

**MINUTES OF THE
PRIVATELY OWNED HEALTH CARE ORGANIZATION TASK FORCE**
Thursday, April 13, 2006 – 9:00 a.m. – Room W135 House Building

Members Present:

Sen. Michael G. Waddoups, Senate Chair
Rep. David Clark, House Chair
Sen. Gene Davis
Sen. John W. "Bill" Hickman
Sen. Peter C. Knudson
Sen. Mark B. Madsen
Sen. Ed Mayne
Rep. Jackie Biskupski
Rep. Stephen D. Clark
Speaker Greg J. Curtis
Rep. Brad L. Dee
Rep. James A. Dunnigan
Rep. Patricia W. Jones
Rep. Bradley G. Last
Rep. Rebecca D. Lockhart

Staff Present:

Constance C. Steffen, Policy Analyst
Allison Morgan, Policy Analyst
Catherine J. Dupont, Associate General Counsel
Joy L. Miller, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Task Force Business

Chair Clark called the meeting to order at 9:20 a.m.

MOTION: Sen. Hickman moved to approve the minutes of the December 12, 2005 meeting. The motion passed unanimously. Sen. Davis was absent for the vote.

2. Limitation of Physician Noncompetition Agreements

Rep. Roz McGee distributed a summary of 1st Sub. H.B. 92, Limitation of Physician Noncompetition Agreements. She said she has been working on the issue for the past few years after it was brought to her attention by one of her constituents. The proposed bill would promote continuity of patient care, fairness and balance in contracting, and free competition. The legislation also would allow for fair financial recovery from defaulting physicians.

Dr. Gary Rabetoy gave a brief history of his medical background. He stated that noncompete agreements are generally one-sided. The American Medical Association has recognized the peril to the patient-physician relationship incident to noncompetition arrangements, but no such protection exists in Utah as it does in many other states. He cited specific examples of experiences some Utah physicians have had concerning noncompetition agreements. He distributed "Utah Examples of Non-Competition Experiences" and "It's time to legislatively end non-compete covenants in Utah."

Dr. Tom Kennedy, Professor of Medicine, University of Utah, explained what he had experienced practicing medicine in Virginia and North Carolina as a result of a noncompetition agreement. He

discussed the intense pressure placed on him by his colleagues to sign the agreement. He stressed that there is no real public good served by these agreements. A noncompete clause can be used to prop up a business for some time but at a huge cost to physicians, patients, and their families.

Ms. Lauren Scholnick, attorney, explained that a noncompete agreement restricts an employee from going to work for any competitor within a geographic region for a certain duration. She indicated that there is not a lot of case law on noncompete agreements and how they are interpreted. States that have chosen to pass statutes to prevent noncompete agreements regarding doctors have done it because they have determined that there is a strong public policy reason to do so. Legislatures have determined that the freedom to contract is trumped by the freedom of individuals to ply their trade. She said employers should be able to protect their investment, but they don't have to do it through a noncompetition agreement. Ms. Scholnick discussed nonsolicitation agreements which provide that physicians cannot openly or outwardly solicit patients from the practice they are leaving.

Dr. Catherine Wheeler, President, Utah Medical Association, stated that many doctors are pressured into signing a noncompetition agreement. Doctors are very frightened of lawsuits. Some doctors come into practices with thousands of dollars of debt. Many start practices by working through large corporations. Dr. Wheeler stressed the importance of continuity of patient care. She pointed out that doctors and the public need fairness and some protection in these contracts.

Mr. Dave Gessel, Utah Hospitals and Health Systems Association, outlined the four areas the courts have determined must exist in order for a noncompete agreement to be upheld in Utah: 1) it must have additional consideration, such as stock, salary, benefits, etc., to be signed; 2) it must be done in good faith; 3) it must protect legitimate business interests; and 4) it must be reasonable in time and scope. He noted that the vast majority of physicians in the state that practice and have medical privileges in Utah's hospitals do not have noncompete agreements. Mr. Gessel commented that H.B. 92, as currently drafted, is potentially capable of invalidating medical bylaws.

3. Review of Task Force Duties and Studies

Ms. Steffen distributed "Review of Study Items Assigned to the Privately Owned Health Care Organization Task Force." Ms. Steffen, Ms. Morgan, and Ms. Dupont reviewed the extent to which the Task Force has investigated the studies assigned to it.

Sen. Hickman recommended that the issue of tax policy be considered for purposes of an additional RFP.

Rep. Lockhart asked that the Task Force study the following issues: 1) essential services, 2) the definition of charity care, and 3) clarification of the rural care access law.

4. Other Items / Adjourn

The Task Force scheduled the following meeting dates: May 11 (9:00 - 1:00), May 25 (9:00 - 1:00), and June 8 (9:00 - 1:00).

Minutes of the Privately Owned Health Care Organization Task Force
April 13, 2006
Page 3

MOTION: Sen. Knudson moved to accept the proposed meeting dates. The motion passed unanimously. Sen. Davis and Sen. Madsen were absent for the vote.

MOTION: Rep. Dee moved to adjourn. The motion passed unanimously.

Chair Clark adjourned the meeting at 12:00 p.m.