

Assembly Bill No. 203--Assemblymen Seale,
Parnell, Hardy, Buckley and Mabey

CHAPTER.....

AN ACT relating to osteopathic medicine; authorizing the State Board of Osteopathic Medicine to employ hearing officers or designate a panel to conduct disciplinary hearings; revising the provisions governing unprofessional conduct; revising the provisions governing the placing of a license on inactive status; revising the provisions governing the renewal of a license; increasing certain fees; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines "unprofessional conduct" for the purpose of establishing conduct of a licensed osteopathic physician which is subject to disciplinary action by the State Board of Osteopathic Medicine. (NRS 633.131, 633.511)

This bill expands that definition of "unprofessional conduct" to include other conduct that may subject a licensed osteopathic physician to disciplinary action.

Existing law establishes the procedures for initiating disciplinary action against a licensed osteopathic physician and gives the State Board of Osteopathic Medicine certain powers and the authority to investigate complaints. (NRS 633.511, 633.526-633.681)

This bill authorizes the Board to employ or appoint hearing officers, or designate a panel, and to delegate to those hearing officers or the panel its authority to conduct disciplinary hearings. Such a hearing officer or panel is required to report back to the Board with findings of fact and conclusions of law. The Board is then authorized to take action, refer the matter back to the hearing officer or panel for further hearings, or to conduct its own hearings.

Existing law provides certain requirements for a licensee to renew his license, including a requirement that the applicant submit to the State Board of Osteopathic Medicine verified evidence of completion of the required continuing medical education. (NRS 633.471)

This bill requires that an applicant submit to the Board an affidavit stating that he has completed the required continuing medical education in lieu of verified evidence. However, the Board is required to request verified evidence of completion of continuing medical education from at least one-third of the applicants for renewal of a license each year. Failure of an applicant to provide the Board with such verified evidence is grounds for disciplinary action.

This bill also authorizes a licensed osteopathic physician to have his license placed in inactive status and imposes an inactive license fee. Such a licensee is not required to annually renew his license, but may renew his license by complying with certain requirements including providing the Board with verified evidence that he has completed the required continuing medical education for the years in which his license was inactive.

Existing law imposes various fees relating to the practice of osteopathic medicine to be collected by the Board.

This bill increases each of those fees.

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

Section 1. Chapter 633 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 3.5, inclusive, of this act.

Sec. 2. *“Hearing officer” means a person to whom the Board has delegated its authority pursuant to subsection 1 of section 3 of this act.*

Sec. 2.5. *“Panel” means a group of persons to whom the Board has delegated its authority pursuant to subsection 2 of section 3 of this act.*

Sec. 3. *The Board may delegate its authority to conduct a hearing concerning the discipline of a licensee pursuant to NRS 633.621 to:*

- 1. A person; or*
- 2. A group of such members of the Board as the President of the Board may designate from time to time, which group must consist of not less than three members of the Board, at least one of whom was appointed to the Board pursuant to subsection 2 or 3 of NRS 633.191.*

Sec. 3.5. *A hearing officer or panel has the powers of the Board in connection with a hearing conducted pursuant to NRS 633.621, and shall report to the Board with findings of fact and conclusions of law within 30 days after the final hearing on the matter. The Board may take action based upon the report of the hearing officer or panel, refer the matter to the hearing officer or panel for further hearings or conduct its own hearings on the matter.*

Sec. 4. NRS 633.011 is hereby amended to read as follows:

633.011 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 633.021 to 633.131, inclusive, *and sections 2 and 2.5 of this act* have the meanings ascribed to them in those sections.

Sec. 5. NRS 633.131 is hereby amended to read as follows:

633.131 1. “Unprofessional conduct” includes:

(a) Willfully making a false or fraudulent statement or submitting a forged or false document in applying for a license to practice osteopathic medicine ~~or~~ *or in applying for renewal of a license to practice osteopathic medicine.*

(b) Failure of a licensee to designate his school of practice in the professional use of his name by the term D.O., osteopathic physician, doctor of osteopathy or a similar term.

(c) Directly or indirectly giving to or receiving from any person, corporation or other business organization any fee, commission, rebate or other form of compensation for sending, referring or

otherwise inducing a person to communicate with an osteopathic physician in his professional capacity or for any professional services not actually and personally rendered, except as otherwise provided in subsection 2.

(d) Employing, directly or indirectly, any suspended or unlicensed person in the practice of osteopathic medicine, or the aiding or abetting of any unlicensed person to practice osteopathic medicine.

(e) Advertising the practice of osteopathic medicine in a manner which does not conform to the guidelines established by regulations of the Board.

(f) Engaging in any:

(1) Professional conduct which is intended to deceive or which the Board by regulation has determined is unethical; or

(2) Medical practice harmful to the public or any conduct detrimental to the public health, safety or morals which does not constitute gross or repeated malpractice or professional incompetence.

(g) Administering, dispensing or prescribing any controlled substance or any dangerous drug as defined in chapter 454 of NRS, otherwise than in the course of legitimate professional practice or as authorized by law.

(h) Habitual drunkenness or habitual addiction to the use of a controlled substance.

(i) Performing, assisting in or advising an unlawful abortion or the injection of any liquid silicone substance into the human body.

(j) Willful disclosure of a communication privileged pursuant to a statute or court order.

(k) Willful disobedience of the regulations of the State Board of Health, the State Board of Pharmacy or the State Board of Osteopathic Medicine.

(l) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any prohibition made in this chapter.

(m) Failure of a licensee to maintain timely, legible, accurate and complete medical records relating to the diagnosis, treatment and care of a patient.

(n) Making alterations to the medical records of a patient that the licensee knows to be false.

(o) Making or filing a report which the licensee knows to be false.

(p) Failure of a licensee to file a record or report as required by law, or willfully obstructing or inducing any person to obstruct such filing.

(q) Failure of a licensee to make medical records of a patient available for inspection and copying as provided by NRS 629.061.

2. It is not unprofessional conduct:

(a) For persons holding valid licenses issued pursuant to this chapter to practice osteopathic medicine in partnership under a partnership agreement or in a corporation or an association authorized by law, or to pool, share, divide or apportion the fees and money received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association;

(b) For two or more persons holding valid licenses issued pursuant to this chapter to receive adequate compensation for concurrently rendering professional care to a patient and dividing a fee ~~if~~ if the patient has full knowledge of this division and if the division is made in proportion to the services performed and the responsibility assumed by each; or

(c) For a person licensed pursuant to the provisions of this chapter to form an association or other business relationship with an optometrist pursuant to the provisions of NRS 636.373.

Sec. 6. NRS 633.271 is hereby amended to read as follows:

633.271 The Board may:

1. Appoint an Executive Director who is entitled to such compensation as **is** determined by the Board.

2. Maintain offices in as many localities in the State as it finds necessary to carry out the provisions of this chapter.

3. Employ attorneys, **hearing officers**, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

Sec. 7. NRS 633.281 is hereby amended to read as follows:

633.281 1. For the purposes of this chapter:

(a) The Secretary of the Board, or in his absence any member of the Board, **or a hearing officer** may administer oaths.

(b) The Secretary or President of the Board, **a hearing officer or panel** may issue subpoenas to compel the attendance of witnesses and the production of books and papers.

2. If any witness refuses to attend or testify or produce any books and papers as required by the subpoena, the Secretary or President of the Board may report to the district court by petition, setting forth that:

(a) Due notice has been given of the time and place of attendance of the witness or the production of the books and papers;

(b) The witness has been subpoenaed by the Board pursuant to this section; and

(c) The witness has failed or refused to attend or produce the books and papers required by the subpoena before the Board which is named in the subpoena, or has refused to answer questions propounded to him,

↳ and asking for an order of the court compelling the witness to ~~{attend and testify or produce the books and papers before the Board.}~~ *comply with the subpoena.*

3. Upon such petition, the court shall enter an order directing the witness to appear before the court at a time and place to be fixed by the court in its order, the time to be not more than 10 days ~~{from}~~ *after* the date of the order, and then and there show cause why he has not ~~{attended or testified or produced the books or papers before the Board.}~~ *complied with the subpoena.* A certified copy of the order ~~{shall}~~ *must* be served upon the witness.

4. If it appears to the court that the subpoena was regularly issued by the Board, *hearing officer or panel*, the court shall enter an order that the witness appear before the Board, *hearing officer or panel* at the time and place fixed in the order and testify or produce the required books or papers, and upon failure to obey the order, the witness ~~{shall}~~ *must* be dealt with as for contempt of court.

Sec. 8. (Deleted by amendment.)

Sec. 9. NRS 633.471 is hereby amended to read as follows:

633.471 1. Except as otherwise provided in subsection ~~{3}~~ *4* and in NRS 633.491, every holder of a license issued under this chapter, except a temporary or a special license, may renew his license on or before January 1 of each calendar year after its issuance by:

- (a) Applying for renewal on forms provided by the Board;
- (b) Submitting the statement required pursuant to NRS 633.326;
- (c) Paying the annual license renewal fee specified in this chapter;
- (d) Submitting a list of all actions filed or claims submitted to arbitration or mediation for malpractice or negligence against him during the previous year; and
- (e) Submitting ~~{verified evidence satisfactory}~~ *an affidavit* to the Board that in the year preceding the application for renewal he has attended courses or programs of continuing education approved by the Board totaling a number of hours established by the Board which must not be less than 35 hours nor more than that set in the requirements for continuing medical education of the American Osteopathic Association.

2. The Secretary of the Board shall notify each licensee of the requirements for renewal not less than 30 days before the date of renewal.

3. *The Board shall request submission of verified evidence of completion of the required number of hours of continuing medical education annually from no fewer than one-third of the applicants for renewal of a license. Upon a request from the Board, an applicant for renewal of a license shall submit verified evidence*

satisfactory to the Board that in the year preceding the application for renewal he attended courses or programs of continuing medical education approved by the Board totaling the number of hours established by the Board.

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

Sec. 10. NRS 633.471 is hereby amended to read as follows:

633.471 1. Except as provided in subsection ~~3~~ 4 and in NRS 633.491, every holder of a license issued under this chapter, except a temporary or a special license, may renew his license on or before January 1 of each calendar year after its issuance by:

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

(b) Paying the annual license renewal fee specified in this chapter;

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

(d) Submitting ~~[verified evidence satisfactory]~~ *an affidavit* to the Board that in the year preceding the application for renewal he has attended courses or programs of continuing education approved by the Board totaling a number of hours established by the Board which must not be less than 35 hours nor more than that set in the requirements for continuing medical education of the American Osteopathic Association.

2. The Secretary of the Board shall notify each licensee of the requirements for renewal not less than 30 days before the date of renewal.

3. *The Board shall request submission of verified evidence of completion of the required number of hours of continuing medical education annually from no fewer than one-third of the applicants for renewal of a license. Upon a request from the Board, an applicant for renewal of a license shall submit verified evidence satisfactory to the Board that in the year preceding the application for renewal he attended courses or programs of continuing medical education approved by the Board totaling the number of hours established by the Board.*

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

Sec. 11. NRS 633.491 is hereby amended to read as follows:

633.491 1. A licensee who retires from the practice of osteopathic medicine need not annually renew his license after he files with the Board an affidavit stating the date on which he retired from practice and such other facts to verify his retirement as the Board deems necessary.

2. A retired licensee who desires to return to practice may apply to renew his license by paying all back annual license renewal fees from the date of retirement and submitting verified evidence satisfactory to the Board that he has attended continuing education courses or programs approved by the Board which total:

(a) Twenty-five hours if he has been retired 1 year or less.

(b) Fifty hours within 12 months of the date of the application if he has been retired for more than 1 year.

3. *A licensee who wishes to have his license placed on inactive status must provide the Board with an affidavit stating the date on which he will cease the practice of osteopathic medicine in Nevada and any other facts that the Board may require. The Board shall place the license of the licensee on inactive status upon receipt of:*

(a) The affidavit required pursuant to this subsection; and

(b) Payment of the inactive license fee prescribed by NRS 633.501.

4. *A licensee whose license has been placed on inactive status:*

(a) Need not annually renew his license.

(b) Shall annually pay the inactive license fee prescribed by NRS 633.501.

(c) Shall not engage in the practice of osteopathic medicine in this State.

5. *A licensee whose license is on inactive status and who wishes to renew his license to practice osteopathic medicine must:*

(a) Provide to the Board verified evidence satisfactory to the Board of completion of the total number of hours of continuing medical education required for:

(1) The year preceding the date of the application for renewal of the license to practice osteopathic medicine; and

(2) Each year succeeding the date the license was placed on inactive status.

(b) Provide to the Board an affidavit stating that the applicant has not withheld from the Board any information which would provide grounds for disciplinary action pursuant to this chapter.

(c) Comply with all other requirements for renewal.

Sec. 12. NRS 633.501 is hereby amended to read as follows:

633.501 The Board shall charge and collect fees not to exceed the following amounts:

1. Application and initial license fee ~~[\$500]~~ \$800
2. Annual license renewal fee..... ~~[300]~~ 500
3. Temporary license fee ~~[100]~~ 500
4. Special license fee ~~[100]~~ 200
5. Special license renewal fee..... ~~[100]~~ 200
6. Reexamination fee 200

- 7. Late payment fee~~[\$100]~~ **\$300**
- 8. For a certificate as an osteopathic physician's assistant.....~~[200]~~ **500**
- 9. Renewal of a certificate as an osteopathic physician's assistant~~[100]~~ **300**
- 10. For an application to employ an osteopathic physician's assistant~~[200]~~ **500**
- 11. *Inactive license fee* 200**

Sec. 13. NRS 633.511 is hereby amended to read as follows:

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

- 1. Unprofessional conduct.
- 2. Conviction of:
 - (a) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS;
 - (b) A felony relating to the practice of osteopathic medicine;
 - (c) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive; or
 - (d) Any offense involving moral turpitude.
- 3. The suspension of the license to practice osteopathic medicine by any other jurisdiction.
- 4. Gross or repeated malpractice, which may be evidenced by claims of malpractice settled against a practitioner.
- 5. Professional incompetence.
- 6. Failure to comply with the requirements of NRS 633.527.
- 7. *Failure to comply with the requirements of subsection 3 of NRS 633.471.***

Sec. 14. NRS 633.621 is hereby amended to read as follows:

633.621 **1.** If a formal complaint is filed with the Board pursuant to NRS 633.541, the Secretary of the Board ***or a hearing officer*** shall fix a time and place for a hearing and cause a notice of the hearing and a formal complaint to be served on the person charged at least 20 days before the date fixed for the hearing. If the Board receives a formal complaint concerning subsection 5 of NRS 228.420, such a hearing must be held within 30 days after receiving the formal complaint.

2. *The Board, a hearing officer or panel shall hold the formal hearing on the charges at the time and place designated in the notice of hearing. The President of the Board shall determine whether the hearing will be held before the Board, a hearing officer or panel.*

Sec. 15. NRS 633.641 is hereby amended to read as follows:

633.641 In any disciplinary proceeding before the Board ~~[]~~, ***a hearing officer or panel:***

1. Proof of actual injury need not be established where the formal complaint charges deceptive or unethical professional conduct or medical practice harmful to the public.

2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license to practice osteopathic medicine is conclusive evidence of its occurrence.

Sec. 16. NRS 633.691 is hereby amended to read as follows:

633.691 The Board, a medical review panel of a hospital, *a hearing officer, a panel of the Board*, or any person who or other organization which initiates or assists in any lawful investigation or proceeding concerning the discipline of an osteopathic physician for gross malpractice, repeated malpractice, professional incompetence or unprofessional conduct is immune from any civil action for such initiation or assistance or any consequential damages, if the person or organization acted without malicious intent.

Sec. 17. 1. This section and sections 1 to 9, inclusive, and 11 to 16, inclusive, of this act become effective on July 1, 2005.

2. The provisions of section 9 of this act expire by limitation on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with the subpoena or warrant relating to a proceeding to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children.

➡ are repealed by the Congress of the United States.

3. Section 10 of this act becomes effective on the date on which the provisions of 42 U.S.C. § 666 requiring each state to establish procedures under which the state has authority to withhold or suspend, or to restrict the use of professional, occupational and recreational licenses of persons who:

(a) Have failed to comply with a subpoena or warrant relating to a procedure to determine the paternity of a child or to establish or enforce an obligation for the support of a child; or

(b) Are in arrears in the payment for the support of one or more children,

➡ are repealed by the Congress of the United States.

