

DAILY ROLL CALL
 BUSINESS & LABOR COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date January 20, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

MINUTES OF THE MEETING
BUSINESS AND LABOR COMMITTEE
50TH LEGISLATIVE SESSION

January 20, 1987

The meeting of the Business and Labor Committee was called to order by Chairman Les Kitselman on January 20, 1987 at 8:00 a.m. in Room 312-F of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 165 - Pharmacists Not Liable for Peer Review sponsored by Rep. Jan Brown. Rep. Brown stated that the bill amends the definition and adds pharmacist to the definition of health care professional.

PROPONENTS

Bob Likewise, Executive Director for the Montana State Pharmaceutical Association, and representing the pharmacists for the state of Montana. Mr. Likewise stated they wanted the committee to amend section 37-2-201, MCA, to include pharmacists in the definition of health care professionals. The purpose, he said, was to grant immunity from liability for actions of the interveners while working within the scope of the rules and by-laws of the Committee for Pharmacist Rehabilitation. Exhibit No. 1 and 2.

OPPONENTS

None.

QUESTIONS

Rep. Wallin asked if they are not responsible if they give the wrong prescription as prescribed by a doctor to someone. Mr. Likewise responded that that would come under the Board of Pharmacy. He stated that in the bill they are working with rehabilitation of pharmacists that have chemical dependency. He said that they are trying to determine that a chemically dependent individual is a threat to the public health and recognize this as a disease, and recommend treatment so that the individual can be productive and safe for public health.

Rep. Wallin asked if one of the members was an alcoholic and issued the wrong medicine to someone, would society want to be responsible for that individual. Mr. Likewise responded that was a different issue. He said that if the wrong medication was issued, this falls under legal ramifications; they are merely working on trying to rehabilitate the

pharmacists before the Board of Pharmacy has to step in for a license revocation hearing. He commented that the Board of Pharmacy must have a license revocation hearing upon referral of that pharmacist and if he has issued a wrong prescription, he would be legally wrong; they are not asking for immunity for that purpose.

Rep. Bachini stated he could not find the referral to rehabilitation in the bill. Mr. Likewise stated that it is mainly putting them in the category of health care professionals for the purpose of allowing them to have the same immunity that has been granted to other health care professionals in rehabilitative processes.

Rep. Brandewie asked if what they are trying to do is to protect themselves from a law suit by the pharmacists who may not believe he has a drinking or drug problem. Mr. Likewise responded that was correct. He said the individual would probably create a law suit only if he did not accept the fact and not seek treatment; and the executive committee, composed of the president, chairman, and legal counsel, would have to inform the Board of Pharmacy of the problem so that appropriate action could be taken.

Rep. Wallin asked what happens when they review that type of case where the law would be employed. Mr. Likewise stated that the only time the law would be employed would be in the event that the individual was reported to the Board of Pharmacy for a license revocation hearing, and that individual filed a law suit as a grievance. He said, however, the committee is bound by the Montana laws to inform the Board of Pharmacy.

Chairman Kitselman asked if the group consisted of pharmacists that review licensure or certification for the individual that has a problem. Mr. Likewise responded that they are a group of pharmacists, that approach the pharmacist with the problem and confront him with the evidence, and at that point try to determine the degree of the problem and recommend treatment.

Chairman Kitselman asked if this bill would exonerate that peer group from liability action by the pharmacist that is accused, while they go through the review process action. Mr. Likewise responded it would, but only as long as they work within the scope and bylaws of the committee.

Chairman Kitselman asked if they are going to use the same scope and bylaws that the other professional groups have

such as the dentists, physicians, and psychologists. Mr. Likewise said that was correct.

CLOSING

Rep. Brown made no further comment.

HOUSE BILL NO. 142 - Simplifying Unemployment Benefits sponsored by Rep. Harper. Rep. Harper said that House Bill 142 has three basic purposes which are to index the minimum base period wages necessary to qualify for benefits, deletes obsolete references, and adopts a concept of maximum benefit amount rather than of duration.

PROPONENTS

Peggy Hartman, Acting Commissioner of the Department of Revenue. Ms. Hartman stated that the bill was proposed by the Department of Labor to the Advisory Council in order to remove the disincentive to work that is inherent in the current law. Under the current law, she said, if a person is drawing unemployment insurance benefits and you are offered a part time job, it is to his benefit to turn down the job because a week of the time is used up which might be needed if the part time job didn't last. Ms. Hartman stated that the Advisory Council, in order to encourage the person to take a job, considered moving the money that the person would have earned that week to the other end of the benefit year so that the benefits could be received that they would have lost for that week. The second thing the bill would do, she said, is to establish a new relationship between the amount of money it takes to qualify to begin receiving unemployment insurance benefits, and the maximum benefit amount. She commented that they are now indexed to the average weekly or average annual wage in this proposed bill, which will raise as the average annual wage raises.

Bob Durkee, Vice Chairman of the Unemployment Insurance Advisory Council. Mr. Durkee stated they met at various times in the past two years trying to clarify the unemployment insurance problems. He stated that the purpose of the change is to encourage unemployment insurance claimants to go back to work even if on a temporary basis. He commented that recent studies by the Montana Job Service indicate that long term unemployment is the most absolute barrier to reemployment, so although the law would technically allow claimants who work part time to draw benefits for a longer period of time, most of these part time workers will find permanent work and not draw as many dollars in benefits.

OPPONENTS

Chad Smith, Unemployment Compensation Advisors, a Montana organization of employers that are concerned about unemployment compensation costs and compensation taxes. Mr. Smith stated that two years ago the unemployment compensation fund was in trouble, and the employers had to pay additional taxes in order to balance and reinforce the fund. He said they were concerned that an individual who does not earn at least \$1,000 within a period of one year is not substantially a part of the labor force and benefits from this program should only be paid to those who are. He requested that if this bill passes that section be deleted.

QUESTIONS

Rep. Thomas asked about the percentage discrepancy. Mr. Smith responded that the figures are difficult to substantiate at this point and if there is no concern about requiring at least \$1,000 as the individual base period wages, then the words "before July 5, 1987" should be removed on page 2, lines 23-25, to qualify, and insert, "to qualify for benefits an individual's total base period wages must be \$1,000 or more".

Rep. Smith asked what the amount was that the employer contributed. Mr. Smith responded that he did not have that information, but there was a substantial percentage increase, particularly in the basic industries in Montana.

CLOSING

Rep. Harper stated that regarding the amount necessary to qualify for benefits, the reason for the date of July 5 was because that is the beginning of the claim week, so that was the logical time to make the transition. He said the only way that this amount could ever drop below the \$1,000 was if they went into a depression so severe that the average annual wage went down to that point.

HOUSE BILL NO. 143 - General Revision of Unemployment Insurance Law, sponsored by Rep. Hal Harper. Rep. Harper stated that this bill was at the request of the Department of Labor and approved by the Advisory Council and basically eliminated obsolete language and some obsolete sections. Rep. Harper went through the bill and explained the changes that it would make.

PROPONENTS

Peggy Hartman, Acting Commissioner, Department of Labor and Industry. Ms. Hartman stated that this bill was noncontroversial in nature and would be available to answer any questions.

Bob Durkee, Vice Chairman of the Governor's Unemployment Insurance Advisory Council. Mr. Durkee stated he was speaking on behalf of the Council in supporting the bill, and was pleased to note that the recommendations they had made had paid off. He said the Advisory Council is a committee of labor and business people and they reviewed the Department's suggestions for this legislative change which has support from both points of view.

Don Judge, representing Montana State AFL-CIO. Mr. Judge stated that they had two areas of concern in the bill. He said on page 39, line 17, would remove the Department from the responsibility of appearing in court on behalf of decisions made by the department. He recommended that the language be reinserted by removing the term "Department" and insert, "the board of labor appeals shall be deemed to be a party in the judicial action involving such decision." He said their concern is that unemployed individuals don't have the economic resources to hire attorneys to defend the decisions made by the Board of Appeals. He also said that if the Board of Labor Appeals made the decision ruling for benefits in favor of those unemployed individuals, then it is the responsibility of the Board of Labor Appeals to appear in court and defend those decisions.

Mr. Judge also voiced concern about the change on page 40, line 25 through line 1 on page 41. He said that the reason that this language was there was because the workers compensation court is an entity onto itself and they don't hear conflicts between unemployment insurance cases and workers compensation cases. He commented that if the Governor's recommendation to abolish the workers compensation court was carried out, those cases of unemployment and workers compensation would be back into the same district courts. He said the committee should cautiously approach removing the jurisdictional kind of priority given workers compensation cases in this event.

OPPONENTS

Chad Smith, representing Unemployment Compensation Advisors. Mr. Smith stated that he was not opposed to the philosophy which is offered in the amendment on page 32, section 13, because he feels that no taxpayer should be given the opportunity to avoid paying their taxes by a technicality in

writing. He stated that language should be inserted in lines 21-23 in order to make an enforceable lien against the personal property of that owing taxpayer. He suggested in order to make this more operable, in lines 22, to delete the two words, "and personal" and insert the words, "from the time the judgement is filed with the Secretary of State or Registrar of Personal Property, specifically describing the personal property, it then becomes a lien against the personal property of the employer." He said this way there is something that refers to the specific item upon which a lien is to be placed and can be enforced and traced.

Mr. Smith also suggested on page 33, lines 23-24, to leave in the words, "to qualify for benefits the total base period wages must be \$1,000 or more" so that it is clear that it is not referring to situations where the qualifying wages are going to be less than \$1,000.

QUESTIONS

Rep. Pavlovich asked if the Department of Labor had any objections to Mr. Smith's amendment on page 32. Ms. Hartman responded they did not.

Rep. Simon asked Ms. Hartman if the Department files an action in Helena, would this cause problems for some employers that would have to travel across the state to appear. Ms. Hartman responded that is why they are saying it is discretionary.

Rep. Simon asked the Department of Labor to clarify what they were trying to accomplish with the new section on uncollectability of debts. Ms. Hartman responded that this section primarily deals with collection of overpaid benefits from someone who has received unemployment benefits and it was determined later they should not have received them. She said that most state agencies turn bad debts to the Department of Revenue who hires a collection agency. She commented that under the current law the Department is unable to pay the fee that the collection agency charges, and this section would allow them to increase the amount they would collect from the overpaid person so they would have the additional amount to pay the fee.

Further questions were asked regarding the changes that the bill would make to the current law.

CLOSING

Rep. Harper stated that there were some technical amendments that had been submitted for both House Bill No. 142 and 143. He stated that the changes that were incorporated in House Bill No. 142 were not incorporated in House Bill No. 143 at this time, but probably would be if No. 142 passed.

EXECUTIVE ACTION - January 20, 1987 - 9:00 a.m.

ACTION ON HOUSE BILL NO. 142 and HOUSE BILL NO. 143

Chairman Kitselman referred both bills to a subcommittee composed of Rep. Glaser, Rep. Swysgood, and Rep. Driscoll, with Rep. Glaser as chairman.

ACTION ON HOUSE BILL NO. 80

Chairman Kitselman referred House Bill No. 80 to a subcommittee composed of Rep. Simon, Rep. Thomas, and Rep. Nisbet, with Rep. Simon as chairman.

ACTION ON HOUSE BILL NO. 165

Chairman Kitselman referred House Bill No. 165 to a subcommittee composed of Rep. Grinde, Rep. Wallin, and Rep. Brown, with Rep. Grinde as chairman.

ADJOURNMENT

The meeting adjourned at 9:15 a. m.



REP. LES KITSELMAN, Chairman

Montana State Pharmaceutical Association

Incorporated

P.O. BOX 4718

HELENA, MONTANA 59604

TELEPHONE 406-449-3843

To: House Business and Labor Subcommittee
From: The Montana State Pharmaceutical Association
Robert H. Likewise, Executive Director
Re: HB # 165
Date: January 20, 1986

The Montana State Pharmaceutical Association would like to go on record as proposing and supporting HB 165.

We would like this subcommittee to amend Section 37-2-201, MCA to include pharmacists in the definition of "Health Care Professionals" for the purpose of granting immunity from liability for actions of the interveners while working within the scope of the rules and by-laws of the Committee for Pharmacist Rehabilitation. This committee has been discussed and approved by the pharmacists of Montana for the purpose of helping to promote greater public safety and to help restore a health professional back to an active productive life. This program is a voluntary, non-coercive program designed to help pharmacists with problems that are potentially threatening to professional performance.

The pharmacists of Montana would therefore ask this committee to recommend a do pass for HB 165.

Thank you. I will be happy to answer any questions you might have.

THE COMMITTEE ON PHARMACISTS REHABILITATION

This committee is a project of the Montana State Pharmaceutical Association to help pharmacists whose health and/or professional effectiveness has been impaired by the disease of chemical dependency. The ethics of our profession state the pharmacist is to hold the health and safety of those served to be of first consideration. The profession therefore must identify cases of impairment, to protect the public, and to assist the affected pharmacist in rehabilitation and recovery from the active state of the disease. In this effort, as a committee, we serve both the public and the individual pharmacist.

GOALS OF THE COMMITTEE ARE

First to intervene in the disease of chemical dependency where it appears to be causing a pharmacist personal and/or professional dysfunction.
Second to encourage the impaired pharmacist to seek professional help.
Third to assist the impaired pharmacist's entry into an appropriate professional treatment model: To support and aid in the continuum of care for up to two years.
Fourth to report to the Montana Board of Pharmacy any established case of impairment in a pharmacist who repeatedly resists appropriate action to correct the impairment.

COMMITTEE COMPOSITION

- A Chairman (Preferably with experience in the area of chemical dependency.)
- The Executive Director of MSPA.
- One representative from the MSPA Board of Directors.
- One representative from MSHP.
- One representative from the staff of the School of Pharmacy, University of Montana.

- Ten MSPA members located geographically throughout the state, to provide intervention and referral services.

The committee as a whole will meet at least biannually to review policy and procedures for achieving committee goals. Regional meetings for training of interveners will be scheduled as needed.

POLICY AND PROCEDURES

1. This is a voluntary reporting program and the reporting parties will be expected to identify themselves and give specific examples of why they believe an impairment exists. This is to minimize "crank" calls. The reporting persons name will remain strictly confidential. However, the intervention procedure will be greatly assisted if the reporting person is willing to work with the interveners. The key to a successful intervention is that the numerous concerned persons have undisputable data to present during the intervention.

2. Calls for assistance with an impaired pharmacist will come from a variety of sources. (1) the impaired pharmacist who admits to the problem and is seeking help. (2) Fellow pharmacists, employers, family or friends. (3) The medical profession. (4) The State Board of Pharmacy. (5) By the committee. (Note) The committee, in this manner, can be a resource for the Board of Pharmacy to assist with the appropriate re-entry of the pharmacist into the profession if a suspension has been involved.

3. The MSPA Executive Director's phone number will serve as the helpline number on calls for assistance. Following the call the Executive Director or appropriate staff members will contact a committee/intervener in the geographic area to serve the caller; by contacting the reporting party personally to evaluate the needs and concerns relative to proceeding with an intervention. The intervention will only proceed if there is sufficient objective data available to indicate an impairment exists. The intervention will then be facilitated by a team of 2 pharmacist

interveners who have received professional training in confronting impaired pharmacists. (An interveners handbook of guidelines is to be provided for interveners.)

4. Upon intervention, if the pharmacist acknowledges the impairment and a need for assistance to deal with the chemical dependency, then arrangements will be made by the interveners for the pharmacist's referral to an appropriate evaluation or treatment facility. The interveners also will make periodic contacts during and after evaluation or treatment, to assist when needed and to monitor the pharmacist's progress. When it appears the disease is in a state of remission and no further impairment occurs, the case will be closed by the committee 2 years from the date of intervention. If the impairment re-occurs, the process will be repeated.

5. In the event impairment is apparent and the pharmacist denies the illness and refuses to seek professional evaluation or treatment after repeated contacts by interveners, or after acknowledging impairment, fails to follow through with professional help, the committee chairman will be advised by the interveners. The committee chairman will then contact the impaired pharmacist encouraging action to correct the impairment. If the impaired pharmacist continues to resist help, the case will be referred to the Pharmacist Rehabilitation Executive Committee, composed of the Committee Chairman, the MSPA President and the Association's legal council. The Executive Committee, without knowledge of the impaired pharmacist's identity will decide on the action to be taken in order to protect the public health and wellbeing. The role of the committee ends at this point unless requested by the state board to re-enter the case.

6. This service may also be extended to pharmacy school students if aid in this area is requested from an administrator or member of the

faculty of the University of Montana.

7. To insured confidentiality, all cases reported to this committee will be assigned case numbers and only be referred to by that number during any committee case discussion. In this manner, only the person assigning the case, the chairman and the interveners acting on it will have the pharmacist's name.

8. This committee will make its resources available to assist any pharmacist who feels a member of their family needs evaluation or treatment. Additionally, as chemical dependency adversely affects those closest to the dependent person, the committee will also assist, when requested, any family members towards the appropriate professional or community help.

9. This committee endorses the disease concept of chemical dependency and will consequently refer its cases only to professionals and programs of that philosophy. Professionals and programs also need to be certified by the State of Montana or the State of their location for the evaluation and/or treatment of chemical dependency.

IN SUMMARY

- The Montana Pharmacists Rehabilitation Committee is a voluntary, non-coercive program designed to help pharmacists with conditions or problems that are potentially threatening to professional performance.
- Early recognition and treatment are essential to assure that a pharmacist receives necessary support and help while personal, financial, mental and physical resources are intact.
- Services provided through the Rehabilitation Committee are intended to be in the best interest of the pharmacist and the public.
- The pharmacist's right to continue or to re-enter professional practice after successful intervention and/or treatment will be preserved and facilitated.
- All information regarding an impaired pharmacist is guaranteed confidentiality.

EXHIBIT 1101

DATE 1/20/87

HB 165

COMMITTEE

ON

PHARMACISTS REHABILITATION



PHARMACISTS
HELPING
PHARMACISTS



Montana State Pharmaceutical Association

P.O. Box 4718 • Helena • Montana, 59604
Telephone 449-3843

1/20 - Prepared by Laura Nease

EXHIBIT 2
DATE 1/20/87
HB 165

AMENDMENTS TO HOUSE BILL 165
(requested by sponsor)

1. Title, lines 4 through 7.

Following: "AN ACT"

Strike: the remainder of line 4 through line 7 in its entirety

Insert: "PROVIDING THAT PHARMACISTS ARE NOT LIABLE FOR CIVIL DAMAGES FOR ACTIONS TAKEN AS A MEMBER OF A PEER REVIEW COMMITTEE; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

2. Pages 1 and 2

Strike: Section 1 in its entirety

Insert: "Section 1. Nonliability for peer review. No member, employee, or volunteer intervenor of the Montana pharmaceutical association in its peer review program is liable in damages to any person for any action taken or recommendation made within the scope of the program if the member, employee, or volunteer acts in good faith in accordance with the rules of the association.

NEW SECTION. Section 2. Codification instruction.

Section 1 is intended to be codified as an integral part of Title 37, chapter 7, and the provisions of Title 37, chapter 7 apply to section."

Renumber: subsequent section

WITNESS STATEMENT

EXHIBIT 1
DATE _____
HB _____

NAME Robert H. Likewise BILL NO. 161

ADDRESS 4376 Heath Drive DATE 1/2-187

WHOM DO YOU REPRESENT? Indiana State Pharmaceutical Assn.

SUPPORT ✓ OPPOSE _____ AMEND _____

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

