

Amendment No. 444

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| Assembly Amendment to Assembly Bill No. 442   | (BDR 54-1055) |
| <b>Proposed by:</b> Assembly Committee on Commerce and Labor                          |               |
| <b>Amends:</b> Summary: Yes Title: Yes Preamble: No Joint Sponsorship: No Digest: Yes |               |

| ASSEMBLY ACTION |                          |      | Initial and Date         |       | SENATE ACTION |              |                          | Initial and Date |                          |       |
|-----------------|--------------------------|------|--------------------------|-------|---------------|--------------|--------------------------|------------------|--------------------------|-------|
| Adopted         | <input type="checkbox"/> | Lost | <input type="checkbox"/> | _____ |               | Adopted      | <input type="checkbox"/> | Lost             | <input type="checkbox"/> | _____ |
| Concurred In    | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____ |               | Concurred In | <input type="checkbox"/> | Not              | <input type="checkbox"/> | _____ |
| Receded         | <input type="checkbox"/> | Not  | <input type="checkbox"/> | _____ |               | Receded      | <input type="checkbox"/> | Not              | <input type="checkbox"/> | _____ |

EXPLANATION: Matter in (1) *blue bold italics* is new language in the original bill; (2) variations of green bold underlining is language proposed to be added in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) orange double underlining is deleted language in the original bill proposed to be retained in this amendment.

JFS/SJQ



Date: 4/22/2023

A.B. No. 442—Requires the Board of Medical Examiners to take certain actions in response to certain complaints against a licensee.  
(BDR 54-1055)





ASSEMBLY BILL No. 442—COMMITTEE  
ON COMMERCE AND LABOR

MARCH 27, 2023

Referred to Committee on Commerce and Labor

SUMMARY—~~[Requires the]~~ **Revises provisions relating to persons licensed by the Board of Medical Examiners.** ~~[to take certain actions in response to certain complaints against a licensee.]~~  
(BDR 54-1055)

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

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

AN ACT relating to medical professions; requiring the Board of Medical Examiners to ~~[notify an appropriate law enforcement agency of]~~ **take certain actions in response to** a complaint alleging that a physician, perfusionist, physician assistant or practitioner of respiratory care has committed any act constituting ~~[a felony,]~~ **domestic violence or sexual assault; requiring a law enforcement agency to notify the Board of a report alleging that a physician, perfusionist, physician assistant or practitioner of respiratory care committed any act constituting domestic violence or sexual assault;** requiring the Board to **adopt regulations setting forth circumstances under which the Board is required to** summarily suspend, pending a formal hearing, the license of a physician, perfusionist, physician assistant or practitioner of respiratory care ~~[who is alleged to have committed any act constituting a felony which is the same as or substantially similar to an act alleged in an earlier]~~ **in response to a** complaint ~~[against the licensee,]~~ **or a series of complaints;** and providing other matters properly relating thereto.

**Legislative Counsel’s Digest:**

1 Existing law authorizes any person to file with the Board of Medical Examiners a  
2 complaint against a physician, perfusionist, physician assistant or practitioner of respiratory  
3 care. (NRS 630.307) **Section 2** of this bill requires the Board to ~~[notify an appropriate law~~  
4 ~~enforcement agency if the Board receives]~~ **ask a person who files** a complaint alleging that a  
5 physician, perfusionist, physician assistant or practitioner of respiratory care committed any  
6 act which, if proven, would constitute ~~[a felony,]~~ **domestic violence or sexual assault**  
7 **whether the person wishes to pursue a criminal investigation of the allegation. If so,**  
8 **section 2 requires the Board to take certain actions to notify and direct the person to an**  
9 **appropriate law enforcement agency. Section 2 also requires a law enforcement agency**  
10 **to notify the Board of any report received by the law enforcement agency alleging that a**

11 physician, perfusionist, physician assistant or practitioner of respiratory care has  
 12 committed an act which, if proven, would constitute domestic violence or sexual assault.  
 13 Section 3.5 of this bill provides that such a law enforcement agency and any of its  
 14 employees are immune from any civil action for providing such a notification to the  
 15 Board. Section 1 of this bill makes a conforming change to refer to provisions that have been  
 16 renumbered by this bill.

17 If an investigation by the Board regarding a licensed physician, perfusionist, physician  
 18 assistant or practitioner of respiratory care reasonably determines that the health, safety or  
 19 welfare of the public or any patient served by the licensee is at risk of imminent or continued  
 20 harm, existing law authorizes the Board to summarily suspend the license of the licensee  
 21 pending the conclusion of a hearing to consider a formal complaint against the licensee. (NRS  
 22 630.326) Section 3 of this bill requires the Board to adopt regulations setting forth  
 23 circumstances under which the Board, in response to a complaint or series of  
 24 complaints, is required to summarily suspend the license of a licensee pending the  
 25 conclusion of a hearing to consider a formal complaint against the licensee. ~~[if the Board~~  
 26 ~~receives a complaint that alleges the licensee committed any act which, if proven, would~~  
 27 ~~constitute a felony and which is the same as or substantially similar to an act that was the~~  
 28 ~~subject of a prior complaint against the same licensee.]~~

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

1 **Section 1.** NRS 630.130 is hereby amended to read as follows:  
 2 630.130 1. In addition to the other powers and duties provided in this  
 3 chapter, the Board shall, in the interest of the public, judiciously:

- 4 (a) Enforce the provisions of this chapter;  
 5 (b) Establish by regulation standards for licensure under this chapter;  
 6 (c) Conduct examinations for licensure and establish a system of scoring for  
 7 those examinations;  
 8 (d) Investigate the character of each applicant for a license and issue licenses to  
 9 those applicants who meet the qualifications set by this chapter and the Board; and  
 10 (e) Institute a proceeding in any court to enforce its orders or the provisions of  
 11 this chapter.

12 2. On or before February 15 of each odd-numbered year, the Board shall  
 13 submit to the Governor and to the Director of the Legislative Counsel Bureau for  
 14 transmittal to the next regular session of the Legislature a written report compiling:

- 15 (a) Disciplinary action taken by the Board during the previous biennium  
 16 against any licensee for malpractice or negligence;  
 17 (b) Information reported to the Board during the previous biennium pursuant to  
 18 NRS 630.3067, 630.3068, subsections 3 and ~~6~~ 7 of NRS 630.307 and NRS  
 19 690B.250; and

20 (c) Information reported to the Board during the previous biennium pursuant to  
 21 NRS 630.30665, including, without limitation, the number and types of surgeries  
 22 performed by each holder of a license to practice medicine and the occurrence of  
 23 sentinel events arising from such surgeries, if any.

24 ➤ The report must include only aggregate information for statistical purposes and  
 25 exclude any identifying information related to a particular person.

26 3. The Board may adopt such regulations as are necessary or desirable to  
 27 enable it to carry out the provisions of this chapter.

28 **Sec. 2.** NRS 630.307 is hereby amended to read as follows:

29 630.307 1. Except as otherwise provided in subsection 2, any person may  
 30 file with the Board a complaint against a physician, perfusionist, physician assistant

1 or practitioner of respiratory care on a form provided by the Board. The form may  
2 be submitted in writing or electronically. If a complaint is submitted anonymously,  
3 the Board may accept the complaint but may refuse to consider the complaint if the  
4 lack of the identity of the complainant makes processing the complaint impossible  
5 or unfair to the person who is the subject of the complaint.

6 2. Any licensee, medical school or medical facility that becomes aware that a  
7 person practicing medicine, perfusion or respiratory care in this State has, is or is  
8 about to become engaged in conduct which constitutes grounds for initiating  
9 disciplinary action shall file a written complaint with the Board within 30 days after  
10 becoming aware of the conduct.

11 3. Except as otherwise provided in subsection 4, any hospital, clinic or other  
12 medical facility licensed in this State, or medical society, shall report to the Board  
13 any change in the privileges of a physician, perfusionist, physician assistant or  
14 practitioner of respiratory care to practice while the physician, perfusionist,  
15 physician assistant or practitioner of respiratory care is under investigation and the  
16 outcome of any disciplinary action taken by that facility or society against the  
17 physician, perfusionist, physician assistant or practitioner of respiratory care  
18 concerning the care of a patient or the competency of the physician, perfusionist,  
19 physician assistant or practitioner of respiratory care within 30 days after the  
20 change in privileges is made or disciplinary action is taken.

21 4. A hospital, clinic or other medical facility licensed in this State, or medical  
22 society, shall report to the Board within 5 days after a change in the privileges of a  
23 physician, perfusionist, physician assistant or practitioner of respiratory care to  
24 practice that is based on:

25 (a) An investigation of the mental, medical or psychological competency of the  
26 physician, perfusionist, physician assistant or practitioner of respiratory care; or

27 (b) Suspected or alleged substance abuse in any form by the physician,  
28 perfusionist, physician assistant or practitioner of respiratory care.

29 5. The Board shall report any failure to comply with subsection 3 or 4 by a  
30 hospital, clinic or other medical facility licensed in this State to the Division of  
31 Public and Behavioral Health of the Department of Health and Human Services. If,  
32 after a hearing, the Division of Public and Behavioral Health determines that any  
33 such facility or society failed to comply with the requirements of subsection 3 or 4,  
34 the Division may impose an administrative fine of not more than \$10,000 against  
35 the facility or society for each such failure to report. If the administrative fine is not  
36 paid when due, the fine must be recovered in a civil action brought by the Attorney  
37 General on behalf of the Division.

38 6. ~~*The*~~ *If the Board* ~~*shall notify an appropriate law enforcement agency*~~  
39 ~~*of any*~~ *receives a complaint [received by the Board] that alleges that a physician,*  
40 *perfusionist, physician assistant or practitioner of respiratory care has committed*  
41 *any act which, if proven, would constitute [a felony] domestic violence pursuant*  
42 *to NRS 33.018 or sexual assault pursuant to NRS 200.366, the Board shall ask*  
43 *the person who filed the complaint, if the identity of the person is known, if he or*  
44 *she wishes to pursue a criminal investigation of the allegation in the complaint. If*  
45 *so, the Board shall:*

46 *(a) Provide to an appropriate law enforcement agency the information*  
47 *contained in the complaint; and*

48 *(b) Direct the person to and, to the best of the Board's ability, connect the*  
49 *person with, the law enforcement agency to which the Board provides the*  
50 *information in the complaint pursuant to paragraph (a).*

51 7. The clerk of every court shall report to the Board any finding, judgment or  
52 other determination of the court that a physician, perfusionist, physician assistant or  
53 practitioner of respiratory care:

- 1 (a) Is mentally ill;  
 2 (b) Is mentally incompetent;  
 3 (c) Has been convicted of a felony or any law governing controlled substances  
 4 or dangerous drugs;  
 5 (d) Is guilty of abuse or fraud under any state or federal program providing  
 6 medical assistance; or  
 7 (e) Is liable for damages for malpractice or negligence,  
 8 ↪ within 45 days after such a finding, judgment or determination is made.

9 ~~7~~ 8. A law enforcement agency shall notify the Board of any report  
 10 received by the law enforcement agency that alleges that a physician,  
 11 perfusionist, physician assistant or practitioner of respiratory care has committed  
 12 an act which, if proven, would constitute domestic violence pursuant to NRS  
 13 33.018 or sexual assault pursuant to NRS 200.366.

14 9. The Board shall retain all complaints filed with the Board pursuant to this  
 15 section for at least 10 years, including, without limitation, any complaints not acted  
 16 upon.

17 **Sec. 3.** NRS 630.326 is hereby amended to read as follows:

18 630.326 1. If an investigation by the Board regarding a physician,  
 19 perfusionist, physician assistant or practitioner of respiratory care reasonably  
 20 determines that the health, safety or welfare of the public or any patient served by  
 21 the licensee is at risk of imminent or continued harm, the Board may summarily  
 22 suspend the license of the licensee pending the conclusion of a hearing to consider a  
 23 formal complaint against the licensee. The order of summary suspension may be  
 24 issued only by the Board or an investigative committee of the Board.

25 2. ~~If the Board receives~~ shall adopt regulations setting forth  
 26 circumstances under which the Board, in response to a complaint filed with the  
 27 Board pursuant to NRS 630.307 ~~alleging that~~ is required to summarily suspend  
 28 the license of a physician, perfusionist, physician assistant or practitioner of  
 29 respiratory care ~~has committed any act which, if proven, would constitute a~~  
 30 felony and which is the same as or substantially similar to an act that was the  
 31 subject of a prior complaint against the same licensee, the Board shall summarily  
 32 suspend the license of the licensee pending the conclusion of a hearing to  
 33 consider a formal complaint against the licensee. Such regulations may, without  
 34 limitation, require the Board to summarily suspend the license of a licensee in  
 35 response to:

36 (a) A complaint alleging that a licensee committed certain acts specified by  
 37 the Board;

38 (b) A certain number of complaints filed against the licensee over a certain  
 39 period of time specified by the Board; or

40 (c) Any combination of the circumstances described in paragraphs (a) and  
 41 (b).

42 3. If the Board or an investigative committee of the Board issues an order  
 43 summarily suspending the license of a physician, perfusionist, physician assistant or  
 44 practitioner of respiratory care pursuant to subsection 1 ~~or~~ or the regulations  
 45 adopted pursuant to subsection 2, the Board shall hold a hearing not later than 60  
 46 days after the date on which the order is issued, unless the Board and the licensee  
 47 mutually agree to a longer period, to determine whether a reasonable basis exists to  
 48 continue the suspension of the license pending the conclusion of a hearing to  
 49 consider a formal complaint against the licensee. If no formal complaint against the  
 50 licensee is pending before the Board on the date on which a hearing is held  
 51 pursuant to this section, the Board shall reinstate the license of the licensee.

52 ~~3~~ 4. If the Board or an investigative committee of the Board issues an order  
 53 summarily suspending the license of a licensee pursuant to subsection 1 or the

1 regulations adopted pursuant to subsection 2 and the Board requires the licensee  
2 to submit to a mental or physical examination or an examination testing his or her  
3 competence to practice, the examination must be conducted and the results obtained  
4 not later than 30 days after the order is issued.

5 Sec. 3.5. NRS 630.364 is hereby amended to read as follows:

6 630.364 1. Any person or organization who furnishes information  
7 concerning an applicant for a license or a licensee in good faith in accordance with  
8 the provisions of this chapter, including, without limitation, a law enforcement  
9 agency and any of its employees who notify the Board pursuant to subsection 8 of  
10 NRS 630.307, is immune from any civil action for furnishing that information.

11 2. The Board and any of its members and its staff, counsel, investigators,  
12 experts, peer reviewers, committees, panels, hearing officers, consultants and the  
13 employees or volunteers of a diversion program are immune from any civil liability  
14 for:

15 (a) Any decision or action taken in good faith in response to information  
16 acquired by the Board.

17 (b) Disseminating information concerning an applicant for a license or a  
18 licensee to other boards or agencies of the State, the Attorney General, any  
19 hospitals, medical societies, insurers, employers, patients and their families or any  
20 law enforcement agency.

21 3. Except as otherwise provided in subsection 4, the Board shall not  
22 commence an investigation, impose any disciplinary action or take any other  
23 adverse action against a physician for:

24 (a) Disclosing to a governmental entity a violation of any law, rule or  
25 regulation by an applicant for a license to practice medicine or by a physician; or

26 (b) Cooperating with a governmental entity that is conducting an investigation,  
27 hearing or inquiry into such a violation, including, without limitation, providing  
28 testimony concerning the violation.

29 4. A physician who discloses information to or cooperates with a  
30 governmental entity pursuant to subsection 3 with respect to the violation of any  
31 law, rule or regulation by the physician is subject to investigation and any other  
32 administrative or disciplinary action by the Board under the provisions of this  
33 chapter for such violation.

34 5. As used in this section:

35 (a) "Diversion program" means a program approved by the Board to correct a  
36 licensee's alcohol or other substance use disorder or any other impairment.

37 (b) "Governmental entity" includes, without limitation:

38 (1) A federal, state or local officer, employee, agency, department,  
39 division, bureau, board, commission, council, authority or other subdivision or  
40 entity of a public employer;

41 (2) A federal, state or local employee, committee, member or commission  
42 of the Legislative Branch of Government;

43 (3) A federal, state or local representative, member or employee of a  
44 legislative body or a county, town, village or any other political subdivision or civil  
45 division of the State;

46 (4) A federal, state or local law enforcement agency or prosecutorial office,  
47 or any member or employee thereof, or police or peace officer; and

48 (5) A federal, state or local judiciary, or any member or employee thereof,  
49 or grand or petit jury.

50 Sec. 4. 1. This section becomes effective upon passage and approval.

51 2. Sections 1 to 3.5, inclusive, of this act ~~becomes~~ become effective ~~on~~ :

- 1 (a) Upon passage and approval for the purpose of adopting any
- 2 regulations and performing any other preparatory administrative tasks that
- 3 are necessary to carry out the provisions of this act; and
- 4 (b) On July 1, 2023, ~~for~~, for all other purposes.