



# Arizona House of Representatives House Majority Research MEMORANDUM

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**To:** JOINT LEGISLATIVE AUDIT COMMITTEE  
**cc:** Representative Rick Murphy, Chair  
Senator Jim Waring, Vice-Chair  
**Re:** Sunset Review of the Board of Homeopathic Medical Examiners  
**Date:** December 2, 2005

Attached is the final report of the sunset review of the **Board of Homeopathic Medical Examiners**, which was conducted by the Senate Health and House of Representatives Health Committee of Reference.

This report has been distributed to the following individuals and agencies:

Governor of the State of Arizona  
The Honorable Janet Napolitano

President of the Senate  
Senator Ken Bennett

Speaker of the House of Representatives  
Representative Jim Weiers

Senate Members  
Senator Jim Waring, Vice-Chair  
Senator Carolyn Allen  
Senator Marsha Arzberger  
Senator Robert Cannell  
Senator Barbara Leff

House Members  
Representative Rick Murphy, Chair  
Representative David Bradley  
Representative Laura Knaperek  
Representative Linda Lopez  
Representative Doug Quellan

Board of Homeopathic Medical Examiners  
Department of Library, Archives & Public Records  
Auditor General

Senate Republican Staff  
Senate Research Staff  
Senate Democratic Staff

House Majority Staff  
House Research Staff  
House Democratic Staff

***Senate Health and House of Representatives Health  
Committee of Reference Report***

***Board of Homeopathic Medical Examiners***

Date: December 2, 2005

To: Joint Legislative Audit Committee  
Representative Rick Murphy, Chair  
Senator Jim Waring, Vice-Chair

***Background***

Pursuant to Arizona Revised Statutes (ARS) §41-2953, the Joint Legislative Audit Committee (JLAC) assigned the sunset review of the Board of Homeopathic Medical Examiners (Board) to the Senate Health and House of Representatives Health Committee of Reference.

The Board was established by the Legislature in 1980. Its mission is to protect the health, safety and welfare of Arizona citizens by examining, licensing and regulating homeopathic physicians. According to ARS §32-2904, the Board is responsible for issuing licenses, conducting all examinations for license applications, holding hearings, and regulating the conduct of those licensed by the Board. The Board also reviews and registers homeopathic medical assistants. The Board is authorized to adopt rules, accredit educational institutions in Arizona which grant the degree of doctor of medicine in homeopathy, hire staff, and adopt rules to establish competency or professional review standards for any minor surgical procedure.

***Committee of Reference Sunset Review Procedures***

The Committee of Reference held one public meeting on November 8, 2005 to review the Board's responses to the sunset factors as required by ARS §41-2954, subsections D and F, and to hear public testimony.

***Committee of Reference Recommendations***

The Committee of Reference recommends that the Board continue for two years and requested the Auditor General conduct a special audit of the Board.

***Attachments:***

1. Sunset report requirements pursuant to ARS §41-2954, subsections D and F.
2. Meeting notice.
3. Minutes of the Committee of Reference meeting.



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Assistant Legislative Research Analyst  
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1700 W. Washington  
Phoenix, AZ 85007-2848  
FAX (602) 417-3140

**To: Members of the House and Senate Health Committees of Reference**

**Re: Sunset Review of the Board of Homeopathic Medical Examiners**

**Date: October 26, 2005**

The Arizona Board of Homeopathic Medical Examiners (Board) is scheduled to sunset July 1, 2006. The following is a brief description of the history and duties of the Board, as well as the Board's response to the sunset questionnaire. A public meeting is scheduled for November 8, 2005 to allow you to ask questions of the Board, take public testimony, and make a final recommendation on the Board's continuation. If you have any questions or need further assistance, please feel free to contact me.

## **BOARD HISTORY AND MISSION**

The Board was established by the Legislature in 1980. Its mission is to protect the health, safety and welfare of Arizona citizens by examining, licensing and regulating homeopathic physicians. According to Arizona Revised Statutes (ARS) §32-2901, *homeopathy* is defined as "a system of medicine that employs homeopathic medication in accordance with the principle that a substance that produces symptoms in a healthy person can cure those symptoms in an ill person." Further, *homeopathic medication* is defined as "a substance of animal, vegetable or mineral origin that is prepared according to homeopathic pharmacology and that is given usually in a homeopathic microdosage." Kinesiology, chelation therapy, orthomolecular therapy and nutritional therapies are all examples of acceptable standards of practice within the homeopathic community.

## **ORGANIZATION AND DUTIES**

The Board consists of the following six members: four licensed homeopathic physicians and two public members. Board members serve staggered three year terms. Board members cannot serve more than three consecutive terms. According to ARS §32-2904, the Board is responsible for issuing licenses, conducting all examinations for license applications, holding hearings, and regulating the conduct of those licensed by the Board. The Board reviews and registers homeopathic medical assistants. The Board is authorized to adopt rules, accredit educational institutions in Arizona which grant the degree of doctor of medicine in homeopathy, hire staff, and adopt rules to establish competency or professional review standards for any minor surgical procedure.

According to the Board, individuals applying for licensure undergo a lengthy application process that includes the verification of medical educational credentials, verification of the active status of MD and/or DO licenses in Arizona or any other state or territory of the United States, and reviews the 300 hours of post graduate education an applicant must complete in homeopathic modalities. The Board does not require that their licensees maintain both an allopathic (or osteopathic) medical license in addition to the homeopathic license.

The Board stated in its sunset response that it has improved its complaint processing times from an average of 140 days in FY 2004 to an average of 69.3 days in FY 2005. In FY 2004, the Board reviewed 10 complaints and in FY 2005 the Board reviewed 22. The Board also stated that over the past two years the number of complaints involving dual-licensed physicians (licensed by both the Board of Homeopathic Medical Examiners and the Arizona Medical Board) physicians has increased. The Board believes that the new procedures instituted by the Arizona Medical Board have resulted in a more efficient process that allows both boards to review complaints involving dual-licensees.

**FISCAL ISSUES**

Pursuant to ARS §32-2906, the Board is required to deposit ten per cent of all monies collected into the State General Fund and the remaining ninety per cent into the Board of Homeopathic Medical Examiners' Fund. In Fiscal Year 2005, the Board had one full-time employee (FTE) and a budget of \$77,300.

**LEGISLATIVE ISSUES**

The Board is requesting legislation to repeal ARS §32-2914(A)(14), which requires the Board to establish a fee of no greater than \$50 for triennial registration of supervision of a homeopathic medical assistant. The Board believes that the fee is “counterproductive to the intent of registering homeopathic medical assistants, penalizes the supervisor and is difficult to enforce.”

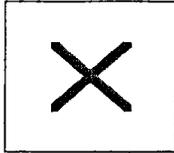
The Board is also requesting that the definition of *unprofessional conduct*, stipulated by ARS §32-2933, be amended in order to “align” the language to that of the Arizona Medical Board and Arizona Board of Osteopathic Medicine.

**ADDITIONAL BACKGROUND**

Staff contacted individuals and agencies that work with the Board to discuss their working relationships with the Board.

Lisa E. Platt from the Arizona Homeopathic and Integrative Medical Association (AHIMA) stated that the AHIMA feels that the Board serves the public and its high standards protect the public by licensing doctors who have a higher level of education, are knowledgeable and well known in their fields. Ms. Platt also stated that the AHIMA licensees support the Board's decisions.

According to Ms. Platt, the AHIMA has a good working relationship with the Board and believes that the Board's existence has “enabled Arizona to become a leader and the nation's center of Holistic Medicine.” The AHIMA supports a 10-year renewal of the Board and believes that the Board sees that highly qualified licensed physicians provide patient care.



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**ARIZONA STATE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS**

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1400 West Washington, Suite 230, Phoenix, Arizona  
85007

Janet Napolitano  
Governor

(602) 542-8154 phone • (602) 542-3093 fax  
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Charles Schwengel, DO, MD(H)  
President  
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Vice-President  
Don Farris  
Secretary-Treasurer

August 30, 2005

Rick Murphy  
State Representative  
Chair, Health Committee of Reference  
Arizona House of Representative  
1700 West Washington, Suite H  
Phoenix, Arizona 85007-2844

**RE: Sunset Review Response to Joint Legislative Audit Committee:**

Dear Representative Murphy:

The Board of Homeopathic Medical Examiners hereby submits its responses to the June 30, 2005 letter submitted regarding the Joint Legislative Audit Committee pending sunset review of the Board.

**1. The objective and purpose in establishing the agency.**

The Board was established in 1981 to examine and license physicians (either M.D. or D.O.) that practice homeopathic medicine. The Board also reviews and registers homeopathic medical assistants and is statutorily approved to accredit education institutions in the state that grant the degree of doctor of medicine in homeopathy. The Board issues dispensing permits. The Board regulates the conduct of licensees by investigating complaints. The Board may discipline physicians that are found to have violated laws related to professional conduct as described in A.R.S. 32-2933.

**2. The effectiveness with which the agency has met its objective and purpose and the efficiency with which it has operated.**

The Board operates efficiently at the current level of licensees and number of complaints received. One 30-hour per week employee serves as executive director and is charged with preparing physician and medical assistant applications for Board review, gathering information on complaints for submission to the Board for disposition, effectively responding to state requirements related to auditing, administrative time-lines, information technology requirements, inventory and other miscellaneous and extraneous reports, as well as budgeting, rulemaking, and responding to consumer inquiries.

The Board has met its objective and purpose to license physicians that practice homeopathic medicine. Applicants undergo a lengthy application process that verifies the medical educational credentials of applicants, verifies active status of MD and/or DO licenses in this state, any other

state, or territory of the United States, and reviews the 300 hours of post graduate education an applicant must complete in modalities defined in A.R.S. §32-2901(22) as the “*practice of homeopathic medicine*”.

The Board believes they have met their objective to respond effectively to consumer complaints, provide information to the public on the status of licensees, and direct consumers to appropriate sources if they seek further information or education about homeopathic practices.

**3. The extent to which the agency has operated within the public interest.**

The Board operated within the public interest in several ways that include updating the Board’s web site to provide access to a list of licensees, on-line application forms, links to statutes and rules and posting of board minutes and agendas.

While being aware that complaint reviews can be quite time-consuming and involve referrals to the Superior Court which can impact the overall timeframe given to the resolution of complaints, the Board has improved its complaint processing times from an average of 140 days in Fiscal Year 2004 to an average of 69.3 days in Fiscal Year 2005. In addition, the number of complaints has increased because of a greater awareness by the Arizona Medical Board that their licensees are dual licensed by the Board of Homeopathic Medical Examiners. Referrals from the Arizona Medical Board and the Osteopathic Medical Board have resulted in more complaint reviews but more effective time frames. As an example in Fiscal Year 2004 the Board reviewed 10 complaints. In Fiscal Year 2005 the number of complaints received jumped to 22.

The Board has met its published time frames with regard to processing license and registration applications.

**4. The extent to which rules adopted by the agency are consistent with legislative mandate.**

Adopted rules are consistent with legislative mandate. The Board has revised *A.A.C. Chapter 38, Article 1 and Article 2* within the last two years in response to recommendations published in its Five Year Rules Review. The Board is currently revising *A.A.C. Chapter 38, Article 3*.

**5. The extent to which the agency has encouraged input from the public before adopting its rules and the extent to which it has informed the public as to its actions and their expected impact on the public.**

As indicated in number 4 above, the Board has revised *A.A.C. Chapter 38, Article 1 and Article 2*. Before adopting the rules, the Board mailed copies of the proposed rules to all licensees, associations, and other state agencies that would be considered stakeholders. Notices were published according to the Arizona Administrative Procedures Act and public hearings were held in Phoenix, with advance notice provided to all licensees and professional associations well in advance of publication of the Notice of Final Rulemaking. The Board believes it has provided adequate and legal notice to all interested and affected parties prior to adoption of rules.

The expected impact of the rules has been discussed in published economic impact statements. No negative comments were received by the Board in either recent rulemaking.

**6. The extent to which the agency has been able to investigate and resolve complaints that are within its jurisdiction.**

The Board has been able to investigate complaints within its jurisdiction. Overall, the number of complaints increased in the last fiscal year, but the overall time frame to resolve them has improved from an average of 140 days in 2004 to an average of 69.3 days in 2005. The

percentage of complaints resolved within 120 days has increased from 40% in 2004 to 77% in 2005.

The number of complaints involving dual-licensed (licensed by both the Board of Homeopathic Medical Examiners and the Arizona Medical Board) physicians increased over the last two years. The Arizona Medical Board instituted procedures that resulted in a more efficient process that allowed both boards to review complaints involving dual-licensees within the parameters of A.R.S. §32-2907. We continue to work with Arizona Medical Board staff to resolve any issues that hamper either board's ability to complete their investigation, including complaints involving primarily homeopathic treatments that fall clearly within the jurisdiction of the Board of Homeopathic Medical Examiners.

The Board strives to educate the complainant about the complaint process and address their concerns first and foremost. The Board's website includes information regarding the complaint process and explanatory information is sent to complainants and physicians regarding the complaint process in the first written communication acknowledging that a complaint has been received.

**7. The extent to which the Attorney General or any other applicable agency of state government has the authority to prosecute actions under the enabling legislation.**

Judicial review of suspension or revocation of a license is available as provided in *Title 12, Chapter 7, Article 6*. The Board may seek injunctive relief through the attorney general or the county attorney may apply to the superior court of Maricopa County for an injunction restraining individuals from violating the statutes governing the Board.

**8. The extent to which the agency has addressed deficiencies in its enabling statutes that prevent it from fulfilling its mandate.**

and

**9. The extent to which changes are necessary in the laws of the agency to adequately comply with these factors.**

The Board fulfills its mandate. A.R.S. §32-2914 (A)(14) should be repealed. The fee is counter-productive to the intent of registering homeopathic medical assistants, penalizes the supervisor, and is difficult to enforce.

A.R.S. §32-2933 regarding unprofessional conduct should be reviewed to determine what language should be included to align the statute to language found within the professional conduct statutes of the Arizona Medical Board and the Arizona Board of Osteopathic Medicine. Historically, all three boards have similar professional conduct statutes.

**10. The extent to which the termination of the agency would significantly harm the public, health, safety or welfare.**

The Board serves as a valuable liaison to citizens of the state seeking information regarding homeopathic care. Without the Board's regulatory and enforcement activities that provide oversight the public could be subject to unprofessional or deceptive practices. Individuals seek alternative medical care either as a complement to their allopathic care or as their sole care based on years of frustrating experience in the more traditional approach to medical care. As consumers become more educated in seeking medical care, alternative care including homeopathy remains a viable option. Many of the calls that come to the Board check the validity of practitioner's credentials. The consumer seeks the consistency and professionalism that a regulatory

mechanism brings to a profession while at the same time seeking to have ready access to homeopathic care.

**11. The extent to which the level of regulation exercised by the agency is appropriate and whether less or more stringent levels of regulation would be appropriate.**

The level of regulation is appropriate for the community the legislation was intended to oversee. Gauged by the number of complaints referred to the Board for review there does not appear to be a perception in the public's eyes that the Board is lax in their oversight of the licensed physicians. Staff interactions with individuals seeking to find a homeopathic practitioner indicate that a majority of the consumers of this type of health care are educated and very well versed in describing the type of care they seek and are aware of efforts they may be called to make with regard to lifestyle and diet modifications.

Of continuing challenge to the Board concerns the unlicensed, but well trained homeopathic lay practitioner. Often these practitioners will seek to comply with Arizona's laws (A.R.S. 32-2931(A) and (B)) concerning the practice of homeopathy and will serve as homeopathic medical assistants under the direct supervision of a licensed homeopathic physician. They provide a valuable and competent adjunct therapeutic service within the practices of the licensed homeopathic physicians.

However, the other side of the landscape is that there are homeopathically trained lay practitioners that work outside the regulatory framework of physician supervision and the potential exists for harm to Arizona citizens. In the last ten year sunset cycle two lay practitioners created a dangerous outcome for Arizona citizens. One citizen died and the other citizen's health was severely compromised and medical costs associated with rehabilitation to a healthful state remains a state funding issue under AHCCCS. The Board remains dedicated to the protection of the health, safety, and welfare of the citizens of Arizona. Consumer education is an important board priority. There are many reasons citizens may seek unlicensed healthcare practitioners including lack of money, a disease state that makes ones ability to logically consider the adverse consequence of a particular therapy, the need to feel protected by a cult-like, all knowing "spiritual" figure, and the feeling that the traditional medical establishment is not to be trusted. The Board would urge the legislature to consider an additional layer of regulation directed at the homeopathic lay practitioner.

**12. The extent to which the agency has used private contractors in the performance of its duties and how effective use of private contractors could be accomplished.**

Due to budgetary considerations the Board has not utilized private contractors to a large extent. Currently, the Board utilizes an outside contractor to update and install program enhancements to its website. Again, budgetary restraints have kept the Board from installing more than a select targeted enhancement to its website each fiscal year.

The executive director provides rulemaking support to the Board and works closely with the Governors Regulatory Review Council to meet statutory and administrative requirements.

The Board could effectively utilize private contractors in the areas of website enhancement, rule writing, and the preparation of medical investigative reports. However, without adequate funds from a larger license base an increased utilization of private contractors is not anticipated.

**Additional questions**

**1. An identification of the problem or the needs that the agency is intended to address.**

The Board is charged with licensing homeopathic physicians. The applicants must have an active M.D. or D.O. license at the time of initial licensure. Because of the unique nature of a homeopathic, rather than allopathic or osteopathic approach to addressing patient's health needs, the Board provides a licensing framework for physicians who practice homeopathy and other modalities defined in A.R.S. §32-2901(22) as the *practice of homeopathic medicine*. In addition, patients that seek a homeopathic approach to the management of their health conditions rely on the Board to enforce standards of practice that may not be compatible with standards of practice within the allopathic medical community; but that, nonetheless, provide relief for many patients. Examples of standards of practice acceptable in the scope of practice within the homeopathic community include kinesiology, chelation therapy (for other than the removal of heavy metals), orthomolecular therapy (ie. IV's that provide the optimum concentration of substances normally present in the human body such as vitamins, minerals, amino acids and enzymes), or nutritional therapies.

In the interest of providing alternative therapies to sometimes chronically sick patients, dual licensed physicians (licensed by the Homeopathic Board of Examiners and either the Arizona Medical Board or the Osteopathic Board of Medical Examiners) are sometimes faced with providing their patient a requested therapy that may be considered "experimental" within the standard of care of the allopathic community but acceptable within the standard of care in the homeopathic community. The Homeopathic Board of Medical Examiners ultimately provides *choice* and protection to the health, safety, and welfare of consumers that seek alternative care. In addition, the Board provides an educational framework and enforcement model for its licensees that offer a particular modality and a defined standard of practice to the consumers that seek out homeopathic medicine or one of the other modalities that make up the practice of homeopathic medicine in Arizona.

**2. A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.**

The Board remains dedicated to enhancing its web presence to promote greater access to information regarding licensees, complaints, and practice locations. The current website does not list physician addresses or complaint information. Unanticipated costs associated with increased health insurance costs absorbed by the Board and joint office costs will draw down the Board's 2006 appropriation and bar further website enhancements. In July, 2005, new rules were approved that will raise additional revenue, the bulk of which will be realized in spring, 2006. A primary objective of the Board is to complete website enhancements as indicated above.

Hand in hand with the website enhancements will be the completion of a catalogue of closed complaints. It is the intention of the Board to make the current year and five previous years available on-line. By making the information readily available to the public, staff time will be freed up for other duties and consumers will have an objective history of a physician's disciplinary record.

The second primary objective is to convert the Lotus Approach database to Access. The current database, developed in 1997 is difficult to program and the Lotus software version is not supported by Windows XP which necessitates maintaining the database on an aging computer with a Windows 98 operating system. The conversion of the database to Access would free up staff time currently utilized by the need to 'jerry-rig' the Lotus Approach database to provide reporting capabilities not conceptualized in the original programming effort.

**3. An identification of any other agencies having similar, conflicting or duplicate objectives, and an explanation of the manner in which the agency avoids duplication or conflict with other such agencies.**

The Arizona Medical Board and the Osteopathic Board of Medical Examiners licenses allopathic and osteopathic physicians within Arizona. Although the licensing qualification of the physician seeking licensure under the Board of Homeopathic Medical Examiners is similar in that each of the Boards require graduation from an accredited medical or osteopathic medical college, or completion of a Fifth Pathway Program, the Board also requires *additional post-graduate education* in modalities that make up the practice of homeopathic medicine in Arizona. These include acupuncture, nutrition, homeopathy, orthomolecular medicine, neuromuscular integration, minor surgery, pharmaceutical medicine, and chelation therapy. The Board's rules provide standards that applicants must meet to practice as a homeopathic physician and create choice for the Arizona consumer seeking treatment outside the allopathic or osteopathic medical paradigm. The standards provide a regulatory framework by which the Board regulates the physicians seeking to practice certain alternative methods. Additional rules provide definitions of what constitutes experimental medicine and gives guidance to the Board as they investigate complaints.

Naturopathic physicians also practice homeopathic medicine in Arizona. However, the educational criteria for naturopathic physicians differs from the educational criteria required of the homeopathic physician. In addition, the emphasis on the application of herbal remedies differs from the practice of homeopathic medicine defined in A.R.S. §32-2901(22).

A.R.S. §32-2907 provides guidance in those instances where a complaint is filed against a physician dual-licensed by either of the traditional medical boards and the Homeopathic Medical Examiners.

**4. An assessment of the consequences of eliminating the agency or of consolidating it with another agency.**

The elimination of the Board would result in some of the licensed homeopathic physicians losing their ability to provide healthcare services in Arizona. The Board does not require that their licensees maintain both an allopathic (or osteopathic) medical license in addition to the homeopathic license. While many of the Board's licensees hold a traditional license in another state it does not follow that they hold an Arizona M.D. or D.O. The elimination of the Board would result in fewer physicians practicing medicine within Arizona.

The ability of consumers to seek alternative medical care would also suffer were the Board to be eliminated. While physicians licensed by the Arizona Medical Board and the Osteopathic Board of Medical Examiners may consider practicing one of the alternative modalities in Arizona, to do so can have serious consequences under the standard of practice act of the traditional boards. The fear of retribution by the traditional board effectively bars experimentation or even the provision of something as essentially helpful as nutritional counseling to assist patients in making healthful lifestyle changes. Consumers demand and expect choice in their medical care.

It is unlikely that a consolidation would address what has historically been an uneasy relationship between the Arizona Medical Board and the Board of Osteopathic Medical Examiners. Although current procedures in place at the Arizona Medical Board herald a respectful consideration of the practices recognized by the laws governing the Homeopathic Medical Board, it is unlikely that the traditional boards would expand their scope of practice to accommodate homeopathic modalities.

Arizona Board of Homeopathic Medical Examiners  
Sunset Review Response

**Request for annual report**

Please note, the Board does not publish an annual report. A copy of the Strategic Plan is enclosed and will address many of the questions you may have regarding the number of current licensees, the number of applications acted upon and complaint data.

If you have further questions do not hesitate to contact me.

Sincerely,

Christine Springer  
Executive Director

Enclosures

Interim agendas can be obtained via the Internet at <http://www.azleg.state.az.us/InterimCommittees.asp>

## ARIZONA STATE LEGISLATURE

### INTERIM MEETING NOTICE OPEN TO THE PUBLIC

SENATE HEALTH AND HOUSE OF REPRESENTATIVES HEALTH  
COMMITTEE OF REFERENCE FOR THE:  
SUNSET OF THE HEALTH FACILITIES AUTHORITY  
SUNSET OF THE MEDICAL RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS  
SUNSET OF THE NURSING CARE INSTITUTION ADMINISTRATION AND ASSISTED LIVING  
SUNSET OF THE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS  
SUNRISE REQUEST OF THE ARIZONA ASSOCIATION FOR HOME CARE  
SUNRISE REQUEST OF THE ARIZONA MIDWIFERY INSTITUTE  
SUNRISE REQUEST OF THE ARIZONA ALLIANCE OF SURGICAL SPECIALISTS

**Date:** Tuesday, November 8, 2005

**Time:** 9:00 a.m.

**Place:** House Hearing Room 1

### AGENDA

1. Call to Order – Opening Remarks
2. Health Facilities Authority
  - Presentation by the Health Facilities Authority
  - Public Testimony
  - Discussion and Recommendations by Committee of Reference
3. Medical Radiologic Technology Board of Examiners
  - Presentation by the Medical Radiologic Technology Board of Examiners
  - Public Testimony
  - Discussion and Recommendations by Committee of Reference
4. Nursing Care Institution Administration and Assisted Living Facility Managers Board
  - Presentation by the Nursing Care Institution Administration and Assisted Living Facility Managers Board
  - Public Testimony
  - Discussion and Recommendations by Committee of Reference
5. Board of Homeopathic Medical Examiners
  - Presentation by the Board of Homeopathic Medical Examiners

- Public Testimony
  - Discussion and Recommendations by Committee of Reference
6. Arizona Alliance of Surgical Specialists
    - Presentation by the Arizona Alliance of Surgical Specialists
    - Public Testimony
    - Discussion and Recommendations by Committee of Reference
  7. Arizona Association for Home Care
    - Presentation by the Arizona Association for Home Care
    - Public Testimony
    - Discussion and Recommendations by Committee of Reference
  8. Arizona Midwifery Institute
    - Presentation by the Arizona Midwifery Institute
    - Public Testimony
    - Discussion and Recommendations by Committee of Reference
  9. Adjourn

**Members:**

Senator Jim Waring, Co-Chair  
Senator Carolyn Allen  
Senator Marsha Arzberger  
Senator Robert Cannell  
Senator Barbara Leff

Representative Rick Murphy, Co-Chair  
Representative David Bradley  
Representative Laura Knaperek  
Representative Linda Lopez  
Representative Doug Quelland

10/31/05  
jmb

**People with disabilities may request reasonable accommodations such as interpreters, alternative formats, or assistance with physical accessibility. If you require accommodations, please contact the Chief Clerk's Office at (602) 926-3032, TDD (602) 926-3241.**

# ARIZONA STATE LEGISLATURE

SENATE HEALTH AND HOUSE OF REPRESENTATIVES HEALTH COMMITTEE OF  
REFERENCE FOR THE:  
SUNSET OF THE HEALTH FACILITIES AUTHORITY  
SUNSET OF THE MEDICAL RADIOLOGIC TECHNOLOGY BOARD OF EXAMINERS  
SUNSET OF THE NURSING CARE INSTITUTION ADMINISTRATION AND  
ASSISTED LIVING  
SUNSET OF THE BOARD OF HOMEOPATHIC MEDICAL EXAMINERS  
SUNRISE REQUEST OF THE ARIZONA ASSOCIATION FOR HOME CARE  
SUNRISE REQUEST OF THE ARIZONA MIDWIFERY INSTITUTE  
SUNRISE REQUEST OF THE ARIZONA ALLIANCE OF SURGICAL SPECIALISTS

Minutes of the Meeting  
Tuesday, November 8, 2005  
9:00 a.m., House Hearing Room 1

## Members Present:

Senator Jim Waring, Co-Chair  
Senator Carolyn Allen  
Senator Marsha Arzberger  
Senator Robert Cannell  
Senator Barbara Leff

Representative Rick Murphy, Co-Chair  
Representative Laura Knaperek  
Representative Linda Lopez  
Representative Doug Quelland

## Members Absent:

Representative David Bradley

## Staff:

Beth Kohler, Senate Health Research Analyst  
Elizabeth Baskett, House Health Research Analyst

Co-chairman Murphy called the meeting to order at 9:12 a.m. and attendance was noted.

## Presentation by the Health Facilities Authority

**Blaine Bandi, Executive Director, Health Facilities Authority (HFA)**, stated that his organization was established in 1977 to issue bonds exempt from income tax on the Authorities interest which enables them to get lower interest rates. He explained that the Authority would then loan their proceeds to health care facilities at lower rates than the healthcare facilities would receive from banks. Mr. Bandi remarked that the Authority provided low cost loans for rural and underserved healthcare facilities.

He stated that rural communities that have benefited from the program included:

- Flagstaff
- Kingman
- Prescott
- Wickenburg
- Douglas
- Springerville
- Page
- Bisbee
- Camp Verde
- Fort Mojave
- Peach Springs
- Sacaton
- Elfrida
- Morenci
- Ajo
- St. Michaels

Mr. Bandi remarked that the Health Facilities Authority was not a regulatory agency and that it existed solely to improve the health care for the residents of Arizona through the financing of critical health care projects. He remarked that failure to continue the Authority would deprive the State's health care providers of a needed source of tax exempt financing. He respectfully requested the Committee of Reference recommend the Arizona Health Facilities Authority be continued for ten years.

In response to Senator Cannell's question about the possibility of a hospital not paying their loan back, Mr. Bandi told the Committee that since the inception of the HFA in 1977, this had only occurred once. He remarked that payments by that hospital were still being made to HFA. Mr. Bandi added that the residents of the State have no legal obligation to back up those bonds because they were issued solely on the credit of the institution.

Representative Knaperek asked Mr. Bandi to list the seven directors for HFA and he did so as follows:

1. **Bruce Gullede**, health care underwriter who does financing for health care institutions across the country.
2. **Donald Shropshire**, former hospital administrator; Tucson Medical Center.
3. **Jennifer Ryan**, community health center director from Southern Arizona.
4. **Rufus Gasper**, Chancellor of the Maricopa County Community College District.

5. **William Emerson**, City Attorney for the City of Peoria.
6. **Susan Straussner**, Community Health Nurse from Parnell County.
7. **Steven Russo**, Bond Attorney based in Tucson.

In response to Representative Knaperek's question about funding, Mr. Bandi told the Committee that the HFA's annual budget was approximately \$300,000 per year and that revenues to the Authority were generated through bond financing activities. He stated that when the HFA approved bonds, applicants are paying one basis point, which is .01 of one percent of total financing. He remarked that additionally applicants paid 7.5 basis points which was equal to .075 percent. Mr. Bandi told the Committee that the HFA brought in between \$300,000 to one million dollars per year, a five year cycle with one million dollars every fifth year. He added that the extra money was used for loans to other healthcare facilities in underserved parts of the State. Mr. Bandi told the Committee that the credit rate was predicated on a number of things, the most prominent being the credit worthiness of the applicant and also on the term and purpose of the loan. He remarked that he had seen the interest rates in the range of about four percent up to about seven percent.

Representative Knaperek asked the amount of savings in interest rates there was for people who used the HFA services. Mr. Bandi responded that historically, the industry used a figure of 15 percent savings going to tax exempt financing versus taxable financing. He stated that today, when interest rates are lower, that 15 percent figure would be closer to 10 or 11 percent.

In response to Representative Quelland, Mr. Bandi stated that the title holder on any property in which the HFA loaned money is going to be that non-profit corporation. He remarked that the HFA had liens on record for every loan they do. Mr. Bandi explained that the bond financing has specific guidelines and rules the HFA must follow in the event of a default.

In response to Senator Leff, Mr. Bandi told the Committee that HFA hired a lobbyist solely from lack of experience with legislative scenarios and to help the organization navigate through the process.

**Representative Quelland moved that the Senate Health and House Health Committee of Reference recommend to continue the Health Facilities Authority Board for ten years. By voice vote, the motion CARRIED.**

#### **Presentation by the Medical Radiologic Technology Board of Examiners**

**Aubrey Godwin, Director, Radiation Regulatory Agency**, told the Committee that the Medical Radiologic Technology Board of Examiners (MRTBE) was created in 1977 by

legislation due to the large number of unqualified technicians in the State. He stated that the role of MRTBE was to make sure that technicians or people applying ionizing radiation to a human being had been properly trained. He remarked that the type of technologist observed by MRTBE were X-ray, therapy, nuclear medicine and mammography technologists. Mr. Godwin pointed out that nuclear medicine technology had been added recently to MRTBE's certification program. He stated that MRTBE presently had approximately 9,000 certificate holders, some of whom hold dual certification. Mr. Godwin pointed out that most of the MRTBE cases dealing with disciplinary matters were related to failure to pay dues or questionable certifications since their last sunset review.

In response to Senator Allen, Mr. Godwin explained that drug treatment was made available through MRTBE for certified technicians who may need it and failure to successfully complete these proceedings would result in termination of certification.

In response to Senator Cannell, Mr. Godwin said that most of the drug related issues with technicians took place in larger institutions such as hospitals as opposed to private physician offices. He stated that if the institution where a troubled technician worked had a drug treatment program, MRTBE would direct the technician to utilize that program and if not, the technician would attend an independent drug program paid for by the technician.

In response to Senator Arzberger, Mr. Godwin remarked that due to the different State requirements for technician certification, out of town applicants must be certified in Arizona before working in this State.

In response to Representative Knaperek, Mr. Godwin told the Committee that there were both nationally certified and non-nationally certified radiological technician schools in Arizona. He stated that the vacancy on MRTBE had been available for less than one year.

In response to Representative Murphy, Mr. Godwin told the Committee that he looked forward to finding a citizen to fill the vacancy on the MRTBE.

In response to Representative Knaperek, Mr. Godwin remarked that due to the shortage of technicians in the State, Arizona has experienced an influx of out of State technicians.

In response to Senator Allen, **John Gray, Program Manager, MRTBE**, informed the Committee that a high school graduate could enter into the field of radiological technology either through community college or privately funded programs. He added that private school training took two years or less.

In response to Senator Leff, Mr. Godwin stated that there was a continuing education requirement in place for the field of radiological technology due to changing technology.

## Public Testimony

**Jerry High, Arizona State Society of Radiologic Technologists**, told the Committee that out of concern for public safety, he was glad that certification was required before becoming a technician.

In response to Senator Leff, Mr. Hyde said that passing the "Registry," a test sponsored by the American Association of Radiologic Technology (AART) was very difficult, yet allowed him to be nationally certified.

In response to Senator Leff, Mr. Godwin told the Committee that radiologic technologists were certified professionals, not licensed professionals.

**Stephen Sapareto, Director of Medical Physics, Banner Good Samaritan Hospital**, stated that he was the boss of the technologists at his facility and expressed the importance of technologists to be certified. He pointed out that another group certified by MRTBE were radiologic therapists, who administered ongoing care such as chemotherapy, and that it was especially important for these therapists to be certified.

In response to Senator Leff, Mr. Safereto explained that radiologic technologists and therapists had a chief technologist or therapist supervising them, followed by a chain of command that ultimately led to a physician at his facility.

**Jeff Siupik, Director of Radiation Services, MRTBE** told the Committee that being a director of technologists, he is concerned about the shortage of technologists in the State due to strict standards by the MRTBE on non-local technologist operating machinery in a crisis situation.

Senator Leff opined that two weeks, the time it takes for MRTBE to certify a non-local technician, was not a long period of time.

**Representative Quelland moved that the Senate Health and House Health Committee of Reference recommend to continue the Medical Radiologic Technology Board of Examiners for ten years. The motion CARRIED by voice vote.**

## Presentation by the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers

**Allen Imig, Executive Director, Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers (BENCIA/ALFM)**, informed the Committee that the Board was created in 1975 to protect the public's health and welfare by regulating and licensing nursing care institution administrators. He stated that in 1990, the board statutes were amended to add the responsibility of certifying and regulating adult home care managers and renamed in 1998 to Assisted Living Facility Managers. The mission of the Board was to protect the health, welfare and safety of its

citizens, to seek and institute the use of services of nursing care institution administrators and assisted living facility managers. Mr. Imig said that the Board's procedures helped ensure quality and competency standards were met by administrators and managers. In addition, the Board approves continuing education courses to make sure quality and useful education is being taught. He explained that since June of 2005, the Board had undergone an "extreme makeover" with virtually all new members being appointed. This reduced the back log of uninvestigated complaints significantly. Mr. Imig told the Committee that the Board had reduced their staff from five to three, leaving an executive director, investigator and a licensing coordinator. He encouraged the Committee to continue the BENECIA/ALFM.

In response to Senator Allen, Mr. Imig said that the Board consisted of five managers, two public members and the remaining members were administrators.

Senator Allen opined that home care nursing staff deserved better pay.

In response to Senator Waring, Mr. Imig stated that the changes made to the Board has helped, but not solved its financial problems.

In response to Senator Arzberger, Mr. Imig said that his Board investigated complaints from citizens regarding private care nurses and administrators as well as complaints filed by the Department of Health Services.

In response to Senator Waring, Mr. Imig told the Committee that the Board's website contained information regarding decisions on disciplinary action.

In response to Senator Allen, Mr. Imig explained that out of the last renewal period for managers, 2,000 of 2,500-2,600 renewal notices sent were renewed, causing 578 expired notices to be sent by the Board.

In response to Senator Leff, Mr. Imig opined that his Board received between 60 and 70 complaints a year, mainly not health care related but administrative related.

In response to Senator Waring, Mr. Imig stated that with the current staff, the Board should catch up on its back log of complaints by January 2006.

In response to Representative Quelland, Mr. Imig remarked that the Board was actively seeking replacements for the three vacancies on the Board.

Senator Leff suggested that the Committee send a letter to the Governor encouraging her to appoint the three positions.

In response to Representative Quelland, Mr. Imig opined that he would like to see a five year continuation be given to the Board.

Representative Knaperek remarked that time elected to the Board would reflect concerns with term limits and not reflect faith in Mr. Imig.

### **Public Testimony**

**Robert Frechette, President, Arizona Health Care Association (AHCA)**, told the Committee that on behalf of his Board, he would like to offer support in the continuation of the BENICIA/ALFM. He opined that the efforts implemented by the new staff showed that the Board was very serious about suggestions and concerns brought forth by the Legislature.

In response to Senator Waring, Mr. Bruschette stated that the AHCA was seen as the organization that represented the for profit facilities, containing some non-profit facilities and representing assisted living communities and independent full service communities. He said that Assisted Living Federation represents assisted living centers in homes and the Arizona Association of Homes for the Aging represents a number of facilities seen as non-profit businesses.

In response to Senator Cannell, Mr. Bruschette opined that if fee increases were necessary to fund the continuation of the Board, that it would be supported by AHCA.

Senator Leff stated that if the Committee made a five year recommendation at this meeting and the audit comes out in December and is changed, the legislation coming out in January does not have to be the same as the recommendation.

Representative Knaperek told the Committee that Mr. Imig had a good work history as a Director in other fields.

In response to Representative Knaperek, Beth Kohler, Senate Health Research Analyst, stated that the first audit of the Board would take place approximately six months after nomination adding an 18 month follow up audit, only if the requirements and recommendations made by the report were not met.

**Representative Quelland moved that the Senate Health and House Health Committee of Reference recommend that the Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility Managers be continued for two years. The motion FAILED.**

**Representative Quelland moved that the Senate Health and House Health Committee of Reference recommend that the Board of Examiners Nursing Care Institution Administrators and Assisted Living Facility Managers be continued for five years pending the findings of the Auditor General's report due in December of 2005. The motion CARRIED.**

## Presentation by the Board of Homeopathic Medical Examiners

**Chris Springer, Executive Director, Homeopathic Board**, told the Committee that she had worked for the Board of Homeopathic Medical Examiners (BHME) since 1999. She complimented appointments made to the Board by all of the Governors on both the Democrat and Republican side. She opined that the laws governing the licensing of homeopathic physicians set forth by the State had been upheld. Ms. Springer stated that a potential audit could be helpful in improving procedures and welcomed the process of an impartial audit. She said that the Board currently has 117 licensed homeopathic physicians.

Senator Leff opined that it was nice to hear Ms. Springer suggest an audit of the Board and noted that BHME had gone approximately 20 years without an audit.

Senator Allen opined that she would like to see an audit of the BHME as well. She added that in no way did legislation intend to do away with the homeopathic form of medicine.

In response to Representative Lopez, Ms. Springer stated that a licensed homeopathic physician could only continue to practice in one state after receiving disciplinary action in another state for less than one year, due to the Board's annual renewal application required of all homeopathic physicians, which would discover the violation in the other state.

In response to Representative Murphy, Ms. Springer said that there was the possibility of a physician being dishonest about any past disciplinary action, however, there is a standard penalty in place for such an event.

In response to Senator Waring, Ms. Springer told the Committee that there was not an easily accessible data base of criminal background checks for physicians and added that the fee to search names on the federal data base was \$3.75 per name.

Senator Leff opined that being dishonest on an application should have strong consequences for any physician when dealing with the subject matter of past disciplinary action.

**Dr. Charles Schwengel, President of the Homeopathic Medical Licensing Board**, told the Committee that being dishonest on an application was the most egregious of unprofessional conduct that could happen.

In response to Representative Knaperek, Ms. Springer stated that a physician lying on the application was discovered once and a letter of concern was issued.

Representative Knaperek opined that there should be a certain amount of consideration afforded to the applicant on whether the incident was an issue of forgetfulness or deliberate intent.

In response to Senator Cannell, Ms. Springer stated that setting aside funds to check each individual physician's background would be a step in the right direction.

Senator Allen remarked that the concerns stated today could be addressed in the forthcoming audit.

In response to Representative Quelland, Ms. Springer told the Committee that some traditional doctors became homeopathic physicians, and then dropped their traditional medical license.

In response to Representative Quelland's comments on a medical doctor dropping their license to pursue homeopathy due to decreased chances of medical malpractice occurring, Dr. Schwengel remarked that he could not comment on the personal reasons a physician might do this.

In response to Representative Murphy, Ms. Springer stated that the percentage of homeopathic physicians who were previously licensed as medical doctors was very low.

Representative Murphy told the Committee that some physicians may choose to not carry medical malpractice insurance to avoid becoming a target for medical malpractice.

Senator Cannell opined that there was a fear with physicians of becoming a target for medical malpractice by carrying medical malpractice insurance.

In response to Senator Waring, Ms. Springer stated that BHME kept records indefinitely of reported complaints against homeopathic physicians. She told the Committee that in her opinion, the BHME should only keep records for up to five years similar to other medical boards.

In response to Senator Waring, Ms. Springer remarked that she felt it necessary to keep records of complaints for longer than five years, only if they were substantiated.

In response to Senator Allen suggesting that more public members should be on the BHME, Ms. Springer said that additional public members on the Board would be a good idea.

### **Public Testimony**

**Dr. Kathleen Fry, dually licensed by the Arizona Medical Board and Arizona Homeopathic Medical Board,** told the Committee that she had gathered a large amount of important information pertaining to the BHME that she would like to share with the Legislature and the Office of the Auditor General. She stated that she had been committed to the practice of homeopathic and alternative medicine for twenty years in Scottsdale, Arizona. She remarked that it was not her intent to keep patients from receiving homeopathic care. Dr. Fry opined that the BHME had been grossly negligent

in its spiritual, moral and judicial responsibilities to protect the public from unscrupulous physicians by licensing felons, failing to adequately discipline physicians who had harmed patients, failing to adequately file complaints against other board members and by giving licenses to physicians who could not pass a basic oral examination of homeopathy. She stated that when she was recruited to the BHME in 1994, she was informed by the Board that her dues were necessary to keep the Board in existence and to allow her to continue to practice homeopathic medicine. Dr. Fry remarked that the dues for the Association were \$1000 per year in addition to the \$500 per year licensing fee and the \$150 dispensing fee. She explained that if a homeopathic physician in Arizona lost their M.D. license in another state, they could still practice homeopathy here in Arizona which gives that physician the power to write prescriptions for all classes of drugs, conduct minor surgery in their office, perform acupuncture and various other medical techniques. In conclusion, Dr. Fry told the Committee that the homeopathic license gives the physician a much broader range of modalities that they can use with much less scrutiny and training.

In response to Senator Waring, Dr. Fry stated that in theory, physicians who had marks on their records in other states should be rehabilitated in that state before being allowed a license in Arizona, but that had not always been the case.

In response to Representative Knaperek, Dr. Fry remarked that transcripts from board meetings that she had obtained from Ms. Springer, were public record.

In response to Senator Leff, Dr. Fry explained that a device called a sputnik originated in Russia and is swallowed by a patient and designed to kill parasites by radiation. She told the committee that a physician sold the device to a patient in Florida over the phone, and that upon taking this device orally, the patient developed a bowel obstruction resulting in the removal of several feet of her intestine. She added that the said physician, being one of the originators of the BHME, only received a letter of concern and an apology by the Board for placing that letter in the physicians file.

In response to Senator Waring, Dr. Springer told the Committee that she disagreed with Ms. Fry's perception of the Board.

**Dr. Todd Rowe, Homeopathic and Integrative Medical Physician, Desert Institute of Classical Homeopathy, dually licensed,** told the Committee that he had been practicing homeopathic medicine for over twenty years. He urged the Committee to continue the BHME. He remarked that after attending several meetings over the years of the BHME, he had found most of what Dr. Fry said to be untrue.

In response to Senator Cannell, Dr. Rowe stated that the number of out-of-state homeopathic physicians licensed in Arizona was very small. He explained that Arizona was one of only three states who had homeopathy boards and that this was another reason for an increase in out-of-state applicants in this State.

In response to Senator Leff, Dr. Rowe said that his homeopathy school had a 1,000 hour program for homeopathy, with plans on expanding that program to 4,000 hours within the next few years.

In response to Senator Leff, Dr. Rowe stated that the qualifications for a license for homeopathy consisted of either 40 hours of class of homeopathy, in addition to 300 hours of alternative medicine, or 90 hours of class for homeopathy. He opined that this met the minimum requirements to become a homeopathic physician and commented on the fact that some applicants were already licensed medical doctors.

**Lee Bakunin, practicing attorney in Arizona for 36 years, representing self**, told the committee that he had spent the last eleven years of his life studying homeopathy. He explained that after the required 90 hours, there was no continuing education required to continue practicing homeopathy. Mr. Bakunin said that the Auditor General may come across the problem of incomplete records of past BHME meetings.

In response to Representative Quelland, Mr. Bakunin said that he currently had studied about 2,000 hours of homeopathy.

**Gladys Conroy, patient of homeopathy, representing self** stated that homeopathy had saved her life. She told the Committee that standard medication caused her great danger.

**Clifford Heinrich, practicing family physician for alternative medicines**, opined that no alternative medical board should be able to have jurisdiction over the spiritual practice of homeopathy. He added that he had obtained over 1,200 hours of homeopathy. Dr. Heinrich told the Committee that he had a petition with 200 signatures recognizing homeopathy as a spiritual practice. He stated that he had an additional petition to request the Legislature audit the BHME for "reasons previously addressed in the meeting."

In response to Senator Allen, Dr. Heinrich opined that homeopathy was being misrepresented by the BHME from its original spiritual foundation, causing the public to believe they were receiving homeopathic care when in fact, they were not.

In response to Representative Knaperek question about the spiritual aspect of homeopathy, Dr. Heinrich explained that a nonmaterial substance was one that had been diluted to a point where the original property is no longer there, leaving only the essence of that object.

In response to Representative Murphy, Dr. Heinrich told the Committee that he wanted the separation between homeopathy and alternative medicines distinguished by the State.

**Amanya Jacobs, Director of Evolution of Self/Soul School Homeopathy**, remarked that she was deeply committed to making homeopathy available to all citizens in the

State. She said that the Board regulated activities that it deemed homeopathy which were totally unrelated to that area of medicine. Ms. Jacobs stated that she was in favor of an audit of the BHME.

**Linda Heming, Arizona Homeopathic and Integrative Medical Association**, told the committee that western medicine could not help her and homeopathy saved her life.

Senator Leff remarked that the open meeting law stated that recordings and minutes must be kept by the open body and must be accurate and open for inspection three days after the meeting, with no language about whether or not they could be destroyed at any time period.

**Russell Olinsky, patient of homeopathy**, spoke in favor of the BHME.

**Cynthia MacLuskie, patient of homeopathy**, told the Committee that all homeopathy medicines were not available at health food stores and that prescriptions were the only way to obtain some of these medicines.

**Lisa Platt, Arizona Homeopathic and Integrative Medical Association, speaking on behalf of the BHME**, remarked that BHME was not recruiting felons. She stated that a number of patients had told her how homeopathy had saved their lives.

**Senator Allen moved that the Senate Health and House Health Committee of Reference recommend that the Board of Homeopathic Medical Examiners continue for two years, adding the request for an audit addressing the concerns covered in today's committee.**

Representative Quelland explained his vote. He said that although he did not have an educational background in homeopathy, the homeopathic physicians had a certain amount of disagreement and confusion among themselves. He reminded the Committee that this was just a recommendation and that someone was going to create a bill and that bill would be voted on, making today's vote not a guarantee that the Board will continue, and he voted "aye."

Senator Cannell explained his vote. He said that although he advocated homeopathy and the continuation of the Board, that the BHME had suffered a "major black eye" today. He opined that the director and the president of the boards had not changed their attitudes and that they should consider their Board a precious commodity by not diluting their group of good physicians with out of state applicants with questionable credentials and he voted "aye."

Senator Leff explained her vote. She requested the Auditor General to do both a financial and performance audit. She remarked that the people who came forward today against the Board should feel free to do so without retaliation and she voted "aye."

Senator Waring explained his vote. He said that he was very frustrated with the Board, and that he would be the first to vote "no" on a bill in the following session if changes weren't made, but since today's vote was merely a recommendation, he would vote "aye."

Representative Murphy explained his vote. He said that he shared many of the concerns voiced by the Committee members today and looked forward to hearing what the Auditor General had to say and he voted "aye."

**The motion CARRIED by a roll call vote of 9-0-1 (Attachment 1).**

Representative Murphy RECESSED the meeting at 1:35 p.m. to the sound of the gavel.

Representative Murphy RECONVENED the meeting at 2:30 p.m.

**Presentation by the Arizona Midwifery Institute**

**Marinah Valenzuela Farrell, President of the Arizona Midwifery Institute (AMI)**, submitted handouts (Attachment A) and (Attachment B) to the Committee. She told the Committee that as midwives, their main concern was for safe outcomes of mothers and babies. She remarked that midwives chose home birth because they believe that birth is a natural and safe event in the life of a woman. Ms. Farrell explained that in the 1970's, midwifery became licensed in the State, yet because of medical liability issues, midwives had experienced difficulty in consults with physicians and access to items to assist in home birth.

In response to Senator Allen, Ms. Farrell stated that midwife licensing exams were very tough and that she had received specialized intravenous training in New Mexico through the local hospital.

In response to Senator Cannell, Ms. Farrell told the Committee that licensing of midwives was dependent upon number of hours of experience in child birth delivery with that applicant. She stated that there were also schools available to midwives that involved intense clinical training. Ms. Farrell said that a surveyor in the Department of Special Licensure administered a national exam to applicants in which upon passing, the applicant must then go through an oral board and upon passing this, must complete a practical exam which is overseen by the surveyor and other midwives. She told the Committee that midwives were trained in resuscitating babies.

In response to Senator Leff, Ms. Farrell stated that the midwives were requesting that a physician not be required to sign off on supplies.

Representative Lopez opined that her own personal experience of giving birth to her last two children at home from midwives was a wonderful experience.

Representative Quelland informed the Committee that Arizona had 53 licensed midwives with 22 of them located in Maricopa County and that there were 343 midwife births in the home in 2004 in the State.

In response to Representative Quelland, Ms. Farrell remarked that none of the 343 reported midwife births reported in 2004 resulted in any problems. She stated that although medical malpractice and liability insurance was available to midwives, the majority refused it due to its cost in proportion to their pay. She told the Committee that the Arizona Health Care Cost Containment System (AHCCCS) discontinued the payment for midwife delivery two years ago due to midwives not carrying medical malpractice and liability insurance which could possibly put AHCCCS at risk for such claims.

Senator Leff stated that midwives dealt mostly with low-risk births and that she would like to see the issue of AHCCCS discontinuing payment for midwife births examined.

Senator Cannell opined that the Committee should hear from AHCCCS because they obviously found midwifery funds a financial risk for some legitimate reason.

Ms. Farrell told the Committee that mothers who chose home births mainly did so, not for financial reasons, but because of belief that the hospital environment was just one intervention leading to another.

### **Public Testimony**

**Rory Hays, Arizona Nurses Association**, said that the items asked for by the AMI were appropriate, if accompanied by more training. She stated that she opposed expanding prescription privileges for anything requiring a Drug Enforcement Agency number.

In response to Representative Quelland, Ms. Hays said that certification would be appropriate for midwives.

Ms. Farrell stated that the only thing midwives were requesting was the power to obtain items already in their reach through a physician, without that physician's pre-approval and that the laws were already in place on limitations for uses with these items.

**Representative Quelland moved that the Senate Health and House Health Committee of Reference recommend that the Legislature expand the scope of practice for Arizona's licensed midwives by allowing procurement, possession, and administration of various medical devices and medications which will be named in the bill. The motion was CARRIED by voice vote.**

Senator Allen opined that midwifery was a choice to be made by the citizen and she hoped that fatalities did not occur due to the choice of using such a method.

### **Presentation by the Arizona Association for Home Care**

**Suzanne Gilstrap, representing the patients for the Arizona Association for Home Care (AAHC),** stated that AAHC was founded in 1983 with a mission to advance quality home care as an integral component of the health care delivery system. She told the Committee that she believed in continuing education for home care providers. She remarked that AAHC had discussed having a joint workshop with the Physical Therapy Association (PTA) but never actually initiated these workshops. Ms. Gilstrap requested that the Committee grant an expansion to allow physical therapy assistants to work under general supervision of a physical therapist as opposed to direct supervision. She told the Committee that the AAHC respectfully requested the joint Committee recommend that physical therapy assistants be allowed to practice in the home health care setting and only in that setting under the following conditions:

- The supervising physical therapist shall be solely responsible for evaluating the patient and determining a plan of care.
- The supervising physical therapist shall be available at all times via telecommunication while the physical therapist assistant is providing treatment interventions.
- The supervising physical therapist supervises no more than two physical therapy assistants.
- The supervising physical therapist shall see the patient and revise the plan of care no less than every 21 days.
- The supervising physical therapist not assign responsibilities to the physical therapy assistants that in any way allow them to provide evaluation services for procedures.
- Continuing education requirements should be added to the statute as well.
- The physical therapist would be the one responsible for final evaluation and discharge of the patient.

In response to Senator Arzberger, Ms. Gilstrap said that proposing a mileage limit would be a good idea in reference to a physical therapist along with the constant telecommunication contact. She stated that it was not unusual to recommend that the practice of home care be extended to other areas outside of the home such as hospitals.

In response to Senator Leff, Ms. Gilstrap remarked that the AAHC was not intending to mandate what physical therapists do, but to enable legislation that would allow them to choose.

In response to Representative Murphy, Ms. Gilstrap stated that home care therapist assistants were well schooled for their job no matter what setting, with the exception of no clinical experience required of the physical therapist.

In response to Senator Waring, Ms. Gilstrap remarked that in all fields of medicine, health care providers were experiencing an inability to serve patients.

Representative Lopez opined that an outside organization should not be directing physical therapists on how to conduct their practice.

In response to Senator Allen, Ms. Gilstrap told the Committee that currently more than 45 states allow general supervision in the home health care setting and that the only two states that do not allow it are Pennsylvania and Arizona.

### **Public Testimony**

**Karen Jeselun, President of the Arizona Association for Home Care**, stated that even if there were no home care physical therapist available at the time, a patient could still be released from the hospital even though they required home care to continue recovery. Ms. Jeselun compared the relationship between a physical therapist and a physical therapist assistant to that of a registered nurse and a licensed practical nurse. She told the Committee that all of their home care providers go through an interview process, a mandatory criminal background check and participate in orientation often with preceptors.

In response to Representative Knaperek, Ms. Jeselun stated that Medicare currently paid home health agencies on an episode basis, meaning for every 60 days of time that patient is in the care of a home health provider, the home care provider gets a lump sum. She opined that she was hoping to serve more patients with no increase in cost.

**Susie Stevens, representing the Arizona Physical Therapy Association (AZPTA)**, informed the Committee that the definitions of general supervision and direct supervision needed to be reviewed. She stated that she was there in opposition to the sunrise request.

**Heidi Herbst Paakkonen, Executive Director of the Arizona Board of Physical Therapy (ABPT)**, told the Committee that the ABPT regulates about 3,200 physical therapists and 434 physical therapist assistants. She said that due to lack of detailed information at this time, she would encourage the Board to oppose the Sunrise Application of the AAHC.

In response to Representative Knaperek, Ms. Paakkonen remarked that there were exactly 3,268 licensed in the State but not all of them worked in Arizona. She told the Committee that approximately 2,800 physical therapists listed Arizona addresses. She stated that there were 434 physical therapy assistants and that approximately 396 reside in Arizona and that it was ABPT's estimate that 350 of them were currently working in the field of physical therapy.

In response to Representative Quelland, Ms. Paakkonen stated that the ABPT was required by statute to have three physical therapists and two public members, but no physical therapist assistants.

In response to Senator Leff, Ms. Paakkonen told the Committee that the ABPT does and has disciplined physical therapist assistants.

**Bob Direnfeld, President of the Arizona Physical Therapy Association (AZPTA),** remarked that his organization was the only one in the State representing physical therapists. He told the Committee that his association opposed the idea of general supervision. Mr. Direnfeld said that patients were getting discharged from the hospital too early in most cases compared to years ago, which cause a greater need for these home care physicians. He remarked that a therapist was ultimately responsible for anything the physical therapy assistant does which puts the physical therapist's license on the line.

In response to Representative Murphy, Mr. Direnfeld opined that passing legislation supporting general care could potentially decrease an even larger amount of physical therapists.

In response to Senator Cannell, Mr. Direnfeld stated that he was not sure that there was a shortage in home health care providers. He also remarked that setting a parameter or definition of a home care patient, would cut down on the patient load.

Representative Knaperek opined that physical therapist assistants should have more of a vote on the Board.

**Peter Zawicki, in favor of the sunrise recommendation,** told the Committee that physical therapists and physical therapist assistants were trained at community colleges and technical schools across the country. He opined that it was critical that there be communication between the physical therapist and the physical therapist assistant in all patient care.

In response to Senator Cannell, Mr. Zawicki stated that physical therapist assistants were under direct supervision during the education process.

In response to Representative Murphy, Mr. Zawicki remarked that to be able to perform in public health care, it would be helpful if a physical therapist assistant had a certain amount or certain type of training.

Senator Leff opined that home health patients are the most vulnerable patients and she felt uncomfortable "experimenting" with the care of those patients.

**Kerry Halcomb, Physical Therapy on Wheels, representing AAHC**, opined that he did not believe that a physical therapist could adequately supervise a physical therapist assistant.

**Gayle Haas, physical therapist, representing AAHC**, remarked that a physical therapist and a physical therapist assistant can work together for years and develop a relationship which allowed for better understanding and communication skills with one another.

**Deborah Bornmann, physical therapist**, stated that she did not feel represented by her own board. She opined that it was great for an outside organization to try to help physical therapists.

**Representative Quelland moved that the Senate Health and House Health Committee of Reference recommend that the Legislature expand the scope of practice for licensed physical therapist assistants by allowing home health visits under the general supervision of licensed physical therapists. The motion was CARRIED by voice vote.**

Senator Waring stated that although he was unhappy with what he had heard today, he hoped discussions were started to improve the situation.

Representative Knaperek remarked that she hoped they could work out their differences for the benefit of the State.

Senator Arzberger opined that changes do need to be made and issues need to be addressed.

Representative Murphy stated that hopefully, this would get people back into discussions.

There being no further business, the meeting was adjourned at 5:12 p.m.

Respectfully submitted,



Jeff Turner  
Committee Secretary

(Tapes and attachments on file in the Secretary of the Senate's Office/Resource Center, Room 115.)

Senate Health and House of Representatives Health Committee  
of Reference

ARIZONA STATE LEGISLATURE

FORTY-FIFTH LEGISLATURE - ROLL CALL VOTE

Recommendation: THAT THE BOARD OF HOMEOPATHY  
MEDICAL EXAMINERS CONTINUE FOR TWO YEARS WITH  
A REQUEST FOR AN AUDIT BY THE AUDITOR GENERAL.

MEMBER	AYE	NO	NOT VOTING	OTHER	
Rep. Bradley			✓		
Rep. Knaperek	✓				
Rep. Lopez	✓				
Rep. Quelland	✓				
Senator Allen	✓				
Senator Arzberger	✓				
Senator Cannell	✓				
Senator Leff	✓				
Senator Waring, CoChair	✓				
Rep. Murphy, CoChair	✓				
	9		1		

Committee Secretary JEFF TURNER Date 11-08-2005

Attachment 1