

MINUTES
SENATE HEALTH & WELFARE COMMITTEE

DATE: Tuesday, February 05, 2013

TIME: 3:00 P.M.

PLACE: Room WW54

MEMBERS PRESENT: Chairman Heider, Vice Chairman Nuxoll, Senators Lodge, Hagedorn, Guthrie, Martin, Lakey, Bock and Schmidt

**ABSENT/
EXCUSED:**

NOTE: The sign-in sheet, testimonies and other related materials will be retained with the minutes in the committee's office until the end of the session and will then be located on file with the minutes in the Legislative Services Library.

CONVENED: **Vice Chairman Nuxoll** convened the meeting at 3:09 p.m.

MINUTES: **Vice Chairman Nuxoll** asked for the approval of the January 16, 2013 Senate Health and Welfare Committee meeting minutes.

MOTION: **Senator Schmidt** moved to approve the January 16, 2013 minutes as written. The motion was seconded by **Senator Martin**. The motion carried by **voice vote**.

MINUTES: **Vice Chairman Nuxoll** asked for the approval of the January 17, 2013 Senate Health and Welfare Committee meeting minutes.

MOTION: **Senator Martin** moved to approve the January 17, 2013 minutes as written. The motion was seconded by **Senator Schmidt**. The motion carried by **voice vote**.

MINUTES: **Vice Chairman Nuxoll** asked for the approval of the January 22, 2013 Senate Health and Welfare Committee meeting minutes.

MOTION: **Senator Hagedorn** moved to approve the January 22, 2013 minutes as written. The motion was seconded by **Senator Bock**. The motion carried by **voice vote**.

Vice Chairman Nuxoll introduced Britt Raubenheimer for the confirmation hearing.

CONFIRMATION HEARING: **Ms. Raubenheimer** thanked committee and said she was requesting support for her reappointment for the Idaho Commission for the Blind and Visually Impaired (ICBVI). **Ms. Raubenheimer** said she is from Sandpoint, Idaho and lost her vision about ten years ago. When she heard she was going blind, she thought she would have to give up her career and lose her job – she works as a researcher in water resources and coastal engineering, manages a team of about ten people, does field work, scuba dives for work, reads documents, writes documents on a computer, gives presentations, works with graduate students and travels. **Ms. Raubenheimer** said she probably would have lost her job if not for ICBVI. ICBVI representatives came to her house and taught her about the technology that exists to allow her to keep working. She now has a computer that reads everything that's on its screen to her and allows her to write proposals and give presentations; she has a watch that vibrates so she can tell time; and she has a cell phone with Global Positioning System (GPS). ICBVI also gave her training in mobility, taught her how to use a cane, how to navigate around, cross streets and encouraged her to get her guide dog, Whit. **Ms. Raubenheimer** said ICBVI gave her the training needed to retain

her employment and she wants to pay back some of what they gave to her, which is remaining independent. She said she hopes to continue to use her experience with managing people, working within a budget, etc. to try and help other Idahoans, who are blind or visually impaired, to remain independent and keep working.

Vice Chairman Nuxoll asked what caused Ms. Raubenheimer's blindness. **Ms. Raubenheimer** said the actual cause is uncertain. However, from Magnetic Resonance Imagings (MRIs), doctors could tell that her optic nerves had atrophied. **Ms. Raubenheimer** said she also has deposits on her optic nerve and does have a blood clotting disorder. Doctors think that there was a blood clot that caused the optic nerve in her right eye to, basically, die overnight and that several different small clots caused her to lose the vision in her left eye. **Senator Bock** asked what Ms. Raubenheimer cannot do now that she could before she lost her vision. **Ms. Raubenheimer** said she cannot drive a car. **Senator Bock** asked what creative techniques has she come up with do continue to do daily tasks. The purpose of asking is to help others adopt some of the same creative strategies. **Ms. Raubenheimer** said she organizes a monthly conference call support group in northern Idaho and that group members mostly talk in order to share ideas on strategies of doing various things, such as cooking a fried egg. **Ms. Raubenheimer** said she also has a scuba diving technique – getting oriented to equipment above water – that other scuba divers adopted; how to use a talking computer; training herself to listen to things and remember sounds – such as in flagging, where the flapping of flags lets her know where places/things are; and utilizing Whit, when she is out on the field, to help her find things. **Vice Chairman Nuxoll** said Ms. Raubenheimer has an impressive background and asked if she still gets to use science. **Ms. Raubenheimer** said she still does quite a bit of science and that most of the work she does is physics-based or engineering-based.

Senator Hagedorn said he was in awe of Ms. Raubenheimer's abilities. He said he has a foundation, the Wyakin Warrior Foundation, that brings in severely wounded veterans. The foundation has three veterans now, who are going through Boise State University (BSU) and College of Western Idaho (CWI), who are blind and that it would help them a great deal to be able to connect up with her. **Senator Hagedorn** asked Ms. Raubenheimer to speak on a National Defense Science and Engineering award that she received. **Ms. Raubenheimer** said it is an award for an early-career scientist and that she received it for doing work relevant to the Navy. **Ms. Raubenheimer** said the committee members could pass her email address on to anybody they felt might benefit from communicating with her. She said, although her monthly, phone-in support group started out in northern Idaho, it has expanded and that there are members from Boise who call in. **Senator Hagedorn** said he would make sure to pass along her information. **Vice Chairman Nuxoll** asked if Ms. Raubenheimer has ever talked in schools because students need to hear her stories of hope and optimism and that, despite obstacles the students may have to endure, they can get through it. **Ms. Raubenheimer** said she has talked at schools in northern Idaho when invited and that she would be happy to talk at schools more often. **Ms. Raubenheimer** said she has also talked with groups of students, organized by the National Federation of the Blind, to make sure other blind and visually impaired students knew about things that could be doing – looking forward to the future. **Vice Chairman Nuxoll** said she would pass Ms. Raubenheimer's email address out to a few schools.

Vice Chairman Nuxoll thanked Ms. Raubenheimer, said the committee is very glad that she has agreed to this appointment and that the committee will be voting on her Gubernatorial Appointment at the following Senate Health and Welfare meeting.

**PASSED THE
GAVEL:**

Vice Chairman Nuxoll passed the gavel to Chairman Heider.

Chairman Heider thanked Vice Chairman Nuxoll, commended Ms. Raubenheimer and introduced Mark Johnston, Executive Director of the Idaho State Board of Pharmacy (BOP), to talk about **H 16**.

H 16

Mr. Johnston introduced himself and said he would be requesting the committee send **H 16** to the floor with a do-pass recommendation. The purpose of this bill is to clarify that pharmacists and practitioners can share Prescription Monitoring Program (PMP) data with each other. (See Attachment 1.)

Senator Bock asked if **H 16** is a new bill, a piggyback on one that was recently done or if this bill ventures into a new subject area. **Mr. Johnston** said Idaho was one of the first states to have a prescription monitoring program and seen somewhat of an industry leader for prescription monitoring programs. Now, 49 states have legislation and almost all of those have their programs up and running. Idaho is continually trying to advance to the next level and a lot of that is funded through federal grants. **Mr. Johnston** said he was before the committee about two years ago, asking for a number of changes that would allow interstate data sharing so that prescribers could look at reports. More recently, the BOP was before the committee requesting the ability to provide unsolicited reports and had also received appropriation from the Joint Finance-Appropriations Committee (JFAC) as part of that bill – the BOP sends out monthly notifications right now and will surely become more adept at it. This would allow the actual practitioners to jump BOP's reports and to talk amongst themselves and really isn't just to catch doctor shoppers. There are two parts to the PMP: one is to identify illegal activity and the other is to help each other prescribe correctly. **Senator Bock** asked, if he was a pharmacist and had received a prescription, what happens, what would he see and how would he know that he's into a problem area? **Mr. Johnston** said, as of now, it would depend on his employer. If he was employed in a larger chain that shares a common electronic file for all its patients, such as Walgreens, he would be able to see every prescription that was filled within the Walgreens system for that patient, even if they went to Florida on vacation. A smaller, independent pharmacist might only be able to see his own records for that patient. Where you're tipped off to want to go to the PMP to look further, kind of varies in your practice setting. **Mr. Johnston** said it's more useful on the front end and it might be more effective on the tail. Pharmacists might help identify folks that are engaged in illegal activity, but practitioners can access the report before they even prescribe and perhaps not creating the doctor shopper in the first place. Different states have addressed that in different ways.

Senator Hagedorn asked how he would associate a link with the person standing before him with a prescription if there was not a name on it, and how would he know the link is important or is associated with a doctor shopper. **Mr. Johnston** said the program that the BOP would like to mimic already exists in Indiana with its Board of Pharmacy and has been a proven program, not just conceptual. So, since it exists, the BOP has a pretty good understanding how it works: when a patient visits your pharmacy, a message will come up to the effect that a doctor would like to share a profile of a patient that has visited your pharmacy and to please click on a link. When you click on that link, you will go to a sign-in page that will then take you to that profile. There's a fine line between protected healthcare and what you can divulge with potential illegal activity, due to the Health Insurance Portability and Accountability Act (HIPAA). **Senator Hagedorn** said he understands this might be a great thing for pharmacists, but had there been any discussions in a public forum to determine whether or not Idahoans have concerns about keeping their information private? **Mr. Johnston** said it has been vetted out by the Attorney General's Office who studied it versus HIPAA, the national privacy act, and there aren't any concerns from a legal perspective. **Vice Chairman Nuxoll** asked if there is any way this bill would be hard for small pharmacies. **Mr. Johnston** said he

can't think of a way that it would be hard since there is no real mandate – the bill says that pharmacies and practitioners have the ability to share information, but it doesn't mandate. Of course, to be able to use the PMP program, you'd have to have internet access. But, due to the Pseudoephedrine Sales and Tracking Bill (Senate Bill 1309) that passed last year, the BOP was successful in verifying that every pharmacy in Idaho had internet access.

Senator Schmidt asked for clarification of Subsection four, which the BOP is adding, and Subsection five since they both seem to address the same issue of sharing. **Mr. Johnston** said that Subsection five was introduced last year and its intent was to address the sharing or reckless, willful and wanton conduct towards the password and log-in information. It wasn't written with the idea that it would address practitioner-sharing information with each other, it was more like protection. It does look like five provides protection for folks who engage in four. **Chairman Heider** asked, either way, if one subsection contradicts the other. **Mr. Johnston** said he didn't believe so and, in the BOP's statement of purpose it was said that this bill clarifies – so it may already exist. **Vice Chairman Nuxoll** asked Mr. Johnston to go over what is on the link sent to the pharmacist. **Mr. Johnston** said the link will be a statement that says something to the effect of, 'a provider would like to share information on a patient of yours with you.' Once you click on the link, the link takes you to a sign-in page where you sign in and are immediately taken to that patient's profile. The patient's profile is collated data of all the controlled substances that the patient's had filled from the last two years, lists the prescriber, the pharmacy, the drug and some other information. This monitoring is so, ideally, people can make better clinical decisions knowing what other drugs have been prescribed. But, it's also used occasionally to address illegal activity. **Senator Bock** asked from whence the bill emanates. **Mr. Johnston** said the BOP received an approximate \$200,000 federal grant to enhance the PMP and set about trying to decide which projects to include in that. Through national conferences, the BOP found what Indiana had done, liked the idea and set the wheels in motion. However, the Attorney General's Office stopped them and said they had better get clarity and a statute to be able to invest in the software program previously mentioned. So, if **H 16** doesn't go forward, the BOP, under legal counsel, would not invest the money in that software program.

TESTIMONY: **Pam Eaton** said she is with the Idaho Retailer's Association, the Idaho Retail Pharmacy Council and the Idaho State Pharmacy Association. **Ms. Eaton** said she initially was not going to testify, but since there were so many questions she just wanted to say that her organizations are supportive of **H 16** and think it will be helpful.

DISCUSSION: **Senator Martin** asked if part of the profile seen in the PMP is the patient's name. Also, how does a pharmacist know that the patient they're getting ready to fill a prescription for potentially has a problem? **Mr. Johnston** said the link that is sent to the provider does not have any private healthcare information. But, once you log in, you see the patient's name. In fact, one of the programs the BOP spent some of its federal grant on is a linking program that will, hopefully, be up in the next week or so. For example, now you will not only see William Johnson, but you will also see Billy Johnson, Bill Johnson, etc. If the names have the same birthday and enough key characters match up, with some addresses mixed in there, too, a pharmacist might actually see a couple different profiles. **Senator Hagedorn** asked Mr. Johnston to speak on the privacy of the database. **Mr. Johnston** said the database has existed since, he believes, 1999. Until 2007 it was accessible by authorization through a faxing system. In 2007 the BOP promulgated rules that made 24/7 online access available just to pharmacists and prescribers. The online access is not available to law enforcement and certain other folks because the BOP didn't want a fishing expedition. If law enforcement requests something from BOP, BOP requires an actual case number to show that there is actually an investigation going on.

MOTION: **Senator Schmidt** moved to send **H 16** to the floor of the Senate with a do pass recommendation. **Senator Bock** seconded the motion. **Senator Schmidt** said he has significant experience with this issue, and with the PMP, and it's something that needs continual attention. Prescription drug abuse is rampant and it is an epidemic in Idaho and in the country. **Senator Schmidt** said he thinks Mr. Johnston and the BOP have paid attention to it appropriately and are moving forward. **Senator Schmidt** said once he got the explanation that this is what the Attorney General's Office needs to move forward, it makes great sense to him. **Senator Schmidt** said he thinks that the committee does need to be vigilant, needs to ask questions and that this would be quite helpful for Idaho. The motion passed by **voice vote**. **Chairman Heider** asked if any of the senators wished to carry **H 16** to the Senate floor. **Senator Schmidt** volunteered.

Chairman Heider asked if Brent Reinke, Director of the Idaho Department of Corrections, was there to give a presentation on the Idaho Criminal Justice Commission (ICJC). **Sharon Harrigfeld**, Director of the Idaho Department of Juvenile Corrections, said that she and Sara B. Thomas, State Appellate Public Defender, would be doing the presentation instead.

PRESENTATION: **Ms. Harrigfeld** and **Ms. Thomas** gave an overview of the ICJC, complete with a slideshow, on what the ICJC has been working on, its subcommittees, some things those subcommittees have been working on and some legislation that will be coming before the Senate Health and Welfare Committee this year as well as some things the ICJC is working toward for next year. (See Attachments 2a, 2b and 2c.)

DISCUSSION: **Chairman Heider** thanked Ms. Harrigfeld and Ms. Thomas and said their presentation was very interesting. Chairman Heider said he is sure the committee members stood in awe during parts of the presentation, in hearing what is happening in Idaho.

Senator Lodge asked about the human trafficking statutes that the ICJC wants in place that include having convicted criminals forfeit goods and monies received during the course of the crimes committed. She asked if the ICJC has decided where it wants those goods/monies to go. **Ms. Thomas** said although it is not part of the statute to direct where the goods/monies go, the forfeiture statute was specifically modeled on the statute for drug forfeitures. So, the intent is that the goods/monies would go to law enforcement. **Senator Lakey** asked about the repayment, if convicted, of the uniform appointment of counsel in the adult system. **Ms. Thomas** said the wording is 'may,' not 'shall,' so it would be up to the judge if they have to repay – unless it would be a true financial hardship, also determined by the judge – and how much would be repaid. It is discretionary. **Senator Lakey** asked if there are parameters on the timeframe of repayment or is that also part of the discretion of the judge. **Ms. Thomas** said, yes, that is all part of the discretion of the judge. The way the law currently reads is that it's due and owing as soon as they're convicted. The reality is that many of those people are in prison, so it could be a long time before there is any recoupment. **Senator Lakey** asked if there was a repayment provision – by the parents, obviously – on the juvenile side. **Ms. Thomas** said there currently is a provision in Idaho law that requires parents to repay. Again, it is discretionary with the judge. But, the parents do have to pay that back and this does not change any of that. The only thing that this would really change is it would ensure that the parents can't put pressure – because this attorney represents the children, not the parents – on the child to waive counsel. **Chairman Heider** asked when the committee can expect to see the cost-benefit analysis the ICJC wants to do and what is the price of the contractor who will be hired to do that analysis. **Ms. Harrigfeld** said five or six of agencies involved in the ICJC put forth some money that came up to \$55,000. That money is being housed and held for ICJC at the Association of Counties, so the money will run through

them to pay for the contracted economist. At this point, the ICJC wants some results to determine whether or not to move forward with it and to determine if it should ask for an appropriation for the economist next year. The Senate Health and Welfare Committee will have it for the next legislative session.

Senator Schmidt said he had more questions about the uniform appointment of counsel but, since a bill is forthcoming, he asked if he should he wait to ask then. **Ms. Thomas** welcomed more questions and said she believes the bill is going to be introduced in the House next week. **Senator Schmidt** said, in regard to the description of the proposed uniform standards, those standards are currently in place for indigency for medical care in counties and it is applied differently in every county even though it's in statute. **Ms. Thomas** said the way that it's envisioned in the statute is that the court is going to be adopting a uniformed form – right now, Idaho doesn't even have that. So the court would be creating, through court rule, a uniform form. The statute actually provides some provisions in there to make sure people can be honest and still have their Fifth Amendment rights against incrimination protected – that forum won't be used to convict them of the crime that they are on trial for. That information is then given to the judge and the judge would actually make the decision. It is never going to be entirely uniform because the fact is that even though we have these presumptions, the judge is able to overrule them – so, it is never going to be ideally, entirely uniform but it will be the judges who will be making those decisions. **Senator Schmidt** asked for the ICJC's definition of public assistance. **Ms. Thomas** said it would be public assistance in the form of food stamps, health coverage, cash assistance or child care assistance. That's the exact language of the statute.

Senator Bock said he would like to make a comment since he serves with Ms. Thomas and others on the commission: The state really has to do something about the public defense system. The state is going to get sued because what is done now is really a violation of constitutional rights of the accused. **Senator Bock** said he is, by no means, arguing against the proposals, but unfortunately there are price tags attached. **Senator Bock** said he thinks that is what the legislature is going to have to struggle with is whether it is going to accept the price tag now or maybe even pay a bigger price tag when a federal judge actually decides what the system's going to look like as well as the scope of it.

Chairman Heider said the committee expects to hear great things from the ICJC's further analysis.

ADJOURNED: There being no further business to come before the committee, **Chairman Heider** adjourned the meeting at 4:24 p.m.

Senator Heider
Chairman

Linda Hamlet
Secretary