

ASSEMBLY BILL NO. 196—ASSEMBLYWOMAN LESLIE

FEBRUARY 18, 2009

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions relating to the licensure of facilities for refractive surgery. (BDR 40-813)

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

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

AN ACT relating to public health; revising provisions relating to the licensure of facilities for refractive surgery; providing for the closure of a facility for refractive surgery if the facility is operating without a license; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

1 Existing law requires a person, state or local government or agency thereof to
2 obtain a license to operate or maintain a medical facility, including a facility for
3 refractive surgery. (NRS 449.0151, 449.030) Existing administrative regulations of
4 the State Board of Health exempt a licensed ophthalmologist from these
5 requirements for licensure of a facility if the ophthalmologist provides other
6 ophthalmological medical services in addition to surgical treatments for refractive
7 errors of the eye. (NAC 449.4502) **Section 7** of this bill codifies into statute an
8 exemption for certain licensed ophthalmologists who provide surgical procedures in
9 addition to surgical treatments for refractive errors of the eye and adds a
10 requirement that the ophthalmologist file an affidavit with the Health Division of
11 the Department of Health and Human Services attesting that he provides the
12 additional surgical procedures.

13 **Section 8** of this bill requires a facility for refractive surgery to ensure that: (1)
14 all surgical treatments for refractive errors of the eye are performed by a licensed
15 ophthalmologist; and (2) a licensed ophthalmologist is available for postoperative
16 care if the medical needs of a patient necessitate the services of an ophthalmologist.

17 **Section 9** of this bill authorizes the Health Division to issue an order to cease
18 and desist upon belief that a person, state or local government or an agency thereof
19 is operating a facility for refractive surgery without a license. **Section 9** also
20 provides that the Health Division may file an action in court for issuance of an
21 injunction and imposition of a civil penalty.



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

1 **Section 1.** Chapter 449 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 9, inclusive, of this
3 act.

4 **Sec. 2.** *As used in sections 2 to 9, inclusive, of this act, unless*
5 *the context otherwise requires, the words and terms defined in*
6 *sections 3 to 6, inclusive, of this act have the meanings ascribed to*
7 *them in those sections.*

8 **Sec. 3.** *“Ophthalmologist” means a physician who is*
9 *qualified to perform laser surgery or intense pulsed light therapy*
10 *on the globe of the eye pursuant to NRS 630.371 or 633.693.*

11 **Sec. 4.** *“Postoperative care” means assessing, monitoring or*
12 *treating a patient while the patient is recovering or healing from a*
13 *surgical treatment for a refractive error of the eye.*

14 **Sec. 5.** *“Preoperative care” means assessing or treating a*
15 *patient in preparation for a surgical treatment for a refractive*
16 *error of the eye.*

17 **Sec. 6.** *“Surgical treatment for a refractive error of the eye”*
18 *means the surgical treatment of a patient with a refractive error of*
19 *the eye by:*

- 20 1. *Photorefractive keratectomy;*
- 21 2. *Laser in situ keratomileusis;*
- 22 3. *Conductive keratoplasty;*
- 23 4. *Implantation of an intraocular lens; or*
- 24 5. *Any other available technology, technique or procedure*
25 *which surgically treats refractive errors of the eye and which has*
26 *been approved by the United States Food and Drug*
27 *Administration.*

28 **Sec. 7.** *A person is not required to obtain a license to operate*
29 *and maintain a facility for refractive surgery pursuant to the*
30 *provisions of this chapter if the person:*

- 31 1. *Is an ophthalmologist;*
- 32 2. *Provides surgical procedures to patients at the facility in*
33 *addition to preoperative care, postoperative care and surgical*
34 *treatments for refractive errors of the eye; and*
- 35 3. *Files with the Health Division an affidavit attesting that*
36 *the person provides surgical procedures at the facility in addition*
37 *to preoperative care, postoperative care and surgical treatments*
38 *for refractive errors of the eye.*

39 **Sec. 8.** *A facility for refractive surgery shall ensure that:*

- 40 1. *All surgical treatments for refractive errors of the eye*
41 *performed at the facility are performed only by an*
42 *ophthalmologist.*



1 2. *The ophthalmologist who performs a surgical treatment*
2 *for refractive errors of the eye at the facility:*

3 (a) *Is available in person for postoperative care if the medical*
4 *needs of a patient necessitate the services of an ophthalmologist;*
5 *or*

6 (b) *Enters into an agreement with another ophthalmologist to*
7 *be available in person for postoperative care if the medical needs*
8 *of the patient necessitate the services of an ophthalmologist.*

9 **Sec. 9. 1.** *If the Health Division believes that a person who*
10 *is required to obtain a license pursuant to this chapter is operating*
11 *a facility for refractive surgery without such a license, the Health*
12 *Division may issue an order to cease and desist the operation of*
13 *the facility. The order must be served upon the person directly or*
14 *by certified or registered mail, return receipt requested. The order*
15 *becomes effective upon service.*

16 2. *An order issued pursuant to subsection 1 expires 30 days*
17 *after the date of service unless the Health Division institutes an*
18 *action in a court of competent jurisdiction seeking an injunction.*

19 3. *Upon a showing by the Health Division that a person is*
20 *operating a facility for refractive surgery without a license issued*
21 *pursuant to this chapter, a court of competent jurisdiction may:*

22 (a) *Enjoin the person from operating the facility.*

23 (b) *Impose a civil penalty to be recovered by the Health*
24 *Division of not more than \$10,000 for the first offense and of not*
25 *less than \$10,000 or more than \$20,000 for a second or*
26 *subsequent offense.*

27 4. *A person enjoined or penalized pursuant to subsection 3*
28 *may not apply for a license to operate a facility for refractive*
29 *surgery for a period of 6 months after the date on which the court*
30 *issues the injunction or penalty.*

31 **Sec. 10.** *NRS 449.00387 is hereby amended to read as*
32 *follows:*

33 449.00387 *1.* *“Facility for refractive surgery” means a*
34 *freestanding facility that provides limited medical services ~~for~~*
35 *relating to surgical treatments for patients with refractive errors of*
36 *the eye, including the preoperative care and evaluation of those*
37 *patients, ~~[with refractive errors of the eye and]~~ the surgical*
38 *treatment of those patients ~~[]~~ and the postoperative care and*
39 *evaluation of those patients.*

40 2. *As used in this section:*

41 (a) *“Postoperative care” has the meaning ascribed to it in*
42 *section 4 of this act.*

43 (b) *“Preoperative care” has the meaning ascribed to it in*
44 *section 5 of this act.*



1 **Sec. 11.** NRS 449.210 is hereby amended to read as follows:
2 449.210 1. Except as otherwise provided in ~~subsections 2~~
3 ~~and 3,~~ *subsection 2 and section 9 of this act*, a person who
4 operates a medical facility or facility for the dependent without a
5 license issued by the Health Division is guilty of a misdemeanor.
6 2. A person who operates a residential facility for groups
7 without a license issued by the Health Division:
8 (a) Is liable for a civil penalty to be recovered by the Attorney
9 General in the name of the Health Division for the first offense of
10 not more than \$10,000 and for a second or subsequent offense of not
11 less than \$10,000 ~~nor~~ *or* more than \$20,000;
12 (b) Shall ~~be required to~~ move all of the persons who are
13 receiving services in the residential facility for groups to a
14 residential facility for groups that is licensed at his own expense;
15 and
16 (c) May not apply for a license to operate a residential facility
17 for groups for a period of 6 months after he is punished pursuant to
18 this section.
19 3. Unless otherwise required by federal law, the Health
20 Division shall deposit all civil penalties collected pursuant to this
21 section into a separate account in the State General Fund to be used
22 for the protection of the health, safety and well-being of patients,
23 including residents of residential facilities for groups.
24 **Sec. 12.** This act becomes effective on July 1, 2009.

