

ARIZONA STATE SENATE

45TH LEGISLATURE
FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON HEALTH

DATE: February 13, 2001

TIME: 1:30 p.m.

ROOM: SHR 2

CHAIRMAN: Senator Gerard

VICE CHAIRMAN: Senator Nichols

ANALYST: Jason Bezozo

**COMMITTEE
SECRETARY:** Carol Dager

INTERN: Meghann Brennan

**ASSISTANT
ANALYST:** Kathy Seeglitz

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Cirillo	X			SB 1105	DPA
Senator Guenther	X			SB 1109	DPA
Senator Hartley	X			SB 1110	DISCUSSION/HELD
Senator Nichols	X			SB 1199	DISCUSSION/HELD
Senator Solomon	X			SB 1208	DPA
Senator Verkamp	X			SB 1234	DISCUSSION/HELD
Senator Nichols, Vice Chairman	X			SB 1300	DPA
Senator Gerard, Chairman	X			SB 1301	DPA
				SB 1304	DP
				SB 1306	DPA
				SB 1308	HELD
				SB 1310	DPA
				SB 1311	HELD
				SB 1315	DPA

Name

Position

Recommendation

Chairman Gerard called the meeting to order at 1:38 p.m., and attendance was taken.

Attendees Sign-In Sheet (Attachment A)

CONSIDERATION OF BILLS

SB 1105 – sudden infant death syndrome; protocols – DO PASS AMENDED

Kathy Seeglitz, Health Committee Assistant Analyst, explained that SB 1105 requires the Department of Health Services (DHS) to establish death scene investigation protocols for suspected sudden infant deaths. There is a four-page Guenther amendment, dated 02/12/01 at 10:46 a.m., that adds a prosecutor to the Sudden Infant Death Syndrome (SIDS) advisory council and charges the council with approving and periodically reviewing the infant death investigation checklist developed by DHS. It requires DHS to develop death scene investigation protocols for apparent natural infant deaths. It no longer requires a checklist to substantially comply with guidelines established by the National Sudden Infant Death Alliance and the National SIDS and Infant Death Program Support Center and must consider their guidelines. It specifies that the protocols include recommended procedures for all first responders, law enforcement agencies, and local social service agencies to recommend that the scene where the infant was found be examined and recommend that investigators use their skills and knowledge to determine the cause of death and keep in mind the need for compassion and sensitivity for the parents and caregivers. It requires a law enforcement officer to complete the Infant Death Investigation Checklist developed by DHS before an autopsy. It requires the law enforcement agency to maintain the original checklist and forward a copy to the County Medical Examiner and DHS. The amendment also requires DHS to consult law enforcement when developing and revising their checklist. It specifies that a law enforcement officer's failure to use the checklist is not a defense or basis for dismissal of a criminal prosecution. Additionally, the amendment adds language to the existing law enforcement training statutes in sudden unexplained infant death to receive medical information on the DHS checklist and awareness in dealing with families and childcare providers.

Senator Hartley thanked Senator Guenther, her daughter Heather, Glenn Davis, and law enforcement representatives who worked on the amendment that makes this a far better bill than her family could ever imagine. SIDS is a unique medical event. It is the only type of death that can occur at home that is automatically considered a crime scene. She said that when an adult dies at home, there is an autopsy, but no one is considered a criminal until an investigation is done, simply because of age and history. There is no developed history on an infant. No one wants child abusers to go undetected. SIDS is a diagnosis of elimination. Hopefully, with the consistent use of the new protocols, it will eliminate the possibility that SIDS will actually exist. It is important to find a reason for these deaths.

Senator Guenther thanked Glenn Davis, Eric Edwards, and Jerry Landau for their work. He said that he feels this amendment is a reasonable compromise and one that will lead to gathering more information on an unexplained infant death. This amendment should also assist in making law enforcement people aware of the sensitivities involved in both investigating and treating the parents and relatives who have suffered the loss of their infant.

Senator Hartley moved SB 1105 be returned with a DO PASS recommendation.

Senator Guenther moved his four-page amendment dated 02/12/01, 11:15 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment B)

Senator Hartley moved SB 1105 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-1-0. (Attachment 1)

Chairman Gerard noted that the following were present in support of the bill: **Sue Braga, Executive Director, American Academy of Pediatrics; and Eric B. Edwards, Legislative Liaison, Arizona Association of Chiefs of Police.**

SB 1199 – BOMEX; formal interviews; information access – DISCUSSION/HELD

Meghann Brennan, Senate Health Committee Intern, explained that SB 1199 requires the Allopathic Board of Medical Examiners (BOMEX) to provide a doctor with all investigative information at the formal interview. The current system provides the doctor with a brief summary of the complaint filed against him/her and the conclusions of the investigation. There is a four-line Gerard amendment dated 02/12/01 at 3:00 p.m. (Attachment C) that insures the investigative materials released to the doctor will be treated like all other medical records pursuant to statute.

Senator Cirillo asked if the amendment means that the accused offending doctor can receive the information and discuss it with his lawyer. Ms. Brennan replied that it is her understanding that a doctor could discuss the information with his attorney. Senator Gerard said that they referred back to existing laws dealing with confidentiality of medical records where insurance companies and other entities have access to medical records. The statute states that anyone who handles the records comes under the requirements of the law that they must handle them in a confidential manner.

Harry J. Cavanogh, Attorney, noted that he has practiced law for many years and has handled many malpractice and BOMEX cases. He stated there are two aspects of the matter that the committee should consider. The first one is that the Attorney General and BOMEX totally misinterpret ARS 32-1451.01, subsection C, which provides patient records will be confidential from the public. They interpret that to mean the doctor cannot see what he is really being charged with. The next aspect of the bill refers to the formal hearing status. Everyone needs to realize that in the informal status, a doctor's rights and privileges can be drastically altered. His ability to work in hospitals, his insurance premiums, and his working with all types of contractual employers will be drastically changed because of an informal hearing where he has received some type of censure. The statute does not prevent the Board from giving the doctor the information. The Federal Medical Standards Act does not in anyway alter or amend what is on the books in Arizona. He said that he is advocating that the doctor and his lawyer should have the right to see the entire file. He said every time he has been involved in a BOMEX hearing, he always requests the file, is always denied, and always writes a letter. The purpose of doing that is because if something really bad occurs, he would go to the Superior Court and get the interpretation change. He noted that the country is governed by due process, both federal and state. ARS 32-1451 provides as follows: "any person may and a doctor of medicine shall report to the Board any information that would appear to be a violation of good medical practice."

Once that information is given to a doctor or consultant, he has a large responsibility. He could lose his own license if he violated that statute. The investigators for the Board hide behind the file. They interview the doctor, yet the doctor never has the opportunity to find out what they are reporting to the Board. The doctor has no way to protect himself. The complainants should not be hidden under secrecy. Many times these hearings are a prelude to a malpractice action and the doctor does not know who the person is that is making the complaint against him. There is an absolute immunity for a good faith reporting to the Board. No one is going to be sued for it or face any hazard whatsoever if they report a claim to the Board in good faith. That is the way it should be.

Mr. Cavanogh pointed out that peer review records could be given to various healthcare professionals; however, by so doing that information is still confidential. The situation of the information being given to the doctor is not public and he has the same duty of confidentiality that he had before the complaint. The lawyer has the same confidentiality duty to the doctor. Neither can expose the complainant.

Senator Guenther asked if there is a difference between a formal interview and a formal hearing. Mr. Cavanogh said yes. BOMEX uses the informal hearing as a complete cover up of information because of the word "public." The statute reads that the information is not available to the public. The Board concludes that the doctor is the public.

Senator Guenther asked why they have the informal hearing. Senator Gerard clarified that the Board has recently changed policy and are no longer using the term "informal." It is now called either a formal hearing or a formal interview. She said she could not keep them straight. Senator Guenther related that the formal interview is something that the accused has to request. Mr. Cavanogh said he did not think that is correct. Senator Guenther explained that if the doctor wants a formal interview before the formal hearing, the doctor must request it. Mr. Cavanogh said then the doctor should be entitled to see the record so that he can make an intelligent decision as to whether he wants to request a formal hearing. Senator Guenther questioned why the doctor would want a formal interview, because the problem with that is that BOMEX has the authority to censure a doctor at a formal interview. Why not just go to a formal hearing, where the doctor would have the right to discovery. Mr. Cavanogh replied that they do not have the right to discovery and that is the problem. He said that he has never been able to obtain a file. They will never disclose it. He questioned how a doctor can make an intelligent decision if he does not know what is in the file.

Mr. Cavanogh referred to ARS 32-1451, subsection G and stated that only the basic information is provided, everything else is kept from the doctor. There may be plenty of sources that could be helpful to the doctor, yet he is not allowed to see it. He said that he feels that is wrong. He cited from Article 2, Section 1 of the Arizona Constitution that provides "A frequent recurrence to fundamental principles is essential to the security of individual rights and the perpetuity of free government." A doctor's rights certainly fall within that right. Article 2, Section 13 provides "No law shall be enacted granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which, upon the same terms, shall not equally belong to all citizens or corporations." He pointed out that means that the doctor has the same right as the anonymous complainant. Article 2, Section 4 provides "No person shall be deprived of life, liberty, or property without due process of law." He state the 14th Amendment does the same thing.

Mr. Cavanogh noted that another section provides “a person who receives medical records pursuant to this section shall not disclose those records without the written authorization of the patient or the patient’s healthcare decision maker unless otherwise provided by law.” If there was true concern about those being confidential, the same provision could be added to BOMEX. He indicated that the language should be changed regarding “public” or they will continue to hide behind the idea that the doctor is “public.”

Senator Gerard asked if the doctor is allowed to have the file if he is before an administrative hearing officer. Mr. Cavanogh replied that at that time, the file could be subpoenaed. However, he has never gotten that far in a case.

Senator Hellon asked if the process begins with a complaint. Mr. Cavanogh said that it does not have to; BOMEX can initiate the procedure. Senator Hellon asked if she filed a complaint, the doctor would be given that information. Mr. Cavanogh replied that if it is about the doctor’s patient, there is no question about it. However, if the complaint comes from another doctor, nurse, pharmacist, or medical provider, that information is not provided. He questioned if it is about the doctor’s patient, why would BOMEX be afraid to provide that information, as the doctor has a duty of confidentiality? The doctor knows how the complaint reads, but does not have all the additional information that is provided to the hearing officers, specifically, complaint and witness testimony.

Senator Cirillo pointed out that most people feel that BOMEX has not been prosecuting doctors for bad practices and performance and does not feel that the public is interested in additional protection for doctors. He said that he understands the constitutional issues and that a doctor should know who their accused is and have the necessary information. It appears the thrust of this bill is additional protection for doctors. Mr. Cavanogh replied that this bill will not inhibit BOMEX from handling all the complaints they should investigate. What it does do is protect an innocent doctor from having some type of censure that should not occur. He said that he feels it should be a fair playing field. Everyone should have the right to confront their accuser and prepare a defense. If the doctor does not know what is in the file, he cannot prepare a defense.

Senator Verkamp asked if he was in favor of the bill. Mr. Cavanogh responded that he was in favor of the bill with changes but not as it is currently written. Senator Gerard noted one of the changes would be that the doctor should have the information at the beginning of the process. Mr. Cavanogh stated that the word “public” should be changed to “peer review.” Senator Verkamp said that he cannot believe that a doctor cannot know anything that has been alleged against him. He noted that he has practiced law for 35 years and is not aware of any procedure that would not provide information to the accuser.

Claudia Foutz, Executive Director, BOMEX, explained that the old system that was created for many of the regulatory agencies attempted to resolve complaints against licensees in a quick manner. It is a two-tiered process. The informal interview, which is in statute, allows a doctor to be invited to appear before the Board to address allegations of wrongdoing. It has been historically a system that was used to resolve an issue at the lowest possible level. In this system the state has no advocate, there is no attorney general representing the state at this level because it was intended to be the lowest level. Doctors are encouraged to bring their own counsel with them. At this point, there is an imbalance because there is no state advocate advocating for the protection of the public. The doctor is not required to attend this interview stage, but rather are required to ask for a full evidentiary hearing where the doctor would have complete access to the files. Those files can be subpoenaed at this level.

Ms. Foutz noted that the reason they are in opposition to this bill because it becomes problematic for the Board if they are trying to mirror the full evidentiary hearing with a much simplified formal interview process. She said that they were willing to look at this, but if they begin to mirror the same process, they would need to contract the Attorney General (AG) so that the public is properly protected. This would incur additional costs. Senator Gerard questioned if the accused has access to all this information, would the AG have to be involved. Ms. Foutz replied yes, because there would not be any public representative at that level. Senator Gerard asked if that is the Board's position. Ms. Foutz responded that the Board does not take that role.

Senator Gerard commented that if the accused had access to this information, they might be able to provide information at the informal level that would resolve the issue. Ms. Foutz replied that after witnessing two and one-half years of interviews, she has never seen a doctor unable to bring forward information that brings more light to this process. Most of these formal interviews are dismissed at a rate of 40% to 60% based on the information that the doctor provides. She said that she failed to see the issue.

Senator Verkamp questioned how she failed to see the issue when the doctor does not know what the charges are. Ms. Foutz noted that some statements have been made that the doctor does not have any information. However, they are provided a copy of their entire interview, because it is taped and transcribed. They have the summation of the allegations and a copy of the expert evaluation from the medical consultants. It is in a condensed form rather than the original transcript. She said that the doctors are very well prepared at these interviews.

Senator Verkamp asked what the objection is to giving the doctors the full transcript. Ms. Foutz said that this is problematic and they need to address the issues. BOMEX has a responsibility to protect the public. If a full evidentiary hearing is going to occur at the formal interview process, the State needs to have proper representation from the AG.

Senator Gerard indicated that they should probably change the terms of the process because "formal interview" and "formal hearing" are confusing. Ms. Foutz explained that the Board's counsel has reviewed the amendments and they have advised that this does elevate the process to another level. Senator Gerard asked if counsel was present. Ms. Foutz replied that he was told by his supervisor not to attend the meeting. Senator Verkamp noted that this procedure is breaking down.

Senator Nichols quoted from the fact sheet and asked for concurrence of the statement regarding the summary letters provided to the physician during the course of the investigation: "the second is presented to the physician prior to the formal interview, and contains an additional summary of complaint, the analysis and conclusion of a staff medical consultant and the investigators' conclusion and recommendations to the Board members." He said that sounds fairly serious to him. This is called the formal interview. He questioned if she feels at that stage of the investigation why the physician should not have access to the records that are being used against him. Ms. Foutz replied that is a proper reflection of the current way that the Board has been providing information to the physician. Senator Nichols asked for agreement that it is fairly serious because it has the conclusion of the staff medical consultant and the investigators' conclusion and recommendations to the Board members. He said that he would want to have as much information as possible to defend himself. Is that not an appropriate time to make the complete record available to the physician? Ms. Foutz responded that the issue

that is being dealt with today is that it has been the Board's interpretation that these records are not to be provided at that level of review. If they are going to provide that information at that level, the structure of the formal interview process needs to be reevaluated.

Senator Hellon questioned that when they get to the formal interview process and the doctor is present with counsel, if the decision of the Board is not satisfactory to the doctor, what is his recourse. Can he appeal the decision or does it go to the legal process? Ms. Foutz said that the Board has several choices at this hearing. One is that there was not sufficient evidence or that there was so much complexity in the issue that they would not continue the formal interview rather they would refer it to the Office of Administrative Hearings for a full evidentiary hearing. Another choice is that after hearing the physician there could be evidence brought forward that would allow the Board to dismiss the case. Third, the Board could issue a nondisciplinary advisory letter, which means that although a violation occurred, it did not rise to disciplinary action. The fourth option is that they could issue a disciplinary order, but the Board is limited in what they can order. They cannot revoke a doctor's license, nor can they suspend the doctor for more than one year.

Senator Hellon asked if they move on to the full evidentiary hearing, can the doctor have counsel present. Ms. Foutz said yes they can. If the Board issues an order, the doctor has 15 days to ask for reconsideration before the Board. Then the Board will hear the doctor's reconsideration at the next Board meeting. If the Board decides not to rehear it, the doctor can appeal the decision to the Superior Court.

Senator Gerard explained that she is going to hold the bill and get additional information from the AG.

Chairman Gerard noted that the following were present in support of the bill: **Judith Connell, Lobbyist, Arizona Trial Lawyers Association; Michael Haener, Director of Legislative Affairs, Attorney General's Office; and David Landrith, Vice President, Arizona Medical Association.**

SB 1315 – health Boards; disciplinary action; votes – DO PASS AMENDED

Ms. Brennan explained that SB 1315 requires all health profession regulatory Boards to record a roll call vote on disciplinary actions that require a Board vote and requires a two-thirds vote for a disciplinary action that is inconsistent with an administrative law judge's recommendation. There is a six-line Gerard amendment dated 02/12/01 at 3:51 p.m. (Attachment D) that changes the language concerning the action of the administrative law judge to conform to other statutes relating to the Office of Administrative Hearings.

Senator Gerard indicated that this bill stems from the media attention to BOMEX. She said that she reviewed all the problems and continuing AG reports dealing with all of the health Boards. Over the years, she has tried to develop some consistency between the health Boards because they have different statutes and rules and often will have different AG opinions on the same rules and statutes. She stated that another issue is that there should be more lay people appointed to the Boards and less health professionals. There is absolutely no data that shows that lay people are harder on the profession than the health professionals.

Jason Bezozo, Senate Assistant Research Director, explained that the amendment deals with the language of the bill that says that the two-thirds vote is required if the Board's decision is inconsistent with the administrative law judge's recommendation. In statute, under the Office of Administrative Hearings, there is a definition for the administrative law judge's decision not recommendation. The term "decision" is used throughout the statute and not "recommendation." The term "decision" includes the finding of fact, conclusions of law, and the order that is issued by the administrative law judge. The amendment would remove the word "recommendation" and change it to "administrative law judge's decision." He noted that concern was raised that the language would require two-thirds vote of the Board if they wanted to issue a penalty or disciplinary action that is more lenient than the decision or harsher than the decision. He indicated that there was some concern about changing the language that would only apply it to the cases when the Board goes with a more lenient decision. Senator Gerard noted that this recommendation came from the AG.

Senator Guenther stated that it seems as if this will create a new super majority requirement. He said that he has served on boards and commissions where there is more than one administrative law judge hearing cases. The requirement is to try to balance the different opinions with regard to the different levels of defenses or mitigating circumstances so that the treatment of all the people across the Board is consistent with what the Board or commission feels is appropriate. In this instance, they could be interfering with the leveling affect in treating people who committed the same offense differently based upon different recommendations from different administrative law judges. Senator Gerard said that many Boards have been consistent. However, BOMEX has not proven that it can make good choices. Senator Guenther stated that there are administrative law judges who do not do a good job. He said that it should be the Board's decision to make the adjustments that they deem necessary.

Senator Nichols moved SB 1315 be returned with a DO PASS recommendation.

Senator Nichols moved a verbal amendment to the bill:

Page 1, strike lines 18 through 20

The motion CARRIED by voice vote.

**Senator Nichols moved SB 1315 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0.
(Attachment 2)**

Chairman Gerard noted that the following were present in support of the bill: **David Landrith, Vice President, Arizona Medical Association; and Kathy Boyle, Executive Director, Arizona Pharmacy Association.**

SB 1310 – BOMEX; disciplinary action; factors – DO PASS AMENDED

Ms. Brennan explained that SB 1310 requires the Allopathic Board of Medical Examiners (BOMEX) to consider previous complaints and disciplinary actions against a licensee when determining disciplinary action. There are two amendments. The first is a three-line Gerard amendment dated 02/12/01 at 2:17 p.m. (Attachment E) that adds nondisciplinary actions to the past actions that must be considered and maintains the language that includes complaints and disciplinary actions. The second is a three-line Gerard amendment dated 02/12/01 at 2:20 p.m.

that adds nondisciplinary actions to the past actions that must be considered and removes the requirements to consider complaints when determining disciplinary action against a licensee. This is being done for the case of dismissal so that those that are thrown out would not have to be considered.

Senator Gerard stated that the Board has said there is an unwritten attorney general's opinion that they can only review each complaint separate and not look at a physician's history. She said that her point is that there may only be one incident that may not seem significant or worthy of investigation or concern. However, if there are a series of them, that is a problem.

Senator Guenther asked if the nondisciplinary action is similar to a letter of reprimand in the file. Senator Gerard replied that it is an advisory letter.

Senator Cirillo suggested that this be patterned after what is done in Child Protective Services (CPS), where they receive thousands of complaints by phone that will turn out to be nothing and to hold those against the family would be wrong.

Senator Guenther asked if nondisciplinary actions can be considered a finding of fault regarding a previous case. Ms. Foutz replied that an advisory letter is an instrument that the Board uses to track the behavior of a doctor as opposed to a dismissal where they would lose track of a pattern that might exist. In the past, the Board had received advice that they could not review advisory letters or other actions as a pattern. That advice has changed for the AG. Currently, the Board looks for any pattern that might exist. An advisory letter is considered to be a finding that does not rise to discipline, but it is tracked. What is not tracked is the dismissal because there was not a finding of a violation, so there is nothing to track.

Senator Cirillo moved SB 1310 be returned with a DO PASS recommendation.

Senator Cirillo moved the three-line Gerard amendment dated 02/12/01, 2:20 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment F)

Senator Cirillo moved SB 1310 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 3)

Chairman Gerard noted that the following were present in support of the bill: **Judith Connell, Lobbyist, Arizona Trial Lawyers Association; Michael Haener, Director of Legislative Affairs, Attorney General's Office; and David Landrith, Vice President, Arizona Medical Association.**

Chairman Gerard noted that the following were present and neutral on the bill: **Claudia Foutz, Executive Director, BOMEX; and Dominick Spatafora, Lobbyist, BOMEX.**

SB 1208 – malpractice settlement; notice costs; BOMEX – DO PASS AMENDED

Ms. Brennan explained that SB 1208 requires the Allopathic Board of Medical Examiners (BOMEX) to pay for the cost of medical malpractice information. There are two amendments. The first is a three-line Gerard amendment dated 02/12/01 at 3:54 p.m. that exempts malpractice insurers from providing copies of expert witness depositions. The second is an 11-

line Gerard amendment dated 02/12/01 at 5:06 p.m. that clarifies that BOMEX is only responsible for paying the cost of notice documents that are filed with their Board. It also adds the Board of Osteopathic Physicians to the provisions of this bill.

Senator Gerard indicated that a trial lawyer wrote to her and said that there is something inherently unfair since they are required by statute after there is a judgment in a malpractice case that they have to provide to the Board copies of everything they had. She also added that in her desire for consistency, she thought the osteopathic physicians should be included.

Dominick Spatafora, Lobbyist, BOMEX, noted that they were neutral on the bill and their only concern is to see an appropriation attached sometime in the process. They estimate that this would cost approximately \$14,000 to \$16,000 a year. Senator Gerard pointed out that this is a cost for the Board and should be included in their budget that they are currently preparing.

Mike Low, Mutual Insurance Company of Arizona (MICA), stated that MICA is a doctor-owned insurance company and writes approximately 50% of all the medical malpractice on Arizona physicians. He said that they support the bill with the amendments. He pointed out that the insurance companies are exempt from providing the witness depositions and expert witness transcripts because they do not have the copies. The plaintiff's lawyer and the defense counsel have them. The statute was amended last year to require the insurance companies to provide information that they currently provide to the national databank. Under federal law the insurance companies must provide that information and have no problem providing it to BOMEX. They recently worked out a procedure with BOMEX that says they will not hold the insurance companies to that requirement since they do not have the copies. Mr. Low explained that the plaintiffs were not providing the information. BOMEX came to the legislature and requested that the insurer be added so that they would have the flow of information. Under federal law, the National Practitioner Databank Report requirement of Public Law 99-660, MICA already provides all the information in Subsection B, paragraphs 1-4 of the statute. As the insurance company, they do not receive the transcripts or summaries of the expert testimony. He noted that part of the problem is that any costs get passed on to the doctors through their insurance premiums. On the other hand, it would be an added cost to the case for the defense counsel. He said that he feels the system in place together with the Gerard amendment is a fair one.

Mr. Bezozo referred to SB 1210 that increased various fees to assist the Board in generating more revenue to assist with their funding deficit problem.

Senator Cirillo moved SB 1208 be returned with a DO PASS recommendation.

Senator Cirillo moved the three-line Gerard amendment dated 02/12/01, 3:54 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment G)

Senator Cirillo moved the 11-line Gerard amendment dated 02/12/01, 5:06 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment H)

Senator Cirillo moved SB 1208 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-1-0. (Attachment 4)

Chairman Gerard noted that the following were present in support of the bill: **Judith Connell, Lobbyist, Arizona Trial Lawyers Association; Michael Haener, Director of Legislative Affairs, Attorney General's Office.**

Chairman Gerard noted that the following were present and neutral on the bill: **Claudia Foutz, Executive Director, BOMEX.**

SB 1306 – BOMEX; disciplinary action; reciprocity – DO PASS AMENDED

Ms. Brennan explained that SB 1306 prohibits the Allopathic Board of Medical Examiners (BOMEX) from issuing a license to practice to certain applicants and requires BOMEX to initiate disciplinary action if another jurisdiction has taken action against a licensee for an act that constitutes unprofessional conduct as defined in this state. There is a three-line Gerard amendment dated 02/12/01, 2:25 p.m. that expands the term “surrender” since some states may not use that term when a physician gives up his license. Also, the amendment requires BOMEX to initiate an investigation rather than a disciplinary action if action was taken in another jurisdiction.

Senator Gerard clarified that this is another bill trying to fix a problem. There already is a requirement if a doctor is not licensed in Arizona and has lost their license in another state, they cannot come to Arizona and apply for a license. The loophole exists if they had an outstanding complaint or were currently under investigation in another state, during that time, they could obtain a license in Arizona. That is one of the loopholes they wanted to close. Oftentimes, doctors licensed in several states, might get in trouble in one state and then continue to practice in Arizona. They have not determined how to resolve that issue.

Senator Nichols moved SB 1306 be returned with a DO PASS recommendation.

Senator Nichols moved the three-line Gerard amendment dated 02/12/01, 2:25 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment I)

Senator Nichols moved SB 1306 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 5)

Chairman Gerard noted that the following were present in support of the bill: **David Landrith, Vice President, Arizona Medical Association; Claudia Foutz, Executive Director, BOMEX; and Dominick Spatafora, Lobbyist, BOMEX.**

SB 1109 – medical student loans – DO PASS AMENDED

Mr. Bezozo explained that a recent performance audit of the Board of Medical Student Loans included several recommendations to the Legislature. Among them the Auditor General recommended the Legislature define the term “rural” or authorize the Board to adopt a definition of the term “rural.” The Auditor General also recommended that the Legislature specify the amount of time the Board should track doctors who continue to practice in rural and medically underserved areas once their service obligation is complete. The Auditor General additionally recommended that the Legislature add a definition of Arizona resident to the Board's statute.

SB 1109 includes these recommendations and expands the definition of medically underserved areas. The bill also includes a definition of medically underserved population. The legislation also tightens the definition of resident by mirroring the state's universities definition of resident and the bill provides flexibility to the Board on how it may allow program participants to fill their service obligations.

Mr. Bezozo pointed out that there is a three-page Gerard amendment dated 02/12/01 at 9:32 a.m. that eliminates the specific law citations under the definitions of medically underserved area and population and specifies that these areas can be designated by federal law. It also stipulates that the program participants must serve in either: 1) a rural or medically underserved area, or 2) an area designated as a medically underserved population. The amendment also maintains the current stipend cap until June 30, 2002. It eliminates the ability of the Board to approve a service location in a facility with a primary permission to provide services to a medically underserved population. It also eliminates the authority of the Board to approve other health related services in lieu of repayment to fulfill the service contract. It eliminates the authority of the Board to waive, reduce, or suspend a loan recipient's service or payment obligation. It also grandfathers service locations that were approved by the Board prior to July 1, 2000 and continues the Board for ten years. Mr. Bezozo distributed maps that identifies to various service areas (Attachment J).

Senator Cirillo moved SB 1109 be returned with a DO PASS recommendation.

Senator Cirillo moved the three-page Gerard amendment dated 02/12/01, 9:32 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment K)

Senator Cirillo moved SB 1109 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 6-0-2. (Attachment 6)

Senator Nichols noted that the following were present in support of the bill: **Kristin Greene, Director of Government Affairs, Arizona Association of Community Health Centers; Nicholas S. Hagen, M.D., Vice Chairman, State Board of Medical Student Loans; Maggie Gumble, Program Coordinator, University of Arizona College of Medicine, Board of Medical Student Loans; Judy Bernas, Association Director, Public Affairs, University of Arizona Health Sciences Center; and Thomas E. McWilliams, D.O., Associate Dean, Midwestern University/Arizona College of Osteopathic Medicine.**

SB 1300 – naturopathic physicians Board – DO PASS AMENDED

Mr. Bezozo explained that SB 1300 makes numerous changes to the statutes governing the Arizona Naturopathic Physicians Board of Medical Examiners (NPBOMEX). In June, 2000, the Auditor General released an audit report of the NPBOMEX. The bill attempts to address several findings and recommendations in the audit. Reviewing some of the provisions, it requires the Board to use a written national examination for licensure and use a state examination for areas not covered by the national examination. In addition, the bill stipulates an applicant for licensure must obtain a minimum grade of 75 on the exam. The bill also prohibits a Board member from participating in the adjudication of a case that a member worked on the investigation of. Another recommendation included in the bill allows the Board and its investigators to subpoena any medical record relating to an investigation. The legislation also prohibits the Board and its

staff from having any financial interest in the national examination. Although the Committee of Reference held its hearing during the interim, the committee did not make a recommendation to continue the Board because it does not sunset until July 1, 2001.

Mr. Bezozo noted that there are two amendments to the bill. The first amendment is a five-page Gerard amendment dated 02/12/01 at 5:17 a.m. and adds two members to the Board, one is a naturopathic physician with at least five years experience and the other is a member of the public who has no interest in the profession. The amendment also requires NPBOMEX to recognize a national examination rather than administering a national exam. The amendment also insures an applicant for licensure has to obtain a minimum grade of 75 on the exam and does not receive less than 70 on any subject of the exam. It authorizes the executive director of the Board to issue a temporary certificate to an applicant who applies for a certificate in a clinical treatment program.

Mr. Bezozo pointed out that the second amendment is a 15-line Gerard amendment dated 02/13/01 at 11:35 a.m. that allows the governor to stagger the two new Board members. It also includes a technical change.

Senator Cirillo quoted from the fact sheet that the bill: “eliminates the ability of a school of naturopathic medicine to become an approved school if the school is certified, recognized or approved by another state’s naturopathic licensing agency and the school is located in the jurisdiction of that agency” and questioned if the state can license a school only if it is in Arizona. Mr. Bezozo replied that the intent was that the statute already allows schools that are accredited. He noted that there was some concern that a school could become approved that is not an accredited school. Under the definition, the school can be accredited by the United States Secretary of Education, a recognized agency, or a candidate for accreditation by the Council for Higher Education.

Dr. John L. Brewer, Executive Director, NPBOMEX, explained that the Board is in favor of the amendment because there is a possibility that a school can become approved by a naturopathic medical agency in another state, but never gain professional or regional accreditation. He also mentioned that the intent of the Board is to get out of the examination business; however, the amendment strikes only two or three parts of the exam. He stated that the Board would be in favor of making a change to the amendment: on page five, line 3, after the number 2, insert “paragraph 3.” With this change, the Board would not have to continue to administer the examinations where they have no funding to do so.

Dr. Brewer referred to the 15-line amendment that adds two additional members to the Board, and noted that if they added two members, the funding would need to be added to the budget. Members receive \$150 for each day they work for the Board.

Senator Nichols moved SB 1300 be returned with a DO PASS recommendation.

Senator Nichols moved the five-page Gerard amendment dated 02/12/01, 5:17 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment L)

Senator Nichols moved the following verbal amendment to the amendment:

**Page five, line 3, strike “and” Insert comma after 1 Insert “and 3” after 2
The motion CARRIED by voice vote.**

Senator Nichols moved the 15-line Gerard amendment dated 02/13/01, 11:35 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment M)

Senator Nichols moved SB 1300 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 7-0-1. (Attachment 7)

Chairman Gerard noted that the following were present in support of the bill: **Craig Runbeck, Executive Director, Arizona Naturopathic Medical Association; Dr. Konrad Kail, NPBOMEX; Jim Hartdegen, Arizona Naturopathic Medical Association; Thomas Kruzel, Physician, Southwest College of Naturopathic Medicine; Greg Harris, Southwest College of Naturopathic Medicine; and Robert Gear, NMD, Chairman of the Board, American University of Integrative Medicine.**

SB 1301 – medical radiologic technology; Board – DO PASS AMENDED

Mr. Bezozo explained that SB 1301 continues the Medical Radiologic Technology Board of Examiners (MRTBE) for five years and authorizes the MRTBE to regulate practical technologists in bone densitometry and nuclear medicine technologists. Contains a Proposition 108 clause.

There is a 17-line Gerard amendment dated 02/12/01 at 1:09 p.m. that eliminates one of the two new members to the Board, which is a practicing radiology technologist. It clarifies the other new members as practicing nuclear medicine technologist. The amendment also eliminates the increase in the amount that Board members are eligible for each day of service and for reimbursement of subsistence and travel expenses. The amendment specifies the fee for a replacement certificate is \$10. It also specifies the appropriation is for each year of the biennium and comes from the State Radiologic Technologist Certification Fund and not from the state general fund.

Senator Guenther moved SB 1301 be returned with a DO PASS recommendation.

Senator Guenther moved the 17-line Gerard amendment dated 02/12/01, 1:09 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment N)

Senator Nichols moved SB 1301 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-0. (Attachment 8)

Chairman Gerard noted that the following were present in support of the bill: **Aubrey Goodwin, Director, Arizona Radiation Agency; and M. Joyce Geyser, Arizona Radiological Society.**

SB 1304 – dialysis technicians; training requirements – DO PASS

Mr. Bezozo explained that at the request of the Renal Disease Coalition of Arizona, the Committee of Reference held a sunrise hearing during the interim to make recommendations regarding the regulation of dialysis technicians. The Committee recommended the Legislature

require dialysis treatment facilities to use dialysis technicians certified by a national certification organization. SB 1304 includes that recommendation and contains a delayed effective date of January 1, 2003 so that dialysis technicians currently in practice can comply with the requirements to obtain national certification.

Senator Hellon asked who has been performing dialysis up to this point. Senator Gerard replied that unlicensed technicians were currently performing dialysis. Senator Nichols emphasized that it is scary if someone has to put their life in the hands of someone who is not licensed, four times a week, using complex equipment.

Senator Gerard noted that at the sunrise meeting, the members wanted to make this a health profession. They determined that the dialysis technicians should be licensed as the certified nursing assistants are.

Melinda Martin-Lester, Registered Nurse, American Nephrology Nurses Association (ANNA), explained that they support certification and standardized training for dialysis technicians. It is felt that the bill as it stand does not address the specific items necessary to ensure legislation that will improve the quality of patient care, therefore, ANNA cannot make an informed decision on the approval or disapproval of SB 1304. Senator Gerard pointed out that there is a delayed enactment in the bill to allow time for the technicians to become certified. Ms. Martin-Lester responded that there are still issues as to how they would deal with technicians who are not certified. ANNA is willing to work with an organization to develop the rules that will make this work, however, it would be difficult to approve the current bill as vague as it is. Senator Gerard asked if she had any ideas how to work out the problems. Ms. Martin-Lester stated that she feels a group of clinicians and nephrology interested parties could put together some recommendations and address the issues.

Louise Gifford, Renal Care Group, indicated that they do not support theoretical testing to ensure competency. They strongly support voluntary certification and have committed to pay for approximately 50 technicians to take the exam. The Renal Care Group also supports standardized training requirements; but would like the opportunity to be involved in the development of such requirements. They are concerned with this bill as it could reduce the labor pool, especially in the rural communities.

Senator Gerard asked what type of training is provided for dialysis technicians. Ms. Gifford replied that they provide six weeks of training and then two additional weeks of on-the-job training. Senator Gerard questioned if there were any educational requirements. Ms. Gifford noted that an applicant needed to have a high school diploma. Senator Gerard explained that the federal government requires, through Medicare and Medicaid, that there are trained dialysis technicians at the dialysis facilities; however, they do not provide any guidelines. Ms. Gifford indicated that they have to provide a skills list to Medicare and the State. Senator Gerard asked if there is standardized training, including a list of requirements noting what a technician can do.

Senator Solomon pointed out that there is nothing in the bill that says a dialysis technician cannot work during this delayed enactment period.

Charlie Thomas, Legislative Chair, Arizona Kidney Foundation, read from a prepared statement by Lee Cobble, National Chairperson for Nephrology Nurses and Technicians: "Upon careful review of SB 1304 as it was introduced, one finds a bill that while good intentioned, inadequately addresses the complex issues of the title of the bill as related to dialysis technician training and certification. To simply state that facilities are required to employ only certified technicians fails to address the broader issues of training and requirements for achieving certification. In order to avoid the pitfalls we have witnessed in legislation in other states that was not crafted to include the cost of administration as well as the impact on the community and to act in the best interest of the hemodialysis patients, the dialysis clinical technicians, and the dialysis providers, it is imperative that this committee move this bill forward only once all of these issues are covered. 1) This bill should include a curriculum outline that will insure clinicians receive the training necessary to successfully pass a national certification exam. 2) A minimum period for training and supervise preceptorship is needed to reduce the risk of errors that are a concern to hemodialysis patients. 3) Provisions for retraining periods and supervision for those technicians who do not successfully pass the certification exam on the first try must be addressed, as well as when a technician is no longer eligible for employment when continued failure of the certificate exam occurs. Additionally a timetable for technicians who move to Arizona with multiple years of experience to achieve the certification should be set. 4) An advisory Board should be established within DHS comprised of technicians, nurses, physicians, patients, and administrators of the renal community. This advisory group would review the providers curriculum, develop a mechanism for dialysis providers to verify a technicians training and valid certification as technicians move from one clinic to another and set possible fees for these activities. 5) It should be made clear that only clinical technicians with direct patient care contact are affected by this legislation. 6) Since several states have already addressed this issue in detail, it would serve the committee well to carefully study the existing legislation and design a bill that would protect patients without unduly placing burdens on technicians or providers. The Council of Nephrology Nurses and Technicians supports the concept of this legislation but strongly cautions against passage of a bill that fails to address these intricate issues."

Senator Gerard asked why no one has brought her any amendments if there was such concern. Mr. Thomas replied that the Arizona Kidney Foundation is not directly involved in the development of this bill, but are concerned about the care of kidney patients and the reputation as a foundation representative of kidney patients and providers. He said that he feels there is a lot of work that needs to be done and offered the foundation to bring together a taskforce. It is encouraging that they have come this far, but there is some distance to go. Senator Gerard said that she is disappointed that they did not give her the language that spelled out what the problems were.

Senator Hartley noted that this bill is a good faith effort in trying to address the needs. Certainly some of these issues should have been brought forward before this meeting.

Senator Hellon indicated that she does not feel it is the Legislature's responsibility to get into the details of how the training occurs. She said that she feels strongly about the bill that the technicians should be certified; however, it should be the responsibility of the people in the field to detail how the training would happen.

Senator Solomon stated that when the State mandates that an examination be taken and the certification be a requirement for employment that the statute does not articulate the terms of the examination. Senator Gerard replied that they are trying to do a cross between a health

profession certification and licensure. There are two national organizations that offer certification testing.

Dale A. Ester, ESRD Coalition, explained that he began dialysis in 1989 and received a transplant in 1991. He said that he speaks for the dialysis patients primarily because he does not have to worry about repercussions rendered from the hands of the individuals who are currently in the dialysis unit. Dialysis patients receive treatment three times a week, every week. They sit in a reclined chair, their blood being removed, going through a machine and going back into their arm. The technicians tend to have an ability to humiliate and intimidate an individual who sits in the chair. These are assistive personnel; they are not licensed or certified, although each unit gives these individuals a title of Certified Hemodialysis Technicians (CHT). But what are they certified to? They are certified to the specifics that the unit thinks they want to teach their individuals. He said that they believe the national organizations take into account the concerns of all 50 states. They would have the best oversight of what is happening to the dialysis industry. There are only 50 certified Board of Nephrology Nurse Examiners/Technicians (BONNET). He questioned why only 50 of 500 technicians are certified.

Mr. Ester noted that there was a meeting two and one-half years AG where all the dialysis providers to attend. He said that they asked for improved conditions. They all walked away and not one ever got back to try to promote the improved conditions on behalf of patients. He stressed that they had no other recourse then to come before the Legislature and ask that this happen. He emphasized that they are here today because they have concerns about their care. Dialysis facilities govern themselves. Complaints go through a grievance process which seems to be far more self serving. When complaints are made, it is handled internally but disappears. For example, if a glove that a technician wears when they are treating a patient is dropped on the floor, is it dirty? Some technicians will pick it up and put in on again. He pointed out that there is a person present who can provide horror stories of what he has seen happen in his unit that brags to be one of the better facilities in town. He said without some form of certification program, dialysis patient care is not going to improve. He noted that they have been unable to get it to happen voluntarily. He asked that the Legislature pass this bill and noted that he is willing to assist in developing core curriculum. He explained that Cheryl Berg is a development coordinator for Rio Salado College and is prepared to offer a vocational training program. Improved training can be provided with classroom and clinical training at five times less cost than what they are currently paying. He noted that this would result in a standardized minimum level of education to allow the technicians to pass the national approved exam. If the unit wants to provide additional training that would be fine; however, they want the technicians to be trained at a basic minimum level so that the patients do not have to worry about their safety when they are sitting in the chair.

Brent Smith, Citizen, stated that he has been a dialysis patient since 1973 and has repeatedly during the last ten years gone to his provider asking that problems be fixed. They have repeatedly refused to do it with an explanation that everything is fine. He said that he is often labeled a malcontent and a noncompliant patient and asked to leave units because he is a disruption to the patient. He noted that a patient advocate program was abruptly stopped because they were educating the patients too much. He said that he was asked to testify last June in Washington D.C. The title of the hearing was "Kidney Dialysis Patients: A Population That Is Under Risk." It was the Special Committee on Aging in the United States Senate. Senator Grasslee has been investigating this in the past two years. He suggested that SB1304 would begin the process of bringing some accountability independent of the providers. This

would give the patients a place to go where someone will listen. No one has been listening to this point. There are over 4,000 patients in Arizona that need the legislature's help.

**Senator Nichols moved SB 1304 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 7-0-1. (Attachment 9)**

Chairman Gerard noted that the following were present in support of the bill: **Jacquelyn Madrid, ESRD Coalition; Ann Gurley, Citizen; Gary Noland, Technician; Helena Hoover, Team Leader, DHS; Natalie Hengel, Dialysis Nurse; Joan Mondschein, Citizen; David Landrith, Vice President, Arizona Medical Association; and Dr. Arnold Serota, Surgeon.**

SB 1110 – AHCCCS; prescription drugs – DISCUSSION/HELD

Ms. Seeglitz explained that SB 1110 allows, beginning October 1, 2001, eligible persons to receive financial subsidies for prescription drugs through the Arizona Health Care Cost Containment System (AHCCCS). This bill specifies that eligible persons are those who qualify for Medicare, have a household income between 100% to 300% of the federal poverty level (FPL), and do not have prescription drug coverage. Additionally, it requires AHCCCS to apply for a waiver from the Healthcare Financing Administration to allow the expanded coverage.

Senator Nichols noted that this program has little or no cost to the state or federal government. It has been done in two states, Vermont and Maine. By issuing a Medicaid card, those individuals can participate in the Medicaid rebate program, which is available as a result of federal agreements with the drug companies. This program has resulted in significant savings for prescription drugs in Vermont. He pointed out that they have had extended conversations with AHCCCS on this issue as to how it might work in Arizona to try to include uncovered people.

The state of Vermont, looking for a way to provide prescription drugs for its people, decided on a novel approach. The idea was to use the Medicaid umbrella which provides prescription drugs, and the federal rebate program which provides a way for pharmacies to get reimbursed to lower the cost of drugs. They chose to give the people under 300% FPL a card that only has one benefit – prescription drugs. It required a federal waiver, which they were successful in obtaining in December. An attempt was made by the drug companies to get an injunction against the implementation of the program; however, it was denied by the court. There still is a case pending which could result in reversing the program. The Pharmaceutical Research and Manufacturers of America (PhRMA) also led a challenge against the waiver approach on the grounds that it was unfair to the drug companies. They failed in that effort.

Senator Nichols noted that the program has been well received in Vermont. The basic premise of the program is if a person has one of the Medicaid cards, they go to the pharmacy, present the card, and receive a reduction in cost, which is approximately a 30% discount. The state advances the money for the rebate and is blind to the patient. He indicated that in Vermont there was some upfront money that had to be used, but ultimately the program is free to the state. Maine is just beginning their program. He explained that currently there are two states that have found a way to reduce prescription drugs at little or no cost to the states. The drug companies and pharmacy bear the cost, but no more than they have agreed to bear through the Medicaid program.

Senator Nichols further explained that the federal rebate program is approximately 18%. It is an arrangement between the federal Medicaid program and the drug companies. The rebate is different for each drug. In Vermont, through mass purchasing through their Medicaid Administration, they receive an additional 15%. On average, the bottomline is an approximate one-third discount on the drug. Senator Gerard asked how they keep people from switching from Medicare HMOs. Senator Nichols replied that there are very few people in the Medicare HMO programs. He said he does not see that as a problem. It is not cost free to the patient. AHCCCS charges approximately \$25 a year for the card. The administrative costs are covered by that fee. He said that AHCCCS has a mass purchasing program in place that would assist in this program.

Senator Cirillo asked if there may be an unintended consequence of less research and development spending and therefore fewer drugs in the future. One of the reasons that the costs are so high is because people are taking more drugs because there are ways to alleviate medical problems that were not available in the past. He said that he is concerned that if the money is taken away from the drug companies, they will do one or two things. They will either increase the costs of drugs in all the states not participating in the program or they will take a bottomline cost which may cut back on research and development.

Senator Verkamp indicated that people can purchase drugs in Canada and Mexico for one third of the cost paid in the United States. He said that he feels it is a game that the drug companies play. If they can sell them that cheap in other countries, it can be done here. Senator Nichols reiterated that on average, drug costs in Mexico are one-third to one-half less than in the states. He suggested that the research and develop is the same for all the other countries where the same drugs are sold at lower prices from the same drug companies that sell the drugs in the U.S. When Congress was considering a prescription program, they talked about a reimportation program where they would allow a drug that has been imported to Canada to reenter the U.S. and be sold cheaper than it is sold in this country. He said that he has a concern about being unfair to the drug companies. He said that they are only talking about a market program that has already been negotiated and agreed upon by the drug companies.

Chairman Gerard noted that the following were present in support of the bill: **Joel E. Goldenberg, Member, AARP; Nicki Jeffords, ABIL; David Carey, ABIL; Phil Pangrazio, ABIL; Donald Vance, Coordinator, Capital City Taskforce, AARP; Jim Driscoll, Executive Director, Arizona Citizen Action, Coalition on Prescription Drug Crisis; Margaret Grannis, Arizona Ecumenical Council, Community Action Taskforce; Timothy Schmaltz, Director of Policy and Program, Foundation for Senior Living; Tara Plese, Legislative Liaison, Arizona Catholic Conference; Karen Novachek, Director, Arizona Ecumenical Council, Community Action Taskforce; and Joy Marx-Mendoza, Citizen.**

Chairman Gerard noted that the following were present in opposition of the bill: **Steve Barclay, President, Advocates West, Inc., Schering-Plough External Affairs, Inc.; Rory Hays, Attorney, Meruk Pharmaceutical; Michael Racy, Lobbyist, Glaxo SmithKline Pharmaceutical; John K. Mangum, Eli Lilly and Company; Jack LaSota, Attorney, Pfizer; and Joe Abate, Attorney, Pharmaceutical Research and Manufacturers of America.**

SB 1234 – prescription medication program – DISCUSSION/HELD

Ms. Seeglitz explained that SB 1234 requires the Arizona Health Care Cost Containment System (AHCCCS) administration to provide prescription medication coverage to certain Medicare beneficiaries and establishes a prescription medication purchasing program for Arizonans who are Medicare eligible or at least 60 years old. This bill requires participants to pay a monthly premium and a copayment for each prescription. It repeals this program if the federal government enacts legislation with prescription medication coverage equivalent to or greater to the coverage of this program. It appropriates \$13.1 million in fiscal year 2001-2002 and \$14.5 million in fiscal year 2002-2003 from the medically needy account to the prescription medication coverage fund established for this program. The second program is a statewide prescription medication purchasing program for Arizonans who are Medicare eligible due to a disability or who are at least 60 years old. This program is to provide access to a variety of prescription medications at the lowest market rate for eligible participants. It requires AHCCCS to develop the formulary in consultation with a senior consumer coalition and a pharmacy benefits manager. It appropriates \$185,000 in fiscal year 2001-2002 from the state general fund to AHCCCS to implement the program. It also appropriates \$15,000 in each of the next two years from the state general fund for a grant to the senior consumer coalition for outreach and education efforts regarding prescription medication assistance programs.

Senator Cummiskey, bill sponsor, mentioned that this bill had its beginning 18 months AG when senior citizen groups and the pharmaceutical companies talked about methods to assist senior citizens. At the end of that process, there were two bills introduced last year, SB 1270 and SB 1271. The first was an idea that if a coalition of senior citizens was formed and used the bulk purchasing capacity that is generated by having many senior citizens working together, they can negotiate discounts with prescription benefits managers. That free market approach was seen as very favorable. At the same time, AARP and other groups said that a discount is good but what about the senior citizens where the discount alone is not sufficient. SB 1271 was then introduced that attempted to have access through the benefits package to provide prescription drugs to citizens up to 250% FPL. With the passage of Proposition of 204, up to 100% FPL is currently covered. He said that they retailored the bill to target seniors in an income group between \$8,500 and \$20,000. It is that group who needs this program the most. He said that they have worked to do this in a fashion that was fiscally responsible.

Senator Cummiskey noted that the Governor would prefer to wait for Congress and the President to act. He said that he would like to see Congress act as well because he feels it is important for them to send money to the states, however, he is not sure that Congress is ready to do this. In the interim, there are approximately 200,000 senior citizens, mostly in rural counties, who do not have any prescription benefit coverage. He stressed that is why it is urgent for the Legislature to act. He pointed out that this bill is not the complete answer. There are other bills that will be introduced on this same subject, but he feels it is important that the Legislature act this session to come up with a reasonable plan to provide prescription coverage to as many seniors that they can. Senator Cummiskey indicated that he sees this program as a bridge program until Congress acts to provide the type of assistance that the President has talked about to provide \$48 billion dollars to the states to help offset the costs.

Senator Cirillo pointed out that many people have high prescription costs who are not seniors. He referred to people with serious diseases and conditions, such as diabetes. He asked if there was any particular reason this bill was limited to senior citizens. Senator Cummiskey said that they would be amiable to opening up the coalition to anyone who would want to participate

based on the notion that the more people in the coalition, the better the discount would be. He said that in his meetings, the discussions were based on the Medicare population and trying to provide a prescription benefit to that group.

Senator Nichols asked for Senator Cummiskey's opinion as to whether SB 1234 and SB 1110 could both pass and are complimentary not competitive. Senator Cummiskey replied that is the analysis of many of the staff people who have worked on the bills. Senator Gerard questioned how that would work, when both bills are targeting the same FPL group. Senator Nichols said that Senator Cummiskey has put in place a subsidy bill for those who need assistance for their drugs. What he has put in place is a rebate/discount program. Most people have a discount component in their medical plans that overlap in the terms of purchasing power. It would not take much effort to bring these two bills together so that people could become eligible both for a subsidy and a rebate.

Lynn Dutton, AHCCCS, explained that there will be an administrative cost for both the rebate and discount program. At the very least, there will need to be some upfront money for the rebate program. Senator Nichols questioned what the average length of time is between picking up the drug at the pharmacy and receiving the rebate until the time the money flows back into the system. Ms. Dutton replied that she has seen data that indicates it will take six to eight months to be repaid. Senator Nichols asked if the \$25 per enrollee would provide the dollars needed for the administrative cost. Ms. Dutton answered that they would have to know the framework of the proposal and then do a cost estimate.

Joe Abate, Attorney, Pharmaceutical Research and Manufacturers of America, noted that they oppose SB 1110. PhRMA represents the country's leading research-based pharmaceutical biotechnology companies. In 2000, PhRMA companies invested over \$26 billion to discover and develop new medications that allow patients to lead longer, happier, and more productive lives. The pharmaceutical industry has over 600 drugs in development to combat the diseases that threaten the health and well-being of many Americans and negatively impact the economy due to prevent medical expenses and lost productivity. Access to pharmaceutical treatment is essential to modern medical care, especially for seniors. The key to good access is good insurance coverage for prescription drugs. Ideally, PhRMA would like to see all seniors guaranteed access to prescription medicine by enactment of a federal Medicare drug benefit structured so that it allows access to all FDA-approved drugs without government controls. While Congress is working on a more global solution, PhRMA recognizes that states may want to adopt solutions to meet the needs of their citizens in the meantime. States wanting to offer prescription drug assistance for seniors should target assistance of those truly in need and ensure that any program is structured to facilitate a smooth transition in prescription drug benefits under the federal Medicaid program. Some key questions to consider are: 1) Are current programs fully used or are there a high percentage of individuals eligible to seek benefits who are not; 2) Is the state in the position to handle the financial liability in the long term if Congress implements a program that is not as generous as that offered by the state or is not eligible to receive federal assistance by the rules established with the federal program; 3) Will there be an unintended consequence such as encouraging employers to drop current coverage. Any program should have access to all medications prescribed by physicians. Imposing formulary restrictions frequently result in higher overall costs, both in terms of healthcare dollars and quality of life. PhRMA maintains that appropriate safe prescription drug use results in savings in other healthcare services, including nursing home admissions, hospital stays, and emergency room visits. They recommend the use of price controls. PhRMA believes that a free market system ensures citizens the best quality healthcare. They believe that price controls

undermine the positive influence a free market dynamics has had on the healthcare system. Putting controls on pricing only has the effect of putting controls on the amount of money the pharmaceutical industry spends on research and development. A 1994 study conducted by an economists at Duke University found that three out of ten drug products introduced from 1980 to 1984 had returns higher than the average development cost. It is estimated by the Boston Consulting Group that pretax costs to develop a new drug in 1990 was \$500 million, including the cost of research failures, as well as interest costs on the entire period of the investment.

Mr. Abate noted that PhRMA does oppose SB 1110 which provides low income seniors with Medicaid discounts on the price of their prescription drugs but does not pay for these prescriptions. According to figures from the National Pharmaceutical Council the average Medicaid discount is 18.3%. If a \$100 drug is now priced at \$82 is it really closer to the reach of the senior. Since Arizona does not have a Medicaid discount, they do have health plans negotiate with the manufacturers for a discount. The research-based companies oppose this bill because they are being ordered to provide a discount on drugs that the state is not purchasing. In essence, this bill is a state mandated form of price control. In many areas of the country our companies are voluntarily giving their price through Medicaid discounts to those states that are providing medical benefits to its senior citizens. In this case, Arizona would be mandating price controls without contributing to the state's obligation to provide any benefits to it seniors. As a consequence, PhRMA has taken legal action in federal court against the same initiative as in Vermont. Mr. Abate said that he would provide a copy of the written litigation at the request of the Legislature. PhRMA believes the price controls only harm patients by curtailing the investment the industry makes in developing new medicines. They believe that the Bush administration is committed to working with Congress on providing a drug component to the Medicaid program and continue to urge this Committee to focus on solutions which provide meaningful coverage to Arizona seniors in the meantime. He provided copies of the Backgrounder PhRMA (Attachment O) that talks about the Vermont programs and the problems they have with it.

Senator Nichols stated that he believes PhRMA went to the Health Care Financing Administration (HCFA) to appeal the waiver and asked for the results of that appeal. Mr. Abate replied that perhaps someone from the pharmaceutical industry could answer that question. Senator Nichols indicated that he believes the appeal was denied. He said that PhRMA then asked for an injunction in Vermont to stop the initiating of the program which also was denied. Mr. Abate said that he believes that they did get a waiver in Maine.

Senator Verkamp referred to statements made about the free market and noted that he can think of many aspects of healthcare that are not related to the free market, such as Medicare. Mr. Abate replied that there is a large amount of government intrusion in the healthcare industry. Much of it has not proven to be very helpful. In the long run, a price control system would not be helpful for the production of new and innovative drugs that the companies have been able to put on the market over the last several years. He stressed that it would be counterproductive to the patient. Senator Verkamp asked for a clarification why the same drugs manufactured by the same companies are sold for one-third of the costs in Mexico and Canada. Mr. Abate replied that there are heavy price controls in Canada; however, the variety and formulary drugs are restricted with many Canadians coming to the United States to get the drugs they want. That is part of the state price control system that the United States would not want to duplicate. As far as Mexico is concerned, part of the price controls is the cost of living and marketing. The quality of drugs may not be the same as in the United States. Senator Verkamp noted that Senator Cirillo had pointed out that the drug prices had to be high in order for the pharmaceutical

companies to engage in their research and development. However, it is still a concern that the same drugs can be sold in other countries for less money. Mr. Abate responded that it does take a lot of money for research and development. For as many drugs that reach the market, there is probably an equal number that fail. Senator Verkamp suggested that explanation did not answer the question. Mr. Abate said that he could not answer the question.

Senator Verkamp questioned the free market price controls and said that apparently the drug companies have agreed with the federal government to put price discounting into effect. Mr. Abate replied that they did agree through the Medicaid program where the state is putting up money to pay for the vast majority of the benefit. This legislation is about a discount that the pharmaceutical companies are supposed to bear the burden and the state is not putting money into the discount. He emphasized that the pharmaceutical companies feel it is illegal and will be decided in court. Senator Verkamp pointed out that again his question was not answered. He said that Mr. Abate's previous testimony indicated that the pharmaceutical companies had agreed to discounts with the federal government because they have mass purchasing power to sell the drugs at a lower price.

Pat Tripenoff, Western United States Senior Director, Glaxo SmithKline Pharmaceutical, explained that she has worked for some time managing the Medicaid rebate program. One of the things that is important to understand is the Medicaid program, which is the best price that they give any customer in the United States. If they are negotiating with CIGNA or other companies, whatever the best price is, that is the price they give the state and federal programs. That is part of the federal regulations that govern what the companies give the programs. Having worked on the strategic pricing committee and wanting to give a sense of the unintended consequences of opening up the program to various customers who are not buying, when they go to negotiate in the private sector they are carrying the Medicaid program. Whenever they consider that they want to give a better price somewhere, they know that price would be covered nationwide. There is a tremendous cost shifting aspect in opening up this program to people in the public sector. There are incredible consequences that would have an impact in eroding how they negotiate in the private sector. For the various senior drug programs that have been developed in other parts of the country, particularly in the Northeast, they have voluntarily given the Medicaid best price, because in those cases it is for low-income people. Senator Verkamp stated that explanation confirms that there is no free market. Ms. Tripenoff replied that many people are participating in various buying groups. In Washington state, the governor instituted a program where the state is consolidating seniors into a program so that they can buy through a consolidated private sector purchasing group. She pointed out that they are opposed to Arizona's bill because the price would be mandated the pharmaceutical companies.

Jack LaSota, Attorney, Pfizer, explained that he has more criticism of SB 1110 than he does of SB 1234. In SB 1234 there is an automatic repealer that is not in SB 1110, in the event that there is a reform of the federal Medicare that might decrease the prices for the seniors. SB 1110 requires a waiver from HCFA. President Bush has a program entitled The Immediate Helping Hand program, which dovetails nicely with an insurance program. Senator Gerard noted that is a bad program. Mr. LaSota said that Arizona should look at a program that may dovetail with the principle program that is currently in progress. SB 1234 does a good job of doing that. One problem both bills have in common is that they both subsidize people who do not particularly need help. In connection with the cooperative purchasing part of SB 1234, it provides that anyone who is over 60 years old would be eligible to participate in this buying cooperative. It does not go far enough to include elements of free marketing to include people

with less significant means who are slightly over the 100% FPL to participate in the cooperative buying program; however, anyone over 60 years old will have that right regardless of their financial status. In SB 1110, anyone over 65 years old would be entitled to this subsidy no matter what their means are. This bill extends a Medicaid benefit to people at 300% FPL which is way beyond what Medicaid does in general - today 300%, tomorrow 500% or 1000%.

Mr. LaSota suggested that the principle problem is the effect on Medicaid. These bills are creating a benefit for a segment of society exclusively on the backs of the drug companies. If the state is going to mandate this type of treatment to an expanded part of the population, that is socialization. The cost should be spread across all of the people. He noted that Pfizer's research and development budget for this year is \$5 billion. He pointed out that when they sell a drug in another country, they do not have to factor in litigation cost, which can contribute up to one-half of the price differential. Senator Verkamp responded that he disagreed with that statement. Senator Gerard asked if there is any state that has a prescription purchasing program that the drug companies think are good and helpful. Mr. LaSota said that he believes the Indiana program is a good one. He said that he does not have the details on that program.

Senator Nichols noted that he does not feel this bill would be that destructive to the pharmaceutical companies. He said that they are targeting the neediest citizens. 300% FPL is not much money to survive in today's economy. Some Medicaid programs are that generous. This bill addresses only prescription drugs. Mr. LaSota noted that those programs involve the expenditure of taxpayer's money and are not done on the backs of industrial society.

Senator Nichols pointed out that statements have been made that the cost of development of drugs today might be \$500 million. He asked if anyone was aware of how much the United States pays for one drug. In many of these cases, the drug companies receive \$500 million in sales in the United States alone in one year. In 1999, Prilosec had sales of over \$3.5 billion. He said that he realizes that the drug companies need to balance the success with the failures. He suggested that drug companies are not going broke and pay their executives and stockholders very well. He stressed that this bill will not "break the bank." He said that Arizona is addressing some of the concerns of the most needy citizens. Mr. LaSota replied that the drug companies are doing well but not marketedly better than other segments of industrial society, whose profitability are not being interfered with by programs such as that in Vermont.

Senator Nichols asked if he agreed that a discount program negotiated between a state Medicaid agency and drug companies would be an example of the free market at work. Mr. LaSota replied yes. Senator Nichols asked if he was aware that is part of the bill's concept. Mr. LaSota replied yes.

Melody Joy Baker, Concerned Disabled Person, noted that as a private concerned citizen who is disabled, she opposes this bill because there are 5% of the citizens in Arizona who are not covered under either of these bills. She said that they cannot get their medications due to AHCCCS rules and regulations. She pointed out that she is supposed to take one drug that she cannot get because it is new and there is no generic form. She said that there is a second drug she should take that AHCCCS refuses to pay for the brand name because there is a generic, but she is unable to take the generic, she must have the brand name. Therefore, she is unable to take either drug. She said that she would not fall under this program even though she is in the FPL guidelines because she is not Medicare eligible or over 60. This is wrong because there are many people whose lives are put in jeopardy because they cannot get the drugs. If the State is putting it out there for the seniors and the people in Medicare that are disabled, then

the State should include all disabled people. AHCCCS does not include the disabled people in the Medicare program if they are independent and live on their own. They do not receive the same coverage.

Senator Nichols said that it is his intent with the amendment that they are working on to use only poverty guidelines for eligibility. He said that it is the intent that the disabled person would be covered under SB 1110. Ms. Baker noted that the bill specifically states Medicare or over 60 years of age.

Donald Vance, Coordinator, Capital City Taskforce, AARP, said that they support both of the bills and suggested that senior citizens need relief now. SB 1110 is contingent on a waiver that might mean the bill will not be available for sometime. SB 1234 is available right away and may be a good stopgap until the waiver is available. He questioned if this will cause the HMOs to cut off the prescription drug benefits. He said that he is above the poverty level and has a good program and does not want to lose it. He said that he is concerned that if the bills pass the drug companies will raise their prices.

Chairman Gerard noted that the following were present in support of the bill: **Marjorie Mead, NOW; Joel E. Goldenberg, Member, AARP; Margaret Grannis, Arizona Ecumenical Council, Community Action Taskforce; Timothy Schmaltz, Director of Policy and Program, Foundation for Senior Living; Tara Plese, Legislative Liaison, Arizona Catholic Conference; Karen Novachek, Director, Arizona Ecumenical Council, Community Action Taskforce; and Joy Marx-Mendoza, Citizen.**

Chairman Gerard noted that the following were present in opposition of the bill: **Steve Barclay, President, Advocates West, Inc., Schering-Plough External Affairs, Inc.; Rory Hays, Attorney, Meruk Pharmaceutical; Michael Racy, Lobbyist, Glaxo SmithKline Pharmaceutical; and John K. Mangum, Eli Lilly and Company.**

Chairman Gerard noted **Kathy Boyle, Executive Director, Arizona Pharmacy Association**, was present and concerned about the bill.

SB 1308 – BOMEX; Board membership – HELD

SB 1311 – health care institutions; licensure – HELD

There being no further business, the meeting was adjourned at 5:45 p.m.

Respectfully submitted,

Carol Dager
Committee Secretary

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