
SENATE BILL NO. 375—SENATOR SCHNEIDER

MARCH 17, 2003

Referred to Committee on Human Resources and Facilities

SUMMARY—Revises provisions governing authority of certain physicians to possess, prescribe, administer and dispense controlled substances, dangerous drugs and other drugs. (BDR 40-1055)

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.

AN ACT relating to physicians; revising the provisions governing the authority of certain physicians to possess, prescribe, administer and dispense controlled substances, dangerous drugs and other drugs; and providing other matters properly relating thereto.

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

- 1 **Section 1.** NRS 453.146 is hereby amended to read as follows:
2 453.146 1. The Board shall administer the provisions of NRS
3 453.011 to 453.552, inclusive, and may add substances to or delete
4 or reschedule all substances enumerated in schedules I, II, III, IV
5 and V by regulation.
6 2. In making a determination regarding a substance, the Board
7 shall consider the following:
8 (a) The actual or relative potential for abuse;
9 (b) The scientific evidence of its pharmacological effect, if
10 known;
11 (c) The state of current scientific knowledge regarding the
12 substance;
13 (d) The history and current pattern of abuse;
14 (e) The scope, duration and significance of abuse;
15 (f) The risk to the public health;



1 (g) The potential of the substance to produce psychic or
2 physiological dependence liability; and

3 (h) Whether the substance is an immediate precursor of a
4 controlled substance.

5 3. The Board may consider findings of the federal Food and
6 Drug Administration or the Drug Enforcement Administration as
7 prima facie evidence relating to one or more of the determinative
8 factors.

9 4. After considering the factors enumerated in subsection 2, the
10 Board shall make findings with respect thereto and , *except as*
11 *otherwise provided in NRS 453.231*, adopt a regulation controlling
12 the substance if it finds the substance has a potential for abuse.

13 5. The Board shall designate as a controlled substance a steroid
14 or other product which is used to enhance athletic performance,
15 muscle mass, strength or weight without medical necessity. The
16 Board may not designate as a controlled substance an anabolic
17 steroid which is:

18 (a) Expressly intended to be administered through an implant to
19 cattle, poultry or other animals; and

20 (b) Approved by the Food and Drug Administration for such
21 use.

22 **Sec. 2.** NRS 453.221 is hereby amended to read as follows:

23 453.221 1. The Board ~~may~~:

24 (a) *May* adopt regulations and charge reasonable fees relating to
25 the registration and control of the dispensing of controlled
26 substances within this state.

27 (b) *Shall not adopt any regulations which in any manner:*

28 (1) *Restrict the authority granted pursuant to subsection 2*
29 *of NRS 453.231 to a physician who holds a license issued*
30 *pursuant to chapter 630 or 633 of NRS; or*

31 (2) *Penalize the exercise of that authority.*

32 2. The Board may charge an additional fee for dispensing
33 controlled substances included in schedules I to V, inclusive, to
34 cover the cost of developing and maintaining the computerized
35 program developed pursuant to NRS 453.1545. The amount of the
36 fee must be:

37 (a) Set so that the aggregate amount received from the fee does
38 not exceed the estimated costs of developing and maintaining the
39 program.

40 (b) Approved by the Legislature, if it is in regular session, or the
41 Interim Finance Committee, if the Legislature is not in regular
42 session.

43 **Sec. 3.** NRS 453.231 is hereby amended to read as follows:

44 453.231 1. The Board shall register an applicant to dispense
45 controlled substances included in schedules I to V, inclusive, unless



1 it determines that the issuance of that registration would be
2 inconsistent with the public interest. In determining the public
3 interest, the Board shall consider the following factors:

4 (a) Maintenance of effective controls against diversion of
5 controlled substances into other than legitimate medical, scientific,
6 research or industrial channels;

7 (b) Compliance with state and local law;

8 (c) Promotion of technical advances in the art of manufacturing
9 controlled substances and the development of new substances;

10 (d) Convictions of the applicant pursuant to laws of another
11 country or federal or state laws relating to a controlled substance;

12 (e) Past experience of the applicant in the manufacture or
13 distribution of controlled substances, and the existence in the
14 applicant's establishment of effective controls against diversion of
15 controlled substances into other than legitimate medical, scientific
16 research or industrial channels;

17 (f) Furnishing by the applicant of false or fraudulent material in
18 an application filed pursuant to the provisions of NRS 453.011 to
19 453.552, inclusive;

20 (g) Suspension or revocation of the applicant's federal
21 registration to manufacture, distribute, possess, administer or
22 dispense controlled substances as authorized by federal law; and

23 (h) Any other factors relevant to and consistent with the public
24 health and safety.

25 2. ~~Registration~~ *The registration by the Board of a physician*
26 *who holds a license issued pursuant to chapter 630 or 633 of NRS*
27 *authorizes the registrant to possess, prescribe, administer and*
28 *dispense any controlled substance, any dangerous drug as defined*
29 *in chapter 454 of NRS and any other drug for the purpose that the*
30 *registrant deems to be a legitimate medical purpose, except to the*
31 *extent that his authority to possess, prescribe, administer or*
32 *dispense any controlled substance, any dangerous drug as defined*
33 *in chapter 454 of NRS or any other drug is specifically limited by*
34 *a state or federal statute or federal regulation. The Board shall not*
35 *deny, suspend, revoke or limit the registration of a physician who*
36 *holds a license issued pursuant to chapter 630 or 633 of NRS or*
37 *take any other disciplinary action against such a physician who is*
38 *registered by the Board solely for his possession, prescription,*
39 *administration or dispensation of a controlled substance, a*
40 *dangerous drug as defined in chapter 454 of NRS or any other*
41 *drug for any purpose that the physician deems to be a legitimate*
42 *medical purpose, unless the particular act of possession,*
43 *prescription, administration or dispensation constitutes a specific*
44 *violation of a state or federal statute or federal regulation.*



1 **3. Except as otherwise provided in subsection 2, registration**
2 pursuant to subsection 1 entitles a registrant to dispense a substance
3 included in schedules I or II only if it is specified in the registration.

4 ~~3.~~ **4.** A practitioner must be registered before dispensing a
5 controlled substance or conducting research with respect to a
6 controlled substance included in schedules II to V, inclusive. The
7 Board need not require separate registration pursuant to the
8 provisions of NRS 453.011 to 453.552, inclusive, for practitioners
9 engaging in research with nonnarcotic controlled substances
10 included in schedules II to V, inclusive, if the registrant is already
11 registered in accordance with the provisions of NRS 453.011 to
12 453.552, inclusive, in another capacity. A practitioner registered in
13 accordance with federal law to conduct research with a substance
14 included in schedule I may conduct research with the substance in
15 this state upon furnishing the Board evidence of the federal
16 registration.

17 **Sec. 4.** NRS 453.381 is hereby amended to read as follows:

18 453.381 1. In addition to the limitations imposed by *this*
19 *subsection*, NRS 453.256 and 453.3611 to 453.3648, inclusive, a
20 *homeopathic* physician ~~is~~ *practicing homeopathic medicine as*
21 *that term is defined in NRS 630A.040*, physician assistant, dentist,
22 advanced practitioner of nursing or podiatric physician may
23 prescribe or administer controlled substances only for a legitimate
24 medical purpose and in the usual course of his professional practice
25 ~~. [and he]~~ *A physician, physician assistant, dentist, advanced*
26 *practitioner of nursing or podiatric physician* shall not prescribe,
27 administer or dispense a controlled substance listed in schedule II
28 for himself, his spouse or his children except in cases of emergency.

29 2. A veterinarian, in the course of his professional practice
30 only, and not for use by a human being, may prescribe, possess and
31 administer controlled substances, and he may cause them to be
32 administered by a veterinary technician under his direction and
33 supervision.

34 3. A euthanasia technician, within the scope of his license, and
35 not for use by a human being, may possess and administer sodium
36 pentobarbital.

37 4. A pharmacist shall not fill an order which purports to be a
38 prescription if he has reason to believe that it was not issued in the
39 usual course of the professional practice of a physician, physician
40 assistant, dentist, advanced practitioner of nursing, podiatric
41 physician or veterinarian.

42 5. Any person who has obtained from a physician, physician
43 assistant, dentist, advanced practitioner of nursing, podiatric
44 physician or veterinarian any controlled substance for administration
45 to a patient during the absence of the physician, physician assistant,



1 dentist, advanced practitioner of nursing, podiatric physician or
2 veterinarian shall return to him any unused portion of the substance
3 when it is no longer required by the patient.

4 6. A manufacturer, wholesale supplier or other person legally
5 able to furnish or sell any controlled substance listed in schedule II
6 shall not provide samples of such a controlled substance to
7 registrants.

8 7. A salesman of any manufacturer or wholesaler of
9 pharmaceuticals shall not possess, transport or furnish any
10 controlled substance listed in schedule II.

11 8. A person shall not dispense a controlled substance in
12 violation of a regulation adopted by the Board.

13 **Sec. 5.** NRS 453.521 is hereby amended to read as follows:

14 453.521 ~~HH~~ *Except as otherwise authorized pursuant to*
15 *subsection 2 of NRS 453.231, it* is unlawful for any person within
16 this state to possess, sell, offer to sell or hold for the purpose of sale
17 or resale any nasal inhaler which contains any controlled substance
18 capable of causing stimulation to the central nervous system unless:

19 1. The product contains a denaturant in sufficient quantity to
20 render it unfit for internal use; and

21 2. The product is among such products listed as approved by
22 the Board in the regulations officially adopted by the Board.

23 **Sec. 6.** NRS 454.341 is hereby amended to read as follows:

24 454.341 ~~HH~~ *Except as otherwise authorized pursuant to*
25 *subsection 2 of NRS 453.231, it* is unlawful for any person within
26 this state to possess, sell, offer to sell or hold for the purpose of sale
27 or resale any nasal inhaler which contains any drug capable of
28 causing stimulation to the central nervous system unless:

29 1. The product contains a denaturant in sufficient quantity to
30 render it unfit for internal use; and

31 2. The product is among such products listed as approved for
32 sale without restriction by the Board in the regulations officially
33 adopted by the Board.

34 **Sec. 7.** NRS 454.371 is hereby amended to read as follows:

35 454.371 1. If the Board finds any drug to be dangerous to the
36 public health or safety, it may , *except as otherwise provided in*
37 *NRS 453.231*, adopt a regulation not inconsistent with NRS 454.181
38 to 454.371, inclusive, limiting or restricting the furnishing or
39 dispensing of the drug.

40 2. A violation of such a regulation must be punished in the
41 same manner as provided in NRS 454.306 to 454.356, inclusive.

42 **Sec. 8.** NRS 630.130 is hereby amended to read as follows:

43 630.130 1. In addition to the other powers and duties
44 provided in this chapter, the Board shall:

45 (a) Enforce the provisions of this chapter;



- 1 (b) Establish by regulation standards for licensure under this
- 2 chapter;
- 3 (c) Conduct examinations for licensure and establish a system of
- 4 scoring for those examinations;
- 5 (d) Investigate the character of each applicant for a license and
- 6 issue licenses to those applicants who meet the qualifications set by
- 7 this chapter and the Board; and
- 8 (e) Institute a proceeding in any court to enforce its orders or the
- 9 provisions of this chapter.

10 2. On or before February 15 of each odd-numbered year, the

11 Board shall submit to the Governor and to the Director of the

12 Legislative Counsel Bureau for transmittal to the next regular

13 session of the Legislature a written report compiling:

- 14 (a) Disciplinary action taken by the Board during the previous
- 15 biennium against physicians for malpractice or negligence; and
- 16 (b) Information reported to the Board during the previous
- 17 biennium pursuant to NRS 630.3067, subsections 2 and 3 of NRS
- 18 630.307 and NRS 690B.045.

19 The report must include only aggregate information for statistical

20 purposes and exclude any identifying information related to a

21 particular person.

22 3. The Board ~~[may]~~:

23 (a) *May* adopt such regulations as are necessary or desirable to

24 enable it to carry out the provisions of this chapter.

25 (b) *Shall not adopt any regulations which in any manner:*

- 26 (1) *Restrict the authority granted to a physician pursuant to*
- 27 *subsection 2 of NRS 453.231; or*
- 28 (2) *Penalize the exercise of that authority.*

29 **Sec. 9.** NRS 630.3066 is hereby amended to read as follows:

30 630.3066 A physician is not subject to disciplinary action

31 solely for:

- 32 1. ~~[Prescribing or administering to a patient under his care a]~~
- 33 *Possessing, prescribing, administering or dispensing any*
- 34 *controlled substance [which is listed in schedule II, III, IV or V by*
- 35 *the State Board of Pharmacy pursuant to NRS 453.146, if the*
- 36 *controlled substance is lawfully prescribed or administered for the*
- 37 *treatment of intractable pain in accordance with regulations adopted*
- 38 *by the Board.], any dangerous drug as defined in chapter 454 of*
- 39 *NRS or any other drug in accordance with the authority granted*
- 40 *to the physician pursuant to subsection 2 of NRS 453.231.*

41 2. Engaging in any activity in accordance with the provisions

42 of chapter 453A of NRS.

43 **Sec. 10.** NRS 633.291 is hereby amended to read as follows:

44 633.291 The Board ~~[shall]~~:



1 **1. Shall** adopt and enforce regulations necessary to enable it to
2 carry out its duties under this chapter, including , but not limited to ,
3 regulations which establish the principles of medical ethics to be
4 used as the basis for determining whether conduct which does not
5 constitute malpractice is unethical.

6 **2. Shall not adopt any regulations which in any manner:**
7 **(a) Restrict the authority granted to an osteopathic physician**
8 **pursuant to subsection 2 of NRS 453.231; or**
9 **(b) Penalize the exercise of that authority.**

10 **Sec. 11.** NRS 633.521 is hereby amended to read as follows:

11 633.521 An osteopathic physician is not subject to disciplinary
12 action solely for *possessing*, prescribing ~~for administering to a~~
13 ~~patient under his care:~~

14 ~~—1. Amygdalin (laetrile), if the patient has consented to the use~~
15 ~~of the substance.~~

16 ~~—2. Procaine hydrochloride with preservatives and stabilizers~~
17 ~~(Gerovital H3).~~

18 ~~—3. A controlled substance which is listed in schedule II, III, IV~~
19 ~~or V by the State Board of Pharmacy pursuant to NRS 453.146, if~~
20 ~~the] administering or dispensing any~~ controlled substance ~~is~~
21 ~~lawfully prescribed or administered for the treatment of intractable~~
22 ~~pain in accordance with accepted standards for the practice of~~
23 ~~osteopathic medicine.], any dangerous drug as defined in chapter~~
24 ~~454 of NRS or any other drug in accordance with the authority~~
25 ~~granted to the osteopathic physician pursuant to subsection 2 of~~
26 ~~NRS 453.231.~~

27 **Sec. 12.** NRS 639.070 is hereby amended to read as follows:

28 639.070 1. ~~[The]~~ *Except as otherwise provided in this*
29 *section and NRS 453.231, the* Board may:

30 (a) Adopt such regulations, not inconsistent with the laws of this
31 state, as are necessary for the protection of the public, appertaining
32 to the practice of pharmacy and the lawful performance of its duties.

33 (b) Adopt regulations requiring that prices charged by retail
34 pharmacies for drugs and medicines which are obtained by
35 prescription be posted in the pharmacies and be given on the
36 telephone to persons requesting such information.

37 (c) Adopt regulations, not inconsistent with the laws of this
38 state, authorizing the Secretary *of the Board* to issue certificates,
39 licenses and permits required by this chapter and chapters 453 and
40 454 of NRS.

41 (d) Adopt regulations governing the dispensing of poisons,
42 drugs, chemicals and medicines.

43 (e) Regulate the practice of pharmacy.

44 (f) Regulate the sale and dispensing of poisons, drugs, chemicals
45 and medicines.



- 1 (g) Regulate the means of recordkeeping and storage, handling,
2 sanitation and security of drugs, poisons, medicines, chemicals and
3 devices, including, but not limited to, requirements relating to:
 - 4 (1) Pharmacies, institutional pharmacies and pharmacies in
5 correctional institutions;
 - 6 (2) Drugs stored in hospitals; and
 - 7 (3) Drugs stored for the purpose of wholesale distribution.
- 8 (h) Examine and register, upon application, pharmacists and
9 other persons who dispense or distribute medications whom it
10 deems qualified.
- 11 (i) Charge and collect necessary and reasonable fees for its
12 services, other than those specifically set forth in this chapter.
- 13 (j) Maintain offices in as many localities in the State as it finds
14 necessary to carry out the provisions of this chapter.
- 15 (k) Employ an attorney, inspectors, investigators and other
16 professional consultants and clerical personnel necessary to the
17 discharge of its duties.
- 18 (l) Enforce the provisions of *this chapter*, NRS 453.011 to
19 453.552, inclusive, and ~~enforce the provisions of this chapter and~~
20 chapter 454 of NRS.
- 21 (m) Adopt regulations concerning the information required to be
22 submitted in connection with an application for any license,
23 certificate or permit required by this chapter or chapter 453 or 454
24 of NRS.
- 25 (n) Adopt regulations concerning the education, experience and
26 background of a person who is employed by the holder of a license
27 or permit issued pursuant to this chapter and who has access to
28 drugs and devices.
- 29 (o) Adopt regulations concerning the use of computerized
30 mechanical equipment for the filling of prescriptions.
- 31 (p) Participate in and expend money for programs that enhance
32 the practice of pharmacy.
- 33 2. ~~[This section does]~~ *The provisions of subsection 1 do* not
34 authorize the Board to prohibit open-market competition in the
35 advertising and sale of prescription drugs and pharmaceutical
36 services.
- 37 **Sec. 13.** NRS 630.135 is hereby repealed.
- 38 **Sec. 14.** As soon as is reasonably practicable, the State Board
39 of Pharmacy, the Board of Medical Examiners and the State Board
40 of Osteopathic Medicine shall repeal or amend in such a manner as
41 is appropriate to carry out the provisions of this act, the provisions
42 of any regulations respectively adopted by the State Board of
43 Pharmacy, the Board of Medical Examiners or the State Board of
44 Osteopathic Medicine before the effective date of this section.



1 **Sec. 15.** 1. This section and section 14 of this act become
2 effective upon passage and approval.
3 2. Sections 1 to 13, inclusive, of this act become effective upon
4 passage and approval for the purposes of adopting regulations and
5 performing any other preparatory administrative tasks that are
6 necessary to carry out the provisions of this act and on October 1,
7 2003, for all other purposes.

TEXT OF REPEALED SECTION

630.135 Board required to define “intractable pain” by regulation. The Board shall by regulation define the term “intractable pain” for the purposes of NRS 630.3066 and 633.521.

