

SENATE BILL NO. 369—SENATORS KIECKHEFER AND HARDY

MARCH 18, 2013

JOINT SPONSORS: ASSEMBLYMEN EISEN AND OSCARSON

Referred to Committee on Commerce, Labor and Energy

SUMMARY—Revises provisions relating to telemedicine.
(BDR 54-972)

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

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to telemedicine; authorizing certain providers of health care to engage in telemedicine under certain circumstances; setting forth certain requirements concerning the practice of telemedicine; providing that authorization to engage in telemedicine does not modify, expand or alter the scope of practice of a provider of health care; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes doctors of osteopathic medicine to engage in telemedicine under certain circumstances. (NRS 633.165) **Section 2** of this bill defines "telemedicine" as the provision of health care through the synchronous or asynchronous transfer of medical data or information using interactive audio, video or data communication, other than through a standard telephone, facsimile transmission or electronic mail message, and **section 3** of this bill expands the authority to engage in telemedicine to any provider of health care who holds a valid license or certificate, including a physician licensed pursuant to chapter 630, 630A or 633 of NRS, physician assistant, dentist, licensed nurse, dispensing optician, optometrist, practitioner of respiratory care, registered physical therapist, podiatric physician, licensed psychologist, licensed marriage and family therapist, licensed clinical professional counselor, music therapist, chiropractor, athletic trainer, perfusionist, doctor of Oriental medicine, medical laboratory director or technician, pharmacist or licensed dietitian. **Section 3** sets forth certain requirements relating to the practice of telemedicine and further provides that authorization to engage in telemedicine does not modify, expand or alter the scope of practice of any provider of health care. **Section 4** of this bill provides that a health care licensing board may



* S B 3 6 9 *

18 seek an injunction against a person licensed or certified by the board who engages
19 in telemedicine without a valid license or certificate issued by the board.

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

1 **Section 1.** Chapter 629 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2, 3 and 4 of this act.

3 **Sec. 2.** *As used in this section and sections 3 and 4 of this*
4 *act, "telemedicine" means the provision of the health care services*
5 *that are within the scope of practice of a provider of health care*
6 *pursuant to the chapter of this title under which the provider of*
7 *health care is licensed or certified through the synchronous or*
8 *asynchronous transfer of medical data or information using*
9 *interactive audio, video or data communication, other than*
10 *through a standard telephone, facsimile transmission or electronic*
11 *mail message.*

12 **Sec. 3. 1.** *A provider of health care may engage in*
13 *telemedicine in this State if he or she possesses a valid license or*
14 *certificate to practice his or her profession in this State. If a*
15 *provider of health care engages in telemedicine with a patient who*
16 *is physically located in another state or territory of the United*
17 *States, the provider of health care shall, before engaging in*
18 *telemedicine with the patient, take any steps necessary to be*
19 *authorized, licensed or certified to practice his or her profession in*
20 *the other state or territory of the United States in which the patient*
21 *is physically located.*

22 **2.** *Except as otherwise provided in subsections 3 and 4, before*
23 *a provider of health care may engage in telemedicine pursuant to*
24 *this section:*

25 **(a)** *A bona fide relationship between the provider of health*
26 *care and the patient must exist which must include, without*
27 *limitation, a history and physical examination or consultation*
28 *which occurred in person and which was sufficient to establish a*
29 *diagnosis and identify any underlying medical conditions of the*
30 *patient.*

31 **(b)** *The provider of health care must obtain informed, written*
32 *consent from the patient or the legal representative of the patient*
33 *to engage in telemedicine with the patient. The provider of health*
34 *care shall maintain the consent form as part of the permanent*
35 *medical record of the patient.*

36 **(c)** *The provider of health care must inform the patient, both*
37 *orally and in writing:*



1 (1) That the patient or the legal representative of the patient
2 may withdraw the consent provided pursuant to paragraph (b) at
3 any time;

4 (2) Of the potential risks, consequences and benefits of
5 telemedicine;

6 (3) Whether the provider of health care has a financial
7 interest in the Internet website used to engage in telemedicine or
8 in the products or services provided to the patient via telemedicine;

9 (4) That the transmission of any confidential medical
10 information while engaged in telemedicine is subject to all
11 applicable federal and state laws with respect to the protection of
12 and access to confidential medical information; and

13 (5) That the provider of health care will not release any
14 confidential medical information without the express, written
15 consent of the patient or the legal representative of the patient.

16 3. A provider of health care is not required to comply with the
17 provisions of paragraph (a) of subsection 2 if the provider of
18 health care engages in telemedicine for the purposes of making a
19 diagnostic interpretation of a medical examination, study or test of
20 the patient.

21 4. A provider of health care is not required to comply with the
22 provisions of paragraph (a) or (c) of subsection 2 in an emergency
23 medical situation.

24 5. The provisions of this section must not be interpreted or
25 construed to:

26 (a) Modify, expand or alter the scope of practice of a provider
27 of health care authorized pursuant to the chapter of this title
28 under which the provider of health care is licensed or certified; or

29 (b) Authorize the provision of health care by a provider of
30 health care in a setting that is not authorized by law or in a
31 manner that violates the standard of care required of the provider
32 of health care pursuant to the chapter of this title under which the
33 provider of health care is licensed or certified.

34 **Sec. 4.** 1. A health care licensing board which licenses or
35 certifies a provider of health care pursuant to this title, through an
36 officer of the board or the Attorney General, may maintain in any
37 court of competent jurisdiction a suit for an injunction against a
38 provider of health care who is subject to the jurisdiction of the
39 health care licensing board and who engages in telemedicine
40 without a valid license or certificate issued by the health care
41 licensing board.

42 2. An injunction issued pursuant to subsection 1:

43 (a) May be issued without proof of actual damage sustained by
44 any person, this provision being a preventive as well as a punitive
45 measure.



(b) Must not relieve the provider of health care from criminal prosecution for practicing his or her profession without a valid license or certificate issued by the health care licensing board.

3. As used in this section, "health care licensing board" means a board created pursuant to chapter 630, 630A, 631, 632, 633, 634, 634A, 635, 636, 637, 639, 640, 640B, 640D, 640E, 641, 641A or 652 of NRS.

Sec. 5. 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 or practice as a physician assistant;

(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 a license to practice osteopathic medicine or to practice as a physician assistant by any other jurisdiction.

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

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.



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

3 11. Signing a blank prescription form.

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

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

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

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

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

19 14. Terminating the medical care of a patient without adequate
20 notice or without making other arrangements for the continued care
21 of the patient.

22 15. In addition to the provisions of subsection 3 of NRS
23 633.524, making or filing a report which the licensee knows to be
24 false, failing to file a record or report that is required by law or
25 willfully obstructing or inducing another to obstruct the making or
26 filing of such a record or report.

27 16. Failure to report any person the licensee knows, or has
28 reason to know, is in violation of the provisions of this chapter or
29 the regulations of the Board within 30 days after the date the
30 licensee knows or has reason to know of the violation.

31 17. Failure by a licensee or applicant to report in writing,
32 within 30 days, any criminal action taken or conviction obtained
33 against the licensee or applicant, other than a minor traffic violation,
34 in this State or any other state or by the Federal Government, a
35 branch of the Armed Forces of the United States or any local or
36 federal jurisdiction of a foreign country.

37 18. Engaging in any act that is unsafe in accordance with
38 regulations adopted by the Board.

39 19. Failure to comply with the provisions of ~~NRS 633.165~~
40 ***section 3 of this act.***

41 20. Failure to supervise adequately a medical assistant pursuant
42 to the regulations of the Board.



Sec. 6. NRS 633.711 is hereby amended to read as follows:

633.711 1. The Board, through an officer of the Board or the Attorney General, may maintain in any court of competent jurisdiction a suit for an injunction against any person ~~+~~:

~~—(a) Practicing~~ **practicing** osteopathic medicine or practicing as a physician assistant without a valid license to practice osteopathic medicine or to practice as a physician assistant. ~~+~~ ~~or~~

~~—(b) Engaging in telemedicine without a valid license pursuant to NRS 633.165.~~

2. An injunction issued pursuant to subsection 1:

(a) May be issued without proof of actual damage sustained by any person, this provision being a preventive as well as a punitive measure.

(b) Must not relieve such person from criminal prosecution for practicing without such a license.

Sec. 7. NRS 633.165 is hereby repealed.

TEXT OF REPEALED SECTION

633.165 Telemedicine: Requirements for practice; exceptions; scope.

1. An osteopathic physician may engage in telemedicine in this State if he or she possesses an unrestricted license to practice osteopathic medicine in this State pursuant to this chapter. If an osteopathic physician engages in telemedicine with a patient who is physically located in another state or territory of the United States, the osteopathic physician shall, before engaging in telemedicine with the patient, take any steps necessary to be authorized or licensed to practice osteopathic medicine in the other state or territory of the United States in which the patient is physically located.

2. Except as otherwise provided in subsections 3 and 4, before an osteopathic physician may engage in telemedicine pursuant to this section:

(a) A bona fide relationship between the osteopathic physician and the patient must exist which must include, without limitation, a history and physical examination or consultation which occurred in person and which was sufficient to establish a diagnosis and identify any underlying medical conditions of the patient.

(b) The osteopathic physician must obtain informed, written consent from the patient or the legal representative of the patient to engage in telemedicine with the patient. The osteopathic physician



* S B 3 6 9 *

shall maintain the consent form as part of the permanent medical record of the patient.

(c) The osteopathic physician must inform the patient, both orally and in writing:

(1) That the patient or the legal representative of the patient may withdraw the consent provided pursuant to paragraph (b) at any time;

(2) Of the potential risks, consequences and benefits of telemedicine;

(3) Whether the osteopathic physician has a financial interest in the Internet website used to engage in telemedicine or in the products or services provided to the patient via telemedicine;

(4) That the transmission of any confidential medical information while engaged in telemedicine is subject to all applicable federal and state laws with respect to the protection of and access to confidential medical information; and

(5) That the osteopathic physician will not release any confidential medical information without the express, written consent of the patient or the legal representative of the patient.

3. An osteopathic physician is not required to comply with the provisions of paragraph (a) of subsection 2 if the osteopathic physician engages in telemedicine for the purposes of making a diagnostic interpretation of a medical examination, study or test of the patient.

4. An osteopathic physician is not required to comply with the provisions of paragraph (a) or (c) of subsection 2 in an emergency medical situation.

5. The provisions of this section must not be interpreted or construed to:

(a) Modify, expand or alter the scope of practice of an osteopathic physician pursuant to this chapter; or

(b) Authorize the practice of osteopathic medicine or delivery of care by an osteopathic physician in a setting that is not authorized by law or in a manner that violates the standard of care required of an osteopathic physician pursuant to this chapter.

6. As used in this section, "telemedicine" means the practice of osteopathic medicine through the synchronous or asynchronous transfer of medical data or information using interactive audio, video or data communication, other than through a standard telephone, facsimile transmission or electronic mail message.

