

EXHIBIT 9
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SB 83



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JOHN M. BARROWS
EXECUTIVE DIRECTOR

March 6, 2009

Sen. Ron Stoker, Chairman
Members
House Human Service Committee
State Capitol
Helena, Montana

SB 83 – OPPOSED

For the record, I am John Barrows, Executive Director of the Montana Newspaper Association, representing Montana's 90 daily and weekly newspapers and we are opposed to Senate Bill 83.

While we cannot argue with the goals of the bill, to improve the quality of Emergency Medical Services, the bill as written creates what we view as a serious constitutional conflict concerning the public's right to know and the desire, in this bill, for an unprecedented level of secrecy surrounding its implementation.

Montana's Constitution (Article II Sec. 8) Article II Sec. 9 and Article II Sec, 10) provides for both the right to know, the right to participate and the right to privacy, The right to know, Sec. 9. is subject to restriction ONLY when it is clearly outweighed in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.

This bill would extend that exemption, contrary to our Constitution, to allow meetings to be closed, not for Individual Privacy, but for a nebulous definition of Quality Improvement Purposes.

In doing so, it would legislatively mandate EMS Councils, and specifically open their deliberations to the public. In every aspect the bill sets the trappings of making the councils public agencies, but then exempts from public view, or participation, the very purpose of the councils...QUALITY IMPROVEMENT.

Under the definition of EMS Council, the bill adds the description of who could belong to the council, without a specific description of who would be appointed and how, specifically, they would serve. There is, however, a clear line of responsibility to the Department of Public Health and Human Services, and the Department would be given broad rule-making authority for this purpose.

Section 4 sets the conduct of the meeting, and mandates them to be public bodies, with the information presented at the meetings to be public, unless it involves quality improvement activities, but again, there is no provision for this exemption under Article II, Sec. 9 of the Montana Constitution.

Instead, it specifically exempts discussion and information on the very topic for which they have been established... performance improvement activities and peer review.

Although there may be times when the Right of Privacy, Article II, Sec. 10 of the Constitution, may apply in some circumstances, such as the release of patients' names, etc... there is no provision in this bill for the Balancing Act that our Constitution requires under Section 9, which specifically states the only exemption is where the demand of individual privacy CLEARLY exceeds the merits of public disclosure.

And under Sec. 2-3-201, MCA, there is a specific legislative intent to the Open Meetings law that the law should be liberally construed, in favor of the right to know. Sec. 2-3-203, MCA, Section 3, clearly outlines how the balancing act between public right to know and individual privacy is to be conducted. Both of these sections are omitted in SB 83.

Also in Section 4 of this bill there is a particularly onerous and draconian provision that each member and individual attending the portion of the meeting involving quality improvement activities, will sign a pledge of secrecy... to my knowledge unprecedented in current state law. That very pledge would seem to go against the very grain of Montana citizenship, and adversely affects Article II, Section 7 of the Montana Constitution guaranteeing freedom of speech, expression and press.

Although there is provision for keeping of minutes of closed session, such minutes would, under the bill, not only be confidential and not discoverable, even in court, but the public portion of the minutes, including the date, time and place of the meeting, a list of the members in attendance and the topics discussed, would be essentially useless and meaningless in attempting to understand the discussion.

While during this closed portion of the meeting, there may be indeed some circumstances in which private information, protected under the Right to Individual Privacy, might be redacted or patients names disguised (Patient A), much, if not indeed, most, would be such as to require public accessibility.

Section 5 further ties the bonds of secrecy tighter... making such information not even discoverable in court. This would further hamstring the knowledge of the public, and plaintiffs, to understand the facts behind a certain incident, which had been subject to review under this bill. Taken together, the secrecy requirements of this bill make it particularly injurious to the public in an area, their health and the quality of emergency services, in which they have great interest.

In the case those involved are public employees a number of Supreme Court decisions have even placed a higher level of responsibility and a lessening level of the expectation of privacy to those who are in a position of trust. Specifically, *Bozeman Chronicle v. City of Bozeman* (1993) and *Great Falls Tribune v. Cascade County Sheriff*.

While this bill provides a formal way to review emergency service runs and review performance in an effort to improve service to the public, it at the same time drops an unprecedented cloak of secrecy upon mandated public meetings of the council, at a time when the public, and the state' constitution demands openness and transparency.

As written, this bill not only gives an unchallengeable right of privacy to such meetings, it even protects discussions that would not normally have the right of privacy at any time, such as equipment and dispatching problems or failures.

We ask that this committee give a DO NOT PASS on this bill as written.

Sincerely,

John Barrows
Executive Director
Montana Newspaper Association