

**REPORT OF RECOMMENDATIONS AND FINDINGS ON THE
PROPOSAL TO MAKE CHANGES IN OPTOMETRY SCOPE OF
PRACTICE**

By the Nebraska State Board of Health

To the Director of the Division of Public Health of the Department of
Health and Human Services and the Members of the Health and
Human Services Committee of the Legislature

January 17, 2023

Table of Contents

Part One: Preliminary Information.....	Page	3
Part Two: Summary of Board of Health Recommendations...	Page	5
Part Three: Summary of the Applicants' Proposal.....	Page	6
Part Four: Recommendations by the Board's Credentialing Review Committee.....	Pages	7, 10
Part Five: Board of Health Recommendations.....	Pages	11, 15, 16

Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

LIST OF MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

Douglas Bauer, DO

Heather Cramer, RN

Russell Crotty, OD

Jaime Dodge, MD

Diane Jackson, APRN-FNP

Michael Kotopka, DDS

John Kuehn, DVM

Donald Ostdiek, DPT

Mark Patefield, PharmD

David Reese

Daniel Rosenthal, PE

Robert (Bud) Synhorst

Timothy Tesmer, MD

Douglas Vander Broek, DC

Dan Vehle

Joshua Vest, DPM

The Board's Credentialing Review Committee met in the morning of September 19, 2022 to formulate its advice to the full Board on the proposal. The members of the full Board of Health met in the afternoon of September 19, 2022 to formulate their recommendations on the proposal. The outcome of the full Board vote was a tie, no recommendation was made.

The Board's Credentialing Review Committee met in the morning of November 14, 2022 to formulate its advice to the full Board on the proposal. The members of the full Board of Health met in the afternoon of November 14, 2022 to formulate their recommendations on the proposal. The outcome of the full Board vote was a tie, no recommendation was made.

The members of the full Board of Health met in the afternoon of January 17, 2023 to formulate their recommendations on the proposal. This time a recommendation was made.

Part Two: Summary of Board of Health Recommendations

The Board's Credentialing Review Committee members advised the full Board to recommend approval of the proposal via a roll call vote of four "yes" votes, three "no" votes, and one abstention.

During their deliberations on the applicants' proposal five members of the full Board voted to recommend approval of the proposal, five members of the full Board voted against recommending approval of the proposal, and three members of the full Board abstained from voting. The outcome of this action was a tie vote which means that the full Board of Health did not formulate a recommendation on the proposal.

The Board's Credentialing Review Committee members advised the full Board to recommend against approval of the proposal via a roll call vote of two "yes" votes and three "no" votes.

During their deliberations on the applicants' proposal six members of the full Board voted to recommend approval of the proposal, six members of the full Board voted against recommending approval of the proposal, and four members of the full Board were absent. The outcome of this action was a tie vote which means that the full Board of Health did not formulate a recommendation on the proposal.

During their deliberations on the applicants' proposal seven members of the full Board voted to recommend approval of the proposal, six members of the full Board voted against recommending approval of the proposal, and three members of the full Board were absent. By this action the members of the full Board of Health voted to recommend approval of the applicants' proposal.

Part Three: Summary of the Applicants' Proposal

The proposed change in scope of practice would authorize Doctors of Optometry to perform a procedure called "Selective Laser Trabeculoplasty" (SLT) for the treatment of glaucoma. The current Optometric Practice Act contains a categorical prohibition on the use of lasers by Optometrists. The proposal would permit a single, specific laser procedure used for the treatment of glaucoma, an eye disease that Optometrists in Nebraska have been treating since 1998.

The full text of the most current version of the applicants' proposal can be found under the Optometry topic area of the credentialing review program link at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Four: The Recommendations of the Members of the Credentialing Review Committee of the Board of Health on the Optometry Proposal

Comments and Discussion by the Committee Members and Interested Parties to the Optometry Proposal During the September 19, 2023 Meeting

Dan Rosenthal briefly discussed the review process of the Optometry Technical Review Committee vis-à-vis the number of meetings including the public hearing and the final meeting wherein the recommendations of the Committee were formulated.

Dr. Christopher Wolfe, OD, came forward to present testimony on behalf of the applicant group. Dr. Wolfe stated that Optometrists have been treating glaucoma for more than twenty years including providing pre-op and post-op care for eyecare patients. He went on to state that the current proposal would enhance the eyecare services of Optometry by adding the utilization of SLT treatment procedures for acute glaucoma, adding that this treatment regimen has become a front-line procedure for glaucoma care and that adding this to Optometric scope of practice would greatly enhance the available options that Optometric patients would have in choosing what procedures they want for their eyecare needs.

Dr. Wolfe commented on each of the six criteria beginning with criterion one, commenting that eighty-three of Nebraska's ninety counties currently do not have SLT procedures located within their borders and that the proposal seeks to correct this shortcoming of Nebraska's health care system. Pertinent to criterion two, Dr. Wolfe commented that passage of similar proposals in nine states around the USA has greatly enhanced access to SLT care in those states. Pertinent to criterion three Dr. Wolfe stated that there has been no evidence that expanding Optometric scope of practice in these states has resulted in any harm to patients in those states. Pertinent to criterion four Dr. Wolfe stated that the experience of Optometry with this expanded scope of practice in these nine states indicates that the proposed education and training in the proposal is the right amount to ensure safe and effective services. Pertinent to criteria five and six Dr. Wolfe stated that previous experience has shown that Boards of Optometry have been able to provide the necessary oversight and discipline of the profession to ensure competency and safe and effective practice vis-à-vis the proposed expanded scope or practice.

Dr. Kuehn asked Dr. Wolfe how post-graduate training and education would be managed if the proposal were to pass. Dr. Wolfe responded by stating that there would be a certification requirement for all Optometrists seeking to provide the services in question and that this certification program would involve both didactic and clinical, hands-on training with work being done on live patients. Dr. Wolfe commented that Optometrists are already trained in how to identify those patients who are prime candidates for SLT, for example. He added that the hands-on training would be a proctored by practitioners already well-qualified and credentialed to provide SLT services.

Dr. Tesmer asked Dr. Wolfe about how Nebraska Optometrists would get access to the proposed training given that there are no schools of Optometry in Nebraska. Dr. Wolfe stated that travel would be necessary to access the training in question and that advance communication and planning would be necessary to schedule the hands-on treatment portion of the training including coordination with those who proctor this kind of training. Dr. Tesmer responded that weekend courses would not be enough to provide adequate preparation and training to do SLTs safely and effectively. Dr. Wolfe responded that the additional proposed

sixteen hours, when added to what Optometrists already have, would provide enough training to provide SLT services safely and effectively.

John Peters, MD, came forward to provide testimony on behalf of those opposed to the Optometry proposal. Dr. Peters stated that SLT is a non-emergent procedure and that most glaucoma patients choose not to do this procedure, adding that access is not an issue vis-a-vis this modality since the services and the patients most likely to use them are already well matched in terms of location and accessibility. Dr. Peters went on to state that passing this proposal would create new potential for harm because of the relative inexperience of Optometrists in providing this kind of hands-on surgical procedure. He cited the stance taken by some insurance companies in refusing to provide coverage for these procedures when done by Optometrists.

Dr. Tesmer asked opponent testifiers about the apparent unpopularity of SLT with eyecare patients. Dr. Shane Havens, MD, responded that most glaucoma patients prefer medications over surgical procedures except for emergencies. Dr. Havens commented that SLT is so rarely chosen that it is difficult for MD students to get enough hands-on repeats to get the necessary repeat procedures to satisfy training requirements.

The opponents were asked about the costs associated with the purchase and maintenance of laser technology. Dr. Havens responded by stating that the costs vary but that in any case these costs are always on the "high side," ranging from 20,000 dollars to 50,000 dollars and higher in some cases.

Dr. Peters commented that portability is an issue vis-à-vis lasers especially in rural areas of our state. Lasers can be moved from site-to-site but there are maintenance problems, including cost problems, associated with portability. Problems with portability include such things as having to continually set, reset, and recalibrate a laser, for example.

Dr. Crotty, OD, responded by stating that Optometrists are willing and able to incur the high costs associated with SLT procedures and technology if, in so doing, this would provide their patients with choices that they currently lack due to access to care problems, for example.

The applicants were asked how continuing competency would be maintained vis-à-vis laser technology and procedures. Would there be CE for this purpose? Would the certification need to be renewed? Dr. Crotty responded that he was not sure how this would be accomplished but that the Board of Optometry would provide answers that are consistent with safe services for the public.

Dr. Kuehn expressed concerns about what he sees as the potential for "scope-creep" arising from passing the current Optometric proposal, adding that it would be difficult to enforce strict practice limits on Optometry practitioners who provide SLT once this proposal is passed, especially those practicing in a remote rural community in out-state Nebraska. Dr. Crotty responded that the Board of Optometry has been very diligent in enforcing scope limits in the past and would take decisive action against any practitioner who violates scope limitations defined in law or rule and regulation.

The Board's Credentialing Review Committee members made their recommendations on each of the six criteria of the CR statute as follows on September 19, 2022:

Criterion one: The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.

Voting "yes" and thereby recommend approval of the proposal were: Crotty, Vander Broek, Vest

Voting "no" and thereby recommend against approval of the proposal were: Bauer, Kuehn, Rosenthal, Tesmer

Cramer abstained from voting

Criterion two: Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.

Voting "yes" and thereby recommend approval of the proposal were: Crotty, Rosenthal, Vander Broek, Vest

Voting "no" and thereby recommend against approval of the proposal were: Bauer, Kuehn, Tesmer

Cramer abstained from voting

Criterion three: The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public.

Voting "yes" and thereby recommend approval of the proposal were: Crotty, Rosenthal, Vander Broek, Vest

Voting "no" and thereby recommend against approval of the proposal were: Bauer, Kuehn, Tesmer

Cramer abstained from voting

Criterion four: The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.

Voting "yes" and thereby recommend approval of the proposal were: Crotty, Rosenthal, Vander Broek, Vest

Voting “no” and thereby recommend against approval of the proposal were: Bauer, Kuehn, Tesmer

Cramer abstained from voting

Criterion five: There are appropriate post-professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill of service in a safe manner.

Voting “yes” and thereby recommend approval of the proposal were: Crotty, Rosenthal, Vest

Voting “no” and thereby recommend against approval of the proposal were: Bauer, Kuehn, Tesmer, Vander Broek

Cramer abstained from voting

Criterion six: There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

Voting “yes” and thereby recommend approval of the proposal were: Crotty, Vander Broek

Voting “no” and thereby recommend against approval of the proposal were: Bauer, Kuehn, Rosenthal, Tesmer, Vest

Cramer abstained from voting

The Board’s Credentialing Review Committee members formulated their advice to the members of the full Board of Health via an “up-down vote” as follows:

Voting “yes” and thereby recommend approval of the proposal were: Crotty, Rosenthal, Vander Broek, Vest

Voting “no” and thereby recommend against approval of the proposal were: Bauer, Kuehn, Tesmer

Cramer abstained from voting

By this vote the Board’s Credentialing Review Committee members advised that the members of the full Board of Health recommend approval of the proposal.

Part Five: The Recommendations of the Members of the Full Board of Health on the Optometry Proposal During the September 19, 2022 BOH Meeting

Comments and Discussion by the Members of the Full Board of Health and Interested Parties to the Optometry proposal

A summary of applicant group comments

An applicant representative provided a brief overview of applicant arguments on the issues under review by stating that the Optometry proposal would do no harm to the public and that there is a need in remote rural areas of Nebraska for SLT services for the treatment of glaucoma. These are important eye care services and rural eyecare patients need better access to them and Optometrists are prepared to provide these services in a safe and effective manner.

A summary of opponent group comments

A representative of Nebraska eyecare physicians provided a brief overview of their concerns about the Optometry proposal by stating that there is no access to care problem vis-à-vis SLT eyecare services in Nebraska. Most glaucoma patients choose medication treatments to deal with their condition. Very few glaucoma patients are candidates for SLT. This representative went on to state that Optometrists are not sufficiently well trained to provide these services safely and effectively and that passing the proposal would create needless new risk to public health and safety.

Discussion by the Board members

Dr. Kuehn expressed concern that passing the proposal would create new potential for “scope creep” in Nebraska. Mr. Reese asked the applicants to clarify the types of service venues wherein SLT services would be provided. Dr. Crotty responded that SLT would be an “in-office” procedure and would not be provided in clinics or hospitals. Amy Reynoldson commenting on behalf of the Nebraska Medical Association that physicians provide SLT services in a wide variety of service venues including clinics, surgical centers, and physicians’ offices.

The Board of Health members took action on the proposal as a whole via an “up-down vote” on the advice of their Credentialing Review Committee, as follows:

Voting “yes” to recommend approval of the committee’s recommendation which was to recommend approval of the applicants’ proposal were:

Vest, Vander Broek, Ostdiek, Jackson, Crotty

Voting “no” to recommend against approval of the committee’s recommendation which was to recommend approval of the applicants’ proposal were:

Tesmer, Kuehn, Reese, Patefield, Bauer

Cramer, Rosenthal, and Dodge abstained from voting

Because this was a tie vote the members of the full Board of Health did not formulate a recommendation on the Optometry the proposal.

Part Six: The Recommendations of the Members of the Credentialing Review Committee of the Board of Health on the Optometry Proposal During the November 14, 2022 BOH Meeting

Dr. Vander Broek asked applicant group representatives to briefly summarize their argument on the issues surrounding their proposal. David McBride came forward to speak on behalf of the applicant group and commented that the proposal satisfies the statutory criteria of the Credentialing Review Program, making the following points in support of the proposal:

- It would not cause any new harm to the public.
- There is a need for improving access to SLT services in remote rural areas of Nebraska.
- The optometry proposal would improve access to SLT procedures.
- The proposal would provide significant benefit to eye care patients living in remote rural areas of our state.
- Optometrists are educated and trained to provide these services safely and effectively.
- The Board of Optometry is well prepared to oversee the implementation of this proposal consistent with the provision of safe and effective SLT services to Nebraska eyecare patients.

Dr. Vander Broek asked representatives of those opposed to the Optometry proposal to briefly summarize their argument on this proposal. Dr. John Peters, MD, commented that the current Optometric proposal does not satisfy the statutory criteria of the Credentialing Review Program, making the following points in this regard:

- There is no evidence supporting the applicants' contention that there is an access to care problem in Nebraska vis-à-vis the provision of SLT services. Access to this care is adequate to meet the need even in remote rural areas of our state.
- There is very limited demand for SLT services in Nebraska compared to other eyecare procedures.
- There would be no benefit to the public from passing this proposal. Information from other states that have passed similar proposals indicates that most optometrists do not utilize SLT procedures in their practices.
- There would be significant new harm stemming from the utilization of SLT surgical procedures by optometrists because optometrists are not adequately trained or educated to provide such procedures safely and effectively.
- There would be no way to oversee or ensure that optometrists would be providing SLT services safely and effectively.

Dr. Russell Crotty, OD, commented about the hardships many rural Nebraskans have getting access to eyecare services. Dr. Crotty stated that the apparent low demand for SLT services in rural areas is more of a reflection of the desire for these services to be delivered locally by a local medical provider rather than have to travel long distances to get such procedures taken care of as is the situation now. Dr. Crotty commented that few of the medical clinics in rural areas of our state provide SLT services, contrary to the testimony provided by the opponents of the proposal.

The Board's Credentialing Review Committee members made their recommendations on each of the six criteria of the CR statute as follows on November 14, 2022:

Criterion one: The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.

Voting "yes" and thereby recommend approval of the proposal were: There were no aye votes.

Voting "no" and thereby recommend against approval of the proposal were: Cramer, Kuehn, Rosenthal, and Vander Broek

Criterion two: Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.

Voting "yes" and thereby recommend approval of the proposal were: Rosenthal and Vander Broek

Voting "no" and thereby recommend against approval of the proposal were: Cramer, Kuehn, and Tesmer

Criterion three: The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public.

Voting "yes" and thereby recommend approval of the proposal were: Rosenthal and Vander Broek

Voting "no" and thereby recommend against approval of the proposal were: Cramer, Kuehn, and Tesmer

Criterion four: The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.

Voting "yes" and thereby recommend approval of the proposal were: Rosenthal and Vander Broek

Voting “no” and thereby recommend against approval of the proposal were: Cramer, Kuehn, and Tesmer

Criterion five: There are appropriate post-professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill of service in a safe manner.

Voting “yes” and thereby recommend approval of the proposal were: Rosenthal and Vander Broek

Voting “no” and thereby recommend against approval of the proposal were: Cramer, Kuehn, and Tesmer

Criterion six: There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.

Voting “yes” and thereby recommend approval of the proposal were: Rosenthal

Voting “no” and thereby recommend against approval of the proposal were: Cramer, Kuehn, and Tesmer

The Board’s Credentialing Review Committee members formulated their advice to the members of the full Board of Health via an “up-down vote” as follows:

Voting “yes” and thereby recommend approval of the proposal were: Rosenthal and Vander Broek

Voting “no” and thereby recommend against approval of the proposal were: Cramer, Kuehn, and Tesmer

By this vote the Board’s Credentialing Review Committee members advised that the members of the full Board of Health recommend against approval of the proposal.

Part Seven: The Recommendations of the Members of the Full Board of Health on the Optometry Proposal During the November 14, 2022 BOH Meeting

The full Board of Health took action on the Optometry proposal via an Up/Down vote on the proposal as a whole. The roll call went as follows:

Voting to recommend approval of the proposal were:

Crotty, Kotopka, Ostdiek, Rosenthal, Vander Broek, and Vehle

Voting not to recommend approval of the proposal were:

Cramer, Dodge, Kuehn, Reese, Synhorst, and Tesmer

The result of this vote is a tie and therefore no recommendation was generated by this action.

Part Eight: The Recommendations of the Members of the Full Board of Health on the Optometry Proposal During the January 17, 2023 BOH Meeting

Dr. Vander Broek moved that the Board members approve the Optometry proposal for change in scope of practice. Dan Rosenthal seconded the motion. The roll call vote was as follows:

Voting to recommend approval of the proposal were seven Board members:

Russell Crotty, OD; Michael Kotopka, DDS; Daniel Rosenthal, PE; Douglas Vander Broek, DC; Dan Vehle; Joshua Vest, DPM; Donald Ostdiek, DPT

Voting not to recommend approval of the proposal were six Board members:

Douglas Bauer, DO; Heather Cramer, RN; John Kuehn, DVM; David Reese; Timothy Tesmer, MD, Jaime Dodge, MD

The result of this action was a vote to recommend approval of the Optometry proposal.