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SENATE BILL NO. 257—COMMITTEE ON JUDICIARY

MARCH 11, 2003

Referred to Committee on Judiciary

SUMMARY—Revises various provisions pertaining to malpractice.  
(BDR 3-104)

FISCAL NOTE: Effect on Local Government: No.  
Effect on the State: No.

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

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AN ACT relating to malpractice; providing that a trier of fact may consult a published treatise, periodical, pamphlet or table concerning the award of noneconomic damages in an action for medical malpractice or dental malpractice under certain circumstances; revising the limitation on the amount of noneconomic damages that may be awarded in an action for medical malpractice or dental malpractice; providing that certain reports concerning malpractice must be made available for access on the Internet; and providing other matters properly relating thereto.

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

- 1     **Section 1.** Chapter 41A of NRS is hereby amended by adding  
2     thereto a new section to read as follows:  
3     ***1. In determining the amount of any noneconomic damages***  
4     ***awarded to a plaintiff in an action for damages for medical***  
5     ***malpractice or dental malpractice, the trier of fact may consult a***  
6     ***published treatise, periodical, pamphlet or table that contains***  
7     ***information concerning awards for noneconomic damages in this***  
8     ***state or in another jurisdiction in similar actions for damages for***  
9     ***medical malpractice or dental malpractice if the treatise,***  
10    ***periodical, pamphlet or table is established as a reliable authority***  
11    ***by the testimony or admission of a witness or by judicial notice.***



1       2. *If a treatise, periodical, pamphlet or table is established as*  
2 *a reliable authority pursuant to this section, in determining the*  
3 *amount of any noneconomic damages awarded to a plaintiff after*  
4 *consulting the treatise, periodical, pamphlet or table, the trier of*  
5 *fact:*

6       (a) *May give the treatise, periodical, pamphlet or table the*  
7 *same weight as other evidence, or may disregard the treatise,*  
8 *periodical, pamphlet or table.*

9       (b) *Shall not give the treatise, periodical, pamphlet or table*  
10 *undue weight or use the treatise, periodical, pamphlet or table as a*  
11 *substitute for its independent judgment.*

12       **Sec. 2.** NRS 41A.031 is hereby amended to read as follows:

13       41A.031 1. Except as otherwise provided in subsection 2 and  
14 except as further limited in subsection 3, in an action for damages  
15 for medical malpractice or dental malpractice, the noneconomic  
16 damages awarded to each plaintiff from each defendant must not  
17 exceed ~~[\$350,000.]~~ *10 percent of the economic damages awarded*  
18 *to each plaintiff from each defendant.*

19       2. In an action for damages for medical malpractice or dental  
20 malpractice, the limitation on noneconomic damages set forth in  
21 subsection 1 does not apply in the following circumstances and  
22 types of cases:

23       (a) A case in which the conduct of the defendant is determined  
24 to constitute gross malpractice; or

25       (b) A case in which, ~~[following return of a verdict by the jury or~~  
26 ~~a finding of damages in a bench trial, the court determines, by clear~~  
27 ~~and convincing evidence admitted at trial, that an award in excess of~~  
28 ~~\$350,000 for noneconomic damages is justified because of~~  
29 ~~exceptional circumstances.]~~ *during the 2 years immediately*  
30 *preceding the date on which the case was filed, there have been*  
31 *three or more judgments entered against the defendant in which*  
32 *the defendant was found liable for damages for malpractice.*

33       3. Except as otherwise provided in subsection 4, in an action  
34 for damages for medical malpractice or dental malpractice, in the  
35 circumstances and types of cases described in subsections 1 and 2,  
36 the noneconomic damages awarded to each plaintiff from each  
37 defendant must not exceed the amount of money remaining under  
38 the professional liability insurance policy limit covering the  
39 defendant after subtracting the economic damages awarded to that  
40 plaintiff. Irrespective of the number of plaintiffs in the action, in no  
41 event may any single defendant be liable to the plaintiffs in the  
42 aggregate in excess of the professional liability insurance policy  
43 limit covering that defendant.

44       4. The limitation set forth in subsection 3 does not apply in an  
45 action for damages for medical malpractice or dental malpractice



1 unless the defendant was covered by professional liability insurance  
2 at the time of the occurrence of the alleged malpractice and on the  
3 date on which the insurer receives notice of the claim, in an amount  
4 of:

- 5 (a) Not less than \$1,000,000 per occurrence; and
- 6 (b) Not less than \$3,000,000 in the aggregate.

7 5. This section is not intended to limit the responsibility of any  
8 defendant for the total economic damages awarded.

9 6. For the purposes of this section, "gross malpractice" means  
10 failure to exercise the required degree of care, skill or knowledge  
11 that amounts to:

- 12 (a) A conscious indifference to the consequences which may  
13 result from the gross malpractice; and
- 14 (b) A disregard for and indifference to the safety and welfare of  
15 the patient.

16 **Sec. 3.** NRS 690B.045 is hereby amended to read as follows:  
17 690B.045 Except as more is required in NRS 630.3067 and  
18 633.526:

19 1. Each insurer which issues a policy of insurance covering the  
20 liability of a practitioner licensed pursuant to chapters 630 to 640,  
21 inclusive, of NRS for a breach of his professional duty toward a  
22 patient shall report to the board which licensed the practitioner  
23 within 30 days each settlement or award made or judgment rendered  
24 by reason of a claim, if the settlement, award or judgment is for  
25 more than \$5,000, giving the name and address of the claimant and  
26 the practitioner and the circumstances of the case.

27 2. A practitioner licensed pursuant to chapters 630 to 640,  
28 inclusive, of NRS who does not have insurance covering liability for  
29 a breach of his professional duty toward a patient shall report to the  
30 board which issued his license within 30 days of each settlement or  
31 award made or judgment rendered by reason of a claim, if the  
32 settlement, award or judgment is for more than \$5,000, giving his  
33 name and address, the name and address of the claimant and the  
34 circumstances of the case.

35 3. These reports are public records and must be made available  
36 for public inspection within a reasonable time after they are received  
37 by the licensing board. *These reports must be made available for*  
38 *access on the Internet or its successor, if any, without charge.*

39 **Sec. 4.** The amendatory provisions of section 2 of this act  
40 apply only to a cause of action that accrues on or after October 1,  
41 2003.

