

EXHIBIT 9
DATE 1-17-05
HB 182

**MHA...An Association of Montana Health Care
Providers**

**Testimony Before the
House Business and Labor Committee**

**Pertaining to HB 182
Generally Revise Professional and Occupational
Licensing Laws**

January 17, 2005

MHA...An Association of Montana Health Care Providers Testimony in Opposition of HB182

MHA opposes passage of HB 182, a bill that eliminates the ability of any licensing board to determine the kind of executive director who can best meet the needs of its licensees. MHA's primary concern is how this bill will affect the Board of Nursing's (BON) ability to effectively address the needs of our licensees and administer the Montana Nurse Practice Act.

As an association that serves most disciplines of the healthcare professions, MHA is in the unique position to interact with the licensing boards on behalf of our members. As a registered nurse for the past 25 years, I have seen many of the infinite number of issues that can arise in increasingly complex health care environments. Health care delivery is changing dramatically and rapidly, and exacerbating the challenges to the work environment for nursing practice is the nationwide shortage of nurses and other allied health professionals.

Nursing Practice and the Board of Nursing

As a regulatory authority, the BON has a mandate to ensure that the public is kept safe through the regulation of nursing practice. One function of the Board is to determine the scope of nursing practice. The scope of nursing practice is that which nurses are educated, competent and legally authorized to perform. The actual scope of an individual nurse's practice is directly influenced by the context from which the nursing takes place, by the needs of clients or patients, by the individual's education and competence, and by the policy requirements of the employer.

Nursing practice incorporates the application of knowledge with skill and judgment in response to an individual's health needs. Both the promotion and maintenance of health is the primary focus of nursing practice. Nursing practice is holistic in nature and care is not restricted to biological requirements; it also addresses psychological, social, cultural and spiritual needs. The focus of nursing practice therefore is the maintenance or attainment of optimal well being, or if this is not possible, establishing the environment for a peaceful death.

Clinical judgment or decision-making is an integral component of nursing practice. The degree of this decision-making is largely determined by the context in which it takes place. Nursing interventions are based on a thorough and individualized nursing assessment of patients/clients. Nursing care must be sensitive, relevant and responsive to patient/client needs and involve, as appropriate, the individual in the decision-making process. This practice must also have the ability to adjust, when and where needed, to changing circumstances.

The nurse practices in cooperation with the individual, family, friends, other health care personnel and the community. Nurses must also practice within the parameters of the state Nurse Practice Act, which is established by its BON. All of the State Boards of Nursing are members of the National Council of the State Boards of Nursing (NCSBN), which is a not-for-profit organization that provides leadership to advance regulatory excellence for public protection. The NCSBN has written its own Model Nurse Practice Act (MNPA), on which much of Montana's Nurse Practice Act is based. The Act's administrative rules are specifically designed to protect public health, safety, and welfare.

Article IV of the MNPA defines the authority for the BON and parameters for how it functions. Section 5(C)(8)(a)(1), Regarding Duties of the Board, states: "Appoint and employ a qualified registered nurse to serve as executive officer and approve such additional staff positions as

may be necessary, in the opinion of the board, to administer and enforce the provisions of the Act.”

The Model Nursing Administrative Rules then describe what qualifications are appropriate for an Executive Officer (Director):

- Licensure in the state as a registered nurse
- Masters degree or higher from an accredited college or university
- At least <> years experience in nursing practice, including administration, teaching or supervision in nursing educational programs, supervision in health agencies or nursing regulation.

The rules continue on to state that the board may authorize employment of “such other employees, assistants, and agents as may be necessary, in the opinion of the Board, to administer and enforce the provisions of this Act.”

It is a national standard that a BON be able to determine what qualifications are necessary for its staff, and particularly, the Executive Director. While not all of Montana’s licensing Boards are staffed by like professionals, it is absolutely essential to the over 14,000 licensed nurses in Montana that their BON has experienced, knowledgeable registered nurses available for the myriad of questions faced every day in real-life practice.

During the past 21 months that Montana has been without a qualified registered nurse readily available at the BON, I have received numerous calls and emails requesting clarification of the NPA. I have many years of clinical experience, yet I was unable to answer several of the questions, and had to prevail upon the Board chair to help me determine the appropriate response. No matter how well either of us knew the rules, we had to apply the individual circumstances of the situation, and have several exchanges to arrive at an answer. Various Board members spent many hours every week dealing with these issues; this is not a tenable situation to continue into the future, which is what would occur if the Department of Labor and Industry (DLI) ever decided an RN license was not a necessary qualification for the BON’s Executive Director.

Under current administrative rule, the BON establishes the qualifications of the Executive Director. However, new language in HB 182 removes this ability (and that of any other Board that feels a professional in its own field is necessary to serve the licensees) and makes the Board rules obsolete (p. 6, lines 14-15). It is absolutely essential that the DLI allow the Board of Nursing to statutorily establish (if its authority to make these rules is removed) the requirements for the number and type of professional staff it needs to serve its licensees, protect the public, and administer its own practice act. HB 182 merely states (p. 6, line 16) “the department may consult with the boards regarding recommendations for qualifications for personnel.”

For MHA and its members, this language is not guarantee enough. Yes, DLI did consult w/the BON during its most recent hiring process. However, the next bureau chief or division administrator may not feel inclined to do so.

MHA strongly urges the committee to consider the implications of this addition to MCA 37-1-121. MHA has discussed this issue w/former Commissioner Keating, and DLI staff is also aware of our views. Establishing the qualifications of a position with this much impact and import on our largest group of licensed health care providers, and on the public, must be done (along with the department) by those who understand the depth and breadth of the practice.