

SENATE JUDICIARY COMMITTEE

MINUTES OF MEETING

MARCH 8, 1977

The meeting was called to order at 9:06 a.m. Senator Close was in the chair.

PRESENT: Senator Close
 Senator Bryan
 Senator Ashworth
 Senator Dodge
 Senator Foote
 Senator Gojack
 Senator Sheerin

ABSENT: None

SB 191 Revises provisions relating to discipline of physicians.

Senator Dodge stated that the theory of the regulation of a profession, by its own members is presumably they are knowledgeable enough about that profession that they can pass judgments.

Senator Close said you have to remember there were several members that were brought before the board and the board had no success in lifting their license. Senator Hilbrecht thought that under 233 the board had the power to go forward with an injunction. Bryce Rhodes on the other hand feels there is a question, and because of that he hadn't used it.

Mr. Isaefff felt that judicial forum is no absolute curative to the problem as it was stated. There is a statute that he has contended is very clear in Nevada cases, the Supreme Court is interpreting and upholding that statute. If the courts are going to ignore that, then they are not necessarily going to grant TRO under this judicial proceeding either. The same court will find a way to avoid enjoining the doctor early in the stage, in the same way they have declined to prevent him from practicing late in the stage. This is simply beyond control if they are not going to follow the statutes.

Senator Dodge stated he still thinks we ought to see if the Board of Medical Examiners agree with what we are doing. If they insist by virtue of their experience on the provision I will not oppose it. If they do not insist then I would like to see an alternate to 233B.

Mr. Isaefff said he felt that the board had very little understanding of the legal proceedings that go on with respect to their board hearings. They know how to conduct hearings, and ask questions as doctors, on how to make a record, etc. But for the fine points he feels we are deal-

ing here with the board members themselves, and they may not truly be the best witness to ask.

Andy Gross stated there might have been some confusion yesterday when Senator Hilbrecht was talking about why that thing was put in there. The doctors came with a problem, not this particular solution. He stated that he didn't believe that the doctors that brought the problem to the committee in 75, would care one way or another what kind of a device you have here, as long as it was a solution. He stated he had also talked to Frank Daykin and Frank feels that "Yes, 233B.127 says what it means and is effective to allow an administrative agency, the Board of Medical Examiners in this case, to get that kind of injunction".

Senator Dodge stated we should then request a Legislative opinion from Frank and then we can hand it to Bryce Rhodes.

Senator Bryan stated he felt we were using inappropriate language. 233B does not talk about an injunction. 233B merely talks about the power of the board to enter a summary suspension for a period of time.

Andy Gross stated then what you are looking at is the power of the board to go to court and get an injunction to limit the practice, suspend or revoke a license. The board under 630 now has that power. That can be pulled out of the language that is in 343, and that is a separate thing. We then have 233B.127 that says that the board on it's own can go ahead and temporarily suspend the license, that is another aspect. Then we have the third aspect which this does, and that is; it sets up a special statutory proceeding where the court is asked to look at evidence that the AG comes up with. Asked to match that evidence, the doctors conduct, against that evidence, against the malpractice definitions, the standards that the Legislature has given on malpractice definitions and determine whether this doctor has committed malpractice or is competent to practice. That is a special statutory proceeding which the LCB feels is constitutional. The court, in the Rosenthal case, just made a distinction between a proceeding where one gets a license, that is administrative and the difference where a doctor has a license already, he has a property right now, we are asking the court to limit that property right or take it away altogether. A court can judicate, so there is no constitutional problem, it is merely a policy question. That is separate from the issue do you want the board to get an injunction, or do you want the board itself to summarily suspend a license under emergency conditions. It is three separate policy questions as we would see it.

Senator Close stated the question is, whether we want to keep all or part of that chart in permitting the board to go directly to court, if they should decide to do so, rather than going through the board. Hilbrecht said that the

doctors had requested a method whereby they could go immediately to court because they had found that previously they had been frustrated by going through the board to have a particular doctors license revoked because he kept prevailing against the board and they could never get the guy enjoined.

Senator Bryan stated there is a court recourse under 233B. Also there is a statute that expressly prohibits these stay orders following the decision, that should address the problem.

Senator Dodge said if you begin to set up those attorney procedures on these regulatory boards and commissions, particularly where they relate to the professions as in this bill, you might as well accept the fact that all these crowds are going to come in and want this. We should have faith in the system of professional people trying to regulate their own group. A lawyer may be disbarred, he doesn't have any alternative procedure, but court judicial review, and that is provided in 233B.

Senator Close stated then we should adopt Bryce Rhodes language if we can, in precluding a review of a suspension either by a TRO or by a preliminary injunction, both prehearing or posthearing.

Jerry Lopez questioned if a letter from Frank Daykin would suffice as to whether the Legislature can preclude a TRO or preliminary injunction in two cases, one the summary suspension and the other the board itself seeking an injunction from the court to attempt to limit the practice or suspend.

Senator Close stated that would be satisfactory.

Senator Foote moved they do away with the judicial action. Senator Dodge seconded. The motion carried unanimously.

Jerry Lopez then asked what the Committee wanted to do with the Board members where there was a conflict of interest.

After some discussion it was decided that the bill should read that an alternate member would be chosen by the appointing authority.

Senator Foote moved a "do kill" with a new bill being written to encompass the above points. Senator Dodge seconded. The motion carried unanimously, Senators Bryan and Gojack were absent from the vote.

SB 185 Provides for retention of and access to certain medical records.

Bill Isaeff stated he had an amendment he prepared yesterday, (see attachment A) it is a fairly simple amendment but he feels it contains within its few brief words the very idea that the Committee had in mind.

Senator Close asked what the present penalty for breach of medical contracts was.

Mr. Isaeff stated that the statute that placed this on the AG, and everyone else dealing with this, contains no penalty provision. It has always been my assumption that if I were to go around blurting these things about, I would probably be open to civil action.

After some discussion the Committee decided that this was a better way to go than with Bill's first amendment.

Senator Dodge moved that they recind their previous action on SB 185.

Seconded by Senator Ashworth.

Motion carried unanimously, Senator Gojack was absent from the vote.

Senator Close stated that we now have to have a motion to pass 185 with the amendment we previously obtained which is 246A plus the suggested language of the AG.

Senator Dodge seconded the motion.

The motion carried unanimously, Senator Gojack was absent from the vote.

SB 187

Provides for periodic payment of certain damages recovered in malpractice claims against health care providers.

Senator Close stated that we were trying to decide what kind of a security to come up with.

Senator Dodge questioned if we had resolved the interest.

Senator Sheerin stated that the whole idea of the structured settlement is to give that interest to the insurance company to keep their cost down.

Senator Dodge stated that if you say they keep on deposit at any time the amount of the unpaid solvency. I think on the question of insolvency we were going to have a trust or something along those lines, where the insurance company or its creditors could not get at that money.

Senator Close stated that what we are changing on this in addition to the previous comments, is cash, TCD or government bonds. The amount that is required to be held in the trust, if you reduce periodical payments, and that has to be kept in trust on a declining balance. The interest will go to the insuror.

He stated at this time that in some cases a person might outlive his payments, that have been set out for care and custody. He thought it might be appropriate to earmark the interest on the money to be utilized in the event that the person outlives the expectancy. So if he dies before that time then the money goes to the insurance company. If he outlives his expectancy, the interest earned on the money could be utilized to continue offsetting the care, which could be extensive.

Senator Ashworth stated he felt this could be a nightmare. If you put it on an accrual basis you would have to reserve the interest for a contingent liability for the person might outlive it. He felt if you are going to do that you would have to fix the rate of interest, because that is going to fluctuate.

There was at this point some discussion about who was to be the trustee, the insurance company or the commissioner.

Senator Close stated his understanding was that it was to be in trust with the Insurance Commissioner.

Some of the Committee felt it should stay with the insurance company and some felt the Insurance Commissioner should be the trustee.

Andy stated it was his understanding that the Committee was satisfied to leave the details up to the court however, obviously that is not now the case.

Senator Bryan felt perhaps we could get information from other states as to how this trustee and interest thing is handled.

Andy felt he could get some kind of information back to the committee tomorrow.

SB 188 Narrows geographical area used in determining standard of care applied to physician.

Bill Isaefff stated that he had attended a hearing last week on SB 139, the osteopathic bill, and where Senator Hilbrecht was called in to discuss the locality rule change, which would occur in that bill, which is identical to SB 188, I got a better insight. The concern over this locality rule is as it applies to civil tort action. There is little or no concern by the doctors about the locality rule as it exists for administrative board hearings. I would suggest that we do have a locality rule for civil tort action, in chapter 41A, specifically perhaps section 100 where expert witnesses are required by law to be in a medical malpractice tort action, and then take Senator Blakemore's more restrictive locality rule and put it in 41A and leave chapter 630 somewhat more liberal locality rule alone. So I think

188 should be looked at as not just amending 630. It might well be a good bill, but amend chapter 41A where it is really intended to have its effect.

Jerry Lopez stated he would offer this remark; there has been no statutory locality rule until 1975. It is the Supreme Court, who perhaps from the founding days, who has said we will apply the strictist locality rule in Nevada, and that is the location where the doctor or defendant comes from. Right now we have a statute in 630 that applies to medical doctors and would apply in proceedings involving medical doctors. What we have now in 630 is a much broader rule. What happens in 188 is that rule is being narrowed down so that we are not only talking about the locality of the doctor, but a similar locality. So that expands it a little bit, and then just a little bit further by saying wherever the practice in the community is to refer a patient somewhere else. Then it is the standards of that somewhere else.

After some discussion the Committee decided that 188 was perhaps not needed, as there was 630 with judicial standards to cover this.

Senator Sheerin moved an indefinite postponement.
Seconded by Senator Dodge.
The motion carried unanimously.

SB 190 Provides for reporting and investigation of certain medical malpractice claims.

Bill Isaeff stated this is the immunity statute. I suggested that the use of the word malpractice on line 5 is not broad enough to cover the various types of charges that may be brought. Malpractice being only one and I suggested that it be interlineated to protect against liability for gross malpractice, malpractice, professional incompetence is immune from any civil action for any initiation or assistance. I also suggested in line 1 that it might be broadened to read "any person who", and then interlineated "or public agency or other type organization".

After some discussion by the Committee it was decided that Bill should send over an amendment on this one section.

At this point the Committee recessed until tomorrow where they would continue the action on these malpractice bills.

Respectfully submitted,

APPROVED:

Virginia C. Letts, Secretary

Senator Melvin D. Close, Jr. Chairman

PROPOSED AMENDMENT TO S.B. 185

AMEND SECTION 6 on page 2 at line 11 by inserting the following:

"No records made available to the Board of Medical Examiners or the Attorney General pursuant to this section shall be used at any public hearing unless the patient named in such records has consented in writing to their use or appropriate procedures are utilized to protect the identity of the patient from public disclosure. Nothing contained in this section shall be construed to prohibit the Board of Medical Examiners or the Attorney General from providing information to a doctor against whom a complaint or written allegation has been filed, or his legal counsel, as to the identity of a patient whose records may be used in any contemplated public hearing, but any such information shall be kept confidential by the doctor or his counsel."

S. B. 139

PROPOSED OSTEOPATHIC PHYSICIANS LICENSING ACT
LEADLINE OUTLINE OF DISCIPLINARY PARTS OF THE BILL

DISCIPLINARY ACTION

Preliminary Proceedings

Grounds for disciplinary action. Sec. 53, P. 11, L. 27.

Filing of complaints. Sec. 54, P. 11, L. 43.

Review of complaints by board, county osteopathic medical society.
Sec. 55, P. 12, L. 27.

Investigation by attorney general of complaints charging malpractice, professional incompetency; board determination regarding further action. Sec. 56, P. 12, L. 27.

Confidentiality of proceedings where complaint charges malpractice, professional incompetence. Sec. 57, P. 12, L. 43.

Physical, mental examination of licensee charged with malpractice, professional incompetency. Sec. 58, P. 13, L. 1.

Board Proceedings

Notice of hearing, copy of complaint to be furnished person charged. Sec. 59, P. 13, L. 16.

Service of process. Sec. 60, P. 13, L. 26.

Requirements for proof of certain charges. Sec. 61, P. 13, L. 38.

Rights of person charged; disciplinary orders of board.
Sec. 62, P. 14, L. 14.

Filing of transcript, findings and order of board. Sec. 63, P. 14, L. 24.

District court review; stay orders prohibited; criminal action required for violations of board order before modification, reversal by court. Sec. 64, P. 14, L. 24.

Judicial Proceedings

Malpractice, professional incompetency: Filing of petition for judicial modification, suspension, revocation of license; criminal prosecution not precluded. Sec. 65, P. 14, L. 43.

Malpractice, professional incompetence: Applicability of Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure; injunctions; appeals. Sec. 66, P. 15, L. 4.

Malpractice, professional incompetence: Modification, suspension, revocation of license by court. Sec. 67, P. 15, L. 13.

Miscellaneous provisions

Restoration of license. Sec. 68, P. 15, L. 23.

Medical competency examination of licensee whose competence is questioned. Sec. 69, P. 15, L. 39.

Limitation, termination of licensee's privilege not precluded by board or judicial disciplinary proceedings. Sec. 70, P. 15, L. 45.

Civil immunity for initiating or assisting in investigation, disciplinary proceedings. Sec. 71, P. 16, L. 4.

Prosecution and Penalties

Board may seek injunction relief against person practicing without a license. Sec. 72, P. 16, L. 9.

Sufficiency of allegations of criminal complaint charging unlawful practice. Sec. 73, P. 16, L. 18.

Prosecution of violators: Employment of investigators. Sec. 74, P. 16, L. 24.

Acts constituting felonies. Sec. 75, P. 16, L. 28.

PROPOSED

CHAPTER 633 (S.B. 139)

NEVADA REVISED STATUTES

Regulating the Practice of
Osteopathic Medicine

The attached is a mockup of the disciplinary sections of S.B. 139 with leadlines inserted.

The concepts on professional discipline found in S.B. 139 are the same as those found in chapter 630 of NRS. The main difference is found in the fact that S.B. 139 was drafted as a total professional regulatory chapter. NRS 630, on the other hand, has grown incrementally over the years.

If the committee finds that the disciplinary sections in chapter 630 have become too confusing to be effective, then S.B. 139 offers a viable alternative.

DISCIPLINARY ACTION

Preliminary Proceedings

Grounds for disciplinary action.

SEC. 53. *The grounds for initiating disciplinary action under 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 as defined in chapter 453 of NRS or dangerous drug as defined in chapter 454 of NRS;*
 - (b) *A felony; or*
 - (c) *Any offense involving moral turpitude.*
3. *Suspension or revocation of the license to practice osteopathic medicine by any other jurisdiction.*
4. *Gross or repeated malpractice.*
5. *Professional incompetence.*

The board shall not initiate disciplinary action on the ground of unprofessional conduct if the supporting alleged facts constitute gross or repeated malpractice or professional incompetence.

Filing of complaints.

SEC. 54. *The board or any of its members, any medical review panel of a hospital or medical society which becomes aware that any one or combination of the grounds for initiating disciplinary action may exist as to a person practicing osteopathic medicine in this state shall, and any other person who is so aware may, file a written complaint specifying the relevant facts with the board or with the osteopathic medical society of the county in which the person charged has his office if there is an osteopathic medical society in the county.*

Review of complaints by board, county osteopathic medical society.

SEC. 55. 1. *When a complaint is filed:*

(a) *With the board, it shall be reviewed by the president or secretary of the board.*

(b) *With a county osteopathic medical society, the society, acting through its governing body or through a committee appointed for this purpose, may choose to review it or may refer it to the board for review.*

2. *Whether or not the society chooses to conduct the review itself, it shall forward a copy of the complaint to the board and advise the board of its decision to review or refer. Whenever a complaint is referred by the society to the board for review, it shall be reviewed by the board.*

3. *Upon completion of the review, the board or the county osteopathic medical society conducting the review shall determine whether the complaint is frivolous. If the society considers a complaint to be frivolous, it shall so notify the board and the board may review the complaint. If the president or secretary of the board considers a complaint to be frivolous, the complaint shall be held in abeyance and reviewed at the next meeting of the board.*

4. *If, from the complaint or from other official records, it appears that the complaint is not frivolous and the complaint charges:*

(a) *Unprofessional conduct, a conviction or the suspension or revocation of a license to practice osteopathic medicine, the board shall proceed with administrative action under this chapter.*

(b) *Gross or repeated malpractice or professional incompetence, the board or the county osteopathic medical society which conducted the review shall transmit the original complaint, along with further facts or information derived from its own review, to the attorney general.*

Investigation by attorney general of complaints charging malpractice, professional incompetency; board determination regarding further action.

SEC. 56. 1. *The attorney general shall conduct an investigation of each complaint transmitted to him to determine whether it warrants proceedings for modification, suspension or revocation of license. If he determines that such further proceedings are warranted, he shall report the results of his investigation together with his recommendation to the board in a manner which does not violate the right of the person charged in the complaint to due process in any later hearing before the board.*

2. *The board shall promptly make a determination with respect to each complaint reported to it by the attorney general as to what action shall be pursued. The board shall:*

(a) Dismiss the complaint;

(b) Proceed with appropriate administrative action under this chapter;

or

(c) Direct the attorney general to file a petition in the district court on behalf of the board for a judicial modification, suspension or revocation of the license.

Confidentiality of proceedings where complaint charges malpractice, professional incompetence.

SEC. 57. *All proceedings subsequent to the filing of a complaint charging gross or repeated malpractice or professional incompetence are confidential until a determination is made by the board following investigation and recommendation by the attorney general. If the board dismisses the complaint, the proceedings shall remain confidential. If the board proceeds administratively under this chapter or directs the attorney general to proceed judicially, confidentiality concerning the proceedings is no longer required.*

Physical, mental examination of licensee charged with malpractice, professional incompetence.

SEC. 58. 1. *When the board has determined to proceed with administrative action on a complaint reported to it by the attorney general, the board may require the person charged in the complaint to submit to a mental or physical examination by physicians designated by the board.*

2. *For the purposes of this section:*

(a) Every physician licensed under this chapter who accepts the privilege of practicing osteopathic medicine in this state is deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board.

(b) The testimony or examination reports of the examining physicians are not privileged communications.

3. *Except in extraordinary circumstances, as determined by the board, the failure of a physician licensed under this chapter to submit to an examination when directed as provided in this section constitutes an admission of the charges against him.*

Board Proceedings

Notice of hearing, copy of complaint to be furnished person charged.

SEC. 59. *If:*

1. *A complaint charging unprofessional conduct, a conviction or the suspension or revocation of a license to practice osteopathic medicine is not frivolous; or*

2. *With respect to a complaint reported by the attorney general, the board has determined to proceed with administrative action, the secretary of the board shall fix a time and place for a hearing and cause a notice of the hearing and a copy of the complaint to be served on the person charged at least 20 days before the date fixed for the hearing.*

Service of process.

SEC. 60. 1. Service of process made under this chapter shall be either personal or by registered or certified mail with return receipt addressed to the osteopathic physician at his last-known address, as indicated on the records of the board, if possible. If personal service cannot be made and if mail notice is returned undelivered, the secretary of the board shall cause notice of hearing to be published once a week for 4 consecutive weeks in a newspaper published in the county of the physician's last-known address or, if no newspaper is published in that county, then in a newspaper widely distributed in that county.

2. Proof of service of process or publication of notice made under this chapter shall be filed with the secretary of the board and shall be recorded in the minutes of the board.

Requirements for proof of certain charges.

SEC. 61. In any disciplinary proceeding before the board:

1. Proof of actual injury need not be established where the complaint charges deceptive or unethical professional conduct or medical practice harmful to the public.

2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license to practice osteopathic medicine is conclusive evidence of its occurrence.

Rights of person charged; disciplinary orders of board.

SEC. 62. 1. The person charged is entitled to a hearing before the board, but the failure of the person charged to attend his hearing or his failure to defend himself shall not serve to delay or void the proceedings. The board may, for good cause shown, continue any hearing from time to time.

2. If the board finds the person is guilty as charged in the complaint, it may by order:

(a) Place the person on probation for a specified period or until further order of the board.

(b) Administer to the person a public or private reprimand.

(c) Limit the practice of the person to, or by the exclusion of, one or more specified branches of osteopathic medicine.

(d) Suspend the license of the person to practice osteopathic medicine for a specified period or until further order of the board.

(e) Revoke the license of the person to practice osteopathic medicine. The order of the board may contain such other terms, provisions or conditions as the board deems proper and which are not inconsistent with law.

Filing of transcript, findings and order of board.

SEC. 63. 1. Whenever the board issues an order upon a finding of guilt, except one which administers a public or private reprimand, the secretary of the board shall file certified copies of the transcript of the proceedings before the board and its findings and order with the clerk of the district court of the county in which the license is recorded within 30 days after the order is issued.

2. The secretary shall also file a certified copy of an order of the board or the court limiting the practice of osteopathic medicine or suspending or revoking a license with the county recorder of the county in which the license is recorded within 10 days after the order is issued.

District court review; stay orders prohibited; criminal action required for violations of board order before modification, reversal by court.

SEC. 64. 1. Any person who has been placed on probation or whose license has been suspended or revoked by the board may petition the district court within 60 days after the filing of the transcript, findings and order to review the proceedings, findings and order of the board and to modify or reverse the board's order. The burden is upon the petitioner to show in the review wherein the order of the board is erroneous or unlawful.

2. Every order of the board which limits the practice of osteopathic medicine or suspends or revokes a license is effective from the date the secretary certifies the order to the proper county recorder until the order is modified or reversed by the court as provided in this section. The court shall not stay the order of the board unless the board has failed to comply with the procedural requirements provided for in section 63 of this act. The attorney general shall bring a criminal action against any person who practices osteopathic medicine in violation of the board's order before it is stayed, modified or reversed by the court.

3. The district court shall make its order affirming the decision of the board when 60 days have elapsed since the filing of the board's order with the clerk of the court.

Judicial Proceedings

Malpractice, professional incompetence: Filing of petition for judicial modification, suspension, revocation of license; criminal prosecution not precluded.

SEC. 65. 1. The attorney general, upon direction from the board to file on its behalf a petition for judicial modification, suspension or revocation, shall file a petition in the district court for the county where the osteopathic physician has his office, or if he has no office in this state then for the county where the cause of action arose, praying for the limitation, suspension or revocation of the physician's license to practice medicine. Venue may be changed as in other civil actions.

2. The filing of a petition pursuant to this section does not preclude any appropriate criminal prosecution by the attorney general or a district attorney based upon the same or other facts.

Malpractice, professional incompetence: Applicability of Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure; injunctions; appeals.

SEC. 66. 1. The judicial proceedings provided in this chapter are civil in nature, and all the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure apply except where a specifically different provision is made in this chapter.

2. In particular, the court may in a proper case by temporary restraining order or preliminary injunction, or both, limit or suspend the right of an osteopathic physician to practice osteopathic medicine.

3. An appeal lies to the supreme court from the decisions of the district court as in other civil matters.

Malpractice, professional incompetence: Modification, suspension, revocation of license by court.

SEC. 67. If the court finds that an osteopathic physician is guilty of gross or repeated malpractice or is professionally incompetent to practice osteopathic medicine or to practice one or more of its specified branches, it may:

1. Limit the practice of the physician to, or by the exclusion of, one or more specified branches of osteopathic medicine.

2. Suspend the license of the physician to practice osteopathic medicine for a specified time or until further order of the court.

3. Revoke the license of the physician to practice osteopathic medicine.

Miscellaneous provisions

Restoration of license.

SEC. 68. 1. Any person:

- (a) Whose practice of osteopathic medicine has been limited; or
- (b) Whose license to practice osteopathic medicine has been:
 - (1) Suspended until further order; or
 - (2) Revoked,

by an order of the board or the court may apply after a reasonable period for removal of the limitation or restoration of his license to the authority which issued the order.

2. The authority hearing the application:

- (a) May require the person to submit to a mental or physical examination by physicians whom it designates and submit such other evidence of changed conditions and of fitness as it deems proper;
- (b) Shall determine whether under all the circumstances the time of the application is reasonable; and
- (c) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrants.

Medical competency examination of licensee whose competence is questioned.

SEC. 69. If the board has reason to believe that the conduct of any osteopathic physician has raised a reasonable question as to his competence to practice osteopathic medicine with reasonable skill and safety to patients, the board may cause a medical competency examination of the physician for purposes of determining his fitness to practice osteopathic medicine with reasonable skill and safety to patients.

Limitation, termination of licensee's privilege not precluded by board or judicial disciplinary proceedings.

SEC. 70. 1. The filing and review of a complaint, its dismissal without further action or its transmittal to the attorney general, and any subsequent disposition by the board, the attorney general or any court do not preclude any measure by a hospital or other institution or osteopathic medical society to limit or terminate the privileges of an osteopathic physician according to its rules or the custom of the profession.

2. No civil liability attaches to any such action taken without malice even if the ultimate disposition of the complaint is in favor of the physician.

Civil immunity for initiating or assisting in investigation, disciplinary proceedings.

SEC. 71. Any person who or organization which, without malicious intent, initiates or assists in any lawful investigation or proceeding concerning the licensure of an osteopathic physician or his insurability against liability for malpractice is immune from any civil action for such initiation or assistance or any consequential damages.

Prosecution and Penalties

Board may seek injunction relief against person practicing without a license.

SEC. 72. 1. The board through its president or secretary or the attorney general may maintain in any court of competent jurisdiction a suit for an injunction against any person practicing osteopathic medicine without a license valid under this chapter.

2. Such an injunction:

- (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) Shall not relieve such person from criminal prosecution for practicing without a license.

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- (a) May require the person to submit to a mental or physical examination by physicians whom it designates and submit such other evidence of changed conditions and of fitness as it deems proper;
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CHAPTER 630

NEVADA REVISED STATUTES

Physicians, Physicians' Assistants
and Emergency Technicians

The attached is a mockup of chapter 630 as it would read
with the adoption of S.B. 191.

On pages 1 and 2 are the definitions of "Gross Malpractice,"
"Malpractice," "Professional incompetence" and "Unprofessional
conduct." These terms are referenced beginning on page 10
in the section on "Suspension and Revocation of Licenses."

CHAPTER 630

PHYSICIANS, PHYSICIANS' ASSISTANTS AND EMERGENCY TECHNICIANS

GENERAL PROVISIONS

630.003 Legislative declaration. The legislature finds and declares that:

1. The practice of the several professions which deal with human health affects the people of this state more broadly and in a more essential respect than the practice of any other profession.

2. Of these professions, the medical profession is accorded the widest scope of practice, deemed to possess the highest skills and therefore charged with the greatest responsibility.

3. Any substantial failure of intraprofessional discipline increases the likelihood of malpractice actions against physicians, thus increasing the cost of malpractice insurance to all physicians or making such insurance difficult to obtain. These results in turn increase the cost of medical care to the patient, decrease the protection available to him, or both. In fact a crisis in the area of medical malpractice litigation does exist in this state.

4. The public health and welfare demand for the medical profession the highest and most effective means of review and discipline, utilizing not only the specialized skills of the profession itself but the investigative authority and legal skill of the attorney general and the impartial factfinding process of the courts.

(Added to NRS by 1975, 411)

630.005 Definitions. As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 630.010 to 630.030, inclusive, have the meanings ascribed to them in those sections.

(Added to NRS by 1975, 412)

630.010 "Board" defined. "Board" means the board of medical examiners of the State of Nevada.

[Part 2:169:1949; 1943 NCL § 4107.02]—(NRS A 1975, 414)

630.012 "Gross malpractice" defined. "Gross malpractice" means malpractice where the failure to exercise the requisite degree of care, diligence or skill consists of:

1. Performing surgery upon or otherwise ministering to a patient while the physician is under the influence of alcohol or any controlled substance as defined in chapter 453 of NRS;

2. Gross negligence;

3. Willful disregard of established medical procedures; or

4. Willful and consistent use of medical procedures, services or treatment considered by physicians in the community to be inappropriate or unnecessary in the cases where used.

(Added to NRS by 1975, 412)

630.013 "Malpractice" defined. "Malpractice" means failure on the part of a physician to exercise the degree of care, diligence and skill ordinarily exercised by physicians in good standing in the community in which he practices. As used in this section, "community" embraces the entire area customarily served by physicians among whom a patient may reasonably choose, not merely the particular area inhabited by the patients of that individual physician or the particular city or place where he has his office.

(Added to NRS by 1975, 412)

630.014 "Physician" defined. "Physician" means a person who:

1. Is a graduate of an academic program approved by the board or is qualified to perform medical services by reason of general education, practical training and experience determined by the board to be satisfactory; and

2. Has received from the board a license or permit to practice medicine.

(Added to NRS by 1975, 412)

630.015 "Physician's assistant" defined. "Physician's assistant" means a person who is a graduate of an academic program approved by the board or who, by general education, practical training and experience determined to be satisfactory by the board, is qualified to perform medical services under the supervision of a supervising physician and who has been issued a certificate by the board.

(Added to NRS by 1973, 503; A 1975, 414)

630.020 "Practice of medicine" defined.

1. "Practice of medicine" means:

(a) To diagnose, treat, correct or prescribe for any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality.

(b) To apply principles or techniques of medical science in the diagnosis or the prevention of any of the conditions listed in paragraph (a).

(c) To offer, undertake, attempt to do or hold oneself out as able to do any of the acts described in paragraphs (a) and (b).

2. It shall also be regarded as practicing medicine within the meaning of this chapter if anyone uses in connection with his name the words or letters "M.D.," or any other title, word, letter, or other designation intended to imply or designate him as a practitioner of medicine in any of its branches.

[Part 17:169:1949; 1943 NCL § 4107.17]—(NRS A 1973, 504; 1975, 415)

630.022 "Professional incompetence" defined. "Professional incompetence" means lack of ability safely and skillfully to practice medicine, or to practice one or more specified branches of medicine, arising from:

1. Lack of knowledge or training;

2. Impaired physical or mental capability of the physician;

3. Indulgence in the use of alcohol or any controlled substance; or

4. Any other sole or contributing cause.

(Added to NRS by 1975, 412)

630.025 "Supervising physician" defined. "Supervising physician" means an active physician licensed in the State of Nevada who cosigns the application for certification of a physician's assistant and who employs and supervises the physician's assistant.

(Added to NRS by 1973, 504; A 1975, 415)

630.030 "Unprofessional conduct" defined. "Unprofessional conduct" includes:

1. Willfully and intentionally making a false or fraudulent statement or submitting a forged or false document in applying for a license to practice medicine.

2. Willfully and intentionally representing with the purpose of obtaining compensation or other advantages for himself or for any other person that a manifestly incurable disease or injury or other manifestly incurable condition can be permanently cured.

3. Performing, assisting or advising an unlawful abortion.

4. Advertising the practice of medicine in a manner which does not conform to the guidelines established by the board.

5. 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.

6. Willful disobedience of the rules and regulations of the state board of health or of the board of medical examiners.

7. Administering, dispensing or prescribing any controlled substance as defined in chapter 453 of NRS, otherwise than in the course of legitimate professional practice or as authorized by law and not primarily for the purpose of catering to the cravings of an addict.

8. Any conduct detrimental to the public health, safety or morals.

9. Violating, or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter.

10. Employing, directly or indirectly, any suspended or unlicensed person in the practice of medicine, or the aiding or abetting of any unlicensed person to practice medicine as defined in this chapter.

11. Directly or indirectly giving to or receiving from any person, firm or corporation, any fee, commission, rebate or other form of compensation for sending, referring or otherwise inducing a person to communicate with a person licensed under this chapter in his professional capacity or

for any professional services not actually and personally rendered. This subsection does not prohibit persons holding valid and current licenses under this chapter from practicing medicine in partnership under a partnership agreement or in a corporation or an association authorized by law, or from pooling, sharing, dividing or apportioning the fees and moneys received by them or by the partnership, corporation or association in accordance with the partnership agreement or the policies of the board of directors of the corporation or association. This subsection does not abrogate the right of two or more persons holding valid and current licenses under this chapter to receive adequate compensation for concurrently rendering professional care to a patient and dividing a fee, if the patient has full knowledge of this division and if the division is made in proportion to the services performed and responsibility assumed by each.

12. Performing, assisting or advising in the injection of any liquid silicone substance into the human body.

[Part 15:169:1949; 1943 NCL § 4107.15]—(NRS A 1971, 2031; 1973, 504; 1975, 120, 415, 1300)

630.040 Gender and number. As used in this chapter, the masculine gender includes the feminine gender, and the singular number includes the plural number.

630.045 License as revocable privilege. The purpose of licensing physicians and physicians' assistants is to protect the public health and safety and the general welfare of the people of this state. Any license issued pursuant to this chapter is a revocable privilege and no holder of such a license acquires thereby any vested right.

(Added to NRS by 1975, 413)

630.047 Applicability of chapter.

1. This chapter does not apply to:

(a) The practice of dentistry, osteopathy, chiropractic, podiatry, optometry, faith or Christian Science healing, nursing, veterinary medicine or hearing aid fitting.

(b) A medical officer of the armed services or a medical officer of any division or department of the United States in the discharge of his official duties.

(c) Licensed nurses in the discharge of their duties as nurses.

(d) Physicians who are called into this state, other than on a regular basis, for consultation or assistance to a physician licensed in this state, and who are legally qualified to practice in the state where they reside.

2. This chapter does not repeal or affect any statute of Nevada regulating or affecting any other healing art.

3. This chapter does not prohibit:

(a) Gratuitous services of a person in cases of emergency.

(b) The domestic administration of family remedies.

[Part 1:169:1949; 1943 NCL § 4107.01] + [Part 17:169:1949; 1943 NCL § 4107.17]—(NRS A 1969, 905; 1973, 518)—(Substituted in revision for NRS 630.360)

BOARD OF MEDICAL EXAMINERS OF THE STATE OF NEVADA

630.050 Board of medical examiners: Creation and membership. The board of medical examiners of the State of Nevada consisting of five members appointed by the governor is hereby created.

[Part 2:169:1949; 1943 NCL § 4107.02]

630.060 Qualifications of members.

1. Each member of the board shall be licensed to practice medicine in the State of Nevada, shall have been engaged in the practice of medicine in the State of Nevada for a period of more than 5 years preceding his appointment and shall be actually engaged in the practice of medicine in the State of Nevada.

2. The members of the board shall be selected without regard to their individual political beliefs.

[Part 2:169:1949; 1943 NCL § 4107.02]—(NRS A 1973, 506)

630.070 Terms of members; vacancies.

1. Upon the expiration of the terms of those members serving on the board on July 1, 1973, the governor shall appoint two members for 2-year terms, one member for a 3-year term and two members for 4-year terms. Thereafter, each member shall be appointed for a term of 4 years.

2. Upon expiration of his term of office, a member shall continue to serve until his successor is appointed and qualifies. No term of office shall extend more than 4 years beyond the expiration of the preceding term of office.

3. If a vacancy occurs in the board, a member is absent from the state for a period of 6 months without permission from the board, a member fails to attend meetings of the board or a member fails to attend to the business of the board, as determined necessary in the discretion of the board, the board shall so notify the governor, and the governor shall appoint a person duly qualified under this chapter to replace the member for the remainder of the unexpired term.

[Part 2:169:1949; 1943 NCL § 4107.02]—(NRS A 1973, 506)

630.080 Oaths of office. Before entering upon the duties of his office, each member of the board shall take:

1. The constitutional oath of office; and

2. An oath that he is licensed to practice medicine in this state and is actually engaged in the practice of medicine in this state.

[Part 3:169:1949; 1943 NCL § 4107.03]—(NRS A 1973, 506)

630.090 Officers of board.

1. The board shall elect from its members a president, a vice president and a secretary-treasurer. The officers of the board shall hold their respective offices during its pleasure.

2. The board shall receive through its secretary applications for the certificates provided to be issued under this chapter.

3. The secretary-treasurer shall receive a salary, the amount of which shall be determined by the board.

[Part 3:169:1949; 1943 NCL § 4107.03] + [Part 5:169:1949; 1943 NCL § 4107.05] + [Part 6:169:1949; 1943 NCL § 4107.06]

630.100 Meetings of board; quorum.

1. The board shall meet at least twice annually and may meet at other times on the call of the president or a majority of its members.

2. A majority of the board shall constitute a quorum to transact all business.

[4:169:1949; 1943 NCL § 4107.04] + [Part 7:169:1949; 1943 NCL § 4107.07]—(NRS A 1973, 506)

630.110 Compensation, expenses of members; deposit of board money in banks, savings and loan associations.

1. Out of the funds coming into the possession of the board, each member of the board shall receive:

(a) A salary of not more than \$40 per day, as fixed by the board, while engaged in the business of the board.

(b) Reimbursement for his actual and necessary expenses incurred in the performance of his duties, as provided in this chapter.

2. Expenses shall be paid from the fees received by the board under the provisions of this chapter, and no part of the salaries or expenses of the board shall be paid out of the general fund of the state treasury.

3. All moneys received by the board shall be deposited in banks and savings and loan associations in the State of Nevada, and shall be paid out on its order for its expenses and the expenses of the members.

[Part 6:169:1949; 1943 NCL § 4107.06]—(NRS A 1963, 149; 1973, 507; 1975, 303)

630.120 Seal of board. The board shall procure a seal.

[Part 5:169:1949; 1943 NCL § 4107.05]

630.123 Board to operate on fiscal year. The board shall operate on the basis of a fiscal year commencing on July 1 and terminating on June 30.

(Added to NRS by 1963, 149)

630.125 Board offices; employees. The board may:

1. Maintain offices in as many localities in the state as it finds necessary to carry out the provisions of this chapter.

2. Employ attorneys, investigators and other professional consultants and clerical personnel necessary to the discharge of its duties.

(Added to NRS by 1963, 149)

630.130 Rules of board. The board may, from time to time, adopt such rules as may be necessary or desirable to enable it to carry into effect the provisions of this chapter.

[Part 5:169:1949; 1943 NCL § 4107.05]—(NRS A 1973, 507)

630.140 Hearings and investigations; subpoenas; oaths.

1. The board may hold hearings and conduct investigations pertaining to the issuance, suspension or revocation of licenses and pertaining to other disciplinary action and take evidence on any matter under inquiry before the board.

2. If the board has reason to believe that the conduct of any physician has raised a reasonable question as to his competence to practice medicine with reasonable skill and safety to patients, the board may cause a medical competency examination of such physician for purposes of determining the physician's fitness to practice medicine with reasonable skill and safety to patients.

3. For the purposes of this chapter, the secretary or president of the board may issue subpoenas for the attendance of witnesses or for the production of documentary or tangible evidence.

4. For the purposes of this chapter, the secretary of the board, or in his absence any member of the board, may administer oaths.

[Part 5:169:1949; 1943 NCL § 4107.05] + [Part 16:169:1949; 1943 NCL § 4107.16] + [Part 22:169:1949; 1943 NCL § 4107.22]—(NRS A 1973, 507; 1975, 416)

EXAMINATIONS AND ADMISSION TO PRACTICE

630.150 Practice of medicine unlawful without license or permit. It shall be unlawful for any person to practice medicine in the State of Nevada without first obtaining a license or permit so to do as provided in this chapter. This section does not prevent the service of physicians' assistants who have complied with the provisions of this chapter.

[Part 1:169:1949; 1943 NCL § 4107.01]—(NRS A 1973, 507)

630.160 Qualifications of applicants for licenses, permits to practice medicine.

1. Every person desiring to practice medicine shall, before beginning to practice, procure from the board a license or permit authorizing such practice.

2. A license or permit may be issued to any person who:

(a) Is a citizen of the United States or has filed a petition for naturalization which is pending or, not having fulfilled the residence requirements for naturalization, has filed a declaration of intention to become a citizen; and

(b) Has completed 1 year of postgraduate training approved by the board.

[Part 8:169:1949; A 1953, 662; 1955, 103]—(NRS A 1969, 211; 1971, 220; 1973, 508)

630.170 Applications: Documentary evidence of qualifications.

1. The applicant for a license to practice medicine who is a graduate of a medical school located in the United States or Canada shall submit to the board, through its secretary:

(a) Proof of graduation from a United States or Canadian medical school recognized as reputable by the board, the requirements of which medical school shall have been, at the time of his graduation, in no particular less than those prescribed for that year by the American Medical Association.

(b) An affidavit that the applicant is the person named in the proof of graduation and that it was procured without fraud or misrepresentation of any kind.

(c) A certificate or other document proving a period of 1 year of postgraduate training, which training must be approved by the board.

2. In addition to the affidavits or proofs required by subsection 1, the board may take such further evidence and require such other documents or proof of qualifications as in its discretion may be deemed proper.

3. If it appears that the applicant is not of good moral character or reputation or that any credential submitted is false, the applicant may be rejected.

[Part 8:169:1949; A 1953, 662; 1955, 103]—(NRS A 1969, 211; 1973, 508)

630.180 Examinations.

1. Before issuance of a license to practice medicine, the applicant who is otherwise eligible for licensure in the State of Nevada and has paid the fee and presented the credentials specified in NRS 630.170 shall appear personally and pass a satisfactory written examination as to qualifications therefor.

2. The examination shall be fair and impartial, practical in character, and the questions shall be designated to discover the applicant's fitness.

3. The board may employ specialists and other professional consultants or examining services in conducting the examination.

[Part 9:169:1949; 1943 NCL § 4107.09] + [11:169:1949; 1943 NCL § 4107.11]—(NRS A 1969, 211; 1973, 509)

630.190 Reexaminations.

1. If an applicant fails in a first examination, he may be reexamined after not less than 6 months.

2. If he fails in a second examination, he shall not thereafter be entitled to another examination within less than 1 year after the date of the second examination, and prior thereto he shall furnish proof to the board of further postgraduate training following the second examination satisfactory to the board.

[Part 9:169:1949; 1943 NCL § 4107.09]—(NRS A 1973, 509)

630.195 Applicants who are graduates of foreign medical schools: Proof of qualifications; examination.

1. The applicant for a license to practice medicine who is a graduate of a foreign medical school shall submit to the board through its secretary:

(a) Proof that he is a citizen of the United States, has filed a petition for naturalization which is pending or, not having fulfilled the residence requirements for naturalization, has filed a declaration of intention to become a citizen.

(b) Proof that he has received the degree of Doctor of Medicine or its equivalent, as determined by the board, from a foreign medical school recognized by the Educational Commission of Foreign Medical Graduates.

(c) Proof that he has completed 3 years of postgraduate training satisfactory to the board.

(d) Proof that he has passed, with a grade acceptable to the board, an examination designated by the board.

2. In addition to the proofs required by subsection 1, the board may take such further evidence and require such further proof of the professional and moral qualifications of the applicant as in its discretion may be deemed proper.

3. If the applicant is a diplomate of an approved specialty board recognized by the American Medical Association, the requirements of paragraphs (c) and (d) of subsection 1 may be waived by the board.

4. Before issuance of a license to practice medicine, the applicant who presents the proof required by subsection 1 shall appear personally before the board and satisfactorily pass a written or oral examination, or both, as to his qualifications to practice medicine.

(Added to NRS by 1969, 214; A 1973, 509; 1975, 960)

630.200 Rights of appeal of unsuccessful applicants. Any unsuccessful applicant may appeal to the district court to review the action of the board, if he files his appeal within 6 months from the date of the rejection of his application by the board. Upon appeal the applicant has the burden to show that the action of the board is erroneous or unlawful.

[12:169:1949; 1943 NCL § 4107.12]—(NRS A 1973, 510)

630.210 Reciprocity certificates and licenses: Admission with or without examination. The board may, in its discretion, license an applicant who holds a current and valid license or certificate issued to him by the medical examining board of the District of Columbia or of any state or territory of the United States, or a certificate as diplomate of the National Board of Medical Examiners of the United States, provided:

1. That the legal requirements of such medical examining board were, at the time of issuing such license or certificate, in no degree or particular less than those of Nevada at the time when such license or certificate was issued;

2. That the applicant is of good moral character and reputation;

3. That, at the discretion of the board, the applicant may be required to pass an oral examination; and

4. That the applicant shall furnish to the board such other proof of qualifications, professional or moral, as the board may require.

[10:169:1949; 1943 NCL § 4107.10]—(NRS A 1973, 510)

630.220 Records of issuance or denial of licenses or permits. The board shall maintain records pertaining to applicants to whom licenses or permits have been issued or denied. In the records shall be recorded:

1. The names of all applicants.
 2. The name of the school granting the diploma.
 3. The date of the diploma.
 4. Residence of the applicant.
 5. The date of issuance or denial of the license or permit.
 6. Any other information required by the board.
- [13:169:1949; 1943 NCL § 4107.13]—(NRS A 1973, 511)

630.230 Licenses and permits: Seal and signatures of board officers. All licenses or permits issued by the board shall bear its seal and the signatures of its president and secretary, and shall authorize the person to whom it is issued to practice medicine.

[Part 7:169:1949; 1943 NCL § 4107.07]—(NRS A 1973, 511)

630.240 Licensees to record licenses with county recorder. Every person to whom the board shall issue a license shall present the same to the county recorder of the county in which he desires to practice, and have the same recorded and pay the usual fees for recording such papers.

[14:169:1949; 1943 NCL § 4107.14]—(NRS A 1973, 511)

630.250 Licenses issued prior to July 1, 1973, remain effective. All valid licenses to practice medicine issued prior to July 1, 1973, shall remain in full effect but subject to the provisions of this chapter.

[19:169:1949; 1943 NCL § 4107.19]—(NRS A 1973, 511)

SPECIAL LICENSURE; PERMITS

630.261 Temporary and special licenses: Purposes; issuance; revocation; regulations.

1. The board may, at its discretion:

(a) Issue a temporary license, to be effective not more than 6 months after issuance, to any physician who is eligible for a permanent license in the State of Nevada and who also is of good moral character and reputation. The purpose of the temporary license shall be to enable an eligible physician to serve as a substitute for some other physician who is duly licensed to practice medicine in the State of Nevada and who is absent from his practice for reasons deemed sufficient by the board. A temporary license, issued under the provisions of this subsection, is not renewable and may be revoked at any time for reasons deemed sufficient by the board.

(b) Issue a special license to a duly licensed physician of an adjoining state to come into this state to care for or assist in the treatment of his own patients in association with a physician duly licensed in this state who shall have the primary care of the patients. A special license, issued under the provisions of this subsection, may be revoked at any time for reasons deemed sufficient by the board.

(c) Issue a special license to a duly qualified physician of another state to practice medicine in this state for a specified period of time and for specified purposes.

2. Every physician who is licensed under the provisions of subsection 1 and who accepts the privilege of practicing medicine in this state under the provisions of the license shall be deemed to have given his consent to the revocation of the license at any time, without notice or hearing, for reasons deemed sufficient by the board.

3. The board may adopt rules and regulations to carry out the purposes of this section.

(Added to NRS by 1973, 511)

630.271 Physician's assistant: Authorized services. A physician's assistant may perform such medical services as he is authorized to perform under the terms of a certificate issued to him by the board, if such services are rendered under the supervision and control of a supervising physician.

(Added to NRS by 1973, 512)

630.273 Physician's assistant: Issuance, conditions of certificate.

1. The board may issue a certificate to properly qualified applicants to perform medical services under the supervision of a supervising physician. The application for a certificate as a physician's assistant shall be cosigned by the supervising physician, and the certificate is valid only so long as that supervising physician employs and supervises the physician's assistant.

2. A supervising physician shall not cosign for, employ or supervise more than one physician's assistant at the same time, except that a supervising physician practicing in a township whose population is less than 16,000, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce, may supervise not more than two physician's assistants at the same time.

(Added to NRS by 1973, 512; A 1975, 991)

630.275 Physician's assistant: Board to adopt regulations concerning certification. The board shall adopt regulations regarding the certification of a physician's assistant, including but not limited to:

1. The educational and other qualifications of applicants.
2. The required approved academic program for applicants.
3. The procedures for applications for and the issuance of certificates.
4. The tests or examinations of applicants by the board.
5. The medical services which a physician's assistant may perform, except that nothing in NRS 630.271 to 630.275, inclusive, or regulations adopted pursuant thereto, shall operate to authorize a physician's assistant to perform those specific functions and duties delegated or restricted by law to persons licensed as dentists, chiropractors, podiatrists and optometrists under chapters 631, 634, 635 and 636, respectively, of NRS, or as hearing aid specialists.
6. The duration, renewal and termination of certificates.
7. The grounds and procedures respecting disciplinary actions against physicians' assistants.
8. The supervision of medical services of a physician's assistant by a supervising physician.
9. The fees to be charged for applications for and renewals of certificates.

(Added to NRS by 1973, 512)

630.280 Permits for resident medical officers in Nevada hospitals.

1. The board may in its discretion issue a permit to any properly qualified applicant to serve as resident medical officer in any hospital in Nevada subject to the provisions of this section.

2. The holder of a permit shall:

(a) Practice medicine, surgery and allied specialties only within the confines of the hospital specified on his permit and under the supervision of the regular hospital medical staff.

(b) Be a graduate of an accredited medical school of the United States or Canada, or a graduate of a foreign medical school recognized by the Educational Council of Foreign Medical Graduates who has received the standard certificate of the Educational Council of Foreign Medical Graduates and has completed 1 year of postgraduate training in a hospital or other institution approved by the board.

(c) Be of good moral character.

3. The board shall have in its possession, before granting any permit to an individual, a letter from a hospital in Nevada, requesting issuance of a permit to serve as a resident medical officer to that individual.

4. Such permits will in general be issued at the stated meetings of the board, but the president and the secretary of the board shall have power to issue permits between meetings of the board, and these permits will be subject to approval or disapproval at the next subsequent meeting of the board.

5. The duration of the permit shall be determined by the board, but shall in no case be in excess of 1 year. It is renewable at the discretion of the board.

6. The permit to serve as resident medical officer shall not entitle the holder to engage in the private practice of medicine.

7. Any permit granted under authority of this section can be revoked by the board at any time for reasons deemed sufficient by the board.

8. The board is empowered to formulate any rules and regulations, subject to the provisions of this section, for carrying out its purposes.

9. The issuance of a permit to serve as resident medical officer shall in no way obligate the board to grant any regular license for the practice of medicine.

[21½:169:1949; added 1951, 163; A 1953, 662]—(NRS A 1969, 213; 1973, 513)

630.285 Permits for professional employees of state, United States.

1. The board may issue a permit to any qualified applicant to serve as a professional employee of the State of Nevada or of the United States subject to the provisions of this section.

2. The holder of a permit shall:

(a) Practice medicine only as an employee of the State of Nevada or of the United States and under the supervision of the appropriate medical division or department of the State of Nevada or of the United States.

(b) Be a graduate of an accredited medical school of the United States or Canada, or a graduate of a foreign medical school recognized by the Educational Council of Foreign Medical Graduates who has received the standard certificate of the Educational Council of Foreign Medical Graduates and has satisfactorily completed 1 year of postgraduate training approved by the board.

(c) Be of good moral character.

3. Before granting any permit to an individual the board shall have in its possession a letter from the appropriate medical division or department of the State of Nevada or of the United States requesting issuance of a permit to that individual to serve as an employee of the State of Nevada or of the United States.

4. Such permits shall be issued at the meetings of the board, but the president and the secretary of the board may issue permits between meetings of the board, subject to approval at the next meeting of the board.

5. The duration of each permit shall be determined by the board, but shall in no case be in excess of 1 year. Each permit is renewable at the discretion of the board.

6. A permit to practice medicine as an employee of the State of Nevada or of the United States does not entitle the holder to engage in the private practice of medicine.

7. Any permit granted pursuant to this section may be revoked by the board at any time for reasons deemed sufficient by the board.

8. The board may adopt and enforce rules and regulations for carrying out the purposes of this section, subject to the provisions of this section.

9. The issuance of a permit to practice medicine as an employee of the State of Nevada or of the United States in no way obligates the board to grant any regular license for the practice of medicine.

(Added to NRS by 1961, 420; A 1963, 972; 1967, 1178; 1969, 213; 1973, 513)

FEEES

630.290 Annual registration fees: Penalties for delinquencies.

1. Each applicant for a license to practice medicine shall pay a fee of \$200.

2. Each applicant who fails an examination and who is permitted to be reexamined shall pay a fee not to exceed \$200 for each reexamination.

3. If an applicant does not appear for examination, for any reason deemed sufficient by the board, the board may, upon request and in its discretion, refund a portion of the application fee not to exceed \$100. There shall be no refund of the application fee if an applicant appears for examination.

4. Each applicant for a permit, issued under the provisions of NRS 630.280 or 630.285, shall pay a fee not to exceed \$50, as determined by the board, and shall pay a fee of \$10 for each renewal of the permit.

5. Each holder of a license to practice medicine shall pay to the secretary-treasurer of the board on or before May 1 of each year an annual registration fee to be set by the board and in no case to exceed the sum of \$100 per year.

6. Any holder failing to pay the annual registration fee after it becomes due shall be given a period of 60 days in which to pay the fee, and, failing to do so, shall automatically forfeit his right to practice medicine, and his license to practice medicine in Nevada shall automatically be suspended. The holder may, within 2 years from the date his license is suspended, on payment of twice the amount of the then-current annual registration fee to the secretary-treasurer, and after he is found to be in good standing, be reinstated in his right to practice.

7. The annual registration fee shall be collected for the year in which a physician is licensed.

8. Notices shall be sent to delinquents that their licenses are automatically suspended for nonpayment of the annual registration fee, and a copy of the notice shall be sent to the federal narcotic enforcement office and to the recorder of the county in which the physician practices. The recording fee shall be a proper charge against the funds of the board.

[20:169:1949; 1943 NCL § 4107.20]—(NRS A 1973, 514; 1975, 959)

SUSPENSION AND REVOCATION OF LICENSES

1. GROUNDS FOR COMPLAINT

630.300 Unprofessional conduct, criminal acts: Revocation, suspension of licenses by board.

630.300 1. The grounds for initiating a disciplinary proceeding before the board by complaint are:

- (a) Unprofessional conduct;
- (b) Conviction of:

- (1) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance as defined in chapter 453 of NRS;

- (2) A felony; or

- (3) Any offense involving moral turpitude; or

- (c) Suspension or revocation of the license to practice medicine by any other jurisdiction.

2. A certified copy of the record of a court or a licensing agency showing any such conviction, revocation or suspension is conclusive evidence of its occurrence.

[Part 15:169:1949; 1943 NCL § 4107.15]—(NRS A 1973, 515; 1975, 417)

2. FILING COMPLAINT

630.310 Proceedings when complaint filed charging unprofessional conduct.

630.310 Any person, including the board or any of its members, may file a complaint with the secretary of the board against any holder of a license provided for in this chapter charging any one or combination of the grounds stated in NRS 630.300. The complaint shall be in writing and verified by the person making it, except when filed by the board as a body. When a complaint has been filed with the secretary, proceedings shall then be had as provided in NRS 630.320 to 630.340, inclusive.

[Part 16:169:1949; 1943 NCL § 4107.16]—(NRS A 1973, 515)

3. INITIAL REVIEW BY SECRETARY/PRESIDENT

630.320 Notice of hearing and copy of complaint to be furnished person charged.

630.320 1. When a complaint has been filed as provided in NRS 630.310, it shall be considered by the president or the secretary of the board. If the complaint is considered to be frivolous, it shall be held in abeyance and discussed at the next meeting of the board.

2. If from the complaint or from other official records it appears that the complaint is not frivolous, or, with respect to an allegation reported by the attorney general under NRS 630.343, the board has determined to proceed with administrative action, the secretary shall fix a time and place for a hearing and cause a copy of the complaint or the allegation to be served on the person charged at least 20 days before the date fixed for the hearing.

[Part 16:169:1949; 1943 NCL § 4107.16]—(NRS A 1973, 516)

4. BOARD HEARING ON COMPLAINT AND ALLEGATIONS

5. NOTICE

630.325 Service of process.

1. Service of process made under this chapter shall be either personal or by registered or certified mail with return receipt addressed to the physician at his last-known address, as indicated on the records of the board, if possible. If personal service cannot be made and if mail notice is returned undelivered, the secretary of the board shall cause notice of hearing to be published once a week for 4 consecutive weeks in a newspaper published in the county of the physician's last-known address or, if no newspaper is published in that county, then in a newspaper widely distributed in that county.

2. Proof of service of process or publication of notice made under this chapter shall be filed with the secretary of the board and shall be recorded by him in the minutes of the board.

(Added to NRS by 1973, 516)

6. DOCTOR'S
RIGHTS AT
BOARD HEARING

630.330 Hearing: Revocation, suspension of license; probation; transcript of proceedings filed with county clerk.

630.330 1. The person charged shall be given a full and fair trial by the board, with the right to be heard and to appear in person and by counsel, to cross-examine witnesses who appear against him and to present witnesses. The failure of the person charged to attend his hearing or his failure to defend himself shall not serve to delay or void the proceedings. The board may, for good cause shown, continue any hearing from time to time.

2. The secretary or the president of the board may issue subpoenas for the attendance of witnesses or for the production of documents or tangible evidence. A subpoena may be served by the sheriff, his deputy or any other person who is not a party and is not less than 18 years of age. If any person refuses to obey the subpoena or refuses to testify or produce any tangible evidence designated therein, the board may petition the district court of the county where the person is served or where he resides to secure the attendance of that person and the production of any tangible evidence. Upon receiving the petition the court shall issue an order requiring that person to obey the subpoena or to show cause why he failed to obey the subpoena. The failure of any person, with adequate excuse, to obey a subpoena is contempt of the court.

7. BOARD'S
SUBPENA POWER

8. BOARD
DISCIPLINARY
ACTIONS

3. If the board finds the person is guilty as charged in the complaint or the allegation, it may by order:

(a) Place the person on probation for a specified period or until further order of the board.

(b) Administer to the person a public or private reprimand.

(c) Limit the practice of the person to, or by exclusion of, one or more specified branches of medicine.

(d) Suspend the license of the person to practice medicine for a specified period or until further order of the board.

(e) Revoke the license of the person to practice medicine.

The order of the board may contain such other terms, provisions or conditions as the board deems proper and which are not inconsistent with law.

[Part 16:169:1949; 1943 NCL § 4107.16]—(NRS A 1973, 517)

9. BOARD MAY
REQUIRE EXAM
AFTER A. G.
REPORT

630.335 Physical or Mental Examination of
Physician.

1. When the board has determined to proceed with administrative action on an allegation reported to it by the attorney general, the board may require the person charged in the allegation to submit to a mental or physical examination by physicians designated by the board.

10. CONSTRUCTIVE
CONSENT TO
EXAM

2. For the purposes of this section:

(a) Every physician licensed under this chapter who accepts the privilege of practicing medicine in this state is deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board.

11. EXAM REPORTS
NOT
PRIVILEGED

(b) The testimony or examination reports of the examining physicians are not privileged communications.

12. EFFECT OF
FAILURE TO
SUBMIT TO
EXAM

3. Except in extraordinary circumstances, as determined by the board, the failure of a physician licensed under this chapter to submit to an examination when directed as provided in this section constitutes an admission of the charges against him.

13. COURT
REVIEW

630.340 Review of proceedings by district court: Licensee's petition; effective date of revocation, suspension, probation.

1. Any person whose license has been revoked or suspended or who has been placed on probation may, within 60 days after the filing of certified copies of the transcript, findings and order, petition the district court to review the proceedings, findings and order of the board and to reverse or modify the same. Upon such review the burden is upon the petitioner to show wherein the order of the board is erroneous or unlawful.

14. COURT
AFFIRMATION:
WHEN BOARD
ORDER IS
EFFECTIVE

2. When 60 days have elapsed after the filing of the order and findings, if no petition for review has been filed, the district court shall make its order affirming the decision of the board. Until the same is modified or reversed, as provided in this section, the revocation, suspension or probation of such license and the right to practice thereunder shall become effective on the date the secretary certifies such fact of the decision and order of the board to the county recorder of the county in which the person's license has been recorded.

[Part 16:169:1949; 1943 NCL § 4107.16]—(NRS A 1973, 518)

15. FILING
ALLEGATION

630.341 Malpractice, professional incompetence: Filing of allegations; immunity from civil action; confidentiality.

1. Any medical review panel of a hospital, medical-legal screening panel or other medical society which becomes aware of gross or repeated malpractice or of professional incompetence on the part of a physician shall, and any other person who is so aware may, file a written allegation of the relevant facts with the board or, if the physician has his office in a county of this state whose population is 100,000 or more, as determined by the last preceding national census of the Bureau of the Census of the United States Department of Commerce, the county medical society.

16. IMMUNITY

2. A person who, acting individually or as a member of any panel or organization, and a panel or organization which files any allegation for the purposes of this section, except with malicious intent, are immune from any civil action for such filing or any consequential damages.

17. CONFIDENTI-
ALITY

3. All proceedings subsequent to the filing of an allegation are confidential until a determination is made by the board following investigation and recommendation by the attorney general. If the board dismisses the allegation, the proceedings shall remain confidential. If the board proceeds administratively under this chapter or directs the attorney general to proceed judicially, confidentiality concerning the proceedings is no longer required.

(Added to NRS by 1975, 413)

630.343 Malpractice, professional incompetence: Review, investigation, dismissal of allegation; determination regarding further action; effect on physician's privileges.

18. INITIAL REVIEW
OF ALLEGATION

630.343 1. When an allegation has been filed:

(a) With the board, it shall be reviewed by the board.

(b) With a county medical society, the society may choose to review it or may refer it to the board for review. Whether or not the society chooses to conduct the review itself, it shall forward a copy of the allegation to the board and advise the board of its decision to review or refer. Whenever an allegation is referred by the county medical society to the board for review, it shall be reviewed by the board.

Upon completion of the review, the board or the county medical society conducting the review shall determine whether the allegation is frivolous, and if it is not, the board or society shall transmit the original allegation, along with further facts or information derived from its own review, to the attorney general.

19. A.G.
INVESTIGATION

2. The attorney general shall conduct an investigation of each allegation transmitted to him to determine whether such allegation warrants proceedings for suspension, revocation or modification of licensure. If he determines that such further proceedings are warranted, he shall report the results of his investigation together with his recommendation to the board in a manner which does not violate the physician's right to due process in any later hearing before the board.

20. BOARD OPTIONS
IN HANDLING
ALLEGATION

3. The board shall promptly make a determination with respect to each allegation reported to it by the attorney general as to what action shall be pursued. The board shall:

(a) Dismiss the allegation;

(b) Proceed with appropriate administrative action under this chapter; or

(c) Direct the attorney general to file a petition in the district court on behalf of the board for a judicial suspension, revocation or modification.

21. HOSPITAL MAY
LIMIT OR
TERMINATE
PRIVILEGES

4. The filing and review of an allegation, its dismissal without further action or its transmittal to the attorney general, and any subsequent disposition by the board, the attorney general or any court do not preclude any measure by a hospital or other institution or medical society to limit or terminate the privileges of a physician according to its rules or the custom of the profession. No civil liability attaches to any such action taken without malice even if the ultimate disposition of the allegation is in favor of the physician.

HOSPITAL
IMMUNITY

COUNTY MEDICAL
SOCIETY
ACTS

5. A county medical society may act for the purposes of this section through its governing board or through a committee appointed for this purpose.

(Added to NRS by 1975, 413)

630.345 Malpractice, professional incompetence: Filing of petition for judicial suspension, revocation, modification of license; criminal prosecution not precluded.

23. A.G. FILES
PETITION IN
COURT

1. The attorney general, upon direction from the board to file a petition for judicial suspension, revocation or modification on its behalf, shall file a petition in the district court for the county where the physician has his office, or if he has no office in this state then for the county where the cause of action arose, praying for the limitation, suspension or revocation of the physician's license to practice medicine. Venue may be changed as in other civil actions.

24. CRIMINAL
PROSECUTION
NOT
PRECLUDED

2. The filing of a petition pursuant to this section does not preclude any appropriate criminal prosecution by the attorney general or a district attorney based upon the same or other facts.

(Added to NRS by 1975, 414)

630.347 Malpractice, professional incompetence: Applicability of Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure in judicial proceedings; injunctions; appeals.

25. NRCP APPLIES
NRAP

1. The judicial proceedings provided in this chapter are civil in nature, and all the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure apply except where a specifically different provision is made in this chapter.

26. INJUNCTION

2. In particular, the court may in a proper case by temporary restraining order or preliminary injunction, or both, limit or suspend the right of a physician to practice medicine.

27. SUPREME COURT
APPEAL

3. An appeal lies to the supreme court from the decisions of the district court as in other civil matters.

(Added to NRS by 1975, 414)

630.349 Malpractice, professional incompetence: Modification, suspension, revocation of license by court. If the court finds that a physician is guilty of gross or repeated malpractice or is professionally incompetent to practice medicine or to practice one or more specified branches of medicine, it may:

28. COURT
DISCIPLINARY
ACTION

1. Limit the practice of the physician to, or by the exclusion of, one or more specified branches of medicine.

2. Suspend the license of the physician to practice medicine for a specified time or until further order of the court.

3. Revoke the license of the physician to practice medicine.

(Added to NRS by 1975, 414)

29. RESTORATION
OF
LICENSE

630.350 1. Any person:

(a) Whose practice of medicine has been limited; or

(b) Whose license to practice medicine has been:

(1) Suspended until further order; or

(2) Revoked,

by an order of the board or the court may apply after a reasonable period for removal of the limitation or restoration of his license to the authority which issued the order.

2. The authority hearing the application:

(a) May require the person to submit to a mental or physical examination by physicians whom it designates and submit such other evidence of changed conditions and of fitness as it deems proper;

(b) Shall determine whether under all the circumstances the time of the application is reasonable; and

(c) May deny the application or modify or rescind its order as it deems the evidence and the public safety warrants.

[Part 15:169:1949; 1943 NCL § 4107.15]—(NRS A 1973, 518; 1975, 418)

UNLAWFUL ACTS; PENALTIES

630.370 Prosecution of violators: Employment of investigators. The board is authorized to prosecute all persons guilty of violation of the provisions of this chapter and may employ investigators and such other assistants as may be necessary to carry into effect the provisions of this chapter, but any expenses so incurred shall not be paid out of the general fund of the state treasury.

[Part 6:169:1949; 1943 NCL § 4107.06]

630.380 Board may seek injunctive relief against person practicing without a license.

1. The board through its president or secretary-treasurer or the attorney general may maintain in any court of competent jurisdiction a suit for an injunction against any person or persons practicing any branch of medicine as defined in NRS 630.020 without a license.

2. Such an injunction:

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

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

[25:169:1949; 1943 NCL § 4107.25]—(NRS A 1973, 519; 1975, 418)

630.390 Sufficiency of allegations of complaint charging unlawful practice. In charging any person with a violation of this chapter by practicing medicine without a license, it is sufficient to charge that he did, upon a certain day, and in a certain county of this state, engage in the practice of medicine, he not having a license to do so, without averring any further or more particular facts concerning the same.

[Part 17:169:1949; 1943 NCL § 4107.17]—(NRS A 1973, 519)

630.400 Penalty for certain violations. Any person who:

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

2. Gives either false or forged evidence of any kind to the board, or any member thereof, in connection with an application for a license or permit to practice medicine;

3. Practices medicine under a false or assumed name or falsely personates another licensee of a like or different name; or

4. Holds himself out as a physician's assistant or who uses any other term indicating or implying that he is a physician's assistant, unless he has been certified by the board,

shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years.

[18:169:1949; 1943 NCL § 4107.18]—(NRS A 1967, 641; 1973, 519; 1975, 418)

630.410 Penalty for practicing without license. Any person who practices medicine, unless licensed under this chapter, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years.

[23:169:1949; 1943 NCL § 4107.23]—(NRS A 1973, 520; 1975, 418)

630.420 Recording of license issued to another constitutes a felony. Every person filing for record, or attempting to file for record, the license issued to another, falsely claiming himself to be the person named in the license, or falsely claiming himself to be the person entitled to the same, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years.

[24:169:1949; 1943 NCL § 4107.24]—(NRS A 1967, 641; 1973, 520)

ADVANCED EMERGENCY MEDICAL TECHNICIANS—AMBULANCE

630.430 "Advanced emergency medical technician-ambulance" defined. As used in NRS 630.430 to 630.450, inclusive, "advanced emergency medical technician-ambulance" means a person specially trained in emergency medical care, including cardiac care, in a training program certified by the state board of health and individually certified by the state health officer as having satisfactorily completed the training program.

(Added to NRS by 1973, 610; A 1975, 38)

630.440 Training requirements.

1. A training program for advanced emergency medical technicians-ambulance shall include at least 500 hours of training, including but not limited to 300 hours of didactic and 200 hours of clinical instruction. The program shall include cardiac care and emergency vehicle experience.

2. A certified advanced emergency medical technician-ambulance must undergo at least 40 hours of further or refresher training yearly in order to maintain his certification, and is subject to reexamination every 2 years by the state health officer.

(Added to NRS by 1973, 610; A 1975, 38)

630.450 Authorized activities. An advanced emergency medical technician-ambulance may:

1. Render rescue, first-aid and resuscitation services.

2. During training at a hospital and while caring for patients in a hospital administer parenteral medications under the direct supervision of a physician or a registered nurse.

3. Perform cardiopulmonary resuscitation and defibrillation in a pulseless, nonbreathing patient.

4. Where voice contact or a telemetered electrocardiogram is monitored by a physician or a registered nurse supervised by a physician, and direct communication is maintained, upon order of such physician or nurse perform such procedures and administer such drugs as are approved by the state board of health, which may include but are not limited to:

(a) Administer intravenous saline or glucose solutions.

(b) Perform gastric suction by intubation.

(c) Administer airway intubation by esophageal tube or endotracheal tube.

(d) Perform needle aspiration of the chest.

(e) Perform surgical exposure of a vein or artery.

(f) Perform a phlebotomy or draw blood specimens for analysis.

(g) Administer drugs of the following classes:

(1) Antiarrhythmic agents.

(2) Vagolytic agents.

(3) Chronotropic agents.

(4) Analgesic agents.

(5) Alkalinizing agents.

(6) Vasopressor agents.

(7) Diuretics.

(8) Narcotic antiagents.

(9) Anticonvulsive agent.

(10) Volume expanding agents.

(11) Topical ophthalmic solution.

(12) Intravenous glucose.

(13) Antihistaminic.

(14) Steroids.

(15) Bronchodilators.

(Added to NRS by 1973, 610; A 1975, 38)

PROPOSED

CHAPTER 633 (S.B. 139)

NEVADA REVISED STATUTES

Regulating the Practice of
Osteopathic Medicine

The attached is a mockup of the disciplinary sections of S.B. 139 with leadlines inserted.

The concepts on professional discipline found in S.B. 139 are the same as those found in chapter 630 of NRS. The main difference is found in the fact that S.B. 139 was drafted as a total professional regulatory chapter. NRS 630, on the other hand, has grown incrementally over the years.

If the committee finds that the disciplinary sections in chapter 630 have become too confusing to be effective, then S.B. 139 offers a viable alternative.

DISCIPLINARY ACTION

Preliminary Proceedings

Grounds for disciplinary action.

SEC. 53. *The grounds for initiating disciplinary action under 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 as defined in chapter 453 of NRS or dangerous drug as defined in chapter 454 of NRS;*
 - (b) *A felony; or*
 - (c) *Any offense involving moral turpitude.*
3. *Suspension or revocation of the license to practice osteopathic medicine by any other jurisdiction.*
4. *Gross or repeated malpractice.*
5. *Professional incompetence.*

The board shall not initiate disciplinary action on the ground of unprofessional conduct if the supporting alleged facts constitute gross or repeated malpractice or professional incompetence.

Filing of complaints.

SEC. 54. *The board or any of its members, any medical review panel of a hospital or medical society which becomes aware that any one or combination of the grounds for initiating disciplinary action may exist as to a person practicing osteopathic medicine in this state shall, and any other person who is so aware may, file a written complaint specifying the relevant facts with the board or with the osteopathic medical society of the county in which the person charged has his office if there is an osteopathic medical society in the county.*

Review of complaints by board, county osteopathic medical society.

SEC. 55. 1. *When a complaint is filed:*

(a) *With the board, it shall be reviewed by the president or secretary of the board.*

(b) *With a county osteopathic medical society, the society, acting through its governing body or through a committee appointed for this purpose, may choose to review it or may refer it to the board for review.*

2. *Whether or not the society chooses to conduct the review itself, it shall forward a copy of the complaint to the board and advise the board of its decision to review or refer. Whenever a complaint is referred by the society to the board for review, it shall be reviewed by the board.*

3. *Upon completion of the review, the board or the county osteopathic medical society conducting the review shall determine whether the complaint is frivolous. If the society considers a complaint to be frivolous, it shall so notify the board and the board may review the complaint. If the president or secretary of the board considers a complaint to be frivolous, the complaint shall be held in abeyance and reviewed at the next meeting of the board.*

4. *If, from the complaint or from other official records, it appears that the complaint is not frivolous and the complaint charges:*

(a) *Unprofessional conduct, a conviction or the suspension or revocation of a license to practice osteopathic medicine, the board shall proceed with administrative action under this chapter.*

(b) *Gross or repeated malpractice or professional incompetence, the board or the county osteopathic medical society which conducted the review shall transmit the original complaint, along with further facts or information derived from its own review, to the attorney general.*

Investigation by attorney general of complaints charging malpractice, professional incompetency; board determination regarding further action.

SEC. 56. 1. The attorney general shall conduct an investigation of each complaint transmitted to him to determine whether it warrants proceedings for modification, suspension or revocation of license. If he determines that such further proceedings are warranted, he shall report the results of his investigation together with his recommendation to the board in a manner which does not violate the right of the person charged in the complaint to due process in any later hearing before the board.

2. The board shall promptly make a determination with respect to each complaint reported to it by the attorney general as to what action shall be pursued. The board shall:

(a) Dismiss the complaint;

(b) Proceed with appropriate administrative action under this chapter;

or

(c) Direct the attorney general to file a petition in the district court on behalf of the board for a judicial modification, suspension or revocation of the license.

Confidentiality of proceedings where complaint charges malpractice, professional incompetence.

SEC. 57. All proceedings subsequent to the filing of a complaint charging gross or repeated malpractice or professional incompetence are confidential until a determination is made by the board following investigation and recommendation by the attorney general. If the board dismisses the complaint, the proceedings shall remain confidential. If the board proceeds administratively under this chapter or directs the attorney general to proceed judicially, confidentiality concerning the proceedings is no longer required.

Physical, mental examination of licensee charged with malpractice, professional incompetence.

SEC. 58. 1. When the board has determined to proceed with administrative action on a complaint reported to it by the attorney general, the board may require the person charged in the complaint to submit to a mental or physical examination by physicians designated by the board.

2. For the purposes of this section:

(a) Every physician licensed under this chapter who accepts the privilege of practicing osteopathic medicine in this state is deemed to have given his consent to submit to a mental or physical examination when directed to do so in writing by the board.

(b) The testimony or examination reports of the examining physicians are not privileged communications.

3. Except in extraordinary circumstances, as determined by the board, the failure of a physician licensed under this chapter to submit to an examination when directed as provided in this section constitutes an admission of the charges against him.

Board Proceedings

Notice of hearing, copy of complaint to be furnished person charged.

SEC. 59. If:

1. A complaint charging unprofessional conduct, a conviction or the suspension or revocation of a license to practice osteopathic medicine is not frivolous; or

2. With respect to a complaint reported by the attorney general, the board has determined to proceed with administrative action, the secretary of the board shall fix a time and place for a hearing and cause a notice of the hearing and a copy of the complaint to be served on the person charged at least 20 days before the date fixed for the hearing.

Service of process.

SEC. 60. 1. Service of process made under this chapter shall be either personal or by registered or certified mail with return receipt addressed to the osteopathic physician at his last-known address, as indicated on the records of the board, if possible. If personal service cannot be made and if mail notice is returned undelivered, the secretary of the board shall cause notice of hearing to be published once a week for 4 consecutive weeks in a newspaper published in the county of the physician's last-known address or, if no newspaper is published in that county, then in a newspaper widely distributed in that county.

2. Proof of service of process or publication of notice made under this chapter shall be filed with the secretary of the board and shall be recorded in the minutes of the board.

Requirements for proof of certain charges.

SEC. 61. In any disciplinary proceeding before the board:

1. Proof of actual injury need not be established where the complaint charges deceptive or unethical professional conduct or medical practice harmful to the public.

2. A certified copy of the record of a court or a licensing agency showing a conviction or the suspension or revocation of a license to practice osteopathic medicine is conclusive evidence of its occurrence.

Rights of person charged; disciplinary orders of board.

SEC. 62. 1. The person charged is entitled to a hearing before the board, but the failure of the person charged to attend his hearing or his failure to defend himself shall not serve to delay or void the proceedings. The board may, for good cause shown, continue any hearing from time to time.

2. If the board finds the person is guilty as charged in the complaint, it may by order:

(a) Place the person on probation for a specified period or until further order of the board.

(b) Administer to the person a public or private reprimand.

(c) Limit the practice of the person to, or by the exclusion of, one or more specified branches of osteopathic medicine.

(d) Suspend the license of the person to practice osteopathic medicine for a specified period or until further order of the board.

(e) Revoke the license of the person to practice osteopathic medicine.

The order of the board may contain such other terms, provisions or conditions as the board deems proper and which are not inconsistent with law.

Filing of transcript, findings and order of board.

SEC. 63. 1. Whenever the board issues an order upon a finding of guilt, except one which administers a public or private reprimand, the secretary of the board shall file certified copies of the transcript of the proceedings before the board and its findings and order with the clerk of the district court of the county in which the license is recorded within 30 days after the order is issued.

2. The secretary shall also file a certified copy of an order of the board or the court limiting the practice of osteopathic medicine or suspending or revoking a license with the county recorder of the county in which the license is recorded within 10 days after the order is issued.

District court review; stay orders prohibited; criminal action required for violations of board order before modification, reversal by court.

SEC. 64. 1. Any person who has been placed on probation or whose license has been suspended or revoked by the board may petition the district court within 60 days after the filing of the transcript, findings and order to review the proceedings, findings and order of the board and to modify or reverse the board's order. The burden is upon the petitioner to show in the review wherein the order of the board is erroneous or unlawful.

2. Every order of the board which limits the practice of osteopathic medicine or suspends or revokes a license is effective from the date the secretary certifies the order to the proper county recorder until the order is modified or reversed by the court as provided in this section. The court shall not stay the order of the board unless the board has failed to comply with the procedural requirements provided for in section 63 of this act. The attorney general shall bring a criminal action against any person who practices osteopathic medicine in violation of the board's order before it is stayed, modified or reversed by the court.

3. The district court shall make its order affirming the decision of the board when 60 days have elapsed since the filing of the board's order with the clerk of the court.

Judicial Proceedings

Malpractice, professional incompetence: Filing of petition for judicial modification, suspension, revocation of license; criminal prosecution not precluded.

SEC. 65. 1. The attorney general, upon direction from the board to file on its behalf a petition for judicial modification, suspension or revocation, shall file a petition in the district court for the county where the osteopathic physician has his office, or if he has no office in this state then for the county where the cause of action arose, praying for the limitation, suspension or revocation of the physician's license to practice medicine. Venue may be changed as in other civil actions.

2. The filing of a petition pursuant to this section does not preclude any appropriate criminal prosecution by the attorney general or a district attorney based upon the same or other facts.

Malpractice, professional incompetence: Applicability of Nevada Rules of Civil Procedure, Nevada Rules of Appellate Procedure; injunctions; appeals.

SEC. 66. 1. The judicial proceedings provided in this chapter are civil in nature, and all the Nevada Rules of Civil Procedure and Nevada Rules of Appellate Procedure apply except where a specifically different provision is made in this chapter.

2. In particular, the court may in a proper case by temporary restraining order or preliminary injunction, or both, limit or suspend the right of an osteopathic physician to practice osteopathic medicine.

3. An appeal lies to the supreme court from the decisions of the district court as in other civil matters.

Malpractice, professional incompetence: Modification, suspension, revocation of license by court.

SEC. 67. If the court finds that an osteopathic physician is guilty of gross or repeated malpractice or is professionally incompetent to practice osteopathic medicine or to practice one or more of its specified branches, it may:

1. Limit the practice of the physician to, or by the exclusion of, one or more specified branches of osteopathic medicine.

2. Suspend the license of the physician to practice osteopathic medicine for a specified time or until further order of the court.

3. Revoke the license of the physician to practice osteopathic medicine.