FINAL REPORT OF RECOMMENDATIONS

By the Nebraska State Board of Health
on Proposals for a Change in Scope of Practice for Certified Nurse Midwives and for the Licensure of Direct Entry Midwives

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

September 25, 2006

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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 technical review committees take the form of written reports that are 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
(Summer 2006)

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 MIDWIFERY PROPOSALS

THE CERTIFIED NURSE MIDWIFERY PROPOSAL

Heather Swanson, M.S.N., C.N.M., is the applicant. The applicant's proposal would make the following changes in the Certified Nurse Midwife (CNM) scope of practice:

1. Allow CNMs to attend home births,
2. Remove the requirement for a practice agreement with a physician,
3. Allow CNMs to care for infants through their first 28 days of life with such care to include newborn screening, immunizations, lab work, medications, and early well-child checkups,
4. Add CNMs to the list of providers that shall be reimbursed for services legally provided,
5. Add CNMs to the list of providers that cannot be denied clinical privileges solely on the basis of the type of license they possess, and
6. Provide CNMs with prescriptive authority as appropriate for their scope of practice.

THE DIRECT ENTRY MIDWIFERY PROPOSAL

Heather Swanson, M.S.N., C.N.M., is the applicant. The applicant's proposal seeks licensure for those Direct Entry Midwives (DEMs) who satisfy standards defined in the proposal.

The proposal states that those Direct Entry Midwives who seek licensure must pass the North American Registry of Midwives (NARM) Examination. Those who pass this exam would be required to pay a fee that would permit them to use the title Certified Professional Midwife (CPM). Those who earn this title could then be granted a license as a Licensed Midwife (LM) by the State of Nebraska. **(The Applicant's Proposal, Pages 3 and 4)**

Groups exempted from the terms of the proposal include Certified Nurse Midwives (CNMs), physicians, midwifery students, parents, and persons lending assistance in an emergency situation. **(Appendix Number 13, The Applicant's Proposal)**

The proposal provides for a temporary license of three years duration for those students in the process of completing their training. **(The Applicant's Proposal, Page 4)**

The proposal provides for the creation of a Board of Midwifery Practice consisting of five members, including two CPMs, one CNM, one physician, and one consumer. **(The Applicant's Proposal, Page 7)**

The license would be renewed every two years. The proposal would also require that each practitioner maintain their CPM certification. **(The Applicant's Proposal, Pages 9 and 10)**

SUMMARY OF BOARD RECOMMENDATIONS AND TECHNICAL REVIEW COMMITTEE RECOMMENDATIONS

The members of the full Board of Health recommended against approval of both the CNM and DEM proposals.

The members of the technical review committee recommended against both the CNM and DEM proposals, but approved a motion which recommended that all but the home birthing provisions of the CNM proposal be approved.

FULL ACCOUNT OF BOARD RECOMMENDATIONS AND CREDENTIALING REVIEW COMMITTEE ACTIONS

(State Board of Health Meeting, July 24, 2006)

Dr. Linda Lazure, Chairperson of the Nebraska State Board of Health, asked Dr. Edward Discoe, Chair of the Board of Health Credentialing Review Committee, to comment on the work of the committee on these two proposals that occurred on July 7, 2006. Dr. Discoe informed the Board members that concerns during this meeting revolved around the subject of home birth. He noted 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 explained the process to be used for accepting public comments on the Direct Entry Midwifery and the Certified Nurse Midwifery credentialing proposals. Dr. Lazure described the format for any comments from members of the public pertinent to the two proposals, stating that for the purpose of public comments, the two reviews would be handled jointly, and that proponents and opponents would receive a total of 15 minutes, not counting time taken to answer questions from committee members.

Dr. Wills, as Chair of the Technical Review Committee, reported on the review. Dr. Wills explained the process used by the Technical Review Committee and its final recommendations.

Autumn Foster Cook, a midwifery advocate, and Heather Swanson, CNM, the applicant, came forward to present proponent testimony. Ms. Cook pointed out that the group organized the sending of postcards supporting midwifery to the BOH because of comments made during the technical review committee meetings that there was little public support. Ms. Cook stated that she believes that the committee decisions were made in error. She explained her background, which emphasized strong family medical and community ties. Even though her family might not support the use of midwives, their belief in freedom of choice combined with their recognition of safety studies would mean they would support her choice. Ms. Cook knows that Dr. Spry is concerned that this would take us back to the 1800s, and he is right to be concerned, because at this time anyone can state that they are a midwife. However, midwives are different today, and they can handle most complications in birth or recognize the complications early and transport. Birth does carry inherent risks – research has shown that risks are different in home births and hospital births – there are risks in both, but they are different risks. She stated that what the group asked for is the right to choose what is best for them and their children. She added that this nation was founded on the principle that people ought to have the right to choose for themselves. She asked the Board members that as public health officials they allow women to make the choice. Dr. Spry asked how easy is it to acquire the things needed for a home birth. Ms. Cook responded that she has not had a home birth, so she could not answer from personal experience.

Heather Swanson presented a PowerPoint presentation, and reviewed the proposals. Ms. Swanson noted that birth centers were mentioned at the last meeting and she loved that comment because she also thinks there should be more birth centers. The problem is the practice agreement requirement and the rest of things that go along with it. Ms. Swanson cited data that was presented during the review, and pointed out results from previous 407 reviews. She reminded the BOH of the 407 (Credentialing Review) goals and explained that she, like Dr. Wills, expected an academic, unbiased review and feels this did not happen. Ms. Swanson

explained several opposition points and, from her perspective, the errors in the opposition evidence. Statistics that Dr. Schaefer had presented at a legislative hearing were quoted and Ms. Swanson added information to clarify several points. Ms. Swanson pointed out that the outcome statistics are good and do not just deal with home births. The bottom line regarding an increase of patient satisfaction is included in at least one study. In the ACNM and ACOG joint statement about midwifery there is no mention of supervision or written practice agreements. The Federal Definition of Nurse Midwife Practice included states where practice agreements do not have to be collaborative agreements. Ms. Swanson pointed out that she provided the PEW Report, "The Future of Midwifery". She stated that the issue is not just about safety but about cost and consumer satisfaction.

Jennifer Graham responded to Dr. Spry's earlier question about supplies for home birth. She has had two home births, one in Texas where this is legal, and one in Nebraska where it is not. A licensed attendant was with her for her births, and those people would have access to and knowledge of supplies, etc., regardless of where they were in the state of Nebraska. Heather Swanson added that they would know where to get sutures and oxygen, e.g.

Dr. Wills commented that he had tried to be sure the committee had the information they needed. Whether they looked at it or not, only they would know.

Dr. Sandstrom commented that it appears to come down to a balance of safety and choice. He pointed out the report from the National Academy of Sciences on pre-term births. Pre-term births have increased 30% in the last ten years. He stated that he is a Physical Therapist, so he sees results from pre-term births, since among the increased risks for pre-term infants are disabilities – i.e. motor skills. What is interesting to him is that no one knows why the number of pre-term births is increasing. This concerns him, especially when it affects this vulnerable population. Ms. Swanson stated that midwives have been effective in reducing the pre-term births. Dr. Sandstrom stated that he doesn’t disagree, but the fact is the Academy does not know why the number of pre-term births is increasing and the data does show it is increasing. He asked what the minimum requirements for midwives were. Ms. Swanson explained the midwifery education. Dr. Sandstrom asked if there were requirements for training in New Mexico, and listed a number of areas from the midwifery statutes of New Mexico. Ms. Swanson said that yes, there are requirements in the training for these areas. She said that those New Mexico statutes are being revised and NARM was not in existence when the originals were written. At this time, language is changing because of the NARM standards. Dr. Sandstrom pointed out that in the New Mexico statutes, the practitioner has to have clinical experience and the number of hours of experience is stated in the statute. He asked if any of that NARM information is in the proposal. Ms. Swanson said that those are part of the NARM exam requirements. Dr. Sandstrom stated that lacking accreditation of education programs, you have a stronger program by having requirements in statutes, and that regardless of whether there is accreditation or not, it would be a stronger program. Dr. Wills asked who the accrediting body is for NARM. Ms. Swanson responded that NOCA is the accrediting body. Dr. Sandstrom then stated that the New Mexico statute requires a physician visit within four weeks of seeing a midwife, and noted that this is not in the applicant’s proposal. Ms. Swanson stated that it was not included because NARM does not feel it is necessary. She commented that the nice thing about New Mexico is there are a lot of physicians who work with midwives. Dr. Sandstrom commented that in the New Mexico law there has to be some form of collaborative relationship. Ms. Swanson stated that no practice agreement is required there. Dr. Sandstrom responded that informed consent is required, and he read from the New Mexico statute. Ms. Swanson commented that she believes this is in the proposal. Dr. Sandstrom then stated that he was for the concept of better access to services, but is not convinced that the proposal is complete. He stated that collaborative practice is important.

Chairperson Lazure then asked for opponent testimony on the two proposals. David Buntain, a lobbyist for the Nebraska Medical Association (NMA) came forward to speak. Mr. Buntain commended Dr. Wills, the technical review committee, Dr. Discoe and his committee for all their work. Mr. Buntain commented that this is not a personal issue between the two groups but is a policy issue for the children, mothers and public health of Nebraska. He stated that the NMA does believe the committees reached the right conclusion and urged the Board members to adopt the recommendation of its sub-committee. He stated that NMA continues to have concerns about the safety of home births and that NMA has concerns about the CNM proposal that would eliminate the collaborative practice agreement. He observed that the Nebraska Midwives Association and the Nebraska Nurses Association have not participated in this review, and feels that this is indicative of lack of support among health professionals for these two proposals.

Dr. Sandstrom stated that in the report there are concerns about CNMs obtaining practice agreements. Mr. Buntain said that we have always said this issue, and if there are concerns about obtaining practice agreements, the NMA would work with them. However, the NMA has never been contacted about any such concerns. Dr. Sandstrom commented that it seems to him that there are communication problems between medicine and nursing over this issue. Dr. Sandstrom asked Mr. Buntain whether he is aware of any problems with nurse midwives obtaining practice agreements. Mr. Buntain responded that he was not aware of any such problems. Mr. Buntain commented that he was certain that any map showing the location of nurse midwifery practices would show that they are located in major population centers. Dr. Spry then commented that with APRNs it was the same argument in that they said they could not get collaborative agreements, but now they can. He stated that he believes the same would eventually occur with CNMs as well. Mr. Buntain commented that every time it is argued that proposals such as the CNM proposal will improve access to rural care, statistics show that is not true because the practitioners in question cluster in the major population centers rather than in remote rural areas. Mr. Buntain added that another issue with the proposal is concern about creating two standards of health care, one for urban areas and another for rural areas. Dr. Sandstrom responded that some of the applicants' data is pretty compelling, and that he was not convinced that the proposal would necessarily create a dual standard of care.

Dr. Lazure asked Ms. Swanson why representatives of the Nebraska Nurse Midwives and the Nebraska Nurses Association have not come forward to participate in this review process. Ms. Swanson responded that the Nebraska Chapter of this Midwifery organization has decided not to publicly support midwifery legislation or proposals. She added that there have been individual midwives who have supported these proposals, but the organization has not been supportive as an entity. Dr. Lazure asked about the Nebraska Nurses Association. Ms. Swanson responded that she did not approach NNA at all, and that their support was not necessary because CNMs are such a small percentage of the total number of nurses is the state.

Carly Runestad, speaking on behalf of the Nebraska Hospital Association, came forward to comment on the two proposals. Ms. Runestad commented that NHA is opposed to both proposals. She stated that low-risk pregnancies can become high-risk pregnancies very quickly, and many risks cannot be known until they occur. One study in the proposal indicates that 12.1% of women intending to deliver at home had to be transferred, and 3.4% were considered urgent. Ms. Runestad talked about transport concerns and the ability to transport in a timely manner. She informed the Board members that fifty-three minutes was the average transport time, and that distance and transportation are impediments to timely care. She stated that infant mortality rates have steadily declined since the 1960s.

Ms. Runestad stated that written practice agreements provide protection for health care professionals as well as a mother and child. She added that NHA urges the Board of Health to protect the welfare of women and babies by rejecting these proposals.

Dr. Sandstrom stated that travel time is an issue if you are traveling to the hospital to give birth. Ms. Runestad commented that transportation is an issue, but that most would start to a hospital sooner if a hospital birth was planned, rather than start out only when complications arise. Ms. Runestad commented that CNMs tend to work with mothers who are highly educated and upper income, and that they might not necessarily be serving those vulnerable populations that were identified in the study.

Dr. Lazure then commented on the criticism that the technical committee received from the applicants by stating that just because committee members ask a question does not mean that they have not read the documentation. Dr. Lazure stated that persons who serve on these committees are good people, and that they volunteer their time and effort to serve the public interest. Ms. Runestad commented that there were portions of the proposals of which the committee members were very supportive, but that the program requires that the committee look at the proposals as a whole. She felt that once they looked at them from such a vantage point, they could not support them. Dr. Sandstrom asked Ms. Runestad whether she could work with the applicant group. Ms. Runestad responded that she has approached Ms. Swanson about these issues and suggested discussing them once the review is over.

Pam List commented that she wouldn't choose to have a home birth, but that she has an open mind. Ms. List asked Ms. Swanson, being from a rural area, how do you stay clinically competent given the fact that in rural areas there are fewer and fewer deliveries? Ms. List then asked Ms. Swanson if nurse midwives were to perform home births, what would the malpractice costs likely be when a given case has to be dealt with by a physician.

Ms. Swanson responded that re-credentialing requirements would cover much of the competency issues. Ms. Swanson went on to state that DEMs have to maintain a certain number of deliveries to maintain certification. She added that midwives are not versed in as many technical skills, so the numbers don't make such a difference. She stated that in regard to skills, there are mechanisms for keeping them up, such as working with another midwife, and that numbers don't necessarily make a difference. Ms. List commented that although as a nurse, with years of experience you develop a "gut feeling" about certain situations, there is still value in multiple exposures.

Pertinent to malpractice insurance, Ms. Swanson commented that if a nurse midwife has a practice agreement with a physician, then vicarious liability is a reality, but that under the terms of the proposal, the malpractice insurance of nurse midwives would have to come into play.

Dr. Wills then commented that the mission of the Board of Health is to protect the health and safety of all people in Nebraska, and that regardless of how this is voted on, the problem will still exist, and we still need to find a solution to it.

Approval of Draft Report on Direct Entry Midwifery Technical Review

Chairperson Lazure informed the group that the Board of Health usually votes on the four criteria collectively, but they may be separated out individually. Dr. Lazure asked whether there was a motion to vote on the criteria separately. 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 Credentialing Review Committee recommended that the proposal to credential Direct Entry Midwives not be approved. The committee recommendation constitutes a motion, and no second is necessary. An "Aye" vote upholds the committee's recommendation. A "Nay" vote overturns the committee's recommendation and supports the credentialing of Direct Entry Midwives.

Dr. Discoe made a motion to accept the committee recommendations on Direct Entry Midwives. Voting aye: 14 (Augustine, Coleman, Discoe, Forney, Heiden, Lazure, List, Reamer, Salansky, Sandstrom, Schafer, Spry, Weber and Westerman); Voting nay: 1 (Wills); Not voting: 0. Motion carried.

By this vote the Board members endorsed the recommendation of their Credentialing Review Committee on the DEM proposal which had taken action on the following criteria on July 7, 2006. This committee recommended against approving the proposal on all but the first criterion.

> **Criterion one**: Absence of a separate regulated profession 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.
>
> **Criterion two**: Creation of a separate regulated profession would not create a significant new danger to the health, safety, or welfare of the public.
>
> **Criterion three**: Creation of a separate regulated profession 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.

Approval of Draft Report on the Certified Nurse Midwifery Proposal

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 Credentialing Review Committee has recommended that the proposal to change the scope of practice of Certified Nurse Midwives not be approved. The committee recommendation constitutes a motion, and no second is necessary. An "Aye" vote upholds the committee's recommendation. A "Nay" vote overturns the committee's recommendation and supports changing the scope of practice of Certified Nurse Midwives.

Dr. Discoe made a motion to accept the committee recommendation on the CNM proposal. Voting aye: 12 (Augustine, Coleman, Discoe, Forney, Heiden, Reamer, Salansky, Sandstrom, Schafer, Spry, Weber and Westerman); Voting nay: 1 (Wills); Abstaining: 2 (Lazure and List); Not voting: 0. Motion carried.

By this vote the Board members endorsed the recommendation of their Credentialing Review Committee on the CNM proposal which had taken action on the following criteria on July 7, 2006. This committee recommended against approving the proposal on all but the first criterion.

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.

The Review and Recommendations of the State Board of Health Credentialing Review Committee to the Members of the Full Board of Health

(July 7, 2006)

Dr. Discoe called the State Board of Health (BOH) Credentialing Review Committee to order at 1:34 p.m. The following committee members were present: Ed Discoe, M.D., Chair; Daryl Wills, D.C., Vice-Chair; Janet Coleman; Linda Heiden; Roger Reamer and Gary Westerman, D.D.S. Also present from the BOH was Leslie Spry, M.D. (BOH Vice-Chair).

Dr. Discoe stated the purpose of the meeting is to make recommendations to the full BOH on the following:

- Proposal for a Change in Scope of Practice for Certified Nurse Midwives in Nebraska (CNMs), and
- Proposal to License Direct Entry Midwives in Nebraska (DEMs).

Dr. Discoe explained the format to be used during today's meeting. Dr. Wills, Chair of the Midwifery Technical Review Committee, will give a report. Then proponents and opponents of the proposals will have comment time. Following the comments, committee members will have time to ask questions.

Dr. Wills, Chair of the Midwifery Technical Review Committee, provided a brief report on the committee's work. He read a list of committee members and thanked the members for their work. The technical review committee met five times in the last four months. There were two applications, both by Heather Swanson, M.S.N., C.N.M. One application is for a change in scope of practice for CNMs in Nebraska, and the other is to license DEMs in Nebraska. The issues were safety, access, and choice – women having the right to decide what way they want to have their babies. The Technical Review Committee members voted against approval of both proposals.

Dr. Wills informed Dr. Discoe that he had some personal comments he would like to make at some time. Dr. Discoe asked Dr. Wills to provide his personal comments at this time. Dr. Wills stated that the health care trend in our country is that we are seeing alternative licensure providers. These mean safety and choice concerns. Most of these mothers say they are concerned with and do not want some things for their babies or them so they choose to go to hotels out-of-state to have a midwife deliver their baby. When that happens, there are no regulations to protect them. This is going to occur and is occurring in our state right now whether we make any changes or not. So this committee and the BOH need to look at how we are going to protect the public and the individuals who are choosing this path. The main thing is the illegality of midwives attending home births. There are lots of studies available in the material provided by the applicant. Dr. Wills thinks the issues that came up were training, safety, protection for the baby, who is in charge, who is protecting the public – and that there is enough data to support a licensure in one form or another for the DEM as well as a change in scope of practice for the CNM. Health care is a personal choice. It is a matter of choosing your health care provider. The applicant says that she wants nothing more than that and these changes will allow midwives to do what they feel is necessary as a citizen in this country where we talk about freedom of choice. The committee discussed all of the issues and looked at the training, competency, and safety issues. Dr. Wills said that he, as Chair, did not vote, but rather tried to direct the meetings and not be biased one way or the other. However, he stated that he

looks at the situation in Nebraska and we have a physician shortage. We have implemented Physician Assistants in our system because of the physician shortage. Dr. Wills feels that if we bring ancillary people in to help with this shortage, then we are protecting the public and providing a service. The one-on-one approach of a CNM or a DEM and their working with the mothers eliminates a lot of these variables (malpractice issues, shortages). Collaboration between the medical profession and the CNM profession is where we need to go – to collaborate to do what is best for the public. Dr. Wills stated that whether there was prejudice or lack of information or study, the committee voted down both proposals and he doesn't think this is in best interest of the people in our state. Dr. Wills was also concerned that in the hearing the only opponents were the Nebraska Medical Association, the Nebraska Hospital Association and the OB/GYNs. There were no other professional people that came out against the proposals. There were many proponents from the public sector. One entity that was missing was the CNMs who have practice agreements. None of them came up to testify and Dr. Wills said he just wonders why – does that give us a message. Health care in our nation is broken. Managed care has been a horrible mistake and has hurt the patients and the providers. Mothers who are taught healthy lifestyles during pregnancy are, he thinks, more likely to raise healthy children. Many of the emergencies we see in health care are because people have neglected their health. Birthing is a natural process and should be treated that way and Dr. Wills did not like the fear propagated by opponents – that it is a fearful thing for a mother to have a baby without being in the hospital. Dr. Wills thinks there was a lot of information that was brought to the technical committee and was not digested properly and was not brought forward properly. The issue was brought forward in 1993-1994 and went a lot further in the technical review committee than it did this time, so Dr. Wills was really surprised, thinking we should have progressed and instead he felt we regressed during this technical review.

Dr. Discoe thanked Dr. Wills for comments regarding the review process. Having heard a good summary of what occurred during the technical review committee, are there any questions for Dr. Wills?

Dr. Spry asked for clarification on Dr. Wills' statement that he did not think the technical review committee had digested the information. Does that mean you had inadequate information? Dr. Wills answered that no, the committee had volumes of information. However, he thinks a lot of what the technical review committee based their decisions on was fear – if someone has a baby out of the hospital it is going to be a horrible thing; if we have to transport it is a horrible thing. Dr. Wills thinks fear is wrong and that there was a fear issue that weighted this review in the wrong direction.

Dr. Spry stated that he was curious why Dr. Wills felt the technical review committee came to the wrong conclusion. We have people on the committee to raise those concerns (i.e. fear issue) because those are the concerns that will be raised by the public. What information do you think would change the opinion? Dr. Wills answered he thinks it is a choice issue for the mother; about the relationship between the mother and the person who delivers the baby and a matter of knowing it is a safe procedure for the majority of births (uncomplicated cases). That information was provided in these reports.

Dr. Spry asked Dr. Wills if he feels it would be in the State's interest to take responsibility for the occasional mishaps. Dr. Wills stated that he thinks that occasional mishaps occur whether in the hospital or out of the hospital.

Dr. Discoe commented that in the information that was presented by Dr. Schaefer, there were nine times greater mishaps outside the hospital then there were inside the hospital. Dr. Wills said that what was not brought out is that we do not know how many of those births were

planned as home births.

Dr. Spry thinks that the Washington State study was misrepresented based on his reading of the transcript. The Washington State study talked about intent to deliver at home versus intent to deliver in the hospital. Dr. Spry said that if anything, the study actually minimizes the risk and the information was presented as well as they could statistically. Dr. Wills commented that the authors of that study stated the study should not be used as a determination if licensure should be issued. Dr. Spry said the licensure issue is a separate issue and it is the home birthing that is the concern. Dr. Spry said that the home birthing issue takes us back to the nineteenth century, and added that he hopes we've learned from the past. Dr. Spry said that he, as a member of the public, would be also be afraid after reading some of the material. Dr. Wills thinks it is interesting that both proponents and opponents used the same studies to make their case. Dr. Spry stated that in the transcript it said that they (the authors of the Washington State study) did not differentiate between intent to deliver at home and intent to deliver at the hospital. He feels that is just wrong and a mischaracterization of the study. Dr. Wills read from the application, page 29, about the Washington State study:

> "Some of the flaws of this study are that the data was gathered from birth certificates. Because of this one cannot decipher if the home birth was planned or not. Even the author noted that unplanned and unattended births were included in the study "as planned home births". They failed to demonstrate causal relationship between neonatal mortality and intended birth site, and as is an expected requirement for scientific studies, the authors do not explain why their findings differed from their studies."

Dr. Wills stated he did not think you can put a lot of credence in that study as far as saying it is not safe or that the mortality or morbidity rate is higher based on the information provided. Dr. Discoe asked if Dr. Wills' quote was an opinion. Dr. Wills and Heather Swanson stated that some of the information is quoted from the study. Ms. Swanson said she would comment more about the study.
Dr. Discoe asked for the applicant to present and Heather Swanson, the applicant, came forward. Ms. Swanson said she would refer to some pages and tabs in the applications and asked the committee to review these on their own. She also asked for clarification of the time she had to speak. Dr. Discoe said fifteen minutes and stated that at the end of that time the committee would decide if they had enough information to proceed.

Ms. Swanson introduced herself to the committee. She is a CNM from Wilcox with a Bachelor's degree in nursing from the Nebraska Medical Center, and a Master's in nursing with a specialty in Nurse Midwifery from New Mexico. Ms. Swanson stated that the midwifery profession warrants closer attention in the United States. She has been greatly disheartened by what is currently happening in Nebraska. Like Dr. Wills, in regards to the technical committee findings, Ms. Swanson felt that information was not appropriately digested by the technical committee.

Ms. Swanson spoke about the economics of health care and the obstacles that nurse midwives face in Nebraska. In New Mexico, over 30% of deliveries are done by midwives. When Ms. Swanson moved to Norfolk and applied for hospital privileges, that category was closed in Norfolk. This is one of the elements of the proposal, that CNMs would be added to the list of providers that cannot be denied clinical privileges based solely on their certification type. Currently she works with the Indian Services in Pine Ridge, South Dakota and enjoys federal benefits.

Ms. Swanson briefly explained that CNMs are trained in nursing and midwifery. They typically have a Master's degree and generally have a Master's degree in nursing. The DEMs are lay

midwives and are trained in midwifery. Currently in Nebraska, what we have is lay midwifery, and essentially someone can say they are a midwife and there is no way to verify competency. The DEMs should be certified, be trained in midwifery and have their competency verified through the North American Registry of Midwives Examination (NARM).

Ms. Swanson explained that it is not an easy process to become eligible to sit for the DEM exam. One of the things she was upset by at the second to last technical committee meeting was that a lot of people voiced concerns about the qualifications of the DEMs and made it sound like they just pay some money and sit for an exam and get their certification so they can go catch a baby. It is a little more detailed than that, and at the public hearing, Ida Darragh from NARM spoke about NARM outcomes. Ms. Swanson pointed to the Johnson and Davis study of 5000 deliveries in North America (Canada and U.S.), all attended by certified professional midwives (CPMs) and the outcomes were pretty impressive in this study. People are looking at the safety and appropriateness of CPMs and NARM reports the outcomes periodically. She felt this was not appropriately heard or understood by the technical review committee. Ms. Swanson did not reiterate the information to the technical review committee. There was a lot of information in the application and she had expected the committee members would read things a little more closely and would have been a little more objective.

Ms. Swanson explained the reasons for the 407 review. A previous technical review was conducted in 1993-94. She had been told the process was long, arduous and cost a lot of money. Ms. Swanson has spent the last year pursuing this and it has been very time-consuming. She felt she prepared these applications well and did not feel that the professions were appropriately reviewed by the technical review committee. Ms. Swanson did not feel that the technical committee members gave sufficient reasons for coming to their conclusion that home birth is unsafe or that these professions should not be practicing at all – they would just say home birth is not safe.

Ms. Swanson stated she has been involved with legislation efforts for the past four to five years. Every time legislation goes to the Legislative Committee, she hears from opposition and some senators to send this to a 407 review. Ms. Swanson appreciates that this is a lot of information to organize and absorb. However, with regards to nurse midwifery, from that first 407 review and all the way through, it was recommended that the scope for nurse midwives be expanded to cover home births and nothing legislative was changed in regards to that. People at the Legislative Committee level felt that it had been twelve years since the review had been done and the information might be outdated, so it should go to review again. Senator Phil Erdman was opposed to that because he felt the money and time had already been spent and that at least the CNM issue should be addressed. Twelve years ago the finding from the technical review committee on the DEMs had been that they should be licensed; however, the BOH and Dr. Horton, the Medical Director during that 407 review twelve years ago, felt that they should hold off on licensing at the time. A couple of the comments made at that time were in regard to not having an accredited program or accredited exam, and both the program and exam are accredited at this point. Ms. Swanson had thought this would be a redundant process and in a sense she may have actually hampered things.

Ms. Swanson stated that since she was told that she would have limited time today, Kate Meriman did not come to speak. She is a DEM and has practiced for ten years in South Dakota and Nebraska. She sat for the NARM exam and passed it. Ms. Meriman supported the proposals and she sent a letter. Ms. Meriman was really upset by the outcomes because she felt that the last review was done sufficiently and that this was a waste of State money and time.

Ms. Swanson said the current concerns are that home birth is illegal for CNMs and DEMs are

not licensed. We know that the worst birth outcome is an unattended home birth or a home birth that is not attended by a licensed regulated provider. She explained that the criteria speak to harm in a number of ways: financial, health and emotional, and that all those were addressed in the applications that were written.

Ms. Swanson said that some of the opposition points were about safety and direct entry training. She has spoken to the direct entry training a little bit and there is more information in the binders, particularly in the white binder, tab 25. In regards to safety, in the white binder (DEM), under tab 22 on page 55 of the narrative, there is information about two studies. One of the studies was brought up to point out that home births were unsafe. The study showed that for unattended home births there were 120 fetal and newborn deaths per thousand; for home births attended by a lay midwife there were 30 fetal and newborn deaths per thousand; and for home births attended by trained midwives (but not licensed) there were three fetal and newborn deaths per thousand. Ms. Swanson noted that in Carly Runestad's testimony, she referred to Dr. Schaefer’s testimony regarding LB 338. In Dr. Schaefer's legislative testimony, she said that, in 2003, there were 68 out-of-hospital births and there were three deaths reported from those 68. Ms. Swanson said the three fetal deaths translate to 44 deaths per thousand during 2003 for out-of-hospital births. That is a concern and the state has an opportunity to license midwives attending home births to improve the outcomes.

Ms. Swanson referred to the black binder, tab 28; the Johnson study and the Murphy studies. The Johnson study was of CPM-attended home births and showed that for planned home births, the fetal death rate was 1.7 per thousand. The opposition said that these studies were not controlled studies and they cannot be applied to practice. All the studies are included and a letter was included in Ms. Swanson's written testimony that contains statements directly out of those studies that say what they controlled for demographics and for health risks.

Regarding CNM care, Ms. Swanson sees the issue as a restraint of practice and that there should be more CNMs available in the state. The difficulty in getting practice agreements limits the CNMs and is a reason why removal of the practice agreement requirement has been included in the proposal. There are several articles in the black binder, tab 22.

Dr. Discoe thanked Ms. Swanson for her presentation and asked the BOH Credentialing Review Committee members if there were any questions.

Dr. Westerman asked if the DEM and CPM scope of practice would be the same since several references were made to CPMs who sat for the exam. Ms. Swanson answered that the scope of practice would be the same.

Ms. Coleman asked for clarification about who is the accrediting agency for DEM. Ms. Swanson said it is NARM. Dr. Spry asked for an explanation. Since this is a national examination by NARM, does anyone actually review the people, or is only the data submitted? Ms. Swanson said that before taking the examination, the people have to complete a recognized program (faculty, testing and preparation).

Mr. Reamer asked about oversight and continuing quality assurance for those practicing. Ms. Swanson said the CNMs have professional licenses and practice in the health care professional network, so they fall under the Uniform Licensing Law (ULL) and are obligated to report (or be reported) if their practice is outside their scope. CNMs can also be reported to the national certifying body.

Dr. Wills stated that it is his understanding that NARM is accredited by NOCA – an organization

that accredits most professional organizations.

Ms. Coleman asked if it is a violation of law if a DEM practices now. Ms. Swanson answered that it is not illegal for someone to use the services of a midwife; however, it is illegal to attend a home delivery. Dr. Discoe asked what the legal repercussions are if someone does illegally attend a home delivery. Ms. Swanson said a Cease and Desist Order is issued, and added that most known to her have just stopped practicing.

Ms. Heiden asked how long the training is for DEMs. Ms. Swanson said that most programs are two or three years and it varies. Often the distance learning programs are a part-time approach so it can take four or five years to complete the training.

Ms. Coleman asked if the DEM has practiced for "x" years, could she or he become a CNM? Ms. Swanson stated that, under her proposal, if someone has been a DEM long enough, they could be temporarily licensed; however, they would have to be licensed as a CNM within three years.

Dr. Spry asked if she had explored liability or malpractice insurance. Ms. Swanson said that DEMs are very rarely sued so the need for malpractice insurance has not been overwhelming and malpractice insurance is not available at this time. Dr. Spry asked about malpractice insurance for CNMs. Does Ms. Swanson know the cost? Ms. Swanson though it might be around $18,000 for the first year and knows the cost is rising. The national rate might be somewhere around $20,000 per year.

Ms. Coleman suggested that the cost of malpractice insurance would be considerably different if there were home births involved. Ms. Swanson said the decision about malpractice insurance, and what it is needed for, would be up to the practitioner. Ms. Swanson stated she believes in the forty states where home births are legal, there is insurance coverage, so in answer to Dr. Spry, malpractice insurance is available.

Ms. Swanson stated that she knows of a family that was reimbursed for the cost of home birth by BC/BS. Dr. Discoe asked if this was a planned home birth and who attended the home birth. Ms. Swanson said she would assume it was a planned home birth and it was attended by a DEM.

Dr. Westerman asked if the DEM and CNM can do the same things. Ms. Swanson said that no, the DEM programs do include well-woman check-ups; however they cannot write prescriptions, so there are two levels. Dr. Westerman asked how the DEMs and CNMs view each other. Ms. Swanson said that most she knows consider each other (DEMs and CNMs) as colleagues. Both view the lay midwife as a problem.

Ms. Coleman asked if the CNM needs an advanced practice degree. Ms. Swanson answered yes. Currently, in Nebraska the CNM can write prescriptions; however, the language is not clear, so prescriptive ability was included in the application so it can be clearly delineated.

Dr. Spry asked to what extent the DEM might carry emergency medicine with them. Ms. Swanson said drugs used in pregnancy or child birth and these were listed in the application. Dr. Spry asked if the DEM would have to attend any course on pharmacology. Ms. Swanson said that yes, the education program includes this.

Dr. Westerman asked why physicians are reluctance to sign collaborative agreements. Ms. Swanson stated she thinks part of it is because they have not spent much time with CNMs or

know much about CNMs so physicians may have a misunderstanding about CNMs as a group. Some of the concern is an economic issue since there would be more of an impact the more the CNM becomes part of deliveries. Dr. Westerman and Ms. Swanson did note there is a nice collaborative example in Hastings.

Dr. Westerman asked what the State nursing association's response was to this proposal. Ms. Swanson stated that the association did not speak in opposition, which she thought was good. She stated that she had not spent an extensive amount of time working with them on this. Ms. Swanson noted that on the agenda of the advanced practice registered nurses were the ideas pertinent to allowing CNMs to attend out-of-hospital deliveries and to reviewing concerns regarding practice agreements and supervisory language. She noted that midwifery is different and a lot of people are reluctant to touch it because it is such a political topic, so the Nebraska Nurses Association did not speak and she did not go to the board and seek support.

Mr. Reamer said that in the proposal there was discussion about the CNM having the ability to decide if the home setting is appropriate for delivery and asked for clarification. If another professional feels the home is an inappropriate delivery location, then that is how there would be oversight involved. Mr. Reamer noted that in hospitals procedures pertinent to stopping delivery are very clear, but asked Ms. Swanson how such decisions are made in home birth situations? He asked whether such decisions involve professionals other than just the attending CNM, and whether other professionals would be involved in deciding whether a given home setting were appropriate for a safe home birth? Ms. Swanson answered by stating that such involvement could occur but would not necessarily. Some of the things would be noted in transfers and the records would be reviewed and concerns noted. Ms. Swanson said that licensed midwives would be more likely to be concerned with appropriate deliveries.

Dr. Spry expressed concern that a movement to home delivery could impact the community hospital’s ability to appropriately manage births because there is a need for a center to manage a critical number of births in order to have the experience and be good so that when a bad one case comes in they are able to deal with it.

Ms. Swanson asked if we are to abandon those that want to delivery at home. Regarding rural areas, there are a lot of counties that do not offer OB/GYN care. Dr. Spry stated he understands there is an unlicensed practice issue; however, it is the home births that are his concern. We need a critical number to flow through a system. Dr. Spry added that he does not have a problem with CNMs as long as they perform the delivery where they have the resources for all possibilities. He added that our job is to protect the public.

Ms. Swanson said she is very appreciative of physicians and loves having one available when needed. The PEW Health Review (in both binders) gives an overview of the rising health care interventions and costs and how midwifery care could benefit that. Ms. Swanson feels the proposals help ensure patient safety and help decrease risks that currently exists. The criteria and the applications really deserve a thorough review and they would be a benefit to consumers in Nebraska.

Ms. Coleman asked for clarification about the CNM practice agreement with a physician. Ms. Swanson said that midwives have difficulty finding physicians whose practice includes obstetrics to sign a practice agreement. Ms. Coleman stated that basically you are saying that if it were allowed and a CNM could attend home deliveries, the CNM would not be able to get a practice agreement signed for home birth delivery. Ms. Swanson said yes. Ms. Coleman added that it would have been some reassurance to her if there were a physician agreement. Ms. Swanson clarified that to get a physician practice agreement is a great obstacle for home birth

delivery and in rural areas because there may be some physicians who will say they do not want to put themselves in a position where vicarious liability is an issue by signing the practice agreement.

Dr. Discoe suggested that there may not only be some hesitancy because of vicarious liability but also some hesitancy to accept that disaster patient that is coming in - because of liability or because the physician does not agree with the CNM model and he/she happens to be on call that night. Ms. Swanson noted that Susan Jenkins commented regarding that in her article. Practitioners are generally considered liable for the care they provide. The situation that was essentially dumped on them is reviewed and then the courts would see if they provided the appropriate care. Dr. Discoe said his point is don't you think there would be some hesitancy on the receiving physician if they already had hesitancy to have a practice agreement in the community? Ms. Swanson stated that she was sure there would be hesitancy and knows there is hesitancy right now.

Dr. Wills stated that this profession is in its infancy in licensure and has growing pains and things that need to be worked through. Certainly we all have situations that we have to accept in our office that we do not like. Once things come about, if it is passed, I think you will find collaboration will be effective and it will be good for the people. Regarding Roger Reamer's comments about small hospitals, I live in a rural area and I know what it is like. Dr. Wills would like to see anything we can do to keep them open and if this proposal would help to do that and maybe have some deliveries in those hospitals that a physician would not do, that might help that situation as well.

Dr. Spry stated he echoed those comments and noted that he does collaborative practice with nurse practitioners in his office and it is very enjoyable experience. Dropping collaboration is a terrible idea because we all work as colleagues. In the example that Dr. Discoe just gave you, if that physician would have been collaborating with you and knew what you were capable of doing out there, he might have been able to then understand the complications that occurred. Collaborative practice always works out a whole lot better than adversarial. Ms. Swanson stated that there is a difference between collaborative and collaborative with supervisor language and, ultimately, she knows that the nurse practitioners in Nebraska will be pursuing not having practice agreements. Ms. Swanson went on to state that if practice agreements are something that this committee feels are so significant that it has to be locked in, then some consideration should be given to what is allowed in the nurse practitioner act wherein if a nurse practitioner cannot find a physician to sign a practice agreement with them a waiver is given for that practice agreement. There are obstacles to practice agreements; however, Ms. Swanson would not discount the importance of relationships with colleagues that are respectful and professional.

Dr. Westerman asked if there were birth centers in Nebraska. Ms. Swanson answered there were none in Nebraska now. A birth center would be considered a health care clinic and so would be licensed similar to an out-patient surgical center.

Dr. Discoe asked if the BOH Credentialing Review Committee members had any other questions. There were none. Dr. Discoe then said that if anyone wanted to present in opposition, they have fifteen minutes.

Ms. Swanson called attention to the fact that there was a representative of the Nebraska Friends of Midwives present who would like to comment if that would be allowed. Dr. Discoe stated he would allow the opposition to have fifteen minutes first.

Speaking in opposition to the proposals was Charles Pallesen, an attorney representing the Nebraska Medical Association (NMA). Mr. Pallesen said the committee already has volumes of material from the NMA regarding the proposals, so he would be brief. He stated that he wanted to address two issues: NMA opposition to allowing CNMs to attend home births; and NMA opposition to the removal of the requirement for a CNM practice agreement with a physician whose practice includes obstetrics. Mr. Pallesen said that with respect to the issue of home births, there is a lot of material that weighs on both sides, and what it really comes back to is the reaction that you have to the basic issue which is whether or not this is a step forward or backwards as far as health care is concerned? Is there really a feeling in this room that moving births from a hospital to a home is safer?

Mr. Pallesen addressed the issue of insurance. As far as physicians are concerned, the practice of obstetrics is one of the highest in insurance premiums. Mr. Pallesen cannot believe that the expansion of CNMs, especially for home births, would not bring an increase of litigation to the area with a responding increase in insurance premiums. Physicians are in a situation, along with Certified Registered Nurse Anesthetists (CRNAs), of having a cap in Nebraska – the Hospital Medical Liability Act. CNMs are not included in that. The highest award that a jury has come back with in the State of Nebraska under the Medical Liability Act was a birth case in Omaha, and the judgment was in excess of the cap. Physicians and others who are not covered by the cap or elect not to be understand that they are personally liable for amounts exceeding their insurance. Accordingly, if you have no insurance or a minimal amount of insurance, your personal assets are at risk and that is not a good situation. If more of the risk is pushed into this area, the cases will follow and they are not going to stop just because there is a limited amount of insurance, they are going to escalate. As Dr. Discoe knows with respect to physicians, if you have obstetrics included in your practice, it increases your insurance premium significantly.

Mr. Pallesen referred to Dr. Wills' earlier comments about fear and perhaps an innuendo. Mr. Pallesen stated he did not know what the fear is unless the fear is that there will not be good care for mothers and babies. Mr. Pallesen did not know if Dr. Wills meant a fear of those to come forward here, and that he cannot say if those who are not here are for or against these proposals - they are not here. There has been no indication and, Mr. Pallesen hopes, no innuendo that any pressure has been put on people to come or not to come. This is an open forum so one can only draw a conclusion that they are not here. Mr. Pallesen stated he thinks it comes down to a safety issue and this is what the Department of Health and Human Services is all about – safety for the public and that is what this issue comes down to.

Dr. Discoe asked if there were any questions from the BOH Credentialing Review Committee.

Dr. Spry stated he knew that CRNAs, physicians and hospitals are under the cap. Mr. Pallesen explained that the CRNAs came under the law when it passed in 1976 because insurance was unavailable for them because of the high risk.

Dr. Discoe asked Mr. Pallesen to explain the Medical Liability Act and Mr. Pallesen complied. Under the Act, there is an underlying insurance that is bought in the open market and used before you go in the fund. The fund sets the premium for the excess to the cap and the fund is paid for by dollars from physicians, CRNAs and hospitals. Dr. Spry then explained that in the worst scenario, if CNMs were to go out on the insurance market with independent practice, all of a sudden they would have no cap, and the insurance companies would be free to estimate what their losses might be and would increase malpractice insurance to whatever they think their losses might be. Understand that nationwide, the single most rapidly increasing area in malpractice litigation is births. Dr. Discoe asked what happens to the professional who cannot

get liability insurance. Mr. Pallesen said that the physician must have two or three turn-down letters, and then the trust must insure. This is a safety for the consumer in that while there is a cap, there is also an assurance that you will get at least that much if your losses are that high. Mr. Pallesen reminded the committee that the physician can elect not to be covered under the Medical Liability Act; however, the physician would then be responsible for any liability beyond their insurance level.

Dr. Wills asked Mr. Pallesen if he sees a problem with CNMs getting under the cap if this licensure or change in scope did occur. Mr. Pallesen responded that he does see a problem. It was a difficult law to get passed and there have been a number of other health care professions who have wanted to be covered under the Act and the desire is not to do so. The cap legislation is frowned upon by the public in general and there has to be a balance. It would have to be shown that there is a real crisis, and maybe it would be. Since 1976, there have been no additional groups added although a number have asked to be added.

Dr. Discoe asked if there were any other questions from the committee. There were none. Dr. Discoe thanked Mr. Pallesen. Dr. Discoe then invited the Friends of Nurse Midwives to speak.

Chanin Monestero, representing Friends of Nurse Midwives, said that before she started her testimony, she wanted to point out that it seems like a lot of times we are talking as if the only two options are home birth or hospital birth. Home birth is happening and will continue to happen with unlicensed midwives. Home births will continue. The only thing we can do is provide licensure so that we have certified midwives with verified credentials.

Ms. Monestero is the mother of two children, both born at home and she teaches part-time at Metro Community College. She has a Bachelor’s of Science degree in mathematics and a Master's degree in education. Ms. Monestero stated she is here to represent consumers who want access to midwifery care and to the midwives with verified competencies. Ms. Monestero believes she represents a somewhat typical consumer. Many people have misconceptions about people who have home births and believe that home births are chosen based on fear by ignorant people.

Ms. Monestero stated that after weighing the risks and after months of personal research, she chose home birth because she believes, and studies support, that home births for low-risk women are as safe and in some cases safer than hospital births. Some people see the decision to choose home birth as lazy and irresponsible. On the contrary, it takes initiative and increased responsibility. Ms. Monestero stated she had to work hard to find midwives and then interview and choose. She took on increased responsibility for preparing for the home birth by gathering her own birth supplies, attending 36 hours of birthing classes and preparing physically for birth. Additionally, Ms. Monestero took on extra financial responsibility because her insurance would not cover the home birth.

Ms. Monestero stated that people often insinuate that because we have a home birth, we do not care or want the best for our children. At the public hearing, Dr. Buckley insinuated just that. On the contrary, we choose midwifery care because of the research.

Ms. Monestero noted she had been participating in the technical review process and expressed her dissatisfaction with the way the process went. She attended each meeting except the meeting where the vote took place. At the outset, Dave Montgomery gave a great description of what should happen. Dr. Wills was always very gracious as the chair and welcomed us to the meetings. Ms. Monestero stated that what she understood was that technical committee members were to come in as neutral parties and were to examine all the evidence before

drawing any conclusions. She said that as the meetings progressed, it became evident from many of the committee member questions that they had not taken time to adequately review the proposals. Ms. Monestero explained that committee members would ask questions about things that were specifically spoken to in the written material. After the public hearing, Ms. Monestero was very hopeful of a good outcome because she thought they did an excellent job of presenting their case. When Ms. Monestero heard the vote outcome she was surprised and when she received the transcript she was appalled. Ms. Monestero stated it was evident that many of the technical committee members had not read the material and had not listened to the testimony, which in many cases addressed their concerns. Ms. Monestero felt it was clear that the technical committee members had in place a firm belief system and no amount of evidence could change it. As a citizen of Nebraska, Ms. Monestero stated she is disgusted. She has incurred expense and spent time away from her family to participate in what she believed would be a fair and judicious process. Ms. Monestero is not upset about the outcome, although she is disappointed. She is upset because, from what she observed, the people on the technical review committee did not fulfill their responsibilities. Ms. Monestero stated that, as consumers, we have repeatedly asked for increased access to home birth and today she came here to ask you to support these proposals that are before you and provide families in Nebraska with access to safe home birth and midwifery care.

Dr. Discoe asked if the BOH Credentialing Review Committee had any questions.

Dr. Spry asked Ms. Monestero to repeat the name of her group. Ms. Monestero said it was "Nebraska Friends of Midwives". Dr. Spry asked how many members there were in the group. Ms. Monestero and Ms. Swanson did not know for sure; they estimated around 100 families. The web site is nemidwives.org.

Dr. Wills asked Ms. Monestero if these proposals would pass what impact it might have on the number of hospital and home births in Nebraska. Ms. Monestero stated that a lot of her friends are not interested in home birth and she does not want to deny them the right to have a hospital birth. She thinks that initially there would be some small increase in home birth. However, she does think that over time there might be more women interested in home birth. Ms Monestero said she does know a number of people who see midwives and have the midwives attend them at hospitals because they do get to spend more time with the CNM and do not feel as rushed. Nebraska tends to be a pretty medically conservative state. Ms. Monestero thinks if someone does not want to go to the hospital they should have a choice. Ms. Monestero noted that they have been working on a postcard campaign. She thinks there is a lot of support for home birth because even women who may not ever want to have a home birth believe that the home birth option should be a choice, if wanted, and if home birth is chosen, there should be a licensed attendant.

Dr. Discoe asked if the BOH Credentialing Review Committee had other questions. There were none. Dr. Discoe thanked Ms. Monestero. Dr. Discoe asked if there were any other speakers.

Carly Runestad from the Nebraska Hospital Association (NHA) came forward to speak briefly in opposition. Ms. Runestad stated that the NHA was not here to debate whether or not CNMs are beneficial to families or whether they are beneficial to the childbirth experience. They certainly believe that to be true. Ms. Runestad said that NHA recognizes that midwifery is a philosophy that when provided within safe and appropriate boundaries can serve as a very important resource to consumers. She thinks that what came out of the committee is in support of that. Ms. Runestad attended most of the meetings and felt that the technical review committee as well as some of the people speaking in opposition supported midwifery services. Ms. Runestad stated that one of the things that caught her attention was when Mr. Beins, a technical review

committee member who said he was from a rural area, stated that he would love to have more CNMs in his area providing prenatal care and annual exams.

Ms. Runestad said she would like to respond to Dr. Wills's earlier statement: “Collaboration is the way to go.” The NHA’s concern is that this proposal essentially eliminated that collaboration and that is one of the significant issues we had with the proposal. Ms. Runestad explained this would eliminate the current requirement for a practice agreement between a CNM and a physician who is licensed to practice obstetrics. She added that this would allow CNMs to practice independently, and eliminating the practice agreement is contradictory and inconsistent to the midwifery practice that calls for collaboration with a physician in all cases that fall outside their scope of practice. Ms. Runestad stated that a written practice agreement not only clarifies the responsibility of the midwife and the physician but also provides protection for both health care professions as well as for the mother and the infant. One of NHA’s major considerations is making sure that collaboration is still there – it is essential.

Ms. Runestad commented on an earlier statement relevant to personal choice. NHA certainly supports an individual’s right to choose in almost all situations; however, that right to choose needs to not infringe on another’s safety or rights. Ms. Runestad acknowledged that location and type of caregiver for child birth delivery is a very personal choice. However, with all major health care choices comes the responsibility for decisions made in a fully informed manner and based on facts. While the mother is the primary decision-maker in childbirth, the best interest of the child must also be assessed and protected.

Ms. Runestad reminded the committee that a statement was made earlier that a birthing situation can go from low to high-risk very quickly and it was said that this situation occurs very minimally. Ms. Runestad stated that there was a study brought up by the proponents. In the study it said that while the “American College of Nurse Midwives states that careful assessments are made to screen the type of patients appropriate for home delivery, low-risk pregnancies can become high-risk pregnancies very quickly, and most of these complications cannot be predicted until they occur.” In a recent North American Perspective study, 12.1% of women who intended to deliver at home were transported to the hospital when labor began and 3.4% were considered urgent. Remember, these women were all carefully prescreened and deemed low-risk.

Ms. Runestad said earlier it was brought up that perhaps the technical review committee did not thoroughly digest all the information provided. Ms. Runestad stated that her personal take on the situation was that the committee was taking the proposal as a whole as they were instructed to do. As a whole, they were instructed to look at home deliveries, eliminating practice agreements, and all other areas that were involved in the proposals. There were several people on the committee who were opposed to home deliveries after reading and hearing information. There were also several individuals who were opposed to eliminating practice agreements. Ms. Runestad did not feel as if the technical review committee had not listened and not digested the information, but that there were portions they were opposed to, and because of that they had to vote down the entire thing.

Dr. Spry asked Ms. Runestad if she had any data of how many hospitals closed in the last year. Ms. Runestad did not have the data with her. Ms. Runestad and Mr. Reamer believe there have been hospitals closed in the last four years. Ms. Runestad said the NHA represents 85 hospitals.

Dr. Discoe said the committee would address each proposal separately. There are two proposals: the change in scope of practice for CNMs and the request for licensure for the

DEMs.

Clarification was made regarding the statutory wording of the criteria used for each of the two proposals. 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.

Dr. Discoe stated the committee will take CNM proposal first, and that in order for this to pass, it must pass all four 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. Wills moved and Dr. Spry seconded that criterion one is met for the CNM proposal. Voting yes: Wills, Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Voting no: None. Motion carried.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.

Dr. Spry stated he does feel there are some current limitations on CNMs that could potentially be addressed by some changes in scope of practice. However, he cannot be talked into home deliveries. Dr. Spry does understand some of the hesitancy out there and his suggestion is that there needs to be an enhanced collaborative practice between the CNM and the physician. He would like the CNM to integrate into the current system. Mr. Reamer agreed that the scope of practice needs to be looked at and feels that the potential of harm is there. Dr. Wills stated that he echoes the concerns about the limitations that exist as well as the fact that there is no regulation for home births. Dr. Westerman stated the present scope of practice needs to be explored and looked at in-depth. He has significant reservations related to home births and is strongly convinced that a collaborative agreement needs to be in place. Ms. Coleman stated she agrees that the scope of practice needs to be changed. She might be leaning toward home births as okay, but she thinks there needs to be a formalized arrangement or practice agreement with a physician. Dr. Discoe stated that the present scope of practice for CNMs is too limiting and there should be some expansion in regard to births. He likes the suggestion that if the CNM can not find a physician for a collaborative agreement there could be some alternative possible. Dr. Discoe is opposed to home births and has concerns about care during the first 28 days of the child's life. He believes that the first two days of life can be very important with regard to recognizing the signs or symptoms of an infant in trouble, so if the midwife is not living with the family for the first two days, he would be wary that adequate medical care is being provided. Dr. Discoe has concerns with completely eliminating the collaborative agreement, although he noted that may be something that comes in time as the CNMs garner more respect within the medical practice fields, but not at this time. Ms. Heiden said her comments are in agreement with Ms. Coleman's.

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.

Dr. Wills moved and Ms. Coleman seconded that criterion two is satisfied by the CNM proposal.

Voting yes: Wills. Voting no: Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Motion defeated.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.
Dr. Spry stated he has major concerns about the removal of the collaborative practice part of this proposal since he believes in collaborative practice and feels that removing it is a step backward. Dr. Spry noted that the home birth component of the proposal would be going back to nineteenth century health care. Dr. Spry heard the testimony that there is a need and he wishes them well; however, everything he has read indicates this would put danger out there and he cannot vote for something that he thinks could be dangerous. Dr. Spry does not think it is a good idea for State policy. Ms. Heiden stated her concern is the protection of the health care of Nebraskans. She noted that one thing she has not quite thought out is the financial considerations pertinent to home birthing versus judgment regarding whether home birthing is a good idea for the mother and for the child. Mr. Reamer stated there needs to be a collaboration and partnership of caring. He noted that we all agree that the collaborative approach is better than anything else and the collaboration part is the biggest issue. Mr. Reamer noted that as for home births, he is not convinced that it is a safer situation. While he certainly respects the proponents' feelings, at this point, home births would not be appropriate. Dr. Wills stated the danger is out there now and this is not a new danger. He said that the risk for some people is going into a hospital and noted that his daughter had a midwife when she had a baby. Dr. Wills stated it is a risk choice and whether you involve a midwife or an OB physician, you are getting someone else's opinion for the safety of the child and the majority of the deliveries are fine. Dr. Wills stated that collaborations will be difficult if any changes occur but they can be worked out – time and working together makes for good health care for our patients. Dr. Westerman stated he has concerns related to home birth and he strongly believes in the collaborative venue working with licensed health professions. Dr. Westerman thinks we should also look at other venues for the birth of our children in Nebraska; for example, out-patient clinics and birthing clinics, which would potentially reduce the risk factors. Ms. Coleman stated she does not think she is voting against home births because she is okay with home births with a physician available; however, she is concerned with the first 28 days of an infant's life and feels that this is too long to not have the actual care of a physician. Dr. Discoe stated he has a family practice and does OB and pediatrics. He is opposed to home deliveries and noted that perhaps he is influenced by experiences he has had. Dr. Discoe stated that he grew up in Paxton and he has concerns with home deliveries in rural areas. He said it has been stated that in rural areas there is not great coverage and this would be a great opportunity to expand the talents of someone who could provide obstetrical care; however, he would be apprehensive about a home delivery for someone who is thirty miles from the dispatch of an ambulance. Dr. Discoe has safety concerns for mothers in rural settings, especially those whose impression of birthing may be that there are only good outcomes.

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

Dr. Wills moved and Ms. Coleman seconded that criterion three is satisfied by the CNM proposal. Voting yes: Wills. Voting no: Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Motion defeated.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.

Dr. Spry reiterated his previous statements that he sees some attributes that are good and

clearly this was educational to him; however, he sees some attributes that would not be a benefit. Ms. Heiden stated that Dr. Discoe's comments struck home with her since she lives in a rural area and it would be a good 40 minutes to a hospital once an ambulance got to her house. She stated that she has a child with birth defect and cannot support home birth. Mr. Reamer has the same reasons as earlier; collaboration and home birth are a concern. He noted there are some benefits in the proposal and he wants to make it clear he does recognize the benefits; however, he cannot support the proposal at this time. Dr. Wills stated that with the screening done prior to a decision regarding home birth a good decision can be made. He thinks that with that screening, any good professional that knows their limitations is going to make a good decision. Dr. Wills stated he sees the same aura of fear and that if a home birth is what the mother wants and she has been screened as appropriate for a home birth, then we need to respect her wishes and not force a hospital delivery. Dr. Westerman echoed what he had previously stated. Ms. Coleman stated that Dr. Discoe has swayed her back to the idea that the home birth option may not be a benefit to rural areas. Dr. Discoe stated the transportation issue, when necessary, is a concern for home delivery. He is also concerned because identifying complications as early as possible during delivery is important, yet even transporting a short distance when there are complications can be an issue.

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

Dr. Wills moved and Dr. Spry seconded that criterion four is satisfied by the CNM proposal. Voting yes: Wills. Voting no: Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Motion defeated.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.

Dr. Spry stated he had learned a lot and he does see some attributes he likes. He believes there are opportunities for collaborative practice and increased outcomes. Dr. Spry does see some benefits and he is tempted to please the public and petitioner; however, there are some things that do not seem to be well thought-out in the proposal. Dr. Spry stated that if he was going to do this he would approach it in a systematic manner. He does not think that medical care can be well delivered, in the way we need it delivered today, without good systems in place. He feels that this proposal might defeat some systems out there and in this way be cost and quality-inefficient. Ms. Heiden stated she believes in hospital births although she wishes there were other choices, such as birthing centers, as suggested earlier. Mr. Reamer stated he appreciated the proponents' passion; however, he voted for the reasons and reservations stated earlier – there are good things in the proposal, and he learned a lot during the process. Dr. Wills stated that all the statistics and data said it is more cost-effective to have a child at home, but from a practical standpoint, if someone is going to have a child at home it makes more sense to have someone qualified in attendance. Dr. Wills noted that he is hearing a lot from this committee that they like some things about the proposal and he feels that good will come out of ideas on the table – something can be worked out for the good of the State. Dr. Westerman stated he liked Dr. Spry's concept of systems. He referred to a statement he made earlier; there is a need to encourage looking at more systems such as out-patient venues that will allow for safer environments for the delivery of babies. Ms. Coleman noted that she likes the idea of other options like birthing centers and that these might be something in-between.

Dr. Discoe stated that the committee will now vote on the DEM proposal.

Criterion one states: Absence of a separate regulated profession 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.

Ms. Coleman moved and Dr. Westerman seconded that criterion one is satisfied by the DEM proposal. Voting yes: Wills, Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Voting no: None. Motion passed.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.

Dr. Spry noted he is still adamantly against home births, so the DEM would have to be within a new system. He would envision a regulated profession and in this collaborative environment, the DEM would work with the CNM and a physician and would create a new system. Dr. Spry believes he now understands and recognizes the present need – that there is a situation right now that does pose some danger to the health of the public; however, we need some new system to address out-of-hospital births, and not have home births. Ms. Heiden stated she agreed with Dr. Spry. Mr. Reamer stated his vote was for the same reasons as previously stated, including collaboration, and he thinks there should be some sort of DEM collaboration as we would see with CNMs. Dr. Wills stated that unlicensed and unregulated practice creates a danger and those seeking services of paraprofessionals in this realm deserve some protection. Dr. Westerman voiced concern with the difference in scopes of practice for CNMs and DEMs. If in fact there are two existing levels, they both need to have some regulation and without regulation we have harm. Ms. Coleman stated that she is opposed to direct entry recognition because she thinks these are people doing what is a natural process (birthing) that can very quickly become a medical process. Ms. Coleman stated that she is also opposed to licensing or certifying DEMs because it gives people without very much education and background the right to do pretty significant things. Dr. Discoe stated he was troubled by the same issue as Ms. Coleman and he does not like the idea of certification of a DEM. Dr. Discoe suggested that if they want to be a midwife, he would like to see the DEM go through the process like a CNM. However, we have been told the DEM practices anyway, so perhaps something is better than no oversight at all.

Criterion two states: Creation of a separate regulated profession would not create a significant new danger to the health, safety or welfare of the public.

Ms. Coleman moved and Dr. Westerman seconded that criterion two is satisfied by the DEM proposal. Voting yes: Wills. Voting no: Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Motion defeated.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.

Dr. Spry stated he could envision a proposal that would satisfy him. However, he has two concerns: the home delivery and the pharmacology. Dr. Spry stated that without a basic science in pharmacology or nursing experience this is a very bad idea. Ms. Heiden stated that this would open up home births to being performed by a less certified person. She does not think that would be a good thing and so may create a danger. Mr. Reamer noted the potential of urging home births by someone less qualified. Dr. Wills stated he listened to the public and other testifiers and feels since it is important to them they should be able to do it. He noted the danger is already there and people are already having home births – there is no more new danger. Dr. Westerman stated it is the home birth issue and he echoes the prescription capability concerns, particularly the non-over the counter medications for prescription purposes

that, while they are limited to a short period, are still a concern. Ms. Coleman said her reasons were already stated. Dr. Discoe said his reasons were already stated.

Criterion three states: Creation of a separate regulated profession would benefit the health, safety or welfare of the public.
Dr. Spry moved and Mr. Reamer seconded that criterion three is satisfied by the DEM proposal. Voting yes: Wills. Voting no: Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Motion defeated.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.

Dr. Wills stated that without basic criteria for the DEMs, we do not have standards. If the DEMs are licensed and standards are put into place (i.e. 3 yrs of practice; passing the NARM exam; perform so many deliveries), then you have benefited the public because you have created a safer haven for individuals wanting home births. Dr. Wills noted that the prescription issue is a concern, but anything that passes into law would need to require appropriate training. Dr. Spry stated he interpreted this particular criterion to say that this proposal provides for the creation of a separate regulated profession that would benefit the health, safety or welfare of the public and it keeps coming back to the home birthing issue. He stated that he is not convinced by the data. He noted that he really tried to look at this scientifically and the data swayed him. He does think there are systems where a DEM would be able to contribute to the system; however, this is not the right proposal. Ms. Heiden stated she is against home birth and agrees with many of the same reasons already stated. Mr. Reamer noted his reasons were already stated. Dr. Westerman stated he questioned the issue of a separate regulated profession since the tendency is to have too many tiers in the delivery of care systems. Ms. Coleman does not think this group should be licensed and that this proposal does not provide for enough educational background for the group. Dr. Discoe stated he echoed these comments.

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

Dr. Westerman moved and Ms. Coleman seconded that criterion four is satisfied by the DEM proposal. Voting yes: Wills. Voting no: Coleman, Heiden, Reamer, Westerman, Discoe and Spry. Motion defeated.

Dr. Discoe asked the committee members to provide some explanation of their vote for the record.

Dr. Spry stated there is a way to fix this, but not with this proposal. Ms. Heiden agreed. Dr. Westerman stated that the proponents of this proposal have some fruitful suggestions that have come forward and he encourages them to explore these. Dr. Wills stated that approximately forty states license DEMs in some form or another, and he does not know what is so different about Nebraska that we do not think it is a safe procedure. Dr. Wills commented that maybe the proposal needs some tweaking, but that this proposal is modeled after what other states have already put into place, and that it is time for Nebraska to approve some version of the DEM proposal.