SENATE BILL NO. 231–SENATOR SCHNEIDER

MARCH 21, 2005

Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing authority of certain physicians to possess, prescribe, administer and dispense controlled substances, dangerous drugs and other drugs. (BDR 40-783)

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 physicians; revising the provisions governing the authority of certain physicians to possess, prescribe, administer and dispense controlled substances, dangerous drugs and other drugs; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

Existing law requires the State Board of Pharmacy to regulate controlled substances, dangerous drugs and other drugs. (NRS 453.146) Existing law further requires any person who dispenses a controlled substance in this State to be registered with the Board. (NRS 453.231)

This bill authorizes a physician or osteopathic physician who is registered with the State Board of Pharmacy to possess, prescribe, administer and dispense any drug for any legitimate medical purpose unless that authority is specifically limited by state or federal law. This bill prohibits the State Board of Pharmacy, the Board of Medical Examiners and the State Board of Osteopathic Medicine from limiting that authority by regulation or from taking disciplinary action against a physician or osteopathic physician who exercises that authority.

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

**Section 1.** NRS 453.146 is hereby amended to read as follows:

453.146 1. The Board shall administer the provisions of NRS 453.011 to 453.552, inclusive, and may add substances to or delete

or reschedule all substances enumerated in schedules I, II, III, IV and V by regulation.

2. In making a determination regarding a substance, the Board shall consider the following:

(a) The actual or relative potential for abuse;

(b) The scientific evidence of its pharmacological effect, if known;

(c) The state of current scientific knowledge regarding the substance;

(d) The history and current pattern of abuse;

(e) The scope, duration and significance of abuse;

(f) The risk to the public health;

(g) The potential of the substance to produce psychic or physiological dependence liability; and

(h) Whether the substance is an immediate precursor of a controlled substance.

3. The Board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

4. After considering the factors enumerated in subsection 2, the Board shall make findings with respect thereto and ***, except as otherwise provided in NRS 453.231,*** adopt a regulation controlling the substance if it finds the substance has a potential for abuse.

5. The Board shall designate as a controlled substance a steroid or other product which is used to enhance athletic performance, muscle mass, strength or weight without medical necessity. The Board may not designate as a controlled substance an anabolic steroid which is:

(a) Expressly intended to be administered through an implant to cattle, poultry or other animals; and

(b) Approved by the Food and Drug Administration for such use.

**Sec. 2.** NRS 453.221 is hereby amended to read as follows:

453.221 1. The Board ~~[may]~~ ***:***

***(a) May*** adopt regulations and charge reasonable fees relating to the registration and control of the dispensing of controlled substances within this State.

***(b) Shall not adopt any regulations which in any manner:***

***(1) Restrict the authority granted pursuant to subsection 2 of NRS 453.231 to a physician who holds a license issued pursuant to chapter 630 or 633 of NRS; or***

***(2) Penalize the exercise of that authority.***

2. The Board may charge an additional fee for dispensing controlled substances included in schedules I to V, inclusive, to cover the cost of developing and maintaining the computerized program developed pursuant to NRS 453.1545. The amount of the fee must be:

(a) Set so that the aggregate amount received from the fee does not exceed the estimated costs of developing and maintaining the program.

(b) Approved by the Legislature, if it is in regular session, or the Interim Finance Committee, if the Legislature is not in regular session.

**Sec. 3.** NRS 453.231 is hereby amended to read as follows:

453.231 1. The Board shall register an applicant to dispense controlled substances included in schedules I to V, inclusive, unless it determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the Board shall consider the following factors:

(a) Maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research or industrial channels;

(b) Compliance with state and local law;

(c) Promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;

(d) Convictions of the applicant pursuant to laws of another country or federal or state laws relating to a controlled substance;

(e) Past experience of the applicant in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific research or industrial channels;

(f) Furnishing by the applicant of false or fraudulent material in an application filed pursuant to the provisions of NRS 453.011 to 453.552, inclusive;

(g) Suspension or revocation of the applicant's federal registration to manufacture, distribute, possess, administer or dispense controlled substances as authorized by federal law; and

(h) Any other factors relevant to and consistent with the public health and safety.

2. ~~[Registration]~~ ***The registration by the Board of a physician who holds a license issued pursuant to chapter 630 or 633 of NRS authorizes the registrant to possess, prescribe, administer and dispense any controlled substance, any dangerous drug as defined in chapter 454 of NRS and any other drug for any purpose that the registrant deems to be a legitimate medical purpose, except to the extent that his authority to possess, prescribe, administer or***

***dispense any controlled substance, any dangerous drug as defined in chapter 454 of NRS or any other drug is specifically limited by a state or federal statute or federal regulation. The Board shall not deny, suspend, revoke or limit the registration of a physician who holds a license issued pursuant to chapter 630 or 633 of NRS or take any other disciplinary action against such a physician who is registered by the Board solely for his possession, prescription, administration or dispensation of a controlled substance, a dangerous drug as defined in chapter 454 of NRS or any other drug for any purpose that the physician deems to be a legitimate medical purpose, unless the particular act of possession, prescription, administration or dispensation constitutes a specific violation of a state or federal statute or federal regulation.***

***3. Except as otherwise provided in subsection 2, registration*** pursuant to subsection 1 entitles a registrant to dispense a substance included in ~~[schedules]~~ ***schedule*** I or II only if it is specified in the registration.

~~[3.]~~ ***4.*** A practitioner must be registered before dispensing a controlled substance or conducting research with respect to a controlled substance included in schedules II to V, inclusive. The Board need not require separate registration pursuant to the provisions of NRS 453.011 to 453.552, inclusive, for practitioners engaging in research with nonnarcotic controlled substances included in schedules II to V, inclusive, if the registrant is already registered in accordance with the provisions of NRS 453.011 to 453.552, inclusive, in another capacity. A practitioner registered in accordance with federal law to conduct research with a substance included in schedule I may conduct research with the substance in this State upon furnishing the Board evidence of the federal registration.

**Sec. 4.** NRS 453.381 is hereby amended to read as follows:

453.381 1. In addition to the limitations imposed by ***this subsection and*** NRS 453.256 and 453.3611 to 453.3648, inclusive, a ***homeopathic*** physician ~~[,]~~ ***practicing homeopathic medicine as that term is defined in NRS 630A.040,*** physician assistant, dentist, advanced practitioner of nursing or podiatric physician may prescribe or administer controlled substances only for a legitimate medical purpose and in the usual course of his professional practice ***.*** ~~[, and he]~~ ***A physician, homeopathic physician, physician assistant, dentist, advanced practitioner of nursing or podiatric physician*** shall not prescribe, administer or dispense a controlled substance listed in schedule II for himself, his spouse or his children except in cases of emergency.

2. A veterinarian, in the course of his professional practice only, and not for use by a human being, may prescribe, possess and

administer controlled substances, and he may cause them to be administered by a veterinary technician under his direction and supervision.

3. A euthanasia technician, within the scope of his license, and not for use by a human being, may possess and administer sodium pentobarbital.

4. A pharmacist shall not fill an order which purports to be a prescription if he has reason to believe that it was not issued in the usual course of the professional practice of a physician, physician assistant, dentist, advanced practitioner of nursing, podiatric physician or veterinarian.

5. Any person who has obtained from a physician, physician assistant, dentist, advanced practitioner of nursing, podiatric physician or veterinarian any controlled substance for administration to a patient during the absence of the physician, physician assistant, dentist, advanced practitioner of nursing, podiatric physician or veterinarian shall return to him any unused portion of the substance when it is no longer required by the patient.

6. A manufacturer, wholesale supplier or other person legally able to furnish or sell any controlled substance listed in schedule II shall not provide samples of such a controlled substance to registrants.

7. A salesman of any manufacturer or wholesaler of pharmaceuticals shall not possess, transport or furnish any controlled substance listed in schedule II.

8. A person shall not dispense a controlled substance in violation of a regulation adopted by the Board.

**Sec. 5.** NRS 453.521 is hereby amended to read as follows:

453.521 ~~[It]~~ ***Except as otherwise authorized pursuant to subsection 2 of NRS 453.231, it*** is unlawful for any person within this State to possess, sell, offer to sell or hold for the purpose of sale or resale any nasal inhaler which contains any controlled substance capable of causing stimulation to the central nervous system unless:

1. The product contains a denaturant in sufficient quantity to render it unfit for internal use; and

2. The product is among such products listed as approved by the Board in the regulations officially adopted by the Board.

**Sec. 6.** NRS 454.341 is hereby amended to read as follows:

454.341 ~~[It]~~ ***Except as otherwise authorized pursuant to subsection 2 of NRS 453.231, it*** is unlawful for any person within this State to possess, sell, offer to sell or hold for the purpose of sale or resale any nasal inhaler which contains any drug capable of causing stimulation to the central nervous system unless:

1. The product contains a denaturant in sufficient quantity to render it unfit for internal use; and

2. The product is among such products listed as approved for sale without restriction by the Board in the regulations officially adopted by the Board.

**Sec. 7.** NRS 454.371 is hereby amended to read as follows:

454.371 1. If the Board finds any drug to be dangerous to the public health or safety, it may ***, except as otherwise provided in NRS 453.231,*** adopt a regulation not inconsistent with NRS 454.181 to 454.371, inclusive, limiting or restricting the furnishing or dispensing of the drug.

2. A violation of such a regulation must be punished in the same manner as provided in NRS 454.306 to 454.356, inclusive.

**Sec. 8.** NRS 630.130 is hereby amended to read as follows:

630.130 1. In addition to the other powers and duties provided in this chapter, the Board shall, in the interest of the public, judiciously:

(a) Enforce the provisions of this chapter;

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

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

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

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

2. On or before February 15 of each odd-numbered year, the Board shall submit to the Governor and to the Director of the Legislative Counsel Bureau for transmittal to the next regular session of the Legislature a written report compiling:

(a) Disciplinary action taken by the Board during the previous biennium against physicians for malpractice or negligence; and

(b) Information reported to the Board during the previous biennium pursuant to NRS 630.3067, 630.3068, subsections 2 and 3 of NRS 630.307 and NRS 690B.250 and 690B.260.

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

3. The Board ~~[may]~~ ***:***

***(a) May*** adopt such regulations as are necessary or desirable to enable it to carry out the provisions of this chapter.

***(b) Shall not adopt any regulations which in any manner:***

***(1) Restrict the authority granted to a physician pursuant to subsection 2 of NRS 453.231; or***

***(2) Penalize the exercise of that authority.***

**Sec. 9.** NRS 630.3066 is hereby amended to read as follows:

630.3066 A physician is not subject to disciplinary action solely for:

1. ~~[Prescribing or administering to a patient under his care a]~~ ***Possessing, prescribing, administering or dispensing any*** controlled substance ~~[which is listed in schedule II, III, IV or V by the State Board of Pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with regulations adopted by the Board.]~~ ***, any dangerous drug as defined in chapter 454 of NRS or any other drug in accordance with the authority granted to the physician pursuant to subsection 2 of NRS 453.231.***

2. Engaging in any activity in accordance with the provisions of chapter 453A of NRS.

**Sec. 10.** NRS 633.291 is hereby amended to read as follows:

633.291 The Board ~~[shall]~~ ***:***

***1. Shall*** adopt and enforce regulations necessary to enable it to carry out its duties under this chapter, including ***,*** but not limited to ***,*** regulations which establish the principles of medical ethics to be used as the basis for determining whether conduct which does not constitute malpractice is unethical.

***2. Shall not adopt any regulations which in any manner:***

***(a) Restrict the authority granted to an osteopathic physician pursuant to subsection 2 of NRS 453.231; or***

***(b) Penalize the exercise of that authority.***

**Sec. 11.** NRS 633.521 is hereby amended to read as follows:

633.521 An osteopathic physician is not subject to disciplinary action solely for ~~[:~~

~~1. Prescribing or administering to a patient under his care:~~

~~(a) Amygdalin (laetrile), if the patient has consented to the use of the substance.~~

~~(b) Procaine hydrochloride with preservatives and stabilizers (Gerovital H3).~~

~~(c) A]~~ ***possessing, prescribing, administering or dispensing any*** controlled substance ~~[which is listed in schedule II, III, IV or V by the State Board of Pharmacy pursuant to NRS 453.146, if the controlled substance is lawfully prescribed or administered for the treatment of intractable pain in accordance with accepted standards for the practice of osteopathic medicine.~~

~~2. Engaging in any activity in accordance with the provisions of chapter 453A of NRS.]~~ ***, any dangerous drug as defined in chapter 454 of NRS or any other drug in accordance with the authority granted to the osteopathic physician pursuant to subsection 2 of NRS 453.231.***

**Sec. 12.** NRS 639.070 is hereby amended to read as follows:

639.070 1. ~~[The]~~ ***Except as otherwise provided in this section and NRS 453.231, the*** Board may:

(a) Adopt such regulations, not inconsistent with the laws of this State, as are necessary for the protection of the public, appertaining to the practice of pharmacy and the lawful performance of its duties.

(b) Adopt regulations requiring that prices charged by retail pharmacies for drugs and medicines which are obtained by prescription be posted in the pharmacies and be given on the telephone to persons requesting such information.

(c) Adopt regulations, not inconsistent with the laws of this State, authorizing the Executive Secretary of the Board to issue certificates, licenses and permits required by this chapter and chapters 453 and 454 of NRS.

(d) Adopt regulations governing the dispensing of poisons, drugs, chemicals and medicines.

(e) Regulate the practice of pharmacy.

(f) Regulate the sale and dispensing of poisons, drugs, chemicals and medicines.

(g) Regulate the means of recordkeeping and storage, handling, sanitation and security of drugs, poisons, medicines, chemicals and devices, including, but not limited to, requirements relating to:

(1) Pharmacies, institutional pharmacies and pharmacies in correctional institutions;

(2) Drugs stored in hospitals; and

(3) Drugs stored for the purpose of wholesale distribution.

(h) Examine and register, upon application, pharmacists and other persons who dispense or distribute medications whom it deems qualified.

(i) Charge and collect necessary and reasonable fees for its services, other than those specifically set forth in this chapter.

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

(k) Employ an attorney, inspectors, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

(l) Enforce the provisions of ***this chapter,*** NRS 453.011 to 453.552, inclusive, and ~~[enforce the provisions of this chapter and]~~ chapter 454 of NRS.

(m) Adopt regulations concerning the information required to be submitted in connection with an application for any license, certificate or permit required by this chapter or chapter 453 or 454 of NRS.

(n) Adopt regulations concerning the education, experience and background of a person who is employed by the holder of a license

or permit issued pursuant to this chapter and who has access to drugs and devices.

(o) Adopt regulations concerning the use of computerized mechanical equipment for the filling of prescriptions.

(p) Participate in and expend money for programs that enhance the practice of pharmacy.

2. ~~[This section does]~~ ***The provisions of subsection 1 do*** not authorize the Board to prohibit open-market competition in the advertising and sale of prescription drugs and pharmaceutical services.

**Sec. 13.** NRS 630.135 is hereby repealed.

**Sec. 14.** As soon as is reasonably practicable, the State Board of Pharmacy, the Board of Medical Examiners and the State Board of Osteopathic Medicine shall repeal or amend in such a manner as is appropriate to carry out the provisions of this act, the provisions of any regulations respectively adopted by the State Board of Pharmacy, the Board of Medical Examiners or the State Board of Osteopathic Medicine before the effective date of this section.

**Sec. 15.** 1. This section and section 14 of this act become effective upon passage and approval.

2. Sections 1 to 13, inclusive, of this act become effective upon passage and approval for the purposes of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act and on October 1, 2005, for all other purposes.

## TEXT OF REPEALED SECTION

**630.135 Board required to define "intractable pain" by regulation.** The Board shall by regulation define the term "intractable pain" for the purposes of NRS 630.3066 and 633.521.

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