

MINUTES

MONTANA SENATE
51st LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By Chairman Hager, on January 20, 1989, at
1:00 p.m. in Room 410.

ROLL CALL

Members Present: All members present.

Members Excused: None.

Members Absent: None.

Staff Present: None.

HEARING ON SENATE BILL 114

Presentation and Opening Statement by Sponsor: Senator Harp, District #4, stated that the bill was introduced at the request of the Montana Dental Society and Dr. Robert Cotner of the Montana Board of Dentistry of Columbia Falls. Senator Harp said it was important to keep the dental profession in control of this board, thus the bill reinstates the fifth member from the dentist profession. New duties have been added and the dentists are more familiar with the problems which have changed considerably in the past few years.

List of Testifying Proponents and What Group they Represent:

Roger Tippy, Montana Dental Association;
Robert Cotner, D.D.S., Chairman of the Board of
Dentistry;
John T. Noonan, D.D.S., Member of the Board of
Dentistry;
Roger Kiesling, D.D.S., Montana Dental Association;
Lee M. Wiser, Denturist, Member of the Board of
Dentistry;

List of Testifying Opponents and What Group They Represent:

Mary Lou Abbott, Montana Dental Hygienists Association;
Brent Kandarian, Denturists Association and
individually;

Elsie Lee, testifying for Elsie Fauth, Montana Senior Citizens Association;
Elmer Fauth, individual.

Testimony:

Roger Tippy, Attorney and lobbyist for the Montana Dental Association said it was not about a turf battle but about the present workload of the board and pointed out the makeup of the board. The old board consisted of five dentists but one of those positions was relinquished when the denturists were added to the board and the board became the board of dentistry in order to cover all dental professions. The workload has increased and the board members spend approximately 35 days per year attending to business of the board, i.e. examinations, complaints, meetings, etc. He urged a do pass on the bill to bring it back up to nine members and named several other boards of that particular makeup.

Robert Cotner, Chairman of the Board of Dentistry, appeared in support of SB 114, and said they are required to meet four times a year and additional meetings are sometimes required to fulfill their responsibilities. They also have to have representation at the Western Regional Examining Board examinations. He said their responsibility is to see that the people of the state have fair and just dental treatment and in order to reach that goal they need to have the fifth member restored to the board. (See Exhibit #1 attached.)

Jack Noonan, Member of the Board of Dentistry, explained that it is very time-consuming for the members to appear at all the examinations and it would be helpful to be able to spread the workload between five members rather than four and they need more people to carry their share of the load. He also pointed out that it would not cost the state any money.

Roger Kiesling, Montana Dental Association, said he was in agreement with Doctors Cotner and Noonan in that the workload needs to be shared by more people. He said that the number of dentists who wish to serve on the board has diminished in past years because of the increased workload and many cannot afford the required time away from their practices. He asked for a nine member board but said he did not think it should be any larger.

Lee Wisner, Denturist member of the Board of Dentistry, but spoke as an individual and said that change is good if

done in an equitable manner. He also suggested that persons moving into the state to practice be accepted by reciprocity. He also mentioned that the workload could be helped by appointing outside examiners.

Mary Lou Abbott, Montana Dental Hygienists Association, submitted written testimony, Exhibit #2 attached, and stated they were not in favor of SB 114.

Elsie Lee, read the testimony of Elsie Fauth of the Montana Senior Citizens Association. The Senior Citizens Association felt, as a group, they should have equal representation and suggested two members from each profession with three lay people on the board. They were opposed to SB 114.

Brent Kandarian, Denturist from Kalispell, Montana, submitted written testimony which is attached as Exhibit #3.

Elmer Fauth, individual, expressed his opposition to the addition of the fifth member and suggested 2-2-2-3 as an equal distribution on the board.

Questions From Committee Members: A discussion was had between Senator Lynch, Mr. Kandarian and Mr. Wiser as to the makeup of the board having two denturists when there are between 13-18 denturists in the state and 750 dentists.

In answer to a question from Senator Rasmussen, Dr. Cotner said that members of the board have been used at the examinations, these examinations are continually being up-dated and it is difficult to keep these people informed on the current events and updates.

Senator Rasmussen questioned Dr. Cotner if there were many 4-4 votes to which he responded that he had been chairman for one year and a member for three years and could remember only once a 4-4 vote. He also stated that as chairman he does not vote. In responding to Senator Lynch's question he said that all members do attend all four meetings.

Chairman Hager asked if the Board currently has any staff members to which Dr. Cotner replied they have an executive-secretary/administrative assistant and an attorney and that person also serves for other boards.

Senator Himsl asked why the board makeup was changed in the beginning. Mr. Tippy explained that the board of denturity would not be self sustaining and therefore

was added to the board of dentists and the name was changed to board of dentistry at which time the dentists gave up one member to the denturists. Senator Himsl asked Mr. Tippy why the change was needed now because previously the Association agreed that this was sufficient. Mr. Tippy said they agreed that they would give it a try.

Closing by Sponsor: In closing Senator Harp said that with the increased workload that the board is facing they had the privilege of coming back and reviewing the makeup of the board. He said the bill only reinstates the fifth member which they had had for 80 years and asked a favorable recommendation for SB 114.

HEARING ON SENATE BILL 146

Vice-Chairman Rasmussen assumed the chair in order for Sen. Hager to present his bill.

Presentation and Opening Statement by Sponsor: Senator Hager, District #48, introduced the bill at the request of the Department of Family Services which would authorize the department to contract with licensed social workers to conduct investigations in private adoptions and to charge a fee for the investigations.

List of Testifying Proponents and What Group they Represent:

Betty Bay, Department of Family Services;

List of Testifying Opponents and What Group they Represent:

None.

Testimony:

Betty Bay of the Department of Family Services submitted written testimony which is attached as Exhibit #4, in support of SB 146.

Questions from Committee Members: Senator Lynch asked Ms. Bay who would be held liable in the event something went wrong; would it be the individual or the department? She said she could not answer that particular question but this bill only refers to parental placements, however, she said that most licensed social workers have liability insurance.

Sen. Hager submitted written testimony of Montana Intercountry Adoption, Inc., Exhibit #5, in which they requested an amendment to include licensed child

placing agencies. Ms. Bay said they would have no objection to the suggested amendment.

Closing by Sponsor: Senator Hager closed stating that the bill would aid the adoption procedure and a fee would also be charged for the investigations.

Chairman Hager reassumed the chair.

ADJOURNMENT

Adjournment At: 2:20 p.m.



SENATOR TOM HAGER, Chairman

TH/lis

Minls.120

ROLL CALL

PUBLIC HEALTH

COMMITTEE

51st LEGISLATIVE SESSION -- 1989

Date 1-20-89

NAME	PRESENT	ABSENT	EXCUSED
Sen. Tom Hager	X		
Sen. Tom Rasmussen	X		
Sen. Lynch	X		
Sen. Himsel	X		
Sen. Norman	X		
Sen. McLane	X		
Sen. Pipinich	X		

Each day attach to minutes.

I AM DR. ROBERT COTNER, PRESIDENT OF THE BOARD OF DENTISTRY AND I AM HERE TO VOICE MY SUPPORT OF S. B. #114 TO ADD ANOTHER DENTIST MEMBER TO THE BOARD OF DENTISTRY. AT THE LAST LEGISLATIVE SESSION, THE LEGISLATURE ADDED A DENTURIST AND A SECOND LAY PERSON TO THE BOARD OF DENTISTRY BY DELETING ONE OF THE DENTIST MEMBERS FROM THE BOARD TO RETAIN THE MEMBERSHIP OF THE BOARD AT SEVEN MEMBERS. THE PRESENT MEMBERSHIP OF THE BOARD OF DENTISTRY CONSISTS OF FOUR MEMBERS THAT ARE GRADUATE DENTISTS, ONE DENTAL HYGIENIST, TWO LAY MEMBERS AND ONE DENTURIST.

THE BOARD OF DENTISTRY IS REQUIRED BY STATUTE TO MEET AT LEAST FOUR TIMES A YEAR AND TO EXAMINE ANY NEW DENTISTS, DENTAL HYGIENISTS OR DENTURISTS THAT WISH TO BE LICENSED TO PRACTICE THEIR PROFESSION IN THE STATE OF MONTANA. IN ADDITION TO THE REGULAR MEETINGS, ADDITIONAL MEETINGS ARE USUALLY REQUIRED BY THE BOARD OF DENTISTRY TO FULFILL THE BOARD RESPONSIBILITIES. MOST OF THE MATTERS OF BUSINESS, PARTICULARLY THE COMPLAINTS FILED AGAINST PRACTITIONERS IN MONTANA, REQUIRE THE EXPERTISE OF THE DENTIST MEMBER SINCE THE OTHER BOARD MEMBERS LACK THE EDUCATIONAL REQUIREMENTS TO RULE ON THE VARIOUS MATTERS COMING BEFORE THE BOARD.

THE STATE OF MONTANA IS A MEMBER OF THE WESTERN REGIONAL EXAMINING BOARD WHICH INCLUDES THE STATES OF MONTANA, IDAHO, UTAH, ARIZONA AND NEW MEXICO. THE W. R. E. B. EXAMINES PROSPECTIVE LICENSEES AT LEAST FOUR TIMES EACH YEAR AT VARIOUS WESTERN DENTAL SCHOOLS ON THE CAMPUSES OF THEIR RESPECTIVE UNIVERSITIES.

THE W. R. E. B. REQUIRES THAT THE EXAMINERS BE REPRESENTATIVE OF THE

STATES REPRESENTED ON THE W. R. E. B. THIS REQUIRES THAT ONLY THE FOUR DENTIST MEMBERS CAN ATTEND AND REPRESENT MONTANA AT THE REGIONAL EXAMINATIONS WHICH, THEREFORE, ADDS FOUR ADDITIONAL MEETINGS TO THE REQUIRED FOUR MEETINGS OF THE BOARD. HAVING ONLY FOUR MEMBERS THAT CAN SERVE AS EXAMINERS PLACES A BURDEN ON THESE FOUR DENTISTS SINCE THE OTHER MEMBERS OF THE BOARD DO NOT HAVE THE QUALIFICATIONS TO SERVE AS EXAMINERS.

I AM IN HOPES THAT YOU, OUR ELECTED REPRESENTATIVES, WILL ACT FAVORABLY ON THIS BILL TO ADD THE FIFTH DENTIST MEMBER TO THE BOARD OF DENTISTRY TO BETTER HANDLE THE BUSINESS THAT COMES BEFORE THIS IMPORTANT REGULATORY BOARD.

DATE JAN. 20, 1989BILL NO. SB-114

Montana Dental Hygienists' Association

January 18, 1989

SB 114

Legislation to add one dentist to the Board of Dentistry

Testimony presented to the Senate Public Health Committee

The Montana Dental Hygienists' Association wishes to speak in opposition to Senate Bill 114. It is the opinion of MDHA that the present composition of eight Board of Dentistry members is adequate to handle the work load for which the Board of Dentistry is responsible. An analysis of Board of Dentistry composition of surrounding states reveals that only Colorado has a board composed of more than seven members. The composition in that state is four dentists, two dental hygienists, and three public members. An analysis of the total number of Board of Dentistry members in states of similar to slightly larger population shows no greater than seven members on the Board of Dentistry.¹

The responsibility of Board of Dentistry members to serve as examiners at regional licensing examinations is assisted by the fact that the Western Regional Examination Board can, and often does, appoint examiners from Montana who are not Board of Dentistry members. The Montana Dental Hygienists' Association views this practice by this board a wonderful opportunity for members of the dental and dental hygiene communities to participate in the regulatory process. In addition, this practice may serve to develop an interest among those individuals to aspire to serve as a Board of Dentistry member. Therefore we feel that it is unwarranted to increase the number of dentists on the Board of Dentistry for the purpose of assisting with examination responsibilities.

In past legislative sessions, the Montana Dental Hygienists' Association has presented testimony to the fact that the ratio of dentists to dental hygienists in Montana is approximately two to one. Dental Hygiene is the only licensed profession which is regulated by a board composed primarily of members of a different profession, who also serve as the primary source of employment. Therefore we feel it is extremely important to establish a proportionate representation on the Board of Dentistry. The present composition is closer to that goal than it has ever been in the past.

The Montana Dental Hygienists' Association urges the committee to vote against SB 114.

Thank you.

Patti Conroy RDH
2525 Silver Spur Trail
Billings, Mt. 59105
252-2336
MDHA Legislative Chairman

Mary Lou Abbott RDH
1509 Livingston Ave.
Helena, Mt. 59601
443-7631
MDHA Legislative Committee member

1. Analysis of: Alaska, Idaho, North Dakota, South Dakota, Utah, Wyoming, New Mexico, Maine.

3 SENATE HEALTH & WELFARE

EXHIBIT NO. 3

DATE JANUARY 20, 1989

BILL NO. SB 114

Senator Thomas Hager, Chairman

SENATE PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

Senate Bill 114

January 20, 1989

My name is Brent Kandarian, I am a practicing denturist in Kalispell, Montana. I was chairman of the Montana State Board of Denturistry and I am in support of a modification to the present Board of Dentistry, but not in the manner presented to this committee.

I feel the bill being presented is in direct contradiction to the 1985 modification to House Bill 649. HB 649 called for a Sunset Audit of the Board of Denturistry. The Audit was prepared by the State Auditors Office and submitted to the 1987 Legislature. The merging of the boards of dentistry and denturistry required the removal of 1 dentist board member from the Board of Dentistry and the addition of 1 denturist and 1 lay person to create the new Board of Dentistry, consisting of 4 dentists, 1 hygienist, 1 denturist, and 2 lay people. This bill, SB 114 is now asking to increase the number of dentists on the Board back to 5.

I believe the 1987 Legislature was misled by the Montana Dental Association's lobbying efforts against the continuing existence of the Board of Denturistry, much of which were centered around me. See exhibit A. This misinformation was gathered and assembled by the lobbyist for the Montana Dental Association as can be seen in exhibit B. I was put in the position of defending my own denturist practice, therefore nullifying my credibilty as a spokesman for denturistry before the 1987 Legislature. Since that time I have prevailed in court as can be seen in the Summary Judgement (exhibit C) attesting to the correctness in my office practices.

I personally, did not object to the merger of the Boards, but rather in the manner with which it was accomplished!

When I reviewed the Sunset Audit of the Board of Denturistry I was angered by the misinformation being presented. Trying to correct this misinformation, I approached the Auditors Office but to no avail. I confided information to the Department of Commerce regarding my fears about the audit report, and also went to see the Attorney General, Mike Greeley. Mr. Greeley told me there was no avenue he could use to investigate of the Auditors Office. The final event that convinced me I was correct in my assesment of the Audit and the personal attacks towards me, took place at a hearing being chaired by Representative Walter Sales. After my testimony before this committee, individuals (plural) in the audience came to me and stated that they heard someone (later identified as a member of the State Auditors Office) state he was going to take a "Contract" out on me. I immediately notified 2 members of the House, Mr. Charles Briggs of the Governors Office and my attorney of this threat. At this time I came to realize that trying to combat the misinformation, negative attitudes and personal threats was an impossible task and because of this, I attended no further legislative hearings during the 1987 Session.

Since the merging of the Boards, the attitude and functioning of the Board has not been equitable to all parties as the "legislature" was assured. The case of myself is proof and exhibit D is a decision by Judge Keedy denying the Board of Dentistry Summary Judgement in its attempt to have my case against it dismissed.

Further proof of the long term animosity in the attitude of the dentists can be seen in exhibit E. Exhibit E, is an excerpt from the May 23rd, 1985, deposition of Dr. John Noonan, a Dental Board Member, where he states, "The MDA (Montana Dental Association) was trying to amend their (denturists) proposals and wanted the denturists put under the Board of Dentistry".

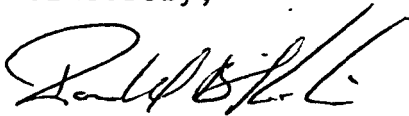
At this time I think it is important that we initiate a Board that represents all licensees equally. Such a Board could be a 2-2-2-3 make up: 2 dentists, 2 denturists, 2 hygienists and 3 lay people. This Board would function in this manner. All members would discuss an issue before it, but only the profession at issue would vote along with the lay people, therefore giving a lay person majority on all matters before the Board.

There may be some issues that would require the entire vote of the Board. An example of this might be licensing fees. At this time, dentistry controls all issues that are voted upon because of their numbers.

In closing let me say that this Board concept and make up is supported by the MSCA (Montana Senior Citizens Association), MDHA (Montana Dental Hygienists Association), DAM (Denturists Association of Montana) and we all ask your consideration for this Board composition.

Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald B. Kandarian". The signature is stylized and cursive.

Ronald B. Kandarian, L.D.

THE DENTURITRY SCANDALS

The Independent Record, Helena, Mont., Wednesday, December 17, 1966—28

ROUND MONTANA denturists resist audit report on licensures

ANEZ
ated Press Writer

The state Board of Dentistry plans to ask a legislative auditor's report that the board broke the law in licensing five apparently unqualified denturists.

Board chairman Brent Kandarian, a Kalispell dentist, said Tuesday no action will be taken to revoke the licenses issued to the five-member board because the applicants met the minimum qualifications required, he said.

But John Norney, attorney in the Legislative Auditor's Office, said he will

hand over the matter to the attorney general for possible prosecution. Ultimately, court action could be needed to invalidate the licenses, he said.

The Legislature, meanwhile, will consider a bill that would merge the dentistry board with the Board of Dentistry because the quota of 30 licensed denturists was not reached.

Montana has 18 licensed denturists, including 12 who were practicing for at least five years before the new dentistry board was created in 1964.

New applicants have to show at least two years education in dentistry and either a two-year internship under a licensed dentist or three year's experience as a licensed dentist in another state or Canada.

The audit found that three of the disputed applicants failed to meet both the education and experience standards, and two did not comply with one criteria.

The dispute between the board and the audit report appears to center on educational backgrounds. Kandarian contends the law, enacted by initiative in November 1964, allows his board to consider military training equal to the two-year education requirement, even though the law makes no mention of military schooling.

Kandarian said it carries more weight because it involves an extensive program of refresher courses that usual schooling does not.

However, only one of the five applicants appears to come close to the minimum educational requirement, according to board files. Only one file indicates an internship under a licensed dentist, and only one applicant already held a license elsewhere.

All five applicants were opposed by Dr. Gayle Roset, a Billings dentist on the Board of Dentistry, and none is practicing in Montana yet.

The five applications cited in the audit are those of: Charles Conlan, 45, Cashmere, Wash.; Kenneth MacPherson, 28,

Redmond, Wash.; Sam Matousek Jr., 50, Eatonville, Wash.; Mark Hittenhouse, 22, Whitehorse, Yukon Territory; and William Spencer, 56, Richlon, Miss.

Roset, the chief critic of the licensings, said he doubted the board will respond to the audit report. He said the board is controlled from the low-income and senior citizen representatives. Elsie Fox of Miles City and Henry Siderus of Kalispell.

"I don't think they want to revoke the licenses because it would show they shouldn't have done it in the first place," Roset said. Kandarian and Wiser "will hold fast to their convictions," he said.

Dentistry head accused of practicing dentistry

HELENA (AP)— The head of the state Board of Dentistry has been accused of practicing dentistry without a license and may face prosecution, state officials acknowledged Tuesday.

The state Board of Dentistry has asked Flathead County Attorney Ted Lympus to take legal action against Brent Kandarian, who operates Glacier Denture Center in Kalispell.

Kandarian has denied any wrongdoing.

Lympus said Monday he had not yet reviewed the complaint. Geoffrey Brazier, staff attorney with the Commerce Department, said Tuesday he will seek an injunction against Kandarian if Lympus decides not to act.

Earlier this year, the board was notified by Kalispell dentist Kenneth MacPherson that Kandarian's advertising offered temporary dental joint evaluations, or diagnosis of jawbone hinge malfunctions.

At a Nov. 12 meeting the Board of Dentistry concluded that Kandarian's actions violated laws governing the practices of dentistry and denturistry. Specifically, denturists are prohibited from diagnosing or treating "any abnormalities."

The board also filed a complaint against Kandarian with his own board, which decided Monday to take no action until Lympus makes a decision.

Board of Dentistry files show Kandarian was twice notified of the complaint against him, on Sept. 22 and Oct. 31.

In a Nov. 6 letter to Brazier, Kandarian explained why he took so long to reply. "I didn't think it necessary to answer a complaint of the dental board when, in fact, it has nothing to do with me — nor me with it. If I have committed a crime, I will answer to the Board of Dentistry."

He denied having ever practiced dentistry, saying his evaluations "certainly fall within my scope of practice regardless of what the Board of Dentistry thinks and I will continue to practice accordingly."

"If the Board of Dentistry would tend to its own complaints instead of going on witch-hunts, it would probably accomplish a whole lot more for the protection of the people of the state of Montana," Kandarian wrote.

Brazier said Tuesday the letter "threw down the gauntlet" to the Board of Dentistry and it had no choice but to pursue legal action.

Kandarian defended his malfunctions Tuesday, saying that anything a denturist does could be considered treating an abnormality. He said the law was meant to prohibit only surgical treatment by denturists.

"Dentists want you to think they are the only ones who can do this work," he said, adding that temporomandibular malfunctions are not abnormalities for denture wearers.

Denturist licensing called illegal

The state Board of Dentistry committed misdemeanors in licensing five applicants who did not meet minimum legal qualifications, says Attorney General Mike Greely.

In an opinion issued to Legislative Auditor Scott Seacat, Greely also said the board broke the law by failing to conduct examinations on the requested date.

However, Greely noted the violations appear to be most since the regulatory board is scheduled to be merged with the Board of Dentistry by the 1967 Legislature.

PAST CRIMES WOULD BE LEGALIZED

The Audit Committee concluded, and the Attorney General agreed, that the Dentistry Board violated its own laws by giving exams to and licensing a number of individuals who did not come remotely close to meeting the high academic standards set out in the law. The denturists' response is HB355's provisions to strip those high standards out of the law and replace them with a loose set of qualifications like military training in denture casting or five years' work in a dental lab and some sort of academic equivalency test this suspect board would administer. The effort is to avoid prosecution by legalizing the violations.

RAID ON MEDICAID: WATCH THE FISCAL NOTE

Federal officials in Denver recently told SRS that if Montana's Medicaid program covers dentures, the dentures must be prescribed by a dentist to be eligible for federal money. HB355 would force SRS to cover dentures made by a denturist, which means 100% of the reimbursement to the denturist would be state money. The expanded definition of dentures in section 3 could also force Medicaid to cover braces and other appliances at normal provider rates.

The fiscal note on HB355 should indicate the dollars which the bill will take away from other senior citizens' programs.

DIAGNOSIS AND TREATMENT OF COMPLEX PROBLEMS: FAR BEYOND DENTURIST SKILLS

Kalispell denturist Brent Kandarian, a board member, has been charged by the Commerce Department with offering to treat TMJ disorders. The TMJ or temporomandibular joint at the hinge of the jaw, can become very painful and its treatment is a complex procedure involving dentists, physicians, physical therapists, and other skilled disciplines.

Rather than cease and desist, Kandarian and his board want the legislature to pass HB355 and allow them to treat TMJ disorders. On one hand they seek to lower the qualifications for a denturist license, down to high school graduation and a little Army training in casting dentures from prescriptions. On the other they seek to expand the scope of practice into a complex field only a few dentists have ventured to master.

AUDIT COMMITTEE BILL: THE PRUDENT APPROACH

The Legislative Audit Committee conducted a mini-sunset review of the Denturistry Board last fall and voted to introduce legislation to merge this Board into the Board of Dentistry. The Board of Dentistry licenses dentists (over 400 in Montana) and dental hygienists (about 200), and prescribes some of the functions and duties of other allied callings: dental assistants and dental laboratories.

DENTIST-REGULATED DENTURITRY: THE ARIZONA EXPERIENCE

Montana's dentists believe that if denturistry is desired by the people, the laws of Arizona provide a model for its regulation and licensing. Arizona's denturists are licensed by the Board of Dental Examiners, and about 30 denturists have qualified and practice there, mainly in the Phoenix and Tucson areas.

There are no denturists on the Arizona Board, but the Board does have consumer representation and a duty to consult the denturists. The system has worked well, as to similar approaches with other licensing boards in Montana. Acupuncturists, for instance, are licensed by our Board of Medical Examiners although they have no members on that Board.

Montana Dental Association

P. O. Box 513 Butte, Montana 59703 Phone (406) 782-9333

6A

Great Falls Tribune
Friday, December 12, 1986

Opin

Potpourri

Audit shows denturist board is slipshod in enforcing rules

MONTANANS WHO RECALL the bitter struggle between dentists and denturists in the 1984 election probably were not surprised to see a renewal of that battle this week in Helena.

Voters approved an initiative two years ago allowing denturists to make and fit false teeth. Its effect has been to take some business away from dentists, who previously had the exclusive franchise for dentures in this state.

On Monday, a legislative audit concluded that the Montana Board of Dentistry had violated several rules in the dentistry law passed by the 1985 Legislature. The audit claimed that the board licensed five denturists who did not meet minimum qualifications for education and training; that it increased license fees before its rules allowed, and that it failed to enforce a requirement that all patients for partial dentures be referred to dentists for preliminary services.

The upshot was a recommendation that the denturist board be merged with the State Board of Dentistry.

Denturists oppose such a move, claiming the dentistry profession wants to drive them out of business. They plan to lobby the 1987 Legislature to retain their own board and to make some changes in the law.

Aside from the political squabble, we feel the denturist law still poses some concerns. The Legislature oversees the activities of all professional boards in Montana and its audit confirms that there are problems.

The Board of Dentistry cannot arbitrarily change some rules and ignore others. If it wants to survive as a separate entity it must exert a stronger influence for professionalism and responsibility. Performance under the law, not lobby-

ing, is the way to achieve that goal.

THE GREAT FALLS CITY COMMISSION has passed a revised junked vehicle ordinance that puts more teeth into neighborhood cleanup efforts, according to Neighborhood Housing Services in its monthly bulletin.

Abandoned vehicles, those that have expired licenses and/or are inoperable, may not be kept outdoors for more than 72 hours unless they are being repaired by the owner of the vehicle and the premises. Repairs may last no longer than 20 days. Storage or repair of such vehicles is permitted indoors, provided the vehicle is owned by the person who owns or rents the premises.

There have been instances of abandoned cars in full outside view for weeks and even months in Great Falls. We applaud the commission's action in helping rid the city of numerous eyesores.

MONTANA-BORN ECONOMIST Lester Thuro of the Massachusetts Institute of Technology came up with an intriguing idea during a state business seminar several months ago that we'd like to see happen.

Thuro said he'd like to see one of the state universities sponsor a contest for the best idea for a new Montana business or product. He also wants state lending institutions to get involved — because first prize in the contest would be a loan to put the concept into action.

Thuro thinks the contest, and the publicity it would engender, would not be just a symbolic gesture. It would put enterprising business people and lending agencies in closer touch with each other. We agree — it's a good idea.

The Independent Record, Helena, Mont. Tuesday, December 9, 1986

Audit report claims denturist board broke the law; charges trade

By BOB ANEZ
Associated Press Writer

The war between dentists and denturists surfaced again before a legislative committee Monday, as an audit report concluded that the board regulating denture-makers broke several laws.

Both sides in the battle traded charges, with dentists saying the 2-year-old Board of Dentistry should be abolished and denturists claiming dentists have sabotaged efforts to create a competing profession in the state.

The report reviewed by the Legislative Audit Committee said the denturist board violated state law by licensing five denturists who did not meet the minimum qualifications. Those illegally licensed failed to have either the required two years of internship under a licensed dentist or the mandated two years of formal education. Three applicants did not meet either requirement, the audit said.

Also, the report said the board administered the denturist exam at various times and locations, contrary to state

law. In addition, it said the board increased license fees before its rules allowed and failed to enforce a requirement that all patients for partial dentures be referred to dentists for preliminary services.

The audit concluded the committee must recommend the 1987 Legislature merge the board with the Board of Dentistry because it licensed only 18 denturists over the past two years, 12 short of the number needed to continue the board's operation.

Denturist supporters, including low-

income and senior citizen groups that say denturists provide a less expensive product, warned the merger would bring denturists under the regulatory thumb of dentists who control the Dentistry Board. The result will be no more licensed denturists and eventual elimination of the profession, they said.

Robert Vavas, a dental technician from Great Falls, said threats by dentists prevented more members of his profession from applying for denturist licenses. He claimed dentists threatened to withhold business from any dental

labs that supported or cooperated with denturists and their campaign in 1984 to legalize the profession.

Brent Kandarian, a Kalispell dentist and president of the board, decried any unqualified people who were licensed and said he was disappointed practicing denturists met with

Licenses were also granted to applicants whose only reported training experience was a two-week "denture appreciation workshop" in Idaho.

1 A. Yes.

2 Q. Now, on page 73, 73, 74, 75 and 76 is a pamphlet that
3 appears to have been published during the '87 legislature by
4 the Montana Dental Association. Do you remember that
5 pamphlet?

6 A. I remember it, yes.

7 Q. The first page on 73, you're publishing the headline
8 that, "Denturitry head accused of practicing dentistry."

9 What did you know of those accusations as of the time you
10 used this news article?

11 A. Your question is flawed in one point. I didn't do it.
12 You say you, and I didn't do it.

13 Q. I meant the Montana Dental Association.

14 A. This particular pamphlet was put together by our
15 lobbyist, Mr. Tippy, and the articles were taken from
16 newspapers around the state. It was published in Helena and
17 I did not see it until it was published.

18 Q. What was it used for to your recollection?

19 A. It was used to pass out to legislators as -- during
20 the legislature. It's self evident what it was for.

21 Q. Page 73 on the bottom, the one headline bears a date
22 of January 16th, 1987. In reference to that date, do you
23 know when this handout would have been prepared?

24 A. You mean this entire handout or that article?

25 Q. The entire handout. It had to be after January 16th

1 IN THE DISTRICT COURT OF THE ELEVENTH
2 JUDICIAL DISTRICT OF THE STATE OF MONTANA,
3 IN AND FOR THE COUNTY OF FLATHEAD

4 Cause No. DV-87-071(B)

5 STATE OF MONTANA, BOARD OF)
6 DENTISTRY,)

7 Plaintiff,)

8 vs.)

MEMORANDUM & ORDER

9 R. BRENT KANDARIAN,)

10 Defendant.)

11 This matter is before the Court following oral argument
12 on Plaintiff's motion for summary judgment on Defendant's
13 counterclaim. The parties submitted post-hearing briefs,
14 and the matter was deemed submitted to the Court for
15 ruling on December 10, 1988. The Court, being advised,
16 now enters the following:

17 MEMORANDUM

18 In the case at bar, Plaintiff contends that it enjoys
19 the immunity granted to quasi-judicial boards, thereby
20 precluding Defendant from proceeding with his counterclaim.

21 Defendant contends that under the facts presented,
22 and under case law, the State is not immune from suit
23 for tortious acts even if in the course of and within
24 the scope of its authority. He contends that the acts of
25 the Board were outside of the scope of its authority.

26 The issue: whether the decision of the Board, to
27 initiate suit following a little-investigated inquiry
28 and against its own expert's opinion and advice, constituted
29 the discharge of an official duty.

30 ✓As will be discussed below, Defendant has raised
substantial questions of material fact sufficient to
defeat Plaintiff's motion.

Plaintiff argues that the Board, and therefore the
State, enjoys immunity from suit and that immunity
derives from the quasi-judicial functions of the Board.
While Plaintiff correctly argues that certain legislative
and judicial bodies enjoy immunity, none of the cases
cited by Plaintiff involves facts parallel to those
presented here.

Two competing lines of legal thought are involved in
this case. On the one hand, Montana has abolished the
concept of sovereign immunity, and subjects the State to
liability for the torts of its employees when acting
within the scope of their duties. Article II, §18,

1 Mont. Constitution. The State is liable for the intentional
2 torts or negligent acts of its employees, §§2-9-102, 2-
9-305, Orser v. State, ___ Mont. ___, 582 P2d 1227 (1978),
3 B.M. v. State, ___ Mont. ___, 649 P2d 425 (1982).

4 However, the State is immune from suit for the legisla-
5 tive and judicial acts and omissions of its members or
6 agents arising from the lawful discharge of official
7 duty. Sections 2-9-111, 2-9-112, M.C.A. Additionally,
8 the State, when acting through a prosecutor, enjoys
9 common-law immunity. State, ex rel Department of Justice
10 v. District Court of the Eighth Judicial District, -
11 Mont., 560 P2d 1328 (1976), Ronek v. Gallatin County,
12 P2d ___, 44 St. Rep. 1275 (Mont. 1987). This concept
13 of prosecutorial immunity has recently been extended to
14 boards of medical examiners when investigating a licensed
15 physician in a contested case proceeding held pursuant
16 to the Administrative Procedure Act. Koppen v. Board of
17 Medical Examiners, ___ P2d ___, 45 St. Rep. 1433 (Mont.
18 1988).

19 The Montana Supreme Court has also held that, in a
20 case where the Court held that individual commissioners
21 and Glacier County were statutorily immune for their
22 legislative acts pursuant to §2-9-111, M.C.A., allegations
23 of ulterior motives fail to strip the commissioners and
24 the county of their immunity. The Court stated that it
25 will look only to the acts in question to determine
26 whether they were performed pursuant to the lawful
27 discharge of official duty. Barnes v. Koepke ___ P2d ___,
28 44 St. Rep. 810 (Mont. 1987).

29 None of the cases relied upon by Plaintiff contained
30 allegations of acts exceeding the scope of authority. In
31 Koppen, the Board of Medical Examiners held a contested
32 case hearing at which the doctor concerned may be represen-
33 ted by counsel and offer evidence. The decision of the
34 Board was subject to judicial review, Koppen, 45 St.
35 Rep. at 1437. There were no allegations that any acts
36 were outside of the scope of authority.

37 Similarly, in Ronek, there were no allegations that the
38 county attorney exceeded his authority or was derelict
39 in his duty under law. Ronek, 44 St. Rep. at 1278.

40 In Butz vs. Economow, 438 U.S. 478, 98 S.Ct. 2894
41 (1978), a case wherein the U.S. Supreme Court held that
42 federal officials must enjoy personal immunity, there
43 were no allegations of acts outside of the jurisdiction
44 and scope of their official duties.

45 In the case at bar, Defendant alleges the following
46 facts, to which Plaintiff concedes: That in the course
47 of its investigation, Plaintiff failed to interview any
48 "victims" of Defendant's alleged practice of dentistry;
49 the Board released to the media information prior to
50 bringing suit; the Board continued the proceedings after
51 its own expert testified that the Board's position was
52 not well founded; no contested case hearing was held at

1 which Defendant could appear and witnesses testify; that
2 even though the county attorney declined to proceed with
3 criminal charges, and the Board of Denturity declined to
act, this Board continued in the legal proceedings
against Defendant.

4 This evidence raises substantial questions of material
5 fact whether the events underlying the decision to
6 initiate legal proceedings were acts performed in the
discharge of the Board's official duties.

7 One of the decisional bases in Butz was the fact that
8 defendants subject to agency proceedings had many safeguards
9 available which were similar to those available in the
10 legal process. Statutorily, the proceedings were adver-
sarial in nature; conducted before a trier of fact not
subject to political pressure, the party was entitled to
present his case by oral or documentary evidence, and
the transcript formed the basis of the decision.

11 The same sort of judicial procedure safeguard existed
12 in the proceeding before the Board of Medical Examiners
in Koppen.

13 This semi-judicial framework is glaringly absent in
14 proceedings before the Board of Dentistry. Although the
15 Board "may" proceed pursuant to the Administrative
16 Procedure Act when investigating and imposing sanctions
against a licensee, no such "agency checks" exist in the
Board's investigation of Defendant. Sections 37-4-321,
37-4-323, M.C.A.

17 In the absence of the underlying rationale supporting
18 Butz and Koppen, the same protection should not be granted.

19 DATED this 5th day of January, 1989.

20
21 
22 Michael H. Keedy
23 District Judge
24
25
26
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28
29
30

1 without seeing the actual proposed
2 legislation."

3 Is it fair to say that this means you have
4 adopted it in principal, but are looking for a
5 final action in terms of the specific
6 legislation?

7 A The MDA was trying to amend their proposals and
8 wanted the denturists put under the Board of
9 Dentistry.

10 Q Oh, the MDA was trying to change a statute
11 passed by the people of the State, correct?
12 The Initiative is an initiative passed by the
13 people of the State, is it not?

14 A Okay. We are going to the Legislature --

15 Q They are going to the Legislature?

16 A -- to amend it.

17 Q To change the Initiative passed by the people?

18 A Yes.

19 Q And it appears that a position is taken here.
20 And I'm trying to see if you were at this
21 meeting. Were you at this meeting? "Yes," you
22 were?

23 A I was.

24 Q And the position was taken here. Did you agree
25 with that position? I assume since you don't

NAME: Mary Lou Abbott DATE: 1/20/89

ADDRESS: 1509 Livingston Ave.

PHONE: 443-7831

REPRESENTING WHOM? MT. Dental Hygienists Assoc

APPEARING ON WHICH PROPOSAL: SB 114

DO YOU: SUPPORT? _____ AMEND? _____ OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Joe M. Wise DATE: 1-20-89

ADDRESS: 315 COULEE DR

PHONE: 587-3631

REPRESENTING WHOM? MY SELF

APPEARING ON WHICH PROPOSAL: SB 114

DO YOU: SUPPORT? X AMEND? X OPPOSE?

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

7

SENATE HEALTH & WELF
EXHIBIT NO. 4
DATE ~~SB~~ Jan. 30/89
BILL NO. SB 146

DEPARTMENT OF FAMILY SERVICES



STAN STEPHENS, GOVERNOR

(406) 444-5900

STATE OF MONTANA

P.O. BOX 8005
HELENA, MONTANA 59604

January 20, 1989

Testimony in support of SB 146 ALLOWING THE DEPARTMENT TO CONTRACT WITH LICENSED SOCIAL WORKERS AND TO CHARGE A FEE FOR INVESTIGATIONS FOR PRIVATE PARENTAL ADOPTION

Submitted by Betty Bay

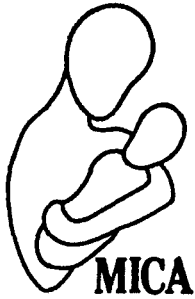
The Department of Family Services is required to investigate and file a report with the court when birth parents arrange for the placement of a child with adoptive parents of their choice. The services required by M.C.A. 40-8-109 and 40-8-122 are now provided at no cost to the adopting parents. The time necessary to fulfill the requirement of the law takes away from time D.F.S. social workers could use in other needed agency services such as protective services to abused and neglected children, and arranging placements for the children in the Department's custody. D.F.S. would like to contract with licensed social workers to conduct the investigation of the parental placement and prepare the report to the court.

The Department does not have adequate funding to contract for the investigation. We are asking that prospective adoptive parents be charged a reasonable fee for the cost of the investigation and completing the report. The fees collected would be used to contract with licensed social workers.

People who adopt children through private agencies must pay a fee for the placement services they receive. Montana Intercountry Adoptions (MICA) charges from \$1,000 to \$1,400 for an adoptive home study similar to that D.F.S. wishes to charge a fee for. Lutheran Social Services charges from \$2,500 to \$6,000 for all the services related to placing a child.

The Department will provide training for those licensed social workers with whom we contract so that the investigations and report will conform to those now performed by D.F.S. social workers.

Montana Intercountry Adoption, Inc.



Date: January 18, 1989
To: Senator Tom Hager
From: Harriet Tamminga, Ph.D.
Executive Director
Re: SB - 146

I would like to propose the addition of the phrase licensed child placing agencies to the wording of Senate Bill 146 which you have introduced. The phrase should be added to the heading of the bill and to section referring to MCA 40-8-109 which states that the Department of Family Services may contract with licensed social workers and licensed child placing agencies to conduct investigations in cases of private parental placements for adoption.

The licensed child placing agencies are experienced in providing preadoptive home studies and postplacement investigations. The agency social workers are not usually licensed separately, so under SB 146 as it now stands, these social workers would not be available to conduct the investigations for DFS. On the other hand, many licensed social workers engage in private counseling practice or work in various institutional settings and most do not have special expertise in adoption. By making the proposed addition to the Bill, private agencies may contract with DFS to do investigations of private parental placements if they wish to do so. This will be an advantage for DFS because the adoption agency social workers won't require special training to provide the services for DFS since they know what is expected by the law.

A concern might be raised that there could appear to be a conflict of interest if either of the parties involved in a proposed parental placement changed their minds about the private placement and wished to work with the private agency conducting the investigation. The possibility of this occurring can be precluded by having the private agency agree in their contract with DFS not to accept as them as their agency client. The individuals concerned could, however, retain their right to work with some other private agency if they choose not to follow through with the proposed parental private placement.

The Montana Code recognizes the importance of involving licensed child placing agencies in adoptions, as the enclosed booklet shows. It makes sense to allow licensed child placement agencies to contract with DFS to conduct investigations in cases of private parental placements!

Senate Health & Welfare

1/20/89

SB 146

Adoption In Montana

and



The Law

COMMITTEE ON

Public Health

DATE: January 20, 1989

VISITORS' REGISTER

SB 114 & H6

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Mary Lou Abbott	MT Dental Hygienists Assoc	SB 114		✓
Christine Hervert	Mt. Dental Hygienist Assoc	SB 114		✓
Jermine J. J. J.	Mont. Dental Hygienists Assoc	SB 114		✓
Frank W. Anderson	Denturist Assn / self	SB 114		
DAVID E. MCKEE	Denturist	SB 114		✓
ELMIRA BONIKESKA	DENTURISTS	SB 114		✓
May W. Hall	Denturist	SB 114		✓
HULDA MCCLURE	DENTURIST	SB 114		✓
MARK A. HENHOUSE	DENTURIST.	SB 114		✓
Dorothy Comet	Denturist	SB 114		✓
Dave Lomer	Denturist	SB 114		✓
Isis Lee	M.S.C.A.	SB 114		✓
Sam Lee	M.S.C.A.	SB 114		✓
ELMER FAUTH	Individual	SB 114		✓
LeAnn Olson	denturist wife	SB 114		✓
Ron Olson	DENTURIST	SB 114		✓
Joe M. Vian	MYSELF	SB 114	✓	
Roger Tippy	Mont. Dental Assn	SB 114	✓	
Frank B. B.	myself - Denturist	SB 114		✓
JOHN MATESKON	DENTURISTS	SB 114		✓
Clare Prisingine	Denturist wife			
Robert Cotton	Montana Bd of Dentistry			
Wm E. Zeng	MONTANA DENTAL ASSOCIATION	SB 114	✓	
ROGER L. KIESLING	" " "	"	✓	
Robert T. Pearson	Mont Bd of Dentistry	"	✓	

(Please leave prepared statement with Secretary)

