FINAL REPORT OF RECOMMENDATIONS

By the Nebraska State Board of Health
on the Proposal by the Audiologists and Speech-Language Pathologists for a Change in Scope of Practice

To the Director of the Department of Health and Human Services Regulation and Licensure and the Legislature

March 19, 2007

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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 Health and Human Services Department of Regulation and Licensure. The Director of this Agency 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 four 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 a technical review committee take the form of a written report that is submitted to the State Board of Health and the Director of the Agency 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.

MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

Sam Augustine, RP, PharmD	(Omaha)
Janet Coleman, Public Member	(Lincoln)
Tim Crockett, PE	(Omaha)
Edward Discoe, MD	(Columbus)
Kent Forney, DVM	(Lincoln)
Linda Heiden, Public Member	(Bertrand)
Russell Hopp, DO	(Omaha)
Linda Lazure, PhD, RN (Chair)	(Omaha)
Pamela List, MSN, APRN	(Beemer)
Roger Reamer, Hospital Administrator	(Seward)
Paul Salansky, OD	(Nebraska City)
Robert Sandstrom, PhD, PT (Secretary)	(Omaha)
Clint Schafer, DPM	(North Platte)
Leslie Spry, MD (Vice-Chair)	(Lincoln)
Gwen Weber, PhD	(Omaha)
Gary Westerman, DDS	(Omaha)
Daryl Wills, DC	(Gering)

SUMMARY OF THE APPLICANTS' PROPOSAL

The Audiology and Speech-Language Pathology Proposal States as Follows:

Proposed Statutory Wording for Audiologists

The practice of audiology shall mean the application of evidence-based practice in clinical decision-making for the prevention, assessment, habitation/rehabilitation, and maintenance of persons with hearing, auditory function, vestibular function, and related impairments including; a) cerumen management to prevent obstruction of the external ear canal and/or amplification devices; b) the evaluation, selection, fitting, and dispensing of hearing aids, implantable hearing aids, and assistive technology devices as part of a comprehensive audiological rehabilitation program.

Current Statutory Wording for Audiologists

The practice of audiology shall mean the application of principles, methods, and procedures for testing, measuring, and monitoring hearing, preparation of ear impressions and selection of hearing aids, aural rehabilitation, hearing conservation, vestibular testing of patients when vestibular testing is done as a result of referral by a physician, and instruction related to hearing and disorders of hearing for the purpose of preventing, identifying, evaluating, and minimizing the effects of such disorders and conditions but shall not include the practice of medical diagnosis, medical treatment, or surgery.

Proposed Statutory Wording for Speech–Language Pathologists

The practice of speech-language pathology is defined as the application of principles and methods associated with the development and disorders of human communication skills and of disorders of swallowing (dysphagia). Such principles and methods include screening, assessment, evaluation, treatment, prevention, consultation, and restorative modalities for speech, voice, language and language-based learning, hearing, swallowing or other upper aerodigestive functions for the purpose of improving quality of life by reducing impairments of body functions and structures, activity limitations, participation restrictions, and environmental barriers.

Current Statutory Wording for Speech–Language Pathologists

The practice of speech-language pathology shall mean the application of principles, methods, and procedures for the evaluation, monitoring, instruction, habilitation, or rehabilitation related to the development and disorders of speech, voice, or language for the purpose of preventing, identifying, evaluating, and minimizing the effects of such disorders and conditions but shall not include the practice of medical diagnosis, medical treatment, or surgery.

Changes in Wording Pertinent to Audiology and Speech–Language Pathology Assistants

Registered audiology and speech-language pathology assistants shall mean those practitioners who have graduated from a bachelor's level program with a major in communications disorders, or have an associate's degree in communication disorders or equivalent. Currently, assistants are only required to have a high school education or equivalent.

An Amendment to the Proposal

At the second meeting of the technical review committee, the applicant group amended the proposal in such a way as to delete item number four of Section 71-1,187 of their practice act. This change in the proposal, if it were passed, would have the effect of terminating the current exemption from the audiology and speech-language pathology licensure statute for the practitioners of these two professions who work in school settings that are under the auspices of the Nebraska Department of Education.

SUMMARY OF BOARD OF HEALTH RECOMMENDATIONS ON THE PROPOSAL

The members of the full Board of Health recommended approval of the Audiology and Speech-Language Pathology proposal for a change in scope of practice with clarifications as stated below.

1) **From the original proposed wording which stated**, "a) cerumen management to prevent obstruction of the external ear canal and/or amplification devices,"
   To the following revised wording which states, "a) cerumen removal from the cartilaginous (outer one-third) portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices. Accumulation of cerumen medial to the cartilaginous portion of the ear canal will be referred to a physician."

2) **From the original proposed wording which stated**, "b) the evaluation, selection, fitting, and dispensing of hearing aids, implantable hearing aids, and assistive technology devices as part of a comprehensive audiological (re)habilitation program."
   To the following revised wording which states, "b) the evaluation, selection, fitting and dispensing of hearing aids, external processors of implantable hearing aids, and assistive technology devices as part of a comprehensive audiological (re)habilitation program."

The Board made an ancillary recommendation regarding the role of audiology assistants in providing services under the terms of the proposal. The members agreed that there should be specific language placed in statute which would have the effect of prohibiting these providers from dispensing and fitting hearing aids.

FULL ACCOUNT OF BOARD OF HEALTH RECOMMENDATIONS ON THE PROPOSAL

(State Board of Health Meeting, November 20, 2006)

Dr. Linda Lazure, Chairperson of the Nebraska State Board of Health (BOH), asked Dr. Edward Discoe, Chair of the Board of Health Credentialing Review Committee, to comment on the work of the committee on the proposal during its November 3, 2006 meeting. He told the Board members that concerns discussed during that meeting were those raised by the representatives of the educational community. Dr. Discoe also informed the Board members that he had been contacted by representatives of Nebraska's Ear, Nose and Throat Specialists (ENTs) regarding concerns they had about the proposal, and that representatives of that group were present to comment on their concerns. He stated that the details of the Technical Review Committee recommendations, as well as those of the Board of Health Credentialing Review Committee, were available in written reports as handouts to the Board members.

Dr. Lazure asked testifiers to come forward to make their comments on the proposal, beginning with the applicant group. Cindy Snyder, Speech-Language Pathologist (S.L.P.), came forward to make comments on behalf of the applicant group. Ms. Snyder began her remarks by stating that the provisions pertinent to cerumen (earwax) management would always occur within the context of hearing tests and the fitting of hearing aids, and that practitioners always work under referral from a physician. She told the Board members that her group would soon be meeting with representatives of the Nebraska Department of Education (NDE) to discuss their ongoing concerns about how the proposal would interface with the current school certification credential. Ms. Snyder went on to state that her group is currently working with NDE representatives on ways to coordinate continuing education so as to accommodate the needs of school practitioners for the time after they become covered by the proposal. Dr. Sandstrom asked Ms. Snyder if the proposed continuing education (CE) requirements could be configured to recognize specific education courses taken by school practitioners. Ms. Snyder responded in the affirmative. Applicant group comments ended at this juncture.

Dr. Lazure asked representatives of groups with concerns about the proposal to come forward to present their comments. Amy Slama, Vocational Rehabilitation Specialist with the Department of Education, came forward to comment on the concerns of school practitioners regarding the idea of universal licensure. Ms. Slama asked that the Board members delay their review process in order to allow more time for clarification on how the proposal for universal licensure might impact the school certification process for members of the professions employed by the public schools. She stated that the jobs of school-based practitioners depend on the continuing viability of this credential. Ms. Slama stated that these practitioners are concerned that the creation of a universal licensure would mean that their school-based credential would somehow "go away." She said that if this were to transpire, school-based practitioners would not be able to satisfy NDE standards related to the educational aspects of their jobs. She added that requiring licensure would not change the

way schools handle clinical matters, and that they would continue to refer clinical matters to licensed professionals outside of the school system.

Dr. Spry asked Ms. Slama how complaints regarding the services of school-based practitioners are currently handled. She responded that complaints are typically handled internally by the school principal, although the NDE has statutory authority to investigate specific complaints if it wishes to do so. This concluded Amy Slama's comments.

Pam List commented that licensure would create a disciplinary process that could provide greater assurance of appropriate accountability. Dr. Sandstrom commented that licensure would provide school-based practitioners with the benefit of a CE process that would ensure that important health-related information is provided to them. He also stated that he did not see anything in the applicants' proposal that indicated that there was any intention on their part to eliminate the school certification credential.

Dr. Lazure then asked whether there were any other persons who wished to come forward to present comments on the proposal. Alan Nissen, M.D., came forward to present comments on behalf of Nebraska's ENTs. He stated that there is potential for harm in cerumen removal procedures, especially in the case of persons who have such chronic health conditions as diabetes. Dr. Nissen informed the Board members that diabetic patients often have unusually brittle inner ear tissues, and there needs to be assurance that cerumen removal is done under the auspices of persons qualified to know and understand the potential for harm associated with this procedure among such vulnerable patients. He also stated that there needs to be a clear prohibition in the proposal against audiologists doing surgical implant procedures because this is something only physicians should be allowed to do. Janet Coleman noted that a wide range of health care workers do cerumen removal, including nurses aides and LPNs, and commented that these workers do not have either the education or training that audiologists possess. She added that no one seems to be sounding the alarm regarding their services in this area. Dr. Sandstrom commented that Dr. Nissen's concerns should not override concerns about access to care issues in remote areas of our state, noting that we don't want situations wherein persons have to travel hundreds of mile just to get earwax removed. This concluded the discussion on Dr. Nissen's remarks.

Dr. Lazure then asked whether there were any other persons who wished to come forward to present comments on the proposal. Amy Prenda, J.D., came forward to present comments on behalf of the hearing aid dealers and fitters. Ms. Prenda expressed concerns about the provision in the proposal that would eliminate the requirement that audiologists be licensed as hearing aid dealers and fitters as a prerequisite to dispensing and fitting hearing aids. She stated that this requirement provides important protection for the public and ensures that providers are knowledgeable about hearing aid technologies and the fitting of hearing aid technologies. Ms. Prenda stated that the education and training of audiologists lacks focus on topics specific to hearing aid fitting and dispensing, and that the requirement for them to sit for the fitters and dispensers examination is an important component of public protection. Dr. Sandstrom asked Ms. Prenda why she believes that audiology education and training is insufficient to protect the public in this aspect of care. Ms. Prenda responded that audiology

curriculum does not prepare a practitioner to sell and fit hearing aids. This ended the testimony of Ms. Prenda.

Dr. Discoe then stated that he would like to have more time to think through the issues under review, and asked that the Board table the issue until its January meeting. Dr. Spry stated that tabling the issue would allow the applicants more time to respond to outstanding concerns about their proposal, including concerns about assistive personnel, medical oversight, surgical procedures, and cerumen removal. He added that during the morning meeting of Dr. Discoe's committee, concerns were expressed about the proposed deletion of language by the applicant group pertinent to surgical procedures. He suggested that the applicant group restore the original statutory wording. Ms. Snyder indicated that this would be done. Ms. Coleman expressed the opinion that there was no reason to delay action on the proposal, and that the Board members already had all the documentation they needed to take action.

Dr. Discoe moved and Dr. Sandstrom seconded that action on the proposal be delayed until the January BOH meeting. A roll call vote was taken. Voting aye were Augustine, Discoe, Forney, Heiden, Hopp, Reamer, Salansky, Sandstrom, Schafer, Spry, Weber, Westerman and Wills. Voting nay were Coleman, Lazure and List. Not voting: None. Motion carried.

Approval of the Committee Report on the Applicants' Proposal by the Full Board

During the January 22 meeting of the full Board of Health, Linda Lazure, Chairperson, informed the Board members that since the issues surrounding the Audiology/SLP proposal had been formally tabled by the Board members at their previous meeting, they would need to take formal action to reopen discussion on these issues before they could continue their work on them.

Dr. Spry moved and Dr. Westerman seconded that the Board members reopen their deliberations on the issues surrounding the Audiology/SLP proposal. Voting aye were Coleman, Discoe, Heiden, Hopp, Lazure, List, Reamer, Salansky, Sandstrom, Spry, Weber and Westerman. There were no nay votes or abstentions. By this vote the Board members reopened their deliberations on these issues.

Chairperson Lazure informed the group that the Board of Health usually votes on the four criteria collectively, but they may be separated out individually. There was no motion to do so, which means that the Board members will take action on the committee report in one roll call vote for their recommendations on this proposal.

> The Board's Credentialing Review Committee recommended that the proposal to change the scope of practice of Audiology and Speech-Language Pathology be approved. They also recommended that the Board approve an ancillary recommendation which includes two revisions to the proposed language concerning cerumen management:
>
> 1) **From the original proposed wording which stated**, "a) cerumen

management to prevent obstruction of the external ear canal and/or amplification devices,"
To the following revised wording which states, "a) cerumen removal from the cartilaginous (outer one-third) portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices. Accumulation of cerumen medial to the cartilaginous portion of the ear canal will be referred to a physician."

2) **From the original proposed wording which stated**, "b) the evaluation, selection, fitting, and dispensing of hearing aids, implantable hearing aids, and assistive technology devices as part of a comprehensive audiological (re)habilitation program."
To the following revised wording which states, "b) the evaluation, selection, fitting and dispensing of hearing aids, external processors of implantable hearing aids, and assistive technology devices as part of a comprehensive audiological (re)habilitation program."

The Board made an ancillary recommendation regarding the role of audiology assistants in providing services under the terms of the proposal. The members agreed that there should be specific language placed in statute which would have the effect of prohibiting these providers from dispensing and fitting hearing aids.

These changes represent compromises on the proposed wording between representatives of Nebraska's ENT physicians and the applicant group that represent clarifications but not amendments to the proposal.

(A more detailed discussion of the committee action on these proposed changes is contained in the next section of this report on <u>pages 17, 18 and 19</u>)

Dr. Lazure asked the Board members whether they wanted to act on this proposed ancillary recommendation with a separate vote, or if they wanted to act on it along with their vote on the entire Credentialing Review Committee recommendation. There was a consensus among the Board members that they wanted to act on both the ancillary recommendation and the committee recommendation in one roll call vote.

Dr. Lazure reminded the Board members that the committee recommendations constitute a motion and that no second is necessary. She stated that an "aye" vote would uphold the committee's recommendation, while a "nay" vote would overturn the committee's recommendation and in effect deny approval of the applicants' proposal.

The Board members then voted on the standing motion from the Credentialing Review Committee. Voting aye were Coleman, Discoe, Heiden, Hopp, Lazure, List, Reamer, Salansky, Sandstrom, Spry, Weber and Westerman. There were no nay votes or abstentions. Motion carried.

By this vote the Board members endorsed the November 3, 2006 recommendations of the Credentialing Review Committee concerning the proposal.

These recommendations had been formulated by applying the following criteria:

Criterion one: The present scope of practice or limitations on the scope of practice create a situation of harm or danger to the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.

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

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

Criterion four: The public cannot be effectively protected by other means in a more cost-effective manner.

(A more detailed discussion of the committee action on these issues is contained in the next section of this report on pages 15 and 16)

THE RECOMMENDATIONS OF THE CREDENTIALING REVIEW COMMITTEE ON THE PROPOSAL

(November 3, 2006)

Dr. Discoe called the State Board of Health (BOH) Credentialing Review Committee to order at 2:00 p.m. The roll was called and the following committee members were present: Ed Discoe, M.D., Chair; Janet Coleman; Roger Reamer and Gary Westerman, D.D.S. Also present from the BOH were Leslie Spry, M.D. (BOH Vice-Chair) and Robert Sandstrom, P.T. (BOH Secretary). The following staff persons were present: Ronald Briel, Anne Owens and David Montgomery.

Dr. Discoe stated that the purpose of the meeting is to make recommendations to the full Board of Health on the proposal for a change in scope of practice for Audiologists and Speech-Language Pathologists. He added that an opportunity would be provided for input on the issues by interested parties, including the applicant group and any groups opposed to the applicants' proposal.

Dr. Discoe began the proceedings by asking Janet Coleman, Chairperson of the Technical Review Committee, to present comments on the work of her committee. Ms. Coleman identified the key issues of the review as being cerumen (earwax) management, dysphagia, and how best to update the requirements for school-based practitioners. She added that the universal licensure issue emerged during the review as an amendment to the original proposal. Ms. Coleman also identified the dual licensure requirement for audiologists to provide hearing aid fitting and dispensing as another issue of the review. She stated that the members of her committee were diligent in their efforts to identify what was best for the public as they reviewed these issues, and that they showed a determination to make recommendations that focused on the public good.

Dr. Discoe then asked the applicant group representatives to come forward to present their comments. Cindy Snyder, Speech-Language Pathologist (SLP), and Ryan McCreery, Audiologist, came forward to present comments on behalf of the applicant group. Ms. Snyder read from a prepared statement and informed the review panel that over the last three decades the skill sets of the members of both audiology and speech-language pathology have expanded significantly. She noted that in both professions, entry-level educational requirements now call for graduate-level education and training, which was not the case a generation ago. Ms. Snyder informed the review panel that both professions now have the education and training to provide services that include the assessment and treatment of dysphagia, autism, auditory disorders, cerumen management and the fitting and dispensing of hearing aids. Ms. Snyder went on to state that the proposal seeks to eliminate the exclusion from licensure for those SLPs who work in the public schools and who practice under a teaching certificate. One of the reasons for this requested change is to meet the needs of students who have disabilities related to speech and hearing. Ms. Snyder stated that SLPs should be able to become involved with these special-needs students in a capacity

other than just teaching. She also advised the committee that negotiations between her group and the Nebraska Department of Education (NDE) are currently occurring pertinent to the implications of the proposal for the current requirement for a teaching certificate for practitioners who are employed by the public schools.

Ms. Snyder stated that the proposal serves as a means of defining and clarifying for the public what role audiologists and speech-language pathologists are capable of playing in the provision of services in the variety of service settings that occur in Nebraska.

Ms. Snyder then presented comments on behalf of Mary Friehe, the President of the Nebraska Speech-Language-Hearing Association. These comments summarized the status of negotiations between the applicant group and representatives of the Department of Education. Ms. Friehe identified the most controversial issue in these negotiations as the matter of what might happen to the teaching certificate if the proposal were to pass. It was noted that those with concerns about the proposal have indicated that if the requirement for this credential were to be eliminated, school-based SLPs would no longer be able to perform functions that are required in statute.

Mr. McCreery then presented comments pertinent to the audiology component of the proposal. He stated that the following elements need to be clearly provided for in the licensure statute for audiology:

1) The assessment and treatment of hearing and balance problems;
2) An update of the educational requirements that would make all degree programs Ph.D. programs by 2008 to meet national standards;
3) Cerumen management as part of the scope of practice;
4) Elimination of the requirement for a separate hearing aid fitters and dealers license in order to dispense and fit hearing aids;
5) Definition of audiology assistants and establishment of professional qualifications for being an assistant; and
6) Universal licensure for all practitioners in Nebraska.

Dr. Sandstrom asked Mr. McCreery why the applicant group is seeking universal licensure of all practitioners in Nebraska. Mr. McCreery responded by stating that health care issues do arise in the schools pertinent to auditory and speech-related matters, and it would be better for the sake of public protection if those practitioners employed in school settings were licensed. Cindy Snyder added that there are medical fragility issues in the schools regarding children with certain genetic disorders, and that those SLP practitioners who work in the schools should be licensed to deal with these kinds of problems.

Dr. Sandstrom then asked the applicants whether or not there is currently a mechanism by which those practitioners who behave in an unprofessional or abusive manner can be tracked and accounted for under the current situation in school systems. Cindy Snyder indicated that there is not such a mechanism or process in place. Marge Harouff, speaking on behalf of the Department of Education, responded that there is a Professional Practice

Commission that reviews complaints from the public related to discipline matters or on matters pertinent to abuse or incompetence. Dr. Harouff added that the public can get information on such actions via the agency website. Dr. Sandstrom asked Dr. Harouff if there is anyone in the NDE system who can make decisions regarding medical malpractice. Dr. Harouff stated that there is not, and that the Department seeks such expertise from outside their system. Dr. Leslie Spry asked Dr. Harouff to "walk him through" this process. Dr. Harouff explained the sequential aspects of this process. She indicated that complaints from the public are acted upon by NDE's legal counsel, who then files a formal complaint with the Professional Practice Commission. Roger Reamer commented that it seems that this process lacks a quality assurance dimension. He added that it seems to be a purely complaint-driven process, and that it seems to lack adequate follow-through on reported problems. Dr. Spry agreed that this process seems to "have some holes in it".

Mr. McCreery then commented on the hearing aid dispensers and fitters issue, stating that audiologists are currently allowed to assess, treat and rehabilitate hearing problems, but are not allowed to dispense or fit hearing aids without having to undergo an additional licensure process. He added that the members of his profession are sufficiently well-trained to provide these kinds of services without having to undergo additional requirements in order to provide them. Mr. McCreery commented that the current situation is both confusing and inconvenient for patients because they may have to seek out two different types of licensed practitioners in two different locations to get the services they need. He added that the proposal would simplify this situation by providing patients with a "one-stop-shop" for their hearing care.

Dr. Sandstrom asked the applicants to discuss the language-based learning aspect of their proposal, and to clarify their intent regarding the current requirement in the schools for a teaching certificate for those practitioners employed by the schools. Cindy Snyder responded that speech-language pathologists do work in the area of literacy. She stated that the applicant group has no intention of seeking the elimination of the requirement for a teaching certificate. Ms. Snyder added that the applicant group intends to grandfather in practitioners employed by the schools.

Dr. Sandstrom asked the applicants to discuss continuing education (CE); specifically, whether or not continuing education is being required for school-based SLP practitioners. Ms. Snyder responded that she has been told that the CE requirement in the schools is something like six semester hours over six years. Dr. Sandstrom commented that this would equate to ninety contact hours, which is quite a large number of hours. Ryan McCreery stated that the problem is that many of these CE hours are education-related rather than health-related.

Donna Moss, Speech-Language Pathologist in the Hastings Public School System, then came forward to speak in favor of some aspects of the proposal. Ms. Moss stated that she is very supportive of the efforts to update the SLP practice act to clearly provide for the assessment and treatment of dysphagia, for example. She indicated that it is the universal licensure aspect of the proposal that creates concerns, and that she would speak on this more specifically later in the meeting. This concluded the applicant group segment of the proceeding.

Dr. Discoe then asked opponent testifiers to come forward to present their comments. Mike Grace, a hearing aid dispenser and fitter, came forward to present comments on behalf of Dan Kurtz, another hearing aid dealer and fitter who could not be in attendance at this meeting. Mr. Kurtz's remarks stated that his group is concerned about the portion of the proposal that calls for the elimination of the requirement for audiologists to obtain a hearing aid dispensers and fitters license in order to dispense and fit hearing aids. He stated that the skills associated with these services are unique and that the education and training received by audiologists is too general to sufficiently focus on the skill sets associated with these services. He stated that for this reason, the requirement for a dispensers and fitters license should continue, and that the public would continue to have the assurance of adequate protection if this requirement were continued. Mr. Kurtz added that technology is changing constantly and professionals who do this kind of work need to have specific and ongoing training just to keep up with all of these changes. Dr. Westerman asked Mr. McCreery how many audiologists already possess a dispensers and fitters license. Mr. McCreery responded that approximately ninety percent of the currently licensed audiologists possess this license.

Dr. Sandstrom then asked Mr. McCreery whether or not the proposal would allow audiology assistants to dispense and fit hearing aids. Mr. McCreery responded that it is not the intention of the applicant group to allow assistants to provide these kinds of services, and that in response to the concerns expressed about this matter, the applicant group intends to create very specific new language that will clearly prohibit this from the scope of practice of audiology assistants.

Dr. Discoe then recognized Marge Harouff for comments on the proposal on behalf of the Department of Education. Dr. Harouff began her prepared remarks by informing the committee members that she inquired with the Department of Health and Human Services and with the Department of Education's Professional Practices Commission to find out if there have been any complaints directed against SLPs employed in the public schools in Nebraska. Dr. Harouff told the committee that she found that there have been no complaints directed against any SLPs in the public schools who possess a license from HHSS. She also noted that there were no complaints directed against practitioners employed in Nebraska school systems who have the teaching certification credential. Janet Coleman responded to these comments by stating that this information does not necessarily mean that there are no problems with these services since complaints are often dealt with at the level of the public schools per se, without being passed on to other disciplinary bodies. Ms. Coleman added that as a former employee of the public schools, she knows how difficult it is to get a complaint to an authority outside of a given school system, and noted that often such complaints simply get "buried."

During this part of the meeting, documents received by agency staff regarding the universal licensure issue were circulated to the committee members.

Dr. Harouff commented that representatives of her agency have requested that the review process on the proposal be delayed until all of the stakeholders have had time to study the

idea and provide input. She added that there is great concern among public school employees regarding the implications of the proposal for their work in school settings. She went on to state that one of the greatest concerns is how the universal licensure concept might impact the current teaching certificate credential that all school-based practitioners are required to maintain. She also noted that there are concerns that if the proposal were to eliminate the school certification credential in favor of licensure, school-based SLPs would be barred by statute from participation in the services provided under the Disabilities Education Act and the Response Intervention process, as well as any programs that include co-teaching concepts and practices as part of their processes. Dr. Harouff mentioned that negotiations are underway between the Department of Education and the applicant group regarding these issues. She added that there would be complications with reimbursement for services if practitioners employed by the schools possessed only a license but no teaching certificate.

Dr. Sandstrom asked whether or not there is a safety issue pertinent to students in the public schools who have dysphagia. Donna Moss, speaking on behalf of the Department of Education, stated that public schools are well prepared to meet the needs of students with these kinds of special needs. These special needs are met by forming medical planning teams that involve parents, teachers, administrators, and health care professionals. Dr. Sandstrom asked whether or not SLPs with only a teaching certification credential are capable of playing a role in these medical planning teams. Ms. Moss responded by stating that school systems frequently employ the services of physicians for the medical professional input on these teams.

Dr. Westerman commented that the answer to questions regarding licensure versus the teaching certification is to require both credentials for those practitioners who are employed by the public schools. Donna Moss stated that it might be a good idea for practitioners to have both credentials, but that she was not sure about making this an absolute requirement. Dr. Sandstrom stated that it is the medical aspect of school-based practice that needs to be more clearly defined. Dr. Spry commented that only licensure can ensure that medically-oriented continuing education occurs and that medical knowledge and skills are maintained. Ms. Moss responded that school-based practitioners do attend workshops that deal with medical issues as part of their continuing education requirements. Dr. Discoe said that this kind of continuing education program could not provide assurance that all medically important issues are covered, and that the thrust of such CE programs would still be education rather than health care. Ms. Moss responded that the team concept she described previously is sufficient to prevent harm. This ended the public comment part of the meeting.

In the ensuing discussion, Dr. Spry stated that he continues to have concerns about the ability of the disciplinary process for SLP practitioners currently used by the public schools to deal with medical and health-related harm from incompetent practice. He said that the focus and agenda of this process would inevitably have an educational rather than a medical focus, and that for this reason there is a need to compliment it with a separate medically focused discipline process that only licensure could implement.

The committee members then moved into a discussion on the four statutory criteria pertinent to scope of practice proposals.

Mr. Briel clarified the statutory wording of the criteria to be used to take action on the proposal. Criterion one for both proposals looks at the current situation and asks if there is a source of harm to the public. Criterion two asks if the specific proposal is going to create new additional harm that would cancel out any benefit. Criterion three asks if there is benefit in the proposal. Criterion four asks if the proposal is the most cost-effective way to address the problem or problems identified. Dr. Discoe stated that in order for the proposal to pass, it must pass all four of these criteria.

Criterion one states: The present scope of practice or limitations on the scope of practice creates a situation of harm or danger to the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.

Dr. Spry moved and Ms. Coleman seconded that the proposal satisfies criterion one. Voting aye were Coleman, Discoe, Reamer, Sandstrom, Spry and Westerman. Voting nay: None. Motion carried.

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

Ms. Coleman moved and Dr. Westerman seconded that the proposal satisfies criterion two. Voting aye were Coleman, Discoe, Reamer, Sandstrom, Spry and Westerman. Voting nay: None. Motion carried.

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

Dr. Spry moved and Dr. Westerman seconded that the proposal satisfies criterion three. Voting aye were Coleman, Discoe, Reamer, Sandstrom, Spry and Westerman. Voting nay: None. Motion carried.

Criterion four states: The public cannot be effectively protected by other means in a more cost-effective manner.

Dr. Westerman moved and Dr. Spry seconded that the proposal satisfies criterion four. Voting aye were Coleman, Discoe, Reamer, Sandstrom, Spry and Westerman. Voting nay: None. Motion carried.

By these actions the committee members advised the full Board of Health to approve the applicants' proposal.

After voting on the criteria, the committee members discussed the issue of the role of audiology assistants in providing services under the terms of the proposal. There was a consensus among the members that there should be specific language placed in statute which would have the effect of prohibiting these providers from dispensing and fitting hearing

aids. Pursuant to this discussion, Dr. Spry moved and Dr. Westerman seconded that the language of any legislative version of the proposal clearly state that audiology assistants be prohibited from dispensing and fitting hearing aids and from making ear molds. Voting aye were Coleman, Discoe, Reamer, Sandstrom, Spry and Westerman. Voting nay: None. Motion carried.

The committee members also discussed the topic of encouraging networking among the interested parties as well as the two state agencies involved with the issues under review. There was consensus that there is a continuing need for all of the parties involved with these issues to continue to negotiate regarding the resolution of outstanding differences and concerns.

Pursuant to this discussion, Dr. Spry moved and Dr. Westerman seconded that there be continuing dialog between the Nebraska Department of Health and Human Services, the Nebraska Department of Education and the Speech-Language Pathologists regarding the idea of licensure from the Department of Health and Human Services of SLPs who may also be holders of a teaching certificate from the Department of Education. This dialog should address concerns of complaint reporting, continuing education requirements and costs associated with this dual credential. Voting aye were Coleman, Discoe, Reamer, Sandstrom, Spry and Westerman. Voting nay: None. Motion carried.

PUBLIC FORUM
ON ISSUES RAISED BY THE PROPOSAL HELD BY THE CREDENTIALING REVIEW COMMITTEE OF THE STATE BOARD OF HEALTH

(January 22, 2007)

Dr. Discoe called the State Board of Health (BOH) Credentialing Review Committee to order at 8:00 a.m. The roll was called and the following committee members were present: Ed Discoe, M.D., Chair; Janet Coleman; Russell Hopp, D.O.; and Gary Westerman, D.D.S. Also present from the BOH were Linda Heiden; Linda Lazure, Ph.D., R.N. (BOH Chair); Robert Sandstrom, P.T. (BOH Secretary) and Leslie Spry, M.D. (BOH Vice-Chair). The following staff persons were present: Ronald Briel and David Montgomery.

Dr. Discoe began the meeting by stating that the purpose of the meeting was to hear comments from interested parties to the Audiology and Speech-Language Pathology proposal for a change in scope of practice. Dr. Discoe then asked the applicant group representatives if they wanted to make any comments. Cindy Snyder came forward to speak for the applicant group. Ms. Snyder began her remarks by informing the committee members that the applicant group has decided not to pursue universal licensure during the legislative review of their proposal. She added that the legislative version of the proposal would exempt school-based SLPs from licensure as long as they refrain from providing services to medically fragile students. Ms. Snyder stated that this change would not change the provisions of the credentialing review proposal that the Board members would be acting on during their afternoon session since it is too late in the review process for any further amendments to their proposal. This version of the proposal would still include the universal licensure provision. Ms. Snyder submitted a draft of the proposed statutory language that comprises the withdrawal of universal licensure in the applicants' legislative proposal, stated as follows:

> The language of statutory reference 71-1,187 begins by stating that "Nothing in the Uniform Licensing Law (to be changed to Uniform Credentialing Act) shall be construed to prevent or restrict:
>
> > (4) The practice of audiology or speech-language pathology or the use of the official title of such practice by a person who holds a valid and current credential as a speech-language pathologist or audiologist issued by the State Department of Education, if such person performs speech-language pathology or audiology services for students who are not medically fragile and solely as a part of his or her duties within an agency, institution, or organization for which no fee is paid directly or indirectly by the recipient of such service and under the jurisdiction of the State Department of Education, but such person may elect to be within the jurisdiction of sections 71-1,186 to 71-1,196;" : **(Items 1, 2, and 3 are not listed because they remain the same)**

Dr. Spry responded to these comments by stating that dropping universal licensure raises concerns about public protection of medically fragile children in the public school system, and

that he is still very much in support of the concept of universal licensure. Amy Slama, a Vocational Rehabilitation Specialist speaking on behalf of the Department of Education, stated that school-based practitioners have chosen to practice in schools because they have no interest in treating persons who are medically fragile. Dr. Discoe observed that there is nothing that would prevent a "rogue" SLP from providing services to medically fragile children under the guise of providing educational services. Dr. Spry agreed with Dr. Discoe and added that there are no laws in place to prevent this from occurring. Ms. Snyder stated that there is a competency differential between licensed practitioners and school-based practitioners regarding medically-related aspects of practice, and that the latter do not have either the education or follow-up training to deal with medically-related problems. Dr. Spry remarked that he has heard of instances wherein school-based practitioners have attempted to provide medical advice, and that this is a concern to him.

Dr. Discoe then asked if there were representatives of the audiology group who might wish to come forward to make comments regarding the audiology component of the proposal. Ryan McCreery, a representative of the audiologists, came forward to present comments. He reported that his group and the ENTs had reached a compromise on issues pertinent to cerumen management. This compromise involved the drafting of the following proposed clarifications:

> **From the original proposed wording which stated**, "a) cerumen management to prevent obstruction of the external ear canal and/or amplification devices,"
> **To the following revised wording which states**, "a) cerumen removal from the cartilaginous (outer 1/3) portion of the external auditory canal when the presence of cerumen may affect the accuracy of hearing evaluations or impressions of the ear canal for amplification devices. Accumulation of cerumen medial to the cartilaginous portion of the ear canal will be referred to a physician."
>
> **From the original proposed wording which stated**, "b) the evaluation, selection, fitting, and dispensing of hearing aids, implantable hearing aids, and assistive technology devices as part of a comprehensive audiological (re)habilitation program."
> **To the following revised wording which states**, "b) the evaluation, selection, fitting and dispensing of hearing aids, external processors of implantable hearing aids, and assistive technology devices as part of a comprehensive audiological (re)habilitation program."

Mr. McCreery informed the Board members that the intent of these provisions is the ensure that audiologists are enabled to remove obstructions in the ear canal that interfere with the conduct of a hearing test, not to treat patient's earwax build-up conditions per se. These conditions would be referred to a physician. Mr. McCreery added that this has always been the intent of the applicant group, and the revised wording provides clarification of that intent.

Janet Coleman stated that the Board members might want to adopt this revised wording as an ancillary recommendation. Dr. Spry asked whether this is something that the committee could send on for the full Board's consideration and Dr. Discoe answered in the affirmative.

Mr. McCreery reiterated that the revised wording is not an attempt to amend the proposal, but rather represents an effort to clarify the intent of the proposal. Dr. Discoe asked whether there was a motion regarding this matter. Ms. Coleman moved and Dr. Spry seconded that the committee members approve the revised language submitted by the applicant group on cerumen management as an ancillary recommendation to be added to their full report of recommendations on the applicants' proposal. The committee members approved the motion unanimously by voice vote.

Dr. Discoe then asked if anyone wished to comment on the hearing aid fitting and dispensing issues raised by the proposal. Stephen Bush, a representative of the hearing aid dealers and fitters, came forward to present comments. Mr. Bush stated that the proposal to eliminate the requirement that audiologists be required to get a hearing aid dealers and fitters license raises concerns about public protection. He stated that these concerns are substantiated by data that shows that the failure rate for audiologists who take the fitters and dealers licensure examination is higher than for those trained and dealers and fitters per se. Dr. Discoe asked Mr. Bush whether he could provide the committee members with documentation of this assertion. Mr. Bush responded that he did not have such documentation.

Mr. McCreery submitted a document to the committee members which detailed the differences in education between audiologists and hearing aid dealers and fitters. He commented that the document shows that there is a great disparity in the education and clinical preparation of these two groups, and that audiologists possess far more training and education than do hearing aid dealers and fitters. Mr. Bush responded that audiology education and training does not adequately focus on the actual technologies associated with hearing, and that the current dual licensing requirement is an important regulatory element that helps to protect the public. Dr. Discoe asked Mr. Bush about the nature of the examination for the dealers and fitters license. Mr. Bush responded that it is both a written and practical examination. Mr. McCreery commented that the training of an audiologist includes extensive practical experience with the technologies in question, and that this preparation, plus continuing education, ensures adequate protection for the public with no need for any additional licensure requirements. The issue of when, during their training, audiologists take the HADF exam was raised. Many times audiology students take the HADF exam early in their training so that they can obtain a part-time job while in school. The pass rate of these students is lower than it would be if they took the exam later in their training.

Dr. Discoe asked whether there were any additional comments on any of the issues raised by the Audiology/SLP proposal. Dr. Sandstrom responded by making a motion on the language pertinent to the withdrawal of universal licensure previously cited in this report on page 17. He moved that the Board of Health support this language as part of its recommendations on this proposal. Dr. Lazure seconded the motion, but stated that she did this only to advance the motion so that it could be discussed. Mr. Montgomery commented that the Board could only approve such a motion on the condition that the current version of the proposal fails to pass, since this motion contradicts the proposal of record that the Board is reviewing. Dr. Discoe asked for voice vote on the motion. The motion did not pass.
Dr. Discoe asked whether there were any other comments on the issues under review. Ann Bird, a coordinator of SLP services with the Special Populations Office of the Department of

Education, came forward to speak. Ms. Bird stated that the Department of Education supports LB 479, which comprises the legislative version of the proposal, including the aforementioned language withdrawing universal licensure. Ms. Bird did state that her agency does have some concerns about this language because it appears to restrict school-based practitioners from providing any kind of services to medically fragile students, even if these are educational in nature. Ms. Bird indicated that her agency would continue to work with the applicant group to address these concerns. There was no further discussion on these issues at the meeting.