

MINUTES OF THE MEETING  
HUMAN SERVICES AND AGING COMMITTEE  
MONTANA STATE  
HOUSE OF REPRESENTATIVES

January 30, 1985

The meeting of the Human Services and Aging Committee was called to order by Chairperson Nancy Keenan on January 30, 1985 at 3:00 p.m. in Room 312-2 of the State Capitol.

ROLL CALL: All members were present.

HOUSE BILL NO. 259: Hearing commenced on House Bill No. 259. Representative Nancy Keenan, District #66, sponsor of the bill indicated that an act providing the Department of Social and Rehabilitation Services had the rulemaking authority to establish penalties and sanctions applicable to providers of health-related services in counties that have opted for state assumption of county welfare; providing that such penalties and sanctions are the same as in the Medicaid Program was needed.

Proponent Pat Gadbout, representing the Audit and Program Compliance Division of the Montana Department of Social and Rehabilitation Services indicated her support.

There being no further proponents or opponents the sponsor of the bill closed.

Vice-Chairman Gould closed the discussion on House Bill No. 259.

HOUSE BILL NO. 290: Hearing commenced on House Bill NO. 290. Representative Earl Lory, District #59, sponsor of the bill, stated that an act permitting the Board of Dentistry to adopt rules concerning administering of anesthetics and advertising by licensed dentists was needed. Representative Lory then discussed the statement of intent which would also be considered.

Proponents included Byron Greany, a dentist and member of the Board of Dentistry. Dr. Greany stated that the Board is confident that the enabling legislation as requested will not only allow us to issue the rules that will encompass the intent of this bill, but, at the same time, give the Board the flexibility to improve and update the requirements as needed to keep abreast with the rapidly changing technological improvements. Dr. Greany's testimony is attached as Exhibit 1. Geoffrey Brazier, an attorney representing the Board of Dentistry supplied a fact sheet, Exhibit 2, which lists the proposed adoption of new rules concerning anesthesia which will be heard before the Board

of Dentistry. Jeanette S. Buchanan, a dental hygienist and member of the Board of Dentistry stated in her testimony, Exhibit 3, that the Board of Dentistry may assume further authority for the use of anesthetics by dentists if this bill were adopted. Elmer Cox, the only lay member of the Board of Dentistry, appointed by Governor Schwinden, supplied his testimony and is attached as Exhibit 4. Mr. Cox states that the legislature has other things to do than debate scientific health issues. Cox indicates that the Board of Dentistry should do this task. Roger Tippy, attorney and lobbyist for the Montana Dental Association. Mr. Tippy supplied a proposed statement of intent and a model regulation for use of general anesthesia by dentists and is attached as Exhibit 5. Dr. Donald Roberts, a member of the Board of Oral and Maxillofacial Surgeons supplied Exhibit 6. Dr. Roberts stated that an energetic response of oral surgeons has resulted in the upgrading of office anesthesia facilities, acceptance of office anesthesia evaluation, initiation of morbidity and mortality studies, review for training of oral surgery auxiliary personnel and renewed interest in clinical research in outpatient anesthesia. Mark Nedrus, representing the Montana Society of Oral Surgery indicated his support. Dr. Doug Smith testified that dentists of Montana should be able to practice anesthesia according to his or her credentials of training and not by degree. Dr. Smith supplied Exhibit 7.

Opponents included Representative Ray Peck. Dr. Peck suggested that a statement of intent be included in the proposal. A non dental person should not be allowed to administer anesthesia. Rule making by the Board of Dentistry which supercedes a statute by the legislature is not appropriate. Members of the Board should follow the statute.

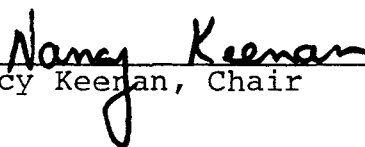
There being no further proponents or opponents, Representative Lory, sponsor of the bill closed the discussion.

Representative Phillips asked Dr. Greany what extent of the rule should be contained in the statute and Dr. Greany replied that all of the stipulations were already being met. Representative Bergene questioned Dr. Greany as to what was the action of the Board and Greany replied that the public should be put at ease by assuring them that the proper equipment for monitoring anesthesia would be used and the training more advanced. Representative Waldron asked Dr. Greany why type of training do the anesthetists require and how many dentists were disciplined over the past year for poor practice of dentistry. The answer being that

twenty-five complaints were filed and one was adjudicated. Representative Waldron also asked if out-of-state reports of poor dental practice was relayed from state to state and the answer was yes. Representative Simon questioned Dr. Greany as to how long the Board knew of the various dangers of anesthesia and the answer was always. Representative Hart questioned the various types of anesthesia. Representative Bradley questions Ms. Buchanan as to the effective date of House Bill No. 290 and the answer was July 1, 1985. Representative Brown questioned Ms. Buchanas as to the advertising by dentists and the question was answered that the code of ethics was followed in most cases. Representative Hansen questioned Dr. Roberts as to whether or not dental assistants assisted in the administration of anesthesia and the answer was no. Representative Gould asked Dr. Greany if acupuncture was licensed by the Board and Greany replied that it was not recognized. Representative Hart asked Representative Peck if he was comfortable with the rule making of the Board and he replied to the negative.

There being no further questions, Chairperson Keenan closed the discussion on House Bill No. 290.

ADJOURN: There being no further business before the Committee, the meeting was adjourned at 5:40 p.m.

  
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Nancy Keenan, Chair

# DAILY ROLL CALL

HUMAN SERVICES AND AGING COMMITTEE

49th LEGISLATIVE SESSION -- 1985

Date January 30, 1985

NAME	PRESENT	ABSENT	EXCUSED
NANCY KEENAN	X		
BUDD GOULD	X		
TONI BERGENE	X		
DOROTHY BRADLEY	X		
JAN BROWN	X		
BUD CAMPBELL	X		
BEN COHEN	X		
MARY ELLEN CONNELLY	X		
PAULA DARKO	X		
BOB GILBERT	X		
STELLA JEAN HANSEN	X		
MARIAN HANSON	X		
MARJORIE HART	X		
HARRIET HAYNE	X		
JOHN PHILLIPS	X		
BRUCE SIMON	X		
STEVE WALDRON	X		
NORM WALLIN	X		

I'm Byron Greany, a dentist member of the Board of Dentistry, and I wish to present to your committee the intent of the Board in its rulemaking authority regulating the use of General Anesthesia in the profession of dentistry.

First, I would like to clarify a couple of issues related to our Board.

The Board of Dentistry, just to refreshen the memory of those on the committee, consists of seven members - 5 dentists, 1 hygienist, and 1 lay person, all appointed by the Governor. Each of the eleven districts within the Montana Dental Association submits their selection of at least one name to the Association. During the annual meeting of the General Assembly, a vote of this membership selects five nominees. Their names are submitted to the Governor's Office for consideration. These dentists are picked because of their professionalism, ethics, ability, and most of all, their inntegrity.

Each year a new board member is picked, but not necessarily from the list. The Governor may choose whomever he feels will best serve his interest in protecting all the citizens of this state, not special interest groups, and I assure you that the Board's efforts have been directed unhesitatingly toward this goal since I have been a member. I would hope this would alleviate any apprehension that we serve as a protective agency for any group or individual.

The second issue I would like to call to the attention of this committee is that a little over two years ago a committee was appointed by the Board of Dentistry to study and develop rules and regulations

on the use and control of all anesthetics in dentistry. Each member appointed represented a facet of dentistry - Oral Surgeons, Pedodontists, Periodontists, Hygienists and the Montana Dental Association. A member of the Board of Dentistry served as chairman. The Board issued rules on Anesthesia. A public hearing notice was posted in the major newspapers as required by law with all the affected professions notified. A public hearing was held under the auspices of the Commerce Department and open to all citizens of Montana for their input. After the hearing the transcript was taken into consideration, but before the proposed rules could be revised, the Board was informed that it lacked the authority to issue such rules and that it would be necessary to obtain enabling legislation.

The Board is confident that the enabling legislation as requested will not only allow us to issue the rules that will encompass the intent of HB 235, but, at the same time, give the Board the flexibility to improve and update the requirements as needed to keep abreast with the rapidly changing technological improvements. It will, in addition, permit incorporation of new academic knowledge on the subject as it is being submitted to the profession without needing for the legislature to change the statute.

Let us not prevent the immediate response to innovation or the need to safeguard Montanans by the Board's inability to act due to of statutes that can be changed only when the legislature is in session. I ask you to vote in favor of HB 290 and do not tie our hands with HB 235.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF DENTISTRY

In the matter of the proposed ) NOTICE OF PROPOSED ADOPTION  
adoption of new rules concern- ) OF NEW RULES UNDER  
ing anesthesia under a new sub- ) SUB-CHAPTER 5, STANDARDS FOR  
chapter 5. ) DENTISTS ADMINISTERING  
 ) ANESTHESIA

NO PUBLIC HEARING CONTEMPLATED

TO: All Interested Persons:

1. On July 15, 1984, the Board of Dentistry proposes to adopt the above-stated rules.

2. The proposed rules will provide as follows:

"I. PROHIBITION (1) Dentists licensed in this state cannot use general anesthesia, conscious sedation, nitrous-oxide inhalation conscious sedation, or local anesthetic techniques, in the practice of dentistry, until they have met all of the requirements set forth in these rules.

(2) Violation of these rules shall constitute grounds for disciplinary action as provided in 37-4-321, MCA."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1) (i), MCA

"II. EXEMPTION (1) A dentist who can show evidence of competence and skill in administering general anesthesia or a form of conscious sedation by virtue of experience and/or comparable alternate training shall be presumed by the dental board to have appropriate credentials for the use of that category of anesthesia or conscious sedation. In applying for an exemption status, the dentist must have documented written evidence of his background for the board to evaluate and determine the appropriateness of training and experience. Consideration will be given to post graduate training and ADA accredited specialty programs."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"III. DEFINITIONS (1) For the purpose of these rules the following definitions shall apply:

(a) General anesthesia is a controlled state of unconsciousness, accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or a combination thereof.

(b) Anesthesia is the loss of feeling or sensation, especially loss of the sensation of pain.

(c) Local anesthesia is the loss of sensation of pain in a specific area of the body, generally produced by a topically applied agent or injected agent without causing the loss of consciousness.

(d) Analgesia is absence of sensibility to pain, designating particularly the relief of pain without loss of consciousness.

(e) Nitrous-oxide inhalation conscious sedation is a state of sedation in which the conscious patient has reduced fear, apprehension and anxiety through the inhalation of nitrous-oxide and oxygen and is maintained in a level of conscious sedation, capable of verbal communication, or other response to physical stimuli, but has not obtunded his protective autonomic reflexes.

(f) Conscious sedation consists of the use of any drug, element or other material administered IV or IM which results in relaxation, diminution or loss of sensation with the retention of intact protective reflexes, spontaneous respiration, the ability to maintain an airway, and the capability of giving rational responses to question on command. These rules do not apply to routine oral premedication."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"IV. GENERAL ANESTHESIA TRAINING AND EDUCATION (1) A licensed dentist may employ or use general anesthesia for patients provided:

(a) He has a minimum of one year or its equivalent of training in anesthesiology and related subjects beyond the undergraduate dental school level which shall be completed prior to the use or administration of general anesthesia.

(b) The dentist and operator staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"V. GENERAL ANESTHESIA FACILITY (1) A licensed dentist administering general anesthesia shall have a facility that is properly equipped for the administration of general anesthesia and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of general anesthesia. The staff shall be under close supervision of the licensed dentist. The dentist must be in the operator at all times when anesthesia of this nature is being used."



Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"VI. CONSCIOUS SEDATION TRAINING AND EDUCATION (1) A licensed dentist may employ or use conscious sedation IV technique on an outpatient basis for dental patients provided:

(a) He has received formal training in the use of conscious sedation techniques.

(b) He is certified by the institution where the training was received to be competent in the administration of conscious sedation techniques. Such certification shall specify the type and number of hours and the length of training. The minimum of didactic hours shall be 40 and the minimum of patient contact hours shall be 20. A formal training program shall be sponsored by or affiliated with a university, teaching hospital or other facility approved by the board of dentistry or part of the undergraduate curriculum of an accredited dental school.

(c) The dentist and operator staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

"VII. CONSCIOUS SEDATION FACILITY (1) When using conscious sedation with oral or injected drugs, the dentist shall have a facility that is properly equipped for the administration of conscious sedation and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of conscious sedation agents. The staff shall be under the close supervision of a licensed dentist, and he shall be in the operator at all times while this type of anesthesia is being used."

"VIII. NITROUS-OXIDE INHALATION CONSCIOUS SEDATION TRAINING AND EDUCATION (1) A licensed dentist may employ or use nitrous-oxide inhalation conscious sedation only, or in conjunction with local anesthetic agents, on an outpatient basis for dental patients provided:

(a) He has a minimum of 20 hours of technique instruction sponsored by an accredited hospital, accredited dental school, or dental society including instruction in safety and management of emergencies, which shall be completed prior to the use or administration of conscious nitrous-oxide sedation for dental patients.

(b) The dentist and operator staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"IX. NITROUS-OXIDE INHALATION CONSCIOUS SEDATION FACILITY (1) When using nitrous-oxide conscious sedation for dental patients, the dentist shall have a facility that is properly equipped for the administration of nitrous-oxide conscious sedation and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of conscious sedation. The staff shall be under the supervision of a licensed dentist.

(2) The following shall be present in any facility where nitrous-oxide inhalation conscious sedation is utilized other than in a hospital or oral surgery suite wherein those machines may provide 100% nitrous-oxide:

(a) an analgesia delivery machine which provides not less than 30% oxygen.

(b) equipment capable of delivering positive pressure oxygen.

(c) equipment for adequate suction.

(d) a portable backup oxygen unit."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"X. LOCAL ANESTHETIC TRAINING AND EDUCATION

(1) Dentists licensed to practice in the state of Montana may use local anesthesia as is indicated in their practice.

(2) The dentist and operator staff must have a current cardiopulmonary resuscitation (CPR) certificate."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"XI. LOCAL ANESTHETIC FACILITY (1) When using local or regional anesthetic agents for dental patients the dentist shall have a facility that is properly equipped for the administration of local anesthesia and be capable of reasonably handling procedure problems and emergencies incident to the use and administration of local anesthetic agents.

(2) The following shall be present in an office utilizing local anesthesia:

(a) portable backup oxygen unit.

(b) equipment capable of delivering positive pressure oxygen.

(c) equipment for adequate suction."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"XII. LIMITATION ON ADMINISTRATION OF ANESTHESIA (1)  
Nothing in these rules shall be construed to allow a dentist, dental hygienist, or auxiliary to administer to himself/herself or to any other person, other than in the course of the practice of dentistry, any drug or agent used for anesthesia."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

3. The board is proposing these rules to establish guidelines upon which the safety of administration of anesthetic agents can be measured. The dental laws of the state of Montana permit any licensed dentist to administer such agents. Morbidity and mortality can be associated therewith. In 1982 the board received a complaint wherein a 24 year old female patient, during the extraction of three wisdom teeth under local anesthesia with intravenous sedation, suffered what was acknowledged to be a respiratory arrest, leading rapidly to proven ventricular fibrillation, and despite resuscitative efforts, lead to a deep coma. Training, experience, adequate equipment and competent staff can minimize such risk. ABC News magazine, 20/20, broadcasted a story on the use of anesthesia and sedation techniques in dentistry, and it was reported by the American Dental Association that the control of anesthesia must be at a state level and cannot be performed at a national level. The board is empowered and directed to identify unsafe practices, equipment, and conditions and direct corrective action. These guidelines represent the basis upon which unsafe dental anesthesia practices would be judged. The board therefore, in order to promote the welfare of the state and to protect the health and well-being of the people of this state, finds it necessary to adopt the definitions and standards.

4. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than July 13, 1984.

5. If a person who is directly affected by the proposed adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than July 13, 1984.

6. If the board receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is

less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 116 based on the 1160 licensees in Montana.

BOARD OF DENTISTRY  
DAVID B. TAWNEY, D.D.S.  
PRESIDENT

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1984.

*New Release - 1/1/84 free of charge*  
MONTANA LEGISLATURE

HOUSE MEMBERS  
FRED "FRITZ" DAILY  
VICE CHAIRMAN  
JAMES M. SCHULTZ  
LES KITSelman  
GARY SPAETH

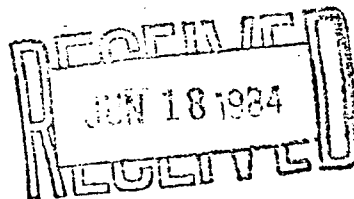


SENATE MEMBERS  
PETE STORY  
CHAIRMAN  
H. W. "SWEDE" HAMMOND  
BILL THOMAS  
LAWRENCE G. STIMATZ

ROOM 138  
STATE CAPITOL  
HELENA 59620  
(406) 449-3064

ADMINISTRATIVE CODE COMMITTEE

June 14, 1984



Lisa Casman  
Administrative Assistant  
Board of Dentistry  
1424 9th Avenue  
Helena, Montana 59620-0407

Dear Ms. Casman:

I am writing concerning the Board of Dentistry's proposed rules setting standards for dentists administering anesthesia as noticed in Issue No. 11 of the 1984 Montana Administrative Register. Section 37-4-101(2)(i), MCA, which is miscited as implemented by the rules, provides that a person is "practicing dentistry" if he "administers an anesthetic of any nature in connection with a dental operation". Under 37-4-327, MCA, no person may practice dentistry in Montana without first having secured a certificate to practice from the Department. Having secured a certificate, a dentist can perform any act under 37-4-101(2), MCA, including administering anesthetics. Because the rules prohibit licensed dentists from administering anesthetics unless exempted, they conflict with 37-4-101(2), MCA, in violation of 2-4-305(6)(a), MCA.

I would also direct the Board's attention to 40 A.G.Op. 50 issued to the Board of Radiologic Technologists and the cases of Board of Barbers v. Big Sky College, M, 626 P.2d 1269, 38 St. Rep. 621 (1981), and Bell v. Dep't. of Licensing, 182 M 21, 594 P.2d 331 (1979), cited therein.

In light of these problems, I request that the Board withdraw the proposed rules.

Sincerely,

*Gregory J. Petesch*  
Gregory J. Petesch  
Staff Attorney

GJP:rm:LEGAL4:Casman 6-14

cc: Geoffrey Brazier  
Department of Commerce

I am Jeannette S. Buchanan of Columbia Falls, Montana, the dental hygienist member of the Board of Dentistry. I am here to testify in favor of HB 290. This bill is to give the Board the authority to develop rules on the use of anesthetics. I encourage passage of this enabling legislation in order that the Board of Dentistry may assume further authority for the use of anesthetics by dentistry. I further prevail upon you to consider this as the best means to reasonably protect the public in answer to concerns called forth in HB 235. Proposed rules have been developed on which a hearing was held last year. These rules will be amended to include concerns identified in the Statement of Intent offered here today.

I am available if you have any questions. Thank you.

Madam Chairman: (Chairperson)

I am Elmer Cox of Great Falls, Montana. I wish to testify in favor of HB290 and opposed to HB235. I am a realtor and rancher by profession. I was appointed to the Board of Dentistry in 1982 by Governor Ted Schwinden. My tenure on the Board has been very interesting and very rewarding. It has been very interesting because the business of the Board concerns itself primarily with the health and well being of people. It has been very rewarding because of the dedication of the Board and its members. As a Board member, I have full voting rights on all issues. It has been a new and challenging experience for me to listen to and participate in so much scientific testimony and then help shape the decisions which at all times have first and foremost the well being of the people of Montana as its primary goal. This continues to give me a very good feeling working with these people - the other members of the Board.

As a non-professional on the Board you may have some question as to what purpose I really serve. I can tell you in all honesty that my input is as well received as any of the professionals. I can listen with an open mind to testimony and scientific data and many times see things from a layman's objective which is very beneficial to the Board decisions. At no time am I, or will I ever be coerced or belittled by Board members. They work in an openminded honest effort to do what is best for all concerned. The Board could not function without these dedicated professionals. I am proud to be a part of it.

We have spent many, many hours addressing the issue of rules governing the use of anesthetics in dentistry. This last year we were told that we did not have authority to set such rules. Now we come to you and ask you to let us do our job. Give us the authority as requested in HB290

and rest assured the Board will do its job. Do not handcuff the Board with statutes which cannot be changed save by legislative action. The legislature has other things to do than debate scientific health issues. We will do the job.



BEFORE THE COMMITTEE ON HUMAN SERVICES & AGING  
MONTANA HOUSE OF REPRESENTATIVES

HOUSE BILL 290 By Lory )  
(Request of Board of )  
Dentistry) Granting Rule-) making Authority to Board)  
for Anesthesia or )  
Advertising. )

STATEMENT IN SUPPORT:  
MONTANA DENTAL ASSOCIATION

I am Roger Tippy of Helena, attorney and lobbyist for the Montana Dental Association, appearing here today in support of HB 290. Much of what I said last week during the hearing on HB 235 was really in support of this bill and need not be repeated today. Suffice it to say that if you accept the superiority of administrative rulemaking to regulate complex technical matters you, as legislators, can still specify some of the basic principles you want to see in those rules.

The instrument by which you do this is the statement of intent. In theory this is a statement of your intent, whether or not you deliberate over its wording or accept it as written from the sponsor, the agency, or some other source. When you approve a statement of intent you create a document that can be used in court to test the validity of rules adopted by a board or department. I had a lawsuit pending last year to have a particular rule invalidated because it conflicted with a statement of intent written by this very committee in 1981.

The point I'm coming to is this: you should take the opportunity to write a statement of intent on HB 290 to tell the Board of Dentistry what they should address and cover in their rules. Some possible sources for rules, such as the American Academy of Oral Surgeons' Model State Regulations, are more restrictive on general anesthesia than HB 235 is. The Board's last set of proposed rules is not as restrictive. From the range of options available to the Board, you can indicate your preferences.

DATED: January 30, 1985.

STATEMENT OF INTENT  
For House Bill 290  
House Human Services Committee 1/30/85  
From the Montana Dental Association

The committee heard testimony from the families of dental patients who had died or suffered brain damage during surgical procedures conducted under general anesthesia. These cases illustrate the basic principle that the person who performs surgery, dental or otherwise, should not be the only person monitoring the patient. The committee intends that the board rules clearly state this principle.

The committee intends the rules that will be adopted by the board to impose requirements of training and skill upon the individuals who administer and monitor general anesthesia, intravenous, deep conscious sedation, or any other drug used in pain control. The board should be guided by the principles in the American Academy of Oral and Maxillofacial Surgeons' "Model State Rules for General Anesthesia", and any and all other guides pertinent to the subject.

The difficulty in drawing a clear line between general anesthesia and deep conscious sedation was discussed in testimony heard by the committee. The rules adopted by the board must address the safeguards necessary for the protection of the public under either procedure as well as the special safeguards required during general anesthesia.

STATE OF MONTANA  
DEPARTMENT OF COMMERCE  
BEFORE THE BOARD OF DENTISTRY

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(b) Anesthesia is the loss of feeling or sensation, especially loss of the sensation of pain.

11-6/14/84

MAR Notice No. 8-16-26

(c) Local anesthesia is the loss of sensation of pain in a specific area of the body, generally produced by a topically applied agent or injected agent without causing the loss of consciousness.

(d) Analgesia is absence of sensibility to pain, designating particularly the relief of pain without loss of consciousness.

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11-6/14/84

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"VI. CONSCIOUS SEDATION TRAINING AND EDUCATION (1) A licensed dentist may employ or use conscious sedation IV technique on an outpatient basis for dental patients provided:  
(a) He has received formal training in the use of conscious sedation techniques.

(b) He is certified by the institution where the training was received to be competent in the administration of conscious sedation techniques. Such certification shall specify the type and number of hours and the length of training. The minimum of didactic hours shall be 40 and the minimum of patient contact hours shall be 20. A formal training program shall be sponsored by or affiliated with a university, teaching hospital or other facility approved by the board of dentistry or part of the undergraduate curriculum of an accredited dental school.

(c) The dentist and operator staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

"VII. CONSCIOUS SEDATION FACILITY (1) When using conscious sedation with oral or injected drugs, the dentist shall have a facility that is properly equipped for the administration of conscious sedation and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of conscious sedation agents. The staff shall be under the close supervision of a licensed dentist, and he shall be in the operator at all times while this type of anesthesia is being used."

"VIII. NITROUS-OXIDE INHALATION CONSCIOUS SEDATION TRAINING AND EDUCATION (1) A licensed dentist may employ or use nitrous-oxide inhalation conscious sedation only, or in conjunction with local anesthetic agents, on an outpatient basis for dental patients provided:  
(a) He has a minimum of 20 hours of technique instruction sponsored by an accredited hospital, accredited dental school, or dental society including instruction in safety and management of emergencies, which shall be completed prior to the use or administration of conscious nitrous-oxide sedation for dental patients.

(b) The dentist and operator staff must have a current cardiopulmonary resuscitation (CPR) certificate and update competence in other emergency procedures every three years."

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Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"IX. NITROUS-OXIDE INHALATION CONSCIOUS SEDATION FACILITY (1) When using nitrous-oxide conscious sedation for dental patients, the dentist shall have a facility that is properly equipped for the administration of nitrous-oxide conscious sedation and staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident to the use and administration of conscious sedation. The staff shall be under the supervision of a licensed dentist.

(2) The following shall be present in any facility where nitrous-oxide inhalation conscious sedation is utilized other than in a hospital or oral surgery suite wherein those machines may provide 100% nitrous-oxide:  
(a) an analgesia delivery machine which provides not less than 30% oxygen.

(b) equipment capable of delivering positive pressure oxygen.  
(c) equipment for adequate suction.  
(d) a portable backup oxygen unit."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

#### "X. LOCAL ANESTHETIC TRAINING AND EDUCATION

(1) Dentists licensed to practice in the state of Montana may use local anesthesia as is indicated in their practice.

(2) The dentist and operator staff must have a current cardiopulmonary resuscitation (CPR) certificate."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"XI. LOCAL ANESTHETIC FACILITY (1) When using local or regional anesthetic agents for dental patients the dentist shall have a facility that is properly equipped for the administration of local anesthesia and be capable of reasonably handling procedure problems and emergencies incident to the use and administration of local anesthetic agents.

(2) The following shall be present in an office utilizing local anesthesia:  
(a) portable backup oxygen unit.

(b) equipment capable of delivering positive pressure oxygen.  
(c) equipment for adequate suction."

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Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

"XII. LIMITATION ON ADMINISTRATION OF ANESTHESIA (1)  
Nothing in these rules shall be construed to allow a dentist, dental hygienist, or auxiliary to administer to himself/herself or to any other person, other than in the course of the practice of dentistry, any drug or agent used for anesthesia."

Auth: 37-1-131, 37-4-205, MCA Imp: 37-1-131, 37-4-101  
(1)(i), MCA

3. The board is proposing these rules to establish guidelines upon which the safety of administration of anesthetic agents can be measured. The dental laws of the state of Montana permit any licensed dentist to administer such agents. Morbidity and mortality can be associated therewith. In 1982 the board received a complaint wherein a 24 year old female patient, during the extraction of three wisdom teeth under local anesthesia with intravenous sedation, suffered what was acknowledged to be a respiratory arrest, leading rapidly to proven ventricular fibrillation, and despite resuscitative efforts, lead to a deep coma. Training, experience, adequate equipment and competent staff can minimize such risk. ABC News magazine, 20/20, broadcasted a story on the use of anesthesia and sedation techniques in dentistry, and it was reported by the American Dental Association that the control of anesthesia must be at a state level and cannot be performed at a national level. The board is empowered and directed to identify unsafe practices, equipment, and conditions and direct corrective action. These guidelines represent the basis upon which unsafe dental anesthesia practices would be judged. The board therefore, in order to promote the welfare of the state and to protect the health and well-being of the people of this state, finds it necessary to adopt the definitions and standards.

4. Interested persons may submit their data, views or arguments concerning the proposed adoptions in writing to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than July 13, 1984.

5. If a person who is directly affected by the proposed adoptions wishes to express his data, views or arguments orally or in writing at a public hearing, he must make written request for a hearing and submit this request along with any comments he has to the Board of Dentistry, 1424 9th Avenue, Helena, Montana, 59620-0407, no later than July 13, 1984.

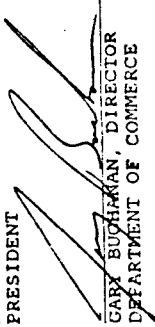
6. If the board receives requests for a public hearing on the proposed adoptions from either 10% or 25, whichever is

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less, of those persons who are directly affected by the proposed adoptions, from the Administrative Code Committee of the legislature, from a governmental agency or subdivision, or from an association having no less than 25 members who will be directly affected, a public hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those persons directly affected has been determined to be 116 based on the 1160 licensees in Montana.

BOARD OF DENTISTRY  
DAVID B. TAWNEY, D.D.S.  
PRESIDENT

BY:   
GARY BUCHANAN, DIRECTOR  
DEPARTMENT OF COMMERCE

Certified to the Secretary of State, June 4, 1984.

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## MODEL REGULATIONS FOR USE OF GENERAL ANESTHESIA BY DENTISTS

\_\_\_\_\_(name of)\_\_\_\_ STATE DENTAL BOARD

### DEFINITIONS (Insert Appropriate Rule Number)

General Anesthesia: General Anesthesia is a controlled state of unconsciousness, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

Sedation: Sedation is a depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command, produced by a pharmacologic or non-pharmacologic method, or combination thereof.

Class A - Parenteral and/or rectal/oral\*

Class B - Conscious sedation, nitrous oxide analgesia

If sedation results in a general anesthetic state, the rules for general anesthesia apply.

Regional: Regional anesthesia consists of the use of any drug, element, or other material which results in a state of insensibility of a circumscribed area, or the loss of sensation of some definite, localized area, without inhibition of conscious processes.

### USE OF GENERAL ANESTHESIA (Insert Appropriate Rule Number)

- A. No dentist shall employ or use general anesthesia on an outpatient basis for dental patients, unless such dentist possesses a permit of authorization issued by the (insert name of state) State Dental Board. The dentist holding such a permit shall be subject to review and such permit must be renewed (insert period of time - annually/biannually). This rule is subject to the exception noted in part D of this rule.
- B. In order to receive such a permit, the dentist must apply on a prescribed application form to the (insert name of state) State Dental Board. Sub-a (insert number) (\$    ) application fee, and produce evidence showing that he or she:
  - 1 (a) Has completed a minimum of one (1) year of advanced training in anesthesiology and related academic subjects (or its equivalent) beyond the undergraduate dental school level in a training program as described in Part 2 of the Guidelines for Teaching the Comprehensive Control of Pain and Anxiety in Dentistry; or

\*oral into Class A Sedation based on the effect on children

- (b) Is a diplomate of the American Board of Oral and Maxillofacial Surgery, or is a fellow/member of the American Association of Oral and Maxillofacial Surgeons or is eligible for examination by the American Association of Oral and Maxillofacial Surgeons, or is a Fellow of the American Dental Society of Anesthesiology; in view of the fact that the training requirements as outlined in subparagraph B.1. (a) above is a partial requirement for receiving or being eligible for these credentials; or
- (c) Employs or works in conjunction with a trained M.D. or D.O. who is a member of the anesthesiology staff of an accredited hospital, provided that such anesthesiologist must remain on the premises of the dental facility until any patient given a general anesthetic regains consciousness; and,
- (d) Has a properly equipped facility for the administration of general anesthesia staffed with a supervised team of auxiliary personnel capable of reasonably handling procedures, problems, and emergencies incident thereto. Adequacy of the facility and competence of the anesthesia team may be determined by the consultants appointed by the Board as outlined in Part D of this rule. Refer to Appendix E of the American Association of Oral and Maxillofacial Surgeons Office Anesthesia Evaluation Manual.

C. A permit may be issued for administration of conscious sedation Class A if the individual has the following qualifications:

- 1. (a) documented experience at the dental school undergraduate or graduate level or beyond or successful completion of a course of i.e. 60 hours, physical evaluation, basic life support certification, IV sedation, airway management and monitoring.  

Sedation Class B - completion of a course of i.e. 24 hours.
  - (b) facility requirements as reflected in item B1(d) above (AAOMS Office Anesthesia Evaluation Manual, Appendix E)
  - (c) Sedation Class B - Positive pressure oxygen.
2. Monitoring: Acceptable, surgical and anesthetic practice dictates that all patients be monitored continually when anesthetic agents are employed.

3. The Board adopts the standards regarding the equipment within a facility as set forth by the American Association of Oral and Maxillofacial Surgeons Office Anesthesia Evaluation Manual, 1978 edition, as the standards by which the Board shall approve facility equipment. Certification of offices by the American Association of Oral and Maxillofacial Surgeons as meeting the standards adopted constitutes a prima facie showing that the office meets the standards.
- D. Prior to the issuance of such permit, the (insert name of state) State Dental Board should require an on-site inspection of the facility, equipment and personnel to determine if, in fact, the aforementioned requirements have been met. This evaluation shall be carried out in a manner described by the Board. (Some states have followed the principles but not necessarily the specifics, described in the American Association of Oral and Maxillofacial Surgeons Office Anesthesia Evaluation Manual.) The evaluation shall be carried out by a team of consultants appointed by the (insert name of state) State Dental Board.

If the results of the initial evaluation are deemed unsatisfactory, upon written request of the applicant, a second evaluation shall be conducted by a different team of consultants.
- E. Each dentist who has been using or employing general anesthesia prior to adoption of these rules shall make application on the prescribed form to the (insert name of state) State Dental Board within one (1) year of the effective date of these rules if such dentist desires to continue to use or employ general anesthesia. If he meets the requirements of these rules, he shall be issued such a permit. An on-site evaluation of the facilities, equipment, and personnel should be required prior to issuance of such permit.
- F. For new applicants who are otherwise properly qualified, a temporary provisional permit of one year in duration may be granted by the Board based solely upon the credentials contained in the application, pending complete processing of the application and thorough investigation via an on-site evaluation as described in Part D of this rule.
- G. The Board shall with (without) charge renew the permit (insert period of time - annually/biannually) unless the holder is informed in writing that a re-evaluation of his credentials and facility is to be required. In determining whether such re-evaluation is necessary, the Board shall consider such factors as it deems pertinent including, but not limited to, patient complaints and reports of adverse occurrences. Such re-evaluation shall be carried out in the manner described in Part D of this rule.



- H. The (insert name of state) State Dental Board, based on formal application stating all particulars which would justify the granting of such permit, may grant the permit authorizing the use or employment of general anesthesia to those licensed dentists who have been utilizing general anesthesia in a competent and effective manner in the past but who have not had the benefit of formal training as outlined in this rule.
- I. It is strongly suggested that continuing education be required of those holding general anesthesia and sedation permits.

All licenses engaged in the practice of dentistry in the State of \_\_\_\_\_ must submit a complete report within a period of thirty (30) days to the \_\_\_\_\_ Dental Board of any mortality or other incident occurring in the outpatient facilities of such dentist which results in temporary or permanent physical or mental injury requiring hospitalization of said patient during, or as a direct result of, dental procedures or anesthesia related thereto.

Failure to comply with this rule when said occurrence is related to the use of general anesthesia may result in the loss of such permit.

- References:
- American Association of Oral and Maxillofacial Surgeons  
Office Anesthesia Evaluation Manual (1978 Edition)
  - American Dental Association Guidelines for Teaching the  
Comprehensive Control of Pain and Anxiety in Dentistry  
(1982 Edition)

November, 1983

## ANESTHESIA

Dear Ladies and Gentleman:

I thank you very much for the opportunity to present some very important information that needs to be considered when evaluating anesthesia in its proper perspective. The use of general anesthesia in the past was very wide-spread. Over the years oral surgeons have felt that definite action by the professions (both medical and dental) to insure a high standard of anesthesia in the out-patient setting is necessary. The timely, energetic response of oral surgeons has resulted in the upgrading of office anesthesia facilities, acceptance of office anesthesia evaluation, initiation of morbidity and mortality studies, review for training of oral surgery auxillary personnel and renewed interest in clinical research in outpatient anesthesia.

1. How safe is outpatient anesthesia?
2. Is it really necessary?

In 1974 in Southern California a five year review of anesthetic morbidity-mortality was undertaken by the oral surgery society. This was done just prior to the initiation of an office anesthetic review requirement. They surveyed 100% of the oral surgeons in southern California. From 1968 to 1972 there were 3 fatalities in 1,300,000 anesthetics or 1 for every 430,000. In 1980 they reviewed the same group again. 100% participation during the second 5 year review of southern California was achieved. There were no deaths in over 1,285,000 anesthetics. In Massachusetts, an anesthetic study revealed that from 1976 to 1980 there were 2 fatalities in 2,353,320 anesthetics or 1 death for every 1,766,660. In Ohio there have been two fatalities in over 3,500,000 anesthetics since 1974, or 1 death for every 1,750,000 anesthetics. Furthermore, 1 in every 600,000 local anesthetics will result in a death.

Now lets compare these statistics to those found in hospitals with anesthesiologists and certified nurse anesthetists. In Dripp's textbook, Introduction to Anesthesiology, Dripp addresses this issue in the section on physical status and risk. In 1954 Beach and Todd found that anesthesia played a primary contributory role in the death of one in every 1,500 patients. More recent statistics reveal one in every 30,000 to 40,000 general anesthetics result in a death. A personal communication with anesthesiologists at a surgicenter in Montana revealed that for surgicenters these numbers are 1 death for every 150,000 anesthetics. When we compare out-patient anesthetic to in-patient in hospital anesthetics of a general nature, it is apparent that out-patient anesthetics by oral surgeons results in a very admirable and statistically safe approach. Oral surgeons are constantly striving to eliminate risks. However, risks can only be eliminated to a certain point. It is important to remember that even with local anesthesia 1 death results in every 600,000 administrations. So local anesthesia in itself is not a sure way of avoiding a significant problem.

Next I would like to address the question of, "Is sophisticated anesthesia care really necessary?" I feel that it truly is. The practice of dentistry has evolved in the sophisticated level of care of pain and anxiety. For example, the patient who refuses treatment until the process has advanced to a potentially body compromising situation requires a sophisticated approach. If local anesthesia alone is employed, many times effective pain control is not attainable. With intravenous sedation or a light plane of general anesthesia, performed in the correct environment, this apprehensive patient can be treated in a very safe and cost-effective manner. It must be realized that the use of a surgicenter or a hospital for elective out-patient surgery adds from \$600 to \$1,000 or more per situation.

At this time I would like to discuss some very important terms, to clarify the concept of anesthesia for this committee.

Anesthesia is a loss of sensation in part, or in the body generally induced by the administration of a drug.

Local Anesthesia is produced by the injection of a local anesthetic drug into the soft tissue.

Regional Anesthesia is produced by the selected injection of a local anesthetic drug into or in close proximity to a specific nerve to produce anesthesia along that area of innervation.

General Anesthesia is a loss of consciousness in addition to the loss of sensation produced by the administration of either intravenous, oral or inhalation anesthetics.

Sedation is the calming by the means of psychologic or pharmacologic (by route of administration) methods that do not impair obligatory anatomic functions such as respirations or cardiac function.

With the administration of any of these medicines there is an anesthetic risk. The anesthetic risk incorporates the present physical status of the patient. These are classified according to The American Society of Anesthesiology.

Class I: This patient is a healthy patient without systemic disease.

Class II: This patient is one with a mild systemic disease such as moderate anemia, history of heart disease without symptoms or a mild diabetic under good control.

Class III: This is a patient with a severe systemic disease that limits activity, but is not yet incapacitating and is not yet a threat to life. Examples of this are gross obesity, asthma, COPD, symptomatic heart disease and moderate trauma.

Class IV and V: These patients have risks not applicable to office practice.

To further enhance the continued safe use of out-patient an anesthetics, I feel the following recommendations should be incorporated into any such approach that is ultimately adopted.

1. One year of anesthesia training or its equivalent be required to provide such services.
2. Advanced life support or it's future equivalent be required to administer anesthesia.
3. An office evaluation be required before a certificate of competency be given to a practitioner. This evaluation should include patient's history, monitoring protocols, use of anesthetics, understanding of anesthetics, and any other adjunctive considerations that may be required.
4. A mandate that the state board implement its regulations within the next year.
5. No provision for a grandfather clause be permitted.

Thank you very much for your time and concern.

Dr. Donald Roberts

Board of Oral and Maxillofacial Surgeons

WITNESS STATEMENT

NAME Douglas C Smith BILL NO. 290  
ADDRESS P.O. Box 266 Bigfork, MT. 59911 DATE 1-30-85  
WHOM DO YOU REPRESENT? SELF AND DENTISTRY  
SUPPORT Yes OPPOSE \_\_\_\_\_ AMEND \_\_\_\_\_  
PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

Comments:

I am a proponent of HB 290 because I believe that the dentists of Montana should be able to practice anesthesia according to his or her credentials of training and not by degree. I sincerely believe that the Board of Dental Examiners should have the mandate by the legislature to make rules and regulations regarding anesthesia within the limits provided by law and provided the rules and regulations are for the best interest of the health and safety of patients under care of the dentists.

Douglas C Smith, D.M.D.

## VISITORS' REGISTER

HOUSE Human Services and Aging COMMITTEE

BILL HB 290

Date 1/30/85

SPONSOR \_\_\_\_\_

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.