REPORT OF RECOMMENDATIONS

By the Nebraska State Board of Health
Regarding a Proposal to Change the Scope of Practice
of Optometry in Nebraska

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

January 25, 2010

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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 (Chair) Physician Member	Columbus
Theodore Evans, Jr., DVM Veterinarian Member	Tecumseh
Linda Heiden Public Member	Bertrand
Russell Hopp, DO Osteopathic Physician Member	Omaha
Kenneth Kester, PharmD, JD Pharmacist Member	Lincoln
Pamela List, MSN, APRN Nurse Member	Beemer
Dale Michels, MD Physician Member	Lincoln
Roger Reamer, MBA Hospital Administrator Member	Seward
Richard Robinson, PE Professional Engineer Member	Omaha
Luisa Rounds, RN, BSN Nurse Member	Omaha
Paul Salansky, OD (Secretary) Optometrist Member	Nebraska City
Robert Sandstrom, PhD, PT Physical Therapist Member	Omaha
John Tennity, DPM Podiatrist Member	Lincoln
Gary Westerman, DDS (Vice Chair) Dentist Member	Omaha
Daryl Wills, DC 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 August 14, 2009.

2. The Report of Findings and Recommendations of the Technical Review Committee, dated October 16, 2009.

3. Information from, and recommendations of, the Credentialing Review Committee of the Board of Health, formulated during that Committee's meeting on October 26, 2009.

Executive Summary of Board of Health Recommendations

The members of the Credentialing Review Committee of the Board of Health recommended against the applicants' proposal. The Committee members approved four ancillary recommendations intended to identify aspects of the proposed expanded scope of optometric practice that need improvement. These ancillary recommendations are described on page six of this report.

The members of the full Board of Health approved the recommendations of the Credentialing Review Committee on the proposal, including the ancillary recommendations, which means that the Board of Health recommended against approval of the proposal.

Board of Health Recommendations

Recommendations of the Credentialing Review Committee

During their special meeting held on October 26, 2009, 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 criteria:

Criterion One:

The present scope of practice or limitations on the scope of practice create 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."

Dr. Westerman moved and Ms. List seconded that the proposal satisfies criterion one. Voting aye were Coleman, Discoe, List, Salansky, Sandstrom, Westerman and Wills. Voting nay was Bizzell. Robinson abstained. The motion passed.

Dr. Sandstrom stated that access to care is a concern in this review. Ms. Coleman and Ms. List expressed agreement with Dr. Sandstrom's comment.

Criterion Two:

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

Dr. Westerman moved and Ms. List seconded that the proposal satisfies criterion two. Voting aye were Bizzell and Salansky. Voting nay were Discoe, List, Sandstrom, Westerman and Wills. Coleman and Robinson abstained. The motion failed.

Dr. Sandstrom stated that he needed to see more specific information on the proposed education and training. He added that there needs to be more work done by the applicants on the list of exclusions. Dr. Discoe stated that he feels that the open-ended wording of the proposal is a source of potential harm to the public. Ms. List asked how the educational aspects had been handled in the previous expansions of optometric scope of practice. Dr. Salansky responded that previously a new certification process was created to handle the proposed new educational provisions. Dr. Vaughan stated that the optometrists would be allowed a five-year period in which to complete the new education and training, but that the Nebraska Optometric Association was certain that it would not take that long for full compliance.

Criterion Three:

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

Dr. Westerman moved and Ms. List seconded that the proposal satisfies criterion three. Voting aye were Bizzell, Coleman, List, Salansky, Westerman and Wills. Voting nay were Discoe and Sandstrom. Robinson abstained. The motion passed.

Criterion Four:

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

Dr. Westerman moved and Ms. List seconded that the proposal satisfies criterion four. Voting aye were Bizzell, Coleman, List, Salansky, Westerman and Wills. Voting nay were Discoe and Sandstrom. Robinson abstained. The motion passed.

Ms. List stated that health care consistent with safety should be provided locally as much as possible. Dr. Salansky commented that under the current situation people must miss work in order to obtain access to the eye care services under review. Dr. Bizzell commented that medical specialists are not moving to rural areas of the state because they are located where they are for reasons of cost efficiency. He expressed concern about the potential for the proposal to degrade the overall quality of eye care services in Nebraska. Dr. Salansky responded that the goal should be to try to get as many health care services to rural Nebraska as are feasible and that can be provided safely and effectively. Dr. Discoe stated that he feels that the proposal asks for too much all at once. Ms. List expressed concern about the lack of consensus about what constitutes primary care. She indicated that this was another source of difficulty for the technical committee when dealing with the proposal.

By these four actions the Committee members recommended that the full Board of Health not approve the applicants' proposal for change in scope of practice. The Committee members continued by formulating the following ancillary recommendations:

1. There is a need for more specific wording regarding the education and training requirements for the following: a) Surgical procedures on the eyelid, b) Surgical procedures of the anterior chamber of the eye, and c) the Pharmaceutical provisions.
2. Add another item to the list of excluded procedures on page four of the applicant group's proposal that would give the Board of Optometry authority to restrict additional procedures.
3. No intraorbital injections should be allowed.
4. Greater attention should be paid by the Board of Optometry to the education and training of optometrists regarding specific medications, routes of delivery, and the application of immunosuppressants, for example.

Recommendations of the Full Board of Health

On November 16, 2009, the full Board of Health took action on the recommendations of the Credentialing Review Committee. Voting aye to adopt the recommendations of the committee on the proposal and the ancillary recommendations approved by the committee were Coleman, Discoe, Evans, Heiden, Hopp, Kester, List, Michels, Reamer, Robinson, Rounds, Sandstrom, Tennity, and Wills. Voting nay was Salansky. There were no abstentions. The motion passed.

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

Discussion on Issues and Findings by the Board Members

Dr. Robert Vandervort, speaking on behalf of the applicant group, stated to the Board members that any review of an issue such as this needs to be evidence-based, and should be motivated by a desire to do what is good for the public rather than serve the purposes of those who want to prevent a profession from growing. He expressed the concern that the review conducted by the Optometry Technical Review Committee seems to have fallen short in that regard. He added that the credentialing review process does not allow for negotiation regarding the details of credentialing proposals, and that this made it difficult for the applicant group to make adjustments to their proposal.

Dr. Vandervort commented on the four criteria as they relate to the issues under review. Regarding criterion one, he stated that there is financial harm to the citizens in rural areas because of duplication of procedures and payments. He stated that some of the ophthalmological outreach clinics are not laser-equipped, and that patients would have to be referred to urban care centers to receive care. Dr. Vandervort added that ophthalmology clinics seldom serve the needs of minority populations because of the unfavorable cost/benefit ratio of serving these populations. As an example, he cited his own experience as an on-call eye doctor for the Department of Ophthalmology at Creighton University. He stated that that many times there are no ophthalmologists scheduled to be on call, so optometrists are called for many types of emergencies throughout the facility.

Dr. Vandervort cited an article in the October 21, 2009 edition of the Omaha World Herald in which a medical doctor stated that there is a great need for more facilities to provide eye care services for medically underserved groups in the state. The article stated that a twenty-million-dollar eye institute is being planned to address these needs through the University of Nebraska Medical Center. Although the building of the facility will be funded by donations, the institute would be a not-for-profit institute serving uninsured minorities. There is no contingency plan for upkeep of the facility, so the state would have to support it financially in the future. He stated that the applicants' proposal would address these needs without any additional cost.

Regarding the second criterion, Dr. Vandervort stated that gory slides shown by the opponent representatives distracted some members of the technical review committee. He added that most of these procedures are in place and being done safely in other states.

Dr. Vandervort stated that the opponents provided no evidence of any harm done to the public by optometrists. If there are members of the public who have had bad outcomes, they are silent in every state. He added that if there were any harm to the public from the services of optometrists, the opposition would certainly have submitted such information very early in the review process. The Board of Optometry would see that required education would be tailored to cover every procedure being requested. Optometrists are held to the same standard of care as ophthalmologists.

Ms. Coleman asked the applicants how many optometrists would currently be qualified to provide the expanded scope of services. Dr. Vandervort responded that most of Nebraska's optometrists already possess the necessary education, and that once the

additional training is in place, all Nebraska optometrists would be required to complete this training and then would be qualified to provide the expanded scope of practice.

Dr. Discoe asked Dr. Vandervort whether optometrists equate pre-surgical and post-surgical skills with surgical skills. Dr. Vandervort responded that he was not equating these very different skill sets; rather, his remark was directed at comments made by some opponents which intimated that optometrists are not sufficiently well-trained to provide follow-up care to patients after surgical procedures have been performed. He added that optometrists have been providing such follow-up care for many years, and are well-trained to do so. He stated that opponents have ignored the provisions in the applicants' proposal which define those procedures that would be excluded. He added that these exclusions clarify that the proposal would not allow any procedure involving the penetration of the eye by an optometrist. Dr. Discoe commented that the arguments made by the optometrists in justifying their proposal are often based on examples of cases that are atypical, such as emergent glaucoma cases. He added that the current practice situation has proven itself effective in dealing with these kinds of cases.

Dr. John Peters, speaking on behalf of the opponent group, the Nebraska Academy of Eye Physicians and Surgeons, stated that there have been no complaints from the public regarding access to eye care services in Nebraska, and that the current proposal is not driven by public need but rather by the goals of the optometric profession. He stated that maintaining skills in performing surgical procedures requires that a sufficient number of procedures be performed on a regular basis. He expressed doubt that optometrists would perform a sufficient number of cases to allow them to maintain those surgical skills. Dr. Peters added that conducting surgical procedures also requires that there be ancillary staff present to assist the surgeon in performing procedures and that this assistance might not always be available in smaller optometric offices in rural areas.

Dr. Peters addressed the first criterion, commenting that the premise of much of the applicants' proposal is that it would help address the needs of patients experiencing eye care emergencies. He stated that these kinds of emergencies are rare, and that the current practice situation wherein non-specialists, including optometrists and ophthalmologists cooperate to address these cases has worked well in Nebraska for many years.

Dr. Peters commented on the open-ended nature of the applicants' proposal in the context of criterion two. He stated that approval of this very open-ended proposal could lead to a situation wherein the scope of practice of optometry could continue to expand into procedures and practices that are unintended and beyond the scope of what the applicant group states it is requesting. The additional education and training that would be required by the proposal was never clearly defined, nor was it clear how this additional education and training would be provided. He added that it needs to be made clear that no mere "weekend course" can provide the kind of skills and judgment necessary to provide surgical procedures consistent with a safe and effective service. In ophthalmology, mentorship for three years is considered the standard of care. He added that there is no national standard that defines the basic education and training for all optometrists in the United States and that this makes it very difficult to determine how much additional education and training is needed for any given optometrist to perform the proposed new scope of practice safely and effectively. Dr. Peters asserted that the proposal makes no change in continuing education requirements which he claimed haven't been changed in many years. He drew the Board

members' attention to applicant group assertions that the Nebraska Board of Optometry would decide exactly what additional educational and training provisions would be required after the proposed legislation is passed. He stated that this approach contradicts the typical approach to establishing safe and effective practice in which health care practitioners must demonstrate competency before they are allowed to perform particular services.

Dr. Peters addressed the third criterion. He stated that even minor surgery and procedures have risks and complications can arise. Avoiding such complications is part of an ophthalmologist's training. The benefits of the applicants' proposal would be minimal, and in any case, would not outweigh the new dangers posed by the proposal.

Addressing the fourth criterion, Dr. Peters commented that the applicant group provided no evidence that its proposal would be effective in improving access to care.

Dr. Peters commented that maintaining quality of care is of critical importance, and that the public needs to protect the public from making unsafe choices in the area of eye care services. He added that the proposal is not consistent with the concept of primary care, and would lead optometric practice into practices now only performed by specialists. Contrary to applicant comments about ophthalmology satellite clinics, these facilities do provide care to patients in rural areas of the state, and they are a viable alternative means of addressing access to care concerns.

Ms. Coleman asked Dr. Peters if telemedicine could be used to address access to care concerns, and whether a physician could utilize the services of an optometrist via a telecommunications link to meet patient needs. Dr. Peters responded that this would be possible, but only within the scope of practice of optometry, and the physician could not delegate anything to them that would be outside of their current scope of practice.

Dr. Bizzell commented that many of the same arguments made by the opponents were also made by them about other professions such as advanced practice registered nurses (APRNs) and physician assistants (PAs). There was also a great deal of resistance to credentialing those groups by the medical community. He asked Dr. Peters if there is any evidence to indicate that the public has been harmed by the services provided by APRNs and PAs. Dr. Peters replied that he couldn't respond to that question because he is not familiar with the practice acts of those professions. Dr. Bizzell commented that perhaps the opponent group is overstating the extent to which the public might be in danger from the proposed changes in optometric scope of practice, just as they did with these two other professions. Dr. Peters cited intraocular injections as an example of a procedure that the proposal would allow and that should only be done by physicians because of the risks involved.

Dr. Wills asked Dr. Peters whether he felt the committee members had received sufficient information from the applicant group regarding their proposed education and training to allow them to make a recommendation. Dr. Peters responded affirmatively. Dr. Wills asked Dr. Peters if he feels that Nebraska's optometric statute lags behind the rest of the nation. Dr. Peters responded that he did not feel that this was the case, and added that the items in the proposal need to be evaluated in terms of whether the public needs them and whether they are safe and effective.

Regarding the issue of the quality of the new course work proposed by the applicants, Dr. Westerman stated that the opponents have misconstrued this issue by referring to it as consisting of "weekend courses." He added that the length of these courses is not what matters, but rather the content and quality of the education and training offered, as well as the extent to which the courses are accredited by a reputable professional organization.

Dr. Vandervort responded to opponent criticisms of optometric education and training. He stated that all optometric education and training is accredited nationally by the Accreditation Council on Optometric Education, and that there is a national board examination that must be passed for licensure. He added that the additional training that would be created by the proposal is designed to supplement the considerable training already possessed by optometrists, and to provide an extra degree of assurance that all aspects of the proposed new scope of practice have been covered. He feels that the opponents have sought to inject fear into the discussions rather than provide information about the issues.

Dr. Vandervort commented on the need for the proposal by referring to a call schedule at the Department of Ophthalmology at Creighton University. According to him, this call schedule shows that there were very few opportunities for patients to access the care of ophthalmologists during on-call hours. This shows that these kinds of clinics cannot be considered as a viable alternative to the proposal when it comes to providing access to important eye care services for uninsured Nebraskans. He also stated that Nebraska is lagging behind surrounding states. He is licensed in Wyoming and Iowa and can perform procedures in both states that he is not allowed to perform in Nebraska. Dr. Peters challenged Dr. Vandervort's assertion that there are no ophthalmologists who are on call regularly at Creighton University, providing the name of an ophthalmologist who is in the on-call roster. Dr. Vandervort responded that the person named by Dr. Peters is no longer on call at the call center.

Dr. Vandervort stated that the applicant group will respond to concerns expressed about the openness of the proposed expanded scope of practice by: 1) expanding the list of exclusions to include, "Other procedures that may be specifically prohibited by ruling of the Nebraska Board of Optometry or by rules and regulations promulgated by the Board of Optometry at its discretion," and by 2) removing the word "any" from the provisions in the proposal pertinent to the administration of pharmaceutical agents. [1] He submitted documentation detailing the educational requirements for certification in the use of lasers for the treatment of the anterior segment of the eye and for certification in the administration of medications by injection excluding intraocular and intraorbital injection. [2]
Dr. Vandervort added that the applicant group intends to adopt all of the ancillary recommendations made by the members of the Nebraska State Board of Health.

Dr. Sandstrom expressed concerns about the adequacy of optometric education to support the proposal in Nebraska. He noted that there is no school of optometry in Nebraska, and that the Board of Optometry would be solely responsible for defining and implementing the standards of the proposal. He questioned whether the Board would be able to do this. He added that in his review of information about optometric education and training he could not find anything that described surgical training. Ms. List indicated that she shares the same

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[1] Applicant Response to Ancillary Recommendations of the Board of Health Credentialing Review Committee," November 16, 2009
[2] "A Summary of Recommended Certification Requirements for LB 417," by the Nebraska Optometric Association

concerns and that in her scope of practice if she feels that she doesn't see enough of certain problems she refers the patient to another provider. She added that she feels that optometrists would act accordingly. Ms. List noted, however, that it was never made clear how the optometrists in Nebraska would acquire the additional education and training necessary for the expanded scope of practice.

Dr. Sandstrom asked whether or not there is a national accreditation standard for these proposed procedures. Dr. Vandervort replied that at this time there is not, but that the individual states provide those standards.

Dr. Westerman asked the applicants how they could provide assurance that optometrists are in place and able to provide the services of the expanded scope of practice to people in rural areas of the state. Dr. Vandervort responded that optometrists are well situated to provide these services and if there are any equipment needs or related issues, local hospitals' equipment could be used by local optometrists to provide services. A hospital could rent the laser equipment in question, but the cost to the optometrists to buy the lasers would be around $18,000, and it is not unusual for an optometrist to spend up to $40,000 on a piece of diagnostic equipment.

Dr. Sandstrom expressed concern that the list of excluded items would not be adequate to prevent the unintended expansion of optometric scope of practice beyond what is being requested in the proposal. He added that outside of the specific exclusions, any other procedure would be allowed.

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 **October 26, 2009**.

The full Board of Health met to formulate its recommendations on the proposal on **November 16, 2009**.

The full Board of Health approved its report of recommendations on the proposal at its regularly scheduled board meeting on **January 25, 2010**.