



**Economic Affairs Interim Committee**  
**61st Montana Legislature**

**SENATE MEMBERS**  
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ROY BROWN  
KEN (KIM) HANSEN  
RYAN ZINKE

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CHUCK HUNTER  
MICHELE REINHART  
DON ROBERTS

**COMMITTEE STAFF**  
PAT MURDO, Research Analyst  
BART CAMPBELL, Staff Attorney  
CLAUDIA (CJ) JOHNSON, Secretary

# MINUTES

## Medical Impairment Subcommittee

July 22, 2010  
Rm 137

Capitol Bldg  
Helena, MT

Please note: These are summary minutes. Testimony and discussion are paraphrased and condensed. Committee tapes are on file in the offices of the Legislative Services Division. **Exhibits for this meeting are available upon request. Legislative Council policy requires a charge of 15 cents a page for copies of the document.**

Please note: These minutes provide abbreviated information about committee discussion, public testimony, action taken, and other activities. The minutes are accompanied by an audio recording. For each action listed, the minutes indicate the approximate amount of time in hours, minutes, and seconds that has elapsed since the start of the meeting. This time may be used to locate the activity on the audio recording.

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### **COMMITTEE MEMBERS PRESENT**

REP. DON ROBERTS, chair  
REP. CHUCK HUNTER

### **STAFF PRESENT**

PAT MURDO, Research Analyst  
BART CAMPBELL, Staff Attorney  
CLAUDIA (CJ) JOHNSON, Secretary

### **Visitors**

Visitors' list, Attachment #1.  
Agenda, Attachment #2.

## COMMITTEE ACTION

- Ms. Murdo will draft a bill for the full Economic Affairs Committee to review.

## CALL TO ORDER AND ROLL CALL

00:00:05 Rep. Roberts called the subcommittee to order at 1:01 p.m. The secretary called the roll. Attachment #3

## AGENDA

00:02:38 Rep. Roberts discussed his concerns about the medical impairment programs, and he said the programs need to continue. Rep. Roberts said he will present the questions and provide a brief explanation then the panel members will respond.

Rep. Roberts introduced the panel members:

- Heather O'Hara - Board of Nursing;
- Mike Bertagnolli - Board of Pharmacy;
- Dr. Mary Ann Guggenheim - Board of Medical Examiners;
- Dr. David Johnson - Board of Dentistry;
- Emery Jones - Montana Assistance Program; and
- Mike Ramirez - Montana Professional Assistance Program, by phone.

### **Discussion about changing statutes to require increased notification of boards of participants' activities in the professional assistance programs.**

00:05:36 Rep. Roberts talked about the need for change because the boards are not being notified when there is substance abuse in the medical field.

00:07:27 Ms. O'Hara explained how the Board of Nursing handles disciplinary issues.

00:10:11 Mr. Ramirez said there are rules for medical and dentistry staff. He said a second complaint or a relapse of severity is built into statute and rules, which are guidelines that pull the trigger.

00:11:26 Dr. Johnson talked about when substance abuse is determined to be an offense.

00:12:08 Rep. Roberts talked about audits not catching all the problems.

00:16:26 Mr. Ramirez said that policy and procedures are separate programs and cannot be lumped together.

00:17:38 Dr. Guggenheim said that all participants in the impact program are known to the board and receives information of the participants. She said the most important part is that professionals who abuse substance have access to the program to receive help. She asked how can the rules or statutes be changed to encourage self-reporting or reporting by a colleague or hospital staff.

- 00:20:52 Mr. Jones said the Nursing Assistance program is similar to the physicians' program, except it is not in statute only in policy. The contract violations are reported back to the Board, and he noted that the number of participants in the assistance program has doubled in the last couple of years. He stated that the Nursing Board is prepared to perform an internal audit.
- 00:35:00 Dr. Guggenheim talked about how hard it is to get data on something that isn't known. Mr. Bertagnolli concurred with Dr. Guggenheim and discussed Montana having a license verification like other states do. Dr. Guggenheim stated that substance addiction is not a habit but a brain disease.
- 00:46:00 Ms. Murdo distributed several handouts:
- a memo about licensees governed by boards are subject to sanctions. **(Exhibit 1)**
  - MCA rules about how to report to the boards. **(Exhibit 2)**
- 00:51:56 Barbara Swehla, Registered Nurse and Continuing Education Director for the Montana Nurses Association, distributed a handout of her comments that explain how the Board of Nursing operates. **(Exhibit 3)** She said the Board meets every six weeks. Ms. Swehla distributed a copy of a Montana Nurses Assistance Program contract. **(Exhibit 4)**
- Discussion about distinguishing in statute between participants in the nondisciplinary tracks and the disciplinary tracks and how each are handled by the program/board.**
- 01:02:06 Mr. Bertagnolli said he supports the nondisciplinary track because it encourages self-reporting and rehabilitation.
- 01:02:25 Mr. Jones talked about finding a process for early intervention and a structure that holds a person accountable.
- Discussion about recidivism and how many chances ought to be allowed before a participant faces loss or suspension of license.**
- 01:05:24 Dr. Guggenheim said it would be a mistake to propose a law because one size does not fit all and explained why.
- 01:09:39 Mr. Ramirez and panel members talked about noncompliance and compliance. He talked about the 35 pages of data on performance outcome and relapses that he had provided at the last EAIC meeting.
- 01:17:45 Ms. O'Hara talked about the "3 strikes you're out" approach. She said that drug addiction and alcohol addiction are individualized diseases, and the recovery of the disease is also individualized. She said the public is protected by the board, which initiates the assistance programs.
- 01:21:08 Mr. Bertagnolli talked about if the screening panel is allowed to ask if a certain individual is part of the program. Dr. Johnson talked about the screening panel

having the information to monitor an individual.

01:22:22 The panel members discussed self-reporting. Rep. Hunter discussed the type of information that is reported between the screening panel and the board. Mr. Ramirez noted that on a first relapse, administrative rules give discretion in the reporting and he most likely would report the first relapse by number and not by name.

**Discussion about automatic revocation of license upon conviction of a felony or, for those with prescription authority the revocation by the Drug Enforcement Agency of prescription authority**

01:31:42 Mr. Ramirez explained the need for an alternative reporting option to the assistance programs rather than to the board. He said the board has to follow due process. Thresholds of reporting vary based on legal representation and actionable offenses.

01:33:33 Anjeanette Lindle, DLI attorney for the Board of Nursing, explained how the process works. She said that Title 2 allows the board to suspend a license without due process. She talked about how hearings take place, and when a contract is signed it allows a person to go through the process but allows the board to retain oversight.

01:35:15 Rep. Roberts, Ms. Lindle and Mr. Jones discussed prescriptive authority allowed by the Drug Enforcement Agency (DEA), particularly relating to nurse practitioners. Dr. Guggenheim noted that a board may not learn if an already licensed practitioner loses prescriptive authority but the board does hear if an applicant has lost prescriptive authority.

01:37:41 Mike Fanning, Department of Labor and Industry (DLI), Prosecutor/attorney for the Board of Medical Examiners and the Counsel for the Board of Pharmacy. He noted that if another state or jurisdiction takes action on a licensee, then the Montana board can take action under unprofessional conduct. Dr. Johnson noted a situation when the Board of Dentistry was not informed of a DEA action but found out through an investigation. Mr. Ramirez noted that the report came from the Montana Professional Assistance Program.

01:39:15 Mr. Jones said there is a federal watch list and that a person on the watch list cannot work for any entity that receives federal funding. Any drug related suspension has a mandatory 5-year period on the watch list that can place that person out of practice.

**Discussion of use of out-of-state impairment program auditors**

01:40:41 Mr. Bertagnolli said the Board of Pharmacy had discussed auditing. Mr. Ramirez noted that the audit of his program was requested by the Board of Medical Examiners. He described the evaluator and guidelines. The panel discussed external and internal options.

- 01:44:24 Dr. Guggenheim, Rep. Hunter, and Mr. Ramirez, talked about audits. Dr. Guggenheim said when the Board of Medical Examiners considered an audit, that it checked with the Legislative Audit Division, which said it does not have jurisdiction over an entity not part of state government, such as the Montana Professional Assistance Program. Rep. Hunter asked about a requirement of a periodic audit, for example every five years. Dr. Guggenheim asked who would pay for the audits and noted that the Board of Medical Examiners had paid for the audit of the Montana Professional Assistance Program. Ms. O'Hara said that while she did not speak for the Board of Nursing, she thought the board would be open to audits. Rep. Roberts commented about the 501(c)(3) status of the professional assistance programs. He asked how to keep the public safe from the 1% or 2% of professionals with problems.
- 01:52:23 Dr. Guggenheim said that the Medical Examiners Board has formed an outreach program. She said the public is more aware of problems than of prevention and questioned how can the public be more informed. Dr. Johnson returned to the issue of costs of audits and whether the costs should borne by licensees. Mr. Ramirez noted that the audit indicated the program provided stellar services but that funding has remained somewhat static and more financial assistance is needed. He also noted the administrative burden of added reporting.
- 01:57:06 Ms. Murdo distributed an email from Erin MacLean, representing the Montana Medical Association, **(Exhibit 5)** regarding conversations with several physicians regarding the lack of oversight of the physicians' assistance program.
- 01:59:13 Carol Roberts, as a citizen, said that the assistance program is good but needs more fine tuning. She talked about:
- how audits will help the general public.
  - supervisors being involved, and
  - the cost of the program should be paid for by all licensees.
- 02:05:58 **Break**
- 02:26:44 Dr. Mark Ibsen addressed the committee via telephone and talked about his personal experience with the Montana Professional Assistance Program (MPAP). He gave an overview of how he was treated as a participant, and said the situation did not serve him. **(Exhibit 6)**
- 02:33:53 Rep. Roberts wanted to know if there should be:
- a whistle blower, or
  - get lawyers be involved
- 02:35:35 Ms. Murdo distributed and explained handouts of MCA codes for Dentists **(Exhibit 7)**, and the Board of Medical Examiners **(Exhibit 8)**.
- 02:39:21 Rep. Roberts talked about what can be done to set limits for people that have a drug problem. He suggested that three relapses and the license should be suspended.

- 02:46:52 Mr. Bertagnolli, panel members and the committee talked about limits and the 3-strikes and you're out approach.
- 03:10:13 Ms. O'Hara said it the mission of the Board of Nursing to protect the public. She said that a suspension is better than a 3-strikes and you're out approach. She said it should be evaluated on a case by case basis. Mr. Jones questioned whether alcohol is included in the abused substances. Mr. Ramirez noted that any prohibited substance is the best term of reference. Mr. Jones gave an example of allowing the board to handle the discipline instead of the 3-strikes and you're out automatic action. The panel discussed the problems of addressing addictions for license applicants. Mr. Fanning added that applicants run the gamut from genuine in misunderstanding of application questions to disingenuous. The discussion included whether an automatic suspension should be required. The final decision was to require action by the board.
- 03:36:08 Rep. Roberts encouraged audits for every board to be performed every five years. The discussion included whether to have both internal and external audits.
- 03:36:39 Ms. Murdo summarized what the bill draft language will reflect.
- 03:42:27 Rep. Roberts adjourned the committee at 4:05 p.m.

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