

**REPORT OF RECOMMENDATIONS AND FINDINGS
ON THE PROPOSAL TO LICENSE DIALYSIS TECHNOLOGISTS**

By the Nebraska
State Board of Health

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

November 14, 2016

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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 written reports on the same 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.

The Members of the Nebraska State Board of Health

Kevin Borchert, PharmD, RP

Jim Trebbien (public member)

Shane Fleming, BSN, MSN, RN

Michael Hansen, (Hospital Administrator)

Russell Hopp, DO

Diane Jackson, APRN

Kevin Low, DDS

Dale Michels, MD

Anthony Moravec, DVM

Debra Parsow (public member)

Teresa Konda, PE

Paul Salansky, OD (Vice Chair)

Wayne Stuberger, PhD, PT (Chair)

Travis Teeter, MD

Joshua Vest, DPM

Douglas Vander Broek, DC

Jeromy Warner, PsyD, LP

Meetings Held

The Meeting of the Credentialing Review Committee of the Board, August 29, 2016

The Meeting of the Full Board of Health, September 19, 2016

The Meeting of the Credentialing Review Committee of the Board and of the Full Board, November 14, 2016

Part Two: Summary of Recommendations on the Dialysis Technologists' Proposal

Summary of the Technical Committee Recommendations

The members of the technical review committee recommended approval of the amended proposal which now calls for licensure.

Summary of the Recommendations of the Nebraska State Board of Health

The Credentialing Review Committee of the Board recommended approval of the amended proposal during its August 29, 2016 meeting. However, during their September 19, 2016 bimonthly meeting these Committee members decided to postpone action on their draft report to the full Board so they can query the Board of Nursing for more information on matters pertinent to nursing delegation of dialysis functions and procedures. During the afternoon session of this bimonthly full Board meeting the Committee members asked the full Board Chairperson, Dr. Wayne Stuberg, to draft a letter requesting such information on behalf of all of the members of the Board of Health and requesting the presence of Board of Nursing representatives at the next bimonthly meeting of the Board of Health's Credentialing Review Committee. During the week that followed this letter was drafted, signed, and submitted to the Board of Nursing.

During their bimonthly morning meeting of November 14, 2016 the members of the Credentialing Review Committee of the Board of Health received additional testimony from representatives of the Board of Nursing pertinent to the meaning and implications of the term 'complex medical procedures'. After some discussion, these Board Committee members decided to rescind their recommendation of August 29, 2016 in which they had recommended the licensing of dialysis technologists. These Board Committee members then proceeded to take action on a motion and a second to register dialysis technologists, unanimously approving this motion.

During the afternoon session of their November 14, 2016 meeting the members of the full Board of Health took action on the recommendation of their Credentialing Review Committee that dialysis technologists be registered, unanimously approving this recommendation.

Part Three: Summary of the Dialysis Technologists' Proposal

The applicant group, the Nebraska Kidney Coalition, is proposing state registration for dialysis patient care technicians (DPCTs), currently referred to as dialysis technologists. Registration would occur at the end of the first two weeks of classroom training prior to DPCTs beginning their on the job training with dialysis patients at a dialysis facility. Most DPCT training programs are twelve weeks long. Following that time, DPCTs gain more on the job experience prior to taking their national DPCT certification examination. The applicant group stated that this credential would be administered through direct administration by the Department of Health and Human Services (DHHS).

The applicants amended their proposal during the course of the review process as follows:

The applicants decided to seek licensure for DPCTs which are now to be called DPCTs—Dialysis Patient Care Technicians. Licensure will establish an approved core training curriculum to provide consistent training across Nebraska as well as a specific scope of practice and oversight that will ensure protection for the public. The proposed scope of practice would mirror the duties that were previously outlined in the Board of Nursing Advisory Opinion for the profession in outpatient dialysis settings.

The full text of this proposal can also be found under the Dialysis Technology topic area of the credentialing review program link at <http://dhhs.ne.gov/licensure/Pages/credentialing-review.aspx>

Part Four: Discussion on the Issues by the Credentialing Review Committee of the Board at the August 29, 2016 Meeting of this Committee

Comments by Dr. Travis Teetor, Chairperson of the Dialysis Technologists' Technical Review Committee

Dr. Teetor began his comments by stating that the current review on dialysis technologists stems from the 'retirement' of the Advisory Opinion of the Board of Nursing on dialysis technology in 2015. Between 1991 and 2015 dialysis technologists relied on this advisory opinion as support for the services they provided in the area of dialysis patient care. Now that this advisory opinion has been 'retired' dialysis technologists are concerned that there is no protection for the functions and services they provide, especially functions and services associated with the administration of heparin, for example. The advisory opinion had allowed dialysis technologists to administer heparin to patients who had been deemed medically stable as long as it is done under the direction of a nurse. The 'retirement' of the advisory opinion has removed this authorization making this component of dialysis technology care subject to varying interpretation as to whether the administration of heparin should or should not be a component of what dialysis technologists do. Some health care providers believe that the administration of heparin is by its nature an inherently complex procedure requiring medical judgment and involving risks to patient safety, and that such procedures should only be delegated to those who are licensed to do so. Dialysis technologists are not licensed. In fact there are no state-mandated personnel standards for them at all. The applicant group is concerned that without their proposal they will eventually no longer be allowed to provide such procedures, and perhaps other procedures, as well, such as the administration of saline solutions and catheterization procedures, for example.

Dr. Teetor informed the Credentialing Review Board Committee members that the Board of Nursing advised dialysis technology representatives that the best way for them to address their concerns was to undergo credentialing review. They decided to follow that advice, and developed a proposal to register dialysis technologists. Later, during the review of the technical review committee, the applicants amended their proposal to seek licensure, concluding that licensure would provide greater assurance that all of their services would be protected. Dr. Teetor concluded his remarks by stating that the technical review committee voted to approve this amended version of the proposal.

Comments by supporters of the proposal:

Comments by Matt Bauman on behalf of the applicant group, The Nebraska Kidney Coalition

Mr. Bauman informed the Board Committee members that the advisory opinion protected the services of his group from 1991 through 2015. This advisory opinion was reaffirmed by the Board of Nursing on three different occasions, 1996, 2001, and 2005. Then the Board rescinded it in 2015 for reasons that are not entirely clear. Because of this latter action the members of the Kidney Coalition had to act to protect their services which they believe is vital to the well-being of those Nebraskans who suffer from kidney disease. He went on to state that there are not enough nurses to provide all necessary services in this area of care, adding that dialysis technologists provide safe and effective care, and that there have been no reported instances of harm to the public from their services. He added that the services in question include heparin administration, saline solutions via central lines, and certain catheterization procedures. He went on to say that oversight of their services is very effective, adding assurance of safe, quality care. He concluded his prepared remarks by stating that passing licensure would ensure that these services would continue as they are now.

Ms. Jackson asked Mr. Bauman about how dialysis techs are trained, and whether this training is 'OJT' or whether there might also be a didactic component. Mr. Bauman responded that it is mostly 'OJT' but that there is a core curriculum and that passing a licensing examination would be required under the terms of the licensure proposal. Ms. Jackson asked how long the training course typically is. Mr. Bauman replied that it is a twelve week course.

Dr. VanderBroek asked Mr. Bauman if there has ever been any evidence of harm from their services. Mr. Bauman responded that there has never been an instance of harm to the public.

Mr. Trebbien asked Mr. Bauman if licensure might have the impact of creating a shortage of providers. Mr. Bauman responded that this would not occur because licensure would make use of the same training and testing procedures that are already used to train and verify the competency of dialysis techs, and the costs of all this would continue to be paid for by employers as they are now.

Dr. Vest asked Mr. Bauman why the applicants changed their proposal from seeking registration to seeking licensure. Mr. Bauman responded that his group found that there was little support for registration on the technical review committee, and that a majority of committee members urged them to amend their proposal to seek licensure, arguing that licensure would be more effective in protecting dialysis tech functions and services.

Dr. Teetor then asked if the applicants could address matters pertinent to complex procedures versus those not regarded as complex, and clarify for the Board Committee members what the difference is between these two terms. Mr. Bauman responded by using central lines as an example. He stated that the members of his group can utilize

central lines as long as the patient being treated has been defined as medically stable by a licensed professional qualified to make such a determination. Mr. Bauman went on to state that in his judgment utilizing central lines in this manner under the direction of a qualified licensed medical professional does not entail a complex procedure. He added that not everyone perceives this the way he does, however, and that some health professionals regard any utilization of central lines as comprising complex procedures.

Comments by those with concerns about the proposal:

Comments by Elizabeth Hurst on behalf of the Nebraska Hospital Association

Ms. Hurst informed the Board Committee members that continuing the services of dialysis techs is vital but that this can be done via some kind of registration procedure. Licensure, per se, is not necessary to accomplish this, and licensure is not indicated by any evidence available pertinent to harm or potential for harm. Licensure would be an overreaction to the issues and concerns raised in the current review, and would result in the overregulation of the profession under review.

General Discussion by the Board Committee members on the issues:

Dr. Teetor made a brief comment summarizing the thinking of the technical review committee in making the recommendation to approve the licensure proposal for dialysis techs. He stated that by the time these committee members were ready to take action on the amended proposal some of them had come back to supporting registration as the best regulatory mechanism for dialysis techs, expressing some resentment over the 'arm-twisting' associated with the argument that licensure must be passed in order to 'save dialysis tech services'. These committee members were no longer sure that licensure was necessary in order to do that, reasoning that dialysis tech services do not include medically complex procedures and thus do not require delegation from a licensed health care professional in order to perform them. However, this renewed interest in registration did not carry the day during the final 'up or down' vote on the proposal. A majority of committee members were still concerned about those who view at least some dialysis tech procedures as requiring delegation from a supervising licensed health care professional in order to perform them. These committee members continued to regard licensure as the only way these procedures can be protected as components of dialysis technology services.

Ms. Jackson asked the applicants whether the education and training of dialysis techs is adequate for them to be able to take delegation from a licensed health professional if the licensure version of the proposal were to pass. Mr. Bauman responded by stating that his group does not believe that it would ever be necessary for dialysis techs to take delegation from another health professional in order to provide their services because

the services they provide are not medically complex. All that is needed is direction from a supervising nurse.

Dr. Moravec responded to Mr. Bauman's comment on delegation by pointing out what he saw as an apparent contradiction in these remarks specifically that the applicants claim that their services are not complex and don't need to be delegated but yet they are asking for licensure so that they can take delegation from other licensed professionals such as nurses, for example. Dr. Moravec asked Mr. Bauman to clarify this part of applicant thinking. Mr. Bauman responded that his group feels that they have no choice but to seek licensure because there are health professionals outside of their group who have the opinion that at least some of the things that dialysis techs do are complex procedures requiring nursing delegation. Mr. Bauman went on to state that the only way to deal with this uncertainty is to go for licensure and thereby ensure the protection of the services they provide. He added that he too would prefer registration over licensure if it were not for the fact that registration would not likely provide the certainty of protection licensure provides for his group.

Mr. Fleming commented that it is not likely that a definitively clarifying judgment on what is versus what is not a complex procedure is going to occur in anything like the near future, and for that reason he indicated his belief that licensure is necessary to protect dialysis tech services.

The Formulation of Recommendations by the Board Committee members

Action taken on each of the four criteria: Actions were taken regarding whether or not the applicants' proposal satisfied the four criteria. An 'aye' vote indicates that the applicants' proposal satisfies a given criterion. A 'nay' vote indicates that it does not.

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

Action taken:

Voting aye on this criterion were Teetor, VanderBroek, and Vest. Voting nay on this criterion were Fleming, Moravec, Trebbien, and Jackson.

Comments:

Jackson: Stated that there have been no reports of harm from dialysis tech services

Teetor: Stated that no regulation currently exists and that there should be something for public protection

Fleming: Stated that there is no evidence of harm from dialysis tech services

Moravec: Stated that there is no evidence of harm from dialysis tech services

Vest: Stated that there is no evidence of harm from dialysis tech services

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

Action taken:

Voting aye on this criterion were Teetor, Fleming, Moravec, Trebbien, and Vest. Voting nay were VanderBroek and Jackson.

Comments:

Trebbien: Stated that there is no new harm stemming from the proposal itself
Teetor: Stated that there is no new harm or barriers from the proposal
Fleming: Stated that there is no new harm from the proposal
Moravec: Indicated that this is a very complex criterion and it's hard to sort out all the pieces. He added that he saw no new harm or barriers from passing the proposal
Vest: Indicated that he saw no new harm or barriers to service in the proposal
Jackson: Stated that there is a need for a third option
VanderBroek: Stated that there are too many unknowns, no basis to support the proposal

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

Action taken:

Voting aye on this criterion were Teetor, Fleming, Trebbien, Vest, and Jackson. Voting nay were Moravec and VanderBroek.

Comments:

Vest: Stated that the public needs some assurance in this regard
Moravec: Stated that the public needs some assurance in this regard but not licensure
Fleming: Stated that we need to act to protect dialysis tech services
Jackson: Indicated that if they can do the job then we need licensure them to protect the services, but was not sure of the quality of the groups' education and training
VanderBroek: Stated that there is no evidence of harm, so no basis for concluding that assurance is needed

Teetor: Stated that there is a need for more consistent training to ensure a quality service
Trebien: Stated that the public does need assurance of competency

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

Action taken:

Voting aye on this criterion was VanderBroek. Voting nay on this criterion were Teetor, Fleming, Moravec, Trebien, Vest, and Jackson.

Comments:

Trebien: Stated that registration would be a much better alternative
Teetor: Stated that registration would be a much better alternative
VanderBroek: Indicated that there is no other way of resolving the problem identified than the proposal
Jackson: Stated that licensure would be overregulation
Fleming: Stated that there has to be a better way than licensure
Moravec: Stated that there has to be a better way than licensure
Vest: Stated that there has to be a better way than licensure

Action taken on the entire proposal

The Board Credentialing Review Committee Members took action to advise the full Board of Health on whether or not to recommend approval of the dialysis technology proposal for licensure via an 'up-down' vote.

Voting to approve the proposal were Teetor, Fleming, Trebien, Vest, and Jackson. Voting not to approve the proposal were Moravec and VanderBroek.

By this vote the members of the Board's Credentialing Review Committee recommended approval of the dialysis technology proposal for licensure.

Comments:

Trebien: Stated that our hands are tied. There's no more effective option than the proposal
VanderBroek: Stated that there's no clear information indicating the need for licensure
Moravec: Expressed sympathy for the situation the applicant group is in, but cannot support licensure which would be overregulation
Fleming: Indicated that it seems as if the uncertainties of the situation can only be addressed by licensure, but he prefers registration if there was assurance it would effectively address the problem identified
Teetor: Stated that our hands are tied. There's no more effective option than the proposal

Reformulation of Recommendations by the Credentialing Review Committee of the Board

The Credentialing Review Committee of the Board recommended approval of the amended proposal during its August 29, 2016 meeting. However, during their September 19, 2016 bimonthly meeting the members of this Committee decided to postpone action on their draft report to the full Board so they can query the Board of Nursing for more information on matters pertinent to nursing delegation of dialysis functions and procedures. During the afternoon session of this bimonthly full Board meeting the Committee members asked the full Board Chairperson, Dr. Wayne Stuberg, to draft a letter requesting such information on behalf of all of the members of the Board of Health and requesting the presence of Board of Nursing representatives at the next bimonthly meeting of the Board of Health's Credentialing Review Committee. During the week that followed this letter was drafted, signed, and submitted to the Board of Nursing.

During their bimonthly morning meeting of November 14, 2016 the members of the Credentialing Review Committee of the Board received a response to their request for information from the Board of Nursing on the difference between 'complex procedures' and 'non-complex procedures. During the October 13, 2016 meeting of the Board of Nursing Karen Weidner, RN, moved and Dawn Straub, RN, seconded that: "Non-complex nursing interventions can safely be performed according to exact directions, do not require alteration of the standard procedure, and the results and client/patient responses are predictable (172 NAC 99). The Registered Nurse may delegate authority, responsibility, and accountability to provide selected non-complex nursing interventions to a qualified unlicensed person (172 NAC 99). Non-complex interventions become complex interventions when nursing judgment is required to safely alter standard procedures in accordance with the needs of the patient; or require nursing judgment to determine how to proceed from one step to the next; or require the multidimensional application of the nursing process (172 NAC 99). The Registered Nurse does not delegate complex nursing interventions to an unlicensed person. Further, the Board of Nursing recommends that the Registered Nurse in the dialysis setting retains the authority to safely delegate tasks based on nursing judgment to Dialysis Patient Care Technicians (PCTs) based on the PCTs education and training. The Board of Nursing supports the registration of certified Dialysis PCTs." This motion was unanimously approved by the members of the Board of Nursing.

After some discussion by the members of the Credentialing Review Committee of the Board of Health Dr. Vest moved and Dr. VanderBroek seconded that the Committee members rescind their action of August 29, 2016 on the dialysis technologists' proposal whereby they had recommended licensure of dialysis technologists. Voting aye were Vest, Parsow, Teetor, Trebbien, Fleming, VanderBroek, and Moravec. There were no nay votes or abstentions. By this action the Board's Credentialing Review Committee members agreed to rescind their recommendation of August 29, 2016.

Mr. Fleming commented that the information provided by the Board of Nursing in delineating the difference between complex and non-complex procedures clarifies that there is no need to license dialysis technologists, and that a registry would suffice to define their place in the provision of dialysis services in Nebraska. He added that it has become clear that dialysis technologists do not perform complex medical procedures.

Dr. Teetor moved and Mr. Fleming seconded that the Board's Credentialing Review Committee members reject licensure for dialysis technologists and instead recommend approval of registration for this profession consistent with the recommendations of the Board of Nursing cited, above, in this document. Voting aye were Vest, Parsow, Teetor, Trebbien, Fleming, VanderBroek, and Moravec. There were no nay votes or abstentions. By this action the Board's Credentialing Review Committee members recommended registration as the appropriate credential for dialysis technologists.

Part Five: Discussion on the Issues by the Full Board of Health

During the afternoon session of their November 14, 2016 meeting the members of the full Board of Health discussed the recommendations of their Credentialing Review Committee on dialysis technologists.

Dr. Hopp asked the applicants about the education and training of dialysis technologists. An applicant representative responded that training consists of three months of training and includes a testing procedure for competency assessment. Completion of a high school diploma or equivalent is also required. Completion of requirements for a national certification is also required.

Part Six: Recommendations of the Full Board of Health on the Proposal

Actions Taken by the Board Members:

The members of the full Board of Health took the following action on the recommendation of their Credentialing Review Committee to rescind their previous recommendation to license dialysis technologists and recommend registration for dialysis technologists instead, as follows:

Voting aye were Borchert, Fleming, Hansen, Hopp, Jackson, Konda, Low, Michels, Moravec, Parsow, Stuber, Teeter, Trebbien, VanderBroek, Vest, and Warner. There were no nay votes or abstentions.

By this action the members of the full Board recommended approval of the recommendation of their Credentialing Review Committee that dialysis technologists be registered.