PROBLEMS CONCERNING PROFESSIONAL LIABILITY INSURANCE

Bulletin No. 79-9

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

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Senate Concurrent Resolution No. 12—Committee on Judiciary

FILE NUMBER 136

SENATE CONCURRENT RESOLUTION—Authorizing the legislative commission to study certain problems concerning professional liability insurance.

WHEREAS, Reliable and extensive information given to the legislative commission's subcommittee on medical malpractice indicates that complex professional liability insurance problems may continue for all licensed professional services; and

WHEREAS, Legislation may be necessary to protect the health and welfare of persons living in this state; now, therefore, be it

Resolved by the Senate of the State of Nevada, the Assembly concurring, That the legislative commission may undertake a study of problems concerning professional liability insurance if the commission determines that such a study is necessary to ensure a continued high quality of all licensed professional services in this state; and be it further

Resolved, That if a study is made, the legislative commission report the results of the study to the 60th session of the legislature together with its recommendations and any appropriate legislation.

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REPORT OF THE LEGISLATIVE COMMISSION

To the Members of the 60th Session of the Nevada Legislature:

This report is submitted in compliance with Senate Concurrent Resolution No. 12 of the 59th session of the Nevada legislature, which permitted the legislative commission to study problems concerning professional liability insurance if the commission determined that the study was necessary to ensure a continued high quality of all licensed professional services in this state. On June 2, 1977, the legislative commission made that determination and appointed a subcommittee to conduct the study. The subcommittee was composed of Senator Norman Ty Hilbrecht as chairman, Assemblyman James J. Banner as vice chairman, and Senator C. Clifton Young and Assemblyman Harley L. Harmon as members.

In its report, the subcommittee has attempted to present its findings and recommendations briefly and concisely. Only that data which bears directly upon the recommendations is included. All supporting documents, including minutes, staff studies and other research materials, are on file with the legislative counsel bureau and are readily available to any legislator.

This report is transmitted to the members of the 1979 legislature for their consideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada

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SUMMARY OF RECOMMENDATIONS

The legislative commission's subcommittee on problems concerning professional liability insurance recommends for the consideration of the 60th session of the Nevada legislature:

1. That insurers who write professional liability insurance for professional nurses be required to offer coverage for the specialized activities of the nurse-practitioner. (BDR 57-46)

2. That the status of the University of Nevada as a state agency for the purposes of Nevada's conditional waiver of sovereign immunity (NRS 41.0305 et seq.) be made more explicit in the law. (BDR 3-45)

3. That persons who participate in the clinical program of the School of Medical Sciences of the University of Nevada as students or as teachers or supervisors be deemed state employees for the purposes of NRS 41.031 and 41.0337 to 41.039, inclusive, while they are directly engaged in any diagnostic or therapeutic activity of the program. (BDR 3-45)

4. That the Board of Regents of the University of Nevada be required to restrict the diagnostic and therapeutic activities of the clinical program of the School of Medical Sciences to the territory of this state. (BDR 3-45)

5. That the time for giving notice of tort claims against the state and its political subdivisions be extended. (BDR 3-97)

6. That the commissioner of insurance be authorized to reduce the minimum required initial free surplus for domestic reciprocals which issue assessable policies. (BDR 57-46)

7. That reserves for unpaid claims and related expense be reduced where they appear unreasonably high in relation to specific standards prescribed by law and that an amended rate structure be filed consistent with the insurance commissioner's order to reduce reserves. (BDR 57-100; alternatively, BDR 57-46)

8. That a single statute of limitations for all malpractice actions, except those against providers of health care, provide a limitations period which ends 2 years after the plaintiff discovers or should have discovered the malpractice, but not later than 4 years after the date of the malpractice, except in cases of fraud. (BDR 2-49)

9. That a professional liability insurer be required to offer an option to buy coverage of claims based on acts occurring during the policy period but filed after the policy is no longer in force. (BDR 57-46)

10. That the Nevada supreme court be urged to direct the State Bar to adopt requirements for the continuing education of lawyers. (BDR 47)

11. That hospitals having more than 200 beds be required to establish an internal risk management program. (BDR 40-99)

12. That the professional and occupational licensing agencies in the state be required to adopt within 2 years regulations which set standards for risk management programs appropriate to their professions or occupations. (BDR 54-48)

13. That the Nevada supreme court be urged to direct the State Bar to adopt standards for programs of risk management appropriate to the legal profession. (BDR 50)

14. That the professional and occupational licensing agencies in the state be required to provide to the research division of the legislative counsel bureau statistical data about malpractice complaints made by the public. (BDR 54-48)

15. That the Nevada supreme court be urged to direct the State Bar to provide to the research division of the legislative counsel bureau statistical data about legal malpractice complaints made by the public. (BDR 50)

16. That the Nevada supreme court be urged to direct the State Bar to adopt effective guidelines for setting reasonable percentages for contingent fees. (BDR 53)

17. That the Nevada supreme court be urged to direct the State Bar to establish voluntary panels for screening legal malpractice claims before they are filed in the courts. (BDR 50)

18. That the inconsistencies which appear between Nevada's comparative negligence statutes and between them and the Uniform Contribution Among Tortfeasors Act be eliminated. (BDR 2-98)

19. That the law of privileges be clarified so as not to prevent the disclosure of threats of substantial harm to persons or property. (BDR 4-92)

20. That the discovery provisions of the Nevada Rules of Civil Procedure apply in arbitration proceedings under chapter 38 of NRS. (BDR 3-52)

21. That awards for future damages for $50,000 or more recovered in medical malpractice actions against providers of health care be subject to payment on a periodic basis at the request of either party to the action. (BDR 3-96)

22. That judgments which draw interest do so from the time the cause of action accrues and at the rate prevailing on the date of the judgment. (BDR 2-101; alternatively, BDR 2-51)

23. That NRS 17.115, relating to compromise settlements, be conformed to Rule 68 of the Nevada Rules of Civil Procedure. (BDR 2-51)

REPORT OF THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE ON PROBLEMS CONCERNING PROFESSIONAL LIABILITY INSURANCE

I. INTRODUCTION

During the interim between the 1975 and 1977 sessions of the Nevada legislature, the legislative commission conducted a comprehensive study of the problems of medical malpractice insurance in this state. (See Bulletin No. 77-1.) That study noted the problems of high cost and decreasing availability of medical malpractice insurance, discussed the causes of these problems and evaluated the effects of extensive medical malpractice legislation enacted during the 1975 session. The evaluation made of that legislation by the subcommittee on medical malpractice insurance in 1976 is still valid. The bills of that session concerning gratuitous emergency care (S.B. 402), prior payments (S.B. 403), res ipsa loquitur (S.B. 405), tolling of the statute of limitations (S.B. 406) and informed consent (S.B. 408) may indeed have long-term beneficial effects on malpractice claims in Nevada, but there is still no evidence of the effect of those changes in the law. (See pages 26 and 27, Bulletin No. 77-1.) S.B. 400 which authorized the formation of a joint underwriting association continues to have a significant impact on the availability of medical malpractice insurance. The joint underwriting association, known as the Nevada Medical Liability Insurance Association, remains the largest medical malpractice insurance carrier in the state, now covering about 337 out of Nevada's approximately 750 practicing physicians. (See page 27, Bulletin No. 77-1.) The medical-legal screening panels provided in S.B. 407 continue to function effectively. And the power and flexibility given the board of medical examiners in S.B. 432 to assure medical competency and, where necessary, to discipline doctors have been put to generally effective use.

As the subcommittee on medical malpractice pointed out, the 1975 legislation demonstrated the legislature's appreciation of and willingness to respond to the malpractice "crisis" and that fact itself appeared to have a beneficial effect on the medical malpractice insurance climate in the state. (Page 29, Bulletin No. 77-1.) Still, those actions were clearly not enough to persuade insurance underwriters to expand their market in Nevada or reduce premiums. Further action was recommended and the subcommittee proposed 14 pieces of legislation which were designed to develop information and statistical data concerning medical malpractice, increase the quality of medical care and the availability of insurance and improve the resolution of medical malpractice claims. (See pages 29-39, Bulletin No. 77-1.) The medical malpractice bills which were enacted by the 1977 session of the legislature included:

S.B. 190, which required malpractice insurers to report to the commissioner of insurance settlements or awards made or judgments rendered by reason of a medical malpractice claim and the commissioner in turn to pass these reports on to the board of medical examiners;

S.B. 413, which made substantial changes in the procedure for disciplining physicians;

A.B. 264, which expanded the membership of the board of medical examiners to include lay members;

S.C.R. 11, which memorialized the Joint Commission on Accreditation of Hospitals to require risk management as a prerequisite to accreditation;

A.B. 269, which provided an option for policyholders in the joint underwriting association to pay an annual charge in lieu of retroactive assessments for certain deficits;

A.B. 268, which, among other things, extended the period for bringing medical malpractice actions on behalf of minor children having certain disabilities;

S.B. 185, which made patients' medical records available for physical inspection and copying by the patient and by certain others in the conduct of a disciplinary investigation of a physician;

A.B. 267, which expanded the membership of the medical-legal screening panels, gave them subpena power and made certain changes in their operating procedure; and

S.C.R. 12, which directed the present study.

Generally, this legislation too is expected to have a long-term beneficial effect; there is little evidence yet of its effect in the short term. Since July 1, 1977, insurers have made 11 reports of medical malpractice settlements or arbitration awards to the insurance commissioner and these have been forwarded to the board of medical examiners. So far one of those reports has been referred to the attorney general's office for investigation. Risk management is being developed in some hospitals in the state, but largely through the insistence of their malpractice insurers. A large and increasing number of insureds with the Nevada Medical Liability Insurance Association are opting for the annual charge in lieu of retroactive assessments. This is expected to produce a substantial paid-in surplus which will greatly stabilize the association. A substantial number of patients too are taking advantage of the easier access to their medical records afforded under S.B. 185 and the attorney general's office reports that the bill has assisted in its responsibilities in the discipline of physicians.

The subcommittee on medical malpractice concluded that the problems involving medical malpractice insurance, though now less exacerbated than before, would continue in the foreseeable future. Moreover, it had indications that the problems of high cost and decreasing availability of professional liability insurance appeared to be shared by some of the other professions as well. The 1977 legislature enacted S.C.R. 12 to provide an opportunity for the legislative commission to continue to monitor the medical malpractice situation, but especially to focus on the malpractice insurance problems of the other professions.

II. AVAILABILITY AND COST OF PROFESSIONAL LIABILITY INSURANCE: SPECIFIC LICENSED PROFESSIONS IN NEVADA

In late 1977 the subcommittee sought to elicit information concerning the availability and cost of professional liability insurance directly from the professional and occupational licensing boards established under Title 54 of NRS and from the respective professional associations in the state. It did so through a questionnaire which appears as Exhibit 1. The responses to the questionnaire are tabulated in Exhibit 2. A statistical analysis of the results of the questionnaire appears as Exhibit 3.

In no instance was malpractice insurance found to be unavailable to any profession questioned. Except as noted below, it appears that malpractice insurance is available at reasonable cost to Nevada's accountants, chiropractors, dentists, professional engineers, nurses, physical therapists, teachers and veterinarians. Malpractice insurance is still generally available to hospitals in Nevada but at a relatively high cost.

High premiums were given as the chief reason why about one-third of Nevada's practicing attorneys are not insured. Malpractice insurance is available only through a single company sponsored by the State Bar. That company's premiums have increased rapidly and substantially, and in the past few months it has threatened to stop writing insurance in the state unless it can obtain a further rate increase. The insurance division could establish a joint underwriting association for lawyers on short notice should this insurance become unavailable. At this time, however, the State Bar does not appear to favor a joint underwriting association and has undertaken to study the feasibility of establishing a lawyer's reciprocal.

It is estimated that about one-third of Nevada's 750 physicians practice without malpractice insurance, principally because of continued high premiums. But medical malpractice insurance is available from several sources. In addition to the Nevada Medical Liability Insurance Association, insurance may be obtained through a private commercial carrier and through a reciprocal of California doctors on a surplus lines basis. A

second such reciprocal has just recently begun to approach the Nevada market on the same basis. The small number of physicians in Nevada appears to make infeasible a reciprocal comprising Nevada doctors alone and prospects for joining out-of-state physicians in a regional reciprocal also appear unpromising.

Oral surgeons, podiatrists, doctors of Oriental medicine, contractors, realtors and insurance agents also complain of the high cost of malpractice insurance, although its availability to them is not yet a problem.

Malpractice insurance for nurses is available through their professional association at a reasonable cost, but it was found that coverage of the specialized and high risk activities engaged in by "nurse-practitioners" could not be obtained. Since these activities were specifically authorized as part of the practice of professional nursing by the Nevada legislature in 1973 and are of benefit as such to the general public, the subcommittee recommends that

> INSURERS WHO WRITE PROFESSIONAL LIABILITY INSURANCE FOR PROFESSIONAL NURSES BE REQUIRED TO OFFER COVERAGE FOR THE SPECIALIZED ACTIVITIES OF THE NURSE-PRACTITIONER.

Section 4 of BDR 57-46, attached as Appendix A, would carry out this recommendation.

The need for professional liability insurance for local government officers and employees in view of Nevada's conditional waiver of sovereign immunity (see NRS 41.0305 to 41.039, inclusive) was examined this interim as part of a study conducted by the legislative commission's subcommittee on local government liability and employee group insurance. (See Bulletin No. 79-11.) Generally, the principles of law discussed in that study concerning the personal liability of officers and employees in local government for torts they commit within the scope of their duties and employment apply as well to those working for the state. Testimony before our subcommittee indicated a concern over the personal liability of officers and employees of the University of Nevada for any negligence they may commit while acting within the scope of their duties or employment, particularly in respect to the clinical program of the school of medical sciences. That program necessarily involves the delivery of medical services to the public. The school has experienced difficulty in attracting and retaining capable persons to hold clinical faculty appointments or otherwise participate in the clinical program because of the uncertainty surrounding their personal liability for actions taken within the program. The subcommittee recommends that

> THE STATUS OF THE UNIVERSITY OF NEVADA AS A STATE AGENCY FOR THE PURPOSES OF NEVADA'S CONDITIONAL WAIVER OF SOVEREIGN IMMUNITY (NRS 41.0305 ET SEQ.) BE MADE MORE EXPLICIT IN THE LAW.

This recommendation is carried out by BDR 3-45, attached as Appendix B. The subcommittee further recommends that

> PERSONS WHO PARTICIPATE IN THE CLINICAL PROGRAM OF THE SCHOOL OF MEDICAL SCIENCES OF THE UNIVERSITY OF NEVADA AS STUDENTS OR AS TEACHERS OR SUPERVISORS BE DEEMED STATE EMPLOYEES FOR THE PURPOSES OF NRS 41.031 AND 41.0337 TO 41.039, INCLUSIVE, WHILE THEY ARE DIRECTLY ENGAGED IN ANY DIAGNOSTIC OR THERAPEUTIC ACTIVITY OF THE PROGRAM.

BDR 3-45 also carries out this recommendation. Under that bill, these persons would be defended and indemnified by the state for negligent torts they may commit within the program. The limitation on damages, which is presently $35,000, would also apply to awards against them.

Recent court decisions handed down in California would impose full liability upon the State of Nevada for torts its employees commit in California. (See Hall v. University of Nevada, 8 Cal.3d 522 [1972] and Hall v. University of Nevada, 141 Cal. Rptr. 439 [Ct. App. 1977].) For this reason the subcommittee recommends that

> THE BOARD OF REGENTS OF THE UNIVERSITY OF NEVADA BE REQUIRED TO RESTRICT THE DIAGNOSTIC AND THERAPEUTIC ACTIVITIES OF THE CLINICAL PROGRAM OF THE SCHOOL OF MEDICAL SCIENCES TO THE TERRITORY OF THIS STATE.

BDR 3-45 carries out this recommendation.

NRS 41.036, 41.037, 244.250 and 268.020 require that when a person wishes to sue a governmental entity in this state for a demand arising out of a governmental tort, he must first present the claim to the governmental entity within 6 months from the time the tort occurred or lose his cause of action. The Nevada supreme court in the case of Turner v. Staggs, 89 Nev. 230 (1973) held these claims statutes void because it felt they arbitrarily barred the lawsuits of victims of governmental tort while victims of private tort suffered no such bar. The subcommittee recommends that

> THE TIME FOR GIVING NOTICE OF TORT CLAIMS AGAINST THE STATE AND ITS POLITICAL SUBDIVISIONS BE EXTENDED.

BDR 3-97, attached as Appendix C, carries out this recommendation by extending the period for presenting the claim to coincide with the limitations period otherwise applicable to the particular cause of action. The applicable statute of limitations is then tolled for the 90-day period in which the governmental entity may act on the claim and again for 30 days thereafter.

III. AVAILABILITY AND COST OF PROFESSIONAL LIABILITY INSURANCE: GENERAL PROBLEMS.

A. The Problem of a Single Source of Insurance.

The most serious problem with the availability and cost of professional liability insurance the subcommittee felt it encountered is the fact that insurance in too many cases is available in this state only from one carrier. Usually, as with the attorneys, barbers, nurses and osteopaths, that insurance is available only through the professional association and thus unavailable for nonmembers. But the greater danger appears when the association agrees to sponsor the malpractice insurer as the exclusive carrier in the state. Typically, the insurer at first offers the lowest rate available in order to become the sole source of insurance for the particular market and then, after the market is "captured", increases its rates suddenly and substantially with little apparent justification and under the threat of pulling out of the market altogether. This is precisely what appears to have happened in the malpractice insurance program sponsored by the State Bar and only recently has the Bar's board of governors voted to seek additional markets to make its members less vulnerable to such threats.

In the search for additional markets here and in other states, the domestic reciprocal in which practitioners of a profession cooperate to furnish insurance to themselves has developed increasing interest as an alternative to the private insurance market. (A detailed description of this type of insurance organization can be found on page 16 of Bulletin No. 77-1.) The reciprocal appears to be favored because, if properly run, it can be a relatively efficient and inexpensive vehicle for insurance. Unlike a joint underwriting association, the reciprocal permits its members to retain control over the limits of their coverage, it appears to have easier access to reinsurance (which would make higher policy limits possible) and its members can retain any profits the reciprocal might make. The difficulty in establishing a reciprocal for many professions in Nevada is collecting enough money from their relatively small numbers to create a sufficient surplus. The subcommittee believes it is desirable to encourage the formation of reciprocal insurers, particularly where a market is served by only one carrier, and therefore recommends that

> THE COMMISSIONER OF INSURANCE BE AUTHORIZED TO REDUCE THE MINIMUM REQUIRED INITIAL FREE SURPLUS FOR DOMESTIC RECIPROCALS WHICH ISSUE ASSESSABLE POLICIES.

Section 1 of BDR 57-46, attached as Appendix A, carries out this recommendation. Under that bill, the amount of the reduction must be consistent with the ability of the reciprocal to assess its policyholders for deficits and, in any case, the amount of initial free surplus required of the insurer may not be less than $300,000.

B. The Problem of Excessive Reserves.

Under NRS 681B.050 casualty insurers are required to "maintain * * * reserves in an amount estimated in the aggregate to provide for payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the insurer may be liable and to provide for the expenses of adjustment or settlement of losses and claims." Under that statute the reserves are to be computed in accordance with regulations of the commissioner of insurance. It appears to the subcommittee that despite these regulations some insurers are reserving at levels which seem unwarranted in view of their loss experience. This practice has a direct and adverse impact on the level of premiums. The commissioner of insurance has indicated that it would be helpful if the standards for reserving applied in his division were made explicit in the law for all lines of insurance to which they could apply. The subcommittee recommends that

> RESERVES FOR UNPAID CLAIMS AND RELATED EXPENSE BE REDUCED WHERE THEY APPEAR UNREASONABLY HIGH IN RELATION TO SPECIFIC STANDARDS PRESCRIBED BY LAW AND THAT AN AMENDED RATE STRUCTURE BE FILED CONSISTENT WITH THE INSURANCE COMMISSIONER'S ORDER TO REDUCE RESERVES.

This recommendation is carried out by BDR 57-100, attached as Appendix D. It prescribes the standards for reserving. The subcommittee recognizes the opposition that may develop from applying these requirements to all lines of insurance governed under chapter 686B of NRS and thus tenders an alternative, section 2 of BDR 57-46, attached as Appendix A, which enacts the same reserving requirements as BDR 57-100, but applies them only to casualty insurance.

C. Problems Associated with the "Claims-made" Form of Malpractice Insurance Policy.

A professional liability insurance policy is described as an "occurrence" type policy if it covers claims which are based on acts occurring during the policy period, whether the claim itself is filed with the insurer during or after the policy period. A malpractice insurance policy is said to be written in the "claims-made" form when it covers only claims which are filed with the insurer during the policy period and which occurred during the current policy

period or a previous period with the same carrier. "Occurrence" type policies protect the public because they cover insured claims even if filed years after the malpractice occurs. (This period between the occurrence of malpractice and the filing of an insurance claim is the so-called "tail" period which is discussed in detail on page 12 of Bulletin No. 77-1.) The subcommittee sees the "claims-made" type of policy as leaving the public unprotected in cases where a claim is filed after the policy is cancelled. When that happens there is no insurance to cover the claim. The difficulty with the "occurrence" type policy lies in determining an appropriate premium where the length of the "tail" period is both long and unknown. Shortening the period for bringing a malpractice action is urged as a necessary response to this problem. The subcommittee recommends that

> A SINGLE STATUTE OF LIMITATIONS FOR ALL MALPRACTICE ACTIONS, EXCEPT THOSE AGAINST PROVIDERS OF HEALTH CARE, PROVIDE A LIMITATIONS PERIOD WHICH ENDS 2 YEARS AFTER THE PLAINTIFF DISCOVERS OR SHOULD HAVE DISCOVERED THE MALPRACTICE, BUT NOT LATER THAN 4 YEARS AFTER THE DATE OF THE MALPRACTICE, EXCEPT IN CASES OF FRAUD.

BDR 2-49, attached as Appendix E, carries out this recommendation. Malpractice actions against providers of health care are already similarly limited under NRS 41A.097.

It was pointed out to the subcommittee that coverage of the period after the "claims-made" policy had been cancelled could be purchased with some "claims-made" policies written in Nevada. But these coverages vary in the length of the period covered and expecially in the circumstances under which the coverage may be purchased. The subcommittee recommends that

> A PROFESSIONAL LIABILITY INSURER BE REQUIRED TO OFFER AN OPTION TO BUY COVERAGE OF CLAIMS BASED ON ACTS OCCURRING DURING THE POLICY PERIOD BUT FILED AFTER THE POLICY IS NO LONGER IN FORCE.

Section 5 of BDR 57-46, attached as Appendix A, carries out this recommendation. Under that section of the bill, the option is effective unless rejected by the insured and remains exercisable by the insured for at least 90 days after the policy terminates for whatever reason.

IV. INCREASED QUALITY OF PROFESSIONAL SERVICES

A. Continuing Education.

It seems to be a truism as the subcommittee on medical malpractice insurance found "that one of the causes for the malpractice crisis is malpractice." (Page 6, Bulletin No. 77-1.) Our subcommittee agrees that the long-term solution to the malpractice problem is to assure the highest possible quality of professional services. The continuing education of members of a profession or occupation plays an important role in increasing the quality of their services and thus preventing malpractice. Requirements for continuing education are already provided in the law for accountants, dispensing opticians, optometrists and pharmacists. The subcommittee found that mandatory continuing education is particularly appropriate at this time for the legal profession which, as indicated above, is experiencing acute malpractice insurance problems. Accordingly, the subcommittee recommends that

> THE NEVADA SUPREME COURT BE URGED TO DIRECT THE STATE BAR TO ADOPT REQUIREMENTS FOR THE CONTINUING EDUCATION OF LAWYERS.

BDR 47, attached as Appendix F, carries out this recommendation.

B. Risk Management Standards and Requirements.

The subcommittee on medical malpractice insurance pointed out in its study that risk management has been used successfully in industry for some time now and has become an important factor in insurance ratings. Florida has required risk management programs in all hospitals with 300 beds or more and those programs appear to have been effective. That state recognized, as it has been noted, that "[a]lmost 80 percent of malpractice claims result from incidents in hospitals [and] * * * [i]n virtually all of these, hospitals become malpractice defendants." (Page 22, Bulletin No. 77-1.) Many malpractice carriers which insure Nevada hospitals have been urging the hospitals to establish internal risk management programs, but apparently with mixed results. The subcommittee recommends that

> HOSPITALS HAVING MORE THAN 200 BEDS BE REQUIRED TO ESTABLISH AN INTERNAL RISK MANAGEMENT PROGRAM.

This recommendation is carried out by BDR 40-99, attached as Appendix G.

The subcommittee believes that the concept of risk management can be applied effectively to help reduce malpractice in the professions and occupations in this state, although it cannot detail the contents of a program of risk management which would be appropriate for a particular profession or occupation. The subcommittee believes that the professional and occupational licensing agencies are in the best position to indicate what kind of risk management program is appropriate for their licensees. Accordingly, the subcommittee recommends that

> THE PROFESSIONAL AND OCCUPATIONAL LICENSING AGENCIES IN THE STATE BE REQUIRED TO ADOPT WITHIN 2 YEARS REGULATIONS WHICH SET STANDARDS FOR RISK MANAGEMENT PROGRAMS APPROPRIATE TO THEIR PROFESSIONS OR OCCUPATIONS.

BDR 54-48, attached as Appendix H, carries out this recommendation. The subcommittee further recommends that

> THE NEVADA SUPREME COURT BE URGED TO DIRECT THE STATE BAR TO ADOPT STANDARDS FOR PROGRAMS OF RISK MANAGEMENT APPROPRIATE TO THE LEGAL PROFESSION.

This recommendation is carried out by BDR 50, attached as Appendix I.

C. Discipline within the Professions and Occupations.

One of the purposes of the professional and occupational regulatory agencies is to protect the public from incompetent or unethical practitioners. The subcommittee found that reliable statistical data on malpractice complaints is largely unavailable to enable the legislature to evaluate accurately the willingness and ability of the regulatory agencies to dicipline their licensees. The subcommittee recommends that

> THE PROFESSIONAL AND OCCUPATIONAL LICENSING AGENCIES IN THE STATE BE REQUIRED TO PROVIDE TO THE RESEARCH DIVISION OF THE LEGISLATIVE COUNSEL BUREAU STATISTICAL DATA ABOUT MALPRACTICE COMPLAINTS MADE BY THE PUBLIC.

BDR 54-48, attached as Appendix H, carries out this recommendation. The subcommittee further recommends that

> THE NEVADA SUPREME COURT BE URGED TO DIRECT THE STATE BAR TO PROVIDE TO THE RESEARCH DIVISION OF THE LEGISLATIVE COUNSEL BUREAU STATISTICAL DATA ABOUT LEGAL MALPRACTICE COMPLAINTS MADE BY THE PUBLIC.

This recommendation is carried out by BDR 50, attached as Appendix I.

V. IMPROVEMENT IN DISPOSING OF CLAIMS

It has been argued that current increases in the number of malpractice suits, in the amounts of judgments and malpractice insurance premiums and in a growing unwillingness of insurers to write liability insurance within the present tort system indicates a need for changing that system. As noted above, the subcommittee found that there is still little evidence that changes made in the tort law in past sessions of the legislature has significantly and beneficially affected the availability or cost of professional liability insurance in Nevada. Even so, the subcommittee strongly believes that certain improvements in the tort system could have a definitely positive, if not immediate, effect upon the malpractice insurance climate in this state.

Public concern over instances of excessively high contingent fees for plaintiffs' lawyers continues. The contingent fee system is seen as a useful screening device. It provides an incentive for an attorney to prosecute a good case where the plaintiff cannot afford to pay for his services and, conversely, a reason not to take on a poor case since the attorney receives nothing if he loses. The major criticism of the system comes from the suspicion that in cases resulting in high awards, the lawyer's fee more reflects the extent of his client's injury than the amount of legal work and expense in handling the case. The American Bar Association's Commission on Medical Professional Liability and the California Citizens Commission on Tort Reform have recommended a decreasing maximum schedule for contingent fees and the New Jersey supreme court by rule and several other states by legislation have adopted such a schedule. (See pages 8 and 9, Bulletin No. 77-1.) At the present time there are now in Nevada no effective guidelines for setting reasonable levels for contingent fees. The subcommittee recommends that

> THE NEVADA SUPREME COURT BE URGED TO DIRECT THE STATE BAR TO ADOPT EFFECTIVE GUIDELINES FOR SETTING REASONABLE PERCENTAGES FOR CONTINGENT FEES.

This recommendation is carried out by BDR 53, attached as Appendix J.

Another effective device for discouraging frivolous or lightly considered suits is the screening panel. Its basic function is to resolve claims before they get into the court system. (See page 24, Bulletin No. 77-1.) As noted above, the medical-legal screening panels established under chapter 41A of NRS have been largely successful in improving the quality of those claims that do go to court. The subcommittee believes that a similar device is now needed to help resolve legal malpractice claims. Accordingly, the subcommittee recommends that

THE NEVADA SUPREME COURT BE URGED TO DIRECT THE STATE BAR TO ESTABLISH VOLUNTARY PANELS FOR SCREENING LEGAL MALPRACTICE CLAIMS BEFORE THEY ARE FILED IN THE COURTS.

This recommendation is carried out by BDR 50, attached as Appendix I.

The subcommittee found that inconsistencies appear between Nevada's two comparative negligence statutes, NRS 41.141 and 698.310, and between them and the Uniform Contribution Among Tortfeasors Act, NRS 17.215 to 17.325, inclusive. NRS 698.310, which relates to motor vehicle accidents, is essentially only a more particular version of subsection 1 of NRS 41.141 and the inconsistencies between them would be eliminated if the two provisions were merged. NRS 41.141 also provides for the several liability of multiple defendants in a tort action in which the plaintiff has been contributorily negligent. This means that the plaintiff can collect from each defendant only the latter's share of the total liability. Under the Uniform Contribution Among Tortfeasors Act a plaintiff may collect the entire liability from any one defendant who then must seek reimbursement from his co-defendants for their share of the liability. The act on its face appears to encompass the same type of tort actions with which NRS 41.141 treats. Hence the inconsistency. The subcommittee believes that several liability as provided in NRS 41.141 should apply to tort actions in which the plaintiff or his decedent are contributorily negligent. The subcommittee recommends that

THE INCONSISTENCIES WHICH APPEAR BETWEEN NEVADA'S COMPARATIVE NEGLIGENCE STATUTES AND BETWEEN THEM AND THE UNIFORM CONTRIBUTION AMONG TORTFEASORS ACT BE ELIMINATED.

BDR 2-98, attached as Appendix K, carries out this recommendation.

Recently a psychiatrist in California was sued for his failure to disclose a threat of bodily harm to another which his patient had carried out. The psychiatrist apparently believed that the doctor-patient privilege prevented him from warning anyone of the threat. The subcommittee found that the privileges created by chapter 49 of NRS do not appear to prevent the practitioner of a profession in Nevada from disclosing a threat made to him within the confidential relationships protected by those privileges. However, since none of the provisions of chapter 49 of NRS specifically except threats and since there is as yet little case law on the subject, the subcommittee recommends that

THE LAW OF PRIVILEGES BE CLARIFIED SO AS NOT TO PREVENT THE DISCLOSURE OF THREATS OF SUBSTANTIAL HARM TO PERSONS OR PROPERTY.

BDR 4-92, attached as Appendix L, carries out this recommendation.

Nevada has adopted the Uniform Arbitration Act (chapter 38 of NRS) which provides a relatively inexpensive method for resolving malpractice claims outside of court. The subcommittee believes that easier discovery of evidence in arbitration proceedings would greatly enhance their usefulness for that purpose. Accordingly, the subcommittee recommends that

> THE DISCOVERY PROVISIONS OF THE NEVADA RULES OF CIVIL PROCEDURE APPLY IN ARBITRATION PROCEEDINGS UNDER CHAPTER 38 OF NRS.

This recommendation is carried out by BDR 3-52, attached as Appendix M.

The subcommittee was told that of the various changes to the tort law enacted throughout the country in response to the malpractice insurance problem, the provision for periodic, rather than lump sum, payment of large awards has proved most helpful. The problems that can arise both for the plaintiff and the defendant insurer when a large award is paid in a lump sum were detailed by the subcommittee on medical malpractice insurance. (See page 20, Bulletin No. 77-1.) Periodic payment appears most appropriate for "future damages", that is, damages for medical treatment and care or custody to be received or incurred by the plaintiff after judgment is rendered because it ensures that the money to pay for these important services will be available in the future when it is needed. And, of course, the plaintiff who dies before the award for future damages is exhausted suffers no further future damages and the balance of the award ought to be returned to the defendant and not go to plaintiff's heirs as a windfall. For these reasons, the subcommittee recommends that

> AWARDS FOR FUTURE DAMAGES FOR $50,000 OR MORE RECOVERED IN MEDICAL MALPRACTICE ACTIONS AGAINST PROVIDERS OF HEALTH CARE BE SUBJECT TO PAYMENT ON A PERIODIC BASIS AT THE REQUEST OF EITHER PARTY TO THE ACTION.

This recommendation is carried out by BDR 3-96, attached as Appendix N. Under that bill, the security for the payments is held in trust by a bank or trust company and interest earned on the security is distributed to the plaintiff as it accrues.

It was pointed out to the subcommittee that personal injury actions now take as long as 2 years to come to trial in Nevada's larger counties. Since under present law interest on the judgment eventually obtained begins to accrue only from the time the judgment is entered, there is not so much incentive to settle as there would be if the interest were to begin to accrue from the time the cause of action accrues. And because of the current economic situation, it seems fair that the present fixed interest rate of 7 percent per annum on judgments be repealed and a flexible rate substituted. The subcommittee recommends that

JUDGMENTS WHICH DRAW INTEREST DO SO FROM THE TIME THE CAUSE OF ACTION ACCRUES AND AT THE RATE PREVAILING ON THE DATE OF THE JUDGMENT.

This recommendation is carried out by BDR 2-101, attached as Appendix O. Under that bill, the prevailing rate of interest is equal to the average of the lowest daily prime rate at the three largest United States banking institutions on the date of judgment. The subcommittee recognizes that there may develop opposition to requiring interest for the period before judgment as BDR 2-101 does. For that reason, the subcommittee tenders an alternative bill, BDR 2-51, attached as Appendix P, which provides for interest on judgments at the prevailing rate as described above, but only authorizes the award of interest for the period before judgment at the discretion of the court.

Lastly, the subcommittee found inconsistencies between Rule 68 of the Nevada Rules of Civil Procedure and NRS 17.115, both of which provide for offers of judgment or compromise settlements, as they are also called. NRCP 68 requires the party who rejects an offer of settlement and who does not later obtain a more favorable judgment to pay costs and attorney's fees, if any are allowed, to the party whose offer was rejected. This requirement of the supreme court is designed to encourage settlements. For that reason, the subcommittee recommends that

NRS 17.115, RELATING TO COMPROMISE SETTLEMENTS BE CONFORMED TO RULE 68 OF THE NEVADA RULES OF CIVIL PROCEDURE.

BDR 2-51, attached as Appendix P, carries out this recommendation.

Respectfully submitted,

Senator Norman Ty Hilbrecht,
Chairman
Assemblyman James J. Banner,
Vice Chairman
Senator C. Clifton Young
Assemblyman Harley L. Harmon

Exhibit 1

Questionnaire of the Subcommittee on Problems Concerning Professional Liability Insurance

YOUR PROFESSION

1. What is the name of your organization?

2. (For licensing boards): How many of your licensees are practicing in Nevada?

3. (For professional associations): What is the total membership of your association?

4. How many of your licensees or members carry professional liability insurance?

GROUP INSURANCE THROUGH YOUR ORGANIZATION

5. Is professional liability insurance available to your members or licensees in a group policy offered through your organization?

6. If such insurance is available:

   (a) Which company or companies offer it?

   (b) What limits of coverage are available?

   (c) Does the policy cover claims filed during the policy period ("claims-made" type coverage) or does it cover malpractice occurrences which happen during the policy period without regard to when the claim is filed ("occurrence" type coverage)?

   (d) If the policy offers "claims-made" type coverage, can your members or licensees buy coverage for claims filed after the policy period ("tail" coverage)?

   (e) What is the premium or premium basis for the group policy?

PROFESSIONAL LIABILITY INSURANCE

7. Is professional liability insurance generally available to all your members or licensees who desire it?

8. Which insurance companies are writing or appear willing to write professional liability insurance for members of your profession in Nevada?

9. What are the ranges of premiums charged for professional liability insurance available to your members or licensees?

10. What percentage increase do these ranges represent over premium ranges charged during the past 3 years?

11. Is the premium charged reasonable enough to permit your members or licensees to secure professional liability insurance if they want it?

12. Of the insurance companies which make professional liability insurance available to your members or licensees, which companies offer:

    (a) "Claims-made" type coverage?

    (b) "Occurrence" type coverage?

    (c) "Tail" coverage, i.e., if the policy covers only claims filed during the policy period, the member may purchase coverage for claims filed after the policy period?

13. What problems, if any, can your members or licensees identify in obtaining professional liability insurance?

14. What solutions to the problems mentioned in Question No. 13 would your organization or your members or licensees recommend?

15. Would your organization or your members or licensees favor:

(a) A "clients' fund" approach to professional liability insurance (e.g., a single pool of money contributed by practitioners from all licensed professions from which recoveries are paid)?

(b) A "no-fault" approach to professional liability (e.g., recovery for "bad results")?

(c) "Structured awards" in professional liability cases (i.e., where award payments are made over a period of time and only to the injured party)?

16. In what way would your organization like to participate in the work of this legislative subcommittee?

PLEASE MAIL THE COMPLETED QUESTIONNAIRE IN THE ENCLOSED STAMPED, SELF-ADDRESSED ENVELOPE. THANKS AGAIN FOR YOUR HELP.

Exhibit 2

Responses to the Questionnaire

(The number heading each column corresponds to the question number on the questionnaire.)

Your Profession — Group Insurance Through Your Organization — Page 1 a

1		2	3	4	5	6 (a)	6 (b)	6 (c)	6 (d)	6 (e)
Attorneys	B	1,206		ukn	no					
Barbers	B	340			no	Through: Barber's Union				
Certified Public Accountants	A	582	505			American Institute of Certified Public Accountants, New York				
Chiropractors	B	60		maj	no	Through: American Chiropractic Assn. By: National Chiropractic Mutual Insurance Co.	Up to $200,000 / claim $600,000 - aggregate	O		Minimum Claim: $10,000 - $30,000 = $228.00, annual Maximum Claim: $200,000 - $600,000 = $648.00, annual
Contractors	A									
Contractors	B	7,200		unk	no					
Dentists	A		289	99%	yes	W.P. Poe and Associates	Combination policy with umbrella to $1,000,000	O		$600 - $700 / yr; higher for oral surgeons
Dentists	B									
Engineers	B	802		ukn	ukn					
Hearing Aid Specialists	B	16		many dropped ins.	no					
Hospitals	A		23	23	yes	Farmers Insurance Group	$1,000,000 / claim	O		(See Attachment "C.")

Your Profession					Group Insurance Through Your Organization					
1		2	3	4	5	6 (a)	6 (b)	6 (c)	6 (d)	6 (e)
Nurses	A		525	247 in ANA Plan; ukn - others	yes	Forrest T. Jones & Co. Kansas City, Mo. Administrators, ANA Plan	$100,000 / 300,000 $2000,00 / 600,000 Graduate Nurse Plan	C	60d unlt if RPTD	$100,000 / 300,000: $22.25 / yr $200,000 / 600,000: $28.00 / yr Graduate Nurse Plan: $12.50 / 6 mo
Nurses	B	5,500		ukn	no (see # 7, 8)					
Practitioners of Oriental Medicine	B	9		most	no					
Osteopaths	A	33	17	10	yes	1. Bercanus Insurance Co. 2. Professional Mutual Ins. Co. Kansas City, Mo.	2. $100,000 / 300,000 $200,000 / 600,000	C O	yes	1. (See Attachment "A.") 2. (See Attachment "B.")
Pharmacists	B	420		unk	no					
Physical Therapists	B	66		most	yes	Through: American Physical Therapy Assn. By: Maginnis Associates Chicago, Ill.	$200,000 / claim $600,000 - aggregate			$172.00 / yr
Physicians	A		650	unk	no					
Physicians (NMLIA)	A		330	330	yes	Nevada Medical Liability Insurance Assn.	$500,000 each occurrence $1,500,000 aggregate	O		
Podiatrists	A		14	13	yes	Through: American Podiatry Association By: NAC Agency Poughkeepsie, N.Y.	$100,000 / 300,000	C	yes	$3,800/yr; $ 680 for $1,000,000 umbrella
Private Investigators	B	80		all	no					
Psychologists	B	54		prob. 50 %	no	Rathmell and Co. 1511 K Street, N.W. Washington, D.C. 20005	$200,000 / claim $600,000-aggregate/yr	O		Annual, renewable (See # 9)

Your Profession					Group Insurance Through Your Organization				Page 1 c
1		2	3	4	5	6 (a)	6 (b)	6 (c)	6 (d)	6 (e)
Public Health Nurses and Physicians	A		200	rarely	no					
Realtors	A		3,300	50% 70%	no					
Teachers	A		4,759	all	yes	Horace Mann Insurance Co.	$250,000 / occurrence	0		$1,189.75 for 4,759 members
Veterinarians	B			all		Through: American Veterinary Medical Association By: Professional Liab. Ins. Trust 209 S. La Salle St., Chicago, 60604				

Professional Liability Insurance

	7	8	9	10	11	12 (a)	12 (b)	12 (c)
Attorneys	yes	Amer. Bankers Ins. Co. of Fla. Amer. Home Ins. Co. Lloyds of London	$614 - $1,105/yr. for $1,000 deductible; $100,000 limit	6.6 X premium of 4 yrs. ago	high	Amer. Bankers Ins. Amer. Home Ins. Co. Lloyds of London	none	Lloyds of London under certain conditions
Barbers		unk	unk	unk	yes	unk	unk	unk
Certified Public Accountants								
Chiropractors	yes	National Chiropractic Mutual Insurance Co.	$288 -$648 / yr.	not varied very much	yes			
Contractors (AGC)								
Contractors (board)	unk	unk	unk	unk	unk	unk	unk	unk
Dentists (NDA)	yes, except oral surgns.	1. Marine Fire	$500 - $3,500 / yr.	150%	yes gen.) no oral)	Marine Fire	W.P. Poe & Assoc.	Marine Fire
Dentists (board)								
Engineers	prob.	unk	unk	unk	unk	unk	unk	unk
Hearing Aid Specialists	yes	1. Ill. Employers Ins. Co. Chicago, Ill. 2. Hartford Ins. Co. Detroit, Mich.	1977: $115 - $440.50	$93 in 1976	no			
Hospitals	yes	1. Farmers Ins. Group; 2. Guarantee Nat'l; 3. Ambassador; 4. Amer. Home Ins. Co; 5. The Hartford Ins. Co.	$27.51/bed/mo. -- $45.00/bed/mo.	150-500%	no	none	all	none

Professional Liability Insurance

	7	8	9	10	11	12 (a)	12 (b)	12 (c)
Nurses (NNA)	yes	unk for coverage other than through ANA	RN's pay same premium regardless of role	48.3%	yes	unk	unk	unk
Nurses (board)	yes, if member of prof assn.	RN Assn: Forrest T. Jones & Co. LPN Assn: Penn. Ins. Co.	RN: $20 - $23.50 LPN: $18	negligible	yes		Forrest T. Jones Co. Penn. Ins. Co	
Practitioners of Oriental Medicine	yes	Marmoorstein Agency 40 Journal Square Jersey City, N.J. 07306	unk	unk	unk (See # 13)	unk	unk	unk
Osteopaths			(See Attachments "A" and "B.")		yes	Bercanus Ins. Co.	Professional Meet. Insurance Co.	
Pharmacists								
Physical Therapists	yes, if member of prof assn.	(See # 6(a)).			lower than other co's.			
Physicians (NSMA)	yes	1. Argonaut 2. NMLIA 3. MIEC 4. The Doctors' Co.	$1,300 - $22,000	15-20%	yes (lrg) no (lrg)	1. MIEC 2. The Doctors' Co.	1. NMLIA 2. Argonaut	1. MIEC 2. The Doctors' Co.
Physicians (NMLIA)	Sub. to specific underwr qual.	1. NMLIA 2. Argonaut 3. CNA	$2,120-$11,052/yr.	12.5%			1. NMLIA 2. Argonaut	
Podiatrists	yes	unk for coverage other than through APA	(See # 6(e)).	40%	no	NAC Agency		NAC Agency
Private Investigators	yes	various	various	unk	req'd by law	various	various	various
Psychologists	yes	(See # 6(a)).	$60-$400/yr.	50%	yes	unk	unk	unk

Professional Liability Insurance

	7	8	9	10	11	12 (a)	12 (b)	12 (c)
Public Health Nurses and Physicians	yes	unk	unk	unk	unk	unk	unk	unk
Realtors	yes	Equity General Agents Los Angeles, Ca.	Based on number of sales persons and dollar volume	?	not always	unk	unk	unk
Teachers	yes	Horace Mann Ins. Co	(See # 6 (e)).	none	Prov. as service of NSIA			
Veterinarians	yes	(See # 6(a)).	within reason					

Attorneys	"High cost."
Barbers	"Must belong to the union. If independent company (carry) this - we do not know." "Most members of the union do not now carry such insurance."
Certified Public Accountants	
Chiropractors	"None - providing they are active members of the National Association in good standing. Nevada is one of the few States that has this good coverage."
Contractors (AGC)	1. Rates are "manual" rates established by private rate making body. 2. High rates
Contractors (board)	
Dentists (NDA)	"Oral surgeons have a problem in getting professional liability insurance because of general anesthesia." " * * * dentists have problems if they use general anesthesia or analgesia, nitrous oxide or I.V. Premedication."
Dentists (board)	" * * * our problems are minimal in malpractice suits."
Engineers	"n/a"
Hearing Aid Specialists	
Hospitals	"To date, all of our hospitals have been able to secure insurance coverage."

	Professional Liability Insurance
	13
Nurses (NNA)	"Good insurance is available through ANA. Only RN's who are members of our association may take advantage of this plan."
Nurses (board)	"None of which I am aware."
Practitioners of Oriental Medicine	"No problems have been identified. Coverage is available. I would rate the cost as 'high'. No claims have ever been filed to my knowledge."
Osteopaths	
Pharmacists	
Physical Therapists	"I do not know of any problems."
Physicians (NSMA)	"1. Costs in most instances are prohibitive." 2. Coverage levels (of) $500,00/1,500,000 are not always sufficient to cover contingencies. 3. Uncertainty of assessment possibilities (NMLIA). 4. Stability of carriers * * *. 5. Strict underwriting criteria may force many rural physicians to 'go bare'."
Physicians (NMLIA)	"Affordability" "Limits of liability"
Podiatrists	"The cost is becoming prohibitive."
Private Investigators	"Unknown"
Psychologists	"Knowledge of companies willing to offer the insurance."

	Professional Liability Insurance
	13
Public Health Nurses and Physicians	"Most members are 'going bare'. Public Health Nurses: Some buy their own, at their own expense. No figures available. Public Health Physicians: The County Physicians of Clark & Washoe County District Health Departments are covered for Malpractice Insurance. Part of their fringe benefits. County Commissioners pick up tab for the premiums. State employed physicians: Health Officers, Prison Physician, State Hospital Physicians, etc., are all 'going bare', to the best of my knowledge."
Realtors	"Cost; Reluctance of carriers; Policy Limitations"
Teachers	"Am aware of none."
Veterinarians	"This insurance has been available for a number of years and is completely satisfactory to all veterinarians at a price within reason."

	Professional Liability Insurance
	14
Attorneys	"Not rating Nevada lawyers with California and other high loss areas. Education of members to avoid loss. More insurance companies for competition."
Barbers	
Certified Public Accountants	
Chiropractors	
Contractors (AGC)	A "No Fault" approach * * * does not seem to be the answer. A "Clients Fund" approach may be the answer * * * either to cover a deductible, or the total exposure. This fund could be established by raising licensing fees for many professions. The financial investment might make a professional (person) more critical of a contemporary and his professional competence."
Contractors (board)	
Dentists (NDA)	"This was outlined very well by Dr. Richard Hamilton at the subcommittee hearing during last session of the legislature."
Dentists (board)	
Engineers	"n/a"
Hearing Aid Specialists	
Hospitals	

14

Nurses (NNA)	
Nurses (board)	
Practitioners of Oriental Medicine	"No Legislative action needed."
Osteopaths	
Pharmacists	
Physical Therapists	
Physicians (NSMA)	"Tort reform through the legislature appears to be the best way to go. A package of bills similar to (California's) AB 1 xx * * * would greatly influence carriers to come to Nevada to write malpractice insurance.
Physicians (NMLIA)	1. Mandatory structured settlements; 2. Reduction of statutes of limitations; 3. Give board of medical examiners substantial policing authority; 4. Plaintiffs pursuing action in court after losing in medical-legal hearing should be required to put up bond for court and legal costs."
Podiatrists	"Evaluation of premiums paid against claims paid and only for Nev. -- then have our premium based on this figure. When Calif. if figured in with Nev., the premiums are naturally higher.
Private Investigators	"n/a"
Psychologists	"Have insurance agency of state notify us of companies which are willing to insure us."

14

Public Health Nurses and Physicians	"Legislature should arrange and fund premiums for malpractice coverage for all State-employed Public Health Nurses and Physicians."
Realtors	"Has not yet been discussed."
Teachers	"n/a"
Veterinarians	

	Professional Liability Insurance			
	15(a)	15(b)	15(c)	16
Attorneys	"No decision"	"No decision"	"No decision"	"The State Bar Insurance Committee wishes to cooperate and assist."
Barbers	"We could not speak for all barbers but most just seem to let it go -- (Insurance)"			
Certified Public Accountants				
Chiropractors				"We are happy with the coverage we now have."
Contractors (AGC)	(See # 14)	(See # 14)		
Contractors (board)	Successfully employed in Hawaii			"In anyway that we may be of assistance to you."
Dentists (NDA)	no	no	no	"We would like to participate on equal basis with other professions."
Dentists (board)				"If we can be of any further assistance, please advise."
Engineers				"n/a"
Hearing Aid Specialists				
Hospitals	no	no	yes	

	15(a)	15(b)	15(c)	16
Nurses (NNA)	"Information not available."			"We would like to monitor the activities of the subcommittee. We recognize that although we have no problems now, we could have them in the future.
Nurses (board)	"I have no way of determining this for so many licensees."			"At this point to just be kept informed."
Practitioners of Oriental Medicine	"No opinion. Survey or sampling perhaps????"			"Do not wish to participate. No special problems."
Osteopaths				"Advisory"
Pharmacists				
Physical Therapists	"I have no opinion on the above -- I have never known a therapist who has been sued for malpractice."			
Physicians (NSMA)	possibly	possibly	definitely	1. Testify 2. Lobby 3. Provide nationwide surveys, studies, reports.
Physicians (NMLIA)	no	no	yes	" * * * in any way (the subcommittee) feels appropriate."
Podiatrists		yes		"You tell us how we can help."
Private Investigators	"?"			
Psychologists	"This seems to be the consensus."			

Professional Liability Insurance

	15(a)	15(b)	15(c)	16
Public Health Nurses and Physicians	"No opinion. Survey or sampling perhaps????"			"Suggest the Legislative Sub-committee invite testimony from all State Employed Physicians and from the Chief of Public Health Nursing, Jeanette Clodfelter, R.N. * * *"
Realtors	"Can't provide such information at this time."			"Anyway possible."
Teachers				"Please keep us informed * * *. We want to be involved and helpful where possible."
Veterinarians				

Exhibit 3

Statistical Analysis of the Professional Liability Insurance Questionnaire

Total Questionnaires Mailed Out	37
Total Responses	33*
Response Rate	89%
Number of Professions to Whom Questionnaires Sent	29
Number of Professions With One or More Responses	25
Response Rate by Profession	86%
Number of Professions With Answers to the Questionnaire	23

NOTE: For subsequent statistics, the number (n) of respondents is 23, the number of professions with substantive responses. Where there is more than one questionnaire per profession and answers are in conflict, the conflicts will be noted.

I.	Availability (Question 7)	
	Number of Professions Stating Insurance is Available	18 (78%)
	Number of Professions Stating Insurance is not Available	0 (0%)
	Number of Professions Giving No Answer on Availability	5 (22%)
II.	Price (Question 11)	
	Number of Professions Stating Insurance is Affordable	12 (52%)
	Number of Professions Stating Insurance is Not Affordable	4 (17%)
	Number of Professions Giving No Answer on Affordability	6 (26%)
	Other (Physicians find it available in low ranges, not in high ranges)	1 (5%)

* In two cases, the response was not an answer to the questionnaire but notification of efforts to get a response from members or others.

III. Insurance Available Through Professional Association (Question 5)

Number of Professions for Which Insurance is Available Through Professional Associations	9 (39%)
Number of Professions for Which Insurance is not Available Through Professional Associations	12 (52%)
Number Not Answering	2 (9%)

IV. Type of Coverage (Question 12)

Number of Professions Able to Obtain "Claims Made" Coverage Only	1 (5%)
Number of Professions Able to Obtain "Occurrence" Coverage	5 (22%)
Number of Professions Able to Obtain "Tail" Coverage to Go With "Claims Made" Coverage	4 (17%)
Number of Professions Able to Choose Between "Claims Made" and "Occurrence"	4 (17%)
Number of Professions Not Responding	16 (70%)

NOTE: N does not equal 23 nor do the percentages add to 100 since answers are not mutually exclusive.

V. Going Bare (Question 4)

Number of Professions Stating Over Half Have Insurance	11 (48%)
Number of Professions Stating Less Than Half Have Insurance	3 (13%)
Number Not Responding or Saying "Unknown"	9 (39%)

SUMMARY--Provides for certain coverages and for reductions in reserves respecting professional liability insurance. (BDR 57-46)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to professional liability insurance; authorizing reduction of minimum surplus requirements for certain reciprocal insurers; requiring examination and reduction of reserves for unpaid losses and loss expense under specified circumstances; providing for coverage of certain acts performed by professional nurses and of claims filed after expiration of certain policies; 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. NRS 680A.120 is hereby amended to read as follows:

680A.120 1. Except as provided in [subsection 2,] subsections 2 and 3, to qualify for authority to transact any one kind of insurance as defined in NRS 681A.010 to 681A.080, inclusive (kinds of insurance), or combinations of kinds of insurance as shown below, an insurer shall possess and thereafter maintain unimpaired paid-in capital stock (if a stock insurer) or unimpaired basic surplus (if a foreign mutual or a foreign reciprocal insurer) and free surplus not less than 50 percent of the minimum required capital stock or minimum required basic surplus, as the case may be, and when first so authorized shall possess initial free surplus, all in amounts not less than as determined from the following table:

Kind or Kinds of Insurance	STOCK INSURERS Minimum Required Capital Stock	STOCK INSURERS Initial Free Surplus	FOREIGN MUTUAL INSURERS Minimum Required Basic Surplus	FOREIGN MUTUAL INSURERS Initial Free Surplus	RECIPROCAL INSURERS Minimum Required Basic Surplus	RECIPROCAL INSURERS Initial Free Surplus
Life	$200,000	$500,000	$200,000	$500,000	Not applicable	
Health	200,000	500,000	200,000	500,000	$200,000	$500,000
Life & Health	300,000	750,000	300,000	750,000	Not applicable	
Property	300,000	750,000	300,000	750,000	300,000	750,000
Casualty	300,000	750,000	300,000	750,000	300,000	750,000
Casualty & Health	400,000	1,000,000	400,000	1,000,000	400,000	1,000,000
Surety	500,000	1,000,000	500,000	1,000,000	500,000	1,000,000
Marine & Transportation	300,000	750,000	300,000	750,000	300,000	750,000
Multiple line	500,000	1,000,000	500,000	1,000,000	500,000	1,000,000
Title	100,000	250,000	Not applicable		Not applicable	

2. A domestic insurer holding a valid certificate of authority to transact insurance in this state immediately prior to January 1, 1972, may, if otherwise qualified therefor, continue to be so authorized while possessing the amount of paid-in capital stock (if a stock insurer) or surplus (if a mutual insurer) required by the laws of this state for such authority immediately prior to January 1, 1972. The commissioner shall not grant such an insurer authority to transact any other or additional kinds of insurance unless it then fully complies with the requirements as to capital and surplus, as applied to all kinds of insurance which it then proposes to transact, as provided by this section for like foreign insurers applying for original certificates of authority under this code.

3. Except as provided in this subsection, the amount of initial free surplus required of a domestic reciprocal insurer which issues assessable policies may be reduced by the commissioner to a level consistent with the amount specified in its power of attorney for the contingent several liability of its subscribers. The amount of initial free surplus required of such an insurer must not be less than $300,000.

4. Capital and surplus requirements are based upon all the kinds of insurance transacted by the insurer in any and all areas in which it operates or proposes to operate, whether or not only a portion of such kinds are to be transacted in this state.

[4.] 5. As to surplus required for qualification to transact one or more kinds of insurance and thereafter to be maintained, domestic mutual insurers are governed by chapter 693A of NRS (corporate powers, procedures of domestic stock and mutual insurers), and domestic reciprocal insurers are governed by chapter 694B of NRS (reciprocal insurers).

Sec. 2. NRS 681B.050 is hereby amended to read as follows:

681B.050 1. As to casualty insurance transacted by it, each insurer shall maintain at all times reserves in an amount estimated in the aggregate to provide for payment of all losses and claims incurred, whether reported or unreported, which are unpaid and for which the insurer may be liable and to provide for the expenses of adjustment or settlement of losses and claims. The reserves shall be computed in accordance with regulations from time to time made by the commissioner, after due notice and hearing, upon reasonable consideration of the ascertained experience and the character of such kind of business for the purpose of adequately protecting the insured and the solvency of the insurer.

2. Whenever the loss and loss expense experience of the insurer show that reserves, calculated in accordance with such regulations, are inadequate, the commissioner may require the insurer to maintain additional reserves.

3. The commissioner shall annually examine the reserves for unpaid losses and loss expense of each insurer transacting professional liability insurance in this state in relation to the insurer's loss and loss expense experience with respect to that insurance. If the reserves for the current year are unreasonably high in relation to:

(a) Losses actually paid on claims regardless of when the casualty occurred;

(b) Reasonable and statistically supportable amounts claimed by the insurer as:

(1) Reserves for claims reported but unpaid; and

(2) Reserves for casualties which probably have occurred but are unreported; and

(c) Changes in the amounts of professional liability insurance transacted,

during the most recent 3 calendar years that insurance was transacted, the commissioner shall require the insurer to reduce those reserves to a level consistent with the purpose of adequately and not overly protecting the insured and the solvency of the insurer, but not below the minimum reserve requirements provided in subsection 4. The insurer shall within 30 days after an order to reduce reserves is issued file for the commissioner's review an amended rate structure which is consistent with the commissioner's order.

4. The minimum reserve requirements prescribed by the commissioner for unpaid losses and loss expenses incurred during each of

the most recent 3 years for coverages included in the lines of business described in the insurer's annual statement as workmen's compensation, liability other than auto (B.I.), and auto liability (B.I.) shall not be less than the following: For workmen's compensation, 65 percent of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year; for liability other than auto (B.I.) and auto liability (B.I.), 60 percent of premiums earned during each year less the amount already paid for losses and expenses incidental thereto incurred during such year.

[4.] 5. The commissioner may, by regulation, prescribe the manner and form of reporting pertinent information concerning the reserves provided for in this section.

Sec. 3. Chapter 690B of NRS is hereby amended by adding thereto the provisions set forth as sections 4 and 5 of this act.

Sec. 4. Each insurer which issues a policy of insurance covering the liability of a professional nurse licensed under chapter 632 of NRS for a breach of professional duty toward a patient shall offer in that policy or supplemental to it coverage for such additional acts, performed under emergency or other special conditions prescribed by regulations of the state board of nursing, as are recognized by the medical and nursing professions as proper to be performed by a professional nurse under those conditions, even though the acts might otherwise be considered diagnosis and prescription.

Sec. 5. 1. Except as provided in subsection 2, a policy, whether a new policy or a renewal, insuring against liability

arising out of the performance of personal services and covering only claims filed during the policy period may not be delivered or issued for delivery in this state unless an option to buy coverage of claims based on acts of malpractice occurring during the policy period but filed after the policy is no longer in force is provided in the policy or supplemental to it. The option must provide that if the policy is not renewed, the option remains exercisable by the insured for at least 90 days after the policy terminates for whatever reason.

2. The option provided in subsection 1 is not required where rejected in writing each time a policy is offered or renewed by an insured named in the policy on a form furnished by the insurer describing the option being rejected.

3. As used in this section, "personal services" means the services of attorneys at law and those services whose performance is licensed under the provisions of chapters 623 to 625, inclusive, 628, 630 to 645, inclusive, 652 and 654 of NRS.

SUMMARY--Limits liability for damages arising out of certain activities of school of medical sciences, University of Nevada. (BDR 3-45)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to actions against public officers and employees; clarifying the status of the University of Nevada as a state agency; declaring the status as public employees of certain persons engaged in the clinical program of the school of medical sciences of the University of Nevada; prescribing a duty of the board of regents to prohibit certain out-of-state activity in connection with that program; and providing other matters properly relating thereto.

WHEREAS, The state has waived its sovereign immunity under the terms and conditions set forth in NRS 41.0305 to 41.039, inclusive; and

WHEREAS, There has been considerable discussion concerning the personal liability of officers and employees of the University of Nevada for any act or omission within the scope of their public duties or employment, particularly in respect to the activities of the school of medical sciences; and

WHEREAS, The educational activity of the school of medical sciences is an important governmental function of this state and necessarily involves the delivery of medical services to the public through the school's clinical program; and

WHEREAS, The school of medical sciences has experienced difficulty in attracting and retaining capable and conscientious persons to hold clinical faculty appointments or otherwise to participate in its clinical program because of the unresolved question of their personal liability in any tort action arising

out of any act or omission within the scope of their duties or employment in the program; and

WHEREAS, The applicability of Nevada's conditional waiver of sovereign immunity to torts committed outside this state by its officers or employees acting within the scope of their duties or employment is currently being questioned; now, therefore,

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

Section 1. Chapter 41 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 4, inclusive, of this act.

Sec. 2. As used in NRS 41.0305 to 41.039, inclusive, this section and sections 3 and 4 of this act, the words and terms defined in NRS 41.0305 and 41.0307 and sections 3 and 4 of this act, have the meanings ascribed to them in those sections, unless a statute otherwise specifically provides or the context otherwise requires.

Sec. 3. "Agency of the state" includes the University of Nevada.

Sec. 4. "Employee" includes:

1. An employee of any board, commission or similar body described in NRS 41.0307.

2. For the purposes of NRS 41.031 and 41.0337 to 41.039, inclusive:

(a) Any person, whether or not compensated, to the extent that he performs teaching or supervisory services; and

(b) Any student enrolled in the clinical program of the school of medical sciences of the University of Nevada, whether or not a physician and whether or not compensated,

while directly engaged at the direction of the school of medical sciences of the University of Nevada in any diagnostic or therapeutic activity of the school's clinical program.

Sec. 5. NRS 41.0305 is hereby amended to read as follows:

41.0305 [As used in NRS 41.031 to 41.039, inclusive, the term "political] "Political subdivision" includes a fire district, irrigation district, school district and other special district which performs a governmental function, even though it does not exercise general governmental powers.

Sec. 6. NRS 41.0307 is hereby amended to read as follows:

41.0307 [As used in NRS 41.031 to 41.039, inclusive, "public] "Public officer" or "officer" includes a member of a part-time or full-time board, commission or similar body of the state or a political subdivision of the state which is created by law. ["Employee" includes an employee of any such board, commission or similar body.]

Sec. 7. NRS 41.039 is hereby amended to read as follows:

41.039 An action which is based on the conduct of any employee or appointed or elected officer of a political subdivision of [the State of Nevada] this state while in the course of his employment or in the performance of his official duties may not be filed against such employee or officer unless, prior to the filing of the complaint in such action, a valid claim has been

filed, pursuant to NRS 41.031 to 41.038, inclusive, and sections 2 to 4, inclusive, of this act, against the political subdivision for which such employee or officer was authorized to act.

Sec. 8. NRS 386.470 is hereby amended to read as follows:

386.470 Any liability or action against the association shall be determined in the same manner and with the same limitations and conditions as provided in NRS 41.031 to 41.039, inclusive [.] , and sections 2 to 4, inclusive, of this act. To this extent, the association shall be deemed a political subdivision of the state.

Sec. 9. Chapter 396 of NRS is hereby amended by adding thereto a new section which shall read as follows:

The board of regents shall prohibit any officer or employee of the University of Nevada, including without limitation an employee described in subsection 2 of section 4 of this act, from engaging in any diagnostic or therapeutic activity outside this state as part of his duties or employment in the clinical program of the school of medical sciences of the University of Nevada.

Sec. 10. NRS 396.433 is hereby amended to read as follows:

396.433 1. The board of regents may budget for and purchase fidelity insurance and insurance against:

(a) Any liability arising under NRS 41.031.

(b) Tort liability on the part of any of its employees , including without limitation those employees described in subsection 2 of section 4 of this act, resulting from an act or omission in the scope of his employment.

(c) The expense of defending a claim against itself whether or not liability exists on such claim.

2. Such insurance shall be limited in amount according to the limitation of liability imposed by NRS 41.035 and shall be purchased from companies authorized to do business in the State of Nevada.

3. Each contract of insurance shall be free of any condition of contingent liability and shall contain a clause which provides that no assessment may be levied against the insured over and above the premium fixed by such contract.

Sec. 11. NRS 616.181 is hereby amended to read as follows:

616.181 1. There is within the commission a department of occupational safety and health as provided for in chapter 618 of NRS and the office of inspector of mines [for the State of Nevada] as provided for in chapter 512 of NRS.

2. The commission, the department of occupational safety and health and the office of inspector of mines [for the State of Nevada] are agencies of the [State of Nevada] state for all purposes of the provisions of NRS 41.031 to 41.038, inclusive [.] , and sections 2 to 4, inclusive, of this act.

SUMMARY--Extends period for giving notice of tort claim against state or local government. (BDR 3-97)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to claims against the state and its political subdivisions; extending the time for giving notice of tort claims; 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. NRS 41.036 is hereby amended to read as follows:

41.036 1. [No action shall be brought under NRS 41.031 against a county without complying with the requirements of NRS 244.245 to 244.255, inclusive, or against a city without complying with the requirements of NRS 268.020, or against an unincorporated town without complying with the provisions of NRS 269.085, or against the state or any agency or other political subdivision of the state without complying with the requirements of subsection 2 or 3 of this section.

2. Every claim against the state arising out of contract shall be presented in accordance with the provisions of NRS 353.085 or 353.090, and every claim for refund in accordance with the provisions of NRS 353.110 to 353.120, inclusive. Every other claim against the state or any of its agencies shall be presented to the ex officio clerk of the state board of examiners within 6 months from the time the cause of action accrues. He shall within 10 days refer each such claim to the appropriate state

agency, office or officer for investigation and report of findings to the board. No action may be brought unless the board refuses to approve or fails within 90 days to act upon the claim.

3. Every claim against any other political subdivision of the state shall be presented, within 6 months from the time the cause of action accrues, to the governing body of that political subdivision. No action may be brought unless the governing body refuses to approve or fails within 90 days to act upon the claim.] Before bringing any action under NRS 41.031, the claimant shall, within the period otherwise limited by law for the commencement of a civil action unless the claim is for refund of money deposited in the state treasury or paid to a state agency, present his claim:

(a) Against the state, to the ex officio clerk of the state board of examiners.

(b) Against a county, to the board of county commissioners and the county auditor.

(c) Against an unincorporated town, to the board of county commissioners.

(d) Against an incorporated city or any other political subdivision of the state, to its governing body.

2. No action may be brought unless the state board of examiners, board of county commissioners, county auditor or other responsible board or officer refuses to approve or fails within 90 days to act on the claim. During the period beginning on the date of presentation of the claim and ending on the date of

notice to the claimant of action on the claim or the expiration of the 90-day period of inaction, whichever is sooner, and for 30 days thereafter, the applicable statute of limitations is tolled.

Sec. 2. NRS 41.037 is hereby amended to read as follows:

41.037 1. Unless a claim presented to the ex officio clerk of the state board of examiners is governed by NRS 353.085, 353.090, or subsection 1 of NRS 353.110, he shall within 10 days refer the claim to the appropriate state agency for investigation and report of findings to the board. Upon receiving the report of findings , [as provided in subsection 2 of NRS 41.036,] the state board of examiners may allow and approved any claim or settle any action against the state, any of its agencies or any of its present or former officers, employees or legislators arising under NRS 41.031 to the extent of $25,000, plus interest computed from the date of judgment. Upon approval of any claim by the state board of examiners, the state controller shall draw his warrant for the payment thereof, and the state treasurer shall pay the same from the reserve for statutory contingency fund.

2. The governing body of any political subdivision whose authority to allow and approve claims is not otherwise fixed by statute may allow and approve any claim or settle any action against that subdivision or any of its present or former officers or employees arising under NRS 41.031 to the extent of $25,000, plus interest computed from the date of entry of any judgment, and pay it from any funds appropriated or lawfully available for such purpose.

Sec. 3. Chapter 11 of NRS is hereby amended by adding thereto the provisions set forth as sections 4 to 8, inclusive, of this act.

Sec. 4. The following actions may only be commenced within 1 year:

1. An action against any officer or officer de facto:

(a) To recover any goods, wares, merchandise or other property seized by that officer in his official capacity as tax collector, or to recover the price or value of any goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention, sale of or injury to any goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) For money paid to that officer under protest, or seized by the officer in his official capacity as a collector of taxes.

2. An action against a county, incorporated city, town or other political subdivision of the state after the claim is first rejected by the board of county commissioners, city council or other governing body, as the case may be, or the time limited for failure to act by subsection 2 of NRS 41.036 has expired.

3. An action against the state not arising out of contract, after the claim is rejected by the state board of examiners or the time limited for failure to act by subsection 2 of NRS 41.036 has expired.

Sec. 5. The following actions may only be commenced within 2 years:

1. An action against a sheriff, coroner or constable upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

2. An action upon a statute for a penalty or forfeiture, where the action is given to a private person or the state, or a private person and the state, except when the statute imposing it prescribes a different limitation.

3. An action for libel, slander, assault, battery, false imprisonment or seduction.

4. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

5. Except as provided in NRS 41A.097, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another.

Sec. 6. The following actions may only be commenced within 3 years:

1. An action upon a liability created by statute, other than a penalty or forfeiture.

2. An action for waste or trespass of real property; but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the waste or trespass.

3. An action for taking, detaining or injuring personal property, including actions for its specific recovery; but in all

cases where the subject of the action is a domestic animal usually included in the term "livestock," which has upon it at the time of its loss a recorded mark or brand, and the animal is strayed or stolen from its true owner without his fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to its possession by the defendant.

4. An action for relief on the ground of fraud or mistake; the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

Sec. 7. The following actions may only be commenced within 4 years:

1. An action on an open account for goods, wares and merchandise sold and delivered.

2. An action for any article charged in a store account.

3. An action upon a contract, obligation or liability not founded upon an instrument in writing.

Sec. 8. The following actions may only be commenced within 6 years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

2. An action upon a contract, obligation or liability founded upon an instrument in writing, except those specified in this chapter.

Sec. 9. NRS 11.190 is hereby amended to read as follows:

11.190 Actions other than those for the recovery of real property, unless further limited by NRS 11.205 or by or pursuant to the Uniform Commercial Code, [can] may only be commenced as [follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged in a store account.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property; but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof; but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," having upon it at the time of its loss a recorded mark or brand, and when such animal was strayed or stolen from the true owner without his fault, the statute shall not begin to run against an action for the recovery of such animal until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to the possession thereof by the defendant.

(d) An action for relief on the ground of fraud or mistake; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or to the state, or an individual and the state, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) An action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person shall apply only to causes of action which shall accrue after March 20, 1951.

5. Within 1 year:

(a) An action against an officer, or officers de facto:

(1) To recover any goods, wares, merchandise or other property seized by any such officer in his official capacity, as tax collector, or to recover the price or value of any goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention, sale of, or injury to any goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making such seizure.

(2) For money paid to any such officer under protest, or seized by such officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

(b) Actions or claims against a county, incorporated city, town or other political subdivision of the state which have been rejected by the board of county commissioners, city council or other governing body, as the case may be, after the first rejection thereof by such board, city council or other governing body, or the expiration of the time limited for failure to act by subsection 3 of NRS 41.036.

(c) Actions or claims against the state not arising out of contract, after rejection by the state board of examiners or the expiration of the time limited for their failure to act by subsection 2 of NRS 41.036.] provided in sections 4 to 8, inclusive, of this act.

Sec. 10. NRS 11.200 is hereby amended to read as follows:

11.200 1. The time in [NRS 11.190 shall be deemed to date] sections 4 to 8, inclusive, of this act dates from the last transaction or the last item charged or last credit given . [; and whenever any]

2. In cases where a payment on principal or interest [has been or shall be] is made upon an existing contract, whether it [be] is a bill of exchange, promissory note or other evidence of indebtedness [if such payment be made after the same shall have become] , after it is due, the limitation [shall commence] commences from the time the last payment was made.

Sec. 11. NRS 11.205 is hereby amended to read as follows:

11.205 1. [No] Except as provided in subsection 2, no action in tort, contract or otherwise [shall] may be commenced against any person performing or furnishing the design, planning, supervision or observation of construction, or the construction, of an improvement to real property more than 6 years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or construction of such an improvement; [or]

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or wrongful death of a person caused by any such deficiency.

2. [Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, where] Where injury occurs in the sixth year after substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 1 year after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 7 years after the substantial completion of the improvement.

3. Where an action for damages for wrongful death or injury to person or property caused by any deficiency in an improvement to real property is brought against a person in actual possession or control as owner, tenant or otherwise of such improvement, the limitation prescribed by this section [shall not be] is not a defense for such person.

Sec. 12. NRS 244.250 is hereby amended to read as follows:

244.250 1. All unaudited claims or accounts against any county which arise out of contract shall be presented to the board of county commissioners within 6 months from the time such claims or accounts become due or payable.

2. No claim or account against any county [shall] may be audited, allowed or paid by the board of county commissioners, or

any other officer of the county, unless the provisions of subsection 1 are strictly complied with.

Sec. 13. NRS 268.020 is hereby amended to read as follows:

268.020 1. All demands and accounts and all claims of [whatsoever] any kind [, character or nature, or however the same may have originated] against any incorporated city in this state, must be presented to the city council of the city, in writing . [, within 6 months from the time such demands or accounts became due or payable, and within 6 months from the time the acts from which the claims originated shall happen] A demand, account or any other claim arising out of contract shall be presented within 6 months after it becomes due and payble. Claims for property damage, personal injuries and any other claim arising out of a tort shall be certified by the claimant before presentation. No other claim or account need be certified. The certification required by this subsection shall be in substantially the following form: "I hereby certify that the above and foregoing claim against the City of ....., State of Nevada, is just and reasonable, and that the claim is now due, owing and unpaid."

2. No such demand, account or claim against any incorporated city in this state shall be audited, considered, allowed or paid by the city council or any officer or officers of the incorporated city unless the [provision] provisions of subsection 1 [shall] have been strictly complied with.

3. No such demand, account or claim which has once been rejected [shall] may ever again be considered or allowed by the

same or any subsequently elected or appointed city council of the same city.

Sec. 14. This act requires the presentation of a claim, in the manner specified in this act, regardless of when the cause of action arose, unless a civil action to enforce the claim has been commenced before July 1, 1979.

SUMMARY--Requires reduction of certain insurance reserves.
(BDR 57-100)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to insurance; requiring a reduction of reserves for unpaid claims and related expense under specified circumstances; 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 686B of NRS is hereby amended by adding thereto a new section which shall read as follows:

If an insurer's reserves for unpaid claims and related expense in a particular line of insurance for the year in which the insurer is examined are unreasonably high in relation to:

1. Money actually paid on claims regardless of when the incident upon which the claim is based occurred;

2. Reasonable and statistically supportable amounts claimed by the insurer as:

(a) Reserves for claims reported but unpaid; and

(b) Reserves for incidents upon which a claim could be based and which have probably occurred but are unreported; and

3. Changes in the amounts of insurance transacted in that particular line,

during the most recent 3 calendar years during which that line of insurance was transacted, the commissioner shall require the

insurer to reduce those reserves to a level consistent with the purpose of adequately and not overly protecting the insured and the solvency of the insurer. The insurer shall within 30 days after an order to reduce reserves is issued file for the commissioner's review an amended rate structure which is consistent with the commissioner's order.

Sec. 2. NRS 686B.050 is hereby amended to read as follows:

686B.050 1. Rates shall not be excessive, inadequate or unfairly discriminatory, nor shall an insurer charge any rate which if continued will have or tend to have the effect of destroying competition or creating a monopoly.

2. Rates are presumed not to be excessive if an insurer's reserves for unpaid claims and related expense are not unreasonably high as provided in section 1 of this act and if a reasonable degree of price competition exists at the consumer level with respect to the class of business to which they apply. In determining whether a reasonable degree of price competition exists, the commissioner shall consider all relevant tests, including:

(a) The number of insurers actively engaged in the class of business and their market shares;

(b) The existence of rate differentials in that class of business;

(c) Whether long-run profitability for insurers generally of the class of business is unreasonably high in relation to its riskiness; and

(d) Consumer knowledge in regard to the market in question.

If such competition does not exist, rates are excessive if they are likely to produce a long-run profit that is unreasonably high in relation to the riskiness of the class of business, or if expenses are unreasonably high in relation to the services rendered.

3. Rates are inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply.

4. One rate is unfairly discriminatory in relation to another in the same class if it clearly fails to reflect equitably the differences in expected losses and expenses. Rates are not unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expense factors, or like expense factors but different loss exposures, so long as the rates reflect the differences with reasonable accuracy. Rates are not unfairly discriminatory if they are averaged broadly among persons insured under a group, franchise or blanket policy.

SUMMARY--Sets time limits for bringing certain malpractice actions. (BDR 2-49)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to limitation of actions; setting time limits for bringing certain actions for malpractice; defining a condition when the time is tolled; 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 11 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 7, inclusive, of this act.

Sec. 2. 1. Except as provided in NRS 41A.097 and subsection 2 of this section, an action for damages for a wrongful act or omission, other than fraud, in the performance of personal services may only be commenced:

(a) Within 2 years after the plaintiff discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission; or

(b) Within 4 years after the date of the wrongful act or omission,

whichever occurs first.

2. This time limitation is tolled for any period during which the defendant has concealed any act or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to him.

3. This section applies to the services of attorneys at law and to personal services whose performance is licensed under the provisions of chapters 623 to 625, inclusive, 628, 637A to 639, inclusive, 641A to 645, inclusive, and 654 of NRS.

Sec. 3. The following actions may only be commenced within 1 year:

1. An action against any officer or officer de facto:

(a) To recover any goods, wares, merchandise or other property seized by that officer in his official capacity as tax collector, or to recover the price or value of any goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention, sale of or injury to any goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making the seizure.

(b) For money paid to that officer under protest, or seized by the officer in his official capacity as a collector of taxes.

2. An action against a county, incorporated city, town or other political subdivision of the state after the claim is first rejected by the board of county commissioners, city council or other governing body, as the case may be, or the time limited for failure to act by subsection 3 of NRS 41.036 has expired.

3. An action against the state not arising out of contract, after the claim is rejected by the state board of examiners or the time limited for failure to act by subsection 2 of NRS 41.036 has expired.

Sec. 4. The following actions may only be commenced within 2 years:

1. An action against a sheriff, coroner or constable upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

2. An action upon a statute for a penalty or forfeiture, where the action is given to a private person or the state, or a private person and the state, except when the statute imposing it prescribes a different limitation.

3. An action for libel, slander, assault, battery, false imprisonment or seduction.

4. An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

5. Except as provided in section 2 of this act and NRS 41A.097, an action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another.

Sec. 5. The following actions may only be commenced within 3 years:

1. An action upon a liability created by statute, other than a penalty or forfeiture.

2. An action for waste or trespass of real property; but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the waste or trespass.

3. An action for taking, detaining or injuring personal property, including actions for its specific recovery; but in all

cases where the subject of the action is a domestic animal usually included in the term "livestock," which has upon it at the time of its loss a recorded mark or brand, and the animal is strayed or stolen from its true owner without his fault, the statute does not begin to run against an action for the recovery of the animal until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to its possession by the defendant.

4. An action for relief on the ground of fraud or mistake; the cause of action does not accrue until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

Sec. 6. The following actions may only be commenced within 4 years:

1. An action on an open account for goods, wares and merchandise sold and delivered.

2. An action for any article charged in a store account.

3. An action upon a contract, obligation or liability not founded upon an instrument in writing.

Sec. 7. The following actions may only be commenced within 6 years:

1. An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

2. An action upon a contract, obligation or liability founded upon an instrument in writing, except those specified in this chapter.

Sec. 8. NRS 11.190 is hereby amended to read as follows:

11.190 Actions other than those for the recovery of real property, unless further limited by NRS 11.205 or by or pursuant to the Uniform Commercial Code, [can] may only be commenced as [follows:

1. Within 6 years:

(a) An action upon a judgment or decree of any court of the United States, or of any state or territory within the United States.

(b) An action upon a contract, obligation or liability founded upon an instrument in writing, except those mentioned in the preceding sections of this chapter.

2. Within 4 years:

(a) An action on an open account for goods, wares and merchandise sold and delivered.

(b) An action for any article charged in a store account.

(c) An action upon a contract, obligation or liability not founded upon an instrument in writing.

3. Within 3 years:

(a) An action upon a liability created by statute, other than a penalty or forfeiture.

(b) An action for waste or trespass of real property; but when the waste or trespass is committed by means of underground works upon any mining claim, the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting such waste or trespass.

(c) An action for taking, detaining or injuring personal property, including actions for specific recovery thereof; but in all cases where the subject of the action is a domestic animal usually included in the term "livestock," having upon it at the time of its loss a recorded mark or brand, and when such animal was strayed or stolen from the true owner without his fault, the statute shall not begin to run against an action for the recovery of such animal until the owner has actual knowledge of such facts as would put a reasonable man upon inquiry as to the possession thereof by the defendant.

(d) An action for relief on the ground of fraud or mistake; the cause of action in such case not to be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

4. Within 2 years:

(a) An action against a sheriff, coroner or constable upon the liability incurred by the doing of an act in his official capacity and in virtue of his office, or by the omission of an official duty, including the nonpayment of money collected upon an execution.

(b) An action upon a statute for a penalty or forfeiture, where the action is given to an individual, or to the state, or an individual and the state, except when the statute imposing it prescribes a different limitation.

(c) An action for libel, slander, assault, battery, false imprisonment or seduction.

(d) An action against a sheriff or other officer for the escape of a prisoner arrested or imprisoned on civil process.

(e) An action to recover damages for injuries to a person or for the death of a person caused by the wrongful act or neglect of another. The provisions of this paragraph relating to an action to recover damages for injuries to a person shall apply only to causes of action which shall accrue after March 20, 1951.

5. Within 1 year:

(a) An action against an officer, or officers de facto:

(1) To recover any goods, wares, merchandise or other property seized by any such officer in his official capacity, as tax collector, or to recover the price or value of any goods, wares, merchandise or other personal property so seized, or for damages for the seizure, detention, sale of, or injury to any goods, wares, merchandise or other personal property seized, or for damages done to any person or property in making such seizure.

(2) For money paid to any such officer under protest, or seized by such officer in his official capacity, as a collector of taxes, and which, it is claimed, ought to be refunded.

(b) Actions or claims against a county, incorporated city, town or other political subdivision of the state which have been rejected by the board of county commissioners, city council or other governing body, as the case may be, after the first rejection thereof by such board, city council or other governing body, or the expiration of the time limited for failure to act by subsection 3 of NRS 41.036.

(c) Actions or claims against the state not arising out of contract, after rejection by the state board of examiners or the expiration of the time limited for their failure to act by subsection 2 of NRS 41.036.] provided in sections 2 to 7, inclusive, of this act.

Sec. 9. NRS 11.200 is hereby amended to read as follows:

11.200 1. The time in [NRS 11.190 shall be deemed to date] sections 2 to 7, inclusive, of this act dates from the last transaction or the last item charged or last credit given . [; and whenever any]

2. In cases where a payment on principal or interest [has been or shall be] is made upon an existing contract, whether it [be] is a bill of exchange, promissory note or other evidence of indebtedness [if such payment be made after the same shall have become] , after it is due, the limitation [shall commence] commences from the time the last payment was made.

Sec. 10. NRS 11.205 is hereby amended to read as follows:

11.205 1. [No] Except as provided in subsection 2, no action in tort, contract or otherwise [shall] may be commenced against any person performing or furnishing the design, planning, supervision or observation of construction, or the construction, of an improvement to real property more than 6 years after the substantial completion of such an improvement, for the recovery of damages for:

(a) Any deficiency in the design, planning, supervision or observation of construction or construction of such an improvement; [or]

(b) Injury to real or personal property caused by any such deficiency; or

(c) Injury to or wrongful death of a person caused by any such deficiency.

2. [Notwithstanding the provisions of NRS 11.190 and subsection 1 of this section, where] Where injury occurs in the sixth year after substantial completion of such an improvement, an action for damages for injury to property or person, damages for wrongful death resulting from such injury or damages for breach of contract may be commenced within 1 year after the date of such injury, irrespective of the date of death, but in no event may an action be commenced more than 7 years after the substantial completion of the improvement.

3. Where an action for damages for wrongful death or injury to person or property caused by any deficiency in an improvement to real property is brought against a person in actual possession or control as owner, tenant or otherwise of such improvement, the limitation prescribed by this section [shall not be] is not a defense for such person.

SUMMARY--Urges Nevada supreme court to direct adoption of requirements for continuing education of lawyers. (BDR 47)

CONCURRENT RESOLUTION--Urging the supreme court to direct the state bar to adopt requirements for continuing education of lawyers.

WHEREAS, The need for mandatory continuing legal education for lawyers is seen in:

1. The ever more numerous and rapidly changing laws and regulations which have made the practice of law more complicated and specialized; and

2. An alarming growth in the incidence of legal malpractice around the country which has given rise to widespread and sometimes highly placed criticism of the profession, raised grave public concern over the quality of legal services and made malpractice insurance for lawyers more difficult and more expensive to obtain; and

WHEREAS, Continuing legal education for Nevada's lawyers is presently available only on a very limited and voluntary basis through sources primarily outside this state; and

WHEREAS, Continuing education for members of other professions in this state has been required by their regulatory agencies or by the legislature to the mutual benefit of the practitioners and the people they serve; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the Nevada legislature urges the supreme court

of Nevada to direct the State Bar of Nevada to adopt appropriate requirements for the continuing education of its members; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the legislative counsel to the chief justice of the supreme court of Nevada.

SUMMARY--Requires certain hospitals to establish internal risk management programs. (BDR 40-99)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to hospitals; requiring the establishment of internal risk management programs; requiring reports; providing a privilege; 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 449 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. Every hospital licensed pursuant to the provisions of NRS 449.001 to 449.240, inclusive, which has more than 200 beds shall establish an internal program for the management of risks of malpractice which includes at least the following components:

(a) The investigation and analysis of the frequency and causes of general categories and specific types of adverse incidents causing injury to patients;

(b) The development of appropriate measures to minimize the risk of injuries and adverse incidents to patients through the cooperative efforts of all personnel; and

(c) The analysis of patients' grievances which relate to care received and the quality of medical services.

2. The program must be carried out through a person on the administrative staff of a hospital as part of his administrative duties, by a committee of the hospital board of trustees or

directors or by the medical staff in a manner which they deem appropriate.

3. The person, committee or staff responsible for carrying out the program shall prepare and file with the insurance division of the department of commerce and the health division of the department of human resources a plan which describes the hospital's current program in the manner prescribed by the commissioner of insurance.

4. Every hospital whose plan is filed as provided in subsection 3 has a privilege to refuse to disclose and to prevent any other person or organization from disclosing the plan or any writing which relates to any corrective action taken under the plan.

SUMMARY--Requires certain licensing agencies to adopt standards for risk management programs and provide certain statistical data. (BDR 54-48)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Effect less than $2,000.

AN ACT relating to the licensing of professions and occupations; requiring certain licensing agencies to adopt standards for programs of risk management and provide certain statistical data; 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. Title 54 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 4, inclusive, of this act.

Sec. 2. As used in this chapter, "licencing agency" means an agency which licenses persons to engage in a profession or occupation regulated under the provisions of chapters 623 to 625, inclusive, 628, 630 to 645, inclusive, 652 and 654 of NRS.

Sec. 3. Each licensing agency shall adopt by regulation not later than July 1, 1981, standards for programs of risk management appropriate to the profession or occupation which it licenses.

Sec. 4. Each licensing agency shall submit to the research division of the legislative counsel bureau during each legislative interim such statistical information about the number, nature and disposition of complaints by the public concerning personal services rendered by its licensees and other statistical data as is requested by the research division and is appropriate

to enable the legislature to evaluate accurately the willingness and ability of the licensing agencies to discipline their respective professions or occupations and the effectiveness of disciplinary procedures provided by law.

SUMMARY--Urges Nevada supreme court to direct State Bar of Nevada to adopt standards for risk management programs, establish legal malpractice screening panels and provide certain statistical data. (BDR 50)

CONCURRENT RESOLUTION--Urging the supreme court to direct the State Bar of Nevada to adopt standards for programs of risk management, establish panels for the screening of legal malpractice claims and provide statistical data.

WHEREAS, The rising number of claims for legal malpractice against Nevada lawyers can be expected to continue to increase with the growth in the general population and the number of attorneys in this state; and

WHEREAS, The protection of the public from legal malpractice which is currently entrusted to the State Bar of Nevada now demands effective procedures for the management of risks and for resolving public complaints and disciplining members of the bar who commit malpractice; and

WHEREAS, Screening panels provided by the medical and legal professions in Nevada have been successful for some years now in resolving claims for medical malpractice without the need for an expensive trial; and

WHEREAS, The legislative commission's subcommittee on problems concerning professional liability insurance found in its recent study that reliable statistical data on malpractice complaints arising out of the practice of various professions in the state, including the legal profession, is largely unavailable and recommended that the professional licensing agencies be required to

collect and furnish that data to the legislature; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the Nevada legislature urges the supreme court of Nevada to direct the State Bar of Nevada to:

1. Adopt standards appropriate to the legal profession for the avoidance or reduction of claims of legal malpractice;

2. Establish panels to which persons may voluntarily submit their claims for legal malpractice for resolution without going to trial; and

3. Provide to the research division of the legislative counsel bureau during each legislative interim statistical information on the number, nature and disposition of complaints by the public concerning professional services rendered by Nevada attorneys and such other statistical data as is requested by the research division and is appropriate to enable the legislature to accurately evaluate the willingness and ability of the State Bar of Nevada to discipline its members; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the legislative counsel to the chief justice of the supreme court of Nevada.

SUMMARY--Urges Nevada supreme court to direct adoption of guidelines on contingency fees. (BDR 53)

CONCURRENT RESOLUTION--Urging the supreme court to direct the state bar to adopt guidelines on contingency fees.

WHEREAS, The practice by which plaintiffs' attorneys set their fees as percentages of either court awards or amounts received in out-of-court settlements appears to help potential plaintiffs obtain legal services which would not otherwise be available and to discourage frivolous or lightly considered suits; and

WHEREAS, Contingency fees in amounts related more to the fortuity of the plaintiff's economic status and degree of injury and less to the amount of legal work and expense involved in handling the case disserves the legal profession and the public at large; and

WHEREAS, The legislative commission's subcommittee on medical malpractice insurance in 1976 and the subcommittee on problems concerning professional liability insurance in 1978 have noted public concern over excessively high contingency fees; and

WHEREAS, The American Bar Association's Commission on Medical Professional Liability and the California Citizens' Commission on Tort Reform have recommended a decreasing maximum schedule for contingency fees and the New Jersey supreme court by rule and several other states by legislation have adopted such a schedule; and

WHEREAS, There are now in Nevada no effective guidelines for

setting reasonable levels for contingency fees; now, therefore, be it

RESOLVED BY THE OF THE STATE OF NEVADA, THE CONCURRING, That the Nevada legislature urges the supreme court of Nevada to direct the State Bar of Nevada to adopt effective guidelines for setting reasonable percentages for contingency fees; and be it further

RESOLVED, That a copy of this resolution be prepared and transmitted forthwith by the legislative counsel to the chief justice of the supreme court of Nevada.

SUMMARY--Consolidates and clarifies certain provisions relating to comparative negligence. (BDR 2-98)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to liability in tort; consolidating and clarifying certain provisions relating to comparative negligence; 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. NRS 17.305 is hereby amended to read as follows:

17.305 NRS 17.215 to 17.325, inclusive, do not apply to : [breaches]

1. Breaches of trust or of other fiduciary obligation.

2. Any action in tort wherein the several liability of multiple defendants has been determined pursuant to NRS 41.141.

Sec. 2. NRS 41.141 is hereby amended to read as follows:

41.141 1. In any action to recover damages for death or injury to persons or for injury to property in which contributory negligence may be asserted as a defense, the contributory negligence of the plaintiff [shall] or his decedent does not bar a recovery if [the] that negligence [of the person seeking recovery] was not greater than the negligence or gross negligence of the person or persons against whom recovery is sought, but any damages allowed shall be diminished in proportion to the amount of negligence attributable to the person seeking recovery [.] or his decedent.

2. In [such] those cases, the judge may, and when requested by any party shall , instruct the jury that:

(a) The plaintiff may not recover if his contributory negligence or that of his decedent has contributed more to the injury than the negligence of the defendant or the combined negligence of multiple defendants.

(b) If the jury determines the plaintiff is entitled to recover, it shall return by general verdict the total amount of damages the plaintiff would be entitled to recover except for [his] the contributory negligence.

(c) If the jury determines that a party is entitled to recover, it shall return a special verdict indicating the percentage of negligence attributable to each party.

(d) The percentage of negligence attributable to the person seeking recovery [shall reduce] reduces the amount of [such] the recovery by the proportionate amount of [such] the negligence.

3. Where recovery is allowed against more than one defendant in such an action:

(a) The defendants are severally liable to the plaintiff.

(b) Each [defendant's liability shall be in proportion to his negligence] defendant is liable only for that proportion of the total amount awarded as damages which his causal negligence bears to the causal negligence attributed to all the defendants against whom recovery is allowed, as determined by the jury, or judge if

there is no jury. [The jury or judge shall apportion the recoverable damages among the defendants in accordance with the negligence determined.]

Sec. 3. NRS 698.310 is hereby repealed.

SUMMARY--Clarifies statutory privileges respecting disclosure of certain threats. (BDR 4-92)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to privileges; clarifying the law of privileges with respect to the disclosure of certain threats; 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 49 of NRS is hereby amended by adding thereto a new section which shall read as follows:

This chapter does not prohibit a person from disclosing a threat of substantial harm to any person or property made to him by another person, or authorize any person to prevent another from disclosing such a threat, before the threat is carried out.

SUMMARY--Provides for discovery in certain arbitration proceedings. (BDR 3-52)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to arbitration; providing for discovery according to the Nevada Rules of Civil Procedure in arbitration proceedings under chapter 38 of NRS; 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. NRS 38.095 is hereby amended to read as follows:

38.095 1. A party may obtain discovery as provided in the Nevada Rules of Civil Procedure.

2. The arbitrators may issue subpenas for the attendance of witnesses and for the production of books, records, documents and other evidence, and shall have the power to administer oaths. Subpenas so issued shall be served, and upon application to the court by a party or the arbitrators, enforced, in the manner provided by law for the service and enforcement of subpenas in a civil action.

[2. On application of a party and for use as evidence, the arbitrators may permit a deposition to be taken, in the manner and upon the terms designated by the arbitrators, of a witness who cannot be subpenaed or is unable to attend the hearing.]

3. All provisions of law compelling a person under subpena to testify are applicable.

4. Fees and mileage for attendance as a witness shall be the same as for a witness in civil actions in the district court.

SUMMARY--Provides for periodic payments of certain damages recovered in malpractice claims against providers of health care. (BDR 3-96)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to damages; providing for the periodic payment of future damages recovered in malpractice claims against certain providers of health care; 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 42 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 9, inclusive, of this act.

Sec. 2. As used in sections 3 to 9, inclusive, of this act:

1. "Future damages" means damages for:

(a) Medical treatment; and

(b) Care or custody,

to be received or incurred by the judgment creditor after judgment is rendered.

2. "Provider of health care" means a physician, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatrist, licensed psychologist, chiropractor, doctor of traditional Oriental medicine in any form, medical laboratory director or technician, pharmacist, or a licensed hospital as the employer of any such person.

Sec. 3. 1. In any action for damages for personal injury against a provider of health care which is based upon a breach of his professional duty toward a patient, the court shall:

(a) Direct the jury to return a special verdict; or

(b) If the action is tried without a jury, make a specific finding of the amount awarded which compensates the plaintiff for medical treatment, care or custody or any other type of damage.

2. If the award for future damages is $50,000 or more, the court shall, at the request of either party, include in its judgment:

(a) The amount determined under subsection 1 after any adjustments have been made; and

(b) An order that this monetary compensation for future damages be made in periodic payments. The order must specify the recipient of the payments, the amount of the payments, the interval between payments and the number of payments to be made.

flusk If the defendant is insured against liability for such future damages, the order must not be entered until his insurer is made a party to the action.

Sec. 4. 1. If the court orders periodic payments of compensation for future damages, the judgment debtor or an insurer obligated under a policy of insurance to cover the liability of the judgment debtor shall deposit with a bank or trust company doing business in Nevada adequate security in an amount and type determined by the court to secure the payment of the future damages. The court shall select and appoint the bank or trust company

which shall hold the security in trust. The bank or trust company as trustee shall:

(a) Periodically review the adequacy of the security; and

(b) Except as provided in subsection 2 of section 5 of this act, distribute to the judgment debtor or his insurer any part of the security which the trustee determines is no longer necessary.

2. The interest earned on the security must be distributed to the judgment creditor as the interest accrues.

3. Except for execution by the judgment creditor, all security and interest in the trust is exempt from execution by any creditor of the judgment debtor or insurer.

4. Upon termination of the periodic payments, or when the judgment creditor dies, any security remaining in the trust must be returned to the judgment debtor or the insurer.

Sec. 5. 1. The bank or trust company is entitled to a reasonable fee for its services as trustee. The fee must be paid out of the award as provided by order of the court.

2. The trustee shall petition the court for instructions when any dispute arises between the judgment debtor or his insurer and any party in interest with respect to the payments ordered by the court or the continuing adequacy of the security.

Sec. 6. 1. Except as provided in subsection 2, the court may, for good cause shown, modify a judgment for periodic payment of future damages with respect to the amount of each payment, the number of payments or the interval between payments. The court shall award costs and attorneys' fees to the prevailing party where the motion for modification is contested.

2. A judgment which provides for periodic payment of future damages is not subject to modification as to accrued payments. Payments which have not accrued at the time a motion for modification is filed may be modified as provided in this section whether or not the court has expressly retained jurisdiction for such modification.

Sec. 7. Payments of future damages under a periodic payments judgment terminate upon the satisfaction or expiration of all obligations specified in the judgment. All obligations with respect to payments then unaccrued expire upon the death of the judgment creditor.

Sec. 8. 1. Each periodic payment of future damages upon becoming due under the terms of a periodic payments judgment constitutes a separate judgment upon which execution may issue.

2. If the court finds that the judgment debtor or his insurer has repeatedly failed without good cause to make the payments specified in the judgment, the court shall find the judgment debtor or his insurer in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor or his insurer to pay the judgment creditor all damages caused by the failure to make the periodic payments, including court costs and attorneys' fees.

Sec. 9. The court may order periodic payment of future damages agreed upon in a settlement or awarded in arbitration of a claim for breach of duty toward a patient by a provider of health care

in the manner provided in sections 2 to 8, inclusive, of this act, where:

1. The amount of future damages agreed upon exceeds $50,000;

2. The parties to the settlement or arbitration cannot agree on periodic payment; and

3. Either party petitions the court for the order.

SUMMARY--Requires interest on judgments from time cause of action accrues. (BDR 2-101)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to judgments; requiring the inclusion of interest from the time when the cause of action accrues; 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 17 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. As used in this section, "prevailing rate" means the average of the lowest daily prime rate prevailing at the three largest United States banking institutions on the date of the judgment.

2. When no rate of interest is provided by contract or otherwise by law, the judgment must provide for interest at the prevailing rate from the time the cause of action accrued until the judgment is satisfied.

Sec. 2. NRS 17.130 is hereby amended to read as follows:

17.130 [1.] In all judgments and decrees, rendered by any court of justice, for any debt, damages or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment, or other proceedings, [shall] may be considered erroneous for [such] that omission.

[2. When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment shall draw interest at the rate of 7 percent per annum from the time of the entry of the judgment until satisfied.]

Sec. 3. NRS 99.040 is hereby amended to read as follows:

99.040 When there is no express contract in writing fixing a different rate of interest, interest shall be allowed at the rate of 7 percent per annum upon all money from the time it becomes due, in the following cases:

1. Upon contracts, express or implied, other than book accounts.

2. Upon the settlement of book or store accounts from the day on which the balance is ascertained.

3. [Upon judgments rendered by a court in this state.

4.] Upon money received to the use and benefit of another and detained without his consent.

[5.] 4. Upon wages or salary, if [the same shall be] it is unpaid when due, after demand [therefor] for it has been made.

SUMMARY--Provides flexible limit to interest rates on judgments and conforms provisions for compromise settlements with Nevada Rules of Civil Procedure. (BDR 2-51)
Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to judgments; authorizing interest from time action accrues; providing a flexible limit to interest rates; conforming statutory provisions for offers of judgment to NRCP 68; 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 17 of NRS is hereby amended by adding thereto a new section which shall read as follows:

1. As used in this section, "prevailing rate" means the average of the lowest daily prime rate prevailing at the three largest United States banking institutions on the date of the judgment.

2. When no rate of interest is provided by contract or otherwise by law, the judgment may provide for interest at the prevailing rate from the time the action accrued until the judgment is satisfied.

3. When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment draws interest at the prevailing rate from the time of the entry of judgment until the judgment is satisfied.

Sec. 2. NRS 17.115 is hereby amended to read as follows:

17.115 At any time more than 10 days before trial, either informally or at any pretrial conference presided over by a judge

of the court in which the action is pending, any party may serve an offer in writing to allow judgment to be taken in accordance with the terms and conditions stated at that time. If [such] the offer is accepted, the judge of the court in which the action is pending shall enter judgment accordingly. If [such] the offer is not accepted prior to trial or within 30 days after it is made, whichever occurs first, it shall be deemed withdrawn, and cannot be given in evidence upon the trial. If the party to whom the offer of judgment is made fails to obtain a more favorable judgment, he [cannot recover costs, and the court may order him to pay to the party who made the offer not only that party's taxable costs incurred from the date of filing the complaint, but also] is not eligible to recover costs or attorney's fees, but shall pay the costs and attorney's fees, if any are allowed, of the party making the offer from the time of the offer plus a reasonable sum to cover costs of the services of expert witnesses who are not regular employees of any party actually incurred and reasonably necessary in the preparation of the case for trial by [such] the prevailing party. Any judgment entered pursuant to this section shall be deemed a compromise settlement.

Sec. 3. NRS 17.130 is hereby amended to read as follows:

17.130 [1.] In all judgments and decrees, rendered by any court of justice, for any debt, damages or costs, and in all executions issued thereon, the amount shall be computed, as near as may be, in dollars and cents, rejecting smaller fractions, and no judgment, or other proceedings, [shall] may be considered erroneous for [such] that omission.

[2. When no rate of interest is provided by contract or otherwise by law, or specified in the judgment, the judgment shall draw interest at the rate of 7 percent per annum from the time of the entry of the judgment until satisfied.]

Sec. 4. NRS 99.040 is hereby amended to read as follows:

99.040 When there is no express contract in writing fixing a different rate of interest, interest shall be allowed at the rate of 7 percent per annum upon all money from the time it becomes due, in the following cases:

1. Upon contracts, express or implied, other than book accounts.

2. Upon the settlement of book or store accounts from the day on which the balance is ascertained.

3. [Upon judgments rendered by a court in this state.

4.] Upon money received to the use and benefit of another and detained without his consent.

[5.] 4. Upon wages or salary, if [the same shall be] it is unpaid when due, after demand [therefor] for it has been made.