

FINAL
Signed:

MINUTES

MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION

COMMITTEE ON PUBLIC HEALTH, WELFARE AND SAFETY

Call to Order: By **CHAIRMAN AL BISHOP**, on February 5, 1999 at
3:25 P.M., in Room 410 Capitol.

ROLL CALL

Members Present:

Sen. Al Bishop, Chairman (R)
Sen. Fred Thomas, Vice Chairman (R)
Sen. Sue Bartlett (D)
Sen. Dale Berry (R)
Sen. John C. Bohlinger (R)
Sen. Chris Christiaens (D)
Sen. Bob DePratu (R)
Sen. Dorothy Eck (D)
Sen. Eve Franklin (D)
Sen. Duane Grimes (R)
Sen. Don Hargrove (R)

Members Excused: None.

Members Absent: None.

Staff Present: Susan Fox, Legislative Branch
Martha McGee, Committee Secretary

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

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 85, 1/28/1999
Executive Action: None

HEARING ON HB 85

Sponsor: REP. BRUCE SIMON, HD 18, Billings

Proponents: Dr. Bill Simons, Optometrist, Helena
Kevin McBride, Optometrist, Billings
Laura Pollster, Optometrist, Billings & Colstrip
Ron Benner, Montana Optometric Association
Larry Obie, Board of Optometry
Tom Rassmussen, Retired Optometrist, Helena

Opponents: Tom Priddy, Opthamologist
Roger Barth, Opthamologist
Gloria Hermanson, Montana Academy of Ophthalmology
Jerry Loendorf, Montana Medical Association
Harry Gibson, Opthamologist

Opening Statement by Sponsor:

REP. BRUCE SIMON, HD 18, Billings, said the bill was very simple; in fact, the introduced bill deleted "topical", so it would read "...prescription of those drugs approved..." and also deleted "not", which would then read "Glaucoma may be treated." An amendment was added in the House to soothe concerns about optometrists performing surgery; in fact, the language clearly stated they could not. He said eyes were one of a person's most precious resources, and when treatment was authorized, that had to be recognized. Therefore, when changes were made, public safety had to be certain; in fact, if he did not believe the bill maintained public safety, he would not be its sponsor.

He said there currently were about 50 ophthalmologists in Montana, and they were the best-trained of those who treated eyes; however, there were about 150 optometrists in Montana. He reiterated ophthalmologists were better trained, though the newer optometrists had better training than the older; in fact, some of the older optometrists had never been trained in the use of drugs.

Since 1977, bills were introduced to allow optometrists to use several kinds of drugs. The sequence was the same, i.e., major opposition to the bills, but eventual passage. The fear was people would lose their eyesight, which of course, was just a fear and not a reality. In fact, a Board was set up to hear complaints regarding the use of the drugs; however, the reality was there has never been a reason for them to meet over these past 20 years because there had not been a single complaint. He again reiterated how every optometrist did not use these drugs, because some had not been trained in their usage.

REP. SIMON reported he had seen letters, filled with horror stories, from both sides, and admitted they could be true, because sometimes things went wrong. He referred to one he saw

where the ophthalmologist said he saw things happening with the optometrist which he did not like, but did not report them because of their friendship. He submitted there was a duty and responsibility to the patients to report any wrongdoing, but the fact was, nothing had ever been reported.

In listening to the testimony, **REP. SIMON** cautioned the Committee to listen for the level of training, issue of access and expertise of the optometrists. They should ask themselves, "If I were in some of the remote areas of Montana, and I had a problem with glaucoma, would I want to wait and get treatment only once a month? Or would I like glaucoma treatment available to me on a regular basis?" He suggested Montanans wanted to have access to help, closer to home, so they were not penalized in seeking the medical treatment needed for the treatment of glaucoma. There were about 40 other states which authorized optometrists to treat glaucoma; however, the medicines used in treatment were not consistent. He said, in order for optometrists to define their scope of practice, they had to come before the legislature and get a bill passed, before they could take the next step. He recapitulated by saying Montana optometrists checked for, recognized and measured for glaucoma; however, they could not treat it, but had to refer the patient to an ophthalmologist.

{Tape : 1; Side : A; Approx. Time Counter : 13.5}

Proponents' Testimony:

Bill Simons, Optometrist, Helena, read his written testimony **EXHIBIT (phs29a01)**, and referred to **EXHIBIT (phs29a02)**, **EXHIBIT (phs29a03)**, **EXHIBIT (phs29a04)**, **EXHIBIT (phs29a05)** and **EXHIBIT (phs29a06)**.

{Tape : 1; Side : A; Approx. Time Counter : 24.5}

Kevin McBride, Optometrist, Billings, read his written testimony **EXHIBIT (phs29a07)**.

{Tape : 1; Side : B; Approx. Time Counter : 0}

Laura Polster, Optometrist, Billings & Colstrip, read her written testimony **EXHIBIT (phs29a08)**.

Ron Benner, Montana Optometric Association, read his written testimony **EXHIBIT (phs29a09)**.

{Tape : 1; Side : B; Approx. Time Counter : 7.9}

Larry Obie, Board of Optometry, read his written testimony **EXHIBIT (phs29a10)**.

Tom Rasmussen, Retired Optometrist, Helena, said he had seen optometry change over the four decades he was a practicing optometrist, and it was a wonderful thing to see. He had been involved with the legislative process over the years, and the letters he received then were much the same as those which were currently being sent. He stated there had never been a complaint to the Optometric Board regarding the use of drugs over the past 22 years. The fact was, if the problems alluded to in the letters were real, the optometrists' malpractice insurance would have skyrocketed; however, the rates had not changed at all. He referred to **EXHIBIT (phs29a11)** and said the American Public Health Association was a national group of about 55,000 members, represented by the public in the consumer area. The group recommended the states update their optometric practice acts to allow for optometric use of those diagnostic and therapeutic pharmaceuticals, which had been determined by the Board to be suitable for their use. He suggested the Board was not dominated by optometrists, but by physicians. He urged support for the bill.

{Tape : 1; Side : B; Approx. Time Counter : 18.8}

Opponents' Testimony:

Tom Priddy, Ophthalmologist, said he had an amendment, which he asked the Committee to consider. He went on to report **HB 85** revised the scope of practice for optometrists, in that it would allow them to independently manage and treat glaucoma. He stated he was a glaucoma specialist, who had received training under two of the more well-known glaucoma specialists of the United States. When he came to Montana, he was the first ophthalmologist to have completed a glaucoma fellowship; however, currently there were four of those specialists in this state. He maintained glaucoma was more complicated than many people realized; in fact, it was actually several diseases, which if treated improperly or too late, resulted in blindness. About 80-120,000 Americans were legally blind from glaucoma, and approximately 2.25 million Americans, 40 years and older, had simple glaucoma; however, estimates showed about half the people did not know they had the disease.

He submitted the treatment of glaucoma was hazardous, because all the medications which were used in the treatment had serious side effects, including the potential of death. It was important to recognize the side effects, because if the medication was stopped immediately, they would usually disappear. He said when he

treated glaucoma, he rarely used oral medications, and if he did, it was only after considerable thought because the side effects were even more serious and frequent. He also pointed out the bill would allow optometrists to prescribe oral steroids, which always produced side effects to some degree; in fact, glaucoma was a potential side effect of steroid use.

He respected the skills of his optometrist colleagues, but suggested the Committee had to answer the question of whether it was reasonable for optometrists to independently treat glaucoma. They felt glaucoma was best treated by ophthalmologists; however, even if the bill passed, it would be best to limit the mode of treatment to topical therapy.

{Tape : 1; Side : B; Approx. Time Counter : 26.9}

Roger Barth, Ophthalmologist, read his written testimony **EXHIBIT (phs29a12)**.

{Tape : 2; Side : A; Approx. Time Counter : 0; Comments : Tape 2 , Side A, began during R. Barth's testimony}

Gloria Hermanson, Academy of Ophthalmology, said they opposed the bill because they felt it placed Montana's glaucoma population at risk, the majority of who were seniors. They felt the bill was unnecessary and Montana citizens had nothing to gain, but a lot to lose. She distributed copies of **EXHIBIT (phs29a13)** and said previous testimony covered much of the material, so she would not repeat it. She stated the bill allowed optometrists to treat glaucoma with topical and oral drugs, and also allowed the use of other oral drugs to treat other diseases. She reminded the Committee glaucoma was a progressive deterioration of the nerve which connected the eye to the brain, i.e., it was as much a neurological, as eye and blinding, disease. Another issue was the increase of glaucoma with advancing age, which meant glaucoma medications might be taken in conjunction with those for other chronic illness of senior citizens. The coordination of these medications was essential. Although 41 states allowed optometrists to treat glaucoma at some level, many states had restrictions and controls on the treatment; however, **HB 85** had none of those safeguards. If "topical" was removed, this bill opened the door for optometrists to unrestricted use of both oral and injectable drugs for use in the treatment of eye disease. She said 20 states prohibited optometrists to use oral medications, and many others severely limited their use. Other states limited or prohibited optometrists in the use of injections, while others did not specifically authorize them to use injectables of any kind. She recounted the Montana Academy of Ophthalmology asked for a "NO" vote on **HB 85** because it did not

guarantee the quality eye care to which Montanans were entitled. However, if the Committee passed the bill, they asked for the restrictions and controls approved by other states. Or at the very least, restrict it to the use of topical drugs in the treatment of glaucoma by optometrists.

{Tape : 2; Side : A; Approx. Time Counter : 12.1}

Jerry Loendorf, Montana Medical Association (MMA), said they endorsed the testimony of **Dr. Tom Priddy** and **Dr. Roger Barth**.

Harry Gibson, Ophthalmologist, addressed the statement made by several people, that no complaints had been made to the Board; however, he suggested many times attempts were made to solve the complaints locally, so never were referred. He said it was his experience if an optometrist referred a patient to an ophthalmologist, and the patient was misdiagnosed, the ophthalmologist would educate the optometrist in the matter. He wondered how well the public would be served if each time there was a misdiagnosis, a complaint would be filed with the Board. He went on to say ophthalmologists had already been trained in glaucoma treatment, but the optometrists would have a learning curve, both in that treatment and medications. It was his opinion that was not best when people of Montana were being served. Also, there was nothing in the bill which prevented intravenous injections.

{Tape : 2; Side : A; Approx. Time Counter : 18.8}

Questions from Committee Members and Responses:

SEN. EVE FRANKLIN asked for response to referral protocols or co-managing patients. **Dr. Bill Simons** said he always asked himself if the patient was getting the best possible care. He felt there were normal and natural limitations in the law, i.e., tightness of where they could treat. However, most ophthalmologists and optometrists referred when the problem was outside their comfort zone.

SEN. DUANE GRIMES commented if over-treatment were used in other states, there would be an indication of that. **REP. BRUCE SIMON** suggested most would agree that optometrists tended to use conservative treatment, i.e., they would not prescribe beyond what was necessary for treatment. In their profession, each time they wanted to expand their scope of practice, they had to appear before this committee and try to convince them of the need; however, medical doctors did not have to do that.

SEN. GRIMES asked about patient safeguards in other states. **REP. SIMON** said it was a legislative process, which really came down to who could do the best job of convincing. For the past 22 years, the restrictions had been peeled off a little at a time; therefore, if the restriction stayed in the bill, it would be back in later legislative sessions. He hoped **HB 85** would be passed in its current form.

{Tape : 2; Side : B; Approx. Time Counter : 0}

SEN. B.F. "CHRIS" CHRISTIAENS commented both ophthalmologists and optometrists would perform the same services if they were with Indian Health Services or Malmstrom Air Force Base. **Dr. Tom Priddy** said it might be true of glaucoma or some medications, but not with surgical procedures. He said he did not know the Federal law, as opposed to state law.

SEN. CHRISTIAENS asked why an advanced practice nurse or physician's assistant, but not an optometrist, should be able to do what was based in the bill. **Dr. Priddy** said he did not know.

SEN. DALE BERRY asked if there would be a certification process for the optometrists, if **HB 85** passed, i.e., would all optometrists practice and treat all levels. **REP. SIMON** said they would not treat glaucoma if they were not trained; in fact, if they treated without the training, their licenses would be revoked.

SEN. BERRY asked for the complaint history in the states which allowed oral medications. **REP. SIMON** said 25 states allowed what **HB 85** was requesting. During the House hearing, an ophthalmologist from the Academy of Ophthalmologists in San Francisco was asked if he was aware of even one complaint in those 25 states. His reply was, "No."

SEN. BERRY asked if it would be practical for the Board of Optometry, through the rules process, to control the list of allowable medications. **Dr. Priddy** said he thought it would be reasonable; however, he was not sure how it would work or how it would be constructed. **Dr. Larry Obie** said it could be handled through the rulemaking process of their Board; however, their concern in making the laundry list, legislatively, was if there was a new medication, they would have to get legislative approval for its use.

SEN. SUE BARTLETT wondered, if **HB 85** passed, how the Board of Optometry determined and authorized an initial set of drugs through the rulemaking process, i.e., how were public comments

received. **Dr. Obie** said the Board would have to meet and decide, based on training and expertise, certification classes and therapeutic certification already in place. That included glaucoma, when it was amended out in 1987. They would have to decide which optometrists were certified, and if there was a new classification of medications which were legislatively approved, they would have to decide which were appropriate, what the appropriate training was, etc. They would seek consultation from the schools and experts in the field to help make the determination through the rulemaking process. At that point, they would ask for public comment. He said that process had not been necessary because the language covered a broad category of drugs in previous therapeutic usage. Injectables were inappropriate treatment by optometrists and would not be allowed by the Board.

{Tape : 2; Side : B; Approx. Time Counter : 9.3}

SEN. DON HARGROVE asked how much work optometrists had, in relation to percent of capacity. **Dr. Kevin McBride** said he stayed very busy, and the volume of patients depended on the length of time or type of practice in which the optometrist was involved.

SEN. HARGROVE asked what efforts at compromise had been made during the past six years. **Dr. McBride** said they met several times during 1993, when they were attempting to add "topical steroids" to their scope of practice. They had some good meetings; however, some were favorable, while others were not. At that point, the matter either had to be dropped, or they had to return to the legislature. He said he valued his close working relationships with many ophthalmologists in his area, and he respected and learned from them.

SEN. HARGROVE asked the same question, from an ophthalmologist's point of view. **Dr. Roger Barth** said generally, they saw more patients than optometrists.

SEN. HARGROVE asked if ophthalmologists had made efforts at compromise. **Dr. Barth** said attempts had been made, but got "bogged down"; in fact, it was enjoyable not to be before the legislature last session. This time there was a meeting to try to work out an agreement, but it was not accomplished. He suggested the more was requested, the stronger the opposition.

{Tape : 2; Side : B; Approx. Time Counter : 16.3}

SEN. JOHN BOHLINGER asked if the fee schedule was the same for both ophthalmologists and optometrists, as pertained to Medicaid

and Medicare patients. **REP. SIMON** said he did not know; however, if the fee schedule was the same, it might be an indication these services could be provided safely.

SEN. BOHLINGER asked about the comment that satellite offices were not very effective in treating glaucoma patients, yet the fact that glaucoma was a slow, progressive disease which did not require emergency service. **REP. SIMON** said some cases required immediate care; however, in general, that was not true. As for accessibility, there were three times more optometrists than ophthalmologists in Montana, and they were scattered across a broad cross-section of the state. Therefore, even in rural areas, optometrists were in their offices every day, rather than once a month, as in the case of an ophthalmologist.

{Tape : 2; Side : B; Approx. Time Counter : 22.7}

SEN. BOHLINGER referred to the map and commented the blues were in different shades, and wondered if there were limits to the different drugs being used. **REP. SIMON** said it was a patchwork quilt because the needs of eye care were different in the various states. Optometrists, across the United States, had to go through a political process to get the next level of treatment.

{Tape : 3; Side : A; Approx. Time Counter : 0}

SEN. BOHLINGER asked about the suggestion this was a health concern, rather than a turf battle. **REP. SIMON** responded, "When they say this is not about turf, it is about turf."

Closing by Sponsor:

REP. BRUCE SIMON said glaucoma in the United States was a serious problem; therefore, it made sense to make more reasonable treatment available. As for Prednisone, it was a scary drug and optometrists would use it very rarely and for a very short period of time. He referred to the issue of co-managing, and said it could cause problems because both parties were on call.

Optometrists treated the anterior segment of the eye, as well as the tissues around the eye; in other words, they did not treat every part of the eye, like the optic nerve. The adopted rules would be very specific about which drugs were and were not allowed. He referred to **EXHIBIT (phs29a14)** to address the issue of side effects of the medications used in glaucoma treatment, and said the information came from the American Academy of Ophthalmology's website. The information said most side effects were not serious, and may disappear after awhile; however, the opponents' testimony was the opposite.

He said physicians' assistants worked and were trained under a doctor; however, they saw patients and wrote prescriptions in a far broader scope than **HB 85** would allow optometrists. Also, their education was less than that of the optometrists. Nurse practitioners also had prescriptive authority, and their overseer was the Board of Nursing, and not a medical board.

He recounted **HB 85** was important to Montana's citizens and asked the Committee to resist any amendments to the bill, because it was a safe bill which would be handled responsibly by the optometrists.

ADJOURNMENT

Adjournment: 5:35 P.M.

SEN. AL BISHOP, Chairman

MARTHA MCGEE, Secretary

JANICE SOFT, Transcriber

AB/MM

EXHIBIT (phs29aad)