

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Chairman Dorothy Eck, on January 21, 1991, at 1:04 p.m.

ROLL CALL

Members Present:

Dorothy Eck, Chairman (D)
Eve Franklin, Vice Chairman (D)
James Burnett (R)
Judy Jacobson (D)
Bob Pipinich (D)
David Rye (R)
Thomas Towe (D)

Members Excused: Thomas Hager

Staff Present: Tom Gomez (Legislative Council)
Christine Mangiantini (Committee Secretary)
Steve Meloy (Department of Commerce)
Bob Verdon (Department of Commerce)

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

Announcements/Discussion:

HEARING ON SENATE BILL 42

Presentation and Opening Statement by Sponsor:

The chairman recognized Senator Robert Brown who asked the committee to table Senate Bill 42. Since introducing the bill he had contacted Brian Zins from the Montana Medical Association. Senator Brown said he received a call from someone in state government who said the bill was in violation of federal law. The federal citation was researched by the attorney for the Montana Medical Association who concurred with the findings of the state agency. Senator Brown requested the chairman recognize Mr. Jerry Loendorf for comment. Mr. Loendorf said Senator Brown was correct and felt there was no need to go forward.

Proponents' Testimony:

The chairman asked for any testimony from proponents of Senate Bill 42. None was given.

Opponents' Testimony:

The chairman asked for any testimony from opponents of Senate Bill 42. None was given.

Questions From Committee Members:

The chairman asked for questions from the committee. There being none. Senator Pipinich moved to table Senate Bill 42. There being no objection the motion carried.

Closing by Sponsor:

None given.

EXECUTIVE ACTION ON SENATE BILL 42

Motion:

The chairman recognized Senator Pipinich moved to table Senate Bill 42.

Discussion:

The chairman asked the committee for discussion on the motion. There being none the motion carried.

Recommendation and Vote:

Senate Bill 42 was tabled by unanimous vote of the committee.

HEARING ON SENATE BILL 90

Presentation and Opening Statement by Sponsor:

Senator Jergenson opened by introducing himself and stating that he is the chief sponsor of Senate Bill 90. He said he has had an interest in this area because his sister is a dental hygienist. Senator Jergenson continued by explaining specific parts of the bill. He said one of the problems dental hygienists have is that they can only work when the dentist is in the office. He said when a dentist takes vacation, the dental hygienist normally is forced to take unpaid vacation, when the dentist goes hunting the hygienist takes unpaid vacation, if the dentist has family responsibilities, the dental hygienist takes unpaid days. He said these are the basic reasons why he has introduced the bill and requested the chairman call for testimony.

Proponents' Testimony:

The chairman called for testimony from proponents of Senate Bill 90.

The first witness to testify in favor of SB 90 was Christine Herbert, a registered dental hygienist representing the Montana Dental Hygienist Association. See Exhibit #1 for a copy of her remarks.

The second witness to testify in favor of SB 90 was Patti Conroy, representing the Montana Dental Hygienists Association. See Exhibit #2 for a copy of her remarks.

The third witness to testify in favor of SB 90 was Mike Stephen, representing the Montana Nurses Association. He stated that 1,400 members of the Association strongly support this measure.

The fourth witness to testify in favor of SB 90 was Kathy Dykstra Smith. She has been practicing dental hygiene in Montana for eight years. She practices at the Montana Developmental Center where she is allowed to perform her duties under general supervision. See Exhibit #3 for a copy of her remarks.

The fifth witness to testify in favor of SB 90 was Mary Cottrell, practicing dental hygienist in Montana since December, 1990. She wanted to express her support for the measure. She took the board exam in California. Her clinical hours and practice are extensive and she feels merit should be given to those instead of requiring her to take another exam. It is expensive to take exams, approximately \$1,000 per exam. It is almost cost prohibitive for a hygienist to practice on a part-time basis. She had been offered a job prior to her relocation to Montana but because of the western regional board is offered only a limited number of times and is not offered in Montana, she had to wait until October before taking the exam. She then had to wait an additional four weeks for the results before she was able to apply for licensure. It was almost six months between the time she was offered the job and when she was able to start working. She would also like to lend her support to allow dental hygienists to practice under general supervision.

Opponents' Testimony:

There being no further testimony from proponents to SB 90 the chairman recognized testimony from the opponents to SB 90.

The first witness to testify in opposition to SB 90 was Mary McCue, representing the Montana Dental Association. See Exhibit #4 for a copy of her remarks.

The second witness to testify in opposition to SB 90 was Dr. Sam Stroehrer, president of the Montana Dental Association and a practicing dentist from Butte. See Exhibit #5 for a copy of his remarks.

The third witness to testify in opposition to SB 90 was Fern Flanagan, a public member of the Board of Dentistry. See Exhibit #9 for a copy of her comments.

The fourth witness to testify in opposition to SB 90 was Dr. Scott Erler, representing the Montana State Board of Dentistry. See Exhibit #6 for a copy of his remarks.

The fifth witness to testify in opposition to SB 90 was Di Shreckengost, a licensed registered dental hygienist. See Exhibit # 7 for a copy of her testimony.

The sixth witness to testify in opposition to SB 90 was Dr. John B. Snively, a dentist in Missoula. See Exhibit # 8 for a copy of his remarks.

The seventh witness to testify in opposition to SB 90 was Dr. Everett Lynn of Helena, representing the Montana Dental Association. His comments were limited to dental accreditation. The commission on dental accreditation was formed in 1975 and is considered a model in the health care education areas. He feels that any watering down or deletion of reference to the accrediting mechanism in the proposed legislation represents a definite decline in consumer protection.

Questions From Committee Members:

The chairman asked for questions from the committee and recognized Senator Burnett.

Senator Burnett addressed his question to any of the doctors present and asked if the dental hygienists were under the direction of the doctor they worked for.

Dr. Erler responded in the affirmative. He said they do direct the dental hygienists.

Senator Burnett said that the dentist is the boss in the office and he instructs the hygienist.

Dr. Stroehrer addressed the comment by saying that there is a shortage of dental hygienists in Montana and they have seen coercion of the hygienists to their employers.

The chairman recognized Senator Pipinich who wondered why the dental hygienists and the dentists had not worked this out before the hearing.

Christine Herbert responded that over the last two years the hygienists have written letters to the dentists and received responses from the Dental Association stating they would refuse to meet with the hygienists unless they agreed to support the legislative package of the Dental Association. She continued by saying the two organizations have met on several issues and have compromised on some of those issues.

The chairman recognized Senator Jacobson who asked Ms. Herbert about the general disagreement between the hygienists and dentists regarding educational requirements.

Ms. Herbert responded by saying what was initially suggested was a certificate program that would be less than an associate degree. The hygienists wanted at least college accredited courses that could be transferable into an associate or bachelors degree. Usually an accredited program takes no less than two years, usually three years of college level courses. The vocational-technical system has worked out the ability to give college credits and to be able to give an associate degree program. Once that program was established the hygienists compromised and said they would not demand four year degree programs but would like to see a college level course offered.

The chairman recognized Senator Towe who addressed his remarks to the dentists. He asked them to respond to the comments made by the dental hygienists regarding proposed meetings between the two organizations.

Dr. Stroehler responded by saying that to the best of his knowledge regarding SB 90 the Dental Association received no information. They did see petitions generated by the Dental Hygienists Association.

Senator Towe commented by asking if it would have made any difference if they had seen SB 90. He also asked about licensing by credentials.

Dr. Stroehler said considering the nature of the issues, the Dental Association would have met with the hygienists. Dr. Stroehler continued by saying he did not have a problem with licensing by credentials, in fact the American Dental Association has approved the concept.

Senator Towe asked Christine Herbert about the problem of anesthesia.

Ms. Herbert said for the hygienists to be able to give local anesthesia they have to go through a specific, additional licensing requirement. She said it would be up to the dentist to give the hygienist permission to be able to use it within his practice. It is a decision that is up to the dentist, it is not appropriate for the hygienists to ask the legislators to decide that issue, or for the Board of Dentistry to decide that issue.

She said direct supervision means the supervising dentist must be in the office not another physician or another doctor. This would allow that other physician or other doctor to be called in on an emergency situation if the supervising dentist was not on site.

The chairman recognized Senator Rye who asked if the Montana Dental Hygienists Association could really speak for all of the dental hygienists, he noted figures regarding membership.

Ms. Herbert responded that the figures used by Senator Rye were incorrect and that the membership had increased. She said it was a largely female profession and women with families do not place membership in the Association as a priority. On the other hand they have a high participation, the surveys are mailed to all the hygienists in the state.

Senator Rye asked Dr. Stoeher if dentists who favor the bill are afraid to voice that opinion because of intimidation factors by their association.

Dr. Stoeher said it was a tough question.

Senator Rye interrupted and said that claim was made to him earlier in the day.

Dr. Stoeher said he would imagine there are individual cases where that is occurring. He guessed that sometimes people make statements or sign surveys when they do not understand what they are doing.

Senator Rye asked Dr. Erler about his experiences as a dental hygienist, asked if he worked under general supervision.

Dr. Erler said no. He thinks you have to work as a team with the dentist. He said the patients are asking the hygienists questions they are not qualified to answer.

The chairman recognized Senator Franklin who commented about the issues to the consumer, she said wouldn't a dentist design the practice in a way that is intelligent regarding general supervision.

Di Shreckengost commented that she worked for three dentists in Colorado. Two of the dentists would not participate in general supervision for hygienists. The doctor that did allow general participation was the type of dentist who would fire a hygienist who would not work under his conditions. She said she felt uncomfortable with general supervision.

Senator Franklin commented that it is up to each dentist to design their practice in an intelligent way which provides services to the consumer.

Ms. Shreckengost said hygienists are fully trained to do the job that they are hired to do. Hygienists in no state are allowed to diagnose.

Dr. Stroehler said there needs to be somebody to regulate dentistry. They need a baseline of regulation. SB 90 is about deregulation. He said they are asking the legislature to set some sort of standard.

Senator Franklin responded that regulation was a separate issue.

Chairman Eck asked Steve Meloy from the Department of Commerce, to what extent it was proper for board's under Commerce to regulate.

Mr. Meloy said the board's are there to protect the public and by definition are allowed to develop policy to govern the professions by rule. They also are allowed by statute to hear appeals of licensees who need relief through the administrative process prior to going to district court. If the board finds a licensee deficient, the licensee has to appeal to the board process before going to district court. These are the two main functions that the board serves.

Chairman Eck said if someone believed that dentists are allowing their hygienists to do things that the law doesn't would a complaint have to be made to the board.

Mr. Meloy turned the floor over to the attorney Bob Verdon who responded that when the board of dentistry or any board receives a complaint that some person is acting beyond the scope of practice allowed by their Act, an investigation is begun by the staff. If the investigation shows there is reason to believe that the illegal act is being perpetrated it is within the jurisdiction of the board to notice the practitioner up for a hearing and if there is proof at that hearing that the person has acted beyond the scope of the Act they may have their license revoked or suspended or they may be fined. There is also the recourse of appeals into district court.

Chairman Eck asked how frequently this happens.

Mr. Verdon responded that the Board of Dentistry has three active investigations regarding the practice of dentists. At least one of those is currently noticed for a hearing.

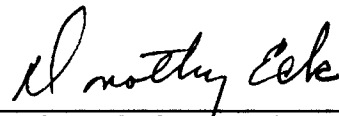
Chairman Eck commented that some of the committee members have talked about expanding the functions of the staff where the board would actually look at the scope of practice and whether requests for expansion are justified by education, training and the exam. She continued by saying several people have mentioned that it is very frustrating being on this committee because we get so many of these battles that look as though they could be worked out in some other way.

Closing by Sponsor:

The chairman recognized the sponsor to close. Senator Jergenson addressed the committee by asking if they were pilot's would they let their ground crew fly the plane? He said hygienists are not asking to fly the plane, they are not even asking to be the co-pilot, but they are asking to be able to do that for which they were trained to do. Just as any good pilot would not require the ground crew only to work when the pilot was around, but that they want that ground crew working as often as possible. The hygienists are asking for the option to be available to their employers, to allow their employers to make a judgement about a particular hygienist and under what conditions that hygienist can practice her profession. Senator Jergenson respectfully asked the committee for a do pass vote on the measure.

ADJOURNMENT

Adjournment At: 2:50 p.m.



SENATOR DOROTHY ECK, Chairman

CHRISTINE MANGIANTINI, Secretary

DE/cm

PUBLIC HEALTH, WELFARE
AND SAFETY

COMMITTEE

Date January 21, 1977

NAME	PRESENT	ABSENT	EXCUSED
SENATOR BURNETT	X		
SENATOR FRANKLIN	X		
SENATOR HAGER			X
SENATOR JACOBSON	X		
SENATOR PIPINICH	X		
SENATOR RYE	X		
SENATOR TOWE	X		
SENATOR ECK	X		

Each day attach to minutes.



SENATE HEALTH & WELFARE
EXHIBIT NO. 1
DATE 1-21-91
BILL NO. SB 90

Montana Dental Hygienists' Association

January 21, 1991

Senator Eck and Committee Members,

The Montana Dental Hygienists' Association has a very high participation, which includes members and non-members in all meetings, newsletters and on committees. We have received letters and contributions from hygienists to support this legislation. Surveys have been sent to all licensed and residing hygienists with the following results:

- 88% supported General Supervision
- 86% Supported Licensed by Credentials
- 95% Opposed Independent Practice by Hygienists

RECOGNITION OF DENTAL AND DENTAL HYGIENE SCHOOLS

It is MDHA's wish to maintain a level of professional quality that is a result of an established accreditation process. The current statute uses wording that is vague (guided by...) and leaves it up to the Board of Dentistry to evaluate each program. We believe that the statute should require that licensees MUST be graduates of an accredited school of Dental Hygiene.

The statute also identifies an organization that is not an accrediting agency (CODE).

In the bill, (lines 7-11) it states that the board shall recognize only those dental hygiene schools accredited by the authorized body as designated by USDOE and COPA. This agency is CODA, or the Commission on Dental Accreditation.

The Dental Association stated that they preferred the specific reference to CODA at the Board of Dentistry meeting in December, so we amended the bill to include their preference for their profession.

CODA is a committee of the American Dental Association and they are currently revising the accrediting standards for dental hygiene schools. It is CODA/ADA that recommends that these standards be reduced. The dental hygienists have recommended that they be increased to meet with the current practice demands of hygienists.

This change will not effect the current accreditation process, nor will it effect the list of Dental or Dental Hygiene Schools accepted by the Board of Dentistry for licensure in Montana.

I am aware that testimony has been sent by the Commissioner of Higher Education and it is unfortunate that he did not contact us to discuss this matter.

LICENSURE BY CREDENTIALS

There is a need to provide a reasonable means of licensure for hygienists, while maintaining a high standard. With the closure of the Carroll College Dental Hygiene Program, the state is now without a resource for new hygienists. We believe that this change will encourage hygienists to move into Montana.

With that closure, we have also lost our clinical examining site. Licensure now requires travel to another state to be examined, which is very costly and time consuming. Letters of testimony from out of state hygienists are included.

We amended the specific criteria required for licensure, after obtaining input from MDA and the Board of Dentistry at the meeting in December.

GENERAL SUPERVISION

There is currently allowed general supervision in many institutions, military sites, and Indian Health Service dental clinics. The list of institutions is attached. There is also an emergency clause (1981), which allows general supervision in some cases. If this is such a risk, why has this been allowed by the Board of Dentistry as recently as 1989?

In practice, this is being asked of dental hygienists and they have indicated to me that they are not comfortable breaking the law. A recent survey of hygienists revealed that 46% of them had been asked at one time or another to practice with the dentist out of the office in non-emergency situations.

MDHA obtained a legal opinion of the current statute. Direct Supervision does not allow the dentist to leave the office while the hygienists sees patients. The dentist down the hall in another practice cannot be the supervisor.

A survey done by the Montana State Health Department, reported that a majority of the dentists in the state supported General Supervision. Individual letters of support have been provided.

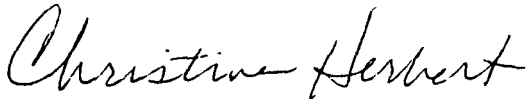
Final wording on this section was amended after the Board of Dentistry meeting in December, and after hearing the dentists concerns. This has been worded very carefully to eliminate any possibility of independent practice. This bill will only make it legal for the dentist to choose general supervision as an option. We have stated that we are not interested in independent practice for hygienists in Montana.

The only liability risk that we see, is in hygienists continuing to allow this to happen without legal support. With this change the professional liability is protected.

There is a public need that is also addressed by allowing the delivery of dental hygiene services under general supervision. The level of service or quality of care will not be affected by this change.

I hope that you will consider this legislation, based on the facts presented and find that the people of Montana will be better served by the changes provided in SB90.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christine Herbert".

Christine Herbert, RDH
President MDHA
4230 Wolverine Dr.
Helena, Mt. 59601

LEGAL OPINION
EXHIBIT "A"
December 12, 1990

This list notes the institutions in Montana granted (by the Montana Board of Dentistry) the right to have dental hygiene services delivered under general supervision. This list does NOT include the several federal locations which are exempt from state law and offer Montanans dental hygiene services under general supervision.

INSTITUTION	DATE PERMISSION GRANTED
Montana Development Center (Boulder River School)	August 31, 1978
Emanuel Lutheran Home (Kalisell)	February 27, 1979
Dental Health Bureau (MDHES)	January 1, 1989(sic)
Eastmont (Glendive)	February 1, 1985
St. John's Lutheran Home (Billings)	November 26, 1986
Montana State University	January 1, 1989
Gallatin County Resthome Mountain View Care Center Bozeman Care Center	March 21, 1989
University of Montana (Missoula)	March 29, 1989

Montana Dental Association

Exhibit # 1
1-21-91 SB 90

P. O. Box 513 Butte, Montana 59701 Phone (406) 792-9333

Constituent: AMERICAN DENTAL ASSOCIATION

TO: MONTANA SENATE PUBLIC HEALTH COMMITTEE

FROM: Donald R. Erickson, D.D.S., President, Montana Dental Association

SUBJECT: SB391 - Montana Dental Practice Act

Section 3, Section 2-15-1606, MCA. Sub Section (2) line 6 adds "one public member" - the MDA questions the duties a lay person would perform on a professional examination Board, and wonders if those services performed would justify the extra expense to the Board of Dentistry. These expenses are paid totally by the examinees and licensees, not general funds. These costs should be controlled as much as possible so as to not prevent potential examinees from taking the examination nor cause older dentists to not maintain their license. Either of these possibilities would adversely affect the patient consumer, as these costs are ultimately paid by the patient.

Section 9. The MDA recommends deletion of Section 9 of SB391. This section of the Dental Practice Act was changed only 2 years ago to permit unsupervised dental hygiene practice in nursing homes and institutions, provided prior approval of type of alternate supervision was asked for and given by the Board of Dentistry. This change was permitted because of the different nature of care necessary in these facilities, and the fact that there was "on premises" nursing care in case of emergencies. This would not be true of this proposed law change. It is still too soon to evaluate how well this change has worked, as it is relatively untested.

Proponents claim a "need for a change", however it seems entirely an economic need for the Dentist or hygienist who wants the income while the Dentist is not at the office because of golf or fishing or ??? There is no need or any increased benefit to the patient, while it does decrease the safety and welfare of the patient.

Proponents claim adequate supervision would be done by the Dentist down the hall, upstairs or in a reasonable proximity. However, present law 37-4-405 requires (1) "on the premises" presence of the Dentist, rules section 40.14.603 (7) states "the Dentist shall assume responsibility and liability for all auxiliaries" and (8) that no Dentist may supervise more auxiliaries than . . . consistent with the protection of health, welfare and safety of the patient.

The proposed change would require a review by the Board of each request and a description of the type of supervision necessary. The MDA suggests that this would not be practical and would result in much confusion to the profession, and it would be impossible for the Board to rule on so many varied situations.

The MDA believes that direct supervision, i.e., "on the premises", is necessary for the safety and welfare of the patient, especially today with so many medically compromised patients. It is not reasonable to expect the hygienist, with minimal dental and medical training, to evaluate and treat these patients or provide necessary emergency care, nor is it reasonable to believe the "proxy" Dentist down the hall could adequately supervise.



Montana Dental Hygienists' Association

November 12, 1990

Senator Dorothy Eck
Montana State Senate
10 W. Garfield
Bozeman, MT 59715

Dear Senator Eck,

The Montana Dental Hygienists' Association wishes to express our congratulations on your election to Montana's 52nd Legislative Assembly. We look forward to meeting and working with you to enhance the quality of health care for the citizens of Montana.

We anticipate that a variety of health care issues will be placed before the Legislature. Among these issues is a bill to allow dental hygienists the opportunity to provide dental hygiene services without the necessity of having the dentist on the premises at all times (general supervision). Montana dental hygienists may currently practice under general supervision only in public or private institutions, hospitals, extended care facilities, schools and public health departments.

We are concerned that some folks are uncomfortable in supporting general supervision for dental hygienists in private practice settings, because they fear it is a step toward dental hygienists opening their own dental practices in the future. We would like to assure you that the Montana Dental Hygienists Association has no intention of pursuing independent practice for dental hygienists. In fact, a recent survey, conducted by the Montana Dental Hygienists' Association, of all licensed and residing dental hygienists in Montana, disclosed that 95% of the respondents OPPOSE INDEPENDENT PRACTICE for dental hygienists.

Our sincere hope is to work together with you to increase the access to, and quality of, oral health care for the citizens of Montana.

Our congratulations,

Chris Herbert, RDH
MDHA President

Patti J. Conroy RDH
MDHA Legislative Chairman

1-21-91

Exhibit 1 also contains 31 letters from dentists and dental hygienists and a summary of the 1990 survey of Montana dentists. The originals are stored at the Montana Historical Society, 225 North Roberts, Helena, MT 59601. (Phone 406-444-4775)

Exhibit 2
1-21-91
SB 90

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21st day of January, 1991.

Name: Patti Conroy

Address: 2555 Silver Spur Trail

Telephone Number: 252-2336

Representing whom?

Montana Dental Hygienists Association

Appearing on which proposal?

SB 90

Do you: Support? ✓ Amend? Oppose?

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY



Montana Dental Hygienists' Association

SB90

Madame Chairman and Legislative Committee Members,

I would like to offer the following information for your consideration, and I request your support for SB 90.

RECOGNITION OF ACCREDITED DENTAL AND DENTAL HYGIENE SCHOOLS

1. Current statute out of date

The agency responsible for setting educational standards has gone through name changes four times.

Montana statute has been changed to keep up with these name changes.

The one constant factor has been that all of the agencies had to be authorized by the USDOE and COPA, to accredit dental and dental hygiene schools.

2. Purpose for Change

USDOE and COPA language would not require any future statutory changes- the business of accreditation is in constant state of evolution, but USDOE will still assure accreditation to provide high quality education.

Proposed language does not affect list of programs approved for licensure now- all are currently bound by USDOE and COPA's requirements (through CODA).

3. Each profession should have the right to set their own preferred wording for educational requirements.

To my knowledge, all other Montana health professionals have this right.

MDA prefers CODA (specific) and we prefer USDOE and COPA (general)

4. MDHA simply wishes to assure accredited education and eliminate the need to update statute in the future.

LICENSURE BY CREDENTIALS

1. Public Safety is Assured

Applicants must hold current licensure in another state and practice a minimum number of required hours during the previous year, as well as fulfill the regular requirements.

2. Common licensing procedure

31 states recognize licensure by credentials for dental hygienists

Almost all health professionals in Montana have this in statute.

GENERAL SUPERVISION (not to be confused with unsupervised practice)

1. Dentist chooses type of supervision preferred

Responsibility lies with the supervising dentist - he chooses which patients, which services, and when, - NOT the Board of Dentistry.

The dentist, of course, will determine what treatment will be given by a hygienist, even if the dentist is not on the premises when treatment occurs, including expanded functions such as local anesthesia, as well as traditional dental hygiene duties.

2. Comparison to Other Health Professionals

Education (Associate, Baccalaureate, and Master degrees) similar to that of Registered Nurses

Registered Nurses are not restricted by direct supervision requirements

No direct supervision requirements exist for other Montana health professionals with similar education and licensing requirements.

3. Americans have enjoyed the benefits of general supervision for up to 70 years.

25 states have general supervision allowable in all practice settings (See map)

Most western states have general supervision in all settings. (Map)

Every state that participates in WREB (Western Regional Examining Board) has general supervision in all settings EXCEPT Montana.

4. General Supervision is a safe and efficient use of dental hygienists.

Board of Dentistry incitates no complaints against hygienists who practice under general supervision.

Dental hygienists' education requires recognition of medical and dental emergencies and training in Basic Life Support.

Liability- no increase in insurance premiums for dentists who utilize general supervision.

No evidence that general supervision fails to protect the public- no documentation, no complaints on record in any state, works well in other states.

5. Beneficial to Public, Dentists, and Dental Hygienists

Increased access to care- more hours available to patients for dental hygiene services- not restricted to dentist's practice hours. (30 hours per week- see survey)

Red tape eliminated for approval for institutions from Board of Dentistry.

Flexibility for dentists and dental hygienists

Stability and predictability in employment arrangements

CLARIFICATION OF AUXILIARY PERSONNEL

1. Suggested by Legislative Council

Section title states two separate groups

This paragraph only addresses UNLICENSED PERSONNEL

Not substantively changing anything for either dental hygienists
or unlicensed auxiliaries -ONLY CLARIFICATION

Thank you,

Patti J. Conroy RDH

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

SENATE HEALTH & WELFARE

EXHIBIT NO. 3

DATE 1-21-91

BILL NO. SB 20

Good Afternoon Senators,

My name is Kathy Dykstra Smith. I have been practicing Dental Hygiene in the State of Montana for 8 years. My employment has been through the Montana Developmental Center in Boulder, Montana. Since, I am employed through the Montana Developmental Center, I have been practicing dental hygiene work under "general supervision". I have been assessing any problems that have occurred on our clients, doing x-rays, routine periodontal cleanings and inservicing staff on proper oral hygiene care. If any major dental problems do arise, the contracting dentist is called immediately. If any medical problems do arise the RN on duty is called, and will call the physician who is on contract. This physician comes out 3 times a week for an average of 3 hours per visit. I am for Dental Hygienist to practice under general supervision.



Montana Dental Hygienists' Association

SENATE BILL 90 WILL

1.)- Give dentists the option of providing dental hygiene services under "general" supervision.

2.)- Give dental hygienists currently licensed in another state the ability to be licensed in Montana without another exam. See back of sheet.

3.) - Identify the correct accrediting authorities for dental schools and dental hygiene schools. See back of Sheet.

1.) GENERAL SUPERVISION

- is NOW LEGAL in institutional settings (at MSU, UM, Boulder River Hospital, for example),

- means that, the dentist who owns the office rather than the Legislature or the Board of Dentistry will decide what the hygienist can do when the dentist is gone (will be like the doctor's office).

- Dental hygiene education requirements are comparable to that of Registered Nurses.

- The majority of dentists responding to a 1990 State of Montana (Health Department) survey supported general supervision.

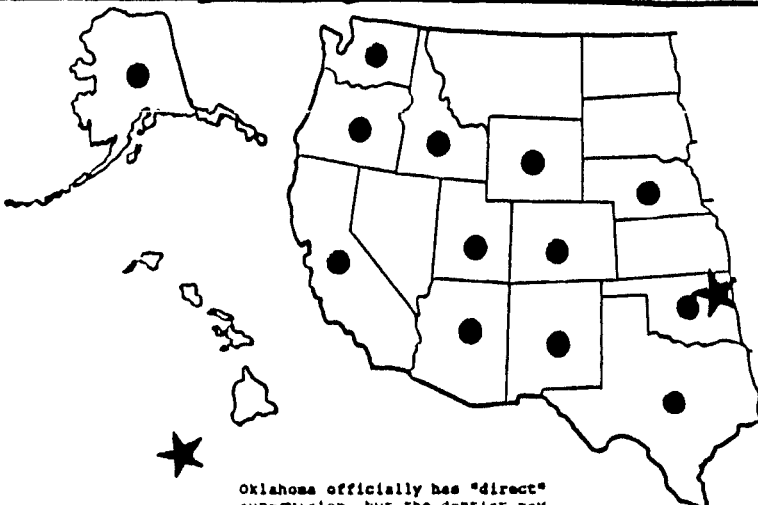
- Most western states permit general supervision in all practice settings. SEE MAP. 25 states have general supervision. General supervision has existed in some states for up to 70 years.

- No history of complaints exists against Montana dental hygienists in providing services under general supervision at MSU, UM, Boulder River School and Montana nursing homes.

- Liability insurance premiums for dentists around the Country are the same under general or direct supervision.

- 95% of Montana's dental hygienists OPPOSE independent practice for dental hygienists.

- Dental hygienists are educated to handle office emergencies.



Western States
where Dental
Hygienists work
in the
dentist's
office under
general super-
vision.

Oklahoma officially has "direct" supervision, but the dentist may be absent for 24 hours at a time.

2.) Licensure by Credentials

- Alleviates the need to travel out of state to take the currently accepted practical examination.
- 31 states recognize licensure by credentials for dental hygienists.
- Majority of Montana health professionals are able to obtain licensure by credentials (examples: Physicians, Nurses, Physical Therapists, Radiology Technologists, Speech Therapists, Audiologist, Nutritionists, Psychologists, etc...)
- Carroll College Dental Hygiene Program is now closed; Montana currently has no program.

3.) Dental and Dental Hygiene Education

- Current statute is out of date. The Agency listed is not an accrediting body.
- The United States Department of Education (USDOE) and the Council on Post-Secondary Accreditation (COPA), approve all agencies which provide institutional accreditation as well as agencies which provide specialized program accreditation.
- To ensure public safety, Montana statute should provide that licenses must be granted only to graduates of accredited educational programs.
- The current agency recognized by USDOE and COPA to accredit dental and dental hygiene programs is the American Dental Association's Commission on Dental Accreditation (CODA).
- This proposed terminology (USDOE and COPA) is similar to that found in Montana statute for other health professions (example: Nutritionists).
- Dentists prefer ADA CODA terminology, Hygienists prefer USDOE and COPA terminology; each profession would have its preferred terminology.

QUESTIONS:

Tippy & McCue

ATTORNEYS AT LAW

SENATE HEALTH & WELFARE

EXHIBIT NO. 4

DATE 1-21-91

BILL NO. SB90

1215 Elserent Avenue

P.O. Box 543

Helena, Montana 59624

406-442-4448 FAX 406-442-8018

Roger Tippy

Mary Kelly McCue

January 21, 1991

Re: Senate Bill 90

--- The Montana Dental Association opposes this bill in terms of its substance and because the dental hygienists have failed to follow even the most elementary process of pre-session negotiation and discussion with the dentists regarding its contents.

--- Historically, dentists and dental hygienists have discussed and negotiated significant changes to the dental hygiene statutes, but in this case the hygienists have not given the dentists an opportunity to work out their differences with the hygienists outside the legislative arena.

--- General supervision of dental hygienists is not acceptable because it fails to protect the public health. MDA members believe that supervision and coordination of treatment by a dentist are essential to the high quality of oral health care; unsupervised practice reduces that quality and seriously increases risks to the patient.

--- The language in this bill relating to accreditation of dental hygiene programs poses the danger of overlapping and possibly competing accrediting agencies that may fragment the accreditation process. This will not serve the public interest and therefore the MDA is opposed to the addition of this language.

--- A draft of this bill was not placed before the Board of Dentistry or Montana Dental Association and its members until the bill was introduced.

--- Members of the MDA are not categorically opposed to any change in the dental hygienists practice act as the evolution of the statutes clearly show. But dentists object to the hygienists urging significant changes in laws that affect the way dentists practice dentistry without being consulted and being brought into the discussion process.

--- If you do not table this bill and pass it out of committee, you are sending the message to other health care providers that this kind of process is acceptable. You are inviting other groups to put their turf battles before you without trying in good faith to work them out before bringing them to the legislature.



Exhibit #4
1-21-91 SB 90

Montana Dental Association

Constituent: AMERICAN DENTAL ASSOCIATION

P.O. Box 281 • Helena, MT 59624 • (406) 443-2061

DENTAL ACCREDITATION

The Commission on Dental Accreditation was formed in 1975 and is considered the model accreditation program in the health care education areas. The Commission is nationally recognized by the Council on Postsecondary Accreditation (COPA) and the United States Department of Education (USDOE) to accredit education programs at the postsecondary level. The Commission functions independently and autonomously in matters of developing and approving accreditation standards, making accreditation decisions on educational programs, and developing and approving procedures that are used in the accreditation process. It is structured to include an appropriate representation of the communities of interest.

The American Dental Hygienists Association is dissatisfied with their representation on the Commission and desires to serve as the accreditation group for dental hygiene programs. The attempt to acquire this responsibility has been rejected on two occasions by the Council on Postsecondary Accreditation.

The attempt of the Montana Dental Hygienists Association to remove the specific reference to the Commission on Dental Accreditation from Montana statutes is merely a continuation of the political campaign initiated by the ADHA.

Elimination of the reference to CODA would be the same as the Montana University System or Carroll College eliminating reference to the Northwest Association of Schools and Colleges in their policies or materials. Recognized accreditation agencies are necessary to provide continuity, consistency of standards, and overall quality control in academic institutions.

The regulatory provisions of CODA, contained in the present statutes, evolved after long study and profound reflection - not for the benefit of the Dental Association or the Hygiene Association, but for the benefit and protection of the consumer public.

It is our studied opinion, supported by the Board of Regents of the Montana University System, that any watering down or deletion of reference to this accrediting mechanism in the proposed legislation represents a definite decline in consumer protection.



Montana Dental Association

Constituent: AMERICAN DENTAL ASSOCIATION

P.O. Box 281 • Helena, MT 59624 • (406) 443-2061

ACCREDITATION

The Montana Dental Hygienists' Association has proposed that references in the Montana Dental Practice Act to the Council on Dental Education be revised to indicate "an accrediting agency recognized by the United States Department of Education (USDOE) and the Council on Postsecondary Accreditation (COPA)." To document the Commission's status as a recognized accrediting agency, a letter from the Secretary of Education confirming the Commission's re-recognition in 1989 for five years--the maximum period for which recognition is granted--is attached.

You will note that the American Dental Association's Council on Dental Education served as the accrediting agency for dental education programs from 1937 to 1975. The Council, and subsequently the Commission, have been recognized by COPA since that agency was organized in 1975 and by COPA's predecessor since 1952.

The Council on Dental Education is unique among ADA agencies in that it was created with, and has always had, a tripartite structure. Of the twelve Council members, only four are appointed by the ADA. Four members are appointed by the American Association of Dental Schools and the remaining four are appointed by the American Association of Dental Examiners. When the Commission on Dental Accreditation was created in 1975, this same core structure was retained and members representing other groups within the communities of interest were added. The core structure of the Council was retained in the Commission structure, in part, because it made possible a direct transfer of recognition by USDOE and COPA from the Council to the new commission.

In terms of the extent to which the Commission represents the various communities of interest affected by its accrediting activities (dental hygiene is only one of the fourteen disciplines accredited by the Commission), it should be pointed out that AADS has a large number of dental hygienists educators as individual members and represents many of the 200 accredited dental hygiene programs as institutional members also. The same might be said of AADE, which represents state dental boards and has both dentist and dental hygienist members.

There have been past attempts by other organizations to gain recognition to accredit dental assisting programs. Although both USDOE and COPA have historically opposed the proliferation of accrediting agencies, such attempts might be made again in the future and would be supported by broad statutory language such as that proposed by the Montana Dental Hygienists Association.

The recognition of overlapping and possibly competing accrediting agencies would fragment the accreditation process in a way that might prove confusing to the public. Because the ultimate purpose of accreditation is to protect the public by assuring that graduates are prepared for practice, the potential confusion caused by a multiplicity of accrediting agencies within the dental field, would not appear to serve the public's best interests. Further, having to meet the requirements of competing agencies accrediting the same programs would likely raise the costs of education and accreditation for institutions and students alike.

For these reasons, statutory language that specifies the Commission on Dental Accreditation as the recognized accrediting body would seem the best approach to assure that the accreditation process serves its intended purpose for the people of Montana. This position has the total support of the Montana Dental Association, the Board of Regents of the Montana University System, and the Montana Board of Dental Examiners.



UNITED STATES DEPARTMENT OF EDUCATION

Exhibit # 4
1-21-91 SB 90

THE SECRETARY

1 13

Dr. Mario Santangelo
Secretary
Commission on Dental
Accreditation
American Dental Association
211 East Chicago Avenue
Chicago, Illinois 60611

Dear Dr. Santangelo:

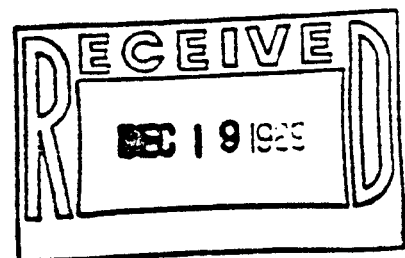
At its meeting on June 27-28, 1989, the National Advisory Committee on Accreditation and Institutional Eligibility recommended that I renew recognition of the Commission on Dental Accreditation of the American Dental Association for a period of five years in accordance with 20 U.S.C. 1141(a) and other legislation.

I concur with the recommendation of the National Advisory Committee. For a period of five years from the date of this letter, I shall continue to list the Commission on Dental Accreditation of the American Dental Association as a nationally recognized accrediting agency for the accreditation and preaccreditation (Accreditation Eligible) of programs leading to the DDS or DME degree, advance general dentistry and specialty programs, general practice residency programs and programs in dental hygiene, dental assisting and dental laboratory technology.

Please convey my best wishes to the members of the Commission on Dental Accreditation.

Sincerely,


Lauro F. Cavazos





THE MONTANA UNIVERSITY SYSTEM

33 SOUTH LAST CHANCE GULCH
HELENA, MONTANA 59620-2602

(406) 444-6570

Exhibit # 4
1-21-91 SB 90

COMMISSIONER OF HIGHER EDUCATION

January 17, 1991

Senator Dorothy Eck
Chairperson, Senate Committee on Public Health,
Welfare, and Safety
State Capitol Building
Helena, Montana

Dear Senator Eck:

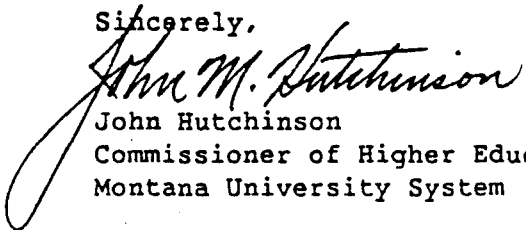
My staff and I have read with great interest SB 90, a bill which proposes a number of changes relative to the education and practice of dental hygienists in this state.

As you may know, the Board of Regents is currently studying the feasibility of establishing a dental hygiene program in one of the institutions which comprise the postsecondary system of education in Montana.

Although it would be inappropriate for us to comment on a number of the provisions of SB 90, we are keenly interested in those portions of the bill which deal with the accreditation of educational programs. We would wish to go on record that the Montana Board of Regents of Higher Education recognizes the Commission on Dental Accreditation of the American Dental Association as the official accrediting body for dental education programs, including those in dental hygiene and dental assisting. This designation is consistent with that of the U.S. Department of Education and the Council on Postsecondary Accreditation, and therefore we believe that the Commission on Dental Accreditation should be specifically referenced in Montana statute.

Thank you for this opportunity to comment.

Sincerely,


John Hutchinson
Commissioner of Higher Education
Montana University System

c: Lisa Casman, Board of Dentistry
Bill Zepp, Montana Dental Association
Chris Herbert, Montana Dental Hygienists' Association



Montana Dental Association

Constituent: AMERICAN DENTAL ASSOCIATION

P.O. Box 281 • Helena, MT 59624 • (406) 443-2061

GENERAL SUPERVISION

As a health profession, dentistry is committed to improving the health of the American people by providing the public with the highest quality comprehensive dental care. Comprehensive dental care must include the inseparable components of dental and medical history, examination, diagnosis, treatment planning, treatment services and health maintenance. Dental preventive procedures are an integral part of the comprehensive practice of dentistry and should be rendered in accordance with the needs of the patient as determined by a diagnosis and treatment plan developed and executed by the dentist.

The dentist is ultimately responsible for patient care. In carrying out that responsibility, the dentist may delegate to auxiliary personnel certain patient care functions for which the auxiliary has been trained. Appropriate functions may be delegated to dental auxiliaries in order to improve the availability of dental services with assurances of quality under the direct, indirect or personal supervision of a dentist.

The dental hygienist is an auxiliary who assists the dentist in providing certain delegated procedures. The delegated procedures are limited to those that the dental hygienist can perform with minimal potential for adverse consequences, under the direct, indirect or personal supervision of a dentist.

SUPERVISION OF DENTAL HYGIENISTS

Supervision and coordination of treatment by a dentist are essential to the high quality of American oral health care. Unsupervised or independent practice by dental hygienists reduces the quality of oral health care and seriously increases risks to the patient. For these reasons, the dental hygienist shall work only under the direct, indirect or personal supervision of a dentist who is professionally and legally responsible for the total dental care of the patient. In all cases, supervision requires that the dentist has reviewed the patient's medical and dental history, examined the patient, diagnosed the condition to be treated, and formulated a treatment plan, prior to the performance of any delegated patient care services by the dental hygienist. Supervision further requires that the dentist has authorized the procedures to be performed, is present in the treatment facility during the performance of dental hygiene services and evaluates the performance of the dental hygienist.

General supervision of dental hygienists is not acceptable to either the Montana Dental Association or the American Dental Association because it fails to protect the health of the public.

1. Any patient to be treated by a dental hygienist must first become a patient of record of a dentist. A patient of record is defined as one who:
 - a. has been examined by the dentist;
 - b. has had a medical and dental history completed and evaluated by the dentist;
 - c. has had his/her oral condition diagnosed and a treatment plan developed by the dentist.
2. The dentist must provide to the dental hygienist authorization to perform clinical dental hygiene services for that patient of record.
3. The dentist shall examine the patient following performance of clinical services by the dental hygienist.

DENTAL HYGIENE EDUCATION

The purpose of dental hygiene education is to train a dental hygienist to provide preventive patient care services under the direction and supervision of the dentist. The MDA and ADA believe that two academic years of study in an education program accredited by the Commission on Dental Accreditation is adequate to prepare a dental hygienist to perform dental hygiene services. The systems of training, accreditation and licensure for dental hygienists are based on the dental hygienist's auxiliary role. The dental hygiene education curriculum does not provide adequate preparation to enable graduates to practice competently in an unsupervised status. The technical ability of the dental hygienist to perform limited delegated procedures presumes no underlying ability to diagnose the necessity for treatment, assess the effectiveness of treatment, or coordinate comprehensive oral health care. A dentist should provide supervision during the clinical training.

APPROPRIATE SETTINGS FOR DENTAL HYGIENE SERVICES

The setting in which a dental hygienist may perform legally delegated functions shall be only a treatment facility under the jurisdiction and supervision of a dentist. When the employer of the dental hygienist is other than a dentist, the method of compensation and other working conditions for the dental hygienist must not interfere with the quality of dental care provided or the relationship between the responsible supervising dentist and the dental hygienist. The federal dental services are urged to assure that their utilization of dental auxiliary personnel is in compliance with policies of the American Dental Association.

The MDA and ADA support the utilization of dental hygienists, under the direct, indirect or personal supervision of a dentist in planning, implementing and evaluating public dental health programs which have been endorsed by the appropriate constituent dental society. The dental hygienist, in this setting, may provide preventive patient care services under an appropriate supervisory arrangement, as well as oral health education programs for groups within the community served.

LICENSURE OF DENTAL HYGIENISTS

—Exhibit # 4
1-21-91 SB 90

The MDA and ADA support states' licensure of dental hygienists to assure high quality oral health care for the public. Further, the Association supports the concept of a single state board of dentistry in each state as the sole licensing and regulating authority for the delivery of all dental care, including the practice of dental hygiene. Graduation from a dental hygiene education program accredited by the Commission on Dental Accreditation or the successful completion by dental students of an equivalent component of a predoctoral dental curriculum accredited by the Commission on Dental Accreditation, is the essential educational eligibility requirement for dental hygiene licensure examination and practice. The clinical portion of the dental hygiene licensure examination, during which patient care is provided, must be conducted under the supervision of a dentist.

The MDA is unequivocally opposed to the general supervision of hygienists.

COMPARISON OF DENTAL EDUCATION AND DENTAL HYGIENE INSTRUCTION

	<u>Predoctoral Dental</u>	<u>Dental Hygiene</u>
Post-secondary Education	Generally eight years of study, usually consisting of four years of college followed by four years of post-graduate dental education.	Generally two years post-high school study leading to an associate degree or certificate. Only a small percentage of those practicing have a baccalaureate degree in dental hygiene, which usually includes only two years of hygiene instruction and two years of liberal arts education.
Scope & Depth of Coursework	Scope and depth of course content are at <u>graduate</u> level and build on a broad background in the basic and social sciences, including chemistry, biology, anatomy, physiology, physics and psychology at the college and graduate level.	Scope and depth of course content are at college <u>undergraduate</u> level; basic and social science courses are generally at introductory survey level.
Terminal Clinical Competencies	<p>Educated and examined in comprehensive dental patient care as follows:</p> <ul style="list-style-type: none">● Assessment of the patient's general, oral and dental health and diagnosis of oral disease and oral sequelae of diseases● Interpretation of oral and dental radiographs and other diagnostic tests● Assessing and managing treatment needs of medically compromised patients● Treatment planning and case presentation● Preventive services and patient education (nearly all dental hygiene functions fall in this category)● Pharmacology and therapeutics; management of related complications (e.g., anesthesia, pain management and antibiotic therapy)● Prevention and management of dental and medical emergencies (e.g., shock, aspiration, allergic reactions, heart attack)● Prevention, diagnosis and management of:<ul style="list-style-type: none">● periodontal disorders● restorative procedures● endodontic disorders● oral surgical procedures● orthodontic abnormalities● prosthetic procedures	<p>Trained to perform the following clinical dental hygiene procedures and health education functions:</p> <ul style="list-style-type: none">● Performing prophylaxis● Exposing radiographs● Applying topical fluorides● Basic life support (CPR)● Oral health education and preventive counseling● May also be trained in application of pit and fissure sealants, root planing, placement of dressings, and similar functions.
Summary	Dentists are educated to assume responsibility for comprehensively managing the complete oral health needs of their patients. Dentists render preventive, diagnostic and therapeutic services, including management of the care of medically compromised patients.	<p>Dental hygiene functions are a defined, narrow portion of comprehensive dental care.</p> <p>All dental hygiene functions are reversible.</p> <p>All dental hygiene functions are taught with the understanding that they will be performed under direct, indirect or personal supervision of a dentist.</p>



Exhibit # 4
1-21-91 SB 90

Montana Dental Association

P.O. Box 281 • Helena, MT 59624 • (406) 443-2061

Constituent: AMERICAN DENTAL ASSOCIATION

A RESOLUTION OF CONCERN TO THE MEMBERS OF THE 1991 MONTANA SENATE

WHEREAS, the health, welfare and safety of the citizens of the State of Montana are the foremost concerns of the dental community and the Montana Dental Association; and

WHEREAS, the dentists of the State of Montana are trained professionals, responsible for the care of their patients and the direct supervision of the entire dental auxiliary staff, including hygienists; and

WHEREAS, legislation has been introduced by the Montana Dental Hygiene Association to lessen accreditation requirements for schools of dental hygiene by removing reference to the Commission on Dental Accreditation, alter certification requirements for practice in the State of Montana, and eliminate direct supervision by the dental professionals which will jeopardize the quality of care available to the citizens of Montana.

THEREFORE BE IT RESOLVED THAT The Board of Directors and the Executive Committee of the Montana Dental Association are adamantly opposed to Senate Bill 90 and urge the members of the Senate to defeat this bill in the interests of all citizens of the State of Montana.

Officers - 1990 - 1991

President

J. Samuel Stroeher, D.D.S.
1250 Harrison Ave.
Butte, MT 59701

President Elect

Don A. Spurgeon, D.D.S.
2615 16th Avenue South
Great Falls, MT 59405

Vice-President

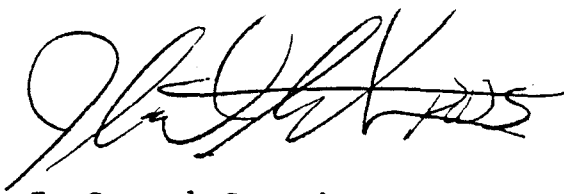
Terry J. Zahn, D.D.S.
690 SW Higgins Avenue
Missoula, MT 59803

Secretary-Treasurer

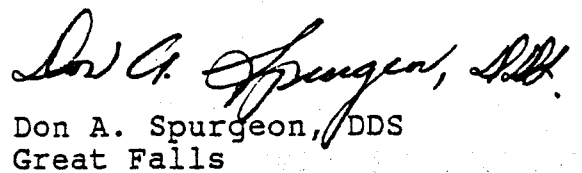
James H. Johnson, D.D.S.
2370 Avenue C
Billings, MT 59102

Executive Director

William E. Zepp
P.O. Box 281
Helena, MT 59624



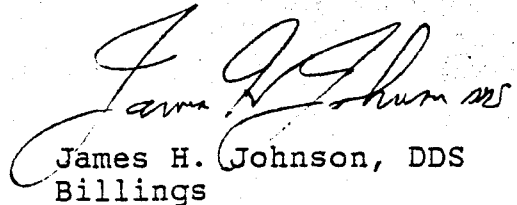
J. Samuel Stroeher, DDS
Butte



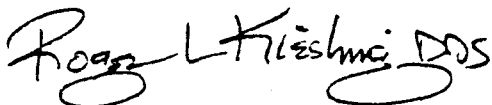
Don A. Spurgeon, DDS
Great Falls



Terry J. Zahn, DDS
Missoula



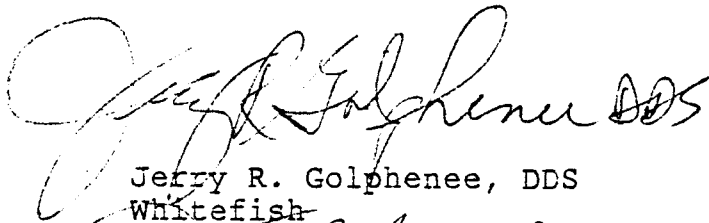
James H. Johnson, DDS
Billings



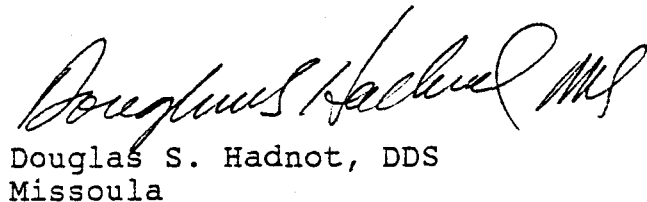
Roger L. Kiesling, DDS
Helena



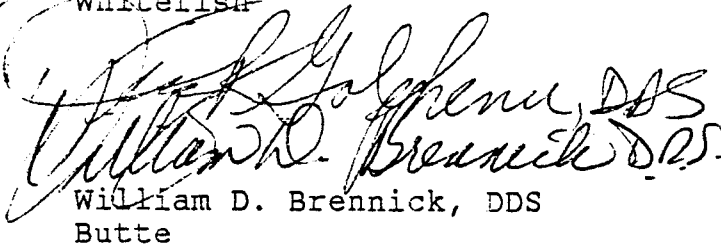
Kirk B. Stetson, DDS
Helena



Jerry R. Golphenue, DDS
Whitefish



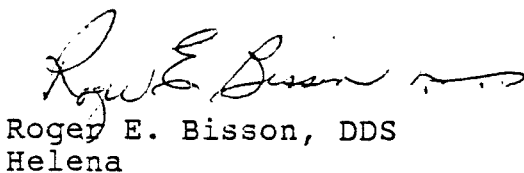
Douglas S. Hadnot, DDS
Missoula



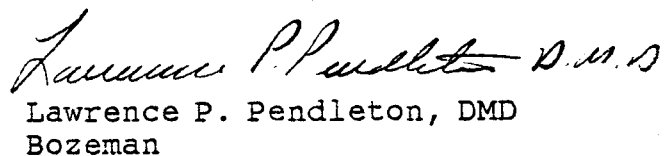
William D. Brennick, DDS
Butte



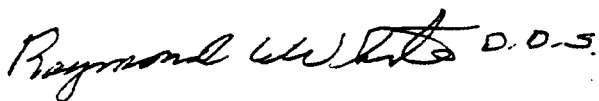
Ronald J. Berkhof, DDS
Great Falls



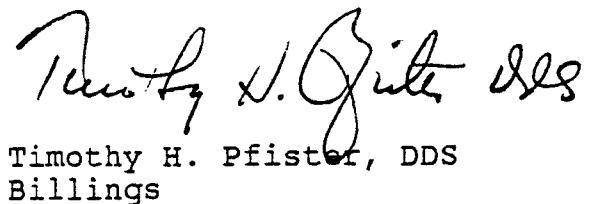
Roger E. Bisson, DDS
Helena



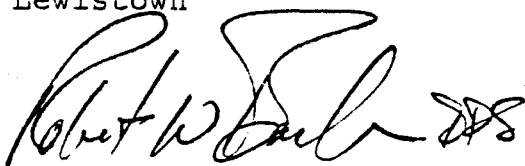
Lawrence P. Pendleton, DMD
Bozeman



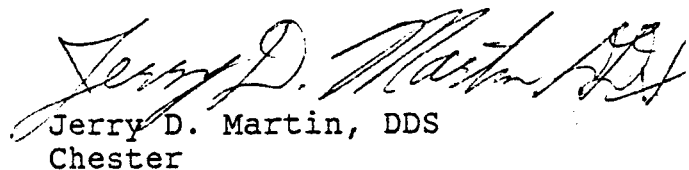
Raymond W. White, DDS
Lewistown



Timothy H. Pfister, DDS
Billings



Robert W. Bareman, DDS
Wolf Point



Jerry D. Martin, DDS
Chester

Wayne L. Hansen, D.D.S., P.C.

Periodontics - Endodontics

Exclusively

(406) 259-1623

Exhibit # 4
1-21-91 SB 90

Senate Public Health Committee

Senate Bill 90

I am writing in reference to Senate Bill 90, which is very concerning to me as a member of the State Board of Dentistry. It is my job to protect the American public and this is the reason I am sending you some information I feel you will need in order to make a decision on this bill. Due to our busy practice here in Billings, and a Board meeting coming up next Wednesday, I am unable to appear before you.

I'm sure you are well aware that, we as the State Board of Dental Examiners, oppose this bill entirely and feel that the hygienists are asking to do one of the most dangerous procedures that we do in dentistry, give a local anesthetic, without supervision.

It is my personal opinion that dental hygienists are a vital part of the dental health care delivery process. I have nothing but the highest regard for their capabilities and good training they received in their two years of dental hygiene school. However, is it also my opinion that their training has always been designed to prepare them to apply their skills in concert with the much broader skills and knowledge of the DDS. There is obvious and grave danger for the professional and the patient alike, in allowance of the broad application of their limited skills. The old adage, a little bit of knowledge is dangerous, is very true in this bill, in which the hygienists are asking to practice hygiene without a doctor present and be allowed to give a local anesthetic without a doctor in the office. We do not allow our ICU nurses to administer a local anesthetic, except for starting IV's, and that is with a medical doctor in the hospital.

We have come along way in revising some of our rules and regulations concerning anesthesia in the State of Montana. In the last eight years we've had two accidents in Billings with IV sedation. One was the loss of a life and the other left the patient in a coma. At that time we tried to revise the rules and regulations for IV sedation in dental offices. We now regulate these offices, give examinations, and have them complete advanced life support system course. After coming all this way with the rules and regulations for the doctors, now we have dental hygienists wanting to administer a local anesthetic without the supervision of a doctor. Statistically, there are a small but significant numbers, to a severe reaction to a local anesthetic, which can lead to shock, cardiac arrest and even death.

Inadvertent intervascular injection of local anesthetics alone can cause seizures, which may result in brain damage or death. Further direct intervascular injections of epinephrine containing solutions can cause severe hypertension, intercranial hemorrhage, cardiac arrhythmias, cardiac arrest and death. Because of these risks, it is my opinion that administering a local anesthetic is dangerous enough for these hygienist to be doing but, to allow them to administer it without a doctor present is wantonly reckless. Having CPR is not adequate enough to treat allergic reactions, anaphylaxis and other complications that might arise with the administration of a local anesthetic. The hygienist, by law, cannot administer drugs and start an IV.

The dental hygienists are an important put of the dental team. They never were intended to be, nor are they trained to be, primary health care providers. To allow them to treat institutionalized patients under "general supervision" settings such as nursing homes will seriously compromise the health of the patient and give support towards the goal of a small minority of hygienists, totally unsupervised. Our nursing home patients and senior citizens in these homes deserve better treatment and better care. They are the ones that are the most compromised of all the dental patients that we have. They are the ones with the most debilitated diseases, poor vascular systems, and are the patients that need a doctors care and examination. I think they deserve the proper kind of treatment.

We presently are investigating the kind of treatment that our senior citizens are getting in nursing homes and other facilities. We will attempt to come up with some other type of solution for these people where they will get proper dental care. In general supervision the hygienist is left alone in the dental office and would be responsible for all types of medical complications that go along with an oral prophylaxis. During the last few years we have seen a big influx of patients with artificial valves, organ transplants, joint replacements, and many other types of medical problems that need to be fortified with antibiotic therapy and different types of drugs before having any type of oral prophylaxis. For a hygienist, in her limited capacity, cannot and should not be evaluating patients medical history and prescribing drugs. This is just not good sound practice. We have had a few dentists violate the law as far as direct supervision but this doesn't make it right that we should change the law to appease the violators.

In recent years, State regulation of the dental profession has moved steadily towards higher standards of education, practice and dental office equipment for the administration of an anesthetic. Motivated out of concern for the patients safety, the Legislature, the Board of Dentistry, and the Montana State Dental Association have worked together on higher standards. Changing the law to allow delegation of a local injection anesthesia to a hygienist, without supervision, would be a move in the opposite direction.

The standard of care of anesthesia use should not be a political issue and I there by suggest that you do not let this out of committee. An issue like this is so dangerous to the American public I do not feel we should put this obligation or responsibility onto our State Legislature.

Sincerely,

Wayne L. Hansen D.D.S.
Vice President State Board of Dentistry



Montana Dental Association

Constituent: AMERICAN DENTAL ASSOCIATION

P.O. Box 281 • Helena, MT 59624 • (406) 443-2061

SUMMARY AND CONCLUSIONS

SURVEY

You have been told that a recent survey indicated that 44% of Montana dentists responding favored general supervision.

This question was #51 of a 55 question survey taken by Dr. Ed Lawler of the Department of Health and Environmental Sciences. The question was the sole query regarding the topic of supervision; the three previous questions addressed fees and payment plans, the following two questions spoke to office overhead and profits.

Question 51 reads as follows:

"Do you feel that dental hygienists should be granted the right to practice their profession under general supervision, as defined by the State Board, of a dentist?"

No definition of general supervision was provided; the only definition referenced was to come from the State Board, not MDHA legislation. We do not feel that this question was presented with enough clarification to provide accurate data. We are being asked to change the law on the basis of one poorly phrased, undefined survey question.

The Ninth District Dental Society of Billings, representing approximately 100 or 20% of the Montana dentists, completed a telephone survey defining general supervision as it is in SB90. The results as of this morning were 54 against general supervision and 2 in favor.

PETITIONS

You have been told that many dentists in the State support SB90 and have signed petitions to indicate this support. In reality, the Hygiene Association initially distributed three petitions; one regarding licensure by credentials, one regarding general supervision, and one regarding accreditation. At some point in the fall, the accreditation information was attached to the licensure by credentials petition. At no time were the petitions presented as one, or dentists verbally informed that only one bill was being drafted. Many dentists are favorable to licensure by credentials; however in supporting licensure by credentials they are being identified as supportive of the entire bill.

REPRESENTATION

You have been told that the MDHA represents a significant percentage of Montana hygienists. The Hygiene Association and their national affiliate, the ADHA, have adamantly refused to release membership numbers or a membership roster, despite requests from the Montana Dental Association, the Montana Board of Dental Examiners, and others. The last official count that I am aware of was 46, including two out-of-state hygienists, reported to the ADHA in the fall of 1989. Since early December, I have heard "fifty or sixty", "probably seventy-five", and "around 140", all from hygienists. Their numbers are as closely guarded as the contents of their bill.

ABUSE OF SUPERVISION REGULATION

You have heard that abuse of the current supervision regulation is rampant and that the law must be adjusted to reflect reality. Surveys indicate that only 53% of Montana dentists even employ a hygienist in their office. In addition, the Board of Dentistry has received no complaints regarding abuses of the supervision regulation -- and the Board must honor and record anonymous complaints as well. If staff members are being compromised or patients neglected, the mechanism for reporting such situations and applying punitive restraints now exists.

CONCLUSION

Major changes such as those proposed by SB90 should be made to protect or benefit the public, not to provide convenience for the dental profession or dental staff members, and certainly not to further the political interests of a vocal minority. How can it possibly benefit the public when the trained dental professional does not have to provide them with even a cursory examination? Indeed, when the trained dental professional does not even have to be on site?

The Montana Dental Association has not sought these changes; the Montana Board of Dental Examiners opposes these changes; and the general public has not requested these changes. The changes are self serving for the leadership of the MDHA, and should not be considered further.

Exhibit 5

1-21-91

SB 90

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this _____ day of _____, 1991.

Name: J. Samuel Stroehrer, D.D.S.

Address: 1250 Harrison Ave.

Butte, MT

Telephone Number: 282-1774

Representing whom?

Montana Dental Association

Appearing on which proposal?

SB 90

Do you: Support? _____

Amend? _____

Oppose? X

Comments:

Typewritten report.

SB. 90

Senator Eck and members of this committee, I am Dr. Sam Stroehrer. I am the current president of the Montana Dental Association and a practicing dentist from Butte. I stand before you today adamantly opposed to Senate Bill 90 both personally and representing the members of my association. Before you is a copy of the *Accreditation Standards for Dental Hygiene Education Programs*. This document details the requirements followed by virtually every hygiene school in our country. Under standard 5 titled Curriculum section 5.2 states, "The ultimate objective of the basic dental hygiene curriculum must be the education of a dental hygienist who, as a member of the dental team, can assume delegated responsibility for providing patient care under the direction and supervision of the dentist." General Supervision, or what might be better titled limited unsupervised practice would remove the hygienist from the direction and supervision of their dentist. Since the standards so clearly speak to this goal and its station as the cornerstone in their curriculum, I would ask you to consider the magnitude of the change that they request. Is it appropriate to legislate that which has not been taught? Would you be adequately protecting your constituents if you were to pass laws allowing ground personnel to fly the planes or teachers aids to be totally responsible for educating our children? Similarly, doesn't it make equal sense that we Montanans' require that dental hygienists first achieve the additional training and education before taking that awesome step towards the responsibilities inherent in functioning virtually autonomously in the dental office.

About five years ago while I was serving as a Board member of the Montana Dental Association, our organization faced a similarly provocative political issue, specifically whether to allow dental hygienists the right to administer local anesthetics, novocaine, in the dental office. Following months of educating the membership as to the relative risks versus benefits of this procedure, and weeks of careful deliberations as to the setting under which injections would be appropriate, a survey of our membership split 50/50 over the issue. Because the membership was educated as to all of the issues involved, and made a careful and divided recommendation to our board, the Montana Dental Association remained neutral in the debate. Conversely, because the Department of Health and Environmental Sciences survey was such a shot out of the dark, addressing an issue which many of our members were ill-prepared to comment upon, this organization can't place a lot of credibility behind the results. Since the survey much discussion has been entertained between dentists around the state; and the results of recent polls of our membership strongly support our position opposing this legislation.

In closing let me ask you to ask yourselves one further question relative to this issue. If SB 90 is made law does it truly benefit the lives of Montanas? And are the risks inherent in this deregulation truly outweighed by the benefits to your constituents? Thank you for your consideration.

Exhibit 6
1-21-91
SB 90

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 1/21 day of Jan, 1991.

Name: Scott Erler DDS

Address: 900 N. Orange #202
Minneapolis, MN

Telephone Number: 721-1067

Representing whom?

MT State Board of Dentistry

Appearing on which proposal?

SB 90

Do you: Support? Amend? Oppose? X

Comments:

written comments submitted.

recommended table

Madam Chairman, Members of the Committee

I'm Dr. Scott Erler. I have been a practicing Dentist in Missoula for the past 14 1/2 years. Prior to this I served as an Air Force Dental Officer and before that I worked as a hygienist in Eastern Montana. I currently am the Dental Consultant for Riverside Health Care Facility, which is St Patrick hospital's nursing home in Missoula.

I'm also one of the 4 Dental members of the Montana State Board of Dentistry. I'm here along with Mrs Flanagan, by request of Dr John Noonan, Chairman of the State Board of Dentistry, to speak in opposition to SB 90.

SB 90 is partially a licensing bill, if enacted, the Board will have to implement it, we need input in its formulation.

I'm not only concerned about the content of this bill but also upset with the political tactics used to keep the State Licensing Board totally in the dark until the last possible moment.

I received a copy of this bill from a senator who thought we should maybe take a look at it, the day before it was introduced. I sent copies to our administrative secretary who distributed it to the rest of the Board. Dr Noonan has informed me the members have seen the bill and have voted no support. Only the Dental Hygiene member voted support.

In our Sept 14, meeting Dr Noonan asked the representatives of the various groups present if they had any legislation planned which would affect the Board. Their representative told us they did not. SB 90 had been given to legislative council on Sept 11, three days earlier.

In Oct we were notified that a Bill was going to be filed for Licensure by Credentials, nothing was mentioned about the other 4/5ths of SB 90.

On Dec 14 the Board held a special meeting to deal specifically with legislative bills concerning the Board. They showed us a bill but said, it had since been changed and was not current, and the Board would have a final draft by the end of the year. We asked if they would give us the name of the bill's sponser so we could contact that person, they would not do that. I asked specifically that the "Commission on Dental Accreditation or it's successor" the official accrediting agency for all Dental related schools be placed in section 1. They agreed to do this. As you can see this is not the case.

We never received the final draft by 12/31, my understanding is that our Board Attorney, Bob Verdon has contacted Mr. Schantz several times since Jan 2 to receive a final draft, obviously it never came.

In addition to Licensing, the Board of Dentistry has the responsibility of protecting the public in matters of Dentistry. For the sake of brevity, I will limit my remarks to one of several areas of SB 90 which causes me concern.

SB 90 would allow Dental Hygienist's to work unsupervised both in private offices and in institutions, including Nursing Homes. It would allow them to give a local anesthetic without any trained backup.

Giving an injection is an irreversable procedure. Once you stick a needle in somebody, and push the plunger, you cannot take that material back. A reaction will not wait around for the Doctor to return. It is the responsibility of the person giving the injection to be ready and able to handle any emergency which can and does occur.

It was once said "A little knowledge is a dangerous weapon", I can appreciate why this group is trying to slide this part of SB 90 through. Modern Local anesthetics, "in trained hands" have a good safety record. It becomes easy to get lulled into a false sense of security.

Even though the medications injected are important, the fact remains, with local anesthetics, most reactions occur because of technique. How you give the injection and where you place the material.

Last month in Missoula, a healthy 18 year old, "basketball player" went to the dentist for a routine filling, x-rays, and a cleaning. He had no history of any previous problems and standard technique was used in administering the injection. While walking to the X-ray machine, he became woozy, collapsed, lost consciousness and went into seizures. He was taken by ambulance to Missoula Community Hospital and fortunately, has since recovered.

The diagnosis was that the local anesthetic was injected to close to an artery, the material was carried to the brain and numbed part of the brain. It was just "one of those things" that happen.

Now think about a nursing home. I have never seen a healthy 18 year old basketball player in a nursing home. People are in nursing homes because they are sick and need 24 hour care. They are helpless and many will not be getting better. Their medical histories are complicated and they are taking medications most people cannot even pronounce. There may or may not be, a physician on premisis. These elderly patients need our compassion and our protection. If you had a parent in that situation would you want would you want a half trained person to give them an injection or even work on them.

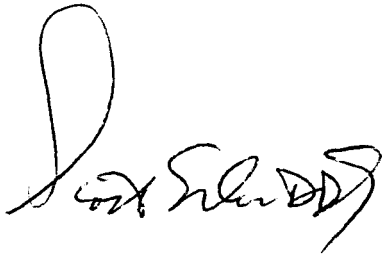
In the past the Board has allowed exceptions for certain Nursing Homes to allow Hygienists to work under Generalized supervision. My guess is that very few teeth have ever been cleaned in those institutions and those exceptions were pushed through to serve as future political ammunition for the bill you are staring at today.

I can assure the Board will be rethinking that policy.

SB 90 is a bad bill. At best it was thrown together with little input and little thought. At worst it is a preplanned attempt to slip something by.

There is another aspect of this bill which needs to be mentioned. It has the potential to be very devisive and inflammatory. In Montana we have currently a good working relationship between Dentists and Hygienists. The system which has been developed works well and is safe. I'd hate to see SB 90 become an issue which would hurt this relationship.

I urge you not to support SB 90.

A handwritten signature in black ink, appearing to read "Don S. H. D." with a stylized flourish at the end.

Ex. 7
1-21-91
SB 90

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21 day of January, 1991.

Name: Al Shuckungest

Address: Box 451

Lebo, NY 59847

Telephone Number: 251-5852 (406)

Representing whom?

Self.

Appearing on which proposal?

SB 90

Do you: Support? Amend? Oppose? ✓

Comments:

I don't feel it is in the best interest
of general public.

SENATE HEALTH & WELFARE

EXHIBIT NO. 7

DATE 1-21-91

MY NAME IS DI SHRECKENGOST. I AM A LICENSED REGISTERED DENTAL HYGIENIST FOR TWO PRACTICES IN MISSOULA AND FLORENCE SB 90.
MONTANA. I AM A GRADUATE OF AN ACCREDITED DENTAL HYGIENE SCHOOL IN WESTERN MARYLAND AND HAVE BEEN PRACTICING DENTAL HYGIENE FOR FOUR YEARS IN MARYLAND, COLORADO AND NOW, MONTANA. I AM ALSO LICENSED TO GIVE LOCAL ANESTHESIA.

THIS PROPOSED BILL CONCERNS ME BECAUSE I'VE WORKED UNDER GENERAL SUPERVISION IN THE STATE OF COLORADO FOR ONE YEAR. I FEEL THAT GENERAL SUPERVISION DOES NOT WORK AS WELL AS THE PEOPLE IN FAVOR OF IT WOULD LIKE TO BELIEVE. I WOULD LIKE TO ADD THAT THE LAW IN COLORADO DOES NOT PERMIT HYGIENISTS TO PERFORM LOCAL ANESTHETIC UNDER GENERAL SUPERVISION AS IS WRITTEN IN THIS PROPOSED BILL.

DURING A TYPICAL DAY AT THE OFFICE UNDER GENERAL SUPERVISION, I DEALT WITH DISGRUNTLED PATIENTS WHO, HAVING ALREADY REARRANGED THEIR BUSY SCHEDULE FOR THEIR CLEANING, WOULD NOW HAVE TO MAKE ANOTHER APPOINTMENT WITH THE DOCTOR TO DISCUSS WITH HIM A PROBLEM AREA THAT COULD HAVE BEEN DISCUSSED IF THE DOCTOR WAS IN THE OFFICE.

THOSE PATIENTS HAVING NO DENTAL COMPLAINTS SELDOM RESCHEDULED FOR EXAMS, BECAUSE OF INCONVENIENCE, THEREFORE GOING WITHOUT NECESSARY ROUTINE EXAMINATIONS BY THE DOCTOR.

I USUALLY FELT UNCOMFORTABLE WHEN THE PATIENT HAD A PROBLEM TOOTH HURTING AND ALL I COULD SAY WAS "I'LL LEAVE A NOTE FOR THE DOCTOR TO CALL YOU WHEN HE'S BACK IN THE OFFICE. I FELT AS THOUGH THEY WERE GETTING HALF SERVICE THAT DAY.

DENTISTRY IS A "TEAM" CONCEPT AND THAT CONCEPT WORKS.

THE HYGIENIST, DOING A TOOTH BY TOOTH EVALUATION DURING HER PROPHYLAXIS, MAY VOICE HER CONCERNS TO THE DOCTOR WHEN HE COMES IN TO DO HIS EXAMINATION AT THE SAME DAY APPOINTMENT. FOUR EYES ARE BETTER THAN TWO WHEN LOOKING FOR THE MYRIAD OF PROBLEMS THAT CAN AND DO OCCUR IN THE ORAL CAVITY.

THIS CRUCIAL DENTIST/HYGIENIST COMMUNICATION IS LOST UNDER THE GENERAL SUPERVISION CONCEPT.

I HOPE WHEN VOTING ON THIS PROPOSED BILL, THAT EACH OF YOU TAKE INTO CONSIDERATION WHAT IS LOST UNDER GENERAL SUPERVISION. THE GENERAL PUBLIC RELIES ON US DENTAL PROFESSIONALS TO PROVIDE THEM WITH THE UTMOST QUALITY CARE. IT IS OUR OBLIGATION TO PROVIDE THEM WITH THAT SERVICE.

Ex. 8
1-21-91
SB 90

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21 day of January, 1991.

Name: John B Snively, DDS

Address: 1221 So. Higgins Ave
Missoula, MT 59801

Telephone Number: 728-9442

Representing whom?

Self

Appearing on which proposal?

SB 90

Do you: Support? ☐ Amend? ☐ Oppose? ☒

Comments:

Written comments submitted to secretary

Senate Public Health, Welfare and Safety Committee
Testimony against SB 90
John B. Snively, D.D.S., Missoula
January 21, 1991

Good afternoon Madam Chairman and Senators. I am Dr. John Snively, and I've had my general dental practice in Missoula for twelve years. Before that I trained for one year in the United States Public Health Service as a general practice resident and practiced the next year in Lame Deer, Montana.

I employ two dental hygienists who serve as important members of my dental team three days a week. Their clinical experience and their insights into my patients' needs are vital to our providing the best preventive dental care possible. This is also true of my entire staff, however. We provide team care where the patient comes first, and the patient gets first class treatment.

That is why I speak against general supervision.

How is it possible to deliver the best dental care when the hygienist working alone, must decide whether a patient should return to see the dentist? What if to save the patient a second visit or simply because she does not recognize a problem, the hygienist sends the patient home with undetected decay - or worse. A tooth may be lost or a lesion may get worse.

Is it fair to the hygienist to place him or her in a position where a patient may ask a question such as "What's this bump?" or says, "This tooth's been hurting for two days now and used to be very sensitive to cold but now is more sensitive to hot." Is it fair to the hygienist to allow him or her to inject local anesthesia, a procedure with potentially serious complications, without adequate back-up. Remember, dental hygienists have limited training in diagnosis and administration of local anesthesia.

More importantly, is it fair to the public?

Madam Chairman and Senators, my profession is being held to increasingly higher standards in all areas: materials safety, infection control, diagnosis, continuing education, treatment and employee relations. All of these translate into improved service and greater responsibility to the public. It is ironic that in the midst of all this we see the proposed amendment which will have the effect of reducing these standards for the convenience of a few dental practices.

Hearing on Senate Bill 90

I am Fern Flanagan. I am a public member of the Board of Dentistry. In what I believe to be the interest of the public, I am speaking in opposition to Senate Bill 90.

One of my chief concerns is that this bill would allow hygienists to administer local anesthesia under general supervision. General supervision means that the hygienists need have only the approval of the dentist, who may not even be on the premises at the time that the anesthesia is administered. There is potential danger in that situation.

Another concern I have is the antipathy that exists between the dental hygienists association and the dental association. If there is not harmony between them, the public may not be well served. Since they work closely together, mutual trust and consideration is important. The Board of Dentistry is the overseer of many matters concerning the two professions, yet the hygienists did not inform the administrative assistant or the attorney for the board of their intention to file this bill, thus complicating the work of the board and probably widening the rift between the two factions.

It would seem that the hygienists are seeking autonomy. A consideration of the facts may prove this attitude is not conducive to a good working relationship. The dentist is the owner of the business. The hygienist is his employee. The dentist is responsible to the public for the work of the hygienist. The dentist has had long and expensive schooling. His overhead costs are high. To say he should have little control over the actions of his hygienists is unreal. Dentists, on the other hand, who are experiencing a great need for hygienists, should have a vital interest in the welfare of the hygienists association.

After observing for a year, I have seen little sign from either group of attempts to resolve the issue. A dialogue seems essential. The ill feeling between the two groups has not been openly expressed but festers and hampers creation of a good atmosphere. The young women leading the hygienists' group seem particularly militant. On the other hand, they have pointed out that the dentists have ignored several of their requests.

For the above reasons I am in opposition to Senate Bill 90.

Michèle G. Kiesling, RDH, MA.
1610 Flowerlee St.
Helena, Montana 59601

SENATE HEALTH & WELFARE
EXHIBIT NO. 10
DATE 1-21-91
BILL NO. SB 91

January 21, 1991

Senator Dorothy Eck, Chairwoman
Public Health, Welfare, and
Safety Committee

Dear Senator Eck,

I am writing to express my support for the basic principles included in Senate Bill 90. I do have some concerns regarding the specifics of the licensing by credential portion of the bill. (Section 3.)

I am a Registered Dental Hygienist licensed to practice dental hygiene in the states of Montana and California. I have practiced under general supervision in the state of California.

I feel that allowing dental hygiene practice under general supervision would benefit the citizens of Montana. In those communities and situations where a dentist is available only on a limited basis, or there is limited space available in the dental treatment facility, the option of general supervision would enable both dental professionals to provide additional dental hygiene and dental services to that patient population. Obviously, each practice situation will be different, and it is imperative that the dentist and dental hygienist involved are in agreement concerning general supervision.

Licensure of dental hygienists by credentials would also help increase the availability of dental hygiene services to Montanans. If my interpretation of the proposed bill is correct, then I believe the wording requires some modification to include that the State Board of Dentistry should be allowed to adopt rules regarding the specific requirements of licensing by credentials.

Thank you for your consideration of my concerns.

Sincerely,

Michèle Kiesling
Michele Kiesling, RDH, MA

Madam Chairman, Members of the Committee:

I am writing in support of Senate Bill 90 and would ask you to vote in favor of the bill also.

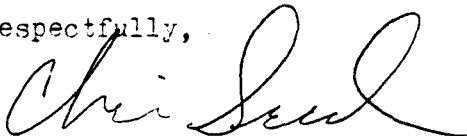
I am a registered, licensed, practicing dental hygienist and have had first-hand knowledge of being unemployed due to my doctor being unable to work due to injury. I have also had to negotiate the number of days I have contracted to work due to the doctor's vacation or being out of town.

I, like many other hygienists, have been asked to work when the doctor is not in the office. I would ask this committee to support this bill which would alleviate the hygienists' from being asked to work outside of the law. It appears from our surrounding states that general supervision is the norm rather than the exception.

I feel if my doctor felt comfortable in asking me to continue working while he was not present, he must also trust me to the patients' care. Due to my professional and educational background (which is comparable to Registered nurses) I am very comfortable and capable of their care without the presence of a dentist.

I strongly urge you to vote YES on SB 90.

Respectfully,



Cheri Purnell Seed, R.D.H., B.S.
908 Middlemas Rd.
Helena, MT 59601
(406)449-3878

Tippy & McCue

ATTORNEYS AT LAW

1215 Eleventh Avenue

P.O. Box 543

Helena, Montana 59624

406-442-4448 FAX 406-442-8018

January 11, 1991

1-21-91

SB 90

Roger Tippy

Mary Kelly McCue

William Zepp, Executive Director
Montana Dental Association
P.O. Box 281
Helena, MT 59624

Dear Mr. Zepp:

You have requested an opinion upon the following facts:

A group of dentists maintain their offices in the same building. Although each practices separately, they have an agreement to share or to reimburse one another for certain services. One such service is the operation of an x-ray machine by a dental hygienist employed by the dentist who owns the machine. On some occasions this dentist is not in the building but the other dentists would like to be able to use the x-ray machine. They agree to pay the first dentist for the use of the machine and the services of the hygienist on those occasions.

The question is whether the hygienist is lawfully practicing while taking x-rays under the supervision of the other dentists when the employer dentist is out of the building. It is our opinion that the hygienist is practicing lawfully under these facts.

To reach this conclusion I first considered the use of the indefinite article "a" in the opening phrase of sec. 37-4-405, MCA:

A licensed dental hygienist may practice in the office of a licensed and actively practicing dentist, in a public or private institution, under a board of health, or in a public clinic authorized by the board but may not

practice except under the direct personal supervision of a licensed dentist. . . . (emphasis added)

The question is why the legislature did not use the definite article "the" in front of "licensed dentist" when expressing the prohibition. To use "the" would signify that only the dentist furnishing the office and paying the hygienist could supervise; "a dentist" implies that the employing dentist or another dentist could supervise. The standard reference on interpreting statutory language, *Sutherland's Statutory Construction*, has this to say about "a" vs. "the" (4th ed., sec. 47.34):

William Zepp, Executive Director
January 11, 1991
Page Two

Issues over singular or plural interpretations often arise in the form of disputes about whether the article "a" restricts the application of the term which it modifies to single objects or subjects. . . . It is most often ruled that a term introduced by "a" or "an" applies to multiple subjects or objects unless there is reason to find that singular application was intended or is reasonably understood.

The prohibition embraces the violation of practicing dentistry without a license, for which a substantial penalty is provided at 37-4- 327. A penal statute is strictly construed against the state, Mont. Auto. Assn. v. Greely, 632 P.2d 300 (1981), and many other cases. This means that a hygienist charged with not practicing under the direct supervision of "the" employing dentist but under the supervision of "a" dentist who was on the premises would be exonerated; the ambiguity would be construed strictly against the state and in favor of the defendant.

The second consideration is the meaning of the term "premises." This term was not used in the pre-1979 statute quoted above but appeared in the amendment made in 1979 which added additional subsections to 37-4-405. The relevant new language is the definition of "direct supervision" in subsec. (2)(a):

"direct supervision" means the supervision of those tasks and procedures

that do not require the dentist in the room where performed but require his presence on the premises and availability for prompt consultation and treatment. . . .

The premises of a dental practice would not, in the context of employer-employee relations law, be restricted to the office space under the exclusive control of the dentist. In the Montana Worker's Compensation Act, for instance, "plant of the employer" is defined to include "the place of business of a third person while the employer has access to or control over such place of business for the purpose of carrying on his usual trade, business, or occupation." 39-71-116(1), MCA. OSHA standards and inspections are cast in terms of the "workplace"; 29 U.S. Code sec. 651 et seq. Statements to the effect that the parking lot of a building containing a dental office are not part of the "premises" are unsupported by any legal authority we could locate. Slip-and-fall injuries, a common form of premises liability, often occur in parking lots or stairwells serving the office and are a source of liability exposure to the office occupant.

Again, the term "premises" is ambiguous and would be construed strictly against the state in any prosecution of an alleged violation on the basis of the supervising dentist being in a nearby

William Zepp, Executive Director
January 11, 1991
Page Three

office down the hall. As an ambiguous term in a statute the Board of Dentistry is charged to enforce, the Board could certainly undertake to define it or to define "a" dentist earlier in the section. The Board could do so either by adopting rules or by rendering a decision on a complaint or in a contested case. Ramage v. Dept. of Revenue, 236 Mont. 69, 768 P.2d 864 (1989). I know there are no rules and I am unaware of any decisions on complaints or hearings. A third option would be for a concerned party to request the Board to issue a declaratory ruling on the questions you have raised.

Sincerely,

Roger Tippy

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21 day of Jan, 1991.

Name: Robert L. Lyman D.S.

Address: 713 Hayes Ave
Helena

Telephone Number: 442 5456

Representing whom?

Mont Rental Assoc.

Appearing on which proposal?

SB 9

Do you: Support? ☐ Amend? ☐ Oppose? ☒

Comments:

My testimony as given - see minute

WITNESS STATEMENT

To be completed by a person testifying or a person who wants their testimony entered into the record.

Dated this 21st day of January, 1991.

Name: Cheri E. Pennell Seed

Address: 908 Middlemas Rd

Helene MT 59601

Telephone Number: 406 - 449 - 3878

Representing whom?

Self & Dental Hygienists

Appearing on which proposal?

2B 90

Do you: Support? ☒ Amend? ☐ Oppose? ☐

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Robert
L. Taylor

Dated this 20th day of January, 1991.

Name: Michelle Kresling

Address: 1610 Floweree, Okla. Mt.

Telephone Number: 443-3825

Representing whom?

Appearing on which proposal?

SB 90

Do you: Support? _____ Amend? ☒ Oppose? _____

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DATE Monday Jan. 21, 1991COMMITTEE ON senate committee on public health, welfare & safety

VISITORS' REGISTER

SB 90
SB 42

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Taryl A. Catterell	Dental Hygiene	#90	X	
William Umbeck RDH	Dental Hygiene	SB 90	✓	
Wesley E. Seed	Dental Hygiene		✓	
Kathy A. Fokken	Dental Hygiene		✓	
Doree Pooner	Mt. Nurses Assoc	SB 90	✓	
Nichelle Kurling	myself	90	✓	
John T. Landis K	Mt. Med Assoc	SB 42		
Wesley E. Seed	MT. DENTAL ASSOCIATION	SB 90		✓
John T. Landis K	Mt. Dental Association	SB 90		✓
Wesley E. Seed RDH	Self - E MDHA	SB 90	X	
Wesley E. Seed RDH	Self & MDHA	SB 90	X	
Wesley E. Seed RDH	MDA	SB 90		✓
Kathy A. Smith RDH	Dental Hygiene		X	
John Struckmeyer RDH	MDA Dental Hygiene	SB 90		X
Wesley E. Seed RDH	State Board of Dentistry	SB 90		X
John T. Landis K	Self, MDA	SB 90		X
Judy Throckmorton RDH	Self -	SB 90	X	
Kathy A. Smith RDH	MDHA	SB 90	X	
Susan Broome	Self	SB 90	X	
Judy Throckmorton RDH	Dental Hygiene		X	
Wesley E. Seed RDH	MDental Hyg. Assoc	SB 90	X	
Wesley E. Seed RDH	Self	SB 90	X	
Wesley E. Seed RDH	Self	SB 90	X	
Wesley E. Seed RDH	MDHA	SB 90	X	
Wesley E. Seed RDH	MDHA	SB 90	X	
Wesley E. Seed RDH	MDHA	SB 90	X	

