IN THE ARIZONA SUPREME COURT

LAURA SEISINGER, Plaintiff/Appellant, vs. SCOTT SIEBEL, M.D., Defendant/Appellee.	Supreme Court No. CV-08-0224-PR Court of Appeals No. 1 CA-CV 07-0266 Maricopa County Superior Court No. CV 2004-015659

BRIEF OF AMICUS CURIAE ARIZONA MEDICAL ASSOCIATION, AMERICAN MEDICAL ASSOCIATION, ARIZONA HOSPITAL AND HEALTHCARE ASSOCIATION, MARICOPA COUNTY MEDICAL SOCIETY, PIMA COUNTY MEDICAL SOCIETY, ARIZONA OSTEOPATHIC MEDICAL ASSOCIATION, AMERICAN ASSOCIATION OF ORTHOPAEDIC SURGEONS, ARIZONA CHAPTER OF THE AMERICAN ACADEMY OF ORTHOPAEDIC SURGEONS, THE AMERICAN COLLEGE OF OBSTETRICIANS AND GYNECOLOGISTS AND ITS ARIZONA SECTION, AMERICAN COLLEGE OF CARDIOLOGY, ARIZONA CHAPTER OF THE AMERICAN COLLEGE OF CARDIOLOGY, ARIZONA SOCIETY OF ANESTHESIOLOGISTS, AND ARIZONA RADIOLOGICAL SOCIETY

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The Petition for Review asks this Court to address whether the Court of Appeals erred in finding that A.R.S. § 12-2604(A) unconstitutionally infringes upon this Court's procedural rule-making powers by requiring medical experts testifying in medical malpractice actions to meet minimum qualifications. The Arizona Medical Association, American Medical Association, Maricopa County Medical Society, Pima County Medical Society, Arizona Osteopathic Medical Association, American Association of Orthopaedic Surgeons and its Arizona Chapter, The American College of Obstetricians and Gynecologists and its Arizona Section, American College of Cardiology, Arizona Chapter of the American College of Cardiology, Arizona Society of Anesthesiologists, and Arizona Radiological Society are nonprofit organizations whose collective membership consists of the majority of physicians licensed to practice in the State of Arizona, as well as representing the interests of physicians across the country. The Arizona Hospital and Healthcare Association is a nonprofit organization consisting of health systems, hospitals and other affiliated healthcare organizations in Arizona that have the goal of improving healthcare delivery to the citizens of Arizona.[1]

The Court of Appeals' ruling will not only have a direct and dramatic impact on the physicians of these associations and societies, but it will impact

[1] Collectively all *amicus curiae* herein are referred to as the Associations.

the delivery of healthcare in the State of Arizona. The ruling eliminates carefully considered legislative protections against costly unfounded medical malpractice claims and the growing market of questionably qualified "hired guns" who cavalierly market medical malpractice claims and drive up the cost of healthcare. The ruling also improperly infringes upon the Arizona Legislature's substantive authority to regulate professions and occupations. For the reasons set forth below, the Associations urge this Court to accept jurisdiction of the instant Petition and reverse the Court of Appeals' ruling.

ARGUMENT

In the First Regular Session of 2005, the Arizona Legislature – noting that Arizona has found itself on the brink of a "medical malpractice crisis" – carefully considered options to "head off" Arizona's impending problem. *See* March 23, 2005 Minutes of Meeting on S.B. 1036 Before H. Comm. on Health, H.R. 47th Leg., 1st Sess., attached as Exhibit A. With projections of continued extensive population growth coinciding with reduced per capita physician counts, the Legislature was concerned about physicians limiting their practices, avoiding risky specialties, and leaving Arizona or declining offers to practice in Arizona because of rising litigation risks and liability insurance premium costs. The Legislature was also concerned about the expansion of medical malpractice litigation supported by poorly credentialed individuals who testify without the

experience and medical knowledge required to aid the trier of fact.

Research has shown that the medical liability system is, at best, grossly inconsistent in fairly adjudicating medical malpractice cases. *See* Joint Commission on the Accreditation of Healthcare Organizations ("JCAHO"), *Health Care at the Crossroads: Strategies for Improving the Medical Liability System and Preventing Patient Injury* ("JCAHO Report"), at 4 (2005). In general, only 17 percent of incidents that turn into medical malpractice actions appear to involve negligent injury. *Id.*

To protect the citizens of Arizona and preserve the integrity of the healthcare professions and the litigation process, the Legislature passed and the Governor signed into law several provisions, including A.R.S. § 12-2604. Section 12-2604 provides a mechanism to ensure that purported medical "experts" – both plaintiff and defense – in the limited subset of cases involving medical malpractice meet minimum qualifications in education and experience in the medical field about which they are testifying. As set forth in Dr. Siebel's briefing and Petition for Review, this provision seamlessly supplements and is entirely consistent with Ariz. R. Evid. 702 for cases involving medical malpractice claims.

Additionally, the provision's legislative history shows that it was warranted by the Legislature's constitutionally appropriate public policy

concerns for the integrity of the legal system and the continued availability of affordable and quality healthcare in Arizona. It is irrefutably within the Arizona Legislature's authority to regulate professions in this manner. The statute does not implicate separation of powers concerns because the rules that are to be applied in making decisions about a witness' qualifications do not restrict the Arizona Supreme Court's authority to prescribe rules of procedure. Therefore, A.R.S. § 12-2604 is constitutional and important public policy for a number of reasons.

I. A.R.S. § 12-2604 IMPLEMENTS IMPORTANT PUBLIC POLICY.

A.R.S. § 12-2604 applies to a small subset of extensively-regulated cases involving claims of medical malpractice. Under A.R.S. § 12-561 *et seq.*, a medical malpractice action cannot be brought against a licensed healthcare provider except upon specific statutory grounds. Arizona statutory law has long established the components of medical malpractice actions and the necessary elements of proof in such claims, including defining the applicable standard of care. *See* A.R.S. § 12-563. The minimum expert qualification requirements dictated in A.R.S. § 12-2604 appropriately supplement – and are entirely consistent with - the standards already in place for medical malpractice litigation.

Section 12-2604 protects the intellectual integrity and credibility of the

medical malpractice litigation process. Because offering expert testimony can be lucrative, there is an economic incentive for self-proclaimed "experts" to support claims, whether or not their testimony is grounded in science or fact. *See* JCAHO Report at 16. There is also incentive to market opinions without legitimate qualifications or experience to support them. Requiring testifying medical experts to meet the minimum educational and practice standards set forth in A.R.S. § 12-2604 provides a mechanism to ensure that "experts" have experience in the medical field in which they are testifying.

The "expert" used by the Plaintiff in the instant case, Jorge Antonio Aldrete, M.D., is an unfortunate, but classic, example of the type of "expert" that can prosper and undermine the judicial process without strong and consistent admissibility standards. Dr. Aldrete has been the subject of multiple complaints, has been investigated by the medical boards in Illinois, Alabama and Florida, has been censured by the American Society of Anesthesiologists (ASA Judicial Council Findings, attached as Exhibit B), and has been reprimanded by the medical boards in Illinois and Florida. (*See* Petition for Review, at 4-5.) He voluntarily surrendered his medical license in Ohio, where he is ineligible for reinstatement. The record established that Plaintiff persisted in using Dr. Aldrete because her attorneys were unable to find a qualified expert who concurred with his opinion. It is intellectually dishonest to allow a

physician determined to be unfit to practice medicine and whose opinions have no credible support to testify on the medical standard of care in Arizona.

The medical profession has increasingly rigorous standards for medical practitioners. The Arizona Medical Board ("AMB") has established Scope of Practice Guidelines to assess the specific qualifications of physicians who undertake new procedures, employ new technologies or migrate into new areas of practice. (*Arizona Medical Board Scope of Practice Guidelines*, available at http://www.azmd.gov, attached as Exhibit C.) The AMB recognizes that "the practice of medicine is dynamic with respect to scientific and technological advancements. Physician practice patterns are changing with evolving medical knowledge and treatment modalities, new technologies and fluctuations within healthcare specialties and the healthcare workforce." *Id.* Like the AMB, the legislature and courts of Arizona must protect the public from unqualified physicians whether they be practicing or setting standards while testifying.

The American Medical Association has also adopted policies directed to protecting the integrity of these processes and maintaining high standards of professionalism in expert witness testimony:

> **H-265.994: Expert Witness Testimony:** .... (2) Our AMA is on record that it will not tolerate false testimony by physicians and will assist state, county and specialty medical societies to discipline physicians who testify falsely by reporting its findings to the appropriate licensing authority.

> (3) Existing policy regarding the competency of expert witnesses and their fee arrangements . . . is reaffirmed, as follows:
>
> (a) The AMA believes that the minimum statutory requirements for qualifications as an expert witness in medical liability issues should reflect the following: (i) that the witness be required to have comparable education, training, and occupational experience in the same field as the defendant or specialty expertise in the disease process or procedure performed in the case; (ii) that the occupational experience include active medical practice or teaching experience in the same field as the defendant; (iii) that the active medical practice or teaching experience must have been within five years of the date of the occurrence giving rise to the claim; and (iv) that the witness be certified by a board recognized by the American Board of Medical Specialties or the American Osteopathic Association or by a board with equivalent standards. American Medical Ass'n, *Policy Compendium* 415-16.[2]

The AMA's policy on expert testimony is consistent with the legislative intent of A.R.S. § 12-2604(A). Both promote good medical practice and professionalism while protecting the integrity of the medical litigation process by requiring opinions to be grounded in fact and fortified by sufficient knowledge and experience. Integrity is enhanced by applying these standards to all expert testimony, whether rendered on behalf of a plaintiff or defendant.

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[2] The policy is also available online at the following: http://www.ama-assn.org/apps/pf_new/pf_online?f_n=resultLink&doc=policyfiles/HnE/H-265.994.HTM&s_t=expert&catg=AMA/HnE&catg=AMA/BnGnC&catg=AMA/DIR&&nth=1&&st_p=0&nth=8&.

Section 12-2604 is intended to assure appropriate standards are met and discourage unfounded suits. The statute's public policy purpose is consistent with the medical profession's commitment to rigorous self-regulation. Multiple medical specialty organizations, including the American Association of Neurosurgeons, American College of Radiologists, and American College of Surgeons, have adopted minimum standards for members who wish to offer expert testimony. In addition, a number of medical organizations discipline members who provide false or substandard expert witness testimony. Although the disciplinary information is not generally published, the process is essential to protect the integrity of the profession and ensure that medical specialties are accountable in their practices and testimony.

A.R.S. § 12-2604 is part of a comprehensive scheme to regulate all aspects of the practice of medicine, a matter within the constitutional purview of the Legislature. The AMB promulgated guidelines concerning the scope of medical practice and certainly has authority to discipline licensees who provide false or unfounded expert testimony. This is also true for other boards that regulate medical professions. Here, as shown in Dr. Siebel's Petition for Review, the expert at issue was retired, had not practiced in the field in which he proposed to offer testimony since 1999, and had been investigated and disciplined by various state medical boards. (Petition for Review at 4.) The

Arizona Legislature has a legitimate interest and duty to protect the public from unqualified medical "experts."

Finally, a Special Task Force appointed by the Governor concluded that the threat of unfounded suits continues to contribute to Arizona's current physician shortage. Arizona's "best and brightest" are not choosing to practice medicine in the state. The costs and emotional toll of defending unfounded lawsuits have eroded the availability of quality healthcare in Arizona. Requiring medical malpractice experts to be appropriately qualified can help reduce the volume of unfounded suits, reverse the doctor shortage, and enhance the quality and availability of healthcare in Arizona. These public policy concerns are specifically addressed by A.R.S. § 12-2604.

II. EXPERT WITNESS TESTIMONY CONSTITUTES THE PRACTICE OF MEDICINE, WHICH MAY BE PROPERLY REGULATED BY THE ARIZONA LEGISLATURE.

It is undoubtedly within the Arizona Legislature's authority to regulate professions and occupations, including medicine, surgery and other healthcare-related professions. *State v. Ariz. Mines Supply Co.*, 107 Ariz. 199, 204, 484 P.2d 619, 624 (1971) ("Under a state's police power . . . it is within the legislature's sole discretion to determine when and in what manner a business or occupation shall be subjected to reasonable restrictions . . . ."); *Ariz. State Bd. of Dental Examiners v. Hyder*, 114 Ariz. 544, 547, 562 P.2d 717, 720

(1977); *see, e.g.,* A.R.S. § 32-1401 *et seq.*, A.R.S. § 32-1601 *et seq.* The Arizona Legislature, in conjunction with properly-established governing bodies, to whom certain powers and duties have been granted, has established substantive qualifications for the practice of medicine, surgery, nursing, and other professions in Arizona, including qualifications relating to education, experience, licensure, etc. *See, e.g.,* A.R.S. § 32-1401 *et seq.*

To this end, the Legislature has defined the practice of medicine to include "*the holding of oneself out as being able to diagnose, treat or correct* any and all human diseases, injuries, ailments, infirmities, deformities, physical or mental, real or imaginary, by any means, methods, devices or instrumentalities . . . ." A.R.S. § 32-1401(22) (emphasis added). This includes rendering expert medical testimony since the testimony requires a statement from the physician regarding the practice, diagnosis, treatment, or correction of medical conditions, and a testifying physician must rely upon special skills, training, and expertise to state such opinions. Am. Med. Ass'n Policy H-265.993; AMA, *Policy Compendeum* 126, 416 (1999); *see Austin v. Am. Ass'n of Neurological Surgeons*, 253 F.3d 967, 973-74 (7th Cir. 2001). Because expert testimony is viewed as the practice of medicine, the Arizona Legislature is constitutionally empowered to set standards for medical testimony.

"[T]he substantive law is that part of the law which creates, defines and

regulates rights; whereas the adjective, remedial or procedural law is that which prescribes the methods of enforcing . . . ." *State v. Birmingham*, 96 Ariz. 109, 110, 392 P.2d 775, 776 (1964). A.R.S. § 12-2604 reflects a careful balancing of competing policy considerations impacting the delivery of healthcare in Arizona. Although the statute may have procedural implications, it is substantive because it concerns the regulation of healthcare professionals in their professional capacity. A healthcare professional could be subject to discipline for offering medical testimony in violation of A.R.S. § 12-2604, *e.g.*, if the testimony is outside the scope of the professional's practice or inconsistent with the standards of practice in Arizona. *See, e.g.*, A.R.S. § 32-1401(27)(t) & (bb). The Court of Appeals erred in holding that the statute is solely procedural. The statute clearly affects substantive rights that are uniquely within the Legislature's purview to regulate.

III. A.R.S. § 12-2604 IS NOT "PROCEDURAL" SIMPLY BECAUSE IT CREATES STANDARDS.

Even though Rule 702 falls squarely within the Arizona Supreme Court's constitutional authority to promulgate procedural rules, it does not dictate that every potential expert be permitted to testify. Rule 702 merely states that, where the trial court determines that expert testimony will assist the trier of fact in understanding and evaluating the evidence, the trial court may in its discretion permit a qualified witness to offer evidence representing the witness'

opinion rather than the witness' observation of facts. The determination of whether such testimony would be helpful, and whether the witness is qualified to offer it, is one committed to the trial court's discretion. The introductory note to Article VII of the Arizona Rules of Evidence states that "as this note makes clear, an adverse attorney may, by timely objection invoke the court's power to require that before admission of an opinion there be a showing of the traditional evidentiary prerequisites." Rendering such a determination is, without question, a judicial function, but that does not operate to make the standards employed for making that particular decision "procedural."

CONCLUSION

The Court of Appeals' ruling undermines the Arizona Legislature's carefully considered efforts to protect Arizona from another medical malpractice crisis, needlessly expands the market for unqualified testifying physicians who merely drive up litigation costs, and exposes Arizona physicians to greater liability risks and increasing costs. The ruling also represents a reversal of efforts to limit unfounded medical malpractice actions, which jeopardizes an already overburdened group of professionals. The *amicus curiae* request that this Court accept jurisdiction of the instant Petition and reverse the Court of Appeals' ruling.

RESPECTFULLY SUBMITTED this 2nd day of September, 2008.

SNELL & WILMER L.L.P.

By _____

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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on this 2nd day of September, 2008, a true and correct copy of the foregoing Brief of Amicus Curiae Arizona Medical Association, American Medical Association, Arizona Hospital and Healthcare Association, Maricopa County Medical Society, Pima County Medical Society, Arizona Osteopathic Medical Association, American Association of Orthopaedic Surgeons, Arizona Chapter of the American Academy of Orthopaedic Surgeons, The American College of Obstetricians and Gynecologists and its Arizona Section, American College of Cardiology, Arizona Chapter of the American College of Cardiology, Arizona Society of Anesthesiologists, and Arizona Radiological Society was sent via U.S. Mail, first class, postage prepaid, addressed to:

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EXHIBIT A

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ARIZONA HOUSE OF REPRESENTATIVES
Forty-seventh Legislature – First Regular Session

COMMITTEE ON HEALTH

Minutes of Meeting
Wednesday, March 23, 2005
House Hearing Room 4 -- 9:00 a.m.

Chairman Quelland called the meeting to order at 9:32 a.m. and attendance was noted by the secretary

Members Present

Ms. Aguirre A
Mr. Bradley
Ms. Burns J
Mr. Carpenter
Mrs. Knaperek
Ms. Lopez L
Mrs. Rosati
Mr. Murphy, Vice-Chairman
Mr. Quelland, Chairman

Committee Action

S.B. 1036 – DPA (9-0-0-0)
S.B. 1133 – HELD
S.B. 1204 – HELD
S.B. 1295 – DP (7-2-0-0)
S.B. 1125 – DP (7-2-0-0)
S.B. 1137 – DPA (9-0-0-0)
S.B. 1250 – DP (9-0-0-0)

Speakers Present

Elizabeth Baskett, Majority Staff Analyst
Senator Robert Cannell, District 24
JoJene Mills, Arizona Trial Lawyers (AZTLA)
Representative David Burnell Smith, District 7
Thomas Bennett, M.D.
Barry Halpern, Legal Counsel, Arizona Medical Association
Adrian Bain, representing self
Persons listed who did not speak (pages 6 and 7)
Erin Harbinson, Majority Staff Intern
Senator Barbara Leff, District 11, Sponsor
Dr. Dawn Schroeder, Arizona Disease Control Research Commission (ADCRC)
January Contreras, Legislative Liaison, Arizona Health Care Cost Containment System (AHC
Lynn Johnson, Arizona Health Care Cost Containment System (AHCCCS)
Monica Attridge, Arizona Consortium for Children with Chronic Illness
Carlos Ortega, representing self
Alisan Rose Patten and Patty Rather, East Valley Women's League
Rose Conner, Assistant Director, Public Health Services, Arizona Department of Health Services
Deborah Houk, Dave Houk, and Austin Houk, representing themselves

Chairman Quelland noted guests in the audience included 80 osteopathic physicians and medical stu Arizona College of Osteopathic Medicine at Midwestern, and several osteopathic physicians and m from Kirksville College of Medicine at A.T. Still University.

CONSIDERATION OF BILLS

S.B. 1036, medical malpractice; procedural reforms – DO PASS AMENDED

Vice-Chairman Murphy moved that S.B. 1036 do pass.

Elizabeth Baskett, Majority Staff Analyst, summarized S.B. 1036 which waives a plaintiff's pa privilege in cases involving a claim of medical malpractice, prescribes additional qualification for e in medical malpractice cases and allows a physician to apologize to a patient without the apology be in the medical malpractice case (Attachment 1).

Vice-Chairman Murphy moved that the 5-line Quelland amendment to S.B. 1036 da 11:25 a.m. be adopted (Attachment 2).

Ms. Baskett explained the 5-line Quelland amendment.

Senator Robert Cannell, District 24, said he is a co-sponsor of S.B. 1036. Senator Cannell exp standing in for Senator Carolyn Allen, who was mainly responsible for this bill, and was unable to date. Senator Cannell emphasized Arizona is approaching a crisis as to medical malpractice. Most o companies that provide medical malpractice insurance have pulled out of the market. Mutual Insur of Arizona (MICA) is a company owned and run by physicians. MICA was created with the help of and presently insures about 85% of doctors in Arizona. He said MICA is a strong and healthy or their rates have been skyrocketing. Arizona is one of three states in the country that will not allow ca in malpractice actions. Senator Cannell said he has been involved for the last four to five years with working on ways to improve the malpractice climate in our state without changing the consti procedural means.

Senator Cannell emphasized the biggest insurance problem in Arizona is with obstetricians. The fan who were delivering babies in southeast Arizona can no longer obtain malpractice insurance. Ma leaving the state. Only 50% of graduates of the medical school in Tucson stay to practice in Arizor three main pieces of this bill are:

- the Duquette piece which was very important to physicians but has now been taken out;
- the expert testimony piece which says a physician cannot testify against another physician ur comparable training and certification;
- the physician apology piece allows physicians to talk to their patients after an untoward event the event, and even say they are sorry or responsible for that event without that discussion bei court if a malpractice case is filed. This piece helps preserve the doctor/patient relationship, prevent some malpractice cases.

Senator Cannell explained technical changes to the bill.

Mrs. Knaperek said she believed the time frame for an expert witness should be three to five years Senator for his opinion. Senator Cannell responded physicians do not want retired physicians to them.

Mr. Bradley asked if a similar bill passed last year has been effective. Senator Cannell responded bill, affidavit of merit, which required there be at least one expert witness for the plaintiff before the forward, was an attempt to avoid frivolous lawsuits, and it is too soon to know if it has been effective

Mr. Bradley commented it is frustrating that the insurance companies are always in the shadow discussions and are never present to comment as to whether any of these changes will have a pos insurance rates. He asked Senator Cannell if he shares that frustration. Senator Cannell responded Arizona 85% plus doctors are insured by one insurance company, MICA, which has testified in although they are not present today, the attorney could speak to that matter. He said there is data measures slow the growth in the rate of malpractice premiums, but it is unlikely anything can be rates. Tort reform will not lower the rates, but it will contain them.

Mr. Carpenter said he supports the bill but has several concerns and asked how many different medic

are. Senator Cannell enumerated several boards and said the purpose of these medical boards is to or physician complaints regarding quality of care. All malpractice settlements are reported to the and are kept on a database.

Mr. Carpenter said he is concerned about future amendments to this statute, i.e. chiropractors use dif and each claims to know the best treatment of a particular problem. Therefore, a doctor will have to particular method of treatment before being allowed to testify. Senator Cannell said generally phy want the Legislature to regulate what they do, and most likely, the chiropractic board would have a c physicians practicing certain methods.

Ms. Aguirre thanked Senator Cannell for working on this issue, and said her biggest concern is how in rural areas, and added it would be good to hear from insurance companies.

JoJene Mills, Arizona Trial Lawyers Association (AZTLA), said she is a trial lawyer practicing in T she has spent nearly fifteen years litigating medical malpractice cases on behalf of patients. She sai part of S.B. 1036, and is against part of S.B. 1036. She explained she knows many of the challe doctors, and regrets that this is not a dialogue on things that have been proven to help the medical reimbursement, reducing patient errors, and providing more resources and assistance to boar examiners so they can address the small number of physicians causing the majority of claims.

Ms. Mills said the part of the bill she and the AZTLA support is the medical apology portion. This h to reduce medical complaints and will make a difference.

Ms. Mills emphasized she and the AZTLA strongly oppose the expert witness portion of the bill, nothing to help physicians, and the insurance companies admit it will do nothing to lower premium the qualifications for expert witnesses for both sides are too stringent. She cited an example of a phy left his practice to research drugs, and a lawsuit is filed regarding the drug he is researching and the by a physician. This physician would be the best person to testify about the drugs but would not be q

Ms. Mills addressed concerns of Mr. Carpenter, saying there are many physicians who refuse to be because they disagree with the process, or are a member of one board versus another. Some physicians in this state are not board certified. When the idea behind this bill was debated at the Am Association, there was concern that physicians who could testify in court must be a member of a sp She said this bill would make malpractice cases more expensive for both sides, particularly in cases physicians, where now, in many cases, an expert witness can testify for both sides. Under this bill, n have to be resolved with more than one expert witness.

Ms. Mills said this bill is unconstitutional. A basic idea of democracy is that the courts decide judges and juries will hear. She said there is a case pending that looks at a bill the Legislature pa what evidence juries can hear, and the bill was declared unconstitutional. It is not possible for the conceive of every possible situation as to whether certain evidence should be heard.

In response to Mr. Murphy's query as to whether the apology portion of this bill would be uncon Mills responded no, because privileges (doctor-patient privilege) are created by the Legislature an

violation of the separation of powers. Individual rules of evidence governing a case are the province

Mrs. Knaperek said she is in favor of the bill, particularly because of a shortage of doctors, and thar for the testimony regarding expert witnesses.

David Burnell Smith, District 07, spoke against S.B. 1036, saying it is poorly written. His second cc paragraph 4-B does not limit the power of the trial court to disqualify an expert witness on grounds o set forth under this section. He said the bill needs a qualification provision. Mr. Smith emphasized of the bill is the "I am sorry section." If a doctor comes out of surgery and says I made a big mistake is dead, this is not an apology but an admission of liability and responsibility. That is not the same a sorry this happened."

Mr. Smith suggested the Committee should investigate the insurance companies regarding the basi charged to physicians. Insurance companies want to blame high insurance rates on lawsuits and atto not correct. Mr. Smith added that for people who are pro-life, this provision would be used again testify against abortionists. It will disqualify as an expert witness every obstetrician-gynecologis performed an abortion within a year of the action.

Mrs. Rosati asked if an obstetrician-gynecologist who performed a dilation and cutterage (D&C patient who had suffered fetal demise would be disqualified as an expert witness in a lawsuit. Mr. position is that a D&C has no correlation to an abortion.

Mrs. Rosati thanked Mr. Smith for his comments and said although this bill is not perfect, it is a st direction.

Thomas Bennett, M.D. spoke at the request of the Committee. Dr. Bennett said he practiced as a gynecologist in Arizona since approximately 1980, but no longer practices obstetrics. He said i elective termination of pregnancy techniques, commonly called abortions, are very different fror medical term for a miscarriage is spontaneous abortion, which is often incomplete and the technique remaining products of conception are identical to a D&C. He said there is not a board certification, r nor a vein of practice in Obstetrics-Gynecology that is known as the abortionist people. He said as h it is important that the judge should have the ability to disqualify an obstetrician-gynecologist, such a has chosen not to terminate a viable pregnancy. However, it is important that a physician who t another physician be practicing and current in an area.

Ms. Lopez asked if the Committee could get back to the main aspect of S.B. 1036, and Chairman Que

Barry Halpern, Legal Counsel, Arizona Medical Association, spoke in support of S.B. 1036. He sug a medical crisis and the crisis is largely associated with the impact of medical malpractice litigation c have to make critical decisions everyday. He emphasized a big part of the problem relates to the qu who testify in these cases. Mr. Halpern pointed out it was the Legislature in 1975 that passed the me act in Arizona that says the standard of care by which a doctor's performance is measured is s Therefore, S.B. 1036 simply fleshes out the law that has been held constitutional for 27 years. Wh the integrity of the legal system as it relates to these kind of cases, which have a direct impact on t

availability of health care in Arizona. The idea there will be a problem finding experts in litigation added there are 70 medical specialty boards. Another favorable portion of the bill is that expert witi receive a contingency fee. Mr. Halpern said we are dealing with fairness and integrity. Every ma that has advanced required expert testimony and the Board of Medical Examiners is required to revie Physicians have been found to be below the standard of care by the Board of Medical Exami microscopic percentage of verdicts.

Mr. Halpern said Mutual Insurance Company of Arizona (MICA) supports the bill and the sugg insurance companies are in the shadows is inaccurate because all but MICA have disappeared from Halpern said this bill brings intellectual credibility to a process that does not work very well. He sta a problem with the constitutionality of the bill and the idea that privileges are distinct from this typ true. There is no "downside" to the "I am sorry" part of the bill.

In response to a query from Mr. Carpenter, Mr. Halpern said it is very unlikely that to avoid litigati would try to "board shop" because it is difficult to become board certified, and remain board certified

In response to Ms. Burns, Mr. Halpern said he was not involved with the drafting of this bill.

In response to Ms. Burns query regarding patients signing a waiver of rights as to certain events occ medical procedure is performed, Mr. Halpern explained that the fact a negative outcome appears on would not take it out of coverage of this bill.

Question was called that the 5-line Quelland amendment to S.B. 1036 dated 3/22/05 at adopted (Attachment 2). The motion carried.

Adrian Bain, representing self, spoke against S.B. 1036, saying it is a disgrace. Mr. Bain related to several personal experiences he and his family have had with the medical profession.

Chairman Quelland said he did not have time to read the names of all the people signed up in supp and asked that the secretary list those names in the Committee Meeting Minutes, as follows:

Donald Isaacson, Lobbyist, Arizona Assoc. of Homes & Housing for the Aging
David Landrith, Arizona Medical Association
Rip Wilson, Arizona Society of Cosmetic Surgeons
Kathy Boyle, Arizona Pharmacy Alliance
Kathleen Pagels, Arizona Health Care Association
Robert Shuler, Health Net of Arizona and Roosevelt Water Conservation District
Brenda Burns, Arizona Heart Hospital, Tucson Heart Hospital
Joseph Abate, Martinez & Curtis P.C.
Charles Bassett, Blue Cross Blue Shield of Arizona
J. Michael Low, Attorney, Mutual Insurance Company of Arizona (MICA)
Michelle Bolton, National Federation of Independent Business
Kelsey Lundy, Lobbyist, Arizona Association of Nurse Anesthetists
Steve Barclay, Mayo Clinic Arizona, CIGNA HealthCare of Arizona

Rory Hays, Lobbyist, Arizona Nurses' Association
Laurie Lange, Arizona Hospital and Healthcare Association
Anne Wendell, Catholic Healthcare West
Tara Plese, Arizona Association of Community Health Centers
Suzanne Gilstrap, Arizona Association for Home Care
Eric Emmert, Tempe Chamber of Commerce
Richard Bitner, Legislative Counsel, Arizona Colllege of Emergency Physicians
Laura Hahn, Arizona Academy of Family Physicians
Jon Dinesman, United Healthcare, Arizona Physicians IPA
Robert Garcia, M.D., representing self
Susan Wilder, M.D., representing self
Armaity Austin, M.D., representing self
Amalia Pineras, M.D., representing self
Jeff Wolfrey, M.D., representing self
Carlos Gonzales, M.D., representing self
Edward Schwager, M.D., representing self
James Dearing, D.O., representing self
Michelle May, M.D., representing self
Jim Burke, M.D., representing self
Jacque Chadwick, M.D., representing self
Carter Mayberry, M.D., representing self
Edward Perrin, M.D., representing self
William Thrift, M.D., representing self
Robert Matthies, M.D., representing self
Kathryn Busby, Touchstone Behavioral Health; Care 1st Health Plan
James Tunnell, Arizona Association of Industries
David Miller, Arizona Council of Human Service Providers
Jay Kaprosy, The Greater Phoenix Chamber of Commerce
Sue Chasin, Banner Health
Brian McAnallen, Scottsdale Healthcare
Susie Stevens, Urgent Care Association
Amanda Weaver, Arizona Osteopathic Medical Association
John Dougherty, Tucson Metropolitan Chamber of Commerce
Jim Norton, PacifiCare

Person opposed to S.B. 1036 who did not speak was Bryan Ginter, representing self.

Vice-Chairman Murphy moved that S.B. 1036 as amended do pass. The motion carriec vote of 9-0-0-0 (Attachment 3).

S.B. 1125, biomedical research commission – DO PASS

Vice-Chairman Murphy moved that S.B. 1125 do pass.

Chairman Quelland left the meeting, and Vice-Chairman Murphy assumed the chair.

Erin Harbinson, Majority Staff Intern, summarized S.B. 1125 which changes the name of the A Control Research Commission (ADCRC) to the Biomedical Research Commission and increases compensation members on the Commission may receive (Attachment 4).

Senator Barbara Leff, District 11, Sponsor, thanked the Committee for hearing the bill and asked for 1125.

Dr. Dawn Schroeder, Arizona Disease Control Research Commission (ADCRC), spoke in support of distributed a pamphlet, to which she referred when she explained the history and membership o (Attachment 5). The pamphlet also detailed the compensation of members on other Arizor commissions.

In response to a query from Mrs. Knaperek, Dr. Schroeder said the intention of this bill is to increase for Commission members to $200 per day that they serve, and explained the Commission mem received a raise since 1984.

Chairman Quelland resumed the chair.

Mrs. Rosati said she was astounded at a request for a raise from $30 per day to $200 per day.
Dr. Schroeder responded Commission members are appointed by the Governor and they do a consic of work outside of the meetings they attend, which cannot be compensated. This year the Commissi approximately 140 proposals

In response to Ms. Burn's question as to why the name of the Commission is being changed.
Dr. Schroeder responded said it is not a change in mission, but more accurately describes what the C always done.

Senator Leff explained this Commission is funded by the lottery.

In response to a query from Ms. Aguirre, Dr. Schroeder said the members of the Commission are travel at the same rate as state employees. Ms. Aguirre asked if the members are also paid by thei the days the Commission meets, and Dr. Schroeder said it depends on the employer. Some m Commission miss a day of work when they serve on the Commission.

In response to a query from Mrs. Rosati, Dr. Schroeder replied the Commission members are requir meeting per year, and usually hold four to six meetings.
She explained the Commission is one of the most frugal agencies in state government, with adminis 4.38 percent of program costs, including this raise.

Mrs. Rosati said she does not believe a volunteer position should pay $200 per day.

Question was called that S.B. 1125 do pass. The motion carried by a roll call vote

(Attachment 6).

S.B. 1133, disabled miners hospital; eligibility – HELD BY CHAIRMAN

Chairman Quelland announced that S.B. 1133 will be held.

S.B. 1137, AHCCCS; certified providers – DO PASS AMENDED

Vice-Chairman Murphy moved that S.B. 1137 do pass.

Elizabeth Baskett, Majority Staff Analyst, summarized S.B. 1137, which conforms state statutes witl Modernization Act of 2003 (MMA) by authorizing the Arizona Health Care Cost Containment Syste to certify Medicare health plans and requiring persons who are dually eligible for Medicaid and Me receiving prescription drugs from Medicare authorized entities beginning January 1, 2006 (Attacl added the bill contains an emergency clause.

Vice-Chairman Murphy moved that the 5-line Quelland amendment to S.B. 1137 da 11:22 a.m. be adopted (Attachment 8).

Ms. Baskett summarized the amendment.

Chairman Quelland noted that the sponsor of this bill, Senator Carolyn Allen, was unable to be in date.

January Contreras, Legislative Liaison, Arizona Health Care Cost Containment System (AHCCCS), of S.B. 1137.

Question was called on the motion that the 5-line Quelland amendment to S.B. 1137 at 11:22 a.m. be adopted (Attachment 8). The motion carried.

Vice-Chairman Murphy moved that S.B. 1137 as amended do pass.

Mrs. Knaperek asked if rule-making will be waived since the bill has an emergency clause.

Lynn Johnson, Arizona Health Care Cost Containment System (AHCCCS), responded AHCCCS rule-making package for the federal government for the main part of the program which goes into ef 2006. She said there would be public hearings.

The motion carried by a roll call vote of 9-0-0-0 (Attachment 9).

S.B. 1204, naturopathic physicians; board; omnibus - DISCUSSED AND HELD

Vice-Chairman Murphy moved that S.B. 1204 do pass.

Erin Harbinson, Majority Staff Intern, summarized S.B. 1204 which clarifies Naturopathic Physi Medical Examiners (Board) statute and modifies licensure requirements for pharmacotherapeutics (A

Mrs. Knaperek questioned if the 60-hour course was required for reciprocity only or is required for a Physicians. Ms. Baskett replied that the 60-hour course and exam is to reorganize within statute v required for those who are not licensed in Arizona for January 1, 2005.

Mrs. Knaperek questioned if anyone licensed after January 1, 2005, will have to deal with the additio 60-hour course and exam for reciprocity. Ms. Baskett said it would be best for a member of the Bc that issue.

Chairman Quelland noted there was no one present from the Board to answer questions regarding S.E

Vice-Chairman Murphy withdrew his motion that S.B. 1204 do pass.

Chairman Quelland announced that S.B. 1204 will be held.

S.B. 1250, newborn screening program – DO PASS

Vice-Chairman Murphy moved that S.B. 1250 do pass.

Elizabeth Baskett, Majority Staff Analyst, summarized S.B. 1250 which expands the types of test i Arizona Newborn Screening Program (Program) and authorizes the Department of Health Services fees charged for the Program (Attachment 11).

Monica Attridge, Arizona Consortium for Children with Chronic Illness, spoke in support of S.B. 1250, saying that she is the mother of a child who has cystic fibrosis and detailed the proces daughter was diagnosed with the disease. She said if a simple test had been administered at birth would not have had to suffer with this disease.

Carlos Ortega, representing self, urged the Committee to pass S.B. 1250, saying his granddaughter pa years ago when she was two and one-half years old. Almost a month after her passing, the family had a genetic disease that could have been discovered at birth with the proper testing, and she cc treated.

Alisan Patten and Patty Rather, East Valley Women's League, spoke in support of S.B. 1250 and dist to the Committee (Attachment 12).

Ms. Aguirre asked for a list of the specific tests that will be included under this bill.

Rose Conner, Assistant Director, Public Health Services (PHS), Arizona Department of Health Ser explained the newborn screening program screens for eight metabolic disorders. This bill will allow to go into the rule making process to add additional metabolic and congenital disorders. Those will l Rules and there must be a cost benefit analyses as new tests are added. The constituency groups PH are recommending a total of 29 tests which would include metabolic, congenital, and hearing disorde

Mr. Carpenter asked if there is a test for strep, and Ms. Conner responded strep is not a congenital d bacterial infection and would not be included under this bill.

Ms. Burns stated it was her understanding that there will be a central database for these tests, and a will be included. Ms. Conner responded the database is confidential, is maintained at the DHS an personal identification. When a disorder is identified, that information is shared with the parents and physician. Access to that information cannot be given to insurance companies or be made public.

In response to Ms. Burns question regarding contracting out this program, Ms. Conner said the Ad works with DHS. In the past when Request for Purchase (RFP) have been issued, there is a confider which works through the procurement process and is isolated from the State Laboratory, which expected bidder.

Deborah Houk, Dave Houk, and Austin Houk, representing themselves, spoke in support of S.B. 1250 saying their family is a living testimonial to the success of newborn screening. Ms. Houk detailed the history of the particular genetic disorder that affects her family.

Question was called on the motion that S.B. 1250 do pass. The motion carried by a roll 0-0-0 (Attachment 13).

S.B. 1295, stem cell research study committee – DO PASS

Vice-Chairman Murphy moved that S.B. 1295 do pass.

Erin Harbinson, Majority Staff Intern, summarized S.B. 1295, which establishes the Stem Cell R Committee until December 31, 2006 (Attachment 14).

Ms. Lopez moved that the 3-line Lopez amendment to S.B. 1295 dated 3/22/05 at 3:41 p.m. be adopted (Attachment 15).

Ms. Harbinson summarized the Lopez amendment.

Mrs. Rosati asked if the committee will be studying embryonic stem cells. Ms. Harbinson said her u that any stem cells could be studied.

Mr. Carpenter questioned if this committee is set up to determine what type of stem cell research th can they set their own limitations.

Ms. Burns said in looking at the bill it does not define or limit the type of stem cell research. The committee is to determine if we need to regulate certain types of stem cell research. Chairman Q with Ms. Burns.

Mrs. Knaperek said this committee will be an opportunity to set the record straight regarding stem cel

Question was called that the 3-line Lopez amendment to S.B. 1295 dated 3/22/05 at adopted (Attachment 15). The motion failed by a hand vote of 4 ayes and 5 nays.

Question was called that S.B. 1295 do pass. The motion carried by a roll call v (Attachment 16).

Without objection, the meeting adjourned at 12:13 p.m.

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Yvette O'Connor, Committee Secretary
March 28, 2005

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

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COMMITTEE ON HEALTH

2

March 23, 2005

---------- DOCUMENT FOOTER ---------

EXHIBIT B

ASA Judicial Council
Findings Regarding Expert Witness Testimony
by J. Antonio Aldrete, M.D.

The ASA Board of Directors censured ASA member J. Antonio Aldrete, M.D. for failing to abide by the ASA "Guidelines for Expert Witness Qualifications and Testimony" ("Guidelines"). The Resolution of Censure, approved August 19, 2007, also admonished Dr. Aldrete that an expert witness must clearly distinguish between opinions regarding what the standard of care is and what the expert believes the standard of care should be.

In accordance with ASA Administrative Procedure No. 6, Section XIII-F, the Judicial Council findings submitted to the ASA Board of Directors are posted below.

FINDINGS

1. Michael F. Mulroy, M.D. brought a complaint (the "Complaint") against J. Antonio Aldrete, M.D. alleging that Dr. Aldrete failed to abide by the ASA Guidelines for Expert Witness Qualifications and Testimony (the "Guidelines") in expert witness testimony given in *Thomas v. Novant Healthcare, Inc, et al.*, No. 04 CVS 3368, Superior Court for Forsyth County, North Carolina (the "*Thomas* case"). Dr. Aldrete served as an expert for the plaintiffs. Dr. Mulroy served as an expert for the defendants. Dr. Aldrete's testimony was given by deposition on April 26, 2005. The *Thomas* case was dismissed by plaintiffs without any payment or settlement on November 28, 2005. Drs. Mulroy and Aldrete are members of the ASA and are bound by the ethical requirements set forth in the Guidelines.

2. The Complaint and Dr. Aldrete's written response were reviewed by the Administrative Council. The Administrative Council found that there appeared to be a substantial question whether Dr. Aldrete's testimony violated the Guidelines. The matter was therefore referred to the Judicial Council for a hearing. We find that the matter is properly within our jurisdiction as prescribed by ASA Bylaws.

3. The Judicial Council held an oral hearing on March 24, 2007. Each member spent approximately 40-50 hours reviewing the written record, including Dr. Aldrete's voluminous responses to the Compliant. The Judicial Council also heard testimony and argument on behalf of the Administrative Council and Dr. Aldrete.

4. The patient in *Thomas* underwent a post partum tubal ligation at a Forsyth, North Carolina hospital in 2001. Anesthesia was administered by an anesthesiologist and nurse anesthetist working under his supervision. Chloroprocaine was injected through a three-hole catheter that had been placed in the epidural space and used successfully for delivery approximately 14 hours earlier.

5. The patient experienced a high spinal (C5). It is assumed for purposes of this matter that the high spinal was the result of unintended delivery of chloroprocaine

into the subarachnoid space. It is further assumed that the patient developed residual neurological dysfunction as a result of the subarachnoid injection of chloroprocaine.

6. Dr. Aldrete testified that it was below the standard of care to administer chloroprocaine using a catheter that had been left in place after delivery some 14 hours beforehand because 50 percent of catheters left afer delivery migrate to the subdural or subarachnoid space.

7. Chloroprocaine is FDA-approved for use as an epidural anesthetic; it is specifically recommended for post partum tubal ligation by one of the leading textbooks on obstetrical anesthesia; and it was commonly used in North Carolina for post-partum tubal ligations in 2001. Chloroprocaine is not approved for spinal anesthesia, that is, for injection into the subdural or subarachnoid space.

8. Dr. Aldrete testified, "I read an article that says 50% of the catheters that are left after obstetrical [procedures] – migrate into either subdural or subarachnoid space." He reiterated several times that catheters "frequently" perforate the dural tissue: "I show you that 50% of catheters placed epidurally if left . . . longer than for the delivery . . . migrate into the subarachnoid space." Dr. Aldrete concluded that "putting a catheter that migrates and proceeding to inject the anesthetic, that is negligence." Taken as a whole, Dr. Aldrete's testimony is most fairly interpreted as stating that it was negligent to use an indwelling epidural catheter to administer an anesthetic not approved for use in the subarachnoid space because 50 percent of such catheters migrate to the subdural or subarachnoid space.

9. Dr. Aldrete did not identify the article referred to during his deposition however, in an addendum to his response to the Complaint, he identified Phillips D.C., "Epidural Catheter Migration During Labour," *Anaesthesia*, 1987, volume 42, 661-63, as the basis of his testimony. Dr. Aldrete also offered nine other publications in support of his testimony regarding the incidence of catheter migration.

10. The Judicial Council carefully reviewed the literature cited by Dr. Aldrete. The Phillips article states that it found that 50% of epidurals migrated inward or outward by ½ to 3 cm, but it does not indicate what, if any, percentage of the catheters migrated into the subdural or subarachnoid space. Several of the articles offered by Dr. Aldrete are case reports of individual incidents of migration. They state that subdural migration is "possible," "very rare" and "uncommon." Based upon the evidence offered by Dr. Aldrete, the Judicial Council concludes that there is no support in the literature for his testimony that indwelling catheters migrate into the subdural or subarachnoid space "frequently," much less 50% of the time.

11. Dr. Aldrete's testimony condemns the use of an indwelling catheter to perform a tubal ligation 14 hours after surgery based on the purported 50% risk of catheter migration to the subdural or subarachnoid space. As such, his testimony violated Guideline 2: "The Physician's testimony should reflect an evaluation of performance in light of generally accepted standards, reflected in relevant literature, neither condemning

performance that clearly falls within generally accepted practice standards nor endorsing nor condoning performance that clearly falls outside accepted medical practice." This testimony condemns the use of an indwelling catheter to administer an anesthetic inappropriate for use in the subarachnoid space based upon a patent misinterpretation of the relevant literature on catheter migration.

12. Dr. Aldrete also testified that the use of a three hole catheter for aspiration to detect possible misplacement of the catheter fell below the standard of care. He testified that a three hole catheter presented a risk that the end-hole could penetrate the subarachnoid space while the lower, side holes drew fluid from the epidural space: "The portion of the catheter has one hole, is in the subarachnoid space, which is probably what happened, and two holes are outside. What she aspirates, it would be negative." Dr. Aldrete testified that the aspiration technique fell below the standard of care, "Because it was [performed with] a catheter with three holes, yes."

13. In his written response to the Complaint however, Dr. Aldrete acknowledged that use of single hole vs. multi-hole catheters is a matter of individual preference: "Neither one, or the other, is the 'standard of care.'" "There is no agreement as to the multi vs. single eye catheter, with plenty of evidence for each side." Likewise, at Judicial Council hearing, Dr. Aldrete acknowledged that "it's a matter of opinion." "I ... would have been more comfortable [with] one-hole epidural catheters, but I have worked in institutions where they only have three-hole catheters, and I used them, but if it is my choice, I use one." There is ample evidence in the record to support the conclusion that the standard of care did not require use of a single-hole catheter for aspiration.

14. Although Dr. Aldrete offered reasoned arguments and medical literature in support of his preference for the single hole catheter, his deposition testimony failed to distinguish between his personal preference and the standard of care. Thus, we find that Dr. Aldrete's testimony violated Guideline 2: "The Physician's testimony should reflect an evaluation of performance in light of generally accepted standards, reflected in relevant literature, neither condemning performance that clearly falls within generally accepted practice standards nor endorsing nor condoning performance that clearly falls outside accepted medical practice." This testimony condemns the use of a three hole catheter as below the standard of care despite the acknowledgment before the Judicial Council that there was no standard of care requiring use of a single hole catheter.

15. The Administrative Council proved the foregoing violations of the Guidelines by clear and convincing evidence. The Administrative Council also contended that Dr. Aldrete's testimony violated the Guidelines in several other respects however, it did not meet the high standard of proving those other alleged violations by clear and convincing evidence.

EXHIBIT C

ARIZONA MEDICAL BOARD
SCOPE OF PRACTICE GUIDELINES

Introduction

Medical Boards make basic assumptions when resolving Scope of Practice issues for physicians. Paramount among those assumptions is that the public must be protected from poorly trained or unqualified physicians.

The Arizona Medical Board developed these Scope of Practice Guidelines to assist physicians in assessing their specific qualifications when they make the decision to undertake new procedures, employ new technologies or migrate into new areas of medical practice for which they have not received formal post graduate/residency training.

Preamble

The Arizona Medical Board (Board) recognizes that the practice of medicine is dynamic with respect to scientific and technological advancements. Physician practice patterns are changing with evolving medical knowledge and treatment modalities, new technologies, and fluctuations within health care specialties and the healthcare workforce. Consumer demand has contributed to changes in practice patterns as well.

Laws defining the practice of medicine, in Arizona and nationwide, are broadly defined and do not restrict a licensee from adopting new technologies, employing new procedures, broadening one's scope of practice or even entering into a different area of practice from which he or she was formally trained. While the law may not restrict these changes in practice patterns, the Board does have the obligation to ensure patient safety through the competent practice of medicine.

Prior to licensure, physicians must graduate from an approved medical school, complete an approved residency program and pass standardized tests. Physicians who complete these necessary requirements are presumed competent to practice within the field in which they received their formal training. Formal training requirements must meet national standards and are heavily regulated and scrutinized. A physician who meets the qualifications for licensure has an unlimited scope of practice. The standard of care, however, requires physicians to be trained, qualified and competent to perform medical procedures before engaging in a particular practice or field of medicine.

Post-formal training and continuing medical education does not receive the same level of scrutiny. While, it is critical for physicians to remain competent and current in the practice of medicine, this training may not be adequate for physicians trying to practice specialty care far afield from their formal post graduate/residency training.

Guidelines

Physicians who practice in specialty areas, whether or not they received formal training, must be competent in all procedures they perform regardless of where they received their training.

For example, internists, who also perform dermatological procedures, must be competent in all procedures that they perform. Likewise, a radiologist practicing radiology for many years may require additional training before being competent to practice emergency department medicine or urgent care medicine.

Areas in which the Board has recently seen physicians expand their scopes of practice include:

- Pain management
- Cosmetic surgery
- Treatment of Erectile dysfunction

While these areas are not inclusive of all the areas in which physicians have expanded their scopes of practice, they represent areas in which physicians have found themselves outside their training and skill levels – at times, to the detriment of their patients. Physicians must be aware of any complications that can arise during the course of a procedure and be prepared to adequately address them. Physicians administering anesthesia during office based surgery must also be aware of the Board's Office Based Surgery Rules, specifically R4-16-702(A)(3)(d), which requires "...the physician and health care professional administering the sedation to rescue a patient after sedation is administered and the patient enters into a deeper state of sedation than what was intended by the physician."

Obtaining Practice Area Expertise and Considerations for an Expanded Scope of Practice:

Practice area expertise can be obtained in a number of ways, including: mini-residency programs, informal training by a hospital or group practice, seminars prepared by private organizations, and direct training by medical equipment manufacturers and pharmaceutical companies. Regardless of how expertise is obtained, physicians should consider the following factors before engaging in an expanded practice:

- What competencies (clinical knowledge, judgment and skills) are required in order to provide services safely and competently?
- What are the prerequisites and the core education needed in terms of undergraduate and postgraduate education and clinical experience?
- Will the education received meet the standards and be recognized by an independent and formally accredited educational organization or institution?
- Is the expanded scope of practice appropriate for the education and training received? How does that education compare to that of other practitioners providing the same service?
- What goals must be established for attaining and retaining competence in that specialty area?

Competence Self-Assessment:
Once additional training is complete, and prior to beginning an expanded practice, physicians may elect to obtain an assessment of their skills. Assessment and evaluation programs are available through institutions such as the University of California San Diego Physician Assessment and Clinical Evaluation (PACE) program or the Colorado Center for Personalized Education for Physicians (CPEP). Additional assessment tools may be available through specialty medical societies or through county and state medical associations.

Summary:
These guidelines were developed to assist physicians in their understanding of the Arizona Medical Board's position on Scope of Practice issues and the Board's obligation to protect the public through the competent practice of medicine. The Board expects physicians to maintain their educational and technical competencies for their current practices. The Board strongly recommends that these Scope of Practice Guidelines be carefully reviewed by all physicians holding current licenses to practice medicine in Arizona.