

SENATE BILL NO. 317—SENATOR NOLAN

MARCH 24, 2005

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing actions for healthcare malpractice. (BDR 3-132)

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 healthcare malpractice; establishing screening panels to review claims against physicians and dentists; providing a penalty; and providing other matters properly relating thereto.

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 21, 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. *“Health care records” means any written reports, notes, orders, photographs, X rays or other written record received or produced by a provider of health care, or any person employed by him, which contains information relating to the medical history, examination, diagnosis or treatment of the patient.*

Sec. 5. 1. *No action involving medical or dental malpractice may be filed until the medical or dental malpractice case has been submitted to an appropriate screening panel and a*



1 *determination made by the panel as provided in this chapter, and*
2 *any action filed without satisfying the requirements of this chapter*
3 *is subject to dismissal without prejudice for failure to comply with*
4 *this section.*

5 2. *Except as otherwise provided in subsection 3, the written*
6 *findings of the screening panel are admissible in any action*
7 *concerning that complaint which is subsequently filed in district*
8 *court. No other evidence concerning the screening panel or its*
9 *deliberations is admissible, and no member of the screening panel*
10 *may be called to testify in any such action.*

11 3. *If the screening panel finds that it is unable to reach a*
12 *decision on the issue of medical or dental malpractice, the written*
13 *findings of the screening panel are not admissible in any action*
14 *concerning that complaint which is subsequently filed in district*
15 *court.*

16 **Sec. 6.** *There are hereby created two tentative screening*
17 *panels, one to be known as the Northern Tentative Screening*
18 *Panel, from which must be selected screening panels to sit in*
19 *Reno, Nevada, to hear claims of medical or dental malpractice*
20 *arising in the counties of Washoe, Storey, Douglas, Lyon,*
21 *Churchill, Pershing, Humboldt, Lander, Elko, Eureka, Mineral,*
22 *White Pine and Carson City, and one to be known as the Southern*
23 *Tentative Screening Panel, from which must be selected screening*
24 *panels to sit in Las Vegas, Nevada, to hear claims of medical or*
25 *dental malpractice arising in the counties of Lincoln, Nye,*
26 *Esmeralda and Clark.*

27 **Sec. 7. 1.** *For cases involving medical or dental*
28 *malpractice, the Board of Governors of the Nevada Trial Lawyers*
29 *Association may designate 40 of its current or retired members to*
30 *serve on the Northern Tentative Screening Panel and 60 of its*
31 *current or retired members to serve on the Southern Tentative*
32 *Screening Panel. Each person so designated shall serve for a term*
33 *of 1 year.*

34 2. *For cases involving medical malpractice, the Executive*
35 *Committee of the Nevada State Medical Association may designate*
36 *40 of its current or retired members to serve on the Northern*
37 *Tentative Screening Panel and 60 of its current or retired*
38 *members to serve on the Southern Tentative Screening Panel.*
39 *Each person so designated shall serve for a term of 1 year.*

40 3. *For cases involving medical malpractice, the Nevada*
41 *Hospital Association may designate 40 administrators of hospitals*
42 *and other persons employed by hospitals in management positions*
43 *to serve as nonvoting members of the tentative screening panels.*
44 *Each person so designated shall serve for a term of 1 year.*



1 4. For cases involving dental malpractice, the Nevada Dental
2 Association may designate 40 of its current or retired members to
3 serve on the Northern Tentative Screening Panel and 40 of its
4 current or retired members to serve on the Southern Tentative
5 Screening Panel. Each person so designated shall serve for a term
6 of 1 year.

7 Sec. 8. 1. The Commissioner of Insurance shall arrange
8 for courses of instruction in the rules of procedure and substantive
9 law appropriate for members of a screening panel.

10 2. Each person designated to serve on a tentative screening
11 panel must attend the instruction provided pursuant to subsection
12 1 before serving on a particular screening panel.

13 Sec. 9. 1. The members of the screening panel shall elect
14 one member to serve as chairman.

15 2. A screening panel is a state agency. The rules adopted
16 pursuant to section 11 of this act apply to all screening panels.

17 Sec. 10. The provisions of chapter 241 of NRS do not apply
18 to any meeting of a screening panel.

19 Sec. 11. The Division, through the Commissioner of
20 Insurance:

21 1. Shall maintain a list of the names of the attorneys,
22 physicians, dentists, administrators of hospitals and persons
23 employed by hospitals in management positions on the Northern
24 Tentative Screening Panel and on the Southern Tentative
25 Screening Panel.

26 2. Upon the third or subsequent finding by a screening panel
27 against a provider of health care that there is a reasonable
28 probability of his medical or dental malpractice and that the
29 claimant was injured thereby, shall notify the appropriate
30 licensing board for the initiation of possible disciplinary action
31 against the provider of health care. Such disciplinary action may
32 include, without limitation, the suspension or revocation of the
33 license of the provider of health care.

34 3. Shall select the members of the screening panels. At least
35 one member of each screening panel must be a medical or other
36 expert who practices or has practiced in an area that is
37 substantially similar to the type of practice engaged in at the time
38 of the alleged malpractice.

39 4. Shall schedule the hearings for those panels.

40 5. Shall obtain, before or after the filing of the complaint,
41 such health care records, dental records, statements of policy and
42 procedure, and other materials as may be required by the parties
43 or the screening panel in connection with the claim.

44 6. Shall charge and collect a reasonable fee for copying
45 materials produced under subpoena.



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

3 8. May adopt such rules of practice and procedure as are
4 necessary to carry out its duties pursuant to this chapter.

5 **Sec. 12.** Any money received by the Division pursuant to the
6 provisions of this chapter must be deposited with the State
7 Treasurer for credit to the Account for the Division of Insurance
8 in the State Agency Fund for Bonds. The administrative costs of
9 the screening panels must be paid from the Account.

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

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

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

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

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

44 8. The fees provided by this section must not be charged or
45 collected more than once:



1 (a) From any party; or
2 (b) For the filing of any complaint, regardless of the number
3 of parties joined in the complaint.

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

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

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

20 3. Except as otherwise provided in this subsection, each party
21 is entitled to not more than:

22 (a) Three peremptory challenges from the list of attorneys in
23 cases involving medical or dental malpractice;

24 (b) Three peremptory challenges from the list of physicians in
25 cases involving medical malpractice; and

26 (c) Three peremptory challenges from the list of dentists in
27 cases involving dental malpractice.

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

37 4. In cases involving medical malpractice, the Division shall
38 randomly select, from the list of members of the tentative
39 screening panel who have not been excused for cause or by a
40 peremptory challenge, the names of three physicians, three
41 attorneys and, if a hospital is also named in the complaint, one
42 administrator of a hospital or person employed by a hospital in a
43 management position, to serve on the screening panel for review
44 of a claim of medical malpractice, but the representative of a
45 hospital may not vote on any claim before the screening panel.



1 5. *In cases involving dental malpractice, the Division shall*
2 *randomly select, from the list of members of the tentative*
3 *screening panel who have not been excused for cause or by a*
4 *peremptory challenge, the names of three dentists and three*
5 *attorneys to serve on the screening panel for review of the claim.*

6 6. *The Division shall notify the parties and the members*
7 *selected to serve on the screening panel immediately after it has*
8 *made the selections. If any member so selected declines to serve,*
9 *the Division shall immediately and randomly select a replacement*
10 *from the list. The Division shall not release or disclose to any*
11 *person the names of the members selected.*

12 7. *If, because of the exercise of challenges for cause or*
13 *peremptory challenges or any other reason, no attorney, dentist,*
14 *physician or administrator of a hospital designated pursuant to*
15 *section 7 of this act remains available to serve on the screening*
16 *panel, the Division shall immediately notify the Nevada Trial*
17 *Lawyers Association, the Nevada State Medical Association, the*
18 *Nevada Dental Association or the Nevada Hospital Association, as*
19 *appropriate, and that association shall immediately designate a*
20 *replacement from among its members. A person who is not so*
21 *designated may not serve on the screening panel.*

22 **Sec. 15.** 1. *The Division may, by certified or registered*
23 *mail, issue subpoenas as may be required by the screening panel,*
24 *to compel the attendance of expert witnesses and, as may be*
25 *required by the parties or the screening panel, to compel the*
26 *production of books, papers, health care records, dental records,*
27 *statements of policy and procedure or other materials.*

28 2. *The Division shall keep the material so produced and make*
29 *it available to the parties, upon request, for inspection or copying.*
30 *If the material is reasonably capable of being copied, the Division*
31 *shall provide a copy to the parties, upon request and receipt of a*
32 *fee for the copying.*

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

37 (a) *Due notice has been given of the time and place of*
38 *attendance of the expert witness or for the production of the*
39 *materials;*

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

43 (c) *The expert witness has failed or refused to attend or the*
44 *person has failed or refused to produce the materials required by*



1 *the subpoena, or has refused to answer questions propounded to*
2 *him,*

3 *↳ and asking for an order of the court compelling the expert*
4 *witness to attend and testify or the other person to produce the*
5 *materials.*

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

13 *5. If it appears to the court that the subpoena was regularly*
14 *issued by the Division, the court shall enter an order that the*
15 *expert witness or other person appear at the time and place fixed*
16 *in the order and testify or produce the required materials, and*
17 *upon his failure to obey the order, the expert witness or other*
18 *person must be dealt with as for contempt of court.*

19 *6. As used in this section, "expert witness" means a person*
20 *who is qualified as an expert witness by the occupational board*
21 *that has issued a license to the party accused of malpractice.*

22 **Sec. 16. 1.** *A claim must be heard by the screening panel*
23 *within 30 days after the panel is selected.*

24 *2. The screening panel shall consider all the documentary*
25 *material, including the complaint, answer and response, health*
26 *care records, dental records and records of a hospital or office and*
27 *the testimony of any expert witnesses as defined in subsection 6 of*
28 *section 15 of this act, the panel considers necessary, and shall*
29 *determine only, from that evidence, whether there is a reasonable*
30 *probability that the acts complained of constitute medical or dental*
31 *malpractice and that the claimant was injured thereby. Except for*
32 *the issue of whether there is a reasonable probability of medical or*
33 *dental malpractice and whether the claimant was injured thereby,*
34 *the screening panel shall not consider any pleading or paper to the*
35 *extent that it addresses a legal issue presented by the claim or a*
36 *legal argument of a party. The screening panel shall not consider*
37 *challenges concerning any relevant statute of limitation relating to*
38 *a claim before the panel.*

39 *3. Copies of the original complaint and of the findings of the*
40 *screening panel with regard to each matter considered by the*
41 *panel must be forwarded to:*

42 *(a) In cases involving medical malpractice:*

43 *(1) The Board of Medical Examiners; and*

44 *(2) The county medical society of the county in which the*
45 *alleged malpractice occurred.*



1 (b) *In cases involving dental malpractice, the Board of Dental*
2 *Examiners of Nevada.*

3 4. *The Commissioner of Insurance shall mail to the parties a*
4 *copy of the findings of the screening panel concerning the*
5 *complaint.*

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

10 (a) *Based upon a review of the materials submitted by the*
11 *parties and the testimony of any medical or other expert, if any*
12 *were called, we find that there is a reasonable probability of*
13 *medical or dental malpractice and that the claimant was injured*
14 *thereby;*

15 (b) *Based upon a review of the materials submitted by the*
16 *parties and the testimony of any medical or other expert, if any*
17 *were called, we find that there is no reasonable probability of*
18 *medical or dental malpractice; or*

19 (c) *Based upon a review of the materials submitted by the*
20 *parties and the testimony of any medical or other expert, if any*
21 *were called, we are unable to reach a decision on the issue of*
22 *medical or dental malpractice.*

23 6. *Whenever four members of the screening panel are unable*
24 *to find that there is a reasonable probability of medical or dental*
25 *malpractice and that the claimant was injured thereby or that*
26 *there is no reasonable probability of medical or dental*
27 *malpractice, the screening panel shall be deemed unable to reach*
28 *a decision on the issue and shall make a finding to that effect.*

29 7. *If a screening panel finds that:*

30 (a) *There is a reasonable probability of medical or dental*
31 *malpractice, the Commissioner of Insurance shall impose upon*
32 *the provider of health care against whom the complaint was made*
33 *an administrative penalty of not more than \$1,000 to pay for the*
34 *administrative costs of the screening panel.*

35 (b) *There is no reasonable probability of medical or dental*
36 *malpractice, the Commissioner of Insurance shall impose upon*
37 *the claimant an administrative penalty of not more than \$1,000 to*
38 *pay for the administrative costs of the screening panel.*

39 **Sec. 17. 1.** *If a claimant is 70 years of age or older or*
40 *suffers from an illness or condition which raises a substantial*
41 *medical doubt that the claimant will survive until a determination*
42 *is made by a screening panel, the claimant may file a written*
43 *request with the Division to give preference in scheduling the*
44 *hearing of the claim filed by the claimant. The request must set*
45 *forth facts showing that the claimant is 70 years of age or older or*



1 *suffers from an illness or condition which raises a substantial*
2 *medical doubt that the claimant will survive until a determination*
3 *is made by a screening panel.*

4 *2. The Division shall schedule the hearing of claims for*
5 *which preference has been granted pursuant to subsection 1 based*
6 *on the order in which the Division received the requests for*
7 *preference.*

8 **Sec. 18.** *1. Upon the request of the Division or counsel for*
9 *a patient, a custodian of any medical or dental record shall not*
10 *allow anyone to review any record relevant to a complaint filed*
11 *with the Division before the record is transferred to a requesting*
12 *party or the authority issuing the subpoena.*

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

14 **Sec. 19.** *1. If the screening panel finds in favor of the*
15 *claimant and an action involving medical or dental malpractice is*
16 *thereafter filed in district court, a conference for settlement must*
17 *be held as provided in section 20 of this act.*

18 *2. If the determination is not in favor of the claimant, the*
19 *claimant may file an action in district court. If the claimant does*
20 *not obtain a judgment in his favor in court, the defendant must be*
21 *awarded reasonable costs and attorney's fees incurred after the*
22 *date of filing the action in court.*

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

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

30 **Sec. 20.** *1. In any action for medical or dental malpractice*
31 *filed in a district court after a determination by a screening panel*
32 *that there is a reasonable probability that medical or dental*
33 *malpractice occurred and that the plaintiff was injured thereby,*
34 *the plaintiff, the defendant, the representative of the physician's or*
35 *dentist's insurer and, if applicable, the hospital's insurer and their*
36 *respective attorneys shall attend a conference for settlement before*
37 *a district judge, other than the judge assigned to the case, to*
38 *determine the amount of the plaintiff's damages. The judge before*
39 *whom the conference is held:*

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

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



1 (c) Shall decide what information the parties may submit at the
2 settlement conference.

3 2. In any such action, the responsive pleading of the
4 defendant must be accompanied by a notice to the clerk that the
5 case must be scheduled for a conference for settlement. If this
6 notice is not filed by the defendant, it may be filed by any other
7 party. The clerk shall immediately notify the judge before whom
8 the conference is to be held of the receipt of that notice.

9 3. The judge shall notify the parties, within 7 days after the
10 receipt of the notice, of the time and place of the conference,
11 which must not be later than 60 days after the receipt of the notice.
12 The judge shall cause the deposition of:

13 (a) The plaintiff;

14 (b) The defendant; and

15 (c) A person designated by the plaintiff to testify regarding
16 damages,

17 ↳ to be taken in the manner prescribed by rule of court for taking
18 a deposition in a civil action in a district court before the date
19 scheduled for the conference.

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

23 5. Within 15 days after the conference, the judge before
24 whom the conference was held shall determine, solely from the
25 information submitted at the conference, the reasonable value of
26 the claim for purposes of settlement and shall so notify the parties
27 in writing.

28 6. Within 14 days after receipt of the determination of the
29 judge, the defendant shall offer to the plaintiff the amount
30 determined by the judge or reject the determination. If the
31 defendant rejects the determination and the plaintiff is awarded an
32 amount greater than the amount of the determination, the plaintiff
33 must be awarded reasonable costs and attorney's fees incurred
34 after the date of the rejection.

35 7. Within 14 days after the receipt of the defendant's offer of
36 the amount determined by the judge, the plaintiff shall accept or
37 reject the offer. If the plaintiff rejects the offer and the plaintiff is
38 awarded an amount less than the amount of the offer, the
39 defendant must be awarded reasonable costs and attorney's fees
40 incurred after the date of the rejection.



1 **Sec. 21. 1. Unless the written findings of the screening**
2 *panel are not admissible pursuant to subsection 3 of section 5 of*
3 *this act, in any action for medical malpractice tried before a jury,*
4 *the following instructions must be given:*

5 **(a) If testimony of a medical expert was given at the review by**
6 *the screening panel:*

7
8 *During the course of this trial certain evidence was*
9 *admitted concerning the findings of a screening panel. The*
10 *findings of the panel were based upon a review of medical*
11 *records and the testimony of a medical expert based upon*
12 *his review of those records. These findings are to be given*
13 *the same weight as any other evidence, but are not*
14 *conclusive on your determination of the case.*

15
16 **(b) If testimony of a medical expert was not given at the review**
17 *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 *medical 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 **2. Unless the written findings of the screening panel are not**
26 *admissible pursuant to subsection 3 of section 5 of this act, in any*
27 *action for dental malpractice tried before a jury, the following*
28 *instructions must be given:*

29 **(a) If testimony of an expert witness was given at the review by**
30 *the screening panel:*

31
32 *During the course of this trial certain evidence was*
33 *admitted concerning the findings of a screening panel. The*
34 *findings of the panel were based upon a review of dental*
35 *records and the testimony of an expert witness based upon*
36 *his review of those records. These findings are to be given*
37 *the same weight as any other evidence, but are not*
38 *conclusive on your determination of the case.*

39
40 **(b) If testimony of an expert witness was not given at the**
41 *review by the screening panel:*

42
43 *During the course of this trial certain evidence was*
44 *admitted concerning the findings of a screening panel. The*
45 *findings of the panel were based solely upon a review of the*



dental records. These findings are to be given the same weight as any other evidence, but are not conclusive on your determination of the case.

Sec. 22. NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 41A.004 to 41A.017, inclusive, *and sections 2, 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 23. NRS 41A.071 is hereby amended to read as follows:

41A.071 If an action for medical malpractice or dental malpractice is filed in the district court ~~§~~ *pursuant to subsection 2 of section 19 of this act*, the district court shall dismiss the action, without prejudice, if the action is filed without an affidavit, supporting the allegations contained in the action, submitted by a medical expert who practices or has practiced in an area that is substantially similar to the type of practice engaged in at the time of the alleged malpractice.

Sec. 24. NRS 41A.081 is hereby amended to read as follows:

41A.081 *Except as otherwise provided in section 20 of this act:*

1. In an action for medical malpractice or dental malpractice, all the parties to the action, the insurers of the respective parties and the attorneys of the respective parties shall attend and participate in a settlement conference before a district judge, other than the judge assigned to the action, to ascertain whether the action may be settled by the parties before trial.

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

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

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

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

4. The failure of any party, his insurer or his attorney to participate in good faith in the settlement conference is grounds for sanctions, including, without limitation, monetary sanctions, against the party or his attorney, or both. The judges of the district courts shall liberally construe the provisions of this subsection in favor of imposing sanctions in all appropriate situations. It is the intent of the Legislature that the judges of the district courts impose sanctions pursuant to this subsection in all appropriate situations to punish for and deter conduct which is not undertaken in good faith because such conduct overburdens limited judicial resources, hinders the timely resolution of meritorious claims and increases the costs of



1 engaging in business and providing professional services to the
2 public.

3 **Sec. 25.** NRS 41A.085 is hereby amended to read as follows:

4 41A.085 1. In an action for damages for medical malpractice
5 or dental malpractice in which the defendant is insured pursuant to a
6 policy of insurance covering the liability of the defendant for a
7 breach of his professional duty toward a patient:

8 (a) ~~At~~ *Except as otherwise provided in section 20 of this act,*
9 *at* any settlement conference, the judge may recommend that the
10 action be settled for the limits of the policy of insurance.

11 (b) If the judge makes the recommendation described in
12 paragraph (a), the defendant is entitled to obtain from independent
13 counsel an opinion letter explaining the rights of, obligations of and
14 potential consequences to the defendant with regard to the
15 recommendation. The insurer shall pay the independent counsel to
16 provide the opinion letter described in this paragraph, except that the
17 insurer is not required to pay more than \$1,500 to the independent
18 counsel to provide the opinion letter.

19 2. The section does not:

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

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

23 **Sec. 26.** NRS 41A.097 is hereby amended to read as follows:

24 41A.097 1. Except as otherwise provided in subsection 3, an
25 action for injury or death against a provider of health care may not
26 be commenced more than 4 years after the date of injury or 2 years
27 after the plaintiff discovers or through the use of reasonable
28 diligence should have discovered the injury, whichever occurs first,
29 for:

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

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

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

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



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

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

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

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

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

15 (b) *In any action for medical or dental malpractice, from the*
16 *date a claimant files a complaint for review by a screening panel*
17 *until 30 days after the date the panel notifies the claimant, in*
18 *writing, of its findings. The provisions of this paragraph apply to*
19 *an action against the provider of health care and to an action*
20 *against any person, government or political subdivision of a*
21 *government who is alleged by the claimant to be liable vicariously*
22 *for the medical or dental malpractice of the provider of health*
23 *care, if the provider of health care, person, government or political*
24 *subdivision has received notice of the filing of a complaint for*
25 *review by a screening panel within the limitation of time provided*
26 *in subsection 1 or 2.*

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

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

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

39 **Sec. 27.** NRS 49.245 is hereby amended to read as follows:

40 49.245 There is no privilege under NRS 49.225 or 49.235:

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



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

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

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

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

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

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

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

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

Sec. 28. NRS 630.364 is hereby amended to read as follows:

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

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

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

(b) Disseminating information concerning an applicant for a license or a licensee to other boards or agencies of the State, the Attorney General, any hospitals, medical societies, insurers, employers, patients and their families or any law enforcement agency.

3. *A screening panel or any of its members, acting pursuant to chapter 41A of NRS, that initiates or assists in any proceeding concerning a claim of malpractice against a physician is immune from any civil action for that initiation or assistance or any*



1 *consequential damages if the screening panel or any of its*
2 *members acted without malicious intent.*

3 **Sec. 29.** Chapter 631 of NRS is hereby amended by adding
4 thereto a new section to read as follows:

5 *A screening panel or any of its members, acting pursuant to*
6 *chapter 41A of NRS, which initiates or assists in any proceeding*
7 *concerning a claim of malpractice against a dentist is immune*
8 *from any civil action for that initiation or assistance or any*
9 *consequential damages if the screening panel or any of its*
10 *members acted without malicious intent.*

11 **Sec. 30.** The amendatory provisions of this act do not apply to
12 actions involving:

- 13 1. Dental malpractice, as that term is defined in NRS 631.075.
14 2. Medical malpractice, as that term is defined in chapter 41A
15 of NRS,
16 ➔ which are filed before October 1, 2005.

