

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Wednesday, February 15, 2017

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Souza, Senators Martin, Lee, Harris, Anthon, Agenbroad, Foreman, and Jordan

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Chairman Heider** called the meeting of the Senate Health and Welfare Committee (Committee) to order at 3:02 p.m.

APPROVAL OF MINUTES: **Senator Lee** moved to approve the Minutes of the January 27, 2017 meeting. **Vice Chairman Souza** seconded the motion. The motion carried by **voice vote**.

Chairman Heider stated the Minutes of the February 6, 2017 meeting will be held for a future agenda.

RS 25275 **Unanimous Consent for Referral to Senate Judiciary & Rules for Printing.** **Senator Foreman** informed the Committee **RS 25275** is a concurrent resolution to focus public and government attention on Post-Traumatic Stress Injury (PTSI). The resolution designates the June 2017 as PTSI Awareness Month and June 27, 2017 as PTSI Awareness Day.

UC REQUEST: **Senator Foreman** asked for unanimous consent to send **RS 25275** to the Judiciary and Rules Committee for printing. There were no objections.

UC REQUEST: **Senator Martin** asked for unanimous consent to hear **H 11** before **S 1081** to allow time for another presenter to arrive. There were no objections.

H 11 **Relating to Optometrists.** **Mitch Toryanski**, Legal Counsel for the Idaho Bureau of Occupational Licenses (Bureau), introduced himself to the Committee on behalf of the State Board of Optometry (Board). The Board is comprised of five members, and **Mr. Toryanski** recognized three Board members present: Dr. Wayne Ellenbecker, Chairman from Coeur d'Alene; Dr. Joy Johnson, Vice Chair from Nampa; and newly-appointed public member Bill Von Tagen from Boise. Also present is former Board Chair Dr. Jack Zarybnisky from Burley.

Mr. Toryanski explained **H 11** removes archaic language regarding the issuance of licenses as well as the requirement for optometrists to display the license in a conspicuous part of the office. The bill also requires all licensed optometrists to be qualified to use pharmaceutical agents to both diagnose and treat conditions of the eye by January 1, 2019. Ninety-seven percent of optometrists are trained and qualified to dilate pupils, diagnose disease, and prescribe eye drops, but three percent are not qualified. For the past 10 to 15 years, the Board has encouraged the optometrists without this training to obtain it to be fully qualified, but the optometry statute does not require it, so a handful have not done so. The Board believes all optometrists in Idaho should be trained to the same standard, and the fact some are not presents a public safety issue. **Mr. Toryanski** stated the Board President will further explain to the Committee.

Mr. Toryanski said the bill does not impact the General Fund or the Bureau's dedicated fund, since it does not create a new program, and license applications will continue to be considered by the Board at regularly-scheduled meetings.

Senator Martin referred to line 32 of the bill and asked why an optometrist should not be required to display the license. **Mr. Toryanski** answered the statute currently requires all licensees to display their licenses in every office, and some have multiple offices. Often the licensee will display the diploma from optometry school, but the license is about the same size as a driver's license. The Board does not feel an optometrist should be disciplined for not displaying the license conspicuously in every office location.

Senator Jordan mentioned she has received several emails on this topic from optometrists who are fairly close to retirement, and they are concerned about being stopped in their careers. **Senator Jordan** asked whether the Board considered grandfathering these remaining optometrists and requiring a statement that they do not provide the services instead of precluding them from practicing. **Mr. Toryanski** replied the Board's intent is not to put anyone out of business, and grandfathering was discussed. However, the Board felt it was important to not have any optometrists practicing who did not have qualification to use pharmaceutical agents. The bill allows nearly two years for the optometrists to obtain the hours and the refresher cardiopulmonary resuscitation class necessary for certification.

Senator Jordan asked if there are recorded cases of complaints or situations that occurred as a result of this requirement not being in place. **Mr. Toryanski** responded he reviewed the discipline taken against optometrist licenses since 1995, and the records show no optometrist without the certification to use pharmaceutical agents has been disciplined for missing something. One was disciplined for failure to provide a contact lens prescription to a patient after he took the money, but that is not relevant to this discussion. There have been 10 optometrists disciplined in the last 22 years, not a high number compared to some other boards.

Senator Lee commented she is unclear on why the bill was brought forward. It appears to be an attempt to raise the standards and knowledge for provider competency versus actually addressing a safety concern. **Senator Lee** asked why some optometrists couldn't simply choose to be certified and others make the choice not to be certified. **Mr. Toryanski** replied he cannot provide a firsthand account; however, Dr. Ellenbecker and other professionals can address that more directly.

TESTIMONY:

Dr. Wayne Ellenbecker introduced himself to the Committee. He is an optometrist from Coeur d'Alene and the current Board chairman. **Dr. Ellenbecker** explained the Board's rationale in requesting the law change. The Board is charged with protecting the public, and the public expects to receive the same level of care no matter what optometrist they are seeing. Having different levels of licensure does not fulfill the accepted standard of care that all practicing optometrists have the ability to use both diagnostic pharmaceutical agents (DPA) and therapeutic pharmaceutical agents (TPA). Failure to either diagnose and/or treat conditions could be visually or physically harmful to the patient. It is a threat to public safety if all optometrists cannot practice to an accepted standard of care. If a practitioner can prescribe a contact lens for a patient, he should also be able to manage the complications arising from that action, such as infections, ulcers, and keratitis which are all treated with topical medications. A practitioner should also be able to dilate the eye and check for evidence of ocular and systemic conditions in the retina. Even cataract evaluation is helped with dilation. Diabetic retinopathy, hypertensive retinopathy, and tumors are examples of conditions that can only be seen by dilation.

Dr. Ellenbecker advised in 1993 the Legislature added a provision for therapeutic licensing. Over 95 percent of licensed Idaho optometrists either become TPA certified since that time or are TPA certified through the current licensing and graduation requirements. There are only six doctors who do not have the DPA certification to dilate, and two are active in Idaho. Currently 11 doctors do not have the TPA licensing component and five are active in Idaho. There are 550 doctors with both DPA and TPA certification. Since 2001, the Board has discussed this issue numerous times. In October 2012, the Board mailed a letter to all non-TPA certified doctors, asking them to become TPA certified, but none did. Over the years, the Board has attempted multiple times to contact the affected practitioners and asked them to gain TPA licensure.

Dr. Ellenbecker advised there is one remaining course that meets the Board's requirements in Florida. The course is a ten-day course that costs \$6,500. The therapeutic management and ocular disease exam is also offered once a year and can be taken by computer through a Pearson VUE test center at a cost of \$450. The Board has given significant warning and plenty of time to obtain therapeutic licensure, but a few have chosen not to do so. The issue was discussed at several Board meetings, and the affected licensees were invited to attend. The Board also sent a postcard to all licensees regarding the proposed legislation. One optometrist attended in person and two participated by conference call. The Board considered the opinions of these participants and voted to move forward with legislation to protect the public. The effective date of January 1, 2019 allows everyone the time to become compliant. The profession is currently held to an unacceptable standard of care, and other states will not allow license by reciprocity due to this specific issue. All professions, medical or otherwise, are forced to change as accepted practice patterns change.

Senator Foreman commented it is admirable the Board wants to modernize health care, but there does not seem to be a realized threat to health care because there are no violations or incidents. The affected practitioners have a great deal of institutional knowledge and patients who rely on them. The providers recognize they are not operating with all the pharmaceutical abilities as their newer counterparts, and the providers refer patients when necessary. **Senator Foreman** asked whether it wouldn't be better to grandfather these providers rather than lose years of knowledge. **Dr. Ellenbecker** replied any consumer doesn't always know or realize there is an avenue to report a bad experience. In many cases, the problem is simply taken care of and the consumer moves on without knowing the provider was in error. If a patient doesn't know dilation is a standard of care, how will the patient know if something was done correctly or whether there was an undiagnosed problem. These practitioners have already been grandfathered. Therapeutic licensing has been available in Idaho since 1993, and anyone licensed at that time had to go through the training process. Students coming out of school now receive the training automatically.

Senator Foreman asked what it would cost to go to Florida to get training. **Dr. Ellenbecker** repeated the available course costs \$6,500 and takes ten days. There is a follow-up test that costs \$450. There would be additional travel and lodging expenses. There are costs involved in keeping up to date in private practice. Some new equipment and systems cost \$25,000 and up.

Vice Chairman Souza mentioned Dr. Ellenbecker is from her area and she took all four of her children to his office when they were young. **Vice Chairman Souza** stated there is a hesitation to create any situation that will put people out of business who have been successfully practicing for many years, and she asked for more information on the reciprocity issue. **Dr. Ellenbecker** replied licenses can be recognized from state to state, but the licenses have to be equal. The Idaho license is not equal to other states' licenses because there are three different tiers. An Idaho licensee with a lower tier license would not be able to be licensed by reciprocity in another state. **Vice Chairman Souza** confirmed it would be a burden for an Idaho optometrist to get reciprocity in another state because the level of practice requirements are unequal and asked if someone with a lower tier Idaho went to another state, would the person have to take additional training or pass a qualifying test in order to practice in that other state. **Dr. Ellenbecker** responded every state is different. When someone comes to Idaho through reciprocity, as long as the person meets the highest level license, reciprocity applies.

Senator Anthon inquired of Dr. Ellenbecker whether an optometrist who does not have this certification or training is committing malpractice. **Dr. Ellenbecker** replied it might be a legal question, but in his opinion, the answer is yes. Certain insurance plans require dilation in some cases, and the inability to offer that service would fail to meet the accepted standard of care.

Senator Foreman asked if most of the patients who see this handful of optometrists are told to see another doctor to get additional services, or are the patients uninformed. **Dr. Ellenbecker** replied a patient assumes all optometrists are licensed the same and are not informed certain services cannot be performed. Patients assume they are getting the highest level of care available.

TESTIMONY:

Art Osterberg introduced himself to the Committee as an optometrist from Orofino to speak in opposition to **H 11**. **Dr. Osterberg** informed the Committee there are only four doctors to whom this law would apply (see Attachment 1). The four remaining doctors are not leaving Idaho and don't have to worry about getting a license somewhere else. He is not opposed to the first part of **H 11** but the second part is unacceptable because in his opinion it is wrong, unfair, discriminatory, unconscionable, and probably unconstitutional. If passed, the law would be a form of genocide to the senior doctors. They have the most experience and wouldn't be here if they didn't get good results. The bill allows 22 months to practice until a license would be pulled and they would have to go work at Walmart or Home Depot.

Dr. Osterberg asked what is wrong with his license and why can't he keep the license he got in 1966. His record is unblemished and has practiced over 50 years, including military optometry. He is a master refractionist who only works with certified opticians in Lewiston and taught at Pacific University teaching doctors how to make glasses. His current practice is a "second opinion" practice. People come to him saying they can't see well, and he helps them see 20/20 without paying \$800 for glasses. He sees patients with undiagnosed cataracts and he refers them to Pacific Cataract and Laser Institute (PCLI) in Lewiston. His patients are always pleased.

Dr. Osterberg commented he knew a doctor in Lewiston in the 1970s who was an eye, ear, nose and throat medical doctor. The medical field was no longer training doctors with that specialty but he was a good physician and the medical board allowed him to continue practicing. If **H 11** is passed into law, everybody loses. He doesn't charge his patients \$800 for glasses nor does he charge to remake glasses if something is wrong. His income will be affected, as well as his ability to sell the practice.

Dr. Osterberg said he talked to the Board and was dissatisfied with the results of those discussions. He feels the Board does not care what he says, and he just wants to keep his license. He does not want to be grandfathered into their therapeutic license because he wouldn't use it. He knows another optometrist in Idaho Falls, Dr. King, who has a unique practice working with reading disabilities, cross eyes, and stroke victims. Dr. King doesn't use therapeutic drugs and doesn't want to use the drug. As far as Dr. King's practice, no one in the Lewiston area does functional optometry or vision training.

Dr. Osterberg said Dr. King graduated from Pacific University in 1968. He read a quote from Dr. King about the type of optometry services she wants to provide. The Board has proposed legislation to protect the public but Dr. King does not believe anyone is harmed if she does not provide pharmaceutical treatment, and appropriate referral is more important. Dr. King will probably be forced to retire if the legislation passes, and the public will be denied her care.

Dr. Osterberg advised he wrote the Board in 2014 and urged the Board not to press the tiered licensure issue. All senior optometrists will be eliminated in due time and do not need to be stressed by possible litigation, proposed legislation, unfavorable media, and loss of income. The former Board chair told him people don't know who they are going to if there are three tiers of license. **Dr. Osterberg** said people don't care as long as the doctor can help them see. He just wants to be left alone to take care of his patients.

Senator Martin asked if being able to dilate eyes has value to Dr. Osterberg's patients. **Dr. Osterberg** said if his patients ask him if he dilates, he tells them no. When he asks the patients if they still want him to look around in their eyes, they tell him yes because they heard he's the best. He can still look inside the eye. Dilation only makes a bigger window.

Senator Foreman commented he hears Dr. Osterberg saying his practice is limited by not being licensed to use drugs, and his practice is highly specialized and fits into a well-defined role that benefits his patients. **Senator Foreman** asked how Dr. Osterberg handles his referrals to other doctors. **Dr. Osterberg** replied when there is a problem he tells them and gives them a choice of two doctors to see. He generally refers to PCLI or there are some others in Lewiston and Spokane.

TESTIMONY:

Dr. Jack Zarybnisky introduced himself as an optometrist from Burley to speak in favor of **H 11**. The bill should pass because reciprocity is a big factor. If he wanted to move to a warmer climate, because Idaho has the three tiers of license, he could not be licensed by reciprocity in another state. The bill must pass so all optometrists function at the same level and the general public can be assured the optometrist is able to detect all eye diseases and prescribe the needed medications. Some of the newer instruments cannot be used if the eye is not dilated, and some conditions such as retinal tears, peripheral cysts, and cancer cannot be seen with just an ophthalmoscope. Patients don't ask if a doctor can do this or that, they just assume the doctor can do whatever is needed to take care of the situation.

Dr. Zarybnisky said Idaho needs to keep up with educational standards, and Idaho is falling behind without this bill. Since he graduated, all schools require this training of their students, and all health care professions need to keep going to school. Financially, the training is not that big a burden. The other day, his own office spent \$45,000 on a piece of equipment to allow them to look into the very far periphery of the eye to detect certain conditions. Medicaid, Medicare, and VSP Vision Care patients are required to see a doctor who can dilate the eye. There are other options for a doctor who does not want to obtain the training to still make a living.

TESTIMONY: **Dr. Philip Rainey**, a Boise optometrist, introduced himself to the Committee to speak in favor of **H 11**. As the standard of care progresses in all medical fields, it is wise to stay on top of as much information as possible. Much of what was learned in school is obsolete or surpassed in only five to ten years. In order to stay at the top tier of licensing, an optometrist must complete 18 hours of continuing education a year, but at other tiers the requirement is only 12 hours per year. The lower-tier optometrists are behind the current standards of care and are getting farther behind because they have to complete fewer education hours per year.

Dr. Rainey reported there used to be other programs closer to Idaho that offered this training, but most of the other optometrists have already completed the training. There is only one school left and that is in Florida. The expense is not onerous and it is a cost of doing business like upgrading a piece of equipment. The training will make optometrists more capable.

TESTIMONY: **Dr. Joy Johnson**, Board member, introduced herself to the Committee. **Dr. Johnson** informed the Committee of a 1970s court case where an ophthalmologist did not check the pressure of a young woman's eye. The patient was only in her 30s and checking pressure in someone under 40 was not the standard of care. However, the woman developed glaucoma and vision damage, and the doctor lost the case. The lawsuit caused the optometrists to change their practice to do more than the basic standard.

Dr. Johnson said she graduated in 1986 and has always been able to dilate eyes, but it is not a routine practice. Dilation changes her description of the optic nerve and helps her watch the optic nerve over time. She has a patient with a nevus or mole in the eye. A nevus can develop into melanoma. **Dr. Johnson** always dilates the patient's eye because otherwise she cannot follow him appropriately for changes. If she didn't know the nevus was there, she could easily miss it. It is not always convenient for her to dilate and she can't charge extra, but it's the right thing to do for her patients. She has purchased \$2-3,000 worth of medical equipment she can't be reimbursed for, but it gives her patients better care and lets her sleep at night.

Dr. Johnson stated an optometrist from another state recently requested a lower tier license and the Board was told it would be required to grant that license. An applicant has to pass an exam but can still obtain a license without therapeutics or diagnostics because the option exists in the law.

Vice Chairman Souza asked why an outside doctor could to request a license without the diagnostic and therapeutic portion, and whether it is preferable to offer choices or have a uniform license at the same standard. **Dr. Johnson** answered because the law still includes the tiered license, the option exists to practice without diagnostics and therapeutics. She can't imagine anyone wanting to practice without at least the diagnostic portion. The Board's counsel advised the Board the applicant had to be granted the license if requested. Ultimately, the applicant was advised of the Board's plan to eliminate the tiered license option and the applicant withdrew the request.

Mr. Toryanski closed by informing the Committee the Board thinks this bill needs to pass for public safety reasons.

Vice Chairman Souza asked for an explanation of how someone coming to Idaho could get a license without including therapeutics and diagnostics in the practice. It appears that the statute supports the way Dr. Osterberg wants to practice, without offering therapeutics and diagnostics. **Mr. Toryanski** replied the Board rules require someone transferring a license to the State to have therapeutic qualifications. However, if it is a new license and the applicant has the training and passes the exam, the applicant is not required to get a license that allows them to use pharmaceuticals. It is something of a loophole, and the purpose of the bill is to close that loophole. **Vice Chairman Souza** asked where the law states therapeutics must be used in an optometry practice, or that an optometrist can't practice without offering therapeutics and diagnostics. **Mr. Toryanski** referred to the sentence added to Idaho Code § 54-1522 in the bill requiring every applicant to be certified as of January 1, 2019. He would be happy to provide the additional statutes for review. **Vice Chairman Souza** stated she understands the law would require certification, but it doesn't require an optometrist to offer the services or use them. **Mr. Toryanski** confirmed that understanding.

Senator Harris asked for clarification on the reciprocity issue and whether it applies only to individual doctors or Statewide recognition of doctors. **Mr. Toryanski** answered the states all have their own laws and standards. Generally, reciprocity is given if the state where the optometrist is coming from has substantially equivalent licensure as the state coming to. The Bureau oversees many professional licenses, and if a professional from another state was trying to be licensed, the relevant regulatory board would review the other state's requirements. If it was substantially the same as Idaho's, the professional would be granted the license. If the other state has a lower standard to be licensed, then Idaho would not allow the license.

MOTION: **Senator Jordan** moved that **H 11** be held subject to the call of the Chair. **Senator Martin** seconded the motion.

DISCUSSION: **Senator Foreman** said he would like to see a grandfather clause added to the bill. There are only 11 people who fall into the area of concern, and they have been practicing a long time with a lot of expertise. In short order, this will become a moot point due to retirements.

Vice Chairman Souza stated some leeway should be given. There is a requirement for certification but not a requirement to use the practice. There does not seem to be any practical difference between how the senior optometrists practice and a new optometrist who is certified but chooses not to use the pharmaceuticals. **Vice Chairman Souza** commented the standard of care needs to be improved and a multiple-tiered system is not desirable. She would like to see some amendment to allow the senior optometrists to continue, perhaps with some sort of disclosure form for the patients to sign so the public is aware that optometrist's practice is limited to only certain areas. The retirement system will take care of the problem.

Senator Jordan said the primary reason she made her motion is there are some good components to the bill but the testimony did not support that there are threats to public health and safety. With 22 years of recordkeeping, to have so few problems is wonderful. This bill might have come a little too quickly, and perhaps next year, a bill will be brought forward that addresses the Board's concerns but not put people out of business who might be filling a niche in communities.

Senator Martin would consider sending the bill to the Fourteenth Order if amendments can be crafted this year. His intent in seconding the motion was not to kill the bill but rather to allow for time to come up with amendments.

Senator Anthon stated he will oppose the motion. He is in favor of the bill and the policy position. It is a hallmark of professional licensure to have ongoing education, especially in health care. Today when technology and technique and medicine are advancing so rapidly, a practitioner has to keep up. That is the policy behind this bill, and he also feels it is a good policy to have a single standard for all licensees. **Senator Anthon** stressed this is a policy discussion rather than an attack on someone's ability.

SUBSTITUTE MOTION:

Vice Chairman Souza moved to send **H 11** to the 14th Order for possible amendment. The substitute motion failed for lack of a second.

There being no more discussion, **Chairman Heider** called for a roll call vote on the original motion. **Senators Martin, Lee, Harris, Foreman, and Jordan** voted aye. **Chairman Heider, Vice Chairman Souza, and Senators Anthon and Agenbroad** voted nay. The motion carried.

S 1081

Relating to the Immunization Assessment Board. **Senator Martin** asked Dean Cameron, Director of the Department of Insurance, to present the legislation. **Director Cameron** stated the bill changes a sunset date from 2017 to 2019. In 2009, there were significant budget shortfalls, and Governor Otter recommended cutting funding for immunizations for children on private insurance. The Legislature adopted that recommendation, but shortly thereafter, problems developed. Previously, the State purchased immunizations at a discounted rate, and doctors were able to provide immunizations without regard to insurance coverage. After the recommendation was implemented, physicians were required to keep two separate stocks of vaccines, one for Medicaid patients and another for those privately insured. Those vaccines were purchased at a higher cost.

Director Cameron explained the Idaho Immunization Assessment Program (Program) was adopted to address the cost concerns. The Program was modeled after another state's program but was adapted to Idaho and has since become the model for other states to follow. The Program provides for the Immunization Assessment Board (IAB) to assess each insurance carrier based on the number of children it insures. Funds are sent to the IAB through the Department of Insurance and then sent to the Department of Health and Welfare (Department). The Department buys one stock of vaccines at a lower cost for both Medicaid patients and insured or self-funded patients, and the vaccines are distributed to local providers. The program does not require any administrative expenses, and every dollar paid by the carriers ends up going toward vaccines.

Director Cameron advised the Program was put in place with a two-year sunset in order to ensure the assessments were not too great and for cost monitoring purposes. The sunset date has been extended for two-year periods since inception, and **S 1081** would extend the sunset date of the Program for an additional two years.

MOTION:

Vice Chairman Souza moved to send **S 1081** to the floor with a **do pass** recommendation. **Senator Lee** seconded the motion. The motion carried by **voice vote**.

ADJOURNED:

There being no further business at this time, **Chairman Heider** adjourned the meeting at 4:29 p.m.

Senator Heider
Chair

Jeanne Jackson-Heim
Secretary