

Amendment No. 57

Assembly Amendment to Assembly Bill No. 196 (BDR 40-813)

Proposed by: Assembly Committee on Health and Human Services**Amends:** Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

SLP/KCR



Date: 4/1/2009

A.B. No. 196—Revises provisions relating to the licensure of facilities for refractive surgery. (BDR 40-813)



ASSEMBLY BILL NO. 196--ASSEMBLYWOMAN LESLIE

FEBRUARY 18, 2009

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the licensure of facilities for refractive surgery. (BDR 40-813)

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 public health; revising provisions relating to the licensure of facilities for refractive surgery; providing for the closure of a facility for refractive surgery if the facility is operating without a license; ***revising provisions governing collaboration agreements between optometrists and ophthalmologists;*** and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires a person, state or local government or agency thereof to obtain a license to operate or maintain a medical facility, including a facility for refractive surgery. (NRS 449.0151, 449.030) Existing administrative regulations of the State Board of Health exempt a licensed ophthalmologist from these requirements for licensure of a facility if the ophthalmologist provides other ophthalmological medical services in addition to surgical treatments for refractive errors of the eye. (NAC 449.4502) **Section 7** of this bill codifies into statute an exemption for certain licensed ophthalmologists who provide surgical procedures in addition to surgical treatments for refractive errors of the eye and adds a requirement that the ophthalmologist file an affidavit with the Health Division of the Department of Health and Human Services attesting that he provides the additional surgical procedures.

Section 8 of this bill requires a facility for refractive surgery to ensure that: (1) all surgical treatments for refractive errors of the eye are performed by a licensed ophthalmologist; and (2) a licensed ophthalmologist is available for postoperative care if the medical needs of a patient necessitate the services of an ophthalmologist.

Section 9 of this bill authorizes the Health Division to issue an order to cease and desist upon belief that a person, state or local government or an agency thereof is operating a facility for refractive surgery without a license. **Section 9** also provides that the Health Division may file an action in court for issuance of an injunction and imposition of a civil penalty.

Existing law authorizes an optometrist to, based upon the individual needs of a patient, collaborate with an ophthalmologist for the provision of care to the patient under certain conditions. (NRS 636.374) Section 13 of this bill adds to the conditions a requirement that the collaborating optometrist refer a patient back to the collaborating ophthalmologist, or another ophthalmologist in his absence, if the patient requires care by an ophthalmologist.

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

1 **Section 1.** Chapter 449 of NRS is hereby amended by adding thereto the
2 provisions set forth as sections 2 to ~~19~~ 10, inclusive, of this act.

3 **Sec. 2.** *As used in sections 2 to ~~19~~ 10, inclusive, of this act, unless the*
4 *context otherwise requires, the words and terms defined in sections 3 to 6,*
5 *inclusive, of this act have the meanings ascribed to them in those sections.*

6 **Sec. 3.** *“Ophthalmologist” means a physician who is qualified to perform*
7 *laser surgery or intense pulsed light therapy on the globe of the eye pursuant to*
8 *NRS 630.371 or 633.693.*

9 **Sec. 4.** *“Postoperative care” means assessing, monitoring or treating a*
10 *patient while the patient is recovering or healing from a surgical treatment for a*
11 *refractive error of the eye.*

12 **Sec. 5.** *“Preoperative care” means assessing or treating a patient in*
13 *preparation for a surgical treatment for a refractive error of the eye.*

14 **Sec. 6.** *“Surgical treatment for a refractive error of the eye” means the*
15 *surgical treatment of a patient with a refractive error of the eye by:*

- 16 1. *Photorefractive keratectomy;*
- 17 2. *Laser in situ keratomileusis;*
- 18 3. *Conductive keratoplasty;*
- 19 4. *Implantation of an intraocular lens; or*
- 20 5. *Any other available technology, technique or procedure which surgically*
21 *treats refractive errors of the eye and which has been approved by the United*
22 *States Food and Drug Administration.*

23 **Sec. 7.** *A person is not required to obtain a license to operate and maintain*
24 *a facility for refractive surgery pursuant to the provisions of this chapter if the*
25 *person:*

- 26 1. *Is an ophthalmologist;*
- 27 2. *Provides surgical procedures to patients at the facility in addition to*
28 *preoperative care, postoperative care and surgical treatments for refractive errors*
29 *of the eye; and*
- 30 3. *Files with the Health Division an affidavit attesting that the person*
31 *provides surgical procedures at the facility in addition to preoperative care,*
32 *postoperative care and surgical treatments for refractive errors of the eye.*

33 **Sec. 8.** *A facility for refractive surgery shall ensure that:*

34 1. *All surgical treatments for refractive errors of the eye performed at the*
35 *facility are performed only by an ophthalmologist.*

36 2. *The ophthalmologist who performs a surgical treatment for refractive*
37 *errors of the eye at the facility:*

38 (a) *Is available in person for postoperative care if the medical needs of a*
39 *patient necessitate the services of an ophthalmologist; or*

40 (b) *Enters into an agreement with another ophthalmologist to be available in*
41 *person for postoperative care if the medical needs of the patient necessitate the*
42 *services of an ophthalmologist.*

43 **Sec. 9.** 1. *If the Health Division believes that a person who is required to*
44 *obtain a license pursuant to this chapter is operating a facility for refractive*
45 *surgery without such a license, the Health Division may issue an order to cease*
46 *and desist the operation of the facility. The order must be served upon the person*
47 *directly or by certified or registered mail, return receipt requested. The order*
48 *becomes effective upon service.*

2. An order issued pursuant to subsection 1 expires 30 days after the date of service unless the Health Division institutes an action in a court of competent jurisdiction seeking an injunction.

3. Upon a showing by the Health Division that a person is operating a facility for refractive surgery without a license issued pursuant to this chapter, a court of competent jurisdiction may:

(a) Enjoin the person from operating the facility.

(b) Impose a civil penalty to be recovered by the Health Division of not more than \$10,000 for the first offense and of not less than \$10,000 or more than \$20,000 for a second or subsequent offense.

4. A person enjoined or penalized pursuant to subsection 3 may not apply for a license to operate a facility for refractive surgery for a period of 6 months after the date on which the court issues the injunction or penalty.

Sec. 10. The provisions of sections 2 to 10, inclusive, of this act do not prohibit an ophthalmologist from collaborating with an optometrist to provide care to a patient if the collaboration complies with the requirements of NRS 636.374.

~~Sec. 10.~~ Sec. 11. NRS 449.00387 is hereby amended to read as follows:

449.00387 1. "Facility for refractive surgery" means a freestanding facility that provides limited medical services ~~for~~ relating to surgical treatments for patients with refractive errors of the eye, including the preoperative care and evaluation of those patients, ~~with refractive errors of the eye and~~ the surgical treatment of those patients ~~and the postoperative care and evaluation of those patients.~~

2. As used in this section:

(a) "Postoperative care" has the meaning ascribed to it in section 4 of this act.

(b) "Preoperative care" has the meaning ascribed to it in section 5 of this act.

~~Sec. 11.~~ Sec. 12. NRS 449.210 is hereby amended to read as follows:

449.210 1. Except as otherwise provided in ~~subsections 2 and 3,~~ subsection 2 and section 9 of this act, a person who operates a medical facility or facility for the dependent without a license issued by the Health Division is guilty of a misdemeanor.

2. A person who operates a residential facility for groups without a license issued by the Health Division:

(a) Is liable for a civil penalty to be recovered by the Attorney General in the name of the Health Division for the first offense of not more than \$10,000 and for a second or subsequent offense of not less than \$10,000 ~~for~~ or more than \$20,000;

(b) Shall ~~be required to~~ move all of the persons who are receiving services in the residential facility for groups to a residential facility for groups that is licensed at his own expense; and

(c) May not apply for a license to operate a residential facility for groups for a period of 6 months after he is punished pursuant to this section.

3. Unless otherwise required by federal law, the Health Division shall deposit all civil penalties collected pursuant to this section into a separate account in the State General Fund to be used for the protection of the health, safety and well-being of patients, including residents of residential facilities for groups.

Sec. 13. NRS 636.374 is hereby amended to read as follows:

636.374 An optometrist may, based upon the individual needs of a particular patient, collaborate with an ophthalmologist for the provision of care to the patient, for a fixed fee, regarding one or more surgical procedures if:

1. The collaborating parties prepare and maintain in their respective medical records regarding the patient, written documentation of each procedure and other

1 service performed by each collaborating party which includes the date each
2 procedure and other service is performed;

3 2. The fixed fee is divided between the collaborating parties in proportion to
4 the services personally performed by each of them; ~~and~~

5 3. The collaborating parties agree that the collaborating optometrist will
6 refer the patient back to the collaborating ophthalmologist or, if the collaborating
7 ophthalmologist is not available, another ophthalmologist designated by the
8 collaborating ophthalmologist to provide care to the patient if the medical needs
9 of the patient necessitate the provision of care by an ophthalmologist; and

10 4. The collaborating parties provide to the patient and maintain in their
11 respective medical records regarding the patient, a written document, signed by
12 each of the collaborating parties and the patient, containing:

13 (a) The name, business address and telephone number of each of the
14 collaborating parties;

15 (b) The amount of the fixed fee for the procedures and services;

16 (c) The proportion of that fee to be received by each collaborating party;

17 (d) A statement, signed by the patient and a witness who is not one of the
18 collaborating parties, that the patient voluntarily, knowingly and willingly desires
19 the performance of the postoperative care by the collaborating optometrist;

20 (e) A statement that the patient is entitled to return to the collaborating
21 ophthalmologist for postoperative care at any time after the surgery; and

22 (f) A statement which:

23 (1) Indicates that the practice of optometry and ophthalmology are
24 respectively regulated by the Nevada State Board of Optometry and the Board of
25 Medical Examiners; and

26 (2) Contains the address and telephone number of each of those Boards.

27 ~~Sec. 12.~~ **Sec. 14.** This act becomes effective on July 1, 2009.