
ASSEMBLY BILL NO. 214—ASSEMBLYMAN MARVEL

MARCH 16, 2005

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing actions for dental malpractice. (BDR 3-84)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
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 actions for dental malpractice; establishing screening panels to review claims against dentists; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides various requirements, limitations and procedures concerning actions brought against physicians and dentists for medical and dental malpractice. (Chapter 41A of NRS)

This bill requires claims for dental malpractice to be submitted to a screening panel before an action may be commenced in court. This bill provides for the establishment of two screening panel pools, one in Northern Nevada consisting of 40 dentists and 40 attorneys and one in Southern Nevada consisting of 60 dentists and 60 attorneys, from which screening panels are to be selected. The Nevada Trial Lawyers Association is authorized to select from its members the attorneys for the screening panel pools. The Nevada Dental Association is authorized to select from its members the dentists for the screening panel pools. From the screening panel pools, three attorneys and three dentists are to be selected for each screening panel to consider a claim of dental malpractice filed with the Division of Insurance of the Department of Business and Industry. This bill tolls the period during which an action for dental malpractice may be brought in district court until 30 days after a claimant is notified of the findings of a screening panel.

This bill requires the Division of Insurance, through the Insurance Commissioner, to select the members of the screening panels subject to certain challenges by the parties and to provide certain administrative services related to those screening panels. This bill also authorizes the Division to adopt rules of practice and procedure to carry out its duties with respect to the screening panels. This bill further provides that screening panels are state agencies, but are not



subject to the Open Meeting Law and only the findings of the panels are admissible in court.

This bill prescribes certain procedures concerning the filing of a claim of dental malpractice for a review by a screening panel, the subpoena power of the Division and certain requirements concerning the hearing of a screening panel. This bill also establishes the confidentiality of records and makes it a misdemeanor to wrongfully disclose such records under certain circumstances.

This bill provides for the consequences of a finding of a screening panel. If a screening panel finds in favor of the claimant and the claimant files an action in district court, a settlement conference must be held to determine the amount of damages for purposes of settlement. This bill sets forth the consequences of that determination on the plaintiff and the defendant. If a screening panel does not find in favor of a claimant, this bill authorizes the claimant to file an action for dental malpractice in court and sets forth the consequences of filing such an action. If the screening panel is unable to reach a decision for any reason, the claimant is authorized to either file an action in court or proceed no further with the complaint.

This bill provides immunity from certain civil liability for damages caused by a screening panel or any of its members if the panel or its members acted without malicious intent in carrying out the duties of the panel.

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

Section 1. Chapter 41A of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 20, inclusive, of this act.

Sec. 2. *“Dentist” means a person licensed to practice dentistry or any special branch of dentistry pursuant to chapter 631 of NRS.*

Sec. 3. *“Division” means the Division of Insurance of the Department of Business and Industry.*

Sec. 4. 1. *No action involving dental malpractice may be filed until the dental malpractice case has been submitted to an appropriate screening panel and a determination has been made by the panel as provided in sections 4 to 20, inclusive, of this act and any action filed without satisfying the requirements of sections 4 to 20, inclusive, of this act is subject to dismissal without prejudice for failure to comply with this section.*

2. *The written findings of a screening panel are admissible in any action concerning that complaint which is subsequently filed in district court. No other evidence concerning the screening panel or its deliberations is admissible, and no member of the screening panel may be called to testify in any such action.*

Sec. 5. *There are hereby created two screening panel pools, one to be known as the Northern Screening Panel Pool, from which must be selected screening panels to sit in Reno, Nevada, to hear claims of dental malpractice arising in the counties of Carson City, Churchill, Douglas, Elko, Eureka, Humboldt,*



1 *Lander, Lyon, Mineral, Pershing, Storey, Washoe and White Pine,*
2 *and one to be known as the Southern Screening Panel Pool, from*
3 *which must be selected screening panels to sit in Las Vegas,*
4 *Nevada, to hear claims of dental malpractice arising in the*
5 *counties of Clark, Esmeralda, Lincoln and Nye.*

6 **Sec. 6.** 1. *The Board of Governors of the Nevada Trial*
7 *Lawyers Association may designate 40 of its members to serve on*
8 *the Northern Screening Panel Pool and 60 of its members to serve*
9 *on the Southern Screening Panel Pool. Each person so designated*
10 *shall serve for a term of 1 year.*

11 2. *The Nevada Dental Association may designate 40 of its*
12 *members to serve on the Northern Screening Panel Pool and 40 of*
13 *its members to serve on the Southern Screening Panel Pool. Each*
14 *person so designated shall serve for a term of 1 year.*

15 3. *If the Nevada Trial Lawyers Association or the Nevada*
16 *Dental Association ceases to exist, the designation authorized by*
17 *this section must be made by the successor to the organization or,*
18 *if there is no successor, by the Governor.*

19 **Sec. 7.** 1. *The Commissioner of Insurance shall arrange*
20 *for courses of instruction in the rules of procedure and substantive*
21 *law appropriate for members of a screening panel.*

22 2. *Each person designated to serve on a screening panel pool*
23 *must attend the instruction provided pursuant to subsection 1*
24 *before serving on a screening panel.*

25 **Sec. 8.** 1. *The members of a screening panel shall elect one*
26 *member to serve as chairman.*

27 2. *A screening panel is a state agency. The rules adopted*
28 *pursuant to section 10 of this act apply to all screening panels.*

29 **Sec. 9.** *The provisions of chapter 241 of NRS do not apply to*
30 *any meeting of a screening panel.*

31 **Sec. 10.** *The Division, through the Commissioner of*
32 *Insurance:*

33 1. *Shall maintain a list of the names of the attorneys and*
34 *dentists on the Northern Screening Panel Pool and on the*
35 *Southern Screening Panel Pool;*

36 2. *Shall select the members of the screening panels;*

37 3. *Shall schedule the hearings for those panels;*

38 4. *Shall obtain, before or after the filing of the complaint,*
39 *such dental records, statements of policy and procedure, and other*
40 *materials as may be required by the parties or the screening panel*
41 *in connection with the claim;*

42 5. *Shall charge and collect a reasonable fee for copying*
43 *materials produced under subpoena;*



1 6. For good cause shown, may authorize a continuance for
2 the proceedings involving a screening panel; and

3 7. May adopt such rules of practice and procedure as are
4 necessary to carry out its duties pursuant to sections 4 to 20,
5 inclusive, of this act.

6 **Sec. 11.** Any money received by the Division pursuant to
7 sections 4 to 20, inclusive, of this act must be deposited with the
8 State Treasurer for credit to the Account for the Division of
9 Insurance in the State General Fund. The administrative costs of
10 the screening panels must be paid from the Account.

11 **Sec. 12.** 1. A claim of dental malpractice is properly
12 presented to a screening panel by filing a complaint with the
13 Division. A fee of \$350 must accompany the complaint.

14 2. The complaint must contain a clear and concise statement
15 of the facts of the case, showing the persons involved and the dates
16 and circumstances, so far as they are known, of the alleged dental
17 malpractice. A screening panel may dismiss a complaint if the
18 complaint is filed without an affidavit supporting the allegations
19 of the complaint submitted by a dental expert.

20 3. The person against whom a complaint is made must,
21 within 90 days after receipt of the complaint, file an answer with
22 the Division, accompanied by a fee of \$350. The Division may
23 authorize an extension of the time in which an answer must be
24 filed only if all parties to the action stipulate to the extension.

25 4. If an answer is not timely filed with the Division, the
26 respondent who failed to file the answer may not participate in any
27 conference held pursuant to section 13 of this act.

28 5. The claimant may file a written response to the answer
29 within 30 days after he receives the answer. The response must
30 address only the allegations of the answer or any accompanying
31 affidavit. The panel shall disregard any portion of the response
32 that does not address an allegation raised in the answer or an
33 affidavit accompanying the answer. No fee may be charged or
34 collected by the Division for the filing of the response. The
35 Division may authorize an extension of the time in which a
36 response may be filed only if all parties to the action stipulate to
37 the extension.

38 6. Unless otherwise stipulated to by all the parties to the
39 action, the Division may not accept any answer or response that is
40 not timely filed.

41 7. A copy of any complaint, answer or response filed with the
42 Division pursuant to this section must be delivered by the party, by
43 certified or registered mail or by personal service, to each
44 opposing party or, if he is represented in the proceedings by
45 counsel, to his attorney.



1 8. *The fees provided by this section must not be charged or*
2 *collected more than once:*

3 (a) *From any party; or*

4 (b) *For the filing of any complaint, regardless of the number*
5 *of parties joined in the complaint.*

6 9. *If a person fails to pay any fee required by this section, the*
7 *Commissioner of Insurance may refer the nonpayment to the*
8 *Office of the Attorney General for collection of the fee and any*
9 *costs incurred.*

10 **Sec. 13.** 1. *Within 35 days after the expiration of the time*
11 *in which to answer the complaint of dental malpractice, the*
12 *Division shall hold a conference to resolve any issues as to*
13 *challenges for cause. For good cause shown, the Division may*
14 *continue the conference once, for a period not to exceed 7 days. A*
15 *party may challenge any person on the screening panel pool for*
16 *cause on any of the grounds provided by NRS 16.050 for the*
17 *challenge of jurors.*

18 2. *The Division shall determine whether cause exists to*
19 *excuse any member of the screening panel pool and shall notify*
20 *each party of the excused members not later than the completion*
21 *of the conference required by subsection 1.*

22 3. *Except as otherwise provided in this subsection, each party*
23 *is entitled to not more than:*

24 (a) *Three peremptory challenges from the list of attorneys; and*

25 (b) *Three peremptory challenges from the list of dentists.*

26 ↪ *In any case in which there are two or more claimants or*
27 *respondents, they are collectively entitled to not more than six*
28 *peremptory challenges from the list of members selected for the*
29 *tentative screening panel. Each party asserting a peremptory*
30 *challenge shall notify the Division of the challenge at the*
31 *conference required by subsection 1. If several parties are*
32 *represented by the same attorney, those parties shall be deemed to*
33 *be one party for the purpose of determining the distribution of*
34 *peremptory challenges.*

35 4. *The Division shall randomly select, from the list of*
36 *members of the screening panel pool who have not been excused*
37 *for cause or by a peremptory challenge, the names of three*
38 *dentists and three attorneys to serve on the screening panel for*
39 *review of the claim.*

40 5. *The Division shall notify the parties and the members*
41 *selected to serve on the screening panel immediately after it has*
42 *made the selections. If any member so selected declines to serve,*
43 *the Division shall immediately and randomly select a replacement*
44 *from the list. The Division shall not release or disclose to any*
45 *person the names of the members selected.*



1 6. *If, because of the exercise of challenges for cause or*
2 *peremptory challenges or any other reason, no attorney or dentist*
3 *remains available to serve on the screening panel, the Division*
4 *shall immediately notify the Nevada Trial Lawyers Association,*
5 *the Nevada Dental Association, their successor or the Governor,*
6 *as appropriate, and that association shall immediately designate a*
7 *replacement from among its members. A person who is not so*
8 *designated may not serve on the screening panel.*

9 **Sec. 14.** 1. *The Division may, by certified or registered*
10 *mail, issue subpoenas as may be required by a screening panel, to*
11 *compel the attendance of expert witnesses and, as may be required*
12 *by the parties or the screening panel, to compel the production of*
13 *books, papers, dental records, statements of policy and procedure*
14 *or other materials.*

15 2. *The Division shall keep the material so produced and make*
16 *it available to the parties, upon request, for inspection or copying.*
17 *If the material is reasonably capable of being copied, the Division*
18 *shall provide a copy to the parties, upon request and receipt of a*
19 *fee for the copying.*

20 3. *If any expert witness refuses to attend or testify or if any*
21 *person refuses to produce any materials as required by the*
22 *subpoena, the Division may report to the district court by petition,*
23 *setting forth that:*

24 (a) *Due notice has been given of the time and place of*
25 *attendance of the expert witness or for the production of the*
26 *materials;*

27 (b) *The expert witness or the person required to produce the*
28 *materials has been subpoenaed by the Division pursuant to this*
29 *section; and*

30 (c) *The expert witness has failed or refused to attend or the*
31 *person has failed or refused to produce the materials required by*
32 *the subpoena, or has refused to answer questions propounded to*
33 *him,*

34 ↪ *and asking for an order of the court compelling the expert*
35 *witness to attend and testify or the other person to produce the*
36 *materials.*

37 4. *Upon receiving such a petition, the court shall enter an*
38 *order directing the expert witness or other person to appear before*
39 *the court at a time and place to be fixed by the court in its order,*
40 *the time to be not more than 10 days after the date of the order,*
41 *and show cause why he has not attended or testified or produced*
42 *the materials. A certified copy of the order must be served upon*
43 *the expert witness or other person.*

44 5. *If it appears to the court that the subpoena was regularly*
45 *issued by the Division, the court shall enter an order that the*



1 *expert witness or other person appear at the time and place fixed*
2 *in the order and testify or produce the required materials, and*
3 *upon his failure to obey the order, the expert witness or other*
4 *person must be dealt with as for contempt of court.*

5 **Sec. 15.** 1. *A claim must be heard by a screening panel*
6 *within 30 days after the panel is selected.*

7 2. *The screening panel shall consider all the documentary*
8 *material, including the complaint, answer and response, dental*
9 *records and records of an office and the testimony of any expert*
10 *witnesses the panel considers necessary, and shall determine only,*
11 *from that evidence, whether there is a reasonable probability that*
12 *the acts complained of constitute dental malpractice and that the*
13 *claimant was injured thereby. Except for the issue of whether*
14 *there is a reasonable probability of dental malpractice and*
15 *whether the claimant was injured thereby, the screening panel*
16 *shall not consider any pleading or paper to the extent that it*
17 *addresses a legal issue presented by the claim or a legal argument*
18 *of a party. The screening panel shall not consider challenges*
19 *concerning any relevant statute of limitation relating to a claim*
20 *before the panel.*

21 3. *Copies of the original complaint and of the findings of the*
22 *screening panel with regard to each matter considered by the*
23 *panel must be forwarded to the Board of Dental Examiners of*
24 *Nevada.*

25 4. *The Commissioner of Insurance shall mail to the parties a*
26 *copy of the findings of the screening panel concerning the*
27 *complaint.*

28 5. *The written findings must be based upon a vote of the*
29 *members of the screening panel made by written ballot, must be*
30 *rendered within 5 days after the review and must be in*
31 *substantially the following form:*

32 (a) *Based upon a review of the materials submitted by the*
33 *parties and the testimony of any expert (if any were called), we*
34 *find that there is a reasonable probability of dental malpractice*
35 *and that the claimant was injured thereby;*

36 (b) *Based upon a review of the materials submitted by the*
37 *parties and the testimony of any expert (if any were called), we*
38 *find that there is no reasonable probability of dental malpractice;*
39 *or*

40 (c) *Based upon a review of the materials submitted by the*
41 *parties and the testimony of any expert (if any were called), we are*
42 *unable to reach a decision on the issue of dental malpractice.*

43 6. *Whenever four members of the screening panel are unable*
44 *to find that there is a reasonable probability of dental malpractice*
45 *and that the claimant was injured thereby or that there is no*



1 *reasonable probability of dental malpractice, the screening panel*
2 *shall be deemed unable to reach a decision on the issue and shall*
3 *make a finding to that effect.*

4 **Sec. 16.** 1. *If a claimant is 70 years of age or older or*
5 *suffers from an illness or condition which raises a substantial*
6 *medical doubt that the claimant will survive until a determination*
7 *is made by a screening panel, the claimant may file a written*
8 *request with the Division to give preference in scheduling the*
9 *hearing of the complaint filed by the claimant. The request must*
10 *set forth facts showing that the claimant is 70 years of age or older*
11 *or suffers from an illness or condition which raises a substantial*
12 *medical doubt that the claimant will survive until a determination*
13 *is made by a screening panel.*

14 2. *The Division shall schedule the hearing of complaints for*
15 *which preference has been granted pursuant to subsection 1 based*
16 *on the order in which the Division received the requests for*
17 *preference.*

18 **Sec. 17.** 1. *Upon the request of the Division or counsel for*
19 *a patient, a custodian of any dental record shall not allow anyone*
20 *to review any record relevant to a complaint filed with the Division*
21 *before the record is transferred to a requesting party or the*
22 *authority issuing the subpoena.*

23 2. *A violation of this section is punishable as a misdemeanor.*

24 **Sec. 18.** 1. *If a screening panel finds in favor of a claimant*
25 *and an action involving dental malpractice is thereafter filed in*
26 *district court, a settlement conference must be held as provided in*
27 *section 19 of this act.*

28 2. *If the determination is not in favor of the claimant, the*
29 *claimant may file an action in district court. If the claimant does*
30 *not obtain a judgment in his favor in court, the defendant must be*
31 *awarded reasonable costs and attorney's fees incurred after the*
32 *date of filing the action in court.*

33 3. *If the screening panel is unable, for any reason, to reach a*
34 *decision, the claimant may file a civil action or proceed no further*
35 *with the complaint.*

36 4. *If the claimant files a civil action in district court, a person*
37 *may not be named as a party in the action unless the person was*
38 *named as a party in the complaint which was filed with the*
39 *Division and considered by the screening panel.*

40 **Sec. 19.** 1. *In any action for dental malpractice filed in a*
41 *district court after a determination by a screening panel that there*
42 *is a reasonable probability that dental malpractice occurred and*
43 *that the plaintiff was injured thereby, the plaintiff, the defendant,*
44 *the representative of the dentist's insurer and, if applicable, their*
45 *respective attorneys shall attend a settlement conference before a*



1 *district judge, other than the judge assigned to the case, to*
2 *determine the amount of the damages of the plaintiff. The judge*
3 *before whom the conference is held:*

4 (a) *Must be selected randomly by the clerk of the court upon*
5 *filing of the notice pursuant to subsection 2, except that he may*
6 *not be the judge assigned to the case.*

7 (b) *May, for good cause shown, waive the attendance of any*
8 *party.*

9 (c) *Shall decide what information the parties may submit at the*
10 *conference.*

11 2. *In any such action, the responsive pleading of the*
12 *defendant must be accompanied by a notice to the clerk that the*
13 *case must be scheduled for a settlement conference. If this notice*
14 *is not filed by the defendant, it may be filed by any other party.*
15 *The clerk shall immediately notify the judge before whom the*
16 *conference is to be held of the receipt of that notice.*

17 3. *The judge shall notify the parties, within 7 days after the*
18 *receipt of the notice, of the time and place of the conference,*
19 *which must not be later than 60 days after the receipt of the notice.*
20 *The judge shall cause the deposition of:*

21 (a) *The plaintiff;*

22 (b) *The defendant; and*

23 (c) *A person designated by the plaintiff to testify regarding*
24 *damages,*

25 *↳ to be taken in the manner prescribed by rule of court for taking*
26 *a deposition in a civil action in a district court before the date*
27 *scheduled for the conference.*

28 4. *The judge before whom the conference is to be held may,*
29 *for good cause shown, continue the conference for a period not to*
30 *exceed 15 days. Only one such continuance may be granted.*

31 5. *Within 15 days after the conference, the judge before*
32 *whom the conference was held shall determine, solely from the*
33 *information submitted at the conference, the reasonable value of*
34 *the claim for purposes of settlement and shall so notify the parties*
35 *in writing.*

36 6. *Within 14 days after receipt of the determination of the*
37 *judge, the defendant shall offer to the plaintiff the amount*
38 *determined by the judge or reject the determination. If the*
39 *defendant rejects the determination and the plaintiff is awarded an*
40 *amount greater than the amount of the determination, the plaintiff*
41 *must be awarded reasonable costs and attorney's fees incurred*
42 *after the date of the rejection.*

43 7. *Within 14 days after the receipt of the offer from the*
44 *defendant of the amount determined by the judge, the plaintiff*
45 *shall accept or reject the offer. If the plaintiff rejects the offer and*



1 *the plaintiff is awarded an amount less than the amount of the*
2 *offer, the defendant must be awarded reasonable costs and*
3 *attorney's fees incurred after the date of the rejection.*

4 **Sec. 20.** *In any action for dental malpractice tried before a*
5 *jury, the following instructions must be given:*

6 *1. If testimony of an expert witness was given at the review by*
7 *the screening panel:*

8
9 *During the course of this trial certain evidence was*
10 *admitted concerning the findings of a screening panel. The*
11 *findings of the panel were based upon a review of dental*
12 *records and the testimony of an expert witness based upon*
13 *his review of those records. These findings are to be given*
14 *the same weight as any other evidence, but are not*
15 *conclusive on your determination of the case.*

16 *2. If testimony of an expert witness was not given at the*
17 *review by the screening panel:*

18
19 *During the course of this trial certain evidence was*
20 *admitted concerning the findings of a screening panel. The*
21 *findings of the panel were based solely upon a review of the*
22 *dental records. These findings are to be given the same*
23 *weight as any other evidence, but are not conclusive on your*
24 *determination of the case.*

25 **Sec. 21.** NRS 41A.003 is hereby amended to read as follows:

26 41A.003 As used in this chapter, unless the context otherwise
27 requires, the words and terms defined in NRS 41A.004 to 41A.017,
28 inclusive, *and sections 2 and 3 of this act* have the meanings
29 ascribed to them in those sections.

30 **Sec. 22.** NRS 41A.071 is hereby amended to read as follows:

31 41A.071 If an action for medical malpractice ~~for dental~~
32 ~~malpractice~~ is filed in the district court, *or if an action for dental*
33 *malpractice is filed in the district court pursuant to subsection 2 of*
34 *section 18 of this act*, the district court shall dismiss the action,
35 without prejudice, if the action is filed without an affidavit,
36 supporting the allegations contained in the action, submitted by a
37 medical expert who practices or has practiced in an area that is
38 substantially similar to the type of practice engaged in at the time of
39 the alleged malpractice.

40 **Sec. 23.** NRS 41A.081 is hereby amended to read as follows:

41 41A.081 1. In an action for medical malpractice, ~~for dental~~
42 ~~malpractice,~~ all the parties to the action, the insurers of the
43 respective parties and the attorneys of the respective parties shall
44 attend and participate in a settlement conference before a district



1 judge, other than the judge assigned to the action, to ascertain
2 whether the action may be settled by the parties before trial.

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

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

6 (b) Shall decide what information the parties may submit at the
7 settlement conference.

8 3. The judge shall notify the parties of the time and place of the
9 settlement conference.

10 4. The failure of any party, his insurer or his attorney to
11 participate in good faith in the settlement conference is grounds for
12 sanctions, including, without limitation, monetary sanctions, against
13 the party or his attorney, or both. The judges of the district courts
14 shall liberally construe the provisions of this subsection in favor of
15 imposing sanctions in all appropriate situations. It is the intent of the
16 Legislature that the judges of the district courts impose sanctions
17 pursuant to this subsection in all appropriate situations to punish for
18 and deter conduct which is not undertaken in good faith because
19 such conduct overburdens limited judicial resources, hinders the
20 timely resolution of meritorious claims and increases the costs of
21 engaging in business and providing professional services to the
22 public.

23 **Sec. 24.** NRS 41A.085 is hereby amended to read as follows:

24 41A.085 1. In an action for damages for medical malpractice
25 or dental malpractice in which the defendant is insured pursuant to a
26 policy of insurance covering the liability of the defendant for a
27 breach of his professional duty toward a patient:

28 (a) ~~IA~~ *Except as otherwise provided in section 19 of this act,*
29 *at* any settlement conference, the judge may recommend that the
30 action be settled for the limits of the policy of insurance.

31 (b) If the judge makes the recommendation described in
32 paragraph (a), the defendant is entitled to obtain from independent
33 counsel an opinion letter explaining the rights of, obligations of and
34 potential consequences to the defendant with regard to the
35 recommendation. The insurer shall pay the independent counsel to
36 provide the opinion letter described in this paragraph, except that the
37 insurer is not required to pay more than \$1,500 to the independent
38 counsel to provide the opinion letter.

39 2. The section does not:

40 (a) Prohibit the plaintiff from making any offer of settlement.

41 (b) Require an insurer to provide or pay for independent counsel
42 for a defendant except as expressly provided in this section.

43 **Sec. 25.** NRS 41A.097 is hereby amended to read as follows:

44 41A.097 1. Except as otherwise provided in subsection 3, an
45 action for injury or death against a provider of health care may not



1 be commenced more than 4 years after the date of injury or 2 years
2 after the plaintiff discovers or through the use of reasonable
3 diligence should have discovered the injury, whichever occurs first,
4 for:

5 (a) Injury to or the wrongful death of a person occurring before
6 October 1, 2002, based upon alleged professional negligence of the
7 provider of health care;

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

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

14 2. Except as otherwise provided in subsection 3, an action for
15 injury or death against a provider of health care may not be
16 commenced more than 3 years after the date of injury or 1 year after
17 the plaintiff discovers or through the use of reasonable diligence
18 should have discovered the injury, whichever occurs first, for:

19 (a) Injury to or the wrongful death of a person occurring on or
20 after October 1, 2002, based upon alleged professional negligence of
21 the provider of health care;

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

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

28 3. This time limitation is tolled ~~for~~ :

29 (a) *For* any period during which the provider of health care has
30 concealed any act, error or omission upon which the action is based
31 and which is known or through the use of reasonable diligence
32 should have been known to him.

33 (b) *In any action for dental malpractice, from the date a*
34 *claimant files a complaint for review by a screening panel until 30*
35 *days after the date the panel notifies the claimant, in writing, of its*
36 *findings. The provisions of this paragraph apply to an action*
37 *against a dentist and to an action against any person, government*
38 *or political subdivision of a government who is alleged by the*
39 *claimant to be liable vicariously for the dental malpractice of the*
40 *dentist, if the dentist, person, government or political subdivision*
41 *has received notice of the filing of a complaint for review by a*
42 *screening panel within the limitation of time provided in*
43 *subsection 1 or 2.*

44 4. For the purposes of this section, the parent, guardian or legal
45 custodian of any minor child is responsible for exercising reasonable



1 judgment in determining whether to prosecute any cause of action
2 limited by subsection 1 or 2. If the parent, guardian or custodian
3 fails to commence an action on behalf of that child within the
4 prescribed period of limitations, the child may not bring an action
5 based on the same alleged injury against any provider of health care
6 upon the removal of his disability, except that in the case of:

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

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

11 **Sec. 26.** NRS 49.245 is hereby amended to read as follows:

12 49.245 There is no privilege under NRS 49.225 or 49.235:

13 1. For communications relevant to an issue in proceedings to
14 hospitalize the patient for mental illness, if the doctor in the course
15 of diagnosis or treatment has determined that the patient is in need
16 of hospitalization.

17 2. As to communications made in the course of a court-ordered
18 examination of the condition of a patient with respect to the
19 particular purpose of the examination unless the court orders
20 otherwise.

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

24 4. In a prosecution or mandamus proceeding under chapter
25 441A of NRS.

26 5. As to any information communicated to a physician in an
27 effort unlawfully to procure a dangerous drug or controlled
28 substance, or unlawfully to procure the administration of any such
29 drug or substance.

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

32 7. As to records that are required by chapter 453 of NRS to be
33 maintained.

34 8. *In a review before a screening panel pursuant to chapter*
35 *41A of NRS.*

36 9. If the services of the physician are sought or obtained to
37 enable or aid a person to commit or plan to commit fraud or any
38 other unlawful act in violation of any provision of chapter 616A,
39 616B, 616C, 616D or 617 of NRS which the person knows or
40 reasonably should know is fraudulent or otherwise unlawful.

41 **Sec. 27.** Chapter 631 of NRS is hereby amended by adding
42 thereto a new section to read as follows:

43 *A screening panel or any of its members, acting pursuant to*
44 *chapter 41A of NRS, which initiates or assists in any proceeding*
45 *concerning a claim of malpractice against a dentist is immune*



1 *from any civil action for that initiation or assistance or any*
2 *consequential damages if the screening panel or any of its*
3 *members acted without malicious intent.*

4 **Sec. 28.** The amendatory provisions of this act do not apply to
5 actions involving dental malpractice, as that term is defined in NRS
6 631.075, which are filed before January 1, 2006.

7 **Sec. 29.** This act becomes effective on January 1, 2006.



