



**REPORT:** 407 Review of Nebraska Podiatric Medical Association's  
Proposal to Change the Scope of Practice of Podiatry

**FROM:** Richard P. Nelson  
Director, Nebraska Department of Health and Human Services  
Regulation and Licensure

**TO:** Speaker of the Nebraska Legislature  
Chairperson, Executive Board of the Legislature  
Chairperson, Health and Human Services Committee

**DATE:** October 1, 1999

Recommendation

I recommend that the Legislature amend the scope of practice in podiatry to include the ankle and related governing structures subject to the following limitations: 1) that any surgery on the ankle and related governing structures be performed only in a licensed hospital or surgical center location, and 2) that the podiatrist must have successfully completed an advanced surgical postdoctoral residency program of at least two years duration which is recognized as suitable for that purpose by the Nebraska Board of Podiatry.

Background

The Regulation of Health Professions Act provides an administrative process to review and present to the Legislature recommendations regarding change in scope of practice of licensed health care professionals. Neb. Rev. Stat., Section 71-6201 et seq. The process is commonly known as a 407 Review because it was authorized by LB 407, Laws 1985. The Department of Health and Human Services Regulation and Licensure administers the Act. As director of the department, I am presenting this report under the authority of Regulation of Health Professions Act.

The Nebraska Podiatric Medicine Association and the American Podiatric Medicine Association have submitted a proposal to the department for a 407 Review requesting the addition of treatment of "the ankle and related governing structures" to the scope of practice of a podiatrist. The applicants subsequently amended the proposal to 1) restrict performance of surgery on the ankle to licensed hospitals and surgical center locations and 2) require hospital and surgical centers to include an orthopedic physician as a member of any credentialing board which would grant privileges to a podiatrist to perform surgery on the ankle and related governing structures.

The amended proposal was reviewed by a technical committee which recommended against approval of the proposal. The Board of Health also reviewed the amended proposal and recommended in favor of the proposal but without the requirement that an orthopedic physician be included on hospital and surgical center credentialing boards. The reports of the technical committee and the Board of Health are attached to this Director's Report.

I also am recommending that legislative action be taken to add treatment of the ankle and related governing structures to the scope of practice of a podiatrist as approved by the Board of Health and with an additional requirement for postdoctoral education.

#### Regulatory Policy and Philosophy

The Legislature has provided four criteria which should be satisfied before a change in scope of practice is adopted. Section 71-6221(3). These criteria focus on the health, safety and welfare of the public. The term "welfare" is defined in Section 71-6220.01 of the Act:

Welfare shall include the ability of the public to achieve ready access to high quality health care services at reasonable costs.

In addition, the Regulation of Health Professions Act states at Section 71-6202:

The Legislature believes that all individuals should be permitted to enter into a health profession unless there is an overwhelming need for the state to protect the interests of the public.

People in Nebraska should be confident that health professionals licensed by the state are competent to provide quality services. It is also important that those quality services be accessible and affordable. It is equally important that people have a choice in health services when that choice can be offered without endangering health and safety.

#### Findings

Criterion One states:

The present scope of practice or limitations on the scope of practice creates a situation of harm or danger to 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.

I find this criterion has been satisfied.

Criterion Two states:

The proposed change in scope or practice does not create a significant new danger to the health, safety, or welfare of the public.

I find this criterion has been satisfied with the change I propose in my recommendation.

Criterion Three states:

Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.

I find this criterion has been satisfied with the change I propose in my recommendation.

Criterion Four states:

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

I find this criterion has been satisfied.

#### Discussion

Nebraska podiatrists presently provide diagnostic, medical, and physical treatment of the ankle. While it is not clear from the statute, there was no suggestion in the 407 Review that these services are beyond the scope of practice. The issue has centered on the surgical treatment of the ankle and related governing structures.

At the time of this application, thirty-three states included the diagnosis, medical, physical and surgical treatment of the ankle within the podiatric scope of practice. They include the neighboring states of Colorado, Iowa, and Missouri. The disagreement between the recommendations of the Board of Health and the technical committee seem to be based on their different perceptions of a need to change the scope of practice rather than on the ability of properly trained podiatrists to provide the necessary services competently.

The Board of Health and the technical committee agree the applicants met Criteria Two and Three, although the votes by the respective bodies were not unanimous. Criterion Two requires that the proposed change not create a significant new danger to the public's health safety or welfare. Criterion Three requires that the proposed change actually benefit the public's health, safety or welfare. I concur with these conclusions, subject to the recommendation regarding suitable postdoctoral education.

The Board of Health and the technical committee disagreed on whether the limitation on the existing podiatric scope of practice creates an easily recognizable situation of harm to the health, safety, or welfare of the public as required by Criterion One. Although surgery on the ankle is within the scope of practice of doctors of medicine and doctors of osteopathy, the focus of the 407 Review was the availability of surgical services from orthopedists, including availability to medicaid recipients.

The Nebraska Medical Association records list one hundred thirty five Nebraska licensed orthopedists. One hundred twenty Nebraska orthopedists are enrolled in Nebraska's medicaid program and, in FY 1999, eighty-seven submitted at least one claim to medicaid for some kind of covered orthopedic service. Three Nebraska orthopedists specialize in treatment of the foot and ankle.

The applicants, however, presented information to the technical committee and the Board of Health that patients with ankle problems, who choose podiatric care, are referred to podiatrists in Iowa and Colorado to receive surgical services. Patients in western and central Nebraska, who are referred to orthopedists, often travel to Colorado, Grand Island, Lincoln, or Omaha because of the difficulty of obtaining orthopedic services closer to home. This information is sufficient to establish a harm to the public's welfare based on accessibility of services. It also suggests important restrictions on patient choice.

Currently there are 79 podiatrists licensed in Nebraska, approximately 52 of whom are practicing in this state. The applicants estimate that approximately ten Nebraska podiatrists have sufficient postdoctoral surgical residency training to be able to competently perform surgery on the ankle. These podiatrists have offices in such communities as Omaha, Lincoln, Grand Island, Beatrice, Blair, Broken Bow, North Platte, Alliance, Kimball, Oshkosh, Scottsbluff and Sidney. Without determining whether each of these ten podiatrists will perform surgery on the ankle, it is reasonable to conclude that the proposal offers increased opportunity for access and patient choice.

The current Nebraska podiatric scope of practice was established in 1983. At that time, there were approximately 41 two-year and 3 three-year surgical residency programs for podiatry. The level and availability of advanced training has changed substantially since then. Currently there are 162 two-year, 32 three-year, and 3 four-year surgical residency programs in podiatry. The applicants also presented information that some podiatrists who have received this advanced training in surgery choose not to come to Nebraska because of the limitation on scope of practice. They choose instead to practice in a state with a scope of practice that allows them broader use their education and training. Increasing scope of practice to include surgery on the ankle will remove this barrier and improve the likelihood of additional podiatrists practicing in Nebraska.

I agree with the Board of Health with regard to Criterion One and conclude that access to podiatric surgical services in Nebraska is restricted by the present scope of practice and that this restriction has resulted in harm to the public welfare as defined by the Regulation of Health Professions Act.

The Board of Health and the technical committee also disagreed on whether the public can be effectively protected by more cost-effective means, Criterion Four.

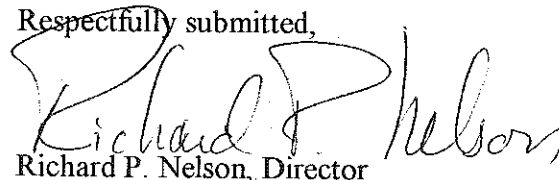
Information was presented during the review that podiatrists generally charge or are reimbursed less than physicians for similar services. This information was not disputed. Having concluded that there is a harm to the public welfare, I also conclude that changing the scope of practice of podiatry is the most cost-effective means of addressing that harm.

The Legislature's adoption of my recommendation would clarify the statutory language regarding diagnosis, medical, and physical treatment of the ankle and governing structures by currently licensed podiatrists. It would not allow current licensees to perform surgery on the ankle and related structures, however, without demonstrating that they have met the additional educational requirement of a two-year surgical residency program.

The Board of Health and the technical committee expressed a legitimate concern over the variety of different accrediting bodies and standards for podiatric residency programs. There are at least six such bodies. The applicants amended their application to address this concern indirectly. They proposed that the committee which grants staff privileges in each hospital or surgical center determine the suitability of an applicant for the expanded surgical privileges and that each committee include an orthopedic surgeon. The Board of Health concluded, however, it is not appropriate to require hospital and surgical center credentialing bodies to have any particular makeup. I agree.

The Board of Podiatry is the appropriate professional board to have responsibility over the implementation of the expanded scope of practice. It is also the appropriate body to determine the adequacy of surgical residency training for this expanded scope of practice. The various professional boards already play an important role in establishing standards for licensure and renewal, including the establishment of educational standards. Allowing the Board of Podiatry to investigate, evaluate, and approve the sufficiency of residency programs for the purpose of expanded scope of practice is the most efficient and uniform way of resolving the issue. Individual credentials committees in hospitals and surgical centers are free to set their own credentialing standards for those who are licensed by the state, and they should be free to include or consult with orthopedists or others as they choose.

Respectfully submitted,

A handwritten signature in black ink that reads "Richard P. Nelson". The signature is written in a cursive style with a large, prominent initial "R".

Richard P. Nelson, Director  
Department of Health and Human  
Services Regulation and Licensure

