

ASSEMBLY BILL NO. 537—COMMITTEE  
ON COMMERCE AND LABOR

MARCH 28, 2011

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Referred to Committee on Commerce and Labor

SUMMARY—Revises provisions governing prohibited acts for certain health care practitioners. (BDR 54-1115)

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.

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AN ACT relating to health care practitioners; prohibiting certain health care practitioners from knowingly procuring or administering certain drugs that are not approved in accordance with federal regulations; providing that such participation is grounds for disciplinary action or denial of licensure; providing a penalty; and providing other matters properly relating thereto.

**Legislative Counsel's Digest:**

1 The Federal Food, Drug and Cosmetic Act requires the United States Food and  
2 Drug Administration to approve certain prescription drugs. (21 U.S.C. §§ 301 et  
3 seq.) Existing law in this State authorizes certain health care practitioners, including  
4 physicians, physician assistants, dentists, advanced practitioners of nursing,  
5 osteopathic physicians, osteopathic physician assistants, podiatric physicians and  
6 optometrists, to prescribe and administer controlled substances and dangerous  
7 drugs under certain circumstances. (NRS 639.0125, 639.235) This bill prohibits  
8 those health care practitioners from knowingly procuring and administering  
9 controlled substances and dangerous drugs that are not approved under federal law,  
10 unless the unapproved controlled substances and dangerous drugs were procured  
11 through a retail pharmacy, were procured through certain Canadian pharmacies or  
12 are considered marijuana used for medical purposes. This bill further authorizes  
13 disciplinary action to be taken against health care practitioners for violations of the  
14 prohibition.

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

**Section 1.** NRS 630.306 is hereby amended to read as follows:  
630.306 The following acts, among others, constitute grounds  
for initiating disciplinary action or denying licensure:

1. Inability to practice medicine with reasonable skill and  
safety because of illness, a mental or physical condition or the use of  
alcohol, drugs, narcotics or any other substance.

2. Engaging in any conduct:

(a) Which is intended to deceive;

(b) Which the Board has determined is a violation of the  
standards of practice established by regulation of the Board; or

(c) Which is in violation of a regulation adopted by the State  
Board of Pharmacy.

3. Administering, dispensing or prescribing any controlled  
substance, or any dangerous drug as defined in chapter 454 of NRS,  
to or for himself or herself or to others except as authorized by law.

4. Performing, assisting or advising the injection of any  
substance containing liquid silicone into the human body, except for  
the use of silicone oil to repair a retinal detachment.

5. Practicing or offering to practice beyond the scope permitted  
by law or performing services which the licensee knows or has  
reason to know that he or she is not competent to perform or which  
are beyond the scope of his or her training.

6. Performing, without first obtaining the informed consent of  
the patient or the patient's family, any procedure or prescribing any  
therapy which by the current standards of the practice of medicine is  
experimental.

7. Continual failure to exercise the skill or diligence or use the  
methods ordinarily exercised under the same circumstances by  
physicians in good standing practicing in the same specialty or field.

8. Habitual intoxication from alcohol or dependency on  
controlled substances.

9. Making or filing a report which the licensee or applicant  
knows to be false or failing to file a record or report as required by  
law or regulation.

10. Failing to comply with the requirements of NRS 630.254.

11. Failure by a licensee or applicant to report in writing,  
within 30 days, any disciplinary action taken against the licensee or  
applicant by another state, the Federal Government or a foreign  
country, including, without limitation, the revocation, suspension or  
surrender of a license to practice medicine in another jurisdiction.

12. Failure by a licensee or applicant to report in writing,  
within 30 days, any criminal action taken or conviction obtained



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1 against the licensee or applicant, other than a minor traffic violation,  
2 in this State or any other state or by the Federal Government, a  
3 branch of the Armed Forces of the United States or any local or  
4 federal jurisdiction of a foreign country.

5 13. Failure to be found competent to practice medicine as a  
6 result of an examination to determine medical competency pursuant  
7 to NRS 630.318.

8 14. Operation of a medical facility at any time during which:

9 (a) The license of the facility is suspended or revoked; or

10 (b) An act or omission occurs which results in the suspension or  
11 revocation of the license pursuant to NRS 449.160.

12 ➔ This subsection applies to an owner or other principal responsible  
13 for the operation of the facility.

14 15. Failure to comply with the requirements of NRS 630.373.

15 16. Engaging in any act that is unsafe or unprofessional  
16 conduct in accordance with regulations adopted by the Board.

17 *17. Knowingly procuring or administering a controlled*  
18 *substance or a dangerous drug as defined in chapter 454 of NRS*  
19 *that is not approved by the United States Food and Drug*  
20 *Administration, unless the unapproved controlled substance or*  
21 *dangerous drug:*

22 (a) *Was procured through a retail pharmacy licensed pursuant*  
23 *to chapter 639 of NRS;*

24 (b) *Was procured through a Canadian pharmacy which is*  
25 *licensed pursuant to chapter 639 of NRS and which has been*  
26 *recommended by the State Board of Pharmacy pursuant to*  
27 *subsection 4 of NRS 639.2328; or*

28 (c) *Is marijuana being used for medical purposes in*  
29 *accordance with chapter 453A of NRS.*

30 **Sec. 2.** NRS 631.3475 is hereby amended to read as follows:

31 631.3475 The following acts, among others, constitute  
32 unprofessional conduct:

33 1. Malpractice;

34 2. Professional incompetence;

35 3. Suspension or revocation of a license to practice dentistry,  
36 the imposition of a fine or other disciplinary action by any agency of  
37 another state authorized to regulate the practice of dentistry in that  
38 state;

39 4. More than one act by the dentist or dental hygienist  
40 constituting substandard care in the practice of dentistry or dental  
41 hygiene;

42 5. Administering, dispensing or prescribing any controlled  
43 substance or any dangerous drug as defined in chapter 454 of NRS,  
44 if it is not required to treat the dentist's patient;



6. *Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:*

(a) *Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;*

(b) *Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or*

(c) *Is marijuana being used for medical purposes in accordance with chapter 453A of NRS;*

7. Chronic or persistent inebriety or addiction to a controlled substance, to such an extent as to render the person unsafe or unreliable as a practitioner, or such gross immorality as tends to bring reproach upon the dental profession;

~~[7-]~~ 8. Conviction of a felony or misdemeanor involving moral turpitude or which relates to the practice of dentistry in this State, or conviction of any criminal violation of this chapter;

~~[8-]~~ 9. Conviction of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive; or

~~[9-]~~ 10. Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(a) The license of the facility is suspended or revoked; or

(b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➔ This subsection applies to an owner or other principal responsible for the operation of the facility.

**Sec. 3.** NRS 632.320 is hereby amended to read as follows:

632.320 1. The Board may deny, revoke or suspend any license or certificate applied for or issued pursuant to this chapter, or take other disciplinary action against a licensee or holder of a certificate, upon determining that the licensee or certificate holder:

(a) Is guilty of fraud or deceit in procuring or attempting to procure a license or certificate pursuant to this chapter.

(b) Is guilty of any offense:

(1) Involving moral turpitude; or

(2) Related to the qualifications, functions or duties of a licensee or holder of a certificate,

➔ in which case the record of conviction is conclusive evidence thereof.



(c) Has been convicted of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.

(d) Is unfit or incompetent by reason of gross negligence or recklessness in carrying out usual nursing functions.

(e) Uses any controlled substance, dangerous drug as defined in chapter 454 of NRS, or intoxicating liquor to an extent or in a manner which is dangerous or injurious to any other person or which impairs his or her ability to conduct the practice authorized by the license or certificate.

(f) Is a person with mental incompetence.

(g) Is guilty of unprofessional conduct, which includes, but is not limited to, the following:

(1) Conviction of practicing medicine without a license in violation of chapter 630 of NRS, in which case the record of conviction is conclusive evidence thereof.

(2) Impersonating any applicant or acting as proxy for an applicant in any examination required pursuant to this chapter for the issuance of a license or certificate.

(3) Impersonating another licensed practitioner or holder of a certificate.

(4) Permitting or allowing another person to use his or her license or certificate to practice as a licensed practical nurse, registered nurse or nursing assistant.

(5) Repeated malpractice, which may be evidenced by claims of malpractice settled against the licensee or certificate holder.

(6) Physical, verbal or psychological abuse of a patient.

(7) Conviction for the use or unlawful possession of a controlled substance or dangerous drug as defined in chapter 454 of NRS.

(h) Has willfully or repeatedly violated the provisions of this chapter. The voluntary surrender of a license or certificate issued pursuant to this chapter is prima facie evidence that the licensee or certificate holder has committed or expects to commit a violation of this chapter.

(i) Is guilty of aiding or abetting any person in a violation of this chapter.

(j) Has falsified an entry on a patient's medical chart concerning a controlled substance.

(k) Has falsified information which was given to a physician, pharmacist, podiatric physician or dentist to obtain a controlled substance.

(l) *Has knowingly procured or administered a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug*



*Administration, unless the unapproved controlled substance or dangerous drug:*

*(1) Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;*

*(2) Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or*

*(3) Is marijuana being used for medical purposes in accordance with chapter 453A of NRS.*

*(m)* Has been disciplined in another state in connection with a license to practice nursing or a certificate to practice as a nursing assistant or has committed an act in another state which would constitute a violation of this chapter.

~~[(m)]~~ *(n)* Has engaged in conduct likely to deceive, defraud or endanger a patient or the general public.

~~[(n)]~~ *(o)* Has willfully failed to comply with a regulation, subpoena or order of the Board.

~~[(o)]~~ *(p)* Has operated a medical facility at any time during which:

(1) The license of the facility was suspended or revoked; or

(2) An act or omission occurred which resulted in the suspension or revocation of the license pursuant to NRS 449.160.

➤ This paragraph applies to an owner or other principal responsible for the operation of the facility.

2. For the purposes of this section, a plea or verdict of guilty or guilty but mentally ill or a plea of nolo contendere constitutes a conviction of an offense. The Board may take disciplinary action pending the appeal of a conviction.

**Sec. 4.** NRS 633.511 is hereby amended to read as follows:

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

1. Unprofessional conduct.

2. Conviction of:

(a) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS;

(b) A felony relating to the practice of osteopathic medicine;

(c) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;

(d) Murder, voluntary manslaughter or mayhem;

(e) Any felony involving the use of a firearm or other deadly weapon;

(f) Assault with intent to kill or to commit sexual assault or mayhem;



(g) Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;

(h) Abuse or neglect of a child or contributory delinquency; or

(i) Any offense involving moral turpitude.

3. The suspension of the license to practice osteopathic medicine by any other jurisdiction.

4. Malpractice or gross malpractice, which may be evidenced by a claim of malpractice settled against a practitioner.

5. Professional incompetence.

6. Failure to comply with the requirements of NRS 633.527.

7. Failure to comply with the requirements of subsection 3 of NRS 633.471.

8. Failure to comply with the provisions of NRS 633.694.

9. Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(a) The license of the facility is suspended or revoked; or

(b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➔ This subsection applies to an owner or other principal responsible for the operation of the facility.

10. Failure to comply with the provisions of subsection 2 of NRS 633.322.

11. Signing a blank prescription form.

12. *Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:*

(a) *Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;*

(b) *Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or*

(c) *Is marijuana being used for medical purposes in accordance with chapter 453A of NRS.*

13. Attempting, directly or indirectly, by intimidation, coercion or deception, to obtain or retain a patient or to discourage the use of a second opinion.

~~13.1~~ 14. Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient.

~~14.1~~ 15. In addition to the provisions of subsection 3 of NRS 633.524, making or filing a report which the licensee knows to be false, failing to file a record or report that is required by law or



1 willfully obstructing or inducing another to obstruct the making or  
2 filing of such a record or report.

3 ~~[15.]~~ 16. Failure to report any person the licensee knows, or  
4 has reason to know, is in violation of the provisions of this chapter  
5 or the regulations of the Board within 30 days after the date the  
6 licensee knows or has reason to know of the violation.

7 ~~[16.]~~ 17. Failure by a licensee or applicant to report in writing,  
8 within 30 days, any criminal action taken or conviction obtained  
9 against the licensee or applicant, other than a minor traffic violation,  
10 in this State or any other state or by the Federal Government, a  
11 branch of the Armed Forces of the United States or any local or  
12 federal jurisdiction of a foreign country.

13 ~~[17.]~~ 18. Engaging in any act that is unsafe in accordance with  
14 regulations adopted by the Board.

15 **Sec. 5.** NRS 635.130 is hereby amended to read as follows:

16 635.130 1. The Board, after notice and a hearing as required  
17 by law, and upon any cause enumerated in subsection 2, may take  
18 one or more of the following disciplinary actions:

19 (a) Deny an application for a license or refuse to renew a  
20 license.

21 (b) Suspend or revoke a license.

22 (c) Place a licensee on probation.

23 (d) Impose a fine not to exceed \$5,000.

24 2. The Board may take disciplinary action against a licensee for  
25 any of the following causes:

26 (a) The making of a false statement in any affidavit required of  
27 the applicant for application, examination or licensure pursuant to  
28 the provisions of this chapter.

29 (b) Lending the use of the holder's name to an unlicensed  
30 person.

31 (c) If the holder is a podiatric physician, permitting an  
32 unlicensed person in his or her employ to practice as a podiatry  
33 hygienist.

34 (d) Habitual indulgence in the use of alcohol or any controlled  
35 substance which impairs the intellect and judgment to such an extent  
36 as in the opinion of the Board incapacitates the holder in the  
37 performance of his or her professional duties.

38 (e) Conviction of a crime involving moral turpitude.

39 (f) Conviction of violating any of the provisions of NRS  
40 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440,  
41 inclusive.

42 (g) Conduct which in the opinion of the Board disqualifies the  
43 licensee to practice with safety to the public.

44 (h) The commission of fraud by or on behalf of the licensee  
45 regarding his or her license or practice.



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- 1 (i) Gross incompetency.
- 2 (j) Affliction of the licensee with any mental or physical
- 3 disorder which seriously impairs his or her competence as a
- 4 podiatric physician or podiatry hygienist.
- 5 (k) False representation by or on behalf of the licensee regarding
- 6 his or her practice.
- 7 (l) Unethical or unprofessional conduct.
- 8 (m) Willful or repeated violations of this chapter or regulations
- 9 adopted by the Board.
- 10 (n) Willful violation of the regulations adopted by the State
- 11 Board of Pharmacy.
- 12 (o) *Knowingly procuring or administering a controlled*
- 13 *substance or a dangerous drug as defined in chapter 454 of NRS*
- 14 *that is not approved by the United States Food and Drug*
- 15 *Administration, unless the unapproved controlled substance or*
- 16 *dangerous drug:*
- 17 *(1) Was procured through a retail pharmacy licensed*
- 18 *pursuant to chapter 639 of NRS;*
- 19 *(2) Was procured through a Canadian pharmacy which is*
- 20 *licensed pursuant to chapter 639 of NRS and which has been*
- 21 *recommended by the State Board of Pharmacy pursuant to*
- 22 *subsection 4 of NRS 639.2328; or*
- 23 *(3) Is marijuana being used for medical purposes in*
- 24 *accordance with chapter 453A of NRS.*
- 25 (p) Operation of a medical facility, as defined in NRS 449.0151,
- 26 at any time during which:
- 27 (1) The license of the facility is suspended or revoked; or
- 28 (2) An act or omission occurs which results in the suspension
- 29 or revocation of the license pursuant to NRS 449.160.
- 30 ➔ This paragraph applies to an owner or other principal responsible
- 31 for the operation of the facility.
- 32 **Sec. 6.** NRS 636.295 is hereby amended to read as follows:
- 33 636.295 The following acts, conduct, omissions, or mental or
- 34 physical conditions, or any of them, committed, engaged in,
- 35 omitted, or being suffered by a licensee, constitute sufficient cause
- 36 for disciplinary action:
- 37 1. Affliction of the licensee with any communicable disease
- 38 likely to be communicated to other persons.
- 39 2. Commission by the licensee of a felony relating to the
- 40 practice of optometry or a gross misdemeanor involving moral
- 41 turpitude of which the licensee has been convicted and from which
- 42 he or she has been sentenced by a final judgment of a federal or
- 43 state court in this or any other state, the judgment not having been
- 44 reversed or vacated by a competent appellate court and the offense
- 45 not having been pardoned by executive authority.



3. Conviction of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive.

4. Commission of fraud by or on behalf of the licensee in obtaining a license or a renewal thereof, or in practicing optometry thereunder.

5. Habitual drunkenness or addiction to any controlled substance.

6. Gross incompetency.

7. Affliction with any mental or physical disorder or disturbance seriously impairing his or her competency as an optometrist.

8. Making false or misleading representations, by or on behalf of the licensee, with respect to optometric materials or services.

9. Practice by the licensee, or attempting or offering so to do, while in an intoxicated condition.

10. Perpetration of unethical or unprofessional conduct in the practice of optometry.

11. *Knowingly procuring or administering a controlled substance or a dangerous drug as defined in chapter 454 of NRS that is not approved by the United States Food and Drug Administration, unless the unapproved controlled substance or dangerous drug:*

(a) *Was procured through a retail pharmacy licensed pursuant to chapter 639 of NRS;*

(b) *Was procured through a Canadian pharmacy which is licensed pursuant to chapter 639 of NRS and which has been recommended by the State Board of Pharmacy pursuant to subsection 4 of NRS 639.2328; or*

(c) *Is marijuana being used for medical purposes in accordance with chapter 453A of NRS.*

12. Any violation of the provisions of this chapter or any regulations adopted pursuant thereto.

~~12.~~ 13. Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

(a) The license of the facility is suspended or revoked; or

(b) An act or omission occurs which results in the suspension or revocation of the license pursuant to NRS 449.160.

➤ This subsection applies to an owner or other principal responsible for the operation of the facility.

**Sec. 7.** (Deleted by amendment.)

**Sec. 8.** (Deleted by amendment.)

