

MINUTES

MONTANA SENATE 53rd LEGISLATURE - REGULAR SESSION

FREE CONFERENCE COMMITTEE ON SENATE BILL 80

Call to Order: By Senator Ed Kennedy, Chair, on April 23, 1993,
at 1:45 p.m.

ROLL CALL

Members Present:

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

Members Excused: None.

Members Absent: None.

Staff Present: David Niss, Legislative Council
Laura Turman, Committee Secretary

Discussion:

Sen. Kennedy said there were people from Miracle Ear attending the Conference Committee. He said the last Committee meeting on SB 80 had resulted in an "impasse". Sen. Kennedy asked Rep. Simon if he had complained about Carol Grell being present at the last meeting. Rep. Simon said he had no objections to Ms. Grell being present, but he felt she had taken a position on the bill and represented that position. He said this was not appropriate because she represented the Board and the Board had not taken a position on SB 80.

Sen. Kennedy said Ms. Grell was a registered lobbyist and had said the Board had not taken a position on the bill. Rep. Simon said she was a staff person for the Board and should not have taken a position not agreed to by the Board.

Sen. Kennedy said he had asked Ms. Grell to be present at the meeting to answer technical questions. Rep. Simon said that was entirely appropriate.

Sen. Kennedy said he understood Rep. Simon had complained about Mary Lou Garrett for the same reasons. Rep. Simon said he had not complained about Ms. Garrett's attendance.

Sen. Kennedy said he had a "compromise" amendment to offer. (Exhibit #1) He said it was the same amendment offered at the end of the last meeting, and it would allow the Board of Hearing Aid Examiners to extend the 90-day direct supervision if they feel it is necessary. Sen. Kennedy said he thought this was a "fair approach".

Rep. Simon said he opposed Sen. Kennedy's amendment. He read part of a letter from Ben Havdahl, the consumer member of the Board of Hearing Aid Examiners. His letter stated the House amendments provided greater consumer protection. Rep. Simon read part of a letter from Pat Ingalls, also a member of the Board. That letter stated 3 of the 5 trainees taking the practical examination given on September 26, 1992, did not know the four sizes of hearing aid batteries. Rep. Simon said it was the responsibility of the Legislature to make the decisions that reflect concern consumer protection. He said it was fine to allow trainees to take three tests, but they should be kept under supervision if they fail one test. Rep. Simon said his amendments do just that.

Sen. Kennedy said Rep. Simon's comments were contradictory to Carol Grell's testimony. She said out of 20 complaints, only 2 were filed by consumers against trainees. Sen. Kennedy said the Board should take care of trainees. He said he did not feel people had adequate time to respond to Rep. Simon's amendments.

Rep. Simon said his amendments were adopted in the House Committee. The only difference was the agreement to put Section 1, the part addressing examinations, back into the form it was when the bill came out of the Senate. Section 2 deals with Rep. Simon's amendment added in the House. He said the process had been "unnecessarily" lengthened.

Sen. Kennedy said he had spoken with the President of the Senate about the document Rep. Simon had prepared, and the President said he did not think it was a legal document. Sen. Kennedy asked Byron Randall of the Board of Hearing Aid Examiners to comment on the number of complaints against trainees.

Mr. Randall, Miracle Ear Franchise, said the percentage of complaints against trainees was very small. He said the Board has rules which allows them handle such complaints. Mr. Randall introduced Al Niece, Miracle Ear Consultant from Billings. Mr. Randall said SB 80 proposes a 12-month period of direct supervision. If Mr. Niece could not work, Mr. Randall said he would have to move to Billings to supervise a trainee, or the trainee would have to be brought to his home town of Kalispell for that length of time. Mr. Randall said with the 12-month direct supervision provision, he did not see how his business could survive.

Sen. Hockett asked Mr. Randall if the company had any training programs prior to hiring trainees. Mr. Randall said there was a

two-week training program conducted by an audiologist which involved the technical aspects of the trade.

Sen. Hockett asked Mr. Randall if those trainees took an examination at the end of the two-week period. Mr. Randall said there were tests, written and hands-on, taken throughout the training period.

Sen. Hockett asked Mr. Randall if they then took the state Board examination. Mr. Randall said the trainees took a written test which determines whether they got a trainee license.

Sen. Hockett asked Mr. Randall what the trainees did if they did not pass that exam. Mr. Randall said they took the examination again. He said trainees practice until they pass the exam.

Sen. Hockett said the "bone of contention" was direct supervision versus general supervision.

Mr. Randall said the practical examination was taken during the 12-month traineeship. The first 90 days was under direct supervision, and the remainder was under general supervision.

Sen. Kennedy asked Mr. Randall if the practical examination was only taken at the end of the 12-month period. Mr. Randall said a few trainees had taken the exam after 6 months. He said the law stated the traineeship was to last 12 months.

Sen. Kennedy asked Mr. Randall if there were five parts to the practical examination. Mr. Randall said there were four parts.

Rep. Bohlinger said he was concerned with amendment #12 offered by Sen. Kennedy. (Exhibit #1) He said this amendment did not provide much consumer protection because trainees did not have enough supervision.

David Niss said the amendment would reinsert stricken language which was current law.

Rep. Bohlinger said it still concerned him, even if the language was current law.

Sen. Kennedy asked Mona Jamison to address this issue. Mona Jamison, Montana Speech Pathologists and Audiologists, said her organization supported the amendments, but they did not propose them. She said during the last legislative session, a major rewrite was done of the hearing aid dispensing law. Ms. Jamison said trainees could continue to serve in a trainee capacity even though that individual had not taken the practical exam. They could fail the practical exam, and continue to serve as a trainee. For this reason, they supported the amendments. She said that particular section was not focused upon during the last legislative session.

Rep. Bohlinger asked Ms. Jamison if a hearing aid dispenser in Billings took the exam and failed it, would that individual receive enough additional training through the general supervision criteria to administer hearing aids in a competent manner. Ms. Jamison said she did not think so. She said one solution to the problem posed by Mr. Randall would be to hire another licensed hearing aid dispenser.

Rep. Simon asked Mr. Randall if the statement that 3 out of 5 trainees failed the examination was accurate. Mr. Randall said he did not exactly remember the failure rate.

Rep. Simon asked Mr. Randall if it could be accurate. Mr. Randall said it could be. Sen. Kennedy said that number referred to one portion of the practical examination.

Rep. Simon asked Mr. Randall what it meant to provide direct supervision for 90 days. Mr. Randall said direct supervision meant it was necessary to be physically with the trainee during working hours.

Rep. Simon said direct supervision as defined in the law did not mean physically being there. It just meant being available for easy reference.

Mr. Randall said if his licensed Billings consultant could not be at work, he would have to be in the Billings office for 12 months to directly supervise a trainee.

Rep. Simon asked Mr. Randall if he would have to move to Billings under current law. Mr. Randall said under the current law, he would have a trainee come to his place of work in Kalispell.

Rep. Simon asked Mr. Randall if he understood that under current law the trainee must take the exam within one year, but the exam could be taken after 6 months. Mr. Randall said that was correct.

Rep. Simon asked Mr. Randall what kind of supervision was provided if he were in Kalispell and the trainee was in Billings. Mr. Randall said the trainee would already have had a "tremendous amount" of training and supervision. He said every fitting, testing or order prepared would be checked.

Rep. Simon asked Mr. Randall how it could be checked if he were in Kalispell and the trainee was in Billings. Mr. Randall said he would go to Billings on a regular basis.

Rep. Simon asked Mr. Randall if he had trainees at this time. Mr. Randall said he did.

Rep. Simon asked Mr. Randall if he regularly visited those trainees. Mr. Randall said he did.

Rep. Dowell said the issue at hand was testing. He said many tests are found to be invalid and do not show that much. He said something was wrong with a test if 3 out of 5 failed. Rep. Dowell said it was presumptuous for Legislators to say whether the test is valid or not when none of them had ever taken it. He said the professionals involved are the ones serving on the Board. Rep. Dowell said he would not presume to know what hearing aid dispensers do, and he feels this is too large an issue.

Sen. Kennedy said his amendment said "you guys are the experts" and it gives the Board flexibility.

Sen. Rye asked Sen. Kennedy what the original intent of SB 80 was. Sen. Kennedy said his request was to change the number of tests from two to three.

Sen. Rye asked Sen. Kennedy if it had reached the point where he opposed his own bill. Sen. Kennedy said it had.

Sen. Rye asked Sen. Kennedy what was wrong with existing law that he wanted to change. Sen. Kennedy said SB 80 changed the number of exams from two to three because it had been "inadvertently" left out during the last session.

Sen. Rye asked if there were any compromise possible because he was "tired of being caught in the middle of a Simon-Kennedy dispute" which appeared unresolvable. He said there was a certain "hard headedness" on both sides, and he did not feel he had enough knowledge of hearing aid dispensing to make a judgement. Sen. Rye said the issue was not worth six hours of hearings.

Sen. Kennedy said he would just as soon let the bill die and force the Board to make necessary changes.

Sen. Rye said word of mouth was a powerful thing, and it was possible that customers could be lost if trainees did a poor job.

Sen. Hockett said he agreed with Sen. Rye and Rep. Dowell. He said he could not imagine Mr. Randall wanting trainees working for his company who did not do a good job. Sen. Hockett asked Sen. Kennedy who served on the Board. Sen. Kennedy said the Board included an audiologist, a medical doctor, a consumer representative and two hearing aid dispensers.

Sen. Hockett said if changes needed to be made, the Board and the audiologists should be drafting those changes.

Rep. Simon said consumers rely on tests, and it is the responsibility of the Legislature to protect the consumer. He discovered what he believed to be a weakness in the area of consumer protection in the hearing aid dispenser law. He said his amendment requires more supervision. He said the House

passed the bill with his amendments 93-6.

Rep. Dowell said in most cases the Legislature does not dictate what a Board should do. There was a "glitch" in the law, and that is how the whole problem arose. Rep. Dowell said the Board should deal with this problem during the interim.

Sen. Kennedy said his amendments change the number of exams from two to three and gives the Board flexibility.

Rep. Bohlinger said there was not enough hands on training and direct supervision necessary to protect consumers.

Rep. Simon said he hoped the Committee would vote on his amendments, and if that did not happen, he hoped SB 80 would be killed rather than adopting Sen. Kennedy's amendments. By killing the bill, it is guaranteed there will be another bill during the next legislative session.

Sen. Kennedy said his preference was to adopt his amendments or kill the bill.


Substitute Motion/Vote:

Rep. Dowell moved action be deferred on SB 80. The motion carried 5-1 with Rep. Simon voting "no".

ADJOURNMENT

Adjournment: Sen. Kennedy adjourned the hearing.


SENATOR JOHN "ED" KENNEDY, JR., Chair


LAURA TURMAN, Secretary

EK/lt

EXHIBIT #1
4-23-93
SB80

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."