

BOARD OF COMMISSIONERS
JIM GIBBONS
GOVERNOR
CATHERINE CORTEZ MASTO
ATTORNEY GENERAL
ROSS MILLER
SECRETARY OF STATE

STATE OF NEVADA

HOWARD SKOLNIK
DIRECTOR



DEPARTMENT OF CORRECTIONS

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**MINUTES OF THE
BOARD OF PRISON COMMISSIONERS MEETING
JANUARY 23, 2008**

The Board of Prisons Commissioner's Meeting was called to order by Governor Jim Gibbons at 1:00 p.m. on January 23, 2008 at the State Capitol Building Annex, 2nd floor, 101 N. Carson Street, Carson City, Nevada and video conferenced at Grant Sawyer State Office Building, Room 5100, 555 E. Washington Ave., Las Vegas, Nevada..

PRESENT: PRISON BOARD MEMBERS

Jim Gibbons, Governor
Catherine Cortez Masto, Attorney General
Ross Miller, Secretary of State

ACLU OF NEVADA
Gary Peck, Executive Director

ATTORNEY GENERAL'S OFFICE
Janet E. Traut, Senior Deputy Attorney General
Keith Marcher, Senior Deputy Attorney General

CORRECTIONS' STAFF
Howard Skolnik, Director
Dr. Bruce Bannister, D.O.
Karen Walsh, Health Information Director

GOVERNOR'S OFFICE
Dianne Cornwall, Chief Operating Officer
Josh Hicks, Legal Counsel

LEGISLATURE

David Parks, Assemblyman

PRESS

Geoff Dornan, Nevada Appeal
Brendan Riley, Associated Press
Cy Ryan, Associated Press
Ed Vogel, Associated Press

SECRETARY OF STATE'S OFFICE

Chris Lee, Deputy Secretary for Southern Nevada
Nicole Lamboley, Chief Deputy Secretary of State
Bob Walsh, Public Information Officer

I. Call to Order

The Governor called the meeting to order with all members of the Commission present. Members of the public were asked to sign in. *See Exhibit A.*

II. Acceptance and Approval of Minutes – November 15, 2007

The minutes of the November 15, 2007 were approved with a few technical corrections. Attorney General Masto motioned to approved and Secretary of State Miller seconded the motion. The minutes were approved unanimously

III. Discussion/Decision Regarding Board Authority related to the Director of the Department of Corrections.

Director Skolnik felt the current statutes and the primary authority given to the director is statutory which states that the director is the chief administrator officer and chief financial officer of the department. When talking about the duties of the director with the exception of educational and vocational training, it essentially says that the director shall establish regulations with the approval of the board and enforce all laws governing the administration of the department and the custody, care and training of offenders. Also, to take proper measures to protect the health and safety of the staff and offenders in the institutions and facilities of the department. It does indicate that agreements with other governmental agencies etc. should come before the board for approval. It provides the appointment of assistant directors and wardens to the director.

Director Skolnik stated his theory is that the board, in its history, has served as a group that has reviewed and approved the policies of the department and that the department operates under that authority which has been granted in the past. There are 247 administrative regulations (ARs) currently in existence which all need to be addressed if there is a change how the board operates and how the director operates in terms of the department.

Director Skolnik stated the board is public body and would require a public notification three days in advance of any decision making. The department is charged with 3,000 employees and 13,000 inmates and can't wait three or four days to make decisions. The director stressed that it is important that the authority that operates the department should remain the director.

The governor asked if Mr. Skolnik's comments were the same as the subject matter in the letter of January 15th sent to each board member. The director responded it was and the governor asked the letters be submitted for the record. *See Exhibit B.* The governor stated that there were also 150 medical directives that the director also had to deal with.

Director Skolnik stated that was in addition to operating procedures, institutional procedures, and POST orders which geminate from ARs. He stated the ARs are the process for administrating the department which would result in a substantial change but one positive aspect would be he wouldn't have to go to court; someone else would have to go in his stead because he would not be making the decisions. It would take the authority away from the director and vest it in the prison board which would become the body to be named in multitude of lawsuits against the department.

Governor Gibbons asked Director Skolnik if he considered a change of the magnitude that has been discussed by this board, if there would be an issue with the timeliness of response and the security and safety of the employee.

Director Skolnik responded there absolutely would be. He expressed his concern regarding what authority the director did and did not have would ultimately end up with people taking sides. He stated when he took this job he publicly stated that his biggest concern in this position is the fact the department's business is changing and finds himself faced with the possibility of being the first director in 144 plus years that would have to attend a funeral of a staff member that's murdered by an inmate.

Governor Gibbons asked if they were to undertake a transfer of the authority to the board in a day to day operation, where is the funding for the board in order to meet the requirements of the day to day operational decisions. The board does not operate with a budget and does not have the budget to oversee the operations of the department. Director Skolnik concurred. The director's recommendation in his letter is to continue with the past practices of the Board of Prison Commissioners in regards to limited involvement and restrict itself to oversight and approval of policy procedures. If the board wants additional information on a regular basis or reporting structure, the department would do that but to successfully manage on a daily basis he stated that he couldn't manage by himself. The director's job is delegated substantially to other individuals through the chain of command to allow the department to be managed on a daily basis.

Governor Gibbons asked that if we look at the way some have talked about this proposal of taking on more responsibility and the day to day requirement to meet and engage in the decision process at a deeper level, would the board then be required to take responsibility for the budget, taking the responsibility for creation, management and execution of the budget? Director Skolnik responded “probably so”. The governor made the comment that if the legislature were meeting, the board would have to sit day in and day out on every proposal the legislature wanted to change in the department’s budget and it would be the board’s responsibility.

Director Skolnik stated at the last legislative session he spent all of his time in the legislature building either responding to policies, statutes, to budgetary questions and other issues. Being available to the legislature during the session was something that he did every day, almost all day long. The governor asked if there was anything preventing the board from requesting information from the department and director Skolnik responded absolutely not.

Secretary of State Miller stated he thought it was important to take a step back to determine exactly what it was they were discussing from the board’s premise. He stated he didn’t remember discussing in any context to have the board intervene in the day to day determinations of what Director Skolnik was tasked with. It was certainly beyond the preview of the board and the board couldn’t carry it out. He stated there are statutes out there that have been in place since 1977 and actually predated and were put in place when we formed the constitution. Article 5 puts direct responsibility upon the board to act as the head of the Department of Corrections (DOC) through the authority that was given to the board by the legislature. He stated it puts in place specific requirements that he thought the board should fulfill and the board had an obligation to fulfill. He stated that to suggest that the board take on nothing more than an advisory role would be to minimize the constitution and the statutes that are in place.

The only action item that he was aware of with the three board members was a discussion of the budget cuts. Secretary of State Miller stated when you’re talking about a prison system that is in crisis, and legislative testimony was heard to that affect where overcrowding had reached the point where there was concern about the feds intervening and taking over control of the system and the director has a recommendation in place to shut down one of the prisons, he stated that was a significant policy consideration and one that he felt strongly that the board should have input. He stated it should be done in an open inclusive process and in 1992 the board addressed the same situation when they were faced with budget cuts. At that time, it was run through the board and voted upon whether they should shut down the Jean facility. He stated he thought the role of the board was to set the policy to allow the director to manage the day to day operations and make those determinations and that the board should be meeting regularly to fulfill its statutory obligations. The board is obligated to get reports as to what is occurring in certain different areas of the DOC to ensure those remedies were pursued and the board can’t do that unless they met regularly. Secretary of State Miller also stated that anytime they are faced with a situation where the prison board is in a state of crisis and as a policy setting board the obligation would be to meet regularly.

Attorney General Masto stated the first part of the discussion talked about advocating the day to day operations to this board and she did not remember that particular discussion when the board met the last time. She stated the discussion of the first board was to start developing what the working relationship was going to be with the DOC and that the only question was the budget and how that process was occurring. Now, the board was talking about advocating their day to day responsibilities with the director's responsibilities to the day to day operations. She agreed the board is required to start by certain requirements by law and that the board needs more information from the director. In the past, the board met very rarely which was their decision. This was a new board now and we want to meet on a regular basis and be more involved in what is happening so we can present it and respond to the public and other agencies. Also, Attorney General Masto stated she did not think it was necessary for an additional oversight committee for the department as that was the role of this board.

Director Skolnik stated he had no problem in providing information and pointed out that there was one difference between the 1992 closure of Jean and today's closure in that there were substantial layoffs in 1992. The current plan is to do this without any layoffs.

Governor Gibbons asked if there was any action or motion required under number III that anyone had. Attorney General Masto suggested that as the board moves forward in the next couple of years they would develop a relationship and the director will understand what it is that the board requires and what they are looking for and visa versa.

IV. Decision Regarding State Administrative Regulations.

Director Skolnik presented to the board ARs 301, 339, 340 and 341 which were pulled at that last meeting due to the request of the employee associations to discuss them. After discussing them, there were no objections from the associations. The director will meet with the associations regarding the 300 series during the next year to view their concerns and they have no problem with the board approving the ARs before them today. He stated the department and the associations have a good working relationship.

Governor Gibbons asked if there was a motion to approve. The attorney general moved to approve and the secretary of state seconded it. Hearing no comments or questions on the motion, the governor asked for approval. The record reflects the vote was unanimous.

V. Informational Presentation by the Director of the Budget Cuts.

Director Skolnik stated the 4.5% budget deductions were handled in FY 08 with the total dollar amount of \$11,603,150 and in 09 it will be \$12,644,385. The department was able to meet a substantial part of the 08 reductions through capitol improvement with the two most significant being the women's prison, the Florence McClure Womens Correction Center (FMWCC), which saved about 6 or 7 million dollars and the proposal of the gradual closing of the Jean facility.

Director Skolnik stated the department has approximately 900 medium beds coming online in February, 240 each at the Northern Nevada Correctional Center (NNCC) and at FMWCC and 480 at the Southern Desert Correctional Center (SDCC). There is one full unit at Southern Nevada Correctional Center (SNCC) in Jean that has housed women since the department ran out of beds. It was the department's intention that as soon as the unit opened at FMWCC it planned to close that down and move the women back to FMWCC. He felt they could close one additional unit this fiscal year at SNCC given the combination factor.

Director Skolnik stated that the department still does not know the true effect of AB 510 and what it will do long term but as of Monday the population was at 12,942. It is 143 inmates below the budgeted projection after AB 510. It was about 400 below the original projections that the construction was based on. The department found it has beds that could be used at least until we saw the full impact of AB 510. The director stated it was a temporary closing of Jean. There will be 1,400 beds coming on line in 08 and 09 at High Desert State Prison (HDSP). There is enough of a cushion that the department can safely phase SNCC out on a temporary basis until we need it again and that would afford us the most of the savings that are required during FY 09.

Attorney General Masto asked if SNCC was the facility for the youthful offender programs and the director said that was correct. He stated there are about 400 youthful offenders there out of approximately 1,200 inmates that would qualify by age alone. They would be moved in a group to HDSP. The department will make a facility for them by converting unit 7 and 8 to programming. The school district would move their entire education program with the youthful offenders to HDSP that was funded at SNCC until the school year was over. No staff would be laid off and no programs would be disrupted that are presently going on at this time.

Attorney General Masto asked Director Skolnik who the other inmates were besides the youthful offender program inmates at SNCC. Director Skolnik replied that they put about 100 older inmates. Originally the department did all kids and we couldn't manage them very well. We found that placing some older inmates in there that it had a significant impact on the general operation of the institution and calmed it down. There are far fewer incidents and much better programming. The women's conservation camp will not be touched at all. Basically, those were the changes. The department has frozen some positions, frozen four from our central office, and some at the Ely State Prison (ESP) that had never been filled. We've had vacant positions in that facility since 1989. ESP has operated effectively with anywhere from 20 to 30 vacant positions, we're just freezing some of those positions.

Attorney General Masto had a concern about the safety at the court house in Ely and the need for correctional officers to be there all the time. The director responded that we will never be able to make that courthouse a safe place to hold inmates. The attorney general then asked if the department would be decreasing the number of correctional officers that would be going to the courthouse and the director responded no.

Governor Gibbons stated if he recalled, just to complete the record, there was a submission by the administration for monies to go to the improvement of the safety items at the Ely courthouse but the legislature changed that so we're back to where we were before we started down that path.

Director Skolnik stated that during his time with the department we have had a couple of very high profile cases in the White Pine County reception. In those cases they were relocated them to Carson City where security was far better.

Secretary of State Miller asked what the overall impact will have shutting down this facility given the current overcrowding situation. Director Skolnik responded by stating the department will not have a significant impact given the addition of 980 beds that are coming online in February. Having that all come online at once, we would have been in trouble but fortunately they aren't, in fact, the department is diverting some of those beds at NNCC for additional savings. We have to do a renovation of the living units at NNCC. They don't meet prior safety and some other codes. It will be a very extended disruptive process and we will be able to move the inmates into the pre-engineer building, speed the process up and save about a million-seven and if we find we need those beds, we've got them. There is a small group of us in the department that lock themselves up trying to find a way to do this without having to lay anyone off nor disrupting families and visits to inmates. This is the only option the department found that did not result in layoffs and cuts and endangering the security of multiple institutions.

Attorney General Masto asked Director Skolnik if there were any other capitol improvement projects that were put on hold that he had not addressed.

Director Skolnik stated the transitional housing facility at FMWCC was taken off the table. That would have been his recommendation with or without budget reductions. There were 50 beds at Casa Grande converted to female and they haven't all been filled yet so the need for 100 beds seemed excessive. When the department did the population projections for the CIPs they found that the female population is hardening and fewer women are qualified for that type of program. The department is building 25 for women at Eagle's Nest in Reno and could convert 100 beds at Casa Grande if needed. We are waiting for IFC approval tomorrow because it is a change in the Capitol Program.

Secretary Miller stated that during the legislative session the director had mentioned that he was trying to use tents according to the media reports.

Director Skolnik stated that he violently and absolutely opposed to the concept of ever using tents. That was a misquote if that was quoted in the media. He stated that programs and other things could be done in tents. Other places that house inmates in tents are jails and the difference is they house them for eleven days and the department houses inmates for four years on the average. The director stated he would not accept the responsibility of tents for housing of inmates in Nevada.

Director Skolnik stated the department is going to restore WSCC to medium security and there is a proposal that won't be made until the next legislative session to take Nevada T, a new site that was going to be put in at NNCC and move it to WSCC. Historically, the department has taken an existing facility that was built for X number of inmates and put more housing in there. SDCC was originally built for 600 inmates, Unit 7 and 8 were added and we're adding 480 beds to put that facility to almost 2,500 inmates. The kitchen and laundry is still for 650 inmates. There are plans to expand that but the department is out of physical plants and people by doing that. One of the Ts was cut out of SDCC that was originally planned. The director stated he asked for the T for NNCC be moved pending legislature approval to WSCC and that future construction be kept at 1,500.

Director Skolnik stated the Jackson State Prison in Michigan bumped that facility to 7,000 inmates which is the largest prison in the United States. It was then cut into half with two wardens, two administrations and operated as two separate prisons and now, by court order, it is being closed and the department does not need to go there. He also is going to recommend that a warden and the associate wardens and their immediate staff at SNCC go to HDSP with the new expansion there and have a maximum and medium security prison which will run separately.

VI. Presentation on Medical Services Provided to Inmates by the Nevada Department of Corrections.

Director Skolnik introduced Dr. Robert Bruce Bannister, Medical Director and Karen Walsh to speak about what we do in this department and how we do it. He stated Dr. Bannister's credentials prove him exemplary.

The governor asked Dr. Bannister and Mrs. Walsh to include in their remarks how the department is or is not meeting a national standard of expected care for prisoners.

Dr. Bannister stated that the department has a very good medical staff, in spite of what everyone is hearing. Medicine should be a science and that is the model he speaks with. There is a lot of concern, whether it is in prisons or public sector, about health care systems, access to care, costs excreta. In the medical department they function with ambition, well thought out by consulting other medical directors and departments in other states. Medical checks things they do and do not make things up. Advice is sought through reputable organizations that are involved in prison systems. Dr. Bannister stated he was on the National Commission on Health Care (NCHC). The mission of the DOC is to provide quality and constitutionally mandated health care and provide an efficient system of management care as professional, humane and appropriate in its support of the mission.

Dr. Bannister stated the medical staff consists of physicians, physician assistants, dentists and psychiatrists. Well over 90% of the medical staff is board certified, several board certified by several boards with a wealth of experience. No staff is with the department who doesn't want to be here. He stated it is important that when doctors and nurses go to work that they expect to do this care and expect to treat people with medical problems.

Dr. Bannister stated the inmate population is a unique population in that a lot of them don't want to be where they are but they do actually have a system to access care. They just have to fill out a piece of paper and request to be seen. Each prison has 24 hour, 7 day a week coverage by nurses. The overwhelming majority of inmates are happy with what happens. There are things that are not perfect that happen. There are things people want that do not turn out to be related to serious illness, not necessary or in line with proven accepted based medical practice.

Dr. Bannister stated he came into the department in 2004 as a senior physician at the Regional Medical Facility (RMF) in Carson City where inmates with more significant medical problems are assigned and classified. He stated he has been medical director for a year and a half and has spent most of his career in academic medicine and for 17 years was the director of residency training in family medicine and during that time he also maintained an active practice in OB, family medicine, hospital work and taught students and residents on a daily basis. He had had a wide variety of medical settings including rural areas. He was appointed by Governor Miller in 1989 to the Nevada State Board Osteopathic medicine for 12 years. The nursing staff has people with a wide variety of experience dealing with oncology and cancer treatment at the RMF in conjunction with outside specialist. There is a system if inmate patients need a higher level of care. Dr. Bannister stated that the department has contracts with outside medical care. There is a committee who meets weekly to decide if someone needs something and how we should approach it. That does not apply to emergency cases; they are taken right to hospitals when deemed necessary. Physicians are on call 24 hours a day, 7 days a week. He feels he is the most qualified person at this time to give information about what is going on in the medical division in the prisons.

Overall, the medical system is functioning. There are medical directives which are procedures that are followed to implement policies that are in place. There is a system to review these constantly to be consistent with recommendations or law changes or changes in medical practice recommendations. We have a dedicated staff. There may have been a few people who have worked for the prison and they may still work for the prison that have been unhappy and raised concerns. Some of those people are gone.

Dr. Bannister stated the inmates come in with a wide variety of backgrounds with different illnesses and histories. Unfortunately, some inmates come in that have illnesses that resulted in the destruction of their bodies revolving around substance abuse, alcohol and intravenous drug use. We classify people according to their health needs and sort out serious issues. The guidelines by experts around the country are not totally agreed upon but in most cases to apply treatment to inmate populations it should be a very solid and proven treatment. A lot of things recommended now in five years will be the wrong thing to do. He stated early HIV treatment as an example where a lot of things that were done had hurt people. The bone marrow transplant issue was a big issue with breast cancer and now we know it was the wrong thing to do.

The governor asked Dr. Bannister if there was a different standard of care for a prisoner or a person in prison or a person in a hospital.

Dr. Bannister stated no but there are different ways that people access care. Inmates have access to care but they don't get to choose who they go to.

The governor asked if he broke his arm would he be treated the same in the prison if he were a prisoner as he would if he were in the hospital as an ordinary citizen.

Dr. Bannister stated medical takes care of broken arms just like a citizen with a broken arm.

The governor asked if we follow the same protocols if we were a non-prison system.

Dr. Bannister stated yes and there are a lot of similarities in leading to the open outcome as what is the right way to treat a broken arm.

The governor stated he agreed there are decisions that are made by doctors and if you had three doctors in a room on a protocol to cure that, you would probably get at least two different approaches to it. What he was trying to say is that there is a standard of care that is required for the humane treatment of an individual whether you're in a prison or whether you're in a hospital. Just because you're a prisoner, you are not given a different standard of care.

Dr. Bannister stated "no, you're not".

The governor asked Dr. Bannister to tell him about hiring in rural Nevada.

Dr. Bannister stated he went to high school in rural Nevada and his father was a GP there. He spent time as a doctor in Caliente and Tonopah paying back his government debts because it was hard to get people to work in smaller towns for a variety of reasons. He stated he use to drive to Ely two and three weekends a month to cover the hospital emergency room and that without some special program; unfortunately, people just don't pick Ely and go there. It has always been a problem getting doctors in rural Nevada. At ESP there are three practitioners; one is a psychiatrist/neurologist who does a lot of general medicine. There is a physician assistant who is learning the system. It takes approximately two years to figure out how to function in a prison system and how to interact with inmates. The department just hired a full certified family physician who practiced in Lovelock most of his life. In the last two years, 69 medical people have been sent to Ely to help out, consult and do other things. If an inmate has a problem they are transported in to see one of our doctors at the RMF or to HDSP for a higher level of consultation. There are three providers at ESP now, two physicians, one physician in standing and nursing staff.

The governor asked what the due process was when there was a complaint. Dr. Bannister stated when an inmate writes that the answer is quite simple at times but some inmates do not like the answer. They can fill out a grievance if they are not satisfied with the answer. The Director of Nursing at the institution is the first level and if they don't like that answer it will come to his office. Some grieve they did not get their medicine on time and it is usually because the inmate forgot to fill out a request or there was a lockdown at the time.

Director Skolnik stated there has been absolutely no significant change in the number of medical grievances out of that facility in the past few years. It has generally stayed the same in respect to the staffing or anything else that was going on there.

Dr. Bannister stated that the majority of grievances were concerning getting medicine on time even though the inmates get it a lot faster than people get theirs on the outside overall. He changed things in the pharmacy by putting medicine right there in the prison so no one would run out and as a result do not get those grievances anymore since it has changed.

The governor asked if there was a national group that reviews health care for inmates in prisons and when the last time the reviewers came to the department.

Director Skolnik stated it was the National Commission on Correctional Health Care (NCCHC) standards which the department is, in general, in compliance with and that we have not had them review us. The department had started down the path to accreditation but there was a dollar amount attached to that and the previous administration chose not to pursue that. The directives were looked at and we identified the ones that needed modification in order to come into complete compliance and we made those changes necessary to come into compliance. We are looking at the budget to see if we can start back down the road to accreditation. The governor then asked what it would cost and the director replied he was not sure, maybe about \$30,000.

Dr. Bannister stated the NCCHC standards are divided into nine categories which has to do with access to care. New guidelines are coming out in 2008 which he has a copy. He stated he stays very current on their guidelines for recommended treatment and speaks with other states that are NCCHC accredited and communicates with them frequently as to what he should do and why. The directives get updated and rewritten using the guidelines.

The governor asked if that was \$30,000 per prison to be certified and Dr. Bannister stated yes. Every prison would have to have their own set of specific regulations to that particular institution. The governor then asked if it was the department's recommendation to go forward with certification.

Director Skolnik stated that he was not sure yet. He contacted the Association of State Correctional Administrators to give him a listing of medical directors and other service deliverers from corrections around the country who they felt would be able to come to Nevada to take a look at what we're doing and give us direction.

Director Skolnik stated if you go after NCCHC accreditation it will say to everyone that we meet these standards and there are some advantages to doing that but there are fiscal implications. Prison Industries went through the accreditation process with the American Correctional Association (ACA) and it was close to \$6,000. The total expenditure that the department would have had to make in order to come into compliance with all the health safety standards and documentation was closer to \$100,000. There are a lot of other costs involved and Director Skolnik stated he would like to have someone come in and say all the department really needs is to spend the \$30,000 and certify us or that we have a lot of work to do before you invite them in.

Governor Gibbons asked the director if he moved to item VII would he have the necessary information regarding the consent decree and if we were meeting the standards. The director stated he did and had enough information to give direction regarding the consent decree but because it is medical information and names individual inmates, he does not have copies of the inmate's releases that ACLU said they have, we cannot put it in the minutes.

Karen Walsh, a registered health information technician, stated she brought current type charts because of the allegation that the department's medical records were inconsistent with community standards. She stated one can clearly see it is easy to find anything within the medical records of an inmate. The governor asked if this was a standard approach that you would find in a hospital. Ms. Walsh stated it was derived from several different states, medical institutions, hospitals and physicians' offices. The governor then asked if it was a combination of Best Practices. Ms. Walsh stated one of our medical personnel, at the request of the previous director and governor, traveled to different states to gather information and that was a combination of all his research. There is a medical directive at each institution to describe exactly where every form belongs. She stated she could not speak for Dr. Noel and the copies he received as the medical division did not make those copies.

Director Skolnik wanted to go on record to express his confidence in the department's medical director and the medical division. They have suffered an awful lot of public abuse which he did not believe they deserved. They work hard and are very professional and deliver services to individuals who, as a large group, had neglected medical care for years and years and years before the department received them and frankly if we were to respond with the same speed that outside medical staff respond, we would be in court all of the time.

Attorney General Masto asked if the practitioners were fulltime, hired by the state to work at the DOC and if they were independent contractors who have their own private practice.

Dr. Bannister stated the family physician is part time and the other two are full time. Director Skolnik stated if you took a look at medical care throughout rural Nevada you would find that very frequently individuals transport themselves to larger communities in order to get care they feel they should receive. The inmates are transported as well to HDSP to put them closer to consultation and to the RMF if they need that type of care. Inmates don't just stay in Ely to get medical care. We get them to where they can get the care they need.

The attorney general asked if the department had a specific location for medically fragile patients. Director Skolnik responded that would be the RMF and that would be determined by the medical staff. The director stated there were 69 trips made by medical staff in one year from other locations to Ely to provide consultation assistance and diagnosis and the care we deliver there is beyond the care of just the staff that are working there full time.

Dr. Bannister stated there are things that happen and misunderstandings do occur because people quite often are not getting what they want but overall it's important to realize that we are a prison and not medical diagnostic mayo clinics. With respect to doctors having practiced on the outside, it is helpful to have a doctor at a prison also working at a hospital. Dr. Bannister stated he is strongly connected to Renown, St. Marys Hospital and the medical school and he has the access to call to ask a question of any one of the doctors which is very helpful. The interactions with the community are a plus.

Attorney General Masto wanted to clarify and confirm that the budget cuts that were discussed have no impact on the medical care. Director Skolnik stated there was no reduction in any of the medical areas at all. He stated that Dr. Bannister has said in order to get true good medical care; you have to have a partnership between the doctor and the patient. If the patient does not want to participate in their own care, there are some problems that would probably arise. There are people in the system that don't respond faithfully or positively to anything. They won't take their medication or participate in their treatment. There are diabetics on diabetic diets who have bought candy from the inmate store and inmates on low cholesterol who bought sausage. The department can't control that kind of behavior and to attempt to do that we would require staffing that would break the back of the state. He stated we have to realize if the inmate does not participate in the treatment, either in prison or if he's on the street, does that mean we should four-point them when they do not want to take their pills and force feed them. There are a number of good reasons not to do that simply because someone on the outside comes in and says we ought to.

VII. Discussion/Decision Regarding the Consent Decree Proposed by the ACLU.

Director Skolnik stated his recommendation is not to agree to the consent decree on a few levels. Number one was the ACLU came to the department with some concerns and we opened our doors and provided them with access to everything they asked for. They made the copies that they claim don't have the information because they blacked that out with their own equipment. He stated he was not responsible for doing that, they were. He shared a report with the three board members from Dr. Bannister that cannot be part of the public record because the department did not have the release forms from the inmates. The report lists inmate by inmate, item by item, accusation by accusation, responds to and/or refutes the claims made by the ACLU. The director stated he cannot commit this state to providing a doctor full time at ESP because the department cannot just create someone. He stated he didn't know if all of us together could convince someone to go to Ely to become a doctor at the prison within 60 days. Director Skolnik stated he does not want to enter consent to convince this state to a set of standards forever. That would open the door to anytime the department changed a director they would have to go to court and deal with that. He stated he does not feel the department is unconstitutional and he believed the issue is whether we are delivering a constitutional level of care.

Governor Gibbons asked the director if even before considering something like this that we should go through a certain approval process. The director stated there is a lot more review that needs to be done by the department to see where we are but to commit in terms of a consent decree would tie up the department for years and years to come, there is no need to do that at this point.

Governor Gibbons stated that medicine like all sciences has its own foundation with its own quality in terms of changes and technology and legalities of the delivery of health care. If that is put into a certain fenced-in requirement, then obstacles are literally put in your way of delivering health care.

Director Skolnik stated that was true and the individual who did the review for ACLU, to the best of the department's knowledge, had no correctional medical experience at all. There was no experience in the correctional setting which is unique in terms of the patients. He stated he had concerns about the report and the board will be able to see in the handout why he has concerns. He stated he could remove the names in order to put it in the record but said he was not sure if consul would advise him to do that.

Governor Gibbons asked Director Skolnik about systemic deficiencies in the consent decree and what it meant to him.

Director Skolnik replied that in his opinion the department did not have systemic deficiencies in the delivery of medical care. There was a consent decree in the early 80s Taylor vs. Wolff which covered mental health and medical services and the department was ultimately discharged from that consent decree but still complied with it. The medical care has gotten better not worse since then.

Dr. Bannister stated in general there have been a lot of changes. There were people who were at Ely who were in charge of medical care who are no longer there and they chose for some reason to create a lot of problems. He stated that people who are in charge of medical care then say bad medical care is being given, are giving bad medical care and have to be gone and they are gone. There are a lot of good people who work for the prison and they are hurt by this. They go to work and do a good job as doctors and nurses who are nursing old people by changing diapers and taking care of patients. Their efforts are directed to do the right thing in spite of the unbelievable comments that are being said.

Director Skolnik stated he had asked Dr. Bannister and his staff to evaluate the medical issues and review patient's needs to see if any of the inmates needed to be moved to the RMF or HDSP because of fragility where they would be maintained securely and to be closer to consultation. Almost 100% of the inmates that were moved to HDSP will go back to ESP. He stated if we were providing such outrageously poor care and such a terrible environment for them why were the inmates asking to go back.

Attorney General Masto asked Director Skolnik if he opposed to not entering into the consent decree from the ACLU and to sit down and meet with them.

Director Skolnik said he would leave that up to the board and that he did not oppose to working with the ACLU, however, he was opposed to letting them randomly select who they are going to bring in as their expert. There needed to be an intervening body. He stated he would propose, for example, that the Nevada State Medical Board perhaps identify a doctor or put together an advisory committee to assist Dr. Bannister in reviewing cases. The ACLU director told director Skolnik he would be more than happy to take it to their board if that was something Director Skolnik would like to see done.

Governor Gibbons stated he thought that gave independence to a review process. It would give a certain separation from the adage that the fox is watching the chicken coop by asking outside medical personnel from the Nevada State Board of Medicine to put together a group of individuals to review this.

Secretary of State Miller stated he thought he could make that recommendation but did not know what the other board members would do.

Governor Gibbons stated in any event that it was probably the salient thing the board could do under the circumstances. Director Skolnik stated he would be happy to draft that letter and send to each board member to review before it was sent.

Attorney General Masto stated they did not have to review it. Governor Gibbons stated just do it and that the director fully understands what the issues are and he needed to go forward with that.

Secretary Miller asked the board if they take full action on that and a motion.

Governor Gibbons asked if there was a motion before the board at this time.

Secretary Miller moved to deny the consent decree pursuant to the director's recommended approach in the hopes that the department can send a letter to the ACLU and do a dialogue with them in the hopes that we will be eluding some type of resolution with accreditation acceptable to all parties. Attorney General Masto seconded the motion.

Governor Miller ruled a motion of denial seconded by the attorney general. Hearing no comments or questions on the motion, the governor asked for approval of denial of the consent decree by the ACLU. The record reflects the vote was unanimous.

VIII. Discussion/Decision Regarding Policy and Procedures for the Governance of the Board related to Future Meetings.

Secretary Miller provided a letter in the packet to the board with his recommendations regarding Item VII. *See Exhibit C.*

Governor Gibbons asked if the board was restricted to any two members meeting outside of the board requirements if it would violate the Open Meeting Law. Keith Marcher responded yes. The governor stated "so no two of us can talk about any subject matter outside of the board meeting". Mr. Marcher stated you can't get together as a quorum and discuss what potentially to deliberate for any potential action on any particular item. The governor quoted NRS 209 that the responsibility of taking minutes of the meeting lays with the secretary of state's office and he requested that office be the legal transmitter in the keeping the records and the minutes by statute. After much discussion amongst the board and Director Skolnik the board elected to combine VIII with agenda item IX.

IX. Future Board Meeting Dates.

There was a motion to approve item VII for the board to meet at quarterly meetings during the course of a year. The record reflects the vote was unanimous.

Regarding item VIII, the governor stated the transcription of minutes did not have to be verbatim transcription and the recording/transcribing of the minutes will be taken by DOC staff. Secretary Miller stated his office would be glad to help if the director needed any help in preparing the minutes as it was the responsibility of the secretary of the board. There was a motion to approve agenda item VIII. Let the record show the vote was unanimous.

X. Remarks from the Board of State Prison Commissioners.

There were no comments or questions.

XI. Future Agenda Items.

Director Skolnik would like to bring to the board at the next meeting the department's long range plans and Jag's new population projections if available and other ARs. No approval was needed.

XII. Public Comment.

Flo Jones addressed the commission and expressed her desire to have an oversight board. She stated she sent an email to the board with suggestions to help solve the major financial problems the state is facing. Ms. Jones suggested taking the facilities in the DOC and redo them. She suggested moving Casa Grande from the DOC into Parole and Probation because it was originally intended for transitional housing and use it as a parole transition home. That would save money. Ms. Jones suggested keeping Jean prison open and stopping new construction. She stated the water problem at HDSP with water being restricted; the department should use the facilities more effectively. The department should work with what they have and mothball the all construction especially at HDSP.

Pat Hines presented to the commissioners a "think list" with her suggestions. *See Exhibit D.* She stated she was pleased with the board's decision on their duties and roles except there were no guidelines as to the public making comments and how you would like for the advocates to do that. Ms. Hines noted that in the history of the Board of Prison Commissioners it wasn't until 1977 that the position of director was appointed which was previously held by the Lt. Governor of the state. She requested that in the future copies of the tapes (CDs) of the minutes be made available to the public. She suggested that employees who are trained by the department should be made to stay for two years and also existing camps should have better utilization. Ms. Hines suggested that there should be an AR Committee like there was years ago so one person would not be tasked with all of the work.

Gary Peck of the Nevada ACLU stated he appreciated the opportunity to work with Director Skolnik and other staff at various prison facilities in the department's efforts to make inquiries into the conditions at facilities. Regarding the disapproval vote of the consent decree, Mr. Peck stated that they have been hearing for years about the medical care in the department from people who work inside and other people in various state agencies and he just wanted to simply say that the ACLU respectfully but vehemently disagrees with that assessment. He stated he listened very carefully to what Dr. Bannister, Ms. Walsh and Director Skolnik had to say and could candidly say some seem illogical or inconsistent. Mr. Peck stated he was troubled that there has been no accreditation for years for nationally accepted standards because it was too difficult and costly for the department to impose. He expressed that the ACLU was trying to avoid litigation. He stated he had written several members of this commission for inquiries and only got one response and that was from the governor's office saying Director Skolnik will take care of the situation. Mr. Peck said if there is a report that has been prepared by Dr. Bannister which refutes all that Dr. Noel put in his report; the ACLU would certainly like to see that report. He stated it was important to have the opportunity to review it. He did not like Dr. Noel's expert report being attacked suggesting he had no experience. He stated Dr. Noel had been doing these kinds of evaluations for decades and his report was based on NDOC records that they were told were complete from archives and records but in fact were not complete. Also, to suggest they were reviewed and taken out of context as not credible is very troubling. The ACLU is hoping to continue to work with the director but they are not willing to accept a unilateral selection of an "independent" expert to go in and do these evaluations.

Mr. Peck stated they were willing to consult with the director to try to select someone whom they could both agree upon and that was quite reasonable with respect to ensuring genuine independence that inspires confidence. Lastly, he had heard the director state repeatedly in various context "well sir the problems that have been going on with the ACLU are problems we just learned about because we've just seen the ACLU's report". Mr. Peck stated it was not the ACLU's job to monitor the medical care system in the NDOC. That's NDOC's job. He stated he thought it would be safe to say that in fact nine inmates, he believed that number was right but not to hold him to that, subsequent to issuance of the report, nine medically fragile inmates were shipped to HDSP where they could get proper medical care, even so, all it states is evidence that there were problems at Ely. Period, end of story. The ACLU is glad the inmates were shipped to HDSP but what they would like now is the opportunity to take the steps we've got blocking the letter dated January 21st to take a look inside of HDSP to interview the appropriate people and to go back to Ely and take another look inside to satisfy ACLU that the delivery of medical care is meeting constitutional standards. The ACLU has every reason to believe it is not. The ACLU at least wants the opportunity to look at those facilities.

Tonya Brown talked about inmate lawsuits and stated the inmate usually wins. She suggested to by-step that by putting into an AR if there is reasonable doubt or if the inmate is successful on the lawsuit, she would like to see NDOC's staff member personally be responsible up to the first \$500. She felt that would cut down on lawsuits. Ms. Brown brought up the water issue at HDSP and that inmates were not allowed to flush for 30 minutes which posed serious conditions. She stated at LCC there were no shower bars thus violating the ADA code.

Ms. Brown brought up the issue of the MERSA outbreak that her brother Nolan Kline had experienced at NNCC brought in by the inmates in the fish tank which she stated she had reported at the last meeting. She suggested putting the fish inmates somewhere else and keep them separated from other individuals which should be a top priority. She suggested an oversight committee.

Regarding the medical issue in rural areas, Ms. Brown suggested the state should offer doctors and others housing and pay for their children's college education by putting it into a fund which would be cheaper in the long run. The state should offer whatever they can regarding housing and college education. It would keep doctors there for three or four years and we would all benefit and if they leave, seek their money back. She also stated medical reports are not being looked at when inmates are transferred from one institution to another and the doctors don't know what the reports mean when they do get them.

Michelle Ranell asked what the status of AR 707 was. The attorney general stated that this was a time for public comment, not questions. Ms. Ranell suggested to bring up in a future agenda if there was going to be an audit of the financial situation of the prisons. She felt as a family member of an inmate and as a taxpayer, they receive an additional tax because of the inmate telephone system and expressed she would like to know where her money is being spent. She would also like to know how many medical staff NDOC has.

James Palombo thank the commissioners for establishing themselves as an oversight committee for the NDOC. He submitted his statement for the record. *See Exhibit E.*

Donald Hinton stated that Director Skolnik and Dr. Bannister's comments about medical were the best (inaudible) story he's ever heard. He requested if the commissioners want, he would give them names, numbers and letters from inmates that have suffered drastically at the hands of the NDOC. Mr. Hinton stated he agreed with Mr. Peck that the report had no credibility whatsoever and he mentioned three names of inmates at HDSP to contact as they would tell the truth to what was going on in the medical department at HDSP. He suggested to the governor to send a group of people to HDSP to look at the medical department. He stated to the board that the closing of Jean Prison was ludicrous and the taxpayer just spent 12 million to get the place open and they have water. He mentioned that HDSP on the other hand was out in the middle of nowhere and the department liked it like that and the water is not a funny situation out there as there is a time limit when to flush toilets. To place 2,400 more beds will run into a very serious problem. He stated that he would like to see reports from NDOC that are presented to the legislature to be made under oath. He stated he has heard an awful lot of things from the NDOC administrators that he heard were so wonderful and the things they were going to do down the line but instead they're forgotten. Mr. Hinton stated he was disgusted with what he sees. *See Exhibit F.*

Written comment submitted by Teresa Werner. *See Exhibit G.*

XIII – Adjournment

On motion by Secretary of State Miller, seconded by Governor Gibbons and approved with a unanimous vote, the meeting was adjourned.

APPROVED THIS DAY 7th, MONTH OF APRIL 2008

BY:

GOVERNOR JIM GIBBONS

ATTORNEY GENERAL CATHERINE CORTEZ MASTO

SECRETARY OF STATE ROSS MILLER

Recorded and Transcribed by Susan Cochran
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