

MINUTES

MONTANA SENATE 52nd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Chairman Dorothy Eck, on January 28, 1991, at 1:04 p.m.

ROLL CALL

Members Present:

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

Members Excused: None

Staff Present: Tom Gomez (Legislative Council)
Christine Mangiantini (Committee Secretary)

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

Announcements/Discussion:

HEARING ON SENATE BILL 146

Presentation and Opening Statement by Sponsor:

Senator Keating greeted the committee and said the bill is a slight modification in the law for a special purpose. He said years ago when the codes were written in order to make certain that a medical doctor did not involve himself with lesser professionals it was specified that he could not be a partner with anyone other than a medical doctor. Now that medical professionals want to form clinics whereby there is a continuum of service by a number of professionals, the medical doctor would like to enter into a joint-venture partnership with licensed professional counselors, social workers or clinical psychologists. The language in the law is unclear, perhaps denotes a legal prohibition on that type of partnership. This bill changes the language to allow a medical doctor to become a partner in a joint-venture with a licensed psychologist, social worker or professional counselor. It allows them to form clinic's or a working partnership, sharing the income and

business expenses. It does not interfere with the delivery of the medical procedures. It is not for the purpose of influencing the doctor in the delivery of medical care, nor the other licensed professionals from altering their procedures. It is strictly from the standpoint of the financial business of the joint venture. Senator Keating asked the chairman to call the witnesses in favor of SB 146.

Proponents' Testimony:

The first witness to testify in favor of SB 146 was Julius Earle, Jr., a physician and child psychiatrist from Billings. He urged passage of the bill. He has a desire to practice in joint venture with clinical psychologists but is prohibited because of the current law. It has required a number of manipulations of different businesses and different arrangements. He understands the bill will simplify and clarify a technicality in the current medical practices act. He would like the law changed to allow for physicians and non-physicians to do business together.

The second witness to testify in favor of SB 146 was Jerry Loendorf, representing the Montana Medical Association. He said although he has an amendment to offer, he is testifying on the proponents side. He said the sponsor has no objection to the proposed amendment. The key prohibitions in the existing law are partnership, agency and employer. The existing law has never prohibited a physician from practicing as an independent contractor whether providing a single service or for a period of time such as for a hospital. See Exhibit #1 for a copy of the amendment. The amendment does not allow him to give up his responsibility for making decisions concerning his medical practice or medical care. Any other decision he can give up and subject himself to any type of agreement. Insofar as a decision concerning the practice of medicine he is required to make those decisions in the patient's best interest. The amendment continues to do that.

The third witness to testify in favor of SB 146 was Mary McCue, representing the Montana Mental Health Counselors Association. The 70 licensed counselors she represents are in favor of the bill. They think it will allow medical doctors and other professionals that are included to work in closer relationships.

Opponents' Testimony:

None.

Questions From Committee Members:

The chairman recognized Senator Rye who said he was under the impression that clinic's in Billings and Great Falls were in partnership situations.

Senator Keating said that is true. He said it is a presumption on their part. Their legal counsel has said they interpret the language differently which allows them to do it. The bill is attempting to address the language of unprofessional conduct under which a medical doctor can lose his license. The intent is to take the vagueness out of the language.

The chairman recognized Senator Pipinich who talked about the Western Montana Clinic in Missoula.

Senator Keating said there are medical clinics that have nothing but medical doctors in them. It is a partnership among equals. The medical doctors are all licensed under the same board and are within a certain strata, they are all the same. There cannot be any unprofessional conduct by that association of equals. It is now that we are dealing with licensed professional counselors or social workers who are not medical doctors, so there is a difference in the strata, a distinction between who is a medical doctor and who is a counselor.

The chairman recognized Senator Hager who asked Mary McCue about the amendment.

Ms. McCue said she had seen the amendment and said they were amending the practice act of the medical doctors. She said she did not have a concern.

Mr. Loendorf said his answer was essentially the same since the amendment was dealing with restrictions in the medical practice act that only applies to physicians not to other health care providers. If you want to make similar amendments to other practice acts you may want to amend those sections of the law.

The chairman recognized Senator Towe and asked Senator Keating about the amendment. Senator Towe said the implication from the amendment is that there may be some mischief or some harm in having a business in which the physician would refer a patient to someone in his own office rather than refer them to someone outside.

Senator Keating said it is in the hearts of the people involved. We presume that the medical doctors we go to have our interests at heart. If they are after money they can make a deal with the social worker down the street. On the other hand a medical doctors reputation is very important.

I doubt they would invite a partner into their firm who in their estimation was not eminently qualified to do the job for which he was invited into the firm. In that instance they are looking for equal quality in those services from that part of their clinic. In recommending their patients to their partner they still have the best interests of their patient at heart. Certainly there is room for mischief throughout our codes. We could not write enough laws to bind everybody down to be exactly as we expect. Integrity, character and good will are not written into law. That is written into the heart. I do not see any mischief here, I think this is merely a guideline saying that "be cautious provider of medicine" make certain that you have the best interests of your patients at heart when you make referral decisions.

Senator Towe asked Mr. Loendorf why we need this amendment.

Mr. Loendorf said the reason the law reads as it does now and only allows physicians to enter into an independent contractor relationship is because that judgement is preserved. Once you enter into an employer/employee relationship you do not retain those rights to control the details of the work. The obligations to the employer and the obligations to the patient could come in conflict.

The chairman recognized Senator Franklin she said the intent is to permit a physician to be involved in a variety of practice with professionals other than medical people. Based upon her experience in health care, one-third of the clinical staff in the Great Falls mental health center are clinical psychiatric nurses. There seems to be an omission regarding the absence of that discipline in this bill. She would like to see the bill amended to include masters prepared clinical specialist psychiatric nurses.

Senator Keating asked if she was suggesting that the nurses wanted to be a joint-venture with the medical doctor and have an ownership in the clinic.

Senator Franklin responded in the affirmative. There are a variety of situations.

Senator Keating asked Bill Bredehoft, a psychologist in Billings, to respond. He said there was no objection to broadening it in any way but he thought it was unlikely that psychiatric nurses would be in this situation because they are not eligible for third party payments. to start with. They work at institutions where they are already employees of the institution. Perhaps at some point they will look to receive third party payments.

Senator Franklin disagreed and said in Great Falls there are at least three or four clinical nurse specialists who are in independent practice.

Senator Keating said they are dealing with permissiveness in the law to deal with the unprofessional conduct language. Nothing in this language is going to force any doctor to accept a partnership with any one else. This is permissive language saying if a group wants to commence a joint-venture the doctor is not threatened with unprofessional conduct. If you want to amend in a class of providers you are concerned about it would have no effect on the rest of the people in that they are not required to accept anybody to form a partnership.

Senator Franklin said she is just allowing for the eventuality and asked Senator Keating if he would have an objection to such an amendment.

Senator Keating said he had no objection.

The chairman commented about other combinations.

Senator Keating said if there were others who wanted to be included in this their legislative watchdogs have seen this vehicle. He is bringing this bill forward for a constituency for specific reasons, he would not want to create an omnibus bill.

The chairman asked Mr. Loendorf about a number of clinics where there are physicians and psychologists involved, are there other combinations as well.

Mr. Loendorf said many different groups are working together but not in the manner that this bill would allow. Most of those are employer/employee positions. They are all employees of a clinic.

The chairman asked if the bill allows independent contractors who had previously been employees to retain the practice as an independent contractor.

Mr. Loendorf said that people have always been allowed to be independent contractors. We are just dealing with the physician because that is where the restriction is placed. It allows the physician to go ahead and be the employee of the social worker, the licensed psychologist and the other licensees mentioned in the bill. If the clinic is a partnership and if there are two of them they may be partners in lieu of employee/employer.

The chairman recognized Senator Towe who said the professional corporation that would allow for the incorporation of a clinic at the present time would prohibit anyone from owning shares in that corporation if they are not a medical doctor. This will not change that. The clinic can go out and hire anyone they want and there is nothing wrong with the other professionals sharing in the profits of that if it is approved. They still will not be able to bring in the psychologist as a shareholder. This bill will allow a psychologist and a doctor to be partners or for the psychologist to hire a doctor as an employee.

Senator Keating said these people are already independent contractors. They have the opportunity to be independent contractors if they choose not to be employees. This bill does not affect that choice. This bill only allows independent contractors to become partners in a business.

The chairman said it also allows the physicians to be an employee and that is not generally allowed now. She said she does not have any objection to this. In fact she thought it would be interesting as a patient to be able to go into a clinic and know there would be a panel of people who would look at what your case was and consult together with them.

Closing by Sponsor:

Senator Keating closed by thanking the committee for an open hearing and said he would appreciate their consideration.

EXECUTIVE ACTION ON HOUSE JOINT RESOLUTION 3

Motion:

Senator Jacobson moved concurrence.

Discussion:

No discussion.

Amendments, Discussion, and Votes:

Recommendation and Vote:

The roll call vote showed Senators' Burnett and Rye voting against concurrence and all other committee members in favor of concurrence. The motion was approved by a vote of 6 ayes and 2 nays.

EXECUTIVE ACTION ON SENATE BILL 135

Motion:

Senator Towe moved to pass SB 135 without amendments.

Discussion:

None

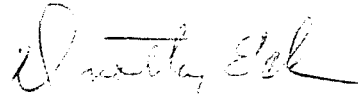
Amendments, Discussion, and Votes:

Recommendation and Vote:

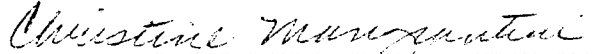
The motion passed by a unanimous vote.

ADJOURNMENT

Adjournment At: 1:40 p.m.



SENATOR DOROTHY ECK, Chairman



CHRISTINE MANGIANTINI, Secretary

DE/cm

ROLL CALL

PUBLIC HEALTH, WELFARE
AND SAFETY

COMMITTEE

Date 01/28/91

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 STANDING COMMITTEE REPORT

Page 1 of 1
January 28, 1991

MR. PRESIDENT:

We, your committee on Public health, Welfare, and Safety having had under consideration House Joint Resolution No. 3 (third reading copy -- blue), respectfully report that House Joint Resolution No. 3 be concurred in.

Signed: _____

Dorothy Eck
Dorothy Eck, Chairman

SA 1-28-91
Ad. Coord.

SB 1/28 2:45
Sec. of Senate

191402SC.Sj1

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 28, 1991

MR. PRESIDENT,

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 135 (first reading copy - white), respectfully report that Senate Bill No. 135 do pass.

Signed: *D. M. [unclear]*, Chairman

1-28-91
Ad. Coord.

SB 1/28 2:45
Sec. of Senate

SENATE HEALTH & WELFARE

EXHIBIT NO. 1

DATE 1-28-91

BILL NO. SB 146

Amend Senate Bill No. 146, First Reading copy

1. Page 4, line 17.

Following: "counselor;"

Insert: "however, the partnership, agency, employment or joint venture shall be evidenced by a written agreement containing language to the effect that the relationship created by the agreement shall not affect the exercise of the physician's independent judgment in the practice of medicine, and the physician's independent judgment in the practice of medicine is in fact unaffected by the relationship; and the physician shall not be required to refer any patient to a particular provider or supplier or take any other action the physician determines not to be in the patient's best interest."

Dated this 28 day of JAN, 1991.

Name: Julius EARLE JR and

Address: 1020 N. 27th St. Ste 420

Billings ALT 59101

Telephone Number: 406 259 9191

Self

513 # 146

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

[illegible]

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

WITNESS STATEMENT

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

Dated this 28 day of January, 1991.

Name: Jerome T. Loerdorff

Address: Helena, mt.

Telephone Number: 442-6350

Representing whom?

mt. med 0554

Appearing on which proposal?

5146

Do you: Support? ~~X~~ Amend? ~~X~~ Oppose?

Comments:

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~~PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY~~

③

Dated this 28th day of January, 1991.

Address: 1215 11th Ave

Telephone Number: 242-4448

Mt. Mental Health Counselors Ass'n

SB 146

Comments:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

4

WITNESS STATEMENT

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

Dated this 28 day of January, 1991.

Name: Bill Brecht

Address: 3112 Farnam St

B: 11 days MT FS 102

Telephone Number: 656 0580

Representing whom?

Seif

Appearing on which proposal?

SR 146

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

Comments:

[illegible]

~~PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY~~

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date Monday, January 28, 1991 Bill No. SB 135 Time 1:37 p.m.

NAME	YES	NO
SENATOR BURNETT		
SENATOR FRANKLIN		
SENATOR HAGER		
SENATOR JACOBSON		
SENATOR PIPINICH		
SENATOR RYE		
SENATOR TOWE		
SENATOR ECK		

Secretary

Chairman

Motion: Senator Towe moved to adopt SB 135 without amendments.

The motion carried unanimously.

ROLL CALL VOTE

SENATE COMMITTEE PUBLIC HEALTH, WELFARE & SAFETY

Date Monday, January 28, 1991 Bill No. HJR 3 Time 1:46 p.m.

NAME	YES	NO
SENATOR BURNETT		X
SENATOR FRANKLIN	X	
SENATOR HAGER	X	
SENATOR JACOBSON	X	
SENATOR PIPINICH	X	
SENATOR RYE		X
SENATOR TOWE	X	
SENATOR ECK	X	

Secretary _____

Chairman _____

Motion: Senator Jacobson moved for concurrence of HJR 3. There
being 6 ayes and 2 nays the motion carried.

DATE Monday, January 28, 1991
COMMITTEE ON senate committee on public health, welfare & safety

senate committee on public health, welfare & safety

SB 146

(Please leave prepared statement with Secretary)