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SUMMARY OF MEETING

COMMITTEE ON LEGAL SERVICES

April 5, 2013

The Committee on Legal Services met on Friday, April 5, 2013, at 12:10 p.m. in HCR 0112. The following members were present:

Senator Morse, Chair
Senator Brophy
Senator Guzman
Senator Roberts
Representative Foote
Representative Gardner
Representative Kagan
Representative Labuda, Vice-chair
Representative Scott (present at 12:14 p.m.)

Senator Morse called the meeting to order.

12:12 p.m. -- The Committee addressed agenda item 1 - Action on Senate Bill 13-079 by Senator Morse and Representative Gardner - Rule Review Bill.

Senator Morse said the Committee is sitting as the House committee of reference so for as long as we're considering Senate Bill 79 in that capacity we'll follow House rules and take seconds.

Representative Gardner said I think the Committee is fully aware of what this bill is and what

it does. I do have a technical amendment that Debbie Haskins will explain when we get there.

12:13 p.m.

Representative Gardner moved Senate Bill 13-079 to the Committee of the Whole with a favorable recommendation. Representative Labuda seconded the motion.

Senator Morse said we will move to public testimony.

12:13 p.m. -- Former State Representative Anne McGihon, Acupuncture Association of Colorado, and Valerie Hobbs, Director of Southwest Acupuncture College in Boulder, testified together before the Committee. Ms. McGihon said my testimony today is regarding amendment L.003. I understand that this Committee gives great deference to staff rule review opinions, such as that dated March 8, 2013, on the state physical therapy board Rule 211, but the Acupuncture Association of Colorado asks with great respect to the bill sponsor, the Office, and this Committee that you take a fresh look at Rule 211 using the type of analysis that the Office staff used in reviewing the rules of the state board of chiropractic examiners. You reviewed the chiropractic rules at your meeting on January 8 and you agreed with the staff analysis in its opinion dated December 27, 2012. I would also like the Committee to be assured that we have talked to members of this Committee commencing just before session, throughout January, and beyond. We have followed the process and we have met with Office staff. I would like you to know this is not a last-minute request. Rather, it is one that is very much a part of the rule review process. We are asking you to consider repealing a rule, which is well within your statutory authority. We ask that you amend Senate Bill 79 to include Rule 211, thereby not extending the rule.

Ms. McGihon said the standard of review is at section 24-4-103 (8) (a), C.R.S., and that standard includes the statement that a rule shall not be deemed to be within the statutory authority and jurisdiction of any agency merely because such rule is not contrary to the specific provisions of a statute. Merely because the statutory practice act for the physical therapists doesn't include a prohibition on dry needling doesn't mean that the rule itself is approved. Instead, Rule 211 is beyond the scope of authority given to the physical therapy board by the General Assembly, and, further, it usurps the powers of the General Assembly by expanding the scope of practice of one of the healing arts, which is a legislative branch function. Thus, we state that it is an expansion of the scope of practice for physical therapists to include dry needling. Expansion of the scope of practice should have been done during the sunset act review process, which was only done last session. At that time, it would have been appropriate for the physical therapists to bring before the General Assembly their desire to expand their scope of practice through dry needling. Every other healing arts profession must request such expansions through the legislative process. It is a public process. It allows for public hearing and comment and review of public safety and concerns for public health around training and education. This is what the chiropractors did when they requested

authority to practice acupuncture when their practice act was renewed.

Ms. McGihon said the board did not have statutory authority to promulgate Rule 211 because of what's in section 12-41-103.6 (2) (b), C.R.S. It says that the board is limited to drafting all reasonable and necessary rules for the administration and enforcement of this article including rules regarding supervision of unlicensed persons working with physical therapists and also animal physical therapy. If you look at the rules of physical therapy, Rules 201 to 210, they fall well within the authority of the board. They talk about licensure, enforcement of physical therapy being practiced by unlicensed persons, licensure for out-of-state, and licensure by endorsement. Rule 210 is the statutorily mandated rule regarding animal physical therapy. But Rule 211 stands strikingly outside the board's authority for rules necessary for the reasonable and necessary enforcement and administration of the physical therapy practice act. Rule 211 allows physical therapists to puncture the skin. Nowhere else in their practice act are they allowed to puncture the skin. Can the board, if this rule is approved, allow expansion of the scope of practice through injections? We would submit to you that allowing this rule to stand opens Pandora's box by allowing the board to expand the scope of practice through rule. There are statutory limitations on the practice of physical therapy provided in section 12-41-103 (6), C.R.S., which is limited by section 12-41-105 (1), C.R.S. I've given this to all of you in writing, so you can follow along if you want. The definition of physical therapy states that nothing in this article authorizes a physical therapist to perform any of the following acts: Practice of medicine, surgery, or any other form of healing except as authorized by the provisions of this article; and the diagnosis of disease. There is no authorization for acupuncture, no authorization to puncture the skin with an invasive procedure that breaks the skin of the patient. By the way, an invasive procedure that breaks the skin of the patient was the standard in the December 27, 2012, memo of the chiropractic rules where you said the chiropractors were not authorized to do an invasive procedure that breaks the skin of the patient. Further, at section 12-36-106 (4), C.R.S., governing medical practice, the General Assembly demonstrated how it intends the interaction between the various health provisions to be strictly interpreted. It says all licensees designated or referred to in section 12-41-106 (3), C.R.S., which means all professions not specifically designated, who are licensed to practice a limited field of the healing arts shall confine themselves strictly to the field for which they are licensed and to the scope of their respective licenses. In statutory construction, we would submit to you that the word "strictly" cannot be ignored. The statute also defines "device" in a fairly restrictive manner. There is no technique or device that contemplates the piercing of the skin. In fact, in Rule 211, it talks about using filiform needles, which are in fact acupuncture needles, which are governed by the Food and Drug Administration as medical devices only to be sold to persons licensed to use them within their practice, which means acupuncturists. Needles are not included in any of the physical therapy devices and nothing that punctures the skin is included. It is largely topical devices and all of those things are superficial to the skin.

Ms. McGihon said in addition, the specific authority granted other health professionals is

notably absent from the physical therapy practice act. The chiropractors have authority to puncture a vein at section 12-33-102 (4), C.R.S., and to treat by acupuncture if trained as stated in section 12-33-102 (1.7), C.R.S., and a physician does not need a license to render acupuncture services if trained as stated in section 12-36-106 (3) (p), C.R.S. We would submit to you that this prohibition on practicing in other practice areas is so important because dry needling is acupuncture. The similarities between acupuncture and dry needling and the extensive literature on the serious risks of acupuncture is extrapolated to evaluate the risks of dry needling. Dr. Janet Travell coined the phrase "trigger point" in the early 1980s. Another physician, Dr. Mark Seem, in his book called *A New American Acupuncture* discussed the similarity between acupuncture and dry needling. Many other authors have noted the adaption of acupuncture nomenclature to western terms and that dry needling is not a new technique and there's no other conclusion that dry needling is piercing the skin with an acupuncture needle and is therefore acupuncture. It is not a new or separate practice to acupuncture; it is subsystem of musculoskeletal acupuncture, which has been in practice for at least 1,400 years. Dry needling is a pseudonym for a brief course of study in myofascial acupuncture, also known as ashi acupuncture and trigger point acupuncture. That comes from an article "Acupuncture by Any Other Name: Dry Needling in Australia", published in the Australian Acupuncture Journal. Notably, in a publication published by the American Physical Therapy Practice Association, the association cites the World Health Organization, which refers to dry needling as acupuncture. They also have a section in the manual for how to expand dry needling as a practice area in your state, and that includes a discussion of the fact that there is great overlap between acupuncture and dry needling. The Rule 211 Office memo as written makes a conclusion that western versus oriental methods of practice must be different and that is simply not accurate. Further, all of those conclusions are unsupported.

Ms. McGihon said finally, the Rule 211 memo as written does not even address the requirement for physical therapists to perform diagnosis as a part of dry needling. This is barred by the physical therapy practice act and therefore contrary to statute. I refer you to section 12-41-105 (1) (b), C.R.S. The board expanded the practice with diagnosis itself and that makes Rule 211 outside the statutory authority of the board. I will sum up by saying the physical therapy practice act sets out multiple treatment and modality procedures, as noted in section 12-41-103, C.R.S., but it does not include dry needling. The physical therapy practice act also addresses special practice requirements in section 12-41-113, C.R.S., but does not include dry needling. The physical therapy practice act has limitations on authority as noted above, including the statutory prohibition on diagnosis. Therefore, Rule 211 is completely contrary to the general reading of all of the healing arts practice acts that generally prohibit practicing in each other's practice areas.

Ms. Hobbs said the Southwest Acupuncture College in Boulder has taught trigger point acupuncture since 2000. I would consider myself an expert on issues around acupuncture. I'm the vice president of the Council of Colleges of Acupuncture and Oriental Medicine and the lead author of a 2009 position paper on dry needling, which we wrote because we noticed

physical therapists were redefining our practice act for us in many states. In our literature there has been a long lineage of practicing and identifying the exact structures that physical therapists are doing and the exact way they're doing it. It is indistinguishable. If we showed you a video, you would not be able to tell who is doing which procedure.

Representative Kagan said if Rule 211 were allowed to expire, and the General Assembly were to amend the physical therapy practice act to specifically authorize physical therapists to dry needle and set forth some requirements, would that be lawful in your view? Ms. McGihon said that is the appropriate method to expand the physical therapy practice act if they want to include dry needling. I'm sure some of the other practices may put up quite a fight, but I know that is the appropriate way that a practice should be expanded. It allows the public the opportunity to comment, such as a young woman who was injured last week when her lung collapsed.

Ms. Hobbs said that was an incident of a pneumothorax last week during a dry needling treatment.

Ms. McGihon said dry needling physical therapists are required to take 46 hours of training, and there's a memo from a member of the physical therapy board that says no one takes that many hours. It would allow the General Assembly to look at public health to make a determination about how many hours. I would note that under Rule 210, for animal physical therapy, a total of 200 hours is required before a physical therapist can touch an animal and yet much less is required to cause possible injury with dry needling. The way to expand the practice act is to bring this as an issue before the General Assembly, to have testimony taken in both houses from people in favor and against, and to have that discussion. Expanding the scope of practice through a board made up largely of physical therapists is not the way.

Representative Kagan said if Rule 211 were to expire, it would not necessarily mean the end of physical therapists engaging in the practice of dry needling. It would just mean that they could only do so if given the statutory authority to do so. Ms. McGihon said yes, that is correct.

Representative Gardner said it is my understanding that dry needling as a permitted practice for physical therapists in Colorado has existed since at least 2007, and that the rule is in the cycle this year because physical therapist rules were repromulgated due to the sunset and the change from the director model to the board model. Wasn't this issue of dry needling itself and the performance of it by physical therapists settled in 2007 and aren't we bringing up a challenge to a practice that has been going on for some time? Ms. McGihon said the initial rule was in the 2008 rule review cycle and at that time, this Committee never had an opportunity to consider the dry needling rule. Staff said to me that it was a close call and we were doing a lot of other things in 2008 and so we did not review the rule. Since then, the rule has changed as well. I provided you with a black lined markup to show the changes from

the 2007 rule to the 2012 rule, which includes an allowance for someone who has engaged in a dry needling course to practice dry needling without having concluded that course. That is a substantial difference in the rule, to allow students to practice dry needling without adequate training.

Ms. Hobbs said I was present in 2007 and present when this particular rule was changed. The practice has actually changed in that amount of time as well. In 2007, this technique was to be applied only to trigger points. In 2012, it is now being applied to any place on the body. There are providers who are changing the name of acupuncture points and just saying this one is near this nerve and since we're not referring to it as an acupuncture point, you can use this too. I believe the concern is about the continuing expansion of a practice without the legislature reviewing how much education is being provided or who is doing the technique.

Representative Labuda said you mentioned someone who recently suffered an injury to a lung because of dry needling. Could you go into detail about that? Ms. Hobbs said when you insert a needle over the chest area, a known complication is to insert it too far and puncture a lung. This is something that is common to anyone who does needle therapy, including acupuncturists, physicians, etc. Our concern in bringing this issue forward and allowing the legislature to hear appropriate training criteria has always been our fear about public harm and that the training criteria adopted by the board have not been sufficient to assure the public that would not happen. Unfortunately, a young woman was injured in this way.

12:37 p.m. -- Dr. Ira Gorman, a faculty member at Regis University and a licensed physical therapist, representing the Colorado chapter of the American Physical Therapy Association, and Dr. Tim Noteboom, a faculty member at Regis University and President of the Colorado chapter of the American Physical Therapy Association, testified together before the Committee. Dr. Gorman said I'm here in support of Rule 211 and I recommend that the rule stand. The rule has been in existence since 2007 and has been reviewed. The department of regulatory agencies (DORA) has supported this rule and this practice has been within our scope of practice. We'd like to state that we are not wishing to expand our scope of practice. We feel this is within our scope of practice of educated physical therapists. Physical therapy is presently educated at the doctoral level. Our students have seven years of college education including three years of graduate study. They come to this practice well-prepared in the foundation of anatomy and physiology as well as various treatment techniques and modalities and the use of this common tool as has been described. We do not wish to and do not presently perform acupuncture. Dry needling is defined as a skilled intervention used by physical therapists that uses a thin filiform needle to penetrate the skin and stimulate underlying myofascial trigger points for the management of neuromusculoskeletal pain and movement impairments. We are not performing acupuncture; we are not following the traditional Chinese model. I'm not here to testify on what acupuncture is, but we're following the work of Janet Travell in identifying myofascial trigger points and treating those trigger points to relieve pain and to improve function, which is something physical therapists have

done for many years. I wish to comment on a few other things. One is the puncture of the skin. Physical therapists do puncture the skin in many states, including Colorado. We perform EMG using a thicker needle that's penetrated into various parts of the body. Those needles are thicker and longer than the filiform needle that acupuncturists and dry needling use. We share a common tool but just because we use that tool does not mean we are performing the same profession. We take blood pressure but that doesn't mean we are practicing medicine. We perform pulse oximetry, we do heart rate monitor, we use a reflex hammer, we evaluate EKGs and perform those, and that does not mean we're practicing medicine. The practice act prevents and limits us to the diagnosis of disease, not diagnosis. Diagnosis is a process and it's something that we are obligated to do when we examine and evaluate a patient, but we do not diagnose disease which is what is stated in our practice act.

Dr. Noteboom said as Dr. Gorman has stated, physical therapists in this state have been doing dry needling, provided they've gone through the proper training, for the last five years. To my knowledge there has been no complaint of any physical therapist provided to DORA or to the newly formed board of physical therapy within this state. Physical therapists are performing dry needling similar to other interventions, in that after doing a thorough evaluation and identifying if this is a musculoskeletal condition, which means it is within the scope of practice, we then determine which intervention is most appropriate. With all due respect to the previous testimony, there is no indication in educational criteria indicating that physical therapists are performing dry needling on areas other than trigger points as originally established when physical therapists were allowed to do dry needling in 2007.

Representative Kagan asked would an acupuncturist be authorized to engage in dry needling in your opinion? Dr. Gorman said I would say so. We're not saying we're the exclusive practitioners of that. We're just saying it's within the scope of physical therapy. There's quite a bit of overlap in other professions, as I said. We are not saying we perform acupuncture, and we would just state that we think it would be similar to say that an acupuncturist is not performing physical therapy but may be performing dry needling.

Representative Labuda said you gave a definition of dry needling as physical therapists do it. I have been using an acupuncturist for more than five years and that's exactly what happens to me, so I don't see a difference between that definition and what I've experienced. That sounds like acupuncture to me.

Dr. Gorman said I would just say again that there is some overlap. We're not wishing to prevent acupuncturists from performing that technique if that's what they use in their practice. Our understanding is that traditional acupuncture involves oriental medicine, the use of meridians, and is very different than exclusively treating trigger points, which is what physical therapists have been doing manually and using needles and fingers and other tools that are allowed in our practice act. This is listed in our practice act as a device or a tool that is common to our practice. It may be confusing sometimes to the public. The public may have

a similar issue with massage and things like where there's overlap between many professions. If somebody gets a massage, it's up to the practitioner to make it very clear what profession they're practicing. Massage doesn't constitute physical therapy but massage may be involved in a number of types of practices.

Representative Labuda asked how much training in dry needling do you give students before they go out and practice dry needling? Dr. Gorman said presently dry needling is not a primary part of our educational curriculum. It is an addition and we offer it as an elective course and a post-graduate course, which is common to a lot of techniques that physical therapists can perform with additional training. The rule does state that an additional 46 hours of training is required before a physical therapist can practice it. That varies between jurisdictions across the country. The important thing to understand again is that physical therapists have seven years of education and have a strong foundation in anatomy, physiology, and various musculoskeletal problems that builds on those 46 hours. This is not just somebody graduating high school and taking these classes. These are students who have fulfilled an undergraduate education and then in three years a doctoral education, and had a number of courses that provide the foundation to add this 46 hours to.

Dr. Noteboom said I think the critical part of that is that physical therapists are trained both at the bachelor level and then at the doctorate level and have thousands of hours of training in the areas critical to performing interventions that are safe to the public - anatomy, physiology, differential diagnosis - and when you take that into account, our training would be very advanced for being able to perform interventions. Then, as Dr. Gorman mentioned, specific techniques are learned in a postgraduate format once the physical therapists are already licensed and practicing.

Representative Foote said I wanted to follow up on something you said in a previous answer. You said there are areas of overlap between these two practices, acupuncture and dry needling. I'd like to try to go a little further and see if you can specifically name some of the differences between the two practices. For example, if I was a patient asking a physical therapist or acupuncturist which one of these should I do and why, would you be able to answer that and give me some differences along those lines? Dr. Gorman said I can't say why you should or should not see an acupuncturist. I assume you'd be going there because of a painful condition. When a person decides to see a physical therapist, it's because of a condition that's causing pain or what we call functional limitation interfering with their activities of daily living or their movement function. We alleviate pain to provide improved function. We do that by performing an examination and making an evaluation and diagnosis of their condition that's outside of medical disease and then treating it appropriately with a number of different tools, which would be modalities to alleviate pain, therapeutic exercise, or manual therapy. Again, there are many overlaps between different professions, including chiropractic and physical therapy in the area of manual therapy and mobilization. There are overlaps between massage therapy, occupational therapy, and physical therapy and maybe

other practitioners. I think this is an area where there is a common tool but it may not be a common treatment. I believe we do not treat for the same reasons, but we are treating the trigger point to relieve pain which would then allow the patient to have increased movement and function and we may address that with other techniques of exercise and manual therapy. To the public, it looks like a needle going into the body, but I believe it's for a different purpose. As I said, there are other tools that are used similarly by other professions but for a different intent.

Representative Foote said what I hear you saying is that the techniques are the same but the purposes may be different. Dr. Gorman said yes, I would agree with that. The technique is pushing a filiform needle, a solid needle, into the body. Again, we would focus on trigger points. I'm aware of acupuncturists using it in different areas of the body. To the consumer, that may seem like a very similar technique but it's for a different purpose.

Representative Kagan said the physical therapists are allowed to engage in animal physical therapy because the physical therapy practice act specifically authorizes animal physical therapy to be done under certain guidelines by physical therapists. That's clearly statutorily authorized, but the physical therapists are not statutorily authorized expressly to engage in dry needling. Would the physical therapists not be pleased and feel more comfortable if they had statutory authorization expressly in statute to engage in dry needling as they do with animal physical therapy? Dr. Gorman said I think it's unreasonable to expect the statute to list everything that we would do. The scope of the practice includes various techniques that are under the definitions of therapeutic exercise, manual therapy, use of devices, physical agents, and activities, and mechanical stimulation. We believe dry needling falls underneath that and therefore does not need to be explicitly stated. The animal rule came about because the practice act did say that we treat humans and so the rule was written specifically for animals. We feel this is within the scope of the language of the practice act and it's really just another technique. Many things that physical therapists or any practitioner does are not explicitly listed and we don't think it would be in the best interest to list every possible tool or modality that a provider would use.

12:54 p.m. -- Greg Shim, President of the Acupuncture Association of Colorado, and Scott Richardson, Vice President of the Acupuncture Association of Colorado, testified together before the Committee. Mr. Shim said I have 10 years of education behind me. Four of those years is a bachelor's in elementary education and two of those years is a master's in education. That really doesn't prepare me for the four-year course I took for acupuncture. We feel that with proper training people can do these things, but we have 800 hours minimum of direct supervised needling training in our fours years of acupuncture school. We feel that it's dangerous to go out there with 23 hours of training. It makes our profession look bad because I've had a number of patients come in and say I don't want to do this because I know it hurts but people told me to come see you and the acupuncture doesn't hurt as badly. These things really scare us in terms of the harm to patients, not only to our name as acupuncturists but

for the patient's safety as well.

Mr. Richardson said I'm also a licensed acupuncturist. I completed a four-year program and am board-certified in California, nationally certified, and also licensed in Colorado. In addition to my training in the United States, I've also spent approximately three years in China and Taiwan as well. One of the issues that seems to reoccur when talking about the differences between dry needling and acupuncture is that they are using a different system. The point location and using the meridian points is one style of acupuncture. When we do our intake and assessment we are using the same type of evaluation and looking at range of motion, palpating for areas of tenderness, and we can use local points which are areas of local tenderness that are usually identified as the trigger points that they're using in dry needling. I know it's been stated that there's a lot of overlap between the two professions. It's our opinion that the overlap is so great that the amount of hours of training should be more appropriate or closer to what is required for licensed acupuncturists. In comment of the training required to do dry needling, I used to work at a physical therapy practice and one of the physical therapists took a 23-hour course and came back from that claiming that per the course she was certified to do dry needling. That is not what is required by the state. Twenty-three hours is half of what is required by the state. She also claimed she could bill insurance for those dry needling techniques, which again is incorrect. To my knowledge, these issues have been brought up to the physical therapy board to make them aware of that and we are not seeing the changes happening to the courses being offered in Colorado to make sure that those attending the courses understand what is required by the state and what is within and outside their scope of practice, not only with the hours required to do the procedure but also what point locations they're able to use.

12:59 p.m. -- Chuck Brackney, Senior Staff Attorney, Office of Legislative Legal Services, addressed the Committee. He said I'm not going to tell you whether this is acupuncture or not, but what I do want to tell you about is what I've gone through in reviewing these rules three times over a large number of years. In the many years that I've served as staff of the Committee, I've probably sat at this table 100 times, telling you what we think is wrong with rules. Never once in all that time have I sat here telling this Committee that rules are okay. What I think you need to do is see if there is any reasonable approach under which the current statutory scheme would authorize the practice covered in the rule. That's less a thing than whether it's acupuncture or not or how much training there is, but rather whether there is that specific statutory authority. Here, there isn't that specific statutory authority, so I'm left to look at other things, and that includes the language in the statute talking about the use of preventive measures and the use of mechanical stimulation. Section 12-41-103 (6) (b), C.R.S., says that "physical agents" includes but is not limited to - so it's not limiting - certain things, and that "physical measures" includes mechanical stimulation. What I ultimately decided three times is that there is statutory authority found there to authorize dry needling by physical therapists in the way the rule talks about it. We heard earlier about whether there were some minor changes when the rules were adopted by the board and I want to bring one

of those to your attention. The rule says that dry needling, also known as trigger point dry needling, is a physical intervention that uses a filiform needle to stimulate trigger points and - here's the new language - diagnose and treat neuromuscular pain and functional movement deficits. I would say those are minor changes in the scope of what we're talking about, which is going to the central point of do they have the authority to do this. I don't think the changes made in 2011 or 2012 by the board were anything beyond that. There's also been a little confusion about the word "diagnose". Section 12-41-105, C.R.S., contains the limitations on authority for physical therapists and it says nothing in this article authorizes a physical therapist to perform any of the following acts, such as the practice of medicine, surgery, or the diagnosis of disease. However, they are certainly within their rights to do this sort of diagnosis of locating pain and what sort of treatment would be appropriate. That does not involve diagnosing disease. It's what you would expect physical therapists to do - diagnose pain and treat it using physical agents, using mechanical stimulation. I think that's exactly what this rule allows them to do. It would be much better if the statute gave them clear direction, but the statute doesn't say that.

Mr. Brackney said let me cover one other point. For the new members, we had a rule issue regarding chiropractors earlier this year. The issue there was that the board of chiropractors authorized chiropractors to do injections of fluids and other substances into people's bodies. I agreed that was beyond the scope of the practice act for chiropractors. You might be thinking that's needles, why isn't that the same thing. Let me give you three reasons why I think it's different. First, injections are not the same as dry needling. Dry needling is invasive but it's not injecting a foreign substance into one's body. That is a whole other degree of things. Secondly, and probably most importantly, is the law. The practice act regarding chiropractors is pretty restrictive; they can only do certain things. In contrast, the practice act for physical therapists is not limited; it includes a number of things. It says more than once in statute "includes but is not limited to". There is a lot of leeway there and room for interpretation. Finally, as a legal matter, the chiropractic rules included the rarely seen negative attorney general's opinion and the physical therapy rules include a positive attorney general's opinion.

Representative Kagan said if Rule 211 were allowed to expire, would it be lawful for a physical therapist who wanted to engage in dry needling to become qualified not only as a physical therapist but as an acupuncturist and then offer physical therapy and dry needling pursuant to their acupuncture qualifications? Mr. Brackney asked under your scenario, they're also licensed acupuncturists?

Representative Kagan said that's what I'm asking. Would it be lawful for a physical therapist to also be licensed as an acupuncturist if they fulfilled all the qualifications and then engaged in physical therapy and acupuncture or dry needling, or both? Mr. Brackney said I would have to say yes, under that scenario. That would be true regardless of what this Committee does with this rule today.

Representative Foote said I appreciate you going to the statute and trying to find some intent. When I'm looking at the March 8, 2013, memo that you wrote, I'm looking at page 3 where most of the page cites section 12-41-103, C.R.S., definitions for physical therapy. When I look at section 12-41-103 (6) (b) (II) (A), C.R.S., it says physical measures, activities, and devices includes, but is not limited to, mechanical stimulation. When I look at that particular subsection and do the analysis that I've been able to do for this memo, it seems to me like the decision really comes down to that subsection and whether or not puncturing the skin or dry needling would be included in one of two provisions. First, the "includes but is not limited to" because as you mentioned that's pretty broad. The other would be if it's included in "mechanical stimulation". It seems to me that you've decided in your analysis that it is included in mechanical stimulation, taking into consideration that the clause is broad because it says "is not limited to". I guess what I'm wondering is would there be room to come to the opposite conclusion and say that if you think puncturing the skin or using dry needling is not included in mechanical stimulation, does the conclusion in your memo change? Mr. Brackney said notice also in the memo that I also highlighted in section 12-41-103 (6) (b) (II) (A), C.R.S., the "but is not limited to" there. It doesn't even have to be that list; it can be other things that aren't on the list. To answer your question more directly, absolutely you can come to that conclusion. I'm trying to infer and read into the statute and my conclusion was that the threshold for reasonable authority to adopt the rule is there.

Representative Kagan said the board is authorized to make rules necessary for the administration and enforcement of the act. Do you consider dry needling rules to be reasonable and necessary for the administration or enforcement of the act? Mr. Brackney said section 12-41-103.6, C.R.S., says the board has the authority to adopt all reasonable and necessary rules for the administration and enforcement of the article. To the extent that one thinks dry needling fits under the practice act, then I think it is reasonable to have a rule regarding dry needling.

Representative Gardner said I wanted to clarify something about the rule review process. This rule first appeared in 2007. Is that correct? Mr. Brackney said yes.

Representative Gardner asked were you the person on staff who reviewed the rule in 2007-08 for that cycle? Mr. Brackney said yes I was. I've been well-acquainted with this for many years.

Representative Gardner said there was an assertion earlier that the Committee did not have an opportunity to look at this rule earlier. It was reviewed as part of the rule review process in 2007-08 was it not? Mr. Brackney said let me tell you exactly how that went. I got the rules in 2007 and reviewed them and went through this analysis, talked to a whole lot of acupuncturists and physical therapists, and came to my conclusion. What we do when we don't have a problem with the rules is the Committee never sees them. That's why I've never been up here before saying a rule is good. During the 2008 session, we were requested to

look at this rule again. It was a matter of a lot of controversy back then, just like it is now. I took a closer look at it at the request of the Chair, Representative McGihon, and I reported to her that I thought it was close. I characterized it as a 60/40 question and I said, however, we believe this rule is okay and the Committee shouldn't take any action. She gave deference to staff and the Committee never heard about it. That's why this is the first time it's being talked about in front of the Committee even though it's been around since 2007.

Representative Gardner asked if a chair wants to put something on the agenda for rule review notwithstanding your opinion, can they do so? Mr. Brackney said yes.

1:14 p.m. -- Dino Ioannides, Health Services Section for the Division of Professions and Occupations in the Department of Regulatory Agencies, and Maureen West, Attorney General's Office, General Counsel for the Office of Acupuncturist Licensure and the Physical Therapy Board, testified together before the Committee. Mr. Ioannides said there are a couple things the Committee should be aware of in terms of how the agency generally looks at the various practice acts. Frankly, what we're really talking about is turf wars among different practice areas. It's not something unique to this particular hearing and we see this with some frequency. The general idea is that the medical practice act authorizes physicians to do basically any health care in the world. Every other health practice act is looked at as a carve-out or a safe harbor allowing the practitioners of those areas to practice in acupuncture, chiropractic, or physical therapy without the possibility of the medical board issuing a cease-and-desist order. A natural outcome of that is that there are overlapping therapies used by different practitioners, there's overlapping modalities, there's overlapping practice, and that happens with quite a bit of frequency. For example, veterinarians can treat animals but so can chiropractors. Nurses and physicians can deliver babies but so can direct-entry midwives. This kind of thing is extremely common. One thing that I think is very important for the Committee to consider is something Ms. McGihon testified to and that is this idea that you have to have extreme specificity in the statute in order to authorize a particular practitioner to do something. The problem if you did that - and no practice act does that - is you would virtually hobble health care delivery in this state because there is simply no way that every single therapy, every single modality out there that practitioners do can be listed in the statute. In fact, that's the very purpose of rule-making. Otherwise we wouldn't need rule-making and the legislature would do all of it.

Representative Kagan said as I understand it, the board is entitled to make rules that are reasonable and necessary for the administration and enforcement of the act. The act suggests what kinds of scope of practice are authorized and then the rule-making authority is for administration and enforcement. All the rules, except for the animal physical therapy, are administrative- or enforcement-oriented, such as how many hours you need or how often you have to renew your license, except for the rule concerning dry needling. That's a concern of mine, that the whole scope of the rules seem to be of an administrative or enforcement nature and are not directly to the scope of practice except for this one. Have I read the body of rules

incorrectly? Mr. Ioannides said I think the Committee needs to take a broader view and look at not just the rules of one island program within the division of professions and occupations but really all of them. There are some boards and programs that do exactly that and all of their rules are virtually administrative. Other boards and programs use rules that do very carefully define the scope of practice and a great example of that is direct-entry midwives. The whole purpose of what the division does and what DORA does is to protect consumers. Consumer protection is our mission. Mr. Brackney testified that he thinks even if this Committee were to kill the rule, dry needling would remain in the scope of practice for physical therapists. That being the case, the board is virtually obliged to have a rule that deals with training obligations to make sure consumers are protected. So is it reasonable and necessary? I would say not only is it reasonable, which is what Mr. Brackney testified to, but I would say that it's necessary for purposes of consumer protection.

Ms. West said I'm in agreement. I represent, besides these two particular programs, eight other programs. The rules vary depending on the program and the program's needs, always with the objective being public safety and welfare. In this particular case, this rule is meant to be clarifying and delineate certain requirements and so it serves the purpose of being both reasonable and necessary.

Representative Labuda said I want to go back to the training. As I've mentioned, I've been going to acupuncturists for years and I talk to them and I know how much training they've had. I've been to a physical therapist recently. I know I would have been very shocked if a physical therapist had taken out a needle to do something for the problems I had. It bothers me when I find that the rules state that physical therapists must have 46 hours of training before they can do dry needling but when we go to animals it's a lot more training. I don't have confidence that those hours are enough to do something like that. I heard Mr. Brackney say that you can interpret this either way. I look at the chiropractic act and I can read what they can do and I know what they can't do because I read it. I expect a chiropractor to do certain things. I do have problems with the interpretation given by our staff. I understand staff's problem when we have a broad statute that he has to go hunting to try to find if the rules fit. I know you do a great job of looking after public safety and I don't think public safety is met in this case.

Mr. Ioannides said I will only say that questions of training regarding dry needling as compared to questions regarding physical therapy of animals are best directed to the physical therapists themselves and maybe to veterinarians.

1:25 p.m.

Representative Gardner moved amendment L.002. Representative Scott seconded the motion. Representative Gardner said L.002 has nothing to do with dry needling. It is just to pick up some things that we were going to repeal but other bills have picked them up.

1:25 p.m. -- Debbie Haskins, Assistant Director, Office of Legislative Legal Services, addressed the Committee. She said L.002 removes from the bill three sets of rules because legislation was passed this session to give the agencies statutory authority for those rules. Those bills are House Bill 13-1219, which authorizes adult basic education authorizations, House Bill 13-1199, which dealt with annual versus monthly reporting of care days for health care policy and financing, and Senate Bill 13-042, which dealt with the issue on the distinguished foreign teaching physician licenses. Those bills are either on the governor's desk for signature or have been signed by the governor. The Committee's practice when this happens is to remove the expiration of the rules from the bill, thereby allowing those rules to continue because statutory authority has been granted by the General Assembly.

No objections were raised to that motion and it passed unanimously.

1:27 p.m.

Representative Kagan moved amendment L.003. Representative Labuda seconded the motion. Representative Kagan said my sole concern is not the reasonableness of the physical therapists engaging in dry needling and whether they do it well or badly or whether they're sufficiently trained or whether they are treading on the turf of another profession. My concern is whether or not the physical therapy board has the authority, in statute, to authorize dry needling by physical therapists. To suggest that the board does have that authority is, to my mind, stretching things. I think it's arguable, but I don't think the argument prevails. The board is allowed to make rules that authorize and enforce the provisions of the physical therapy practice act. This is not true of all practice acts. Some boards are allowed to make rules that authorize types of scopes of practice, beyond enforcement or administration, but the physical therapy board is authorized to make rules that are reasonable and necessary to the administration and enforcement of the act. The act itself defines what the scope of practice is and, as has been pointed out by the physical therapists themselves and Mr. Brackney, the physical therapy scope of practice includes certain things but does not limit it. Of course, it would be impossible to make a comprehensive list and it's a very broad statutory authority that includes mechanical stimulation or mechanical adjustment to address pain and conditions. The question before us is does that include the practice of dry needling when it appears so close and to have such a large overlap with acupuncture and when the board and the physical therapists in the act are specifically prohibited from engaging in the other healing arts. Acupuncture is another method of healing so the question for us is, absent a specific statutory authority, which was given with regard to animal therapy, given that the authorization is administration and enforcement, given that there's a specific prohibition on other types of healing arts, given that the authorization relied on by the board is mechanical stimulation, and given that it is so much like acupuncture in many respects, is there really sufficient statutory authority for going beyond simply administration and enforcement and by rule-making effectively including within the scope of practice a practice that is of very questionable statutory authority within the act? That is our remit on this Committee: Making

sure rules are not beyond the statutory authority of the rule-making body. I concede that a similar rule has been in force for a while. I don't think that is sufficient to discharge our responsibility on this Committee to make sure that all rules promulgated are within the statutory authority of the board that promulgates the rules. I felt it was my responsibility to move this amendment because we must make sure that all rules promulgated are within the statutory authority. I don't think this one is. I think it's incumbent upon us now to say it is not. If we do, that does not mean that physical therapists will not be able to engage in dry needling. It will be open to the General Assembly to specifically authorize dry needling by physical therapists. Absent that, it is open to physical therapists to gain qualifications in acupuncture and then engage in dry needling. This is not a plea for physical therapists to stop engaging in dry needling. It's just a plea to stop doing it by rule without the statutory authority to do so. That's why I urge a yes vote on this motion.

Representative Gardner said in 2007 this scope of practice decision was made in DORA. It was reviewed by staff and there as an opportunity for this Committee to consider it. I don't think that forever forecloses us from considering it, but in the meantime, there was a sunset process in which all sorts of things get looked at, such as the regulatory model and the scope of practice. What's interesting to me about that is that dry needling as a part of the scope of practice was in existence when the sunset legislation was done and if there were concerns about that it seems to me that it probably was incumbent upon acupuncturists to challenge that. It might have been better, as Representative Kagan suggests, that it be done with clarity, but I can understand that physical therapists have a regulation recognizing dry needling within their scope of practice and it has existed for a little while and the scope of practice seems to be defined by regulation. These scope of practice things are, as DORA informs us, about turf battles, and I understand why nobody wants to kick that rock over, but the people that were unhappy might have wanted to kick that rock over at the time. So then we get a repromulgation of the regulations, not for the reason of scope of practice, but because we're changing the regulatory model from director regulation to board regulation and this creates an opportunity to revisit this thing that has been in essence rejected a couple times. Mr. Brackney said this was maybe 60/40. I've done these regulatory things for seven sessions now and had some closer ones than this. This seems to me to be a settled issue. It's one that was settled a long time ago and could have been raised two or three times as to whether there is enough training or all of those things. Those are DORA decisions that I might disagree with and if I disagree with them enough I have the ability to introduce bills to change that. If someone wants to change the standing scope of practice, this is not an illegitimate way to do it, but, in response to Representative Kagan, let me say you can exclude it from the scope of practice by bill as well. I'm going to be a no on this amendment. I think Mr. Brackney's analysis is clear, appropriate, and accurate, and we should let the rule stand.

Representative Foote said I don't have the depth of experience that other members have but my understanding of our service on this Committee is that we're supposed to take a look at a rule that has been promulgated and decide if, in our independent judgment, there is

statutory authority for that particular rule. That's what I've tried to do in this case and I've concluded that I think it is beyond the scope of what the statutory authority allows. I'm saying that because under physical activities, measures, and devices, and the mechanical stimulation part of it, I understand there is a clause that says "but is not limited to", but it seems like the analysis rests at least partially if not mostly on whether or not dry needling would be mechanical stimulation. What bothers me the most about saying that it would is that we're talking about the puncturing of skin, which is admittedly not as invasive as injecting a foreign fluid into the body, but is still invasive. I know other parts of the law treat it as such. I feel like had there been legislative intent to allow a more invasive technique, then it would have or should have been stated. I don't see it stated here and I just simply disagree with the conclusion. Unlike Representative Gardner, I see this as a very close issue. I see it as 51/49, frankly. That's where I'm going to come down, based on the information I have at this time. I'll be voting yes on the amendment.

Senator Morse said one thing that hasn't been stated expressly is that every single rule that is promulgated by the executive branch is reviewed through this process. It's really just those, based on the analysis that's done by our staff, that are possibly outside the scope that come to us, unless we ask specifically, for whatever reason, that an analysis be done and then we talk about it. It's not true that there's been a time or two where there's been an omission or we skipped it. Having served as chair of this Committee for years, our staff does an outstanding job of reviewing every single rule. Again, we end up with these memos that we then apply our independent judgment to, but in this case I agree with Representative Gardner that the statute gives them plenty of room to do this. I think as Mr. Ioannides suggested, that it's appropriate in these medical scope of practice things to try to carve out the safe harbors. I can't think of anything that would be more mechanical stimulation than dry needling. I will be a no on this amendment for those reasons. I think the process has worked very well in this case.

The motion failed on vote of 4-5, with Representative Foote, Representative Kagan, Representative Labuda, and Senator Roberts voting yes and Representative Gardner, Representative Scott, Senator Brophy, Senator Guzman, and Senator Morse voting no.

Representative Gardner said I was probably too quick on the original motion, so let me renew it.

1:43 p.m.

Representative Gardner moved Senate Bill 13-079, as amended, to the Committee of the Whole with a favorable recommendation. The motion was seconded by Representative Scott. Representative Labuda said the routing sheet says the bill needs to go to Appropriations. Is there any need for it to go to Appropriations? Senator Morse said it said that for the Senate and I think the Committee of the Whole is appropriate in this case. Representative Kagan

said before we vote on the bill I just wanted to echo your sentiments about the excellent job staff does in reviewing the rules for us and in preparing their opinions, and also the excellent job the staff did with Rule 211. Representative Labuda said I'll echo what everybody else says about the excellent staff, which I truly appreciated when I chaired this Committee. You're outstanding folks and you do excellent work. The motion passed on a vote of 9-0, with Representative Foote, Representative Gardner, Representative Kagan, Representative Labuda, Representative Scott, Senator Brophy, Senator Guzman, Senator Morse, and Senator Roberts voting yes.

1:45 p.m. -- Jennifer Gilroy, Revisor of Statutes, Office of Legislative Legal Services, addressed agenda item 2 - Discussion of and approval of a committee bill based on the process enacted in House Bill 10-1178 to repeal certain statutes in cases where a bill was funded with gifts, grants, and donations and a notice from the agency regarding the sufficiency of funding was not received by the Legislative Council Staff.

Ms. Gilroy said I'm here to discuss with you proposed legislation relating to gifts, grants, and donations. There's some good news and some bad news related to this. The good news is that when I was preparing for this presentation, I realized it was going to be a lot shorter than I expected. By way of review, this story begins with a bill that the General Assembly enacted in 2010, House Bill 1178, that required that Legislative Council staff keep a record of all bills that passed from January 1, 2011, forward that relied entirely or in any part on grant moneys for the funding source of a program, a service, an interim Committee, or other function of state government. Grant moneys is a defined term and includes any federal funds that do not have to be repaid or any gifts, grants, and donations equal to or in excess of $50 that do not have to be repaid. It also went on to say that any bills enacted by the General Assembly beginning January 1, 2011, that had a program or interim committee, study, or function that relied all or in part on gifts or grants moneys must include a provision that would require the oversight state agency to report to the Legislative Council staff that it had received adequate funding through grant moneys for that program or service. It had to do that reporting within two years of the effective date of the legislation. Then what happens is that the Legislative Council staff is charged with the requirement of keeping a list of those bills that it did not get the proper notice from, and that list is provided to you all and the Executive Committee, the president, the speaker, and me. Ultimately, if after two years inadequate funding or no notice has been received, I am directed to prepare a bill with your supervision and direction for repealing those provisions that were not adequately funded. I'm here today to present that bill to you. I've provided a draft to you prior to this meeting, but I think the bill may not be necessary at this point. The reason is - and here's the bad news - that in 2011 our staff had not been prepared, in those six bills identified by Legislative Council staff, to include those notices in the bills requiring the oversight state agencies to report to Legislative Council if they received adequate funding. The list that I provided to you identified seven bills that fit the description, one of which has already been repealed automatically by it's own terms, and those bills are still current law. There is nothing on the books that requires those

oversight state agencies to report to Legislative Council staff because it's not actually in the initial legislation from 2010. Rather, the initial legislation required the implementing bills to require the reporting. I can assure you that starting in the 2012 legislative session, our staff has been great about including those provisions. We have a protocol that has to be followed. But at this point, I would identify to you that with those other remaining bills, those state agencies don't know that they should be reporting. They do have actual notice because in 2012 I realized the oversight from our 2011 legislation and I personally called and spoke to a representative from every state agency that those bills represent and did follow-up e-mails to let them know about their reporting requirement. Now, since then I know there have been changes in personnel but I can tell you that on the books there is nothing that requires them to report. Of the six bills that still remain, only one of them has passed its two-year mark. One of them became effective March 17, 2011. Of the others, one will be effective at the end of April, two in June, and two in August. In some sense those are premature, but I took it upon myself to include the reporting requirements from those bills in the 2012 revisor's bill after I let the agencies know I'm going to include those reporting requirements in the revisor's bill, so they had notice and had a whole year to know they needed to report. The 2012 revisor's bill was deemed lost in the final days of the session last year, so still those reporting requirements are not on the books. I have included those provisions in the 2013 revisor's bill, which I anticipate will be introduced next week, but the time period is significantly shortened. There are five others out there and I'm happy to leave those in there. You all may decide to wait until next year to consider whether or not you want to proceed and see if Legislative Council staff does get notice from the agencies that they've received adequate funding or not. Also, I have permission from Senator Steadman to let you all know that he is planning to introduce a bill in the very near future that would actually repeal this whole process. You also may want to consider how that bill might proceed and whether or not you want to pursue this at all this year. The bill that I have prepared pursuant to statute is probably premature at this point.

Representative Labuda said I remember when that legislation was passed because it seemed like every bill we were passing relied upon gifts, grants, or donations. I think that is no longer the case because when we passed that bill, people got the idea that you don't do that. My main concern at the time was if there was anything relying solely on gifts, grants, and donations, there were some things on the statutes we might as well get rid of because they're nonfunctioning. I think I will talk with Senator Steadman about not getting rid of the program altogether, but just changing it because I don't want to have statutes on the book that mean nothing because they rely entirely on gifts, grants, and donations and none have come in.

Ms. Gilroy said there is a portion of House Bill 10-1178 that requires state agencies to report to the Joint Budget Committee on November 1 of each year what gifts, grants, and donations they've received, for what purpose, the amount, and sustainability. I don't believe that Senator Steadman's proposed legislation would repeal that. That assists the Joint Budget Committee at least in evaluating the budget if there's attempts to backfill through general fund moneys

if there's insufficient gifts, grants, and donations received.

Representative Labuda asked do you know if the Joint Budget Committee has received any reports of gifts, grants, or donations? Ms. Gilroy said I actually contacted the Joint Budget Committee staff individuals responsible for the areas that these bills affected and the ones that I got information from indicated they did not receive information. I don't know if they have in other areas, but the indication is in the areas these bills address, the answer is no.

Senator Morse asked if Ms. Gilroy needed guidance from the Committee? Ms. Gilroy said I have two questions for the Committee. One of them is would you like me to put away the bill draft I gave you and not proceed at this point in time? My second question would be, in terms of the notice provisions on the bills for 2011 that I have in the 2013 revisor's bill, would you like me to keep those notice provisions in the bill or take them out before it's introduced? The first question has to do with the bill that would repeal all the 2011 legislation for which we have not received notice of sufficient funding.

Senator Morse asked if the Committee objected to pulling the notice bill, shelving it for the time being, and wait to see what happens with Senator Steadman's bill and with the revisor's bill? The Committee indicated that it did not object.

Senator Morse said with respect to taking out the notice provisions in the revisor's bill, how is that going to mesh with Senator Steadman's bill? His bill has not been introduced yet. Is the revisor's bill close to being done? Ms. Gilroy said they'll probably be introduced almost the same time. The revisor's bill will pass close to the end of session although about a week before sine die. Timing-wise I'm not sure. It would be a situation where those notice provisions could go into the books but the process would be repealed. You've got bills from 2012 that have the notice provisions, too. The repeal of this process from House Bill 10-1178 I can always clean it up in a future revisor's bill. I'm not worried about it.

Senator Morse asked if the Committee objects to instructing Ms. Gilroy to leave the notice provisions in the revisor's bill for the time being and if we see Senator Steadman's bill is going to pass then perhaps we could amend the revisor's bill to take them out?

Mr. Gilroy said another way to address this is that I can do a conditional effective date for those sections of the revisor's bill so that those sections of the bill do not become effective if Senator Steadman's bill becomes law.

Senator Morse asked the Committee if there is any objection to that approach? The Committee indicated that it did not object.

1:58 p.m. -- Sharon Eubanks, Deputy Director, Office of Legislative Legal Services, addressed agenda item 3 - Update on the Budget for the Office of Legislative Legal Services.

Ms. Eubanks said we wanted to give you a brief update on our budget for fiscal year 2013-14. I am happy to report that we have received an appropriation for our budget, which was included in the legislative appropriation bill, Senate Bill 13-187, which has been enacted and signed into law. What we wanted to make you aware of is that the amount of appropriation that we received for fiscal year 2013-14 is different than the amount of our total budget that you all approved back in February. We included a sheet of information in your packet for the meeting. To refresh your memory, the third column reflects the budget that you approved for us, which included a total amount of $5,759,744. The amount in the next column is the amount of the appropriation that we received in Senate Bill 187. The difference between those two numbers is reflected in the chart under personal services. You might recall that when we presented our budget to you, we included an increase in funding in personal services to match the 2% salary survey funding that the executive branch requested as well as a 1.6% merit increase. Our budget request to you also included additional funding for merit increases to help us keep our good people, to make us more competitive especially with government-sector attorneys, and to help more fully implement a new system of positions and salary ranges that we have adopted in the Office. After you approved our request, we submitted our approved budget to the Executive Committee and we got direction from the Executive Committee to reduce our personal services funding. The Executive Committee thought it was important for the legislative department to match the request of the executive department in terms of only providing funding for the 2% salary survey increase and the 1.6% merit increase. Our budget was adjusted downward by $92, 228 and that was the additional revenue we requested for additional merit increases and the associated costs related to those. We just wanted to make you aware of that change to our budget.

Representative Labuda asked no merit increases? Ms. Eubanks said we have the 1.6% merit increases but not the additional amount.

2:03 p.m. -- Dan Cartin, Director, Office of Legislative Legal Services, addressed the Committee. He said I have one quick update on the General Assembly's contract dispute with LVW Electronics. This is the contract the General Assembly entered into in 2008 with LVW to provide computer software and associated hardware for the House and Senate voting systems. Some of you who have been on the Committee for a few years are familiar with this dispute. In October 2011, LVW submitted claims for amounts substantially in excess of the contract price. Without going into detail, the General Assembly disputed those claims. We came to the Committee at that time and obtained authorization to retain Holland and Hart to represent the General Assembly in connection with the contract dispute. The Executive Committee was also apprised and approved. Last month, the dispute went to mediation and no settlement was achieved. On Monday we were advised by LVW's attorneys that they were filing a complaint and jury demand against the General Assembly in Denver District Court on its contract claim. Maureen Witt and Diego Hunt of Holland and Hart will continue to represent the General Assembly and respond to LVW's claims and advance any counter

claims that the General Assembly may have in this matter. We've informed the Executive Committee of these developments and we'll continue to keep you updated.

2:05 p.m.

The Committee adjourned.