

MINUTES

**MONTANA HOUSE OF REPRESENTATIVES
52nd LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By Chairman Bill Strizich, on February 23, 1991,
at 12:05 a.m.

ROLL CALL

Members Present:

Bill Strizich, Chairman (D)
Vivian Brooke, Vice-Chair (D)
Arlene Becker (D)
Dave Brown (D)
Robert Clark (R)
Paula Darko (D)
Budd Gould (R)
Royal Johnson (R)
Vernon Keller (R)
Charlotte Messmore (R)
Linda Nelson (D)
Jim Rice (R)
Angela Russell (D)
Jessica Stickney (D)
Howard Toole (D)
Tim Whalen (D)
Diana Wyatt (D)

Members Excused: Rep. Boharski, Rep. Lee, and Rep. Measure

Staff Present: John MacMaster, Leg. Council Staff Attorney
Jeanne Domme, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

HEARING ON HB 968

AUTHORIZE DHES TO ADOPT AND ADMIN. DO NOT RESUSCITATE IDENT.

Presentation and Opening Statement by Sponsor:

REP. BROOKE, HOUSE DISTRICT 56, stated this bill gives the Department of Health the ability to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists. A lot of this bill deals with medical language and standards that a department of health professional can address further.

Proponents' Testimony:

Drew Dawson, Chief of the emergency Medical Services Bureau - Department of Health and Environmental Sciences, gave written testimony in favor of HB 968. EXHIBIT 1

John Delano, Montana Medical Association, stated that the Association is in support of this bill.

Ira B. Byock MD, Chair - COMFORT ONE Task Force, gave written testimony in favor of HB 968. EXHIBIT 2

Opponents' Testimony: NONE

Questions From Committee Members: NONE

Closing by Sponsor:

REP. BROOKE said there is an issue out there that needs to be addressed and these professionals have worked hard this interim and she encouraged the committee to support this measure.

EXECUTIVE ACTION ON HB 968

Motion: REP. BROOKE MOVED HB 968 DO PASS.

Motion: REP. BROOKE moved to amend HB 968. EXHIBIT 3

Discussion: REP. BROOKE stated the amendment provides for an appropriation in the sum of \$1000 for education and publication of educational materials to help the department create some public awareness about this program. She encouraged the committee's support of this amendment.

Vote: Motion carried unanimously.

Motion: REP. BROOKE MOVED HB 968 DO PASS AS AMENDED.

Discussion: REP. WHALEN asked REP. BROOKE on page 3, line 5, there is a definition of resuscitate order, what input does this person have in the adoption of the order and where does it come from? REP. BROOKE said the order comes from the physician.

Mr. Dawson stated that it was his understanding that a Do Not Resuscitate Order is a joint decision made between the patient and the physician.

REP. TOOLE stated that it was his feeling that this bill is not limited to the terminally ill.

REP. JOHNSON stated these people appeared before the medical examiners board on two different occasions explaining their program and trying to tell us how they are going to put it into effect. At that time, we had a lot of drawings on the

paraphernalia that you would be able to use and it did include all the things previously discussed.

John MacMaster stated that he did not see anything in the bill that clearly says that the possessor has to accept a "Do Not Resuscitate" order issued. He suggested that on page 3, line 8, after the word "physician" insert "who has an" and then insert the same language found on page four lines 20 - 22.

REP. TOOLE stated that would limit this bill and application and all protection of medical care providers in situations where there is a request from the patient with a terminal condition.

REP. MESSMORE stated, "I reject this amendment".

REP. DARKO stated the committee needs to get this bill out and send it to another committee where there will be another hearing on this bill.

Motion/Vote: REP. GOULD moved to amend HB 968 on page 2, line 25, by adding "or tattoo". Motion carried unanimously.

Motion/Vote: REP. DARKO MOVED HB 968 DO PASS AS AMENDED. Motion carried 15 to 2 with Rep's: Whalen and Rice voting no.

EXECUTIVE ACTION ON HB 921

Motion: REP. DARKO MOVED TO RECONSIDER HB 921.

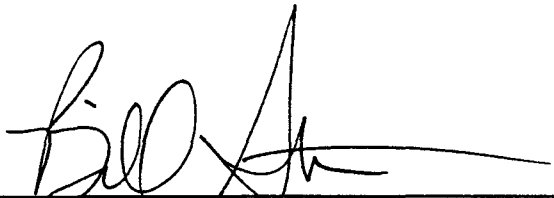
Discussion:

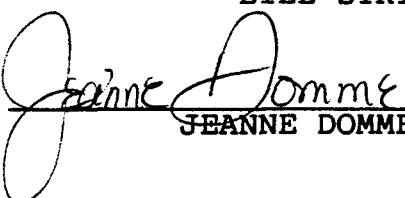
REP. DARKO stated that we have to authorize the placement of social security numbers of the statistical portion of the birth certificate in order to qualify for federal funds.

Vote: Motion failed.

ADJOURNMENT

Adjournment: 1:20 P.M.


BILL STRIZICH, Chair


JEANNE DOMME, Secretary

HOUSE OF REPRESENTATIVES

JUDICIARY COMMITTEE

ROLL CALL

DATE 2-23-91


NAME	PRESENT	ABSENT	EXCUSED
REP. VIVIAN BROOKE, VICE-CHAIR	/		
REP. ARLENE BECKER	/		
REP. WILLIAM BOHARSKI		/	
REP. DAVE BROWN	/		
REP. ROBERT CLARK	/		
REP. PAULA DARKO	/		
REP. BUDD GOULD	/		
REP. ROYAL JOHNSON	/		
REP. VERNON KELLER	/		
REP. THOMAS LEE		/	
REP. BRUCE MEASURE		/	
REP. CHARLOTTE MESSMORE	/		
REP. LINDA NELSON	/		
REP. JIM RICE	/		
REP. ANGELA RUSSELL	/		
REP. JESSICA STICKNEY	/		
REP. HOWARD TOOLE	/		
REP. TIM WHALEN	/		
REP. DIANA WYATT	/		
REP. BILL STRIZICH, CHAIRMAN	/		

HOUSE STANDING COMMITTEE REPORT

February 23, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 968 (first reading copy -- white) do pass as amended.

Signed: 
Bill Strizich, Chairman

And, that such amendments read:

1. Title, line 18.

Following: "PENALTIES;"

Insert: "PROVIDING FOR AN APPROPRIATION;"

2. Page 2, line 25.

Following: "necklace,"

Insert: "tattoo,"

3. Page 8.

Following: line 7

Insert: "NEW SECTION. Section 7. Appropriation. There is appropriated to the department of health the sum of \$1,000 for the two fiscal years beginning July 1, 1991, to be used to publish and disseminate educational materials relating to [this act] for physicians, health care facilities, emergency medical services personnel, and others.

Renumber: subsequent section

Mr. Chairman, members of the committee. I am Drew Dawson, Chief of the Emergency Medical Services Bureau in the Department of Health and Environmental Sciences.

When emergency medical services personnel respond to the scene of a patient who is not breathing and who has no pulse, it is a very emotional and difficult situation for both the family and the EMS personnel. Sometimes, when the death is anticipated, the patient and their physician have previously decided they do not wish the patient's life to be extended by the application of Cardiopulmonary Resuscitation (CPR). The EMS personnel are often faced with conflicting information at the scene by family and friends who are, understandably, quite upset.

During the 1989 legislature, the Montana Living Will Act was amended. Now, terminally ill patients who have declared living wills may wear a uniform, state-wide identification bracelet or card which signifies to EMS personnel that they are to follow procedures (a protocol) set forth by the Montana Board of Medical Examiners. This protocol, which is included with the testimony of Doctor Ira Byock, instructs the emergency care personnel to withhold cardiopulmonary resuscitation while placing emphasis on providing comforting, supporting care to the dying patient and their family. In fact, the entire program is called **COMFORT ONE**.

The Montana Hospice Association, the Montana Association of Home Health Agencies, the Montana Medical Association, the Montana Emergency Medical Services Association, the Department of Health and Environmental Sciences, have been working for two years to implement this **COMFORT ONE** program. However, we learned that the identification could be issued only to terminally ill patients who had declared a living will...not to patients for whom a physician had issued a Do Not Resuscitate Order...a standard medical practice. The EMS people are again caught in the middle; they hear conflicting stories from family members and friends, and attempt to determine if there is a valid physician's DNR order. In the heat of the moment, this is an almost impossible task.

This legislation simply allows this uniform identification to be issued to patients who have a valid DNR order in their medical chart and provides immunity to the EMS personnel who then follow the protocol. It also allows EMS personnel to follow a direct, verbal DNR order from a physician.

The intent is simple. When EMS personnel see this identification, they follow the standard, state-wide protocol already adopted by the Board of Medical Examiners. It provides a good mechanism for EMS personnel to follow to wishes of the patient and his physician. If they do not see the uniform identification, they follow their usual procedures and begin resuscitating the patient.

Due to short notice, the physicians who were instrumental in developing this legislation could not be here. However, I would be happy to answer questions.

Thank you.

Honorable Vivian Brooke
Montana House of Representatives
Judiciary Committee

February 21, 1991

Members of the Judiciary Committee:

I wish to give testimony today in favor of HB ___, An Act authorizing the Department of Health and Environmental Sciences to adopt a standard means of identification for persons for whom a medical order not to perform cardiopulmonary resuscitation exists. Regrettably the abrupt scheduling of this hearing and the inflexibility of my own schedule prevents appearing in person to give testimony on this bill.

I am writing as Chair of the Living Will Protocol Task Force (now called Comfort One Task Force). This group, which is comprised of representatives of all relevant facets of Montana's health care community (physicians, emergency medical technicians, home health agencies, hospice programs and the DHES Emergency Medical Services Bureau chief) was formed by DHES and has been working since the end of the last legislative session to implement provisions of the Amended Living Will Act (previous HB 422) that address recognition of a qualified patient's living will declaration by emergency medical services (EMS) personnel. The resultant program and clinical EMS protocol has been given the term COMFORT ONE. This protocol has been prepared through a true consensus process addressing the concerns and incorporating the ideas of all those involved. The COMFORT ONE Protocol has been formally approved by the Board of Medical Examiners.

There are ordinarily very few situations in which prehospital providers may withhold or withdraw CPR. Except for obvious signs of death (such as rigor mortis, pooling of body fluids, decomposition, decapitation, etc) or the exhaustion of rescuers conducting CPR, EMTs can cease efforts only when a physician assumes control of the case or on presentation of a written, physician's DNR order - as might occur on arrival at a hospital or at a nursing home.

In 1989 HB 422, which amended Montana's Living Will Act, broke new ground by creation of the entity of "reliable documentation". This created a clear, all or none, mechanism for prehospital providers to know whether or not the a living will had been signed and, if so, whether the necessary qualifying terminal condition for the living will had been certified by a physician.

The Task Force charged with drafting implementing Rules and an EMS clinical protocol for this legislation recognized the importance of providing EMS personnel at the scene with a means of knowing immediately and unequivocally whether or not to begin cardiopulmonary resuscitation. Within the Rules "reliable documentation" was made synonymous with the term COMFORT ONE as presented in a standardized logo within a standardized form or identification jewelry. The Rules were formally noticed and hearings were held in several cities.

After the Rules had been approved it became apparent that the Task Force, and, by extension DHES, had inadvertently gone beyond its Rule-making authority by

Ex. 2
2-23-91
HB 968

including provisions for issuing COMFORT ONE certification to patients on the basis of a written do not resuscitate (DNR) order of a licensed physician. While legal counsel for DHES and the Board of Medical Examiners reaffirmed the propriety of EMS personnel honoring a written physician's DNR order at the scene, the Task Force continues to strive to provide a consolidated, prospective means of identifying patients for whom CPR is to be avoided.

The current legislation is necessary to allow implementation of the COMFORT ONE program as it has been approved in hearings on the Rules (now rescinded) and as approved as an EMS protocol by the Board of Medical Examiners. The Bill before the Committee does not extend the program beyond what has been approved with the exception of adopting the COMFORT ONE credentials (under development by DHES) as the standardized format for written physician DNR orders to be complied with in the non-institutional setting.

The COMFORT ONE program represents an innovative strategy that effectively addresses a problem that has long plagued EMS and hospice care providers - and the patients and families they serve. The Task Force, and the multiple component groups it represents, is anxious to proceed with development of educational programs and materials to implement COMFORT ONE. After three years of discussion and evolution the current legislation will enable the promise of this important program to be realized.

Respectfully submitted,



Ira R. Byock, MD, FACEP
Chair COMFORT ONE Task Force

341 University Ave.
Missoula, MT 59801

COMFORT ONE protocol
Appendix A

Amendments to House Bill No. 968
First Reading Copy

Requested by Rep. Brooke
For the Committee on the Judiciary

Prepared by John MacMaste
February 22, 1991

1. Title, line 18.

Following: "PENALTIES;"

Insert: "PROVIDING FOR AN APPROPRIATION;"

2. Page 8.

Following: line 7

Insert: "NEW SECTION. Section 7. Appropriation. There is appropriated to the department of health the sum of \$1,000 for the two fiscal years beginning July 1, 1991, to be used to publish and disseminate educational materials relating to [this act] for physicians, health care facilities, emergency medical services personnel, and others.

Renumber: subsequent section

**HOUSE OF REPRESENTATIVES
VISITOR REGISTER**

Judiciary COMMITTEE BILL NO. HB 968
DATE 2-23-91 SPONSOR(S) Vivian Brooke

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Ellie Parker, Helena	DHES	✓	
Drew Dawson, Boulder	DHES	✓	
John Delano	MMA	X	
Rep. Roger Johnson	H 288	X	

**PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.**