

SENATE BILL NO. 101—SENATOR HARDY

PREFILED FEBRUARY 3, 2017

Referred to Committee on Health and Human Services

SUMMARY—Restricts the authority to administer botulinum toxin to certain medical professionals. (BDR 40-677)

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.

~

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

AN ACT relating to professions; revising provisions governing the administration of botulinum toxin by certain medical professionals; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law authorizes a medical assistant who is directed and supervised by a physician or physician assistant or a licensed dental hygienist who is directed and supervised by a dentist to possess and administer dangerous drugs under certain circumstances. (NRS 454.213) Existing law further requires the Board of Medical Examiners to adopt regulations governing the administration of botulinum toxin, commonly known as Botox, by a medical assistant or any person under the jurisdiction of the Board. (NRS 630.047, 630.138)

This bill revises provisions governing the administration of botulinum toxin. **Section 2** of this bill removes the requirement for the Board of Medical Examiners to adopt regulations governing the administration of botulinum toxin by a medical assistant and, instead, **section 1** of this bill prohibits medical assistants and licensed dental hygienists from administering botulinum toxin. **Sections 3 and 7** of this bill provide that a physician or osteopathic physician who delegates the administration of botulinum toxin to a medical assistant or otherwise allows a medical assistant to administer botulinum toxin is subject to disciplinary action by the Board of Medical Examiners or the State Board of Osteopathic Medicine, respectively. **Sections 4-6** of this bill: (1) prohibit a dentist from assigning the administration of botulinum toxin to any person other than a licensed dentist; (2) provide that a dentist is subject to disciplinary action by the Board of Dental Examiners of Nevada for assigning the administration of botulinum toxin to any person other than a licensed dentist or administering botulinum toxin outside the scope of the practice of dentistry; and



* S B 1 0 1 *

22 (3) provide that a dental hygienist is subject to disciplinary action by the Board of
23 Dental Examiners of Nevada for administering botulinum toxin.

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

1 **Section 1.** NRS 454.213 is hereby amended to read as follows:
2 454.213 1. A drug or medicine referred to in NRS 454.181 to
3 454.371, inclusive, may be possessed and administered by:

4 (a) A practitioner.

5 (b) ~~IA~~ *Except as otherwise provided in this paragraph, a*
6 physician assistant licensed pursuant to chapter 630 or 633 of NRS,
7 at the direction of his or her supervising physician or a licensed
8 dental hygienist acting in the office of and under the supervision of
9 a dentist. *A licensed dental hygienist shall not administer*
10 *botulinum toxin.*

11 (c) Except as otherwise provided in paragraph (d), a registered
12 nurse licensed to practice professional nursing or licensed practical
13 nurse, at the direction of a prescribing physician, physician assistant
14 licensed pursuant to chapter 630 or 633 of NRS, dentist, podiatric
15 physician or advanced practice registered nurse, or pursuant to a
16 chart order, for administration to a patient at another location.

17 (d) In accordance with applicable regulations of the Board, a
18 registered nurse licensed to practice professional nursing or licensed
19 practical nurse who is:

20 (1) Employed by a health care agency or health care facility
21 that is authorized to provide emergency care, or to respond to the
22 immediate needs of a patient, in the residence of the patient; and

23 (2) Acting under the direction of the medical director of that
24 agency or facility who works in this State.

25 (e) A medication aide - certified at a designated facility under
26 the supervision of an advanced practice registered nurse or
27 registered nurse and in accordance with standard protocols
28 developed by the State Board of Nursing. As used in this paragraph,
29 “designated facility” has the meaning ascribed to it in
30 NRS 632.0145.

31 (f) Except as otherwise provided in paragraph (g), an advanced
32 emergency medical technician or a paramedic, as authorized by
33 regulation of the State Board of Pharmacy and in accordance with
34 any applicable regulations of:

35 (1) The State Board of Health in a county whose population
36 is less than 100,000;

37 (2) A county board of health in a county whose population is
38 100,000 or more; or



* S B 1 0 1 *

(3) A district board of health created pursuant to NRS 439.362 or 439.370 in any county.

(g) An advanced emergency medical technician or a paramedic who holds an endorsement issued pursuant to NRS 450B.1975, under the direct supervision of a local health officer or a designee of the local health officer pursuant to that section.

(h) A respiratory therapist employed in a health care facility. The therapist may possess and administer respiratory products only at the direction of a physician.

(i) A dialysis technician, under the direction or supervision of a physician or registered nurse only if the drug or medicine is used for the process of renal dialysis.

(j) A medical student or student nurse in the course of his or her studies at an accredited college of medicine or approved school of professional or practical nursing, at the direction of a physician and:

(1) In the presence of a physician or a registered nurse; or

(2) Under the supervision of a physician or a registered nurse if the student is authorized by the college or school to administer the drug or medicine outside the presence of a physician or nurse.

➔ A medical student or student nurse may administer a dangerous drug in the presence or under the supervision of a registered nurse alone only if the circumstances are such that the registered nurse would be authorized to administer it personally.

(k) Any person designated by the head of a correctional institution.

(l) An ultimate user or any person designated by the ultimate user pursuant to a written agreement.

(m) A nuclear medicine technologist, at the direction of a physician and in accordance with any conditions established by regulation of the Board.

(n) A radiologic technologist, at the direction of a physician and in accordance with any conditions established by regulation of the Board.

(o) A chiropractic physician, but only if the drug or medicine is a topical drug used for cooling and stretching external tissue during therapeutic treatments.

(p) A physical therapist, but only if the drug or medicine is a topical drug which is:

(1) Used for cooling and stretching external tissue during therapeutic treatments; and

(2) Prescribed by a licensed physician for:

(I) Iontophoresis; or

(II) The transmission of drugs through the skin using ultrasound.



(q) In accordance with applicable regulations of the State Board of Health, an employee of a residential facility for groups, as defined in NRS 449.017, pursuant to a written agreement entered into by the ultimate user.

(r) A veterinary technician or a veterinary assistant at the direction of his or her supervising veterinarian.

(s) In accordance with applicable regulations of the Board, a registered pharmacist who:

(1) Is trained in and certified to carry out standards and practices for immunization programs;

(2) Is authorized to administer immunizations pursuant to written protocols from a physician; and

(3) Administers immunizations in compliance with the "Standards for Immunization Practices" recommended and approved by the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(t) A registered pharmacist pursuant to written guidelines and protocols developed and approved pursuant to NRS 639.2809.

(u) A person who is enrolled in a training program to become a physician assistant licensed pursuant to chapter 630 or 633 of NRS, dental hygienist, advanced emergency medical technician, paramedic, respiratory therapist, dialysis technician, nuclear medicine technologist, radiologic technologist, physical therapist or veterinary technician if the person possesses and administers the drug or medicine in the same manner and under the same conditions that apply, respectively, to a physician assistant licensed pursuant to chapter 630 or 633 of NRS, dental hygienist, advanced emergency medical technician, paramedic, respiratory therapist, dialysis technician, nuclear medicine technologist, radiologic technologist, physical therapist or veterinary technician who may possess and administer the drug or medicine, and under the direct supervision of a person licensed or registered to perform the respective medical art or a supervisor of such a person.

(v) ~~IA~~ *Except as otherwise provided in this paragraph, a* medical assistant, in accordance with applicable regulations of the:

(1) Board of Medical Examiners, at the direction of the prescribing physician and under the supervision of a physician or physician assistant.

(2) State Board of Osteopathic Medicine, at the direction of the prescribing physician and under the supervision of a physician or physician assistant.

↪ *A medical assistant shall not administer botulinum toxin.*

2. As used in this section, "accredited college of medicine" has the meaning ascribed to it in NRS 453.375.



Sec. 2. NRS 630.138 is hereby amended to read as follows:

630.138 The Board ~~†~~

~~1. May~~ *may* adopt regulations governing the supervision of a medical assistant, including, without limitation, regulations which prescribe limitations on the possession and administration of a dangerous drug by a medical assistant.

~~†2. Shall adopt regulations governing the possession and administration of botulinum toxin, commonly known as Botox, by a medical assistant or any other person, including, without limitation:~~

~~(a) The qualifications and training required for administration; and~~

~~(b) The manner and place of administration.†~~

Sec. 3. NRS 630.306 is hereby amended to read as follows:

630.306 1. The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

(a) 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.

(b) Engaging in any conduct:

(1) Which is intended to deceive;

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

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

(c) 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.

(d) 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.

(e) 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.

(f) 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.

(g) 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.

(h) Habitual intoxication from alcohol or dependency on controlled substances.



(i) 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.

(j) Failing to comply with the requirements of NRS 630.254.

(k) 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.

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

(m) Failure to be found competent to practice medicine as a result of an examination to determine medical competency pursuant to NRS 630.318.

(n) Operation of a medical facility at any time during which:

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

(2) An act or omission occurs which results 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.

(o) Failure to comply with the requirements of NRS 630.373.

(p) Engaging in any act that is unsafe or unprofessional conduct in accordance with regulations adopted by the Board.

(q) Knowingly or willfully 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:

(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;

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

(4) Is an investigational drug or biological product prescribed to a patient pursuant to NRS 630.3735 or 633.6945.

(r) Failure to supervise adequately a medical assistant pursuant to the regulations of the Board **H**, *including, without limitation, delegating the administration of botulinum toxin to a medical*



1 *assistant or otherwise allowing a medical assistant to administer*
2 *botulinum toxin.*

3 (s) Failure to comply with the provisions of NRS 630.3745.

4 (t) Failure to obtain any training required by the Board pursuant
5 to NRS 630.2535.

6 2. As used in this section, "investigational drug or biological
7 product" has the meaning ascribed to it in NRS 454.351.

8 **Sec. 4.** NRS 631.313 is hereby amended to read as follows:

9 631.313 1. A licensed dentist may assign to a person in his or
10 her employ who is a dental hygienist, dental assistant or other
11 person directly or indirectly involved in the provision of dental care
12 only such intraoral tasks as may be permitted by a regulation of the
13 Board or by the provisions of this chapter.

14 2. The performance of these tasks must be:

15 (a) If performed by a dental assistant or a person, other than a
16 dental hygienist, who is directly or indirectly involved in the
17 provision of dental care, under the supervision of the licensed
18 dentist who made the assignment.

19 (b) If performed by a dental hygienist, authorized by the
20 licensed dentist of the patient for whom the tasks will be performed,
21 except as otherwise provided in NRS 631.287.

22 3. No such assignment is permitted that requires:

23 (a) The diagnosis, treatment planning, prescribing of drugs or
24 medicaments, or authorizing the use of restorative, prosthodontic or
25 orthodontic appliances.

26 (b) Surgery on hard or soft tissues within the oral cavity or any
27 other intraoral procedure that may contribute to or result in an
28 irremediable alteration of the oral anatomy.

29 (c) The administration of general anesthesia, minimal sedation,
30 moderate sedation or deep sedation except as otherwise authorized
31 by regulations adopted by the Board.

32 (d) *The administration of botulinum toxin.*

33 (e) The performance of a task outside the authorized scope of
34 practice of the employee who is being assigned the task.

35 4. A dental hygienist may, pursuant to regulations adopted by
36 the Board, administer local anesthesia or nitrous oxide in a health
37 care facility, as defined in NRS 162A.740, if:

38 (a) The dental hygienist is so authorized by the licensed dentist
39 of the patient to whom the local anesthesia or nitrous oxide is
40 administered; and

41 (b) The health care facility has licensed medical personnel and
42 necessary emergency supplies and equipment available when the
43 local anesthesia or nitrous oxide is administered.



* S B 1 0 1 *

Sec. 5. NRS 631.346 is hereby amended to read as follows:

631.346 The following acts, among others, constitute unprofessional conduct:

1. Employing, directly or indirectly, any student or any suspended or unlicensed dentist or dental hygienist to perform operations of any kind to treat or correct the teeth or jaws, except as provided in this chapter;

2. Except as otherwise provided in NRS 631.287, giving a public demonstration of methods of practice any place other than the office where the licensee is known to be regularly engaged in this practice;

3. Employing, procuring, inducing, aiding or abetting a person not licensed or registered as a dentist to engage in the practice of dentistry, but a patient shall not be deemed to be an accomplice, employer, procurer, inducer, aider or abettor;

4. *Assigning a person other than a licensed dentist to administer botulinum toxin in violation of paragraph (d) of subsection 3 of NRS 631.313;*

5. For a dental hygienist, practicing in any place not authorized pursuant to this chapter; or

~~5-1~~ 6. Practicing while a license is suspended or without a renewal certificate.

Sec. 6. NRS 631.3475 is hereby amended to read as follows:

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

1. Malpractice;

2. Professional incompetence;

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

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

5. Administering, dispensing or prescribing any controlled substance or any dangerous drug as defined in chapter 454 of NRS, 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



* S B 1 0 1 *

1 recommended by the State Board of Pharmacy pursuant to
2 subsection 4 of NRS 639.2328; or

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

5 7. *Administering botulinum toxin outside the scope of the*
6 *practice of dentistry;*

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

11 ~~8.1~~ 9. Conviction of a felony or misdemeanor involving moral
12 turpitude or which relates to the practice of dentistry in this State, or
13 conviction of any criminal violation of this chapter;

14 ~~9.1~~ 10. Conviction of violating any of the provisions of NRS
15 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440,
16 inclusive;

17 ~~10.1~~ 11. Failure to comply with the provisions of NRS
18 453.163 or 453.164;

19 ~~11.1~~ 12. Failure to obtain any training required by the Board
20 pursuant to NRS 631.344; or

21 ~~12.1~~ 13. Operation of a medical facility, as defined in NRS
22 449.0151, at any time during which:

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

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

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

28 *14. For a dental hygienist, administering botulinum toxin.*

29 **Sec. 7.** NRS 633.511 is hereby amended to read as follows:

30 633.511 1. The grounds for initiating disciplinary action
31 pursuant to this chapter are:

32 (a) Unprofessional conduct.

33 (b) Conviction of:

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

37 (2) A felony relating to the practice of osteopathic medicine
38 or practice as a physician assistant;

39 (3) A violation of any of the provisions of NRS 616D.200,
40 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive;

41 (4) Murder, voluntary manslaughter or mayhem;

42 (5) Any felony involving the use of a firearm or other deadly
43 weapon;

44 (6) Assault with intent to kill or to commit sexual assault or
45 mayhem;



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

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

(9) Any offense involving moral turpitude.

(c) The suspension of a license to practice osteopathic medicine or to practice as a physician assistant by any other jurisdiction.

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

(e) Professional incompetence.

(f) Failure to comply with the requirements of NRS 633.527.

(g) Failure to comply with the requirements of subsection 3 of NRS 633.471.

(h) Failure to comply with the provisions of NRS 633.694.

(i) Operation of a medical facility, as defined in NRS 449.0151, at any time during which:

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

(2) An act or omission occurs which results 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.

(j) Failure to comply with the provisions of subsection 2 of NRS 633.322.

(k) Signing a blank prescription form.

(l) Knowingly or willfully 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:

(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;

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

(4) Is an investigational drug or biological product prescribed to a patient pursuant to NRS 630.3735 or 633.6945.

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

(n) Terminating the medical care of a patient without adequate notice or without making other arrangements for the continued care of the patient.



(o) 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 knowingly or willfully obstructing or inducing another to obstruct the making or filing of such a record or report.

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

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

(r) Engaging in any act that is unsafe in accordance with regulations adopted by the Board.

(s) Failure to comply with the provisions of NRS 629.515.

(t) Failure to supervise adequately a medical assistant pursuant to the regulations of the Board **H**, *including, without limitation, delegating the administration of botulinum toxin to a medical assistant or otherwise allowing a medical assistant to administer botulinum toxin.*

(u) Failure to obtain any training required by the Board pursuant to NRS 633.473.

(v) Failure to comply with the provisions of NRS 633.6955.

(w) Failure to comply with the provisions of NRS 453.163 or 453.164.

2. As used in this section, "investigational drug or biological product" has the meaning ascribed to it in NRS 454.351.

Sec. 8. This act becomes effective on July 1, 2017.

