

Assembly Bill No. 208—Assemblymen Horne, Conklin, Allen, Arberry Jr., Atkinson, Christensen, Denis, Gansert, Gerhardt, Giunchigliani, Grady, Hardy, Hettrick, Kirkpatrick, Koivisto, Leslie, Mabey, Manendo, Marvel, McClain, McCleary, Mortenson, Munford, Ocegüera, Parks, Parnell, Pierce, Sherer, Sibley, Smith and Weber

Joint Sponsors: Senators Care, Horsford and Titus

CHAPTER.....

AN ACT relating to medical professions; requiring an applicant for a license to practice medicine to submit to a criminal background check; requiring physicians and osteopathic physicians against whom disciplinary action is initiated to submit to criminal background checks; expanding the grounds for initiating disciplinary action against physicians and osteopathic physicians; requiring, upon request, an agency of criminal justice to disseminate records of criminal history to the Board of Medical Examiners and the State Board of Osteopathic Medicine; creating the Nevada Institutional Review Board and defining its powers and duties; requiring the Board of Homeopathic Medical Examiners to make recommendations to the Legislature regarding alternative and complementary integrative medicine; and providing other matters properly relating thereto.

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

Section 1. Chapter 630 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 and 3 of this act.

Sec. 2. *In addition to any other requirements set forth in this chapter, each applicant for a license to practice medicine shall submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.*

Sec. 3. 1. *Any physician against whom the Board initiates disciplinary action pursuant to this chapter shall, within 30 days after the physician's receipt of notification of the initiation of the disciplinary action, submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.*

2. The willful failure of a physician to comply with the requirements of subsection 1 constitutes additional grounds for disciplinary action and the revocation of the license of the physician.

3. The Board has additional grounds for initiating disciplinary action against a physician if the report from the Federal Bureau of Investigation indicates that the physician has been convicted of:

(a) An act that is a ground for disciplinary action pursuant to NRS 630.301 to 630.3066, inclusive; or

(b) A violation of NRS 630.400.

Sec. 4. NRS 630.301 is hereby amended to read as follows:

630.301 The following acts, among others, constitute grounds for initiating disciplinary action or denying licensure:

1. Conviction of a felony relating to the practice of medicine or the ability to practice medicine. A plea of nolo contendere is a conviction for the purposes of this subsection.

2. Conviction of violating any of the provisions of NRS 616D.200, 616D.220, 616D.240, 616D.300, 616D.310, or 616D.350 to 616D.440, inclusive.

3. The revocation, suspension, modification or limitation of the license to practice any type of medicine by any other jurisdiction or the surrender of the license or discontinuing the practice of medicine while under investigation by any licensing authority, a medical facility, a branch of the Armed Services of the United States, an insurance company, an agency of the Federal Government or an employer.

4. Malpractice, which may be evidenced by claims settled against a practitioner, but only if such malpractice is established by a preponderance of the evidence.

5. The engaging by a practitioner in any sexual activity with a patient who is currently being treated by the practitioner.

6. Disruptive behavior with physicians, hospital personnel, patients, members of the families of patients or any other persons if the behavior interferes with patient care or has an adverse impact on the quality of care rendered to a patient.

7. The engaging in conduct that violates the trust of a patient and exploits the relationship between the physician and the patient for financial or other personal gain.

8. The failure to offer appropriate procedures or studies, to protest inappropriate denials by organizations for managed care, to provide necessary services or to refer a patient to an appropriate provider, when such a failure occurs with the intent of positively influencing the financial well-being of the practitioner or an insurer.

9. The engaging in conduct that brings the medical profession into disrepute, including, without limitation, conduct that violates

any provision of a ~~national~~ code of ethics adopted by the Board by regulation ~~is~~ *based on a national code of ethics.*

10. The engaging in sexual contact with the surrogate of a patient or other key persons related to a patient, including, without limitation, a spouse, parent or legal guardian, which exploits the relationship between the physician and the patient in a sexual manner.

11. Conviction of:

- (a) *Murder, voluntary manslaughter or mayhem;*
- (b) *Any felony involving the use of a firearm or other deadly weapon;*
- (c) *Assault with intent to kill or to commit sexual assault or mayhem;*
- (d) *Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;*
- (e) *Abuse or neglect of a child or contributory delinquency;*
- (f) *A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS; or*
- (g) *Any offense involving moral turpitude.*

Sec. 5. Chapter 630A of NRS is hereby amended by adding thereto the provisions set forth as sections 5.2 to 10, inclusive, of this act.

Sec. 5.2. *As used in sections 5.2 to 10, inclusive, of this act, unless the context otherwise requires, the words and terms defined in sections 5.4, 5.5 and 5.6 of this act have the meanings ascribed to them in those sections.*

Sec. 5.4. "Practitioner" means:

- 1. *A homeopathic physician licensed pursuant to this chapter;*
- 2. *A physician licensed pursuant to chapter 630 of NRS; or*
- 3. *An osteopathic physician licensed pursuant to chapter 633 of NRS.*

Sec. 5.5. 1. "Researcher" means a practitioner who intends to undertake or is undertaking a research study.

2. The term does not include a practitioner who intends to undertake or is undertaking any research, study or trial described in section 5.8 of this act.

Sec. 5.6. 1. "Research study" means any research, study or trial using devices, therapies or substances regulated by the Board of Homeopathic Medical Examiners, or any combination of those devices, therapies or substances, in a manner that is considered to be a form of alternative or complementary integrative medicine.

2. The term does not include any research, study or trial described in section 5.8 of this act.

Sec. 5.8. *The provisions of sections 5.2 to 10, inclusive, of this act do not apply to any research, study or trial that is conducted under the auspices of a federally qualified institutional review board and in accordance with applicable federal statutes.*

Sec. 6. *1. The Nevada Institutional Review Board is hereby created.*

2. The Nevada Institutional Review Board shall be under the supervision of the Board of Homeopathic Medical Examiners.

3. The Nevada Institutional Review Board consists of seven members appointed as follows:

(a) After consultation with organizations in Nevada representing medical disciplines, the Board of Homeopathic Medical Examiners shall appoint four members who represent various medical disciplines in Nevada.

(b) Three members who are lay members of the general public and residents of Nevada and who are not licensed in any medical discipline must be appointed as follows:

(1) One member appointed by the Governor;

(2) One member appointed by the Majority Leader of the Senate; and

(3) One member appointed by the Speaker of the Assembly.

4. The members of the Nevada Institutional Review Board serve at the pleasure of the appointing authority. A vacancy on the Nevada Institutional Review Board must be filled by the appointing authority in the same manner as the original appointment.

5. The members of the Nevada Institutional Review Board are entitled to receive, out of the money coming into the possession of the Nevada Institutional Review Board, a per diem allowance and travel expenses, as fixed by the Nevada Institutional Review Board.

6. Four members of the Nevada Institutional Review Board constitute a quorum. A quorum may exercise all the power and authority conferred on the Nevada Institutional Review Board.

7. The Nevada Institutional Review Board shall elect officers from within its membership, fix the time and place of its meetings and adopt rules of procedure as it deems necessary to carry out its duties.

Sec. 7. *Before entering upon the duties of his office, each member of the Nevada Institutional Review Board shall take:*

1. The constitutional oath or affirmation of office; and

2. An oath or affirmation that he is legally qualified to serve on the Nevada Institutional Review Board.

Sec. 7.3. *1. The Nevada Institutional Review Board shall adopt regulations to carry out the provisions of sections 5.2 to 10, inclusive, of this act.*

2. All regulations adopted by the Nevada Institutional Review Board must be approved by the Board of Homeopathic Medical Examiners.

Sec. 7.7. 1. A researcher who intends to undertake a research study must submit a proposal for the research study to the Nevada Institutional Review Board for its review and approval.

2. A researcher shall not undertake a research study unless the proposal for the research study has been approved by the Nevada Institutional Review Board.

Sec. 8. 1. The Nevada Institutional Review Board shall:

(a) Review proposals for research studies and oversee, review and control all research studies it has approved;

(b) Evaluate, determine and act upon the safety, efficacy, reimbursement and availability of diagnostic devices, substances, other modalities, therapies and methods of treatment used in such research studies; and

(c) Analyze, coordinate and integrate the diagnostic techniques and treatments related to alternative and complementary integrative medicine with the diagnostic techniques and treatments of other health care practices.

2. The Nevada Institutional Review Board shall oversee, review and control any research studies which it has approved and which involve the use of human research subjects and any related issues, including, without limitation:

(a) The qualifications required for conducting such research studies;

(b) The proper clinical outcome to be attributed to such research studies; and

(c) The safety, efficacy, reimbursement and availability of diagnostic devices, substances, other modalities, therapies and methods of treatment used in such research studies.

3. The Nevada Institutional Review Board shall evaluate:

(a) The social and economic impact of the research studies it has approved; and

(b) The relationship between alternative and complementary integrative medicine and other health care practices.

4. The Nevada Institutional Review Board shall:

(a) Keep a record of all transactions and provide the Board of Homeopathic Medical Examiners, the Board of Medical Examiners and the State Board of Osteopathic Medicine with quarterly reports of all transactions; and

(b) Make any additional reports or recommendations to the Board of Homeopathic Medical Examiners as the Board of Homeopathic Medical Examiners requires.

5. The Nevada Institutional Review Board is accountable to the Board of Homeopathic Medical Examiners for all the activities of the Nevada Institutional Review Board.

Sec. 9. 1. All money received by the Nevada Institutional Review Board must be deposited in financial institutions in this State that are federally insured or insured by a private insurer approved pursuant to NRS 678.755. The money must be kept separate from any money to be used by or for the Board of Homeopathic Medical Examiners.

2. The deposited money must only be used to carry out the activities of the Nevada Institutional Review Board and to pay the expenses incurred by the Nevada Institutional Review Board in the discharge of its duties.

Sec. 10. 1. Except as otherwise provided in subsection 3, the Nevada Institutional Review Board may be funded by:

(a) A nonprofit organization, created by the Board of Homeopathic Medical Examiners, which is exempt from taxation pursuant to 26 U.S.C. § 501(c)(3); and

(b) Grants, gifts, appropriations or donations to assist the Nevada Institutional Review Board in carrying out its duties pursuant to the provisions of sections 5.2 to 10, inclusive, of this act.

2. Any money received by the Nevada Institutional Review Board must be placed with the financial institutions described in section 9 of this act.

3. The Nevada Institutional Review Board may not be funded by any money from:

(a) The sponsor of any research study; or

(b) The manufacturer of any device, drug or other substance regulated by the Board of Homeopathic Medical Examiners.

Sec. 11. NRS 630A.090 is hereby amended to read as follows:

630A.090 1. ~~[This]~~ Except as otherwise provided in sections 5.2 to 10, inclusive, of this act, this chapter does not apply to:

(a) The practice of dentistry, chiropractic, Oriental medicine, podiatry, optometry, respiratory care, faith or Christian Science healing, nursing, veterinary medicine or fitting hearing aids.

(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 or certified nurses in the discharge of their duties as nurses.

(d) Homeopathic physicians who are called into this State, other than on a regular basis, for consultation or assistance to any physician licensed in this State, and who are legally qualified to practice in the state or country 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 case of emergency.

(b) The domestic administration of family remedies.

4. This chapter does not authorize a homeopathic physician to practice medicine, including allopathic medicine, except as otherwise provided in NRS 630A.040.

Sec. 12. NRS 630A.155 is hereby amended to read as follows:
630A.155 The Board shall:

1. Regulate the practice of homeopathic medicine in this State and any activities that are within the scope of such practice, to protect the public health and safety and the general welfare of the people of this State.

2. Determine the qualifications of, and examine, applicants for licensure or certification pursuant to this chapter, and specify by regulation the methods to be used to check the background of such applicants.

3. License or certify those applicants it finds to be qualified.

4. Investigate, hear and decide all complaints made against any homeopathic physician, advanced practitioner of homeopathy, homeopathic assistant or any agent or employee of any of them, or any facility where the primary practice is homeopathic medicine. If a complaint concerns a practice which is within the jurisdiction of another licensing board [~~including, without limitation, spinal manipulation, surgery, nursing or allopathic medicine,~~] *or any other possible violation of state law*, the Board shall refer the complaint to the other licensing board.

5. *Supervise the Nevada Institutional Review Board created by section 6 of this act, including, without limitation, approving or denying the regulations adopted by the Nevada Institutional Review Board.*

6. *Submit an annual report to the Legislature and make recommendations to the Legislature concerning the enactment of legislation relating to alternative and complementary integrative medicine, including, without limitation, homeopathic medicine.*

Sec. 13. Chapter 633 of NRS is hereby amended by adding thereto a new section to read as follows:

1. *Any osteopathic physician against whom the Board initiates disciplinary action pursuant to this chapter shall, within 30 days after the osteopathic physician's receipt of notification of the initiation of the disciplinary action, submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.*

2. The willful failure of an osteopathic physician to comply with the requirements of subsection 1 constitutes additional grounds for disciplinary action and the revocation of the license of the osteopathic physician.

3. The Board has additional grounds for initiating disciplinary action against an osteopathic physician if the report from the Federal Bureau of Investigation indicates that the osteopathic physician has been convicted of:

(a) An act that is a ground for disciplinary action pursuant to NRS 633.511; or

(b) A felony set forth in NRS 633.741.

Sec. 14. NRS 633.328 is hereby amended to read as follows:

633.328 ~~[1.]~~ In addition to any other requirements set forth in this chapter, each applicant for a license to practice osteopathic medicine, except a temporary or special license, or each osteopathic physician's assistant for whom an application to employ an osteopathic physician's assistant is submitted to the Board must submit to the Board a complete set of his fingerprints and written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report.

~~[2. The Board may issue a provisional license pending receipt of the report of the Federal Bureau of Investigation if the Board determines that the applicant is otherwise qualified.~~

~~— 3. The Board shall revoke a provisional license upon receipt of the report from the Federal Bureau of Investigation if the report indicates that:~~

~~— (a) The applicant or the osteopathic physician's assistant has been convicted of an act that is a ground for disciplinary action pursuant to NRS 633.511;~~

~~— (b) The applicant or the osteopathic physician's assistant has been convicted of a felony set forth in NRS 633.741; or~~

~~— (c) A warrant for the arrest of the applicant or the osteopathic physician's assistant has been issued by a court of competent jurisdiction.]~~

Sec. 15. NRS 633.511 is hereby amended to read as follows:

633.511 The grounds for initiating disciplinary action pursuant to 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 or any dangerous drug as defined in chapter 454 of NRS;

(b) A felony relating to the practice of osteopathic medicine;

(c) A violation of any of the provisions of NRS 616D.200, 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive; ~~[or]~~

- (d) *Murder, voluntary manslaughter or mayhem;*
- (e) *Any felony involving the use of a firearm or other deadly weapon;*
- (f) *Assault with intent to kill or to commit sexual assault or mayhem;*
- (g) *Sexual assault, statutory sexual seduction, incest, lewdness, indecent exposure or any other sexually related crime;*
- (h) *Abuse or neglect of a child or contributory delinquency; or*
- (i) Any offense involving moral turpitude.

3. The suspension of the license to practice osteopathic medicine by any other jurisdiction.

4. Gross or repeated malpractice, which may be evidenced by claims of malpractice settled against a practitioner.

5. Professional incompetence.

6. Failure to comply with the requirements of NRS 633.527.

Sec. 16. NRS 179A.100 is hereby amended to read as follows:

179A.100 1. The following records of criminal history may be disseminated by an agency of criminal justice without any restriction pursuant to this chapter:

(a) Any which reflect records of conviction only; and

(b) Any which pertain to an incident for which a person is currently within the system of criminal justice, including parole or probation.

2. Without any restriction pursuant to this chapter, a record of criminal history or the absence of such a record may be:

(a) Disclosed among agencies which maintain a system for the mutual exchange of criminal records.

(b) Furnished by one agency to another to administer the system of criminal justice, including the furnishing of information by a police department to a district attorney.

(c) Reported to the Central Repository.

3. An agency of criminal justice shall disseminate to a prospective employer, upon request, records of criminal history concerning a prospective employee or volunteer which:

(a) Reflect convictions only; or

(b) Pertain to an incident for which the prospective employee or volunteer is currently within the system of criminal justice, including parole or probation.

4. In addition to any other information to which an employer is entitled or authorized to receive, the Central Repository shall disseminate to a prospective or current employer the information described in subsection 4 of NRS 179A.190 concerning an employee, prospective employee, volunteer or prospective volunteer who gives his written consent to the release of that information if the employer submits a request in the manner set forth in NRS 179A.200 for obtaining a notice of information. The Central

Repository shall search for and disseminate such information in the manner set forth in NRS 179A.210 for the dissemination of a notice of information. Except as otherwise provided in this subsection, the provisions of NRS 179A.180 to 179A.240, inclusive, do not apply to an employer who requests information and to whom information is disseminated pursuant to this subsection.

5. Records of criminal history must be disseminated by an agency of criminal justice, upon request, to the following persons or governmental entities:

(a) The person who is the subject of the record of criminal history for the purposes of NRS 179A.150.

(b) The person who is the subject of the record of criminal history or his attorney of record when the subject is a party in a judicial, administrative, licensing, disciplinary or other proceeding to which the information is relevant.

(c) The State Gaming Control Board.

(d) The State Board of Nursing.

(e) The Private Investigator's Licensing Board to investigate an applicant for a license.

(f) A public administrator to carry out his duties as prescribed in chapter 253 of NRS.

(g) A public guardian to investigate a ward or proposed ward or persons who may have knowledge of assets belonging to a ward or proposed ward.

(h) Any agency of criminal justice of the United States or of another state or the District of Columbia.

(i) Any public utility subject to the jurisdiction of the Public Utilities Commission of Nevada when the information is necessary to conduct a security investigation of an employee or prospective employee, or to protect the public health, safety or welfare.

(j) Persons and agencies authorized by statute, ordinance, executive order, court rule, court decision or court order as construed by appropriate state or local officers or agencies.

(k) Any person or governmental entity which has entered into a contract to provide services to an agency of criminal justice relating to the administration of criminal justice, if authorized by the contract, and if the contract also specifies that the information will be used only for stated purposes and that it will be otherwise confidential in accordance with state and federal law and regulation.

(l) Any reporter for the electronic or printed media in his professional capacity for communication to the public.

(m) Prospective employers if the person who is the subject of the information has given written consent to the release of that information by the agency which maintains it.

(n) For the express purpose of research, evaluative or statistical programs pursuant to an agreement with an agency of criminal justice.

(o) An agency which provides child welfare services, as defined in NRS 432B.030.

(p) The Welfare Division of the Department of Human Resources or its designated representative.

(q) An agency of this or any other state or the Federal Government that is conducting activities pursuant to Part D of Subchapter IV of Chapter 7 of Title 42 of the Social Security Act, 42 U.S.C. §§ 651 et seq.

(r) The State Disaster Identification Team of the Division of Emergency Management of the Department.

(s) The Commissioner of Insurance.

(t) The Board of Medical Examiners.

(u) The State Board of Osteopathic Medicine.

6. Agencies of criminal justice in this State which receive information from sources outside this State concerning transactions involving criminal justice which occur outside Nevada shall treat the information as confidentially as is required by the provisions of this chapter.

Sec. 17. 1. As soon as practicable, each appointing authority responsible for the appointment of members to the Nevada Institutional Review Board shall make its initial appointments to the Nevada Institutional Review Board.

2. The Nevada Institutional Review Board shall adopt regulations pursuant to section 7.3 of this act on or before October 1, 2005.

Sec. 18. 1. This section and section 17 of this act become effective upon passage and approval.

2. Sections 1 to 16, inclusive, of this act become effective on July 1, 2005.

