



Pacific Law Journal Review of Selected Nevada Legislative

Volume 1983 | Issue 1

Article 7

1-1-1983

Business Associations and Professions; Disciplinary Actions

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Recommended Citation

University of the Pacific, McGeorge School of Law, *Business Associations and Professions; Disciplinary Actions*, 1983 U. PAC. L. REV. (2019).

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Business Associations and Professions

Business Associations and Professions; disciplinary actions

NEV. REV. STAT. §§459.—, 616.—, 628.—, 631.—, 634.—, 636.—, 637.—, 637A.—, 637B.—, 639.—, 640.—, 644.—, 648.—, 684A.— (new); §§459.235, 463.330, 463.331, 616.425, 628.140, 628.390, 631.350, 631.400, 634.050, 636.075, 636.110, 636.280, 636.285, 636.420, 637.060, 637.150, 637A.080, 637A.090, 637B.240, 639.081, 640.070, 640.160, 644.060, 644.070, 644.170, 645.140, 648.040, 684A.240 (amended).

SB 65 (Committee on Judiciary); 1983 STAT. Ch 531
(Effective May 26, 1983)

AB 101 (Committee on Commerce); 1983 STAT. Ch 72

Chapter 531 reduces the workload of several state boards and commissions by providing for the delegation of authority to take disciplinary action to a hearing officer or panel. These boards and commissions include the Nevada State Board of Accounting,¹ the Commissioner² and Administrator³ of the Nevada Industrial Insurance Commission,⁴ the Board of Dental Examiners of Nevada,⁵ the Nevada Board of Chiropractic Examiners,⁶ the Nevada State Board of Optometry,⁷ the Board of Dispensing Opticians,⁸ the Board of Hearing Aid Specialists,⁹ the Board of Examiners for Audiology and Speech Pathology,¹⁰ the State Board of Pharmacy,¹¹ the State Board of Physical Therapy Examiners,¹² the State Board of Cosmetology,¹³ the Private Investigators Licensing Board,¹⁴ and the Insurance Commission.¹⁵ In

1. NEV. REV. STAT. §628.140(2) (amended by 1983 Nev. Stat. c. 531, §8(2), at 1533-34).

2. *Id.* §616.040 (definition of commissioner).

3. *Id.* §616.026 (definition of administrator).

4. *Id.* §616.425(3) (amended by 1983 Nev. Stat. c. 531, §6(3), at 1533). The commissioner may delegate authority only under NEV. REV. STAT. section 616.294, and the administrator may delegate authority only under NEV. REV. STAT. section 616.647. *Id.* §616.425(3) (amended by 1983 Nev. Stat. c. 531, §6(3), at 1533).

5. *Id.* §631.350(2) (amended by 1983 Nev. Stat. c. 531, §11(2), at 1535).

6. *Id.* §634.050(2) (amended by 1983 Nev. Stat. c. 531, §14(2), at 1536).

7. *Id.* §636.110(2) (amended by 1983 Nev. Stat. c. 531, §17(2), at 1537).

8. *Id.* §637.060(2) (amended by 1983 Nev. Stat. c. 531, §19(2), at 1538).

9. *Id.* §637A.080(3) (amended by 1983 Nev. Stat. c. 531, §22(3), at 1539).

10. *Id.* §637B.240(2) (amended by 1983 Nev. Stat. c. 531, §25(2), at 1540).

11. *Id.* §639.081(2) (amended by 1983 Nev. Stat. c. 531, §27(2), at 1540).

12. *Id.* §640.070(3) (amended by 1983 Nev. Stat. c. 531, §29(3), at 1541).

13. *Id.* §644.170(4) (amended by 1983 Nev. Stat. c. 531, §34(4), at 1543).

14. *Id.* §648.040(3) (amended by 1983 Nev. Stat. c. 531, §37(3), at 1544).

15. 1983 Nev. Stat. c. 531, §39(1), at 1545.

addition, the State Board of Health may delegate its authority to take disciplinary action in the regulation of nuclear radiation to a hearing officer or panel.¹⁶ Any action taken by the hearing officer or panel under Chapter 531 is subject to the same procedural requirements as actions taken by the Board or Commission.¹⁷

Furthermore, Chapter 531 states that when the hearing officer or panel imposes a monetary penalty or fine,¹⁸ the decision is final¹⁹ and, therefore, appealable to a court.²⁰ Conversely, if the hearing officer or panel (1) reprimands or places the licensee on probation,²¹ or (2) takes any action affecting a license, permit, registration, or certification,²² an appeal must be brought before the Board or Commissioner before judicial review is available.²³

While prior law provided that the Board of Dispensing Opticians, the State Board of Physical Therapy Examiners, and the Board of Dental Examiners could recover some of the costs involved in hearing or investigating a dispute,²⁴ Chapter 531 withdraws that authority.²⁵ Moreover, while prior law allowed the Nevada State Board of Accounting to assess the costs of the proceedings as a portion of any penalty it might impose,²⁶ Chapter 531 limits the recoverable expenses of the Board to attorneys' fees and court costs.²⁷ Finally, Chapter 72 authorizes the Nevada State Board of Optometry to assess the actual costs

16. NEV. REV. STAT. §459.235(2) (amended by 1983 Nev. Stat. c. 531, §4(2), at 1532) (delegable authority limited to state radiation control under NEV. REV. STAT. §§459.010, 459.290).

17. 1983 Nev. Stat. c. 531, §§3(1), 5(1), 7(1), 10(1), 13(1), 15(1), 18(1), 21(1), 24(1), 26(1), 28(1), 31(1), 36(1), 40(1), at 1531-45.

18. *Id.* c. 531, §§3(2), 5(2), 7(2), 10(2), 13(2), 15(2), 18(2), 21(2), 24(2), 26(2), 28(2), 31(2), 36(2), 40(2), at 1532-45 (penalty provisions for specified administrative agencies).

19. *Id.*

20. See NEV. REV. STAT. §233B.130 Any party aggrieved by a final decision in a contested case is entitled to judicial review thereof. *Id.*

21. 1983 Nev. Stat. c. 531, §7(2), 13(2), 18(2), 21(2), 24(2), 26(2), 28(2), 36(2), at 1533-44.

22. *Id.* c. 531, §§3(2), 5(2), 7(2), 10(2), 13(2), 15(2), 18(2), 21(2), 24(2), 26(2), 28(2), 31(2), 36(2), 40(2), at 1532-45.

23. *Id.*; see NEV. REV. STAT. §233B.130. Where an appeal is provided within an agency, only the decision at the highest agency level is reviewable unless otherwise provided by statute. *Id.*

24. 1981 Nev. Stat. c. 617, §4(10), at 1344 (amending NEV. REV. STAT. §637.150); 1981 Nev. Stat. c. 480, §22(1)(f), at 937 (amending NEV. REV. STAT. §640.160); 1981 Nev. Stat. c. 767, §19(1)(b), at 1977 (amending NEV. REV. STAT. §631.400).

25. Compare NEV. REV. STAT. §637.150(10) (amended by 1983 Nev. Stat. c. 531, §20(10), at 1538) with 1981 Nev. Stat. c. 617, §4(10), at 1344 (amending NEV. REV. STAT. §637.150); compare NEV. REV. STAT. §640.160(1)(f) (amended by 1983 Nev. Stat. c. 531, §30(1)(f), at 1542) with 1981 Nev. Stat. c. 480, §22(1)(f), at 937 (amending NEV. REV. STAT. §640.160); compare NEV. REV. STAT. §631.400(1)(b) (amended by 1983 Nev. Stat. c. 531, §12(1)(b), at 1535-36) with 1981 Nev. Stat. c. 767, §19(1)(b), at 1977 (amending NEV. REV. STAT. §631.400).

26. 1981 Nev. Stat. c. 636, §35(2), at 1392 (amending NEV. REV. STAT. §628.390(2)).

27. Compare NEV. REV. STAT. §628.390(2) (amended by 1983 Nev. Stat. c. 531, §9(2), at 1535) with 1981 Nev. Stat. c. 636, §35(2), at 1392 (amending NEV. REV. STAT. §628.390). *But cf.*, *In re Ross*, 99 Nev. 1, 13, 656 P.2d 832, 840 (1983). The Nevada Supreme Court found a violation of due process and dismissed the disciplinary proceeding by State Bar of Nevada's Board of Governors where a finding of "misconduct" was necessary to recover costs. *Id.*

of the hearing in addition to the fine.²⁸

28. NEV. REV. STAT. §636.420(2) (amended by 1983 Nev. Stat. c. 72, §4(2), at 233).

Business Associations and Professions; physicians— unprofessional conduct

NEV. REV. STAT. §630.030 (repealed); §630.— (new); §§630.005, 630.140, 630.170, 630.195, 630.290, 630.301, 630.311, 630.339 (amended).

SB 53 (Committee on Commerce and Labor); 1983 STAT. Ch 120

Chapter 120 expands the definition of unprofessional conduct by physicians¹ and physicians' assistants² in addition to expanding the grounds for initiating review of complaints justifying disciplinary action by the Board of Medical Examiners (hereinafter the referred to as Board).³ Chapter 120 also changes the requirements of specified applicants for obtaining a license to practice medicine.⁴

Unprofessional Conduct

Chapter 120 specifies acts deemed unprofessional conduct by physicians and physicians' assistants.⁵ The Board may impose penalties for the violation of these provisions⁶ or, in certain circumstances, seek criminal sanctions.⁷

Existing law specifies various acts that constitute unprofessional con-

1. NEV. REV. STAT. §630.014 (definition of physician).

2. *Id.* §630.015 (definition of physician's assistant); see 1983 Nev. Stat. c. 120, §§3-6, at 301.

3. See NEV. REV. STAT. §630.140(1) (amended by 1983 Nev. Stat. c. 120, §8(1), at 302) (duties of the Board of Medical Examiners of the State of Nevada). Compare NEV. REV. STAT. §630.301 (amended by 1983 Nev. Stat. c. 120, §12, at 305) with 1981 Nev. Stat. c. 327, §3, at 590 (amending NEV. REV. STAT. §630.301).

4. See 1983 Nev. Stat. c. 120, §9, at 303 (amending NEV. REV. STAT. §630.170); *id.* c. 120, §10, at 304 (amending NEV. REV. STAT. §630.195). Under existing law, the board is empowered to collect fees from each applicant for a license to practice medicine. Chapter 120 establishes a specific fee schedule and provides for refunds upon rejection of a license application. Compare 1981 Nev. Stat. c. 535, §2, at 1132 (amending NEV. REV. STAT. §630.290) with 1983 Nev. Stat. c. 120, §11(1)-(2), at 304.

5. 1983 Nev. Stat. c. 120, §§3-6, at 301.

6. NEV. REV. STAT. §630.352 (penalties include probation, limiting the guilty party's practice, or suspension or revocation of the license).

7. *Id.* §630.400. Persons who give false or forged evidence of any kind to the Board in connection with an application for a license to practice medicine and uncertified persons who hold themselves out as physicians' assistants are subject to sanctions including imprisonment in the state prison for not less than one year nor more than six years, and a fine of not more than \$5000. *Id.*