IN THE SUPREME COURT OF THE STATE OF NEVADA

TAWNI MCCROSKY, INDIVIDUALLY AND AS THE NATURAL PARENT OF LYAM MCCROSKY, A MINOR CHILD, Appellants, vs. CARSON TAHOE REGIONAL MEDICAL CENTER, A NEVADA BUSINESS ENTITY, Respondent.	)	Case No. 70325

APPEAL

From the First Judicial District Court, Carson City County
The Honorable JAMES T. RUSSELL, District Judge
District Court Case No. 13TRT00028IB

RESPONDENT'S APPENDIX

JOHN C. KELLY, ESQ.
Nevada Bar No.: 9848
ROBERT C. McBRIDE, ESQ.
Nevada Bar No.: 007082
CHELSEA R. HUETH, ESQ.
Nevada Bar No.: 010904
CARROLL, KELLY, TROTTER,
FRANZEN, McKENNA, & PEABODY
8329 West Sunset Road, Suite 260
Las Vegas, Nevada 89113
(702) 792-5855

Attorneys for Respondent
Carson Tahoe Regional Medical Center

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CERTIFICATE OF SERVICE

I certify that I am an employee of Carroll, Kelly, Trotter, Franzen, McKenna & Peabody, and that on the date shown below, pursuant to NRAP 25(d), I caused service of the foregoing document by electronically filing the same with the Clerk of the Court which serves the following party automatically:

Peter D. Durney, Esq.
Durney & Brennan
6900 S. McCarran Boulevard, Suite 2060
Reno, NV 89509
Attorneys for Appellant

Additionally, I deposited in the United States mail at Las Vegas, Nevada, a true copy of the foregoing document, addressed to:

Matthew L. Sharp, Esq.
Matthew L. Sharp, Ltd.
432 Ridge Street
Reno, NV 89501
Attorneys for Amicus Curiae
Nevada Justice Association

DATED this 13th day of February, 2017.

Sharlene Reed

Case No. 13 TRT 00028 1B
Dept. No. 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

TAWNI McCROSKY, individually and as the natural parent of LYAM McCROSKY, a minor child,

Plaintiffs,

vs.

CARSON TAHOE REGIONAL MEDICAL CENTER, a Nevada business entity; and DOES I-X, inclusive;

Defendants.

JURY INSTRUCTIONS

LADIES AND GENTLEMEN OF THE JURY:

It is my duty as judge to instruct you in the law that applies to this case. It is your duty as jurors to follow these instructions and to apply the rules of law to the facts as you find them from the evidence.

You must not be concerned with the wisdom of any rule of law stated in these instructions. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your oath to base a verdict upon any other view of the law than given in the instructions of the court.

Instruction No. 1

If, in these instructions, any rule, direction or idea is repeated or stated in different ways, no emphasis thereon is intended by me and none may be inferred by you. For that reason, you are not to single out any certain sentence or any individual point or instruction and ignore the others, but you are to consider all the instructions as a whole and regard each in the light of all the others.

The order in which the instructions are given has no significance as to their relative importance.

Instruction No. 2

The masculine form as used in the instructions, if applicable as shown by the text of the instruction and the evidence, applies to a female person or a corporation.

Instruction No. 3

The evidence which you are to consider in this case consists of the testimony of the witnesses, the exhibits, and any facts admitted or agreed to by counsel.

Statements, arguments and opinions of counsel are not evidence in the case. However, if the attorneys stipulate as to the existence of a fact, you must accept the stipulation as evidence and regard that fact as proved.

You must not speculate to be true any insinuations suggested by a question asked a witness. A question is not evidence and may be considered only as it supplies meaning to the answer.

You must disregard any evidence to which an objection is sustained by the court and any evidence ordered stricken by the court.

Anything you may have seen or heard outside the courtroom is not evidence and must also be disregarded.

Instruction No. 4

You must decide all questions of fact in this case from the evidence received in this trial and not from any other source. You must not make any independent investigation of the facts or the law, or even discuss or consider or discuss facts as to which there is no evidence. This means, for example, that you must not on your own visit the scene, conduct experiments, or consult reference works or the internet for additional information.

You also may not consult or discuss with others the evidence and facts in this case by any social media, whether it be online through the internet or by any electronic device such as a cellular telephone, hand-held PDA, or tablet.

Instruction No. 5

Although you are to consider only the evidence in the case in reaching a verdict, you must bring to the consideration of the evidence your everyday common sense and judgment as reasonable men and women. Thus, you are not limited solely to what you see and hear as the witnesses testify. You may draw reasonable inferences from the evidence which you feel are justified in the light of common experience, keeping in mind that such inferences should not be based on speculation or guess.

A verdict may never be influenced by sympathy, prejudice or public opinion. Your decision should be the product of sincere judgment and sound discretion in accordance with these rules of law.

Instruction No. 6

One of the parties in this case is a corporation. A corporation is entitled to the same fair and unprejudiced treatment as an individual would be under like circumstances, and you should decide the case with the same impartiality you would use in deciding a case between individuals.

Instruction No. 7

If, during this trial, I have said or done anything which has suggested to you that I am inclined to favor the claims or position of any party, you will not be influenced by any such suggestion.

I have not expressed, nor intended to express, nor have I intended to intimate, any opinion as to which witnesses are or are not worthy of belief, what facts are or are not established, or what inference should be drawn from the evidence. If any expression of mine has seemed to indicate an opinion relating to any of these matters, I instruct you to disregard it.

Instruction No. 8

There are two kinds of evidence; direct and circumstantial. Direct evidence is direct proof of a fact, such as testimony of an eyewitness. Circumstantial evidence is indirect evidence, that is, proof of a chain of facts from which you could find that another facts exists, even though it has not been proved directly. You are entitled to consider both kinds of evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any evidence. It is for you to decide whether a fact has been proved by circumstantial evidence.

Instruction No. 9

In determining whether any proposition has been proved, you should consider all of the evidence bearing on the question without regard to which party produced it.

Instruction No. 10

Certain testimony has been read into evidence from a deposition. A deposition is testimony taken under oath before the trial and preserved in writing. You are to consider that testimony as if it had been given in court.

Instruction No. 11

An attorney has a right to interview a witness for the purpose of learning what testimony the witness will give. The fact that the witness has talked to an attorney and told him or her what he or she would testify to does not, by itself, reflect adversely on the truth of the testimony of the witness.

Instruction No. 12

The credibility or "believability" of a witness should be determined by his or her manner upon the stand, his or her relationship to the parties, his or her fears, motives, interests or feelings, his or her opportunity to have observed the matter to which he or she testified, the reasonableness of his or her statements and the strength or weakness of his or her recollections.

If you believe that a witness has lied about a material fact in the case, you may disregard the entire testimony of that witness or any portion of this testimony which is not proved by other evidence.

Instruction No. 13

Discrepancies in a witness's testimony or between his testimony and that of others, if there were any discrepancies, do not necessarily mean that the witness should be discredited. Failure of recollection is a common experience, and innocent misrecollection is not uncommon. It is a fact, also, that two persons witnessing an incident or transaction often will see or hear it differently. Whether a discrepancy pertains to a fact of importance or only to a trivial detail should be considered in weighing its significance.

Instruction No. 14

A witness who has special knowledge, skill, experience, training or education in a particular science, profession or occupation is an expert witness. An expert witness may give his opinion as to any matter in which he is skilled.

You should consider such expert opinion and weigh the reasons, if any, given for it. You are not bound, however, by such an opinion. Give it the weight to which you deem it entitled, whether that be great or slight, and you may reject it, if, in your judgment, the reasons given for it are unsound.

Instruction No. 15

A hypothetical question has been asked of an expert witness. In a hypothetical question, the expert witness is told to assume the truth of certain facts, and the expert witness is asked to give an opinion based upon those assumed facts. You must decide if all of the facts assumed in the hypothetical question have been established by the evidence. You can determine the effect of that admission upon the value of the opinion.

Instruction No. 16

In this case you have heard medical experts express opinions as to the standard of professional learning, skill and care required of the defendant.

To evaluate each such opinion, you should consider the qualifications and credibility of the witness and the reasons given for his opinion. Give each opinion the weight to which you deem it entitled.

You must resolve any conflict in the testimony of the witnesses by weighing each of the opinions expressed against the others, taking into consideration the reasons given for the opinion, the facts relied upon by the witness, his relative credibility, and his special knowledge, skill, experience, training and education.

Instruction No. 17

Whenever in these instructions I state that the burden, or the burden of proof, rests upon a certain party to proved a certain allegation made by him, the meaning of such an instruction is this: That unless the truth of the allegation is proved by a preponderance of the evidence, you shall find the same to be not true.

The term "preponderance of the evidence" means such evidence as, when weighted with that opposed to it, has more convincing force, and from which it appears that the greater probability of truth lies therein.

Instruction No. 18

The preponderance, or weight of evidence, is not necessarily with the greater number of witnesses.

The testimony of one witness worthy of belief is sufficient for the proof of any fact and would justify a verdict in accordance with such testimony, even if a number of witnesses have testified to the contrary. If, from the whole case, considering the credibility of witnesses, and after weighing the various factors of evidence, you believe that there is a balance of probability pointing to the accuracy and honesty of the one witness, you should accept his testimony.

Instruction No. 19

The Plaintiffs have the burden to prove by a preponderance of the evidence:

1. The accepted standard of medical care for the nurses working for Carson Tahoe Regional Medical Center;
2. That the conduct by the nurses departed from the standard of care;
3. That the conduct by the nurses was the actual and proximate cause of the injuries; and
4. The Plaintiffs' damages.

Instruction No. 20

In order to establish a claim of negligence, the Plaintiffs must prove the following elements by a preponderance of the evidence:

1. That the Defendant was negligent; and
2. That the Defendant's negligence was a proximate cause of damage to the Plaintiffs.

Instruction No. 21

A verdict cannot be founded on speculation or possibilities. In order for plaintiffs to recover damages for injuries arising from a medical provider's negligence, it must be shown to a reasonable degree of medical probability that one or more of the medical provider's negligence was a proximate cause of plaintiffs' injury, damage, loss or harm.

Instruction No. 22

A proximate cause of injury, damage, loss or harm is a cause which, in natural and continuous sequence, produces the injury, damage, loss, or harm, and without which the injury, damage, loss, or harm, would not have occurred.

Instruction No. 23

In a medical case, it is the duty of a Registered Nurse to have the knowledge and skill ordinarily possessed, and to use the care and skill ordinarily used, by reputable Registered Nurses practicing in the same field.

A failure to perform such duty is negligence.

Instruction No. 24

A nurse is not necessarily negligent because her efforts prove unsuccessful. A nurse is negligent if her lack of success is due to a failure to perform any of the duties as defined in these instructions.

Instruction No. 25

A nurse who, herself, is exercising ordinary care has a right to assume that every other person will perform his or her duty under the law; and in the absence of reasonable cause for thinking otherwise, it is not negligence for a nurse to fail to anticipate injury which can come to plaintiff only from a violation of law or duty by another.

Instruction No. 26

It is the duty of a hospital, such as defendant Carson Tahoe Regional Medical Center, to use reasonable care in furnishing a patient the care, attention, and protection reasonably required by her mental or physical condition. The amount of caution, attention, and protection required in the exercise of reasonable care depends on the know condition of the patient and her needs, and must be appropriate to that condition and those needs. The standard of reasonable care required of a hospital is the care, skill, and diligence ordinarily used by hospitals generally under similar circumstances.

A failure to perform any such duty is negligence.

Instruction No. 27

A medical provider, in treating a patient, is not an insurer of favorable results. The fact that a bad result followed the labor and delivery does not, in itself, require you to find that any of the defendants failed in the duty they owed to their patient, which duty I have defined for you. If they used the care and skill ordinarily exercised in like cases by reputable members of their professions practicing in the same specialties, they cannot be found to have failed in their duty simply on the basis of the results that followed.

Instruction No. 28

In this case, the nurses were within the employ and under the control of Carson Tahoe Regional Medical Center and, as such, each such person was the agent of Carson Tahoe Regional Medical Center and the hospital is liable for their negligence, if any, occurring within the scope of their employment.

Instruction No. 29

Evidence of the habit of a person or the routine practice of an organization, whether corroborated or not and regardless of the presence of eyewitnesses, is relevant to prove that the conduct of the person or organization on a particular occasion was in conformity with the habit or routine practice.

Instruction No. 30

Dr. Amy Sue Hayes was previously a defendant in this case and has been dismissed based upon a settlement with Plaintiffs. You are not to speculate on the amount of that settlement. A settlement is not an admission of fault. In order to establish a claim of negligence as to Dr. Amy Sue Hayes, the following elements must be proved by a preponderance of evidence by the Defendant: that Dr. Hayes was negligent and that the negligence of Dr. Hayes was a proximate cause of the damages to Plaintiffs.

Defendant Carson Tahoe Regional Medical Center is not liable for the actions of Amy Sue Hayes, M.D.

If you decide that both Defendant Carson Tahoe Regional Medical Center and Dr. Hayes were negligent and that the negligence of both Defendant Carson Tahoe Regional Medical Center and Dr. Hayes was a proximate cause of injuries and damages to the Plaintiffs, you shall assess that percentage of negligence attributed to Defendant Carson Tahoe Regional Medical Center and Dr. Hayes in accordance with the Instructions on damages.

You are to award damages without consideration of any settlement by Dr. Hayes.

Instruction No. 31

In determining the amount of losses, if any, suffered by the plaintiffs as a proximate result of the negligence in question, you will take into consideration the nature, extent and duration of the injuries and damage you believe from the evidence plaintiffs have sustained, and you will decide upon a sum of money sufficient to reasonably and fairly compensate plaintiffs for the following items:

1. The reasonable medical expenses plaintiffs have necessarily incurred as a result of the incident to the present as reflected in the amount paid to date by Medicaid;
2. The medical expenses which you believe the plaintiffs are reasonably certain to incur in the future as a result of the incident, discounted to present value;
3. Plaintiffs' loss of earnings or earning capacity from the date of the incident to the present;
4. Plaintiffs' loss of earnings or earning capacity which you believe the plaintiffs are reasonably certain to experience in the future as a result of the incident, discounted to present value;
5. The physical and mental pain, suffering, anguish and disability endured by the plaintiffs from the date of the incident to the present; and
6. The physical and mental pain, suffering, anguish and disability which you believe plaintiffs are reasonably certain to experience in the future as a result of the incident.

Instruction No. 32

In this action evidence of the amount payable as a benefit to Plaintiffs as a result of injury pursuant to Medicaid has been introduced. To date, Lyam McCrosky's medical expenses have been paid by Medicaid.

If you decide that Plaintiff Tawni McCrosky is entitled to judgment against Carson Tahoe Regional Medical Center, you should find her damages in accordance with the Court's instruction on damages and return a verdict in the Plaintiffs' favor in the amount so found.

Instruction No. 33

Tawni McCrosky claims damages for the nursing care she provided to Lyam McCrosky.

The measure of damages for nursing care for Lyam McCrosky is the reasonable monetary value of the services.

You must decide if the services to Lyam McCrosky were necessary, the reasonable monetary value of the services, and if the need for the services was a result of the negligence of Carson Tahoe Regional Medical Center.

Instruction No. 34

No definite standard or method of calculation is prescribed by law by which to fix reasonable compensation for grief, sorrow or emotional pain. Nor is the opinion of any witness required as to the amount of such reasonable compensation. Furthermore, the argument of counsel as to the amount of damages is not evidence of reasonable compensation. In making an award for grief or sorrow and pain and suffering, you shall exercise your authority with calm and reasonable judgment and the damages you fix shall be just and reasonable in light of the evidence.

Instruction No. 35

Whether any of these elements of damage have been proven by the evidence is for you to determine. Neither sympathy nor speculation is a proper basis for determining damages. However, absolute certainty as to the damages is not required. It is only required that plaintiffs proves each item of damage by a preponderance of the evidence.

Instruction No. 36

If you decide that Plaintiff Lyam McCrosky has suffered damages that will continue for the rest of his life, you must decide how long he will probably live.

Instruction No. 37

If you find more than one person at fault for Plaintiffs' injury, you must then determine the relative degrees of fault of all those whom you find to have been at fault.

The relative degrees of fault are to be entered on the special verdict form as percentage of the total fault for Plaintiffs' injury.

The fault of one person may be great or lesser than that of another, but the relative degrees of all fault must add up to 100%. This will be clear from the special verdict form.

Instruction No. 38

The Court has given you instructions embodying various rules of law to help guide you to a just and lawful verdict. Whether some of these instructions will apply will depend upon what you find to be the facts. The fact that I have instructed you on various subjects in this case including that of damages must not be taken as indicating an opinion of the court as to what you should find to be the facts or as to which party is entitled to your verdict.

Instruction No. 39

It is your duty as jurors to consult with one another and to deliberate with a view toward reaching an agreement, if you can do so without violence to your individual judgment. Each of you must decide the case for yourself, but should do so only after a consideration of the case with you fellow jurors, and you should not hesitate to change an opinion when convinced that it is erroneous. However, you should not be influenced to vote in any way on any question submitted to you by the single fact that a majority of the jurors, or any of them, favor such a decision. In other words, you should not surrender your honest convictions concerning the effect or weight of evidence for the mere purpose of returning a verdict or solely because of the opinion of the other jurors. Whatever your verdict is, it must be the product of a careful and impartial consideration of all the evidence in the case under the rules of law as given you by the court.

Instruction No. 40

If, during your deliberation, you should desire to be further informed on any point of law or hear again portions of the testimony, you must reduce your request to writing signed by the foreperson. The officer will then return a written instruction to you or return you to court.

Readbacks of testimony are time consuming and are not encouraged unless you deem it a necessity. Should you require a readback, you must carefully describe the testimony to be read back so that the court reporter can arrange the notes. Remember, the court is not at liberty to supplement the evidence.

Instruction No. 41

Now you will listen to the arguments of counsel who will endeavor to aid you to reach a proper verdict by refreshing in your minds the evidence and by showing the application thereof to the law, but, whatever counsel may say, you will bear in mind that it is your duty to be governed in your deliberation by the evidence, as you understand it and remember it to be, and by the law as given you in these instructions, and return a verdict which, according to your reason and candid judgment, is just and proper.

Instruction No. 42

When you retire to consider your verdict, you must select one of your number to act as foreman, who will preside over your deliberation and will be your spokesman here in court.

During your deliberation, you will have all the exhibits which were admitted into evidence, these written instructions and forms of verdict which have been prepared for your convenience.

In civil actions, three-fourths of the total number of jurors may find and return a verdict. This is a civil action. As soon as six or more of you have agreed upon a verdict, you must have it signed and dated by your foreman, and then return with it to this room.

DATED this _____ day of March, 2016.

_____
JAMES T. RUSSELL
District Court Judge

Instruction No. 43

History of AB421 1997

Versions: As Introduced First Reprint As Enrolled

BDR 2-1534
Introduced:04/29/97
Introduced By: Judiciary

Summary: Revises provisions concerning settlements based upon good faith. (BDR 2-1534)

- 04/29/97 Read first time. Referred to Committee on Judiciary. To printer.
- 04/30/97 From printer. To committee. 5/21
- 05/22/97 From committee: Amend, and do pass as amended.
- 05/23/97 Read second time. Amended. To printer.
- 05/26/97 From printer. To engrossment. Engrossed. First reprint.
- 05/27/97 Read third time. Passed, as amended. Title approved. To Senate.
- 05/28/97 In Senate.
- 05/28/97 Read first time. Referred to Committee on Judiciary. To committee. 6/6
- 06/06/97 From committee: Do pass.
- 06/09/97 Read second time.
- 06/11/97 Read third time. Passed. Title approved. To Assembly.
- 06/12/97 In Assembly. To enrollment.
- 06/16/97 Enrolled and delivered to Governor.
- 06/20/97 Approved by the Governor.
- 06/20/97 Chapter 164.
- 06/20/97 Effective June 20, 1997.

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BILL SUMMARY
69th REGULAR SESSION
OF THE NEVADA STATE LEGISLATURE

PREPARED BY
RESEARCH DIVISION
LEGISLATIVE COUNSEL BUREAU
Nonpartisan Staff of the Nevada State Legislature

ASSEMBLY BILL 421
(Enrolled)

Assembly Bill 421 changes the provisions governing the effect of a release or covenant not to sue or not to enforce judgment. This measure adds equitable indemnity as a condition for which a tortfeasor who receives such a release or covenant may be discharged from all liability to any other tortfeasor. Furthermore, the bill defines "equitable indemnity" to mean a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

Assembly Bill 421 was requested to address situations in construction defect litigation where one tortfeasor (individual or business [for example, a subcontractor] being sued for a wrongful act) wants to settle his part of a case but is prevented from doing so because other tortfeasors are not ready or willing to settle. The existing law allows one of two or more tortfeasors to settle with the injured party and to be discharged from all liability for contribution to the tortfeasors who do not settle. Under contribution, a tortfeasor against whom a judgment is rendered is entitled to recover proportional shares of judgment from other joint tortfeasors whose negligence contributed to the injury and who were also liable to the injured party.

In an opinion dated January 3, 1997 (*Medallion Development v. Converse Consultants*), Nevada's Supreme Court held that the existing law does not address implied equitable indemnity or the right under which the entire loss or liability is shifted from one tortfeasor to the party primarily responsible. Because of this decision, one party cannot be released to settle his part of the case separately. Assembly Bill 421 corrects this situation by specifically providing for equitable indemnity in the law, and it should expedite the prompt settlement of disputes.

This bill is effective on June 20, 1997.

ASSEMBLY BILL NO. 421–COMMITTEE ON JUDICIARY

APRIL 29, 1997

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning settlements based upon good faith. (BDR 2-1534)

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

EXPLANATION - Matter in italics is new; matter in brackets [ ] is material to be omitted.

AN ACT relating to tortfeasors; revising the provisions governing the effect of a release or covenant not to sue; 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 17.245 is hereby amended to read as follows:

17.245 *1.* When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

[1.] *(a)* It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide , [;] but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

[2.] *(b)* It discharges the tortfeasor to whom it is given from all liability for contribution *and for equitable indemnity* to any other tortfeasor.

2. As used in this section, "equitable indemnity" means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

Sec. 2. NRS 17.265 is hereby amended to read as follows:

17.265 *Except as otherwise provided in NRS 17.245, the provisions of* NRS 17.225 to 17.305, inclusive, do not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

MINUTES OF THE
ASSEMBLY COMMITTEE ON JUDICIARY

Sixty-ninth Session
May 21, 1997

The Committee on Judiciary was called to order at 8:07 a.m., on Wednesday, May 21, 1997. Chairman Bernie Anderson presided in Room 3138 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Guest List.

COMMITTEE MEMBERS PRESENT:

Mr. Bernie Anderson, Chairman
Ms. Barbara Buckley, Vice Chairman
Mr. Clarence (Tom) Collins
Ms. Merle Berman
Mr. John Carpenter
Mr. Don Gustavson
Mr. Dario Herrera
Mrs. Ellen Koivisto
Mr. Mark Manendo
Mr. Dennis Nolan
Ms. Genie Ohrenschall
Mr. Brian Sandoval
Mrs. Gene Segerblom

COMMITTEE MEMBERS ABSENT:

Mr. Richard Perkins (Excused)

STAFF MEMBERS PRESENT:

Donald O. Williams, Chief Principal Research Analyst
Risa L. Berger, Committee Counsel
Juliann K. Jenson, Senior Research Analyst
Joi Davis, Committee Secretary

OTHERS PRESENT:

Bob Maddox, Attorney, Representing the Nevada Trial Lawyers Association
John Morrow, Washoe County Public Defender's Office
Mary Sanada, Nevada Society of CPAs
Darlene Reed, Nevada Society of CPAs
Ray Moberg, Nevada Society of CPAs
Fred Hillerby, Nevada Society of CPAs
Donna Sweger, Nevada Attorneys for Injured Workers
Eric Cooper, Nevada Sheriffs and Chiefs Association
Captain Jim Nadeau, Washoe County Sheriff's Office
Lt. Stan Olsen, Las Vegas Metropolitan Police Department
Paul Kincade, Private Citizen
Jim Wadhams, Southern Nevada Home Builders Association
Bill Bradley, Attorney, Representing Nevada Trial Lawyers Association
Georgia Rohrs, Acting Administrator, Administration of the Courts
Richard Simmonds, Nevada Veterinarian Medical Association

Chairman Anderson opened the meeting and turned to Assembly Bill 421.

ASSEMBLY BILL 421 - Revises provisions concerning settlements based upon good faith.

Bob Maddox, Attorney, Representing the Nevada Trial Lawyers (NTLA), stated most of his cases involved complex litigation pertaining to construction problems. Such cases, he said, involved many parties, consumed many resources and were litigated for a period of several years. He explained it would be beneficial to resolve these cases at an early stage and A.B. 421 was brought to allow for early settlements and freedom from cross claims. Presently, he informed, the statute only allowed for dismissal of cross claims for contribution but not for equitable indemnity.

Mr. Maddox went on to state that in January 1997, the Nevada Supreme Court, in the case of Medallion Development v. Converse Consultants, determined that a settlement that had already been reached could not be upheld because of the possibility of a claim for implied indemnity. As a result, NTLA met with the home builders associations to amend NRS 17.245 to include dismissal of cross claims for equitable indemnity if there was a good faith settlement. He concluded A.B. 421 was positive legislation and promoted early resolution.

Responding to Mr. Collins' inquiry, Mr. Maddox explained the bill was designed for cases that came about after a construction project was completed. For example, when a lawsuit was filed for defective construction which involved many parties and some of the parties wanted to settle claims and the statutes as written did not allow release from claims if there was an equitable indemnity claim. Mr. Maddox provided additional examples of equitable indemnity claims.

Mr. Sandoval asked if the bill would affect pending litigation. Mr. Maddox asserted NTLA wanted the bill to be effective upon adoption and in that instance the bill would not affect a settlement already reached, but would benefit the possibility of settlement in existing litigation. Mr. Anderson pointed out that A.B. 421, if passed, would be effective as of October 1, 1997 and asked if NTLA wanted that changed. Mr. Maddox affirmed they would like to see the bill effective upon passage and approval. Responding to Mr.Sandoval's inquiry, Mr. Maddox responded the bill would affect a "great many" cases.

Jim Wadhams, representing the Southern Nevada Home Builders Association, testified in support of A.B. 421. He stated the bill affected many persons and was designed to expedite prompt settlement of disputes. He explained if a party to a lawsuit wanted to write a check and settle their claim, this legislative measure would allow that. Further, often when one party settled a claim that often precipitated additional settlements. Mr. Wadhams stated he supported the proposed amendment to make the bill effective upon passage and approval. He indicated the amendment would not affect any existing agreements to settle but would affect litigation in which an agreement had not been reached.

Mr. Wadhams clarified that the passage of A.B. 421 was not strictly limited to the settlement of construction litigation cases in that the bill affected other types of litigation, including automobile accidents and other tort claims.

Mr. Collins disclosed he was a contractor and member of the Southern Nevada Home Builders Association and that would not affect his voting on the bill since he was not involved in structural work.

Mr. Sandoval disclosed he was an attorney involved in litigation which the legislation could affect and therefore he would be abstain from voting.

ASSEMBLYMAN CARPENTER MOVED TO AMEND & DO PASS A.B. 421 TO ALLOW FOR THE BILL TO BE EFFECTIVE UPON PASSAGE AND APPROVAL.

ASSEMBLYWOMAN SEGERBLOM SECONDED THE MOTION.

Ms. Buckley disclosed she was an attorney but had no pending cases that would be affected by A.B. 421.

THE MOTION CARRIED WITH MR. SANDOVAL ABSTAINING.

Chairman Anderson appointed Mr. Gustavson for floor assignment of the bill.

ASSEMBLY BILL 422 - Adds court administrator to advisory committee for uniform program for reporting crimes.

Georgia Rohrs, Acting Director, Administrative Office of the Courts for the Nevada Supreme Court, stated A.B. 422 amended NRS 179A.078 to add a member of the court administrator's staff to the Uniform Crime Reporting Advisory Committee. In addition, there were some technical changes in the bill. Ms. Rohrs informed the committee the legislative measure was suggested by the legislative auditor and by the Department of Motor Vehicles and Public Safety. In addition, she advised the bill was approved and supported by the State of Nevada Judicial Council.

ASSEMBLYWOMAN BUCKLEY MOVED DO PASS A.B. 422.

ASSEMBLYMAN MANENDO SECONDED THE MOTION.

THE MOTION CARRIED UNANIMOUSLY BY THOSE PRESENT.

Chairman Anderson appointed Assemblywoman Berman for floor assignment of the bill.

ASSEMBLY BILL 423 - Provides for admissibility under certain circumstances of testimony of witness who has undergone hypnosis.

Assemblyman Brian Sandoval, Assembly District 25, primary sponsor, introduced his constituent and requester of the bill, Paul Kincade. Mr. Sandoval explained A.B. 423 provided for the admissibility, under certain circumstances, of testimony of a witness who had undergone hypnosis. He pointed out for the committee that forensic hypnotism had been used as a legitimate law enforcement tool for many years and the legislative measure was not creating anything new. He pointed out that hypnotic testimony was currently admitted in courts in Nevada.

Assemblywoman Evans moved the adoption of the amendment.
Remarks by Assemblywoman Evans.
Amendment adopted.
Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 322.
Bill read second time.
The following amendment was proposed by the Committee on Natural Resources, Agriculture, and Mining:
Amendment No. 328.
Amend section 1, page 2, by deleting lines 8 and 9 and inserting:
"*(a) "Severe mental disability" means a mental impairment that is medically documented and limits substantially one or more of a person's major life activities. The term includes, without limitation, mental retardation, severe mental or emotional illness and a severe learning disability.*".
Assemblywoman de Braga moved the adoption of the amendment.
Remarks by Assemblywoman de Braga.
Amendment adopted.
Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 421.
Bill read second time.
The following amendment was proposed by the Committee on Judiciary:
Amendment No. 423.
Amend the bill as a whole by adding a new section designated sec. 3, following sec. 2, to read as follows:
"Sec. 3. This act becomes effective upon passage and approval.".
Assemblyman Anderson moved the adoption of the amendment.
Remarks by Assemblyman Anderson.
Amendment adopted.
Bill ordered reprinted, engrossed and to third reading.

GENERAL FILE AND THIRD READING

Assembly Bill No. 36.
Bill read third time.
Remarks by Assemblymen Carpenter, Chowning, Goldwater and Ohrenschall.
Roll call on Assembly Bill No. 36:
YEAS—41.
NAYS—None.
Excused—Arberry.

Assembly Bill No. 36 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 126.
Bill read third time.
Remarks by Assemblymen Chowning, Ernaut, Freeman and Bache.

ASSEMBLY BILL NO. 421–COMMITTEE ON JUDICIARY

APRIL 29, 1997

Referred to Committee on Judiciary

SUMMARY—Revises provisions concerning settlements based upon good faith. (BDR 2-1534)

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

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

AN ACT relating to tortfeasors; revising the provisions governing the effect of a release or covenant not to sue; 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 17.245 is hereby amended to read as follows:

17.245 *1.* When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

[1.] *(a)* It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide , [;] but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

[2.] *(b)* It discharges the tortfeasor to whom it is given from all liability for contribution *and for equitable indemnity* to any other tortfeasor.

2. As used in this section, "equitable indemnity" means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

Sec. 2. NRS 17.265 is hereby amended to read as follows:

17.265 *Except as otherwise provided in NRS 17.245, the provisions of* NRS 17.225 to 17.305, inclusive, do not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

Sec. 3. This act becomes effective upon passage and approval.

GENERAL FILE AND THIRD READING

Assembly Bill No. 240.

Bill read third time.

Remarks by Assemblymen Humke, Freeman, Ohrenschall, Goldwater and Anderson.

Roll call on Assembly Bill No. 240:

YEAS—42.

NAYS—None.

Assembly Bill No. 240 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 263.

Bill read third time.

Remarks by Assemblywoman Evans.

Roll call on Assembly Bill No. 263:

YEAS—42.

NAYS—None.

Assembly Bill No. 263 having received a constitutional majority, Mr. Speaker declared it passed, as amended.

Bill ordered transmitted to the Senate.

Assembly Bill No. 322.

Bill read third time.

Remarks by Assemblywoman de Braga.

Assemblywoman Buckley moved that Assembly Bill No. 322 be taken from the General File and placed on the Chief Clerk's desk.

Remarks by Assemblywoman Buckley.

Motion carried.

Assembly Bill No. 374.

Bill read third time.

The following amendment was proposed by the Committee on Ways and Means:

Amendment No. 408.

Amend section 1, page 2, line 16, by deleting "*previously constructed*" and inserting: "*constructed on or after July 1, 1999*".

Amend sec. 3, page 3, line 20, by deleting "*previously constructed*" and inserting: "*constructed on or after July 1, 1998*".

Amend sec. 6, page 4, by deleting lines 3 through 5 and inserting:

"Sec. 6. This act becomes effective on July 1, 1997.".

Assemblyman Hettrick moved the adoption of the amendment.

Remarks by Assemblyman Hettrick.

Amendment adopted.

Bill ordered reprinted, re-engrossed and to third reading.

Assembly Bill No. 421.

Bill read third time.

Remarks by Assemblymen Gustavson, Sandoval and Humke.

Conflict of interest declared by Assemblyman Sandoval.
Potential conflict of interest declared by Assemblyman Humke.
Roll call on Assembly Bill No. 421:
YEAS—41.
NAYS—None.
Not voting—Sandoval.

Assembly Bill No. 421 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Assembly Bill No. 428.
Bill read third time.
Remarks by Assemblymen Price, Giunchigliani, Carpenter and Bache.
Assemblyman Bache moved that Assembly Bill No. 428 be re-referred to the Committee on Ways and Means.
Remarks by Assemblymen Bache and Price.
Motion carried.

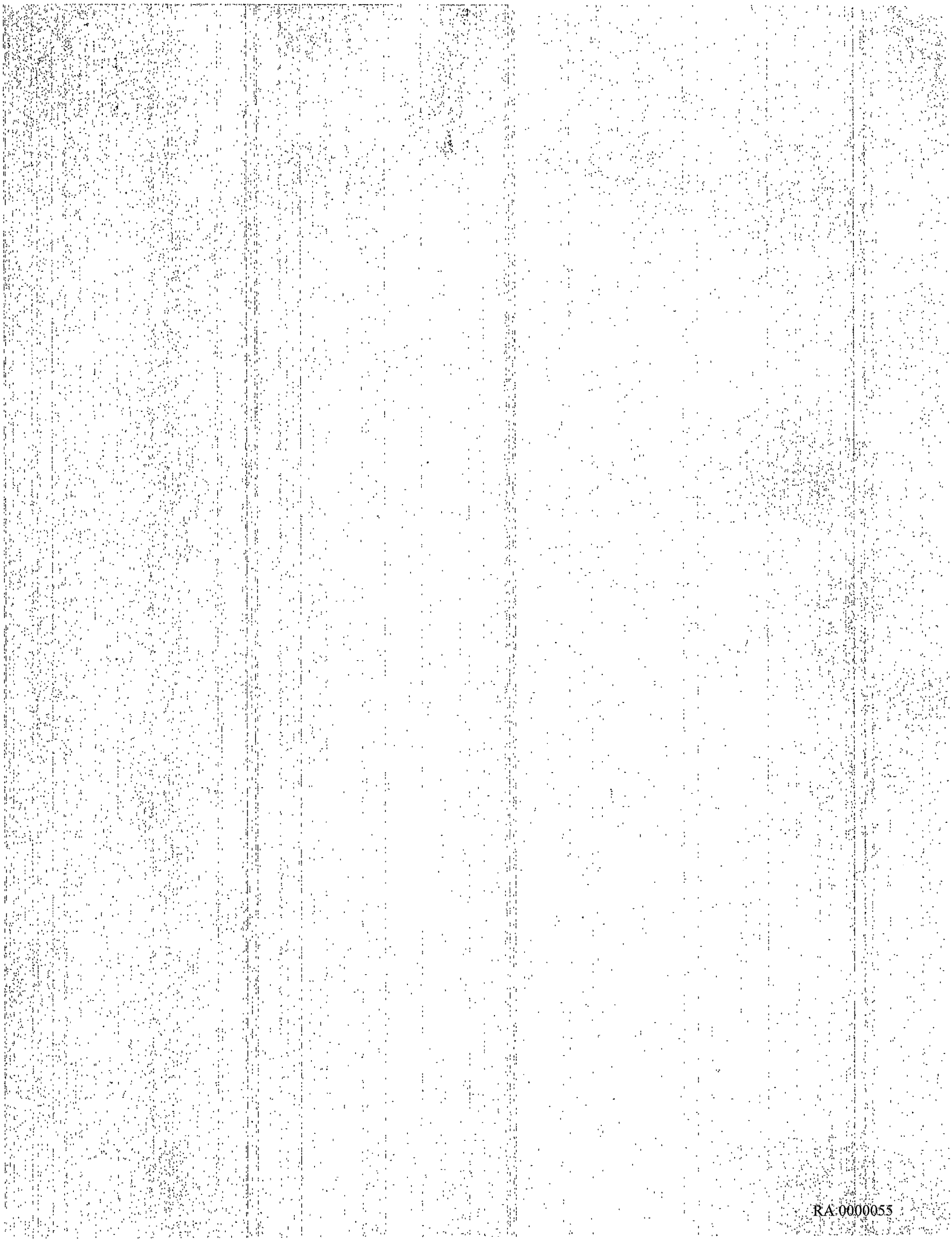
Assembly Joint Resolution No. 9.
Resolution read third time.
Remarks by Assemblymen Giunchigliani, Goldwater, Lambert, Tiffany, Collins, Bache, Carpenter and Price.
Roll call on Assembly Joint Resolution No. 9:
YEAS—24.
NAYS—Amodei, Berman, Braunlin, Carpenter, Cegavske, Close, Dini, Ernaut, Goldwater, Gustavson, Hettrick, Hickey, Humke, Lambert, Marvel, Sandoval, Tiffany, Von Tobel—18.

Assembly Joint Resolution No. 9 having received a constitutional majority, Mr. Speaker declared it passed.
Resolution ordered transmitted to the Senate.

Senate Bill No. 46.
Bill read third time.
Remarks by Assemblymen Parks, Freeman and Cegavske.
Roll call on Senate Bill No. 46:
YEAS—42.
NAYS—None.

Senate Bill No. 46 having received a constitutional majority, Mr. Speaker declared it passed, as amended.
Bill ordered transmitted to the Senate.

Senate Bill No. 83.
Bill read third time.
Remarks by Assemblymen Lambert, Segerblom, Collins, Price, Chowning and Bache.
Roll call on Senate Bill No. 83:
YEAS—35.
NAYS—Collins, Gustavson, Manendo, Ohrenschall, Price, Sandoval, Segerblom—7.



MINUTES OF THE
SENATE COMMITTEE ON JUDICIARY

Sixty-ninth Session
June 6, 1997

The Senate Committee on Judiciary was called to order by Chairman Mark A. James, at 8:38 a.m., on Friday, June 6, 1997, in Room 2149 of the Legislative Building, Carson City, Nevada. Exhibit A is the Agenda. Exhibit B is the Attendance Roster.

COMMITTEE MEMBERS PRESENT:

Senator Mark A. James, Chairman
Senator Jon C. Porter, Vice Chairman
Senator Mike McGinness
Senator Maurice Washington
Senator Ernest E. Adler
Senator Dina Titus
Senator Valerie Wiener

STAFF MEMBERS PRESENT:

Allison Combs, Committee Policy Analyst
Brad Wilkinson, Committee Counsel
Maddie Fischer, Administrative Assistant
Jo Greenslate, Committee Secretary

OTHERS PRESENT:

Glen Whorton, Chief, Classification and Planning, Department of Prisons
Richard A. Gammick, District Attorney, Washoe County
Brent Adams, District Judge, Second Judicial District
Deborah A. Agosti, District Judge, Second Judicial District
Bill Bradley, Lobbyist, Nevada Trial Lawyers Association
I.R. (Renny) Ashleman, II, Lobbyist, Attorney, Nevada Supreme Court
Fred L. Hillerby, Lobbyist, Nevada Society of Certified Public Accountants
Mary Sanada, Nevada Society of Certified Public Accountants
Michael D. Hillerby, Lobbyist, Nevada Veterinary Medical Association

Chairman James opened the hearing on Senate Bill (S.B.) 133.

palatable, because if they are over budgeted in the number of inmates housed, the operating funds revert back to the General Fund.

Chairman James stated he had to take some action on the bill. He asked Mr. Whorton, if he sent the bill back to the Senate floor for a vote on Tuesday, June 10, if that would be enough time for him to supply the needed information. Mr. Whorton replied yes, it would.

SENATOR PORTER MOVED TO DO PASS S.B. 133 AS AMENDED.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATOR ADLER WAS ABSENT FOR THE VOTE.)

*****

Chairman James opened the hearing on Assembly Bill (A.B.) 421.

ASSEMBLY BILL 421: Revises provisions concerning settlements based upon good faith. (BDR 2-1534)

Bill Bradley, Lobbyist, Nevada Trial Lawyers Association, stated his organization was attending the meeting on two bills, A.B. 421 and A.B. 427. He remarked his organization is in total agreement with both bills. He testified A.B. 421 involves situations where a plaintiff is suing more than one defendant. If one defendant decides he or she would like to settle, that defendant must go to court and make sure the judge deems the settlement is in good faith, before being dismissed. Chairman James interjected, in other words, that would ensure it is not a collusive settlement in which one defendant would settle for nothing, and then collectively go after the remaining defendant. Mr. Bradley confirmed that was correct.

In construction-defect litigation, particularly, Mr. Bradley remarked, there is one claim called "equitable indemnity." He explained equity is an area of the law that says, "When all else fails, and there is really not any other thing that can be done, the judge can look at what is true, fair, honest, and sincere." He said, unfortunately, in construction litigation, it is being abused because the defendants all claim a fairness doctrine against the rest of the defendants called "equitable indemnity." Under current law, as long as that claim continues to

exist among joint defendants, one defendant cannot settle out. He explained this bill was designed to eliminate that defense and promote and encourage settlements among joint defendants, particularly in construction litigation. He concluded his organization sees A.B. 421 as a very positive bill, one that will encourage settlements and move cases along a little faster.

Senator Porter asked Mr. Bradley to clarify, for the average person on the street, what this bill really does. Mr. Bradley gave the example in which he represents "Maddy," who is the owner of a nice home in a big development. Plumbers, electricians, sheetrockers, roofers are all involved, and there is a flap over construction of the house. He stated everyone comes to the lawsuit initially, but really the roofer and plumber did not have much to do with it, so they want out of the lawsuit. He said what happens among all the other subcontractors is that they all sue each other for the equitable indemnity, and as long as that claim exists, a judge cannot let any of the subcontractors out. He surmised this bill will do away with the ability to claim equitable indemnity among the joint defendants, and allow a good settlement to release defendants less involved from the case. He maintained it will ensure the right settlement goes to the right person.

Chairman James inquired whether there was a Nevada Supreme Court case that said equitable indemnity exists notwithstanding the provision already there that a defendant does not have liability for contribution. Mr. Bradley confirmed that was correct. Chairman James asked in which case that was considered.

I. R. (Renny) Ashleman, II, Lobbyist, Attorney, Nevada Supreme Court, answered Medallion Development v. Converse Consultants, a case that came down January 3, 1997, 113 Nev. Ad. Op. 4. He clarified what the court did then was to simply interpret the Uniform Contribution Act, which this Legislature has adopted, to say that contributions are protected under settlement, but it does not say anything about equitable settlement. Therefore, the court believed it was still restricted from settling out lesser defendants in joint-defendant, equitable-indemnity cases. He maintained this bill plugs a hole in the Uniform Contribution Act.

Chairman James queried where the Uniform Contribution Act is codified in Nevada statutes. Mr. Ashleman replied Nevada Revised Statutes (NRS) 17.265, which this amendment addresses. He commented actually NRS 17.245 is the contribution provision, but NRS 17.265 says, "We did not impair any right of indemnity," and according to Mr. Ashleman, that is where the problem is.

Mr. Ashleman testified Mr. Bradley and he had only talked about construction, but actually the bill has wide application in medical malpractice and a number of other areas. He maintained he has had extensive discussions with members of the insurance industry, the defense bar, and others that are not involved in construction. He asserted he does not know of any attorney involved in active litigation where there is a potential settlement that does not favor this bill.

Chairman James clarified what the judge will be doing under this statute is determining whether the settlement is in good faith. That good-faith determination is one which seeks to protect the rights of the other potentially liable tort-feasors. Mr. Ashleman confirmed that was correct. He stated they are all noticed and get to come in and argue the fairness of the settlement. He explained once a party is deemed to be in good faith and goes out of the case, that party's negligence is no longer considered by the jury, but the remaining defendants get a credit for the amount for which that defendant settled. He continued usually the argument is the settling defendant is not paying his or her fair share, which is why the codefendants object. He surmised it is the judge's responsibility to determine if in fact, he or she is, in the context of liability and damages.

Chairman James pointed out it is a good-faith issue rather than a fair-share issue that the judge determines. He illustrated using an example of a case involving four defendants, all equally liable. One manages to negotiate a good settlement for $100,000. That means the extra $150,000 the others are going to owe would be spread among the other parties, and this would not allow them to go back against the defendant who settled, for the $50,000 owed to each defendant. He expressed his concern that this would foreclose the idea they could ever go after that, even if they had to pay it. Mr. Ashleman agreed, but added there is a judicial determination that it is in good faith. As part of his good-faith analysis, Mr. Ashleman said, the judge actually analyzes whether or not the settlement is proportionate. Chairman James affirmed that was all he wanted to know.

Chairman James closed the hearing on A.B. 421 and opened the hearing on A.B. 427.

ASSEMBLY BILL 427: Changes limit of time within which actions for malpractice may be commenced against accountants,

Chairman James asked for a motion on A.B. 421.

SENATOR WASHINGTON MOVED TO DO PASS A.B. 421.

SENATOR PORTER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS MCGINNESS AND TITUS WERE ABSENT FOR THE VOTE.)

*****

Chairman James asked for a motion to rescind the committee's action whereby S.B. 133 was recommended for do pass as amended because he needed to do a conflict amendment.

SENATOR ADLER MOVED TO RESCIND THE DO PASS AS AMENDED ON S.B. 133.

SENATOR WASHINGTON SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS MCGINNESS AND TITUS WERE ABSENT FOR THE VOTE.)

*****

Chairman James then asked for a motion to amend and do pass S.B. 133 with the conflict amendment.

SENATOR PORTER MOVED TO AMEND AND DO PASS AS AMENDED S.B. 133.

SENATOR ADLER SECONDED THE MOTION.

THE MOTION CARRIED. (SENATORS MCGINNESS AND TITUS WERE ABSENT FOR THE VOTE.)

*****

Chairman James opened the work session on A.B. 97.

trying to get a bill that was going to make some earthshaking change to take art away from kids and affect the Catholic holy sacrament. That is preposterous. How do you say that on the floor here? Isn't there some line you do not step across?

Amendment adopted.
Bill ordered reprinted, engrossed and to third reading.

Assembly Bill No. 417.
Bill read second time and ordered to third reading.

Assembly Bill No. 421.
Bill read second time and ordered to third reading.

Senate Bill No. 341.
Bill read second time.
The following amendment was proposed by the Committee on Transportation:
Amendment No. 504.
Amend sec. 2, page 2, by deleting line 5 and inserting: "*except that the lettering must be at least 8 inches high and formed by lines that are at least 1-inch wide.*".
Amend sec. 4, page 2, by deleting lines 11 and 12 and inserting: "*street or roadway, except that the lettering must be at least 8 inches high and formed by lines that are at least 1-inch wide.*".
Amend sec. 5, page 2, by deleting lines 16 and 17 and inserting: "*the nearest street or roadway, except that the lettering must be at least 8 inches high and formed by lines that are at least 1-inch wide.*".
Amend sec. 8, page 2, by deleting lines 32 and 33 and inserting: "*legible from the center of the nearest street or roadway, except that the lettering must be at least 8 inches high and formed by lines that are at least 1-inch wide.*".
Senator O'Donnell moved the adoption of the amendment.
Remarks by Senator O'Donnell.
Amendment adopted.
Bill ordered reprinted, engrossed and to third reading.

GENERAL FILE AND THIRD READING

Senate Bill No. 177.
Bill read third time.
Roll call on Senate Bill No. 177:
YEAS—21.
NAYS—None.

Senate Bill No. 177 having received a constitutional majority, Mr. President declared it passed.
Bill ordered transmitted to the Assembly.

Senate Bill No. 184.
Bill read third time.
Roll call on Senate Bill No. 184:
YEAS—21.
NAYS—None.

Assembly Bill No. 174 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 274.

Bill read third time.

Roll call on Assembly Bill No. 274:

YEAS—21.

NAYS—None.

Assembly Bill No. 274 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 336.

Bill read third time.

Remarks by Senators James and Adler.

Roll call on Assembly Bill No. 336:

YEAS—21.

NAYS—None.

Assembly Bill No. 336 having received a constitutional majority, Mr. President declared it passed, as amended.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 417.

Bill read third time.

Roll call on Assembly Bill No. 417:

YEAS—21.

NAYS—None.

Assembly Bill No. 417 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

Assembly Bill No. 421.

Bill read third time.

Remarks by Senators James and Neal.

Roll call on Assembly Bill No. 421:

YEAS—21.

NAYS—None.

Assembly Bill No. 421 having received a constitutional majority, Mr. President declared it passed.

Bill ordered transmitted to the Assembly.

MESSAGES FROM THE ASSEMBLY

ASSEMBLY CHAMBER, Carson City, June 11, 1997

To the Honorable the Senate:

I have the honor to inform your honorable body that the Assembly on this day adopted Assembly Concurrent Resolution No. 42.

JACQUELINE SNEDDON
Assistant Chief Clerk of the Assembly

2. The director of the department of administration shall notify the state controller and the fiscal analysis division of the legislative counsel bureau of his approval of a request made pursuant to subsection 1. The state controller shall draw his warrant upon receipt of the approval by the director of the department of administration.

3. An advance from the state general fund:

(a) May be approved by the director of the department of administration for the budget account of the Nevada equal rights commission of the department of employment, training and rehabilitation.

(b) Is limited to 25 percent of the revenue expected to be received in the current fiscal year from any source other than legislative appropriation.

4. Any money which is temporarily advanced from the state general fund to an account pursuant to subsection 3 must be repaid by August 31 following the end of the immediately preceding fiscal year.

Sec. 2. This act becomes effective upon passage and approval.

Assembly Bill No. 421–Committee on Judiciary

CHAPTER 164

AN ACT relating to tortfeasors; revising the provisions governing the effect of a release or covenant not to sue; and providing other matters properly relating thereto.

[Approved June 20, 1997]

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

Section 1. NRS 17.245 is hereby amended to read as follows:

17.245 *1.* When a release or a covenant not to sue or not to enforce judgment is given in good faith to one of two or more persons liable in tort for the same injury or the same wrongful death:

[1.] *(a)* It does not discharge any of the other tortfeasors from liability for the injury or wrongful death unless its terms so provide , [;] but it reduces the claim against the others to the extent of any amount stipulated by the release or the covenant, or in the amount of the consideration paid for it, whichever is the greater; and

[2.] *(b)* It discharges the tortfeasor to whom it is given from all liability for contribution *and for equitable indemnity* to any other tortfeasor.

2. As used in this section, "equitable indemnity" means a right of indemnity that is created by the court rather than expressly provided for in a written agreement.

Sec. 2. NRS 17.265 is hereby amended to read as follows:

17.265 *Except as otherwise provided in NRS 17.245, the provisions of* NRS 17.225 to 17.305, inclusive, do not impair any right of indemnity under existing law. Where one tortfeasor is entitled to indemnity from

another, the right of the indemnity obligee is for indemnity and not contribution, and the indemnity obligor is not entitled to contribution from the obligee for any portion of his indemnity obligation.

Sec. 3. This act becomes effective upon passage and approval.

Assembly Bill No. 417–Assemblymen Berman, Freeman, Giunchigliani, Collins, Lee, Braunlin, Koivisto, Ernaut, Hettrick, Nolan, Manendo, Sandoval, Mortenson, Evans, Anderson, Bache, Lambert, Parks, Arberry, Goldwater, Herrera, Close, Humke, Amodei, Ohrenschall, Von Tobel, Marvel, Neighbors, Williams, Buckley, Perkins, Cegavske, Gustavson, Price, Krenzer, Chowning, Hickey, Tiffany, Segerblom and de Braga

CHAPTER 165

AN ACT relating to days of observance; requiring the governor to proclaim a week in May as Osteoporosis Prevention and Awareness Week in the State of Nevada; and providing other matters properly relating thereto.

[Approved June 20, 1997]

WHEREAS, Osteoporosis is a bone-thinning disease that poses a serious threat to the health and quality of life of one of every two women and one of every five men in this country; and

WHEREAS, It is estimated that over 150,000 women and men in Nevada currently suffer from osteoporosis and low-bone mass; and

WHEREAS, Osteoporosis progresses silently and without sensation over many years, and many cases remain undiagnosed because its first symptom is often a bone fracture, typically of the hip, spine or wrist; and

WHEREAS, While Nevada's population ages over the next 20 years, it is estimated that Nevada's residents will experience more than 24,900 hip fractures and the incidence of all bone fractures will increase by more than 86 percent; and

WHEREAS, It is estimated the annual cost for these fractures will increase from approximately $20 million in 1995 to $103 million by the year 2015; and

WHEREAS, Each such fracture causes pain, disability, immobility and social isolation, and significantly affects the person's quality of life and threatens his or her ability to live independently, thus increasing long-term health care costs; and

WHEREAS, Because osteoporosis currently has no cure, it is imperative for us to focus on the prevention, early diagnosis and treatment to reduce the prevalence of and the devastation resulting from this disease; and

WHEREAS, Low bone mass is one of the most reliable predictors of a person's risk of future fracture; and

WHEREAS, A person's bone mass can now be accurately and painlessly measured to diagnose and monitor the treatment of osteoporosis; and

INITIATIVE PETITION

INITIATIVE PETITION

FEBRUARY 21, 2003

Referred to Committee on Judiciary

SUMMARY—Makes various changes relating to certain actions against providers of health care.

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

AN ACT relating to medical malpractice; limiting attorney's fees in actions against providers of health care; eliminating the exceptions pertaining to noneconomic damages; making changes concerning the payment of damages; revising the statute of limitations for the filing of actions; eliminating joint and several liability; making various other changes concerning such actions; and providing for other matters properly relating thereto.

WHEREAS, There exists a major health care crisis in this state attributable to the skyrocketing cost of medical malpractice insurance; and

WHEREAS, Such skyrocketing medical malpractice insurance costs have resulted in a potential breakdown in the delivery of health care in this state, severe hardships concerning the availability of health care for the medically indigent, a denial of access to health care for the economically marginal, and the depletion of physicians such as to substantially worsen the quality of health care available to the residents of this state; and

WHEREAS, It is necessary to provide an adequate and reasonable remedy to address this health care crisis and to protect the health, welfare and safety of the residents of this state; now, therefore,

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

Section 1. Chapter 7 of NRS is hereby amended by adding thereto a new section to read as follows:

1. An attorney shall not contract for or collect a fee contingent on the amount of recovery for representing a person seeking damages in connection with an action for injury or death against a provider of health care based upon professional negligence in excess of:

(a) Forty percent of the first $50,000 recovered;

(b) Thirty-three and one-third percent of the next $50,000 recovered;

(c) Twenty-five percent of the next $500,000 recovered; and

(d) Fifteen percent of the amount of recovery that exceeds $600,000.

2. The limitations set forth in subsection 1 apply to all forms of recovery, including, without limitation, settlement, arbitration and judgment.

3. For the purposes of this section, "recovered" means the net sum recovered by the plaintiff after deducting any disbursements or costs incurred in connection with the prosecution or settlement of the claim. Costs of medical care incurred by the plaintiff and general and administrative expenses incurred by the office of the attorney are not deductible disbursements or costs.

4. As used in this section:

(a) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(b) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

Sec. 2. Chapter 41A of NRS is hereby amended by adding thereto the provisions set forth as sections 3 to 6, inclusive, of this act.

Sec. 3. *"Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the*

provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

Sec. 4. "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

Sec. 5. In an action for injury or death against a provider of health care based upon professional negligence, the injured plaintiff may recover noneconomic damages, but the amount of noneconomic damages awarded in such an action must not exceed $350,000.

Sec. 6. 1. In an action for injury or death against a provider of health care based upon professional negligence, each defendant is liable to the plaintiff for economic damages and noneconomic damages severally only, and not jointly, for that portion of the judgment which represents the percentage of negligence attributable to the defendant.

2. This section is intended to abrogate joint and several liability of a provider of health care in an action for injury or death against the provider of health care based upon professional negligence.

Sec. 7. NRS 41A.003 is hereby amended to read as follows:

41A.003 As used in this chapter, unless the context otherwise requires, the words and terms defined in NRS 41A.004 to 41A.013, inclusive, *and sections 3 and 4 of this act* have the meanings ascribed to them in those sections.

Sec. 8. NRS 41A.097 is hereby amended to read as follows:

41A.097 1. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 4 years after the date of injury or 2 years after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring before October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring before October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring before October 1, 2002, from error or omission in practice by the provider of health care.

2. Except as otherwise provided in subsection 3, an action for injury or death against a provider of health care may not be commenced more than 3 years after the date of injury or ~~[2 years]~~ *1 year* after the plaintiff discovers or through the use of reasonable diligence should have discovered the injury, whichever occurs first, for:

(a) Injury to or the wrongful death of a person occurring on or after October 1, 2002, based upon alleged professional negligence of the provider of health care;

(b) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from professional services rendered without consent; or

(c) Injury to or the wrongful death of a person occurring on or after October 1, 2002, from error or omission in practice by the provider of health care.

3. This time limitation is tolled for any period during which the provider of health care has concealed any act, error or omission upon which the action is based and which is known or through the use of reasonable diligence should have been known to him.

4. For the purposes of this section, the parent, guardian or legal custodian of any minor child is responsible for exercising reasonable judgment in determining whether to prosecute any cause of action limited by subsection 1 or 2. If the parent, guardian or custodian fails to commence an action on behalf of that child within the prescribed period of limitations, the child may not bring an action based on the same alleged injury against any provider of health care upon the removal of his disability, except that in the case of:

(a) Brain damage or birth defect, the period of limitation is extended until the child attains 10 years of age.

(b) Sterility, the period of limitation is extended until 2 years after the child discovers the injury.

~~[5. As used in this section, "provider of health care" means a physician licensed under chapter 630 or 633 of NRS, a dentist, registered nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital or the employer of any such person.]~~

Sec. 9. Chapter 42 of NRS is hereby amended by adding thereto a new section to read as follows:

1. In an action for injury or death against a provider of health care based upon professional negligence, if the defendant so elects, the defendant may introduce evidence of any amount payable as a benefit to the plaintiff as a result of the injury or death pursuant to the United States Social Security Act, any state

or federal income disability or worker's compensation act, any health, sickness or income-disability insurance, accident insurance that provides health benefits or income-disability coverage, and any contract or agreement of any group, organization, partnership or corporation to provide, pay for or reimburse the cost of medical, hospital, dental or other health care services. If the defendant elects to introduce such evidence, the plaintiff may introduce evidence of any amount that the plaintiff has paid or contributed to secure his right to any insurance benefits concerning which the defendant has introduced evidence.

2. A source of collateral benefits introduced pursuant to subsection 1 may not:

(a) Recover any amount against the plaintiff; or

(b) Be subrogated to the rights of the plaintiff against a defendant.

3. In an action for injury or death against a provider of health care based upon professional negligence, a district court shall, at the request of either party, enter a judgment ordering that money damages or its equivalent for future damages of the judgment creditor be paid in whole or in part by periodic payments rather than by a lump-sum payment if the award equals or exceeds $50,000 in future damages.

4. In entering a judgment ordering the payment of future damages by periodic payments pursuant to subsection 3, the court shall make a specific finding as to the dollar amount of periodic payments that will compensate the judgment creditor for such future damages. As a condition to authorizing periodic payments of future damages, the court shall require a judgment debtor who is not adequately insured to post security adequate to assure full payment of such damages awarded by the judgment. Upon termination of periodic payments of future damages, the court shall order the return of this security, or so much as remains, to the judgment debtor.

5. A judgment ordering the payment of future damages by periodic payments entered pursuant to subsection 3 must specify the recipient or recipients of the payments, the dollar amount of the payments, the interval between payments, and the number of payments or the period of time over which payments will be made. Such payments must only be subject to modification in the event of the death of the judgment creditor. Money damages awarded for loss of future earnings must not be reduced or payments terminated by reason of the death of the judgment creditor, but must be paid to persons to whom the judgment creditor owed a duty of support, as provided by law, immediately before his death. In such cases, the court that rendered the original judgment may,

upon petition of any party in interest, modify the judgment to award and apportion the unpaid future damages in accordance with this subsection.

6. If the court finds that the judgment debtor has exhibited a continuing pattern of failing to make the periodic payments as specified pursuant to subsection 5, the court shall find the judgment debtor in contempt of court and, in addition to the required periodic payments, shall order the judgment debtor to pay the judgment creditor all damages caused by the failure to make such periodic payments, including, but not limited to, court costs and attorney's fees.

7. Following the occurrence or expiration of all obligations specified in the periodic payment judgment, any obligation of the judgment debtor to make further payments ceases and any security given pursuant to subsection 4 reverts to the judgment debtor.

8. As used in this section:

(a) "Future damages" includes damages for future medical treatment, care or custody, loss of future earnings, loss of bodily function, or future pain and suffering of the judgment creditor.

(b) "Periodic payments" means the payment of money or delivery of other property to the judgment creditor at regular intervals.

(c) "Professional negligence" means a negligent act or omission to act by a provider of health care in the rendering of professional services, which act or omission is the proximate cause of a personal injury or wrongful death. The term does not include services that are outside the scope of services for which the provider of health care is licensed or services for which any restriction has been imposed by the applicable regulatory board or health care facility.

(d) "Provider of health care" means a physician licensed under chapter 630 or 633 of NRS, dentist, licensed nurse, dispensing optician, optometrist, registered physical therapist, podiatric physician, licensed psychologist, chiropractor, doctor of Oriental medicine, medical laboratory director or technician, or a licensed hospital and its employees.

Sec. 10. NRS 41A.031, 41A.041 and 42.020 are hereby repealed.

Sec. 11. If any provision of this act, or the application thereof to any person, thing or circumstance is held invalid, such invalidity shall not affect the provisions or application of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 12. The amendatory provisions of sections 5, 6 and 8 of this act apply only to a cause of action that accrues on or after the effective date of this act.

TEXT OF REPEALED SECTIONS

41A.031 Limitations on liability for noneconomic damages; exceptions.

1. Except as otherwise provided in subsection 2 and except as further limited in subsection 3, in an action for damages for medical malpractice or dental malpractice, the noneconomic damages awarded to each plaintiff from each defendant must not exceed $350,000.

2. In an action for damages for medical malpractice or dental malpractice, the limitation on noneconomic damages set forth in subsection 1 does not apply in the following circumstances and types of cases:

(a) A case in which the conduct of the defendant is determined to constitute gross malpractice; or

(b) A case in which, following return of a verdict by the jury or a finding of damages in a bench trial, the court determines, by clear and convincing evidence admitted at trial, that an award in excess of $350,000 for noneconomic damages is justified because of exceptional circumstances.

3. Except as otherwise provided in subsection 4, in an action for damages for medical malpractice or dental malpractice, in the circumstances and types of cases described in subsections 1 and 2, the noneconomic damages awarded to each plaintiff from each defendant must not exceed the amount of money remaining under the professional liability insurance policy limit covering the defendant after subtracting the economic damages awarded to that plaintiff. Irrespective of the number of plaintiffs in the action, in no event may any single defendant be liable to the plaintiffs in the aggregate in excess of the professional liability insurance policy limit covering that defendant.

4. The limitation set forth in subsection 3 does not apply in an action for damages for medical malpractice or dental malpractice unless the defendant was covered by professional liability insurance at the time of the occurrence of the alleged malpractice and on the date on which the insurer receives notice of the claim, in an amount of:

(a) Not less than $1,000,000 per occurrence; and

(b) Not less than $3,000,000 in the aggregate.

5. This section is not intended to limit the responsibility of any defendant for the total economic damages awarded.

6. For the purposes of this section, "gross malpractice" means failure to exercise the required degree of care, skill or knowledge that amounts to:

(a) A conscious indifference to the consequences which may result from the gross malpractice; and

(b) A disregard for and indifference to the safety and welfare of the patient.

41A.041 Medical malpractice: Several liability for noneconomic damages.

1. In an action for damages for medical malpractice, each defendant is liable for noneconomic damages severally only, and not jointly, to the plaintiff only for that portion of the judgment which represents the percentage of negligence attributable to the defendant.

2. As used in this section, "medical malpractice" means the failure of a physician, hospital, employee of a hospital, certified nurse midwife or certified registered nurse anesthetist in rendering services to use the reasonable care, skill or knowledge ordinarily used under similar circumstances.

42.020 Actions for damages for medical malpractice: Reduction of damages by amount previously paid or reimbursed; payment of future economic damages.

1. Except as otherwise provided in subsection 2, in any action for damages for medical malpractice, the amount of damages, if any, awarded in the action must be reduced by the amount of any prior payment made by or on behalf of the provider of health care against whom the action is brought to the injured person or to the claimant to meet reasonable expenses of medical care, other essential goods or services or reasonable living expenses.

2. In any action described in subsection 1 in which liability for medical malpractice is established or admitted, the court shall, before the entry of judgment, hold a separate hearing to determine if any expenses incurred by the claimant for medical care, loss of income or other financial loss have been paid or reimbursed as a benefit from a collateral source. If the court determines that a claimant has received such a benefit, the court shall reduce the amount of damages, if any, awarded in the action by the amount of the benefit. The amount so reduced must not include any amount for which there is a right of subrogation to the rights of the claimant if the right of subrogation is exercised by serving a notice of lien on the claimant before the settlement of or the entry of judgment in the action. Notice of the action must be provided by the claimant to any statutory holder of a lien.

3. If future economic damages are awarded in an action for medical malpractice, the court may, at the request of the claimant, order the award to be paid:

(a) In a lump sum which has been reduced to its present value as determined by the trier of fact and approved by the court; or

(b) Subject to the provisions of subsections 5 and 6 and the discretion of the court, in periodic payments either by an annuity purchased to provide periodic payments or by other means if the defendant posts an adequate bond or other security to ensure full payment by periodic payments of the damages awarded by the judgment.

As used in this subsection, "future economic damages" includes damages for future medical treatment, care or custody, and loss of future earnings.

4. If the claimant receives periodic payments pursuant to paragraph (b) of subsection 3, the award must not be reduced to its present value. The amount of the periodic payments must be equal to the total amount of all future damages awarded by the trier of fact and approved by the court. The period for which the periodic payments must be made must be determined by the trier of fact and approved by the court. Before the entry of judgment, each party shall submit to the court a plan specifying the recipient of the payments, the amount of the payments and a schedule of periodic payments for the award. Upon receipt and review of the plans, the court shall specify in its judgment rendered in the action the recipient of the payments, the amount of the payments and a schedule of payments for the award.

5. If an annuity is purchased pursuant to paragraph (b) of subsection 3, the claimant shall select the provider of the annuity. Upon purchase of the annuity, the claimant shall:

(a) Execute a satisfaction of judgment or a stipulation for dismissal of the claim with prejudice; and

(b) Release forever the defendant and his insurer, if any, from any obligation to make periodic payments pursuant to the award.

6. If the defendant posts a bond or other security pursuant to paragraph (b) of subsection 3, upon termination of the payment of periodic payments of damages, the court shall order the return of the bond or other security, or as much as remains, to the defendant.

7. As used in this section:

(a) "Benefit from a collateral source" means any money, service or other benefit which is paid or provided or is reasonably likely to be paid or provided to a claimant for personal injury or wrongful death pursuant to:

(1) A state or federal act which provides benefits for sickness, disability, accidents, loss of income or workers' compensation;

(2) A policy of insurance which provides health benefits or coverage for loss of income;

(3) A contract of any group, organization, partnership or corporation which provides, pays or reimburses the cost of medical, hospital or dental benefits or benefits for loss of income; or

(4) Any other publicly or privately funded program which provides such benefits.

(b) "Medical malpractice" has the meaning ascribed to it in NRS 41A.009.