

SENATE BILL NO. 2—SENATORS RAGGIO, TITUS, AMODEI, CARE, CARLTON,
COFFIN, JACOBSEN, MATHEWS, MCGINNESS, MILBURN,
O’CONNELL, O’DONNELL, PAULK, RAWSON, RHOADS,
SCHNEIDER, SHAFFER, TOWNSEND, WASHINGTON AND WIENER

JULY 29, 2002

Referred to Committee of the Whole

SUMMARY—Makes various changes related to medical and dental malpractice. (BDR 3-13)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to malpractice; limiting the liability of certain medical providers for negligent acts under certain circumstances; establishing a limitation on the amount of noneconomic damages that may be awarded in an action for medical malpractice or dental malpractice; providing for several liability of a defendant for noneconomic damages in an action for medical malpractice; making various changes concerning the payment of future economic damages in actions for medical malpractice; providing for the mandatory dismissal of an action for medical malpractice or dental malpractice under certain circumstances; repealing the provisions pertaining to the use of screening panels for an action for medical malpractice or dental malpractice; revising the statute of limitations for filing an action for medical malpractice or dental malpractice; making various other changes concerning actions for medical malpractice or dental malpractice; requiring certain district judges to receive training concerning the complex issues involved in medical malpractice litigation; requiring courts to impose certain sanctions on attorneys in certain circumstances; making various changes relating to the reporting of claims of malpractice or negligence; and providing other matters properly relating thereto.

1 WHEREAS, The State of Nevada is experiencing extreme difficulties
2 attracting and maintaining a sufficient network of physicians to meet the
3 needs of the residents of this state; and

4 WHEREAS, The Nevada Legislature has determined that the shortage of
5 physicians and the inability to attract new physicians to this state pose a
6 serious threat to the health, welfare and safety of the residents of the State
7 of Nevada; now, therefore,



* S B 2 *

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 41 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in subsection 2 and NRS 41.505:

(a) A hospital which has been designated as a center for the treatment of trauma by the administrator of the health division of the department of human resources pursuant to NRS 450B.237 and which is a nonprofit organization;

(b) An employee of a hospital described in paragraph (a) who renders care or assistance to patients;

(c) A physician or dentist licensed under the provisions of chapter 630, 631 or 633 of NRS who renders care or assistance in a hospital described in paragraph (a), whether the care or assistance was rendered gratuitously or for a fee; and

(d) A physician or dentist licensed under the provisions of chapter 630, 631 or 633 of NRS:

(1) Whose liability is not otherwise limited pursuant to NRS 41.032 to 41.0337, inclusive; and

(2) Who renders care or assistance in a hospital of a governmental entity that has been designated as a center for the treatment of trauma by the administrator of the health division of the department of human resources pursuant to NRS 450B.237, whether or not the care or assistance was rendered gratuitously or for a fee, that in good faith renders care or assistance necessitated by a sudden, unexpected situation or occurrence resulting in a serious medical condition demanding immediate medical attention, for which the patient enters the hospital through its emergency room or trauma center, may not be held liable for more than \$50,000 in civil damages as a result of any act or omission in rendering that care or assistance if the care or assistance is rendered in good faith and in a manner not amounting to gross negligence or reckless, willful or wanton conduct.

2. The limitation on liability provided pursuant to this section does not apply to any act or omission in rendering care or assistance:

(a) Which occurs after the patient is stabilized and is capable of receiving medical treatment as a nonemergency patient, unless surgery is required as a result of the emergency within a reasonable time after the patient is stabilized, in which case the limitation on liability provided by subsection 1 applies to any act or omission in rendering care or assistance which occurs before the stabilization of the patient following the surgery; or

(b) Unrelated to the original medical emergency.

3. For the purposes of this section, "reckless, willful or wanton conduct," as it applies to a person to whom subsection 1 applies, shall be deemed to be that conduct which the person knew or should have known at the time he rendered the care or assistance would be likely to result in injury so as to affect the life or health of another person, taking into consideration to the extent applicable:



- 1 (a) *The extent or serious nature of the prevailing circumstances;*
- 2 (b) *The lack of time or ability to obtain appropriate consultation;*
- 3 (c) *The lack of a prior medical relationship with the patient;*
- 4 (d) *The inability to obtain an appropriate medical history of the*
- 5 *patient; and*
- 6 (e) *The time constraints imposed by coexisting emergencies.*

7 **Sec. 2.** Chapter 41A of NRS is hereby amended by adding thereto the
8 provisions set forth as sections 3 to 9, inclusive, of this act.

9 **Sec. 3.** *“Economic damages” includes damages for medical*
10 *treatment, care or custody, and loss of earnings.*

11 **Sec. 4.** *“Noneconomic damages” includes damages to compensate*
12 *for pain, suffering, inconvenience, physical impairment, disfigurement*
13 *and other nonpecuniary damages.*

14 **Sec. 5.** 1. *Except as otherwise provided in subsection 3, in an*
15 *action for damages for medical malpractice or dental malpractice, the*
16 *noneconomic damages awarded to each plaintiff must not exceed*
17 *\$350,000.*

18 2. *In an action for damages for medical malpractice or dental*
19 *malpractice, in the circumstances and types of cases described in*
20 *subsection 3, the noneconomic damages awarded to a plaintiff must not*
21 *exceed the greater of \$350,000 or the amount of money remaining under*
22 *the professional liability insurance policy limit covering the defendant*
23 *after subtracting the economic damages awarded to that plaintiff.*
24 *Irrespective of the number of plaintiffs in the action, in no event may any*
25 *single defendant be liable to the plaintiffs in the aggregate in excess of*
26 *the professional liability insurance policy limit covering that defendant.*

27 3. *In an action for damages for medical malpractice or dental*
28 *malpractice, the limitation on noneconomic damages set forth in*
29 *subsection 1 does not apply in the following circumstances and types of*
30 *cases:*

- 31 (a) *Organic brain damage;*
- 32 (b) *Hemiplegia, paraplegia or quadriplegia;*
- 33 (c) *Death of a parent, spouse or child;*
- 34 (d) *Total blindness;*
- 35 (e) *Actual physical loss of a limb, including a foot or hand;*
- 36 (f) *Permanent loss or damage to a reproductive organ resulting in*
37 *sterility;*
- 38 (g) *A case in which the conduct of the defendant is determined to*
39 *constitute gross malpractice; or*
- 40 (h) *A case in which, following return of a verdict by the jury, the court*
41 *determines, by clear and convincing evidence, that an award in excess of*
42 *\$350,000 for noneconomic damages is justified under the circumstances.*

43 4. *For the purposes of this section:*

44 (a) *“Gross malpractice” means failure to exercise the required degree*
45 *of care, skill or knowledge which amounts to:*

46 (1) *A conscious indifference to the consequences which may result*
47 *from the gross malpractice; and*



1 (2) *A disregard for and indifference to the safety and welfare of the*
2 *patient.*

3 (b) *“Organic brain damage” means the person has documented*
4 *organically caused, permanently impaired cognitive capacity rendering*
5 *him incapable of making independent, responsible life decisions or*
6 *permanently incapable of independently conducting the activities of the*
7 *person’s normal daily living.*

8 (c) *“Total blindness” means a person’s visual acuity with correcting*
9 *lenses does not exceed 20/200 in the better eye, or whose vision in the*
10 *better eye is restricted to a field which subtends an angle of not greater*
11 *than 20°.*

12 **Sec. 6.** *In an action for damages for medical malpractice, each*
13 *defendant is liable for noneconomic damages severally only, and not*
14 *jointly, to the plaintiff only for that portion of the judgment which*
15 *represents the percentage of negligence attributable to the defendant.*

16 **Sec. 7. 1.** *Upon the motion of any party or upon its own motion,*
17 *unless good cause is shown for the delay, the court shall, after due notice*
18 *to the parties, dismiss an action involving medical malpractice or dental*
19 *malpractice if the action is not brought to trial within:*

20 (a) *Three years after the date on which the action is filed, if the action*
21 *is filed on or after October 1, 2002, but before October 1, 2005.*

22 (b) *Two years after the date on which the action is filed, if the action*
23 *is filed on or after October 1, 2005.*

24 2. *Dismissal of an action pursuant to subsection 1 is a bar to the*
25 *filing of another action upon the same claim for relief against the same*
26 *defendants.*

27 3. *Each district court shall adopt court rules to expedite the*
28 *resolution of an action involving medical malpractice or dental*
29 *malpractice.*

30 **Sec. 8.** *If an action for medical malpractice or dental malpractice is*
31 *filed in the district court, the district court shall dismiss the action,*
32 *without prejudice, if the action is filed without an affidavit, supporting*
33 *the allegations contained in the action, submitted by a medical expert*
34 *who practices in an area that is substantially similar to the type of*
35 *practice engaged in at the time of the alleged malpractice.*

36 **Sec. 9. 1.** *In an action for medical malpractice or dental*
37 *malpractice, the plaintiff, the defendant, the representative of the*
38 *physician’s or dentist’s insurer and their respective attorneys shall attend*
39 *and participate in a settlement conference before a district judge, other*
40 *than the judge assigned to the action, to ascertain whether the action*
41 *may be settled by the parties before trial.*

42 2. *The judge before whom the settlement conference is held:*

43 (a) *May, for good cause shown, waive the attendance of any party.*

44 (b) *Shall decide what information the parties may submit at the*
45 *settlement conference.*

46 3. *The judge shall notify the parties of the time and place of the*
47 *settlement conference.*



1 ***4. The failure of any party or his attorney to participate in good faith***
2 ***in the settlement conference is grounds for sanctions against the party or***
3 ***his attorney, or both.***

4 **Sec. 10.** NRS 41A.003 is hereby amended to read as follows:
5 41A.003 As used in this chapter, unless the context otherwise requires,
6 the words and terms defined in NRS 41A.004 ~~to 41A.013, inclusive,~~ and
7 ***41A.009 and sections 3 and 4 of this act*** have the meanings ascribed to
8 them in those sections.

9 **Sec. 11.** NRS 41A.097 is hereby amended to read as follows:
10 41A.097 1. Except as otherwise provided in subsection ~~2~~ ***3***, an
11 action for injury or death against a provider of health care may not be
12 commenced more than 4 years after the date of injury or 2 years after the
13 plaintiff discovers or through the use of reasonable diligence should have
14 discovered the injury, whichever occurs first, for:

15 (a) Injury to or the wrongful death of a person ~~to~~ ***occurring before***
16 ***October 1, 2002***, based upon alleged professional negligence of the
17 provider of health care;

18 (b) Injury to or the wrongful death of a person ***occurring before***
19 ***October 1, 2002***, from professional services rendered without consent; or

20 (c) Injury to or the wrongful death of a person ***occurring before***
21 ***October 1, 2002***, from error or omission in practice by the provider of
22 health care.

23 2. ***Except as otherwise provided in subsection 3, an action for injury***
24 ***or death against a provider of health care may not be commenced more***
25 ***than 3 years after the date of injury or 2 years after the plaintiff discovers***
26 ***or through the use of reasonable diligence should have discovered the***
27 ***injury, whichever occurs first, for:***

28 (a) ***Injury to or the wrongful death of a person occurring on or after***
29 ***October 1, 2002, based upon alleged professional negligence of the***
30 ***provider of health care;***

31 (b) ***Injury to or the wrongful death of a person occurring on or after***
32 ***October 1, 2002, from professional services rendered without consent; or***

33 (c) ***Injury to or the wrongful death of a person occurring on or after***
34 ***October 1, 2002, from error or omission in practice by the provider of***
35 ***health care.***

36 3. This time limitation is tolled ~~for~~
37 ~~—(a) For~~ ***for*** any period during which the provider of health care has
38 concealed any act, error or omission upon which the action is based and
39 which is known or through the use of reasonable diligence should have
40 been known to him.

41 ~~[(b) In any action governed by the provisions of NRS 41A.003 to~~
42 ~~41A.069, inclusive, from the date a claimant files a complaint for review~~
43 ~~by a screening panel until 30 days after the date the panel notifies the~~
44 ~~claimant, in writing, of its findings. The provisions of this paragraph apply~~
45 ~~to an action against the provider of health care and to an action against any~~
46 ~~person, government or political subdivision of a government who is alleged~~
47 ~~by the claimant to be liable vicariously for the medical or dental~~
48 ~~malpractice of the provider of health care, if the provider, person,~~
49 ~~government or political subdivision has received notice of the filing of a~~



~~complaint for review by a screening panel within the limitation of time provided in subsection 1.~~

~~3-4~~ 4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 ~~1-4~~ or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of his disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

~~1-4-1~~ 5. As used in this section, "provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital as the employer of any such person.

Sec. 12. NRS 41A.100 is hereby amended to read as follows:

41A.100 1. Liability for personal injury or death is not imposed upon any provider of medical care based on alleged negligence in the performance of that care unless evidence consisting of expert medical testimony, material from recognized medical texts or treatises or the regulations of the licensed medical facility wherein the alleged negligence occurred is presented to demonstrate the alleged deviation from the accepted standard of care in the specific circumstances of the case and to prove causation of the alleged personal injury or death, except that such evidence is not required and a rebuttable presumption that the personal injury or death was caused by negligence arises where evidence is presented that the personal injury or death occurred in any one or more of the following circumstances:

(a) A foreign substance other than medication or a prosthetic device was unintentionally left within the body of a patient following surgery;

(b) An explosion or fire originating in a substance used in treatment occurred in the course of treatment;

(c) An unintended burn caused by heat, radiation or chemicals was suffered in the course of medical care;

(d) An injury was suffered during the course of treatment to a part of the body not directly involved in the treatment or proximate thereto; or

(e) A surgical procedure was performed on the wrong patient or the wrong organ, limb or part of a patient's body.

2. *Expert medical testimony provided pursuant to subsection 1 may only be given by a provider of medical care who practices in an area that is substantially similar to the type of practice engaged in at the time of the alleged negligence.*



1 **3.** As used in this section, “provider of medical care” means a
2 physician, dentist, registered nurse or a licensed hospital as the employer of
3 any such person.

4 **Sec. 13.** NRS 42.020 is hereby amended to read as follows:

5 42.020 1. Except as otherwise provided in subsection 2, in any action
6 for damages for medical malpractice, the amount of damages, if any,
7 awarded in the action must be reduced by the amount of any prior payment
8 made by or on behalf of the provider of health care against whom the
9 action is brought to the injured person or to the claimant to meet reasonable
10 expenses of medical care, other essential goods or services or reasonable
11 living expenses.

12 2. In any action described in subsection 1 in which liability for medical
13 malpractice is established or admitted, the court shall, before the entry of
14 judgment, hold a separate hearing to determine if any expenses incurred by
15 the claimant for medical care, loss of income or other financial loss have
16 been paid or reimbursed as a benefit from a collateral source. If the court
17 determines that a claimant has received such a benefit, the court shall
18 reduce the amount of damages, if any, awarded in the action by the amount
19 of the benefit. The amount so reduced must not include any amount for
20 which there is a right of subrogation to the rights of the claimant if the right
21 of subrogation is exercised by serving a notice of lien on the claimant
22 before the settlement of or the entry of judgment in the action. Notice of
23 the action must be provided by the claimant to any statutory holder of a
24 lien.

25 3. If future economic damages are awarded in an action for medical
26 malpractice, the ~~award must be paid, at the election of the claimant;~~ *court*
27 *may, at the request of the claimant, order the award to be paid:*

28 (a) In a lump sum which has been reduced to its present value as
29 determined by the trier of fact and approved by the court; or

30 (b) Subject to the provisions of ~~subsection 5;~~ *subsections 5 and 6 and*
31 *the discretion of the court, in periodic payments either* by an annuity
32 purchased to provide periodic payments ~~[-]~~ *or by other means if the*
33 *defendant posts an adequate bond or other security to ensure full*
34 *payment by periodic payments of the damages awarded by the judgment.*

35 As used in this subsection, “future economic damages” includes damages
36 for future medical treatment, care or custody, and loss of future earnings.

37 4. If the claimant ~~elects to receive~~ *receives* periodic payments
38 pursuant to paragraph (b) of subsection 3, the award must not be reduced to
39 its present value. The amount of the periodic payments must be equal to the
40 total amount of all future damages awarded by the trier of fact and
41 approved by the court. The period for which the periodic payments must be
42 made must be determined by the trier of fact and approved by the court.
43 Before the entry of judgment, each party shall submit to the court a plan
44 specifying the recipient of the payments, the amount of the payments and a
45 schedule of periodic payments for the award. Upon receipt and review of
46 the plans, the court shall specify in its judgment rendered in the action the
47 recipient of the payments, the amount of the payments and a schedule of
48 payments for the award.



1 5. If an annuity is purchased pursuant to paragraph (b) of subsection 3,
2 the claimant shall select the provider of the annuity. Upon purchase of the
3 annuity, the claimant shall:

4 (a) Execute a satisfaction of judgment or a stipulation for dismissal of
5 the claim with prejudice; and

6 (b) Release forever the defendant and his insurer, if any, from any
7 obligation to make periodic payments pursuant to the award.

8 6. *If the defendant posts a bond or other security pursuant to*
9 *paragraph (b) of subsection 3, upon termination of the payment of*
10 *periodic payments of damages, the court shall order the return of the*
11 *bond or other security, or as much as remains, to the defendant.*

12 7. As used in this section:

13 (a) “Benefit from a collateral source” means any money, service or
14 other benefit which is paid or provided or is reasonably likely to be paid or
15 provided to a claimant for personal injury or wrongful death pursuant to:

16 (1) A state or federal act which provides benefits for sickness,
17 disability, accidents, loss of income or workers’ compensation;

18 (2) A policy of insurance which provides health benefits or coverage
19 for loss of income;

20 (3) A contract of any group, organization, partnership or corporation
21 which provides, pays or reimburses the cost of medical, hospital or dental
22 benefits or benefits for loss of income; or

23 (4) Any other publicly or privately funded program which provides
24 such benefits.

25 (b) “Medical malpractice” has the meaning ascribed to it in NRS
26 41A.009.

27 **Sec. 14.** NRS 1.360 is hereby amended to read as follows:

28 1.360 Under the direction of the supreme court, the court administrator
29 shall:

30 1. Examine the administrative procedures employed in the offices of
31 the judges, clerks, court reporters and employees of all courts of this state
32 and make recommendations, through the chief justice, for the improvement
33 of those procedures;

34 2. Examine the condition of the dockets of the courts and determine
35 the need for assistance by any court;

36 3. Make recommendations to and carry out the directions of the chief
37 justice relating to the assignment of district judges where district courts are
38 in need of assistance;

39 4. Develop a uniform system for collecting and compiling statistics
40 and other data regarding the operation of the state court system and
41 transmit that information to the supreme court so that proper action may be
42 taken in respect thereto;

43 5. Prepare and submit a budget of state appropriations necessary for
44 the maintenance and operation of the state court system and make
45 recommendations in respect thereto;

46 6. Develop procedures for accounting, internal auditing, procurement
47 and disbursement for the state court system;



1 7. Collect statistical and other data and make reports relating to the
2 expenditure of all public money for the maintenance and operation of the
3 state court system and the offices connected therewith;

4 8. Compile statistics from the information required to be maintained
5 by the clerks of the district courts pursuant to NRS 3.275 and make reports
6 as to the cases filed in the district courts;

7 9. Formulate and submit to the supreme court recommendations of
8 policies or proposed legislation for the improvement of the state court
9 system;

10 10. On or before January 1 of each year, submit to the director of the
11 legislative counsel bureau a written report compiling the information
12 submitted to the court administrator pursuant to NRS 3.243, 4.175 and
13 5.045 during the immediately preceding fiscal year; ~~and~~

14 11. *On or before February 15 of each odd-numbered year, submit to*
15 *the governor and to the director of the legislative counsel bureau for*
16 *transmittal to the next regular session of the legislature a written report*
17 *compiling the information submitted by clerks of courts to the court*
18 *administrator pursuant to NRS 630.307 and section 30 of this act which*
19 *includes only aggregate information for statistical purposes and excludes*
20 *any identifying information related to a particular person; and*

21 12. Attend to such other matters as may be assigned by the supreme
22 court or prescribed by law.

23 **Sec. 15.** Chapter 3 of NRS is hereby amended by adding thereto a new
24 section to read as follows:

25 *The supreme court shall provide by court rule for mandatory*
26 *appropriate training concerning the complex issues of medical*
27 *malpractice litigation for each district judge to whom actions involving*
28 *medical malpractice are assigned.*

29 **Sec. 16.** NRS 7.085 is hereby amended to read as follows:

30 7.085 If a court finds that an attorney has:

31 1. Filed, maintained or defended a civil action or proceeding in any
32 court in this state and such action or defense is not well-grounded in fact or
33 is not warranted by existing law or by an argument for changing the
34 existing law that is made in good faith; or

35 2. Unreasonably and vexatiously extended a civil action or proceeding
36 before any court in this state,
37 the court ~~may~~ *shall* require the attorney personally to pay the additional
38 costs, expenses and attorney's fees reasonably incurred because of such
39 conduct.

40 **Sec. 17.** NRS 49.245 is hereby amended to read as follows:

41 49.245 There is no privilege under NRS 49.225 or 49.235:

42 1. For communications relevant to an issue in proceedings to
43 hospitalize the patient for mental illness, if the doctor in the course of
44 diagnosis or treatment has determined that the patient is in need of
45 hospitalization.

46 2. As to communications made in the course of a court-ordered
47 examination of the condition of a patient with respect to the particular
48 purpose of the examination unless the court orders otherwise.



1 3. As to written medical or hospital records relevant to an issue of the
2 condition of the patient in any proceeding in which the condition is an
3 element of a claim or defense.

4 4. In a prosecution or mandamus proceeding under chapter 441A of
5 NRS.

6 5. As to any information communicated to a physician in an effort
7 unlawfully to procure a dangerous drug or controlled substance, or
8 unlawfully to procure the administration of any such drug or substance.

9 6. As to any written medical or hospital records which are furnished in
10 accordance with the provisions of NRS 629.061.

11 7. As to records that are required by chapter 453 of NRS to be
12 maintained.

13 8. ~~In a review before a screening panel pursuant to NRS 41A.003 to~~
14 ~~41A.069, inclusive.~~

15 ~~9.]~~ If the services of the physician are sought or obtained to enable or
16 aid a person to commit or plan to commit fraud or any other unlawful act in
17 violation of any provision of chapter 616A, 616B, 616C, 616D or 617 of
18 NRS which the person knows or reasonably should know is fraudulent or
19 otherwise unlawful.

20 **Sec. 18.** Chapter 630 of NRS is hereby amended by adding thereto a
21 new section to read as follows:

22 *A physician licensed pursuant to this chapter shall not practice*
23 *medicine in this state unless he maintains professional liability insurance*
24 *in an amount of:*

25 *1. Not less than \$1,000,000 per person; and*

26 *2. Not less than \$3,000,000 per occurrence.*

27 **Sec. 19.** NRS 630.130 is hereby amended to read as follows:

28 630.130 1. In addition to the other powers and duties provided in this
29 chapter, the board shall:

30 (a) Enforce the provisions of this chapter;

31 (b) Establish by regulation standards for licensure under this chapter;

32 (c) Conduct examinations for licensure and establish a system of
33 scoring for those examinations;

34 (d) Investigate the character of each applicant for a license and issue
35 licenses to those applicants who meet the qualifications set by this chapter
36 and the board; and

37 (e) Institute a proceeding in any court to enforce its orders or the
38 provisions of this chapter.

39 2. *On or before February 15 of each odd-numbered year, the board*
40 *shall submit to the governor and to the director of the legislative counsel*
41 *bureau for transmittal to the next regular session of the legislature a*
42 *written report compiling:*

43 *(a) Disciplinary action taken by the board during the previous*
44 *biennium against physicians for malpractice or negligence; and*

45 *(b) Information reported to the board during the previous biennium*
46 *pursuant to NRS 630.3067, subsections 2 and 3 of NRS 630.307 and NRS*
47 *690B.045.*



1 *The report must include only aggregate information for statistical*
2 *purposes and exclude any identifying information related to a particular*
3 *person.*

4 3. The board may adopt such regulations as are necessary or desirable
5 to enable it to carry out the provisions of this chapter.

6 **Sec. 20.** NRS 630.267 is hereby amended to read as follows:

7 630.267 1. Each holder of a license to practice medicine must, on or
8 before July 1 of each alternate year:

9 (a) Submit the statement required pursuant to NRS 630.197; ~~and~~

10 (b) *Submit a list of all actions filed or claims submitted to arbitration*
11 *or mediation for malpractice or negligence against him during the*
12 *previous 2 years; and*

13 (c) Pay to the secretary-treasurer of the board the applicable fee for
14 biennial registration. This fee must be collected for the period for which a
15 physician is licensed.

16 2. When a holder of a license fails to pay the fee for biennial
17 registration and submit the statement required pursuant to NRS 630.197
18 after they become due, his license to practice medicine in this state is
19 automatically suspended. The holder may, within 2 years after the date his
20 license is suspended, upon payment of twice the amount of the current fee
21 for biennial registration to the secretary-treasurer and submission of the
22 statement required pursuant to NRS 630.197 and after he is found to be in
23 good standing and qualified under the provisions of this chapter, be
24 reinstated to practice.

25 3. The board shall make such reasonable attempts as are practicable to
26 notify a licensee:

27 (a) At least once that his fee for biennial registration and the statement
28 required pursuant to NRS 630.197 are due; and

29 (b) That his license is suspended.

30 A copy of this notice must be sent to the Drug Enforcement Administration
31 of the United States Department of Justice or its successor agency.

32 **Sec. 21.** NRS 630.3062 is hereby amended to read as follows:

33 630.3062 The following acts, among others, constitute grounds for
34 initiating disciplinary action or denying licensure:

35 1. Failure to maintain timely, legible, accurate and complete medical
36 records relating to the diagnosis, treatment and care of a patient.

37 2. Altering medical records of a patient.

38 3. Making or filing a report which the licensee knows to be false,
39 failing to file a record or report as required by law or willfully obstructing
40 or inducing another to obstruct such filing.

41 4. Failure to make the medical records of a patient available for
42 inspection and copying as provided in NRS 629.061.

43 5. Failure to ~~report any claim for malpractice or negligence filed~~
44 ~~against the licensee and the subsequent disposition thereof within 90 days~~
45 ~~after the:~~

46 ~~—(a) Claim is filed; and~~

47 ~~—(b) Disposition of the claim.]~~ *comply with the requirements of NRS*
48 *630.3067.*



1 6. Failure to report any person the licensee knows, or has reason to
2 know, is in violation of the provisions of this chapter or the regulations of
3 the board.

4 **Sec. 22.** NRS 630.3067 is hereby amended to read as follows:

5 630.3067 ~~[Under the provisions of NRS 690B.045, the]~~

6 *1. The insurer of a physician licensed under this chapter and the*
7 *physician must report to the board any action filed or claim submitted to*
8 *arbitration or mediation for malpractice or negligence against the*
9 *physician and the settlement, award, judgment or other disposition*
10 *~~[thereof.]~~ of the action or claim within 30 days after:*

11 *(a) The action was filed or the claim was submitted to arbitration or*
12 *mediation; and*

13 *(b) The disposition of the action or claim.*

14 *2. The board shall report any failure to comply with subsection 1 by*
15 *an insurer licensed in this state to the division of insurance of the*
16 *department of business and industry. If, after a hearing, the division of*
17 *insurance determines that any such insurer failed to comply with the*
18 *requirements of subsection 1, the division may impose an administrative*
19 *fine of not more than \$10,000 against the insurer for each such failure to*
20 *report. If the administrative fine is not paid when due, the fine must be*
21 *recovered in a civil action brought by the attorney general on behalf of*
22 *the division.*

23 **Sec. 23.** NRS 630.307 is hereby amended to read as follows:

24 630.307 1. Any person, medical school or medical facility that
25 becomes aware that a person practicing medicine or respiratory care in this
26 state has, is or is about to become engaged in conduct which constitutes
27 grounds for initiating disciplinary action shall ~~[forthwith]~~
28 complaint with the board ~~[]~~ *within 30 days after becoming aware of the*
29 *conduct.*

30 2. Any hospital, clinic or other medical facility licensed in this state, or
31 medical society, shall ~~[forthwith]~~ report to the board any change in a
32 physician's privileges to practice medicine while the physician is under
33 investigation and the outcome of any disciplinary action taken by that
34 facility or society against the physician concerning the care of a patient or
35 the competency of the physician ~~[]~~ *within 30 days after the change in*
36 *privileges is made or disciplinary action is taken. The board shall report*
37 *any failure to comply with this subsection by a hospital, clinic or other*
38 *medical facility licensed in this state to the health division of the*
39 *department of human resources. If, after a hearing, the health division*
40 *determines that any such facility or society failed to comply with the*
41 *requirements of this subsection, the division may impose an*
42 *administrative fine of not more than \$10,000 against the facility or*
43 *society for each such failure to report. If the administrative fine is not*
44 *paid when due, the fine must be recovered in a civil action brought by the*
45 *attorney general on behalf of the division.*

46 3. The clerk of every court shall ~~[forthwith]~~ report to the board any
47 finding, judgment or other determination of the court that a physician,
48 physician assistant or practitioner of respiratory care:

49 (a) Is mentally ill;



* S B 2 *

- 1 (b) Is mentally incompetent;
- 2 (c) Has been convicted of a felony or any law governing controlled
- 3 substances or dangerous drugs;
- 4 (d) Is guilty of abuse or fraud under any state or federal program
- 5 providing medical assistance; or
- 6 (e) Is liable for damages for malpractice or negligence ~~H~~,

7 *within 45 days after such a finding, judgment or determination is made.*

8 *4. The board shall keep information received pursuant to this section*
9 *confidential unless a court of competent jurisdiction issues a subpoena*
10 *compelling the release of such information.*

11 *5. On or before January 15 of each year, the clerk of each court*
12 *shall submit to the office of court administrator created pursuant to NRS*
13 *1.320 a written report compiling the information that the clerk reported*
14 *during the previous year to the board regarding physicians pursuant to*
15 *paragraph (e) of subsection 3.*

16 **Sec. 24.** NRS 630.364 is hereby amended to read as follows:

17 630.364 1. Any person or organization who furnishes information
18 concerning an applicant for a license or a licensee in good faith and
19 without malicious intent in accordance with the provisions of this chapter
20 is immune from any civil action for furnishing that information.

21 2. The board and any of its members and its staff, counsel,
22 investigators, experts, committees, panels, hearing officers and consultants
23 are immune from any civil liability for:

24 (a) Any decision or action taken in good faith and without malicious
25 intent in response to information acquired by the board.

26 (b) Disseminating information concerning an applicant for a license or a
27 licensee to other boards or agencies of the state, the attorney general, any
28 hospitals, medical societies, insurers, employers, patients and their families
29 or any law enforcement agency.

30 ~~[3. A screening panel or any of its members, acting pursuant to NRS~~
31 ~~41A.003 to 41A.069, inclusive, that initiates or assists in any proceeding~~
32 ~~concerning a claim of malpractice against a physician is immune from any~~
33 ~~civil action for that initiation or assistance or any consequential damages, if~~
34 ~~the panel or members acted without malicious intent.]~~

35 **Sec. 25.** Chapter 631 of NRS is hereby amended by adding thereto a
36 new section to read as follows:

37 *A dentist licensed pursuant to this chapter shall not practice dentistry*
38 *in this state unless he maintains professional liability insurance in an*
39 *amount of:*

- 40 *1. Not less than \$1,000,000 per person; and*
- 41 *2. Not less than \$3,000,000 per occurrence.*

42 **Sec. 26.** Chapter 633 of NRS is hereby amended by adding thereto the
43 provisions set forth as sections 27 to 30, inclusive, of this act.

44 **Sec. 27.** *An osteopathic physician licensed pursuant to this chapter*
45 *shall not practice osteopathic medicine in this state unless he maintains*
46 *professional liability insurance in an amount of:*

- 47 *1. Not less than \$1,000,000 per person; and*
- 48 *2. Not less than \$3,000,000 per occurrence.*



1 **Sec. 28. 1.** *On or before February 15 of each odd-numbered year,*
2 *the board shall submit to the governor and to the director of the*
3 *legislative counsel bureau for transmittal to the next regular session of*
4 *the legislature a written report compiling:*

5 *(a) Disciplinary action taken by the board during the previous*
6 *biennium against osteopathic physicians for malpractice or negligence;*
7 *and*

8 *(b) Information reported to the board during the previous biennium*
9 *pursuant to NRS 690B.045, section 29 of this act and subsections 2 and 3*
10 *of section 30 of this act.*

11 **2.** *The report must include only aggregate information for statistical*
12 *purposes and exclude any identifying information related to a particular*
13 *person.*

14 **Sec. 29. 1.** *The insurer of an osteopathic physician licensed under*
15 *this chapter and the osteopathic physician must report to the board any*
16 *action filed or claim submitted to arbitration or mediation for*
17 *malpractice or negligence against the osteopathic physician and the*
18 *settlement, award, judgment or other disposition of the action or claim*
19 *within 30 days after:*

20 *(a) The action was filed or the claim was submitted to arbitration or*
21 *mediation; and*

22 *(b) The disposition of the action or claim.*

23 **2.** *The board shall report any failure to comply with subsection 1 by*
24 *an insurer licensed in this state to the division of insurance of the*
25 *department of business and industry. If, after a hearing, the division of*
26 *insurance determines that any such insurer failed to comply with the*
27 *requirements of subsection 1, the division may impose an administrative*
28 *fine of not more than \$10,000 against the insurer for each such failure to*
29 *report. If the administrative fine is not paid when due, the fine must be*
30 *recovered in a civil action brought by the attorney general on behalf of*
31 *the division.*

32 **Sec. 30. 1.** *Any person, medical school or medical facility that*
33 *becomes aware that a person practicing osteopathic medicine in this state*
34 *has, is or is about to become engaged in conduct which constitutes*
35 *grounds for initiating disciplinary action shall file a written complaint*
36 *with the board within 30 days after becoming aware of the conduct.*

37 **2.** *Any hospital, clinic or other medical facility licensed in this state,*
38 *or medical society, shall report to the board any change in an osteopathic*
39 *physician's privileges to practice osteopathic medicine while the*
40 *osteopathic physician is under investigation and the outcome of any*
41 *disciplinary action taken by that facility or society against the osteopathic*
42 *physician concerning the care of a patient or the competency of the*
43 *osteopathic physician within 30 days after the change in privileges is*
44 *made or disciplinary action is taken. The board shall report any failure to*
45 *comply with this subsection by a hospital, clinic or other medical facility*
46 *licensed in this state to the health division of the department of human*
47 *resources. If, after a hearing, the health division determines that any*
48 *such facility or society failed to comply with the requirements of this*
49 *subsection, the division may impose an administrative fine of not more*



1 *than \$10,000 against the facility or society for each such failure to*
2 *report. If the administrative fine is not paid when due, the fine must be*
3 *recovered in a civil action brought by the attorney general on behalf of*
4 *the division.*

5 *3. The clerk of every court shall report to the board any finding,*
6 *judgment or other determination of the court that an osteopathic*
7 *physician or osteopathic physician's assistant:*

8 *(a) Is mentally ill;*

9 *(b) Is mentally incompetent;*

10 *(c) Has been convicted of a felony or any law governing controlled*
11 *substances or dangerous drugs;*

12 *(d) Is guilty of abuse or fraud under any state or federal program*
13 *providing medical assistance; or*

14 *(e) Is liable for damages for malpractice or negligence,*
15 *within 45 days after such a finding, judgment or determination is made.*

16 *4. The board shall keep information received pursuant to this section*
17 *confidential unless a court of competent jurisdiction issues a subpoena*
18 *compelling the release of such information.*

19 *5. On or before January 15 of each year, the clerk of every court*
20 *shall submit to the office of court administrator created pursuant to NRS*
21 *1.320 a written report compiling the information that the clerk reported*
22 *during the previous year to the board regarding osteopathic physicians*
23 *pursuant to paragraph (e) of subsection 3.*

24 **Sec. 31.** NRS 633.471 is hereby amended to read as follows:

25 633.471 1. Except as otherwise provided in subsection 3 and in
26 NRS 633.491, every holder of a license issued under this chapter, except
27 a temporary or a special license, may renew his license on or before
28 January 1 of each calendar year after its issuance by:

29 (a) Applying for renewal on forms provided by the board;

30 (b) Submitting the statement required pursuant to NRS 633.326;

31 (c) Paying the annual license renewal fee specified in this chapter; ~~and~~

32 *(d) Submitting a list of all actions filed or claims submitted to*
33 *arbitration or mediation for malpractice or negligence against him*
34 *during the previous year; and*

35 *(e) Submitting verified evidence satisfactory to the board that in the*
36 *year preceding the application for renewal he has attended courses or*
37 *programs of continuing education approved by the board totaling a number*
38 *of hours established by the board which must not be less than 35 hours nor*
39 *more than that set in the requirements for continuing medical education of*
40 *the American Osteopathic Association.*

41 2. The secretary of the board shall notify each licensee of the
42 requirements for renewal not less than 30 days before the date of renewal.

43 3. Members of the Armed Forces of the United States and the United
44 States Public Health Service are exempt from payment of the annual
45 license renewal fee during their active duty status.

46 **Sec. 32.** NRS 633.511 is hereby amended to read as follows:

47 633.511 The grounds for initiating disciplinary action pursuant to this
48 chapter are:

49 1. Unprofessional conduct.



1 2. Conviction of:
2 (a) A violation of any federal or state law regulating the possession,
3 distribution or use of any controlled substance or any dangerous drug as
4 defined in chapter 454 of NRS;
5 (b) A felony;
6 (c) A violation of any of the provisions of NRS 616D.200, 616D.220,
7 616D.240 or 616D.300 to 616D.440, inclusive; or
8 (d) Any offense involving moral turpitude.
9 3. The suspension of the license to practice osteopathic medicine by
10 any other jurisdiction.
11 4. Gross or repeated malpractice, which may be evidenced by claims
12 of malpractice settled against a practitioner.
13 5. Professional incompetence.
14 6. *Failure to comply with the requirements of section 29 of this act.*
15 **Sec. 33.** NRS 690B.045 is hereby amended to read as follows:
16 690B.045 Except as more is required in NRS 630.3067 **and section**
17 **29 of this act:**
18 1. Each insurer which issues a policy of insurance covering the
19 liability of a practitioner licensed pursuant to chapters 630 to 640,
20 inclusive, of NRS for a breach of his professional duty toward a patient
21 shall report to the board which licensed the practitioner within 30 days
22 each settlement or award made or judgment rendered by reason of a claim,
23 if the settlement, award or judgment is for more than \$5,000, giving the
24 name and address of the claimant and the practitioner and the
25 circumstances of the case.
26 2. A practitioner licensed pursuant to chapters 630 to 640, inclusive, of
27 NRS who does not have insurance covering liability for a breach of his
28 professional duty toward a patient shall report to the board which issued his
29 license within 30 days of each settlement or award made or judgment
30 rendered by reason of a claim, if the settlement, award or judgment is for
31 more than \$5,000, giving his name and address, the name and address of
32 the claimant and the circumstances of the case.
33 3. These reports are public records and must be made available for
34 public inspection within a reasonable time after they are received by the
35 licensing board.
36 **Sec. 34.** NRS 690B.050 is hereby amended to read as follows:
37 690B.050 1. Each insurer which issues a policy of insurance
38 covering the liability of a physician licensed under chapter 630 of NRS *or*
39 *an osteopathic physician licensed under chapter 633 of NRS* for a breach
40 of his professional duty toward a patient shall report to the commissioner
41 within 30 days each settlement or award made or judgment rendered by
42 reason of a claim, giving the name and address of the claimant and
43 physician and the circumstances of the case.
44 2. The commissioner shall report to the board of medical examiners **or**
45 *or the state board of osteopathic medicine, as applicable,* within 30 days
46 after receiving the report of the insurer, each claim made and each
47 settlement, award or judgment.



1 **Sec. 35.** NRS 41A.0043, 41A.005, 41A.008, 41A.013, 41A.016,
2 41A.019, 41A.023, 41A.024, 41A.026, 41A.029, 41A.033, 41A.036,
3 41A.039, 41A.043, 41A.046, 41A.049, 41A.051, 41A.053, 41A.056,
4 41A.059, 41A.069 and 631.377 are hereby repealed.

5 **Sec. 36.** The amendatory provisions of sections 1 to 6, inclusive, and
6 11 of this act apply only to a cause of action that accrues on or after
7 October 1, 2002.

8 **Sec. 37.** The amendatory provisions of sections 7, 8, 12 and 17 apply
9 only to an action filed on or after October 1, 2002.

10 **Sec. 38.** 1. Notwithstanding the repeal of NRS 41A.0043, 41A.005,
11 41A.008 and 41A.013 to 41A.069, inclusive, if a claimant has filed a
12 complaint with the division of insurance of the department of business and
13 industry pursuant to NRS 41A.039 before October 1, 2002, and a
14 determination has not been made by the screening panel as provided in
15 NRS 41A.003 to 41A.069, inclusive, before October 1, 2002, the claimant
16 may elect:

17 (a) To have a determination made by the screening panel as provided in
18 NRS 41A.003 to 41A.069, inclusive. If the claimant elects to have a
19 determination made by the screening panel, the provisions of NRS
20 41A.003 to 41A.069, inclusive, shall be deemed to continue to apply to the
21 claim and to any subsequent action filed in the district court. If the claimant
22 wishes to elect to have a determination made by the screening panel, the
23 claimant must, before December 1, 2002, file written notice of that fact
24 with the division. If the claimant fails to provide such written notice, the
25 claimant shall be deemed to have elected to have no further action taken by
26 the screening panel concerning the complaint.

27 (b) To have no further action taken by the screening panel concerning
28 the complaint. If the claimant elects to have no further action taken by the
29 screening panel concerning the complaint, the division and the screening
30 panel shall not take any further action with respect to the complaint, and
31 the claimant may file an action in the district court.

32 2. Notwithstanding the repeal of NRS 41A.0043, 41A.005, 41A.008
33 and 41A.013 to 41A.069, inclusive, and the amendment of paragraph (b) of
34 subsection 2 of NRS 41A.097, if a claimant elects:

35 (a) To have a determination made by the screening panel, the tolling of
36 the time limitation provided for review of the complaint by the screening
37 panel pursuant to NRS 41A.097 shall be deemed to continue to apply until
38 30 days after the date on which the screening panel notifies the claimant, in
39 writing, of its findings.

40 (b) To have no further action taken by the screening panel concerning
41 the complaint, the tolling of the time limitation provided for review of the
42 complaint by the screening panel pursuant to NRS 41A.097 ceases on
43 December 1, 2002.

44 3. If a claimant:

45 (a) Elects to have no further action taken by the screening panel
46 concerning the complaint;

47 (b) Files an action in the district court; and

48 (c) Prevails at the trial of the action,



1 the claimant is entitled to tax, as costs, the fee paid to the division pursuant
2 to NRS 41A.039 for filing the complaint.

3 **Sec. 39.** On or before March 1, 2003, pursuant to subsection 3 of
4 section 7 of this act, each district court in this state shall adopt court rules
5 to expedite the resolution of an action involving medical malpractice or
6 dental malpractice.

7 **Sec. 40.** This act becomes effective on October 1, 2002.

LEADLINES OF REPEALED SECTIONS

41A.0043 "Dentist" defined.

41A.005 "Division" defined.

41A.008 "Health care records" defined.

41A.013 "Physician" defined.

41A.016 Submission of case to screening panel required before suit
may be filed; admissibility in court of findings of screening panel.

41A.019 Creation of tentative screening panels.

41A.023 Designation of members.

41A.024 Courses of instruction for members.

41A.026 Election of chairmen; applicability of rules.

41A.029 Requirements regarding open meetings do not apply to
meetings of screening panels.

41A.033 Administrative duties and powers of division.

41A.036 Deposit of money received by division with state
treasurer; payment of administrative costs of screening panel.

41A.039 Submission of claim to screening panel: Complaint;
answer; response to answer; service of pleadings; fees.

41A.043 Selection of members for particular screening panel.

41A.046 Subpoenas: Powers and duties of division; enforcement.

41A.049 Hearing by screening panel: Time for holding; materials
for consideration; findings.

41A.051 Hearing by screening panel: Preferential scheduling for
certain elderly claimants and claimants who suffer from terminal
illness or condition.

41A.053 Early disclosure of medical or dental records prohibited;
penalty.

41A.056 Effect of decision of screening panel.

41A.059 Conference for settlement of claim: Attendance; powers
and duties of judge; effect of failure to settle.

41A.069 Instructions to jury.

631.377 Screening panel immune from civil action.

