

Debra March
Frank Nemec, MD
John Onyema, MD
Steven Ross
Barbara Ruscigno, RN
Anita Wood

Councilwoman, Henderson Alternate
Alternate At-Large Member, Physician
Alternate At-Large Member, Physician
Councilman, Las Vegas Alternate
Alternate At-Large Member, Registered Nurse
Councilwoman, North Las Vegas Alternate

Staff: Scott Weiss; John Middaugh, MD; Angus MacEachern; Glenn Savage, Jennifer Sizemore; Bonnie Sorensen; Jo Alexander; Stephanie Bethel; Jerry Boyd; Dennis Campbell; John Cataline; Nicole Chacon; Rory Chetelat; Judith Flores; Lorraine Forston; Steve Goode; Maria Gueco; Angela Jones; Brian Labus; Susan Lane; Eddie Larsen; Christina Madison; Ann Markle; Dante Merriweather; Veronica Morata-Nichols; Mars Patricio; Walter Ross; Patricia Rowley; Linda Rupert; Clayton Sellers; Leo Vega; Jorge Viote; Deb Williams; Valery Klaric and Shelli Clark, recording secretary

ATTENDANCE:

<u>NAME</u>	<u>REPRESENTING</u>
Bruce Aguilera	Bellagio Hotel and Casino
Stephanie Aldan	LaPetite Academy
Maureen Avery	Creative Kids
Douglas Bell	Converse Consultants
Jason Boyd	KLAS Channel 8
Keelie Christopher	Self
Michael Genczo	USN Student Pharmacist
Jeff Gerber	PGAL
Faegann Hanon	Self
Randall Huggins	ROH Interest
Steve Joyner	APP/CORE
Debra Martinez	LaPetite Academy
Liz Merdzinski	Self
Ken McPhie	STO Design Group
Sidney Nguyen	USN Student Pharmacist
Carrie Paldi	Self
John Reigle	Self
Karen St. Antoine	Creative Kids
Sean Shanahan	Creative Kids
Anthony Snow	Self
Andrew Stanton	Self
Michael Thompson	Childcare Association
Todd Whittle	Republic Services
Cindi Williams	MGM Mirage - Bellagio
Brianne Young	Self

PRESENTATION: Make a Difference Day – Shots 4 Tots

Dr. Sands introduced Veronica Morata-Nichols to discuss the Shots 4 Tots event at Lorenzi Park scheduled for Saturday, October 24th. Ms. Morata-Nichols noted the event should draw over 2,000 children. She introduced some of the immunization staff who have been instrumental in planning the event: Linda Rupert, Maria Gueco, Judith Flores and Jo Alexander. All Board members were invited to attend the event; Dr. Sands and First Lady Dawn Gibbins will be attending. She thanked Councilman Ricki Barlow's office for their tremendous assistance in coordinating the event.

Ms. Morata-Nichols reported that immunization is not a one-time only event – immunizations occur throughout the year and should be promoted. She would like to have everyone familiar with the Shots 4 Tots program to help increase immunization rates. Each Board member received a t-shirt promoting Shots 4 Tots as well.

Chair Giunchigliani thanked staff for their efforts. Julie Hurd from the Public Information Office was also acknowledged for her assistance. Ms. Hurd took a photo of the Board members wearing their t-shirts.

Dr. Sands said a flyer was provided to each Board member about the event, which is being held in partnership with United Way, 100 Black Men of Las Vegas and the Nevada State Health Division. He noted that the staff present today is only a small portion of the immunization team – other staff members are providing service to the H1N1 vaccination clinic. Each staff member plays a vital role in providing immunizations to the community and deserves much recognition.

I. CONSENT AGENDA

These are matters considered to be routine by the Southern Nevada District Board of Health and may be enacted by one motion. Any item, however, may be discussed separately per Board Member request before action. Any exceptions to the Consent Agenda must be stated prior to approval.

1. **Approve Minutes / Board of Health Meeting:** 9/24/09
2. **Approve Payroll / Overtime for Periods:** 9/09/09 – 9/18/09 & 9/19/09 – 10/02/09
3. **Approval Voluntary Furlough Program Reports for Periods:** 9/05/09 – 9/18/09 & 9/19/09 – 10/02/09
4. **Approve Accounts Payable Registers:** #1196: 9/04/09 – 9/09/09; #1197: 9/10/09 – 9/16/09; #1198: 9/17/09 – 9/24/09; #1199: 9/25/09 – 9/30/09

Chair Giunchigliani asked if there were any discussion on the items brought forward on the Consent Agenda. Seeing none, she called for a motion to approve the Consent Agenda as presented.

A motion was made by Member Crowley to approve the Consent Agenda as presented; seconded by Member Fairchild and was unanimously approved.

II. PUBLIC HEARING / ACTION

1. **Memorandum #24-09:** Application to Modify a Public Waste Storage Bin Facility from Republic Silver State Disposal, Inc. for Sandy Valley Convenience Center, Located at 1575 Beech Avenue, Sandy Valley, NV 89109 (APN: 219-05-801-001)

Chair Giunchigliani declared the public hearing open.

Walter Ross, environmental health supervisor/engineer, and Dante Merriweather, environmental health specialist II, spoke relative to this matter. Mr. Ross said that Republic Silver State Disposal, Inc. has met all requirements for a Public Waste Storage Bin Facility as specified in Section 4 of the Regulations governing Public Waste Storage Bin Facilities for the Sandy Valley Convenience Center. This modification to an existing permit documents a historic ownership transfer and addresses the regulations adopted in 2007.

Staff recommends approval based on conditions as outlined in the memorandum and a final inspection. Todd Whittle, Republic Silver State Disposal, Inc. and Doug Bell, Converse Consultants were present to answer questions of the Board.

Chair Giunchigliani asked if the parties understood and are in agreement with the conditions as specified; they each responded affirmatively. The business will operate one day a month and is free to residents of Sandy Valley. The only outstanding requirement is to construct a concrete pad where the waste bins will sit. The business has been operational for several years; however the facility is making modifications to be in compliance with current regulations.

Chair Giunchigliani asked if anyone else wished to testify on this item. Seeing none, she closed the public hearing.

A motion was made by Member Crowley to approve the application with the conditions as outlined; seconded by Member Boutin and was unanimously approved.

3. **Memorandum #25-09:** Application to Modify a Public Waste Storage Bin Facility from Republic Silver State Disposal, Inc. for Searchlight Convenience Center, Located at 651 North Pipeline Road, Searchlight, NV 89046 (APN: 243-35-501-001)

Chair Giunchigliani declared the public hearing open.

Walter Ross, environmental health supervisor/engineer, and Dante Merriweather, environmental health specialist II, spoke relative to this matter. Mr. Ross said that Republic Silver State Disposal, Inc. has met all requirements for a Public Waste Storage Bin Facility as specified in Section 4 of the Regulations governing Public Waste Storage Bin Facilities for the Searchlight Convenience Center. This modification to an existing permit documents a historic ownership transfer and addresses the regulations adopted in 2007.

Staff recommends approval based on conditions as outlined in the memorandum and a final inspection. Todd Whittle, Republic Silver State Disposal, Inc. and Doug Bell, Converse Consultants were present to answer questions of the Board. This facility will be open three days per week and will be free for Searchlight residents.

Chair Giunchigliani asked if anyone else wished to testify on this item. Seeing none, she closed the public hearing.

A motion was made by Member Hardy to approve the application with the conditions as outlined; seconded by Member Strickland and was unanimously approved.

Member Crowley asked how many more applications were pending to ensure compliance with current regulations. Mr. Ross noted that Moapa Valley and Mt. Charleston Convenience Centers would be coming to the Board shortly for approval. There are some transfer station applications pending. Currently Republic Silver State Disposal, Inc. is the only facility permitted as a transfer station; one other facility will be changed to a recycling center from a transfer station.

Glenn Savage, director of environmental health, reported staff is constantly working with the community to bring businesses into compliance, and there is a lengthy list of recycling centers applying for permits. There are not many single stream recycling centers due to the changing market. Staff seeks to ensure compliance with code, handling and storage of materials prior to transport. Member Crowley noted that transfer stations are considered solid waste management

full stream facilities versus those facilities that separate materials for transport. Clark County and the local jurisdictions require sorting to be done with Republic.

- 3. Variance Request** to operate a Public Bathing Place not in Compliance with the Nevada Administrative Code (NAC) 444.130.1, 444.134.1 and 444.156.4, Located at 3600 Las Vegas Blvd. S, Las Vegas, NV 89109 (APN: 162-20-510-002) for Pending Health Permit 18678-3H7-92-99. **Petitioner:** Bruce Aguilera, Vice President and General Counsel for Bellagio, LLC

Chair Giunchigliani declared the public hearing open.

Angela Jones, pool plan review supervisor and Lorraine Forston, senior environmental health specialist presented this item. The petitioner is requesting a variance for the nine Villa swimming pools which do not have clear, unobstructed four-foot minimum width deck width around the entire perimeter, as each pool has a waterfall feature with adjacent planters and spas along one side of the basin and only 64% deck perimeter. There is no handhold going around the entire perimeter of the pool. Two pairs of the inlets are 22 feet apart versus 15 feet apart per regulations. The petitioner feels that a retrofit to the deck and handhold around the entire pool will create financial hardship, require demolition and disruption to service. The maximum width of the pools is 11 feet, allowing customers access to the decks on both sides and the unobstructed end. The pool has more than the required number of inlets, including both a waterfall and skimmer to promote water circulation. Only three to four bathers are allowed in a pool at one time.

Staff recommends approval of the variance based on the following conditions:

1. The petitioner agrees to maintain eight inlets to help ensure recirculation;
2. The petitioner agrees to operate the pool's waterfalls to promote water mixing and circulation;
3. The petitioner agrees to maintain pool surfaces without algae growth;
4. The petitioner agrees to ensure staff has the proper equipment and training required to maintain the sanitation of the pools;
5. The petitioner agrees that the facility will meet all other requirements of the Nevada Administrative Code 444 Public Bathing Places Public Spas;
6. Failure of the petitioner to prevent public health and safety issues, as determined by the health authority, will result in the voiding of this variance;
7. This variance is automatically terminated without further notice upon the closing of any sale transaction involving the subject property, or upon petitioner leasing or assigning operations of these public bathing spaces to any other person or entity

Bruce Aguilera, Cindy Williams, Ken McPhie, Randall Huggons were present to answer questions of the Board. Mr. Aguilera noted they agree with the recommendations as outlined.

Mr. Aguilera noted that without the variance the resort would suffer financial hardship due to the extensive cost of remodeling, as well as loss of use of the Villas during construction. Ms. Forston noted the Villas were never permitted as they were considered private residences; now the area is public and must be permitted.

Mr. McPhie said the pool does have handholds; however it is only 11 feet wide so a bather is always close to a handhold; additionally the pools are only 3.5 feet deep. Installation of handholds in the waterfall area or below the water's surface would require additional demolition and disruption of the concrete. Currently there are benches in the pool as well. The Villas have

been in existence since October 1998 and there have been no issues with handholds previously. At any given time a bather is no more than 4.5 feet from a bench or handhold.

Mr. Smith, legal counsel, noted that if the variance is approved, the district is exempt from future liabilities for any handhold issues.

Member Jones said in his view of the facility there is ample area for a person to flat-hand balance around the pool. He further recused himself from voting on this item as he is an employee of MGM Mirage.

Chair Giunchigliani asked if anyone from the public wished to speak on this issue. Seeing none, she closed public hearing.

A motion was made by Member Crowley to approve the Variance Request with the conditions as outlined; seconded by Member Christensen and was unanimously approved.

4. Memorandum #11-09: Approval of Southern Nevada Health District Regulations Governing the Sanitation and Safety of Body Piercing Establishments; Consideration of Business Impact Statement

Chair Giunchigliani declared the public hearing open.

The following is a verbatim transcription of the public hearing concerning Memorandum #11-09.

Dr. Sands: Next is Memorandum #11-09, which is the approval of Southern Nevada Health District Regulations Governing the Sanitation and Safety of Body Piercing Establishments and Consideration of Business Impact Statement. And Mark Bergtholdt and Clayton Sellers from our environmental health division are here to present and answer questions. And, I'm sorry, not Clayton Sellers, John Cataline, will be presenting. And as you remember this is regulations that we brought forward originally in March and then again in May of this year, after taking direction from the Board. And Mark will give you, particularly for the new members, a review of what all the issues were.

Mark: Good morning Madam Chair, members of the Board. My name is Mark Bergtholdt – I'm environmental health supervisor for special programs.

The Southern Nevada Health District has been regulating tattoo and body piercing facilities since at least 1995 after the Clark County Health District Board passed regulations developed by staff. At that time, the regulations were ground breaking and staff responsible in writing those regulations during that time participated with the National Environmental Health Association in developing a Model Code for Body Art facilities that was published in 1999. The proposed regulations before you are a complete rewrite of those regulations that were passed back in 1995.

These proposed revisions to the body piercing regulations came before the board first in March 2009. During the hearing, the owner of Club Tattoo, a regulated facility here in Clark County, testified in

opposition of the inclusion of single point piercing in the definition of extreme body modification. During that meeting, the Board decided to postpone a decision on the regulations until its May meeting so that staff could gather medical information about the practice. Between the March and May 2009 meetings, the owner of Club Tattoo provided staff with two letters from local doctors which supported the claim that the placing of jewelry under the skin is not a medical implant. A third letter was provided by a local doctor to SNHD that supports the claim that it is a medical procedure. All three of these letters were brought to the Board at its May meeting and included in that record of the meeting. At the May meeting, the board then decided to request staff to obtain a decision from the Nevada State Board of Medical Examiners regarding the practice of placing jewelry under the skin qualified as a medical practice. Staff then drafted a letter to the Board of Medical Examiners requesting a determination of the procedure's status. This matter was heard at the August meeting of the Board of Medical Examiners on an agenda item. Members reviewed the documentation that SNHD provided, members of the Medical Board that is, including a DVD of the procedure and determined that the practice of placing and removing jewelry under the skin in the manner described and depicted was a medical procedure, as it is defined by NRS 630.020. The Board then sent a letter of its findings back to Dr. Sands. In the letter, the Board expressed, and I quote from the letter, "concerns about invasiveness of the procedure, the sterility and safety of the location at which such procedures would take place and the obvious risk of rejection and infection."

After receiving the letter, the staff made three changes to the proposed regulations submitted to the SNHD Board in the May hearing to support the determination made by the Board of Medical Examiners. Sections 1.43, extreme body modification, 1.48, implantation and 8.6 prohibited acts, were modified to take into account the determination made by the Board of Medical Examiners. A fourth change was made to section 8.4, Aftercare instructions, in response to a request by a SNHD Board of Health member at the May meeting to require some other method of reporting adverse reactions of the procedures to the Health District. The regulations will now require a statement on the aftercare instructions advising the clients that should an adverse reaction occur, that they are to seek medical attention through their personal physician and report the reaction directly to SNHD.

After making the four changes, staff then issued an additional public notice announcing a public workshop to be held and receive comment regarding the four changes, and that the regulations will be heard at today's meeting. Each of the 41 facilities that would be affected by the changes were contacted and advised of the notice of the workshop and today's hearing. The public workshop was held on September 24. A transcript of that workshop is included in your packet as Attachment E.

Currently, Section 2.13 of our regulations, which are currently in effect, I'm talking about today's regulations, prohibit the branding, scarification, implantation of jewelry under the skin, or any form of unregulated, invasive body modification from being practiced in a body piercing facility. The proposed section of the regulations have clarified and expanded the prohibitions to include, 8.6.1, Scarification which includes branding, cutting, skin peeling, 8.6.2, implantation of jewelry or objects under the skin, 8.6.3, dermal punching, 8.6.4, Suspension piercing, 8.6.5, Voluntary amputation, 8.6.6, splitting appendages, 8.6.7, Neck rings, 8.6.8, Foot binding, 8.6.9, Corseting, 8.6.10, Any other form of unregulated invasive or extreme body modification which may emerge in the future, 8.6.11 Tattoo or permanent makeup removal, unless under the supervision by a licensed physician, by means of, surgery, treatment with a chemical or substance, or medical device such as an infrared coagulator or laser, and 8.6.12 The injection into the body of botulinum toxin, prescription numbing agents, or any substance other than dyes or pigments approved for tattooing.

If the Board desires I do have a DVD available for viewing that will show the procedures on how a piercing is done to an earlobe using a needle; and how a single-point piercing is done to an individual.

As part of the research that staff conducted, we also contacted the detention centers and the state prisons to find out how they handle incoming inmates with piercings. Three of the four detention centers and one prison responded and reported that they remove any piercing jewelry that can be safely removed or cut off from the individual. Any jewelry that appears to be implanted is left in place.

John and I are here to answer any questions.

Chair Giunchigliani: Thank you. Sorry. I guess I'll open up the public hearing at this point and then whoever wishes to testify can come forward. Just make sure you state your name for the record, we'd appreciate it.

Member Boutin: Madam Chair, I do have a question.

Chair Giunchigliani: Yes.

Member Boutin: What is dermal punching?

Mr. Bergtholdt: John, would you be able to answer that question?

John Cataline: They use a little tool that's usually greater than two millimeters and will actually remove a plug of skin for one reason or another, usually it's involved in piercing, could be used for other things, too.

Chair Giunchigliani: That's right. We actually had to, thank you, Mr. Cataline, we actually talked about this six months ago, I think.

Dr. Sands: March.

- Chair Giunchigliani: March, and so some folks to that, maybe not have been here for that conversation, so some of it...it was a learning curve for a bunch of us. Good morning.
- Member Eliason: Yes it was.
- Steve Joyner: Good morning. My name's Steve Joyner. I'm actually a piercer in San Francisco, but I work with the Association of Professional Piercers – we're an international association. I work with the legislative committee – we write regulations internationally. I also have run a performance art group known as Constructs of Ritual Evolution, also known as CoRE, and we do flesh hook suspension. So I'm here to speak on two different variations. It wasn't brought to our association's attention that this was even going on legislation-wise until just about a month ago, which is unusual for us because I don't know if you guys even know it, but internationally our conference is held here in Las Vegas every year.
- Chair Giunchigliani: Good.
- Mr. Joyner: So if this has been going on March through May, it's kind of strange to me that we don't know this is going on in this state. So, our two cents around microdermal implants...I do see the update that was going, that happened September 28th, where it comes back and redefines implantation. And what is implantation and microdermal implants are two different things in our industry.
- Member Crowley: Could you move your telephone away from...
- Stephen Smith: It's off.
- Member Crowley: Oh, OK.
- Chair Giunchigliani: Yeah, all cell phones are supposed to be silenced. We're just trying to figure out what's causing...
- Mr. Joyner: Mine's silent.
- Mr. Smith: Yeah, me too.
- Chair Giunchigliani: If you have one on, that might impact that just a little bit.
- Mr. Smith: Yeah, I'll turn it completely off and put it here.
- Member Crowley: That's fine.
- Mr. Smith: That's OK.
- Chair Giunchigliani: If it's off it should be fine. Thank you.
- Mr. Smith: I think it was mine. It went away.

- Mr. Joyner: So looking at the definition of what's going on with implantation versus microdermal implants, our association, we teach...I do not know what the video is that you saw, because there are four, five six different techniques of doing microdermal implants and they can be removed. What we were told is that they were removed with scalpels, and that is one method but that is not what we preach nor what we teach it to be removed that way. You can literally manipulate the tissue and pop them out. So I don't know that is...I don't understand the full definition of...I understand what you guys are saying here what was handed down and reviewed, I have not seen the video – I do not know what method they're being taught. We do teach this in our conference here on proper microdermals. There are two different methods: the needle method and the dermal punch method. We do not teach dermal punch method but the dermal punch method is regulated federally, that it's illegal for us to buy them and use them. So there are many different techniques and many different apparatuses to achieve the end goal of having this piece of jewelry put in to the skin.
- Member Boutin: Mr. Joyner?
- Mr. Joyner: Yes.
- Member Boutin: Do you have clients that ever ask for a specific technique when they're having the procedure done?
- Mr. Joyner: Yes, we do.
- Member Boutin: What is the most preferred?
- Mr. Joyner: Well, honestly most people prefer the dermal punch method, but we don't do the dermal punch method. And the reason why, I think, is when you go on different websites and they explain about technique of the jewelry is going to set, if you will, perpendicular to the tissue, and then the base of it sets parallel to the tissue, this makes a T. So it sets, the disk that's on top, if you can...I don't know if I'm explaining this enough...
- Member Boutin: It's good.
- Mr. Joyner: There's a foot, there's a post that comes through the top of the tissue and then there's a disk – the disk sets flush on top of the tissue and then you can change the different gemstones and it looks appropriate. But if it's leaning one way or the other it doesn't look quite appropriate. But with the needle method, sometimes you get a little lean, too. So we are regulated federally that we can't do the dermal punch method. And I'm not saying it's not being done – its' being done all through America. But in their television shows that come up, people wanting them done on their fingers and stuff like that. So there is a conservative side to it and we turn people away all the time for not doing it. But that is our choice as in where we're regulated at. Here, if this goes through to say it's basically made illegal to do, then you just hurt people's business. They're going to go elsewhere to get it down

and get it down in an appropriate method, and what we deem by appropriate method.

Member Boutin: And I was going to ask you that as well. So if we over-regulate the procedure and industry, do you feel that the business would be driven to a nearby state or do you feel it would drive the black market for...

Mr. Joyner: Both.

Member Boutin: ...for the need.

Mr. Joyner: Both. Los Angeles isn't that far away and it's known there, or even going to Reno, because this is Southern Nevada from what I'm understanding. But the black market, I think, will be there. We had uprisings years ago in Hawaii where they tried to make tongue piercing illegal, and it backfired. And then I had to go out and help, go OK tongue piercing's OK, this is the reason why. The dental field doesn't like it, we understand – there are proper ways to do it. We work hand-in-hand with the dentists and there are ways to do things appropriate and there are ways to do things inappropriate. I'm not going to sit here and tell you, I may not look conservative but I'm very conservative in what I do – I turn people away all the time. And when it comes down to is there an appropriate way to do it, and remove it, yes there is without using medical devices, without using medical procedures.

Chair Giunchigliani: To follow up on that. On the federal side, what do they allow under federal law?

Mr. Joyner: We can actually use needles...

Chair Giunchigliani: Not the dermal.

Mr. Joyner: It's just the dermal punches that we have a problem with. We fight with this all the time, cause some states it's a gray area. But when you go federal, federal says we can't purchase these instruments.

Chair Giunchigliani: OK.

Mr. Joyner: So I can buy them. I can go, right now you and I can sit on a website and purchase them and bring them to the house. It's that easy.

Chair Giunchigliani: OK.

Mr. Joyner: But when it comes to law, and actual using it on a federal level, there are...we do fall under that. It's a gray area. It has...

Chair Giunchigliani: Part of what we've been wrestling with, and I'm sorry that your industry was not contacted, how did we do our outreach other than just the one business that came in.

- Mr. Bergtholdt: We actually contacted each of the piercing facilities that are regulated by SNHD by phone, and advised them of both the workshop and the hearing.
- Chair Giunchigliani: OK, but you did not...
- Mr. Joyner: And they contact us.
- Chair Giunchigliani: OK, well that's good. At least somehow you have a network. We should make sure, for future reference, that your industry is...tough place.
- Mr. Joyner: Around 2000, or before, I worked with Clark County, and that's when I chaired the legislative committee...
- Chair Giunchigliani: OK.
- Mr. Joyner: ...and I don't know where the gap, when it happened.
- Chair Giunchigliani: OK.
- Member Jones: Does SNHD staff know of the federal regulation and had that been brought into the discussion?
- Mr. Bergtholdt: I'm not aware of any regulation that prohibits dermal punching.
- Mr. Joyner: It's not known...it's the buying of parts.
- Chair Giunchigliani: Buying...OK, purchasing.
- Mr. Joyner: Not...
- Chair Giunchigliani: Not doing it...
- Mr. Joyner: Scalpels, dermal punches, things of that...it's a very heated topic within our industry.
- Chair Giunchigliani: OK. So part of what we were wrestling with and wanted to get an idea, or understanding of, is whether or not this is a medical procedure versus just a standard tattooing, for lack of a better term, on my part naiveté. And so a letter was requested of the State Board of Medical Examiners and in our packet the former executive director (**attachment #2**), who's no longer with them, had determined that the Board felt that it was a medical practice so it wasn't barred, it just would not be allowed under our regulations and if an industry or business wanted to do it they could go to the Medical Board of Examiners, and I believe under the auspices of a doctor they could then perform the tattooing process. So that's kind of where we're at, just for edification. I hope I'm being clear.
- Member Hardy: So the person who performs the procedure would be a medical assistant?

- Chair Giunchigliani: That's why I asked where the letter came from because that individual's no longer there based on the last ruling.
- Member Boutin: I have a question for staff.
- Chair Giunchigliani: Go ahead.
- Member Boutin: What's the procedure in Nye County? Do they have policies?
- Mr. Bergtholdt: I believe Nye County does not have regulations regarding tattoo or piercing facilities at all.
- Member Boutin: OK, so the client base wouldn't necessarily go to another state, they could drive to another county.
- Mr. Bergtholdt: They could easily go to another county where it's unregulated.
- Dr. Sands: And one of the things to be aware of, it's not all counties, all jurisdictions even regulate tattoo or have regulations for tattoos. And so, as Mark pointed out in his presentation, Clark County was one of the first to promulgate regulations of tattoo, body art and body piercing in the country, and actually the regs have served for other jurisdictions as a model.
- Chair Giunchigliani: But I think we also have to be very cautious about driving people underground. If you've got a safety component that's built in through a regulatory process, then business-wise we should recognize that as well. So, I'm trying to get an understanding...
- Mr. Joyner: That's where we stand...
- Chair Giunchigliani: ...of the regulations...
- Mr. Joyner: if there's a safe way to do it, then why...this generalizes everything in one category...
- Chair Giunchigliani: Right.
- Mr. Joyner: ...when there's no such thing as that. I can sit here and do six different techniques. You know, that's what I'm saying is, it's not fair for these practitioners, in my opinion, that from business they can't do business when there's a safe way. And like I mentioned at the beginning to reiterate, I don't know what video you watched – I have no idea what technique you were watching. I know that...
- Chair Giunchigliani: We can show the video.
- Mr. Bergtholdt: The video's queued up right now.
- Chair Giunchigliani: OK. Let me take a question from Dr. Hardy and I'll come to you Susan.

- Member Hardy: The counties that aren't Washoe and Clark, and I guess Carson, have the state health district or state health department to be in charge on things, so the state health department has no regulations on tattooing or body piercing.
- Mr. Joyner: No, the state never has in this state.
- Member Hardy: Thank you.
- Chair Giunchigliani: Susan.
- Member Crowley: You succinctly put in a couple sentences where we sit, and that's if we asked the Board of Medical Examiners to take a look at whether this was a medical procedure – their read is that it is. And so if we decide to allow any kind of method of accomplishing this, we've decided to bypass that opinion and I don't think I'm willing to do that.
- Chair Giunchigliani: Could we, and I appreciate that, could we look at the video that was sent to the Board of Medical Examiners, because they, and if I look at Louis' letter, they reviewed the materials we sent and the DVD of the microdermal anchoring as shown in the materials provided. And we need to know what they were provided. And if there's six different types, we need to know what the other techniques are.
- Dr. Sands: And you want to discuss the origins of the DVD?
- Mr. Bergtholdt: Yes. Prior to our coming to you in March for the hearing of these body piercing regulations, we met with Club Tattoo and they provided us with a training DVD on how they do needle piercing with the single-point, to create a single-point pocket in the sternum of a woman. They also showed how they remove it in the arm of an unidentified individual. Both those, the entire DVD was sent to the State Board of Medical Examiners and it also included some aftercare instructions. The DVD I have for you today is actually basically a, I cut it down to the point where it's basically only the procedures, not talking about what's needed – it just shows you the procedure that's being done. I also included a training DVD on how they do a piercing of an earlobe with a needle, which is very simple for comparison's sake. So it's a little different than what we sent to the Board of Medical Examiners, but it encompasses basically the same information.
- Member Crowley: One other comment, actually a question, and this is actually for Stephen. The opinion that was given by the Medical Examiner's Board, that was actually broader than a specific method of implantation – it was the just breaking of the skin and going below it to implant something – it didn't make any difference what the method was, right?
- Mr. Smith: That would be my understanding.
- Member Crowley: OK.

- Mr. Smith: Remember that Louis Ling was merely reporting on what the Board had felt after it was agendized and discussed – it was item 20 on the August Board agenda. And the letter is merely a reflection of the findings of the Board – we'd asked for an opinion and they responded with an opinion.
- Chair Giunchigliani: Ms. Strickland.
- Member Strickland: I, too, am a little concerned about receiving an opinion from the Board of Medical Examiners and then not following it or at least not considering it and obviously the evidence that they had for their opinion is what they based their opinion on. It's only as good as the information provided. So perhaps if it turns out, or we decide as a Board that maybe their evidence wasn't sufficient to cover all of things that were discussed by this gentleman, that maybe he could work with members of our staff to present further information to the Board to make sure they really know that they really had sufficient information upon which to base their opinion. Because that appears to be what he's indicating and I don't know if we covered all of the avenues that he's addressed.
- Mr. Smith: Member Strickland, may I interject? When Dr. Sands wrote his letter to the Board asking for the opinion, Club Tattoo and their legal representative was given a copy, plus I made sure they were given a copy and given an opportunity to participate if they so choose. They were the industry representative, if you will, because they appeared at the March and the May meeting – that was the persons that we were informing specifically and then once the letter came down they were also copied on the letter and then they were informed about the proposed regulations and the workshops in September. So in terms of notice to Club Tattoo, who was the individuals or the company or the establishment objecting to the regulations, they were notified every step of the way, to the best of my knowledge.
- Member Strickland: And they were given copies of the information that was given to the Board of Medical Examiners...
- Mr. Smith: Right.
- Member Strickland: ...for consideration.
- Member Christensen: They provided the information...
- Member Jones: I think they got it.
- Mr. Smith: They provided the information...
- Member Christensen: ...to us.
- Mr. Smith: Yeah.
- Chair Giunchigliani: Oh.

- Member Christensen: ...so that we could provide it to the Board...
- Mr. Smith: We provided it to them, yes.
- Member Christensen: ...because at the meeting that was one of the questions I asked is will you give us your educational materials so that we know exactly what you're doing.
- Member Strickland: OK.
- Chair Giunchigliani: So if I add...yeah, go ahead. Because...
- Member Strickland: So then I don't know where you're coming from on this. Are you saying that Club Tattoo didn't have the information, that didn't properly represent your industry?
- Mr. Joyner: They, we don't know. I mean obviously I don't know...
- Member Jones: Is Club Tattoo here?
- Mr. Joyner: ...what technique they submitted – I don't know the information. From our Association's viewpoint, just bringing it to our attention and then, what the red flag came up is something's going to be made illegal that we basically look at as a piercing, it's a little bit longer procedure to get there. But I don't know what method they actually use.
- Chair Giunchigliani: So that's significant. OK.
- Mr. Joyner: We view this as...
- Chair Giunchigliani: So you were involved in 2000, the Association was...
- Mr. Joyner: I was...
- Chair Giunchigliani: See, I'm bothered that just one company, because one company happened to be the only ones...
- Member Weekly: They can't speak for everybody.
- Chair Giunchigliani: ...that showed up because they don't speak for everybody in the long run. So you were involved in 2000...
- Mr. Joyner: These piercers here, you're going to get probably two or three different methods...
- Chair Giunchigliani: Right.
- Mr. Joyner: ...that they use. I do see in the documentation here that...
- Chair Giunchigliani: Referring.
- Mr. Joyner: ...that is has been...I can read.

- Mr. Smith: And I want to make sure that you get copies of the letter.
- Member Boutin: Madam Chair?
- Chair Giunchigliani: Yes.
- Member Boutin: I've got a question for staff. When the various regulations when one is found at fault or not staying in compliance, is there some type of scale or can you give us a generic form of fines or penalties that are imposed?
- Mr. Bergtholdt: If staff were to find in their facilities today somebody doing implantation of any type, we would issue a cease and desist notice to that facility stating that they cannot practice this type of implantation. We would also refer it to the Medical Board for their review and action. If we follow up in a period of time with another inspection and see it again, we will issue another cease and desist and bring them in for a supervisory conference. This is the least way we go, it depends upon how severe the problem is.
- Member Boutin: There are no financial fines or penalties?
- Mr. Bergtholdt: There will be financial fines and penalties for follow-up inspections.
- Member Boutin: Would it be unreasonable for us to start a dialogue or consider just prohibiting it in general. Pahrump is a 45-minute drive; this wouldn't be the only service that our residents drive across county lines to receive and impose...
- Chair Giunchigliani: Tax revenue.
- Member Boutin: ...and impose a fine or penalty that would be so strict that we could help reduce the black market potentially for doing so.
- Member Hardy: Madam Chair?
- Chair Giunchigliani: Yes, Dr. Hardy.
- Member Hardy: Going in a little different direction. We work with public health – that's our concern and so one of the things that we have to do, is we have to say is something a public health risk or is it safe? And so I think we have to recognize that there are safe ways to do things even if we don't want them done to ourselves. And we have to keep that in mind. And there are unsafe ways to do things and we don't want them done to anybody. So the public health issue is our bailiwick. But then we get into the legal thing, no matter what the video is going to show, who trumps who? So does the health district actually have the wherewithal to say you can't do or you can do what the Board of Health says or the Board of Medical Examiners. And the Board of Medical Examiners has jurisdiction over the doctors. And so if the doctor does something then they have jurisdiction. If somebody who's not a doctor, who's not registered as a doctor, tries to do something,

then the Board of Medical Examiners doesn't have legal right to jerk their license, because they don't have a license. And so it's the Attorney General that gets involved with actual prosecution or the district attorney, depending upon who it is. So we're looking at no matter what the video shows, who trumps who, who can actually say yes you can, no you can't from a legal perspective. So we've got the public health perspective at some distance with the potential legal thing. So I don't care what the video shows because we have to find out what we can do or what we can't do with the reality of what we're proposing.

Member Weekly: Great. I agree.

Chair Giunchigliani: I think that was the reason that we asked for, cause we weren't sure if it was a medical procedure. We were being told, so we sent a letter and held back the regulation, to say tell us if it is or if it isn't. And again, they were shown x, y, z from Club Tattoo and the Board of Medical Examiners...

Mr. Joyner: They may say all of it's medical. We're doing an invasive procedures...

Chair Giunchigliani: I believe it. Exactly.

Mr. Joyner: ...in subcutaneous layer of tissue. It's all just to what degree.

Chair Giunchigliani: To what degree.

Mr. Joyner: We try to follow the law.

Member Weekly: Where do we get that answer from that Dr. Hardy just explained, because I think he has a very valid point in terms of whose decision – who supersedes who.

Chair Giunchigliani: That and I don't know how the Board of Medical Examiners, if they may identify a doctor and then just say this doctor could allow for this business to sub-contract under their license to perform. That's a possibility – we just don't know at this point.

Member Crowley: That's not our jurisdiction.

Member Christensen: That's not our jurisdiction.

Chair Giunchigliani: I'm not saying it is.

Member Christensen: It's like the medical spa issue.

Member Boutin: Federal law preempts what we're going to decide any way so maybe we should try...

Dr. Sands: Also to put this in perspective to, about our regs. Our regs are for health and safety standards. We do not certify or regulate the

competency of the people performing the procedures, only that they are doing it in conditions that are safe and under sanitary conditions.

Chair Giunchigliani: Right. So the regulation is proposed that we are looking at today though, it does not allow piercing – it outlaws implantation through a dermal...

Member Jones: Single point.

Chair Giunchigliani: ...single point dermal.

Member Crowley: Well I don't know if they were that specific. We just asked...

Chair Giunchigliani: I tried to clarify what it is because I...

Member Crowley: What we were asking the Medical Examiners to look at was implantation, not method. Implantation. And implantation is what they gave us the opinion on...

Chair Giunchigliani: Right.

Member Crowley: ...it doesn't, the...

Chair Giunchigliani: I mean, our regulation...

Member Weekly: We even messed that up.

Member Crowley: ...the method at this point doesn't make any difference.

Mr. Joyner: Well that's...

Member Fairchild: Mr. Joyner...

Chair Giunchigliani: Yes.

Mr. Joyner: ...what we're debating here is that implantation means that something is held permanently. I have implants in my wrists – this is implantation. A transdermal is something that's sticking of that that has a big base on it, I can't just pull that out. Microdermals you can. I can put a big instrument on it and massage it and pull it out. It's not an implant – it's a piercing.

Chair Giunchigliani: OK.

Member Crowley: We had somebody give us an opinion about that kind of thing, the little thing under the skin that can be pulled out. They told us it was implantation and it's a medical procedure.

Chair Giunchigliani: That's what they said. I know you may not agree, but that's what we were trying to...

Member Crowley: Yeah, that's what we were trying to get an opinion on.

- Member Jones: They did see the video and they did see it being placed and removed in the video.
- Mr. Joyner: And that's why I'm saying one technique.
- Member Boutin: I think we should...
- Chair Giunchigliani: Yes it's whatever...in their mind it didn't matter as the Board of Medical Examiners. Alright, Ms. Fairchild.
- Member Fairchild: Thank you, Madam Chair.
- Member Christensen: You're going to have to take that up with the Board of Medical Examiners...
- Chair Giunchigliani: Whoa, Jim. Speaking order, OK? Donna.
- Member Fairchild: Does your industry have any kind of statistics on infection rates and things like that. Is there some kind of documentation you could bring to our staff that would help us understand this a little better from a public safety and health standpoint?
- Mr. Joyner: In our industry, yes. For microdermals, no, because they are so new – they are only a few years old. So there's not enough research that has been done to have an official stance on anything.
- Member Fairchild: Does California have any kind of reporting system in place for implantations?
- Mr. Joyner: California regulations just got vetoed last week. So we have no...we've been there fifteen years and Schwarzenegger decided that we have regulations already, and we don't. So we don't, that is in California, I'm talking about an industry world-wide. We do in-house and we out-source for our research, yes, but this hasn't been around long enough to have formal research.
- Member Fairchild: OK. Madam Chair, just my own opinion. I think this is something that's not urgent. Perhaps staff could meet with the gentleman as a representative of the industry to just go through the materials again. Maybe Mr. Smith could do a little more investigation on how it all interconnects with the Board of Medical Examiners since these aren't doctors – they may not have jurisdiction or you know, just kind of bring all the pieces together so we have the whole puzzle and then bring this back to the full Board in a couple months.
- Chair Giunchigliani: I would tend to agree with you. I know our issue is the public safety side, but in government sometimes we over-regulate and I think we need to be careful that we don't move in that direction and then put people at worse safety risk because they're no longer getting it done by a properly licensed professional. I might suggest, if the Board even accepts that, that we also ask that your organization, and maybe if staff would agree, I don't know what your time is, I believe the Board

of Medical Examiners could have a representative or someone sit down and talk this through, because we could become the only one with a regulation and I don't want a domino effect but we could be the properly be the leader to at least direct for the rest of the state, because right now the absence of anything it's all allowed period until you get caught or otherwise. So maybe there could be a dialogue that we've not had since 2000 to try to see how to massage this through correctly, for both the public safety but also be sure we've got the balancing act. Because if the Board has jurisdiction, the Board of Medical Examiners, they need to be very clear then on what they do, because then they have to establish a regulation on how to allow your businesses to proceed. I don't want to just leave somebody in limbo because we adopt a regulation and then there's no...we just kind of finger pointing in the long run.

Mr. Joyner:

And there is a scare part from our side that you guys are planting a seed, you'll be the only people to make this illegal. And to us there is...we're here for public health and safety, too; that's why I work on the legislative committee. I think there's three or four things that are public health issues in your regulations...using chemiclaves is not a good thing in our industry. You know, so we could sit here and debate all the public health issues and fine tune it. Our whole thing is that if there's a proper way to do why isn't there somebody in business? So I would like to at least get a formal, no your methods are medical procedures, it's wrong – I would at least like to have that instead of watching one video and somebody determining what's going on. And I hear what's going on and I hear what she's saying, that they're deeming it implant. I can tell you that almost any piercing can be deemed implant except for it has an entrance and exit – that's the only difference.

Chair Giunchigliani:

And I think sometimes face-to-face is far better than watching something. So if staff would be..if there's a counterpart contact with the Board of Medical Examiners that maybe we could get a working group together on this component, because there may be other parts that we've forgotten, didn't even address safety-wise from an industry perspective versus an individual business perspective. And I think that's part of what we ought to take a look at. So, Donna is that in the form of a motion to set aside or...

Member Crowley:

One more comment.

Chair Giunchigliani:

Certainly, Susan.

Member Crowley:

And that's that I think our staff has already told us that as our regulations sit right now if they inspect the tattoo parlor and they're doing the implants they'll be issued a cease and desist. So...

Chair Giunchigliani:

But our...that's what...I was going to come back to that. Under the current regulation you will do a cease and desist. What in our current regulation allows you to do that?

- Mr. Bergtholdt: The definition of extreme body modification is implantation. We consider this to be an implant.
- Member Crowley: So really in the revised regulations we're not changing that...
- Chair Giunchigliani: Not changing that.
- Member Crowley: ...the way we handle...
- Chair Giunchigliani: Were you aware of that?
- Mr. Joyner: Yes, and I think the terminology is wrong.
- Chair Giunchigliani: OK. So that part is still in the threshold of the definition then, in the current one. OK, that's...
- Mr. Joyner: I'm going off of what a medical definition is, so that's...it's a little confusing but not confusing at the same time. I can understand that so...I understand that the ramifications of watching the video, I understand the legal documentation that says this is the terminology, I also understand what we do, the medical field and the politics behind it. So I'm trying to say where does this all come together.
- Member Fairchild: Madam Chair, I'd like to form a motion.
- Chair Giunchigliani: OK. Alright. And then Councilman Anthony has a question.
- Member Anthony: I just have a question. I guess I'm a little confused. If it's considered an implant and you can regulate it and give desist orders, what are we doing?
- Member Crowley: I know.
- Member Anthony: Why are we discussing this? It sounds like it's done.
- Chair Giunchigliani: It sounds like it's been there...we never quite did anything with it and now we're doing something with it.
- Member Anthony: We're having a nice discussion about it. But what's the...I mean, what's the point?
- Mr. Joyner: Can I say this? Implants in the initial regulations is stuff like this. And now, just now you, as in this going on in the last month or so they watched it and they have now deemed microdermals as implants. So this is very new. Not the...
- Chair Giunchigliani: That's what...
- Mr. Joyner: ...initial implant. That's what I'm saying terminology is, what's the problem.
- Member Boutin: Madam Chair?

- Chair Giunchigliani: Yes, please.
- Member Boutin: Who asked for the agenda item? Do we know who requested this? Did this come from...
- Chair Giunchigliani: I don't know. Did staff initiate this?
- Dr. Sands: Oh no, this was initiated as an update to our regulations for body piercing.
- Member Boutin: ...originally done this. This is a carry-over, correct?
- Dr. Sands: Right. Right.
- Member Jones: I think that Club Tattoo come to one of the original discussions; they represented that they had a new technique, a microdermal technique, and it should not be considered an implant...
- Member Boutin: So it sounds to me like...
- Member Jones: ...and so they were asking to have it removed from the definition of implantation.
- Member Crowley: That's why we went to the Medical Examiners Board to ask them whether or not it was considered an implant...
- Member Boutin: ...getting a new definition...
- Member Crowley: ...they say yes it is considered an implant.
- Member Boutin: So it looks great on paper.
- Member Jones: They said it was a medical procedure.
- Mr. Joyner: They'll still say it when they get through talking to us, too.
- Chair Giunchigliani: Yeah, but I think you need to make sure when you do the regs...
- Member Boutin: Mr. Joyner, can you, when we set up our subsequent meeting, can you be prepared to give us a presentation on the different techniques that you would use for this service?
- Mr. Joyner: I just need notice so I can make it back.
- Member Boutin: Can we have a copy of the act that prohibits the, at least that you can buy equipment...
- Member Fairchild: The sale.
- Mr. Smith: It's a medical device. It's an FDA, food and drug regulations dealing with medical devices. This is a complex regulatory scheme which there are no easy answers. We asked the Board for an opinion.

There's a big difference between asking the Board of Medical Examiners to initiate regulatory action, which in their discretion they may or may not do just as we may, the district, may or may not do. You're dealing with a complex area in which there are really no answers. The district has the proposed regulations amending their current regulations. That's what's before the Board as an agenda item.

Member Fairchild: And it's important to note, too, as Mr. Joyner's pointed out, there are new procedures that the industry is not doing that is far beyond their scope from the regulations in 2000 – I mean there are new things out there that we need to know about and that we need to address. So I think by bringing this back to the table and looking at the whole thing. I think Mr. Joyner will be able to allow us to understand how far reaching this really is. I mean, there are whole new procedures that we weren't aware of and why lump them all under...

Mr. Joyner: We're familiar with FDA and we work hand-in-hand with them. We're very familiar not using dermal punches and stuff like that.

Chair Giunchigliani: And it sounds like maybe we ought to have a broader working group, the Medical Examiners, the FDA...we have folks here in town that we can set a working group. I just want to make sure we do the right decision regardless of your business...if we decide that's not the right thing...

Mr. Joyner: That's what we want. Even if you say sorry, this is...OK, we've tried. At least we've got what we consider the proper information...

Chair Giunchigliani: Councilman. Commissioner Weekly.

Mr. Joyner: ...we don't know what they...

Member Weekly: Thank you, Madam Chair. And I'll just have to step back to Dr. Christensen's comments, but please Mr. Joyner, I just wanted to volunteer...I think there was a suggestion that Mr. Joyner comes back with a demonstration or whatever...I'd like to offer up Councilman Eliason.

Member Eliason: Thank you. Don't...

Mr. Joyner: We teach classes, we have videos and we even, because we teach in accordance with so many different regulations...

Chair Giunchigliani: I think an earring would be great. We appreciate this. We're trying to add a little levity to this...

Member Fairchild: You look good in that shade of red there, Robert.

Chair Giunchigliani: OK, I guess we have a motion, I need a second to set this aside...Oh, I'm sorry.

- Member Christensen: I just have one question. You said that you don't attest to the competency...
- Mr. Joyner: Correct.
- Member Christensen: So who does? In the scheme of things.
- Chair Giunchigliani: I guess the consumer. I don't know. Good question.
- Member Christensen: Well I mean, you know...
- Mr. Joyner: Elaborate on that.
- Member Christensen: Separate question, but if we're doing a procedure who attests to the competency of the people doing the procedure?
- Mr. Joyner: There's no regulations that...so you're saying how do we know who's...
- Member Christensen: How do you know someone's good to go to do the procedure safely and how do you know somebody's...
- Mr. Joyner: I agree. And if I had my way, we'd go to college and learn how to do this appropriately.
- Chair Giunchigliani: I like that actually. Dr. Hardy.
- Member Hardy: And likewise we hear there's no complication we know of. But we don't report it. I mean, there's no reporting that we report like we do gonorrhea. There's no reporting system so how do we know who's got a complication and who doesn't.
- Mr. Joyner: It's just like, well I can't say it's just like any other field, because most fields are...we are actually trying now to get CEU courses so we can actually train people appropriately and have documentation stating they've been trained. We give certificates...to me it doesn't really mean anything...
- Chair Giunchigliani: Because it's not formal.
- Mr. Joyner: ...and in the Association a lot of us who were trained, a lot of us would come back and train. We have a lot of people sitting in here that are instructors sometimes. When it comes down to it, half of that's experience...
- Chair Giunchigliani: Mm-hmm.
- Mr. Joyner: ...and the other half is getting fully trained...
- Chair Giunchigliani: Sure, it's like a pre-internships or something.

- Mr. Joyner: ...we work with orthopedic surgeons on that and they teach that. We work hand-in-hand on that. So it's piercers and medical field working together, or dentists or whatever.
- Chair Giunchigliani: Maybe part of what we have to look at though is if we're going to do a regulation regardless of what we permit or don't permit, we ought to have a reporting mechanism and that goes back to Board of Medical docs should be tracking this. And it's all in the eye of the beholder. If I didn't like the way my doctor did x, y, or z who do I report that to? The Board of Medical Examiners if it rises to the part about possible malpractice or if it wasn't done correctly versus I just didn't like how it came out. So we have to look at that balance. It sounds like our regs...maybe there's some additional things we could look at. I like the idea of a CEU but we can't mandate that you do that but I think...
- Mr. Joyner: You can look at Kansas regulations where they would have you train so many hundred hours before you're able to do this procedure.
- Chair Giunchigliani: If you have information like that...
- Mr. Joyner: ...certain states that are way more intense...
- Member Boutin: Mr. Joyner, there are no certification, there's not a certification process for the tattoo artists?
- Mr. Joyner: Not official. Nothing that would be recognized. California has one school that is recognized on a state level. That's it. So it doesn't mean anything unless you live in the state.
- Dr. Sands: But getting back to your question about reporting...that is a very important issue that was brought up the last time we discussed that. And that's part of what we're proposing in the revisions in the regulations is tied to that because right now those reports aren't coming directly to the health district so it's really difficult for us to be able to track those situations when they are occurring as well as just ethics. We want to make sure that people are being referred to their personal health care provider, or a health care provider, if they do have an adverse reaction to...
- Chair Giunchigliani: OK.
- Dr. Sands: ...the procedure. That's one of the things we're proposing right now so that we can start getting a handle on that.
- Chair Giunchigliani: And it should come, in my opinion, to the health district but also to the Board of Medical Examiners if we deem that it becomes a medical procedure so at least there's documentation both ways. OK, we've heard a motion...
- Mr. Joyner: One of the things...
- Chair Giunchigliani: Yes.

- Mr. Joyner: ...you can stiffen up in here, your regulations only say implant grade is surgical stainless steel. Period. It doesn't say anything about specific grade or series or anything. So I can put a staple grade in you and say good luck. And that's not good.
- Chair Giunchigliani: See, those are the types of things...
- Mr. Joyner: The things you buy at the mall are cheap jewelry, where you can actually write in certain grades and series most states have that you have to start with. That doesn't mean once it's healed you can't buy what we consider like the costume staff. But you start out with something...what we have problems with, and this is nation-wide not here, is that somebody says you can implant, you can pierce with this, this implant here, and then there's a problem and they want to blame it on how we did it. And we say no, it's the jewelry. But you say it's OK to use this cheap stuff. And since there's no regulation saying you can't buy anything from Thailand or Korea that's maybe \$.99 and put it in somebody – people do it. So then...it's from working in a high-end industry, it's totally not our business then because I spend \$13 wholesale for a barbell versus somebody who buys a \$.99 piece of jewelry and then they charge the same amount as us.
- Chair Giunchigliani: And that's where infection comes from.
- Mr. Joyner: We can pick this apart on many levels.
- Member Eliason: I'm still trying decide where I'm going to get a piercing at.
- Chair Giunchigliani: Oh I can give you an idea but we don't do that one, would we?
- Mr. Joyner: Might be a public health issue.
- Chair Giunchigliani: You have a comment...the public hearing is still open, please.
- Liz Merdzinski: My name is Liz and I'm a local piercer. Just to go back to why it's so important that we discuss it now. This cut my business and my income in half. The shop that was the oldest shop in Las Vegas was closed down for a while and this was a big impact. This is a really huge, popular hot thing to do – it is the trendy thing to do. You know like when the navel exploded everybody had to get their navel pierced like...
- Chair Giunchigliani: I resisted, I really did resist that.
- Ms. Merdzinski: Well this is a big thing. It hurt my income so bad and I'm a single mom. And I made a lot of money off of that piercing. And people are doing this – people are doing this out of their house that don't even know how to properly do it.
- Member Eliason: Well I think that's going to continue no matter what we adopt.
- Ms. Merdzinski: But...did...a lot of people are going to these places instead of coming to see somebody like myself or one of the other three or four piercers

in town that know how to really do it. And I've seen some really bad things and it's really scary and when these bad things happen, people look at me and that hurts me because it's just going on regardless. And it's really hurting us. It really is. And you can go to Phoenix or Arizona where there is no regulations whatsoever – you don't even have to have a license over there.

Chair Giunchigliani: OK. Councilman Strickland has a question.

Member Strickland: I have a question for you. Do you in your establishment carry liability insurance in the event you injure somebody as a result of what you're doing?

Ms. Merdzinski: Absolutely. And that's why we have release forms as well. You know, the thing in my forehead, just to touch on that. The top two, right here, that's a surface bar, which is perfectly allowed under the regulations as they are, and it's OK. Underneath it I have an anchor, and the procedures in doing those is pretty much the same – the only difference is that I don't push the needle all the way through the skin for a surface bar, I just pull it out half way. That's the only difference and there's less scarring, and there's usually less chance for infection. People have a much better time healing. If I pierce two people's hips right now, two different girls, you know, one girl I'm going to see her every couple months with issues with healing and everything if I use a surface bar; and the anchor I'm not going to see her again unless she wants to change the end.

Member Strickland: And the insurance that you have that's for people who are actually injured as a result of the services you performing, not just somebody just injured by coming and falling in your establishment or something, correct?

Ms. Merdzinski: Right.

Member Strickland: OK. And...

Mr. Joyner: I will say, and this is a downfall right now, microdermals are not covered under piercing insurance at this particular time.

Member Strickland: So then what's going to happen in the event somebody sustains some kind of serious infection as a result of a microdermal piercing and they go to you to get some recovery and your business doesn't have the money to pay them?

Mr. Joyner: Well, when the research was going on with them, exactly what I mentioned to her earlier, there has to be enough research before the insurance company will approve it or not approve it. Actually a third of the piercings that we're probably doing every day are not covered under that insurance, because there's not enough research.

Member Eliason: I'll second the motion...

- Mr. Joyner: And these are piercings that you guys say are OK to do. There's a two-way street there. I understand why we're debating this particular issue – this particular issue doesn't have enough research for the insurance companies to provide insurance.
- Chair Giunchigliani: OK. We'll take one more for the public hearing and then we'll close the public hearing.
- Anthony Snow: My name's Tony I'm a local piercer as well. I just want to say that the Association that Steve Joyner represents – they are corporate members who are people that design and came up with the jewelry design and they do not condone implants at all. The jewelry itself is referred to by the Association as a single-point piercing strictly – no implants. They do not condone the use of dermal punches. I am myself have never even used a dermal punch to insert one of these – I've only used a needle. They go in just as smooth as when doing a nostril piercing, less invasive actually, you know. That's pretty much all I wanted to say.
- Chair Giunchigliani: OK. Thank you very much, Tony. OK we have a motion before us to set the revised regulations aside; to ask staff, the Association, and anybody else that wishes to participate to really go back through and flush it out, in addition to working with the Board of Medical Examiners as best as we can to see if they would participate in some discussions regarding the regulation process, and anyone else who wishes to participate.
- Member Fairchild: And should we set it for a date certain, the January meeting?
- Mr. Joyner: Ma'am, I have one more question...
- Chair Giunchigliani: Sure.
- Mr. Joyner: ...and that regarding suspension piercing. I personally, this is my personal opinion, agree this should not be done in piercing studios; however I run the world's largest theatrical suspension group and the way that it's written there are loopholes that say that I cannot come in here and perform in the casinos. So I'm a little concerned that if this...
- Chair Giunchigliani: Then we need to make sure that that's part of the discussion if the Board approves setting this aside, because then that would be another thing we'd have to talk about then.
- Mr. Joyner: OK.
- Member Crowley: Second the motion.
- Chair Giunchigliani: OK. All those in favor say "aye."
- Board members in unison: Aye.

- Chair Giunchigliani: Opposed? Motion carries. Then make sure that's part of the conversation.
- Mr. Joyner: I've got a whole training manual.
- Chair Giunchigliani: We're learning as we go as well.
- Ms. Merdzinski: So until this meeting it's still not allowed?
- Chair Giunchigliani: It's still not allowed because our current regulations...we're back under the current regulations for now.

A motion was made by Member Fairchild to 1) set the revised regulations aside to the January 2010 Board of Health meeting, and 2) ask staff, the Association, and anybody else that wishes to participate including working with the Board of Medical Examiners to more thoroughly discuss the regulation process; seconded by Member Crowley and was unanimously approved.

5. Memorandum #28-09: Proposed Amendments to the SNHD Regulations Governing the Sanitation and Safety of Child Care Facilities; Consideration of Business Impact Statement

Chair Giunchigliani declared the public hearing open.

The following is a verbatim transcription of the public hearing concerning Memorandum #28-09.

Dr. Sands: Our next item is Memorandum #28-09, this is proposed amendments to the SNHD Regulations Governing the Sanitation and Safety of Child Care Facilities and Consideration of Business Impact Statement. And Mr. Bergtholdt from our environmental health division is here to present and answer questions.

Mark Bergtholdt: Good morning, again. To my left is Susan Lane, she is an environmental health specialist for Special Programs; she is the key person for child care.

State Law requires facilities that provide care to children that are not their own to have issued a license by the licensing authority. State law also requires, The State Health Officer or his designate to inspect at least annually, every child care facility. Presently, Environmental Health Specialists conduct inspections at child care facilities using *CCHD Regulations Governing the Sanitation of Child Care Facilities* adopted by the Clark County District Board, at that time, on August 22, 2002, and revised May 22, 2003. These Regulations govern the standards and activities to protect public health at child care facilities that are licensed by the Nevada Division of Child and Family Services, Bureau of Services for Child Care.

Staff has been developing these Regulations for the past two years and proposing changes to the regulations based on comments received from operators during routine inspections, reviewing the revised state licensing regulations and reviewing "Caring for Our Children," a model health code for child care facilities published by the American Public Health Association and the American Academy of

Pediatrics. During July and August 2009, staff met with a number of stakeholders to introduce them to the draft proposed amendments. These stakeholders included Clark County Child Care Licensing, Nevada Division of Child and Family Services, Bureau of Services for Child Care, the Child Care Association of Nevada, and UNLV Preschool, which is a National Association for the Education of Young Children (NAEYC) accredited facility – that facility adheres to standards that reflect the most rigorous credentialing criteria in the child care industry today.

Three public workshops were also scheduled around the county, and publicly noticed. At the request of the community a fourth was held in the evening to meet the need of the regulated community so that individuals who were busy during the day could attend and comment on the regulations. Minutes from all of the public workshops, except Laughlin which had no attendees, were recorded. Public comments received throughout the comment period and at the workshops were addressed both at the workshops and via written e-mail correspondence. A summary of correspondence was prepared by staff that lists the comments and SNHD's responses. The current draft regulations reflect changes made as a result of the community workshops, other stakeholders via written submissions, and SNHD staff. These proposed regulations also include several appendices that supply child care operators with information and guidance that will assist them with achieving compliance with the regulatory requirements.

The changes include comments staff have received from the public during their inspections, sorry. Highlights of the most significant changes, identified by potential to increase the protection of public health and the environment and from stakeholder feedback regarding anticipated economic impact include:

- Revision of the chemical disinfectant strength to be used for all purposes except for cleaning toys that go into the child's mouths and eating utensils
- Addition of special event facility requirement
- Expansion of exclusion for fever criteria, including observation of changes in behavior and signs and symptoms of illness; and separate criteria for children less than four months of age
- Addition of the requirement for the use of gloves for diaper changing and application of sunscreen to children
- Addition of a requirement for shoe removal, shoe covers, and no bare feet in infant rooms
- Prohibition of the use of chemical air fresheners
- Notification of parents and guardians of pesticide application of three business days in advance of the application
- Addition of up-to-date food safety information, including food cooling and storage
- Addition of the requirement to vacuum or clean carpets when children are not present, and revision of the infant room carpet cleaning requirement from every three (3)-months to monthly

- Revision of medication administration information to include non-prescription medications
- Addition of the requirement of an illness log
- And changing references from US Consumer Product Safety Commission (CPSC) to the American Society for Testing and Materials (ASTM), where applicable

Comments received by the public during the comment period that recommended changes to the regulations were carefully analyzed by staff and addressed. If the comment was found to substantially improve either the clarity of the regulations or improve the protection of the public health, the recommendation was included in the draft of the proposed amendments to these regulations.

One issue that came up during the workshops is the requirement for family care and group care homes to have impact attenuation surfacing and use zones for home playground equipment with a designated playing surface of 20 inches or more in height – that means that they're 20 inches above the grade. This currently is required in 12.3.3.a of our current regulations today. This requires all home equipment to be installed to the manufacturer's instructions. Within those instructions are statements that require the equipment to be placed on a yielding surface. The proposed section 9.6.1 still requires the equipment to be installed to the manufacturer's specification. Additionally, the ASTM standard, which is mentioned in 9.6.1, for residential playground equipment requires the following statement in the installation instructions: "Do not install home playground equipment above concrete, asphalt, packed earth, grass, carpet or any other hard surface. A fall onto a hard surface can result in serious injury."

The estimated economic impact of the proposed amendments to these regulations is minimal, and the estimated cost, if any, to the SNHD enforcement is also minimal. Environmental Health staff recommends the adoption of the proposed amendments to *SNHD Regulations Governing the Sanitation and Safety of Child Care Facilities* to improve the public health within our community.

I see out here that there is Mike Thompson, who is a member of the Nevada Child Care Association. We have been in contact over the last couple of days with emails from him. He has issues regarding pesticides and air fresheners. We have worked with him and staff developed some language that may answer his concerns. Also Susan and I are up here to answer any questions you may have.

Member Crowley: Madam Chair?

Mr. Bergtholdt: Thank you.

Chair Giunchigliani: Thank you. Ms. Crowley?

- Member Crowley: Did I hear you correctly that we're asking that play equipment isn't installed on a grassy area?
- Mr. Bergtholdt: Correct.
- Member Hardy: Madam Chair?
- Mr. Bergtholdt: And that's only for family care homes because of impact attenuation and a child who falls from a height of twenty inches or more and comes in contact with that may suffer possibly a life-changing injury with the brain. We're not concerned with bone fractures, because those are repairable.
- Chair Giunchigliani: Dr. Hardy?
- Member Hardy: So, series of questions, I guess. One: this is compatible with proposals we have over the new kindergarten/pre-school law that the Legislature did with looking at food preparation. Obviously we're not going to plant trees anywhere unless they're planted in a yielding material surface, because kids still climb trees. And food preparation – we're still looking at the same kind of thing...we don't feel that was...change diapers in the same facility by the same person.
- Mr. Bergtholdt: Correct.
- Member Hardy: Thank you. And if you have any other comments about those. So correct on all three?
- Mr. Bergtholdt: Well, climbing trees is not an approved piece of playground equipment, so that would fall under licensing for allowing kids to climb on a tree in their care. So that would be kind of off limit, that's more of a licensing question.
- Member Hardy: So you don't want trees.
- Chair Giunchigliani: Licensing question for whom?
- Mr. Bergtholdt: Also for...
- Chair Giunchigliani: Licensing for child care?
- Mr. Bergtholdt: Also for child care facilities, because there are trees in playground areas at child care facilities.
- Chair Giunchigliani: Right. So who...
- Member Jones: It's a prohibition to climb a tree unless you're an operator.
- Member Eliason: But don't they even require so much shade when they're on site, too?
- Mr. Bergtholdt: Yes, we do require an amount of shade outside.

- Member Eliason: You just don't get to climb it.
- Chair Giunchigliani: You just can't climb a tree. You can't be a kid, you can't run barefoot, you can't play in the grass. OK.
- Member Crowley: Bubble wrap.
- Chair Giunchigliani: Good Lord. OK, let me open the public hearing so that if anybody, that gentleman, Mr. Thompson or anybody wants to come up. I had a couple questions. Tell me about the no shoes, and the reason I ask is there are some children, and it's very rare, but I had an autistic child who would go in to seizure based on the pressure of their shoes, so their parents, when they would bring them to school, would just leave them with their socks. So what if a parent makes a specialized request, are they allowed under this regulation?
- Mr. Bergtholdt: The only no shoes that we're speaking of is within the infant room, so when adults are in the care of children who are infants that they wear either shoe covers or wear stockings or have stocking feet – no bare feet in the infant room. That's the only place that we're talking about.
- Chair Giunchigliani: OK. And a non-absorbent wall. What is a non-absorbent wall in the infant changing room?
- Mr. Bergtholdt: That's basically a painted surface so that it doesn't absorb liquid in to it.
- Chair Giunchigliani: So painted. I was thinking ...
- Member Crowley: Intact.
- Chair Giunchigliani: ...a piece of padding
- Mr. Bergtholdt: In a lot of these facilities there may be some sort of rubbing that occurs from the furniture and that scratches the paint and gets into the surface and now it's a non-absorbent wall. So we're looking at intact walls.
- Chair Giunchigliani: Could we do lead-based home surveys of our child care facilities so that we can assist them and use our grants to help them not be lead-based?
- Mr. Bergtholdt: Actually we have surveyed all our child care facilities built before 1978 here in Clark County for lead and all the lead hazards have been corrected.
- Chair Giunchigliani: OK. And how many facilities are there that are inspected by you...by your...
- Mr. Bergtholdt: There are approximately 600 facilities in total.

- Chair Giunchigliani: And that's Clark County, Henderson, Boulder and...what I keep getting confused about is the state designated...it's either the state or their designee as the local health board to do the inspections, and then in the county we have inspections for business license purposes. So what do they look at that's different than what you look at?
- Mr. Bergtholdt: Business licensing and the Bureau of Child Services are looking at things about the quality of care that's being provided to the child. They're not looking at the health issues that are within the facility.
- Chair Giunchigliani: With no disrespect, I would argue that we don't have any training for our folks to really be looking at quality of care for child...
- Mr. Bergtholdt: That's with the licensing people, not with us.
- Chair Giunchigliani: But we intend, what is the reality of it, so...
- Susan Lane: Licensing looks at ratios, maximum capacities in rooms...
- Chair Giunchigliani: How many...
- Ms. Lane: ...curriculum, toys that are available. We do have some areas where we overlap: the disinfectants, food service...but they're more interested in food quality as far as making sure that it fits the federal guidelines for a balanced meal and within so many hours how many meals the child has to have in a day if they're in that facility for so many hours.
- Chair Giunchigliani: So as we in the county are debating whether to shift this back to the state, I'm just trying to get a handle on who's really doing what and what were they looking at and are we duplicating at some places and does something fall through the cracks on the other side of it. So...I notice that City of Las Vegas still has a child care licensing board or no?
- Member Weekly: Yes.
- Chair Giunchigliani: Yes, you do, don't you, or they do?
- Member Weekly: They do.
- Chair Giunchigliani: OK. Do any of the other jurisdictions? I'll have to see what they're looking at, because you gave yours back to the state so I don't know why there's a board now. OK.
- Member Weekly: He's still on probation.
- Chair Giunchigliani: Oh...
- Member Anthony: I'm new.

Chair Giunchigliani: And then finally I was going to ask on the special events component, which is 1.61, which is the new administrative code that was updated in the state, that the county was not in compliance with and we had a board agenda this week on it, I think that will help convention facilities be able to apply. What we're going to do is agendize it that convention facility can then apply for a waiver to ours until we get our code updated. So I think, and I talked with staff, so thank you very much for making sure that whatever we did today did not conflict with moving in to that direction. And I guess in state law it's event-by-event, they cannot just do a blanket yearly application. Correct?

Mr. Bergtholdt: That's my understanding.

Chair Giunchigliani: OK. And third thing was, and it was a question Commissioner Sisolak, that we were talking about, had asked me to ask, and that is because it's an event-by-event what if casino X designates rooms A, B and C and then depending on...they do their application; we come in and inspect and say A is great and they don't use A again for three months, but then another group comes in and there's no change in circumstances, same number of kids, same delivery of service – do they have to then go through a full-blown inspection or can they reapply, jump through those hoops but not have to cause staff to go back out or not. We were trying to kick that around...

Mr. Bergtholdt: I think, just off the cuff here, I would see that probably it would not be the plan review part of it...

Chair Giunchigliani: Right.

Mr. Bergtholdt: ...but there would be the inspection part of it...

Chair Giunchigliani: OK.

Mr. Bergtholdt: ...because these facilities change over time, just from...because it was three months actually it might have had three different, four or how many types of uses...

Chair Giunchigliani: Right.

Mr. Bergtholdt: ...in that period of time, so that would have to be verified that it's back in place. So I would see an inspection for every event for my staff; but for the plan review, to go through the plan review group if it's set up the same, I do not see that being needed...

Chair Giunchigliani: OK.

Mr. Bergtholdt: ...but I'm just talking off the cuff here.

Chair Giunchigliani: That's fine, and that at least lets me get back with an answer that I was asked.

- Member Jones: And I think the expectation of industry is that the code now does require a new inspection...
- Chair Giunchigliani: Each time.
- Member Jones: ...and a new application for each special event. Hopefully that can be fixed in the future.
- Chair Giunchigliani: OK. Further questions from the Board? OK, anybody want to offer a motion?
- Member Hardy: Move for approval...
- Dr. Sands: We need public comment.
- Chair Giunchigliani: Oh, acknowledge that...yes I did open...is there anyone else that wishes to testify? Mr. Thompson, was it you said was here? Good morning.
- Michael Thompson: Good morning. Madam Chair and the Board. My name is Michael Thompson and I'm the acting president of the Child Care Association of Nevada. And thank you so much for this opportunity. Historically the health department has regulated us for years and years and years and oversees any aspects of safety and quality in relation to child care services within the state. In relation to this section of regulations being looked at...I first want to thank the health district under Susan's leadership and reaching out to our industry, because as you all know, child care is a service of need not a service of want. Demographically we serve working families and today, unfortunately in the state of Nevada, the greatest population of those we serve are single moms, over 50% of them are single moms. So we want to thank them for their sensitivity along these issues in relation to child care as a small business and the impact these changes could have on parents' ability to be able to utilize licensed, quality child care services within Southern Nevada. The only two issues we brought to the table, and again first of all, in the dialogue we had it was a wonderful experience and opportunity to really be able to sit across from the table and dialogue with people about the services we offer, their goals, and so I would like to set this up as a potential example for things for the future when regulatory bodies look at industries, particularly at our industry, that they really understand that there is always the ideal and there's the reality of what happens every single day in workplaces that we work in. So I want to thank them again for that. The only two items that we brought back to the table after our discussion, which I had sent via e-mail yesterday and have already been approached by...to me again this morning, were two issues that we really look at as issues of customer service. We don't see them as negatively impacting us from a financial standpoint necessarily but because they actually are expenses that we incur for the possibility of being able to offer good customer service to our families and to our clients. And the first one has to do with the use of commercial grade air fresheners. Many schools use commercial grade air filtration systems as far as

circulatory systems within their buildings, but also use air fresheners as well as a way to enhance the experience for people. And, as I said to Ms. Lane as we talked about this early on, I said, you know, one of things that parents really do appreciate in a quality setting as they walk into that particular setting and they see what the cleanliness factors are in that school. And many parents really look at that as a key element for future safety and security of their children. And so even though the smell of air is not necessarily a direct indicator of health and safety, from a perception standpoint for parents it's a big issue. So when you walk into a school that does a good job at this, you know it. And when you walk into a school that does a bad job at this, you know it. OK? So our point was that we certainly see the value of its usage and we do believe that there should be a process in place by which parents are made aware of the use of them so that they can take that into consideration in regards to their own child. What we suggested is that we already have systems in place for this in relation to other aspects of child allergies, so we have a whole allergy system whereupon the enrollment of a child within our school structure we ask the parents to identify any particular allergies that they may have, and so we saw that this could fall into a similar category whereas upon a new family approaching a school to look to enroll they could then be informed of the use of certain, in this case, air fresheners and also it goes back to pesticides, which is the second area. So a pre-notification to parents so that they aware and so that they can inform us of any particular issues their own child might have with it. And again, staff has suggested that they're working on some language to kind of meet that goal.

Chair Giunchigliani: Is there a particular section, I was just trying to see that...

Mr. Bergtholdt: The language we have here is 4.58.

Chair Giunchigliani: Thank you.

Mr. Thompson: The other area had to do with pest abatement, of pest control. And so, again, regulatorily we have to use systems by which to keep insects and other kinds of rodents and things outside of our facilities and so we've always used pesticides, which is...again we use commercial grade, commercial companies and we keep track of those when we log those usages and we have reports available upon request. The new request in the regulation was to, excuse me, for a three-day notification of parents of the same, that we were going to have an impending usage of pesticides. And so we certainly understand, again, the need for parents to be aware of the use of air fresheners and/or pesticides so they can understand if there's any kind of implications medically for their own child. So we suggested then using the same process of early entrance into the facility as a way to kind of identify and let parents know that we do use air fresheners and pesticides again so that they can report back to us. You know, the good news, I represent many, many different child care centers that have been in operations for many different numbers of years and historically we have had no issues in relation to pesticides

at all. So there doesn't seem to be a strong emphasis to make it a huge modification to this, and this is what we suggested and staff has indicated they are interested in it as well, that if we could come up with a language, on our application forms for new parents coming in, notify them, then they'll have the opportunity to inform us of any particular issues they might have.

Chair Giunchigliani: So a pre-notification. And does staff have language for us to look at or...

Mr. Bergtholdt: 4.5.2 and I'll get this started going around here (**Attachment #4**). We'd like to change it to "child care centers must provide a written advisory of the use of chemical air fresheners on the premises. All parents or guardians must sign a written acknowledgement of the use of air fresheners at least once per calendar year. In addition to the written notification, the child care center must post an advisory sign in a public place within the facility in plain view of parents and guardians. This signage must be in place at all times when the child care center is in operation."

Member Fairchild: Madam Chair?

Chair Giunchigliani: Yes.

Member Fairchild: A question, especially for Dr. Christensen since he's kind of the knowledgeable one in dealing with allergies and things, would being, especially a developing child, be in the presence of an air freshener over a period of time possibly create an allergy to that air freshener?

Member Christensen: No.

Member Fairchild: So the allergy would be in place first.

Member Christensen: Well, you get sensitized and then you have an allergy. But to air fresheners and to pesticides it's usually an irritant reaction; it's incredibly rare for someone to be allergic to an air freshener, but they might just have a bad reaction to the scent...it might smell good to you but to me it just drives me nuts. That's really what happens. They're really pseudo allergens. And as long as you're posting and letting the parents know one or two days before...where this would become important is not so much the child with allergies but an asthmatic child...is chemical sense and smells is a well-known trigger for asthma and so you don't want those kids where they've just stripped the floor, used a floor stripper, you don't want those kids there, because they'll go into...

Chair Giunchigliani: And if fact, if I might, the schools also do that same kind of notification. They do a pre-event if they're going to remove carpet in the classroom, we'll send out a notice to everybody, the principal will send out a notice to the parents on these days this will be going on, if your son or daughter has an asthmatic reaction so that they can keep

them home and they're not penalized for that period. So I know that's pretty common now.

Member Christensen:

Yes.

Mr. Thompson:

We would be in agreement with this language.

Chair Giunchigliani:

So this would be acceptable for the industry? And this covers then both areas?

Mr. Bergtholdt:

Just covers the air fresheners.

Chair Giunchigliani:

Just the air fresheners.

Mr. Bergtholdt:

Insecticides is a different one. Staff do you have some proposed language on that? I'll get this passed around there real quick and read it in (**Attachment #5**). "Insecticide 8.2.4. Notification of the scheduled application of insecticide at a child care center must include a sign in a public place within the facility which is clearly visible to parents and guardians. The notification must include the date and time of the scheduled application of insecticide. Additional methods of notification by the center may also include e-mail, individual flyers, newsletters or other methods of routine communication with parents or guardians. The secondary methods of notification may not be used in place of the required signage."

Chair Giunchigliani:

May not be used...

Mr. Bergtholdt:

May not be used.

Member Jones:

So what's the issue of scheduled versus let's say you have an ant invasion today that you want to get rid of today. That seems to be a common type of...

Chair Giunchigliani:

To me that looks like part two comes into play.

Mr. Bergtholdt:

Yeah, part two would come into play if you need to do something immediately. You'd have to notify the people before you apply it, because again we're talking about chemical sensitivities to the children.

Member Jones:

You know, on the balancing act having the pests there versus getting rid of the pests with the chemicals, it seems like the better choice would be getting rid of the pests.

Mr. Bergtholdt:

In almost any case you're probably going to be noticing the pest is becoming a problem and schedule a pesticide...you'll be able to schedule the pesticide before. With infestations of ants or things like that, there are methods in place that you can control without using a pesticide.

Member Jones:

But it occurs. There will be an ant invasion.

- Member Boutin: So am I understanding that if there's an ant invasion that every parent in the facility has to be notified before they can take care of...
- Mr. Bergtholdt: If they're going to apply a pesticide to the ants and not, say, spray ammonia and clean up the ants that way, that would...that's one way to solve it. Or some sort of sanitizer on the ants will kill the ants. If you're going to apply a pesticide you have to notify the parents of the application of the pesticide.
- Mr. Thompson: If I could just...
- Member Fairchild: Wouldn't ammonia be an irritant as well?
- Member Christensen: Yeah.
- Mr. Thompson: Yeah, especially for an asthmatic.
- Member Christensen: That would probably work better than an air freshener.
- Member Boutin: What about disinfectants, the air freshener, does that include disinfectants, like Lysol? Do we have a list, are we going to be able...do we have any...I'm not an expert in this type of thing...I feel ignorant...so ammonia would be OK but not a pesticide I guess?
- Mr. Bergtholdt: Applying an ammonia compound may be OK; and I'm not a pest control expert, I just know that some things do work to clean up a problem. But there are things that can be put down to control the ants if needed. If we're talking about specific ants. But in most cases you'll have time to schedule a routine treatment.
- Member Boutin: OK.
- Chair Giunchigliani: But you have to be careful to not have little ant things that the little munchkins can get a hold of, because...
- Mr. Bergtholdt: You know...
- Member Fairchild: Snacks!
- Mr. Bergtholdt: ...it's a complex issue and again, I'd go back to the first statement that I opened with is that in most cases with pest control, you're going to have time to schedule an application. It's not an all-of-a sudden...
- Chair Giunchigliani: You're noticing it.
- Mr. Bergtholdt: ...you're going to notice it.
- Member Jones: But this line would prohibit doing an immediate pesticide application for an invasion.
- Mr. Bergtholdt: Correct.

- Member Jones: And it seems like it is really the balance that is not effective – there should be some method doing an immediate response to an ant invasion.
- Mr. Bergtholdt: Well they probably would either need to work with us, staff would get a notice out in time...
- Member Jones: Would it be reasonable to just post that this was done today?
- Mr. Bergtholdt: Well, it should not be done with the children around in the first place. So they're going to have to wait for the facility to close to do the application.
- Member Jones: Well I suspect that the company's do have, because a pest control operator, that they will have chemicals that are usable around people like that at a specific level, and then they may have something that's more of a big hit that they use when no one's around.
- Chair Giunchigliani: Mr. Thompson, do you just want to...
- Mr. Thompson: Yeah, if I just might add some...just some thought around this. I think there's somewhat of a discussion going on here, and I think there are some other owners who have some more specific cases where it is an issue. I do think, let's go back and just realize there hasn't been any medical issues in the child care industry in relation to pesticides. None. So it seems like we're taking a long leap here to have to kind of regulate something that it's a real need from a health standard to do so. You know, that being said, we have instances where we have infestations of bees, where bees will gather on play equipment, killer bees...
- Chair Giunchigliani: Right.
- Mr. Thompson: ...and we have to take immediate action to, you know, abate them as well. So in that situation there's no way we could offer this particular notification. Again I think because there hasn't been any issue with it I don't see the necessity to make this change. What I would suggest is that we look to inform the parents that this is a standard procedure within the schools, that we notify them of that, we give the opportunity to communicate back to us any potential problems that that might be for their own child, and that we document that we have notified them, that we have them sign off on that and we have a procedure by which they could notify us in the future if their own medical practitioner has indicated that there is an issue.
- Member Boutin: And...
- Chair Giunchigliani: Councilwoman Strickland first and then Ms. Boutin.
- Member Strickland: I see that in the air freshener 4.5.2 there is this written advisory and guardians or parents signing a written an acknowledgment in the use

of air fresheners. Do we have similar proposed language for the insecticide use, and if we don't why not?

Mr. Bergtholdt: Because the air fresheners are around constantly, so we didn't feel it was necessary to provide that notification during the event that it's in use. With the pesticides, because they are applied on a scheduled time, we felt it necessary to have the parents notified within three days.

Member Strickland: I think maybe my question was a little vague because you didn't answer it. In your proposed air freshener language of 4.5.2 you talk about how child care centers will provide a written advisory of the time of enrollment and that the guardians will sign written acknowledgement of use of them so that they have documentation that the parents have been advised and the parents have been advised in writing. Do we have a similar thing with respect to the use of insecticides where upon enrollment they are given a written document which says this insecticide is used on a regular basis or insecticides are used, and the parent then acknowledges it. Then, I think, that's what you're proposing...

Mr. Thompson: Yes.

Member Strickland: ...I don't know if we've got it here or if we've got it some other place.

Mr. Bergtholdt: It's not in here...what's being proposed is not in staff's proposal.

Member Strickland: I would think that would be in compliance with what's being suggested and I think it gives the parents written notice that yes, this facility uses insecticides and they sign off on it and that way at least there's some communication about that use.

Chair Giunchigliani: OK. I think Kathleen had a question then Jim.

Member Boutin: So I'm a parent who has used a child care facility and also a small business owner. And I'm wondering if we should change the language to say that we should make a reasonable attempt to notify a guardian...and...Dr. Hardy brought up a very good point. What if it's an insect that could cause immediate harm or danger to the child, like a spider? I cannot, I mean, is there a way for us to remove the children from the area and use the pesticide or can we change the language to say we'll make a reasonable attempt to notify the parents and...it's just seems to me like we're putting a tremendous cost burden and labored burden on the child care worker for something that is, should be rectified really for the health and safety of the children.

Mr. Bergtholdt: 8.2...

Member Boutin: When you're talking about bees and spiders...there's some pesticides...

- Mr. Bergtholdt: 8.2.5 answers your question. Pesticide application should be done to unoccupied rooms during a time when children are not present. So you can have a room evacuated and then sent to another area of the facility and a pesticide can be applied to that room.
- Member Boutin: After you've notified all the parents.
- Mr. Bergtholdt: If it was to become an emergent issue, I would not require that that notification be put in place, other than the fact that when the children were picked up that there was a pesticide applied at the time during the day in the unoccupied room. We would work...staff would work with the facility in getting that emergent issue addressed.
- Member Boutin: I just have another question. What prompted the changes, both the air freshener and pesticide?
- Mr. Bergtholdt: These were proposed in the model code "Caring for our Children," which was published by the American Academy of Pediatrics and the American Public Health Association for child care facilities.
- Member Boutin: Madam Chair, I'm not comfortable voting in favor of this in its current form. I'm sorry.
- Chair Giunchigliani: I'm still concerned about grass.
- Member Fairchild: Me, too.
- Member Crowley: Grass and play equipment...
- Member Jones: And trees.
- Chair Giunchigliani: And trees. Dr. Jim, sorry. Editorial comment, I'm sorry.
- Member Christensen: Yeah, I'm sort of concerned about the grass, too. You could really put the insecticides and air fresheners together, because the risk is really the same. That gives you a reasonable way of flexibility so you can meet the needs because you're going to use air freshener when it's needed and if you have a pest you're going to use a pesticide when it's needed. You know, as long as the parents know that this is used in the facility from time to time, and that you'll take general measure to protect the kids from it, that's more than enough. It's just an easier way of doing...
- Mr. Thompson: I do think, historically, when pesticides are used, they are after hours, so children's aren't present when they're used.
- Chair Giunchigliani: I think the key is the pre-notification and your document when you're signing up this is when we do x, y and z and that should be reasonable as far as adequate notice for both sections. Thank you very much.
- Mr. Thompson: Thank you.

Chair Giunchigliani: Now I do believe there are a few other folks who wanted to testify or...come forward. Come on up. Oh, I thought you raised your hand. Did you wish to...

Maureen Avery: Actually I do.

Member Jones: She's offering to.

Chair Giunchigliani: She's rethinking it now.

Ms. Avery: I've worked with Dr. Thompson as well...

Chair Giunchigliani: And your name, I'm sorry.

Ms. Avery: I'm Maureen Avery...

Chair Giunchigliani: Thank you.

Ms. Avery: ...and I work for Creative Kids Learning Centers. We have eight centers in the area. And we have spent, you know, a good deal of time working with the health department. I do appreciate Mark and Susan and Clayton and all the people that have worked with us. I was also involved with the new state regulations that are still on-going and I do feel that the process that we utilized with the health department have been more in tune with actually our industry and keeping in mind that we are small businesses, we do provide a service and we are highly regulated. So we are doing our best to follow all the regulations and make sure that we're in line with all these things; however economy-wise it is very tough whenever we make a change – it does have a financial impact and it does have tendency to spill over in to our tuition rates, which is a basic economic issue. I do want to clarify a little bit...the state regulations that you were talking about are the minimum standard. So if the county, the city used to have a regulatory system which they have returned their schools to the state, the county has also notified us that they will be returning their schools to the state. The state has gone through their regulatory process, they have actually passed two documents, 06 and 07, they have 09 that's still awaiting to be passed. These are regulations that also include health and safety issues. The reason that they included health and safety is because Southern Nevada, Clark County, is regulated by the health department; however in other portions of the state there's not the regulation of a health department. So when you look at those regulations, and you see different things that apply, for instance I worked on health and safety workgroup and I'll just give you one example – in-home cares and child care centers in the North are allowed to use say a small wading pool, and it can be according to the new regulation one foot in depth, it has to be cleaned and sanitized between uses, etc., etc., This is something that was already regulated in Southern Nevada – we don't use small pools with water, so it doesn't affect us. So there is a little bit of confusion, I think, in this state as to why we have certain regulations and why in the North there are regulations. Now, personally, I mean, as a company that,

we are only in the Southern Nevada area, but if we were to open a school in the North, our regulatory system would be different, perhaps I guess I would say less restrictive, in a way. I don't have an issue with the restrictions and the way that they sit in Southern Nevada, but you need to be aware, as an entity, that there is a difference within our own state. So that is something that I think everyone needs to be aware of and I think people are always surprised that there is a difference.

Chair Giunchigliani: Thank you, that's very helpful actually.

Ms. Avery: So if that kind of...if you kind of understand that the state is going through their regulatory changes, it just happens that the health department is also going through their regulatory changes. You can understand we have stacks of regulations and when asked we actually went before the Assembly and talked about our regulations that we were going through with the state, and we explained to them that we have approximately 397 pages of regulation between the health department and the state. And that doesn't include the fire department, and that doesn't include homeland security. So we do have to be very well-educated and it is a primary job of mine and my company, and fortunately my owner, we are owned and operated locally by Carol Evans and she allows me to spend a lot of time going through regulations and documents and we do the very best we can, but I do have concerns about smaller centers that don't have a person like myself and Michael and CCAN and all the organizations...we try to work together so we can help the in-home care centers and we can help the smaller centers or the single centers. So I just felt compelled to say this today. And so I thank you.

Chair Giunchigliani: Since you're there, tell us about trees and grass and how that...

Ms. Avery: Well, trees...I mean actually you know, and I'm sure Mark, and this is kind of a funny thing...but if underneath the tree had a proper resiliency surface they would be able to climb it, right Mark?

Mr. Bergtholdt: Well...

Member Crowley: Depending upon the height of the tree.

Member Hardy: If it's not over two feet tall.

Member Crowley: Yeah, if it's not over two feet tall.

Ms. Avery: There are rules and regulations. I mean, some of our centers do have trees for shade, etc., etc., but we are not allowed to have children climb the trees because there is not a fall-zone underneath the tree. As far as grass is concerned, it's the same issue...

Chair Giunchigliani: I'm just thinking more about, if you're in-home small care provider and you have a swing-set set up in the back and it's on the grass, is this prohibited now under this?

- Mr. Bergtholdt: Actually it has been.
- Chair Giunchigliani: Has been?
- Mr. Bergtholdt: Yes. It's not a change...
- Chair Giunchigliani: We've always had to have the resilient, like in the pools...
- Mr. Bergtholdt: Since 2005. Right.
- Chair Giunchigliani: I didn't realize that.
- Ms. Avery: So it's you know, for all of us that grew up, you know, on concrete, it's a difficult concept but we want you to understand is – as an industry we have done the very best we can; however we need to have the understanding of groups like yourselves so that when you look at these issues you can also understand that we've gone through tremendous amount of economic revamping and, you know, it's been a continual process. And it does reflect in the amount of tuition that parents are paying because if you're a for-profit situation, and keep in mind that there are many child care entities that are not regulated.
- Chair Giunchigliani: Such as?
- Ms. Avery: Boys and Girls Clubs, YMCA, some of the rec department, they're not required, there are rec departments that have their pre-school organization, you know their pre-school classes have decided to be licensed, but they do not have to be licensed, church-type affiliated pre-schools, etc., etc. They are many issues with this, so when you are talking about the child care industry, I think you do need to ask who is regulated, who isn't regulated...it's not up to me or up to the health department or up to the state to determine – they already have their centers that they regulate, but there is a whole world out there that is in competition with the for-profit centers. For instance, we have one of our centers across from the street from a rec department – they are able to offer two half-days a week for a price that we couldn't compete with in any way, shape or form, and they run that program the same way we run our program; however we are going by this regulation, that regulation, whatever and we are being inspected. I think you have to understand the whole child care industry and why we step forth and why we are organized and why we try to get this information out because I don't think most people are aware of it. Thank you very much.
- Chair Giunchigliani: Thank you very much. Any further comments? Ms. Crowley?
- Member Crowley: Madam Chair, I am, truthfully I'd like to read through the regulations and get a real understanding of what they say before I vote on them.
- Chair Giunchigliani: What's the feeling of the rest of the Board members? It was on our DVD, but it's...I printed out one section because unfortunately I still need to visually see some things, and I just wasn't getting it off the

disk but do you feel comfortable voting today or does the Board in general wish to maybe wait to the next meeting and...you killed a tree.

Member Hardy: I donated my disk to Donna because she didn't get one.

Chair Giunchigliani: Oh, that was nice of you. Thank you.

Member Christensen: Can we designate a poll?

Chair Giunchigliani: Let me put it this way then. Is there an objection if we waited and rescheduled this for next month for action and then we can bring back the language at least suggested by Linda and Kathleen, which is just look at the first paragraph on air fresheners and make that same pre-notification for the industry with regard to insecticides and we'll at least have that language coming back.

Member Jones: That's the only issue being contested right now, is that my understanding today?

Chair Giunchigliani: And I want Board members to feel comfortable, I mean, because it's really it's a big industry.

Member Fairchild: Madam Chair, I agree with Ms. Crowley. Knowing that there are so many levels, and it's not just us – there are state issues in play and everything else. It just helps me as a Board member to take back to my constituents and the whole home-child care facilities in Mesquite if I have a better understanding of state versus Southern Nevada Health District versus what is what is regulated, what isn't regulated as Ms. Avery brought up. I mean, I'm with Ms. Crowley – I'd just like one month to kind of digest all of these and see the state regulations and make it clear in my mind.

Chair Giunchigliani: I think you've got a computer program that could outline state requirements, the new model act, and then what we're proposing, because that would help people see who did you mirror on what, and that might help us. We did that for some other regulation that you had asked for. Is that something, Glenn, I think you guys did that for us on a different regulation last year.

Member Jones: Maybe on the tattoo, I think it was.

Chair Giunchigliani: Might have been on the tattoo, to see if we could lay that out. That would be very, very helpful.

Mr. Bergtholdt: I think we could get something.

Chair Giunchigliani: OK.

Member Hardy: And if it's on a DVD format, could it be online?

Member Jones: It is online.

- Member Fairchild: It is online.
- Member Hardy: So the industry...
- Chair Giunchigliani: Industry could react to it.
- Member Hardy: ...and have input if they know that it's online.
- Chair Giunchigliani: So it will be online, they'll play around and try to get the state reg, our reg and the model code so at least we're getting a handle on what we really want to require versus what might be feel good, or good policy. It may be both, and we'll come back and reschedule that for the next agenda, and we'll let the industry then know that. And you can also look online if there's changes that come up, because sometimes you're right, we have the small, the medium and the large size companies and how things are treated.
- Member Fairchild: And just a reminder next month the meeting is one week earlier due to Thanksgiving.
- Chair Giunchigliani: Thanksgiving. Yeah, it will be the 16th...
- Member Fairchild: A shorter...
- Dr. Sands: The Thursday before Thanksgiving, that's still four weeks from today.
- Chair Giunchigliani: Alright, thank you then. We'll set aside as an agenda item with those directions. Thank you very much to staff – you've done a good job working with the industry.
- Stephen Smith: You need a motion...
- Chair Giunchigliani: OK, I'll take a motion to table to the next meeting.
- Mr. Smith: ...to include on the next agenda...
- Member Crowley: I'll move.
- Member Fairchild: Second.
- Chair Giunchigliani: So moved and seconded. All those in favor say aye.
- Board members in unison: Aye.
- Chair Giunchigliani: Opposed? Motion carries. Thank you.

A motion was made by Member Crowley to continue the proposed regulations as presented with direction to staff to incorporate language as suggested by industry and include information regarding state regulations and model code; seconded by Member Fairchild and was unanimously approved.

III. REPORT / DISCUSSION / ACTION

1. **Memorandum #26-09:** Meeting Dates/Times of the Southern Nevada District Board of Health; Consideration of 2010 Meeting Schedule

Dr. Sands noted this is the time of year where the Board meeting schedule is determined. A schedule of all open meetings in Clark County was included with the memorandum. Proposed schedules were included with meeting times varying from 7:30am to 8:30am, keeping the meeting day on the fourth Thursday with the exception of November and December where the meeting is on the third Thursday due to the holidays. Member Fairchild noted that the Las Vegas Review Journal omitted Mesquite City Council meetings which are held on the second and fourth Tuesdays each month at 5:00pm.

Currently Member Anthony serves as an alternate to the Water Authority Board. The housing authority boards will be consolidated in the future, which will drop from the matrix.

Chair Giunchigliani suggested moving the meeting to the first Thursday of the month as there were no other conflicts. There would be no reason to change the meeting dates for November and December, keeping a consistent meeting schedule throughout the year. Mr. Weiss noted that financials would be one month behind if this meeting schedule were approved. Mrs. Clark also remarked that some program data for the month, such as epidemiology and STD, takes time to process and compile as well, which would also be one month behind.

Chair Giunchigliani also noted the suggestion to move the Health Officer & Staff Reports section earlier on the agenda; however the public may leave prior to the public comment portion of the meeting. Member Fairchild commented on the importance of staff reports and suggested that this information could be provided in the Board books or sent electronically in advance of the meeting, which would allow for questions at either briefings or at the meeting after a full review of the information. Oft times a specific Board member may request a certain item and miss the discussion at the Board meeting. Member Hardy expressed concern about walking quorum issues and potential deliberation in briefings.

Dr. Sands agreed that information can be shared in advance with Board members but noted that emergent issues sometimes miss the deadline for inclusion in Board books.

Member Boutin expressed concern with the length of meetings and suggested that staff reports remain toward the end of the meeting as a quorum is not necessary to hear reports. She suggested that staff reports be included in the briefings as well.

Materials can be posted on the website for the public's view and sent via email to Board members to review and formulate questions in briefings. Board members were encouraged to have their briefings scheduled together to facilitate better use of time. Briefings would be scheduled to ensure no quorum is achieved.

Mr. Weiss said that certain items coming to the Board are bound by statute as to when they must be submitted to the Department of Taxation following Board approval, such as the budget and audit. Second meetings may be necessary in those months as reports may not be available three weeks in advance.

Member Strickland summarized that the issue of lack of Board members being present for staff reports is resolved by sending information out in advance of the meeting; by moving the meeting date early in the month additional barriers are created for timely action on certain items. She

proposed keeping the current meeting schedule and using electronic means to share information in advance for free exchange of information keeping the Open Meeting Law in mind.

A motion was made by Member Strickland to maintain the current meeting date and time, additionally information will be shared in advance of the meetings with Board members electronically and placed on the website for review; seconded by Member Hardy and was unanimously approved.

As some Board members needed to leave the meeting Chair Giunchigliani took the next three items in one motion.

- 2. Petition #32-09:** Proposal for a New Building Site at Martin Luther King Blvd. and West Lake Mead Blvd.

Dr. Sands noted this was a follow-up from discussion at the last Board meeting to receive authorization to peruse a new location for the main facility.

A motion was made by Member Christensen to approve the proposal for a new building site as presented; seconded by Member Hardy and was unanimously approved.

Chair Giunchigliani, in the absence of Member Barlow, remarked that a suggestion was made to relocate the main facility to North Las Vegas as a means to save money and use the existing land where the health district is located for other purposes.

- 3. Petition #33-09:** Approval of a Flexible Spending Account (FSA) for the Employees of the Southern Nevada Health District, Effective January 1, 2010 through December 31, 2010

Additional documentation for the item was presented as an attachment (**attachment #5**).

A motion was made by Member Christensen to approve a Flexible Spending Account (FSA) for Employees as presented; seconded by Member Hardy and was unanimously approved.

- 4. Receive Report from the Southern Nevada District Board of Health Audit Committee** (Committee: Committee Chair Jones and Members Barlow, Christensen, Crowley, Fairchild and Mattocks)

Member Jones asked for clarification on the items just approved. Mrs. Clark noted that the Audit Committee report was accepted but not heard. Member Jones, committee chair, noted that the committee met and the audit is on target for the Board's consideration at the November meeting.

A motion was made by Member Hardy to accept the report from the Audit Committee by Member Christensen and was unanimously approved.

- 5. Receive Report on Nevada Clean Indoor Air Act; Direction to Staff**

Stephen Smith, legal counsel, shared a brief PowerPoint with Board members concerning the recent decision of the Nevada Supreme Court concerning the Nevada Clean Indoor Air Act (**attachment #6**). He also shared a memorandum with the Board (**attachment #7**). The Court noted the purpose of the NCIAA is to "protect families and children from the harmful effects of secondhand smoke." The Court also found the criminal provisions unconstitutionally vague for enforcement on the following conditions:

- The statute fails to adequately define to whom the Act is enforced against;
- It is unclear if there is an obligation to affirmatively prevent smoking by a business owner, manager, or employee;
- The statute fails to explain whether business owners have a responsibility to stop someone who is smoking in violation of the Act, if so what the responsibility entails;
- It is questionable whether it is sufficient under the statute to ask the person to stop smoking or whether a business proprietor or employee can ask the person to leave the premises, and if the person refuses to leave the premises is the business proprietor or employee required to call the police;
- The statute fails to provide guidelines as to what action is required and how the statute is enforced, it therefore creates the possibility of arbitrary and discriminatory enforcement; and
- The term "smoking paraphernalia" and "large room" are vague and do not have plain meaning

The Court upheld the civil provisions by stating:

- Smoking is prohibited in certain areas including bars and restaurants where food is served;
- Certain business cannot allow smoking and must post no smoking signs. But this is under a lower level test according to the Supreme Court;
- There may be uncertainty as to what affirmative actions, if any, a business owner is required to make his or establishment nonsmoking. An establishment is required to post signs designating it as "nonsmoking;" and
- In Footnote 14 the Court emphasized (direct quote): "In reaching this conclusion, we emphasize that this appeal involves a facial challenge to the statute. We note that the statute contains numerous defects that may be subject to as-applied challenges once the statute is enforced against a particular party, but it is improper in the context of a facial challenge review to consider these hypothetical situations. For example, as noted above, under the language of the statute, uncertainty arises regarding whether the statute imposes upon business owners an obligation to stop a person who is smoking in violation of the statute. As another example, ambiguity concerning what is included as smoking paraphernalia under the statute may potentially provide a basis for an as-applied challenge." (emphasis added)

Mr. Smith noted this discussion was a public briefing and specific legal questions as to enforcement can be answered in an attorney session as appropriate.

Dr. Sands said that the decision limits what inspectors can enforce; any further action can be challenged. Currently the district has two cases on appeal in regard to NCIAA – everything was stayed pending the decision of the Supreme Court. A citation process was also being developed which recently came to conclusion; theoretically a smoker can be sued in small claims court for \$100 citation violation. To date there are no regulations in place concerning NCIAA, though the state had been developing regulations.

The law as approved by voters was imperfect; however the people of Nevada have spoken. Member Crowley noted that local entities could implement smoking prohibitions as a result of this law, which could be better worded than the state law. She suggested that local entities should support the referendum of the people and craft an instrument that is less flawed and better worded.

Member Hardy noted that the state will now be expected to develop and implementing state-wide administrative regulations. The state can preempt work done at the local level; however the local entities can move forward with guidance. It was agreed that among the local health authorities that state-wide regulations were necessary to ensure the same procedures were followed across the state, with the understanding that local jurisdictions could further build upon the regulations and enact more stringent standards.

Member Christensen suggested adding signage and removal of smoking paraphernalia to the inspection sheet and downgrade those facilities not in compliance to keep in spirit with the law as written. Customers can then decide which facilities to frequent based on compliance with the law. There have been numerous improvements since the law was instituted.

Dr. Sands noted that the revised food establishment regulations will be brought to the Board for approval in January. Perhaps a new rating system could be considered to designate which facilities are exempt or non-exempt from NCIAA.

Member Hardy asked that this item be agendaized for the November meeting. Chair Giunchigliani asked that Mr. Smith devise a one-page summary of what is currently in the law, what the Board/District can do, and what potential steps the Board can take to enforce NCIAA. Member Crowley noted that NAC can be modified to further strengthen NRS and clarify muddled issues. Chair Giunchigliani remarked a similar codification occurred with the medical marijuana issue. Member Jones expressed concern with adding NCIAA compliance to the food establishment regulations, which specifically address sanitation issues.

IV. PUBLIC COMMENT

Public Comment is a period devoted to comments by the general public, if any, and discussion of those comments, about matters relevant to the Board's jurisdiction will be held. No action may be taken upon a matter raised under this item of this Agenda until the matter itself has been specifically included on an agenda as an item upon which action may be taken pursuant to NRS 241.020.

Chair Giunchigliani asked if anyone wished to address the Board. Seeing none, she closed the Public Comment portion of the meeting.

V. HEALTH OFFICER & STAFF REPORTS

Health Officer Update

Dr. Sands invited all Board members to attend the annual Service Awards Celebration and Holiday Party, which is being held December 12th at the "Top of the Riv" Events Room (**attachment #8**). He asked that Shelli be notified of attendance. Childhood Lead Poisoning Prevention Week kicks off Sunday and several events are planned (**attachment #9**).

Communities Putting Prevention to Work Grant – John Middaugh, MD, Director of Community Health & Deborah Williams, Chronic Disease Prevention & Health Promotion Manager

Deborah Williams, chronic disease prevention and health promotion manager highlighted the Communities Putting Prevention to Work Grant opportunity (**attachment #10**). This funding would allow for significant expansion to existing programs currently in place with limited funding. The grant is possible via the American Recovery & Reinvestment Act of 2009. The purpose is to "create healthier communities through sustainable proven population-based approaches such as broad-based policy, systems, organizational and environmental changes in communities and schools."

The application process is highly competitive and only thirty to forty communities nationwide will be funded. The funding will be between \$10 and \$20 million for two years. The district has submitted a letter of intent for both categories A and B: category A focuses on nutrition and obesity; category B focuses on tobacco. Funding will begin in February 2010. If funded we are required to use evidence-based strategies identified in the FOA to affect policy and environmental changes to address increased physical activity, improve nutrition, decreased obesity and overweight, decreased smoking prevalence, decreased teen smoking initiation and decreased exposure to second-hand smoke. The work would be overseen by a leadership team composed of eight to ten local community leaders and change agents, and there would be significant involvement of local community coalitions. Staff will be seeking a letter of support from the Board. Mrs. Williams asked if Board members could advocate for the needed policy changes as well.

Chair Giunchigliani noted the school district Board of Trustees voted two years ago to remove all unhealthy food choices from vending machines and replace with healthy snacks, including fruits and vegetables. Recreational centers should also include healthy food choices – this could be an initiative in the grant application to improve vending choices at all venues. Physical education should also be improved in the schools. Community gardening would be a worthwhile component as well. There is a national group, “Family Dinner Night” which shows a decrease in tobacco and drug use by having a family meal five nights a week.

The application is due December 1st and all suggestions are welcome as we prepare the application. Dr. Sands commended Mrs. Williams’ staff for their efforts in putting the information together. He asked that our congressional delegation be informed to help campaign for the district as a potential fundee. The fact that we have only one school district in our county is also a major advantage in the competitive process.

Novel H1N1 Influenza Update: John Middaugh, MD – Director of Community Health; Bonnie Sorenson, Director of Clinics & Nursing Services; Jennifer Sizemore, Public Information Manager

Dr. Sands said we will continue to provide updates on Novel H1N1 Influenza in southern Nevada. There has been tremendous response from the community in regard to vaccination, which has presented great opportunities and challenges.

Bonnie Sorenson, director of clinics & nursing services, reported that the large community response has resulted in a near exhaustion of injectable vaccine and beginning tomorrow only FluMist will be offered until our supply is replenished. The nursing division is responsible for providing vaccine in an efficient and expeditious manner. Staff from the entire district has been instrumental in operating the vaccination clinics. Five different presentations of the vaccine are expected, which results in additional training for staff to ensure all vaccine is administered properly. Another hurdle is receiving vaccine presentation which is not appropriate for the priority groups: pregnant women and children with underlying medical conditions cannot receive FluMist. The district is operating under an incident command structure to facilitate vaccine distribution which is allowing the district to exercise its preparedness plans. As more vaccine becomes available, additional points of distribution (PODs) will be opened to further aid in delivery of vaccine to the community.

John Middaugh, director of community health, commended staff for their efforts in providing vaccine to the community. The healthcare community is currently rejecting FluMist and staff is providing education of its safety and efficacy. Staff is also providing guidance on use of N-95 masks – there is no evidence that N-95s provide any better protection than surgical masks. The public wants to be vaccinated and staff is working diligently to target the high-risk sub-population groups. We continue to establish and continue surveillance – there is a large increase of disease in the community and more individuals are being hospitalized and put on ventilators. Currently 80% of

children seen in the targeted facilities for pediatric surveillance are positive for the H1N1 virus. As the weather continues to change, we will see a continued increase in disease prevalence. CCSD is providing absentee information to assist in surveillance for illness clusters – to date no clusters have been found. Vaccine has been provided to 117 local providers to assist in the vaccination of the high-risk populations. Due to problems manufacturing the vaccine, the large shipments expected for mid-October will not be seen until late-November. The district will continue its focus on outreach to the highest-risk sub-groups who are experiencing the most severe illness. Pregnant women are taken to a special room to avoid waiting in long lines. Medical screeners are ensuring that vaccine is provided to the target groups and counseling those who cannot be vaccinated at this time.

Jennifer Sizemore, public information manager noted the challenge in marketing the vaccine. Funding was received through the federal grant for advertising; however the ads cannot contain specific dates or target populations. The ads are promoting vaccine safety and directing the public to our website. The campaign will roll out over the next few weeks with the catch phrase “get it so you don’t get it.” All priority groups will be represented in the commercials. Flurevolution.com contains information on all flu-related materials. Staff can provide materials for town halls, newsletters and other events.

Dr. Sands recognized the challenge with vaccinating large groups of people. He commended staff for their dedicated efforts in performing their regular duties in addition to serving in the PODs. Chair Giunchigliani asked for the Board’s recognition and appreciation be conveyed to staff as well.

VI. INFORMATIONAL ITEMS

DULY NOTED

A. Chief Health Officer and Administration:

1. Monthly Activity Report, Mid-September 2009 – Mid-October 2009
2. Financial Data: Revenue and Expenditure Report for General Fund, Capital Reserve Fund and Public Health Laboratory Fund for the Month of September 2009
 - a. Grant and Agreement Tracking Report, as of October 8, 2009
3. Public Information Monthly Report, Mid-September 2009 – Mid-October 2009
 - a. Letter of Appreciation from the Las Vegas Convention and Visitors Authority to Susan Eiselt, administrative secretary

B. Community Health:

1. Monthly Activity Report, September 2009
 - a. Updated Pediatric Antiviral Dosing Syringe and Compounding Information
 - b. September 2009 Disease Statistics
 - c. 3rd Quarter Disease Statistics

C. Environmental Health:

1. Monthly Activity Report, September 2009
 - a. Letter of Certification and certificate from the FDA to Glenn Savage, environmental health director, for Christine Sylvis, training officer

D. Clinics and Nursing:

1. Monthly Activity Report, September 2009
 - a. In-service calendar

VII. ADJOURNMENT

There being no further business to come before the Board, Chair Giunchigliani adjourned the meeting at 11:39 a.m.

SUBMITTED FOR BOARD APPROVAL

Lawrence Sands, DO, MPH, Chief Health Officer
Executive Secretary

/src

attachments