# DIRECTOR'S REPORT ON THE PROPOSAL TO LICENSE DENTAL ASSISTANTS

**From:** **Joann Schaefer, M.D., Chief Medical Officer**
**Director, Division of Public Health, Department of Health and Human Services**

**To:** **The Speaker of the Nebraska Legislature**
**The Chairperson of the Executive Board of the Legislature**
**The Chairperson and Members of the Legislative Health and Human Services Committee**

**Date:** **February 12, 2009**

## Introduction

The Regulation of Health Professions Act provides for an administrative process to review and present to the Nebraska Legislature recommendations regarding change in scope of practice of licensed health care professionals and the establishment of new credentialing for currently unregulated professions. This process (as defined in Neb. Rev. Stat., Section 71-6201, et. seq.) is commonly referred to as a credentialing review. The Department of Health and Human Services Division of Public Health administers the Act. As Director of this Division, I am presenting this report under the authority of this Act.

## Description of the Issue Under Review

The applicant group is the Nebraska Dental Assistants Association (NDAA). The issue under review is whether or not dental assistants should be licensed in Nebraska.

## Summary of Technical Committee and Board of Health Recommendations

The technical committee members recommended against the proposal to license dental assistants, but made a series of ancillary recommendations to improve educational and training standards for dental assistants. The Board of Health also recommended against the proposal, and supported the ancillary recommendations made by the technical committee. I concur with the recommendations made by these two review bodies with the caveat that I have some doubts about the value of the ancillary recommendations that were approved. More detailed comments about these ancillary recommendations will be made later in this report.

## The Director's Recommendations on the Proposal Using the Four Criteria of the Credentialing Review Statute

Recommendations will be made by using the four criteria of the Credentialing Review Program that pertain to new credentialing proposals. These are contained in the text of Neb. Rev. Stat., Section 71-6201, et. seq., and are as follows:

**Criterion one:**

**Unregulated practice can clearly harm or endanger 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.**

Dental assistants are not currently regulated by the State of Nebraska. Some are graduates of two-year training programs, but most are trained directly by the dentist who employs them. Applicant arguments focused around demonstrating the potential for harm stemming from the lack of standardization in dental assistant training from one dental office to another. They argued that some dentists might be doing a fine job of training and overseeing their dental assistants, but other dentists might not. They argued that there is a need to create a more consistent training and testing process for dental assistants so that the public can have assurance that their services are safe and effective and of high quality. The applicants argued that there is significant potential for harm to the public stemming from this current practice situation, but did not provide evidence that would substantiate this concern. Additionally, the applicant group argued that the fact that dental assistants are not held directly accountable for their actions poses additional potential for harm to the public. No evidence was presented to substantiate this concern, and the counterargument presented by Nebraska Dental Association representatives, which states that disciplinary action can be taken against the licenses of supervising dentists if their dental assistants cause harm to patients, is a convincing one. Thus I find that Criterion one has not been satisfied.

**Criterion two:**

**Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.**

Considerable information was received during the review to indicate that passing the proposal would create significant barriers to the provision of services, and that access to care could suffer as a result. The proposal would likely create significant hardship for dental offices, especially in rural areas of the state, and would likely create a situation of overregulation of a service for which no compelling evidence of any harm has been demonstrated. After the proposal became effective and the grandfathering period has passed, anyone seeking to become a dental assistant in Nebraska would be required to undergo a lengthy, costly, and time-consuming educational and training program. Such educational and training requirements could prove to be prohibitive for at least some persons seeking employment as dental assistants. Thus I find that Criterion two has not been satisfied.

**Criterion three:**

**The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state.**

The applicants argued that licensing dental assistants would provide the public with greater assurance that inadequate care by dental assistants would result in effective disciplinary action, and that minimum competencies would be attained by dental assistants. However, no evidence was presented by the applicants to demonstrate that the current practice situation of dental assistants has failed to protect the public from harm, or that it has failed to provide adequate training for dental assistants. It is hard to argue against the idea that requiring formal education and training could be a positive development for addressing concerns about the quality and consistency of the services of dental assistants. However, the benefits this could bring do not justify passing a proposal that is likely

to result in significant restrictions to access to care for patients as well as new barriers to access to employment for prospective dental assistants, especially when there is nothing to indicate that there is anything wrong with the current educational and training process. Regarding disciplinary issues, the idea that being able to take direct disciplinary action against dental assistants for their misdeeds would somehow improve the current disciplinary system is flawed. There would be situations wherein identifying the culpable party would be difficult to ascertain, and would likely involve the Dental Board in the murky business of having to apportion the liability between the supervising dentist and their dental assistants. The public interest would not be served by allowing these kinds of complex disciplinary situations to occur. Thus I find that Criterion three has not been satisfied.

**Criterion four:**

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

It is hard to make a convincing argument that taking direct disciplinary action against dental assistants would be a cost-effective way of providing discipline and public protection for this area of care. It is far more cost-effective to take action against a supervising dentist than it is to take action against the supervisees of a dentist, or in some cases, to take action against both the supervisees and the supervising dentist. Similarly, the current educational and training provisions wherein the supervising dentist is responsible for the training of their assistants is far more cost-effective than requiring a lengthy and costly formal educational and training program, as long as the current training process is providing dental assistants with what they need to know to practice safely and effectively. No evidence was provided during the review process to indicate that there are any serious problems with the current manner in which dental assistants are trained. An example to illustrate that on-the-job training ("OJT") can be safe and effective comes from the field of medicine. Medical assistants are an occupational group that has been an important component of medical care for many years. These practitioners are trained either on-the-job or by employer-required certificate programs from community colleges. On-the-job training is done by their supervising physicians, who are liable for everything their medical assistants do under their license. This is a relationship that has worked well in the medical area for the benefit of the public for many years without significant problems. No compelling information was provided during the course of the review to suggest that this "OJT" approach is somehow not working for the public good as it relates to the services of dental assistants. Thus I find that Criterion four has not been satisfied.

**Comments Regarding Ancillary Recommendations (see pages six and seven of the Report of the Board of Health)**

The ancillary recommendations approved by both the technical committee and the Board of Health represent a means of addressing concerns raised about the education and training of dental assistants in a manner that is more consistent with access to care than does the current applicant proposal. However, there would be no means by which these ideas could be enforced, and in effect they would become recommended guidelines unless there is a statutory and regulatory modification. The proposed statutory change for regulatory oversight by means of licensing dental assistants is a separate issue from the possible statutory changes needed to set the educational standards. Setting education standards for dental assistants should be given to the Board of Dentistry, as it is consistent with their mission. Currently, they set the standards for dentists and dental hygienists; therefore, it makes sense that they set the standards for dental assistants as well. There would be no harm in advancing these ideas.

**By these actions on the four criteria I hereby recommend against approval of the proposal.**