

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.

HOUSE COMMITTEE ON BUSINESS AND CONSUMER AFFAIRS SUBCOMMITTEE NO. 3

April 29, 1991
M.

Hearing Room 137 9:00 A.
Tape 10 - 13

MEMBERS PRESENT: Rep. Hedy L. Rijken, Chair Rep. Lisa Naito Rep. Beverly Stein

MEMBER EXCUSED: Rep. John Schoon

STAFF PRESENT: Terry Connolly, Committee Administrator Annetta Mullins, Committee Assistant

MEASURES CONSIDERED: HB 2791 PH & WS HB 2792 PH HB 2973 PH

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TAPE 10, SIDE A

004 CHAIR RIJKEN calls the meeting to order at 8:36 and opens the public hearing on HB 2791.

HB 2791 - REQUIRES CPR CERTIFICATION FOR MAINTENANCE OF DENTAL HYGIENE LICENSE. Witnesses: Dell Isham, Oregon Dental Hygienists' Association

TERRY CONNOLLY, Administrator, reviews the Preliminary Staff Measure Summary (EXHIBIT A).

007 DELL ISHAM, Oregon Dental Hygienists' Association, submits and paraphrases a prepared statement in support of HB 2791 (EXHIBIT B).

033 REP. NAITO: Is this provided by rule?

MR. ISHAM: It is provided by rule. There wasn't support for it from all licensees. Therefore, the rule was deleted. We would like to see it reinstated by law and required there be a rule in place.

041 CHAIR RIJKEN closes the public hearing and opens the work session on HB 279 1.

045 MOTION: REP. NAITO moves that HB 2791 be sent to the full committee with a DO PASS recommendation.

VOTE: In a roll call vote, REPS. NAITO, STEIN and CHAIR RIJKEN vote AYE. REP. SCHOON is EXCUSED.

048 CHAIR RIJKEN declares the motion PASSED.

048 CHAIR RIJKEN opens the public hearing on HB 2792.

(Tape 10, Side A) HB 2792 - AUTHORIZES DENTAL HYGIENIST UNDER GENERAL SUPERVISION OF DENTIST TO ENGAGE IN PRACTICE OF DENTAL HYGIENE IN ANY PLACE WHERE LIMITED ACCESS PATIENTS ARE LOCATED. Witnesses: Rep. Marie Bell John Poulson, Oregon Dental Association Clayton Stearns, Oregon Dental Association Dell Isham, Oregon Dental Hygienists Association Lynn Ironside, Dental Hygienists' Association Erwin Weichel, Periodontist Cynthia Layport, Periodontist Barbara L. Nay, Oregon Dental Association Linda Latshaw, hygienist Frank Armstrong, Governors Commission on Senior Services Nick Marineau, dentist Susan M. Sanzi-Schaedel, hygienist Margie Reveal, hygienist

051 MR. CONNOLLY reviews the Preliminary Staff Measure Summary on HB 2792 (EXHIBIT C).

056 REP. MARIE BELL: I am a former dental hygienists, trained at the University of Oregon Dental School and became an instructor at Lane Community College in dental hygiene. I served as the Oregon president of the association. I have not practiced in the last 15 years. I looked at this bill as other bills involving auxiliary personnel. I studied this bill and asked myself if the individuals are educated for what they are asking to do, are there proper regulations and proper liability coverage. As I read the bill and understand the rules, this bill is putting into statute what is already in the rules. I believe in the area of health care the professionals are going to have to face the fact that delegation is going to have to be a way of life. We can only reach the rural areas by delegation. We don't have ophthalmologist or dentist in every community. We don't have specialists in all areas. People sometimes prefer not to go to a professional and will pay less. We have to look at education, regulation and liability and prepare for the time when we face this head on by having the dental hygienist rule in statute. This bill is simply laying the groundwork for when the time comes. Dental hygienists have always maintained an extremely high level of professionalism. I believe they are highly over educated.

Many of these things are in rule. On page 2, lines 17 through 21 address not only what hygienists, but anybody else, do on a routine basis. A preliminary screening is simply looking in the mouth with a flashlight and tongue depressor to determine whether dental care is needed. The last part of the sentence is irritating to the dental profession because they believe it is getting into the area of diagnosis. The people involved in screening are very careful to not make the diagnosis but to bring to their attention they need to see a dentist.

Lines 12 and 13 relate to general supervision. This already is occurring. It simply means a hygienists could go into a nursing home, a school, or facility where the patients are not able to get to the dentists easily and take care of dental hygiene procedures.

178 REP. NAITO: If we looked at this to allow preliminary screening, why not end the sentence and not define the advantages which may go into the area of diagnosis?

REP. BELL. That is one option. The other option was to end the sentence after "dental hygiene services are necessary" (page 2, line 19). Your suggestion would be preferable because if there is a definite effort to leave out the last clause, you may be saying the dental hygienist can't do it but the moms, nurses, aides and the principal can. I would do it after "groups" and leave it to the preliminary screening.

188 JOHN POULSON, DDS, Chairman, Government Relations Committee, Oregon Dental Association: We are in opposition to this bill. It is uncomfortable to be in opposition to the hygienists who serve us so well. We are concerned about the treatment of the citizens and believe the bill extends the scope of practice of hygienists without supervision by a dentist. We believe they will not be able to identify the small lesions that would turn into big lesions.

263 REP. NAITO: My understand of this is the intent would be that screening would be to determine whether dental services should be sought. There may be some problems as written, but would there be objections to that? Are dentists going out to communities and schools to determine if there are needs?

275 DR. POULSON: Yes. We do that in the screening situation. We refer them to a dentist. Our concern is that anybody can identify gross lesions. We are concerned about the small ones that can lead to malignancy, etc.

286 REP. STEIN: Section 3 indicates there would be a change regarding the law on the number of dental hygienists. Do you oppose or support that?

270 DR. POULSON: We think that addition would limit the supervision of the dentist. Our concern is that someone will open up a clinic with one dentists to supervise many hygienists so they can get closer to the independent practice of hygiene.

315 CLAYTON STEARNS, a practicing dentist and President, Oregon Dental Association: We would oppose Section 3 because it does not address the concerns about supervision. The one-to-one ratio is not common. It is much more common to see two or three dental hygienists in a dental office. It does not take much for the board to allow for more than a one-to-one ratio. That provision is in the law now.

333 REP. STEIN: The existing language does not reflect current practice and you are saying "when authorized" is dominant. There may be a need for some change to bring the statute into reality.

342 DR. STEARNS: A 2-1 ration would be reasonable and it should also allow for those situations or cases where the board may feel more than that ratio may be appropriate. The board should be able to maintain that control.

381 DR. STEARNS submits and reads a prepared statement in opposition to HB 279 2 (EXHIBIT D).

TAPE 11, SIDE A

030 DELL ISHAM, Executive Administrator, Oregon Dental Hygienists Association, submits and reviews a prepared statement in support of HB 2792 and proposing amendments (EXHIBIT E).

183 REP. NAITO: On lines 4 and 5 of page 2, it appears authorized procedures may be performed at a place other than the usual place of practice of the dentist. It appears the existing language provides for limited access patient care already.

MR. ISHAM: It may do that. It depends on the rules. There are dental hygienists whose total practice is in nursing homes.

228 REP. NAITO: What is your opinion on changing (5) on page 2 to say "The prior authorization by a dentist or the presence of a dentist is not required for a dental hygienist to perform a preliminary screening of individuals "in groups to recommend dental services."

230 MR. ISHAM: We would prefer the present wording with the amendment we suggested. Including "dental services" and not the rest of the sentence. It seems to imply that if they see something other than dental hygiene services, they are supposed to ignore it. There is a difference identifying a problem and referring to the appropriate professional and actually diagnosing.

250 LYNN IRONSIDE, R.D.H., President, Dental Hygienists' Association, submits and reads a prepared statement in support of HB 2792 (EXHIBIT

F).

290 ERWIN WEICHEL, Periodontist: In interviewing dental student, other dentists, hygienists and patients, their views were wide ranging. The prime concern I am getting as feed back from the dental community is the inability to properly assess the patient's medical status. >He quotes from the March-April 1991 article in the Journal of Dental Hygiene (EXHIBIT G), "Self-regulation has been a goal of the American Dental Hygienists' Association (ADHA) for many years, but it is not one that has been readily publicized." I think the self-regulation, self-examination is the clear direction of organized dental hygiene. The Oregon Dental Hygiene Association publication says "...by those most knowledgeable of the process." That is incorrect. I think part of the problem may be from the fact that hygienists have a limited scope and their base of knowledge is limited.

TAPE 10, SIDE B

029 >To identify something as being a lesion is a diagnosis. >He reviews the course curriculum for dental and dental hygiene students Oregon Health Sciences University (EXHIBIT H). >Opposed to hygienists doing screening. >2,000 dentists and 1,400 dental hygienists in state. >Individual problems should be handled on individual basis; don't change the entire system. >Clinic in Clackamas County has been voluntarily staffed by dentists for 25 years. >Dentists do go in nursing homes.

258 CYNTHIA LAYPORT, Periodontist, submits and summarizes a prepared statement in opposition to HB 2792 (EXHIBIT I).

TAPE 11, SIDE B

008 BARBARA L. NAY, Stoel Rives Boley Jones & Grey, Attorneys for Oregon Dental Association, submits a prepared statement, Attorney General Opinion 8076, November 30, 1981, and IRS rules relating to independent contractors (EXHIBIT J) and reviews the statement. >Section 5 addresses preliminary screening. If the Legislature is inclined to address preliminary screening, it would be appropriate to clarify what is meant because, as I read it, it authorizes the hygienist to determine if services are necessary. Then under Section 10 they are authorized to perform the procedures without the presence of the dentist and without any direction and control over the means and manner of providing the procedures. I am not sure where the dentist fits in that statutory scheme. I think if we were going to have anything along the lines of Section 5, a clarification that "referral to a dentist is needed before services are provided" would be very appropriate.

136 CHAIR RIJKEN: How do you interpret the current statute in regard to general supervision?

138 MS. NAY: I find Section 10 somewhat vague in the way it says a dentist must authorize the procedures. It is not clear to me whether the dentist must first see the patient. The OARs specifically require preliminary examination by a dentist in certain situations. One situation is where the hygienist is going to provide certain types of services to limited access patients. The Board of Dentistry has used discretion to specify. In other circumstances I think it is being left to the discretion of the dentist as to whether or not they will see the patient first.

177 LINDA LATSHAW, Registered Dental Hygienist, submits and reads a prepared statement in support of HB 2792 (EXHIBIT K).

220 FRANK ARMSTRONG, member, Governors Commission on Senior Services: >Governors Conference on Health Care in 1988 and 1990 placed health care on the priority list. Last week the commissioners were unanimous in their support for dental health care at a most reasonable cost and saw no threat to the supervisory activities of the dentists in HB 2792. We believe the bill is necessary in meeting our health goals and at no

additional cost to the patient or the public. 262 NICK MARINEAU, General Practitioner, Beaverton: I don't know why we are here. It seems the ODA, the ODHA and Board of Dentistry should have hashed this out. It seems that the whole crux is whether general supervision should be a statute or rule; I think it should be a statute. They hygienists deserve to be under general supervision; they have proven they don't abuse it and there is no reason they shouldn't have it.

Illusion was made to experience in Washington that had a bill in 1984 that gave hygienists the ability to go into nursing homes, care centers and unserved areas without supervision. It is not comparable to the Oregon situation. We have general supervision and if it is in statute it may be even stronger.

A letter dated March 7 from Dr. Marineau to Rep. John Schoon is hereby made a part of these minutes (EXHIBIT L).

354 REP. STEIN: What does this do that isn't happening now?

355 MR. MARINEAU: I think the big concern is that it is the first step for independent practice. I don't see that. It is simply a matter of putting general supervision in statute instead of rules. I question what kind of liability we are opening ourselves up to by letting dental hygienists diagnose; essentially that is diagnosing. I think it is best left to dentists to do that. Most nursing homes have a supervising dentist.

426 SUSAN M. SANZI-SCHAEDEL, a public health trained dental hygienist, submits and reads a prepared statement in support of HB 2792 (EXHIBIT M).

TAPE 12, SIDE A

042 REP. STEIN: Do you feel we should not retain the section on screening?

044 MS. SANZI-SCHAEDEL: It is not a licensed function and as far as I am concerned it doesn't belong in the bill.

057 MARGIE REVEAL, Registered Dental Hygienist, submits and paraphrases a prepared statement in support of HB 2792 (EXHIBIT N)

090 REP. STEIN: How does your supervision work?

089 MS. REVEAL: Headstart is a federal program and it is a little different. There is a dentist and dental hygienists on the advisory committee for the Headstart program. The dental services, the treatment, that are provided are given through dental offices in the area. Screening allows for either a dentist, dental hygienists, or a qualified individual to do the screening. That could be and is a non-dental person. In any state, the screening can be done by any one of those individuals. The person that has the training is usually a health coordination and the training is usually provided by a dentist or dental hygienist so they know what to screen for.

A letter dated March 19, 1991 to Rep. Schoon from the Oregon Dental Association (EXHIBIT O) and a statement from Sharon Hagan, Registered Dental Hygienist (EXHIBIT P) are hereby made a part of these minutes.

103 CHAIR RIJKEN closes the public hearing on HB 2792 and opens the public hearing on HB 297 3.

(Tape 12, Side A) HB 2793 - REMOVES AUTHORITY TO REDUCE CHILD SUPPORT OBLIGATION BY AMOUNT OF COST OF PROVIDING HEALTH CARE COVERAGE.
Witnesses: Brenda Breames, The Association Enforcement of Support Theresa Ray, The Association Enforcement of Support John Ellis, Department of Justice Karen Berkowitz, Oregon Legal Services Corporation and Family Law Task Force of Oregon Legal Aid programs Carl Stecker, District Attorneys Association

106 MR. CONNOLLY reviews the Preliminary Staff Measure Summary (EXHIBIT Q).

132 BRENDA BREAMES, State President and Coordinator, The Association Enforcement of Support, submits and reads a prepared statement in support of HB 2973 (EXHIBIT R).

200 THERESA RAY, Clackamas County Coordinator, The Association Enforcement for Support, submits and reads a prepared statement in support of HB 2973 (EXHIBIT S).

223 JOHN ELLIS, Assistant Administrator, Department of Justice, Support Enforcement Division, submits a prepared statement (EXHIBIT T).

In 1989 the Department of Justice submitted HB 2454 which was the culmination of a lot of thought on our part about how child support and medical insurance should be handled. For a long time courts have had the authority to require the absent party to provide insurance, health and life insurance, for children of divorce and separation. One of the reasons that probably doesn't happen as often as it should is that in low and moderate income families there isn't enough money to go around after the family separates. Our thought and the thought of the committees last session changed. In the beginning, HB 2454 said that the cost of health insurance should be deducted dollar for dollar from the cost of child support ordered against the parent.

We and the Judiciary Committee realized that was probably not a good idea. The result was the discretionary judgment that is now in Oregon law. In Oregon law at the current time, when child support is ordered the decision maker, whether it is a judge or referee, must order health insurance. In 1989 this body thought it was so important to have medical insurance for kids of divorce that it required health insurance to be provided for if it was available when child support was ordered. The Legislature had to make the decision on how to ensure that medical insurance will be ordered when there is also a child support order involved. The two together can be very burdensome.

Kids of divorce are economically disadvantage, but it is also true that low income absent parent sometimes simply don't have enough money to provide adequate child support and adequate medical insurance. It was thought the best way to handle the problem was to leave it as discretionary.

Mr. Ellis reads the example of support obligation outlined in his statement (EXHIBIT T). If the custodial parent wants the full amount of child support, that parent can waive the health insurance cost. The Department of Justice, the proponent of the scheme in 1989, is not in opposition to HB 2973. I suggest if this committee amends the current law, the ripple effect will be to require that we re-evaluate not only this part of our practice of child support, but also the entire child support guidelines system.

360 REP. STEIN: When you say change the guidelines, are you implying that if we don't allow the dollar-for-dollar, it will be shifted over and the support amounts will be lowered?

366 MR. ELLIS: Under current law, the judge can reduce the amount of child support in consideration of the burden of paying for health insurance. This bill would take that discretion away. I think the result would be that the judge would find another way to lower the child support which is possible under Oregon law by demonstrating that the child support amount is unreasonable and unjust. The reason I am not opposing this bill is that may not be a bad idea to think about. You can't make a decision about this very narrow part of the state child support scheme and not expect it to have ripple effects through the rest of the state's child support scheme which is not before you.

396 REP. STEIN: Section 3(2) is for payments being made directly to

medical providers. What is your opinion on that?

401 MR. ELLIS: That is a good idea. He gives example of insurance company sending payment to the non-custodial parent who spends the money instead of paying the medical bills. There is no requirement that the health insurance check go to the provider.

400 KAREN BERKOWITZ, Attorney at Law, Oregon Legal Services Corporation, and Family Law Task Force of Oregon's Legal Aid programs, submits and paraphrases a prepared statement opposing amendments in Sections 1 and 2 (EXHIBIT U).

482 REP. STEIN: What is your experience of the actual practice and to what extent are judges reducing dollar-for-dollar.

485 MS. BERKOWITZ: Most of our experience is on the administrative level because most of our clients are at welfare level income. In many of these cases there are dollar-for-dollar reductions. I believe that is proper because we are dealing with very poor people.

TAPE 13, SIDE A

025 MR. ELLIS: I would like to concede the point that in most of these low-income cases, we do provide for a dollar-for-dollar reduction.

037 MS. BERKOWITZ: In some cases the custodial parent may have their own insurance and under the current law the custodial parent can decline to have the double insurance coverage if it is going to reduce the child support obligation. If you remove that economic consequence for the double insurance, then why should any custodial parent say that is okay. We don't want to duplicate it where it is going to cause hardship to one person. The law currently makes it solely the right of the custodial parent to elect the insurance coverage.

059 Under the current child support guidelines where the custodial parent maintains health insurance, if that health insurance costs money to the custodial parent, it is added into the child support obligation and apportioned between the parties. Under this proposed change, you would have an inequity between the custodial parent who has to pay for insurance and the non-custodial parent who has to pay for insurance. The custodial parent would be able to pass off some of the costs and it would come back as added child support. But if a non-custodial parent has the same financial obligation for medical insurance, with this proposed bill the non-custodial parent would have to bear the entire cost. I would like to see cost sharing of everything between the parties according to their relative incomes. That is the way the guidelines work, but unfortunately the medical insurance does not necessarily work that way. Although the current law would allow a judge to do that, I am not sure they do it.

080 I request that Section 1 and 2 of HB 2973 not be adopted by this committee. I agree with Section 3.

088 MS. BEAMES: We, as an organization, would not disagree with Karen Berkowitz's assessment that it should be shared costs. We would have no problem amending it to reflect cost sharing. We are having a problem with the fact it is currently being done, in actual practice not only by the Justice Department in low-income situation but by the judiciary. It is actually being deducted at a dollar-for-dollar level.

104 CHAIR RIJKEN requests that Ms. Beames work with others to get amendments to the bill.

120 CARL STECKER, Deputy District Attorney, Marion County and representing the District Attorneys Association: Our concern with the bill has been that the matter of determination of child support comes to a fixed number. There are later considerations for whether or not the insurance that may be provided by the obligor ought to receive some credit or consideration against support. Some of the problems that have

arisen include lack of guidance as to what dollar amount to give. The consequence of this is that different fact finders can accord it different rates. We resolved that within our own office only by prorating the credit in proportion to the various parties incomes to the total income aggregated. That is consistent with the child support guidelines developed by the Department of Justice. This bill does not solve that problem.

A second problem is what happens when the job ends. If the dollar amount has already been deducted from an order, that is sufficient; there is no automatic modification unless the order has been sophisticatedly drafted to anticipate that kind of condition.

A third factor is the single obligor for insurance coverage may have children from different families. The support guidelines make reference to that. The appropriate fact finder would say if it cost \$150 to carry insurance for four children, it will be prorated to \$37.50 per child and credit given on the support.

The obligee who provides the insurance coverage does have the opportunity to have that cost added back in on top of the order. That is within the guidelines. Ms. Berkowitz's reference to the equal protection problem is a valid one. I think you have to look at the effect on both parties, depending on who is being ordered to provide.

175 We are supporting Section 3. We have an instance where the obligor received a \$1,200 insurance reimbursement and bought himself a motor cross bike and the medical provider in the meantime had turned the bills over to a collection agency.

190 CHAIR RIJKEN asks all parties to work together on amendments to the bill, closes the public hearing and declares the meeting adjourned at 11:15 a.m.

Respectfully submitted, Reviewed by,

Annetta Mullins Terry Connolly Assistant Administrator

EXHIBIT SUMMARY

A -HB 2791, Preliminary Staff Measure Summary, staff B -HB 2791, prepared statement, Dell Isham C -HB 2792, Preliminary Staff Measure Summary, staff D -HB 2792, prepared statement, Clayton Stearns E -HB 2792, prepared statement, Dell Isham F -HB 2792, prepared statement, Lynn Ironside G -HB 2792, article from Journal of Dental Hygiene, Erwin Weichel H -HB 2792, curriculum, Erwin Weichel I -HB 2792, prepared statement, Cynthia A. Layport, DMD J - HB 2792, prepared statement, Barbara Nay K -HB 2792, prepared statement, Linda Latshaw L -HB 2792, letter, Nick Marineau M -HB 2792, prepared statement, Susan Sanzi-Schaedel N -HB 2792, prepared statement, Marge Revel O -HB 2792, letter, Oregon Dental Association P HB 2792, prepared statement, Sharon Hagan Q -HB 2973, Preliminary Staff Measure Summary, staff R -HB 2973, prepared statement, Brenda Breames S -HB 2973, prepared statement, Theresa Ray T -HB 2973, prepared statement, John Ellis U -HB 2973, prepared statement, Karen Berkowitz