

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 080

Call to Order: By Senator Kennedy, on April 20, 1993, at 11:14 a.m.

ROLL CALL

Members Present:

Sen. Ed Kennedy, Chair (D)
Sen. Bob Hockett (D)
Sen. David Rye (R)
Rep. John Bohlinger, Chair (R)
Rep. Tim Dowell (D)
Rep. Bruce Simon (R)

Members Excused: None

Members Absent: None

Staff Present: Greg Petesch, Legislative Council
David Martin, Committee Secretary

Discussion:

Sen. Kennedy asked Carol Grell, Attorney for the Department of Commerce and Attorney for the Board of Hearing Aid Dispensers (BHAD), to testify. Ms. Grell read prepared testimony (Exhibit #1).

Sen. Kennedy reminded the Committee that the meeting was a "Free Conference" Committee, not a "Conference" Committee as advertised.

Sen. Kennedy asked if there were unqualified people selling hearing aids. Ms. Grell said no. The sellers have passed their written test to show competency. She said even if they have "failed", they have passed 3 out of the 4 required tests on the way to full licensure. She said they may practice an additional 6 months under general supervision, which means the fully licensed dispenser is also liable and responsible.

Sen. Kennedy asked if the public was being hurt by the 90-day direct supervision versus the 12-month supervision. Ms. Grell said no. She said the remaining 9 months were still under general supervision. She said reports are generated by the supervisor, who is responsible for the trainee.

Sen. Kennedy asked why the Board had not addressed many of the "giant problems" which generated the House amendments to SB 80. He said he was upset with the Board for not taking care of these problems. Ms. Grell said the Board has not been made aware of those problems. She said those problems, if they exist, need to be brought to the Board's attention.

Sen. Hockett asked why SB 80 is necessary. Ms. Grell said language from the 1991 Legislature only allowed for two examinations, when three were needed. Sen. Hockett asked if the House amendments were unnecessary or redundant from the Board's position. Ms. Grell said the Board did not seek the amendments.

Rep. Simon asked for a definition, under the rules, of "direct supervision". Ms. Grell said the definition was in the statute on page 5, line 10. She said the Board's rules do not further define "direct supervision" since it is in the statute.

Rep. Simon asked, under direct supervision, if a trainee would be required to have someone "holding his hand" all the time, or could the supervisor look over the trainee's work from time to time. Ms. Grell said that was not exactly correct. She referred to page 5. Rep. Simon clarified he was asking about "direct" and not "general" supervision. Ms. Grell said the supervisor would be available in the same place of business, which is physically in the same building, but not necessarily in the same room. She said the people who send trainees to small rural areas do not have their supervisors in the same building. She said rural areas could be deprived of this service. She said general supervision allows for a review of trainees as they are sent out in rural areas.

Rep. Simon asked if a person under general supervision could have a supervisor in Great Falls while working in Billings. Ms. Grell said after the first 90 days, general supervision does not require the physical presence of the supervisor, but the reviews would continue.

Rep. Simon asked if the Board had taken a position on the House amendments. Ms. Grell said the Board had not voted on these. She said the Board had general discussions. Since this was not a bill requested by the Board, it has not taken an official position. Rep. Simon asked Ms. Grell if her appearance was as an official representative of the Board, since the Board had not taken an official position on SB 80. Rep. Simon said Board members have contacted him in support of the House amendments. He asked Ms. Grell if she was testifying on her own behalf or as a representative of the Board. Ms. Grell said she was aware that the Board has differing positions, and that they have no official position on SB 80. She said she came to testify at Sen. Kennedy's request, to explain the status of SB 80. Rep. Simon asked Ms. Grell to clarify that she was not representing the position of the Board. Ms. Grell said that was correct.

Motion:

Sen. Kennedy MOVED TO AMEND SB 80 (Exhibit #2). He said these amendments would return SB 80 to the original form that it first went to the House from the Senate. He said this would address the main purpose which is to change the number of exams from 2 to 3.

Rep. Simon said he would speak against the motion. He said he recognized that he had a difference of opinion with Sen. Kennedy. He said he feels the House amendments are important for consumer protection. He said a public policy decision needs to be made about public protection, and these amendments would strip out those protections. He said people could sell hearing aids after only 90-days of supervision. He said these people could fail the test and continue selling hearing aids until failing the third exam. He said it was not a very good way for the State of Montana to provide licensure and protect the public. He said he had amendments to do something different.

Rep. Dowell said he heard differing opinions at the meeting. He said Ms. Grell said a certain degree of competence was required to get a trainee's license, and that some portion of the test needed to be passed. He asked how competent these trainees really were. He asked if a person could totally fail the test and still be a trainee. Ms. Grell said that was not the case at all. She said the written test must be taken before you obtain the trainee license. She said the written test was recently reviewed, updated, and brought up to national standards by a consultant hired by the Board. She said after passing the written test you are a trainee. She said all that remains to obtain licensure is the practical examination which contains 4 sections. If a person passes 3 sections of the test a person is still considered "failed". She said a person could pass the written test, 3 out of 4 of the practical exams, and still retain trainee status. She said this was not an "incompetent" level for a trainee. She said persons that have not taken the practical exam had been underwritten.

Rep. Bohlinger asked Ben Havdahl to respond as a hearing aid consumer to the offered amendments. Mr. Havdahl said he testified comprehensively at the last Conference Committee hearing on SB 80. He said he supported the House amendments as they affected 305 and had no problems with the Senate language concerning training and testing. He said he wanted it made clear that the Board of Hearing Aid Dispensers has not taken an official position on this legislation. He said the Board has not considered or reviewed this legislation. He said there are Board members who support the amendments made in conference committee. He said the Board is split on this issue, and any reference to the Board's position on this issue is erroneous. He said his personal opinion only relates to consumer protection. He said a trainee that cannot pass a practical examination could continue on for 2 years under the supervision as it now stands under the

provisions of 305. He said general supervision is no supervision at all.

Sen. Kennedy asked if a "large problem" exists, why has the Board not come to the Legislature before and asked for legislation. Mr. Havdahl said he was testifying as a hearing aid consumer. Sen. Kennedy said he also supported consumers, but that Mr. Havdahl's testimony conflicted with Ms. Grell's testimony. Mr. Havdahl said he had attended all of the Board meetings since he was a member, and that the Board had not taken an official position on SB 80. He said when this legislation was originally enacted in 1991, it was at the request of the Society of Audiologists and Speech Pathologists, not the Board of Hearing Aid Devices. He said the Board has not been able to agree on proposed legislation.

Sen. Hockett asked if a lawsuit had been filed against the Board. Mr. Havdahl said he could not specifically remember if a trainee had brought a lawsuit.

Sen. Hockett asked Ms. Grell if a lawsuit had been filed. She said it had been filed after the last Board meeting, and the members had been notified by mail. Sen. Hockett asked if the lawsuit had been settled. Ms. Grell said the lawsuit had been settled, and agreed to allow the applicant to renew his trainee license and work toward the next practical exam in October. She said what happens after that depends on the outcome of SB 80. If the bill passes he will be allowed the third exam. Ms. Grell said there is one other applicant in this situation, but she did not know if he would file suit. She said any student who fails their second exam will be in the same situation.

Sen. Hockett said the problem is that the Board cannot agree among themselves. He said it is difficult to deal with this issue when the Board has not taken a position.

Sen. Kennedy said the intent of his motion is to deal with the "exam" problem, and hopefully the Board will "get their act together".

Sen. Rye suggested rejecting the "Kennedy" amendments, and adopting the "Simon" amendments with the additional proviso of striking the immediate effective date. This would provide tougher consumer standards, but allow people 5 months to "get their act together" and pass the exam.

Sen. Kennedy said the House amendments were not approved by the Board either.

Sen. Rye asked Mona Jamison to testify. Mona Jamison said she represented "Audiologists", and she supported the House amendments. She said if the Legislature only handled legislation approved by boards, that would preempt the public from introducing legislation. She said that the "green" bill would

solve the exam issue. She said the Board will never agree on legislation and will be gridlocked. She said the question was whether the additional amendments and later effective date serve the public, and whether or not the public can support amendments that a board does not approve.

Rep. Simon said changing the effective date would put the Board back into the position where they could not offer the third examination which would defeat the purpose of SB 80.

Motion:

Rep. Simon made a SUBSTITUTE MOTION TO AMEND SB 80 (EXHIBIT #3). He said it would make a public policy statement as a Legislature.

Sen. Kennedy spoke against the substitute motion. He said the Board needs to come to the Legislature and ask for legislation.

Vote:

Rep. Simon's substitute motion to amend SB 80 FAILED in a Roll Call Vote with Sen. Kennedy, Sen. Hockett and Rep. Dowell voting NO.

Vote:

Sen. Kennedy's Motion to amend SB 80 (Exhibit #2) FAILED in a Roll Call Vote with Senator Rye, Rep. Bohlinger, and Rep. Simon voting NO.

Motion:

Sen. Kennedy MOVED TO AMEND SB 80 (Exhibit #4). He said this amendment would take care of the number of exams, and it leaves the 90-day direct supervision in, but gives the Board the authority to extend the 90-days if they feel it is necessary.

Rep. Simon spoke against the amendment. He said it would not break the Board's gridlock.

Sen. Hockett asked Mona Jamison her opinion of the amendments. She said she agrees with Rep. Simon and does not find the amendments acceptable.

The Committee discussed the gridlock situation of the Board of Hearing Aid Devices in relation to the Board's composition.

Vote:

The motion (Exhibit #4) FAILED in a Roll Call Vote with Sen. Hockett, Sen. Rye, Rep. Bohlinger, and Rep. Simon voting NO.

Sen. Kennedy said no action was taken on SB 80 during the Free Conference Committee.

ADJOURNMENT

Adjournment: Meeting adjourned at 11:54 a.m.

John Ed. Kennedy Jr.

SENATOR KENNEDY, Chair

David Martin

DAVID MARTIN, Secretary

EK/dm

Ex. # 1
SB 80
4-20-93

CONFERENCE COMMITTEE TESTIMONY
APRIL 20, 1993

Carol Grell
Legal Counsel
Board of Hearing Aid Dispensers

I would like to address concerns regarding SB 80, and the different implications of passing this bill in the original Senate version, and with the House amendments.

ORIGINAL RE-EXAMINATION LANGUAGE

The original amendatory language of SB 80, found at page 2, lines 6 through 23, was an attempt to provide for three attempts at the practical examination for hearing aid dispenser trainees. This amendment became necessary after the language was inadvertently changed during the 1991 session to allow only two attempts at the practical exam.

Section 37-16-405, MCA, currently allows for two renewals of the trainee license. This provision was intended to work in conjunction with a three attempts at examination set-up. The original statutory amendments found in SB 80 would provide for this.

LITIGATION

The Board of Hearing Aid Dispensers has recently had a lawsuit filed against them in District Court by a trainee caught in this contradictory statutory tangle. The trainee had failed one portion only of the practical exam. He was allowed a second attempt at this section during the next exam, but failed one section again. The trainee was then left in limbo, with both attempts at the exam having been given, but only one renewal for the license granted. The Board must, of course, uphold the statutes that are promulgated by the Legislature. They therefore granted a second renewal of the trainee license, even though this candidate cannot re-take the failed portion. He may now work as a "trainee" for six more months, but will not be eligible for full licensure at the end of that time, and will instead simply be out of work in this field for two years. That case was settled just last week.

I anticipate continual lawsuits of this nature for the next two years for this Board, as

they attempt to uphold the statutory language as written, and candidates attempt to gain licensure in the midst of confusing and contradictory language. The Board will almost certainly be back in 1995 to ask the Legislature's help in amending this contradiction out of the statutes if the original SB 80 does not pass here.

The original language of SB 80 would allow the three attempts at the practical exam, in coordination with two renewals of the trainee license, and keep the Board in line with Legislative requirements in the statutes.

HOUSE AMENDMENTS ON TRAINEE REQUIREMENTS

The House amendments to SB 80, found in Section 2 beginning at page 2, line 24, are not additions or changes sought by the Board of Hearing Aid Dispensers.

The Board has not experienced significant problems with the trainee program as set forth in Section 37-16-405, MCA. The current provisions providing for successful completion of a written exam and direct supervision for 90 days, with general supervision following have proven adequate for training and use of candidates in this field.

A. STATISTICS ON TRAINEE COMPLAINTS

Out of approximately 20 complaints to date in 1993, only 2 were filed by consumers against trainees. These statistics indicate that consumers are not experiencing problems with the trainees, or their lack of knowledge or skill.

In any event, the supervisor is always responsible, even under the general supervision period, and will always be available to provide service, a refund, or any other disciplinary action ordered by the Board.

B. COMPETENCE OF TRAINEES

The candidates have always passed a written exam before being issued a trainee license. This exam has recently been reviewed and updated to a national standard by a consultant hired by the Board of Hearing Aid Dispensers. In some professions, a written test is the only requirement for full licensure.

However, the Board of Hearing Aid Dispensers also requires the practical

examination. This exam is given in four sections, consisting of ear molds; fitting and service; audiometer; and audiogram. If any section is failed, another attempt is made at the failed section only. This means the trainee is fully competent in all area passed, and must only obtain additional knowledge in the section failed.

Again, the additional training will be under general supervision, with the supervisor ultimately responsible to all consumers during the additional trainee period. No statutory change, such as that set forth in Section 2 is therefore necessary to somehow achieve greater competence in trainees. The current statutory trainee provisions are already working.

C. 1991 TRAINEESHIP LEGISLATIVE CHANGES

Prior to 1991, the statutes did not address trainee supervision directly. At the 1991 session, the Montana Hearing and Speech Association was involved in the bill which set up the 90 day direct supervision, followed by 9 months of general supervision. The definitions of "direct" and "general" supervision, found at page 5, lines 10 through 19 were also put in place at that time. Since no problems have with this scheme have been identified, or brought to the Board's attention, there does not appear to be a need to make any changes to this section of the statutes.

CONCLUSION

In conclusion, the original SB 80 language amending section 37-16-403 is necessary for the Board to properly administer exams, and will have to be brought again in 1995 if the changes do not pass here. The House amendment to section 37-16-405 on trainee requirements is not necessary, nor sought by the Board. I urge you to pass SB 80 in the original Senate version without the House amendments. I will be available for any questions from the Committee. Thank you.

Σ # 2
SB 80
4-20-93

Amendments to Senate Bill No. 80
Reference Copy

Requested by Sen. Kennedy
For the Free Conference Committee

Prepared by David S. Niss
April 16, 1993

1. Title, lines 6 and 7.
Strike: "REVISING THE FORM OF SUPERVISION UNDER WHICH THE APPLICANT MAY BE REEXAMINED;"

2. Title, line 9.
Strike: ", 37-16-405,"

3. Page 1, lines 15 and 19.
Strike: "SECOND"
Insert: "third"

4. Page 2, line 9.
Following: "BOARD"
Insert: ", unless the taking of the examination at that time is waived by the board"

5. Page 2, line 13.
Following: "BOARD"
Insert: ", unless the taking of the examination at that time is waived by the board"

6. Page 2, lines 20 through 23.
Strike: "THE" on line 20 through "TRAINING" on line 23
Insert: "two practical reexaminations is no longer eligible for reexamination unless the board, by rule, provides for additional education and training before the reexamination may be taken a third time"

7. Page 2, line 24 through page 5, line 19.
Strike: section 2 in its entirety
Re-number: subsequent sections

Amendments to Senate Bill No. 80
Reference Copy

Ex. #3
SB 80
4-20-93

Requested by Rep. Simon
For the Free Conference Committee

Prepared by David S. Niss
April 16, 1993

1. Page 1, lines 15 and 19.
Strike: "SECOND"
Insert: "third"

2. Page 2, line 9.
Following: "BOARD"
Insert: ", unless the taking of the examination at that time is
waived by the board"

3. Page 2, line 13.
Following: "BOARD"
Insert: ", unless the taking of the examination at that time is
waived by the board"

4. Page 2, lines 20 through 23.
Strike: "THE" on line 20 through "TRAINING" on line 23
Insert: "two practical reexaminations is no longer eligible for
reexamination unless the board, by rule, provides for
additional education and training before the reexamination
may be taken a third time"

#4
SB 80
4-20-93

Amendments to Senate Bill No. 80
Reference Copy

Requested by Sen. Kennedy
For the Free Conference Committee

Prepared by David S. Niss
April 16, 1993

1. Title, lines 6 and 7.

Strike: "REVISING THE FORM OF SUPERVISION UNDER WHICH THE
APPLICANT MAY BE REEXAMINED;"

2. Page 1, lines 15 and 19.

Strike: "SECOND"
Insert: "third"

3. Page 2, line 9.

Following: "BOARD"

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

4. Page 2, line 13.

Following: "BOARD"

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

5. Page 2, lines 20 through 23.

Strike: "THE" on line 20 through "TRAINING" on line 23

Insert: "two practical reexaminations is no longer eligible for
reexamination unless the board, by rule, provides for
additional education and training before the reexamination
may be taken a third time"

6. Page 3, line 15.

Following: "days"

Insert: "for the first 90 days, or longer as determined by rule
or order of the board,"

7. Page 3, line 17.

Strike: "until the applicant passes the practical examination"

8. Page 4, line 1.

Following: "dispenser."

Insert: "(c) work for any balance of the training period during
which the applicant may engage in all activities allowed a

licensed hearing aid dispenser, under the general supervision of a licensed hearing aid dispenser."

9. Page 5, line 9.

Following: "section+"

Insert: ":"

10. Page 5, line 10.

Following: "~~a~~"

Insert: "(a)"

11. Page 5, line 13.

Strike: "÷"

Insert: "; and"

12. Page 5.

Following: line 19

Insert: "(b) "general supervision" means oversight by a licensed hearing aid dispenser of those tasks and procedures that do not require the physical presence of the licensed dispenser on the business premises. However, the trainee remains under the licensed hearing aid dispenser's direction, control, responsibility, and evaluation."