

REPORT OF RECOMMENDATIONS AND FINDINGS

By the Art Therapists'
Technical Review Committee

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

March 3, 2020

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Part One: Preliminary Information

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 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.

**LIST OF MEMBERS OF THE ART THERAPISTS' TECHNICAL REVIEW
COMMITTEE, 2019 / 2020**

Kevin Low, DDS (Chair)

Su Eells

Karen Jones

Wendy McCarty, Ed. D.

Michael J. O'Hara

Ben Greenfield, Perfusionist

Marcy Wyrens, RRT

Part Two: Summary of Committee Recommendations

The committee members unanimously approved the applicants' proposal.

Part Three: Summary of the Applicants' Original Proposal

The Nebraska Art Therapy Licensure Coalition is proposing to amend the Uniform Credentialing Act and the Mental Health Practice Act to provide for licensing of qualified art therapists as Licensed Mental Health Practitioners and Licensed Independent Mental Health Practitioners with a credential as a Certified Art Therapist to be administered by the Board of Mental Health Practice. The resulting credential would be placed within the framework of LMHP under the LMHP umbrella board.

The applicants stated that they are not asking for independent licensure, rather, they are asking for the creation of a specialty certification within the LMHP licensure category for Art Therapists. Under this concept anyone who seeks to provide Art Therapy services would not only have to qualify as an Art Therapist, they would need to qualify as an LIMHP, as well. This way Art Therapy providers would have all of the necessary skills and abilities to diagnose and treat mental health or mental health related conditions of their patients. These requirements would include a Masters' degree in Art Therapy and qualifying as an LIMHP. The applicants added that adding Art Therapy as a new subspecialty under LIMHP would make it necessary to add an Art Therapist as an additional member of the LMHP Board.

The full text of the most current version of the applicants' proposal can be found under the Art Therapy topic area on the credentialing review program link at <http://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Four: Discussion on issues by the Committee Members

What are the shortcomings of the current practice situation, if any? If there are shortcomings what needs to be done to rectify the situation?

The applicants argued that harm or potential for harm exists when unqualified persons attempt to provide art therapy services to members of the public. Unqualified practice can result in negative impacts on the emotional stability of clients/patients, misdiagnosis of a clients'/patients' overall mental health condition, improper administration of art-based modalities/treatments vis-à-vis a client/patient, and a worsening of a clients'/patients' mental health condition.

Potential for fraud exists when programs and/or practitioners attempt to load up treatment options by adding art therapy to their curricula or treatment programs when the programs in question lack training staff or health care providers who are qualified as art therapists.

Currently there is a lack of a legal structure in Nebraska that would allow qualified art therapists to provide high quality professional art therapy services in Nebraska.

The current un-credentialed status of art therapy in Nebraska impedes the definition and implementation of practice standards and educational standards for art therapy services, standards that are necessary for the establishment of safe, high quality art therapy services in our state. Currently, anyone can set themselves up as an art therapist and provide services to anyone they want in accordance with whatever definition of art therapy they might devise, and/or in accordance with whatever they might think constitutes competency in art therapy.

Janelle Hallaert, Masters Degree Art Therapist, and Jessica Stallings, Ph.D., a clinical mental health practitioner, came forward to present the proposal to the committee members. Dr. Stallings stated that the Art Therapy applicant group want to model the credentialing path to be established for their profession to be modelled after that of Nebraska's LMHP credential. Dr. Stallings went on to say that harm to the public can come from inappropriate or fraudulent application of art therapy practices and techniques. Trained art therapy professionals are schooled to be aware of possible allergic reactions to certain products and materials utilized in the creation of art, whereas untrained or fraudulent practitioners are not. Trained art therapy professionals are schooled in human growth and development concepts and factor in this knowledge for each client they are serving, whereas untrained or fraudulent practitioners are not. The potential for fraud is always "there." Licensure would go a long ways towards addressing these kinds of problems.

Dr. Low asked the applicants whether or not there the proposal would create a regulatory board if it were to pass. Program staff persons Matt Gelvin commented that there are options for newly credentialed professions other than creating a board. For example, there is the option of establishing a committee under an existing board. Dr. Low asked if there is any opposition to the proposal. Dr. Stallings replied that some members of the social work and professional counseling professions and some recreational therapists have expressed concerns about the proposal based on turf concerns. She went on to state that these concerns arise when there is a practitioner who utilizes art therapy as one of their modalities when the practitioner in question has only a minimal amount of training in art therapy and is concerned that they might be barred from using this modality anymore if licensure for art therapists were to become law.

Su Eells asked the applicants why they believe they need licensure. Dr. Stallings responded by stating that currently there is a move within the professional counseling profession to no longer recognize art therapy as being part of LMHP services or modalities. Licensure of Art Therapy represents one way of countering this kind of movement. She added that some professional counselors argue that art therapy is not a profession, only a modality. At this juncture, Clara Keane with the American Art Therapy Association in Alexandria, Virginia commented that eight states have recognized art therapy as a profession by licensing art therapists as health professionals, one being the state of Connecticut, for example.

***Would the ideas proposal by the applicant group be helpful in addressing the shortcomings of the current practice situation?
Would the public benefit from these proposed ideas?***

The applicants argued that passing the proposal would create a legal/professional framework of regulation for art therapy services in Nebraska that would result in the definition and implementation of professional standards vis-à-vis art therapy services in our state. The applicants argued that the establishment and implementation of such professional standards would in turn create a legal/administrative framework for the provision of safe, high quality art therapy services in our state which in turn should go a long ways in addressing the harm to the public under the current un-regulated situation of art therapy services in Nebraska.

During the review some members of the review panel wanted more information from the applicant group that documents the need for the proposal in general and which documents the harm to the public under the current unregulated status of art therapy in particular.

Karen Jones commented that the applicants need to remember that the reason for credentialing a health profession is to protect the public not to protect a profession. Wendy McCarty asked the applicants if they can document instances of harm to the public stemming from inappropriate or incompetent art therapy practice. Dr. Stallings responded that there is a documented case of harm from England associated with a negative reaction to a graven image.

Wendy McCarty expressed concern about the apparent narrowness of the kind of therapy the applicants seek to credential, and asked the applicants if art therapy ever branches out beyond what she referred to as “studio art.” Clara Keane responded by stating that there are other art-related professions that provide therapeutic services such as music therapy, for example. She went on to say that music therapy is a very different profession with very different education, training, and modalities, and it would be very difficult to find a practical way to merge art therapy and music therapy, for example.

Michael O’Hara asked the applicants about their argument that licensing art therapists would provide a boost to employment in Nebraska. Janelle Hallaert responded that there are art therapy practitioners originally from Nebraska who currently practice in other states who would be glad to return home to Nebraska and practice here if Nebraska were to license their profession.

At this juncture Karen Jones commented that it seems to her that the applicants’ argument seems to be in reverse order, arguing that it is flawed logic to assume that licensure, per se, creates employment. She continued by stating that the applicants seem to forget that art therapists can practice in Nebraska right now regardless of whether or not their profession is

licensed. Michael O'Hara asked the applicants if there is any evidence that licensure would increase the income of those persons who are already providing art therapy services in Nebraska. He then asked the applicants how many art therapists are currently practicing in Nebraska. Janelle Hallaert replied that currently there are about 23 art therapists in Nebraska.

Would there be new harm resulting from this proposal?

During Committee discussions on the issues and questions raised by the applicants' proposal it was pointed out that complications could arise from the inextricable linkage between the proposed specialty certification, on the one hand, and the umbrella organization—the LMHP Board—on the other. There's a potential problem vis-à-vis the assumption that all of those who might want to provide the services under review are or aspire to be LMHPs. What about an instance wherein a certain Ph.D. Psychologist might want to acquire the education and training and the requisite certificate so that he or she too could provide these services? Would this hypothetical psychologist be left "out-in-the-cold" even if he or she met all the requirements for practice as an art therapist? This was a question that this Committee member wanted addressed by the applicants before the Committee takes action on the proposal. Related to this is another question, to wit, if such a person ever did become certified under this proposal who would discipline this person, his own Board, or the Board of LMHP, or both?

The applicants stated that there would be no exemptions and that anyone who seeks to provide the services associated with Art Therapy must undergo the education and training necessary to provide these services safely and effectively. One attendee commented that consideration should be given to the idea of including a disclaimer regarding some health care providers regulated under the Medical Practice Act such as Physicians, for example.

The applicants went on to state that they are not asking for independent licensure, rather, they are asking for the creation of a specialty certification within the LMHP licensure category for Art Therapists. The applicants went on to state that under this concept anyone who seeks to provide Art Therapy services would not only have to qualify as an Art Therapist, they would need to qualify as an LIMHP, as well. This way Art Therapy providers would have all of the necessary skills and abilities to diagnose and treat mental health or mental health related conditions of their patients. These requirements would include a Masters' degree in Art Therapy and qualifying as an LIMHP. The applicants added that adding Art Therapy as a new subspecialty under LIMHP would make it necessary to add an Art Therapist to the LMHP Board.

Regarding examinations for the LIMHP component of the requirements Kris Chiles, Program Manager for Behavioral Health and Consumer Services in the Department of Health and Human Services, stated that there are four examinations that a candidate for Art Therapy can take to satisfy the LIMHP requirements. The Board of LMHP would determine which of these examinations was the most appropriate for a given candidate to take.

The applicants stated that if the proposal were to pass Art Therapists would be regulated under the LMHP Board. The applicants stated that they want an Art Therapist added to this Board to ensure that a qualified practitioner in Art Therapy is present whenever this Board takes up any questions or concerns about Art Therapy or about a particular Art Therapist. This way there would not be a concern about art therapy running up costs of administration by proposing the creation of a new regulatory body to administer the proposal.

Are there better ways of addressing the concerns raised by the applicant group than the ideas they proposed?

To date, no one has as yet defined an alternative to the proposal other than the option of either approving this particular proposal or not approving it, which, of course, would not address the concerns raised about the current unregulated practice situation of art therapy.

All sources used to create Part Four of this report can be found on the credentialing review program link at

<http://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Five: Public Hearing Testimony and Committee Comments

The following persons came forward to present testimony on behalf of the proposal.

Jennifer Jackson, representing the Art Therapy Coalition
Douglas Zbylut, representing the Art Therapy Coalition
Jasmin Tucker, representing the Art Therapy Coalition
Jessica Stallings, representing the Art Therapy Coalition

There was no testimony from any groups or persons unaffiliated with the applicant group.

Electronic copies of all testimony presented at this hearing can be found at the following web link under Art Therapy <http://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Copies of some of the testimony presented at this hearing are included as inserts in the following order:

Sara Ann Staley, PLMHP, PCMSW
Wendy L. Schardt, ATR-BC, LMHP, NCC, LPC
Yasmin Tucker, ATC, LIMHP, LPC, PLADC
Dr. Jessica Stallings, ATC-BC, LMHP, LPC, LMHC (IA)
Jennifer Jackson, Registered, Board Certified Art Therapist
Examples of Public Harm in Other Jurisdictions

Part Six: Discussion and Recommendations

Discussion on the Four Statutory Criteria as They Pertain to the Proposal

Criterion one: *Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.*

Karen Jones commented that the applicants provided good examples of harm that has occurred as a result of poor quality care provided by unqualified providers of art therapy services. Dr. Low commented that this information shows that there is potential for real harm from unqualified providers of this kind of care.

The Committee members took a roll call vote on whether the proposal satisfies criterion one: Jones, Wyrens, McCarty, and Eells voted yes. There were no nay votes. Chairperson Low abstained from voting.

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.*

Marcy Wyrens commented that the proposal offers the public another group of competent providers for art therapy services. Karen Jones expressed some concerns about whether the proposal might initially diminish the supply of providers, but noted in her comment that it is more important to weed out the unqualified providers and ensure that all who provide these services are qualified. Marcy Wyrens commented that if the proposal were to be approved art therapists from other states might be encouraged to come to Nebraska to set up practices. Karen Jones and Su Eells expressed agreement with this comment.

The Committee members took a roll call vote on whether the proposal satisfies criterion two: Jones, Wyrens, McCarty, and Eells voted yes. There were no nay votes. Chairperson Low abstained from voting.

Criterion three: *The public needs assurance from the state of initial and continuing professional ability.*

The Committee members took a roll call vote on whether the proposal satisfies criterion three: Jones, Wyrens, McCarty, and Eells voted yes. There were no nay votes. Chairperson Low abstained from voting.

Criterion four: *The public cannot be protected by a more effective alternative.*

Su Eells commented that the proposed specialty certification for art therapists would mirror the way LMHP has incorporated a wide variety of subspecialties within mental health, and that art therapy would be a good addition in this regard.

The Committee members took a roll call vote on whether the proposal satisfies criterion four: Jones, Wyrens, McCarty, and Eells voted yes. There were no nay votes. Chairperson Low abstained from voting.

Action taken on the proposal as a whole was as follows:

The Committee members took action on the proposal as a whole via an up/down vote as follows:

Voting to recommend approval of the proposal were Jones, Wyrens, McCarty, and Eells. There were no nay votes. Chairperson Low abstained from voting. By this vote the Committee members recommended approval of the art therapy proposal.