

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, OCEGUERA, PARKS, PARNELL, PIERCE, SHERER, SIBLEY, SMITH AND WEBER

MARCH 15, 2005

JOINT SPONSORS: SENATORS CARE, HORSFORD AND TITUS

Referred to Committee on Commerce and Labor

SUMMARY—Makes various changes relating to physicians and medical research. (BDR 54-1108)

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 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; removing the requirement that the Board of Homeopathic Medical Examiners refer complaints within the jurisdiction of other boards to those boards; requiring the Board of Homeopathic Medical Examiners to make recommendations to the Legislature



regarding 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:

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

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

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

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

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

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

28 **(b)** *A violation of NRS 630.400.*

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

30 630.301 The following acts, among others, constitute grounds
31 for initiating disciplinary action or denying licensure:

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

35 2. Conviction of violating any of the provisions of NRS
36 616D.200, 616D.220, 616D.240, 616D.300, 616D.310, or 616D.350
37 to 616D.440, inclusive.

38 3. The revocation, suspension, modification or limitation of the
39 license to practice any type of medicine by any other jurisdiction or



1 the surrender of the license or discontinuing the practice of medicine
2 while under investigation by any licensing authority, a medical
3 facility, a branch of the Armed Services of the United States, an
4 insurance company, an agency of the Federal Government or an
5 employer.

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

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

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

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

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

23 9. The engaging in conduct that brings the medical profession
24 into disrepute, including, without limitation, conduct that violates
25 any provision of a ~~national~~ code of ethics adopted by the Board by
26 regulation ~~§~~ *based on a national code of ethics.*

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

32 ***II. Conviction of:***

33 ***(a) Murder, voluntary manslaughter or mayhem;***

34 ***(b) Any felony involving the use of a firearm or other deadly***
35 ***weapon;***

36 ***(c) Assault with intent to kill or to commit sexual assault or***
37 ***mayhem;***

38 ***(d) Sexual assault, statutory sexual seduction, incest, lewdness,***
39 ***indecent exposure or any other sexually related crime;***

40 ***(e) Abuse or neglect of a child or contributory delinquency;***

41 ***(f) A violation of any federal or state law regulating the***
42 ***possession, distribution or use of any controlled substance or any***
43 ***dangerous drug as defined in chapter 454 of NRS; or***

44 ***(g) Any offense involving moral turpitude.***



1 **Sec. 5.** Chapter 630A of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 6 to 10, inclusive, of this
3 act.

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

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

8 **3.** *The Nevada Institutional Review Board consists of seven*
9 *members as follows:*

10 **(a)** *One person, who may be a member of the Board of*
11 *Homeopathic Medical Examiners, appointed by the Board of*
12 *Homeopathic Medical Examiners;*

13 **(b)** *One person, who may be a member of the Board of*
14 *Medical Examiners, appointed by the Board of Medical*
15 *Examiners;*

16 **(c)** *One person, who may be a member of the Board of*
17 *Osteopathic Medical Examiners, appointed by the Board of*
18 *Osteopathic Medical Examiners;*

19 **(d)** *One person, who may be a member of the State Board of*
20 *Pharmacy, appointed by the State Board of Pharmacy; and*

21 **(e)** *Three residents of Nevada appointed by the Board of*
22 *Homeopathic Medical Examiners.*

23 **4.** *The Board of Homeopathic Medical Examiners shall*
24 *appoint three residents of Nevada to serve as alternates to the*
25 *Nevada Institutional Review Board. If there is a vacancy, either*
26 *permanent or temporary, on the Nevada Institutional Review*
27 *Board, the Board of Homeopathic Medical Examiners shall*
28 *appoint one of the alternates to fill the vacancy.*

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

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

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

39 **1.** *The constitutional oath or affirmation of office; and*

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

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

43 **(a)** *Assist the Board of Homeopathic Medical Examiners in:*



1 (1) *Protecting the public by exercising control of research*
2 *studies using devices, therapies and substances regulated by the*
3 *Board;*

4 (2) *Evaluating, determining and acting upon the safety,*
5 *efficacy, reimbursement and availability of diagnostic devices,*
6 *substances, other modalities, therapies and methods of treatment*
7 *used in such research studies; and*

8 (3) *Analyzing, coordinating and integrating the diagnostic*
9 *techniques and treatments related to complementary integrative*
10 *medicine with the diagnostic techniques and treatments of other*
11 *healthcare practices;*

12 (b) *Oversee, review and control any research studies submitted*
13 *to the Nevada Institutional Review Board which involve*
14 *complementary integrative medicine and the use of human*
15 *research subjects and any related issues, including, without*
16 *limitation:*

17 (1) *The qualifications required for conducting such*
18 *research studies;*

19 (2) *The proper clinical outcome to be attributed to such*
20 *research studies; and*

21 (3) *The safety, efficacy, reimbursement and availability of*
22 *diagnostic devices, substances, other modalities, therapies and*
23 *methods of treatment used in such research studies;*

24 (c) *Evaluate:*

25 (1) *The social and economic impact of submitted research*
26 *studies; and*

27 (2) *The relationship between complementary integrative*
28 *medicine and other healthcare practices;*

29 (d) *Keep a record of all transactions and provide the Board of*
30 *Homeopathic Medical Examiners with periodic reports of all*
31 *transactions; and*

32 (e) *Be accountable to the Board of Homeopathic Medical*
33 *Examiners for all the activities of the Nevada Institutional Review*
34 *Board and make any reports or recommendations to the Board of*
35 *Homeopathic Medical Examiners as the Board of Homeopathic*
36 *Medical Examiners requires.*

37 2. *The Nevada Institutional Review Board may adopt such*
38 *regulations as are necessary to carry out the provisions of sections*
39 *6 to 10, inclusive, of this act. All regulations adopted by the*
40 *Nevada Institutional Review Board must be approved by the Board*
41 *of Homeopathic Medical Examiners.*

42 **Sec. 9. 1.** *All money received by the Nevada Institutional*
43 *Review Board must be deposited in financial institutions in this*
44 *State that are federally insured or insured by a private insurer*
45 *approved pursuant to NRS 678.755. The money must be kept*



1 *separate from any money to be used by or for the Board of*
2 *Homeopathic Medical Examiners.*

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

7 **Sec. 10.** 1. *The Nevada Institutional Review Board may be*
8 *funded by:*

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

12 (b) *Grants, gifts, appropriations or donations to assist the*
13 *Nevada Institutional Review Board in carrying out its duties*
14 *pursuant to the provisions of sections 6 to 10, inclusive, of this act.*

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

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

19 630A.090 1. ~~[This]~~ *Except as otherwise provided in section*
20 *8 of this act and NRS 630A.155, this* chapter does not apply to:

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

24 (b) A medical officer of the Armed Services or a medical officer
25 of any division or department of the United States in the discharge
26 of his official duties.

27 (c) Licensed or certified nurses in the discharge of their duties as
28 nurses.

29 (d) Homeopathic physicians who are called into this State, other
30 than on a regular basis, for consultation or assistance to any
31 physician licensed in this State, and who are legally qualified to
32 practice in the state or country where they reside.

33 2. This chapter does not repeal or affect any statute of Nevada
34 regulating or affecting any other healing art.

35 3. This chapter does not prohibit:

36 (a) Gratuitous services of a person in case of emergency.

37 (b) The domestic administration of family remedies.

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

41 **Sec. 12.** NRS 630A.155 is hereby amended to read as follows:

42 630A.155 The Board shall:

43 1. Regulate the practice of homeopathic medicine in this State
44 and any activities that are within the scope of such practice, to



1 protect the public health and safety and the general welfare of the
2 people of this State.

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

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

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

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

20 6. *Make recommendations to the Legislature concerning the
21 enactment of legislation relating to complementary integrative
22 medicine, including, without limitation, homeopathic medicine.*

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

25 1. *Any osteopathic physician against whom the Board
26 initiates disciplinary action pursuant to this chapter shall, within
27 30 days after the osteopathic physician's receipt of notification of
28 the initiation of the disciplinary action, submit to the Board a
29 complete set of his fingerprints and written permission authorizing
30 the Board to forward the fingerprints to the Central Repository for
31 Nevada Records of Criminal History for submission to the Federal
32 Bureau of Investigation for its report.*

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

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

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

43 (b) *A felony set forth in NRS 633.741.*



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

2 633.328 ~~[+]~~ In addition to any other requirements set forth in
3 this chapter, each applicant for a license to practice osteopathic
4 medicine, except a temporary or special license, or each osteopathic
5 physician's assistant for whom an application to employ an
6 osteopathic physician's assistant is submitted to the Board must
7 submit to the Board a complete set of his fingerprints and written
8 permission authorizing the Board to forward the fingerprints to the
9 Central Repository for Nevada Records of Criminal History for
10 submission to the Federal Bureau of Investigation for its report.

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

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

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

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

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

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

26 633.511 The grounds for initiating disciplinary action pursuant
27 to this chapter are:

28 1. Unprofessional conduct.

29 2. Conviction of:

30 (a) A violation of any federal or state law regulating the
31 possession, distribution or use of any controlled substance or any
32 dangerous drug as defined in chapter 454 of NRS;

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

34 (c) A violation of any of the provisions of NRS 616D.200,
35 616D.220, 616D.240 or 616D.300 to 616D.440, inclusive; ~~[or]~~

36 (d) *Murder, voluntary manslaughter or mayhem;*

37 (e) *Any felony involving the use of a firearm or other deadly
38 weapon;*

39 (f) *Assault with intent to kill or to commit sexual assault or
40 mayhem;*

41 (g) *Sexual assault, statutory sexual seduction, incest, lewdness,
42 indecent exposure or any other sexually related crime;*

43 (h) *Abuse or neglect of a child or contributory delinquency; or*

44 (i) Any offense involving moral turpitude.



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

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

5 5. Professional incompetence.

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

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

8 179A.100 1. The following records of criminal history may
9 be disseminated by an agency of criminal justice without any
10 restriction pursuant to this chapter:

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

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

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

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

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

22 (c) Reported to the Central Repository.

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

26 (a) Reflect convictions only; or

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

30 4. In addition to any other information to which an employer is
31 entitled or authorized to receive, the Central Repository shall
32 disseminate to a prospective or current employer the information
33 described in subsection 4 of NRS 179A.190 concerning an
34 employee, prospective employee, volunteer or prospective volunteer
35 who gives his written consent to the release of that information if
36 the employer submits a request in the manner set forth in NRS
37 179A.200 for obtaining a notice of information. The Central
38 Repository shall search for and disseminate such information in the
39 manner set forth in NRS 179A.210 for the dissemination of a notice
40 of information. Except as otherwise provided in this subsection, the
41 provisions of NRS 179A.180 to 179A.240, inclusive, do not apply
42 to an employer who requests information and to whom information
43 is disseminated pursuant to this subsection.



- 1 5. Records of criminal history must be disseminated by an
2 agency of criminal justice , upon request, to the following persons or
3 governmental entities:
- 4 (a) The person who is the subject of the record of criminal
5 history for the purposes of NRS 179A.150.
- 6 (b) The person who is the subject of the record of criminal
7 history or his attorney of record when the subject is a party in a
8 judicial, administrative, licensing, disciplinary or other proceeding
9 to which the information is relevant.
- 10 (c) The State Gaming Control Board.
- 11 (d) The State Board of Nursing.
- 12 (e) The Private Investigator's Licensing Board to investigate an
13 applicant for a license.
- 14 (f) A public administrator to carry out his duties as prescribed in
15 chapter 253 of NRS.
- 16 (g) A public guardian to investigate a ward or proposed ward or
17 persons who may have knowledge of assets belonging to a ward or
18 proposed ward.
- 19 (h) Any agency of criminal justice of the United States or of
20 another state or the District of Columbia.
- 21 (i) Any public utility subject to the jurisdiction of the Public
22 Utilities Commission of Nevada when the information is necessary
23 to conduct a security investigation of an employee or prospective
24 employee, or to protect the public health, safety or welfare.
- 25 (j) Persons and agencies authorized by statute, ordinance,
26 executive order, court rule, court decision or court order as
27 construed by appropriate state or local officers or agencies.
- 28 (k) Any person or governmental entity which has entered into a
29 contract to provide services to an agency of criminal justice relating
30 to the administration of criminal justice, if authorized by the
31 contract, and if the contract also specifies that the information will
32 be used only for stated purposes and that it will be otherwise
33 confidential in accordance with state and federal law and regulation.
- 34 (l) Any reporter for the electronic or printed media in his
35 professional capacity for communication to the public.
- 36 (m) Prospective employers if the person who is the subject of
37 the information has given written consent to the release of that
38 information by the agency which maintains it.
- 39 (n) For the express purpose of research, evaluative or statistical
40 programs pursuant to an agreement with an agency of criminal
41 justice.
- 42 (o) An agency which provides child welfare services, as defined
43 in NRS 432B.030.
- 44 (p) The Welfare Division of the Department of Human
45 Resources or its designated representative.



1 (q) An agency of this or any other state or the Federal
2 Government that is conducting activities pursuant to Part D of
3 Subchapter IV of Chapter 7 of Title 42 of the Social Security Act,
4 42 U.S.C. §§ 651 et seq.

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

7 (s) The Commissioner of Insurance.

8 (t) *The Board of Medical Examiners.*

9 (u) *The State Board of Osteopathic Medicine.*

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

15 **Sec. 17.** 1. As soon as practicable after the effective date of
16 this act, the Boards responsible for the appointment of members to
17 the Nevada Institutional Review Board shall make their initial
18 appointments to the Nevada Institutional Review Board.

19 2. The Nevada Institutional Review Board shall adopt
20 regulations pursuant to section 8 of this act on or before October 1,
21 2005.

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

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



