

REPORT OF RECOMMENDATIONS AND FINDINGS

By the Dental Assistants'
Technical Review Committee

To the Nebraska State Board of Health, the
Director of the Department of Health and Human Services Division of Public
Health, and the Members of the Health and Human
Services Committee of the Legislature

October 28, 2008

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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 Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with 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 Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

**MEMBERS OF THE
DENTAL ASSISTANTS' TECHNICAL REVIEW COMMITTEE
APRIL 2008**

- Janet Coleman (Chairperson)** (Lincoln)
Representing the State Board of Health
Retired Special Education Teacher, Lincoln Public Schools
- Annette Byman, R.D.H.** (Omaha)
Representing the Nebraska Dental Hygienists Association
Dental Hygienist, Employed by Dr. Scott Morrison
- Linda Coster, R.T.** (Hildreth)
Radiologic Technologist, retired from active practice
- Linda Douglas** (Lincoln)
Retired, Special Education Program, Lincoln Public Schools
Part-time Instructor at UN-L and contract work for the
Nebraska Department of Education
- Lonnie Flagtwet, D.D.S.** (Lincoln)
Representing the Nebraska Dental Association
Self-Employed Family Practice Dentist
- Kelly Sheets** (Kearney)
Vice President, Five Points Bank
- Roberta Worm, C.D.A.** (Omaha)
Dental Assisting Instructor
Representing the Nebraska Dental Assistants Association
Vatterott College

EXECUTIVE SUMMARY OF THE PROPOSAL AND RECOMMENDATIONS

Summary of the Dental Assistants' Proposal

The applicant group sought to license dental assistants in Nebraska. Their proposal defined a basic licensure category and three advanced licensure categories. The original proposal was amended during the review process, and the text of the proposal described below is the amended version of the proposal.

The following summarizes the final version of the applicants' proposal and briefly describes the categories of providers that the proposal would create:

Dental Aide

This would be an individual who has no formal academic preparation in dental assisting. The training they receive would be entirely "on-the-job" (OJT), and they would be required to have a high school diploma and to have attained the age of eighteen. They would be allowed to perform intraoral procedures, but only under the supervision of a licensed dentist. Functions typical of this category of provider include those identified below.

- Receiving and preparing patients for treatment, including seating the patient, positioning the chair and placing the napkin,
- Preparation of procedural trays and armamentaria setups,
- Performing sterilization and disinfection procedures,
- Processing dental radiographs,
- Selecting and manipulating gypsums and waxes,
- Providing pre and post-operative instructions,
- Transferring dental instruments, and
- Mixing dental materials.

Licensed Dental Assistant

This individual would be required to have attained the age of eighteen and to have graduated from a dental assisting program accredited by the American Dental Association Commission on Dental Accreditation (CODA). They would also be required to have a current certification in cardiopulmonary resuscitation (CPR) and to have passed an examination approved by the Nebraska Board of Dentistry. They must complete thirty continuing education credits every two years, including six hours in infection control and four hours in jurisprudence. This individual would be able to provide all of the services of a Dental Aide, as well as providing the functions identified below.

- Exposing and mounting radiographs,
- Assessing and screening to determine the potential for dental or oral disease,
- Placing temporary fillings,
- Cementing temporary crowns,
- Performing coronal polishing procedures,
- Placing and removing periodontal dressings,

- Providing patient preventive education and oral hygiene instruction,
- Taking and recording vital signs,
- Removing sutures,
- Assisting in the management of medical and dental emergencies, and
- Adding medications to intravenous lines.

Licensed Dental Assistant-Sealants (LDA-S)

This individual would be required to have attained the age of eighteen, to be a Licensed Dental Assistant (LDA), and possess a current certification in cardiopulmonary resuscitation (CPR). They would also be required to have successfully completed an Expanded Function Sealant course that is taught didactically and to clinical competency at a dental assisting program accredited by CODA. This individual would be required to pass a written state-specific expanded function examination in Sealants from the Dental Assisting National Board (DANB). A LDA-S may perform all the functions of a LDA, as well as apply pit and fissure sealants.

Licensed Dental Assistant-Expanded Function (LDA-EF)

This individual would be required to have attained the age of eighteen, to be a Licensed Dental Assistant (LDA), and possess a current certification in cardiopulmonary resuscitation (CPR). They would also be required to have successfully completed a Licensed Dental Assistant - Expanded Function course that is taught didactically and to pre-clinical competency at a dental assisting program accredited by CODA. This individual would be required to have passed a written state-specific expanded function Dental Assisting National Board (DANB) exam. They must complete thirty continuing education credits every two years, including six hours in infection control and four hours in jurisprudence. A LDA-EF may perform all the functions of a LDA, as well as provide the functions identified below.

- Placing, condensing, and carving amalgam restorations,
- Taking final impressions for restorations and removable prosthesis, and
- Removing excess cement from coronal surfaces of teeth by means of an ultrasonic scaler.

Licensed Dental Assistant-Ortho Expanded Function (LDA-OEF)

This individual would be required to have attained the age of eighteen, to be a Licensed Dental Assistant (LDA), and possess a current certification in cardiopulmonary resuscitation (CPR). They would be required to successfully complete a Licensed Dental Assistant – Ortho Expanded Function course that is taught didactically and to pre-clinical competency at a dental assisting program accredited by CODA. They must complete thirty continuing education credits every two years, including six hours in infection control and four in jurisprudence. This individual would be required to have passed a written state-specific orthodontic expanded function Dental Assisting National Board examination. A Licensed Dental Assistant-Ortho Expanded Function (LDA-OEF) may perform all the functions of an LDA, as well as the functions identified below.

- Preliminary positioning of indirect brackets on a model,
- Taking intraoral measurements for orthodontic procedures,
- Tying, placing or removing ligatures on arch wires,
- Placing and removing elastic orthodontic separators,
- Removing loose bands and brackets,
- Placing simple arch wires,
- Tying in arch wires,
- Removing arch wires, and
- Placing and removing orthodontic bands.

All dental assistant credentialing categories described above would be required to work under the supervision of a licensed dentist and to satisfy OSHA standards pertinent to training in infection control, including training specific to the prevention of spreading of bloodborne pathogens.

The proposal includes a grandfather clause which states that any dental assistant may apply to become a Licensed Dental Assistant (LDA) for a period of one year from the effective date of the law. A dental assistant applying for licensure under the grandfathering provision must show proof of completion of coursework in dental radiology, cardiopulmonary resuscitation, and coronal polishing that is approved by either the Nebraska Board of Dentistry or the American Dental Association (ADA).

The proposal includes a provision for reciprocity which states that any dental assistant who has graduated from an ADA Accredited Dental Assisting Program and has passed the Dental Assisting National Board certification examination will be granted licensure upon application and payment of fees.

SUMMARY OF COMMITTEE RECOMMENDATIONS

Summary of the Preliminary Recommendations

The members of the Dental Assistants' Technical Review Committee formulated preliminary recommendations on the proposal during their July 18, 2008 meeting by taking action on the four statutory criteria. The committee members tentatively recommended approval of each of the criteria, and thus of the proposal.

Summary of the Final Recommendations

The Public Hearing on the proposal took place on August 15, 2008, with testimony presented by over 40 persons. After careful review of the testimony, the committee met again on October 6, 2008, to formulate final recommendations on the proposal by taking action on the four statutory criteria.

Criterion one states:

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.

The committee members determined that the current unregulated situation of the dental assistants' profession satisfied Criterion One.

Criterion two states:

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.

The committee members determined that the applicants' proposal did not satisfy Criterion Two.

Criterion three states:

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

The committee members determined that the applicants' proposal satisfied Criterion Three.

Criterion four states:

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

The committee members determined that the applicants' proposal did not satisfy Criterion Four.

Since at least one criterion was found not to be satisfied, the committee members' actions recommended against approval of the applicants' proposal.

The committee members unanimously approved the following ancillary recommendations:

1. Representatives of the applicant group and the Board of Dentistry should cooperate to develop a uniform education and training program for those dental assistants who would be providing expanded functions, and which would include a consistent curriculum and a testing component.
2. Parameters and guidelines should be defined for the on-the-job training so that there are requirements for a consistent curriculum and competency testing.
3. Standardized training for the procedures associated with radiography and coronal polishing should be established for all dental assistants, along with testing for competency for each of these two components of dental assisting practice.
4. Expanded function dental assistants, including those who would provide orthodontic expanded functions, should be educated, tested, and credentialed on the functions they would be providing.

COMPLETE ACCOUNT OF COMMITTEE RECOMMENDATIONS

The members of the Dental Assistants' Technical Review Committee formulated their final recommendations on the Dental Assistants' proposal during their October 6, 2008 meeting by taking action on the four statutory criteria of the Regulation of Health Professions Act under Nebraska Revised Statutes, Section 38-6221. These four criteria and the committee recommendations are described below. When taken together, these four actions comprise the final recommendation on the entire proposal. The proposal must be supported on all four criteria for it to be positively recommended by the committee.

Criterion one states:

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.

Roberta Worm moved and Annette Byman seconded that the proposal satisfies the first criterion.

Voting aye were Byman, Coster, Douglas, Flagtwet and Worm. Voting nay was Sheets. Ms. Coleman abstained from voting. The motion carried.

By this vote, the committee members recommended that the current unregulated situation of the dental assistants' profession is a potential source of harm to the public.

The majority of committee members continued to have concerns about the absence of uniformity in the training of dental assistants, and the lack of an assurance that dental assistants are adequately trained to perform their duties safely and effectively under the current situation.

Criterion two states:

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.

Linda Douglas moved and Roberta Worm seconded that the proposal satisfies the second criterion.

Voting aye were Douglas and Worm. Voting nay were Byman, Coster, Flagtwet and Sheets. Ms. Coleman abstained from voting. The motion failed.

By this action the committee members recommended that the proposal does not satisfy the second criterion.

The majority of committee members were concerned about the potential of the proposal to restrict access to services, especially in rural areas of the state.

Criterion three states:

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

Roberta Worm moved and Annette Byman seconded that the proposal satisfies the third criterion.

Voting aye were Coleman, Douglas, Flagtwet and Worm. Voting nay were Byman, Coster and Sheets. The motion carried.

By this vote, the committee members recommended that there was significant benefit to the public from the proposal.

The majority of committee members felt that the proposal would create uniformity in the training of dental assistants and that this would provide greater assurance of safe and effective practice. Some committee members continued to have concerns about the fact that current dental assisting programs do not teach to the level of clinical competency.

Criterion four states:

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

Roberta Worm moved and Annette Byman seconded that the proposal satisfies the fourth criterion.

Voting aye were Douglas and Worm. Voting nay were Byman, Coster, Flagtwet and Sheets. Ms. Coleman abstained from voting. The motion failed.

By this vote, the committee members recommended that the proposal was not the most cost-effective means of addressing the concerns raised under the first criterion.

The majority of committee members indicated that they wanted to find means of addressing the problems identified under criterion one other than the proposal which raises too many concerns about restrictions on access to care.

By virtue of these actions taken on the four criteria, the committee members recommended against approval of the proposal.

Ancillary Recommendations

1. Linda Coster moved and Annette Byman seconded that the committee members recommend that representatives of the applicant group and the Nebraska State Board of Dentistry cooperate to develop a uniform education and training program for dental assistants who would be providing expanded functions, and which would include a consistent curriculum and a testing component.

Voting aye were Byman, Coster, Douglas, Flagtwet, Sheets and Worm. Ms. Coleman abstained from voting. The motion carried.

2. Lonnie Flagtwet moved and Annette Byman seconded that parameters and guidelines be defined for the on-the-job training provided by dentists so that there are requirements for a consistent curriculum and competency testing.

Voting aye were Byman, Coster, Douglas, Flagtwet, Sheets and Worm. Ms. Coleman abstained from voting. The motion carried.

3. Linda Coster moved and Kelly Sheets seconded that standardized training for the procedures associated with radiography and coronal polishing be established for all dental assistants, along with testing for competency for each of these two components of dental assisting practice.

Voting aye were Byman, Coster, Douglas, Flagtwet, Sheets and Worm. Ms. Coleman abstained from voting. The motion carried.

4. Roberta Worm moved and Linda Douglas seconded that expanded function dental assistants, including those who would provide orthodontic expanded functions, be educated, tested, and credentialed on the functions they would be providing.

Voting aye were Byman, Coster, Douglas, Flagtwet, Sheets and Worm. Ms. Coleman abstained from voting. The motion carried.

ISSUES DISCUSSED BY THE COMMITTEE

1. Is there harm to the public health in the current practice situation of dental assistants? What is the nature of this harm?

Proponents presented the following arguments to support the contention that there is harm, or at least potential for harm, to the public in the current practice situation of dental assistants:

- On-the-job training (OJT) alone is not sufficient to ensure consistently safe and effective services by dental assistants, and a consistent standard is needed for the education and training of dental assistants. Formal education and training would make them safer and more effective employees than they are currently.¹
- Assurance of adequate infection control training for dental assistants is a priority, and this cannot be assured under the current practice situation of "OJT".² The proponents observed that while some dentists might be good teachers, others might not. The proponents also noted that OSHA rules and regulations require that all dental personnel be trained in the area of infection control consistent with a standard of safety.
- Clear and consistent training is needed for dental assistants to perform radiographic and orthodontic functions safely and effectively. The potential for harm inherent in such procedures requires the assurance of consistent and effective training in these aspects of dental care.³
- Absence of a clear and consistent scope of practice for dental assistants places the patient at risk. Testimony was received from one orthodontist that the current practice situation has resulted in the inappropriate utilization of the services of dental assistants. This testimony indicated that there is a significant number of orthodontic practices wherein a large number of dental assistants are employed to treat as many as a hundred patients per day with very little oversight provided. In these practices dental assistants are required to perform duties that should only be performed by a licensed dentist. These duties have included the use of high/low hand speed instruments, finalizing the placement and cementation of brackets and bands and retainers and shaping arch wires. This testimony indicated that in these practices it is not uncommon for patients to be seen only by their dental assistant for consecutive months without the benefit of seeing their orthodontist. This testimony provided information that at least some patients treated in such practices fail to make progress despite lengthy treatment histories and that licensure would provide a clear scope of practice for dental assistants and prevent these kinds of abuses.⁴
- Access to dental assisting care is declining under the current situation because the number of dentists is steadily declining. There are currently 54 counties in Nebraska that do not have the services of a dentist. Dental assistant practice needs to be

¹ The Testimony of Susan Asher, Pages 213-215 of the Transcript of the Public Hearing held on August 15, 2008

² The Applicants' Proposal, Page 9, Items 22, and 23

³ The Applicants' Proposal, Page 9, Item 23

⁴ The Written Testimony of Dr. Timothy Adams, DDS, Submitted during the Public Hearing held on August 15, 2008

structured to address these kinds of concerns. The proposal would allow advanced practice dental assistants to provide outreach services for underserved areas.⁵

- The public lacks the assurance that inadequate care, when provided by a dental assistant, will result in clear and consistent disciplinary action. Also, concern was expressed that tasks assigned to dental assistants by their supervising dentists are inconsistent with their training and abilities.⁶ The current situation wherein the supervising dentist bears all the responsibility for the training of dental assistants creates a high risk situation for the supervising dentist who in effect assumes liability for everything their supervisees do. If there is any short-coming in their training and errors occur as a result, the dentist, not the dental assistant, is liable. Licensing dental assistants would make them responsible for the tasks they perform.⁷
- The lack of required formal training and education for dental assistants also places these health care workers at significant risk of harm. A study entitled "Preventing Percutaneous Injuries Among Dental Health Care Personnel," by Jennifer L. Cleveland, DDS, et al, published in the Journal of the American Dental Association (JADA), Vol. 138, February 2007, cited evidence indicating that dental assistants have been injured or exposed to disease pathogens on the job due to their lack of adequate education and training. The applicants cited this study as further evidence of the need for formal education and training for dental assistants.

Opponents and those with concerns about the proposal offered the following counter-arguments regarding the potential for harm to the public in the current situation:

- The current "OJT" process has worked well for Nebraskans, and there is no evidence that it is a source of harm to the public, nor is there any problem with the quality of care provided by dental assistants under the current situation. Opponents feel that the best way for a dental assistant to learn what they need to learn is by working with, and learning first-hand from, a licensed dentist.⁸ Opponents argued that formal academic preparation for dental assistants sometimes fails to provide them with what they need to know to provide services in a specific area of the state. They feel that "OJT" does a better job of preparing them for a specific market.⁹
- The current system is cost-effective for both consumers, dental assistants, and those who employ dental assistants. Dental assistants currently receive nearly all of their training via "OJT" from their employer. Opponents feel that this works well for all concerned. Dental assistants do not have to incur the costs associated with travel, relocation, and downtime associated with formal education and training. The dentist can train them and at the same time receive the benefit of their work. Consumers experience no disruption of services under this system. Opponents feel that requiring a formal educational and credentialing process for dental assistants risks

⁵ The Applicants' Proposal, Page 2, Item 4; and the Testimony of Deb Garner, Page 203 of the Transcript of the Public Hearing held on August 15, 2008

⁶ The Testimony of Jennifer Riege (Pages 206-207), and Susan Asher (Pages 213-215), in the Transcript of the Public Hearing held on August 15, 2008

⁷ The Written Testimony of Dr. Timothy Adams, DDS, submitted during the Public Hearing held on August 15, 2008

⁸ The Testimony of John Pershing, DDS (Page 199), Amy Kabasz (Page 163), Byron Tullis, DDS (Page 180), Marcia Beck, DDS (Page 177), and Sami Webb, DDS (Page 171), in the Transcript of the Public Hearing held on August 15, 2008

⁹ The Testimony of Gary Christiansen, DDS (Pages 167-168) and Chris MacKnight, DDS (Pages 160-162) in the Transcript of the Public Hearing held on August 15, 2008

increased costs of dental services as well as disruption of services without significantly increasing the quality of these services.¹⁰

- The current system represents the best scenario as regards access to care when compared with the idea of a formal credentialing process for dental assistants. The current “OJT” training process for dental assistants imposes no hardships on any of the involved parties, whether they be consumers, dentists, or dental assistants. Training and access to care are both well served by this process.¹¹
- The current training and employment situation for dental assistants places all liability for bad outcomes on the licensed dentist. Opponents think that this provides the public with ample recourse for any errors or bad practices that might stem from the actions of dental assistants.¹²

2. Would the proposal create new sources of harm to the public health and welfare?

Proponents offered the following arguments pertinent to this question:

- In response to opponent arguments that dental assistant education and training does not teach to the level of clinical competency, the proponents stated that once the proposal passes dental assistant educational and training programs will transition toward teaching dental assisting functions at the level of clinical competency, and thereby provide the necessary education and training in a manner that is safe and effective.¹³
- Educational opportunities for dental assistants to receive the necessary education and training are multiple and diverse, including the option of accessing such training via on-line venues. On-site training opportunities are provided along the I-80 corridor of Nebraska, and training can be accessed on-line as well. This information was cited to address concerns about the costs and supposed restrictiveness of the proposal.¹⁴
- The proponents responded to concerns from representatives of the Nebraska Dental Association about the supposed restrictiveness of the proposal as regards its changes vis-à-vis “OJT” by stating that, contrary to the opponent assertions, the proposal does not eliminate “OJT”. The applicants assert that the proposed dental aide category would be trained in this manner, and stated that this fact goes a long way toward addressing concerns about the restrictiveness of the proposal.¹⁵
- The applicants’ proposal contains a grandfather clause that allows current dental assistants one year to apply for licensure. Current dental assistants who have completed their radiographic, coronal polishing and CPR requirements would be eligible for licensure after paying the licensure fee. Proponents believe that this

¹⁰ The Testimony of Gary Christiansen, DDS (Pages 167-168) and Chris MacKnight, DDS (Pages 160-162) in the Transcript of the Public Hearing held on August 15, 2008

¹¹ The Testimony of John Pershing, DDS (Page 199), Amy Kabasz, (Page 163), Byron Tullis, DDS (Page 180), Marcia Beck, DDS (Page 177), and Sami Webb, DDS (Page 171), in the Transcript of the Public Hearing held on August 15, 2008

¹² The Testimony of Jessica Meeske, DDS (Pages 88-89), and John Pershing, DDS (Pages 198-199) in the Transcript of the Public Hearing Held on August 15, 2008

¹³ The Minutes of the May 28, 2008 Meeting of the Committee

¹⁴ The Minutes of the April 11, 2008, Meeting of the Committee

¹⁵ NDAA Power Point Presentation shown at the Public Hearing, August 15, 2008

provision goes a long way towards addressing concerns stated by opponents about the supposed restrictiveness of the proposal.¹⁶

- The applicants stated that once the proposal is in effect, the educational process would move quickly to cover the new requirements, and that the necessary training would be in place when needed.¹⁷
- The applicants stated that the proposal provides a grandfather clause that would allow for one year's time to complete requirements. Additionally, there are training programs in all areas of the state, and some colleges have the entire curriculum on-line.¹⁸
- The applicants stated that their proposal would continue to allow for "OJT" for dental aides.¹⁹

Opponents and those with concerns about the proposal offered the following criticisms of the proposal:

- Some opponents stated that the current proposal goes too far in defining procedures without ensuring accredited didactic and clinical education or competency testing. There is currently no standardized clinical competency examination.²⁰
- Comment was made that the proposed dental assistant scope of practice defines functions and services that are beyond what dental assisting educational programs are prepared to teach. Such functions as sizing and fitting stainless steel crowns for primary teeth, the placement of fillings, removing permanent cement from supragingival surfaces with hand instruments, the removal of excess cement from coronal surfaces of teeth, and the placement of orthodontic appliances are examples of functions that require much more attention to detail in the clinical training of dental assistants than what currently exists, according to these testifiers.²¹
- Opponents commented that current dental assisting education and training for such functions teaches only to pre-clinical competency, and that such a level of training will not suffice to protect the public from new harm associated with the numerous intraoral functions listed in the proposal such as the application of pit and fissure sealants, amalgam restorations and the use of light-curing devices for curing orthodontic and restorative materials.²²
- Concern was expressed about the possible negative impact of the proposal on access to care. Orthodontists argued that the new licensure standards could drive many current practitioners out of the field, and that the requirements are going to be too difficult for current practitioners to satisfy given that they would have to take too much time away from work in order to complete the training requirements for licensure. This would especially be a problem in rural areas of Nebraska.²³

¹⁶ The Minutes of the July 18, 2008 Technical Committee Meeting

¹⁷ Minutes of the May 28, 2008 Meeting of the Technical Committee

¹⁸ Minutes of the April 11, 2008 Meeting of the Technical Committee

¹⁹ The Testimony of Cindy Cronick, CDA, Page 228 of the Transcript of the Public Hearing, held on August 15, 2008

²⁰ The Public Hearing Testimony of Darlene Carritt, RDH, Page 85 of the Transcript of the Public Hearing held on August 15, 2008

²¹ (The Testimony of Jane Broekemeier, RDH, Pages 150-151 of the Transcript of the Public Hearing held on August 15, 2008)

²² The Public Hearing Testimony of Janet M. Wehrli, RDH, Pages 157-158 of the Transcript of the Public Hearing held on August 15, 2008

²³ The Testimony of David O'Doherty (Page 95), Dr. Sol Kutler, DDS (Page 109) in the Transcript of the Public Hearing held on August 15, 2008

- Comment was made by one opponent that the dental assisting training programs in our state do not graduate enough dental assistants per year to meet demand, and that passing the proposal would likely lead to a shortage of practitioners in this area of care.²⁴
- Opponents argued that the creation of a licensing process for dental assistants would be restrictive and increase the cost of care. The proposal would create hardships serious enough that some dental assistants might drop out of the profession. Such a situation could cause some dental offices to close.²⁵

3. Would the public benefit from the proposal?

Proponents presented the following arguments regarding public benefit:

- Licensure of dental assistants would ensure that all dental assistants received at least baseline education and training under the auspices of accredited, college-based programs.²⁶ The standardization of education and training that would be brought about by licensure would provide greater assurance of quality services, and such aspects of practice as OSHA infection control rules, CPR requirements, and radiographic training would occur as they are supposed to occur. Additionally, the proponents argued that education is essential to the protection of the public as regards the services of dental assistants, and that in-office "OJT" alone cannot compensate for a lack of education *per se*.²⁷ In-office "OJT" can only prepare an employee to perform a specific set of tasks. It cannot adequately educate the employee so that they understand why functions are done, and why they are done in a certain way.²⁸
- Written testimony from the Organization for Safety and Asepsis Procedures (OSAP), entitled "Why Infection Control is Important for Dental Assistants," was submitted to the committee members by the applicant group. This document stated that dental assistants need to be provided with an understanding of the microbial world, and that this is part of the dental assistant's personal and professional responsibility, given that infection control is typically one of their primary responsibilities. The proponents stated that the assurance of competency in this area of care requires formal education, and should not be left to "OJT". The proponents argue that on-the-job training alone allows for too much variation in quality from one dental office to another, and that it stands to reason that while some dentists might be good teachers, others might not.
- One representative of the dental profession commented that the proposal to license dental assistants is one that the dental profession can and should support so as to improve the quality of dental care in Nebraska. This testifier stated that the dental profession needs to act responsibly for the sake of patients and pay for the short-term costs of education of their dental assisting employees. Higher wages would likely result from the licensing of dental assistants, but this would also raise the level

²⁴ The Testimony of Cassandra Pietrok, DDS, Pages 122-123, in the Transcript of the Public Hearing held on August 15, 2008

²⁵ The Testimony of Dr. Sol Kuller, DDS, Page 109, in the Transcript of the Public Hearing held on August 15, 2008

²⁶ The Applicants' Proposal, Page 2, Items 3 and 4

²⁷ The Applicants' Proposal, Page 9, Items 22 and 23

²⁸ NDAA Power Point Presentation shown at the August 15, 2008 Public Hearing

of the available pool of applicants entering the dental assisting field, and thereby elevate the quality of the services they provide.²⁹

- Licensure of advanced practice dental assistants would allow for a more efficient use of dental assistants with advanced skills because they could practice under general supervision. This would allow them to do some work without a dentist being on the premises. These dental assistants, if their supervising dentist were to approve, would be able to provide outreach services to underserved populations. Proponents argued that in this manner the proposal could help to alleviate the shortage of dental personnel in underserved areas of Nebraska.³⁰ They described comments from the American Dental Association regarding its support for expanded functions for dental assistants to address the shortage of dental personnel in underserved areas, and the ADA's support for the idea of formal education for dental assistants.³¹
- Licensure of dental assistants would provide significantly greater assurance that the radiographic and orthodontic services of advanced dental assistants would be done safely and effectively.³²
- Proponents argue that another benefit would be that for the first time the public would have recourse against a dental assistant who has acted in a fraudulent manner or has been a source of harm by virtue of carelessness or clinical incompetency.³³ Opponents counter that such recourse already exists via action that can be taken against the license of a supervising dentist.
- The applicants stated that once licensure is passed, dental assistant training programs would be upgraded to meet the requirements of the scope of practice, and would teach to the level of clinical competency.³⁴

Opponents and those with concerns about the proposal stated the following concerns or counterarguments:

- The argument was made that even the best formal dental assistant education and training is not adequate to prepare dental assistants to perform some of the functions identified as part of advanced dental assistants' practice, which include working with molds, coronal polishing and pit and fissure sealants.³⁵ Those skeptical of the proposal indicated that "OJT" by each dentist might offer better training in this regard by focusing that training on the specific needs of the market in each local area.³⁶ The argument was made that what potential benefits there might be from the formalization of training and licensure does not justify the risks associated with the possibility of losing dental services completely in some rural areas of the state.
- Concern was expressed that the proposal does not ensure that there will be adequate education and training for dental assistants to perform all of the functions

²⁹ Written Testimony of Dr. Timothy Adams, DDS, Submitted during the Public Hearing held on August 15, 2008

³⁰ The Testimony of Deb Garner, Pages 203-204 of the Transcript of the Public Hearing held on August 15, 2008

³¹ The Testimony of Jill Day, Pages 58 and 59 of the Transcript of the Public Hearing held on August 15, 2008

³² The Testimony of Jennifer Riege, Pages 205-207 of the Transcript of the Public Hearing held on August 15, 2008

³³ The Applicants' Proposal, Page 2 and 3, Item 6

³⁴ The Minutes of the May 28, 2008 meeting of the Committee

³⁵ The Minutes of the May 28, 2008 Meeting of the Technical Committee

³⁶ The Testimony of Gary Christiansen, DDS, (Page 167) and Chris MacKnight, DDS (Page 160) in the Transcript of the Public Hearing held on August 15, 2008

included in the proposed scope of practice. Comments were made that formal dental assistant education and training does not train to clinical competency, and that the way it handles radiographic training is a case in point. In this context it was noted that dental assistants' radiographic training is currently done using mannequins, rather than patients. Concern was raised about the ability of the current academic training programs for dental assistants to train for all of the functions and duties defined in the applicants' proposal such as those in radiography and orthodontics.

- Applicant arguments that the efficiencies associated with the creation of advanced practice dental assistants would help to improve access to care by creating opportunities for outreach services were received skeptically by those with concerns about the proposal. For example, whether this idea could address the needs of rural counties that do not even have a dental office seemed doubtful to some interested parties. Additionally, it is not clear how many dental assistants are going to be interested in becoming credentialed at the advanced levels of practice.³⁷

4. Are there alternatives to the proposal that might address the harm identified in the application more cost-effectively?

Proponents made the following arguments:

- The proposal would protect the public from risk of harm from unqualified providers by establishing minimum educational and training requirements for dental assistants.³⁸
- The proposal would ensure an appropriate level of education and training for dental assistants performing expanded functions which does not exist under the current practice situation.³⁹
- The proposal would prohibit a dentist from delegating specific expanded functions to dental assistants who do not possess the defined advanced education and training to perform such functions.⁴⁰
- The expanded functions provided under the terms of the proposal and the provision for general supervision for advanced practice dental assistants would provide opportunity for dental offices to use dental assistants for outreach purposes, and would thereby, expand access to care for rural areas of our state that currently lack dental care services.⁴¹
- Alternatives to the proposal such as mandating education and training for dental assistants without credentialing them would not provide for discipline or for mandatory continuing competency. The alternative of creating formal rules and regulations for dental assistants including a formal definition of functions and duties would not ensure the protection of the public from uneducated and untrained providers. The alternative associated with maintaining the status quo would continue a situation wherein the public receives services from uneducated and untrained dental assistants. The proponents felt these options are not acceptable alternatives for the public. The proponents stated that their proposal offers the most

³⁷ Minutes of the May 9, 2008 Meeting of the Technical Committee

³⁸ The Applicants' Proposal, Page 15, Item 45

³⁹ The Applicants' Proposal, Page 15, Items 46,47,and 48

⁴⁰ The Applicants' Proposal, Page 20, Item 57

⁴¹ The Applicants' Proposal, Page 15 and 16, Items 46, 47, and 48

cost-effective means of addressing the harm or potential for harm in the current practice situation.⁴²

Opponents and those with concerns about the proposal made the following arguments:

- The argument was made by some interested parties with concerns about the proposal that education and training for dental assistants could be mandated without requiring the creation of the formal “machinery” of credentialing. Under this alternative concept, dental assistants or their employers would have to prove that they possess a specific set of educational and training requirements, and then and only then would they be allowed to practice.⁴³
- The argument was made that the current practice situation works well, and should be left alone so as not to create a process that is too restrictive vis-à-vis access to care and cost of care. Opponents believe that the current practice situation is by far the most cost-effective means of addressing the issues under review.⁴⁴
- Opponents of the proposal argued that the best protection for the public as regards dental assistant services is the oversight of a licensed dentist. Holding the supervising dentist liable for the actions of their dental assistants is the most effective means of dealing with any disciplinary issues that might arise.⁴⁵
- The argument was made that the best way to address access to care concerns is the flexibility that the current practice situation provides wherein the dentist can train his or her dental assistants to do exactly what is needed to meet the public need in each service area of Nebraska.⁴⁶
- Opponents argued that there is no evidence to suggest that the education and training of dental assistants under the current practice situation is in any way inadequate to protect the public from harm, and that there is no problem with the current practice situation that calls for a solution.⁴⁷
- The Board of Dentistry has proposed using the rules and regulations process to establish practice guidelines for dental assistants, including a list of functions and procedures that all dental assistants would be allowed to perform. Although this approach would not mandate formal education and training for dental assistants, it would specifically define what functions and duties dental assistants could perform, and thereby would provide the basis for improved oversight and discipline of the profession.⁴⁸

⁴² The Applicants Proposal, Page 20, Items 57 and 58

⁴³ The Minutes of the June 20, 2008 Meeting of the Technical Committee

⁴⁴ The Testimony of Sami Webb (Page 171), Marcia Beck (Page 177), and Byron Tullis (Page 180) in the Transcript of the Public Hearing held on August 15, 2008

⁴⁵ The Testimony of Gary Christiansen, DDS (Page 168) in the Transcript of the Public Hearing held on August 15, 2008

⁴⁶ The Testimony of Amy Kabasz, (Page 164) in the Transcript of the Public Hearing held on August 15, 2008

⁴⁷ The Testimony of Sami Webb (Page 171), Marcia Beck (Page 177), and Byron Tullis (Page 180) in the Transcript of the Public Hearing held on August 15, 2008

⁴⁸ Testimony of David O’Doherty (Pages 99 and 100) in the transcript of the Public Hearing held on August 15, 2008

OVERVIEW OF COMMITTEE PROCEEDINGS

- On April 11, 2008 the committee met for the first time for orientation to the review process and initial discussion regarding the proposal.
- On May 9, 2008, the committee discussed defining the issues and clarifying the proposal.
- During their meeting on May 28, 2008, the committee continued discussion on issue definition and clarification of the proposal.
- The committee met on June 20, 2008 to clarify the proposal and begin the formulation of tentative recommendations on the proposal.
- During their July 18, 2008 meeting, the committee continued discussion on the proposal and formulated their tentative recommendations on the proposal.
- August 15, 2008 was the Public Hearing regarding the proposal.
- On October 6, 2008, the committee met to finalize their recommendations on the proposal.
- The October 28, 2008 meeting was held via teleconference and in person, and the committee finalized their report and adopted it as the embodiment of their recommendations on the proposal.

