

ARIZONA STATE SENATE

46TH LEGISLATURE
FIRST REGULAR SESSION

MINUTES OF COMMITTEE ON HEALTH

DATE: February 13, 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 Cannell	X			SB 1103	DPA
Senator Garcia	X			SB 1178	DISCUSSION/HELD
Senator Harper	X			SB 1180	DP
Senator Hellon	X			SB 1189	DP
Senator Jackson	X			SB 1300	DPA
Senator Leff	X			SB 1301	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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PRESENTATIONS

Marla Weston, Executive Director, Arizona Nurses Association, Nursing Shortage
Dr. John Galgiani, Director, Valley Fever Center for Excellence

Chairman Allen called the meeting to order at 8:32 a.m., and attendance was taken.

APPROVAL OF MINUTES

Senator Binder moved the minutes of February 6, 2003 be approved. Without objection, the minutes were approved as distributed.

CONSIDERATION OF BILLS

SB 1189 – health care liens; ambulance service – DO PASS

Julie Keane, Health Committee Research Analyst, explained that SB 1189 extends the time period for an ambulance service to perfect a health care lien.

Senator Binder added that the bill increases the timeframe from 30 days to 180 days to receive payment for services.

Senator Binder moved SB 1189 be returned with a DO PASS recommendation. The motion CARRIED with a roll call vote of 8-0-1. (Attachment 1)

SB 1103 – massage therapists; licensure – DO PASS AMENDED

Brandy Martin, Health Committee Research Assistant Analyst, explained that SB 1103 is a Proposition 108 measure that establishes the Board of Massage Therapy within the Naturopathic Physicians Board of Medical Examiners to license and regulate the practice of massage therapy. She also explained two amendments: 1) Allen four-page amendment dated 2/12/03 at 9:59 a.m.; and 2) Allen four-line amendment dated 2/12/03 at 4:28 p.m.

Senator Leff questioned if there could be dual licenses. Ms. Martin replied that the State would issue the massage therapist license and the cities would issue the business license.

In response to Senator Harper's question, Ms. Martin responded that the cities would make the final decision for a massage therapist to do business in their city.

In response to Senator Miranda's question, Ms. Martin replied that a massage therapist must have a license issued by the State to practice and could not open a business without the State license.

Gregory Harris, Lobbyist, Arizona Chapter, Massage Therapy Association, pointed out that massage therapy is already regulated by most municipalities. However, this patchwork of regulation means conflicting, overlapping, and multiple licensing requirements. He suggested that they are offering a solution, which would provide uniform regulations and established standards regarding qualifications for massage therapists. These uniform standards would assist in addressing law enforcement concerns. He noted that there is no opposition from city representatives even though the State will now be taking over an area where the cities have been involved. However, the cities will still be responsible to make decisions about the operation and location of the businesses. The bill also provides uniform protection for the therapists, as well as for the clients.

Mr. Harris noted that there are overlapping modalities of treatment by different healthcare providers. If a person is licensed in any of the Title 32 professions that include a type of therapeutic massage, there is no need to obtain a massage therapist license.

Mr. Harris also discussed the membership of the board, noting that the cities of Phoenix and Scottsdale wanted the public member to have an appreciation of law enforcement issues because of previous experiences with the less savory side of some massage therapy businesses.

Senator Leff questioned why a law enforcement person needs to be on the board disciplining licensed massage therapists because they are not the ones participating in unsavory activities. She indicated that it appears to be disrespectful to the profession. Mr. Harris replied that they have worked hard to make a division between legitimate massage therapists and the others. He added that there are no other boards that have a police officer as a member. Senator Leff suggested that all boards have investigators that are not members.

Senator Leff inquired about the provisions stated in the bill that explains what a massage therapist cannot do. She said that she is concerned about a customer filing a complaint on something that appears to be difficult to prove. Mr. Harris replied that those issues were driven by the municipalities' concerns that there be a clear line drawn between legitimate massage therapy and the techniques used by prostitution practiced under the name of massage therapy. Senator Cannell noted that similar language is in the Arizona Medical Board statute.

In response to Senator Harper, Senator Allen stated that the city representatives are supportive of the bill because they want to be able to discourage businesses operating as prostitution houses.

Judy Boyer, American Massage Therapy Association and Arizona Coalition for Therapeutic Massage and Bodywork, testified that she has been working on uniform standards for their profession for over three years to benefit the practitioners and the public. She stressed that massage therapists are taught to keep very clear boundaries and intentions with the clients. For legitimate practitioners, their number one goal is to make the client feel safe. It is important for a massage therapist to have their client complete an informed consent form and ensure the client is clear as to what will occur during the massage.

To assist in alleviating any concerns, Senator Cannell read from HB 2207 for the Arizona Medical Board which has similar language to this bill regarding the conduct of doctors with their patients.

Senator Cannell inquired about breast massage therapy. Ms. Boyer replied that research has determined that appropriate breast massage therapy is legitimate and beneficial for patients with lymphedema and fibrocystic disease. She emphasized that this type of therapy should only be performed by someone who has been trained in the procedure and there would need to be an informed consent form completed by the client.

John Wayne Gonzales, City of Phoenix, indicated that they appreciate working with the industry in proposing this bill. While the vast majority of massage therapists are legitimate, there are some therapists who are engaged in prostitution. He indicated that it is important to ensure enough safeguards are in place to weed out the bad therapists. He pointed out that the language in the amendment referring to sexual activity was taken directly from the Phoenix city code and has stood the test of the courts. He suggested that there are many crafty people who have different definitions for a massage.

Mr. Gonzales referred to the question regarding a law enforcement person sitting as a board member. He stated that the board member could be someone with a legal or law enforcement background to assist in eliminating those therapists that would engage in illegal activities from receiving a license. Senator Allen stated that she has no problem with a board member being a law enforcement officer who has been on the streets and is sensitive to the problems the industry faces. Most of the public is not aware of the problems the law enforcement officer encounters.

Jim Lockett, Associated Bodywork and Massage Professionals, noted that they support the bill and indicated that careful consideration has gone into the wording of the bill. In response to Senator Harper's question regarding the conduct of therapists, Mr. Lockett pointed out that they wanted to ensure fairness for the therapists and safety for the clients.

Kelsey Lundy, Government Relations Specialist, City of Apache Junction and Massage Envy, testified that they support the bill and specified that statewide licensing makes sense. This bill should provide a clear line between legitimate and illegitimate massage therapists. It also would provide a certain comfort level for small business owners when hiring a state-licensed therapist.

Craig Runbeck, Executive Director, Naturopathic Medical Board, pointed out that their board has committed \$75,000, subject to repayment, to set up the Massage Therapy Board.

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

Senator Binder moved SB 1103 be returned with a DO PASS recommendation.

Senator Binder moved the Allen four-page amendment dated 02/12/03, 9:59 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment B)

Senator Binder moved the Allen four-line amendment dated 02/12/03, 4:28 p.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment C)

Senator Binder moved SB 1103 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 9-0-0. (Attachment 2)

SB 1178 – health care professionals; hospitals – DISCUSSION/HELD

Senator Allen announced that she would be holding SB 1178 but would hear testimony and a presentation on the nursing shortage.

Kimberly Coleman, Health Committee Research Intern, explained that SB 1178 prohibits retaliatory action against health professionals for reporting violations of health and safety laws or breach of public safety. The bill also appropriates, subject to the availability of monies, \$150,000 in each of fiscal years (FY) 2004-2005 through 2007-2008 from the medically needy account to the Department of Health Services (DHS) for grants to reimburse health care institutions that earn magnet designation from the American Nurses Credentialing Center for the costs of the application and appraisal.

Senator Allen asked for clarification of the \$150,000. Ms. Coleman replied that the bill states that the \$150,000 is appropriated in each of FY 2004-2005 through 2007-2008 from the medically needy

account. Any unspent monies would revert back to the state general fund at the end of 2008. In the amendment, those monies will revert back to the medically needy account.

Rory Hays, Lobbyist, Arizona Nurses Association (ANA), introduced **Marla Weston, Executive Director, ANA**. Ms. Weston distributed a handout (Attachment D) entitled "The State of Nursing in Arizona" and provided an overview of the nursing shortage which is more dramatic in Arizona than in the rest of the nation. She emphasized that the nursing shortage is a public health issue and affects all areas of the profession: 1) hospitals; 2) long-term care; 3) school nurses; 4) nursing faculty; and 5) every area a nurse works. Arizona hospitals are experiencing a 26% turnover for nurses; nationally the turnover rate is at 15%. She noted the average age of a nurse is 46.8, which is 49% of the nursing workforce. With only 25% under the age of 40, there are not enough young nurses in the pipeline to replenish the system.

Ms. Weston referred to survey feedback received from nurses leaving the profession. She emphasized that it is critical that they try to improve the work environment. If they attract new people but do not fix what is wrong in the work environment, it will only create more turnover. She noted that ANA is focused on making improvements, explaining the Campaign for Caring and its various cycles: 1) awareness and attraction; 2) preparation and lifelong education; and 3) commitment, passion, and rededication. She mentioned national hospitals that are considered magnet facilities, pointing out the successes for nurses: 1) increased satisfaction; 2) increased perception of productivity; and 3) increased perception by nurses of quality care. At these magnet facilities, patient benefits included lower mortality rates, increased patient satisfaction and shorter lengths of stay. This survey suggests that a good working environment for nurses translates into great patient care.

Ms. Weston explained that ANA conducted a survey of nurses working in Arizona. Of the 82 hospitals in Arizona, 43 participated, with good representation from large and small, urban and rural hospitals. They measured four scales: 1) nurse autonomy; 2) control over the practice setting; 3) nurse/physician relationship; and 4) organizational support. The results of the survey were compared to the survey of magnet facilities. The comparison indicated that the nurse/physician relationship was higher in Arizona than at the magnet facilities; however, in the other three categories, Arizona scored lower. Not one Arizona hospital matched the average standard of excellence of the magnet facilities.

Ms. Weston mentioned that the key areas of work environment improvements they are currently working on are: 1) eliminating mandatory overtime; 2) reporting patient safety; and 3) creating magnet-like work environment.

Senator Harper voiced his concern that the bill uses public money to provide a grant to anyone in their union. Ms. Weston replied that the magnet credentialing is done through the American Nurses Credentialing Center, which is not a union. She indicated that she sees a direct relationship between the investment of public funds to produce better patient outcomes and reducing healthcare costs for Arizona. Many large healthcare organizations can easily afford the cost of becoming a magnet facility; however, the smaller rural facilities would have a difficult time finding the funds.

Senator Allen explained that the bill will not pass without removing the \$150,000 provision. She maintained that she wants the bill to move forward because she is aware of the seriousness of the nursing shortage. Nurses are overworked and do not feel they are given the credit and respect they deserve.

Senator Harper inquired about the whistleblower protection provision in the bill. Ms. Weston replied that they worked closely with healthcare professionals and institutions as they crafted the bill to ensure that reporting was only done when there were clear violations of patient safety. The second part of that provision ensures that the complaint was reported directly to the organization to allow them to correct it or respond.

Kathy Player, President, ANA, addressed the three initiatives their organization is currently working on. The first one is to eliminate mandatory overtime. She stressed that they are not concerned with volunteer overtime in an emergency disaster. Nurses should not be forced to work unplanned overtime in nonemergency situations. ANA has partnered with Arizona Organization of Nurse Executives in petitioning hospitals to sign a pledge and implement policies not to use mandatory overtime. The second two initiatives are in the bill. People become nurses to deliver quality care and when they are put in positions where they are unable to do so, they need to have avenues to advocate on behalf of the patients. In most cases, when nurses report problematic situations, it is corrected and resolved. However, there are too many circumstances where problems remain unresolved and often retaliatory action occurs. She emphasized that a “do pass” from this Committee would send a message to nurses, healthcare providers, and citizens of Arizona about the importance of this issue and the quality of healthcare expected in the State.

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

SB 1180 – registered sanitarians – DO PASS

Ms. Coleman explained that SB 1180 requires a registered sanitarian to complete ten hours of continuing education each year in order to renew a registration. It also provides for reciprocity with other jurisdictions relating to registration.

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

**Senator Binder moved SB 1180 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 7-0-2. (Attachment 3)**

SB 1300 – controlled substances – DO PASS AMENDED

Ms. Martin explained that SB 1300 makes several changes to the controlled substances schedules of the Arizona Uniform Controlled Substances Act. She also explained the Allen six-line amendment dated 2/12/03 at 9:09 a.m.

Thomas Babicke, Diversion Program Manager, United States Drug Enforcement Administration (DEA), pointed out that his job is to enforce the drug laws as it pertains to pharmaceutical controlled substances and people who traffic in those drugs. Carisoprodol is not currently controlled federally; however, Arizona has had a problem with this drug over the past several years. Many fraudulent prescriptions have carisoprodol attached to other narcotic drugs. It is commonly used in combination with those drugs. The subjective affects of carisoprodol are considered to be similar to barbiturates. Meprobamate, a major metabolite of carisoprodol in humans, produces dependence and tolerance and is a schedule IV controlled substance. He explained the affects and abuses of carisoprodol and noted a progressive increase in emergency room cases positively linked with the drug from 1989 through 2001.

Senator Allen asked for clarification whether the drug is prescribed by doctors or if it is a street drug. Mr. Babicke replied that carisoprodol is prescribed by doctors but it is not considered a controlled substance.

Senator Binder suggested that Soma is just a muscle relaxant. Mr. Babicke replied that Soma is a noncontrolled prescription drug for the relief of acute pain in muscular skeletal conditions. He pointed out that they are not asking that the drug be outlawed, but to be considered a controlled substance because it is being abused.

In response to Senator Leff, Mr. Babicke replied that it becomes a felony under the State statutes to traffic in a controlled substance. If a fraudulent prescription is passed, it is a misdemeanor; for a controlled substance, it is a felony.

Senator Cannell asked what would happen if the State considers Soma a controlled substance but the federal government does not. Mr. Babicke responded that a person could be prosecuted under the State statutes but not federal laws. He pointed out that 12 other states have passed legislation regarding carisoprodol being a controlled substance.

Trish Hart, Consultant, Arizona State Board of Pharmacy, testified that they support the bill.

Richard Thomas, Banner Poison Control Center and University of Arizona (UA) Poison and Drug Information Center, mentioned that they have gathered data that shows increases in the use of carisoprodol. In overdoses of recreational drugs, narcotics, other controlled substances and illicit substances, carisoprodol is frequently also involved, particularly in combination with narcotics. Poison Centers answer calls regarding drug identification and one of the top three drugs people request information on is carisoprodol. Various clinics are seeing patients that are going through withdrawal from this substance. When a drug is elevated to a controlled substance, doctors and pharmacists closely scrutinize prescribing the drug.

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

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

Senator Binder moved the Allen six-line amendment dated 2/12/03, 9:09 a.m. be ADOPTED. The motion CARRIED by voice vote. (Attachment E)

Senator Binder moved SB 1300 be returned with an AS AMENDED, DO PASS recommendation. The motion CARRIED with a roll call vote of 9-0-0. (Attachment 4)

SB 1301– board of pharmacy – DO PASS

Ms. Martin explained that SB 1301 is a Proposition 108 measure that requires licensure of pharmacy technicians and pharmacy technician trainees and makes numerous changes to the statutes governing the State Board of Pharmacy (Board).

Kathy Boyle, Executive Director, Arizona Pharmacy Association, testified that they support the bill. She said that there is a growing need to license pharmacy technicians because of the shortage of pharmacists and the increased volume of prescriptions being filled. Pharmacists need to spend

more time on patient care services. Approximately 12 states already license pharmacy technicians and others require certification.

Llyn Lloyd, Executive Director, Board of Pharmacy, responded to Senator Binder's question regarding Mexican prescriptions being filed in the United States. He suggested that the Mexican prescriptions are mostly confined to Southern Arizona and include items available in the United States that are not available in Mexico. He suggested that they have had no problems with the prescriptions written in Spanish because there are bilingual pharmacists in that area.

Senator Cannell indicated that pharmacists now track patient's prescriptions to ensure medications are not prescribed that would interfere with each other and wondered how the pharmacist handled those Mexican prescriptions. Mr. Lloyd replied that there could be a possible problem; however, if the pharmacist perceives a possible problem, he can refuse to fill the prescription.

Michelle Ahlmer, Executive Director, Arizona Retailers Association, testified that they do support the concept of the bill and will continue to work toward a resolution to their concerns. One concern is keeping the fee for registering technicians in a reasonable range because many companies pay the fee for their technicians. She stated that they are also concerned about patient privacy, because the bill may be more restrictive than the Health Insurance Portability and Accountability Act (HIPAA). She also mentioned the definition of the practice of pharmacy and indicated that a taskforce has been formed to address that concern.

Trish Hart, Consultant, Arizona State Board of Pharmacy, emphasized that they are committed to working with Ms. Ahlmer to resolve their concerns.

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

**Senator Binder moved SB 1301 be returned with a DO PASS recommendation.
The motion CARRIED with a roll call vote of 8-0-1. (Attachment 5)**

PRESENTATION

Dr. John Galgiani, Professor of Medicine, UA, and Director, Valley Fever Center for Excellence, distributed a handout (Attachment F) and provided an overview of the status of Valley Fever in Arizona. Currently, the State is experiencing an epidemic. Although Valley Fever is a national problem, 65% of the cases are in Arizona. He stressed that Valley Fever could be used as an agent of bioterrorism. If the perceived risk of Valley Fever is not managed by education and research, businesses and tourists may go elsewhere.

Dr. Galgiani referred to this week's Center for Disease Control (CDC) Report, noting that Valley Fever is the fourth most commonly reported infectious disease to the Arizona Department of Health Services (DHS). The increase in reported infection is unexplained, but could possibly be linked to construction, climatic effects, and bioterrorist attack.

In response to Senator Leff's question, Dr. Galgiani replied that Valley Fever is a complex problem. There is no clear explanation for the cause of the epidemic, which is in excess of the population growth. Most cases are mild, lasting weeks to months. Specifically, one in four college students are sick for up to four months. He pointed out the problems with current therapy, noting that less than 70% of patients respond to therapy. However, when therapy is stopped, relapses occur. He explained that indefinite therapy is expensive with lifetime therapy costing two-thirds of a million

dollars for each patient. Currently, there is a project collaborated between several universities to use biotechnology to develop a vaccine to prevent Valley Fever.

Mr. Jay Edwards, representing himself, commented that he has Valley Fever and probably the worse case of the disease. He had been misdiagnosed for several years and reached a life-threatening level. The disease takes away quality of life and takes a lifetime to fight it.

There being no further business, the meeting was adjourned at 10:53 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.)