



# Pacific Law Journal Review of Selected Nevada Legislative

---

Volume 1987 | Issue 1

Article 81

---

1-1-1987

## Evidence; competency of witnesses

University of the Pacific, McGeorge School of Law

Follow this and additional works at: <https://scholarlycommons.pacific.edu/nlr>



Part of the [Legislation Commons](#)

---

### Recommended Citation

University of the Pacific, McGeorge School of Law, *Evidence; competency of witnesses*, 1987 U. PAC. L. REV. (2019).

Available at: <https://scholarlycommons.pacific.edu/nlr/vol1987/iss1/81>

This Legislative Review is brought to you for free and open access by the Journals and Law Reviews at Scholarly Commons. It has been accepted for inclusion in Pacific Law Journal Review of Selected Nevada Legislative by an authorized editor of Scholarly Commons. For more information, please contact [mgibney@pacific.edu](mailto:mgibney@pacific.edu).

guardian,<sup>10</sup> or by the personal representatives of a deceased client.<sup>11</sup> A marriage and family counselor, however, may invoke the privilege only on behalf of the client.<sup>12</sup> Chapter 259 creates four exceptions to the privilege: (1) for communications that the client plans to commit a crime;<sup>13</sup> (2) if the counselor must testify in an investigation<sup>14</sup> or proceeding involving the client's or the client's children's welfare; (3) for communications relevant to certain issues in proceedings to hospitalize the patient for mental illness;<sup>15</sup> or (4) for communications regarding the treatment of the client in any proceeding in which the treatment is an element of a claim or defense.<sup>16</sup>

GWH

---

tution or the Nevada Constitution, and except as provided in the Nevada Revised Statutes, no person has a privilege to refuse to disclose any matter or prevent another from being a witness or disclosing any matter or producing any object or writing).

10. 1987 Nev. Stat. ch. 259, sec. 4, at \_\_\_ (enacting NEV. REV. STAT. § 49.\_\_\_\_) (the client's conservator may also invoke the privilege).

11. *Id.* See NEV. REV. STAT. §§ 49.075 and 49.175 (definitions of representative of the client in the lawyer and client and the accountant and client contexts).

12. 1987 Nev. Stat. ch. 259, sec. 4, at \_\_\_ (enacting NEV. REV. STAT. § 49.\_\_\_\_) (the marriage and family counselor's authority to the privilege is presumed in the absence of evidence to the contrary).

13. *Id.* at \_\_\_ (also applies where client intends to commit that which the client knows or should reasonably know is a crime).

14. *Id.* at \_\_\_ (either an administrative or a court-related investigation is included).

15. *Id.* at \_\_\_ (if the marriage and family counselor in the course of diagnosis or treatment determines that the client is in need of hospitalization).

16. *Id.*

## Evidence; competency of witnesses

NEV. REV. STAT. § 50.\_\_\_\_ (new).

AB 780 (Committee on Judiciary); 1987 STAT. Ch 406

Existing law provides that, with certain exceptions,<sup>1</sup> every person<sup>2</sup> is competent to be a witness.<sup>3</sup> Under Chapter 406, a witness is not incompetent to testify solely because the witness, or a family member

---

1. See, e.g., NEV. REV. STAT. §§ 50.055 (competency of judge as witness), 50.065 (competency of juror as witness).

2. *Id.* § 0.039 (definition of person).

3. *Id.* § 50.015. A witness may not testify unless that person has personal knowledge of the matter or is an expert. *Id.* § 50.025.

## Evidence

of the witness, has received medical or psychological care in connection with the event giving rise to the proceeding.<sup>4</sup> Chapter 406 further provides that evidence relating to that care is admissible if the evidence otherwise falls within the provisions concerning admissible evidence.<sup>5</sup>

RWL

- 
4. 1987 Nev. Stat. ch. 406, sec. 1, at \_\_\_ (enacting NEV. REV. STAT. § 50.\_\_\_\_).
  5. *Id.* NEV. REV. STAT. § 48.015-.135 (general provisions on admissibility).

## Evidence; privileged communications

NEV. REV. STAT. § 49.245 (amended).  
AB 809 (Committee on Judiciary); 1987 STAT. Ch 449  
(Effective July 1, 1987)

Under existing law, confidential<sup>1</sup> communications between a patient<sup>2</sup> and doctor<sup>3</sup> are privileged.<sup>4</sup> Chapter 449, however, mandates that there is no privilege for written medical or hospital records regarding a patient's condition when such condition is an element of a claim or defense in any proceeding.<sup>5</sup> Furthermore, written medical or hospital records requested by the patient, or by any authorized investigator of the board of medical examiners in the course of an investigation, are not privileged.<sup>6</sup>

CC

- 
1. NEV. REV. STAT. § 49.215 1 (definition of confidential).
  2. *Id.* § 49.215 3 (definition of patient). *See id.* § 49.235 (persons who may claim the privilege on behalf of the patient).
  3. *Id.* § 49.215 2 (definition of doctor).
  4. *Id.* § 49.225. *But see id.* § 49.245 (amended by 1987 Nev. Stat. ch. 449, sec. 1, 2) (privilege does not protect such communications if the issue involves: (1) the patient's mental illness, (2) a communication made in a court ordered examination, (3) a communication that is an element of a claim or defense, or a prosecution or mandamus proceeding, (4) information communicated which has an unlawful purpose, or (5) health care records requested by the patient, an authorized representative of the patient, or by an authorized representative or investigator of the board of medical examiners in the course of any investigation).
  5. 1987 Nev. Stat. ch. 449, secs. 1, at \_\_\_ (amending NEV. REV. STAT. § 49.245 3), 2, at \_\_\_ (amending NEV. REV. STAT. § 49.245).
  6. 1987 Nev. Stat. ch. 449, sec. 1, at \_\_\_ (amending NEV. REV. STAT. § 49.245 6).