

The meeting was called to order at 9:05 a.m. Senator Close was in the Chair.

PRESENT: Senator Close
Senator Hernstadt
Senator Don Ashworth
Senator Dodge
Senator Ford
Senator Raggio
Senator Sloan

ABSENT: None

AB 95 Provides certain immunity from civil damages to physician who provides treatment to patient in rural community in emergency.

Virgil Getto, Assemblyman and prime introducer of this bill, stated that this was the result of many people being concerned over the shortage of doctors in rural areas. The Legislature has extended the "Good Samaritan" concept piece by piece. This bill addresses itself to extending that concept to an emergency in a medically isolated facility or in a rural area. The reason for this is that the doctor in a rural area practices under much different circumstances than one in an urban area. He does not have the facilities or backup that the doctor in a large hospital has in the emergency room. In most rural areas there is only one doctor on duty, especially on weekends. That doctor on call, may be called into a situation where he is not a specialist, or may not even have practiced in that particular area with a great deal of experience. Mr. Getto then passed out an article written by Dr. Des Marteau, who recently left Fallon because he would not place himself in the emergency room situation (see exhibit A).

Senator Ashworth asked if the standards for a doctor in a particular area were not set up by the doctor in that area.

Mr. Getto stated that that was true, by the locality rule. However there is a suit filed in Fallon right now for malpractice, and one against a Dr. Boone who is not in Fallon. So there are suits that are filed against rural doctors and this piece of legislation would help alleviate that.

Senator Ashworth stated that he felt there would still be suits filed even if this bill were passed. It is a dual standard right now. All you have to do is look around and see what is available to that doctor and his qualifications and that is the standard.

Mr. Getto stated all that this bill would do would be to give them immunity in the rare case of an emergency where a doctor could save a person's life. We are not asking to exclude them from liability in all areas of their practice so perhaps emergency could be defined a little tighter in the bill.

Senator Hernstadt stated that the doctor would still be required to practice in a workman-like way and follow routine medical procedures. What would this bill allow a doctor to do that he cannot do now?

Mr. Getto stated that all he can say is to say that a doctor left Fallon because of the malpractice problems, and other doctors simply will not come to a rural area, because they are placed under a different jeopardy. In the urban areas there are specialists on call. In just seconds you can have another specialist there. That simply does not happen in the rural area. At this point he also submitted another article for the Committee to read, on the shartage of doctors in the rural areas (see exhibit B).

Dr. Curt carlson who is a practicing physician in Fallon stated he would like to testify in support of this bill. He said that many of the OB patients that come into the emergency room have never been seen before by any of the doctors in the area. Many of them have had no prenatal care. They just walk in and say "here I am, deliver me." Many of them are in terrible shape. The baby may be coming down in a breach position, and unless you are a specialist, there aren't too many doctors around that are skilled enough in obstetrics to handle those kinds of situations. There is not time to transport them to a large center, and so the doctor must intervene because he is there. They need some help and protection in this regard.

Senator Close stated that in the bill it says that you are not liable when you are compelled to treat a patient in an emergency situation. However, on lines 13, 14, and 15 where it says, "after the emergency is over if you do not advise the patient, or arrange for further treatment of the patient, you are not liable." At that point in time there is no emergency, so why is that in the bill?

De. Carlson stated that he wasn't aware that was in the bill and he would think that should be amended out.

Senator Hernstadt asked if the malpractice fees were greater in the Fallon area than other areas, and if so, why?

Dr. Carlson stated that they were greater. He also stated he was not carrying any insurance, but that was his choice. He stated that if an internist came to the rural community he would have to carry malpractice insurance on everything. The way the liability is set up right now, it is detrimental to everyone except the general practioner.

Senator Raggio stated that the way this bill is written, it would invite negligence.

Dr. Carlson stated that then perhaps the bill was not well written. All they are asking for is to be under the "Good

Samaritan Act" in those cases of a dire emergency where the patient cannot be transported.

Senator Ashworth stated that as for training, any doctor that has been through medical school has a lot more expertise than a layman. Under the hippocratic Oath he felt they would have an obligation. If a doctor goes in and trys, it may be negligent in comparison to the doctor that is a specialist in obstetrics, but that is not going to be the standard applied, because he is not trained in that particular field.

Dr. Carlson stated he didn't feel that the doctors in rural areas are that secure with the double standard. If indeed they were that secure, this bill would not be needed.

Mike Madden, Administrator for Churchill Public Hospital in Fallon, stated they are in support of this bill. They are licensed as an acute care facility and therefore must have an emergency room. They cannot afford \$27.50 an hour to have a full time doctor in the emergency room so the doctors that have the privilege of the hospital cover the emergency room on a rotating basis. He stated that he has talked recently with two physicians that are interested in locating in a rural area, but their first question is always how much is the malpractice insurance. Their second question is if they would have to cover the emergency room. Because of the emergency room situation and the high rate of malpractice insurance, neither one is interested in locating here. His personal opinion is that the dual standard does not exist. Right now there are two lawsuits that have come out of Fallon, and out of the emergency room. Both of these are with out-of-state people. Both of them were negligent themselves in that they were negligent in their driving abilities. Another point he brought out is the fact that part of the malpractice insurance is paid by the hospital, because these doctors are required to cover the emergency room. There is also a problem with the ambulance service. This is strictly volunteer, and because of that, sometimes the ambulance service is not available.

Rick Peugh, Executive Director of the Nevada State Medical Association stated he was appearing for Dr. Swissman, who is the President of the Association. As Dr. Swissman was unable to attend he read his written statement (see attachment C).

G. P. Echivery, Director of the Nevada League of Cities stated his organization is in favor of adoption of this bill.

Jim Banner, Assemblyman, District 11, stated he is in opposition to this bill. What is disturbing to him is that section in the bill that states, "not held liable for any civil damages as a result of any act or omissions not amounting to gross negligence." What this says to him is that negligence, gross or otherwise, is a possibility. This then would allow a doctor that is licensed through the State of

Nevada, to perform a wrongful act for which he may be excused from civil action. So what this bill is doing is to allow a certain class of people to be negligent and then not be charged like you or me.

David Gamble, representing the Nevada Trial Lawyers Association, stated they are in opposition to this bill. He brought out the fact that in Dr. Des Marfeau's article, the doctor states that malpractice suits would be at the bottom of the list of reason for not locating in a rural area. The bill talks about negligence and that is not the lack of knowledge or training of the part of the doctor, that is carelessness. The locality rule, which applies in this state is, that if there is one doctor in Eureka that standard of care for that doctor is himself. This rule provides that if no one has special training in Fallon for obstetrics, then the standard of care in Fallon for obstetrics, is the training that those doctors have. Therefore, if a doctor is sued in Fallon, the test he would have to pass would be did he do it as well as he was able, or as well as his colleagues were able. He feels that the people in Fallon, or Eureka, or Winnemucca would not want the type of medical care that would be attracted by this bill. Because with this bill anything short of gross negligence would be acceptable.

Senator Ashworth asked what would happen if you had an OB in Fallon, but he was gone for the day, and a general practitioner would have to take over. Would the locality rule be on the OB or the other doctor?

Mr. Gamble stated he would imagine that the locality rule would apply to the doctor that was there at that particular delivery. If the OB couldn't be there then his standard of care wouldn't exist.

Peter Neumann, with the Trial Lawyers Association stated this was a piece of ill-conceived legislation. He does not believe that a doctor in any community is not going to treat patients because of the fear of a lawsuit. He stated he did not believe that the Legislature would pass a bill that would grant the right to practice medicine irresponsibly. He also feels that the doctor in the rural area will know that he is going to have to treat emergency cases, before he ever locates there. The legislature has created a special insurance for the doctors and yet here is a doctor testifying today that he does not take advantage of that. He feels that an area should never be created where the doctor can take this last step and have immunity against negligence.

SB 289 Provides for creation of easements for collection of solar energy.

Norman "Ty" Hilbrecht, former Senator, and now a practicing attorney stated he appears here today as a member of the Nevada Solar Energy Association. The BDR that resulted in this bill, is the product of the Solar Energy Association.

He stated he had two guests with him that he would like to introduce. The first is Dr. John Tryon. He is a professor at the UNLV campus, an electronic engineer and a full professor in the Engineering School. Mr. Joel Jobest is a nuclear physicist. He is also a solar energy instructor at UNLV and Clark County Community College.

Mr. Jobest stated that he cannot over-emphasize the precarious nature of the energy shortage situation. Nearly all of the coal, oil and natural gas used in Nevada is imported from neighboring states. 37% of the electrical power used is generated elsewhere and piped into Nevada on high voltage lines. Natural gas prices have gone up 32% in Northern Nevada and 23% in Southern Nevada in the past few years. Nevada has one abundant resource and that is sunshine. Because of our location and clear skies that resource can be used. 82% of possible sunshine can be used in Las Vegas and 76% in Reno, but a solar easement is essential. Just as a rancher must have water rights to be assured of his water, so should the person using a solar energy system be assured of his sunshine. He stated that there are many solar energy systems in use now, and the number is continually rising. The present systems are not cheap, they will run anywhere from \$15,000 to \$25,000 to install. However, once installed the fuel is extremely cheap. This bill would make Nevada an energy independent state.

Mr. Tryon stated that he had a slide presentation he would like to show the Committee. These slides pointed out the different types of collectors that could be installed. They also pointed out how the easements would be utilized so that the sunlight will never be obstructed. He also brought out the fact that 20 or so states have already established the legal basis for these easements. He also stated that he does have some changes he would like in the bill and would like the Committee to consider them (see attachment D).

Mr. Hilbrecht stated brought out the fact that under a change in the zoning, that the easement could be sold. This would be by agreement of the parties.

Senator Hernstadt asked what about the person that doesn't want to sell.

Mr. Hilbrecht stated that would come under the "cause of action" in section 6 of the bill.

Senator Close stated that because they had to go into session in about 10 minutes, and they had heard no opposing testimony, this bill would be rescheduled for later hearing.

SB 309 Imposes additional state tax on slot machines contingent upon expiration of federal tax on slot machines.

Senator Ashworth moved the SB 309 be re-referred to Taxation.

Seconded by Senator Sloan.

The motion carried unanimously.

SB 290 Authorizes additional means of proving service in probate proceedings.

Julian Sourwine, member of the State Board of Governors of the State Bar of Nevada stated that this was recommended by the Board. This would avoid a problem that is foreseen in that the Nevada Rules of Civil Procedure, as presently constituted, most likely do not apply to probate proceedings. The method of proof of service in probate is now specified in NRS 155.080, and permits proof of service only by affidavit. The legislation proposed is to permit proof of service in any probate proceedings, in any fashion, by rules of civil procedure.

SB 291 Authorizes award of deficiency judgment directly to beneficiary of deed of trust.

Julian Sourwine stated he is in favor of this bill. Current law permits for a deficiency after a foreclosure of deed of trust to be brought by the trustee. A number of attorneys at both ends of the state have had difficulties with title companies, who are the usual trustee, in refusing to allow their names to be used in the absence of an indemnity agreement, or at all. This legislation would provide that a deficiency action may be brought by the beneficiary.

SB 296 Removes office of county recorder as place to file security interests in certain cases.

De Armond Sharp, with the Board of Governors of the State Bar stated that this legislation is directed, so that the filing of financing statements affecting security interest, can be filed only with the Secretary of State. This would only be with local-type collateral, such as equipment, accounts, or inventories. As it is now, it doubles up on the filings, the cost of filing, costs on searches, and is burdensome. It is also a trap for the unwary. People coming in from out of state are not aware of the dual filings and if you miss one you are not perfected.

No action was taken on the above three bills at this time.

Meeting was adjourned at 10:58 a.m.

APPROVED:

Respectfully submitted,


Virginia C. Letts, Secretary

Senator Melvin D. Close, Jr., Chairman

(Committee Minutes)

Readers Voice Opinions

The Sunday Nevada Forum

We want them . . . we like them . . . we believe our readers like them. The editors will select letters for use on the basis of their merit on a subject of current interest. Keep them to 250 words or fewer so we can print as many as possible. Longer letters may be subject to condensation. Sign them please. Letters will be printed only with signatures except in unusual circumstances.

Unnecessary

EDITOR, NEVADA STATE JOURNAL: The State Assembly has endorsed a bill containing the concept that physicians in rural Nevada should be immune from malpractice suits arising out of treatment given under emergency situations. This could open a Pandora's box, the contents of which I do not believe are fully comprehended.

The points which follow preclude me from believing such legislation is necessary or feasible.

For medical care purposes (and by this I do not mean administrative ones, only where can the best care for a patient come from?) how does one define rural Nevada? For example, can Fallon be justifiably considered "medically rural" when it is only 40 minutes from the Reno hospitals

by ambulance? Having practiced there I believe it cannot! One does have to note that the proponent of this legislation, Assemblyman Virgil Getto, is from the Fallon area.

Secondly, can the term emergency be accurately defined so as not to allow abuse to cover true negligence? For example, under this proposed bill could a case such as a myocardial infarction that could have been transported to and better handled in a major center be declared an "immune" emergency after inappropriate management was instituted? Phrases couched in legalise would not be sufficient for such definition.

Peer review generates the third point of my contention. Have thoughts been given to establish a mechanism of peer review under this bill whereby recourse would

be assured the patient who has actually suffered malpractice?

Attraction of physicians to rural Nevada is cited by Mr. Getto as an impetus to obtaining such legislation. However, I feel this is more imaginary than real. No physician I have worked with in an isolated or rural area, in my experience, would deny emergency care. Also Nevada has the good samaritan concept in force. Furthermore, true emergency situations comprise only a small part of most medical practices.

The reasons that physicians are not attracted or held to rural areas are less complicated. They involve finances, lifestyle, and professional isolation. Malpractice suits arising out of emergency situations would rank near the bottom of any list in considering a rural area as a place to practice.

My last point concerns the possi-

ble future extension of such legislation once it has gained a foothold, to include more and more medical acts in rural areas. Could this extension, if it came to pass, be the panacea some health care personnel are seeking to raise occupancy rates in rural hospitals, thus decreasing the financial straits that plague all the small hospitals I know of (at least in Northern Nevada)?

Would we really want to possibly sanction inappropriate care in the rural hospitals of Nevada? I would hope the answer to this question would be a resounding "no"!

From the above I feel the the Nevada Senate should very seriously consider not endorsing this legislation, which may seem innocent in the first instance but shall prove not to be so in the long term.

John DesMariseau, M.D.

546

EXHIBIT "A"

Gazette, Journal, Reno, Nev.

Sunday, March 11, 1973-57

Shortage of country doctors concerns western states

HELENA, Mont. (UPI) — Concern is growing over the disappearance of the country doctor from the many rural communities of the West.

Physicians say he is becoming an endangered species. State medical associations in places like Montana, Idaho, Wyoming and Nevada find themselves diagnosing the problem and admitting to no quick cure.

While doctors are attracted to larger cities or, for example, to Western Montana's scenic splendor, they tend to shun small, less-inviting communities. "It's tough to practice in the boondocks," says Dr. James Cope, past president of the Montana Medical Association.

The Forsyth, Mont., physician, who established his practice in the Eastern Montana town 30 years ago following graduation from Western Reserve Medical School in his native Ohio, concedes, "this is not an ideal place."

"We have no skiing here, no shining mountains, no trout streams or very little recreation," Cope says. "It's hot in the summer, cold in the winter."

Eastern Montana is sparsely populated over a 70,000 square-mile area. Even for the doctor who likes the countryside, he finds it hard to retain enough patients to support a practice in a region where the population is so scattered.

The "one doctor towns can't keep a doctor," Cope says. He finds himself over-worked trying to be the single doctor for too many towns too far apart.

Cope and one other physician serve Forsyth, a town of fewer than 3,000 residents, not far from Colstrip, the hub of Montana's recent coal-boom area. There are no doctors and no hospital in Colstrip, which now is larger than Forsyth.

As Cope notes, the problem is not numbers of physicians, of which the United States has no shortage. It's what he calls "maldistribution."

Dr. Robert St. John, president of the Montana Medical Association, uses the same term, adding, "We're actually looking at a physician excess."

St. John is a gynecologist-obstetrician in his hometown of Butte in Western Montana, where the mountains, trout streams, skiing, hunting and similar attractions apparently have helped to nearly double the number of physicians in that city in the last 10 years.

Robert G. Smith, executive director of the Wyoming State Medical Society, also points to what he calls the "distribution problem."

"Physicians are going to congregate where they are needed, and where they can practice their skills, specialists especially."

Nearly 40 percent of Wyoming's doctors are located in Cheyenne and Casper, that state's largest cities, Smith says.

Dr. Neil Swissman of Las Vegas, president of the Nevada State Medical Association, says his group "for years ... has been active in promoting practice opportunities for physicians in rural communities."

"Facts indicate that rural physicians earn less than their urban colleagues, must be available 24 hours a day, have fewer opportunities for continuing medical education, and have less frequent contact with their colleagues for consultation," said Swissman in a recent speech.

In Oregon, a report by Lee Lewis of the state

Medical Association called attention to Oregon's "livability" as the primary reason for a growth in the statewide physician population. Ms. Lewis said it was "difficult to support the proposition that we have a great manpower shortage," but she too mentioned "some problems with the distribution of medical manpower."

Director Donald Sower of the Idaho Medical Association says that while the association has been relatively successful in placing doctors in many of Idaho's small communities in recent years, that has not been the case in "remote areas." "I don't know if we're ever going to get them there," says Sower.

Idaho has in excess of 1,000 physicians, but more than 200 are in the Boise area and nearly 400 others in and around Twin Falls, Idaho Falls, Pocatello and Coeur d'Alene.

Of Montana's estimated 1,000 doctors, about 220 practice in Billings, and another 300 are in Great Falls and Missoula, the state's three largest cities.

Montana's Cope, Smith of Wyoming, and Sower of Idaho all express the need for family-practice physicians — general practitioners — the type of doctors best fitted to serve small communities.

Replacement of retiring physicians is a concern for the near future, according to Cope, Smith and Sower.

So what's the prescription for the medical "trouble spots" in the West?

The doctors and the state medical associations find room for optimism, as well as action.

Better-equipped ambulances traveling on interstate highways to better-equipped hospitals, for example, means "the people aren't too bad off," says Cope. He also has hope that Montanans who are trained at medical schools outside the state — Montana has no such school — will return to practice in their native state.

St. John of Butte, believes that the Emergency Medical Services Program and similar programs already are improving the outlook in rural areas. The emergency services program channels government funds into communities for the purchase of life-support equipment and for the training of emergency medical technicians.

In a philosophical vein, St. John says many people are "sick of the big cities, the smog, the crime, the rush," which will lead them to places like Montana.

Idaho's Sower, noting nearly 200 physicians were attracted to his state last year, said, "I think the problem is solvable."

Swissman cites the Rural Health Project in Nevada which gives over-worked, rural practitioners an occasional break: It has a program in which doctors from larger communities in the state go to rural areas "and spell a physician for a brief period so he can attend a medical education conference, take a vacation, or simply get away for a while."

More than 60 Nevada doctors volunteered to help their colleagues in the country, Swissman said.

The prescription that may be the most effective — at least for another 10 years or so — comes from country doctor Cope, who says:

"I'm 55, and I cannot picture myself retiring... as long as I have all my faculties." — even if it is tough to practice in the boondocks.

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

March 12, 1979

TO: Senator Mel Close, Chairman, Senate Judiciary Committee

FROM: Neil Swissman, M.D., President

SUBJ: Supporting Testimony for A.B. 95

The Nevada State Medical Association is in favor of the concepts embodied in A.B. 95, a bill which would provide immunity for rural physicians in certain instances.

There are many benefits which would attract a physician to our small rural towns. Chief among these are the more relaxed life style, the excellent hunting and recreational activities, and a sense of belonging that is expressed by the residents.

We also need to recognize the many drawbacks. Many physicians who now practice in our smaller communities feel somewhat isolated from their medical colleagues, in most instances do not have the advanced medical equipment available, often are on duty 24 hours each day, and frequently pay higher costs for their professional liability insurance protection as a result of their practice location. There are frequent cases, accidents for example, when the rural physician's liability is increased substantially. In extreme emergency situations when a physician's best and most expedient judgment is called for, his diagnosis and treatment is often hindered due to lack of advanced medical equipment. In many circumstances it is medically unwarranted to attempt transferring the patient to the nearest urban health care facility. The doctor must then make his diagnosis and begin giving the best possible medical care. In such cases, his potential medical liability is increased substantially.

There has been some question as to the constitutionality of this potential law. Frank Dakin, Director of the Legislative Council Bureau has assured the Assembly Judiciary Committee at its recent hearing on this bill that, in his opinion, this measure would stand the test of constitutionality.

Members of the Senate Judiciary Committee may want to study the possibility of amending this bill to more specifically define the term "emergency". There may also be other modifications you may wish to make to improve A.B. 95, but Nevada physicians urge a DO PASS on this bill.

NS:kn

549
551

Testimony before the Senate Committee on Judiciary

--SB 289 Easements for Collection of Solar Energy

March 12, 1979

John G. Tryon, phone 702-739-3701

Joel E. Jobst, phone 702-739-~~0584~~ 0511

Norman Ty Hilbrecht, phone 702-382-2101

Recommended changes are as follows:

- (a) Throughout the bill, change "equipment" to "collecting equipment" wherever the distinction between collecting equipment and other solar equipment is significant. The affected lines are:
 Page 1; line 19.
 Page 2; lines 5,7.
- (b) Section 3.3, lines 5 and 6, page 2;
 3. The equipment is set back at least ~~8~~ (10) feet from the boundary between his land and the neighboring land; and
- (c) Section 4.3, lines 18-21, page 2;
 3. Does not affect any tree or other vegetation which is planted (growing) on the burdened land ...
- (d) Section 2.3, lines 8-11, page 1;
 3. ... When acknowledged, the instrument may (must) be recorded by the county recorder ...
- (e) Section 6.4, lines 47-49, page 2; to eliminate a conflict with subsection 6.2, replace the present wording with
 4. Upon a court order of termination, based on abandonment under subsection 2 above; or on changed conditions but not sooner than 10 years after creation of the easement.
- (f) Section 4.6, lines 28-31, page 2 would not, as it stands, authorize for example a utility pole on the burdened lands if the collecting equipment were small. We recommend this replacement:
 6. Does not preclude use on the burdened land of antennas, utility wires, utility poles, or similar obstructions which in the aggregate are not wider when viewed from the collecting equipment than 3 inches if horizontally oriented, 18 inches if vertically oriented, and 6 inches if diagonally oriented.