

Nevada State Medical Association/Clark County Medical Society
2590 Russell Road
Las Vegas, Nevada 89120
702-739-9989

October 19, 2007

The Honorable James Gibbons
Governor
Office of the Governor
101 North Carson Street
Carson City, NV 89701

Dear Governor Gibbons:

We are writing on behalf of the physicians and medical students who are members of the Clark County Medical Society and the Nevada State Medical Association regarding recent newspaper articles alleging significant abuses of physicians who are practicing medicine in Nevada as part of the national "J-1 Visa" program. This is an important program for our State because of the critical physician workforce shortages. We appreciate your efforts, those of the Legislature and the Nevada System of Higher Education to adopt State policy to relieve this crisis over time. Until we have sufficient physician workforce to meet Nevada needs however, foreign physicians who come to the State under this program to serve at least 3 years in medically underserved communities provide essential professional services in areas that otherwise are without them.

We are deeply concerned that the allegations in the **Las Vegas Sun** series could shake public confidence in this program and that physicians in this program may have been mistreated. Therefore, we request that you direct the appropriate State agencies to investigate the specific allegations made in the news articles and that they take appropriate actions based on those investigations. We urge that these inquiries be made as quickly as possible so that the public can be assured that there is accountability for any proven abuses and that appropriate oversight is in place to preclude any future abuses of the program.

The Clark County Medical Society and the Nevada State Medical Association will assist you and any Nevada agencies in any way that we can. Thank you for your consideration of these concerns.

Sincerely,



Edwin C. Kingsley, MD
President
Nevada State Medical Association



Weldon E. Havins, MD, JD
President and Executive Director
Clark County Medical Society

cc: Catherine Cortez Masto, Attorney General
Drennan A. Clark, Executive Secretary/Special Counsel-Board of Medical Examiners
Michael Willden, Director-Department of Health and Human Services

United States Senate

WASHINGTON, DC 20510

October 4, 2007

Michael Chertoff, Secretary
U.S. Department of Homeland Security
Washington, D.C. 20528

Dear Secretary Chertoff:

Recent news stories in the *Las Vegas Sun* have documented apparent abuses of the J-1 visa waiver program, which includes the Conrad State 30 Program and is designed to bring physicians to underserved areas. According to these reports, some employers are exploiting the dependent immigration status of foreign doctors in the J-1 visa waiver program and preventing them from meeting their waiver obligations, thus undermining the program's purpose.

With this letter, we request that the Department of Homeland Security (DHS) immediately investigate these allegations and take the necessary steps to correct any abuses found. We also request a report of your findings and recommendations to Congress for appropriate legislative action to prevent future abuses. Please include in your report an assessment of the respective oversight responsibilities of U.S. Citizenship and Immigration Services (USCIS), U.S. Customs and Immigration Enforcement (ICE), and the states under current law, and make recommendations for how these oversight responsibilities might be clarified and strengthened. According to the *Sun*, USCIS believes that oversight of the program is the responsibility of the states; however, a November 2006 GAO report found that at least some states believe they do not receive adequate information from USCIS to conduct that oversight and that their only authority over the physicians is to file a report with USCIS.

Ultimately, the responsibility of ensuring that visitors to our country comply with the terms of their visas sits squarely on the shoulders of DHS.

The J-1 visa waiver program was intended to bring professional medical care to communities where it is badly needed. We believe it is crucial that oversight mechanisms be in place to protect against abuses of this important program. We look forward to your response.

Sincerely,



HARRY REID
Senate Majority Leader



KENT CONRAD
United States Senator

Cc: Director Emilio T. Gonzalez, USCIS; Assistant Secretary Julie L. Myers, ICE

Nevada State Medical Association

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MCH/CSHCS

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Wayne C. Hardwick, M.D., AMA Alternate Delegate
Marietta Nelson, M.D., AMA Alternate Delegate
Lawrence P. Matheis, Executive Director

January 14, 2008

Judith Wright, Chief
Bureau of Family Health Services
Division of Health
3427 Goni Road, Suite 108
Carson City, NV 89706

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**HEALTH DIVISION
ADMINISTRATOR**

Dear Ms. Wright:

Thank you again for the opportunity to participate on behalf of the Nevada State Medical Association in the meeting regarding J-Visa Waiver issues. You and your staff have clearly done considerable work in developing a more comprehensive oversight approach for future program participants in Nevada. The purpose of this letter is to restate several comments that I made at the meeting and to make some suggestions for your consideration.

The proposed revised "Guidelines" do seem to incorporate responses to the various allegations in the recent Las Vegas SUN articles. They also appear to update the rules to conform to the federal rules.

1. As I indicated at the meeting, "Guidelines" do not have the force of law, although they may be used in civil litigation. Oversight of the appropriate implementation of physician primary care services under J-1 Visa waivers is a joint Federal and State responsibility, and, within the State, includes the State Health Division and various professional licensing boards. State regulations provide clearer directions to State agencies than guidelines in the event of alleged violations. The State Board of Health has considerable general authority to protect the public health under NRS 439 to adopt regulations and the State Health Division has authority to implement such laws. I recommend that any guidelines should be adopted by State regulation.
2. I recommend that the J-1 Visa Waiver Advisory Committee be expanded to include all stakeholders and interested parties and recommend that all meetings should be public. It may prove desirable in the longer term to seek legislative designation of the advisory committee, including public reporting requirements.
3. The proposed guidelines specifically address the federal requirement that contracts cannot contain "non-compete" clauses. I asked at the meeting whether any current contracts that contain such clauses can have force of law and suggested that the Division should require

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4. While the Nevada State Medical Association applauds the creation of the State Health Division web site, which is an excellent resource for the public and physicians interested in the program, reporting complaints is always limited if the complainant has reasonable (or unreasonable) expectations of retaliation. The Las Vegas SUN newspaper stories, the testimony at the Legislative Committee on Health Care meeting on October 31, 2007, and some comments made at the Division's December meeting all indicated that some physicians participating in the program As you know, in the 2002 Legislative Special Session, the Legislature passed some protections against retaliation for reporting various matters. These protections are included in NRS 449 and NRS630. It may be that these statutory provisions are not inclusive enough to protect physicians, their families or others who report alleged violations of the program rules or other laws. I recommend that the Division seek legal interpretation of the statute regarding its application for reporting alleged abuses in this program. It may be appropriate to seek clarifying legislation in 2009.

Thank you and the State Health Division staff for your hard work on this complex issue. As NSMA President Edwin C. Kingsley, M.D. and Clark County Medical Society President Eldon E. Havins, M.D., J.D. wrote in their October 19, 2007 letter to Governor Jim Gibbons: "Until we have sufficient physician workforce to meet Nevada needs, foreign physicians who come to the State under this program to serve at least 3 years in medically underserved communities provide essential professional services in areas that otherwise are without them. We are deeply concerned that the allegations in the Las Vegas SUN series could shake public confidence in this program and that physicians in this program may have been mistreated." If you need more information, or if I can be of additional assistance, don't hesitate to call me.

Sincerely,



Lawrence P. Matheis
Executive Director

CC: Governor Jim Gibbons
Catherine Cortez Masto, Attorney General
Drennan A. Clark, Executive Secretary/Special Counsel-Board of Medical
Examiners
NSMA Council

STATE OF NEVADA

JIM GIBBONS
Governor

MICHAEL J. WILLDEN
Director



RICHARD WHITLEY, MS
Administrator

State Health Officer

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH DIVISION

4150 Technology Way, Suite 300
Carson City, Nevada 89706

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February 7, 2008

Lawrence P. Matheis, Executive Director
Nevada State Medical Association
3660 Baker Lane, #101
Reno, NV 89509

Dear Mr. Matheis:

Your written comments regarding the J-1 Physician Visa Waivers program were greatly appreciated. The purpose of this letter is to provide you with an update on what is happening with the J-1 Visa program and to respond more specifically to your suggestions for change.

On January 14, 2008, a strategic organizational change was made, and the Primary Care Development Center, including the J-1 Visa program, was reassigned to the Health Planning Unit in the Bureau of Health Planning and Statistics. Luana Ritch, PhD is the Bureau Chief, and Lynn O'Mara is the Health Planning Program Manager. Under the management and supervision of these individuals, I am confident that the J-1 Visa program effectiveness and administration will be greatly enhanced, including the implementation of a transparent, public process and oversight.

Regarding the suggested changes to the J-1 Visa program guidelines that you have submitted during the public comment period, I would like to address each one:


1. In consultation with the Attorney General's Office, we are examining the possibility of deploying the regulatory process for the J-1 Visa program. As a first step, the J-1 Visa program is adopting formal program policies and procedures. This approach has been successfully vetted by other state agencies who oversee J-1 Visa programs. With the assistance of the J-1 Visa advisory council, the Health Division will continue to explore whether legislative or regulatory changes will be necessary.
2. We are in the process of establishing the Health Division J-1 Visa / Primary Care Development Advisory Council, including the drafting of bylaws, and the first quarterly meeting will take place no later than March/April. The anticipated mission of this council includes assisting the Health Division Administrator by providing enhanced oversight of the J-1 Visa program and with the review and approval/ disapproval of J-1 Visa program physician waiver and employer site qualification applications. This council will also assist with Health Division primary care development activities, including physician recruitment

and retention. While we fully support that all stakeholders must have a voice, we believe that limiting the council membership to seven members will ensure that a quorum can be present and that decisions can be made in a timely manner. Because the council meetings will follow Nevada Open Meeting Law, all stakeholders, as well as the public at large, will have the opportunity to present invited testimony and/or public comment to assist the council in accomplishing its mission. The Nevada State Medical Association will be invited to participate as a council member, and Lynn O'Mara will be contacting you directly with regard to this matter.

3. You are correct that, per current federal guidelines for the J-1 Visa program, non-compete clauses are now officially prohibited, and all contracts will be in compliance.
4. We are working with the Attorney General's Office to better understand the referenced protections afforded under NRS 41.635—41.670, NRS 449.205 and NRS 630.293—630.296, particularly as they apply to the J-1 Visa program. The web-based complaint system, implemented November 2007, has generated only three complaints, none of which involved the J-1 Visa program. We are coming to understand the cultural issues which have played a major role in complaints not being filed. This is an education matter, and both employers and J-1 physicians must be informed of both their rights and responsibilities, and the complaint system is being revamped accordingly.

Please let me assure you that both the Department of Health and Human Services and the Health Division take with the utmost seriousness the allegations put forth by the *Las Vegas Sun*. We are executing a defined plan to address these concerns, and I am encouraging Lynn O'Mara to provide the same plan briefing to you that she provided to Marshall Allen. I believe you will be pleased with the direction in which we are headed. We hope the NSMA will partner with us in making sure that this valuable program helps to meet the health care needs of Nevada residents.

Sincerely,


Richard Whitley, MS
Administrator

Cc: Assemblywoman Sheila Leslie, Nevada State Legislature
Cynthia Pyzel, Assistant Chief Deputy Attorney General, Bureau of Public Affairs,
Office of the Attorney General
Linda Anderson, Chief Deputy Attorney General, Health and Human Services,
Office of the Attorney General
Luana J. Ritch, PhD, Chief, Bureau of Health Planning and Statistics, Health Division
Lynn O'Mara, Health Planning Program Manager, Bureau of Health Planning and
Statistics, Health Division