

ARIZONA STATE LEGISLATURE  
Forty-fifth Legislature – Second Regular Session

**SENATE HEALTH AND HOUSE HEALTH COMMITTEES OF REFERENCE FOR  
THE SUNSET HEARINGS OF THE ARIZONA BOARD OF OPTOMETRY AND  
ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM AND THE SUNRISE  
HEARINGS OF PHARMACY TECHNICIANS, MASSAGE THERAPISTS,  
PSYCHOLOGISTS AND BEHAVIORAL HEALTH EXAMINERS**

Minutes of Meeting  
Thursday, November 21, 2002  
Senate Hearing Room 1 -- 9:00 a.m.

(Tape 1, Side A)

Chairman Gerard called the meeting to order at 9:07 a.m. and attendance was noted by the secretary.

**Members Present**

Senator Cirillo	Representative Binder
Senator Yrun	Representative Gullett
Senator Gerard, Cochair	Representative Miranda
	Representative Huppenthal, Cochair

**Members Absent**

Senator Hartley	Representative Chase
Senator Solomon	

**Speakers Present**

Jack Confer, Executive Director, Arizona State Board of Optometry  
(Chairman Gerard acknowledged persons in support of continuation of the Arizona State Board of Optometry, page 3)  
Dr. Lansing Brown, Member, Arizona State Board of Optometry  
Andria Kowalczyk, representing herself and Dr. Kowalczyk  
Kathy Boyle, Executive Director, Arizona Pharmacy Association  
Don Isaacson, Legislative Counsel, representing Arizona Optometric Association  
Dr. Robert Maynard, Vice President, Arizona State Board of Optometry  
Dale Chapman, Performance Audit Manager, Auditor General's Office  
Phyllis Biedess, Director, Arizona Health Care Cost Containment System (AHCCCS)  
(Chairman Gerard acknowledged persons in support of continuation of AHCCCS, page 9)  
Llyn Lloyd, Executive Director, Arizona State Board of Pharmacy

SENATE AND HOUSE HEALTH COMMITTEES  
OF REFERENCE FOR SUNSET HEARINGS  
OF THE AZ BOARD OF OPTOMETRY AND AHCCCS;  
SUNRISE HEARINGS OF PHARMACY TECHNICIANS,  
MASSAGE THERAPISTS, PSYCHOLOGISTS AND  
BEHAVIORAL HEALTH EXAMINERS  
November 21, 2002

Michelle Ahlmer, Executive Director, Arizona Retailers Association  
(Chairman Gerard recognized a person in support of licensure of pharmacy technicians, page 11)  
Jason Bezozo, Director, Government Affairs and Policy, Arizona Hospital and Healthcare Association  
Mike Johnston, Executive Director, National Pharmacy Technicians Association  
Greg Harris, representing American Massage Therapy Association - Arizona Chapter  
Gay Schwabauer Pies, President, Arizona Psychological Association  
Dr. Eric Schindler, Arizona Psychological Association  
Dr. Jeffrey Thomas, Arizona Psychological Association  
Dr. John Spaulding, Director, Mental Health Program, Phoenix Area of the Indian Health Service (IHS)  
(Chairman Gerard acknowledged persons in support of prescriptive authority for psychologists, page 15)  
(Chairman Gerard acknowledged persons opposed to prescriptive authority for psychologists, page 15)  
Tim Hoffman, Chair, Arizona Behavioral Health Professionals Coalition  
Debra Rinaudo, Executive Director, Board of Behavioral Health Examiners

### **Sunset of the Arizona State Board of Optometry**

Jack Confer, Executive Director, Arizona State Board of Optometry, stated that he believes the agency adequately met its objective and purpose since the last sunset review. The Board successfully administered and managed a pharmaceutical agent statutory change from 1999, passed financial audits with success, and adequately reviewed complaints presented to the agency and resolved those in a timely manner. Disciplinary action is taken whenever necessary. He stated that with regard to the licensing aspect of the Board, about 75 percent of the 750 optometrists in the state are currently practicing within Arizona, and the average turnaround time for renewal of licenses is 11 days. The Board provides information to the public through the web site such as disciplinary action on optometrists and verifies licenses to insurance companies, etc. He added that several legislative changes over the last few years increased the effectiveness and ability of the Board to distribute programs to people within the state, and legislation will probably be introduced next session to clean up some minor items in the statute.

When Mrs. Binder asked if he is aware of the e-mail to the Members from Dr. Lansing Brown opposing the change from a state exam to a national exam, Mr. Confer replied that he is and he responded to Dr. Brown in writing. He related that during at least two Board meetings, advice was given by the Attorney General's Office that the Board has the statutory authority to move to that standard, and the issue was reviewed about a year before the change was made. A staff member and Board member were sent to the National Board of Examiners of Optometry to review the test, and a National Board representative attended a Board meeting to review the questions in Part 3, which is the most in-depth and relates to patient assessment and management. He opined that the national examination has not had any deleterious effects on the profession as far as qualifications to practice optometry.

Chairman Gerard commented that it is ironic that someone is concerned about the Board utilizing a national exam when the Legislature demanded that many of the other boards use national exams since they are generally more accurate than tests developed locally.

Mr. Confer pointed out that the Auditor General, in the last audit, suggested the Board use the national standard. He agreed with Senator Cirillo that using the national exam makes it easier for optometrists licensed elsewhere to move to Arizona and practice.

Chairman Gerard acknowledged the following persons in support of continuation of the Arizona State Board of Optometry:

Stephen Spencer, President, Arizona State Board of Optometry  
Margaret Whalen, Licensing Coordinator, Arizona State Board of Optometry  
Donna Linkous, Public Member, Arizona State Board of Optometry  
Amanda Zibell, Office Administrator, Arizona State Board of Optometry

Dr. Lansing Brown, Member, Arizona State Board of Optometry, stated that he is the “minority report” of the Board. He was asked to write a portion of the state exam in the years 2000 and 2001, which he did. Referring to the letter e-mailed to the Members (Attachment 1), he noted that Exhibit 1a is a portion of the state exam he wrote whereby applicants were shown a series of slides and answered related questions. The problem is that all individuals who took the national exam passed, but about 50 percent did not pass the state exam. Arizona has always had the reputation of being a difficult state to obtain a license in, but using the national exam decreases the qualifications of people who are licensed. Individuals who could not pass the state exam during the first three years he was on the Board are now licensed.

Referring to Exhibit 1d, page one, Dr. Brown explained that it is an application summary and pointed out that Exhibit 1d, page 2 shows that the individual failed two parts of the national exam; however, he is now an optometrist in Arizona. Dr. Brown said he strongly objected to licensing the individual, but the other Board members said the applicant had practiced in Illinois, and since there was no record of anything against him, he should be allowed to practice in Arizona. He submitted that this licensure by endorsement is not in the interest of the safety and health of the citizens of Arizona. If an Arizona exam is no longer used, individuals should at least have to pass the national exam no matter where it was taken.

Dr. Brown added that the national exam is graded on a curve, which is against the law. He raised the issue with the Board, but was outvoted. He added that questions are also thrown out, which changes the results of people who pass or fail.

In response to Mr. Huppenthal’s inquiry as to whether the national test is a valid and reliable test of optometry skills, Dr. Brown opined that it is not sufficient because the scope of practice is not the same in every state. In order to make the test sufficient, additional testing should be done in the area of therapeutics (treatment of eye diseases). He indicated that Dr. Davidson from exam headquarters brought the national exam to the Board, but the members only had about

10 minutes to review the exam. He found three or four spelling mistakes, which means the exam cannot be too good, which he circled and handed back to Dr. Davidson. He added that because of his concerns about the national test, the Board sent him to Fullerton, California to view one part, which is a practical exam where students examine patients; however, every patient was near-sighted or far-sighted. Not one patient had an eye disease, which is not valid enough to cover disease processes and treatment.

Mr. Huppenthal stated that the issue is probably not resolvable in this forum because it is necessary to find out if the national exam is a valid and reliable test developed by a reputable company. If so, it would still be possible and good public policy to adopt the national exam, but perhaps some additional review would be appropriate in relation to therapeutics.

Dr. Brown agreed. Referring to Exhibit 2, Subsection D, he noted that the Board received a letter from Dr. Tongue, Chairman of the College of Pharmacy at the University of Arizona (UA), stating that the UA's course is adequate. Dr. Herrier, Associate Professor at the College of Pharmacy at the UA, however, recommended a minimum requirement of 28 hours of education. Despite Dr. Herrier's recommendation, the Board only requires 12 hours, which is actually only 10 hours (12 periods for 10 minutes), which he believes is inappropriate.

Senator Cirillo stated that he heard the same discussion three years ago during a battle between ophthalmologists and optometrists about prescribing authority, which supposedly had been resolved. He noted that Dr. Brown's e-mail suggested terminating the agency, but he does not believe that would resolve the problems. Dr. Brown responded that the agency could be terminated in order to start over again or the makeup of the Board could be changed so the number of public members and medical doctors is equal to optometrists. He opined that the Board is used as a mouthpiece for optometry. He believes the members should be on the side of complainants, but the other members disagree. As a result, many complaints are dismissed despite his vote when he believed there was unprofessional conduct by the optometrist.

Mr. Confer clarified that the Board is composed of six members. One is a medical doctor and one is a layperson.

Andria Kowalczyk, representing herself and Dr. Kowalczyk, agreed with Dr. Brown that the solution would be half laypeople and half optometrists on the Board, which is what will be done in California since the board was dismissed and revamped in order to resolve problems. She testified that she has been trying to obtain information from the Board for seven years due to circumstances that greatly affected her family. She submitted that the Board should be held accountable for following written policies, procedures, and statutes. She was not allowed access to a complaint that is currently available per the statute and Attorney General comments in minutes of the Board meeting from August 27, 1999.

Mr. Huppenthal recalled that a complaint was filed against Mrs. Kowalczyk's husband who was represented by counsel. He signed a consent agreement, but she and her husband believe they

were misled by counsel and not fully informed of the ramifications of the consent agreement. He indicated that he introduced legislation to allow her to view the file.

Mrs. Kowalczyk replied that a consent agreement was pursued without her husband ever seeing the information. He wanted an opportunity to speak before the Board, but not knowing the rules in the handbook, did not realize the opportunity was available. She indicated that she did obtain a copy of the investigative report, which was available to every other doctor at the time an action was pending, except her husband, and she believes that is due to the complainant's influence on the Board, which was brought to the ombudsman's attention.

Mrs. Kowalczyk contended that the findings of fact in the consent agreement never had a majority vote. Minutes should be available within a reasonable amount of time and should be accurate and complete. The Board should be mandated to save tapes for a minimum of two years because, in their case, the tapes were destroyed before the minutes were approved. She said she is trying to overturn the consent agreement because her husband does not deserve this misrepresentation of his expertise. Her family's experience with the Board turned their lives upside down and she wants some laws cleared up so this will not happen to anyone else.

In response to Chairman Gerard, Mrs. Kowalczyk explained that with Mr. Huppenthal's help she was able to finally obtain information to show that the complainant did not make the complaint in good faith. Her husband was given a letter of exoneration, but the allegation is still on his record because he signed the consent agreement; however, he did so under duress in the middle of the night after being told he would be suspended if he did not. She was told that the only way to turn things around is through the judicial system because the consent agreement states that her husband does not admit or deny the allegation, but has no right of appeal. She questioned how a person cannot have the right to appeal without a hearing. The record shows that a hearing was held, but it was not actually a hearing.

Mrs. Kowalczyk indicated to Chairman Gerard that because all of the information could not be obtained from the Board, their hands were tied as far as doing anything legally with the attorney or complainant, which amounts to actually obstructing justice. She advised Senator Cirillo that she consulted with the state's ombudsman and she was told by the Governor's Office that the ombudsman should have looked into the complaint of bias and conflict. Unfortunately, because her husband signed the consent agreement, even though it was done involuntarily and he was unaware, the consent agreement closed the door on any opportunity to tell his side of the story and correct the situation.

In response to Chairman Gerard, Mrs. Kowalczyk contended that legal counsel was inadequate and did not explain the ramifications of the consent agreement until they received a letter the day after her husband signed the consent agreement. She related that the original consent agreement said her husband did not conduct ocular health, but someone crossed out the word "conducting" and wrote above it "properly documented" after her husband signed it, yet the patients and polygraph confirmed that her husband does ocular health. She wants to clear her husband's name because he has been defamed and did nothing wrong.

Senator Cirillo surmised that it would be appropriate to talk to the ombudsman about investigating whether the consent agreement is valid and signed properly. Chairman Gerard speculated that it would still be necessary to go to court to overturn the consent agreement.

Mrs. Kowalczyk submitted that the Board is supposed to make sure the doctor is aware of everything in the consent agreement, but he was not present when it was accepted because he was told by the Board not to attend as the members would be antagonized and suspend his license. She cannot understand how someone can be suspended without giving their side of the story. She reiterated the recommendation that the Board should follow the statutes and be held accountable.

Chairman Gerard opined that one of the basic problems with the 90-10 boards is that they do not answer to anyone unless someone takes them to court.

Mrs. Kowalczyk stated that California does not have consent agreements. She has seen five consent agreements signed by doctors in Arizona and none contain the clause to admit or deny. All of the doctors were given the information and an opportunity to respond if they chose. She submitted that her husband signed the consent agreement under duress and to keep him quiet because he was going to be a witness for what would have been public information against a very powerful entity.

Kathy Boyle, Executive Director, Arizona Pharmacy Association, thanked the Board for notifying pharmacies on a regular basis of optometrists that do not have topical and oral prescribing privileges. She advised that the Association is currently working with the Board and reviewing the national exam to make sure it is appropriate for optometrists and validates whether individuals have the knowledge and expertise for prescribing privileges. She anticipated that a conclusion will be reached by January 2003.

When Mrs. Gerard asked about the required number of hours of education, Ms. Boyle conveyed the fact that the Association testified at a public hearing of the Board against the 12-hour recommendation, but it passed, and the proposal went on to the Governor's Regulatory Review Council (GRRC). She testified before the GRRC that the 12 hours is not adequate and should be 28 hours; however, GRRC passed the course of study as 12 hours.

Don Isaacson, Legislative Counsel, representing Arizona Optometric Association, spoke in support of continuing the agency. He stated that he was involved in the last few rounds and the Members are hearing a bit of the lingering battle during which Chairman Gerard and others spent an incredible amount of time attempting to resolve issues. He made the following points:

- Arizona will be one of 47 states to adopt the national exam. In other professions, the move over the last few years has been to national exams, and when the Legislature adopted the last round of pharmaceutical authority in law, specific reference was made that connotes a national exam. The point of discussion and contention in 1999 when the expansion was

allowed was not on testing, but the particular pharmaceuticals and at what point the patient should be referred to a medical doctor.

- Regarding the Board's action with respect to a particular optometrist, he cannot speak to the case, but the Board is guided by the Attorney General's Office, which is regularly involved on any discipline matter or questions about applicants because a person's profession and property rights are involved. If the Board acted improperly, recourse should be with the Attorney General's office to review the matter.
- All 90-10 medical boards are dominated by members of the profession. In fact, 15 or 20 years ago it was considered radical to have a public member. In the case of the Board of Optometry, there is a public member and a member of the medical doctor profession, which is consistent with the other medical boards.
- In order to eliminate the notion that after 12 hours of education someone can prescribe, it is necessary to take the basic course offered in a doctorate program and a College of Optometry, in addition to two other courses and two other testing regiments for the two prior levels of authorization of pharmaceuticals in Arizona. Arizona is now one of between 40 and 45 states that allow oral pharmaceuticals for optometrists and was guided by the range of pharmaceuticals, testing, and standards in other states; therefore, if 12 hours is required in Arizona, that is probably what was done elsewhere.

Mr. Confer related to Chairman Gerard that the Board uses the record retention schedule kept by Library, Archives and Public Records; therefore, when Board minutes are approved, the tapes are destroyed. He explained that when a statute or rule is not in place, the agency uses those adopted by Library, Archives and Public Records. He related that the national exam scores are graded on a scale, which is technically not a curve. Legal advice was provided on the issue and the Board was told that the grading is in compliance with the statute. The National Board advises the Board whether an individual passed or failed the national exam.

When Mrs. Binder recalled that Dr. Brown mentioned that the national exam is not sufficient because the scope of practice is different in each state, Mr. Confer responded that having been at other agencies in the past, he was surprised that the Board was still giving a state exam. He perceived it as more of a liability to the agency because there is no scientific backing on the questions, etc. As far as the national exam and scope of practice, the Board has not received one complaint on the last scope of practice changes, i.e., 12 hours and oral medications, which he believes are very adequate in testing knowledge and practice.

Dr. Robert Maynard, Vice President, Arizona State Board of Optometry, related that current schools of optometry teach clinicals and pharmacology to the highest state practice, and usually far ahead in the university, as opposed to actual state practice. Some states have not been as successful as others in moving through the scope of practice as Arizona, which has one of the highest in the country. Five states do not have oral prescribing authority. Other states have more prescribing authority than Arizona, but the schools teach to a higher standard, so the people from those schools already meet all of the standards, which is why the 12-hour course is not necessary.

When Mrs. Gullett asked about the endorsement application, Mr. Confer pointed out that the individual did not pass basic science in 1989; however, in August 2001, he passed the TMOD (treatment and management of ocular disease) portion of the national exam. That was the standard to become licensed in Arizona by endorsement, along with a jurisprudence examination on statutes and rules, which is taken within the state.

When Chairman Gerard asked if the concern with this particular case is that the person was licensed in another state but failed portions of the test, Mr. Maynard agreed. He related that the doctor passed the exam in the State of Illinois, and when Illinois passed their law, rules and regulations were established about the amount of education optometrists currently in practice needed in order to practice therapeutics. The doctor took those courses and passed the TMOD part, and therefore, met the same criteria and has the same prescribing authority as an optometrist in Arizona even though he failed part of the national exam because, at that time, the State of Illinois gave a state exam as well as the national exam.

**Mr. Huppenthal moved that the Committee recommend to the Legislature to continue the Arizona State Board of Optometry for 10 years and staff review ongoing issues of examination in relation to the prescription of therapeutics. The motion carried by a roll call vote of 6-0-0-4 (Attachment 2).**

### **Sunset of the Arizona Health Care Cost Containment System**

Dale Chapman, Performance Audit Manager, Auditor General's Office, gave a Power Point presentation of the audit performed on the Arizona Health Care Cost Containment System (AHCCCS) (Attachment 3).

Phyllis Biedess, Director, Arizona Health Care Cost Containment System (AHCCCS), described the Auditor General's presentation as complete and accurate. She said the sunset report includes 24 recommendations and areas of improvement for AHCCCS, which are a high priority for the agency. An action plan was developed for each recommendation, and as of today, 8 are completed, 14 are in the process, and 2 will take longer because the recommendations relate to activities that will be undertaken in the future. For instance, one recommendation is to use past performance in the bid process for the Arizona Long-Term Care System, but the bid does not occur again until 2004. She thanked the Auditor General and staff for their professionalism and cooperation throughout the audit.

She stated that in the last four years, there has been 70 percent overall growth in the agency, including 13 percent growth in administration, and assuming the current budget with the 10 percent deleted holds, it is important not to reduce the administrative budgets beyond the current status in order for AHCCCS to do the job everyone wants done. With the current budget, it will be difficult to implement all of the recommendations. She added that as the Auditor General pointed out, actuarial soundness in AHCCCS rates is absolutely critical to the ongoing operation of the program.

Ms. Biedess noted that the Chief Medical Officer responsible for the quality of care areas is prepared to address any questions. She added that AHCCCS recently celebrated a 20<sup>th</sup> birthday, and she would appreciate the Committee's recommendation to continue the agency for another 10 years.

Mrs. Binder thanked Ms. Biedess and the staff for doing a fabulous job, sometimes under the most difficult circumstances. She stated that AHCCCS is one of the best-run agencies in the state and she hopes Ms. Biedess will not retire.

Chairman Gerard asked if the federal government requires every state to participate in Medicaid. Ms. Biedess replied that she believes a state can choose not to participate, but would receive no federal dollars. The staff person who would know is not present, but she will find out for sure. She explained that AHCCCS did not participate until 1982 when it became necessary as a result of some of the counties threatening bankruptcy due to the burden of health care costs.

Chairman Gerard recognized persons in favor of continuation of AHCCCS:

Anne Wendell, Director of Advocacy, CHW/St. Joseph's Hospital  
David Landrith, Vice President, Arizona Medical Association  
Jason Bezozo, Director, Government Affairs and Policy, Arizona Hospital and  
Healthcare Association

**Mr. Huppenthal moved that the Committee recommend to the Legislature continuation of AHCCCS for 10 years with commendation for the services the agency provided to citizens over the last 20 years. The motion carried by a roll call vote of 7-0-0-3 (Attachment 4).**

THE MEETING RECESSED AT 10:50 A.M. UNTIL 11:30 A.M.

THE MEETING RECONVENED AT 11:30 A.M. WITH THE SAME MEMBERS PRESENT.

### **Sunrise of Pharmacy Technicians**

Llyn Lloyd, Executive Director, Arizona State Board of Pharmacy, thanked Kathy Boyle and the Arizona Pharmacy Association for their valuable assistance in this project. He related that in material submitted to the Committee, reference was made to "registration" of pharmacy technicians, but Legislative Council recommends "licensure." He said a comment from a stakeholders' meeting prompted the Board to consider and approve an extension of the 12-month technician in training provision to 24 months. Another comment addresses the need to continue certification of a technician after the initial two-year period. He anticipated that reciprocity would evolve over a short time because, with the heavy representation of national chains in the pharmacy community, there is an opportunity and value to moving pharmacy technicians from one state to another.

Mr. Lloyd emphasized the fact that there is a nationwide pharmacist shortage in staffing in community pharmacies. Without qualified pharmacy technicians to assist the pharmacist, consumers will wait a long time to have a prescription filled and the information pharmacists can provide for pharmaceutical care and optimal outcomes will be very limited. With certified and licensed technicians available, this inconvenience should be minimized and the public well served.

When Chairman Gerard asked if pharmacy technicians are regulated, Mr. Lloyd replied that they are not. The technicians send their name to the Board where it is filed, but are not required to report a change of address or employment. Some pharmacies advise the Board if a technician changes, leaves, or is hired. He said the Board is aware that drugs are sometimes stolen by pharmacy technicians, but rarely hear about it. He acknowledged that people caught stealing drugs could just obtain a job at another pharmacy.

In response to a question posed by Senator Cirillo, Mr. Lloyd related that the major pharmacy chains are supportive of licensing pharmacy technicians, but would like a few details worked out, which the Board is willing to do.

Chairman Gerard commented that most members of the public assume that pharmacy technicians are regulated and safe. Mr. Lloyd responded that about 30 states regulate pharmacy technicians, which has worked well in many states, and he believes Arizona can benefit from their experiences. He added that a representative of one of the major chains recently contacted him and asked to work with the Board on structuring some of the licensure processes, etc., using a model from his home state. That type of assistance is helpful.

Michelle Ahlmer, Executive Director, Arizona Retailers Association, spoke in support of the concept of licensure of pharmacy technicians. She opined that it would be in the best interest of the public, as well as businesses that are members of the Association, and a pharmacy committee within the organization called the Arizona Community Pharmacy Committee. She expressed appreciation for the work Mr. Lloyd and his staff have done to meet the Association's concerns and noted that she will continue to work with the Board to address the permitting process for the technician in training and the recertification process.

Mr. Huppenthal asked if meetings have been set up to work out the details and suggested that he, Pete Wertheim, Research Analyst, or Mrs. Gullett should be involved. He asked what percentage of the market the chains comprise. Ms. Ahlmer replied that the chain pharmacy has much of the market share, but there is still a fairly healthy independent pharmacy population. Through one of the cooperatives, there is representation on the Association's committee that will be included in the process. The Arizona Pharmacy Association has a number of independent pharmacists, so she would be happy to work with Ms. Boyle and the Board. She added that she is very receptive to including Mr. Huppenthal, Mrs. Gullett, or Mr. Wertheim in the meetings. A meeting has not yet been scheduled with the Board since everyone is finally "on the same page" as of this week, but she is open to a schedule that would meet everyone's needs.

Chairman Gerard noted that Kathy Boyle, Executive Director, Arizona Pharmacy Association, is in favor of licensing pharmacy technicians.

Jason Bezozo, Director, Government Affairs and Policy, Arizona Hospital and Healthcare Association, indicated that the proposal was discussed, but he is monitoring the situation until the legislation is available. He acknowledged that hospitals employ pharmacy technicians.

Mr. Huppenthal noted that in the dialysis discussion, it was discovered that the licensure under consideration worked fine in well-populated counties, but could cause extreme problems for most rural dialysis centers. He asked if remote hospitals and pharmacies should be consulted since it cannot just be assumed they have the same interests as local chains or hospitals. Mr. Bezozo replied that an executive committee met with representation from the rural hospitals, and Mr. Lloyd assured him that this will not increase the current training program requirements for hospital pharmacists; however, he will reserve any support/opposition until he views the actual legislation.

Mr. Lloyd related that because this is a preliminary process, it is premature to state that every pharmacy technician will be licensed until the Committee's approval is received, so a proclamation has not been made saying that it is being considered.

Chairman Gerard indicated that the purpose of the sunrise process is to work out the details and involve the many different groups and individuals because time is limited during the regular session. Also, questions like this arise so there is time to obtain answers before the questions are asked again during regular session.

Mr. Lloyd pointed out that the current President of the Board is from Springerville. He has been very involved in this process and has not voiced any reservation or hesitation.

Mrs. Binder remarked that as the only legislator from a rural area, she does not believe there will be a problem. Constituents would like to know that pharmaceutical technicians are well trained and licensed appropriately. She said she is aware of cases where drugs have been stolen, which is a concern.

Mike Johnston, Executive Director, National Pharmacy Technicians Association, stated that he has been involved in this type of legislation across the country in different states. He is from Texas where they had a similar issue when legislation was considered because the state has very large metroplex areas and very rural areas. He related that the organization's members perceive this as an issue of public safety, and regardless of the community size, the patient should be the first consideration. Different measures were put in place in states such as Texas where a grandfathering clause states that individuals who practiced as a pharmacy technician for a certain number of years and live in a county with a very small population (about 30,000 to 40,000) could still practice. If the individual chooses to leave the current employer, the grandfathering clause no longer applies, and the individual would have to go through the same process as any other technician. This clause could be easily implemented in the legislation.

Mr. Huppenthal stated that he is concerned about a mindset that this is automatically a good idea. It should be thoroughly tested because he does not believe, in general, that additional regulation is beneficial. He is willing to go forward on this, but the Committee needs to “gut check” itself on each of these.

**Mr. Huppenthal moved that the Committee recommend to the Legislature the licensure of pharmacy technicians and staff work out the conditions with the pharmacy associations, retail associations, and rural interests to make sure those are integrated into the final recommendation. The motion carried by a roll call vote of 7-0-0-3 (Attachment 5).**

THE MEETING RECESSED AT 11:58 A.M. UNTIL 1:30 P.M.

THE MEETING RECONVENED AT 1:35 P.M. WITH THE SAME MEMBERS PRESENT.

### **Sunrise of Massage Therapists**

Chairman Gerard explained that a sunrise hearing on massage therapists was held last year and a bill was introduced, but general fund money was not available for startup funds. The profession considered licensure under the Occupational Therapist Board, but decided against it, so the bill did not go anywhere. The Naturopathic Board agreed to take in this profession and advance the money, which will be paid back, since the Naturopathic Board is in the financial shape to do so.

Greg Harris, representing American Massage Therapy Association – Arizona Chapter, expressed hope to use the Naturopathic Board’s expertise and familiarity with massage therapy to provide a setting for a streamlined approach to regulation. He noted that most large cities in the state already require massage therapists to be licensed, but this would eliminate duplicate costs and effort any massage therapist faces in the Valley to obtain a license. It would also help address issues of concern to law enforcement by providing a statewide database to validate whether someone claiming to be a massage therapist actually is a massage therapist. He added that due to working closely with a wide range of people in the massage community, he believes this effort will lower costs for practitioners and not cause prices paid by consumers for massage therapy to increase. Also, regulatory costs will lessen because people will not have to go to multiple locations to obtain the practitioner license that is now required.

Chairman Gerard remarked that this makes sense especially if massage therapists operate in more than one jurisdiction, so it could help bring down costs of operation.

Mr. Huppenthal stated that he sponsored this bill last year, but he was not sure of his position on the issue. The dilemma is that if the cities were not regulating massage therapists, he would never have heard the bill, so the only reason to regulate would be because the cities are already regulating and there would be uniform regulation; however, it is also additional regulation over a

huge business that is not currently regulated. He added that he came to the decision that he will not support it.

**Senator Cirillo moved that the Committee recommend to the Legislature approval of regulation of massage therapists under the Naturopathic Board.**

Senator Yrun asked if massage therapists would remain under the Naturopathic Board temporarily or permanently. Chairman Gerard replied that it is a permanent setup.

**The motion carried by a roll call vote of 5-1-0-4 (Attachment 6).**

THE MEETING RECESSED AT 1:43 P.M. UNTIL 2:30 P.M.

THE MEETING RECONVENED AT 2:32 P.M. WITH THE SAME MEMBERS PRESENT.

**Sunrise to Increase the Scope of Practice for Psychologists**

Gay Schwabauer Pies, President, Arizona Psychological Association, said she is very encouraged by the national progress that has been made in prescriptive authority for psychologists. The neighboring state of New Mexico passed prescriptive authority legislation for psychologists, and collaborative work on implementing the legislation is moving forward in a vigorous fashion. She said she is aware that the Arizona Board of Psychologist Examiners sent a letter to Members of the Committee and she is appreciative of the fact that the Board continues to be receptive to the forwarding process of this legislation, although she understands the Board's frustration with the current lack of a solid proposal. She submitted that the necessity to continually evolve in an effort to understand and meet express concerns of everyone involved and impacted by the RxP initiative requires some tolerance of ambiguity. She thanked the Board for the interest and attention to detail, noting that the Board provided many points of discussion and clarification that, as the RxP initiative moves forward, will be of guidance to the Association. As educated and caring professionals, the Association wishes to develop what is right for the citizens of Arizona, which requires listening to all interested parties, moving in a very carefully planned way, and working in full collaboration with other professional groups that also have the best interest of health care as a priority.

Dr. Eric Schindler, Arizona Psychological Association, gave a Power Point presentation on the Psychologist's Prescription Privilege Initiative (Attachment 7).

Dr. Jeffrey Thomas, Arizona Psychological Association, testified that he specializes in treating adolescents and young adults. He related that in April 2001 a survey was sent to about 1,300 psychologists licensed in the state asking questions about their practice on a day-to-day basis with regard to patients and medications. About 226 psychologists returned the survey, which is an excellent response rate.

Dr. Thomas indicated that of those who returned the survey, 20 indicated they were not seeing patients at that time, so the sample involved 206 psychologists seeing patients. The conclusion reached is that psychologists are already dealing with medication on a daily basis when they work with their patients. Another item looked at is how long it takes the patient to obtain an appointment to be evaluated when psychologists refer the patient to a prescriber, and 61 percent indicated that it takes over 30 days. One of the issues of concern is that people should be evaluated and receive medication in a more timely fashion to reduce the amount of time they must suffer with psychological symptoms before receiving the appropriate treatment.

He related that one item psychologists hold most valuable is ethical standards. The code of ethics of the American Psychological Association is a model code used by many other behavioral health professions, and it is constantly under refinement. As someone who believes in those ethics, he would never want to treat a patient with any treatment, including medication, unless he was adequately prepared and believed he has the skills, knowledge, and experience to do so. Psychologists are very aware that training to be able to do this is very important, which is why Mr. Schindler mentioned working with the University of Arizona to develop a program with one of the state universities to prepare psychologists to dispense medications in a competent and ethical way.

In conclusion, Dr. Thomas announced that he has been given the responsibility to formally withdraw the bill as it was submitted to the Committee, and reiterated that this is a work in progress. He added that the feedback and cooperation received from other professions is valuable, and the Association looks forward to continuing that in the future.

Mr. Huppenthal remarked that it is necessary to have the proposal as polished as possible and consider all issues. He offered to help engage other entities to make sure the proper amount of time is given to evaluate the proposal. Dr. Thomas answered that he appreciates the offer and the help Mr. Huppenthal provided so far.

Chairman Gerard repeated a suggestion from last year to establish a pilot program in certain settings and show that the “sky is not falling” and then return to take this further. Dr. Thomas said her recommendation was heard loud and clear before, and that is something the Association is working on.

Dr. John Spaulding, Director, Mental Health Program, Phoenix Area of the Indian Health Service (IHS), related that the Phoenix area of the IHS covers Utah, Nevada, and about two-thirds of Arizona, but does not include the Navajo reservation or two tribes near Tucson, the Pasqui Yacqui and the Tohono O’odham. About 140,000 patients are served in this area, including 113,000 in Arizona, and most of the tribes are in rural and sometimes very isolated areas. He advised that the mental health problems of Arizona Indians are great, and a tremendous need exists for professionals trained to prescribe psychotropic medications.

He conveyed that in Arizona, almost every reservation has a mental health program with one or more clinical psychologists, yet there are very few psychiatrists. Psychiatrists are spread thin

and try to be circuit riders to as many programs as possible. Many programs have no psychiatric visits, but even when visits do occur, the visits are only once a month. Because long waiting lists exist, psychiatrists can only conduct medication checks during brief visits, so the time spent with patients is very short, and typically, there is no time to discuss the patient with the local psychologist or mental health worker. Even when a psychiatrist can visit once a month, it is often an adult psychiatrist who cannot see children or adolescents, so those patients go without being seen. To help fill the need, IHS sometimes contracts with psychiatrists in the private sector, but that typically costs \$1,000 or more a day.

Dr. Spaulding stated that the turnover rate is also higher for psychiatrists than psychologists, in part due to the high workloads, and when a psychiatrist's position becomes vacant, it is much more difficult to fill than a vacant psychologist's position. Some remain open as long as two or three years. There is also a nationwide shortage of child psychiatrists, which is recognized by the American Psychiatric Association, so positions for child psychiatrists are even more difficult to fill. Finally, a full-time psychiatry position costs the IHS approximately twice as much as a psychology position.

Chairman Gerard recognized persons present in support of prescriptive authority for psychologists:

Brian Ramirez, Psychology Intern, Arizona Psychological Association  
Charlene Ledet, Special Assistant, State Relations, University of Arizona (neutral)  
Dr. Patricia Johnson, representing herself, Scottsdale

Chairman Gerard recognized persons opposed to prescriptive authority for psychologists:

LaDonna Courtney, Executive Vice President, Arizona Academy of Family Physicians  
David Landrith, Vice President, Arizona Medical Association  
Amanda Weaver, Executive Director, Arizona Osteopathic Medical Association  
Kathy Boyle, Executive Director, Arizona Pharmacy Association  
Mary Davis, representing herself, Tempe  
Dr. Lauro Amezcua-Patino, Arizona Psychiatry Society

THE MEETING RECESSED AT 3:05 P.M. UNTIL 3:30 P.M.

THE MEETING RECONVENED AT 3:32 P.M. WITH THE SAME MEMBERS PRESENT.

### **Sunrise of Behavioral Health Examiners**

Tim Hoffman, Chair, Arizona Behavioral Health Professionals Coalition, stated that he is a certified professional counselor and has been in practice about 10 years. The Coalition is a partnership between professional associations regulated by the Board of Behavioral Health Examiners that represents 4,000 to 4,500 professionals across the state. He noted that people go to behavioral health professionals at their most vulnerable. Behavioral health professionals serve

children, the elderly, the mentally ill, people who are emotionally distraught, people who have reached the point where they believe life is not worth living, and people who have become slaves to chemical dependency. The behavioral health professional's job is conducted in a very confidential and sensitive environment, but for some reason, anybody is allowed to practice in Arizona regardless of motivation, credentials, competence, or ethics. Arizona is one of a few states that do not license therapists so the state attracts "bad apples," some of whom do not know any better and tend to make poor decisions in the process of treatment, and others who do know better and actually take advantage of the patient. Either way, the result can be devastating for the patients and their families. Often patients assume therapists are licensed and sometimes people pay the price for that assumption.

Mr. Hoffman related that the Coalition has been working on enhancements to the current certification statutes to move from voluntary to mandatory licensure, and the individual professions have been working on this for at least seven years. During the first two years, there was much infighting within the professions, but the Coalition was formed a few years ago with the express purpose of resolving those differences, reaching a consensus, and moving forward. Efforts were made to include as many people as possible in the process, and he now believes the proposal is ready to go forward. He added that in Arizona, people who cut hair and people who do nails are licensed, but therapists are not, and people are being hurt by that. He asked for the Committee's help in moving the proposal forward to correct the situation.

Debra Rinaudo, Executive Director, Board of Behavioral Health Examiners, advised that the Board was created in 1988 to offer voluntary certification to behavioral health professionals and currently certifies almost 6,000 individuals. The Board was created to protect the public by helping consumers identify practitioners that meet minimum standards of education, training, and competency and review complaints and take disciplinary action against certified professionals who act unethically or unprofessionally. She noted that the Board is unable to fully meet its responsibility to protect the public for the following reasons:

- In Arizona, anyone can hang out a shingle and call himself or herself a therapist, and patients seeking behavioral health services do not understand that therapists are not licensed. As a result, vulnerable patients end up being treated by unqualified therapists.
- The Board has no authority to take action against unqualified, uncertified therapists who harm patients. Thirty percent of the Board's complaints are against noncertified professionals, but the complaints must be dismissed without investigation or action.
- The most stringent form of discipline currently available to the Board is suspension and revocation. The Board uses these types of discipline for the most egregious conduct by certified professionals, but if the Board revokes the certification of a particularly "bad apple," that person continues to practice while suspended or revoked, but cannot claim to be a certified professional. This is also a problem for the Board of Psychologist Examiners with psychologists.

Ms. Rinaudo related three specific incidences in which patients were harmed by the therapist. She indicated that copies of all of the Board's disciplinary cases are available for the Members'

review. In conclusion, she stated that the Board has been regulating behavioral health professionals since 1990. Licensure is not new regulation, but an enhancement of existing regulation to allow the Board to better protect the public. She added that licensure will not change the Board's existing fee structure.

Chairman Gerard asked why the Board was set up initially for voluntary certification. Ms. Rinaudo speculated that it was the best that could be done at that time because of concerns of moving into a new area of regulation. In other states, voluntary certification was often done initially so people could get used to the concept and then the profession moved naturally into mandatory licensure. She said the fact that this is a composite Board has made the process more difficult because most states do not have the "push and pull" between the disciplines.

Chairman Gerard opined that the Board was in disarray a few years ago, but Ms. Rinaudo did a good job of turning things around and organizing the Board, so it is now in a position to handle the increased volume and responsibility.

Ms. Rinaudo answered questions posed by Senator Yrun regarding a grandfather clause to avoid losing qualified professionals currently providing care. She advised that school counselors should not be providing psychotherapy, which requires informed consent and involves patient rights, as well as specific ethical and professional requirements.

**Senator Yrun moved that the Committee recommend to the Legislature licensure of behavioral health professionals. The motion carried by a roll call vote of 7-0-0-3 (Attachment 8).**

Without objection, the meeting adjourned at 3:56 p.m.

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Linda Taylor, Committee Secretary  
December 5, 2002

(Original minutes, attachments, and tapes are on file in the Office of the Chief Clerk.)