



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 Nursing Care Institution Administrators and Assisted Living Facility Managers Board
Date: December 2, 2005

Attached is the final report of the sunset review of the **Nursing Care Institution Administrators and Assisted Living Facility Managers Board**, 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 Qulland

Nursing Care Institution Administrators and Assisted Living Facility Managers Board
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***

Nursing Care Institution Administration and Assisted Living Facility Managers Board

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 Nursing Care Institution Administration and Assisted Living Facility Managers Board (Board) to the Senate Health and House of Representatives Health Committee of Reference.

The Nursing Care Institution Administration and Assisted Living Facility Managers Board was established by the Legislature with Laws 1975, Chapter 141, §13. The Board's mission is to protect the health, welfare, and safety of Arizona citizens who seek and use the services of nursing care institution administrators and assisted living facility managers. The Board is responsible for licensing nursing care institution administrators and certifying assisted living facility managers. Statute requires nursing care institutions be operated by Board licensed administrators and that assisted living facilities be operated by Board certified managers. The Board must adopt rules for the examination and licensure of nursing care administrators and the examination and certification of assisted living facility managers. This includes approving continuing education courses for managers and administrators, which enables them to achieve the statutory required hours for renewal of licenses and certifications. The Board currently licenses, certifies and regulates 2,021 assisted living facility managers and 379 nursing home administrators.

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 continuing the Nursing Care Institution Administration and Assisted Living Facility Managers Board for five years, pending the findings of the Auditor General's report due in December of 2005.

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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To: Members of the House and Senate Health Committees of Reference
Re: Sunset Review of the Nursing Care Institution Administrators and Assisted Living Facility Managers Board
Date: October 26, 2005

The Nursing Care Institution Administrators and Assisted Living Facility Managers Board (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.

AGENCY MISSION AND HISTORY

The Board was established by the Legislature with Laws 1975, Chapter 141, §13. The Board's mission is to protect the health, welfare, and safety of Arizona citizens who seek and use the services of nursing care institution administrators and assisted living facility managers.

The Board is responsible for licensing nursing care institution administrators and certifying assisted living facility managers. Statute requires nursing care institutions be operated by Board licensed administrators and that assisted living facilities be operated by Board certified managers.

Nursing care institutions provide care for people who need nursing services on a continuing basis, but who do not require hospital care or care under the daily direction of a physician. These facilities are often called nursing homes and sometimes are referred to as skilled nursing facilities. *Assisted living facilities* are residential care institutions that provide or contract to provide supervisory, personal, or directed care on a continuing basis for people who do not require continuous nursing care. These facilities have staff who assist elderly, disabled, or other residents with eating, personal hygiene, and other activities.

ORGANIZATION AND DUTIES

The Board consists of eleven members who are appointed by the Governor. This number was increased last session with the passage of SB 1358 from nine to eleven members. According to the Board, since August 2005, the Board has worked with the Governor's office to ensure the Board positions are appropriately filled. The Board must include one administrator of a nonprofit faith based skilled nursing facility, one administrator of a proprietary skilled nursing facility, two managers of an assisted living center who are not currently affiliated with a nursing care institution, two managers of an assisted living home who are not currently affiliated with a nursing care institution, one manager at large not currently affiliated with a nursing care institution, two members which are representative of the professions concerned with the care and treatment of the chronically ill or infirm elderly patients and two public members not currently affiliated with a nursing care institution or an assisted living facility. Statute specifies that noninstitutional administrative members of the Board may not have a direct financial interest in nursing care institutions or assisted living facilities. Members are appointed for two-year terms and no member may serve for more than two consecutive terms. Statute requires that the Board meet at least twice a year and states that members of the Board are eligible for compensation for each day spent performing their duties as Board members.

According to Arizona Revised Statutes (ARS) §36-446.03, the Board may adopt, amend or repeal reasonable and necessary rules and standards in relation to performing their duties and must apply appropriate techniques for determining whether a person meets the qualifications to be licensed and certified as an administrator and manager respectively. Additionally, the Board must adopt rules for the examination and licensure of nursing care administrators and the examination and certification of

assisted living facility managers. This includes approving continuing education courses for managers and administrators, which enables them to achieve the statutory required hours for renewal of licenses and certifications. The Board is statutorily permitted to adopt nonrefundable fees and to elect officers. The Board is authorized to conduct investigations, hearings and other proceedings concerning violations of the rules adopted by the Board and statute relating to the Board. ARS §36-446.03 also permits the Board to employ persons to provide investigative, professional and clerical assistance as required to perform its powers and duties. The Board is permitted to appoint review committees to make recommendations concerning enforcement matters.

According to the Board, since June 2005, the backlog from FY 2003 of complaints has been reduced to 4. Uninvestigated complaints from FY 2004 have been reduced to 10. FY 2005 complaints that have not been investigated have been reduced to 34. The Board currently licenses, certifies and regulates 2021 assisted living facility managers and 379 nursing home administrators.

FISCAL ISSUES

ARS §36-446.08 establishes the Nursing Care Institution Administrators' Licensing and Assisted Living Facility Managers' Certification Fund (Fund). Ten per cent of the monies collected by the Board are deposited into the State General Fund, while the remaining ninety per cent are deposited into the Fund. Monies that are collected as a result of civil penalties must be deposited into the State General Fund. According to the Appropriations Report published by the Joint Legislative Budget Committee, in Fiscal Year 2005, the Board was authorized five full-time employees (FTE) and an operating budget of \$370,000. According to the data submitted by the Board, the Board reduced its staff from five FTEs to three FTEs. The Board eliminated the office manager and administrative assistant. The three remaining FTEs include the Executive Director, Investigator and the Licensing Coordinator.

LEGISLATIVE ISSUES

In 2005, the Legislature passed Senate Bill 1358 which enabled the Board to discipline administrators and managers after their license or certificate had expired. It also increased the Board membership from nine to eleven members. SB 1358 set Board member terms at two-year terms and required assisted living facility managers to document paid health related work experience.

The Board is currently requesting legislation to increase the license fee limits for both administrators and managers and increase other fees by proportional amounts. Manager fee limits have not increased since 1991 and administrator fee limits were last raised in 1998. Currently, both fees are at the maximum limits statutorily permitted.

ADDITIONAL BACKGROUND

Lindsey Norris, Executive Director of the Arizona Association of Homes and Housing for the Aging (AzAHA) stated that she has not identified any current problems but is aware that the Board is working to fill vacant seats. She also stated that AzAHA continues to support the Board and if she becomes aware of any issues, she will contact staff.

Kathleen Collins Pagels, Executive Director of the Arizona Health Care Association, speaking on behalf of herself only, stated that she has been attending the recent Board meetings and has been very impressed with the progress the Board has made. According to Ms. Pagels, the investigation backlog seems to have diminished. She also stated that the new Executive Director, Alan Imig, seems to be very qualified and has a handle on things.

Ms. Pagels believes there may be challenges with leadership due to the fact that several board members will no longer be eligible because of the changes done in the 2005 Legislative Session. Ms. Pagels stated that she had received feedback from the Skilled Nursing Facility (SNF) profession regarding the number of assisted living representatives on the Board versus the number of skilled nursing facility managers. The SNF believes that the two are out of proportion and this could become an issue given the differential in education and clinical training requirements when one's license is on the line. According to Ms. Pagels, skilled nursing facility administrators must have completed a Master's degree in health care of LTC administration or a certified Administrator in Training Program and assisted living managers are required to have a high school diploma. Ms.

October 26, 2005

Pagels stated that there is no federal funding for assisted living but there is federal funding for CMS for the SNF licensees.

Ms. Pagels has become aware of the concerns in changing statute to include "faith based" in regards to the membership of the Board requiring one member to be an administrator from a non-profit faith based skilled nursing facility. She said that some believe this distinction to be in appropriate. Ms. Pagels mentioned that there is some thought to separating the skilled nursing facility licensure and assisted living. She believes that the financial problems the Board faced began when the certification of assisted living managers was added to the same article.

Ms. Pagels hopes that the Board will continue to grow in strength and capacity and will not be terminated.



**BOARD OF EXAMINERS OF NURSING CARE INSTITUTION ADMINISTRATORS AND
ASSISTED LIVING FACILITY MANAGERS**

Janet Napolitano

Governor

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Allen Imig

Executive Director

September 7, 2005

Representative Rick Murphy
Chair, Health Committee of Reference
Arizona House of Representatives
1700 W. Washington
Phoenix, AZ 85007

RE: Sunset factors pursuant to A.R.S. §41-2954

Dear Representative Murphy:

In accordance with the provisions of A.R.S. §41-2954 and in response to your letter dated June 30, 2005, I offer the following response to the sunset consideration factors as follows:

1. The Objective and purpose in establishing the agency.

The Board was created in 1975 to protect the public's health, safety and welfare by licensing and regulating nursing care institution administrators and also in response to federal requirements that each state must license administrators of nursing homes in order to receive certain federal Medicare funds. In 1990, the Board's statutes were amended to add the responsibility for certifying and regulating adult care home managers, renamed in 1998 to assisted living facility managers.

The Board's mission is to "protect the health, welfare, and safety of Arizona citizens who seek and use the services of nursing care institution administrators and assisted living facility managers." To accomplish this mission, the Board has established three goals: 1) to improve agency operations relating to complaint investigations to ensure consistent and timely enforcement of statutes and rules regulating nursing care institution

administrators and assisted living facility managers; 2) to ensure that licenses and certificates are processed in a timely and efficient manner; and 3) to ensure that agency operations are effective and efficient.

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

Using the Auditor General's report of 2004 as a guide, the Board has focused its efforts to be effective and efficient in meeting the agency objectives in all areas.

The Board has implemented policies and procedures regarding complaint investigations that include timeframes at each stage. Management reports are prepared monthly and presented at the Board meetings. These reports identify any abuse and neglect cases, the number of open investigations, and which fiscal year they were opened.

Since June 2005, the backlog of fiscal year 2003 complaints that have not been investigated has been reduced to 4. Uninvestigated complaints from Fiscal year 2004 have been reduced to 10. Fiscal year 2005 complaints that have not been investigated have been reduced to 34.

This was accomplished in several ways. By eliminating duplication and redundancy of reports, efficiency was increased without compromising the thoroughness of the report or investigation. By allowing the investigator to better utilize his time investigating the complaint and dictating his reports, and then arranging for clerical support to type the dictated report. The Board was also able to arranged short term assistance of investigators from another state agency to help with several of the backlog of cases.

Administrative changes were implemented with regard to initial licensing and certification so the process aligns directly to the timeframes and rules. Each step in the process is now monitored with written notices given when required. This will help ensure that all temporary and initial licensing and certification is completed within the established timeframes.

Other changes include giving the manager's examination monthly, instead of every other month. This gives the applicants more opportunities to successfully complete the certification process, within the timeframes. Also, test scoring equipment was upgraded to reduce staff time and increase efficiency.

The Board has reduced staff from 5 FTE's to 3 FTE's. Included in the reduction are the office manager and administrative assistant. The three remaining personnel are the Executive Director, Investigator, and Licensing Coordinator.

As part of the reduction in staff and efficiency savings, the Board now utilizes the services of the ADOA State Boards Office for mail processing, cash-handling, deposits, claims, travel claims, payroll, procurement, and personnel records.

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

The Board holds meetings every month that are always open to the public. The meetings are properly noticed with agendas posted. The meeting dates, time and location are posted on our website.

The website also allows the public to look up any statute or rule related to nursing care institution administrators and assisted living facility managers. Complaint forms and information about the complaint process are also available.

The website allows the public to look up the status of an administrator or manager and has basic information about each licensee or certificate holder. As resources become available the Board intends to improve this website to include viewing disciplinary actions.

Also, as resources become available, to better inform the public, the Board would improve the website to include Board meeting minutes, agendas, and up to date statistical information.

In response to the Auditor General's recommendations to make it easier for the members of the general public to serve on the Board, Senate Bill 1358 was passed. The bill redefined the qualifications of each Board member position and increased the Board from 9 to 11.

Since the law went into effect on August 12, 2005, the Board has worked with the Governor's office to ensure the Board positions are appropriately filled.

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

The Governor's Regulatory Review Council (GRRC) reviewed the Board's rules in August 2004 and determined the Board needs to amend some of the rules to ensure they are consistent with statutes. On June 30, 2005, at GRRC's request, the Board outlined a step by step plan to accomplish the rule changes approved in the five-year review report. The Board outlined a time-table for each article, with a planned end date of December 31, 2007. The Board also has an interagency service agreement (ISA) for a rule writer to assist with this project.

The Auditor General's report points out the Board needs to define the work experience it will accept to satisfy the certification requirement for managers. Senate Bill 1358 modified A.R.S. §36-446.04(B)(4) that an applicant must have completed 2080 hours of paid, health related work experience within the last five years, instead of twelve months of work experience in a health related field within the preceding five years. This modification helped to document the work experience but will still have to define what experience is acceptable. Defining work experience in rules falls under Article 4 and is the first Article to be addressed in the plan approved by GRRC.

5. The extent to which the Board 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.

The Board followed all requirements for noticing and public comments when it amended its rules concerning fees for administrator licenses and manager certificates in fiscal year 2004. This included filing a formal notice of rulemaking with the Secretary of State's Office and providing a period of public review and comment.

The Board has complied with the State's open meeting laws. The Board has posted public meeting notices at least 24 hours in advance at the required location, made agendas available to the public and maintained meeting minutes. The Board also has a call to the public at each of its meetings.

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

The Board has appropriated and funded one FTE investigator. In addition, the Executive Director is an experienced investigator and can assist as time allows. Since the Auditor General's last report, the Board has reduced the number of uninvestigated complaints from FY2003 to 4 and FY2004 to 10. Of the FY 2005 complaints 34 out of 61 remain as open investigations. As the investigations are completed, they are presented to the Board to be reviewed and adjudicated. Licensees or certificate holders who the Board found in violation of the statutes or rules are finalized through a consent agreement or formal hearing through the Office of Administrative Hearings.

In May 2005, the Board approved a new policy and procedure that clarifies the investigative position, expectations, and investigative process from intake to final decision.

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

A.R.S. §41-192 authorizes the Attorney General's Office to prosecute actions and represent the Board. The Board is currently represented by one part-time Assistant Attorney General.

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

The Board's statutes have been amended several times in the past with the most recent being in 2005 with the passage of Senate Bill 1358. It enabled the Board to discipline administrators and managers after their license or certificate had expired. It reconfigured the qualifications of the Board and increased Board membership to 11. It also adjusted the Board member terms to two-years, and defined disqualification and termination. The amendment also modified qualifications for assisted living facility managers requiring them to document paid health related work experience.

Part of the legislation that was not successful in 2005 was a fee limit increase.

The Board will once again seek legislation to increase the fee limits for both administrators and managers and increase other fees by proportional amounts.

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

The manager fee limits have not increased since they were promulgated in 1991. The administrator fee limits were last raised in 1998. Both administrator and manager fee limits are at the maximum limit pursuant to a rule change in April 2004.

The Board has increased efficiency and reduced staff from 5-FTE's to 3-FTE's to reduce expenditures and achieve as close as possible a zero sum balance with projected revenues. Without a fee limit increase in 2006 additional savings will have to be achieved by February 2007 to keep from going negative.

The Board currently licenses, certifies and regulates 2021 managers, 379 administrators. It processed 773 manager applications and 49 administrator applications in FY2005. There were also 61 complaint investigations opened. The Board also approves continuing education courses so managers and administrators receive up to date information and are able to achieve the statutory required hours for renewal. To accomplish the Board's mission to protect the public, adequate resources need to be in place.

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

Terminating the Board would harm the public health, safety, and welfare as the Board is responsible for licensing administrators, certifying managers, and investigating and adjudicating complaints against administrators and managers. Without state laws establishing educational and competency standards, the public could be subject to unqualified, incompetent or unscrupulous administrators and managers. As the state grows and the population ages, the number of administrators and managers staffing institutions and facilities is anticipated to increase.

Termination of the Board would disqualify the state from participating in Medicare/Medicaid funding programs, which would directly affect the public by eliminating a significant amount of federal funds.

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 current level of regulation exercised by the Board of Examiners of Nursing Institution Administrators and Assisted Living Facility Managers is appropriate.

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.

The Board has used private contractors to perform certain services. For example, the Board has contracted to support its website, database, computer system, rule development, and transcription services.

Additional responses to the following questions were requested.

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

Below are areas the Board has identified as problems or needs that are in the process of being addressing, or need to be addressed.

- A. Bringing current the backlog of uninvestigated complaints for the Board to review and adjudicate. Also, keep the standard of 180 days or less to resolve a complaint.
- B. Address financial needs, both on the expenditure side as well as the revenue side.

- C. Improve public information availability and accuracy.
 - D. Closer oversight by the Board.
 - E. Rule updates and revisions
2. **A statement, to the extent practicable, in quantitative and qualitative terms, of the objectives of such agency and its anticipated accomplishments.**

As outlined in #2 above, the Board is well on its way in addressing the backlog of investigations. Since June 2005, the backlog of fiscal year 2003 complaints that had not been investigated has been reduced to 4. Fiscal year 2004 complaints that had not been investigated have been reduced to 10. Fiscal year 2005 complaints that have not been investigated have been reduced to 34. The objective is to complete all investigations for unresolved complaints that originated in FY2005 by February 28, 2005.

To meet reasonable financial constraints and still meet the objective above, permanent NCIA personnel was reduced to three FTEs. An Executive Director, Investigator, and Licensing Coordinator. To accomplish this, certain administrative functions have been outsourced. Fiscal and administrative functions (cash receipt processing, deposits, claims preparation, timekeeping, procurement, personnel records etc.) will be transferred from the Central Services Bureau (CSB) of the General Accounting Office to the State Boards Office (SBO) of the Department of Administration. This will enable NCIA to take advantage of the clerical services of the SBO, eliminating the need for NCIA staff. While SBO services will cost more than CSB services (by approximately \$11 thousand per year), SBO services will cost significantly less than the combination of CSB services and an FTE to perform clerical and financial services within NCIA.

Moreover, additional operational economies will be sought and aggressively pursued. Among these would be alternative approaches to rule writing, an elimination of out-of-state travel, a prohibition against State-paid attendance at conferences. Also, a reduction in office related services that include, unused or unneeded telephone lines, services, and e-mail accounts.

Reintroduce legislation to increase, manager and administrator licenses fee limits and to increase other fees by proportional amounts.

In order to continue to provide professional oversight and regulation of this industry, fees for nursing care institution administrators and assisted living facility managers must be increased. Numerous financial projections have been produced, which, without exception, have pointed to this inescapable conclusion.

The Board understands, though, that for such an increase to be palatable to the profession and to the Legislature, NCIA must, first, prove itself to be fiscally well managed and has taken aggressive steps to that end.

Even though the Board currently has limited financial resources, the public must have accurate and accessible information. Currently the Board's website allows the public to look up the status of an administrator or manager, and any statute or rule related to the NCIA Board. Complaint forms and information about the complaint process are also available. Information can also be obtained by calling the Board office.

As resources become available, the Board would improve the website to include Board meeting minutes, agendas, publish an E-newsletter, and view disciplinary actions.

Currently, the Board receives monthly, financial reports, complaint investigation reports and licensing reports.

The Board proposed an updated timeline and plan that was approved by GRRC in July 2005. Also in July, 2005, the Board has contracted with ADOA for rule writing assistance. The timeline and plan covers revisions and amendments to all four Articles of the Board's rules.

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.**

There is no other agency in Arizona whose scope of practice duplicates or overlaps the practice of nursing care institution administrators or assisted living facility managers.

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

Terminating the Board would harm the public health, safety, and welfare as the Board is responsible for licensing administrators, certifying managers, and investigating and adjudicating complaints against administrators and managers. Without state laws establishing educational and competency standards, the public could be subject to unqualified, incompetent or unscrupulous administrators and managers. As the state grows and the population ages, the number of administrators and managers staffing institutions and facilities is anticipated to increase.

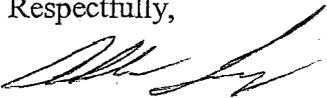
Termination of the Board would disqualify the state from participating in Medicare/Medicaid funding programs for which the State receives significant amounts of federal funds.

Because the Board is a 90/10 agency it is funded exclusively by the profession. There is no general fund money appropriated to its existence. However, the Board returns 10% of its revenues to the States general fund. Termination would reduce revenue to the State general fund.

If the Board was consolidated with another state agency, the agency would lack the critical expertise, insight, and involvement of practitioners and consumers. Without a Board comprised of practitioners, the state would be faced with hiring consultants for this expertise. In addition, another agency may lack staff and resources to carry out the mission of the Board.

On behalf of the Arizona Board of Examiners of Nursing Care Institution Administrators and Assisted Living Facility managers, I thank you for the opportunity to respond to these questions. If you have additional questions, or require clarification, please contact me at 602-542-8156 or by e-mail at allen.imig@nciabd.state.az.us

Respectfully,



Allen Imig
Executive Director

Attachments: Financial projections
GRRC Timeline

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 Glasper**, 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 BENCIA/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 BENCIA/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