

CORRECTED

ARIZONA STATE SENATE

46TH LEGISLATURE
FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON HEALTH

DATE: January 30, 2003

TIME: 8:30 a.m.

ROOM: SHR 1

CHAIRMAN: Senator Allen

VICE CHAIRMAN: Senator Binder

ANALYST: Julie Keane

INTERN: Kimberly Coleman

ASSISTANT

ANALYST: Brandy Martin

COMMITTEE

SECRETARY: Carol Dager

ATTENDANCE

BILLS

<u>Committee Members</u>	<u>Pr</u>	<u>Ab</u>	<u>Ex</u>	<u>Bill Number</u>	<u>Disposition</u>
Senator Garcia	X			SB 1039	HELD
Senator Harper	X			SB 1051	HELD
Senator Hellon	X			SB 1052	DP
Senator Jackson	X			SB 1084	DPA
Senator Leff	X			SB 1087	DP
Senator Miranda	X				
Senator Binder, Vice Chairman	X				
Senator Allen, Chairman	X				

GOVERNOR'S APPOINTMENTS

<u>Name</u>	<u>Position</u>	<u>Recommendation</u>
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Chairman Allen called the meeting to order at 8:30 a.m., and attendance was taken.

APPROVAL OF MINUTES

**Senator Binder moved the minutes of January 23, 2003 be approved.
Without objection, the minutes were approved as distributed.**

APPOINTMENT OF COMMITTEE OF REFERENCE

Senator Allen announced that the following members were appointed to the Senate Health Committee of Reference: Senator Hellon, Chairman; Senator Leff; Senator Binder; Senator Miranda; and Senator Cannell.

Senator Allen announced she would be holding SB 1039 and SB 1051.

CONSIDERATION OF BILLS

SB 1039 – AHCCCS; rural primary care clinics – HELD

SB 1051 – AHCCCS; chiropractic care – HELD

SB 1052 – chiropractic board; acupuncture; certification – DO PASS

Kimberly Coleman, Health Committee Research Intern, explained that SB 1052 requires applicants for an acupuncture certification under the chiropractic license to provide documentation of passing an acupuncture examination approved by the State Board of Chiropractic Examiners (Board) and increases the minimum hours of study the applicants must meet in acupuncture.

Senator Allen asked if there was a cost for the additional hours. Ms. Coleman replied that there would be the regular cost of schooling. Senator Harper asked if this bill would put additional cost on the Board. Ms. Coleman answered that this bill is for additional classes at an accredited chiropractic college.

Jennifer Clark, Arizona Association of Chiropractic, testified that they support this bill. She indicated that it is her understanding that this bill is conforming to a national standard for acupuncturists and most Arizona chiropractors are already adhering to these new hours.

Senator Binder noted that this bill will increase the number of hours of education in the acupuncture field to 120 hours. This increase will allow the Board to utilize the acupuncture examination given by the National Board of Chiropractic Examiners which requires more than 50 hours to sit for the exam. This will allow the Board to get out of the testing business, which poses a considerable risk management to the State. It also provides for a more accurate test of competency to ensure the safety of the consumer. The increase analysis has been well researched and found to be feasible and necessary.

Senator Harper inquired as to how much of the cost would be passed on to the small business owner that performs acupuncture and would now be required to have additional training. **Patrice Pritzl, Director, State Board of Chiropractic Examiners**, replied that there should not be any additional cost. Nothing will change for chiropractors who are already certified. Senator Harper asked what the cost will be to a person who is starting as an acupuncturist. Ms. Pritzl responded that most

individuals receive their training at the Chiropractic College and the course consists of 150 hours, so there would be no additional cost. Senator Harper asked if there are courses that consist of only 50 hours. Ms. Pritzl replied that there probably are courses with only 50 hours, but she is not familiar with them.

**Senator Binder moved SB 1052 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 8-0-1. (Attachment 1)**

Senator Allen announced the individuals who registered their position on the bill (Attachment A).

SB 1084 – naturopathic board; omnibus – DO PASS AMENDED

Julie Keane, Health Committee Research Analyst, explained that SB 1084 makes numerous changes to the statutes governing the Arizona Naturopathic Physicians Board of Medical Examiners (Board). She also explained the Allen 18-line amendment dated 01/27/03 at 2:20 p.m.

Craig Runbeck, Executive Director, Naturopathic Medical Board, pointed out that this bill would bring statute in line with other medical statutes.

Charles Strouss, Attorney, Arizona Newspapers Association (ANA) testified that they oppose the bill because one of the missions of the newspaper is to ensure public records are available to the public. He referred to a portion of the bill that makes virtually all patient records and information unavailable to the public. He said that HB 2041 has a simplified method to eliminate this type of language by indicating personally identifiable information of medical records are unavailable to the public.

Senator Cannell noted that HB 2041 refers to records at the Department of Health Services (DHS) and this bill refers to medical board records, pointing out that these records are different. Mr. Strouss replied that there is no uniformity amongst the boards and that is why he feels the language from HB 2041 would be good for SB 1084. Senator Cannell suggested that it is necessary for boards to investigate and deal with doctors who are not practicing good medicine and feels that the language in question protects that process.

Senator Hellon asked if Mr. Strouss is questioning the language of the bill because it is different from the other medical boards. Mr. Strouss replied that he has not reviewed the other boards. When public records are being closed to the public, ANA becomes concerned. When ANA is unable to obtain certain public records, they take the matter to court and allow the courts to decide. The courts usually rule that unless the privacy and confidentiality of the records would interfere with an investigation, the records need to be made public.

Senator Allen related to her recent medical situation, noting that she was concerned about the newspapers printing things about her situation that she would not want public. She stressed that everyone should be careful that the patient's privacy is protected. She encouraged Mr. Strouss to work out any issues with Mr. Runbeck.

Senator Cannell reminded the Committee members that if they look at amending the language of the bill, that the main purpose of the Board is to protect the public by regulating naturopathic medicine. It is necessary to give them the power to investigate cases and eliminate bad practice without the media obtaining information that would compromise the investigation.

Senator Binder moved SB 1084 be returned with a DO PASS recommendation.

Senator Binder moved the Allen 18-line amendment dated 01/27/03, 2:20 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment B)

Senator Binder moved SB 1084 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 9-0-0. (Attachment 2)

Senator Allen announced the individuals who registered their position on the bill (Attachment A).

SB 1087 – sexual assault; emergency medical services – DO PASS

Ms. Keane explained that SB 1087 requires health professionals to provide victims of sexual assault with medically accurate information on emergency contraceptives as well as emergency contraception on request.

Dr. Melissa Merideth, Gynecologist, Mayo Clinic, stated that emergency contraception consists of the same hormones found in ordinary birth control pills. Research has demonstrated that emergency contraception used within 72 hours of unprotected intercourse, such as in a sexual assault situation, can decrease the risk of pregnancy by approximately 75% to 85%. The emergency contraception would have no affect on a pregnancy that is already established nor cause any harm to the woman or fetus. She testified that the American Medical Association (AMA) and the American College of Obstetricians and Gynecologist have endorsed the provision of emergency contraception to sexual assault survivors. It is crucial that all healthcare workers provide information and access to emergency contraception as a component of comprehensive and compassionate care for sexual assault victims. As a physician, she understands the reluctance to have mandates dictating medical care. However, it is crucial in this situation, so that all women who are sexually assaulted have access to this comprehensive healthcare regardless of where they live or what type of insurance they have.

Senator Allen asked how long it takes for the sperm to attach itself to the womb. Dr. Merideth replied that sperm can live up to five days and fertilization can happen during that time.

Senator Harper wondered if the emergency contraception pill was different from the morning after pill. Dr. Merideth explained that emergency contraception is generally used as a birth control pill and is not the same as RU-486 which is used for medical abortions. Senator Harper asked if the bill requires that charges be filed in order to provide the medical information. Dr. Merideth responded that there is no requirement for reporting the sexual assault.

Kimberly Yedowitz, Registered Nurse (RN), Forensic Nurse Examiner, Scottsdale Healthcare, explained that she supervises the group that conducts rape exams in Maricopa and Pinal Counties and assisted in drafting the bill. However, she testified that she does oppose the legislation. Caring for a sexual assault patient is a complex process that involves addressing physical injury, emotional trauma, disease and pregnancy prevention, counseling for diseases that cannot be prevented, financial concerns, safety, collection of evidence, referral for crisis intervention and long-term counseling, and support through the healing and criminal justice process.

Ms. Yedowitz affirmed that historically, victims of sexual assault did not receive comprehensive treatment in emergency rooms (ER). In fact, difficulties in the ER and other disciplines resulted in

victims only reporting 20% of the assaults. This legislation still will not provide the comprehensive care victims require; it may do the opposite. Approximately 3% of the victims that are sexually assaulted require treatment for injury. Hospital personnel need comprehensive education on how to deal effectively with victims of sexual assault. This includes legally streamlining the process to divert patients to established programs or providing the minimum standard of care which includes the items previously addressed. A hospital physician or nurse must know how to proceed with intervention and when to recognize that the patient is a crime scene. This bill may decrease the chances of pregnancy, but it may cause the loss of opportunity to successfully prosecute the offender or cause the patient to suffer for years with post-traumatic stress disorder. Not one issue will impact sexual assault patients more than another. Pregnancy, as a result of rape, is devastating, but so is contracting an incurable disease or suffering with post-traumatic stress disorder for years. Ten years ago, there was only one Sexual Assault Nurse Examiner (SANE) Program in Arizona and one advocacy center; today there are more than 7 programs and 11 centers. This awareness has increased the reporting rate to 39%, which is attributed to the specialized services, the increased prosecution, and patients no longer primarily cared for in the ER.

Ms. Yedowitz emphasized that she feels this legislation will set back Arizona over ten years and severely jeopardize the upward trend that has been demonstrated by the improved reporting rates. In 1999, the American College of Emergency Physicians joined with the International Association of Forensic Nurses to establish guidelines for the treatment of sexually assaulted patients, which describe the steps that emergency facilities should take to ensure comprehensive care of sexually assaulted patients. The Arizona Hospital and Healthcare Association (AzHHA) has offered to provide the guidelines that correspond with existing laws, current programs, and the standards of care identified by the American College of Emergency Physicians, the American College of Obstetrics and Gynecology, and the Center for Disease Control. She stressed that hospital workers need education not legislation.

Senator Binder wondered if any of the SANE programs or centers were available in rural Arizona. Ms. Yedowitz replied that Mohave County currently has two programs and Yuma has a program. Senator Binder countered that the programs are not in the true rural areas, such as Page.

Senator Binder emphasized that she feels an unwanted pregnancy from a rape would be far more stressful than contracting a disease. She added that this program is one of choice; a woman does not have to participate, but it should be available to her. She quoted some statistics: 1) 300,000 women are raped annually with 32,000 of these women becoming pregnant; and 2) one in five women will be raped in their lifetime. The trauma of being pregnant from a rape warrants providing as much assistance as possible to these victims. She stated that she understands that healthcare professionals do not like mandates; however, she feels this bill is humanitarian.

Ms. Yedowitz pointed out that she is not opposed to patients receiving the medication or the education, rather she is opposed to mandating it. A hospital worker should not believe that their only requirement with a sexual assault patient rests in providing this one piece of education and medication. A total package of comprehensive care should be provided to a rape victim. Emergency contraception should be included in the comprehensive care, but not to the exclusion of all the others.

Senator Harper inquired about healthcare administrators facing any liabilities. Ms. Yedowitz replied that she instructs nurses that it could be a liability not to provide the emergency contraception. The bill does not provide any penalties; however, it could leave the hospitals open for liability issues, resulting in additional costs.

In response to Senator Leff's question, Ms. Yedowitz replied that currently a patient could be forced to wait for hours in an ER before treatment. As many as 12 hours (the national average wait in an ER) could pass before the appropriate information is provided to the victim. Many hospital tests could destroy valuable evidence. These issues should be considered by the healthcare professional, along with many others. Comprehensive care should be available to the victim and not just the emergency contraceptive.

Senator Leff wondered how the patient is referred to the SANE programs. Ms. Yedowitz replied that most ER personnel are able to determine if the patient requires additional medical care or if the woman needs to be seen for issues related to the assault. Usually a police officer will transport the victim to the center and within an hour an examination is begun and full comprehensive treatment provided. In the absence of a patient reporting the sexual assault, the emergency contraceptive will still be provided; however, the patient will not get the comprehensive care they need. Senator Leff questioned if there is any liability to the hospital if they refer the patient directly to a SANE center without first examining the victim. Ms. Yedowitz responded no, the patients make the choice to decline further emergency care and be transferred to the center. Senator Leff asked if the nurse practitioner can prescribe the morning after pill. Ms. Yedowitz explained that the SANE program has a board-certified emergency physician who provides the service.

In response to Senator Hellon's question, Ms. Yedowitz explained that the SANE centers can provide emergency contraception if the patient wants the medication. Senator Hellon asked for clarification of Ms. Yedowitz's objection. Ms. Yedowitz explained that her objection is that she does not believe that the medical practice for emergency contraceptives should be legislated. Comprehensive education and preexisting protocols should assist healthcare workers in providing the proper care for sexual assault victims, which would hopefully increase the number of sexual assaults reported. More reports will aid in more offenders being prosecuted.

Charles Lagattuta, Board Member, Southern Arizona Center Against Sexual Assault (SACASA), mentioned that this bill is about victims of crime and is compatible with sexual assault programs already in operation in Arizona. It will fill a gap in those counties where no program is available. The ability for a women to prevent a pregnancy resulting from a violent assault should not depend on where she lives, who is on duty, or whether she reports the crime to law enforcement.

Cathi Herrod, Director of Policy, The Center for Arizona Policy, testified that they are neutral on the bill but would like to propose some amendments. The most important amendment is to add a conscientious clause exemption to the bill. Current Arizona law allows a healthcare worker who objects to an abortion on moral or religious grounds the right to not participate in either a medical or surgical procedure that results in an abortion. She brought up another concern regarding whether the sexual assault would need to be reported. Arizona law stipulates that only sexual assaults to a minor must be reported. Ms. Herrod indicated that they would like to amend the bill to include a reporting requirement. She noted a concern that the morning after pill can result in an abortion and feels it should only be available in limited circumstances. Women should not be able to obtain these pills under fraudulent claims of rape. She also proposed that parental consent should be required for minors.

Senator Cannell asked what Ms. Herrod's definition of abortion is and whether it corresponds with a medical definition. Ms. Herrod explained that the definition of abortion has been stated in many bills and most have a clause that excludes the morning after pill. Senator Cannell pointed out that Ms. Herrod's definition would mean that women have abortions all the time and do not know it because fertilized eggs are passed frequently.

Senator Harper asked if healthcare workers did not adhere to the bill would they be open to lawsuits. Ms. Herrod responded that her concern is the healthcare worker who objects to dispensing these pills is not protected. Senator Harper wondered about widespread fraud. Ms. Herrod replied that they would like to see a reporting requirement in the bill to guard against fraud.

In response to Senator Allen's question, Ms. Herrod indicated that the Center for Arizona Policy does not have a position on contraceptives. She stated that they feel the morning after pill can work as a contraceptive or an abortion pill.

Senator Allen noted that she is sympathetic to the conscious clause but supports the availability of the emergency contraceptive. Senator Binder agreed to work on an amendment to include the conscious clause.

Senator Cannell pointed out that as a physician, he would oppose a conscious clause. When a person enters the healthcare profession, they take on certain responsibilities. If they put themselves in a position to care for rape victims, they must offer proper medical care regardless of their religious beliefs. He added that healthcare professionals work with people of all religions and are responsible to medically do what is best for the patient. He stressed that it is up to the woman as to what medical treatment she wants, but it is not up to a healthcare provider to withhold treatment because of their faith. Doctors should do what is best for the patient.

In response to Senator Harper's question, Senator Cannell remarked that he feels it is difficult to imagine that a woman would put herself through the rape examination if she had not been raped just to receive the contraceptive. Senator Binder replied that the cost of the contraceptive is minimal. Senator Hellon reinforced what Senator Cannell stated.

Cindy Minnetti, Bureau Chief of the Sex Crimes Unit, Maricopa County Attorneys Office, testified for **Jerry Landau, Maricopa County Attorneys Office,** that they are neutral on the bill but do have some evidentiary concerns regarding prosecutions. She indicated that they would like to work on amendments to address the concerns discussed today.

Richard Bitner, Arizona College of Emergency Physicians, stated that he has discussed certain concerns with the sponsor relating to liability exposure, availability of alternative means of emergency contraception, requirements for immediate treatment, and treatment of minors. He said they would like to take part in developing specific clarifying and corrective amendments.

In response to Senator Harper's question, Mr. Bitner replied that he is concerned that there are requirements in the bill that have a potential liability.

Carolyn Modeen, Nurse, pointed out that in the past a healthcare provider did not select who they administered care to.

Ron Johnson, Executive Director, Arizona Catholic Conference, testified that they support a conscience clause amendment to protect the civil liberties of physicians who have religious concerns. He added that emergency contraceptives are routinely provided at a Catholic hospital, because preventing a pregnancy is not an abortion. In response to Senator Harper's question, Mr. Johnson replied that there are always liability concerns in any medical procedure.

Senator Leff commented that adding a conscious clause would not do any harm to the bill.

Sandra Junck, Planned Parenthood of Central and Northern Arizona, noted that they support the bill and would be interested in discussing the concerns that were brought up today. She pointed out that they would not want to lose forensic evidence. She indicated that the medication is not free and would be paid for by the patient's insurance carrier. She emphasized that a rape victim needs solutions to many issues. Senator Leff indicated that the bill states that the hospital must provide the emergency contraception immediately upon request of the patient. It does not mention anything about payment. Ms. Junck replied that there is no intent that the medication would be free.

In response to Senator Miranda's question, Ms. Junck pointed out that AzHHA was involved in drafting the bill but do not necessarily approve the bill. The AMA was contacted by telephone.

Laurie Lange, Vice President of Public Affairs, AzHHA, testified that they support the goal of the bill; however, they feel the goal would best be accomplished through education and training and not through legislation that imposes a mandate. AzHHA surveyed the hospitals and received 20 responses. All respondents indicated they are referring victims to SANE programs or providing the medication. She suggested that they are willing to work on modifying the bill to make it better. In response to Senator Harper's question, Ms. Lange indicated that there is always a liability with any medical procedure.

Wendi Aitken, Forensic Nurse Examiner, commented that she feels emergency contraceptives should be provided; however, it is only one part of a large package. She brought up that the victims are also subject to diseases, some of which are incurable. Senator Binder emphasized that the goal of the bill is to ward off unwanted pregnancies for the rape victim.

Tina Wilcox, Legislative and Legal Liaison, Arizona Medical Board and Regulatory Board of Physician Assistants, noted that these boards regulate two of the professions that would be affected by this bill. She suggested that they are neutral on the bill because there are no consequences mandated. However, if a complaint is filed, the board would need to open an investigation and based upon the information gathered, the medical professional could face either disciplinary or nondisciplinary action.

Nancy Hiatt, Executive Director of Victim Witness Services, Coconino County, and Northern Arizona Center Against Sexual Assault, (NACASA), specified that they are one of the 11 centers in Arizona. She also is a founding member of the Child and Family Advocacy Network. She noted that she is in support of the bill. She pointed out that she has worked with victims in Page, Ferdonia, Tuba City, Kayenta, and the Indian reservation. Senator Jackson asked if the health centers in Northern Arizona would be able to accommodate the rape victims. Ms. Hiatt replied that many victims prefer not to go to the clinic in their specific rural area because of confidentiality, privacy, embarrassment, cultural beliefs, and so forth. They do provide training to the workers at the Indian Health Services (IHS) clinics.

Barbara Burkholder, Legislative Cochair, Arizona Public Health Association and Arizona Family Planning Coalition (Coalition) testified that the Coalition helped bring this bill forward. People from the rural counties have indicated that these services are not available. She stated that if the majority of women are not reporting the crime, healthcare workers need to have the ability and information to provide to the victims. St. Joseph's Hospital has a protocol that indicates it is the role and responsibility of the healthcare team to care for the patient without making a judgment about whether a sexual assault occurred. This protocol can be used as a model.

Senator Leff asked if there is any way this bill encourages victims not to report the crime. Ms. Burkholder replied that the victim should be encouraged to report the crime. She said that she would not want to be part of anything that discourages victims to report to the police. She stated that she believes that if a victim does not report the crime, they are not referred to SANE programs. She stressed that is a problem.

Senator Harper asked if Ms. Burkholder felt that every sexual assault should be reported. Ms. Burkholder responded that she feels there are a lot of barriers in our society for reporting a sexual assault. She indicated that she would be willing to work to promote reporting; however, if a person makes a choice not to report, the medical service should not be withheld. A victim can be advised but not required to report the crime.

Senator Harper emphasized that he feels every sexual assault should be reported and should be a capital offense.

Ann Wendall, Director of Relations, Catholic Healthcare West, pointed out that St. Joseph's Hospital and Chandler Regional Hospital are part of Catholic Healthcare West. These hospitals have fairly sophisticated protocols covering sexual assault victims. She maintained that since they are a California corporation, they already have protocols in place. She added that they have not had a rape victim in one of their hospitals in over three years because those victims automatically go to a crisis center.

In response to Senator Harper's question regarding liability, she replied that they have protocols in place and are not concerned about liability.

Sara Thome, Sexual Assault Advocate, NACASA, testified that she supports the bill. Victims feel they do not have control over the situation and feel they are always at someone else's mercy – of the assailant, criminal justice system, and the healthcare providers. Victims have the right to hear what choices they have and make their own decision. By not offering these choices to victims, the loss of control is perpetuated.

Dr. Rebecca Lavy, Obstetrics and Gynecology, related information on her background. She researched information on the emergency contraception pill, which indicated that one of the intended mechanisms of action is prevention of the implantation of a fertilized egg - that is considered an abortion. After the women knew all the facts, no one wanted to take the medication.

**Senator Binder moved SB 1087 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 8-1-0. (Attachment 3)**

There being no further business, the meeting was adjourned at 10:38 a.m.

Respectfully submitted,

Carol Dager
Committee Secretary

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