

SENATE COMMITTEE ON HUMAN
RESOURCES AND FACILITIES

APRIL 26, 1977

The meeting was called to order at 9:05 A.M. on Tuesday, April 26, 1977, in Room 323, with Senator Jack Schofield in the Chair.

PRESENT: Chairman Jack Schofield
Vice-Chairman Joe Neal
Senator William Raggio
Senator Richard Blakemore
Senator Wilbur Faiss
Senator William Hernstadt

GUESTS: William Isaeff, A.B. 245
Richard Pugh, Nevada State Medical Association
Ned Soloman, Clark County Juvenile Court
Fran Green, Nevada Banker's Association

A.B. 741

Chairman Schofield asked the Committee to be alerted that this bill was processed by the Assembly Committee on Ways and Means and is an exact duplicate of S.B. 94 which was "killed" by this same Committee.

A.B. 245 (Exhibit "A")

Mr. William Isaeff said that on Page Two, Lines 23-28, this would reinstitute in the law the requirement that the Commissioner of Veteran's Affairs serves as guardian to numerous veterans and minor dependents of veterans in Nevada and that the Commissioner execute and deliver to the Secretary of State his official bond in the penal sum of \$500,000 with a corporate surety licensed to do business in this State, conditioned to insure his faithful discharge of responsibilities...A separate bond for each estate is not required.

Senator Faiss: Motion for Do Pass of A.B. 245
Senator Blakemore: 2nd the Motion

The Motion passed. (Senator Hernstadt - Absent)

A.B. 559

Mr. Richard Pugh of the Nevada State Medical Association submitted a written statement to the Committee, (Exhibit "B").

Senator Hernstadt asked why don't they put the Hippocratic Oath into the statutes? Mr. Pugh said that a law is not necessary when the subject is already encompassed by that particular professions' code of ethics.

Senator Neal: Motion to Do Pass A.B. 559
Senator Faiss: 2nd the Motion

Discussion:

Senator Raggio said that he will not vote, but he wished to comment. "I do not see the necessity, and I do not represent any medical group, of writing in the rights with respect to medical practitioners. I am concerned that putting this into the statutes at this time is opening up some more area for medical malpractice... I have looked over the medical ethics regulations which are adopted by the Board of Medical Examiners, which Mr. Pugh presented to us, and if compared, they are more than adequate. A provision in this bill which gives a right to refuse treatment and the refusal must be in writing, is impractical. There are many cases where this is impossible...I question the need for this additional legislation."

No action was taken on A.B. 559.

(Senators Blakemore and Schofield voted "NO"; Senator Raggio "Abstain"; Senators Neal, Faiss and Hernstadt voted "YES")

A.B. 495

Senator Neal: Motion for Do Pass

--The Motion died for a lack of a 2nd --

Senator Raggio: Motion for Indefinite Postponement

--The Motion died for a lack of a 2nd --

A.B. 549 (Exhibit "C")

Senator Blakemore: Motion for Do Pass of A.B. 549
Senator Raggio: 2nd the Motion.

Discussion:

Senator Hernstadt was concerned that a person could lose their home because they did not pay for their garbage collection. Senator Blakemore said that this could be conceivable, but the amounts involved are very small.

The Motion passed. (Senators Neal and Hernstadt voted "NO")

A.B. 741 (Continued)

Mr. Ned Soloman of the Clark County Juvenile Court stated that Nevada is not ready for a Youth Authority and its bureaucracy.

Senator Raggio said that he understood that action has already been taken in Ways and Means to cut the two positions. Mr. Soloman said they have.

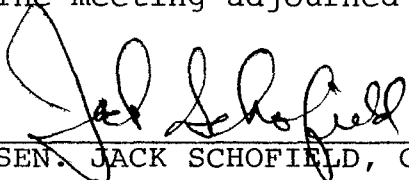
A.B. 549 (Continued)

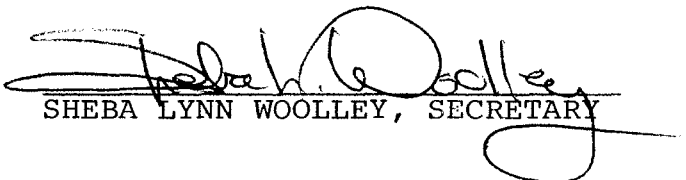
Mr. Fran Green of the Nevada Banker's Association said this is another lien against the property. Senator Blakemore commented that the wording in this bill (Page One, Line 8-9) is not as complete as that of a "Mechanic Lien".

Senator Raggio: Rescind previous action, and amend A.B. 549 to conform to the Mechanic's Lien law and re-refer to Judiciary.
Senator Blakemore: 2nd the Motion.

The Motion passed. (Senator Neal - Abstain)

The meeting adjourned at 9:41 a.m.


SEN. JACK SCHOFIELD, CHAIRMAN


SHEBA LYNN WOOLLEY, SECRETARY

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 245

ASSEMBLY BILL NO. 245—COMMITTEE ON
GOVERNMENT AFFAIRS

FEBRUARY 1, 1977

Referred to Committee on Government Affairs

SUMMARY—Exempts Nevada commissioner for veteran affairs from filing bond whenever he is appointed guardian for beneficiary of Veterans' Administration. (BDR 37-112)

FISCAL NOTE: Local Government Impact: No.
State or Industrial Insurance Impact: No.EXPLANATION—Matter in *italics* is new; matter in brackets [] is material to be omitted.

AN ACT relating to the Nevada commissioner for veteran affairs; providing for a single blanket bond; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 160.090 is hereby amended to read as follows:
 2 160.090 1. Before making an appointment under the provisions of
 3 this chapter the court shall [be satisfied] *establish to its satisfaction*
 4 that the person whose appointment as guardian is sought is a fit and
 5 proper person to be appointed.
 6 2. Upon the appointment being made the guardian shall, except as
 7 otherwise provided in this section, execute and file a bond to be approved
 8 by the court in an amount not less than the value of the personal property
 9 of the estate plus the anticipated annual income. Thereafter the amount
 10 of such bond shall be equal to the total value of the personal estate plus
 11 the annual income. The bond shall be in the form and be conditioned as
 12 required of guardians appointed under the provisions of chapter 159 of
 13 NRS. The premiums on all such bonds shall be paid from the estate.
 14 3. If a banking corporation [.] as defined in NRS 657.016, or
 15 a trust company [.] as defined by NRS 669.070, doing business in this
 16 state is appointed guardian of the estate of a ward, no bond [shall be] *is*
 17 required of such guardian unless the court by specific order requires [the
 18 same.] *a bond. If the Nevada commissioner for veteran affairs is*
 19 *appointed guardian, no bond is required.*
 20 4. If the court orders that the estate and income, or a part thereof,
 21 be deposited in a banking corporation, as defined in NRS 657.016, or
 22 trust company, as defined by NRS 669.070, doing business in this state

Original bill is 2 pages long.
Contact the Research Library for
a copy of the complete bill.

NEVADA STATE MEDICAL ASSOCIATION

JOHN W. CALLISTER, M.D., President
ROBERT L. BROWN, M.D., President-Elect
RICHARD C. INSKIP, M.D., Secretary-Treasurer
WILLIAM K. STEPHAN, M.D., Immediate Past President
C. NORMAN CHRISTENSEN, M.D., AMA Delegate
LEONARD H. RAIZIN, M.D., AMA Alternate Delegate

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850 E. Desert Inn Road, #802
Las Vegas, Nevada 89109

April 26, 1977

Hon. Jack Schofield, Chairman
SENATE HUMAN RESOURCES COMMITTEE
Nevada State Legislature
Carson City, Nevada 89710

Dear Senator Schofield:

Thank you for the opportunity to appear before your committee to discuss A.B. 559, the Patients' Rights Bill. Dr. John Sande, chairman of our Governmental Affairs Commission, testified in opposition to this bill when it was in the Assembly, and he has asked that I provide your committee with additional testimony today.

Briefly, you have before you a copy of the Hippocratic Oath which is administered to every physician when he or she is graduated from a medical school. Although the Oath was written hundreds of years ago, its principles are clear and valid today...

- a. to uphold the profession of medicine
- b. to strictly follow the precepts of the science of medicine
- c. to do no harm to a patient
- d. to consult with and refer to, when appropriate, a more specialized physician
- e. to maintain a high code of personal morality
- f. to maintain strict confidentiality

On a national level, the Joint Commission on Accreditation of Hospitals has established criteria under which physicians may be granted privileges to practice in a hospital. These criteria have been in use for long time and offer standardization of care to the patient. In a review of the recently updated JCAH regulations, the Journal of Legal Medicine found that many of the concepts embodied in A.B. 559 are and have been practiced by hospitals nationwide for many years.

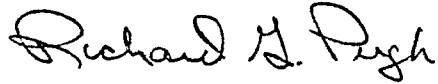
You also have before you the recently approved regulations concerning Principles of Medical Ethics. I submit that these regulations encompass the sentiment of A.B. 559.

Hon. Jack Schofield
April 26, 1977
Page Two

In summary, the Nevada State Medical Association believes that there is no need to place in the Nevada Revised Statutes a law that spells out what is and has been for many years the accepted code of practice by hospitals and physicians.

We urge the defeat of A.B. 559.

Sincerely,



RICHARD G. PUGH

RGP:d

HIPPOCRATIC OATH

I swear by Apollo, the physician, and Aesculapius, and Health, and All-Heal, and all the gods and goddesses, that according to my ability and judgment, I will keep this oath and this stipulation - to reckon him who taught me this Art equally dear to me as my parents, to share my substance with him, and relieve his necessities if required; to look upon his offspring in the same footing as my brothers, and to teach them this Art, if they shall wish to learn it, without fee or stipulation; and that by precept, lecture and every other mode of instruction, I will impart a knowledge of the Art to my own sons, and those of my teachers, and to disciples bound by a stipulation and oath according to the law of medicine, but to none others. I will follow that system or regimen which, according to my ability and judgment, I consider for the benefit of my patients, and abstain from whatever is deleterious and mischievous. I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner I will not give to any woman a pessary to produce abortion. With purity and with holiness I will pass my life and practice my Art. I will not cut persons laboring under the stone, but will leave this to be done by men who are practitioners of this work. In whatever houses I enter, I will go into them for the benefit of the sick, and will abstain from any voluntary act of mischief and corruption; and further from the seduction of females, or of males, of freemen and slaves. Whatever, in connection with my professional practice or not in connection with it, I see or hear, in the life of men, which might not be spoken of abroad, I will not divulge, as reckoning all should be kept secret. While I continue to keep this Oath unviolated, may it be granted me to enjoy life and the practice of the Art, respected by all men, in all times! But should I trespass and violate this Oath, may the reverse be my lot!

The New JCAH Standards: What Is Their Legal Standing?

*A look at
highlights
of the latest
edition of the
manual hospitals
consider the
'good book'*

IN A SENSE, JCAH accreditation is the Good Hospital Seal of Approval. The Joint Commission of Accreditation of Hospitals (JCAH) has since 1951 been dedicated to the development of national standards of structure, function, staffing, and procedure for hospital medicine. Its voluntary standards have fast become the "Good Book" of health care delivery. The JCAH venture, a multidisciplinary effort within the health care industry, has been an ongoing, dynamic, and self-critical task, ever directed toward providing and maintaining optimal quality patient care within the institution.

The 1976 edition of the Accreditation Manual for Hospitals¹ represents the fourth major revision in standards in six years. Included are sections on (1) the quality of professional services relating to standards for monitoring and evaluating the quality of patient care provided by hospitals' medical and other professional staffs; (2) patients' rights; (3) building and grounds safety, functional safety and sanitation, and infection control; (4) anesthesia services, medical records, nuclear medicine, and radiology.

As the site for delivery of health services continues to shift from the patient's home and the physician's office to the clinic or hospital facility, the JCAH standards are continually being revised to keep pace with new demands. The revisions reflect society's requirements and expectations of optimal health care delivery.

All areas of general and specialty medicine participate in promulgating the "optimal achievable standards" delineated by the JCAH manual. Few health care providers,

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tion faster than new pharmaceuticals can be developed. Moreover, older drugs must now meet the new requirements for higher kill or L.D. 50 doses (i.e., lethal dose for 50 per cent of the organisms). Understandably, the hospital has become a reservoir for virulent pathogens; monitoring the use of antibiotics will be essential in any successful program of microbe hunting.

Patients' Rights

Here, the general philosophy is reestablished that **"no person should be denied impartial access to treatment or accommodations that are available and medically indicated, on the basis of such considerations as race, color, creed, national origin, or the nature of the source of payment for his care."** Certain rights to privacy are assured every patient who enters a hospital or other health care facility. Representative agencies not connected with the facility or in any way, either directly or indirectly, involved in the patient's care are not permitted access to the patient himself or to patient information without the patient's permission, verbally or as evidenced by a properly executed release.

The individual's dignity and privacy of the body is, of course, reemphasized. All health care staff and personnel should be clearly identified and should identify themselves to the patient. The purpose of any approach to the patient should be clearly stated and should be understood and acceptable to the patient. While it may sound incredible, the wrong patient in a semiprivate room occasionally gets an unnecessary enema or, worse, the wrong medication.

It has become common knowledge that all patients within a medical school or other teaching facility are expected to participate to some extent in clinical teaching or in the gathering of research data. No patient, regardless of the source of payment for any care—service or private—is to be subjected, however, to such collateral procedures as may be personally demeaning or otherwise undesirable to the individual.

Informed consent is not specifically mentioned, presumably because the expression lacks precise definition. The manual states that "the patient has the right to communicate with those responsible for his care, and to receive from them *adequate information concerning the nature and extent of his medical problem, the planned course of treatment and the prognosis.*" This leaves to the courts to define what constitutes a valid informed consent to health care delivery in any dispute on this point.

The doctrine of informed consent has yet to be defined for universal application in American medical standards.

Much has been written about the doctrine,² pro and con, and while precise definition remains illusive, there is some general consensus. In principle, under this concept, every patient has a fundamental right to know and understand, in a general way, what is medically wrong; what the health care provider plans to do about it; what the potential risks of treatment are; what alternative measures exist, along with their potential risks; and, finally, the probable outcome if only the most conservative or "do nothing" procedures are elected. Case law is developing in some jurisdictions.³ These cases have established precedent, but no judicial decision based solely upon a lack of informed consent has yet been reported.

Until the matter of informed consent is settled, some simple rules may be followed in applying the basic requirements of the concept mentioned above. New and novel or experimental procedures should always be explained in depth. Consideration of risk/benefit ratios in planned and alternative treatments must be shared with the patient in a language he clearly understands. It should be remembered that, even among people who ostensibly speak English, cultural variations may have the effect of preventing meaningful communication. A patient's failure to ask questions or the trusting expres-

The manual recommends that hospitals employ interpreters if persons with different language backgrounds commonly come there for health care

sion on his face, while indicative of confidence in the physician, should not be construed as implying a full understanding of what was said.

The JCAH manual recommends that the hospitals employ interpreters wherever multilingual groups commonly use the facility. In screening applicants for hospital employment, multilingual persons obviously are to be preferred.

The person who is to provide the treatment should give the explanation and obtain the consent. This is not a ministerial function of nurses or other agents. It is the responsibility of each independent contractor in the health care team to obtain his own consent, especially when risk is associated with an area under his specific direction and control.

Procedures with a statistically significant incidence of complications require explanation in greater detail than do those with which complications are exceedingly rare. Never give a guarantee of outcome unless you can deliver. If promises are made, it would be prudent to put in writing what was promised and have the document

THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA
ADOPTED
REGULATIONS ESTABLISHING THE
PRINCIPLES OF MEDICAL ETHICS

AUTHORITY:

NRS 630.030 (5) defines, as a ground of unprofessional conduct the following:

“Engaging in any unethical or deceptive professional conduct or medical practice harmful to the public, in which proof of actual injury need not be established. The principles of medical ethics to be used as the basis for determining whether conduct is unethical shall be established by regulations of the board.”

The Board of Medical Examiners of the State of Nevada is authorized, pursuant to NRS 630.030 (5) and NRS 630.130, to adopt regulations regarding principles of medical ethics to be used as the basis for determining whether such conduct is unethical.

UNPROFESSIONAL CONDUCT REGULATIONS:

The violation of any of the following principles of medical ethics shall constitute unprofessional conduct:

1. A physician shall expose to the Board, without hesitation, illegal or unethical professional conduct by other physicians which is deemed harmful to the public.
2. A physician, having undertaken the care of a patient, may not neglect him and unless the physician has been discharged, he may discontinue his professional services only after giving adequate notice.
3. A physician shall seek consultation in doubtful or difficult cases or whenever it appears that the quality of medical services may be enhanced thereby. Furthermore, a physician should consent to consultation upon request of the patient or the patient's family.
4. A physician shall not falsify medical records or operative notes or records.
5. A physician shall not falsify hospital medical records so as to indicate his presence at a time when he was not in attendance, or falsify records to indicate procedures were performed by him which were in fact not performed by him.
6. A physician shall not engage in the practice of writing prescriptions for controlled substances, as defined in Chapter 453 of NRS, in such excessive amounts so as to constitute a departure from prevailing standards of acceptable medical practice.
7. A physician shall not consistently use medical procedures, services or treatments which constitute a departure from prevailing standards of acceptable medical practice but does not constitute gross malpractice or malpractice as defined by law.
8. A physician shall not render professional services to a patient while the physician is under the influence of alcohol or any controlled substance, as defined in Chapter 453 of NRS, or while in any impaired mental or physical condition.
9. A physician shall not acquire any controlled substances, as defined in Chapter 453 of NRS, from any pharmacy or other person by misrepresentation, fraud, deception or subterfuge.
10. A physician shall not write a prescription for controlled substances, as defined in Chapter 453 of NRS, for any person without an appropriate examination, which said examination shall confirm the medical necessity for such controlled substances.

11. A physician shall not receive any remuneration of any kind, directly or indirectly from any hospital for admitting a patient to said hospital.
12. A physician shall not receive any remuneration of any kind, directly or indirectly from any person or firm furnishing ancillary medical services to patients of the physician. Ancillary medical services include, but are not limited to, laboratory services, radiology, physiotherapy, pharmacy, or surgical and medical supply companies.
13. A physician shall not prescribe anabolic steroids to any person to increase muscle mass where not medically indicated.
14. A physician shall not make an unreasonable additional charge for laboratory tests, radiology services, or other testing services which are ordered by the physician and performed outside the physician's own office.
15. A physician shall not treat any patient with cancer with any drug or substance not recognized scientifically as being potentially beneficial, other than experimental drugs, substances or methods approved by the appropriate Federal agency.
16. A physician shall not prescribe or administer drugs for the purpose of weight control which have no scientific basis for the control of weight. The indiscriminate prescribing of amphetamines and the prescribing of chorionic gonadotrophic hormones for weight control are sufficiently hazardous to the health of the patient to make their use unethical.
17. A physician shall not administer irradiation for the treatment of cancer by a standard radiation source when a super voltage radiation source would be more beneficial.

EFFECTIVE DATE:

These Regulations shall be effective upon adoption by the Board and the filing thereof with the Secretary of State in conformity with NRS 233B.060 and 233B.070.

THE BOARD OF MEDICAL EXAMINERS
OF THE STATE OF NEVADA
ADOPTED
REGULATIONS ESTABLISHING THE GUIDELINES
RELATING TO
ADVERTISING THE PRACTICE OF MEDICINE

AUTHORITY:

NRS 630.030 (4) defines, as a ground of unprofessional conduct, the following:

“Advertising the practice of medicine in a manner which does not conform to the guidelines established by the Board.”

The Board of Medical Examiners of the State of Nevada is authorized, pursuant to NRS 630.030 (4) and NRS 630.130, to adopt regulations regarding advertising the practice of medicine.

(REPRINTED WITH ADOPTED AMENDMENTS)

FIRST REPRINT

A. B. 549

ASSEMBLY BILL NO. 549—ASSEMBLYMEN POLISH, GOODMAN, BARENGO, MOODY AND HORN

MARCH 28, 1977

Referred to Committee on Government Affairs

SUMMARY—Provides for property lien for unpaid waste collection charges. (BDR 40-1410)

FISCAL NOTE: Local Government Impact: No. State or Industrial Insurance Impact: No.

EXPLANATION—Matter in italics is new; matter in brackets [] is material to be omitted.

AN ACT relating to sanitation; providing a property lien for unpaid collection charges; providing for foreclosure after notice; and providing other matters properly relating thereto.

The People of the State of Nevada, represented in Senate and Assembly, do enact as follows:

- 1 SECTION 1. NRS 444.520 is hereby amended to read as follows:
- 2 444.520 1. The governing body of any municipality may, by ordi-
- 3 nance, provide for the levy and collection of fees and charges and require
- 4 such licenses as may be appropriate and necessary to meet the require-
- 5 ments of NRS 444.460 to 444.610, inclusive.
- 6 2. All fees or charges levied under this section constitute a lien against
- 7 the property. The lien has the same priority as and is coequal with a
- 8 mechanic's lien. The lien expires 6 months after a notice of the existence,
- 9 nature and amount of the lien is recorded unless:
- 10 (a) An action to enforce the lien is commenced in the proper court; or
- 11 (b) The lien is extended by written agreement of the parties, filed and
- 12 recorded in the same manner as the original lien, for a period of not more
- 13 than 1 year.
- 14 The lien may be foreclosed in the same manner as provided for the fore-
- 15 closure of mechanics' liens. Before the lien is foreclosed, the governing
- 16 body shall hold a hearing after notice by publication and by registered or
- 17 certified mail, return receipt requested, addressed to the last-known
- 18 owner at his last-known address according to the records of the munici-
- 19 pality and the real property assessment roll of the county in which the
- 20 property is located.

20

Original bill is on file at the Research Library.