

Amendment No. 660

Assembly Amendment to Senate Bill No. 199 First Reprint (BDR 15-504)

Proposed by: Assembly Committee on Judiciary

Amends: Summary: No Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____	Adopted	<input type="checkbox"/>	Lost	<input type="checkbox"/>	_____
Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Concurred In	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____
Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____	Receded	<input type="checkbox"/>	Not	<input type="checkbox"/>	_____

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 underlining* is newly added transitory language.

VMS/BAW



Date: 5/19/2013

S.B. No. 199—Makes it a felony to perform certain medical procedures without a license. (BDR 15-504)



SENATE BILL NO. 199—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE LEGISLATIVE COMMITTEE
ON HEALTH CARE)

FEBRUARY 28, 2013

Referred to Committee on Judiciary

SUMMARY—Makes it a felony to perform certain medical procedures without a license. (BDR 15-504)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: Yes.

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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 crimes; making it a felony to perform certain health care procedures or surgical procedures without a license; revising the provision defining when a person is deemed to be practicing dentistry; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires various medical professionals to be licensed to practice in this State (Chapters 630-637, 639 and 640 of NRS) **Sections 5 and 6** of this bill make it a felony to perform certain health care procedures or surgical procedures without a license and set forth specific penalties for engaging in such unlawful conduct.

Sections ~~7-18~~ 7-9 and 10-18 of this bill amend various provisions of existing law which impose penalties for the practice of certain medical professions without a license to specify that if the provisions of **section 5 or 6** provide a greater penalty for engaging in the unlawful conduct, the greater penalty must apply. Section 9.5 of this bill revises the provision defining when a person is deemed to be practicing dentistry.

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

Section 1. Chapter 200 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 6, inclusive, of this act.

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

Sec. 3. *“Health care procedure” means any medical procedure, other than a surgical procedure, that requires a license to perform pursuant to chapters 630 to 637, inclusive, 639 or 640 of NRS.*

1 **Sec. 4.** *“Surgical procedure” means any invasive medical procedure where*
2 *a break in the skin is created and there is contact with the mucosa or any*
3 *minimally invasive medical procedure where a break in the skin is created or*
4 *which involves manipulation of the internal body cavity beyond a natural or*
5 *artificial body orifice which requires a license to perform pursuant to chapters*
6 *630 to 637, inclusive, 639 or 640 of NRS.*

7 **Sec. 5.** *A person who performs a health care procedure on another person*
8 *without a license which results in:*

9 1. *Substantial bodily harm other than death to the person who received the*
10 *procedure:*

11 (a) *For a first offense, is guilty of a category C felony and shall be punished*
12 *as provided in NRS 193.130.*

13 (b) *For any subsequent offense, is guilty of a category B felony and shall be*
14 *punished by imprisonment in the state prison for a minimum term of not less*
15 *than 2 years and a maximum term of not more than 20 years and shall be further*
16 *punished by a fine of not less than \$2,000 but not more than \$5,000.*

17 2. *The death of the person who received the procedure, unless a greater*
18 *penalty is provided by statute, is guilty of a category B felony and shall be*
19 *punished by imprisonment in the state prison for a minimum term of not less*
20 *than 2 years and a maximum term of not more than 20 years and shall be further*
21 *punished by a fine of not less than \$2,000 but not more than \$5,000. A sentence*
22 *imposed pursuant to this subsection may not be suspended nor may probation be*
23 *granted.*

24 **Sec. 6.** *A person who performs a surgical procedure on another person*
25 *without a license which results in:*

26 1. *No substantial bodily harm to the person who received the procedure:*

27 (a) *For a first offense, is guilty of a category C felony and shall be punished*
28 *as provided in NRS 193.130.*

29 (b) *For a second or subsequent offense, is guilty of a category B felony and*
30 *shall be punished by imprisonment in the state prison for a minimum term of not*
31 *less than 2 years and a maximum term of not more than 20 years and shall be*
32 *further punished by a fine of not less than \$2,000 but not more than \$5,000.*

33 2. *Substantial bodily harm other than death to the person who received the*
34 *procedure is guilty of a category B felony and shall be punished by imprisonment*
35 *in the state prison for a minimum term of not less than 2 years and a maximum*
36 *term of not more than 20 years and shall be further punished by a fine of not less*
37 *than \$2,000 but not more than \$5,000.*

38 3. *The death of the person who received the procedure, unless a greater*
39 *penalty is provided by statute, is guilty of a category B felony and shall be*
40 *punished by imprisonment in the state prison for a minimum term of not less*
41 *than 2 years and a maximum term of not more than 20 years and shall be further*
42 *punished by a fine of not less than \$2,000 but not more than \$5,000. A sentence*
43 *imposed pursuant to this subsection may not be suspended nor may probation be*
44 *granted.*

45 **Sec. 7.** NRS 630.400 is hereby amended to read as follows:

46 630.400 A person who:

47 1. Presents to the Board as his or her own the diploma, license or credentials
48 of another;

49 2. Gives either false or forged evidence of any kind to the Board;

50 3. Practices medicine, perfusion or respiratory care under a false or assumed
51 name or falsely personates another licensee;

52 4. Except as otherwise provided by a specific statute, practices medicine,
53 perfusion or respiratory care without being licensed under this chapter;

5. Holds himself or herself out as a perfusionist or uses any other term indicating or implying that he or she is a perfusionist without being licensed by the Board;

6. Holds himself or herself out as a physician assistant or uses any other term indicating or implying that he or she is a physician assistant without being licensed by the Board; or

7. Holds himself or herself out as a practitioner of respiratory care or uses any other term indicating or implying that he or she is a practitioner of respiratory care without being licensed by the Board,

➤ is guilty of a category D felony and shall be punished as provided in NRS 193.130 ~~+~~, *unless a greater penalty is provided pursuant to section 5 or 6 of this act.*

Sec. 8. NRS 630A.590 is hereby amended to read as follows:

630A.590 A person who:

1. Presents to the Board as his or her own the diploma, license, certificate or credentials of another;

2. Gives either false or forged evidence of any kind to the Board;

3. Practices homeopathic medicine under a false or assumed name; or

4. Except as otherwise provided in NRS 629.091, *or unless a greater penalty is provided pursuant to section 5 or 6 of this act*, practices homeopathic medicine without being licensed or certified under this chapter,

➤ is guilty of a category D felony and shall be punished as provided in NRS 193.130.

Sec. 9. NRS 630A.600 is hereby amended to read as follows:

630A.600 Except as otherwise provided in NRS 629.091, a person who practices homeopathic medicine without a license or certificate issued pursuant to this chapter is guilty of a category D felony and shall be punished as provided in NRS 193.130 ~~+~~, *unless a greater penalty is provided pursuant to section 5 or 6 of this act.*

Sec. 9.5. NRS 631.215 is hereby amended to read as follows:

631.215 1. Any person shall be deemed to be practicing dentistry who:

(a) Uses words or any letters or title in connection with his or her name which in any way represents the person as engaged in the practice of dentistry, or any branch thereof;

(b) Advertises or permits to be advertised by any medium that the person can or will attempt to perform dental operations of any kind;

(c) ~~Diagnoses,~~ Evaluates or diagnoses, professes to evaluate or diagnose or treats or professes to treat , surgically or nonsurgically, any of the diseases , disorders, conditions or lesions of the oral cavity, ~~teeth, gingiva or the supporting structures thereof,~~ maxillofacial area or the adjacent and associated structures and their impact on the human body.

(d) Extracts teeth;

(e) Corrects malpositions of the teeth or jaws;

(f) Takes impressions of the teeth, mouth or gums, unless the person is authorized by the regulations of the Board to engage in such activities without being a licensed dentist;

(g) Examines a person for, or supplies artificial teeth as substitutes for natural teeth;

(h) Places in the mouth and adjusts or alters artificial teeth;

(i) Does any practice included in the clinical dental curricula of accredited dental colleges or a residency program for those colleges;

(j) Administers or prescribes such remedies, medicinal or otherwise, as are needed in the treatment of dental or oral diseases;

(k) Uses X-ray radiation or laser radiation for dental treatment or dental diagnostic purposes, unless the person is authorized by the regulations of the Board to engage in such activities without being a licensed dentist;

(l) Determines:

(1) Whether a particular treatment is necessary or advisable; or

(2) Which particular treatment is necessary or advisable; or

(m) Dispenses tooth whitening agents or undertakes to whiten or bleach teeth by any means or method, unless the person is:

(1) Dispensing or using a product that may be purchased over the counter for a person's own use; or

(2) Authorized by the regulations of the Board to engage in such activities without being a licensed dentist.

2. Nothing in this section:

(a) Prevents a dental assistant, dental hygienist or qualified technician from making radiograms or X-ray exposures or using X-ray radiation or laser radiation for dental treatment or dental diagnostic purposes upon the direction of a licensed dentist.

(b) Prohibits the performance of mechanical work, on inanimate objects only, by any person employed in or operating a dental laboratory upon the written work authorization of a licensed dentist.

(c) Prevents students from performing dental procedures that are part of the curricula of an accredited dental school or college or an accredited school of dental hygiene or an accredited school of dental assisting.

(d) Prevents a licensed dentist or dental hygienist from another state or country from appearing as a clinician for demonstrating certain methods of technical procedures before a dental society or organization, convention or dental college or an accredited school of dental hygiene or an accredited school of dental assisting.

(e) Prohibits the manufacturing of artificial teeth upon receipt of a written authorization from a licensed dentist if the manufacturing does not require direct contact with the patient.

(f) Prohibits the following entities from owning or operating a dental office or clinic if the entity complies with the provisions of NRS 631.3452:

(1) A nonprofit corporation organized pursuant to the provisions of chapter 82 of NRS to provide dental services to rural areas and medically underserved populations of migrant or homeless persons or persons in rural communities pursuant to the provisions of 42 U.S.C. § 254b or 254c.

(2) A federally-qualified health center as defined in 42 U.S.C. § 1396d(l)(2)(B) operating in compliance with other applicable state and federal law.

(3) A nonprofit charitable corporation as described in section 501(c)(3) of the Internal Revenue Code and determined by the Board to be providing dental services by volunteer licensed dentists at no charge or at a substantially reduced charge to populations with limited access to dental care.

(g) Prevents a person who is actively licensed as a dentist in another jurisdiction from treating a patient if:

(1) The patient has previously been treated by the dentist in the jurisdiction in which the dentist is licensed;

(2) The dentist treats the patient only during a course of continuing education involving live patients which:

(I) Is conducted at an institute or organization with a permanent facility registered with the Board for the sole purpose of providing postgraduate continuing education in dentistry; and

(II) Meets all applicable requirements for approval as a course of continuing education; and

(3) The dentist treats the patient only under the supervision of a person licensed pursuant to NRS 631.2715.

(h) Prohibits a person from providing goods or services for the support of the business of a dental practice, office or clinic owned or operated by a licensed dentist or any entity not prohibited from owning or operating a dental practice, office or clinic if the person does not:

(1) Provide such goods or services in exchange for payments based on a percentage or share of revenues or profits of the dental practice, office or clinic; or

(2) Exercise any authority or control over the clinical practice of dentistry.

3. The Board shall adopt regulations identifying activities that constitute the exercise of authority or control over the clinical practice of dentistry, including, without limitation, activities which:

(a) Exert authority or control over the clinical judgment of a licensed dentist; or

(b) Relieve a licensed dentist of responsibility for the clinical aspects of the dental practice.

Such regulations must not prohibit or regulate aspects of the business relationship, other than the clinical practice of dentistry, between a licensed dentist or professional entity organized pursuant to the provisions of chapter 89 of NRS and the person or entity providing goods or services for the support of the business of a dental practice, office or clinic owned or operated by the licensed dentist or professional entity.

Sec. 10. NRS 631.400 is hereby amended to read as follows:

631.400 1. A person who engages in the illegal practice of dentistry in this State is guilty of a category D felony and shall be punished as provided in NRS 193.130 ~~+~~, *unless a greater penalty is provided pursuant to section 5 or 6 of this act.*

2. ~~+~~ *Unless a greater penalty is provided pursuant to section 5 or 6 of this act, a* person who practices or offers to practice dental hygiene in this State without a license, or who, having a license, practices dental hygiene in a manner or place not permitted by the provisions of this chapter:

(a) If it is his or her first or second offense, is guilty of a gross misdemeanor.

(b) If it is his or her third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

3. Unless a greater penalty is provided by specific statute, a person who is licensed to practice dentistry who practices dentistry in a manner or place not permitted by the provisions of this chapter:

(a) If it is his or her first or second offense, is guilty of a gross misdemeanor.

(b) If it is his or her third or subsequent offense, is guilty of a category D felony and shall be punished as provided in NRS 193.130.

4. The Board may assign a person described in subsection 1, 2 or 3 specific duties as a condition of renewing a license.

5. If a person has engaged or is about to engage in any acts or practices which constitute or will constitute an offense against this chapter, the district court of any county, on application of the Board, may issue an injunction or other appropriate order restraining the conduct. Proceedings under this subsection are governed by Rule 65 of the Nevada Rules of Civil Procedure, except that no bond or undertaking is required in any action commenced by the Board.

Sec. 11. NRS 632.315 is hereby amended to read as follows:

632.315 1. For the purposes of safeguarding life and health and maintaining high professional standards among nurses in this State, any person who practices or offers to practice nursing in this State shall submit evidence that he or she is qualified to practice and must be licensed as provided in this chapter.

2. Any person who:

(a) Practices or offers to practice nursing in this State or uses any title, abbreviation, sign, card or device to indicate that he or she is practicing nursing in this State unless that person has been licensed pursuant to the provisions of this chapter; or

(b) Does not hold a valid and subsisting license to practice nursing issued pursuant to the provisions of this chapter who practices or offers to practice in this State as a registered nurse, licensed practical nurse, graduate nurse, trained nurse, certified nurse or under any other title or designation suggesting that the person possesses qualifications and skill in the field of nursing,

is guilty of a misdemeanor **H**, *unless a greater penalty is provided pursuant to section 5 or 6 of this act.*

3. The Executive Director of the Board may, on behalf of the Board, issue an order to cease and desist to any person who practices or offers to practice nursing without a license issued pursuant to the provisions of this chapter.

4. The Executive Director of the Board shall forward to the appropriate law enforcement agency any information submitted to the Board concerning a person who practices or offers to practice nursing without a license issued pursuant to the provisions of this chapter.

Sec. 12. NRS 633.741 is hereby amended to read as follows:

633.741 A person who:

1. Except as otherwise provided in NRS 629.091, practices:

(a) Osteopathic medicine without a valid license to practice osteopathic medicine under this chapter;

(b) As a physician assistant without a valid license under this chapter; or

(c) Beyond the limitations ordered upon his or her practice by the Board or the court;

2. Presents as his or her own the diploma, license or credentials of another;

3. Gives either false or forged evidence of any kind to the Board or any of its members in connection with an application for a license;

4. Files for record the license issued to another, falsely claiming himself or herself to be the person named in the license, or falsely claiming himself or herself to be the person entitled to the license;

5. Practices osteopathic medicine or practices as a physician assistant under a false or assumed name or falsely personates another licensee of a like or different name;

6. Holds himself or herself out as a physician assistant or who uses any other term indicating or implying that he or she is a physician assistant, unless the person has been licensed by the Board as provided in this chapter; or

7. Supervises a person as a physician assistant before such person is licensed as provided in this chapter,

is guilty of a category D felony and shall be punished as provided in NRS 193.130 **H**, *unless a greater penalty is provided pursuant to section 5 or 6 of this act.*

Sec. 13. NRS 634.227 is hereby amended to read as follows:

634.227 1. A person who:

(a) Presents to the Board as his or her own the diploma, license or credentials of another;

(b) Gives false or forged evidence of any kind to the Board; or

(c) Practices chiropractic under a false or assumed name or falsely personates another licensee,

is guilty of a misdemeanor.

2. Except as otherwise provided in NRS 634.105 and 634.1375, a person who does not hold a license issued pursuant to this chapter and:

- (a) Practices chiropractic in this State;
- (b) Holds himself or herself out as a chiropractor;
- (c) Uses any combination, variation or abbreviation of the terms "chiropractor," "chiropractic" or "chiropractic physician" as a professional or commercial representation; or
- (d) Uses any means which directly or indirectly conveys to another person the impression that he or she is qualified or licensed to practice chiropractic,

➤ is guilty of a category D felony and shall be punished as provided in NRS 193.130 ***⚡, unless a greater penalty is provided pursuant to section 5 or 6 of this act.***

Sec. 14. NRS 634A.230 is hereby amended to read as follows:

634A.230 Any person who represents himself or herself as a practitioner of Oriental medicine, or any branch thereof, or who engages in the practice of Oriental medicine, or any branch thereof, in this State without holding a valid license issued by the Board is guilty of a gross misdemeanor ***⚡, unless a greater penalty is provided pursuant to section 5 or 6 of this act.***

Sec. 15. NRS 635.167 is hereby amended to read as follows:

635.167 Any person who:

1. Presents to the Board as his or her own the diploma, license or credentials of another;

2. Gives either false or forged evidence of any kind to the Board;

3. Practices podiatry under a false or assumed name or falsely personates another licensee;

4. Except as otherwise provided by specific statute, practices podiatry without being licensed under this chapter; or

5. Uses the title "D.P.M.," "Podiatrist," "Podiatric Physician," "Podiatric Physician-Surgeon" or "Physician-Surgeon D.P.M." when not licensed by the Board pursuant to this chapter, unless otherwise authorized by a specific statute,

➤ is guilty of a gross misdemeanor ***⚡, unless a greater penalty is provided pursuant to section 5 or 6 of this act.***

Sec. 16. NRS 636.410 is hereby amended to read as follows:

636.410 A violation of this chapter shall constitute a gross misdemeanor and shall be punishable as such ***⚡, unless a greater penalty is provided pursuant to section 5 or 6 of this act.***

Sec. 17. NRS 637.200 is hereby amended to read as follows:

637.200 The following acts constitute misdemeanors ***⚡, unless a greater penalty is provided pursuant to section 5 or 6 of this act:***

1. The insertion of a false or misleading statement in any advertising in connection with the business of ophthalmic dispensing.

2. Making use of any advertising statement of a character tending to indicate to the public the superiority of a particular system or type of eyesight examination or treatment.

3. Furnishing or advertising the furnishing of the services of a refractionist, optometrist, physician or surgeon.

4. Changing the prescription of a lens without an order from a person licensed to issue such a prescription.

5. Filling a prescription for a contact lens in violation of the expiration date or number of refills specified by the prescription.

6. Violating any provision of this chapter.

1 **Sec. 18.** NRS 639.285 is hereby amended to read as follows:
2 639.285 Any person not licensed by the Board, who sells, displays or offers
3 for sale any drug, device or poison, the sale of which is restricted to prescription
4 only or by a registered pharmacist or under his or her direct and immediate
5 supervision, is guilty of a misdemeanor ~~+~~, *unless a greater penalty is provided*
6 *pursuant to section 5 or 6 of this act.*