

SENATE COMMITTEE ON HEALTH CARE AND BIO-ETHICS

May 4, 1993           Hearing Room C 3:00 p.m.   Tapes 69 - 72

MEMBERS PRESENT:   Senator Bob Shoemaker, Chair Senator Jeannette Hamby,  
Vice Chair Senator Joyce Cohen Senator Bill McCoy Senator Gordon Smith

STAFF PRESENT:           Barbara Coombs, Administrator Dick Shoemaker,  
Administrator/Assistant Joan Green, Assistant

MEASURES HEARD:   SB 683 relating to cooperative programs for  
transplant services, WS SB 859 relating to declaration for mental  
health

treatment, WS SB 450 relating to dental hygiene, WS SJM20 memorializing  
President, White House Task Force on Health Care and Congress to make  
long term care

essential part of health care reform, PH/WS SB 983 relating to  
investigations of practice of

dentistry, PH

WITNESSES:           Mike Crew, Oregon Medical Association Frank  
Mussell, Assistant Attorney General Dell Isham, Oregon Dental  
Hygienist's Association Jane Myers, Oregon Dental Association Bob  
Joondeph, Oregon Advocacy Center Janice Berger, St. Vincent Steve  
Telfer, Legacy Health Systems Pam Edens, Oregon Alzheimer's Public  
Policy Committee Walter Dawson, Citizen Barbara Cornell, Multiple  
Sclerosis Society Joyce Bernheim, Oregon Association of Hospitals  
Herbert Goodman, DOS, Oregon Board of Dentistry Nic Marineau, Oregon  
Dental Association Raymond Mensing, Citizen Kurt Hansen, Citizen Ed  
McGlove, Citizen

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These minutes contain materials which paraphrase and/or summarize  
statements made during this session. Only text enclosed in  
quotation marks report a speaker's exact words. For complete contents  
of the proceedings, please refer to the tapes. [--- Unable To Translate  
Graphic ---]

TAPE 69, SIDE A

006   Chair Shoemaker: Meeting called to order at 3:16 p.m.

WORK SESSION SB 683 RELATING TO COOPERATIVE PROGRAMS FOR TRANSPLANT  
SERVICES

015   Barbara Coombs, Administrator: Reviews the status of the  
bill. Discusses the principles that were adhered to in drafting the  
proposed

amendments, Exhibit A and Exhibit B. Reviews amendments section by  
section, Exhibit A.

137 Sen. Cohen: On pg. 11, ln. 5, Exhibit A; who makes the selection of order?

139 Coombs: Order was so important that we gave it a definition which appears on pg. 5, lns. 5-8, Exhibit A.

145 Sen. Cohen: It is not even the Council; just the director? We're giving them actual rule making authority.

148 Coombs: I had to go through the draft that was copied one more time to make sure the separation of authority between the committee and Director was intact and tracked well through the bill. This is one area where it had to change. It is not the Director that issues the orders; it's the

committee that issues the orders.

152 Sen. Cohen: That is the subcommittee of three of the Health Council?

154 Coombs: Concur, as established by this bill.

162 Sen. Cohen: Is there a reference in this statute to the Administrative Procedures Act?

163 Coombs: Yes.

165 Chair Shoemaker: Who would constitute that committee?

166 Coombs: Reviews composition of the committee.

177 Chair Shoemaker: They need not be members of the Council?

178 Coombs: No.

182 Sen. McCoy: Who represents agency?

184 Coombs: The committee is a State Agency.

186 Sen. McCoy: The three members should be experts more or less; they have the final authority?

188 Coombs: There is an appeals process. Continues with review of amendments, Exhibit A.

206 Mike Crew, Oregon Medical Association: Speaks to the proposed amendments to SB 683, Exhibit A. The current proposal goes beyond the

oversight set forth in the original bill. Refers to the OMA Proposal, Exhibit B and his concerns: 1) Pg. 10, 5; recommends language requiring physician involvement on the board. 2) Pg. 11, 6; concerned the setting aside of those fees may violate ERISA. 3) Pg. 13, 10, (1) is confusing in the current format. Could be clarified if it read

"during either the annual review . . .". 4) Pg. 14, (2) (a), don't understand the necessity of a \$50,000 fine; we would oppose that. And 5) pg. 14, 11 is troublesome to the Oregon Medical Association (OMA).

367 Coombs: The thinking was not to violate ORS 41.675. My interpretation is that "may" was permissive.

368 Crew: We read it that a participant could provide confidential information. The only confidential information we are aware of that

would be otherwise inpropitiatory would be peer review information.

370 Coombs: I thought this primarily had to do with trade secrets and business information.

371 Crew: With modification that could be clarified.

373 Chair Shoemaker: What if it read "if parties to a cooperative provide . . . Oregon law, . . . shall not be deemed a waiver . . .". Would that

give you a level of confidence?

378 Crew: Concur.

391 Chair Shoemaker: It would appear that there are three substantive options. Lists them. Which would be your preference?

TAPE 70, SIDE A

004 Crew: Responds.

012 Joyce Bernheim, Oregon Association of Hospitals: Speaks to four major areas of concern and cannot support the language in its present form.

025 Chair Shoemaker: We're running out of time.

033 Bernheim: Responds. Concerns: 1) the scope of the guidelines.

042 Sen. Smith: Please be more specific regarding the hiring of physicians.

045 Bernheim: Responds. Continues with list of concerns: 2) the scope of the veto power on the part of the public member.

070 Sen. Cohen: Why would any one single person be given a veto power of this type?

073 Chair Shoemaker: The public has a definite interest in protecting against unnecessary capital expenditures and unnecessary personnel.

080 Sen. Cohen: I thought we only had three members.

082 Chair Shoemaker: Four, one from each of the three institutions

and the public member.

085 Sen. Cohen: We are still going to give a single person on the Operational Board a veto power on an ongoing basis?

107 Chair Shoemaker: Reviews process and reasoning; this is a way to have the public . . .

115 Sen. Cohen: I want to register my objection to a single individual, wherever and whomever, scuttling everything.

122 Bernheim: Continues with concerns: 3) concerned about the language in 10, pg. 13, ln. 9, Exhibit A.

155 Chair Shoemaker: Let's delete "or willfully failed to comply with the terms and conditions of the order granting approval,".

166 Bernheim: Concurr. Continues with concerns: 4) refers to pg. 16, 14, Exhibit A and the rights of third parties.

255 Chair Shoemaker: If we were to remove the veto provision, other than the anti-competitive aspects of this and make the other changes as

agreed to, would we have the support of the Association?

257 Bernheim: Responds.

266 Steve Telfer, Legacy Health Systems: Speaks to the amendments, Exhibit A. Feels the amendments are overly regulatory.

314 Janice Berger, St. Vincent: Speaks to concerns with the bill. The public member's veto power is an issue. The proposal would be

burdensome in a number of aspects. I would suggest setting our goals;

let us run with it and let us know if we are stepping out of line.

346 Chair Shoemaker: The process called for in the bill is the result of consultation with the Attorney General's (AG) office. This is necessary for the protection of this program, based on the opinion of the AG.

384 Bernheim: The incentives in health care are shifting quickly. If you set-up your incentives properly hospitals will do what you want because it is in their interest to do it. If you set-up a system of regulation hospitals will follow where the incentives lead them and try to evade

the regulations if that is not where their incentives are. SB 683, as revised, the Association would not take a position. Our preference to SB 756 would be to work on the language further.

TAPE 69, SIDE B

017 Chair Shoemaker: If we were to limit the scope of the veto to the anti-competitive part and modify the cease and desist

provision as

discussed the Association would be generally supportive of the bill; with reservations about the guidelines, but would not argue against the bill on that account, correct?

026 Bernheim: Not with respect to SB 683. 028 MOTION: CHAIR SHOEMAKER MOVED TO DELETE LANGUAGE ON PG. 10, LN. 7, EXHIBIT A "AND WHICH MAY RESULT IN INCREASED COSTS, PRICES, PERSONNEL POSITIONS OR CAPITAL EXPENDITURES."

040 Bernheim: The intent of the amendment is that even though there are guidelines in place and the program is operating in accordance with

those guidelines; that even within the confines of those guidelines the public member could exercise a veto?

046 Telfer: Refers to 9, Exhibit A. That opens a door, I believe, under the Administrative Procedures Act to any aggrieved party coming in and

saying "I don't like something in this guideline."?

052 Sen. Cohen: Presents a possible scenario. Is that the issue?

061 Bernheim: Responds to proposed scenario. That is what I want to think through.

073 Chair Shoemaker: The concern is appropriate. What if we added after the word "effects" language saying "and which that designee believes

departs from the guidelines."?

080 Bernheim: I guess we understood that if there were a departure from the guidelines it should be handled by the committee.

085 Chair Shoemaker: They don't get to it until after the fact.

090 Bernheim: If there is a disagreement how would that be resolved?

093 Chair Shoemaker: I suppose the veto could be challenged and be contested in an Administrative proceeding.

098 Bernheim: That is not provided for in this bill.

113 Sen. Hamby: Would it move more quickly if the witnesses and the Assistant AG were to sit down together.

116 Bernheim: I think there is a solution to that problem. Did the AG say that anti-competitive positions must be stopped in advance?

123 Coombs: Responds.

138 Sen. Cohen: What is the relationship between the State Committee and the one lone person sitting on that Board with veto power? Are we

giving them the authority to be the diviner of truth regardless of what anybody else says? Is that what is necessary?

146 Coombs: No.

147 Sen. Cohen: I think there are different accesses available to the committee without providing absolute veto power to a single individual. It seems cumbersome to me.

155 Coombs: It is the Assistant AG's opinion that the actual act of supervision that makes this legal resides in the agency, not in the

designee.

159 Sen. Cohen: I would rather have a dissenting board member bring it forward to the committee rather than be given the veto power. If the

three person committee and the director are the real authority let them be.

173 Chair Shoemaker: We can do that.

180 Coombs: I think if on pg. 10, ln. 5 we changed "veto" to "report" that would be accomplished.

183 Chair Shoemaker: That is provided for anyway. I guess we would eliminate veto entirely? We would delete 5, (4), Exhibit A?

194 Sen. Smith: What has been done with the operational concerns?

204 Chair Shoemaker: I think they will be left in place in this bill and I believe they are comfortable with that and would work with that in the

other bill, if we moved forward with the other bill.

198 Coombs: Reviews the motion to the amendments. On pg. 13, ln. 10, delete "b" and insert "a" and in that line delete "or wilfully failed to comply with the terms and conditions of the order granting approval,".

In that case I would recommend two additional amendments. Right now only the Director can issue this cease and desist order. On pg. 12, ln. 24, Exhibit A I would recommend adding language "if the Director or Committee determines . . ." ??? and on pg. 13, ln. 2, would need to read "Director or Committee may direct the . . . to cease and desist . . .".

219 Chair Shoemaker: Would it be appropriate to expand the list of certain actions in 10, Exhibit A to the Director or the Committee?

224 Coombs: That could be done. The thinking is that it is not necessary to go to the Committee. We wanted to allow the Director the flexibility to meet the needs quickly on both the parts of the provider and the

State.

230 Chair Shoemaker: If we say Director or Committee that could work itself out, as appropriate under the given circumstances?

234 Coombs: I think that you want to save the punitive and critical things for the Committee in 10 (2), Exhibit A.

238 Chair Shoemaker: I was referring to 10 (1), Exhibit A.

242 Bernheim: Concur.

244 Telfer: In 10, (1), Exhibit A if we say "Director or Committee may modify a guideline . . .", do we really want to authorize them to change guidelines on their own initiative?

250 Coombs: I think that was the intention in even the Oregon Hospital Association's draft.

251 Bernheim: Under the limited circumstances, if conditions have changed. Also reserved the issue on the standing that Sen. Cohen had raised.

262 Sen. Cohen: I am concerned that we are inviting dissatisfied clients clogging up the process.

272 Chair Shoemaker: I am open to finding a way to leave the process open to legitimate complaints without opening it up to the world at large.

275 Telfer: Would that include my concern about 9?

279 Chair Shoemaker: That is different.

281 Bernheim: I think Steve's and my concern is to create an appropriate grievance process, but avoid creating a frivolous grievance standing.

287 Chair Shoemaker: Requests those concerns be addressed in the House.

303 MOTION: CHAIR SHOEMAKER WITHDRAWS EARLIER MOTION AND MOVED AS CONCEPTUAL AMENDMENTS TO THE BILL ON PG. 5, LN. 7 CHANGE "DIRECTOR"

TO "COMMITTEE"; ON PG. 10, DELETE 5 (4), LNS. 4-8; ON PG. 12, LN. 8

AFTER "REVIEW," INSERT "OR"; THROUGHOUT THE BALANCE OF 10, (1) ADD

"OR COMMITTEE" AFTER EACH APPEARANCE OF "DIRECTOR"; PG. 13, LN. 10

CHANGE "THE" TO "A" AND DELETE THE PHRASE BEGINNING ON LN. 10 AND

CARRYING OVER TO LN. 11 "OR WILFULLY FAILED TO COMPLY WITH THE TERMS AND CONDITIONS OF THE ORDER GRANTING APPROVAL".

344 VOTE: HEARING NO OBJECTIONS, SO ORDERED.

350 Coombs: On pg. 14, ln. 5, Exhibit A insert prior to "Parties" the

word "If"; delete "may" in that line; on ln. 8 delete "." and add "such".

358 Chair Shoemaker: And strike "made pursuant to this subsection".

345 MOTION: CHAIR SHOEMAKER MOVED THE CONCEPTUAL AMENDMENT TO THE PROPOSED AMENDMENT, PG. 14, 11, EXHIBIT A, AS FOLLOWS: "IF PARTIES TO A COOPERATIVE PROGRAM AGREEMENT PROVIDE TO THE DIRECTOR AND COMMITTEE WRITTEN OR ORAL INFORMATION THAT IS CONFIDENTIAL OR OTHERWISE PROTECTED FROM DISCLOSURE UNDER OREGON LAW SUCH DISCLOSURE SHALL NOT BE DEEMED A WAIVER OF ANY RIGHT TO PROTECT SUCH INFORMATION FROM DISCLOSURE IN OTHER PROCEEDINGS."

363 VOTE: HEARING NO OBJECTION, SO ORDERED.

366 MOTION: CHAIR SHOEMAKER MOVED THE MAY 4, 1993 PROPOSED AMENDMENTS, EXHIBIT A, AS AMENDED.

371 VOTE: HEARING NO OBJECTION, SO ORDERED.

372 MOTION: CHAIR SHOEMAKER MOVED SB 683 AS AMENDED TO THE FLOOR WITH A DO PASS RECOMMENDATION.

376 Sen. Smith: With these amendments everyone is still in favor of this bill proceeding?

362 Telfer: Responds.

375 Sen. Smith: I'm torn by this bill and have been from the outset. I will vote yes with grave misgivings.

387 Sen. Cohen: I hope we can fix the standing issue so as not to invite people to come and complain without first going to their provider.

402 VOTE: MOTION CARRIED, 5-0.

TAPE 70, SIDE B

SB 756 RELATING TO HOSPITAL COOPERATIVE PROGRAMS

015 General consensus by the Committee to return to this bill and the Oregon Medical Association's proposal at a later date.

SB 859 RELATING TO DECLARATION FOR MENTAL HEALTH TREATMENT

067 Bob Joondeph, Oregon Advocacy Center: Reviews the SB 859-2 amendments, Exhibit C.

144 MOTION: CHAIR SHOEMAKER MOVED THE PROPOSED CONCEPTUAL AMENDMENTS, PG. 7, EXHIBIT C TO THE SB 859-2 AMENDMENTS, EXHIBIT C.

145 VOTE: HEARING NO OBJECTIONS, SO ORDERED.

147 MOTION: CHAIR SHOEMAKER MOVED THE SB 859-2 AMENDMENTS, AS AMENDED.



148 VOTE: HEARING NO OBJECTION, SO ORDERED.

149 MOTION: CHAIR SHOEMAKER MOVED SB 859 AS AMENDED TO THE FLOOR WITH A DO PASS RECOMMENDATION.

152 VOTE: MOTION CARRIED, 4-0. (EXCUSED: SEN. McCOY). SEN. HAMBY WILL LEAD THE FLOOR DISCUSSION.

SB 450 RELATING TO DENTAL HYGIENE

165 Barbara Coombs, Administrator: Reviews the action the Committee has already taken. 166 Chair Shoemaker: We adopted the SB 450-2 amendments, Exhibit D which replace the bill and so that would also replace the SB 450-1 amendments to the bill.

175 Dell Isham, Oregon Dental Hygienist's Association: Reviews the SB 450 -3 amendments, Exhibit E and a handout, Exhibit F.

192 Chair Shoemaker: Refers to the SB 450-1 amendments; are they no longer needed?

205 Isham: Reviews the SB 450-3 amendments, Exhibit E.

236 Chair Shoemaker: The SB 450-3 amendments, Exhibit E would make it appear as if 4, (3) and (4) are present language except for one very

small change?

239 Isham: That is an error; (4) should all be bold print. Continues with review of the SB 450-3 amendments, Exhibit E.

256 Chair Shoemaker: Reviews the effect of the proposed amendments, Exhibit E.

269 Isham: The traditional dental office is excluded. The SB 450 -3 amendments relate only to public institutions, health maintenance

organizations, health care facilities and limited access patients.

274 Chair Shoemaker: I don't see the limitation on that.

295 Isham: Responds.

297 Chair Shoemaker: I think more work is necessary. Conveys what he thought was the agreement. I don't think this language accomplishes

that.

323 Jane Myers, Oregon Dental Association: Reviews the 450-2 amendments, Exhibit D.

415 Chair Shoemaker: Requests Ms. Myers' comments assuming that the Hygienist's amendment emerges; would it authorize hygienists to provide services to under-served populations which would otherwise not have

ready access to a dentist.

TAPE 71, SIDE A

006 Myers: Responds.

017 Chair Shoemaker: What would be your problem in providing dental hygiene to under-served populations without supervision after having gone

through a credentialed period and being approved by the Board of Dentistry?

018 Myers: We cannot support a different standard of care in under-served populations.

030 Chair Shoemaker: Why can't we go forward with this now rather than having a two year study?

034 Nic Marineau, President, Oregon Dental Association: Responds.

045 Chair Shoemaker: Doesn't the Board of Dentistry have the ability through rules to control that?

049 Marineau: If it includes education.

059 Sen. Hamby: If the Committee would like to go with the Board of Dentistry's proposal I have no quarrel, but I would like to see a more

balanced approach.

070 Chair Shoemaker: I'm wondering whether a two year study is needed.

073 Sen. Cohen: I don't see that either set of amendments meet my concerns. There is no protocol to link a practitioner of dental hygiene with an

interacting dentist.

114 Chair Shoemaker: Requests all players work on amendments that meet the objectives outlined by Committee members. I'm not inclined to create

another task force for the sake of another study. The ability to set rules should allow for effective control of quality.

128 Sen. McCoy: Refers back to Sen. Hamby's comment. Cites nurse practitioners as one of the professional groups that operate

independently. Educational standards can be established to address this. I don't know why this particular group is a problem. The dentists are just not ready to give and I am ready to have them give some.

PUBLIC HEARING

SJM20 MEMORIALIZING PRESIDENT, WHITE HOUSE TASK FORCE ON HEALTH CARE AND CONGRESS TO MAKE LONG TERM CARE ESSENTIAL PART OF HEALTH CARE REFORM

173 Sen. Hamby: Introduces witnesses.

182 Chair Shoemaker: Declares a potential conflict of interest in that I'm a member of the Board of the Columbia-Willamette Chapter of the Oregon

Alzheimer's Association.

184 Pam Edens, Oregon Alzheimer's Public Policy Committee: Speaks in support of the bill, Exhibit G.

245 Walter Dawson, Citizen: Speaks in support of the bill, Exhibit K.

321 Barbara Cornell, Multiple Sclerosis Society: Speaks in support of the bill, Exhibit I.

371 Sen. Smith: I think the in-home treatment plays into the public interest, as well as the private interest. I certainly support that.

Testimony submitted for the record by Mary Lou McClenaghan, Exhibit H and Clara Dawson, Exhibit J.

WORK SESSION

396 MOTION: SEN. McCOY MOVED SJM 20 TO THE FLOOR WITH A DO PASS RECOMMENDATION.

400 VOTE: MOTION CARRIED, 5-0. SEN. HAMBY WILL LEAD THE FLOOR DISCUSSION.

PUBLIC HEARING

SB 983 RELATING TO INVESTIGATIONS OF PRACTICE OF DENTISTRY

425 Raymond Mensing, Citizen: Speaks in support of the bill and the SB 983-1 amendments, Exhibit L.

TAPE 72, SIDE A

035 Mensing: Continues with testimony.

077 Chair Shoemaker: The substantive change is on pg. 3, lns. 3-9 of the bill and the new language would come in correct?

082 Mensing: Correct.

086 Sen. Smith: What were you referring to about community standards?

088 Mensing: Responds.

089 Sen. Smith: Does that differ greatly from Oregon to New York?

090 Mensing: Responds.

099 Sen. Smith: If it were Beverly Hills you would have gold fillings, the Bronx might be whatever works?

102 Kurt Hansen, Citizen: Responds. Speaks in support of the bill.

168 Chair Shoemaker: You refer to cases you have handled and the standard of the bill not being met in any of them. How many cases have you

handled?

169 Hansen: Responds.

179 Ed McGlove, Citizen: Speaks in support of the bill.

244 Chair Shoemaker: Your testimony seems to go far beyond setting time lines within which they shall act, request information, etc. Where in

the bill would this fall within the Board of Dentistry's authority?

246 McGlove: Responds.

259 Sen. Cohen: He wants to adopt grievance procedures. 261 McGlove: Responds.

272 Herbert Goodman, DOS, Oregon Board of Dentistry: Speaks in opposition to the bill. Submits letter from the Attorney General, Exhibit M.

305 Sen. Cohen: How would a 120 day limitation on bringing an investigation provide anybody to escape a proper discipline?

307 Goodman: Responds.

411 Chair Shoemaker: There are two other substantive provisions in this bill; do you have any problem with those?

TAPE 71, SIDE B

006 Goodman: Responds.

029 Frank Mussell, Assitant Attorney General (AG): Responds.

048 Sen. Hamby: Requests the Assistant AG to speak to the proposed amendment, ln. 3, Exhibit L.

052 Mussell: Responds.

062 Dick Shoemaker, Administrator: Responds.

065 Sen. Hamby: Refers to 3, paragraph 2, Exhibit M. According to the amendments they still remain, correct?

073 Mussell: Responds.

081 Sen. Hamby: Calls the Committee's attention to the Assistant

AG's opinion, pg. 2, Exhibit M.

087 Mussell: Responds.

105 Sen. Smith: Do you have a due process procedure?

109 Mussell: Responds.

127 Sen. Cohen: I have a concern about why we should not move ahead with the 120 day piece.

131 Mussell: Responds.

Meeting adjourned at 6:15 p.m.

Submitted by:

Reviewed by:

Joan Green  
Administrator

Dick Shoemaker Assistant

EXHIBIT LOG:

A - Proposed amendments to SB 683 - Staff - 16 pages B - Proposed amendments to SB 683 - OMA - 17 pages C - SB 859-2 amendments - Staff - 7 pages D - SB 450-2 amendments - ODA - 2 pages E - SB 450-3 amendments - ODHA - 2 pages F - Handout to SB 450 - Staff - 1 page G - Testimony on SJM20 - Edens - 3 pages H - Testimony on SJM20 - McClenaghan - 2 pages I - Testimony on SJM20 - Cornell - 6 pages J - Testimony on SJM20 - C. Dawson - 2 pages K - Testimony on SJM20 - W. Dawson - 4 pages L - SB 983-1 amendments - Staff - 2 pages M - Letter on SB 983 - AG - 3 pages N - Testimony on SB 983 - Mensing - 2 pages O - Testimony on SB 983 - Hansen - 3 pages