STATE OF NEBRASKA

ROBERT KERREY • GOVERNOR • GREGG F. WRIGHT, M.D., M.Ed. • DIRECTOR

MEMORANDUM

TO: Senator Donald Wesely

FROM: Gregg F. Wright, M.D., M.Ed.
Director of Health

SUBJECT: Recommendations Regarding Credentialing of Opticians

DATE: January 3, 1986

Introduction

In preparing my recommendations on the opticians proposal, I have attempted to conform to both the letter and the spirit of LB 407. My principal concern has been to try to assure that there has been a reasonably uniform interpretation and application of the philosophy, criteria, and procedures required by the act.

The language of LB 407 is quite specific in identifying the three criteria that must be satisfied by any group seeking professional credentialing. Briefly stated, these are that there must be clear evidence of harm to the public resulting from the lack of regulation; that the public must need and benefit from an assurance of minimum standards of competence; and that no method other than regulation by the state provides for cost-effective protection of the public.

However, each of the technical review committees has found it necessary to determine for itself how to apply these criteria. For example, each has had to decide what type and amount of documentation of actual or potential harm to the public is sufficient to warrant exercise of the regulatory powers of the state. If the committee found the three criteria to be met, it had to determine which level of regulation was most appropriate. Most importantly, each committee has had to determine whether the proposed regulation will, in fact, protect the public from the harm that has been documented.

I have attempted to identify each of these elements in the committee report, and I have scrutinized the application, and the evidence and testimony submitted by all parties. In making my recommendations, therefore, I have reviewed the same material that was used by the technical committee. But I have also been guided by the intent of LB 407 to provide a uniform application of a broad philosophy of regulation to all applications. I take this philosophy as one that

DEPARTMENT OF HEALTH, BOX 95007, LINCOLN, NEBRASKA 68509-5007
301 CENTENNIAL MALL SOUTH
AN EQUAL OPPORTUNITY/AFFIRMATIVE ACTION EMPLOYER

views state regulation as a means of last resort. This philosophy finds the necessity for regulation to rest almost exclusively in the need to protect the health, safety, and welfare of the public from the prospect of widespread and significant harm. It seeks to balance this necessity against the very real economic and social costs of regulation, such as restriction of competition, potential increases in the cost of health care, limitation of the availability and accessibility of services, and increases in the size and cost of state government.

The application of this broad philosophy may at times lead to a somewhat different interpretation of the evidence submitted from that arrived at by the technical committee. I hope that any such different interpretations will be viewed, not as sharp differences of opinion between the Director of Health and the technical committee, but rather as the natural shift of emphasis and priority that occurs when one moves toward a more global perspective.

In this light, I submit the following comments and recommendations regarding the proposal for credentialing of the opticians.

Recommendations

The opticians proposal sought licensure as a prerequisite to practice ophthalmic dispensing in Nebraska. The technical review committee recommended that licensure be granted to ophthalmic dispensers. I recommend that state regulation not be extended to ophthalmic dispensers.

This is a particularly difficult recommendation, because in this case it is apparent that the three interested parties -- the opticians, the optometrists, and the ophthamologists -- have arried at a hard-fought compromise acceptable to all. It is tempting to be impressed with this compromise and to agree to the licensure proposed. My recommendation to the contrary is solely because I cannot find adequate support to show that the public is currently being harmed.

Discussion

The proponents' strongest arguments concern the potential financial harm that inappropriate or incompetent ophthalmic dispensing can cause to the public. I believe that they made an effective argument to this effect. It is true that a person can become an optician and begin dispensing eye wear with little or no training, and in the process could cause the public to spend money for services that the untrained optician is unprepared to deliver. While economic harm is mentioned in LB407, I find that I cannot give it much weight unless there is also a potential for a harm to the public health. Because LB407 does not clarify the relative weights to give to economic versus health considerations, it will be up to the legislature to address.

The issue of physical harm to the public as it concerns ophthalmic dispensing can be separated into two issues: the potential harm associated with dispensing spectacle lenses and the potential harm associated with the dispensing of contact lenses. In my judgment there is virtually no potential for physical harm to the public associated with the dispensing of spectacle lenses. Spectacles are designed to improve vision. The expert on whether vision is improved is the customer. Although the potential harm from dispensing non-safety glass lenses does exist, this is no different than any other product liability issue, and the FTC does regulate in this area.

There is a stronger case for potential harm from the dispensing of contact lenses, as this is an invasive procedure which involves complex measurements of the cornea and the application of lenses onto the eyeball itself. However the proponents have not effectively demonstrated that this potential harm is a real problem. In fact, the applicants present a study by the FTC (Exhibit V in their application) which suggests to me that the actual potential for harm is indeed small.

In this study, a large number of contact lens wearers were studied in 14 states. Interviews were done, and the subjects were examined to determine the adequacy of the lens and the presence of any indicators of physical harm to the eye. The study concluded that there was virtually no difference between subjects whose lenses had been fitted by opticians when compared to those fitted by optometrists and ophthalmologists.

According to the proponents, the results of this survey showed that the ability of opticians to competently dispense contact lenses was comparable to that of ophthalmologists and optometrists. I believe that this is true. However, it suggests an additional interpretation. Several of the states cited in the survey did not regulate the practice of ophthalmic dispensing. Despite this, there were no observable problems with the safety or fitting of the lenses. This would also suggest that the procedure does not carry a high degree of physical risk.

If the Legislature deems it necessary to regulate this profession, either because of the potential physical or economic risks, I believe that certification would provide an appropriate level of regulation for this profession. If the economic risks are not felt to be an appropriate reason to credential within the Health Department, then I would suggest that the certification need only deal with the dispensing of contacts. I would be comfortable entrusting the dispensing of spectacles to the vigilance and judgment of the buyer.

As with all reports, I recommend that the Legislature review the attached technical review by the Department of Health for possible adoption as part of the committee's amendments. I also recommend that the Department's "Proposal for Uniformity in Credentialing" be applied to this proposal and that any resulting legislation be modified accordingly.

GFW/blw

Enclosure

cc: Senator Harry B. Chronister
Senator Timothy J. Hall
Senator Dan Lynch
Senator Richard Peterson
Senator Jacklyn J. Smith
Senator Ron Withem