

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON HUMAN SERVICES & AGING**

**Call to Order:** By CHAIRMAN BILL BOHARSKI, on March 8, 1993, at 3:00 p.m.

#### **ROLL CALL**

**Members Present:**

Rep. Bill Boharski, Chairman (R)  
Rep. Bruce Simon, Vice Chairman (R)  
Rep. Beverly Barnhart (D)  
Rep. Ellen Bergman (R)  
Rep. John Bohlinger (R)  
Rep. Tim Dowell (D)  
Rep. Duane Grimes (R)  
Rep. Brad Molnar (R)  
Rep. Sheila Rice (D)  
Rep. Angela Russell (D)  
Rep. Tim Sayles (R)  
Rep. Liz Smith (R)  
Rep. Carolyn Squires (D)  
Rep. Bill Strizich (D)

**Members Excused:** Rep. Hansen, Rep. Nelson

**Members Absent:** None

**Staff Present:** David Niss, Legislative Council  
Alyce Rice, Committee Secretary

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

**Committee Business Summary:**

Hearing: SB 291, 403  
Executive Action: SB 120, SB 165

#### **HEARING ON SB 291**

**Opening Statement by Sponsor:**

**SEN. STEVE DOHERTY**, Senate District 20, Great Falls, said SB 291 revises utilization review provisions with regard to health care services. The bill was proposed by the Montana health counselors and psychologists. The bill requires anyone who is reviewing a mental health treatment claim to request only information relevant to the payment of the claim. When a utilization review

requires disclosure of personal information regarding the patient or client, including personal and family history or current and past symptoms of mental disorder, the identity of that individual must be concealed from anyone having access to that information in order that the patient or client may remain anonymous. If a review of the patient's or the health care provider's records is required by the insurer, the review must be conducted by a person trained in the field of the provider.

**Proponents' Testimony:**

**Dr. Elizabeth Kolstedt, Clinical Psychologist, Montana Psychologists' Association**, said Montana is a small state and eventually we know each other's business. This is fine if one is choosing a contractor or deciding who to vote for Legislature, based on how they are as neighbors. It is not all right to know a person's business, when it comes to why they go to see a therapist or psychologist. The reason most people go to see a therapist or psychologist is because of a pain that has become intolerable. The pain is so private and intense, it takes most people months just to get up the courage to see somebody. When they finally do it is imperative that the intimate details of their lives be kept private. There is a state agency that helps people pay for treatment if they are injured because of a crime. Part of the requirement for payment is that all case records must be sent to the agency. It is important that the person conducting a review be trained in the field of the provider. The three items proposed in the bill cost nothing. The cost of not passing the bill is the violation of trust that has been bestowed upon therapists and psychologists when someone seeks help.

**Dr. Carl Bodek, Mental Health Counselor, Missoula, Montana Clinical Mental Health Counselors' Association (MCMHC)**, said there are many good professionals in the health insurance business, but cannot be assumed that all the employees hired by these companies are trustworthy. If one person gets hurt because of misuse of records, it is criminal. Dr. Bodek and MCMHC urged the committee's support of SB 291.

**Jim Smith, Montana Psychological Association**, distributed testimony by **Dr. John Platt, Ph.D, President, Montana Psychological Association, Bozeman**. EXHIBIT 1. Mr. Smith urged the committee to support SB 291.

**Dr. Elizabeth Dane, Executive Director, National Association of Social Workers (NASW)** said that NASW supports SB 291.

**Opponents' Testimony:**

None

**Informational Testimony:**

None

Questions From Committee Members and Responses:

None

Closing by Sponsor:

SEN. DOHERTY closed.

EXECUTIVE ACTION ON SB 120

Motion: REP. SMITH MOVED SB 120 BE CONCURRED IN.

Discussion: CHAIRMAN BOHARSKI explained the amendments to SB 120. EXHIBIT 2.

Motion/Vote: CHAIRMAN BOHARSKI MOVED TO ADOPT THE AMENDMENTS. REP. DOWELL called the question. Voice vote was taken. Motion carried unanimously.

Motion/Vote: REP. SMITH MOVED SB 120 BE CONCURRED IN AS AMENDED. REP. DOWELL called the question. Voice vote was taken. Motion carried unanimously.

EXECUTIVE ACTION ON SB 165

Motion: REP. SIMON MOVED SB 165 BE NOT CONCURRED IN.

Discussion: REP. SIMON said he doesn't see any benefit in having inspectors traveling around the state inspecting facilities with x-ray equipment. There has been little or no indication that there is a problem. X-ray technicians are evidently doing their jobs because no complaints have been filed. According to the fiscal note, it will cost \$37,305 a year. The license fee for active status is inexpensive. It is unnecessary to reduce the fee for inactive status.

REP. SQUIRES said inspections of facilities with x-ray equipment are necessary to ensure that technologists are performing x-rays on only parts of the anatomy they are licensed and qualified to perform. The bill won't cost the state any money because the money will come from the revenue received from license fees.

REP. BERGMAN said she agreed with REP. SQUIRES.

REP. MOLNAR said each inspection, according to the fiscal note, takes two hours at \$15 an hour. The license fee money will be depleted very quickly.

REP. BOHLINGER said he does not believe there is a need for SB 165.

REP. DOWELL said he supports the bill because the safety benefit of persons involved in the x-ray process will increase.

REP. SQUIRES said she is concerned about unqualified people x-raying patients. A great deal of damage can be done to people by unqualified technologists. The board is asking for permission to spend its own money to upgrade the profession to protect the general public. To say no to that is ridiculous.

REP. SIMON said there wasn't any testimony about unqualified technicians taking x-rays. The costs involved are totally unrealistic. One or two inspectors covering the state will cost a lot more than what is proposed in the fiscal note, or else there won't be much of an inspection. Most technologists work in facilities where their licenses are checked, and staff are aware of what they are qualified to do.

REP. SMITH said personnel in health care facilities are reviewed to ensure they are licensed for the duties they perform. REP. SMITH said she didn't know if clinics were reviewed.

REP. SQUIRES said personnel in acute care facilities are screened, but there are dental offices, private clinics, and isolated places where personnel are not monitored as closely. The reason there haven't been any reports of unqualified personnel performing x-rays is because of the lack of inspections. If inspections are allowed to take place, there will be more reports to the board about unqualified personnel performing x-rays. The public needs to be protected.

CHAIRMAN BOHARSKI asked REP. SQUIRES if someone from the Board of Nursing inspects nurses. REP. SQUIRES said in the nursing profession there is an annual renewal date of nurses' licensure. The license is turned in to the supervisor. There is a chain of command for monitoring nurses. Technologists don't have this type of monitoring.

REP. SIMON said the committee has not heard any evidence that people are being harmed because wrong x-rays are being taken. Technologists do not practice independently; they work under someone's direction and authority.

**Motion/Vote:** REP. BOHLINGER MOVED TO TABLE SB 165. Roll call vote was taken. EXHIBIT 3. Motion carried 9 to 7.

#### HEARING ON SB 403

#### Opening Statement by Sponsor:

SEN. DAVID RYE, Senate District 47, Billings, said SB 403 amends the health care facility licensing laws to clarify the definition of outpatient facilities. The Department of Health and Environmental Sciences (DHES) requested the bill because it

doesn't have the funds to adequately inspect outpatient facilities over the next two years. There is a sunset provision that will terminate the bill October 1, 1995. This bill provides that outpatient facilities will be required to obtain a license from the department for informational purposes only. The license requirement does not obligate or require the department to visit or inspect the facilities or to regulate the activities of the facilities.

**Proponents' Testimony:**

Mike Craig, Department of Environmental Sciences, Licensure Bureau, said the bill puts the department and state in a very uncomfortable position, but it is needed. Mr. Craig distributed a copy of a court opinion regarding a motel that is regulated by the department. The court opinion holds true to health facilities. **EXHIBIT 4.** The State of Montana is required to regulate and license all health care facilities. Mr. Craig distributed a chart of all health care facilities in the state. **EXHIBIT 5.** The bill has no fiscal impact. If the bill does not pass, the department will have to submit a proposal to the budget office for added funding. In 1992 the department submitted a proposal for approximately \$200,000 in general funds in order to fulfill its obligations regarding health care facilities. The proposal wasn't approved.

**Opponents' Testimony:**

Jim Ahrens, President, Montana Hospital Association, said if there is inadequate funding in the department, more positive action should have been taken to resolve the issue. There is as much complicated surgery taking place in out-patient facilities as there is in hospitals. It seems strange that most of these facilities are approved by the Legislature, but now the department doesn't want to inspect them. If hospitals tried to be licensed for informational purposes only, the public would be upset. The state should be inspecting out-patient facilities.

Jerry Loendorf, Montana Medical Association, said if the government is interested enough to require a license, it should respond to complaints that the licensee is not meeting the requirements of the license. Mr. Loendorf referred to the bill's definition of an out-patient facility as "a facility or service." In other words, a service is providing a service. The word "service" should be deleted. A facility is licensed, and the providers are licensed, but the service is never licensed.

**Informational Testimony:**

None

**Questions From Committee Members and Responses:**

REP. SIMON asked Mr. Loendorf if a mobile van used for ultra

sound would be considered a service. Mr. Loendorf said the van is not a service, it's a place where service is provided. The van is a mobile facility.

REP. SIMON asked Mr. Ahrens if hospitals pay a license fee, to which he replied no.

REP. SQUIRES asked Mr. Craig if all the facilities with asterisks on the chart are federally inspected. Mr. Craig said those facilities are certified by the federal government; that doesn't automatically mean they are inspected. The federal government inspects 10% of those facilities, with the exception of mammography facilities which are all inspected annually. REP. SQUIRES asked Mr. Craig if the state ever inspected those facilities, to which he replied no. Mr. Craig also corrected Mr. Ahrens' statement that hospitals do not pay license fees. Hospitals do pay license fees.

REP. BARNHART said if she saw a license on the wall of an out-patient facility she would assume that facility had been inspected and asked Mr. Craig if her assumption was correct. Mr. Craig said if a license is issued to an out-patient facility; and has the statement "For Informational Purposes Only," that means the department does not inspect the facility.

REP. BOHLINGER asked Mr. Craig whether, if the bill is passes, the department's legal staff feels confident the wording on the license will absolve them from lawsuits, to which Mr. Craig replied that is correct.

CHAIRMAN BOHARSKI said there is a statute that requires the department to license motels at least once every twelve months. There is another statute that says the department may inspect a licensed health care facility whenever it considers it necessary. The entire premises of a licensed facility must be open to inspection and access to all records must be granted at all reasonable times. This statute is very vague. CHAIRMAN BOHARSKI asked Mr. Craig for his comments. Mr. Craig said the department is using two different internal legal opinions that the to regulate licensing and inspection procedures. At present the department is obligated to license and inspect these facilities.

CHAIRMAN BOHARSKI asked Mr. Craig how often the department thinks out-patient facilities could be inspected. Mr. Craig said all out-patient facilities could be inspected within a three-year period. However, the budget coming from the legislature does not give the department enough funds to do the inspections. CHAIRMAN BOHARSKI said the bill seems to grant the department immunity from liability. Whenever the legislature grants immunity from liability, it requires a two-thirds vote of both houses of the Legislature and asked Mr. Craig for his comments. Mr. Craig referred to the MacMasters case that cost the state \$100,000 general fund money to settle out of court with the family of the two victims. Mr. Craig said another lawsuit like that could

cripple the licensure program. CHAIRMAN BOHARSKI asked Mr. Craig how many FTE's would be needed to perform inspections of the out-patient facilities. Mr. Craig said two additional surveyors and one additional support person are needed.

Closing by Sponsor:

SEN. RYE said the bill is full of unhappy situations, and he is not happy sponsoring it, but something has to be done in order to stay legal and meet statutory responsibilities. SEN. RYE urged the committee to support SB 403.

ADJOURNMENT

**Adjournment:** The meeting adjourned at 5:00 p.m.

*William E. Boharski*

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WILLIAM BOHARSKI, Chair

*Alice Rice*

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ALICE RICE, Secretary

WB/ar



# HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING

COMMITTEE

ROLL CALL

DATE

3-8-93

NAME	PRESENT	ABSENT	EXCUSED
REP. BILL BOHARSKI, CHAIRMAN	✓		
REP. BRUCE SIMON, VICE CHAIRMAN	✓		
REP. STELLA JEAN HANSEN, V. CHAIR			✓
REP. BEVERLY BARNHART	✓		
REP. ELLEN BERGMAN	✓		
REP. JOHN BOHLINGER	✓		
REP. TIM DOWELL	✓		
REP. DUANE GRIMES	✓		
REP. BRAD MOLNAR	✓		
REP. TOM NELSON			✓
REP. SHEILA RICE	✓		
REP. ANGELA RUSSELL	✓		
REP. TIM SAYLES	✓		
REP. LIZ SMITH	✓		
REP. CAROLYN SQUIRES	✓		
REP. BILL STRIZICH	✓		

HOUSE STANDING COMMITTEE REPORT

March 12, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Human Services and Aging  
report that Senate Bill 120 (third reading copy -- blue) be  
concurrent in as amended.

Signed: Wm E Boharski  
Bill Boharski, Chair

And, that such amendments read:

Carried by: Rep. Smith

1. Page 4, line 9.

Following: "(F)"

Insert: "at each of the times specified in subsections (4)(a)  
through (4)(e),"

2. Page 9, line 3.

Strike: "FINDINGS"

Insert: "determination made"

-END-

Committee Vote:  
Yes \_\_, No \_\_.

561610SC.Hpf



**MONTANA PSYCHOLOGICAL ASSOCIATION, INCORPORATED**

February 15, 1993

Senate Public Health Committee  
Montana State Senate  
Helena, Montana

Re: Senate Bill 291. An Act Revising Utilization Review  
Provisions; and Amending Section 33-32-201, MCA.

Madame Chairman and Members of the Committee:

With the ever-increasing need for cost control in health care, requests for information by third party payers such as health insurance companies, health maintenance organizations and their agents, have become a regular part of the health professionals daily functioning. In the mental health field, in particular, disturbing trends have become evident whereby sensitive information is requested without evidence of real need by the company performing utilization reviews, without provision of appropriately trained personnel to evaluate diagnostic and treatment decisions and without appropriate safeguards for confidential information.

It has become commonplace for providers of mental health services to receive blanket requests for all clinical records. My own and others' experience has been that a phone call to the insurer often reveals that the question which triggered the review is quite limited in scope, such as a question as to the date the patient was first seen, or as to the specific type of service that was provided on a given date. Such questions clearly do not justify a request for the entire clinical record, and we often are left with the impression that insurers are on "fishing expeditions" for other kinds of information that might be used to deny a claim.

There are instances when an insurer may legitimately question the appropriateness of a diagnosis or the necessity of a service which has been submitted for reimbursement. As an organization dedicated to human welfare, the Montana Psychological Association supports legitimate efforts to assure that patients receive appropriate, necessary, high quality services. However, we frequently find such reviews being conducted by individuals whose qualifications to address the issues are suspect: registered and licensed practical nurses, for example.

Finally, as professionals who subscribe to ethical principles which include strict rules of confidentiality, we have become deeply concerned about the potential adverse impact of utilization reviews on the privacy to which our patients are entitled. Policy-holders typically are required to agree in advance to

release information to the insurance companies or their agents. However, we feel that disclosures should be limited to what is sufficient to answer a specific question and that systems need to be in place which will better protect sensitive personal information.

Mental health professionals are well aware of the distress many patients experience when they learn of the extent of disclosure that insurance companies frequently require. I personally know of cases in which individuals have denied themselves or their children needed services or declined to submit legitimate insurance claims due to their concern about the possibilities of such disclosures. This legislation would make it possible for us to alleviate many of these concerns without compromising quality of care or cost controls.

We anticipate resistance from insurance interest groups, but believe that, upon examination, their objections will prove spurious.

One objection of which we are already aware concerns the projected cost of enacting these provisions. It may be argued that companies will incur greater costs by hiring or contracting with more highly trained personnel to conduct reviews. However, it should be pointed out that the majority of reviews will still involve questions around dates of service and specific services provided that would fall within the purview of less highly trained personnel. Companies would simply be prevented from requesting extensive case information in such instances.

In Montana, Blue Cross Blue Shield already employs a psychiatrist to review higher order questions around diagnosis and treatment decisions. Our bill would simply require that the information provided not contain names and other references which would personally identify the patient; a case number could be used instead, for identification services. The actual information solicited for such reviews would be kept in a separate file with access limited to professional level personnel as described. Determinations made by the reviewing professional could be transmitted to other personnel or file locations without revealing personal details upon which the determination was based. This is not asking a great deal.

As regards the protection of confidential information, representatives of Blue Cross Blue Shield will probably argue that new legal requirements aren't necessary because their company already has adequate safeguards in place. Our experience would suggest otherwise, in that requests by Blue Cross Blue Shield for entire files are often signed by a non-professional person. But even if

Page 3  
Re: SB 291

EXHIBIT 1  
DATE 3/8/93  
SB 291

we accept Blue Cross Blue Shield's assurances, the fact remains that there are many health insurance companies operating in Montana, along with various managed care companies which conduct reviews. Consumers and providers need legal protection that sets out minimal standards that must be met.

Common sense alone supports the view that anyone charged with reviewing diagnostic and treatment decisions should also be qualified to make those kinds of clinical judgments. It is obvious that an insurance company which employs a registered nurse to conduct such reviews might have to pay more to have them performed by a more qualified individual. However, we believe that the resulting improvement in quality of care, appropriateness of feedback to the provider and reduction of expense on the part of the provider will more than offset such cost increases. The massive outlays in paperwork and professional time that ensue when unnecessary and incompetent reviews are undertaken translate into higher costs for providers and ultimately higher costs for consumers and insurance companies, in the form of higher fees to meet overhead expenses.

Over the past year, Montana Psychological Association (MPA) has communicated verbally and in writing with Blue Cross Blue Shield about how to best improve the quality of utilization reviews. At one time, a representative of Blue Cross Blue Shield's provider relations department even suggested that MPA nominate a qualified individual to be hired by Blue Cross Blue Shield to conduct such reviews. Instead, we made a counter-proposal that Blue Cross Blue Shield contract with a pool of providers to render reviews in areas of treatment or diagnosis that matched their own areas of specialization. We declined to be involved in the selection process, but did provide Blue Cross Blue Shield with a list of criteria recommended by the American Psychological Association for qualifying individuals to conduct reviews. Now, many months after this counter-proposal was sent, Blue Cross Blue Shield has still not responded.


More recently representatives of the Montana Mental Health Providers Coalition have met on several occasions with representatives of Blue Cross Blue Shield, as well as with individuals within the State Auditor's Office, to develop a fair and cost effective method of addressing our concerns. Many changes in our original proposal were made in efforts to deal with concerns raised by Blue Cross Blue Shield representatives. We realize that differences still remain, but ask the Committee to recognize the effort that has gone into the creation of a bill that is fair and feasible.

Page 4

Re: Senate Bill 291

In closing, we would argue strongly that utilization review should achieve not only cost reduction, but also quality assurance. The provisions of Senate Bill 291 are designed to allow for cost containment, while minimizing inappropriate interference with professional clinical judgement and unwarranted intrusions on patient privacy.

Thank you for your consideration of this proposal.

  
John A. Platt, Ph.D.  
President, Montana Psychological Association  
121 West Kagy Boulevard  
Bozeman, Montana 59715  
Phone: 587-7468

Amendments to Senate Bill No. 120  
Third Reading Copy

For the Committee on Human services and Aging

Prepared by David S. Niss  
March 8, 1993

1. Page 4, line 9.

Following: "(F)"

Insert: "at each of the times specified in subsections (4)(a)  
through (4)(e),"

2. Page 9, line 3.

Strike: "FINDINGS"

Insert: "determination made"

EXHIBIT 3  
DATE 3-8-93  
SB 165

HOUSE OF REPRESENTATIVES

HUMAN SERVICES AND AGING COMMITTEE

ROLL CALL VOTE

DATE 3-8-93 BILL NO. SB 165 NUMBER \_\_\_\_\_

MOTION: TABLE SB 165

NAME	AYE	NO
REP. BRUCE SIMON, VICE CHAIRMAN	✓	
REP STELLA JEAN HANSEN, VICE CHAIRMAN		✓
REP. BEVERLY BARNHART	✓	
REP. ELLEN BERGMAN	✓	
REP. JOHN BOHLINGER	✓	
REP. TIM DOWELL		✓
REP. DUANE GRIMES	✓	
REP. BRAD MOLNAR	✓	
REP TOM NELSON	✓	
REP. SHEILA RICE		✓
REP. ANGELA RUSSELL		✓
REP TIM SAYLES	✓	
REP LIZ SMITH		✓
REP. CAROLYN SQUIRES		✓
REP. BILL STRIZICH		✓
REP. BILL BOHARSKI, CHAIRMAN	✓	



EXHIBIT 4

DATE 3-8-93

SB 403

1991

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RECEIVED

JUN 18 1991

DHES LEGAL DIVISION

MONTANA FOURTH JUDICIAL DISTRICT COURT, MINERAL COUNTY

COLEEN I. IRGENS, individually  
and as Personal Representative  
of the Estate of COLEEN CLAIRE  
MACMASTER,

Plaintiff,

v.

ADDISON PRODUCTS CORP., a  
Michigan corporation; and  
the STATE OF MONTANA,

Defendants.

Cause No. 3573 & 3574

Filed this 14th day

of April A.D. 1991

*[Signature]*  
Clerk

OPINION AND ORDER

J. BRUCE MacMASTER, SR. and  
ANITA FEKETE, individually and  
as the co-personal representa-  
tives of the Estate of JOSEPH B.  
"JAY" MacMASTER, JR.,

Plaintiffs,

v.

ADDISON PRODUCTS CORPORATION  
and THE STATE OF MONTANA;

Defendants.

This matter comes before the Court on motions for  
summary judgment by the plaintiffs and the Defendant State of  
Montana, which have been fully briefed by the parties, with oral

1 argument having been held before this Court on March 13, 1991.  
2 The Court being fully advised in the premises, enters the  
3 following Opinion and Order on such motions.

4 OPINION

5 This action involves the deaths of Jay and Coleen  
6 MacMaster by carbon monoxide poisoning while they were staying in  
7 Unit No. 8 of the 4 D's Motel, Saltese, Montana.

8 The parties agree that the issue of whether the State  
9 of Montana owed a duty of care to inspect the 4 D's Motel in the  
10 case at bar is a legal issue, and not a factual issue.

11 Rule 56 Mont. R. Civ. P. allows entry of summary  
12 judgment on legal issues prior to trial, when there are no  
13 genuine issues of material fact. It appears to this Court that  
14 entry of partial summary judgment on the issue of duty is  
15 appropriate. Based upon the grounds and reasons expressed below,  
16 this Court hereby grants plaintiffs' motions for summary  
17 judgment, and denies the motion for summary judgment by the State  
18 of Montana. The State owed a legal duty to inspect the 4 D's  
19 Motel, which applies in this action.

20 The State has admitted in responses to written  
21 discovery, as well as during oral argument, that certain  
22 statutory duties are imposed upon the State to inspect motels,  
23 including the 4 D's Motel in Saltese, Montana. Plaintiffs argue  
24 that such duties apply in this action, and run to decedents as  
25 tenants in a motel. The State argues that although statutory  
26 duties are imposed upon the State, such duties do not apply to  
27 individual plaintiffs, and the State urges this Court to apply

1 what has been characterized as the "Public Duty Doctrine". Under  
2 that doctrine the State urges that where a general duty is owed  
3 to the public at large, no specific duty is owed to individual  
4 plaintiffs.

5 Montana law requires inspection of motels to be  
6 conducted by the State. The State Fire Marshal is required to  
7 inspect motels and to require conformity to law and promulgated  
8 rules. The rules of the State Fire Marshal shall be reasonable  
9 and calculated to effect the purposes of applicable law and shall  
10 include requirements for design, construction, installation,  
11 operation, maintenance or use of heating devices. Agents of the  
12 State Fire Marshal are required to enter motels to inspect for  
13 violation of statutes, rules and uniform codes incorporated  
14 therein, at least once every 18 months. See, MCA §§ 50-3-  
15 102(1)(c), 50-3-103, 50-61-114, Defendant State of Montana's  
16 Response to Plaintiff Irgens' Request for Admission No. 1, and  
17 Answer to Interrogatory No. 16 of Plaintiff MacMasters' First Set  
18 of Interrogatories to Defendant State of Montana.

19 The administrative rules at the State Fire Marshal  
20 Bureau include the adoption and incorporation of the Uniform Fire  
21 Code. As to heating appliances, the Uniform Fire Code provides  
22 that gas appliances shall be vented in accordance with the  
23 Uniform Mechanical Code. This requires a venting system to have  
24 a positive flow adequate to convey all combustion products to the  
25 outside, and to terminate a specified distance above the roof.  
26 A.R.M. 23.7.111, Uniform Fire Code Section 11.404(c), Uniform  
27 Mechanical Code Sections 901 and 906(d).

1           Plaintiff Irgens also argues that the Department of  
2 Health and Environmental Sciences (DHES) and its agents are  
3 required to inspect motels. The expressed purpose of regulation  
4 of motels is to prevent or eliminate unsanitary and unhealthful  
5 conditions which may endanger public health, and such regulations  
6 are in the interest of the social well being and the health and  
7 safety of the State and all of its people. § 50-51-101, MCA.  
8 Montana law requires agents of the DHES to inspect motels at  
9 least once every 12 months. Local health officers are charged  
10 with carrying out DHES duties and receive certain amounts from  
11 the DHES for the purpose of carrying out such inspections.

12           A duty to inspect motels is imposed on the State of  
13 Montana through the offices of the State Fire Marshal and the  
14 DHES.

15           The State's argument that requiring it to inspect  
16 public accommodations in order to require compliance with the  
17 statutes and administrative rules would make the State an  
18 insurer of all buildings in the State of Montana is without  
19 merit. The Legislature has imposed specific statutory duties to  
20 inspect motels, and the State's agencies have promulgated  
21 specific rules to carry out the intent and purpose of the law.  
22 The argument that State agents should not be required to enforce  
23 the statutes, rules, and Uniform Codes incorporated therein due  
24 to the voluminous nature of such provisions is not well taken by  
25 this Court. The State has a duty to inspect motels, including  
26 the 4 D's Motel, as a matter of law.  
27

1 As to whether such duties to inspect run to the  
2 plaintiffs' decedents in the case at bar, the facts and cir-  
3 cumstances in this action do not fall within the "Public Duty  
4 Doctrine". Separate and independent statutory duties are imposed  
5 upon the State, unlike in Phillips v. City of Billings, \_\_\_ Mont.  
6 \_\_\_, 758 P.2d 772 (1988), which is distinguishable. The Public  
7 Duty Doctrine has not been adopted in its entirety by the Montana  
8 Supreme Court, but rather the general duty - special duty  
9 distinction was applied only as to the facts presented in  
10 Phillips. 758 P.2d at 775. In Phillips, there was no other  
11 source of legal duty to the injured party.

12 The deaths of the MacMasters occurred while they were  
13 tenants in a motel which the State was required to inspect. The  
14 State's argument that a duty is owed to the general public, but  
15 not to a specific individual upon registration in a motel is not  
16 the law in Montana and totally ignores the expressed intent and  
17 purpose of the inspection laws. The purpose of state regulation  
18 of motels, and the mandated inspections, is to protect motel  
19 guests. If they are not protected there is no purpose to the  
20 regulation. The MacMasters, as tenants in a motel, are within an  
21 identifiable class to whom the State owed independent duties  
22 imposed by statute and promulgated rules.

23 The concepts of foreseeability are not stretched by  
24 requiring the State to comply with the applicable statutes,  
25 rules, and Uniform Codes incorporated therein. The duty to  
26 inspect motels, including the 4 D's Motel, applies to individual  
27

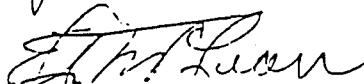
1 tenants in the motel as a matter of law, and the trial of this  
2 action will be conducted accordingly.

3 ORDER

4 Based upon the foregoing Opinion,

5 IT IS HEREBY ORDERED, that plaintiffs' motions for  
6 partial summary judgment is granted, and defendant State of  
7 Montana's motion for summary judgment is denied. The trial of  
8 the above-captioned actions will be conducted accordingly.

9 DATED this 26<sup>th</sup> day of April, 1991.

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11 Ed McLean, District Judge

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25 c: Garlington, Lohn & Robinson  
26 Rosscup & Kragh  
27 Chronister, Driscoll & Moreen  
Milodragovich, Dale & Dye, P.C.

Licensure Bureau  
Chief  
2 Facility Surveyors  
1 Construction Consultant  
1 Administrative Assistant

Adult Day Care  
26

Infirmaries  
2

Personal Care  
27

Residential Treatment  
2

Specialty Mental Health  
1

Home Infusion Therapy  
1

Hospices  
11 Licensed & Certified  
8 Licensed Only  
19 Total  
18 Surveyed Under State  
Licensure Standards

Hospitals  
16 Licensed/Certified/JCAHO  
40 Licensed & Certified  
56 Total  
36 Surveyed Under State  
Licensure Standards

Community Mental Health  
8  
Surveyed by Dept. of  
Corrections & Human Services

Chemical Dependency Centers  
6  
Surveyed by Dept. of  
Corrections & Human Services

47 Home Health Agencies  
104 Nursing Homes  
5 Medical Assistance Facilities  
ALL ARE ISSUED STATE LICENSES  
BASED ON THEIR ABILITY TO MEET  
MORE STRINGENT FEDERAL SURVEY  
CERTIFICATION REQUIREMENTS

\*11 Federally Qualified  
Health Centers  
\*1 Comprehensive O/P  
Rehab Center  
\*34 Mammography Facilities  
\*9 SurgiCenters (7 are  
licensed)  
\*1 Radiation Therapy  
\*7 ESRD Clinics (6 are  
hospital affiliated)  
\*6 PT/OT/Speech Pathologists  
1 Ultrasound Diagnostic  
Imaging (Licensed)  
1 Outpatient Clinic  
(Licensed)  
\*20 Rural Health Clinics  
\*26 PT/OT (Independent)  
3 Abortion Clinics  
25 Family Planning Clinics  
49 Local Public Health  
6 Urgent Care Centers

\*Federal Certification  
Standards Apply

HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Human Services

COMMITTEE

BILL NO. SB 291

DATE 3/8/93

SPONSOR(S) Sen. Doherty

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Gin Smith</u>	<u>Mt. Psych Assoc.</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Elizabeth Kohlstaedt PhD</u>	<u>Mt. Psych Assoc</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>CARL BODEK</u>	<u>NMCHCA</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Mary MacCue</u>	<u>Mt. Clinical Mental Health Counselors Ass'n</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<u>Elizabeth Hume</u>	<u>National Association of Social Workers</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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



HOUSE OF REPRESENTATIVES  
VISITOR'S REGISTER

Human Services COMMITTEE BILL NO. SB 403  
DATE 3/8/93 SPONSOR(S) Sen. Rye

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NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
<u>Jerome T. Zaender</u>	<u>mt. west assn</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

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