

Connecticut Association of Nurse Anesthetists

377 Research Parkway, Suite 2D
Meriden, CT 06450

Written Testimony of
Dianne M. Murphy, RN, APRN, CRNA, MS
Connecticut Association of Nurse Anesthetists

Raised Bill No. 5258, An Act Implementing the Recommendations of the Program Review and Investigations Committee Concerning Scope of Practice Determinations for Health Care Professions.

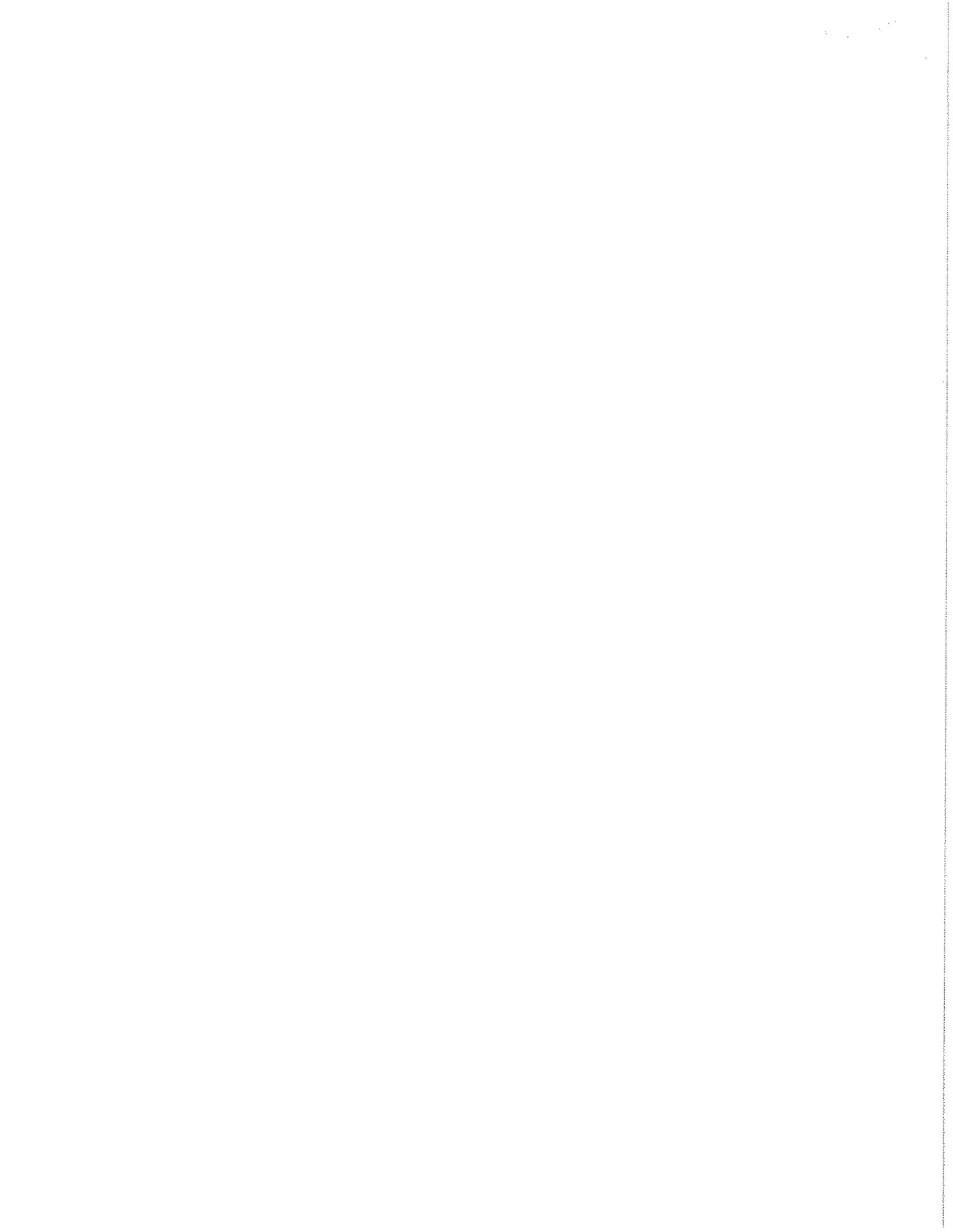
Thursday, February 25, 2010
General Assembly's Program Review and Investigations Committee and Public Health Committee

Good Morning Senators Kissel and Harris, Representatives Mushinsky and Ritter, My name is Dianne Murphy. I live in Waterbury. I'm a licensed Registered Nurse (RN), a Certified Registered Nurse Anesthetist (CRNA), a licensed Advanced Practice Registered Nurse (APRN) and I hold a Master's Degree in Biological Sciences, specializing in anesthesia. Today I am here to speak as State Government Affairs Representative for the Connecticut Association of Nurse Anesthetists (CANA), which represents nearly 400 CRNA members. Thank you for the opportunity to testify on Raised Bill No. 5258, "An Act Implementing the Recommendations of the Program Review and Investigations Committee Concerning Scope of Practice Determinations for Health Care Professions."

The PRI and Public Health Committees should be aware that CANA has not sought legislative change in at least a decade, has no request at present and no immediate plans to seek change. Still, several times over the last decade we have been forced to testify in defense our practice and educate the legislature. We find ourselves in the same position today because of the Scope of Practice Determinations for Health Care Professions legislation.

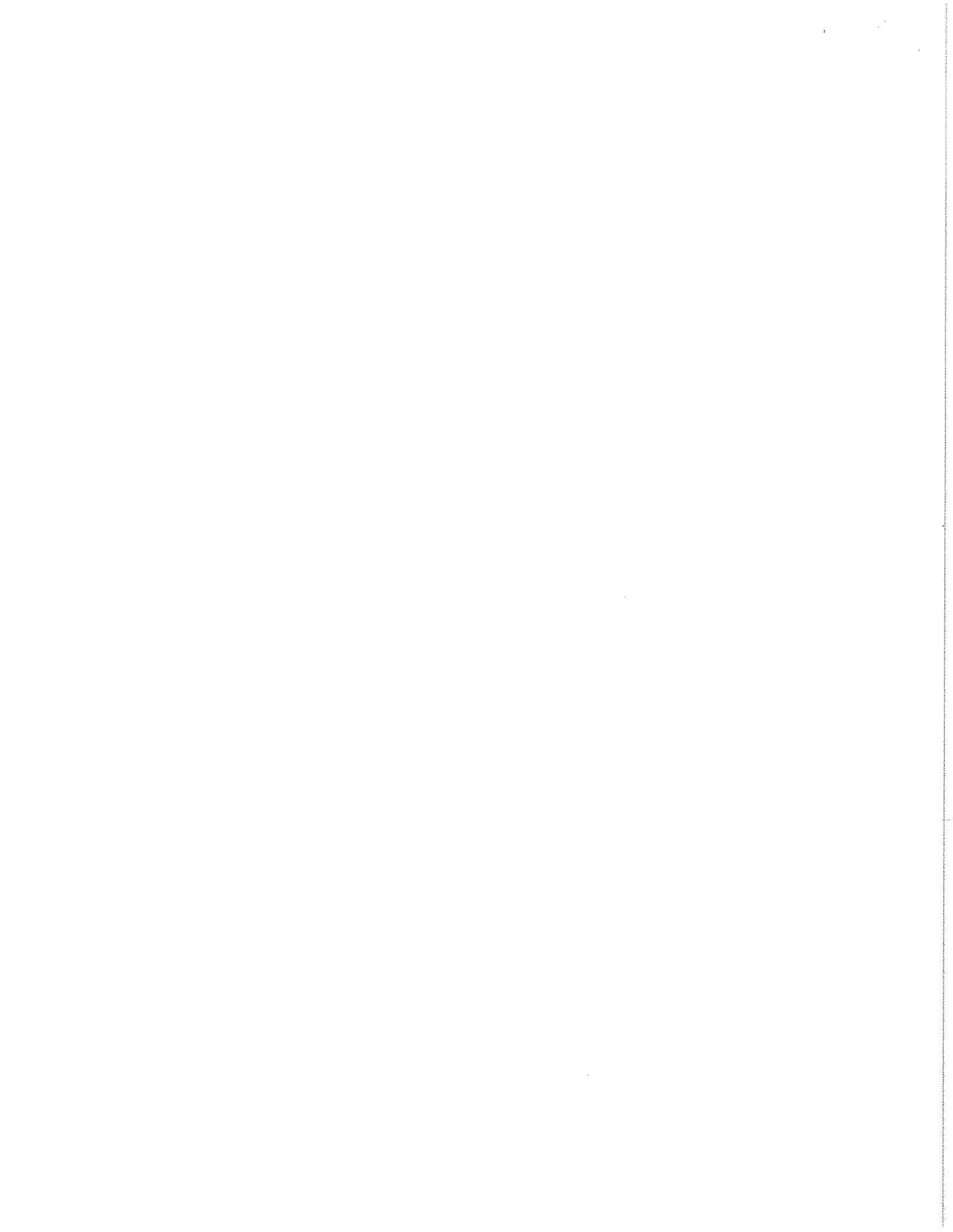
CANA understands that the legislature would like a system to assess scope of practice requests. We sympathize with that need. We also have serious concerns that the elements of Raised Bill No. 5258 may not provide a level playing field. We have reviewed the report and the proposed legislation in great detail and must conclude that the proposal is seriously flawed. In the broadest terms, it demonstrates a lack of respect for the education and professionalism of non-physician health professionals. It is founded on the faulty assumption that non-physician scope of practice issues are attempts to encroach upon the physicians' scope of practice and would entrench an adversarial approach to scope of practice questions while at the same time give physicians the upper hand in the process. In short, the legislation proposes a process that is bias in favor of physicians.

- ❖ Raised Bill No. 5258 assumes that all legislative changes equal scope of practice changes for health professions. The question of exactly what constitutes a scope of practice change and what entity determines it is unasked and unanswered.
- ❖ This bill reflects a key point raised at the PRI Staff Briefing, which is, and we contend an example of its physician bias. The PRI Staff Briefing stated that Connecticut's scope of practice for physicians is unrestricted in medicine and surgery. It also stated that all



other health care professions are judged within this context. It is in no way part of the education or training of physicians to adjudicate the scope of practice or to preside over all other health care professions.

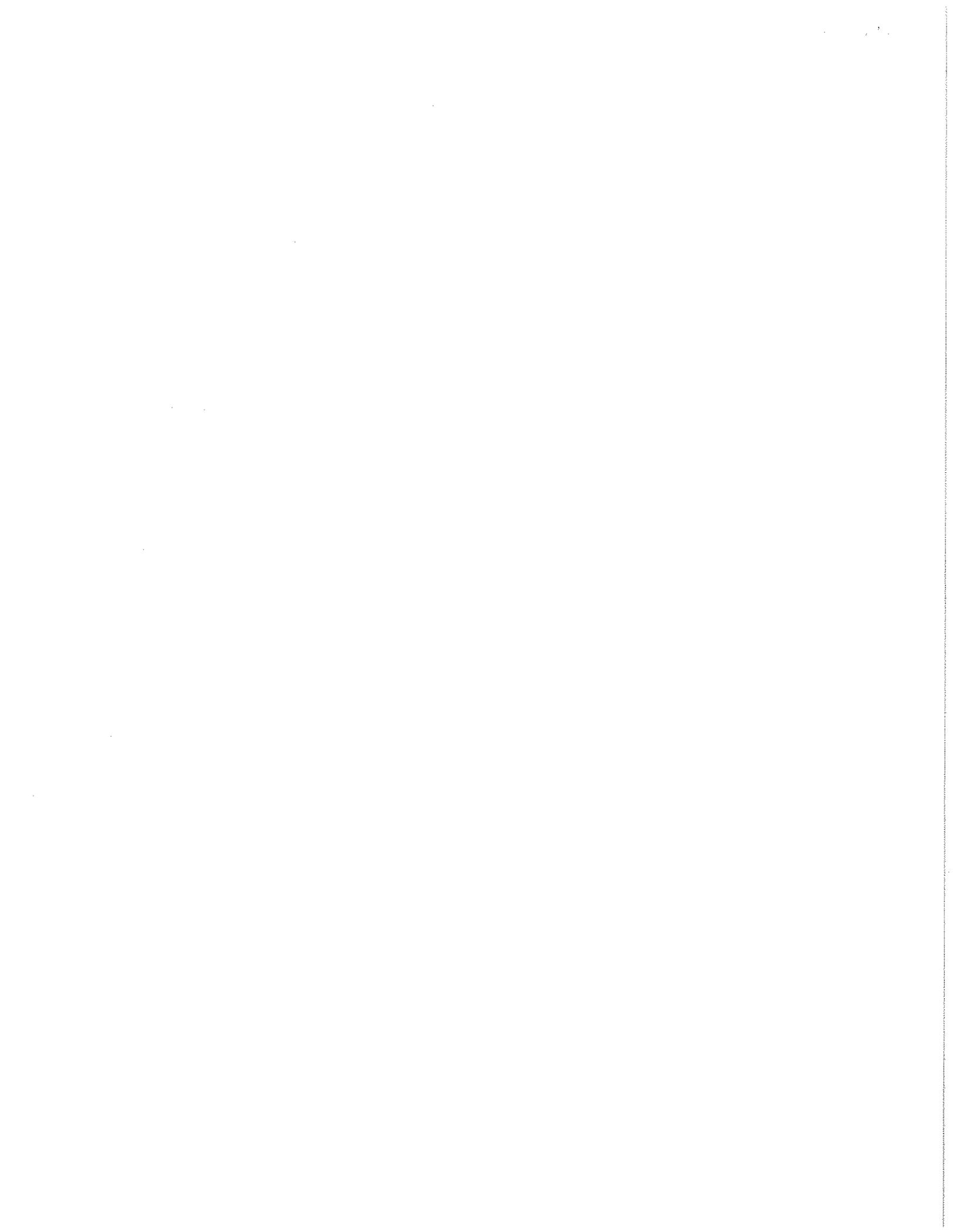
- ❖ All health professions but one are subject to intense scrutiny. Physicians who broaden their practice are not affected by the requirements of this Raised Bill.
- ❖ Raised Bill No. 5258 is a mirror image of the American Medical Association (AMA) Scope of Practice Campaign Advocacy Resource Center's document "Creation of State-based Scope of Practice Review Committees Legislative Template". And if that bias were not enough, this Raised Bill places additional and unreasonable obligations on the proponents of a scope change rather than the committee responsible for the process, there by making the process even more cumbersome to the proponent of the legislation and stifling to the citizens of this state in need of improved access to care.
- ❖ An institutionalized and systematic opposition would be born of this scope of practice review committee process to changes by any non-physician health professional. The AMA's public position is to oppose any scope of practice "expansion" by non-physician health professionals. The AMA scope of Practice Partnership that was created for expressly as a tool to assist in attempts to stifle efforts by non-physician health professionals to make any changes in their scopes of practice. Given that background, it is startling to see the closeness of the requirements of Raised Bill No. 5258 to the AMA's political document, and it seems highly unlikely that a fair, reasonable process for scope of practice determination can be created.
- ❖ Documents regarding scope of practice changes are available and have been referenced in the PRI report, but are not reflected in the essentials of the Raised Bill. This Raised Bill does not replicate a nationwide trend to maximize the contributions of the full array of highly educated and highly skilled healthcare professionals, each practicing within and bound by their professions' scope of practice. Rather, it would institutionalize a more individual group bias against all health professions but one, the physician.
- ❖ Proponents of legislation are required to deliver all supporting documentation to opponents. What is reasonable about doing all of the opponents' work for them? Is it not more reasonable for opponents to create their own arguments? Primary opposition to any scope of practice change is organized medicine, as evidenced once again by the AMA's Scope of Practice Partnership developed specifically for the purpose of opposing any scope of practice "expansion" by non-physician health care professionals.
- ❖ Licensed Health care professionals forced to jump over artificially constructed hurdles that serve as a barrier to prevent professionals from delivering services they are able to safely perform.
- ❖ What is the relevance of the history of requested scope of practice changes? If a profession has asked for a change more than one time what then becomes unreasonable to request? This history has no bearing on the professionals' ability to provide a service. It is only relevant to demonstrate that the service can be provided safely and competently.
- ❖ Reporting on the economic impact on the profession creates a double standard. Physicians who already have all-encompassing scopes of practice to not need to



request a change and therefore never have economic interest evaluated. Conversely, all other professionals have motives dissected. It is anticompetitive.

- ❖ It is unclear how comprehensive a summary of regional and national trends would need to be. An entire history of similar scope practice initiatives would be too broad and burdensome to undertake thereby suppressing any potential requests by professions who do not have significant support. This limits any potential improvement in access to care.
- ❖ It is unreasonable to expect a health care professional group to identify any and all opponents to objectively assess the history of interactions and efforts to discuss the issue and summarize areas of opposition and agreement. This option requires the proponents, once again, to do the opponents work for them.
- ❖ What can possibly be an “impartial” health care professional to evaluate a scope of practice change. Who determines what profession would be impartial?
- ❖ Attached, find the AMA document “Creation of State-Based Scope of Practice Review Committees” Legislative Template to see the following similar elements:
 1. Committee membership elements a compilation of Arizona, New Mexico, Texas AMA approaches. Pp5-6
 2. Deadline concept for initial notification of legislature. P9
 3. Information required of proponent. Pp9-10, d: i – ii, v
 4. Additional burden of information requirements placed on proponents in Bill 5258, P11
 5. Potential harm, benefits, economic impact and access to care, need for a change, review of other states practices. b: iv 1 2, 3, 5; vi, vii.

The Connecticut Association of Nurse Anesthetists appreciates the work done and time spent by the program review committee and its staff in preparing a report and recommendations, and understands that its intent was a nonpartisan endeavor. We also understand that while its intent was to remain nonpartisan, the final components of Raised Bill No. 5258 appear to be significantly influenced by physicians who openly attempt to place a professional strangle-hold on all non-physician providers. We believe that adopting this model is not in the best interest of the citizens of Connecticut and would significantly set the State of Connecticut backwards in contrast to trends across the nation intended to improve access to care.



Creation of State-based Scope-of-Practice Review Committees

Legislative Template

Scope-of-Practice Campaign
Advocacy Resource Center



2008

**Scope of Practice Campaign:
Creating a State-based Scope of Practice Review Committee**

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**Scope of Practice Campaign:
Creating a State-based Scope of Practice Review Committee**

LEGISLATIVE TEMPLATE

This template provides an overview of various potential elements of legislation and/or regulation to address the creation of state-level scope of practice review committees..

I. GENERAL OVERVIEW

State legislatures are routinely overwhelmed with the number of scope of practice proposals they are asked to consider. Oftentimes legislators do not have available to them a thorough, professional and independent understanding of the health and economic implications of such proposals. The creation of a state-level scope of practice review committee, that assesses scope of practice initiatives *prior to* their introduction at the legislative or regulatory rule-making level, *may* serve to expose such initiatives to the scrutiny of multiple health care disciplines. These committees have the potential to encourage debate by those most appropriately positioned to consider such issues. They provide a procedure for objective review of proposed changes in the scope of practice of nonphysician practitioners licensed in their state to ensure that the changes contribute to the improvement of the overall health of the state's citizens.

Several states have passed legislation similar to the proposed model bill, most notably Arizona and Nebraska. While Arizona has experienced much success with their law, Nebraska's experience has been more tempered. In addition to the Arizona and Nebraska laws, New Mexico and Texas have seen legislation introduced on this issue in the last 2-3 years. Each one of these bills (AZ, NE, NM, TX) is unique and state specific. For example, each state has addressed the composition of the scope of practice review committee in a different manner (i.e. Arizona's committee is primarily composed of legislators, while Texas' committee is a mixture of legislators, state agency leaders, academics and public members). As a result, it is strongly recommended that any state medical association considering this type of legislation take into account its unique state needs, political climate, etc., when determining committee composition and other provisions contained in such legislation.

In this advocacy tool, we have endeavored to highlight various state laws that have attempted to compose scope of practice review committees. We hope that the information in this template will be a useful tool for states that wish to advocate for such legislation.

NOTE:

The AMA does not have model state legislation that addresses the creation of scope of practice review committees, nor is there specific AMA policy that addresses this issue. The AMA's Advocacy Resource Center (ARC) is currently working with staff from several state medical associations that are considering the introduction of this type of legislation during the 2008 legislative sessions. This template provides the Federation with a proactive mechanism that establishes review committees that span the authority of more than one health professional regulatory board in the state. Notably, the template combines the "best of" provisions from legislation introduced on this issue to date and allows for flexibility when defining the composition of the scope of practice review committee.

II. LEGISLATIVE PURPOSE

The following is a compilation of the "best of" provisions from all legislation introduced on this issue. This is meant only as an example and can be altered on an as needed basis:

The Legislature hereby finds and declares that:

- a. *The Legislature is routinely overwhelmed with the number of proposals it is asked to consider that recommend changes in healthcare practitioner scopes of practice.*
- b. *Oftentimes legislators may not have available to them a thorough, professional and independent understanding of the health and economic implications of such recommendations on an individual basis.*
- c. *Currently, when a healthcare practitioner scope of practice change is proposed, the [INSERT NAME OF STATE] Legislature must consider many complex issues in a relatively short time frame.*
- d. *Effective legislative decision-making is dependent on each legislator having access to balanced, thoroughly researched information.*
- e. *The purpose of this Act is to:*
 - i. *Provide a procedure for objective review of proposed changes in the scope of practice of healthcare practitioners licensed in this state to ensure that the changes contribute to the improvement of the overall health of people in this state; and*

- ii. *Establish a committee to make recommendations to the [INSERT NAME OF STATE] Legislature.*

III. APPLICATION

a. In General

The legislation should cover any health professional group or organization or individual that proposes to increase the scope of practice of a health profession.

b. Examples of Legislative Language

"'Applicant group' means any health professional group or organization, any individual or any other interested party that proposes that any health professional group not presently regulated be regulated or that proposes to increase the scope of practice of a health profession."
ARIZ. REV. STAT. ANN. § 32-3101 (I).

"'Applicant group' shall mean any health professional group or organization, any individual or any other interested party that proposes that any health professional group not presently regulated be regulated or that proposes to increase the scope of practice of a regulated health profession."
NEB. REV. STAT. § 71-6204.

"... A member of a licensing board, a licensee or the licensing board or any other person seeking a change in the scope of practice of a health profession..." NM SB 381 (First Session, 2005) (Sec. 4(A)).

"... A person who seeks to change the scope of practice of a health profession, including a person who is a member of the relevant licensing entity or a license holder in that profession..."
TX HB 2706 (2005) (Sec. 113.101(a)).

IV. DEFINITIONS

Every state will have to determine what definitions it needs to provide in order to ensure this legislation is clear and unambiguous. Each statute or piece of legislation discussed in this template differs in this regard. The following is a sampling of definitions that ARC staff recommends that any state medical association consider prior to introduction of this type of legislation:

- a. *"Applicant group" means any health professional group or organization, any individual or any other interested party that proposes to increase the scope of practice of its profession.*

- b. "Committee" means the Scope of Practice Review Committee.
- c. "Health profession" means a health-related activity or occupation for which a person must hold a license under this title.
- d. "License" includes a license, certificate, registration, permit, or other authorization issued by a licensing entity.
- e. "Licensing entity" means an agency, board, department, commission, or other entity that issues a license under this title to practice a specific health profession.
- f. "Scope of practice" means those activities that a person licensed to practice a health profession is permitted to perform, as prescribed by the appropriate statutes and by rules adopted by the appropriate licensing entity.

V. REQUIREMENTS

- a. Composition of the Scope of Practice Review Committee
 - i. When establishing a scope of practice review committee, a state should ensure that it is administratively attached to a specific state agency.
 - ii. The members of the Committee ought to be defined in statute.¹

DRAFTING NOTE:

Arizona approach: consisting of five members of the senate appointed by the president of the senate, one of whom shall be a member of the senate appropriations committee, and four members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be a member of the house of representatives appropriations committee. Selection of members shall be based on their understanding and interest in legislative and oversight functions. Not more than three appointees of each house shall be of the same political party. The president and the speaker shall designate one of their appointed members as chairperson of their respective delegations. The chairperson of the senate committee shall serve for the term of each legislature. The chairpersons of the senate committee shall alternate. The president of the senate and the speaker of the house of representatives shall also serve as ex-officio members of the committee.

¹ The issue of committee composition is a critical one. Several states (AZ, NE, NM, TX) have approached the committee composition issue, which the resulting legislative language differing significantly from one state to the next. Any state medical association considering this type of legislation needs to consider its unique state needs, political climate, etc., when determining committee composition.

² ARIZ. REV. STAT. ANN. § 32-3101 et seq.

DRAFTING NOTE (cont.):

Nebraska approach: The director [of Regulation and Licensure] with the advice of the [state] board [of health] shall appoint an appropriate technical committee to examine and investigate each application. The committee shall consist of six appointed members and one member of the board designated by the board who shall serve as chairperson of the committee. The chairperson of the committee shall not be a member of the applicant group . . . or any health profession which is directly or indirectly affected by the application. The director shall ensure that the total composition of the committee is fair, impartial, and equitable. In no event shall more than two members of the same regulated health profession, the applicant group . . . serve on the technical committee.

New Mexico approach: The commission responsible under the contract is the New Mexico Health Policy Commission, which is an independent state agency whose mission is to improve access and quality health care for all New Mexicans by providing timely, relevant health care information and analysis on health policy research and planning issues. This commission has the authority to appoint an . . . ad hoc review panel of sufficient numbers and persons to review and make recommendations on the proposed change. Such panels shall include one or more members of the licensing board for the health profession in which the proposed change in scope of practice originates, at least one additional member from the profession from which the proposed change originates, who shall be from the professional association of that profession, and (3) shall have at least one-fourth of its membership as individuals who do not have an economic interest in the profession originating the request, or change in scope of practice.

Texas approach: (a) The commission consists of the following members: (1) the commissioner of the Department of State Health Services, as an ex officio member; (2) the chair of the Health Board who works on the Texas Health Board; (3) a representative of the Center for Public Policy, from the University of Texas at Austin; (4) a representative of the University of Houston; (5) a representative of the legislative council who has expertise in scope of practice issues; and (6) a representative of the state. (b) A member who is an employee of a state agency or representative of an institution of higher education shall be designated by that agency or institution. (c) The governor shall appoint the public members of the commission.

³ NEB. REV. STAT. § 71-6201 et seq. Notably, Nebraska's law provides that the technical committees file a report with the state board of health and the director of regulation and licensure. The state board of health then files a separate report with the director of regulation and licensure. Finally, the director of regulation and licensure prepares a final report for various members of the Legislature.

⁴ NM SB 381 (First Session, 2005)

⁵ TX HB 2706 (2005)

- iii. If a state decides to include, as a member of the Committee, an employee of a state agency or representative of an institution of higher education, that member ought to be designated by that agency or institution.
- iv. States should consider allowing their respective governor to appoint any public members of the Committee.
- v. States should consider naming the commissioner of the appropriate state department or agency as the chair of the Committee.

b. Restriction on Public Membership

Texas' legislation, in Sec. 113.053, places restrictions on public membership. This is an important component to this legislation. It ensures a balanced composition of this Committee. The following are some examples of possible language – all taken from Texas' HB 2706:

- i. *In this section, "[INSERT NAME OF STATE] trade association" means a cooperative and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.*
- ii. *A person may not be a public member of the Committee if:*
 - 1. *The person is an officer, employee, manager, or paid consultant of a [INSERT NAME OF STATE] trade association in the field of health care;*
 - 2. *The person's spouse is an officer, manager, or paid consultant of a [INSERT NAME OF STATE] trade association in the field of health care;*
 - 3. *The person is required to register as a lobbyist under [INSERT CITATION OF APPROPRIATE STATE STATUTE] because the person's activities for compensation on behalf of a health profession related to the activities of the Committee; or*
 - 4. *The person has a direct financial interest in a health care profession or is employed within the health care industry.*

iii. Other Examples of Legislative Language

Some states, rather than address the issue of public membership in a separate section of the legislation, simply define "public member" in the definitions section. Examples of this tactic are as follows:

"'Public member' means an individual who is not and never has been a member or spouse of a member of the health profession being regulated and who does not have and never has had a material financial interest in either the rendering of the health professional service being regulated or an activity directly related to the profession being regulated." ARIZ. REV. STAT. ANN. § 32-3101(10).

"Public member, defined. Public member shall mean an individual who is not, and never was, a member of the health profession being regulated, the spouse of a member, or an individual who does not have and never has had a material financial interest in the rendering of the health professional service being regulated or an activity directly related to the profession being regulated."
NEB. REV. STAT. § 71-6216.

c. Compensation

i. In General

When considering this legislation, states ought to consider requiring that any member of the Committee not receive compensation for service as a Committee member. TX HB 2706 (2005) (Sec. 113.055).

ii. Examples of Other Legislative Language

"Committee members shall receive no salary, but shall be reimbursed for their actual and necessary expenses as provided in sections . . ."
NEB. REV. STAT. § 71-6227(3).

VI. CREATION OF REVIEW PANEL/SUBCOMMITTEE/WORKING GROUP

a. In General

States considering the development of this type of legislation, should consider allowing the Committee to create a review panel, subcommittee or working group to assist in performing the Committee's duties.

b. Points of Interest

- i. It ought to be mandated that any such panel/subcommittee/working group ought to consist of persons other than members of the Committee.
- ii. Also, the name, occupation, employer, and community of residence of each member of the review panel/ subcommittee/working group must be made part of the record of the Committee and detailed in any report resulting from the work of the review panel/subcommittee/working group. TX HB 2706 (2005) (Sec. 113.056).

VII. APPLICANTS FOR INCREASE IN SCOPE OF PRACTICE; FACTORS

Each statute or piece of legislation discussed in this template differs in this regard. The following is a sampling of factors that ARC staff recommends that any state medical association consider prior to introduction of this type of legislation. This language is a compilation of the "best of" provisions found in existing law and/or legislation.

- a. *Applicants, applicant groups, members of a licensing board, a licensee of the licensing board or any other person seeking a change in the scope of practice of a healthcare practitioner profession shall notify the respective licensing board and request a hearing on the proposal.*
- b. *This request shall be submitted on or before August 1 prior to the start of the legislative session for which the legislation is proposed.*
- c. *The licensing board, upon receiving such request, shall notify the Committee and shall:*
 - i. *Collect data, including information from the applicant and all other appropriate persons, necessary to review the proposal;*
 - ii. *Conduct a technical assessment of the proposal, if necessary, with the assistance of a technical review panel established for that specific purpose, to determine whether the proposal is within the profession's current scope of practice; and*
 - iii. *Provide its analysis, conclusions and any recommendations, together with all materials gathered for the review, to the Committee.*
- d. *The person or entity seeking the change in scope of practice shall provide the licensing board with all information requested, including:*

- i. *A definition of the problem and why a change in scope of practice is necessary including the extent to which consumers need and will benefit from practitioners with this scope of practice;*
- ii. *The extent to which the public can be confident that qualified practitioners are competent including:*
 1. *Evidence that the profession's regulatory board has functioned adequately in protecting the public;*
 2. *Whether effective quality assurance standards exist in the health profession, such as legal requirements associated with specific programs that define or endorse standards or a code of ethics; and*
 3. *Evidence that state approved educational programs provide or are willing to provide core curriculum adequate to prepare practitioners at the proposed level.*
- iii. *The extent to which the proposed scope of practice increase may harm the public including the extent to which the proposed increase will restrict entry into practice and whether the proposed increase requires registered, certified or licensed practitioners in other jurisdictions who migrate to this state to qualify in the same manner as state applicants for registration, certification and licensure as those in this state;*
- iv. *The cost to [INSERT NAME OF STATE] and to the general public of implementing the proposed scope of practice increase; and*
- v. *Any proposal which contains a continuing education requirement for a health profession shall be accompanied by evidence that such a requirement has been proven effective for the health profession.*

VIII. COMMITTEE SCOPE OF PRACTICE REVIEWS AND ANALYSIS

Each statute or piece of legislation discussed in this template differs in this regard. The following is a sampling of requirements related to a Committee's review and analysis that ARC staff recommends that any state medical association consider prior to introduction of this type of legislation. This language is a compilation of the "best of" provisions found in existing law and/or legislation.

- a. *Upon receipt of notice, as required under Section 4 (c) (b) of this Act, the Committee shall review and make recommendations on the proposed scope of practice change.*

- b. In performing its duties under this Section, the Committee shall:*
- i. Familiarize itself with the Committee's rules on procedures and criteria for such reviews;*
 - ii. Ensure appropriate public notice of its proceedings;*
 - iii. Invite testimony from persons with special knowledge in the field of the proposed change;*
 - iv. Assess the proposal using the following criteria:*
 - 1. Whether the proposed change could potentially harm the public health, safety, or welfare;*
 - 2. Whether the proposed change will benefit the health, safety and welfare of health consumers;*
 - 3. What economic impact on overall health care delivery the proposed change is likely to have;*
 - 4. Whether potential benefits of the proposed change outweighs potential harm; and*
 - 5. The extent to which the proposed changes will affect the availability, accessibility, delivery and quality of health care in [INSERT NAME OF STATE].*
 - v. Evaluate the quality and quantity of the training provided by health care professional degree curricula and post-graduate training programs to healthcare practitioners in active practice with regard to the increased scope of practice proposed;*
 - vi. Determine whether a need exists for the proposed scope of practice change;*
 - vii. Draft a report that includes findings from subparagraph (iv) above, as well as:*
 - 1. A review of other states that have a scope of practice for the relevant profession that is identical or similar to the proposed change and any available information on how that scope of practice has affected the quality and cost of health care in the state;*

2. *A review of any statutory or regulatory changes that were required in the other state to implement the identical or similar scope of practice change;*
 3. *An objective and balanced review that examines the extent to which the potential benefits predicted by proponents of the change or concerns raised by opponents of the change materialized after the scope of practice change took effect in the other state;*
 4. *This report must include evidence-based legislative recommendations for each proposed scope of practice change submitted to the Committee; and*
- viii. *The Committee shall report, not later than December 31 of each year, the results of its review to the:*
1. *Governor;*
 2. *Lieutenant Governor;*
 3. *Speaker of the House of Representatives;*
 4. *President of the Senate; and*
 5. *standing committees of the [INSERT NAME OF STATE] Senate and House of Representatives having jurisdiction over [INSERT APPROPRIATE ISSUES, I.E. STATE FINANCE, HEALTH AND HUMAN SERVICES, ETC.].*

IX. FAILURE TO SUBMIT

Any state considering this type of legislation ought to address the issue of an applicant groups failure to submit their legislative proposal for a scope of practice expansion by the deadline set forth in this legislation.

An example of this type of language is as follows: “[a]ny bill that proposes to expand, contract or change the scope of practice of a healthcare practitioner profession that was not submitted to the Committee will not be considered by [INSERT NAME OF STATE] Legislature.”

X. OTHER COMMITTEE DUTIES

States ought to consider mandating that as the Committee determines appropriate, the Committee ought to conduct other reviews and perform research on issues related to the

scope of practice of a health profession, including retrospective reviews of scope of practice changes.

In addition, this Committee ought to be allowed to provide assistance to the respective states' Legislature, on an as needed basis, with regard to a proposed health profession scope of practice change.

This Committee should also provide staff services to any review panel/subcommittee/working group established under this law.

Finally, states ought to consider allowing these Committees to have the power of legislative subpoena. ARIZ. REV. STAT. ANN. § 41-1279(C)(3).

XI. NOTICE AND PUBLIC HEARING

States considering this type of legislation ought to legislate the following to ensure an open and fair process: (1) that the Committee shall notify, on an annual basis, each licensing entity and, whenever possible, each professional association and group of health professions, of both the Committee's duties under this Act; and (2) that a public hearing conducted under this Act shall be open to the public and is subject to the requirements of the appropriate state statute.