

Members Present:

Chairman Hayes
Vice Chairman Stewart
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Horn
Mr. Malone
Mr. Polish
Mr. Sena

Members Excused:

Mr. Prengaman

Guests Present:

Larry Kees, Nevada Industrial Insurance Agents
Richard Pugh, Nevada State Medical Association
Phoebe Talbert, Consumer Affairs
Virgil Anderson, AAA
Tom Ainsworth, KOLO-KORK
Pete Kelley, Nevada Industrial Agents
Vince Swinney, Washoe County Sherrif's Department
Larry Ketzenberger, Las Vegas Metro Police Department
Chuck King, Central Telephone
Dr. Tom Scully, University of Nevada, Reno, School
of Medical Sciences
Joe Crowley, University of Nevada
Assemblyman John Vergiels
Assemblyman Harley Harmon

ASSEMBLY BILL NO. 29

Limits liability for damages arising out of
certain activities of school of medical sciences,
University of Nevada.

Chairman Hayes called the meeting to order at 9:10 a.m.
Assemblyman Harmon stated that A.B. 29 came out of an
interim Committee on Professional Liability Insurance
as a measure to protect the State against any liability
that might arise out of the School of Medical Sciences,
University of Nevada, Reno.

Assemblyman Banner named members of the interim committee, which included Mr. Harmon, Mr. Banner, Senators Hilbrecht and Young. That interim committee was concerned with several areas of professional liability of the State for entities in addition to the School of Medical Sciences at the University of Nevada, Reno. The particular concern for the School of Medical Sciences dealt with medical students performing services in their third and fourth years of medical school which had potential liability over and above the State limits (\$35,000.00) as well as students who might go out of State in performance of their duties, possibly further libeling the State.

Mr. Stewart asked if the bill contemplated students being employees of the State, and Mr. Banner stated that was the consideration for a medical student performing a service as indicated earlier. Mr. Banner further responded that no reimbursement was involved in medical students' provision of the referenced services.

In response to Mr. Malone's inquiry, Mr. Banner stated that the bill contains no statement requiring the physician to notify a patient that the intern providing services is a student. He further stated that a major concern of the bill is the student who goes out of state to perform services, citing the fact that California does not recognize Nevada's sovereign immunity.

In response to Chairman Hayes' question, Mr. Banner stated that he is not familiar with other states' laws which may be similar pertaining to medical schools and that Nevada's \$35,000.00 foreign immunity coverage limit is unique. Mr. Stewart commented that the foreign immunity provision is only for employees of the State and not for University of Nevada employees.

Mr. Banner reaffirmed that medical students at the University really are individually unprotected so that without protection from this sort of bill, they are inhibited from going out of state to perform services.

Chairman Hayes inquired as to whether a history of these kinds of problems exists, and Mr. Harmon replied that problems are anticipated, as this is the first year when third and fourth year medical students have been in the School of Medical Sciences, the first two years of medical school not requiring activities by medical students which would be considered potential liabilities. Mr. Sena confirmed that this is a problem pertinent to the last two years of medical school.

Mr. Stewart asked if the intention of the bill was to protect the State or, in addition, to protect the student; Mr. Banner answered that this would provide protection only for the student in performance of required services and that another study committee would be needed to provide protection for the State in situations which might require defense action by the Attorney General.

Chairman Hayes commented that the bill would additionally protect teachers and doctors in the School of Medical Sciences program. She noted that Jerry Lopez was the attorney of record on the interim study committee and requested that he be asked to appear before the Committee to answer technical considerations of the proposed bill.

Next to testify was Richard Pugh, Executive Director of the Nevada State Medical Association, who read from a letter to the Committee signed by Neil Swissman, M.D., President of that association, urging a Committee vote of "do pass" on the bill. A copy of that letter is attached hereto as Appendix A.

Chairman Hayes recessed the meeting at 9:22 a.m. until the arrival of Assemblyman John Vergiels at 9:30 a.m., when the meeting was reconvened.

Dr. Tom Scully, School of Medical Sciences, University of Nevada, Reno, spoke next. He noted that he had attended meetings of the interim subcommittee on public liability insurance from concern about ability of the school to obtain malpractice insurance, which has been obtained since that time in a satisfactory amount to the school. Dr. Scully stated his support of the proposed bill with one reservation. He cited page 3, lines 8 and 9, which he noted could adversely affect accreditation requirements for medical students. He stated that the accreditation standards mandate that a medical student go out of State for eight to ten weeks to established medical schools, which Nevada does not have. He questioned whether under this bill, students could be permitted to go out of state under any condition, noting that if the law were to permit them to go out of state, the University of Nevada could negotiate with other medical schools to obtain malpractice insurance for them.

Jerry Lopez then arrived in the Committee room to answer inquiries of Committee members regarding technicalities of the bill. He noted, in response to Chairman Hayes' question, that the bill as drafted refers only to medical students enrolled at the School of Medical Sciences.

In answer to Mr. Stewart's question, Dr. Scully responded that students practice without licenses under direction of licensed physicians (under contract with the University) who supervise senior students. Students practice either in the hospital or in the supervising physician's office. He emphasized that students are not so assigned by any physician not under the rules and regulations of contract by and with the University of Nevada. He noted that students assigned out of State would be under an agreement between the University of Nevada and the out-of-State medical school, under supervision of appointed physicians so designated by that medical school. No student would be authorized to go out of Nevada without that specific affiliation.

Mr. Malone expressed concern about patients who authorize, by signed document, operative procedures by a licensed physician, when in actuality services are performed by an intern without the patient's knowledge. Dr. Scully explained that such situations have become infrequent because of Federal government regulations requiring that the licensed surgeon to whom signed permission is given by a patient must perform the operation. He added that every patient seen by a medical student signs a permit to the effect that he knows that medical student is working with the physician in charge of that patient; further, that every patient has the opportunity to deny, in writing, permission for a medical student to perform any service in connection with the patient's care.

Chairman Hayes asked if the requirements described by Dr. Scully are determined by law; Dr. Scully answered that only the written agreement between patient and licensed physician determines by whom care is effected for the patient. Mr. Lopez then responded to Chairman Hayes that the proposed bill was not modeled after legislation from any other state, but that he would research other state laws to see whether such legislation exists.

Mr. Stewart stated that the bill would appear to prohibit the University of Nevada from sending students out of State and would thus impede their completion of training as necessitated by accreditation standards. Mr. Lopez cited the Hall case in the State of California, in which California determined that sovereign immunity from the State of Nevada does not apply in California torts by public employees of Nevada working in California. Mr. Stewart then emphasized his feeling that the bill needed amending so that medical students could meet accreditation requirements.

After further discussion regarding amending Sections 4 and 9 of the proposed bill, Chairman Hayes and Mr. Stewart concurred in stating that technicalities of the bill might be re-examined, and Dr. Scully stated he would be happy to work with whatever committee might deliberate that reassessment.

ASSEMBLY BILL NO. 82

Prohibits keeping or operating borrowed vehicle beyond terms of its loan.

Assemblyman John Vergiels explained his introduction of this bill was based on a complaint from a constituent regarding a car borrowed from him, not returned as promised, and the constituent's difficulty in obtaining assistance from the police department to regain possession of the car. The police department stated the cause of its inability to act in the matter was based on the fact that there was no law to cover the situation. Mr. Vergiels stated that purpose of the bill introduction was to protect citizens who had loaned vehicles to others from like problems in regaining possession of their cars. Mr. Vergiels also remarked that his primary concern was to have a law that would be both justifiable and enforceable.

Mr. Stewart said that he had tried to find reference in the Nevada Revised Statutes pertaining to this particular situation and that his research findings indicated the problem would fall under the heading of embezzlement. He defined embezzlement as initial possession of property lawfully with consent, with intent thereafter converted to the possessor's own use, and exemplified with a hypothetical situation which would indicate the borrower's later intent to steal a vehicle. Mr. Stewart further stated that the law pertains presently only to leased vehicles. He suggested making the law applicable to borrowed vehicles and reducing the period after which an owner could seek police assistance with return of the car from 72 to 48 hours. Mr. Virgil Anderson, representing AAA, agreed with that sort of change, as did Larry Ketzenberg of the Las Vegas Metro Police Department.

In answer to Mr. Malone's question, Mr. Ketzenberger stated that registered letters are sent by the police department as a matter of policy, not law, with reference to vehicle embezzlement. Mr. Polish suggested that contracts might be required in all lending situations regarding vehicles. Mr. Ketzenberger said that 75 per cent of situations in which breach of trust was involved and in which complaints are filed with the police department are cancelled complaints within ten days of the initial filing. Mr. Vince Swinney of the Washoe County Sheriff's Office concurred.

Motion: Mr. Sena moved for indefinite postponement of A.B. 82, seconded by Mr. Polish. Motion was approved, with Committee members voting as follows:

Majority Vote:

Chairman Hayes
Mr. Banner
Mr. Brady
Mr. Coulter
Mr. Fielding
Mr. Malone
Mr. Polish
Mr. Sena

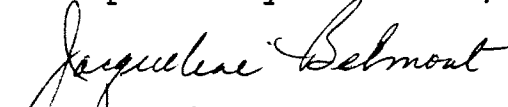
Minority Vote:

Mr. Horn
Vice Chairman Stewart

Chairman Hayes then referred further consideration of A.B. 29 to a subcommittee composed of Mr. Horn, Chairman, and Mr. Stewart.

There being no further business to come before the Committee, Chairman Hayes adjourned the meeting at 10:02 a.m.

Respectfully submitted,


Jacqueline Belmont
Secretary

NEVADA
STATE
MEDICAL
ASSOCIATION

NEIL SWISSMAN, M.D., President
RICHARD C. INSKIP, M.D., President-elect
GORDON L. NITZ, M.D., Secretary-Treasurer
ROBERT L. BROWN, M.D., Immed. Past President
LESLIE A. MOREN, M.D., AMA Delegate
LEONARD H. RAIZIN, M.D., AMA Alternate Delegate
RICHARD G. PUGH, CAE, Executive Director

3660 Baker Lane • Reno, Nevada 89509 • (702) 825-6788

January 24, 1979

Honorable Karen Hayes
Nevada State Legislature
Legislative Building
Carson City, Nevada 89710

Dear Mrs. Hayes:

Thank you for notifying the Nevada State Medical Association of the January 25, 1979 hearing on AB-29, a bill limiting liability for damages arising out of certain activities of the School of Medical Sciences.

As you know, this is one of the recommended bills from the Interim Subcommittee on Professional Liability Insurance. Committee members worked extremely hard in developing this and other measures that, hopefully, will ease the problem of cost and availability.

The Nevada State Medical Association supports Bill AB-29 and urges your committee to vote a "do pass".

Sincerely,



NEIL SWISSMAN, M.D.

NS:kn

cc: Assembly Judiciary Committee members