REPORT OF RECOMMENDATIONS

By the Nebraska State Board of Health
Regarding a Proposal to License
Genetic Counselors in Nebraska

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

March 21, 2011

TABLE OF CONTENTS

HEADINGS **PAGES**

Introduction 1

Members of the Nebraska State Board of Health 2

Summary of Sources, Data and Information 3

Executive Summary of Board of Health Recommendations 4

Board of Health Recommendations 5

- *Recommendations of the Credentialing Review Committee* 5
- *Recommendations of the Full Board of Health* 7

Discussion on Issues and Findings by the Board Members 8

- *Comments by the Representative of the Applicant Group* 8

Board of Health Meetings to Review the Proposal 11

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 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 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.

MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

Daniel Bizzell, EdD Mental Health Professional Member	Kearney
Janet Coleman Public Member	Lincoln
Edward Discoe, MD Physician Member	Columbus
Theodore Evans, Jr., DVM Veterinarian Member	Tecumseh
Russell Hopp, DO Osteopathic Physician Member	Omaha
Diane Jackson, APRN Nurse Member	Franklin
Kenneth Kester, PharmD, JD Pharmacist Member	Lincoln
Dale Michels, MD (Secretary) Physician Member	Lincoln
Debra Parsow Public Member	Omaha
Roger Reamer, MBA Hospital Administrator Member	Seward
Richard Robinson, PE Professional Engineer Member	Omaha
Luisa Rounds, RN, BSN Nurse Member	Omaha
Paul Salansky, OD Optometrist Member	Nebraska City
Wayne Stuberg, PhD, PT Physical Therapist Member	Omaha
John Tennity, DPM Podiatrist Member	Lincoln
Gary Westerman, DDS (Chair) Dentist Member	Omaha
Daryl Wills, DC (Vice Chair) Chiropractor Member	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 September 22, 2010.

2. The Report of Findings and Recommendations of the Technical Review Committee, dated December 1, 2010.

3. Information from, and recommendations of, the Credentialing Review Committee of the Board of Health, formulated during that Committee's meeting on January 4, 2011.

EXECUTIVE SUMMARY OF BOARD OF HEALTH RECOMMENDATIONS

The members of the Credentialing Review Committee of the Board of Health recommended approval of the applicants' proposal. The committee members also approved an ancillary recommendation which stated that the entry-level requirements for licensure should include a Masters' degree in an appropriate field as specified in the application and passage of the American Board of Genetic Counseling (ABGC) examination at the cut-score adopted by the State Board of Medicine and Surgery, upon the recommendation of the Genetic Counselors' Committee.

The members of the full Board of Health approved the recommendations of the Credentialing Review Committee on the proposal, including the ancillary recommendation.

BOARD OF HEALTH RECOMMENDATIONS

Recommendations of the Credentialing Review Committee

During their special meeting held on January 4, 2011, the members of the Board's Credentialing Review Committee formulated their advice to the full Board of Health on the proposal by taking action on the following four statutory criteria:

Criterion One:
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.

Dr. Stuberg moved and Ms. Parsow seconded that the proposal satisfies criterion one. Voting aye were Bizzell, Coleman, Parsow, Jackson, Rounds, Stuberg, Tennity and Wills. There were no nay votes or abstentions. The motion carried.

Dr. Stuberg stated that genetic counseling services provided by unqualified practitioners can result in the delivery of inappropriate or unnecessary medical care, or result in failure to provide necessary medical care.

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.

Dr. Stuberg moved and Dr. Bizzell seconded that the proposal satisfies criterion two. Voting aye were Bizzell, Coleman, Jackson, Parsow, Rounds, Stuberg, Tennity and Wills. There were no nay votes or abstentions. The motion carried.

Dr. Wills stated that the proposal would be beneficial, making it possible for future third-party reimbursement of genetic counseling services, and thereby greatly improving public access to these services.

Criterion Three:
The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional by the state.

Ms. Jackson moved and Dr. Stuberg seconded that the proposal satisfies criterion three. Voting aye were Bizzell, Coleman, Jackson, Parsow, Rounds, Stuberg, Tennity and Wills. There were no nay votes or abstentions. The motion carried.

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

Dr. Bizzell moved and Ms. Rounds seconded that the proposal satisfies criterion four. Voting aye were Bizzell, Coleman, Jackson, Parsow, Rounds, Stuberg, Tennity and Wills. There were no aye votes or abstentions. The motion carried.

By these four actions the committee members recommended that the full Board of Health approve the applicants' proposal for licensure. The committee members agreed with the ancillary recommendation of the technical review committee and took the following action to advance the recommendation to the full Board of Health.

Dr. Tennity moved and Ms. Jackson seconded that the entry-level requirements for licensure should include a Masters' degree in an appropriate field as specified in the application and passage of the American Board of Genetic Counseling (ABGC) examination at the cut-score adopted by the State Board of Medicine and Surgery, upon the recommendation of the Genetic Counselors' Technical Review Committee.

Voting aye were Bizzell, Coleman, Jackson, Parsow, Rounds, Stuberg, Tennity and Wills. There were no nay votes or abstentions. The motion carried.

Recommendations of the Full Board of Health

On January 24, 2011, the full Board of Health took action on the recommendations of the Credentialing Review Committee, including its ancillary recommendation.

Voting aye to adopt the recommendations of the committee on the proposal were Bizzell, Coleman, Discoe, Hopp, Jackson, Kester, Michels, Parsow, Reamer, Robinson, Rounds, Salansky, Stuberg, Tennity, Westerman and Wills. There were no nay votes or abstentions. The motion carried.

By this vote, the members of the full Board of Health recommended approval of the applicants' proposal.

DISCUSSION ON ISSUES AND FINDINGS BY THE BOARD MEMBERS

Bronson Riley, CGC, presented comments on behalf of the applicant group. Mr. Riley explained that genetic counselors receive specialized graduate education and training in clinical genetics. In order to become certified genetic counselors, they are required to pass a national examination. Currently, an applicant who fails the national exam may still practice in Nebraska. Anyone can call him- or herself a genetic counselor and begin a practice with no training or education in clinical genetics. He or she can provide services to consumers and charge for those service without any oversight. Direct-to-consumer advertising and genetic testing kits are a very real concern to certified genetic counselors. The lack of oversight in these areas highlights the likelihood of an increase in the unqualified practice of genetic counseling, and action is needed to create practice standards in this area of care. Mr. Riley acknowledged that the applicants' proposal would not directly affect the actions of direct-to-consumer advertising, but stated that it would help to increase awareness within the medical community and the public at large that genetic counselors are the experts in this area of care.

Ms. Coleman asked Mr. Riley if he advertises his services. Mr. Riley responded that he does not advertise, and that advertising is typically associated with independent practice in some other States. The services of genetic counselors are not reimbursed by third-party payers in Nebraska, making independent practice difficult. Genetic counselors typically work as part of an interdisciplinary team and cannot diagnose or treat patients. Mr. Riley stated that genetic counseling services are explained on his employer's website, and members of the public can locate a genetic counselor through the website of the National Society of Genetic Counselors.

Ms. Jackson asked how often genetic counselors must be recertified, and how difficult it would be for genetic counselors in Nebraska to obtain the proposed fifty (50) hours of continuing education (CE) every two years. Mr. Riley replied that genetic counselors are required to be recertified every five years, either by retaking the national exam or accumulating a comparable amount of continuing education. The majority of CE is obtained through online training, attending the annual national conference, or both. Dr. Tennity added that the amount of proposed CE is comparable to that required by his own profession.

Ms. Jackson asked Mr. Riley if rural areas of Nebraska have adequate access to the services of genetic counselors. He replied that UNMC has good outreach clinics throughout Nebraska, and that Good Samaritan Hospital is expanding coverage in its Kearney facility. The Kearney hospital has had an Advanced Practice Registered Nurse (APRN) who was providing genetic counseling for cancer patients, and recently hired a genetic counselor. Ms. Jackson asked if the APRN who has been providing these services would have to stop doing so under this proposal. Mr. Riley replied that she would only be prohibited from calling herself a genetic counselor. Representing herself as a nurse geneticist, if she has that certification, would be acceptable.

Dr. Bizzell stated that in five or ten years, genetic testing will be much more visible and commonplace, creating an environment that will encourage advertising by practitioners. He asked Mr. Riley how the proposal would deal with the potential for licensees to take financial advantage of vulnerable clients. Mr. Riley responded that the professions'

code of ethics and the limitations on their scope of practice would deal with these issues. Genetic counselors do not diagnose or treat patients, but work as part of an interdisciplinary team. Dr. Wills added that the profession would fall under the Uniform Credentialing Act, which prohibits unprofessional conduct.

Ms. Rounds asked Mr. Riley if he foresees Nebraska having a genetic counseling education program in the future. Mr. Riley replied that he is hopeful that will occur. UNMC did have a training program that was part of a consortium for a program based in Arkansas, but the person leading it left Nebraska. There is a great deal of interest in genetics among undergraduates in the State, and the applicant group would like to have that program restarted to allow people to train locally.

Dr. Stuberg asked Mr. Riley if genetic counselors would be required to pass the national board examination before they could practice in Nebraska under the terms of the proposal. Mr. Riley responded that recent graduates would be able to practice while waiting to take the national examination, but they must be board-eligible to practice, and cannot call themselves genetic counselors prior to passing the examination.

Dr. Wills asked what the cut-score is for the national certification examination. Mr. Riley responded that this year the cut-score was set at sixty-eight percent. Dr. Wills asked Mr. Riley what he thinks of the ancillary recommendation made by the technical committee that this cut-score be set by the Board of Medicine and Surgery. Mr. Riley responded that the applicant group is concerned that this might interfere with the ability of its profession to make necessary adjustments to the cut-score. Mr. Montgomery explained that many professions deal with this issue by adding language to the licensure bill or the regulations that states that the Board would take into account the national recommendation.

Ms. Jackson asked Mr. Riley approximately how many students passed the national certification examination this year. Mr. Riley responded that about eighty percent of applicants passed the exam.

Ms. Coleman asked Mr. Riley if there is any particular professional group that is the greatest source of harm to the public as regards these services. Mr. Riley responded that this professional group would be those physicians who are not adequately educated or trained in this field. He added that one of the benefits of the proposal is that it will heighten the awareness of physicians regarding the high quality of services provided by appropriately trained and educated genetic counselors. This will lead to more referrals by physicians to genetic counselors. Genetic counselors do not take over the care of the patients, but send the testing results back to the referring physicians to allow them to create a plan of treatment with their patients. Ms. Coleman asked if the genetic counselors would explain the tests to the patient. Mr. Riley replied that all of the genetic counselors in Nebraska routinely go through the informed consent process with each of their patients. Many times physicians see test results in "black and white", while genetic counselors are able to identify and explain the "gray" areas to the patient.

Ms. Coleman asked Mr. Riley if the applicant group has any concerns about practitioners such as nurse geneticists and other persons being able to practice competently. Mr. Riley responded in the affirmative. He added that there is a genetic testing company that has been frustrated with the small numbers of genetic tests being

ordered from the company. In response, the company has offered to staff a two-week training course in cancer genetics for nurses. The nurses coming out of these two-week programs are calling themselves genetic specialists and are performing assessments and consultations, ordering tests and reporting out risk information, all under the authority of a physician. There is a nurse in Omaha that is known to be practicing in this capacity even though she does not have the qualifications to do so. This nurse does not have the certification required to become a nurse geneticist. Mr. Riley does not believe that she is representing herself as a genetic counselor, but the hospital for which she works is doing so.

Ms. Coleman asked Mr. Riley how many States have passed legislation to license genetic counselors. Mr. Riley responded that seven States currently license genetic counselors, and many other States are considering licensure. Ms. Coleman commented that creating a licensure process for sixteen people is hard to justify. Mr. Riley responded that the proposal could lead to third-party reimbursement of genetic counselors' services, making the profession more visible and attractive to hospitals and improving public access to its services. He added that licensure should significantly increase the number of professionals in Nebraska and cited Utah as an example, where the number of genetic counselors increased from sixteen to thirty-two after licensure was enacted. Ms. Parsow asked if Mr. Riley feels the profession will grow quickly enough to meet demands for services. He responded that he does, especially in the next few years, because the applicants are not limiting the scopes of practice of other practitioners.

Mr. Montgomery stated that one significant element that will be in place if this legislation goes forward and passes is that for the first time the State of Nebraska would statutorily define the practice of genetic counseling. This would have the potential to cause two major changes in the practice of other professions. The first change would begin to provide a basis for standards of care to which physician practitioners could be held. Secondly, genetic counseling is deemed to be part of the scopes of practice of several other health professions, such as nursing, because it has not been specifically excluded. A statutory definition could be evaluated by other professions to assess whether or not their practitioners are qualified to provide these services, and provide the option to make changes to their scopes of practice.

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 **January 4, 2011**.

The full Board of Health met to formulate its recommendations on the proposal on **January 24, 2011**.

The full Board of Health approved its report of recommendations on the proposal at its regularly scheduled board meeting on **March 21, 2011**.