

Health and Human Services Committee

LB 369

March 5, 2015

**Dr. Joseph Acierno, Chief Medical Officer
Division of Public Health
Department of Health and Human Services**

Good afternoon Senator Campbell and members of the Health and Human Services Committee. My name is Dr. Joseph Acierno (J-O-S-E-P-H A-C-I-E-R-N-O). I am the Chief Medical Officer and Director of the Division of Public Health for the Nebraska Department of Health and Human Services, and I am currently serving as acting CEO for the agency.

I am here today to testify in support of LB 369 that was initiated by the Division of Public Health.

The Uniform Credentialing Act (UCA) regulates persons and businesses that provide health and health-related services and environmental services. LB 369 proposes to modify an existing process in the UCA that is used when a credential holder is alleged to be unqualified for professional practice due to physical or mental disability or deterioration or substance abuse. The changes proposed by LB 369 are intended to clarify this process and to synchronize the UCA with the Americans with Disabilities Act (ADA).

The current process in the UCA provides for an examination of applicants and credential holders when the Department receives a complaint or report that indicates the person's ability to practice his or her profession is impaired by the abuse, dependence, or active addiction to alcohol, any controlled substance, or any mind-altering substance; or illness, deterioration, or disability. The examination is conducted by a committee of three qualified physicians or other qualified professionals who are appointed by the respective professional board, and the cost of the examination is paid by the Department. The committee reports its findings to the board for a determination of whether the applicant or credential holder is qualified to practice. If the board finds the applicant or credential holder is not qualified to practice, the board recommends to the Director of the Division of Public Health the denial, refusal of renewal, limitation, suspension, or revocation of the credential. The Director then issues an order as he or she determines to be necessary for the protection of the public. Action taken under this provision is considered as disciplinary action.

LB 369 offers a rearrangement of the process that is less cumbersome and offers more options for the Department, the professional boards, and the applicant or credential holder. The board may receive additional information such as diagnostic examinations provided by the applicant or credential holder. The board may require the applicant or credential holder to undergo a diagnostic examination by an approved provider at the applicant's or credential holder's expense. The board may appoint a panel of three qualified physicians or other qualified

professionals to review and analyze information regarding the applicant or credential holder at the Department's expense and report the panel's findings to the board. Based on all of the information available, the board would make a recommendation to the Director as to whether an applicant or credential holder is qualified to practice or to continue to practice in Nebraska. The board could recommend denial, refusal of renewal, or revocation of the credential; issuance or renewal of the credential with specific limitations, terms, or conditions; or suspension of the credential. The Director then issues an order as he or she determines to be necessary for the protection of the public.

The Department was involved in a U.S. District Court lawsuit several years ago in which an applicant for a credential alleged discrimination under the ADA. The Court found in favor of the applicant, and it was apparent that changes in this statute were necessary. There needed to be authorization for the Department to monitor credential holders who have a physical or mental condition that impairs their ability to practice, without requiring disciplinary action against the credential. It was recommended by the Assistant Attorney General who represented the Department in this case to pursue changes that would synchronize the UCA with the ADA, recognizing that qualified individuals under the ADA should not be discriminated against because of their disability.

The Department has been in communication with the Attorney General's Office and have worked together to create an amendment to LB 369 to address the issues in the green copy while still achieving the ultimate goal of this legislation.

I believe that LB 369 offers improvements to the UCA by establishing a process that is more logical and efficient than the present process and offers more options to achieve the desired result which is an accurate assessment of an applicant's or credential holder's ability to practice safely.

An improved process to address this issue is becoming increasingly more important because the Department expects that there will be an increase in reports of applicants' or credential holders' inability to practice safely in the coming years.

Modern medicine and drugs have extended life, and improved the control of disease. Health care providers can practice longer than ever before. But the downside is chronic diseases that are often associated with aging are becoming more prevalent. A number of those diseases can result in subtle, but sure, deterioration of physical or mental abilities over time.

Likewise, modern medicine continues to make great progress in developing pharmaceuticals to treat both short-term and long-term illnesses and disease. All drugs have side effects, some of which may be a decrease of physical or cognitive abilities, and in fact some prescribed drugs can cause dependency. Moreover, most recreational drugs can cause dependency, either physical or psychological. Unfortunately, both prescription drug abuse and recreational drug use are increasing.

Health care providers, perhaps because they are dedicated to helping others, may not recognize or may ignore their own symptoms of a decreased ability to safely practice. Providers are subject to the same illnesses and diseases and use the same pharmaceuticals as the general public. And some providers, like some in the general public, will abuse prescription drugs or use recreational drugs or alcohol to excess.

Patients and clients have a right to expect that their health care providers are physically and mentally fit for professional practice and will practice safely. Every professional board desires for credential holders to meet the highest professional practice standards.

For all of these reasons, the Department supports an improved, efficient, thorough, and fair process to assess whether a health care professional can safely practice his or her profession.

I believe the provisions in LB 369 will meet those improvement standards, and I support its advancement.