

STUDY OF THE PROVIDERS OF HEALTH
CARE AND HEALTH CARE
FACILITIES



Bulletin No. 85-4

LEGISLATIVE COMMISSION
OF THE
LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA

August 1984

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HEALTH AND CARE FACILITIES



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LEGISLATIVE COMMISSION
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LEGISLATIVE COUNSEL BUREAU
STATE OF NEVADA
AUGUST 1984

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ASSEMBLY CONCURRENT RESOLUTION—Directing the legislative commission to study the providers of health care and health and care facilities in this state.

WHEREAS, Physicians, dentists, nurses and other practitioners of healing arts offer valuable services to this state and its citizens; and

WHEREAS, Many Nevadans are recipients of the services of these practitioners; and

WHEREAS, Certain agencies of the State of Nevada license these practitioners after determining their knowledge and skills; and

WHEREAS, Each year the state and its counties use public money to purchase the services provided by health and care facilities; and

WHEREAS, It would be in the best interests of this state and its citizens that a comprehensive examination of all providers of health care and the agencies which license them be made to determine whether:

1. The practitioners of the healing arts offer only those services which they are licensed to provide;

2. The agencies are issuing licenses only to those who are properly qualified to provide the quality of care required by the state and its citizens; and

3. Any representations concerning the knowledge and skills of these practitioners are misleading; and

WHEREAS, It would be in the best interests of this state and its citizens that a comprehensive examination of the care provided by health and care facilities be reviewed to determine whether the care is adequate and of a good quality; now, therefore, be it

Resolved by the Assembly of the State of Nevada, the Senate concurring, That the legislative commission is hereby directed to study and evaluate the:

1. Level of knowledge and skill required by each licensing agency for a license as a practitioner of a healing art;

2. Review by each agency of a practitioner's skills when he is licensed and during the time he practices in Nevada;

3. Representations made by the agencies or practitioners concerning the knowledge and skills of the practitioners to ensure that they are not misleading; and

4. Quality of care provided by health and care facilities in this state; and be it further

Resolved, That the legislative commission shall:

1. If it finds any irregularities in the conduct of practitioners of healing arts, the agencies which license them or the health and care facilities in this state, report the irregularities to the attorney general or to the district attorney of the appropriate county for investigation and possible prosecution; and

2. Report the results of the study, together with any recommendations for legislation, to the 63rd session of the legislature.

REPORT OF THE LEGISLATIVE COMMISSION

TO THE MEMBERS OF THE 63RD SESSION OF THE NEVADA LEGISLATURE:

This report is submitted in compliance with Assembly Concurrent Resolution No. 49 of the 62nd session of the Nevada legislature, which directs the legislative commission to study the providers of health care and health and care facilities in Nevada. As required by the resolution, the study covered:

1. Level of knowledge and skill required by each licensing agency for a license as a practitioner of a healing art;
2. Review by each agency of a practitioner's skills when he is licensed and during the time he practices in Nevada;
3. Representations made by the agencies or practitioners concerning the knowledge or skills of the practitioners to ensure that they are not misleading; and
4. Quality of care provided by health and care facilities in this state.

The legislative commission appointed a subcommittee to conduct the study and recommend appropriate action to the 1985 session of the Nevada legislature. The following legislators were members of the subcommittee:

Senator William J. Raggio, Chairman
Assemblyman Edward J. Kovacs, Vice Chairman
Senator Donald R. Mello
Senator Joe Neal
Assemblyman Lonie Chaney
Assemblyman Marvin M. Sedway

In this report the subcommittee has attempted to present its findings and recommendations briefly and concisely. The report is intended as a useful guide to legislators. A great amount of data was gathered in the course of the study, and much of it was provided in the form of exhibits that became part of the minutes of the subcommittee. The data which relate directly to the subcommittee's recommendations are included in the report. All supporting documents and minutes are on file with the research library of the legislative counsel bureau and are readily available to any member.

This report is transmitted to the members of the
63rd session of the Nevada legislature for their con-
sideration and appropriate action.

Respectfully submitted,

Legislative Commission
Legislative Counsel Bureau
State of Nevada

Carson City, Nevada
August 1984

* * * * *

LEGISLATIVE COMMISSION

Senator James I. Gibson, Chairman

Senator Thomas J. Hickey	Assemblyman Louis W. Bergevin
Senator Robert E. Robinson	Assemblyman Joseph E. Dini, Jr.
Senator Randolph J. Townsend	Assemblyman John E. Jeffrey
Senator Sue Wagner	Assemblyman Michael O. Malone
	Assemblyman David D. Nicholas
	Assemblyman John M. Vergiels

SUMMARY OF RECOMMENDATIONS

This summary represents the subcommittee's recommendations in response to its conclusions and findings. These recommendations are based upon suggestions which were presented in public hearings and written communications to the subcommittee. They reflect the testimony of representatives of state agencies and health care providers, staff research, and the experience and research of the members of the subcommittee.

The subcommittee recommends:

CONTINUING EDUCATION

1. The statutes be amended to require continuing education for all health care professions licensed or certified by state agencies. (BDR 54-129)

DEPARTMENT OF HUMAN RESOURCES

Abuse of Older Persons

2. The statutes be amended to expand the list of persons who must report incidents of abuse, neglect, or exploitation of older persons to include every person who maintains or is employed by a hospital or health and care facility. (BDR 16-124)

Adult Family Care Homes

3. The statutes be amended to provide for the definition of "family care home" and allow for the licensing of such homes by the state health division. The subcommittee recommends the statutes be amended to define "family care home" similar to the definition used by the state welfare division of the department of human resources. The subcommittee recommends further that "adult family care home" means an individual-for-profit home which provides room, board, laundry and continuous protective oversight for one to three adults, not related to the operator, who by reason of age or disability are incapable of independent living but are not in need of practical or professional nursing care. (BDR 40-127)

Alcohol and Drug Abuse

4. The statutes be amended to require that all programs, personnel, and facilities for the treatment of alcohol and drug abuse in the state must be certified by the bureau of alcohol and drug abuse in order to operate in Nevada. The subcommittee recommends further that any provision which effectively exempts nonfunded agencies and personnel from certification be deleted and that a provision delineating penalties (misdemeanor for first offense and gross misdemeanor for second and subsequent offenses) for uncertified practice or program operation be added to the law. (BDR 40-128)
5. The statutes be amended to establish the current alcohol and drug abuse certification board, which is established by regulation and is advisory to and appointed by the chief of the bureau of alcohol and drug abuse, as a statutory board. The subcommittee recommends further that the board be given full authority for certifying all alcohol and drug abuse practitioners in the state. (BDR 40-128)
6. The statutes be amended to allow the alcohol and drug abuse certification board to charge fees for certification and program accreditation. The subcommittee recommends further that such fees be used exclusively for the operation of the board and support of the certification and accreditation system. (BDR 40-128)
7. The statutes be amended to grant the alcohol and drug abuse certification board the authority to require continuing education as a part of the certification requirements. (BDR 40-128)
8. The statutes be amended to allow the alcohol and drug abuse certification board to provide for the expiration of certificates and for recertification based upon continuing education requirements. (BDR 40-128)
9. The statutes be amended to designate the bureau of alcohol and drug abuse as the state agency responsible for approving the teachers and educational courses for persons convicted of driving while intoxicated/driving under the influence (DUI). (BDR 40-128)

Health Care Inspections

10. The 1985 legislature authorize and appropriate the necessary funds for the state health division to add at least two health facilities surveyor positions--

one health facilities surveyor II in Clark County and
one health facilities surveyor II in Carson City.

Mental Hygiene/Mental Retardation Personnel

11. The statutes be amended to require that all new health practitioners employed by the state division of mental hygiene/mental retardation be licensed or certified by the respective boards in their professional fields. The subcommittee recommends further that existing employees be allowed no more than 3 years to obtain certification or licensure before being reclassified and placed under the supervision of a licensed or certified professional. (BDR 39-126)
12. The statutes be amended to require that all psychiatrists employed by the state division of mental hygiene/mental retardation possess the certification of the American Board of Psychiatry and Neurology or obtain such certification within 3 years of their first date of employment with the division. (BDR 39-126)
13. The statutes be amended to require that all professional staff employees of the division of mental hygiene/mental retardation demonstrate proficiency in the English language to the administrator of the division. The subcommittee recommends that the division of mental hygiene/mental retardation study and report to the 1987 legislature the effects of this requirement. (BDR 39-126)

DEPARTMENT OF PERSONNEL

14. A legislative resolution directing the department of personnel to study and report to the 1987 legislature regarding the potential effect of requiring that all health practitioners employed in state service be licensed or certified by the respective boards in their professional fields. (BDR 39-126)
15. A legislative resolution directing the department of personnel to study and report to the 1987 legislature regarding state experience, policy and practice in employing health practitioners, those normally licensed under Title 54 of Nevada Revised Statutes, who have limited or no English speaking ability. (BDR 39-126)

BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

16. The statutes be amended to delete the present restrictions on the terms of members of the board of homeopathic medical examiners. The subcommittee recommends further that the statutes be amended to add the provision that a board member may be reappointed to serve as a member of the board provided he has properly exercised his duties as a board member, remains in good standing in the homeopathic medical community, and is selected by the governor to serve another term. (BDR 54-130)

BOARD OF MARRIAGE AND FAMILY COUNSELOR EXAMINERS

17. The statutes be amended to increase the fee schedule of the board of marriage and family counselor examiners as follows:

Examination fee.....[~~\$30~~] \$ 50

Certification fee.....[~~\$15~~] \$ 25

Biennial registration fee, not less than
[~~\$20~~] \$100 nor more than [~~\$80~~] \$200, as
determined by the board

Restoration of a certificate revoked for
nonpayment of the biennial registration
fee[, not less than \$20 nor more than
\$80 as determined by the board]..... \$100

Application fee.....[~~\$15~~] \$ 25

Certification by endorsement under the
[provision] provisions of NRS 641A.240..~~[\$50]~~ \$ 75

(BDR 54-134)

18. The statutes be amended to include a provision for privileged communications between marriage and family counselors and their clients. (BDR 54-134)

BOARD OF NATUROPATHIC HEALING

19. The statutes be amended to change the membership of the board of naturopathic healing to include the following

five members: one licensed physician residing and practicing in Nevada for at least 2 years, two licensed naturopaths engaged in the practice of naturopathic healing for at least 2 years and residing in Nevada, and two public members who have no professional association with health care. The subcommittee recommends further that the statutes be amended to require the board to reexamine all current licensees after verifying their educational credentials. (BDR 54-131)

BOARD OF DISPENSING OPTICIANS

20. The statutes be amended to delete any provision which allows an exemption or exception to the requirement that licensed dispensing opticians must pass the Contact Lens Registry Examination of the National Committee of Contact Lens Examiners before being certified to fit contact lenses. (BDR 54-133)

NEVADA STATE BOARD OF OPTOMETRY

21. The statutes be amended to provide the state board of optometry with the necessary authority and flexibility to impose various types of disciplinary action. The subcommittee recommends further that the statutes be amended to delete the restrictive term "revocation or suspension of licenses" and substitute, wherever appropriate, the more general term "disciplinary action," except to include revocation and suspension of licenses among various options under "disciplinary action." (BDR 54-132)

BOARD OF PSYCHOLOGICAL EXAMINERS' CONCERNS REGARDING NONACCREDITED PSYCHOLOGY PROGRAMS

22. The statutes be amended to require the commission on postsecondary education to appoint an advisory committee to evaluate and approve any private institution's nonaccredited degree program which prepares persons for employment as providers of health care, practitioners of a healing art, or other health professionals. The subcommittee recommends that the advisory committee have the following membership:
 1. The chancellor of the University of Nevada System, or his representative, to serve as chairman of the committee.

2. The chairman, or his representative, of each state licensing board for which the institution's curriculum claims to prepare persons for employment.
3. The superintendent of public instruction, or his representative, to serve as vice chairman of the committee.
4. A Nevada licensed practitioner, not affiliated with the University of Nevada System or any licensure board, who holds a degree identical to the one offered in the program being evaluated.
5. A member of the general public who has no professional affiliation with any postsecondary education institution or the degree program's field of study.

The subcommittee recommends further that the statutes be amended to (a) provide the committee with the authority to employ out-of-state consultants representing the profession or professions normally associated with the proposed degree program, (b) require the commission on postsecondary education to use the committee to evaluate and approve both new programs applying for licensure and existing programs applying for relicensure, (c) require the applicant institution to bear the cost of the evaluation, and (d) require that, except by the unanimous vote of the full commission on postsecondary education, no program shall be approved for licensure or relicensure if not approved first by a majority of the advisory committee.

(BDR 34-125)

23. The statutes be amended to change part of the current membership of the commission on postsecondary education from " * * * two members who are knowledgeable in the field of education * * * " to two members who hold advanced degrees and are knowledgeable in the field of higher education. (BDR 34-125)
24. The statutes be amended to require that a nonaccredited institution may not award a degree in Nevada unless it has provided the commission on postsecondary education with affidavits clearly indicating that at least two accredited institutions will accept a majority of its

course credits as transfer credits to the same type of degree program. The subcommittee recommends further that the statutes be amended to provide that: (a) the affidavits must be from the president or chief executive officer of the applicant institution and each accredited institution, (b) the accredited institutions must not be affiliated in any way with the applicant institution, (c) the applicant institution must provide the commission with documentation of the curriculum material it submitted to each accredited institution, (d) the affidavits must indicate the persons who have actually taught courses at the applicant institution, (e) the representations set forth in the catalog of the applicant institution are referenced and explained in the affidavits, and (f) the proof of transfer credit be required of both current licensed institutions and new applicants for licensure. (BDR 34-125)

REPORT TO THE 63RD SESSION OF THE NEVADA LEGISLATURE
BY THE LEGISLATIVE COMMISSION'S SUBCOMMITTEE
TO STUDY THE PROVIDERS OF HEALTH CARE AND
HEALTH AND CARE FACILITIES IN NEVADA

I. INTRODUCTION AND OVERVIEW OF STUDY

The 1983 Nevada legislature adopted Assembly Concurrent Resolution No. 49 (File No. 139, Statutes of Nevada 1983) which directs the legislative commission to study the providers of health care and health and care facilities. The resolution was proposed by certain members of the assembly committee on commerce who requested an indepth legislative study of the licensing procedures and requirements of the state boards for providers of health care and other health professions.

During the 1983 session, the assembly committee on commerce considered bills pertaining to the regulation and licensure of chiropractors, homeopaths, naturopaths, optometrists, osteopaths and other health care professions. Legislators on the committee indicated that they had found irregularities and inconsistent requirements within some of the licensing boards for health professions. The problems included licensees misrepresenting their professional skills and education and health care providers practicing outside their licensed areas.

Assembly Concurrent Resolution No. 49 directed the legislative commission to study and evaluate the following four concerns:

1. Level of knowledge and skill required by each licensing agency for a license as a practitioner of a healing art;
2. Review by each agency of a practitioner's skills when he is licensed and during the time he practices in Nevada;
3. Representations made by the agencies or practitioners concerning the knowledge or skills of the practitioners to ensure that they are not misleading; and
4. Quality of care provided by health and care facilities in this state.

In accordance with the provisions of Assembly Concurrent Resolution No. 49, the legislative commission appointed a subcommittee composed of legislators to conduct the study and recommend appropriate actions to the 1985 session of the Nevada legislature.

The subcommittee commenced its study by identifying the state agencies responsible for licensing health care providers and regulating health and care facilities. Eighteen state boards were identified as licensing or certifying providers of health care or other human health professions under Title 54 of Nevada Revised Statutes. In addition, the subcommittee determined that the department of human resources (DHR), through its various divisions, was responsible for regulating health and care facilities and licensing or certifying certain health care providers. (See Appendix A of this report for the list of state agencies and boards studied by the subcommittee.)

Before opening the public hearing portion of its study, the subcommittee requested each state licensing agency to submit a summary of its role in regulating health care providers, practitioners of a healing art, or health and care facilities. The agencies were provided a copy of A.C.R. 49 and were asked to respond to the resolution's four concerns regarding the knowledge and skill of licensed practitioners and the quality of health care.

The subcommittee held four meetings in carrying out the study. Two meetings were held in Carson City, one in Las Vegas, and one in Reno.

The subcommittee conducted its first meeting on September 19, 1983, in Carson City. After reviewing the state agencies' responses regarding their respective roles in licensing health practitioners and regulating health and care facilities, the subcommittee received testimony from various boards and agencies.

Testifying at the initial meeting were representatives of the department of human resources' divisions or offices of aging services, alcohol and drug abuse, health, mental hygiene/mental retardation, and Medicaid. In addition, the subcommittee heard from the Nevada state board of chiropractic examiners, the board of naturopathic healing, and the board of psychological examiners. Administrative officers of two private health organizations also presented testimony.

The second public hearing was held in Las Vegas on November 8, 1983. The subcommittee considered information from the health licensing agencies regarding continuing education, licensing and certification statistics, misleading advertising, and requirements for licensure. The department of human resources summarized its comprehensive and detailed report concerning the department's licensure functions and regulatory authority. (9)*

A considerable amount of testimony at the second meeting related to the doctoral program in clinical psychology at the University for Humanistic Studies (UHS) in Las Vegas. Witnesses appearing in regard to the university's program included officials from the commission on postsecondary education, the board of marriage and family counselor examiners, the board of psychological examiners, and the university itself. The remainder of the meeting was devoted to discussing a licensed naturopath's educational credentials and scope of practice, and three naturopaths appeared before the subcommittee to answer questions relating to this matter.

The subcommittee convened in Reno on February 13, 1984, for its third and final meeting to obtain public testimony. The subcommittee's staff reported the agencies' recommendations obtained prior to this meeting and presented information regarding continuing education requirements and licensing private degree-granting institutions. A letter from the attorney general regarding his office's role in working with health licensing agencies was briefly discussed by the subcommittee. (See Appendix B.) In addition, the subcommittee reviewed the legislative counsel's opinion concerning the use of hypnosis by naturopaths or the practitioners of any profession other than psychology. (See Appendix C.)

*The numbers in parentheses at the end of sentences refer to items in the Bibliography and Footnotes Section of this report. The number refers to the publication or footnote entry. Any number(s) after a colon refers to the page number(s) of the publication. For example, the above citation refers to a memorandum dated October 28, 1983, to Donald O. Williams, senior research analyst, legislative counsel bureau, from S. Barton Jacka, director of the Nevada department of human resources.

The agencies which presented their legislative recommendations at the third meeting were the Nevada state board of chiropractic examiners, the board of dispensing opticians, the department of human resources, the board of naturopathic healing, and the Nevada state board of optometry. Additional testimony was offered by representatives of the board of dental examiners of Nevada, the Nevada State Medical Association, the Nevada Naturopathic Medical Association, and the Washoe County Medical Society.

The fourth meeting of the subcommittee was held on May 14, 1984, in Carson City. This, the final meeting in the study, was a work session where the subcommittee adopted recommendations to be submitted to the legislative commission and the 1985 legislature. At the work session, the legislative counsel replied to the subcommittee's previous questions concerning the personal civil liability of board members who act contrary to legal advice. (See Appendix D.)

II. DISCUSSION OF ISSUES

The basic purpose of state laws regulating the health professions is to protect the public's health, safety and welfare. By requiring health personnel to meet certain standards of practice and specifying which tasks these practitioners can perform, states have sought to safeguard the public from incompetent and unethical procedures. (26:1)

The four issues identified in Assembly Concurrent Resolution No. 49 and studied by the subcommittee can be summarized as: (1) assuring the adequacy of licensing standards for health care providers; (2) assuring the continued competence of licensed health practitioners, (3) protecting the public against fraud and incompetence relating to health providers, and (4) assuring the quality of health care. The sections which follow include a description of the regulation of health professionals and a discussion of each of the four issues mentioned above.

A. REGULATION OF HEALTH CARE PROVIDERS

State officials are increasingly concerned over rising health care costs and the maldistribution of health care providers. The state regulation and licensure of health care is a determining factor in the availability of various types of health care services and the number of different health practitioners. All states have experienced mounting pressure to license new professions and broaden the scope of practice of currently regulated professional groups. (20:v)

Occupational and professional licensure was developed to protect the public from incompetent and dishonest practitioners by establishing minimum standards of proficiency in the regulated fields. (25:1)

Licensure is "the process by which an agency of government grants permission to persons to engage in a given profession or occupation by certifying that those licensed have attained the minimal degree of competency necessary to ensure that the public health, safety and welfare will be reasonably protected." (5:1)

Professional regulation begins with the statutory creation of an expert board which is normally appointed by the governor. State statutes provide such boards with certain specific and general powers. These regulatory powers include the authority to assess the qualifications of applicants, test applicants' competence by examination, issue licenses, enforce statutory requirements, and accredit or approve educational institutions.

The licensing of health occupations was initiated to combat medical quackery. As far back as the early 19th century, professional health organizations advocated licensure. Nevertheless, it was not until the 20th century that a significant number of health licensing laws were enacted. (2:16)

The United States Department of Health and Human Services estimates that at least 100 health occupational groups are now regulated or seeking regulation in at least one state. Approximately 45 different occupations in the health field are regulated, and several of these occupations are licensed in every state. (4:7) All 50 states now require the licensing of physicians, dentists, pharmacists, professional nurses, practical nurses, physical therapists, optometrists, dental hygienists, osteopaths and podiatrists.

B. LICENSING STANDARDS

Licensing should protect the public and promote high performance standards for the profession. To accomplish these objectives, state boards develop and enforce certain standards to regulate entry into the occupational field. (3:131)

The state licensing act defines the minimum education, experience and fitness qualifications necessary for a person to be licensed. The licensing board then determines the specific educational and training programs which satisfy the statutory criteria. (23:36)

Every state licensing statute contains personal requirements such as United States' citizenship, state residency, age and moral character. The board determines each applicant's qualifications based on his or her specialized training or education, and work experience or apprenticeship. In addition, the board requires each candidate for licensure to pass a competency examination which is usually written but may also require an oral and/or a practical examination.

The assurance of professional competence and fitness extends beyond restricting entry into a profession by means of limiting the focus of acceptable practice. Concerned with etiquette and ethics, licensing boards establish codes or rules of conduct as additional standards for their licensees. Implementation of the code of conduct requires formal disciplinary means, including powers of investigation, prosecution, adjudication, and punishment. (23:37)

C. ASSURING CONTINUED PROFESSIONAL COMPETENCE

Legislators recognize continued competence as one of the thorny issues with which they must deal now and in the years ahead. The rising cost of malpractice insurance and pressures from professional groups for mandatory programs of continuing education are forcing legislators to look closely at an issue that has heretofore been largely ignored. Most of the emphasis in licensing occupations and professions has been on initial competence. Little attention has been paid to the question of continued competence. Now legislators are asking: Has the practitioner kept up with developments in the field? Has he maintained his skills? Is he as qualified to provide safe and effective service as he was at the time of initial licensure? (24:35)

Professional licensing agencies and the general public have begun to recognize that the state licensing system that attempts to ensure beginning practitioners' competence should also attempt to ensure the public that practitioners continue to practice above minimum levels. Continuing competence may be assured when practitioners keep abreast of advancements in knowledge and technology and are periodically reassessed for possible skill deficiencies.

Although there are several different means to assure currency of practitioner skill and knowledge, continuing education is by far the most extensively employed method. (4:10)

Most states have instituted continuing education requirements for one or more health professions. In some states,

proof of continuing education credits is necessary before a license may be renewed. State licensing statutes may specify the type and duration of required continuing education programs or may authorize the board to set continuing education requirements. (5:4)

States continue to mandate continuing education as a vehicle for ensuring competent practice in the health professions. Forty-six states require continuing education for nursing home administrators and optometrists. Since 1979, the number of states with mandatory continuing education for psychologists has increased by over 30 percent. (17:549)

D. PROTECTING THE PUBLIC

The major argument for licensing is that without regulation the public might be harmed. (1:101)

The regulation of health care providers is intended to protect the public health, safety, and welfare against incompetent practitioners. Without licensing, the public might suffer physical injury. Licensing is intended to ensure honest professional service, quality care, and protection against fraud and deception. (24:9)

In addition to keeping unqualified individuals from entering practice and unlicensed persons from practicing, boards also protect the public by monitoring licensees and investigating complaints received from consumers and from other professionals. Each year, boards receive thousands of complaints from various sources alleging incompetence, negligence, dishonesty and unprofessional conduct on the part of licensees. (1:101)

The licensing board serves as an intermediary between the public and the profession, and it provides the aggrieved consumers with a means of redress. Complaints which reveal violations of standards of practice or conduct may result in the board taking disciplinary action against a licensee. Disciplinary action available to the board normally ranges from a simple reprimand to the suspension or revocation of the individual's license and his right to practice.

E. QUALITY ASSURANCE

Stripped of all elaborations and digressions, the practice of medicine consists only of actions related to the quality of care. (21:4)

Quality medical care is defined by Leonard S. Rosenfeld, M.D., as follows:

- a) The availability of various medical, psychological and related social services in accordance with the needs of the patient and with current precepts.
- b) Demonstration of good professional judgments in terms of currently accepted standards of practice in applying the various preventive, diagnostic, therapeutic and rehabilitative services when and as indicated.
- c) Continuity of care and professional responsibility.
- d) Patient understanding and satisfaction, and responsible participation in the medical care process to the maximum level of his capacity. (22:17,18)

Two major aspects of quality of care are the technical aspect and the art-of-care.

The technical aspect is measured by the following:

- 1. Adequacy of diagnosis;
- 2. Appropriateness of therapy;
- 3. Efficiency of diagnostic and therapeutic procedures;
- 4. Utilization of medical technology; and
- 5. Appropriateness of professional measures and facilities used in care and treatment. (18:4,5)

The art-of-care, on the other hand, refers to the manner of physician care relative to the patient as an individual, as measured by the physician's sensitivity, openness, and nonauthoritarian manner. (19:36)

Quality of care data is obtained from a variety of sources, ranging from claims for payment of services to medical records to direct observation of medical practice. Of the many sources, it appears that medical records are the most common source for information from which to assess quality of care. Because most quality of care studies have been performed in hospital settings, almost all quality assurance programs emphasize the hospital component of medical care. Prominent quality assessment researchers have reported that data are sparse for evaluating the effectiveness of quality assurance programs in terms of changes in the behavior of health care providers or in the health of the patients whose care is reviewed. (19:9)

III. FINDINGS AND RECOMMENDATIONS

The subcommittee found several problems pertaining to the regulation and licensure of health care providers and health

and care facilities in Nevada. These problems were identified to the subcommittee by testimony, through correspondence and research, and by the members' own experience with the policies and practices of the state agencies and boards under study.

Although the subcommittee discovered few problems with state requirements for the initial licensure of health professions, it learned that many agencies are not adequately reviewing the continued competence of their licensed practitioners. In addition, testimony and correspondence received by the subcommittee indicated a problem concerning certain licensed health care providers misrepresenting their credentials and/or scope of licensed practice.

Based on the testimony presented by the department of human resources (9:1.2,1.36), it appears that the state health division is utilizing appropriate methods of assessing the quality of care provided by health and care facilities. The subcommittee feels, however, that additional health inspectors and more frequent inspections are necessary in order for the health division to carry out its licensure inspections and thus assure the provision of quality health care.

The following sections of this report represent the subcommittee's recommendations and legislative proposals for changes needed to improve the state's regulation of the providers of health care and health and care facilities. The recommendations cover a broad range of topics including continuing education, elderly abuse, adult family care homes, alcohol and drug abuse, health care inspections, mental hygiene/mental retardation personnel, employment requirements for state personnel, homeopaths, marriage and family counselors, naturopaths, dispensing opticians, optometrists, and nonaccredited psychology programs.

A. CONTINUING EDUCATION

During the course of its study, the subcommittee found that all but five of the 18 state licensing boards of health professions (see Appendix A) now require continuing education for licensure renewal. The five not requiring continuing education are the board of dental examiners of Nevada, the board of homeopathic medical examiners, the board of marriage and family counselor examiners, the board of medical examiners of the State of Nevada, and the state board of oriental medicine.

The board of dental examiners of Nevada has neither statutory provisions nor regulations regarding continuing education for its licensed dentists and dental hygienists. Although the board of medical examiners of the State of Nevada has the statutory authority to require continuing

education for licensed physicians, it has chosen not to adopt regulations mandating continuing education. The subcommittee's research revealed 12 states* which require continuing education for relicensure of dentists and 18 states** with mandatory continuing education requirements for physicians.

In correspondence to the subcommittee, the president of the board of marriage and family counselor examiners requested enabling legislation that would allow the board to require continuing education for its licensees. (6:3)

Both the board of homeopathic medical examiners and the state board of oriental medicine advised the subcommittee of plans to require continuing education for their respective licensees. Neither board, however, has statutory authority to require continuing education.

Of the 13 boards which currently require continuing education for relicensure or recertification, two of the boards--the state board of examiners for nursing facility administrators and the state board of psychological examiners--do not have statutory authorization for their requirements. Seven boards*** have statutes mandating continuing education, but the other four boards**** have permissive statutes.

In addition, the subcommittee learned that continuing education is not currently required of laboratory personnel certified by the bureau of regulatory health services in the health division of the department of human resources.

Recognizing the importance of continuing education in assuring the continued professional competence of health professions, the subcommittee, therefore, recommends:

*California, Iowa, Kansas, Kentucky, Massachusetts, Minnesota, New Jersey, New Mexico, North Dakota, Oklahoma, Oregon and South Dakota.

**Alaska, Arizona, California, Hawaii, Iowa, Kansas, Maine, Maryland, Massachusetts, Michigan, Minnesota, New Hampshire, New Mexico, Ohio, Rhode Island, Utah, Washington, and Wisconsin.

***Boards regulating chiropractors, nurses, dispensing opticians, optometrists, osteopaths, pharmacists, and podiatrists.

****Boards regulating audiologists and speech pathologists, hearing aid specialists, naturopaths, and physical therapists.

The statutes be amended to require continuing education for all health care professions licensed or certified by state agencies. (BDR 54-129)

B. DEPARTMENT OF HUMAN RESOURCES

1. Abuse of Older Persons

Existing law requires that every person who maintains or is employed by a group care facility must report incidents of abuse, neglect, or exploitation of older persons. However, in hospitals and nursing homes only the superintendent, manager, physician, professional or practical nurse, physician's assistant, psychologist, ambulance driver or ambulance attendant, clergyman and social worker must report such incidents. Aides, attendants, kitchen staff, janitorial staff, and X-ray and laboratory technicians are not required to report. Inasmuch as these are persons who probably have as close contact with patients as any listed in the required reporting group, the department of human resources' division for aging services suggested it would be appropriate to include them in the listing of individuals who must report. (10:3,4)

The subcommittee agrees with the aging services division and, therefore, recommends:

The statutes be amended to expand the list of persons who must report incidents of abuse, neglect, or exploitation of older persons to include every person who maintains or is employed by a hospital or health and care facility. (BDR 16-124)

2. Adult Family Care Homes

"Adult family care homes," as presently certified by the state welfare division of the department of human resources (DHR), operate in a manner similiar to "group care facilities," as licensed by the health division of the department of human resources, but on a smaller scale. Nevada Revised Statutes 449.005 defines "group care facility," as an establishment operated and maintained for the purpose of furnishing food, shelter, and personal care other than nursing to:

1. Four or more ambulatory aged, infirm, mentally retarded or handicapped persons unrelated to the person operating the facility; or
2. Four or more females during pregnancy or after delivery, who are unrelated to the person operating the facility.

State welfare division policy provides for certification of an "adult family care home," when the facility provides room, board, laundry and continuous protective oversight for one to three adults, not related to the operator, who by reason of age or disability are incapable of independent living but are not in need of practical or professional nursing care. Certification is required when such adults are Supplemental Security Income (SSI) recipients--state supplement recipients.

There is no licensing or certification requirement for facilities which care for less than four adults and are not SSI--state supplement recipients. According to the department of human resources, this void in the law has resulted in unlicensed or uncertified homes becoming more prevalent throughout the state. During the subcommittee's public hearing on September 19, 1983, the administrator of the aging services division of the department of human resources testified that there have been incidents in which elderly residents of these facilities have been abused, neglected, or exploited. Without a requirement for licensing or certification of such care homes, the subcommittee believes there is no way to identify and eliminate inadequate facilities.

The department of human resources suggested to the subcommittee that the state regulate adult family care homes. The department expressed support for delegating such regulatory authority to the state health division, recognizing the necessity of adequate supportive resources to carry out that responsibility. (10:5,6)

The subcommittee concurs with the department of human resources and, therefore, recommends:

The statutes be amended to provide for the definition of "family care home" and allow for the licensing of such homes by the state health division. The subcommittee recommends the statutes be amended to define "family care home" similar to the definition used by the state welfare division of the department of human resources. The subcommittee recommends further that "adult family care home" means an individual-for-profit home which provides room, board, laundry and continuous protective oversight for one to three adults, not related to the operator, who by reason of age or disability are incapable of independent living but are not in need of practical or professional nursing care. (BDR 40-127)

3. Alcohol and Drug Abuse

Nevada Revised Statutes 458.025 requires all alcohol and drug abuse programs, personnel and facilities receiving

state or federal funds to be certified by the bureau of alcohol and drug abuse (BADA) of the department of human resources. While it grants the bureau authority to certify "self-supported" facilities and their programs and personnel upon request, the law does not require certification for such entities. As a result, the state currently has no control over private practice substance abuse counselors or private, nonhospital alcohol or drug abuse programs operating without state or federal funds.

When a state funded program begins operations, its facility must be licensed by the bureau of health facilities; its personnel must be certified by the bureau of alcohol and drug abuse certification board; and its program of treatment must be accredited. In addition, as part of the accreditation requirements, the program is monitored regularly by BADA's staff to assure ongoing compliance with state standards and with acceptable treatment quality requirements. At present, there is no such mechanism for assuring treatment quality in nonfunded programs.

The same situation exists with regard to private-practice counselors. The bureau of alcohol and drug abuse's certification system was designed to guarantee that substance abuse counselors and administrators in the state meet minimum standards of competency and knowledge, but was never intended to license and regulate independent practice. The certification process is seen as one element of a three-component credentialling model. Certification guarantees that staff meet minimum competency levels, but actual practice is monitored as part of the accreditation process. In this way, the BADA assures that the treatment being provided is of acceptable quality. The bureau cannot do this with regard to private practice alcohol and/or drug abuse counselors, even though those counselors may have applied for and earned certification.

According to the bureau of alcohol and drug abuse, the enactment of tougher driving while intoxicated/driving under the influence (DUI) legislation (with courts mandating more and more people into treatment) and the increasing demand for alcohol and drug abuse services have resulted in a significant increase in applications for voluntary certification by counselors in private practice. The bureau indicated that these individuals view state certification as a means of sanctioning private, unsupervised practice--something the existing certification system was not designed to do. (10:7,8)

Another concern is the current procedure where courses and programs for persons convicted of DUI are approved by the department of motor vehicles (DMV) instead of the bureau of

alcohol and drug abuse. While the majority of the DUI instructors are substance abuse counselors certified by BADA, the subcommittee believes it would be in the best interest of the public to require that all programs and instructors be certified by the bureau.

In order for the state to regulate alcohol and drug abuse personnel and programs more effectively, the subcommittee, recommends:

The statutes be amended to require that all programs, personnel, and facilities for the treatment of alcohol and drug abuse in the state must be certified by the bureau of alcohol and drug abuse in order to operate in Nevada. The subcommittee recommends further that any provision which effectively exempts nonfunded agencies and personnel from certification be deleted and that a provision delineating penalties (misdemeanor for first offense and gross misdemeanor for second and subsequent offenses) for uncertified practice or program operation be added to the law. (BDR 40-128)

The statutes be amended to establish the current alcohol and drug abuse certification board, which is established by regulation and is advisory to and appointed by the chief of the bureau of alcohol and drug abuse, as a statutory board. The subcommittee recommends further that the board be given full authority for certifying all alcohol and drug abuse practitioners in the state. (BDR 40-128)

The statutes be amended to allow the alcohol and drug abuse certification board to charge fees for certification and program accreditation. The subcommittee recommends further that such fees be used exclusively for the operation of the board and support of the certification and accreditation system. (BDR 40-128)

The statutes be amended to grant the alcohol and drug abuse certification board the authority to require continuing education as a part of the certification requirements. (BDR 40-128)

The statutes be amended to allow the alcohol and drug abuse certification board to provide for the expiration of certificates and for recertification based upon continuing education requirements. (BDR 40-128)

The statutes be amended to designate the bureau of alcohol and drug abuse as the state agency responsible for approving the teachers and educational courses for persons convicted of driving while intoxicated/driving under the influence. (BDR 40-128)

4. Health Care Inspections

In its correspondence to the subcommittee, the health division of the department of human resources recommended additional health facilities surveyors, located in the bureau of regulatory health services, to conduct nonfederal inspections of care facilities (e.g., group care, alcohol and drug abuse facilities). (10:10,11) The surveyors assist in the investigations of complaints and are responsible for followup inspections relative to deficiencies noted during Medicare and state licensure inspections.

The number of adult group care facilities has been increasing. There are currently 30 licensed group care facilities in which there is a total of 793 beds. Further, recent changes in the State Life Safety Code regulations permit licensure of such facilities with six or fewer residents without the installation of sprinkler systems. This results in a need for increased monitoring of these facilities.

Medicaid budget limitations have necessitated reductions in a number of areas including reimbursement to long-term care facilities. These facilities are regulated by the bureau of regulatory health services. Concerns regarding the effect of these reductions on the quality of patient care have caused the bureau to identify, as a priority, consistent and enhanced monitoring of long-term care facilities. The subcommittee feels that adequate staff resources are imperative to the bureau's ability to adequately respond in this area.

If the health division is delegated authority to regulate adult family care homes on a statewide basis, as proposed by this subcommittee, adequate staff support is necessary to assure regularly scheduled inspections of these homes. As with other care facilities, staff time must be available for ongoing monitoring in order to assure minimum standards are being met.

The subcommittee, therefore, recommends:

The 1985 legislature authorize and appropriate the necessary funds for the state health division to add at least two health facilities surveyor positions-- one health facilities surveyor II in Clark County and one health facilities surveyor II in Carson City.

5. Mental Hygiene/Mental Retardation Personnel

At the present time, the state division of mental hygiene/mental retardation, department of human resources, employs psychologists, marriage and family counselors and other

health professionals without requiring that they be licensed by the respective licensing boards for private practitioners in these fields. Psychiatrists employed by the division must be licensed as physicians by the board of medical examiners of the State of Nevada, but they do not have to be certified psychiatrists possessing the certification of the American Board of Psychiatry and Neurology. In addition, there is no requirement that the division's psychiatrists or psychologists be able to speak English.

At its November 8, 1983, public hearing in Las Vegas, the subcommittee was presented with the mental health and mental retardation division's recommendations concerning unlicensed health professionals working in state service. The administrator of the division recommended that professionals working in state service should be subject to the same licensure or certification requirements as professionals working in the private sector. He indicated, however, that a provision must be made to accommodate those personnel who have not yet attained licensure or certification. It was further suggested that such unlicensed state employees be required to work under the supervision of a licensed or certified professional. (9:3.1)

The subcommittee agrees with the mental health and mental retardation division's recommendations and supports imposing state licensure requirements on all the division's professional staff employees. The subcommittee recognizes, however, that increases of salary may be necessary in order to attract qualified licensed health professionals to state service.

The subcommittee, therefore, recommends:

The statutes be amended to require that all new health practitioners employed by the state division of mental hygiene/mental retardation be licensed or certified by the respective boards in their professional fields. The subcommittee recommends further that existing employees be allowed no more than 3 years to obtain certification or licensure before being reclassified and placed under the supervision of a licensed or certified professional. (BDR 39-126)

The statutes be amended to require that all psychiatrists employed by the state division of mental hygiene/mental retardation possess the certification of the American Board of Psychiatry and Neurology or obtain such certification within 3 years of their first date of employment with the division. (BDR 39-126)

The statutes be amended to require that all professional staff employees of the division of mental hygiene/mental retardation demonstrate proficiency in the English language to the administrator of the division. The subcommittee recommends that the division of mental hygiene/mental retardation study and report to the 1987 legislature the effects of this requirement. (BDR 39-126)

C. DEPARTMENT OF PERSONNEL

The State of Nevada currently allows the employment in state service of health practitioners who are not licensed or certified by the respective boards in their professional fields. In recommending that his employees be required to meet the same minimum qualifications of employees in the private sector, the administrator of the state division of mental hygiene/mental retardation advised the subcommittee of the need for the department of personnel to study the impact of such a requirement on other state agencies hiring similar employees. (9:3.1)

Another concern identified by the subcommittee is the lack of a requirement that certain health practitioners employed by the state be able to speak English.

The subcommittee, therefore, recommends:

A legislative resolution directing the department of personnel to study and report to the 1987 legislature regarding the potential effect of requiring that all health practitioners employed in state service be licensed or certified by the respective boards in their professional fields. (BDR 39-126)

A legislative resolution directing the department of personnel to study and report to the 1987 legislature regarding state experience, policy and practice in employing health practitioners, those normally licensed under Title 54 of Nevada Revised Statutes, who have limited or no English speaking ability. (BDR 39-126)

D. BOARD OF HOMEOPATHIC MEDICAL EXAMINERS

Chapter 630A of Nevada Revised Statutes governs the board of homeopathic medical examiners. Subsection 2 of NRS 630A.100 limits the appointment of members to no more than two full terms or to no more than one full term when a member serves for more than 1 1/2 years of a term to which another person was appointed. The board's recommendation to the subcommittee was that the statute be amended to delete the restrictions on the number of terms. (7:2)

The subcommittee concurs with the board of homeopathic medical examiners' recommendation and, therefore, recommends:

The statutes be amended to delete the present restrictions on the terms of members of the board of homeopathic medical examiners. The subcommittee recommends further that the statutes be amended to add the provision that a board member may be reappointed to serve as a member of the board provided he has properly exercised his duties as a board member, remains in good standing in the homeopathic medical community, and is selected by the governor to serve another term. (BDR 54-130)

E. BOARD OF MARRIAGE AND FAMILY COUNSELOR EXAMINERS

The board of marriage and family counselor examiners has requested that the subcommittee recommend legislation to increase its various fees in order to allow the board to carry out regular functions and hearings on complaints. (8)

The board of marriage and family counselor examiners also proposed legislation to create an evidentiary privilege for certain communications between licensed marriage and family counselors and their clients. While chapter 49 of Nevada Revised Statutes includes dentists, physicians, osteopaths, psychologists, psychiatric social workers, school counselors and other professionals under its provisions regarding privileged communications, marriage and family counselors are not covered by the chapter. The subcommittee found that the State of New Jersey currently has a statutory privilege protecting the confidential communications between a marriage counselor and his client.

The subcommittee supports the request of the board of marriage and family counselor examiners and, therefore, recommends:

The statutes be amended to increase the fee schedule of the board of marriage and family counselor examiners as follows:

Examination fee.....[~~\$30~~] \$ 50

Certification fee.....[~~\$15~~] \$ 25

Biennial registration fee, not less than
[~~\$20~~] \$100 nor more than [~~\$80~~] \$200, as
determined by the board

Restoration of a certificate revoked for
nonpayment of the biennial registration

fee[, not less than \$20 nor more than
\$80 as determined by the board]..... \$100

Application fee.....[\$15] \$ 25

Certification by endorsement under the
[provision] provisions of NRS 641A.240..[\$50] \$ 75

(BDR 54-134)

The statutes be amended to include a provision for privileged communications between marriage and family counselors and their clients. (BDR 54-134)

F. BOARD OF NATUROPATHIC HEALING

The board of naturopathic healing was created in 1981 with the enactment of Assembly Bill 444 (chapter 745, Statutes of Nevada 1981). Nevada Revised Statutes 633A.150 provides that the board consist of the following members appointed by the governor: three licensed naturopaths engaged in the practice of naturopathic healing for more than 2 years in this state, one licensed physician who is a Nevada resident, and one public member who is neither a licensed health practitioner nor a health administrator. The statute allowed the initial naturopaths on the board to be licensed and engaged in practice in another state and authorized their appointment to the board to constitute their licensure in Nevada.

According to the board of naturopathic healing, there are 46 naturopaths licensed to practice in Nevada. Most of the licensed naturopaths are residents of other states. Only three of the board's licensees are practicing in Nevada.

The board of naturopathic healing's first chairman, the licensed physician member, submitted his resignation in 1982, and the three naturopaths on the board submitted their resignations in 1983. The only remaining member of the board is the lay member who is unable to take any action because of the lack of a quorum. Until the governor appoints qualified members to the board, it will remain inactive. At the subcommittee's first meeting, the board's secretary-treasurer testified that there are no qualified persons to be appointed as the naturopathic members of the board. (13)

During the course of its study, the subcommittee received considerable testimony and correspondence regarding allegations that certain licensed naturopaths in the state are, among other things, practicing with questionable, if not

fraudulent, credentials. Testimony revealed the following allegations:

1. Cheating on board examinations;
2. The sale and possession of fraudulent educational certificates or diplomas;
3. Board approval and licensure of applicants with educational credentials from nonexistent schools; and
4. Licensed naturopaths practicing outside their scope of practice.

Regarding the allegation that certain naturopaths are practicing outside their license, the subcommittee was presented with copies of actual telephone and newspaper advertisements which appeared to misrepresent the legal practice of naturopaths and mislead the public.

A witness at the subcommittee's public hearing on February 13, 1984, advised of an alleged incident where a child required emergency medical treatment after being treated by a naturopath. (15)

Although the allegations mentioned above were not substantiated, the subcommittee believes the nature and number of complaints regarding the board of naturopathic healing and its licensees raises serious concerns over the potential harm to the public health and welfare. Considering these concerns and the present inactivity of the board, the subcommittee sees no advantage in continuing the board in its present form. The subcommittee feels that the board's membership should be changed to allow more public representation. In addition, the subcommittee strongly believes that the skills and knowledge of all Nevada's licensed naturopaths need to be thoroughly examined and verified.

The subcommittee, therefore, recommends:

The statutes be amended to change the membership of the board of naturopathic healing to include the following five members: one licensed physician residing and practicing in Nevada for at least 2 years; two licensed naturopaths engaged in the practice of naturopathic healing for at least 2 years and residing in Nevada, and two public members who have no professional association with health care. The subcommittee recommends further that the statutes be amended to require the board to reexamine all current licensees after verifying their educational credentials. (BDR 54-131)

G. BOARD OF DISPENSING OPTICIANS

Nevada Revised Statutes 637.122 requires certification for a dispensing optician to be able to fit contact lenses. Under the provisions of the statute, the board of dispensing opticians may certify, with one exception, only those licensees who have passed the Contact Lens Registry Examination of the National Committee of Contact Lens Examiners. Any licensed dispensing optician who fitted contact lenses before January 1, 1978, and submits affidavits testifying to his proficiency, is exempt from the examination requirement.

In testimony before the subcommittee, the president and secretary of the board of dispensing opticians stated that all of the board's licensees should be required to pass the national examination, and they recommended the elimination of the current grandfather clause. (11)

The subcommittee concurs and, therefore, recommends:

The statutes be amended to delete any provision which allows an exemption or exception to the requirement that licensed dispensing opticians must pass the Contact Lens Registry Examination of the National Committee of Contact Lens Examiners before being certified to fit contact lenses. (BDR 54-133)

H. NEVADA STATE BOARD OF OPTOMETRY

The Nevada state board of optometry's statute, chapter 636 of Nevada Revised Statutes, restricts disciplinary action against a licensee to revocation or suspension of license. During the subcommittee's public hearing in Reno, the board's president and secretary requested legislation to allow the board enough flexibility to impose various types of discipline when necessary. (16)

The subcommittee believes the state board of optometry needs the statutory authority to be able to use the most appropriate means, in addition to revocation or suspension, to discipline any licensee who has a record of consumer abuse or unethical conduct.

The subcommittee, therefore, recommends:

The statutes be amended to provide the state board of optometry with the necessary authority and flexibility to impose various types of disciplinary action. The subcommittee recommends further that the statutes be amended to delete the restrictive term "revocation or suspension of licenses" and substitute, wherever appropriate, the more general term "disciplinary

action," except to include revocation and suspension of licenses among various options under "disciplinary action." (BDR 54-132)

I. BOARD OF PSYCHOLOGICAL EXAMINERS' CONCERNS REGARDING
NONACCREDITED PSYCHOLOGY PROGRAMS

In his remarks to the subcommittee at its first meeting on September 19, 1983, the president of the board of psychological examiners discussed the board's problem with the proliferation of nonaccredited schools of psychology which award Ph.D.'s in clinical psychology. According to the board's president, many of these nonaccredited schools do not possess qualified faculty or adequate facilities to provide appropriate education and training to prepare clinical psychologists. (14) Although persons holding degrees from such schools would normally not qualify for state licensure, they would still be able to practice in Nevada's state and local institutions because of the absence of licensure requirements for employment in the public sector.

During the subcommittee's public hearings in Carson City and Las Vegas, representatives of the board of psychological examiners expressed concern over the licensure of the University for Humanistic Studies (UHS) in Las Vegas. (12,14) The UHS is a private, nonaccredited school offering a doctoral program in clinical psychology. In 1981, the commission on postsecondary education fully approved and licensed UHS over the objections of the board of psychological examiners, the psychology faculty of the University of Nevada System, and the American Psychological Association.

The board of psychological examiners believes that UHS does not deserve the legitimacy conveyed by its license from the commission. The board's position is based on its concerns regarding the inadequacy of the faculty and facilities at UHS.

The following are the major concerns raised by the board of psychological examiners in its testimony before the subcommittee:

1. Most of the faculty at the University for Humanistic Studies are out-of-state;
2. The university lacks the type of clinical facilities and internship laboratories necessary for a good doctoral program;
3. The institution is not able to offer the program it purports to offer in its catalog; and
4. The university has no library.

The subcommittee discovered that the faculty of the University for Humanistic Studies is a part-time faculty with many of its members residing outside of Nevada. Less than half of the faculty listed in the university's catalog have actually instructed UHS students. Despite the fact that UHS is a clinical psychology school, it appears to have no more than two resident clinical psychologists on its faculty. In addition, it appears that the majority of courses offered by the university up until the present have been taught by persons who are not licensed clinical psychologists.

While the University for Humanistic Studies' catalog lists over 100 courses, only 15 courses will be offered in the 1983-1984 academic year. The catalog also lists a nonexistent librarian. Furthermore, the subcommittee was presented with no evidence of UHS having a library or any library volumes. It appears that UHS students rely primarily on the library resources at the University of Nevada, Las Vegas, which does not have the necessary resources to support a doctoral program in clinical psychology.

In reviewing the commission on postsecondary education's procedures in licensing the University for Humanistic Studies, the subcommittee found that the commission was negligent in two areas:

1. The evaluation of UHS faculty and facilities; and
2. Authorizing UHS to award degrees without obtaining the necessary documentation to satisfy the statutory requirements for nonaccredited institutions.

The subcommittee discovered that only one licensed clinical psychologist was on the commission on postsecondary education's site review team which evaluated the doctoral program at the University for Humanistic Studies. The team's psychologist was later hired by UHS in response to the review team's concern that the institution did not have a clinical psychologist on its resident staff. It appears to the subcommittee that the commission licensed UHS without adequate objective information from experts in the field of clinical psychology. Additionally, the subcommittee feels that the commission ignored the concerns raised by its own review team and the leaders of Nevada's psychological community.

Nevada Revised Statutes 394.630 mandates that no Nevada university may award a degree unless it is an accredited institution or has an affidavit stating that the majority of its course credits are generally acceptable or transferable to at least one accredited college or university. The subcommittee has concluded that the commission on postsecondary

education authorized the University for Humanistic Studies to award its doctoral degree in clinical psychology before receiving the necessary information to support the UHS claim of transferring credits to an accredited institution. Even though seven students have received degrees from UHS since 1980, the commission did not receive proof of another institution accepting UHS transfer credits until 1984.

Because NRS 394.630 does not specify the type of accredited institution accepting transfer credit or the details of the transfer agreement, the commission on postsecondary education was able to authorize the University for Humanistic Studies to award degrees based on a transfer of credit agreement with Meadville/Lombard College, a theology school, in Illinois.

Moreover, the commission on postsecondary education was unable to present the subcommittee with documentation of the curriculum material supplied by the University for Humanistic Studies to Meadville/Lombard College. Although the commission has recently adopted a regulation which requires that institutions applying for licensure must present evidence of transferring credits to two accredited institutions, the new rule does not apply to UHS or the other nonaccredited colleges or universities which currently hold licenses.

The subcommittee believes the current policies and past practices of the commission on postsecondary education do not assure quality educational programs for the preparation of health professions, and it strongly supports appropriate changes in the commission's statutes.

The subcommittee, therefore, recommends:

The statutes be amended to require the commission on postsecondary education to appoint an advisory committee to evaluate and approve any private institution's nonaccredited degree program which prepares persons for employment as providers of health care, practitioners of a healing art, or other health professionals. The subcommittee recommends that the advisory committee have the following membership:

1. The chancellor of the University of Nevada System, or his representative, to serve as chairman of the committee.
2. The chairman, or his representative, of each state licensing board for which the institution's curriculum claims to prepare persons for employment.

3. The superintendent of public instruction, or his representative, to serve as vice chairman of the committee.
4. A Nevada licensed practitioner, not affiliated with the University of Nevada System or any licensure board, who holds a degree identical to the one offered in the program being evaluated.
5. A member of the general public who has no professional affiliation with any postsecondary education institution or the degree program's field of study.

The subcommittee recommends further that the statutes be amended to (a) provide the committee with the authority to employ out-of-state consultants representing the profession or professions normally associated with the proposed degree program, (b) require the commission on postsecondary education to use the committee to evaluate and approve both new programs applying for licensure and existing programs applying for relicensure, (c) require the applicant institution to bear the cost of the evaluation, and (d) require that, except by the unanimous vote of the full commission on postsecondary education, no program shall be approved for licensure or relicensure if not approved first by a majority of the advisory committee.
(BDR 34-125)

The statutes be amended to change part of the current membership of the commission on postsecondary education from "* * * two members who are knowledgeable in the field of education * * *" to two members who hold advanced degrees and are knowledgeable in the field of higher education. (BDR 34-125)

The statutes be amended to require that a nonaccredited institution may not award a degree in Nevada unless it has provided the commission on postsecondary education with affidavits clearly indicating that at least two accredited institutions will accept a majority of its course credits as transfer credits to the same type of degree program. The subcommittee recommends further that the statutes be amended to provide that: (a) the affidavits must be from the president or chief executive officer of the applicant institution and each accredited institution, (b) the accredited institutions must not be affiliated in any way with the applicant institution, (c) the applicant institution must provide the commission with documentation of the curriculum

material it submitted to each accredited institution, (d) the affidavits must indicate the persons who have actually taught courses at the applicant institution, (e) the representations set forth in the catalog of the applicant institution are referenced and explained in the affidavits, and (f) the proof of transfer credit be required of both current licensed institutions and new applicants for licensure. (BDR 34-125)

IV. BIBLIOGRAPHY AND FOOTNOTES

A. BOOKS

1. Shimberg, Benjamin. Occupational Licensing: A Public Perspective. Princeton, New Jersey: Educational Testing Service, 1982.
2. Shimberg, Benjamin, Barbara F. Esser and Daniel H. Kruger. Occupational Licensing: Practices and Policies. Washington, D.C.: Public Affairs Press, 1973.

B. PUBLICATIONS OF THE GOVERNMENT

3. Greene, Karen. "Licensing Requirements: Minimum Standards or Exclusionary Practices?" In A New Direction in Occupational Licensing Conference Presentations. Information Bulletin No. 133. Kentucky Legislative Research Commission. Frankfort, Kentucky, 1979, pp. 131-139.
4. Perspectives on Health Occupational Credentialing: A Report of The National Commission for Health Certifying Agencies. Sponsored by U.S. Department of Health and Human Services. DHHS Publication No. (HRA) 81-4. Washington, D.C.: GPO, 1979.
5. United States Department of Health, Education and Welfare. State Regulation of Health Manpower. DHEW Publication No. (HRA) 77-49. Washington, D.C.: GPO, 1977.

C. CORRESPONDENCE

6. Letter, dated October 28, 1983, to Donald O. Williams, Senior Research Analyst, Legislative Counsel Bureau, from William C. Marchant, Ed.D., President of the Board of Marriage and Family Counselor Examiners, concerning the activities of the Board of Marriage and Family Counselor Examiners.
7. Letter, dated January 19, 1984, to Donald O. Williams, Senior Research Analyst, Legislative Counsel Bureau, from F. Fuller Royal, M.D., President, Board of Homeopathic Medical Examiners, regarding the Board of Homeopathic Medical Examiners' formation, regulations, licensure requirements, and legislative recommendations.

8. Letter, dated February 2, 1984, to Donald O. Williams, Senior Research Analyst, Legislative Counsel Bureau, from William C. Marchant, Ed.D., President, Board of Marriage and Family Counselor Examiners, concerning recommendations for legislation.
9. Memorandum and attachments, dated October 28, 1983, to Donald O. Williams, Senior Research Analyst, Legislative Counsel Bureau, from S. Barton Jacka, Director of the Department of Human Resources, concerning: (1) authority, responsibilities, and functions of the Bureau of Health Facilities, Health Division; (2) Welfare Division's response to questions relative to Medicaid involvement with health care providers and facilities, e.g., Medical Review Team; and (3) position statement from Jerry Griepentrog, Administrator, Division of Mental Hygiene/Mental Retardation, regarding licensing/certification requirements for professionals in state services.
10. Memorandum and attachments, dated February 10, 1984, to Donald O. Williams, Senior Research Analyst, Legislative Counsel Bureau, from Christina Wise, Chief, Planning, Evaluation and Program Development, Department of Human Resources, regarding the Department of Human Resources' recommendations for legislation.

D. UNPUBLISHED MATERIALS

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12. Hess, Harrie F., and Diane Turnbough. "Testimony of Harrie F. Hess, Ph.D., Consultant, and Diane Turnbough, Ph.D., Member, Board of Psychological Examiners, before the Legislative Commission's Subcommittee to Study the Providers of Health Care and Health and Care Facilities in Nevada (Assembly Concurrent Resolution No. 49)," November 8, 1983.
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27. The Council of State Governments. State Regulatory Policies: Dentistry and the Health Professions. Lexington, Kentucky: The Council of State Governments, 1979.

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APPENDIX A

List of State Agencies and Boards Studied by the
Legislative Commission's Subcommittee to Study
the Providers of Health Care and Health and
Care Facilities in Nevada

LIST OF STATE AGENCIES AND BOARDS UNDER STUDY

Board of Examiners for Audiology and Speech Pathology
(chapter 637B of Nevada Revised Statutes)

Nevada State Board of Chiropractic Examiners
(chapter 634 of Nevada Revised Statutes)

Board of Dental Examiners of Nevada
(chapter 631 of Nevada Revised Statutes)

Board of Hearing Aid Specialists
(chapter 637A of Nevada Revised Statutes)

Board of Homeopathic Medical Examiners
(chapter 630A of Nevada Revised Statutes)

Board of Marriage and Family Counselor Examiners
(chapter 641A of Nevada Revised Statutes)

Board of Medical Examiners of the State of Nevada
(chapter 630 of Nevada Revised Statutes)

Board of Naturopathic Healing
(chapter 633A of Nevada Revised Statutes)

State Board of Nursing
(chapter 632 of Nevada Revised Statutes)

State Board of Examiners for Nursing Facility Administrators
(chapter 654 of Nevada Revised Statutes)

Board of Dispensing Opticians
(chapter 637 of Nevada Revised Statutes)

Nevada State Board of Optometry
(chapter 636 of Nevada Revised Statutes)

State Board of Oriental Medicine
(chapter 634A of Nevada Revised Statutes)

State Board of Osteopathic Medicine
(chapter 633 of Nevada Revised Statutes)

State Board of Pharmacy
(chapter 639 of Nevada Revised Statutes)

State Board of Physical Therapy Examiners
(chapter 640 of Nevada Revised Statutes)

State Board of Podiatry
(chapter 635 of Nevada Revised Statutes)

Board of Psychological Examiners
(chapter 641 of Nevada Revised Statutes)

Department of Human Resources

Division for Aging Services
(chapter 427A of Nevada Revised Statutes)

Health Division
(chapter 439 and others of Nevada Revised Statutes)

Mental Hygiene and Mental Retardation Division
(chapters 433 to 436 of Nevada Revised Statutes)

Rehabilitation Division, Bureau of Alcohol and Drug Abuse
(chapter 458 of Nevada Revised Statutes)

Welfare Division, Nevada Medicaid Section
(chapter 422 of Nevada Revised Statutes)

APPENDIX B

Letter dated February 3, 1984, from William E. Isaeff,
Chief Deputy Attorney General, for Attorney General
Brian McKay, to Senator William J. Raggio Regarding
the Role of the Attorney General's Office in
Working With the State Boards Responsible
for Licensing Health Care Professionals,
and the Procedures for Handling the
Boards' Legal Problems Concerning
Allegations of Professional
Misrepresentation or Allegations
of Misconduct on the Part of
a Licensee



STATE OF NEVADA
OFFICE OF THE ATTORNEY GENERAL

CAPITOL COMPLEX
CARSON CITY 89710

BRIAN MCKAY
ATTORNEY GENERAL

WILLIAM E. ISAEFF
CHIEF DEPUTY ATTORNEY GENERAL

February 3, 1984

Senator William J. Raggio, Chairman
Legislative Commission Subcommittee
to Study the Providers of Health Care
and Health and Care Facilities in Nevada
Legislative Building, Capitol Complex
Carson City, Nevada 89710

Dear Senator Raggio:

This letter is in response to the inquiry directed to the Attorney General by Donald O. Williams, Senior Research Analyst, the Legislative Counsel Bureau. In Mr. Williams' letter dated December 20, 1983, two general questions were posed. We understand the two questions to be:

1. What is the role of the Attorney General's Office in working with the state boards responsible for licensing health care professionals?
2. What are the procedures for handling the boards' legal problems concerning allegations of professional misrepresentation or allegations of misconduct on the part of licensees?

GENERAL COMMENTS

Mr. Williams asked our office to respond to the two questions in the context of 23 state agencies and boards. The 23 state agencies and boards are:

Board of Examiners for Audiology and Speech Pathology
Nevada State Board of Chiropractic Examiners
Board of Dental Examiners of Nevada
Board of Hearing Aid Specialists
Board of Homeopathic Medical Examiners
Board of Marriage and Family Counselor Examiners
Board of Medical Examiners of the State of Nevada

Board of Naturopathic Healing
State Board of Nursing
State Board of Examiners for Nursing Facility
Administrators
Board of Dispensing Opticians
Nevada State Board of Optometry
State Board of Oriental Medicine
State Board of Osteopathic Medicine
State Board of Pharmacy
State Board of Physical Therapy Examiners
State Board of Podiatry
Board of Psychological Examiners
State Department of Human Resources,
Rehabilitation Division, Bureau of Alcohol and
Drug Abuse
Division for Aging Services
Health Division
Mental Hygiene and Mental Retardation Division
Welfare Division, Nevada Medicaid Section

Some general observations about our office's representation of these state boards versus our representation of other state agencies are in order. In representing the listed divisions and sections of the state's Department of Human Resources, our office performs legal services which are similar to the general legal services that we perform for other agencies in the executive department of state government. These services include preparation of proposed legislation and regulations, rendition of both formal and informal opinions, preparation and review of contracts or leases, representation of the agency in personnel matters, advisor to intra-agency boards and commissions and legal counsel for the agency in any litigation involving the agency for which special counsel has not been designated in accordance with applicable state law.

In representing the listed state boards, our office may or may not perform legal services in conjunction with private counsel retained by the various boards pursuant to their respective statutory authorizations. Where a particular board is not represented by private counsel, our function will be broader than for those boards who have retained private counsel. However, even those boards who have retained private counsel will request and receive both formal and informal opinions prepared by our office. In performing legal services for the listed boards, our office will advise these boards during their meetings, serve as prosecutor in the context of any contested case, represent the board or its members in civil litigation subject to the limitations contained in NRS Chapter 41, represent the board in judicial review of final decisions in contested cases in accordance

with NRS Chapter 233B or other analogous judicial review provisions and prepare proposed legislation and regulations, in addition to the previously mentioned rendition of opinions. In the circumstance where a particular board does not retain private counsel, our office will both advise the board and prosecute in a contested case in accord with the division of function rule enunciated in Rudin v. Nevada Real Estate Advisory Commission, 86 Nev. 562, 565, 471 P.2d, 658 (1970) and Laman v. Nevada Real Estate Advisory Commission, 95 Nev. 50, 57, 589, P.2d, 166 (1979).

There are many similarities in the types of services performed for both the listed state agencies and the listed state boards. We will discuss in individual fashion our involvement with each of the listed state boards and the listed divisions and sections of the state's Department of Human Resources in the next two portions of this letter.

STATE BOARDS

1. Board of Examiners for Audiology and Speech Pathology

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of the statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 637B.160. Scope of practice is generally defined in NRS 637B.030 through 637B.070, inclusive, and 637B.290 through 637B.310, inclusive. Provisions relating to disciplinary action are contained in NRS 637B.250 through 637B.285, inclusive. No disciplinary action has been initiated before this board within the 12 months immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees before this board except that we may advise the board on matters relating to statutory and regulatory interpretation.

2. Nevada State Board of Chiropractic Examiners

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in

any contested case. Therefore, our function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. Recently, this litigation has involved uniform declaratory judgments act litigation concerning licensure and a judicial review action pending in the Nevada Supreme Court. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice are concerned with the interpretation of statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 634.080 through 634.110, inclusive, 634.123 and 634.125. Scope of practice is generally defined in NRS 634.013, 634.208 and 634.227. Provisions relating to disciplinary action are contained in NRS 634.140 through 634.216, inclusive. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board within the 12 months immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation.

3. Board of Dental Examiners of Nevada

This board has retained private counsel. The private counsel has been retained in such a manner that counsel serves both as advisor and prosecutor for this board. Our office does not represent this board in any civil litigation at the present time nor are we litigating any judicial review actions on behalf of this board. We consult orally with the board's private counsel and render written opinions concerning scope of practice and disciplinary action. Either the board or their private counsel would have to be contacted concerning the board's licensure activity for the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees in any manner.

4. Board of Hearing Aid Specialists

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice are concerned with the interpretation of

statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 637A.130 through 637A.160, inclusive, and 637A.220 through 637A.240, inclusive. Scope of practice is generally defined in NRS 637A.020(8) and 637A.352. Provisions relating to disciplinary action are contained in NRS 637A.250 through 637A.310, inclusive. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation of provisions that relate to licensure. Furthermore, our office has advised this board with respect to proposed regulations which pertain to continuing professional education requirements.

5. Board of Homeopathic Medical Examiners

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. We render both oral and written opinions to the board on a variety of topics. Issues requiring our advice are concerned with the interpretation of statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 630A.230 through 630A.320, inclusive. Scope of practice is generally defined in NRS 630A.040, 630A.050, 630A.220, 630A.570 and 630A.600. Provisions relating to disciplinary action are contained in NRS 630A.340 through 630A.470, inclusive. This licensing board came into being as a result of legislation passed and approved during the 1983 session of the Nevada Legislature. Consequently, no disciplinary action or investigation which is preliminary to disciplinary action has been initiated before this board within the the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation. Additionally, the board has enlisted our oral advice with respect to the content of the licensed application form and solicited our interpretation with respect to reciprocal licensure.

6. Board of Marriage and Family Counselor Examiners

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 641A.230 through 641A.250, inclusive. Scope of practice is generally defined in NRS 641A.060, 641A.080 and 641A.410. Provisions relating to disciplinary action are contained in NRS 641A.310 through 641A.400, inclusive. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation.

7. Board of Medical Examiners of the State of Nevada

This board has retained private counsel. The private counsel retained by the board serves in the capacity as an advisor to the board and has on occasion acted as a prosecutor before the board. Additionally, our office has also served in a prosecutorial capacity before this board in the context of contested cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and would represent the board in judicial review of the board's final decisions arising out of cases in which we had served in a prosecutorial capacity. Occasionally we are contacted with a request to prepare a written opinion for the board. In addition, our office has made referral of citizen inquiries to the board for appropriate action. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board by our office in the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees in any manner.

8. Board of Naturopathic Healing

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office would be responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and would represent the board in judicial review of the board's final decisions. We have rendered both oral and written opinions to this board during the 12 month period immediately preceding the date of this letter. At the present time there are vacancies on this board which cannot be filled due to the requirements contained in NRS 633A.150. The lack of a full board precludes systematic regulatory activity with respect to those persons practicing naturopathic healing.

9. State Board of Nursing

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of the statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 632.130 through 632.340, inclusive. Scope of practice is generally defined in NRS 632.010(6) and (7) and 632.475 and 632.480. Provisions relating to disciplinary action are contained in NRS 632.220, 632.320 and 632.350 through 632.420, inclusive. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation.

10. State Board of Examiners for Nursing Facility Administrators

This board has not retained private counsel. Our office serves as both advisor and would serve as prosecutor for this board in any contested case. Therefore, if a contested case is to be presented before this board we would divide function in the case in accord with the case authority noted in the general

comment section of our letter. In addition, our office would be responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and would also represent the board in judicial review of the board's final decisions. We have been requested by the board to give occasional oral and written opinions to the board pertaining to the interpretation to be afforded the statutory provisions under which they operate. In addition, this board has solicited our advice concerning the preparation of proposed regulations. In the 12 months period immediately preceding the date of this letter no disciplinary proceeding or investigation which may be preliminary to a disciplinary proceeding has been initiated before this board. Our office is not involved in the evaluation of licensees.

11. Board of Dispensing Opticians

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. At the present time we are representing the board in an appeal taken by a licensee to the United States Circuit Court of Appeals for the 9th Circuit. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of the statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 637.100 through 637.125, inclusive. Scope of practice is generally defined in NRS 637.020, 637.180, 637.185 and 637.200. Provisions relating to disciplinary action are contained in NRS 637.150 through 637.170, inclusive. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation.

12. Nevada State Board of Optometry

Although this board has retained private counsel in the past, it is our information that at the present time this board has decided not to retain private counsel in the future. Therefore, our office will be serving both as advisor and prosecutor for this board in any contested case. Therefore, function will

be divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. In addition, the board is also represented in a judicial review action of a final board decision by private counsel. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 636.145 through 636.227, inclusive. Scope of practice is generally defined in NRS 636.025 and 636.345 through 636.395, inclusive. Provisions relating to disciplinary action are contained in NRS 636.290 through 636.340, inclusive. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board relating to statutory and regulatory interpretation. Furthermore, in the 12 month period immediately preceding the date of this letter the board has also solicited our advice on proposed legislation, proposed regulations and advise with respect to the processing of consumer complaint problems.

13. State Board of Oriental Medicine

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and would represent the board in judicial review of the board's final decisions. In the 12 month period immediately preceding the date of this letter our office has been engaged in litigation seeking injunctive relief against a particular instance of unlicensed practice. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of the statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 634A.110 through 634A.165, inclusive. Scope of practice is generally defined in NRS 634A.020 and 634A.200. Provisions relating to disciplinary action are contained in NRS 634A.170 and 634A.180. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation. Additionally, the

board will solicit our advise with respect to the appropriate interpretation of NRS 634A.225 which pertains to board approval of seminars concerning traditional oriental medicine which may be conducted in this state.

14. State Board of Osteopathic Medicine

This board has retained private counsel. Private counsel functions as the advisor to this board. Our office serves in a prosecutorial capacity before this board in the context of any contested case. Therefore, function is divided in contested cases. At the present time, private counsel is responsible for representation of the board in civil litigation. Our office would represent the board in judicial review of the board's final decisions in those cases in which our office served as the prosecutor at the administrative hearing. Occasionally we have been consulted by the board for advice on general licensing matters and citizen complaint procedures. In addition, the board has solicited our advise with respect to proposed regulations. Investigation which may be preliminary to disciplinary action is pending before this board at the present time. Our office is not involved in the examination of potential licensees.

15. State Board of Pharmacy

This board has retained private counsel. Private counsel functions in the capacity as advisor to this board. In addition, the board's private counsel prepares legislative and regulatory amendments pursuant to direction of the board. Our office serves in an advisory function to the executive secretary for the board. In addition, our office is the prosecutor before this board in the context of a contested case. Therefore, function is divided in any contested case presented to this board. At the present time, we are representing the board in judicial review of the board's final decision in a contested case. We render both oral and written opinions to the executive secretary for the board and on occasion to the board itself. Issues forming the basis of these opinions are usually concerned with the qualifications of applicants, scope of practice, and disciplinary action. NRS Chapter 639 and the regulations promulgated pursuant to that chapter by the board contain provisions relating to all three of these issues. Disciplinary action and investigation which is preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on some matters relating to statutory and

regulatory interpretation when requested to do so by the board's legal counsel or the board itself.

16. State Board of Physical Therapy Examiners

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of the statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications for registration of applicants are contained in NRS 640.080 through 640.150, inclusive, and 640.230 through 640.300, inclusive. Scope of practice is generally defined in NRS 640.024, 640.169 and 640.170. Provisions relating to disciplinary action are contained in NRS 640.160 through 640.167, inclusive. No disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation.

17. State Board of Podiatry

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigations subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of the statutes pertaining to qualifications of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in NRS 635.050 through 635.080, inclusive, and 635.093 through 635.098, inclusive. Scope of practice is generally defined in NRS 635.085 and 635.160. Provisions relating to disciplinary action are contained in NRS 635.130 through 635.150, inclusive, and 635.170. Investigation which may be preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we

may advise the board on matters relating to statutory and regulatory interpretation.

18. Board of Psychological Examiners

This board has not retained private counsel. Our office serves as both advisor and prosecutor for this board in any contested case. Therefore, function is divided in these cases. Our office is responsible for representation of the board in civil litigation subject to the limitations noted in our general comments and represents the board in judicial review of the board's final decisions. At the present time we represent the board in the appeal of a judicial review action which stands submitted before the Nevada Supreme Court. We render both oral and written opinions to the board on a variety of topics. The issues requiring our advice most frequently are concerned with the interpretation of the statutes pertaining to qualification of applicants, scope of practice and disciplinary action. Qualifications of applicants are contained in the provisions pertaining to certification which are set forth in NRS 641.160 through 641.220, inclusive. Scope of practice is generally defined in NRS 641.020 and 641.390 through 641.430, inclusive. Provisions relating to disciplinary action are contained in NRS 641.230 through 641.330, inclusive. Investigation which may be preliminary to disciplinary action has been initiated before this board within the 12 month period immediately preceding the date of this letter. Our office is not involved in the examination of potential licensees except that we may advise the board on matters relating to statutory and regulatory interpretation.

STATE AGENCIES

1. Department of Human Resources, Rehabilitation Division, Bureau of Alcohol and Drug Abuse

No private counsel has been retained to perform services on behalf of this particular agency of the state Department of Human Resources. The general comments pertaining to state agencies that were made at the outset of this letter describe the type of activities which we would perform on behalf of this bureau. Review and development of procedures for certifying personnel, accrediting programs and licensing facilities for the treatment of the abuse of alcohol or drugs are formulated by the advisory committee created pursuant to NRS 458.216. Review of that committee's annual report which is prepared pursuant to NRS 458.218(4) might present a better source of information for the subcommittee in evaluating the certification of personnel accreditation programs and licensure of facilities for the treatment of the abuse of alcohol or drugs.

2. State Department of Human Resources, Division
for Aging Services

This division has not retained private counsel. Our office performs services for the division of the same nature as noted in the general comments section of this letter when we described the types of services performed for state agencies in general. The activities of advocates for residents of facilities for long-term care can be described in greater detail by the chief of the aging services division of the department.

3. State Department of Human Resources, Health
Division

This division has not retained private counsel. The services performed by our office with respect to this division are similar in nature and extent to those described for state agencies generally in the general comments section of this letter. In addition, our services with respect to this division involve extensive advice and representation of the division in the context of the licensure of health care facilities, particularly in the area of health planning approval pursuant to NRS Chapter 439A. Fair hearing procedures pursuant to the chapter just cited and the attendant judicial review of final agency decisions has consumed an extensive portion of our services performed on behalf of this particular division of the state department.

4. State Department of Human Resources, Mental
Hygiene and Mental Retardation Division

This agency has not retained private counsel. Our office serves in a wide variety of functions on behalf of this division. Our duties are similar to those described for state agencies generally as outlined in the general comments section of this letter. In addition to those general functions, our office devotes a significant amount of time to the representation of the division in civil litigation in which the division is named as a party. In addition, our office represents the agency in personnel action and collections actions that are maintained by the division. We serve as advisor to the division's advisory committee which has been created pursuant to the provisions of NRS Chapter 433. Like other state agencies, we render both formal and informal opinions to this agency on request pertaining to a wide variety of legal issues.

5. State Department of Human Resources, Welfare
Division, Nevada Medicaid Section


This agency has not retained private counsel. Our office performs a wide variety of services for this agency as outlined in the general comments section of this letter. Services to the agency will include representation of the agency in general civil litigation in which the agency has been named as a party. Furthermore, our office is involved in fair hearing procedures before the agency's hearing officer which review administrative decisions pertaining to the rights of medicaid recipients as well as the suspension of provider contracts. These hearings entail activities on the part of our office similar to those engaged in other contested cases. Other activities performed on behalf of the division include the preparation and review of contracts between the welfare division and health care providers for reimbursement purposes.

CONCLUSIONS

The questions posed by Mr. Williams in his correspondence to this office were general in nature. Our responses to those inquiries are also of a general nature in keeping with the tone of the questions posed. If the subcommittee desires more specific information concerning our activities on behalf of these state agencies and boards, our office would be more than happy to provide additional information in response to specific inquiries. We appreciate the opportunity to assist the subcommittee in completing its study.

Sincerely,

BRIAN MCKAY
Attorney General

By 
William E. Isaef
Chief Deputy
Attorney General

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APPENDIX C

Letter, Dated February 10, 1984, from Richard A. Sheffield,
Associate Legislative Counsel, for Frank W. Daykin,
Legislative Counsel, to Senator William J. Raggio
Concerning Whether Psychotherapy and
Hypnosis May be Used as Means of
Professional Treatment by Naturopaths
or the Practitioners of any
Professions Other Than Psychology

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February 10, 1984

Senator William J. Raggio
Chairman, Legislative Commission's
Subcommittee to Study Providers of
Health Care and Health and Care Facilities
Post Office Box 3137
Reno, Nevada 89505

Dear Senator Raggio:

The subcommittee has asked the legislative counsel to determine whether psychotherapy and hypnosis may be used as means of professional treatment by naturopaths or the practitioners of any profession other than psychology.

Under Nevada law the members of two professions are authorized to practice medicine in the broadest sense. Physicians who are licensed pursuant to chapter 630 of NRS may treat "any human disease, ailment, injury, infirmity, deformity or other condition, physical or mental, by any means or instrumentality." (NRS 630.020) Osteopaths who are licensed pursuant to chapter 633 of NRS may use "full methods of diagnosis and treatment in physical and mental health and disease." (NRS 633.081) These two classes of physicians may therefore include psychotherapy and hypnosis among their methods of treatment.

Marriage and family counselors who are licensed pursuant to chapter 641A of NRS may apply "established principles of learning, motivation, perception, thinking, emotional, marital and sexual relationships and adjustments." The "application of such principles includes ***the use of psychotherapeutic measures." (NRS 641A.080) Since these counselors have express statutory authorization to use psychotherapy, the only question is whether they may also use hypnosis.

Senator William J. Raggio
February 10, 1984
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Dorland's Medical Dictionary, 24th edition, defines "psychotherapy" as treatment "designed to produce a response by mental rather than by physical effects, including the use of suggestion, persuasion *** and support, as well as the techniques of hypnosis ***". The only use of the word "hypnosis" in NRS is in subsection 5 of NRS 641.020 where psychotherapeutic measures are described as including hypnosis.

A reasonable interpretation of the authority of marriage and family counselors to use psychotherapeutic measures in their field is that these measures may include hypnosis.

In chapter 631 of NRS each activity which constitutes the practice of dentistry is stated. One statement is that a person shall be deemed to be practicing dentistry who administers such "remedies, medicinal or otherwise, as are needed in the treatment of dental or oral diseases." (Para. (j) of subsection 1 of NRS 631.215) Although the part of the human body which a dentist may treat is limited, his means are not limited. Consequently, he is authorized to use hypnosis to produce anesthesia.

Practitioners of audiology and speech pathologists are authorized to treat impairments of hearing and speech respectively for modifying "disorders in communication." (NRS 637B.050 and 637B.060) Since the statutes do not limit their means of treatment, these practitioners may use psychotherapy and hypnosis within the appropriate fields.

The authorized professional activities of podiatrists are specifically listed by statute. (NRS 635.085) Podiatrists may not use psychotherapy or hypnosis because those methods of treatment are not included in the list.

The methods of treatment which may be used by homeopaths, chiropractors, practitioners of Oriental medicine, and naturopaths are limited by the statutory definitions of their particular systems of healing.

"Homeopathic medicine" is described as a "system of medicine employing substances of animal, vegetable, chemical or mineral origin." (NRS 630A.040) Because psychotherapy and hypnosis are not performed through the use of any substances, those methods are not applicable to the homeopathic system.

Senator William J. Raggio
February 10, 1984
Page three

"Chiropractic" is defined as "the practice of palpating and adjusting the articulations of the human body by hand, the use of physiotherapy, hygienic, nutritive and sanitary measures ***." (NRS 634.013) The reference to physiotherapy but omission of psychotherapy is significant. Clearly, psychotherapy and hypnosis are excluded from the authorized activities.

The permissible activities of practitioners of traditional Oriental medicine are commensurate with the definitions set forth in chapter 634A of NRS. "Acupuncture" means "the insertion of needles into the human body" and "herbal medicine" means the use of medicinal herbs for the cure or relief "of any ailment or disease of the mind or body." (NRS 634A.020) The practitioners of each branch of the profession are excluded from use of psychotherapy and hypnosis.

Naturopaths are members of another restricted profession of healing, and so the definition of the practice governs its scope. "Naturopathic healing" is defined generally as "natural healing including the use of natural agencies." (NRS 633A.070) It is not easy to determine whether psychotherapy and hypnosis are "natural" and what test should be used to distinguish a natural from an artificial method. The rest of the definition, however, suggests a limit to the generality of "natural" by speaking of "diet and nutrition" and "manual manipulation, including the physical, chemical and other properties of heat, light, water and electricity," which are methods of treatment unlike psychotherapy and hypnosis. Because psychotherapy and hypnosis are not expressly or impliedly included in the definition of the practice, those methods must be considered outside the scope of a naturopath's authorized activities.

Very truly yours,

Frank W. Daykin
Legislative Counsel

By Richard A. Sheffield
Richard A. Sheffield
Associate

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APPENDIX D

Letter, Dated May 8, 1984, from Kimberly A. Morgan,
Principal Deputy Legislative Counsel, for
Frank W. Daykin, Legislative Counsel,
to Senator William J. Raggio Regarding
Whether Members of a State Board
Incur Personal Civil Liability
When They Act Contrary to Legal
Advice and Concerning
Other Matters

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May 8, 1984

Senator William J. Raggio
Chairman, Legislative Commission's
Subcommittee to Study Providers of
Health Care and Health and Care
Facilities
P.O. Box 3137
Reno, NV 89505

Dear Senator Raggio:

The legislative counsel has assigned me to provide your subcommittee with legal advice and draft any proposed legislation which results from the study. Mr. Richard Sheffield, the subcommittee's former counsel, has recently retired.

I offer the following responses to the questions submitted to this office for reply.

DO THE MEMBERS OF A BOARD OF THE EXECUTIVE DEPARTMENT OF STATE GOVERNMENT INCUR PERSONAL CIVIL LIABILITY WHEN THEY ACT CONTRARY TO THE ADVICE GIVEN BY THE ATTORNEY GENERAL OR OTHER PERSON WHO PROVIDES LEGAL ADVICE TO THE BOARD?

The Supreme Court of Nevada has not addressed this particular question. However, in Gurley v. Brown, 65 Nev. 245 (1948), the court reiterated the following pertinent general principles. A public officer is not personally liable for an injury which arises as a consequence of an act performed within the scope of his official authority and in the line of his official duty. Even negligence, an error or mistake in judgment does not give rise to personal liability provided the act complained of was within the scope of his authority and without wilfulness, malice or corruption. However, he is personally liable for damages resulting from:

1. An act which exceeds the scope of his official authority.

2. The exercise of his official discretion where corruption or malice is imputed.

3. His omission to perform or his negligent performance of a wholly ministerial task (one which involves no question of discretion because the duty is mandatory, plain and certain and involves only the execution of a set task).

Ignoring the advice of his legal counsel would have no direct bearing on a public officer's personal liability. However, it may have an effect upon the determination of his negligence, malice and the scope of his authority.

IS THE STATE OF NEVADA LIABLE FOR DAMAGES WHICH ARISE FROM THE ACT OR OMISSION OF A BOARD OF THE EXECUTIVE DEPARTMENT OF STATE GOVERNMENT?

The state may be held liable for certain actions or omissions of such a board because the State of Nevada has, under certain circumstances, waived its sovereign immunity by enacting the provisions set forth in NRS 41.0305 to 41.039, inclusive. The waiver is limited. It does not, for example, permit an action:

1. Based upon an act or omission by a public officer who was exercising due care in the execution of a statute or regulation; or

2. Based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty, whether or not the discretion involved is abused.
(NRS 41.032)

No judgment may be entered against the State of Nevada for an act or omission of a public officer which was outside the course and scope of his public duties. (NRS 41.03475)

If a judgment is entered against a public officer based on an act or omission which was wanton or malicious, the state need not indemnify him. (NRS 41.0349)

WHICH LICENSING BOARDS UNDER THE PURVIEW OF THIS STUDY
HAVE STATUTORY AUTHORITY TO RETAIN PRIVATE LEGAL COUNSEL?

The attorney general and his deputies are the legal advisers to the executive department of state government. No private attorney may be employed to advise or represent any agency in the executive department unless:

1. The attorney general and his deputies are disqualified; or
2. The legislature specifically authorizes the employment of other attorneys. (NRS 228.110)

The legislature has specifically authorized 13 of the 18 boards which license providers of health care and health and care facilities to employ other attorneys. The citation of the statutory authority is respectively set forth for each such board. The boards listed without a statutory reference are the boards which have not been authorized to employ other attorneys.

<u>Boards</u>	<u>Statutory Authority</u>
Board of Examiners for Audiology and Speech Pathology	—
Nevada State Board of Chiropractic Examiners	NRS 634.043
Board of Dental Examiners of Nevada	NRS 631.190
Board of Hearing Aid Specialists	—
Board of Homeopathic Medical Examiners	NRS 630A.190
Board of Marriage and Family Counselor Examiners	—
Board of Medical Examiners of the State of Nevada	NRS 630.125

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<u>Boards</u>	<u>Statutory Authority</u>
Board of Naturopathic Healing	NRS 633A.200
State Board of Nursing	NRS 632.065
Nevada State Board of Examiners for Nursing Facility Administrators	--
Board of Dispensing Opticians	NRS 637.070
Nevada State Board of Optometry	NRS 636.090
State Board of Oriental Medicine	NRS 634A.070
State Board of Osteopathic Medicine	NRS 633.271
State Board of Pharmacy	NRS 639.070
State Board of Physical Therapy Examiners	NRS 640.050
State Board of Podiatry	NRS 635.035
Board of Psychological Examiners	--

DOES THIS OFFICE AGREE WITH THE RESPONSE FROM DAVID A. GATES, ESQ., INSURANCE DIVISION, DEPARTMENT OF COMMERCE, IN HIS LETTER OF SEPTEMBER 26, 1983, TO LON L. HARTER, D.C., REGARDING THE INAPPLICABILITY OF THE VARIOUS PROVISIONS OF TITLE 57 OF NRS TO AGREEMENTS FOR THE PAYMENT OF HEALTH BENEFITS TO EMPLOYEES BY AN EMPLOYER WHO HAS NOT TRANSFERRED THE RESPONSIBILITY FOR SUCH PAYMENTS TO AN INSURER?

The letter to Dr. Harter from David Gates, Esq., correctly sets forth the statutory authority of the insurance division of the department of commerce to regulate matters concerning insurance. The provisions of Title 57 of NRS do not apply to an agreement by an employer to pay certain medical expenses for his employees when that employer makes

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the required payments himself and does not transfer the risk of such payments to a third party (an insurer).

If the legislature desired to address Dr. Harter's concerns, it could limit the discriminatory treatment of chiropractors in that situation with a provision such as:

1. If an employer agrees to pay the expenses of certain medical care for an employee as a benefit of his employment, the employer shall not limit that agreement to payments only for the treatment of the particular illness by a physician when the treatment for the illness is also within the authorized scope of practice of a qualified chiropractor.

2. The terms of such an agreement must not:

(a) Provide coverage for a greater number of treatments by a physician than the number of covered treatments by a chiropractor.

(b) Limit reimbursement for treatments by a chiropractor to an amount less than that charged for similar treatments by a physician.

Very truly yours,

Frank W. Daykin
Legislative Counsel

By Kim Morgan
Kimberly A. Morgan
Principal Deputy

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APPENDIX E

Suggested Legislation

	<u>Page</u>
BDR 16-124.....Enlarges group of persons required to report instances of abuse, neglect or exploitation of older persons.....	75
BDR 34-125..... Creates advisory committee on non-accredited programs for education of providers of health care.....	79
BDR 39-126.....Makes various changes regarding licensing of certain providers of health care.....	89
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BDR 40-128.....Creates board to certify services relating to abuse of alcohol and drugs.	97
BDR 54-129.....Requires continuing education for certain professions and occupations....	121
BDR 54-130.....Removes restriction on reappointment of members of board of homeopathic medical examiners.....	131
BDR 54-131.....Changes composition of board of naturopathic healing and provides for expiration of licenses previously issued by board.....	133
BDR 54-132.....Broadens range of disciplinary actions available to state board of optometry..	137
BDR 54-133.....Removes exemption from examination for certification of dispensing opticians to fit contact lenses.....	145
BDR 54-134.....Increases fees for certification of marriage and family counselors and establishes privilege to refuse to disclose certain confidential communications.....	149

SUMMARY--Enlarges group of persons required to report instances of abuse, neglect or exploitation of older persons. (BDR 16-124)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to crimes against the person; requiring every person who maintains or is employed by a health and care facility to report instances of abuse, neglect or exploitation of older persons; 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 200.5093 is hereby amended to read as follows:

200.5093 1. [Immediately after] If any of the persons listed in subsection 2 suspects an instance of abuse, neglect or exploitation of an older person [is suspected, a report must be made] , he shall immediately report his suspicion to:

- (a) The local office of the welfare or aging services division of the department of human resources;
- (b) Any police department or sheriff's office; or
- (c) The county's office for protective services, if one exists in the county where the suspected action occurred.

If the report of abuse, neglect or exploitation involves an act or omission of the welfare division, aging services division or a law enforcement agency, the report must be made to an agency other than the one alleged to have committed the act or omission. Each agency, after reducing the report to writing, shall forward a copy of the report to the aging services division of the department of human resources.

2. Reports must be made by:

(a) Every physician, dentist, chiropractor, optometrist, resident [and intern licensed in this state who examines, attends or treats an older person who appears to have been abused, neglected or exploited.

(b) The superintendent, manager or other person in charge of a hospital or similar institution, upon notification, which must be given by every physician who has attended an older person who appears to have been abused, neglected or exploited pursuant to his performance of services as a member of the staff of the hospital or institution.

(c) Every] , intern, professional or practical nurse, physician's assistant, psychologist, ambulance driver and ambulance attendant licensed or certified to practice in this

state, who examines, attends or treats an older person who appears to have been abused, neglected or exploited.

[(d)] (b) Every clergyman or social worker.

[(e)] (c) Every person who maintains or is employed by a [group care facility.

(f)] health and care facility as defined in NRS 449.007.

(d) Every attorney, unless he has acquired the knowledge of abuse, neglect or exploitation from a client who has been or may be accused of the abuse, neglect or exploitation.

[(g)] (e) Any employee of the welfare or aging services division of the department of human resources.

[(h)] (f) Any employee of a police department, sheriff's office or a county's office for protective services.

3. Every physician who has, pursuant to his performance of services as a member of the staff of a hospital or similar institution, attended an older person who appears to have been abused, neglected or exploited shall notify the superintendent, manager or other person in charge of the institution. The superintendent, manager or other person in charge shall make a report as required in subsection 1.

4. A report may be filed by any other person.

[4.] 5. A division, office or department which receives a report pursuant to this section shall cause the investigation of the report within 3 working days.

[5.] 6. If the investigation of the report results in the belief that the older person is abused, neglected or exploited, the welfare division of the department of human resources or the county's office for protective services may provide protective services to the older person if he is able and willing to accept them.

SUMMARY--Creates advisory committee on nonaccredited programs for education of providers of health care. (BDR 34-125)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to postsecondary education; creating the advisory committee on nonaccredited programs for the education of providers of health care; providing its duties; authorizing a fee for the evaluation of certain programs; 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 394 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. The advisory committee on nonaccredited programs for the education of providers of health care is hereby created consisting of the following:

1. Permanent members:

(a) The chancellor of the University of Nevada System or his designee as chairman;

(b) The superintendent of public instruction or his designee as vice chairman; and

(c) A representative of the general public appointed by the commission who is not professionally associated with:

(1) A postsecondary educational institution; or

(2) The provision of health care; and

2. Alternate members:

(a) The presiding officer of:

(1) The board of medical examiners of the State of Nevada;

(2) The board of homeopathic medical examiners;

(3) The board of dental examiners of Nevada;

(4) The state board of nursing;

(5) The state board of osteopathic medicine;

(6) The Nevada state board of chiropractic examiners;

(7) The state board of Oriental medicine;

(8) The state board of podiatry;

(9) The Nevada state board of optometry;

(10) The board of dispensing opticians;

(11) The state board of physical therapy examiners; and

(12) The board of psychological examiners; and

(b) A person licensed by each of the boards mentioned in this subsection appointed by the commission who is not:

(1) A member of the board; or

(2) Professionally associated with the University of Nevada System.

Sec. 3. 1. The administrator shall serve as the executive secretary of the advisory committee on nonaccredited programs for the education of providers of health care and shall provide the advisory committee with the clerical, administrative and other services necessary to perform its functions.

2. Each member of the advisory committee is entitled to the subsistence allowance and travel expenses provided by law for state officers and employees.

Sec. 4. 1. If an application is filed for the issuance or the renewal of a license to operate an institution which offers an educational program related to a provider of health care, the administrator shall notify the chairman of the commission and shall refer the application and the supporting materials to the chairman of the advisory committee on nonaccredited programs for the education of providers of health care.

2. Within 10 working days after receipt of the application, the chairman of the advisory committee shall convene a panel of the advisory committee to review the application

and evaluate its contents. The panel consists of the permanent members of the committee and one or more pairs of the alternate members representing the profession or professions most closely associated with the subject of the educational program. The panel may employ a consultant with demonstrable knowledge or expertise in the subject or subjects normally associated with the program to aid the panel in evaluating the program.

3. The panel shall evaluate the quality of each course or element of instruction, training or study of the program to determine whether or not it adequately meets the stated objective for which it is offered. The evaluation must include an appraisal of:

- (a) The credentials and experience of each instructor;
- (b) The resources which the applicant has available to support the study required by the program; and
- (c) The scope and quality of the clinical or practical instruction that is to be offered in the program.

4. The panel shall submit its written evaluation, recommendation and a statement of the actual cost of the evaluation to the commission within 90 days after it convenes. The recommendation may be to grant the issuance or renewal of the license or to refuse the issuance or renewal for the reasons stated in the evaluation.

5. If the advisory committee recommends against the issuance or renewal of a license, the commission may issue the license or grant the renewal only by the unanimous vote of the members of the commission.

6. As used in this section, "educational program related to a provider of health care," means a program of instruction leading to a degree, diploma or certificate in a field of study that purports to meet or to fulfill substantially the educational requirement for a license to practice as a physician licensed under chapter 630, 630A or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatrist, licensed psychologist, chiropractor, doctor of traditional Oriental medicine in any form, pharmacist, medical laboratory director or technician.

Sec. 5. NRS 394.385 is hereby amended to read as follows:

394.385 1. The governor shall appoint:

(a) One member who is a representative of the state board of education.

(b) Two members who hold advanced degrees and are knowledgeable in the field of higher education, but not persons

representing postsecondary educational institutions, or colleges established or maintained under the laws of this state.

(c) Two members who are representatives of private postsecondary educational institutions.

(d) Two members who are representatives of the general public and are not associated with the field of education.

2. The commission shall designate a chairman. The administrator is the executive secretary. The commission may meet regularly at least four times each year at such places and times as may be specified by a call of the chairman or majority of the commission. The commission shall prescribe regulations for its own management. Four members of the commission constitute a quorum which may exercise all the authority conferred upon the commission.

3. Any commissioner may be removed by the governor if, in his opinion, the commissioner is guilty of malfeasance in office or neglect of duty.

Sec. 6. NRS 394.540 is hereby amended to read as follows:

394.540 1. All fees collected pursuant to [the provisions of the Postsecondary Educational Authorization Act] NRS 394.361 to 394.560, inclusive, and sections 2, 3 and 4 of this act must be collected by the administrator and deposited in the state treasury to the credit of the state

general fund . [, and no fees so collected are subject to refund. The fees, to be collected by the administrator,] No fee is refundable. The fees listed in subsection 2 must accompany an application for a license to operate or an agent's permit.

2. The commission shall [, by regulation, adopt a fee schedule which may not exceed the following:

(a) The initial application fee or renewal fee for a postsecondary educational institution..... \$250

(b) The initial fee or renewal fee for an agent's permit 30]

charge and collect not more than the following fees respectively:

For application for and issuance of a license to operate a postsecondary educational institution..... \$250

For renewal of a license to operate a postsecondary educational institution..... 250

For application for and issuance of an agent's permit..... 30

For renewal of an agent's permit..... 30

3. The commission may charge and collect, from each applicant for a license to operate a postsecondary educational institution which offers an educational program

related to a provider of health care or the renewal of such a license, a fee which must not exceed the actual cost of evaluating the program.

Sec. 7. NRS 394.630 is hereby amended to read as follows:

394.630 No person [, firm, association, partnership or corporation may award, bestow, confer, give, grant, convey or sell] may grant to any other person a degree or honorary degree upon which is inscribed, in any language, the word "associate," "bachelor," "baccalaureate," "master," "doctor" or "fellow," or any abbreviation thereof, unless it is a [school, academy, institute, community college, junior college, college, university or other educational organization or entity] postsecondary educational institution located in the State of Nevada or operating from a place of business in this state which offers courses of instruction or study wherein credits may be earned toward an academic or professional degree in any field of endeavor beyond the secondary school level, and:

1. Is accredited by an accrediting association recognized by the United States Department of Education; or

2. Has filed and kept current with appropriate amendments, in the office of the administrator, an affidavit by the president of the institution : [stating]

(a) Stating that the majority of the [course] credits for

courses offered by the institution are generally acceptable or transferable to at least [one college or university] two colleges or universities which:

(1) Offer the same type of degree proposed by the institution;

(2) Are unassociated with the institution; and

(3) Are accredited by an accrediting association recognized by the United States Department of Education [.] ; and

(b) Identifying the information upon which the decision regarding the acceptability or transferability of the credits was based, including:

(1) The institution's list of its faculty;

(2) The extent of the institution's library; and

(3) Any other factual representations made to the college or university about the institution.

SUMMARY--Makes various changes regarding licensing of certain providers of health care. (BDR 39-126)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to providers of health care; requiring certain providers of health care employed by the state to be licensed by the appropriate state licensing board; requiring certain persons professionally qualified in the field of psychiatric mental health employed by the state to demonstrate proficiency in the English language; directing various related studies by the department of personnel; 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 433 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. Any person employed by the division as a psychiatrist, psychologist or professional nurse must be licensed or certified by the appropriate state licensing board for his respective profession.

Sec. 3. Any psychiatrist who is employed by the division must be certified by the American Board of Psychiatry and Neurology within 3 years after his first date of employment

with the division. The administrator shall terminate the employment of any psychiatrist who fails to receive such certification.

Sec. 4. The administrator shall not employ any psychiatrist, psychologist or professional nurse who holds a master's degree in the field of psychiatric nursing who is unable to demonstrate proficiency in the oral and written expression of the English language.

Sec. 5. NRS 433.209 is hereby amended to read as follows:

433.209 "Person professionally qualified in the field of psychiatric mental health" means:

1. A psychiatrist licensed to practice medicine in the State of Nevada [;] and certified by the American Board of Psychology and Neurology;

2. A psychologist certified to practice in this state ;
[or employed as such by the division;]

3. A social worker who holds a master's degree in social work, or is a candidate for that degree and is employed by the division; or

4. A registered nurse who [holds a master's degree in the field of psychiatric nursing and is] ;

(a) Is licensed to practice as a professional nurse in this state;

(b) Holds a master's degree in the field of psychiatric nursing; and

(c) Is employed by the division.

Sec. 6. The provisions of section 2 do not apply to any person employed by the mental hygiene and mental retardation division of the department of human resources before July 1, 1985. Such a person must obtain the requisite license or certificate before July 1, 1988, or he must be reclassified or placed under the supervision of a person who is so licensed or certified.

Sec. 7. The provisions of section 3 do not apply to any psychiatrist who is employed by the mental hygiene and mental retardation division of the department of human resources before July 1, 1985. Such a psychiatrist must obtain certification from the American Board of Psychiatry and Neurology before July 1, 1988, or he must be reclassified or placed under the supervision of a person who is so certified.

Sec. 8. 1. The provisions of section 4 do not apply to persons professionally qualified in the field of psychiatric mental health who are employed by the mental hygiene and mental retardation division of the department of human resources before July 1, 1985. Before January 1, 1986, the

administrator of the mental hygiene and mental retardation division of the department of human resources shall require those persons to demonstrate to him their respective proficiency in the oral and written expression of the English language.

2. The administrator shall terminate the employment of any such person who is unable to demonstrate the requisite proficiency.

3. As used in this section, the term "person professionally qualified in the field of psychiatric mental health" means:

(a) A psychiatrist licensed to practice medicine in the state of Nevada;

(b) A psychologist certified to practice in this state; or

(c) A registered nurse who holds a master's degree in the field of psychiatric nursing.

Sec. 9. 1. The department of personnel shall conduct a study of the potential effect of requiring all providers of health care who are employed by the state to be licensed or certified by their respective state licensing boards. The department shall report the results of the study and any related recommendations to the 64th session of the Nevada legislature.

2. The department of personnel shall conduct a study of

the potential effect of requiring all providers of health care who are employed by the state to demonstrate proficiency in the oral and written expression of the English language. The department shall report the results of the study and any related recommendations to the 64th session of the Nevada legislature.

3. As used in this section, the term "provider of health care" means a physician licensed under chapter 630, 630A or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatrist, licensed psychologist, chiropractor, doctor of traditional Oriental medicine in any form, pharmacist or medical laboratory director or technician.

Sec. 10. Section 5 of this act becomes effective on July 1, 1988.

SUMMARY--Provides for regulation of all group care facilities regardless of size. (BDR 40-127)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to health and care facilities; broadening the definition of group care facilities to provide for regulation of such facilities regardless of size; 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 449.005 is hereby amended to read as follows:

449.005 1. "Group care facility" means an establishment operated and maintained for the purpose of furnishing food, shelter and personal care or services other than nursing care to:

(a) [Four or more] Any ambulatory aged, infirm, mentally retarded or handicapped [persons] person unrelated to the person operating the facility; or

(b) Four or more females during pregnancy or after delivery, who are unrelated to the person operating the facility.

2. The term does not include any establishment which provides care only during the day.

Sec. 2. NRS 427A.020 is hereby amended to read as follows:

427A.020 As used in this chapter, unless the context otherwise requires:

1. "Administrator" means the chief of the aging services division of the department.
2. "Advocate" means an advocate for residents of facilities for long-term care.
3. "Commission" means the Nevada commission on aging.
4. "Day care center" means a day care facility for adults as defined in NRS 449.004.
5. "Department" means the department of human resources.
6. "Director" means the director of the department.
7. "Division" means the aging services division of the department.
8. "Facility for long-term care" means:
 - (a) A group care facility as defined in NRS 449.005;
 - (b) An intermediate care facility as defined in NRS 449.014; and
 - (c) A skilled nursing facility as defined in NRS 449.018 .
[; and
 - (d) A family home or other establishment, whether or not certified or licensed by any state or local governmental

agency, in which room and board, laundry services and continuous protection and oversight are provided for compensation to not more than three adult persons who:

(1) By reason of age or disability are incapable of independent living but do not require the care of a practical or professional nurse; and

(2) Are not related to the person or persons maintaining the home or establishment.]

SUMMARY--Creates board to certify services relating to abuse of alcohol and drugs. (BDR 40-128)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: Yes.

AN ACT relating to the abuse of alcohol and drugs; creating the board on certification of services relating to the abuse of alcohol and drugs; providing its powers and duties; authorizing the collection of certain fees; requiring certification by the board for the provision of certain services; designating the bureau of alcohol and drug abuse of the rehabilitation division of the department of human resources as the agency to approve certain educational courses; providing penalties; 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 449.002 is hereby amended to read as follows:

449.002 "Alcohol or drug treatment facility" means any public or private institution, except an educational institution, which is engaged in education concerning [alcohol or drug abuse,] the abuse of alcohol or drugs, prevention of the abuse and treatment, including mental and physical restoration, of [alcohol or drug] abusers of alcohol or drugs which is certified by the [bureau of alcohol and drug abuse in the rehabilitation division of the department of human

resources, pursuant to subsection 3 of NRS 458.025.] board on certification of services relating to the abuse of alcohol and drugs pursuant to section 14 of this act. The term "alcohol or drug treatment facility" does not include services offered by volunteers or voluntary organizations.

Sec. 2. Chapter 458 of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 16, inclusive, of this act.

Sec. 3. "Abuser" means a person whose consumption of alcohol or other drugs, or any combination thereof, interferes with or adversely affects his ability to function socially or economically.

Sec. 4. "Board" means that board on certification of services relating to the abuse of alcohol and drugs.

Sec. 5. "Bureau" means the bureau of alcohol and drug abuse in the rehabilitation division of the department.

Sec. 6. "Chief" means the chief of the bureau.

Sec. 7. "Civil protective custody" means a custodial placement of a person to protect his health or safety. Civil protective custody does not have any criminal implication.

Sec. 8. "Department" means the department of human resources.

Sec. 9. "Director" means the director of the department.

Sec. 10. "Facility" means a physical structure where a program is carried on.

Sec. 11. "Program" means a project concerned with education, prevention and treatment directed toward achieving the mental and physical restoration of abusers.

Sec. 12. There is hereby created within the bureau the board on certification of services relating to the abuse of alcohol and drugs consisting of five members. The governor shall appoint:

1. Two members certified by the board to counsel abusers, except the initial members who must be so certified by the bureau;

2. One member who is a certified psychologist;

3. One member who is an educator with demonstrable experience in training persons in the treatment and rehabilitation of abusers; and

4. One member who is a representative of the general public.

Sec. 13. 1. The board shall select annually one of its members to serve as presiding officer. It may meet regularly each quarter and specially at times and places specified by the presiding officer.

2. The chief shall serve as secretary of the board and

shall provide the board with the services of the bureau necessary to perform its functions.

3. Each member of the board is entitled to receive:

(a) A salary of \$60 per day while engaged in the business of the board.

(b) Actual and necessary expenses for subsistence and lodging, not to exceed \$25 per day, and for transportation while traveling on the business of the board.

Sec. 14. The board shall:

1. Adopt regulations governing:

(a) The qualification, discipline and continuing education of persons who counsel abusers;

(b) The qualification, discipline and continuing education of persons who administer programs; and

(c) The standards for programs and facilities.

2. Certify qualified persons to counsel abusers or administer programs.

3. Certify qualified programs and facilities.

4. Charge and collect necessary and reasonable fees for its services.

Sec. 15. 1. A certificate is valid from the date of its issuance until the last day of June in the year following the year of issuance and may be renewed for successive periods of 1 year.

2. No certificate may be renewed unless the holder successfully completes the program of continuing education required by the board.

Sec. 16. A person who:

1. For compensation, counsels another person regarding the abuse of alcohol or drugs; or

2. Administers a program, without a certificate to do so which is issued by the board is guilty, for the first offense, of a misdemeanor and, for the second or a subsequent offense, of a gross misdemeanor.

Sec. 17. NRS 458.010 is hereby amended to read as follows:

458.010 As used in this chapter, unless the context [requires otherwise:

1. "Alcohol and drug abuse program" means a project concerned with education, prevention and treatment directed toward achieving the mental and physical restoration of alcohol and drug abusers.

2. "Alcohol and drug abuser" means a person whose consumption of alcohol or other drugs, or any combination thereof, interferes with or adversely affects his ability to function socially or economically.

3. "Alcoholic" means any person who habitually uses alcoholic beverages to the extent that he endangers the health, safety or welfare of himself or any other person or group of persons.

4. "Bureau" means the bureau of alcohol and drug abuse in the rehabilitation division of the department.

5. "Chief" means the chief of the bureau.

6. "Civil protective custody" means a custodial placement of a person for the purpose of protecting his health or safety. Civil protective custody does not have any criminal implication.

7. "Department" means the department of human resources.

8. "Director" means the director of the department.

9. "Facility" means a physical structure used for the education, prevention and treatment, including mental and physical restoration, of alcohol and drug abusers.] otherwise requires, the words and terms defined in sections 3 to 11, inclusive, of this act have the meanings ascribed to them in those sections.

Sec. 18. NRS 458.025 is hereby amended to read as follows:

458.025 The bureau of alcohol and drug abuse is hereby

created in the rehabilitation division of the department.

The bureau:

1. Shall formulate and operate a comprehensive state plan for [alcohol and drug abuse programs which shall] programs which must include but is not [be] limited to:

(a) A survey of the need for [education, prevention and treatment of alcohol and drug abuse, including a survey of the facilities needed to provide services] programs and facilities and a plan for the development and distribution of services and programs throughout the state.

(b) A plan for programs to educate the public in the problems of the abuse of alcohol and other drugs.

(c) A survey of the need for trained teachers, persons who have professional training in health fields and others involved in [alcohol and drug abuse education and prevention and in the treatment and recovery of alcohol and drug abusers,] programs and a plan to provide [such] necessary treatment.

In developing and revising the state plan, the bureau shall consider, among other things, the amount of money available from the Federal Government for [alcohol and drug abuse] programs and the conditions attached to the acceptance of [such] the money, and the limitations of legislative appropriations for [alcohol and drug abuse] programs.

2. Is responsible for coordinating efforts to carry out the state plan and coordinating all state and federal funding of [alcohol and drug abuse] programs in the state. The bureau must be consulted in the planning of projects and advised of all [grant] applications from within the state for grants which are concerned with [alcohol and drug abuse] programs, and [has the responsibility to] shall review and advise concerning such applications.

3. Shall develop and publish standards [of certification and may certify or deny certification of any facilities, programs or personnel on the basis of the standards, and] for the certification of programs, facilities and persons who administer programs or counsel abusers. The bureau shall publish a list of certified facilities, programs and personnel. Any facilities, programs or personnel which are not certified are ineligible to receive state and federal [funds for alcohol and drug abuse programs.

4. Upon request from a self-supported facility, has the authority to certify such facility, its programs and personnel and add them to the list of certified facilities, programs and personnel.] money for programs.

Sec. 19. NRS 458.091 is hereby amended to read as follows:

458.091 [Alcohol and drug abusers shall] Abusers must be admitted to public or private general medical hospitals which receive federal or state [funds for alcohol and drug abuse] money for programs, and [shall] must be treated [in such hospitals] on the basis of their medical need. [No general medical] A hospital that violates this section is not eligible to receive further federal or state assistance pursuant to the provisions of this chapter.

Sec. 20. NRS 458.097 is hereby amended to read as follows:

458.097 All money received by the bureau pursuant to NRS 369.174 must be used to increase services for the prevention of [alcohol abuse and] alcoholism and the abuse of alcohol and for the detoxification and rehabilitation of [abusers.] persons who abuse alcohol. In allocating the money for the increase of services, the bureau shall give priority to:

1. The areas where there exists a shortage of personnel to conduct treatment for alcoholism and [alcohol abuse.] the abuse of alcohol. The bureau must determine the areas of shortage on the basis of data available from state and local agencies, data contained in the comprehensive state plan for [alcohol and drug abuse] programs and other appropriate data.

2. The needs of counties to provide civil protective custody, pursuant to NRS 458.270, for persons who are found in public places while under the influence of alcohol.

Sec. 21. NRS 458.216 is hereby amended to read as follows:

458.216 1. An advisory committee on insurance covering the treatment of [alcoholism and drug abuse,] abusers of alcohol and drugs, consisting of thirteen members, is hereby created.

2. The governor shall appoint:

(a) One member who is a representative of the insurance division of the department of commerce.

(b) One member who is a representative of the bureau.

(c) Two members who are legislators.

(d) One member who is a representative of a medical service corporation.

(e) One member who is a representative of a commercial insurance company.

(f) One member who is a representative of business and industry and one who is a representative of labor. One of these members must represent persons who hold contracts for

group health insurance issued by a medical service corporation and the other must represent persons who hold contracts for group health insurance issued by a commercial carrier.

(g) Two members who are representatives of persons who provide treatment for abusers . [of alcohol or drugs.]

(h) Three members who are representatives of the general public.

Sec. 22. NRS 458.218 is hereby amended to read as follows:

458.218 The committee shall:

1. Review the provisions of the law relating to insurance coverage for the cost of treatment of [the abuse of alcohol or drugs.] abusers.

2. Review the structure of insurance benefits, the use of those benefits and methods of containing costs of insurance coverage for such treatment, including the feasibility of providing incentives to employers who create and maintain programs which identify and refer for treatment employees who are abusers . [of alcohol or drugs.]

3. Review and develop procedures for certifying personnel, accrediting programs and licensing facilities.

4. Prepare an annual report, containing its recommendations, for the legislature and the governor.

Sec. 23. NRS 458.270 is hereby amended to read as follows:

458.270 1. Except as provided in subsection 7, a person who is found in any public place under the influence of alcohol, in such a condition that he is unable to exercise care for his own health or safety or the health or safety of others, [shall] must be placed under civil protective custody by a peace officer.

2. A peace officer may use upon [such] the person that kind and degree of force which would be lawful if he were effecting an arrest for a misdemeanor with a warrant.

3. If a [licensed facility for the treatment of alcohol abusers] facility which is certified to treat abusers of alcohol exists in the community where the person is found, he [shall] must be delivered to [such] the facility for observation and care. If no such facility exists in the community, the person so found may be placed in a county or city jail for shelter or supervision for his own health and safety until he is no longer under the influence of alcohol. He may not be required against his will to remain in either a [licensed] facility or a jail longer than 48 hours.

4. An intoxicated person taken into custody by a peace officer for a public offense [shall] must immediately be

taken to a secure unit for detoxification [unit] or other appropriate medical facility if his condition appears to require emergency medical treatment. Upon release from the [detoxification] unit or medical facility, [such person shall] the person must immediately be remanded to the custody of the apprehending peace officer and criminal proceedings [shall] must proceed as prescribed by law.

5. The placement of such a person in civil protective custody [shall] must be recorded at the facility or jail to which he is delivered and communicated at the earliest practical time to his family or next of kin if they can be located and to the division or to a local [alcohol abuse authority] agency for the treating abusers of alcohol designated by the division.

6. Every peace officer and other public employee or agency acting pursuant to this section is performing a discretionary function or duty.

7. The provisions of this section [shall] do not apply to any driver apprehended or arrested for the offense of operating a vehicle under the influence of intoxicating liquor or controlled substances, pursuant to chapter 484 of NRS.

Sec. 24. NRS 458.290 is hereby amended to read as follows:

458.290 As used in NRS 458.300 to 458.350, inclusive, unless the context otherwise requires : [, "drug]

1. "Alcoholic" means any person who habitually uses alcoholic beverages to the extent that he endangers the health, safety or welfare of himself or any other person.

2. "Drug addict" means any person who habitually takes or otherwise uses any controlled substance as defined in chapter 453 of NRS, other than any maintenance dosage of a narcotic or habit-forming drug administered pursuant to chapter 453 of NRS, to the extent that he endangers the health, safety or welfare of himself or any other person . [or groups of persons.]

Sec. 25. NRS 458.300 is hereby amended to read as follows:

458.300 Subject to the provisions of NRS 458.290 to 458.350, inclusive, an alcoholic or a drug addict who has been convicted of a crime is eligible to elect treatment [under the supervision of a state-approved alcohol or drug treatment] at a facility before he is sentenced unless:

1. The crime is a crime against the person as provided for in chapter 200 of NRS;

2. The crime is that of selling a controlled substance as defined in chapter 453 of NRS;

3. The crime is that of driving under the influence of intoxicating liquor or while an habitual user or under the influence of a controlled substance or while incapable of safely driving because of the use of any chemical, poison or organic solvent as provided for in NRS 484.379, or such driving which causes the death of or substantial bodily harm to another person as provided in NRS 484.3795;

4. The alcoholic or drug addict has a record of one or more convictions of a crime of violence or of selling a controlled substance as defined in chapter 453 of NRS, or of two or more convictions of any felony;

5. Other criminal proceedings alleging commission of a felony are pending against the alcoholic or drug addict;

6. The alcoholic or drug addict is on probation or parole and the appropriate [parole or probation] authority does not consent to [such] the election; or

7. The alcoholic or drug addict elected and was admitted, pursuant to NRS 458.290 to 458.350, inclusive, to a [treatment] program on two prior occasions within any consecutive 2-year period.

Sec. 26. NRS 458.310 is hereby amended to read as follows:

458.310 1. If the court has reason to believe that a

person who has been convicted of a crime is an alcoholic or drug addict, or the person states that he is an alcoholic or drug addict, and the court finds that he is eligible to make the election provided for in NRS 458.300, the court shall hold a hearing before it sentences the person to determine whether or not he should receive treatment [under the supervision of a state-approved alcohol or drug treatment] at a facility. The district attorney may present the court with any evidence concerning the advisability of permitting the person to make the election.

2. At the hearing the court shall advise him that sentencing will be postponed if he elects to submit to treatment and is accepted for treatment [by a state-approved alcohol or drug treatment] at a facility. In offering the election, the court shall advise him that:

(a) If he elects to submit to treatment and is accepted, he may be placed [under the supervision of the treatment facility] in the facility's program for a period not to exceed 3 years;

(b) During treatment he may be confined in an institution or, at the discretion of the [treatment facility,] administrator of the program, released for treatment or supervised [aftercare] care in the community;

(c) If he satisfactorily completes treatment, as determined by the court, the conviction will be set aside, but if he does not satisfactorily complete the treatment, he may be sentenced and the sentence executed.

Sec. 27. NRS 458.320 is hereby amended to read as follows:

458.320 1. If the court, after a hearing, determines that a person is entitled to accept the treatment offered pursuant to NRS 458.310, the court shall order [an approved alcohol or drug treatment facility] the administrator of a facility's program to conduct an examination of the person to determine whether or not he is an alcoholic or drug addict and is likely to be rehabilitated through treatment. The [facility] administrator shall report to the court the results of the examination and recommend whether or not the person should be placed under supervision for treatment.

2. If the court, acting on the report or other relevant information, determines that the person is not an alcoholic or drug addict, or that he is not likely to be rehabilitated through treatment, he may be sentenced and the sentence executed.

3. If the court determines that the person is an alcoholic or drug addict and is likely to be rehabilitated

through treatment, the court may defer sentencing until such time, if any, as sentencing is authorized pursuant to NRS 458.330, and place the person [under the supervision of an approved alcohol or drug treatment] at a facility for treatment for a maximum of 3 years. The court may require such progress reports on the treatment of the person as it deems necessary.

4. No person may be placed [under the supervision of] at a facility under this section unless the [facility] administrator of the program accepts him for treatment.

Sec. 28. NRS 458.330 is hereby amended to read as follows:

458.330 1. Whenever a person is placed [under the supervision of a treatment] at a facility, his sentencing must be deferred, and his conviction must be set aside if the [treatment facility] administrator of the facility's program certifies to the court that he has satisfactorily completed the [treatment] program and the court approves the certification.

2. If, upon the expiration of the [treatment period, the treatment facility] time set by the court for treatment, the administrator has yet to certify that the person has completed his [treatment] program, the court shall sentence

him. If the court believes that he will complete his treatment on a voluntary basis, it may [, in its discretion,] set the conviction aside.

3. If, before the [treatment] period for treatment expires, the [treatment facility] administrator determines that the person is not likely to benefit from further treatment at the facility, [it] he shall so advise the court. The court shall then:

(a) Arrange for the transfer of [such] the person to a more suitable [treatment] facility, if any; or

(b) Terminate the supervision and conduct a hearing to determine whether the person should be sentenced.

Whenever a person is sentenced under this section, time spent in institutional care must be deducted from any sentence imposed.

Sec. 29. NRS 458.350 is hereby amended to read as follows:

458.350 The provisions of NRS 458.290 to 458.350, inclusive, [shall] do not require the state or any of its political subdivisions to establish or finance any [alcohol or drug treatment] facility.

Sec. 30. NRS 484.3792 is hereby amended to read as follows:

484.3792 1. Any person who violates the provisions of
NRS 484.379:

(a) For the first offense within 7 years, is guilty of a
misdemeanor. Unless he is allowed to undergo treatment as
provided in NRS 484.3794, the court shall:

(1) Order him to pay tuition for an educational course
on the abuse of alcohol and controlled substances approved
by the [department of motor vehicles] bureau of alcohol and
drug abuse of the rehabilitation division of the department
of human resources and complete the course within the time
specified in the order, and the court shall notify the
department of motor vehicles if he fails to complete the
course within the specified time;

(2) Unless the sentence is reduced pursuant to NRS
484.3794, sentence him to imprisonment for not less than 2
days nor more than 6 months in jail, or to perform 48 hours
of work for the community while dressed in distinctive garb
which identifies him as having violated the provisions of
NRS 484.379; and

(3) Fine him not less than \$200 nor more than \$1,000.
The teacher of the educational course shall evaluate the

offender and, if he finds the offender is an abuser of alcohol or controlled substances, he shall promptly report his findings to the court for its use.

(b) For a second offense within 7 years, is guilty of a misdemeanor. Except as provided in NRS 484.3794, the court shall sentence him to imprisonment for not less than 10 days nor more than 6 months in jail and fine him not less than \$500 nor more than \$1,000.

(c) For a third or subsequent offense within 7 years, shall be punished by imprisonment in the state prison for not less than 1 year nor more than 6 years and must be further punished by a fine of not less than \$2,000 nor more than \$5,000. An offender so imprisoned must be segregated insofar as practicable from offenders whose crimes were violent, and must be assigned to an institution of minimum security or, if space is available, to an honor camp, restitution center or similar facility.

2. Any offense which occurred within 7 years immediately preceding the date of the principal offense or after the principal offense constitutes a prior offense for the purposes of this section when evidenced by a conviction, without regard to the sequence of the offenses and convictions. The facts concerning a prior offense must be alleged in the complaint, indictment or information, must not be read to

the jury or proved at trial but must be proved at the time of sentencing and, if the principal offense is alleged to be a felony, must also be shown at the preliminary examination or presented to the grand jury.

3. No person convicted of violating the provisions of NRS 484.379 may be released on probation, and no sentence imposed for violating those provisions may be suspended. No prosecuting attorney may dismiss a charge of violating the provisions of NRS 484.379 in exchange for a plea of guilty or nolo contendere to a lesser charge or for any other reason unless he knows or it is obvious that the charge is not supported by probable cause or cannot be proved at the time of trial.

4. Any term of confinement imposed under the provisions of this section may be served intermittently at the discretion of the judge or justice of the peace, except that a person who is convicted of a second or subsequent offense within 7 years must be confined for at least one segment of not less than 48 consecutive hours. This discretion must be exercised after considering all the circumstances surrounding the offense, and the family and employment of the offender, but any sentence of 30 days or less must be served within 6 months from the date of conviction or within 6

months after the date of sentencing if the offender underwent treatment pursuant to NRS 484.3794. Any segment of time for which the offender is confined must consist of not less than 24 consecutive hours.

5. Jail sentences simultaneously imposed under this section and NRS 483.560 or 485.330 must run consecutively.

6. As used in this section, unless the context otherwise requires, "offense" means a violation of NRS 484.379 or 484.3795 or homicide resulting from the driving of a vehicle while under the influence of intoxicating liquor or a controlled substance, or the violation of a law of any other jurisdiction which prohibits the same conduct.

Sec. 31. Section 16 of this act becomes effective January 1, 1986.

SUMMARY--Requires continuing education for certain professions and occupations. (BDR 54-129)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to vocational licensing boards; requiring continuing education for certain professions and occupations as a prerequisite for the renewal of licenses; 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 630.287 is hereby amended to read as follows:

630.287 The board [may require physicians who are licensed under this chapter to comply with continuing education requirements adopted by the board as a prerequisite to annual registration.] shall, as a prerequisite for the:

1. Renewal of a certificate as a physician's assistant;

or

2. Annual registration of the holder of a license to practice medicine,
require each holder to comply with the requirements for continuing education adopted by the board.

Sec. 2. Chapter 630A of NRS is hereby amended by adding thereto a new section to read as follows:

1. To renew a license other than a temporary, special or limited license issued pursuant to this chapter, each person must, on or before January 1 of each year:

(a) Apply to the board for renewal;

(b) Pay the annual fee for renewal set by the board; and

(c) Submit evidence to the board of his completion of the requirements for continuing education.

2. The board shall, as a prerequisite for the renewal or restoration of a license other than a temporary, special or limited license, require each holder of a license to comply with the requirements for continuing education adopted by the board.

3. Any holder failing to pay the annual fee for renewal after it becomes due must be given a period of 60 days in which to pay the fee, and, failing to do so, automatically forfeits his right to practice homeopathic medicine, and his license to practice homeopathic medicine in Nevada is automatically suspended. The holder may, within 2 years after the date his license is suspended, apply for the restoration of his license.

4. The board shall notify any holder whose license is

automatically suspended for nonpayment of the annual fee for renewal and send a copy of the notice to the Drug Enforcement Administration of the United States Department of Justice or its successor agency.

Sec. 3. NRS 630A.330 is hereby amended to read as follows:

630A.330 1. Each applicant for a license to practice homeopathic medicine must pay a fee of \$250.

2. Each applicant who fails an examination and who is permitted to be reexamined must pay a fee not to exceed \$200 for each reexamination.

3. If an applicant does not appear for examination, for any reason deemed sufficient by the board, the board may, upon request, refund a portion of the application fee not to exceed \$100. There must be no refund of the application fee if an applicant appears for examination.

4. Each applicant for a permit issued under the provisions of NRS 630A.310 or 630A.320, must pay a fee not to exceed \$50, as determined by the board, and must pay a fee of \$10 for each renewal of the permit.

5. [Each holder of a license to practice homeopathic medicine must pay to the secretary-treasurer of the board on or before January 1 of each year an annual registration fee to

be set by the board and in no case to exceed the sum of \$100 per year.

6. Any holder failing to pay the annual registration fee after it becomes due must be given a period of 60 days in which to pay the fee, and, failing to do so, automatically forfeits his right to practice homeopathic medicine, and his license to practice homeopathic medicine in Nevada is automatically suspended. The holder may, within 2 years from the date his license is suspended, on payment of twice the amount of the then-current annual registration fee to the secretary-treasurer, and after he is found to be in good standing, be reinstated in his right to practice.

7. The annual registration fee must be collected for the year in which a homeopathic physician is licensed.

8. Notices must be sent to delinquents that their licenses are automatically suspended for nonpayment of the annual registration fee, and a copy of the notice must be sent to the Drug Enforcement Administration of the United States Department of Justice or its successor agency.] The fee for the renewal of a license, as determined by the board, must not exceed \$100 per year and must be collected for the year in which a homeopathic physician is licensed.

6. The fee for the restoration of a suspended license is

twice the amount of the fee for the renewal of a license at the time of the restoration of the license.

Sec. 4. NRS 631.330 is hereby amended to read as follows:

631.330 1. Licenses must be renewed annually.

2. The board shall, as a prerequisite for the renewal of a license or reinstatement of a license to active status, require each holder to comply with the requirements for continuing education adopted by the board.

3. Each holder of a license to practice dentistry or dental hygiene must, upon [payment] :

(a) Submission of evidence of his completion of the requirements for continuing education; and

(b) Payment of the fee provided in NRS 631.345, be granted a renewal certificate which [will authorize] authorizes continuation of the practice for a 1-year period.

[2.] 4. The annual renewal fee must be paid on or before June 30. Failure to pay the fee to the board by June 30 of each year automatically suspends the license and it may be reinstated only upon payment of the reinstatement fee specified in NRS 631.345 in addition to the annual fee due thereon.

Sec. 5. Chapter 634A of NRS is hereby amended by adding thereto a new section to read as follows:

1. To renew a license issued pursuant to this chapter, each person must, on or before February 1 of each year:

(a) Apply to the board for renewal;

(b) Pay the annual fee for registration prescribed by the board; and

(c) Submit evidence to the board of his completion of the requirements for continuing education.

2. The board shall, as a prerequisite for the renewal or reinstatement of a license, require each holder of a license to comply with the requirements for continuing education adopted by the board.

Sec. 6. NRS 641.220 is hereby amended to read as follows:

641.220 [Every person certified by the board shall be required to submit biennially a completed registration form and pay the biennial registration fee provided for in this chapter.]

1. To renew a certificate issued pursuant to this chapter, each person must, on or before the first day of January of each odd-numbered year:

(a) Apply to the board for renewal;

(b) Pay the biennial registration fee set by the board;

and

(c) Submit evidence to the board of his completion of the requirements for continuing education.

2. The board shall, as a prerequisite for the renewal of a certificate, require each holder to comply with the requirements for continuing education adopted by the board.

Sec. 7. NRS 641A.260 is hereby amended to read as follows:

641A.260 1. [Every person certified by the board shall be required to submit biennially a completed registration form and pay the biennial registration fee provided for in this chapter.

2. Each person holding a certificate as a marriage and family counselor in this state shall pay a biennial registration fee to the board on or before the 1st day of January of each odd-numbered year.] To renew a certificate issued pursuant to this chapter, each person must, on or before the first day of January of each odd-numbered year:

(a) Apply to the board for renewal;

(b) Pay the biennial registration fee set by the board;

and

(c) Submit evidence to the board of his completion of the requirements for continuing education.

2. The board shall, as a prerequisite for the renewal of

a certificate, require each holder to comply with the requirements for continuing education adopted by the board.

Sec. 8. Chapter 652 of NRS is hereby amended by adding thereto a new section to read as follows:

1. The board shall adopt regulations for the certification and licensure of laboratory personnel.

2. The board shall, as a prerequisite for the renewal of a certificate or license, require the laboratory director and any laboratory personnel certified by the board pursuant to chapter 652 of NRS to comply with the requirements for continuing education adopted by the board.

Sec. 9. NRS 654.170 is hereby amended to read as follows:

654.170 1. The board shall issue a numbered license, in such form as it may prescribe, to each applicant who meets the requirements of NRS 654.150 and shall affix its official seal to [such] the license.

2. Each license issued by the board under this chapter expires on December 31 of the year following the year of its issuance and may be renewed biennially.

3. Any licensed nursing facility administrator may renew his license by applying for [such] renewal in the manner prescribed by the board and paying the renewal fee fixed by the board.

4. The board shall, as a prerequisite for the renewal of

a license, require each holder to comply with the requirements for continuing education adopted by the board.

Sec. 10. NRS 641.340 is hereby repealed.

SUMMARY--Removes restriction on reappointment of members of board of homeopathic medical examiners. (BDR 54-130)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to homeopathic medicine; removing the restriction on the reappointment of the members of the board of homeopathic medical examiners; 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 630A.100 is hereby amended to read as follows:

630A.100 [1.] The board of homeopathic medical examiners consists of five members appointed by the governor.

[2. No person may be appointed as a member of the board to serve a full term more than twice. No person who serves for more than 1 1/2 years of a term to which another person was appointed may be appointed to serve a full term more than once.]

SUMMARY--Changes composition of board of naturopathic healing and provides for expiration of licenses previously issued by board. (BDR 54-131)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to naturopathic healing; changing the composition of the licensing board; providing for the expiration of all licenses previously issued by the board; 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 633A.150 is hereby amended to read as follows:

633A.150 1. The board of naturopathic healing consists of five members appointed by the governor.

2. [Three] Two members of the board must:

(a) Be licensed under this chapter ; [, except the initial members who must be licensed as naturopaths in another state;]

(b) Be actually engaged in the practice of naturopathic healing in this state ; [, except the initial members who must have been so engaged in another state; and]

(c) Have been so engaged in this state for more than 2

years preceding their appointment [, except the initial members who must have been so engaged in another state.] ; and

(d) Be residents of Nevada.

3. One member must [be] :

(a) Be a physician licensed under chapter 630 of NRS [and]

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(b) Have practiced medicine in Nevada for at least 2

years; and

(c) Be a resident of Nevada.

4. The remaining [member] members must be [a resident] residents of the State of Nevada:

(a) Not licensed in any state to practice any healing art;
and

(b) Not actively engaged in the administration of any health and care facility.

5. Before entering upon the duties of his office, each member of the board shall take:

(a) The constitutional oath of office; and

(b) An oath that he is legally qualified to serve on the board.

6. As used in this section "health and care facility" has the meaning ascribed to it in NRS 449.007.

7. Upon expiration of his term of office, a member must

continue to serve until his successor is appointed and qualifies.

8. If a vacancy occurs on the board, a member is absent from the state for a period of 6 months or more without the board's permission, or a member fails to attend meetings of the board or to the business of the board, as determined necessary in its discretion, the board shall notify the governor, and the governor shall appoint a person qualified under this chapter to replace the member for the remainder of the unexpired term.

Sec. 2. Any license issued by the board of naturopathic healing before July 1, 1985, hereby expires. Any qualified person may apply to the board for a license pursuant to the provisions of chapter 633A of NRS.

Sec. 3. The terms of the members of the board of naturopathic healing who were appointed before July 1, 1985, hereby expire.

SUMMARY--Broadens range of disciplinary actions available to state board of optometry. (BDR 54-132)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to optometry; broadening the range of disciplinary actions available to the state board of optometry; 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 636.015 is hereby amended to read as follows:

636.015 [Unless otherwise indicated by the context, words and phrases, or variants thereof, employed in this chapter must be construed and given meanings, for the purpose of this chapter, in accordance with the following definitions:]

As used in this chapter, unless the context otherwise requires:

1. "Advertise" means the use of a newspaper, magazine or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, tag, label, window display, store sign, radio announcement or any other means or method [now or hereafter] employed to bring to the

attention of the public the practice of optometry or the prescribing, fitting or dispensing, in connection therewith, of lenses, frames, eyeglasses or other accessories or appurtenances.

2. "Applicant" means a person who has applied for examination.

3. ["Association" means the Nevada State Optometric Association.

4.] "Board" means the Nevada state board of optometry.

[5.] 4. "Complaint" means a complaint against a licensee for [the revocation or suspension of his license.

6.] disciplinary action.

5. "Diagnostic pharmaceutical agents" means topical ophthalmic anesthetics and topical cycloplegics, miotics and mydriatics.

[7. "Examination" means examination of an applicant for a license.

8. "Examinee" means a person being or who has been examined by the board.

9.] 6. "Eye" means the human eye.

[10. "Fee" means a fee payable by an applicant or licensee to the secretary.

11. "Governor" means the governor of the State of Nevada.

12. "License" means a license to practice optometry in the State of Nevada.

13. "Licensee" means a person licensed to practice optometry in the State of Nevada.

14. "Meeting" means a meeting of the board.

15. "Member" means a member of the board.

16. "Membership" means membership in the board.

17.] 7. "Ophthalmic lens" means a lens which has cylindrical, prismatic or spherical power or value.

[18. "Practice of optometry" means the doing of any or all the things mentioned in NRS 636.025.

19. "President" means the president of the board.

20. "Register" means the register of the licensees.

21. "Registration" means registration as a licensee.

22. "Secretary" means the secretary of the board.

23. "State" means the State of Nevada.

24.] 8. "Trial frame" or "test lens" means a frame or lens used in testing the eye, which is not sold and not for sale to patients.

[25.] 9. "Unethical or unprofessional conduct" means the doing of any or all of the things mentioned in NRS 636.300.

Sec. 2. NRS 636.125 is hereby amended to read as follows:

636.125 The board [shall have the power to make and promulgate] may adopt rules and regulations, not inconsistent with the provisions of this chapter, governing its procedure, the examination and admission of applicants, the granting [, refusal, revocation and suspension of licenses,] or refusal of licenses, the disciplining of licensees and the practice of optometry.

Sec. 3. NRS 636.130 is hereby amended to read as follows:

636.130 The board [has the power to] may grant or refuse licenses after examination and [to revoke or suspend the same] discipline licensees for any of the causes specified in this chapter.

Sec. 4. NRS 636.290 is hereby amended to read as follows:

636.290 Any [license issued under] person licensed pursuant to this chapter or any former law relating to the practice of optometry may be [revoked or suspended for a fixed period] disciplined by the board for [a cause or causes] cause in the manner specified in this chapter.

Sec. 5. NRS 636.295 is hereby amended to read as follows:

636.295 The following acts, conduct, omissions, or mental or physical conditions, or any of them, committed, engaged

in, omitted, or being suffered by a licensee, [shall] constitute sufficient cause for [revoking or suspending his license:] disciplinary action:

1. Affliction of the licensee with any communicable disease likely to be communicated to other persons.

2. Commission by the licensee of a felony or a gross misdemeanor involving moral turpitude of which he has been convicted and from which he has been sentenced by a final judgment of a federal or state court in this or any other state, [such] the judgment not having been reversed or vacated by a competent appellate court and [such] the offense not having been pardoned by executive authority.

3. Commission of fraud by or on behalf of the licensee in obtaining his license or a renewal thereof, or in practicing optometry thereunder.

4. Habitual drunkenness or addiction to any controlled substance as defined in chapter 453 of NRS . [on the part of the licensee.]

5. Gross incompetency . [on the part of the licensee.]

6. Affliction [of the licensee] with any mental or physical disorder or disturbance seriously impairing his competency as an optometrist.

7. Making false or misleading representations, by or on

behalf of the licensee, with respect to optometric materials or services.

8. Practice by the licensee, or attempting or offering so to do, while he is in an intoxicated condition.

9. Perpetration [by the licensee] of unethical or unprofessional conduct in the practice of optometry . [, within the provisions of NRS 636.300.]

10. Willfully and repeatedly violating provisions of this chapter or rules or regulations adopted [and promulgated] by the board.

Sec. 6. NRS 636.305 is hereby amended to read as follows:

636.305 A complaint may be made against a licensee by [an] :

1. An agent or inspector employed by the board [, any] ;

2. Any other licensee [or any] ; or

3. Any aggrieved person,

charging one or more of the causes for [which such license may be revoked or suspended] disciplinary action with such particularity as to enable the defendant licensee to prepare a defense . [thereto.]

Sec. 7. NRS 636.325 is hereby amended to read as follows:

636.325 Upon conclusion of the hearing, or as soon as practicable thereafter, the board shall make and announce its decision by which it may, in the exercise of reasonable

discretion [, revoke the license, suspend the license for a fixed time, or dismiss the complaint.] :

1. Reprimand the licensee;
2. Place the licensee on probation for a specified or unspecified period;
3. Suspend the licensee from practice for a specified or unspecified period;
4. Revoke the licensee's license; or
5. Dismiss the complaint.

The board may, in connection with a reprimand, probation or suspension, impose such other terms or conditions as it considers proper which are not inconsistent with law.

Sec. 8. NRS 636.330 is hereby amended to read as follows:

636.330 If the board [revokes a license, or suspends it for a fixed time,] makes a decision which is adverse to the licensee , he may apply for a rehearing within 10 days [and the board may grant such] after the board announces its decision. The board must grant or deny the application within 30 days thereafter.

SUMMARY--Removes exemption from examination for certification of dispensing opticians to fit contact lenses. (BDR 54-133)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to dispensing opticians; removing the exemption from examination for certification to fit contact lenses; 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 637.122 is hereby amended to read as follows:

637.122 1. A dispensing optician shall not fit contact lenses unless he is certified to do so pursuant to this section.

2. The board shall issue a certificate containing an authorization for its holder to fit contact lenses to any licensed dispensing optician whose license has been issued by this board and:

(a) [Who fitted contact lenses before January 1, 1978, and submits an application with affidavits from two physicians who specialize in treatment of the eye, testifying to his

proficiency in the fitting of contact lenses. No examination on fitting contact lenses is required of such an applicant;

(b)] Who has successfully completed a course of instruction on the fitting of contact lenses at a school which offers a degree of associate in applied science for studies in ophthalmic dispensing and who has passed the Contact Lens Registry Examination of the National Committee of Contact Lens Examiners; or

[(c)] (b) Who has completed at least 1 year of training and experience in the fitting of contact lenses under the supervision of a licensed dispensing optician certified to fit contact lenses, a physician specialized in treatment of the eye, or an optometrist, and has passed the Contact Lens Registry Examination of the National Committee of Contact Lens Examiners.

A certificate to fit contact lenses is effective for 1 year but may be renewed.

3. The board may charge a fee of not more than \$100 for its initial issuance of a certificate to fit contact lenses and for an annual renewal of such a certificate.

4. An applicant who desires to qualify by obtaining 1 year of training and experience must first apply to the board for a training permit. The board shall fix a fee of not more than \$15 for the training permit. The permit must

be conspicuously displayed at the place of training. The year of training and experience must consist of not less than 1,000 hours of experience in fitting and adapting contact lenses, verification and interpretation of prescriptions for contact lenses, and in other aspects of the practice and theory of fitting contact lenses.

5. The board may issue a training permit for the fitting of contact lenses to a registered apprentice dispensing optician to run concurrently with his permit to serve as an apprentice dispensing optician.

6. The board may issue a permit, to be effective for not more than 2 years, to a licensed dispensing optician who is not certified to fit contact lenses in order that he may train in the fitting of such lenses.

7. A dispensing optician:

(a) May fit contact lenses only pursuant to a written prescription specifying contact lenses.

(b) Shall direct the patient to return to the prescriber for checking the fit and accuracy of the lenses.

SUMMARY--Increases fees for certification of marriage and family counselors and establishes privilege to refuse to disclose certain confidential communications. (BDR 54-134)

Fiscal Note: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: No.

AN ACT relating to marriage and family counselors; increasing the fees for certification; establishing a privilege to refuse to disclose confidential communications between a counselor and his client; 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 641A.290 is hereby amended to read as follows:

641A.290 [The amount of fees payable to the board pursuant to this chapter shall be fixed by the board according to the following schedule:

1. Examination fee..... \$30
2. Certification fee..... 15
3. Biennial registration fee, not less than \$20 nor more than \$80, as determined by the board.

4.	Restoration of a certificate revoked for nonpayment of the biennial registration fee, not less than \$20 nor more than \$80, as determined by the board.	
5.	Application fee.....	15
6.	Certification by endorsement under the provision of NRS 641A.240... \$50] <u>The board shall charge and collect not more than the following fees, respectively:</u>	
	<u>For application for a certificate.....</u>	<u>\$25</u>
	<u>For examination of an applicant for a certificate.....</u>	<u>50</u>
	<u>For issuance of a certificate.....</u>	<u>25</u>
	<u>For issuance of a certificate by reciprocity.....</u>	<u>75</u>
	<u>For biennial renewal of a certificate.....</u>	<u>200</u>
	<u>For reinstatement of a certificate revoked for nonpayment of the fee for biennial renewal</u>	
	100

Sec. 2. Chapter 49 of NRS is hereby amended by adding thereto a new section to read as follows:

1. A client has a privilege to refuse to disclose, and to prevent any other person from disclosing, confidential communications between himself and his marriage and family counselor.

2. As used in this section "marriage and family counselor" means a person who is certified as a marriage and family counselor by the board of marriage and family counselor examiners of Nevada.