MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE & SAFETY

Call to Order: By Senator Dorothy Eck, Chair, on January 15, 1993, at 1:00 p.m.

ROLL CALL

Members Present:

Sen. Dorothy Eck, Chair (D)

Sen. Eve Franklin, Vice Chair (D)

Sen. Chris Christiaens (D)

Sen. Tom Hager (R)

Sen. Terry Klampe (D)

Sen. Kenneth Mesaros (R)

Sen. David Rye (R)

Sen. Tom Towe (D)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Council

Laura Turman, Committee Secretary

Please Note: These are summary minutes. Testimony and

discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 89 ,5035

Executive Action: SB 35, SJ 4, SB 80

HEARING ON SB 89

Opening Statement by Sponsor:

Sen. Judy Jacobson, Senate District 36, Butte, said SB 89 is a request of the Depart of Commerce revising the laws for the Board of Medical Examiners. One of the changes to the bill is that a physician assistant will sit on the Board of Medical Examiners, and they will only vote on issues concerning physician assistants. Sen. Jacobson went over changes regarding appearing in front of the Board when a physician is applying for a license, the enforcement of the Board when a physician is called in, and regarding disciplinary action associated with physical and mental impairment of physicians.

Proponents' Testimony:

Dr. Peter Burleigh, President of the Board of Medical Examiners, said one third of the Board's meeting time is spent dealing with physician assistant matters, so to make time more useful, a physician's assistant subcommittee was formed. But, much time was spent going over the subcommittee's report, so they would like to have a physician assistant be an official Board member, who; could only vote on physician assistant certified business items. Dr. Burleigh said there is a change to SB 89 regarding impaired physicians which changes "narcotic" to "addictive" because many impairing substances may not be narcotics. the Board must be able to deal with mental and physical illnesses that debilitate physicians. One good thing about this law is that a physician's peers may suggest that they go through treatment or put him under a contract rather that waiting for the physician to make a mistake. Dr. Burleigh said the Board wants to have the authority to revoke a physician's license if a direct order of the Board is ignored or refused. Dr. Burleigh also suggested that to receive a temporary license, meeting with a member of the Board is not required. Meetings with the Board should take place only if there are questions about disciplinary problems in the past or malpractice suits.

Jim Reid, Physician Assistant and who presides over the Physician Assistant Advisory Committee to the Board of Medical Examiners, said the changes to SB 89 regarding physician assistants was developed by consensus of the Committee and the Board. expands disciplinary action over physician assistants and their supervising physician because currently there is very little recourse for the Board if they find that a physician assistant or a supervising physician are in violation of existing rules or SB 89 also revokes the requirement that physician assistants practicing in a hospital setting carry professional liability insurance. This was a requirement for physician assistants as a criteria for approved practice or licensure. Hospitals already have credential requirements regarding liability insurance, and since this only applies to physician assistants working in a hospital setting, Mr. Reid feels this should be revoked. SB 89 authorizes the Board to issue temporary or permanent licenses for physician assistants. It revokes the part of the statute that the drugs distributed by the physician assistant be prepackaged by a pharmacist because it is time consuming and very difficult in rural areas where there may not be a pharmacist. If all dispensed drugs had to be prepackaged, a pharmacist would have to prepackage and deliver the drugs. also clarifies the billing for physician assistant's services. Currently, physician assistants cannot directly bill patients and that is acceptable, but only the facility where services were delivered could bill. The changes in SB 89 make allowances for house calls or cases where the physician assistant is not directly employed by the facility where services were delivered.

Bonnie Tippy, representing Montana State Pharmaceutical

Association, said there was a technical problem with SB 89 in Section 14. She provided written testimony. (Exhibit #1)

Jerry Loendorf, representing the Montana Medical Association, said they support all amendments offered to SB 89, especially those amendments giving greater authority to the Board to deal with incompetent physicians. The reason for this is it effects the patients and incompetent physicians create claims, increasing the cost of liability, increasing the cost of health care and ultimately increasing health insurance premiums.

Randy Spear, Past President of the Montana Academy of Physician Assistants, said that SB 89 will lead to decreased unnecessary regulations and legislation and provide for a greater ability for physician assistants to provide care in rural areas.

Dr. Peter Burley said there was one area he wanted to bring to the Committee's attention which he left out of his previous testimony. Current law states that if a physician knows that another physician is impaired, he must report this to the Board, and thus the Board knows about the impaired physician. The language in SB 89 allows a physicians who knows of another physician who is impaired to report to the Montana Physician Assistance Program (MPAP), a group which will be regionalized with sub-groups all over the state and this will save costs. If there is a problem with an impaired physician, one of the sub-groups will report it directly to the MPAP instead of the Board. If the physician does not abide by his contract with the MPAP, he is reported to the Board of Medical Examiners. They feel that this will result in a smooth running program.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Jacobson said on Page 15, Line 16 the words "scheduled drugs" should be replaced with "addictive substances" to include alcohol.

Sen. Towe asked about the "other entity" on Page 20 which may bill for physician assistant services. Chairman Eck said there is a lot of talk about eventually having a single billing entity.

Sen. Towe asked why it was necessary to spell out in statute who may bill for physician assistant services. Sen. Jacobson said it was necessary because a physician assistant can't bill.

Sen. Towe asked why they couldn't bill for their services. Sen. Jacobson said it was because physician assistants work under a supervising physician. Jim Reid said direct billing by physician

assistants is avoided because they are not independent practitioners. Regarding the business of medicine rather that the practice of medicine, for small rural communities, the 1989 statute stating who can bill is limiting. SB 89 broadens employment arrangements between physician assistants, counties, health care facilities to allow any of those to bill for services of a physician assistant.

Sen. Towe said he didn't understand the ramifications of the amendment. His understanding is that any other entity may bill for a physician assistant's services, through a law firm for example. Mr. Reid said that effectively, that was the case. He said that very often physician assistants are employed by nursing homes, counties, hospitals, or health care facilities.

Sen. Towe asked if physician assistants had any problem with repealing that section of SB 89 all together so that they could send out a bill any way they wanted. Jim Reid said there was some question among some carriers as to whether or not physician assistants' services should be reimbursed at all.

Sen. Towe asked Jerry Loendorf if he or the Medical Association or the doctors in Montana have problems with eliminating the billing provision in SB 89 all together, does it serve any purpose. Mr. Loendorf said the useful purpose is if insurers are concerned and someone else is billing, it helps in getting paid.

Sen. Towe asked if that could be done without the statute. Jim Reid said that the statute was helpful.

Sen. Towe asked Bonnie Tippy if she could explain her concerns with SB 89. Ms. Tippy said the problem is with the part of the statute against physician assistants dispensing drugs. The physician may dispense drugs if a community pharmacy is not within ten miles. The office of the physician assistant is not defined, it does not say that the physician assistant's office is a satellite office of that medical doctor. Ms. Tippy said the language she suggests adding certified physician assistant to the part of the Montana Code book (37-2-101) which defines medical practitioner. If the Committee doesn't want to do this, then she suggests that language is added to SB 89 saying that the physician assistant's office is an extension to the medical doctor's office for the purpose of dispensing drugs.

Sen. Towe asked if the sponsor had any objections to this. Jim Reid said that it was fine to modify the definition of medical practitioner. Bonnie Tippy said it was really a technical matter.

Sen. Klampe said that if the Committee accepted the first option, were there other ramifications of being a medical practitioner that the Committee was not aware of.

Sen. Franklin said the Committee wasn't in a position to evaluate

the potentials.

Jerry Loendorf said the term "medical practitioner" is used strangely in the Community Pharmacy Act where, in almost every other part of the code, the term "health care provider" is used as the definition when a number of care providers are lumped together.

Sen. Towe asked what a "locum tenens utilization plan" is. Sen. Jacobson said a physician hires a locum tenen physician to cover the practice while he is out of the state. A utilization plan must be filed with the Board of Medical Examiners if they are going to do practice in Montana without a license.

Dr. Peter Burleigh said the utilization plan applies only to physician assistants.

Sen. Towe asked Dr. Burleigh about making willful disobedience of an order of the Board unprofessional conduct. He said the Board could get carried away. For instance, ordering the doctor to attend a meeting of the Governor, and if the doctor doesn't, it's unprofessional conduct. Dr. Burleigh said the Board acts in a reasonable manner, and all cases of misconduct are entitled to a hearing. It is the concern that some situations are timely, regarding a urine sample to detect use of a narcotic, for example.

Sen. Towe asked Dr. Burleigh if it would be cleaner to add language to SB 89 specifying an order of the Board to include the "physician's fitness or ability to practice medicine" to limit the Board's ruling of unprofessional conduct. Sen. Towe said he was concerned about the language making the violation of any order of the Board to be professional misconduct. Sen. Towe asked if a physician failed to submit a license fee, and the Board issued an order to pay it, and the physician doesn't get around to paying the license fee, does that qualify as professional misconduct. Dr. Burleigh said failure to renew a license fee was grounds for revocation of the license.

Sen. Towe said he understood that to be true, but he didn't think that not paying a license fee should be grounds for professional misconduct. Dr. Burleigh said that this situation would not be grounds for professional misconduct. Dr. Burleigh said it was his understanding that Sen. Towe disliked the idea that every violation of the Board's orders be qualified as professional misconduct.

Sen. Towe said that was "exactly right."

Sen. Rye said he couldn't believe that professional misconduct for failing to pay a license fee has ever come up. Dr. Burleigh said it had never been professional misconduct, but some licenses have been revoked for failure to pay the fee. Sen. Towe said the Committee was being asked to change the law so that it states that "unprofessional conduct" means "willful disobedience of an order of the Board". This is what worried him.

Chairman Eck asked Jim Reid if a physician assistant worked under the supervision of a physician, whether or not they were in the same location. Mr. Reid said that was correct.

Chairman Eck said billing might not be a problem if the supervising physician were in the same location as the assistant. She asked if physician assistants were allowed now to bill independently. Mr. Reid said physician assistants could bill directly in some settings. Under Medicare law, physician assistants may not bill independently for their services.

Chairman Eck asked Mr. Reid if a physician must do the billing for a physician assistant. Mr. Reid said "an entity" must do the billing, the hospital or the county that employs the physician assistant. To the best of his knowledge, no physician assistant is being reimbursed directly to his tax identification number.

Sen. Jacobson asked Patrician England to address the problems with billing. Patrician England, Executive Secretary and Attorney for the Board of Medical Examiners said there may be a misunderstanding regarding the Board's authority to order a physician to do anything. The Board has specific authority over a physician during an investigation to order a physician to undergo a complete mental and physical evaluation. After a physician has been found guilty of unprofessional conduct of any sort, the Board may revoke his license, put him on probation, suspend him, or it may take other necessary action, which may be that the physician go back to school or that he restrict his practice to a specific area. The Board should be able to order a mental and physical evaluation if there is reasonable suspicion that a physician is unsafe. That is what this language is about. The Board does not have the authority to order a physician to attend a conference, or to build a ramp onto the office, or to pay license fees.

Sen. Christiaens asked Patricia England about when the Board can order a urine sample. Ms. England said the Board has the authority to order a complete mental and physical evaluation, and there are lesser degrees of evaluations than complete evaluations, such as a urine sample or a blood sample. The Board only has the authority to order these evaluations if there is reason to suspect the physician is guilty of unprofessional conduct or is an unfit practitioner. It is like "probable cause".

Sen. Christiaens asked Patricia England to address the timeliness issue. Ms. England said that when the Board has reason to suspect that the physician is unfit to practice medicine, the Board will ask the physician to produce a urine sample, not order

one. If the physician refuses and the Board has other facts as evidence to support an evaluation, the Board will order a complete evaluation.

Sen. Towe asked Ms. England if it wouldn't be simpler and easier to add in language to specify "an order regarding evaluation or enforcement of discipline of a licensee" where "unprofessional conduct" is now. He said he is not convinced that the Board would not assume more authority than talked about here. Ms. England said improper orders of the Board may be challenged by the physician and overturned in a court of law, thus not enforced. She said she didn't see any problems with leaving the language the way it is now.

Sen. Towe asked Ms. England if she would rather not change the language. Ms. England said it is simpler legally and linguistically to leave the language where it is.

Sen. Towe asked if there were any medical doctors at the Hearing who were not members of the Board. Sen. Towe asked Jim Reid if not changing the language regarding "unprofessional conduct" bothered him. Mr. Reid said that because of his experience with the Board, he understood the rationale, reasoning and fairness of the Board. He has no problems with leaving the language as is.

Closing by Sponsor:

Sen. Jacobson said it was a good hearing, and if the Committee was going to extensively amend the SB 89, please let her or Bonnie Tippy know and consult them.

HEARING ON SB 35

Chairman Eck turned the chairmanship over to Sen. Eve Franklin.

Opening Statement by Sponsor:

Sen. Dorothy Eck, Senate District 40, Bozeman, presented SB 35 at the request of the Joint Interim Subcommittee on Children and Families. Sen. Eck said the Children's Trust Fund is a good program, and has never been adequately funded, and the Subcommittee considered making the Trust Fund the body in Montana responsible for prevention. During the last session, increasing the budget for the Trust Fund through a gambling tax failed. It has been recommended that the Children's Trust Fund be part of a coordinating council, and Sen. Eck suggested that the Committee table SB 35. But, Sen. Eck wanted the members of the Committee to hear testimony from individuals who support the Children's Trust Fund.

Proponents' Testimony:

Richard Kurstein, member of the Montana Children's Trust Fund Board, said the purpose of the Trust Fund is to be a funding mechanism for child abuse prevention programs. The funding comes from an income tax check off, and a small amount comes from a federal challenge grant. The amount of money in the Fund is small, and the Children's Trust Fund hopes to play a role on the coordinating council addressed in SB 34.

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

Sen. Towe asked Sen. Eck about her concerns regarding the fiscal note. He said it looked to him that the impact was zero as far as the revenues are concerned. Sen. Eck said most of the money would be spent on the programs going on with the Trust right now, so there would be no money to administer.

Sen. Christiaens said it was his experience that federal grants start programs up, and then dry out. Sen. Christiaens asked if the Trust Fund would generate its own funding. Sen. Eck said that for now she would request the Committee to table SB 35, and the Children's Trust Fund continue to operate another year as it has been, and that the coordinating council will then assume responsibility for this, making the decision as to the responsibilities of the Trust.

Paulette Kohman, Executive Director of the Montana Council for Maternal and Child Health, said historically the problem has been finding a vehicle for prevention. When SB 35 was drafted a report card was needed, as was a study gathering together prevention activities. The Prevention Council has taken over the study and a state-wide grant has been awarded to the Education Foundation of Healthy Mothers, Healthy Babies to do a research study on children's well being. Ms. Kohman said it is not a terrible thing if SB 35 fails, and the Children's Trust Fund continues as it has. She said there small number of proponents speaking for the Children's Trust Fund because it looks like the Trust has another and maybe bigger role to play on the Prevention Council.

Sen. Mesaros asked about the duplication of services.

Sen. Eck said the Children's Trust Fund will have a voice in the coordinating council, whereas at one time there was consideration that the Trust Fund be the voice regarding prevention activities in Montana. Sen. Eck said Sen. Lynch introduced this bill and got it passed about six years ago, when there wasn't an effective voice for children in the state legislature. Sen. Eck said the means of funding has never been adequate. She said the Children's Trust Fund has made people aware that prevention is a

problem, and the coordinating council will be effective in addressing the needs in the area of prevention. They are unsure about the support coming from the new Administration, and Sen. Eck feels that it is best to put SB 35 "on the back burner".

Closing by Sponsor:

Sen. Eck closed.

EXECUTIVE ACTION ON SB 35

Motion:

Sen. Towe moved that SB 35 be Tabled.

Vote:

The Committee voted unanimously that SB 35 be Tabled.

EXECUTIVE ACTION ON SB 80

Discussion:

Sen. Towe went over the amendments (Exhibit #2). Sen. Towe said he wanted to further amend the Statement of Intent to add "before a third reexamination is taken, additional training and education requirements must be met". The intent is that additional training and education is required before the third reexamination.

Motion:

Sen. Towe moved the amendments.

Discussion:

Sen. Klampe asked if the fourth reexamination is precluded. Sen. Towe explained that an individual takes original exam, the first reexamination, the second reexamination, the next reexamination requires additional training and education.

Vote:

The motion carried unanimously.

Motion/Vote:

Sen. Franklin moved that SB 80 DO PASS as amended. The vote carried unanimously.

EXECUTIVE ACTION ON SJ 4

Motion:

Sen. Christiaens moved that SJ 4 DO NOT PASS.

Discussion:

Sen. Klampe said he wanted to hear Sen. Christiaens' reasons as to why SJ 4 should not pass. Sen. Christiaens said he opposed SJ 4 because banning alcohol advertising on television is censorship.

Sen. Towe asked about the censorship already existing that hard liquor cannot be shown on television. Sen. Christiaens said he thought that was wrong, too. He said alcohol is a legal product, and that's what troubles him about banning advertising.

Sen. Rye said that singling out alcohol as the only product with misleading advertising is wrong. He said that half the advertisements today give false impressions, so beer and wine are not unique.

Vote:

All members of the Committee voted that SJ 4 DO NOT Pass, except Sen. Towe and Sen. Eck.

ADJOURNMENT

Adjournment:

Chairman Eck announced that Sen. Christiaens will present the adverse committee report on the Senate Floor.

Chairman Eck said if any of the Committee members had amendments to SB 89, they should talk with Susan Fox, Legislative Council, first.

Chairman Eck adjourned the hearing.

SENATOR DOROTHY ECK, Chair

LAURA TURMAN, Secretary

DE/LT

ROLL CALL

SENATE COMMITTEE Public Health DATE 1-15-93

| NAME | PRESENT | ABSENT | EXCUSED |
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| CHRISTIAENIS | | | |
| HAGER | | | |
| KLAMPE | ·V | ų. | |
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ADVERSE

SENATE STANDING COMMITTEE REPORT

Page 1 of 1 January 18, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Joint Resolution No. 4 (first reading copy -- white), respectfully report that Senate Joint Resolution No. 4 do not pass.

Signed:

Dorothy Eck, Chair

SENATE STANDING COMMITTEE REPORT

Page 1 of 2 January 18, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration Senate Bill No. 80 (first reading copy -white), respectfully report that Senate Bill No. 80 be amended as follows and as so amended do pass.

That such amendments read:

1. Page 1, line 10.

Insert: "

STATEMENT OF INTENT

This bill requires a statement of intent because it requires rulemaking by the board of hearing aid dispensers to allow a license applicant to be reexamined a third time. It is the intent of the legislature that the board adopt rules to implement 37-16-403(2) that clearly establish additional education and training requirements that must be met before a third reexamination may be taken."

2. Page 1, line 22. Strike: "a subsequent"
Insert: "the next"

Following: "examination"
Insert: ","

3. Page 1, line 23. Following: "fee"

Insert: ", unless the taking of the examination at that time is waived by the board"

4. Page 1, line 24.

Following: "time"

Insert: "at the next examination,"

5. Page 1, line 25.

Following: "fee"

Insert: ", unless the taking of the examination at that time is waived by the board"

Page 2, line 1. Strike: "successive" Following: "is"

Insert: "no longer"

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7. Page 2, lines 2 through 4.

Following: "reexamination" on line 2

Strike: "after a period of 2 years"

Following: "and" on line 2

Strike: "or" on line 2 through "both" on line 4
Insert: "unless the board, by rule, provides for additional education and training before the reexamination may be taken

a third time."

-END-

TESTIMONY AND PROPOSED AMENDMENTS

SENATE HEALTH & WELFARSENATE BILL 89

DATE 1-15-93

EXHIBIT NO. | SUBMITTED BY: THE MONTANA STATE PHARMACEUTICAL

ASSOCIATION

JANUARY 15, 1993

This bill adds a physician-assistant-certified to the BMeX, to vote, like the dietitian member, only on issues affecting the licensure and regulation of his or her group of licensees. The bill makes some housekeeping changes for both physician and physician-assistant licensing. The concern is with a portion of this bill amending the 1989 law which allowed P.A.s some prescribing and dispensing authority. That code section, sec. 37-20-404, contains this provision which would be deleted by SB 89:

Drugs dispensed by a physician assistant-certified must be pre-packaged by a licensed pharmacist, except that samples provided by a pharmaceutical company representative may be dispensed.

Other language in sec. 37-20-404 specifies that any P.A. dispensing is subject to the general law on physician dipsensing, sec, 37-2-104. That law prohibits an M.D. from dispensing, "directly or indirectly", except as may come under one of the exceptions: an emergency, lack of a community pharmacy within 10 miles, administration of a unit dose, "occasional" dispensing not in the usual course of business, or giving away samples. 37-2-104 (2), MCA. So, if an M.D. can abuse these exceptions to the point of economically injuring a pharmacy in a small town, a P.A. would be able to do so too, under this bill. A P.A. could not, by virtue of having to limit the dispensing to occasional incidents not in the normal course of business, replace a pharmacy.

The one problem is the definition of a community pharmacy in the dispensing law, at 37-2-101 (5):

"Community pharmacy", when used in relation to a medical practitioner, means a pharmacy situated within 10 miles of any place at which the medical practitioner maintains an office for professional practice.

Is the P.A.'s office considered an office of the supervising M.D. for purposes of this definition? Imagine a P.A. in Ekalaka working under the supervision of an M.D. in Glendive. If there is a pharmacy in Ekalaka, is that a community pharmacy for purposes of the definition just quoted? Bear in mind that the definition of a "medical practitioner" does not include a P.A. The cleanest solution would be to amend them in there, at 37-2-101 (1): "Medical practitioner" means any person licensed by the state of Montana to engage in the practice of medicine, dentistry, osteopathy, podiatry, optomtetry, or a nursing specialty as described in 37-8-205 (5), or a physician assistant-certified functioning as described in 37-20-404 and in the licensed practice to administer or prescribe drugs." The next choice would be to insert a statement in the section now being amended, 37-20-404, to the effect that the P.A.'s office is considered an extension of the M.D's office for purposes of the definitions in 37-2-101.

SENATE HEALTH & WELFARE S ON TISHER

DATE 1-15-93 Amendments to Senate Bill No. 80 5880 First Reading Copy

Requested by Sen. Tom Towe For the Committee on Public Health, Welfare, and Safety

> Prepared by Susan B. Fox January 13, 1993

1. Page 1, line 10.

Insert: "

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This bill requires a statement of intent because it requires rulemaking by the board of hearing aid dispensers to allow a license applicant to be reexamined a third time. It is the intent of the legislature that the board adopt rules to implement 37-16-403(2) that clearly establish the additional educational and training requirements that a person must fulfill before a third reexamination may be taken."

2. Page 1, line 22.

Strike: "a subsequent"

Insert: "the next"

Following: "examination"

Insert: ","

3. Page 1, line 23. Following: "fee"

Insert: ", unless the taking of the examination at that time is waived by the board"

4. Page 1, line 24. Following: "time"

Insert: "at the next examination,"

5. Page 1, line 25.

Following: "fee"

Insert: ", unless the taking of the examination at that time is waived by the board"

6. Page 2, line 1.

Strike: "successive"

Following: "is"

Insert: "no longer"

7. Page 2, lines 2 through 4.

Following: "reexamination" on line 2

Strike: "after a period of 2 years"

Following: "and" on line 2

Strike: "or" on line 2 through "both" on line 4

Insert: "unless the board, by rule, provides for additional education and training before the reexamination may be taken a third time."

| DATE Jan. 15, 1993 |
|---------------------------------------|
| SENATE COMMITTEE ON Public Health |
| BILLS BEING HEARD TODAY: 58 35. 58 89 |

| N | D. | Bill | Check One | |
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| HARLEY WARNER | ASSOC. OF CHURCHES | 5,835 | X | |
| Terine Lorndork | prt. pred. 1859 | 589 | 0 | |
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VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY