REPORT OF RECOMMENDATIONS

By the Nebraska State Board of Health
Regarding the Proposal for Licensure by Nebraska's Dental Assistants

To the Director of the Department of Health and Human Services
Division of Public Health and the Health and Human Services
Committee of the Legislature

January 26, 2009

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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 Division of Public Health. The Director of this Division then appoints an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with four statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of a technical review committee take the form of a written report that is submitted to the State Board of Health and the Director of the 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 NEBRASKA STATE BOARD OF HEALTH

Eric Berggren, PE	Omaha
Daniel Bizzell, EdD	Kearney
Janet Coleman, Public Member	Lincoln
Edward Discoe, MD	Columbus
Theodore Evans, Jr., DVM	Tecumseh
Linda Heiden, Public Member	Bertrand
Russell Hopp, DO	Omaha
Kenneth Kester, RP, PharmD, JD	Lincoln
Linda Lazure, PhD, RN (Chair)	Omaha
Pamela List, MSN, APRN	Beemer
Dale Michels, MD	Lincoln
Roger Reamer, Hospital Administrator	Seward
Paul Salansky, OD	Nebraska City
Robert Sandstrom, PhD, PT (Secretary)	Omaha
John Tennity, DPM	Lincoln
Gary Westerman, DDS (Vice Chair)	Omaha
Daryl Wills, DC	Gering

Summary of Sources, Data, and Information

The Board of Health utilized the following sources of information to conduct their review:

1. The transcript of the public hearing held by the Technical Review Committee on August 15, 2008.

2. The Report of Findings and Recommendations of the Technical Review Committee, dated October 28, 2008.

3. Information from, and recommendations of, the Credentialing Review Committee of the Board of Health formulated during that Committee's meeting on November 7, 2008.

Executive Summary of Board of Health Recommendations

The members of the Credentialing Review Committee of the Board of Health recommended against approval of the applicants' proposal. The proposal failed on the second and fourth criterion. The Committee members recommended adoption of all of the ancillary recommendations of the technical review committee. The Committee members also recommended that the Board of Dentistry be given the authority to develop educational and training requirements for dental assistants and to define the number of dental assistants a dentist could supervise consistent with public health and safety.

The members of the full Board of Health adopted the recommendations of the Credentialing Review Committee.

Board of Health Recommendations on the Proposal

Recommendations of the Credentialing Review Committee to the Full Board of Health

During their special meeting held on November 7, 2008 to review the proposal, the members of the Board's Credentialing Review Committee formulated their advice to the full Board of Health on the Dental Assistants' proposal by taking action on the following 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."

Janet Coleman moved and Daryl Wills seconded that the proposal satisfies the first criterion.

Dr. Sandstrom commented that such aspects of care as dental anesthesia, running IV lines, and performing oral brush biopsies indicate that there is a potential for harm to the public under the current unregulated practice situation of dental assistants. Ms. Coleman stated that there are procedures performed by dental assistants that can cause harm if they are not adequately trained to perform them. Dr. Bizzell said that the potential for harm is easily recognizable as regards dental assistant practice.

Voting aye were Bizzell, Coleman, Discoe, Lazure, Reamer, Sandstrom and Wills. There were no nay votes or abstentions. The motion passed.

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."

Daryl Wills moved and Roger Reamer seconded that the proposal satisfies the second criterion.

Ms. Coleman stated that the proposal as currently worded would likely create serious access to care problems. Dr. Sandstrom commented that on-the-job training (OJT) must be given a greater role than the current proposal would allow. Dr. Bizzell said that there surely are better ways of addressing the problems than the current proposal. Dr. Wills stated that there are potential access to care problems with the current proposal especially in rural areas of Nebraska. Dr. Lazure and Mr. Reamer agreed that the public hearing showed the deep concern that the proposal created in the dental community regarding its potential to restrict access to care.

Voting nay were Bizzell, Coleman, Discoe, Lazure, Reamer, Sandstrom and Wills. There were no aye votes or abstentions. The motion failed.

<u>Criterion Three States</u>: "The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the State."

Janet Coleman moved and Daryl Wills seconded that the proposal satisfies the third criterion.

Mr. Reamer and Dr. Wills stated that it would be good to have the assurance of a minimum level of clinical competency. Dr. Lazure indicated that uniform standards of education and training would be beneficial to the public. Dr. Bizzell agreed with these comments and stated that the information provided during the meeting today substantiates this viewpoint. Dr. Sandstrom commented that there is a need for uniform standards of education and training. Ms. Coleman stated that as a member of the public she feels that all patients need to be protected, and Dr. Discoe agreed.

Voting aye were Bizzell, Coleman, Discoe, Lazure, Reamer, Sandstrom and Wills. There were no nay votes or abstentions. The motion passed.

<u>Criterion Four States</u>: "The public cannot be effectively protected by other means in a more cost-effective manner."

Janet Coleman moved and Daryl Wills seconded that the proposal satisfies the fourth criterion.

Ms. Coleman stated that there has got to be a better way to protect the public than the current proposal. Dr. Lazure agreed with this comment. Dr. Bizzell said that there are surely more cost-effective alternatives to the proposal. Mr. Reamer and Dr. Sandstrom expressed agreement with Dr. Bizzell. Dr. Sandstrom added that the applicants need to build on the work of the Board of Dentistry and the recommendations of the technical review committee.

Voting nay were Bizzell, Coleman, Discoe, Lazure, Reamer, Sandstrom and Wills. There were no aye votes or abstentions. The motion did not pass.

By these four actions the Committee members recommended that the full Board of Health not approve the applicants' proposal for licensure.

The Committee members then discussed the ancillary recommendations of the technical review committee. The Committee members indicated that these ancillary recommendations represent an improvement in ways of addressing the issues under review over the current applicant proposal. Dr. Discoe asked for a motion regarding the adoption of these ancillary recommendations by the Committee members. These ancillary recommendations are as follows:

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. The program should 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.

Janet Coleman moved and Dr. Bizzell seconded that the Committee members recommend that the full Board of Health adopt these ancillary recommendations. Voting aye were Bizzell, Coleman, Discoe, Lazure, Reamer, Sandstrom and Wills. There were no nay votes or abstentions. The motion passed.

Dr. Sandstrom moved that the Board members recommend that there be a statutory change that would allow the Board of Dentistry to establish educational and training provisions for dental assistants, and that the Board members recommend that the Board of Dentistry define how many dental assistants a dentist can supervise consistent with the goals of public safety and effectiveness. Ms. Coleman seconded the motion. Dr. Bizzell stated that all interested parties to this issue should be involved in any process for the development of such educational provisions and oversight standards. Dr. Sandstrom and Ms. Coleman accepted Dr. Bizzell's comment as a friendly amendment to the motion.

Voting aye were Bizzell, Coleman, Discoe, Lazure, Reamer, Sandstrom and Wills. There were no nay votes or abstentions. The motion passed.

The Recommendations of the Full Board of Health on the Proposal

At their November 17, 2008 meeting, the members of the full Board of Health accepted comments from Roberta Worm, President-Elect of the Nebraska Dental Assistants Association and David O'Doherty, Executive Director of the Nebraska Dental Association.

Ms. Worm stated that the NDAA supports the recommendations made by the Technical Review Committee and the Board's Credentialing Review Committee. Their only concern is the statutory authority given to the Board of Dentistry, because they have no guarantee that the Board will decide that those items the NDAA considers very important do not require formal education. These items include bonding, retracting, pit and fissure sealants, etc. The NDAA is willing to work together with the Board of Dentistry to make changes.

Mr. O'Doherty responded to Dr. Bizzell's question in the Committee's draft report about why the Board of Dentistry has been so determined to have new regulations for dental assistants if there is no harm to the public in current practice. There has been a legal case where the dentist was being prosecuted, and the Board of Dentistry had been using a list of duties for dental assistants that had been developed in the mid-1980s and had never been promulgated into regulation. Mr. O'Doherty said that the NDA will work on this issue in the next legislative session if DHHS does not introduce legislation. Drs. Lazure and Sandstrom suggested that the NDAA and the NDA have face-to-face meetings and negotiations and that the NDA look at ADA standard five pertaining to health and safety.

The members of the full Board of Health agreed that they would formulate their recommendations by taking action on the recommendations of the Credentialing Review Committee rather than by taking their own actions on each of the four statutory criteria of the Credentialing Review Program. The Board members took a roll call vote on these Committee recommendations. Voting aye were Coleman, Discoe, Heiden, Hopp, Lazure, List, Michels, Reamer, Sandstrom, and Westerman. There were no nay votes or abstentions. The motion carried. By this action, the Board members adopted the recommendations of their Credentialing Review Committee, including each of the ancillary recommendations made by this Committee.

Dr. Westerman stated that if the Board had voted on each of the four criteria, he would have not agreed that Criterion One was satisfied.

Discussion on Issues and Findings by the Board Members

The applicant group informed the Board members that after engaging in discussions with representatives of other dental health professions since the last meeting of the technical review committee, they are in the process of revising its concept for regulating their profession. Once a new concept is defined, it would replace the one that was submitted for review to the credentialing review program. The applicants were asked whether it might not be a better process if the Board of Dentistry defined both the training regimen and the scope of duties for dental assistants. They responded that the Board of Dentistry at one time was in the process of defining training standards, but then backed away from that effort because they were informed that they did not have the statutory authority to define such standards. After this, the applicants could no longer support the Dental Board's efforts at revising rules and regulations pertinent to dental assistants.

The applicants were asked how many dental assistants they felt a dentist can effectively supervise. They responded that a dentist could effectively supervise two dental assistants. One Board member commented that nursing is very aware of concerns regarding the ratio of supervisors to supervisees as related to nursing students, and expressed concern that the rules and regulations for dental offices do not address these kinds of issues.

A representative of the dental hygienists stated that they were generally supportive of the recommendations of the technical review committee, including the ancillary recommendations. One Board member asked the dental hygienists whether there are noticeable differences in the abilities of those dental assistants who are trained via "OJT" as compared to those who have received formal education and training in academic settings. They responded that the most noticeable differences occur in the areas of decision-making and in professional judgment, and that this shows the value of formal education and training. The dental hygienists stated that they are supportive of the idea of accredited education and training for dental assistants with competency testing by an outside agency.

Representatives of the orthodontic community stated that one aspect of the proposal that is problematical for dentists is the fact that the grandfather clause would be operative for only one year, and then the full weight of the educational and training requirements would begin to have their impact on those people considering dental assisting as a field of work. Their concern was that eventually the pool of available people would become too restricted for some dental offices, especially in rural areas of the state, some of which might be forced to close. These representatives indicated that if the terms of grandfathering could somehow be revised so as to increase the length of the grandfathering period, for example, that would help to lessen the negative impact of the proposal on dental offices. The suggestion was made that one way to address the concerns of the dental profession would be to combine the idea of competency testing with "OJT." The thought was that this might be a way to address public protection and access to care issues.

Concern was expressed by some Board members that the grandfathering provision could result in allowing dental assistants to provide nitrous oxide and dental analgesia functions regardless of their qualifications to perform these functions, and that this highlights the point

that there is a need to find a way to standardize the training of dental assistants and to require some kind of competency testing.

Representatives of the orthodontic community stated that the applicant group has failed to provide any evidence that there is harm to the public from the current practices situation of dental assistants. According to these testifiers, a comparison of examination scores of non-accredited programs and "OJT" dental assistants conducted by DANB shows that the "OJT" assistants performed better than the formally educated and trained dental assistants. (This information came from the testimony provided by Cindy Durley of DANB at the public hearing held on the proposal. However, no citation for this information was provided.) The orthodontists went on to comment that this information shows that the "OJT" dental assistants should not be perceived as inferior to those who are formally trained, and that there is no basis to say that they are a source of harm to the public.

Orthodontic representatives were asked whether or not there have been any complaints against dentists because of actions taken by their dental assistants. One orthodontist responded that there have been twelve cases that he knows of, but that about six of these were dismissed, while some of the rest involved reprimands of supervising dentists, and that this does not equate to significant harm to the public. These representatives were asked why the Board of Dentistry has been so determined to develop new rules and regulations for dental assistants if there is no evidence of harm to the public. The response of dental representatives was that the Board of Dentistry was trying to create a process to improve disciplinary procedures associated with the utilization of dental assistant services by dentists.

Some Board of Health members expressed disagreement with the argument that there is no evidence of harm to the public. These Board members stated that the application of such procedures as analgesia, brush biopsies, IV lines, radiological procedures, and infection control procedures by dental assistants indicates that there is at least potential for harm to the public from the functions that these practitioners perform. These Board members indicated that they wanted greater assurance that the public will be protected, and that some kind of standardized training and testing procedures need to be defined for dental assistants. They commented that one way to address these concerns would be to revise the rules and regulations pertinent to dental assistants so as to not only define the practice parameters of dental assistants, but also give the dental board the authority to develop educational and training standards for dental assistants. Comment was made that the current regulations for nursing assistants could be used as a model for developing such improvements in the regulations pertinent to dental assistants. Another comment was that before these ideas for improving the dental rules and regulations can occur, the dental board would need to be given the statutory authority to develop educational and training standards for dental assistants. Representatives of the dental community expressed support for the concept of providing this kind of authority to the dental board.

Representatives of the dental assistants expressed concerns about the idea of revising the dental rules and regulations as a means of creating educational and training standards for dental assistants. They expressed skepticism regarding the willingness of the dental board to advance such ideas for revising these rules and regulations. They added that there would be no way to require that the dental board take action to implement such revisions if all that is done is to give the board permission to do this. These representatives indicated

that they want more extensive legislative action that would mandate educational and training standards for dental assistants. Some Board of Health members responded that the Board of Health would use its oversight authority to ensure that the dental board takes action to add educational and training provisions to their rules and regulations. These board members added that legislation of some kind will be necessary to facilitate action by the dental board, and that it would be desirable if such legislation also played a role in helping to define what specific elements should be included in dental assistant education and training.

Board of Health members commented that regardless of the method by which ideas for the development of education and training standards for dental assistants might be defined, it is desirable that such ideas involve a balance between formal education and training and "OJT." These board members indicated that there is a place for "OJT" in the training process for dental assistants, and that this should continue to be an important part of this process. These board members commented that the current applicant proposal went too far in the direction of formal academic education and training, and that a better approach would be to find a way to combine some formal training with current "OJT" training.

Board of Health Meetings to Review the Proposal

The meeting of the Board of Health's Credentialing Review Committee to formulate its advice to the full Board of Health on the proposal was held on **November 7, 2008**.

The full Board of Health met to formulate its recommendations on the proposal on **November 17, 2008**.

The full Board of Health approved its report of recommendations on the proposal at its regularly scheduled board meeting on **January 26, 2009**.