REPORT OF RECOMMENDATIONS AND FINDINGS

By the Optometry
Technical Review Committee

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

October 16, 2009

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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 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 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
OPTOMETRY TECHNICAL REVIEW COMMITTEE

Pam List, MSN, APRN (Chairperson) **(Beemer)**
Representing the State Board of Health
Nurse Practitioner

Tom E. Bassett **(Lincoln)**
Self-Employed, Bassett's Appraisal Service

Lisa Keathley, RP, PharmD **(Omaha)**
Representing the Nebraska Pharmacists Association
Pharmacist

Norman Langemach **(Lincoln)**
Self-Employed Attorney

Michael Millea **(Omaha)**
Retired Licensed Mental Health Practitioner

John D. Peters, MD **(Omaha)**
Representing the Nebraska Academy of Eye Physicians and Surgeons
Ophthalmologist

Jerry Vaughan, OD **(Broken Bow)**
Representing the Nebraska Optometric Association
Optometrist

EXECUTIVE SUMMARY OF THE PROPOSAL AND RECOMMENDATIONS

Summary of the Applicant Group's Proposal as Amended

The scope of practice of optometry would be amended as follows:

Pharmaceutical agents available to optometrists for diagnostic purposes would be expanded to include any pharmaceutical agent rational to diagnosing a condition of the eye, ocular adnexa, or visual system.

Pharmaceutical agents available to optometrists for therapeutic purposes would be expanded to include any pharmaceutical agent rational to the treatment or management of a condition, a disorder, a disease, an inflammation, or an injury of the eye, ocular adnexa, or visual system, including a controlled narcotic substance enumerated in Schedule 3 or 4 of Section 28-405 and an ophthalmic device or a contact lens classified by the Federal Food and Drug Administration as a drug.

Equipment and procedures available for optometrists to use to investigate, examine, diagnose, treat, manage, or correct diseases and conditions of the eye, ocular adnexa, or visual system would include the dilation, probing, irrigation, or closure of the lacrimal punctum, canaliculi, and related procedures and the use of autorefraction or other automated testing equipment.

Optometrists would be allowed to prescribe, dispense and apply pharmaceutical agents, lenses, devices containing lenses, prisms, contact lenses, ophthalmic devices, orthoptics, vision training, low-vision rehabilitation, and prosthetic devices to correct, relieve, or treat defects or abnormal conditions of the eye, ocular adnexa, or visual system.

Optometrists would be allowed to prescribe, dispense, and sell cosmetic or plano contact lenses and ophthalmic devices, including devices and medicated contact lenses classified by the federal Food and Drug Administration as a drug.

Optometrists would be allowed to administer those pharmaceutical agents defined as within their scope of practice by any route rational including all injections except by intraocular injection.

Optometrists would be allowed to perform laser or non-laser surgical procedures on the eye or ocular adnexa to remove superficial growths and lesions, or treat eye care emergencies.

The Board of Optometry would establish applicable and appropriate certification requirements for the expanded scope of practice. All optometrists would be required to satisfy these requirements.

Summary of Committee Recommendations

The Committee formulated final recommendations on the proposal on September 11, 2009. The committee members voted to recommend against approval of the proposal. The proposal failed on all four of the statutory criteria.

ISSUES DISCUSSED BY THE COMMITTEE

1. Is there harm to the public health in the current practice situation of Optometry?

The applicants stated that the current practice situation of optometry in Nebraska places serious limitations on the ability of residents in rural areas of the state to obtain timely access to important eye care services. This is because the current situation prevents optometrists from using laser procedures or prescribing legend drugs to treat closed angle glaucoma using oral steroids or other immunosuppresents, thereby making it necessary to seek such care from either ophthalmologists or general practice physicians. According to the applicants, the first option is costly and time-consuming for residents of rural areas of the state because ophthalmologists are much less likely to establish practices in those areas than are optometrists. [1] The applicants stated that the overwhelming majority of ophthalmology practitioners are located in urban areas, far removed from rural areas. Some patients who reside in rural areas are not able to travel great distances to access the care they need. This is often the case with elderly residents of rural communities. The applicants stated that the second option is problematical because general practice physicians are often not well-trained to diagnose or treat eye diseases, and often lack the necessary equipment. [2] They added that optometry has a presence in most areas of Nebraska, and that access to their services would be much easier for residents of rural communities if the proposal were approved. [3]

The opponents countered that the public has good access to the services of ophthalmologists. They argued that ophthalmologists are located in large population centers because a substantial volume is required to maintain surgical and clinical skill levels. The 2000 census revealed that about 75 percent of Nebraska's population lives in 15 of the state's 93 counties. The opponents informed committee members that ophthalmologists serve rural areas of Nebraska via 51 satellite clinics, and that 99.5 percent of Nebraskans live within thirty miles of such a satellite clinic. [4] They commented that it is not possible for any health profession to achieve perfect access to its care, adding that their rural patients have registered no complaints about traveling to obtain access to high quality care. [5]

The applicants stated that the creation of and location of ophthalmological outreach clinics in rural areas has not adequately addressed access to care issues because

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[1] The Applicants' Proposal, Question 21, Page 9

[2] "Key points in Favor of the Optometric Proposal in Response to the 407 Criteria," Submitted by the Applicant Group during the June 29, 2009 meeting of the Optometry Technical Review Committee

[3] The Applicants' Proposal, Exhibit "F", Page 38

[4] "Excellent Access to Ophthalmology in Nebraska," a map appended to the fact sheet for the optometric review," and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

[5] The Minutes of the Fourth Meeting of the Committee, June 29, 2009

these clinics are typically staffed only two or three days a month. They added that only eleven counties in the entire state have ophthalmologists practicing on a daily basis. [6] The applicants stated that there is a need to improve access to emergency eye care services in underserved areas of Nebraska. They cited the problem of acute angle closure glaucoma as an example. In these emergencies, it is critical to address the problem as quickly as possible so as to minimize risks of serious damage to the patient's eyesight, including vision loss. They stated that they are sufficiently trained to deal with these kinds of emergencies, but added that current restrictions on their scope of practice prevent them from doing so. [7]

The opponents stated that applicant arguments about the supposed need for improved access to emergency care is greatly exaggerated. They stated that the majority of narrow angles in Nebraska do not present an emergency and can be dealt with electively. The emergency cases of acute angle closure glaucoma are rare, and can be diagnosed and treatment initiated by the initial physician or optometrist with the patient then being referred to the ophthalmologist for further evaluation and treatment. [8]

Dr. Christopher Wolfe, a member of the applicant group, addressed the assertion of the opponent group regarding the supposed rarity of emergent glaucoma cases. He cited a study published in the journal *Eye* that states from one in twenty to one in fifty Caucasian patients over the age of fifty-five have occludable angles. According to the same study, seventy-five percent of ophthalmologists surveyed chose to perform peripheral iridotomies prophylactically based on patients' symptoms, intraocular pressures, and gonioscopic findings. He added that over the past year he personally has diagnosed ten patients with narrow angles without prior closure. In each case they were referred to an ophthalmologist who repeated all the tests, confirmed the original diagnosis, performed the appropriate surgical procedure, and then sent the patient back to him for post-operative care. [9]

The opponents argued that the applicant group has provided no evidence to indicate that the current practice situation is a source of harm to the public. [10] They added that there has been no outcry from the public regarding the supposed difficulties in accessing eye care services from ophthalmologists. The present system wherein patients are stabilized locally by either an optometrist or a primary care physician and then referred to an ophthalmologist has worked well in Nebraska for decades. [11]

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[6] "Key points in Favor of the Optometric Proposal in Response to the 407 Criteria," Submitted by the Applicant Group during the June 29, 2009 meeting of the Optometry Technical Review Committee

[7] The Applicants' Proposal, Page 3

[8] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

[9] Testimony of Dr. Christopher Wolfe, The Transcript of the Public Hearing held on August 14, 2009, Page 75; (Sheth H, Goel R, Jain S., UK National survey of prophylactic YAG iridotomy. *Eye*. 19(9):981-4, 2005 Sep.)

[10] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response

[11] The Transcript of the Public Hearing held on August 14, 2009, Page 23

2. Would the proposal create new sources of harm to the public health and welfare?

The opponents argued that optometrists currently lack sufficient education, training, and clinical experience to perform safely and effectively the surgical procedures proposed. They stated that surgery is more than just technique. Surgery requires judgment to determine whether or not a procedure is necessary, the knowledge to identify patients with increased risks of complications and the experience to evaluate and manage complications. They added that ophthalmologists acquire these skills during a lengthy residency program, but that optometrists do not undergo residency training and accordingly, a vital component of clinical preparation is absent from optometric training. [12]

The applicants stated that the Nebraska Board of Optometry would ensure that all optometrists in Nebraska would be required to pass rigorous certification standards to provide the new services if the proposal passes. The Board would scrutinize the education and training of optometrists planning to relocate to Nebraska from other states to ensure that these practitioners meet the new standards of practice. [13] They stated that the education and training of optometrists in Oklahoma, which has already approved a scope of practice similar to the one being proposed for Nebraska, includes clinical experience in hospital settings. In these settings, Oklahoma optometrists provide care for patients who take multiple medications for multi-system diseases. [14] The applicants stated that once the proposal passes, the Nebraska Board of Optometry would model the education and training of Nebraska optometrists along the lines of the Oklahoma education and training program. [15]

The applicants provided the committee members with written testimony stating that optometrists are educated and trained to perform minor surgical procedures on the surface of the front of the eye to remove superficial foreign bodies. This documentation also stated that optometrists and ophthalmologists share common educational elements, including courses in systemic health that focus on a patient's overall medical condition. This education prepares optometrists to recognize diseases that impact the entire body such as diabetes and hypertension. It also prepares them to manage complications that might arise from surgical procedures on the eye. This testimony stated that optometrists are also qualified to provide pre and post-operative care pertinent to glaucoma, laser, refractive, and cataract procedures. [16]

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[12] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

[13] The Minutes of the Second Meeting of the Committee, May 15, 2009

[14] The Transcript of the Public Hearing held on August 14, 2009, Page 71 and 72

[15] Minutes of the Second and Third Meetings of the Committee, May 15, and June 8, 2009

[16] Statement from Dick Wallingford, Jr., O.D., President of the American Optometric Association, "American Optometric Association NCL/AAO Study on Consumer Awareness", distributed by Dr. Vaughan.

The opponents commented that the wording of the current proposal is so open-ended that it would not prohibit optometrists from performing advanced surgical procedures. They observed that the current proposal would allow optometrists to treat any condition or disease of the eye or visual system deemed by the applicant group to be consistent with optometric scope of practice. [17] The opponents stated that nothing in the wording of the current proposal would prevent optometrists from using laser technology to perform such surgical procedures as pterygium surgery and bletharoplasty, both of which are advanced procedures currently performed only by ophthalmologists. Audiovisual information was provided to show the risks associated with performing such procedures. The opponents pointed out that those practitioners who perform these procedures must be sufficiently well-trained and educated to perform them safely and effectively. [18]

The applicants stated that this wording needs to be understood in the context of attempting to craft a viable scope of practice, and that optometrists would not actually use or apply all the things that the proposal would allow. They stated that the exact parameters of their scope of practice would be clarified later by the Board of Optometry. The proposed expanded scope of practice is designed to enhance the ability of optometrists to provide primary care to their patients, and nothing would be added that is inconsistent with this goal. The applicants stated that like other doctoral-level professions, optometrists know their limits and know when they need to consult with other professionals and when to refer to other professionals. They argued that just as the public can trust ophthalmologists not to perform brain surgery, they can trust optometrists not to perform LASIK or any other highly invasive surgical procedure. [19]

The opponents stated that the current wording of the proposal creates concerns about the drugs optometrists would be allowed to prescribe to treat eye conditions and eye diseases. The proposal states that the practice of optometry would include "...any pharmaceutical agent rational to the treatment or management of a condition, a disorder, a disease, an inflammation, or an injury of the eye, ocular adnexa, or visual system". [20] The opponents commented that this wording would allow optometrists to use a wide variety of powerful drugs that are currently prescribed only by physicians, including Diamox, Mitomycin C, Prednisone, immunosuppressants, and other medications currently unknown for example, all of which have dangerous side effects and complications. [21] They argued that optometrists lack sufficient education and training in the use of pharmaceutical agents to prescribe the drugs in question safely and effectively. [22]

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[17] The Applicants' Proposal, Exhibit "B", Page 26; and the Minutes of the Third Meeting of the Committee, June 8, 2009

[18] Minutes of the Third Meeting of the Committee, June 8, 2009; and, "Cornea and External Diseases: Surgery and Complications," Digital Reference of Ophthalmology, http://dro.hs.columbia.edu/sclmtc.htm

[19] "Key points in Favor of the Optometric Proposal in Response to the 407 Criteria," Submitted by the Applicant Group during the June 29, 2009 meeting of the Committee

[20] The Applicants' Proposal, Exhibit "B", Page 24

[21] Minutes of the Fourth Meeting of the Committee, June 29, 2009

[22] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

The opponents stated their concerns that immunosuppressants, Prednisone, and Diamox would be allowed under the terms of the optometric proposal. These are powerful drugs that have potential side-effects that include damage to vital organs, cancer, and death. Only providers with extensive education, training, and experience in the use of these drugs and in monitoring of patients should be using these drugs. They stated that the proposal would permit injections and intravenous infusions for which optometrists lack sufficient training and experience. [23]

The applicants responded that optometrists are qualified to prescribe medications to treat eye diseases as well as evaluate and treat such vision conditions as nearsightedness, farsightedness, astigmatism and presbyopia. They provided documentation comparing the pharmacological education of medical students, dental students, podiatry students, physical therapy students, and optometry students. According to the applicants, this documentation shows that optometry education in this area was comparable to that of medical students, dental students, and podiatry students. [24] The applicants stated that this evidence shows that their education in the area of pharmaceuticals qualifies them to safely and effectively prescribe the medications that their proposal would allow them to prescribe.

The opponents stated that the education cited by the applicants is purely didactic in nature and that no insight into the level of clinical training and experience optometrists possess regarding prescribing pharmaceutical agents has been provided. [25] They noted that the applicants have provided no information clarifying how the education and training for the proposed expanded scope would be provided, or exactly what it would consist of. [26] The applicants stated that the Board of Optometry would define the exact educational and training provisions of the proposed expanded scope of practice at a later date. [27]

The opponents stated that optometrists lack the necessary education, training, and experience in the management of disease conditions, or in writing prescriptions for systemic or ocular diseases as proposed. [28] The applicants responded that optometrists are trained to write prescriptions in the context of complex patient conditions. They added that optometrists in Oklahoma, for example, are trained to manage a wide range of ocular diseases including glaucoma, keratoconus, diabetic retinopathy and uveitis.

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[23] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response

[24] A Statement from Martin A. Wall, CAE, Executive Director, ASCO, Eastern Tennessee State University College of Public and Allied Health

[25] Minutes of the Fourth Meeting of the Committee, June 29, 2009

[26] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

[27] Minutes of the Fourth Meeting of the Committee, June 29, 2009

[28] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

They receive extensive training in pre and post-operative care as well as in potential complications or contraindications. The applicants added that this training occurs under appropriate professional supervision. [29]

The applicants argued that their profession consistently has the lowest malpractice rates of any doctoral-level health profession in the nation, and that this highlights the fact that there is no evidence of harm being done to patients by optometrists, including those Oklahoma optometrists who perform the procedures associated with the proposed expanded scope of practice. [30] Opponents stated that malpractice insurance rates do not imply competency, skill and adequate training. Premiums for optometry are based on a large population of providers, the vast majority of whom perform no procedures or only low-risk procedures. [31]

3. Would the public benefit from the proposal?

The applicants argued that their proposal would increase access to important eye care services for those Nebraskans who live in rural areas. [32] The applicants' proposal includes a map showing that optometrists are better situated geographically to provide eye care services to patients in rural areas than are ophthalmologists. [33]

The applicants argued that increased access to optometric care would improve the quality of eye care services in rural areas as well as decrease the cost of such care. Cost savings would come from eliminating duplicative office visits and reductions in patient travel and associated costs. Approval of the expanded scope of practice would also increase the chances that rural Nebraska communities might be able to attract the best quality optometrists to practice, which would further enhance the quality of eye care in rural Nebraska. [34]

The opponents responded to applicant comments about the supposed benefits of the proposal for access to care by stating that Nebraskans already have good access to eye care services. Nearly every area of the state is covered by ophthalmological satellite clinics, providing nearly all Nebraskans with access to the services of ophthalmologists. The opponents also stated that the proposal calls for remedial action to address issues that are relatively rare in nature, such as infrequently occurring glaucoma emergencies. They stated that glaucoma-related emergencies can usually be dealt with using low-risk treatments initially, that are already available to all licensed eye care professionals, such

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[29] The Transcript of the Public Hearing held on August 14, 2009, Pages 71 and 72

[30] "Key points in Favor of the Optometric Proposal in Response to the 407 Criteria," Submitted by the Applicant Group during the June 29, 2009 meeting of the Committee

[31] The Transcript of the Public Hearing held on August 14, 2009, Page 28

[32] The Minutes of the Second Meeting of the Committee, May 15, 2009; and The Transcript of the Public Hearing held on August 14, 2009, Page 52

[33] The Applicants' Proposal, Exhibit "F", Page 38

[34] "Key points in Favor of the Optometric Proposal in Response to the 407 Criteria," Submitted by the Applicant Group during the June 29, 2009 meeting of the Committee

as using topical medicines or corneal compression. [35] The opponents commented that the risks to public health and safety that would stem from the proposal itself would outweigh any benefits that it might theoretically offer. [36]

The opponents stated that the current system for managing eye care emergencies has worked well in Nebraska, and that no benefit would come from approving a proposal that would in effect create services that are duplicative of those currently provided by physicians. They stated that optometrists are allowed to use certain topical medications to stabilize emergent conditions, and can then refer patients to an ophthalmologist for further treatment if it is indicated. [37]

4. Are there alternatives to the proposal that might address the harm identified in the application more cost-effectively?

The applicants argued that their proposal would successfully address the access to care problems that they have identified in a manner consistent with high standards of care and the goal of protecting public health and safety. They stated that they are not aware of any alternative to the proposal that could address both the access to care issues and the quality of care issues better than their proposal. [38]

The opponents stated that no evidence has been provided to demonstrate that the current access to care system for providing eye care services has failed to meet the needs of rural Nebraskans, and that there is no need for the applicants' proposal. They added that whatever access problems exist in rural areas could be better addressed by technologies typically included under the category of "telemedicine" than by the applicants' proposal. Such technologies could be used to enable ophthalmologists to direct the treatment of patients in rural areas of the state from a site far removed from where the patients are located. [39] They added that emergency rooms in local hospitals are able to stabilize and refer emergency glaucoma cases. [40]

The applicants stated that all optometrists in Nebraska would be required to successfully complete the certification programs associated with the expanded scope of practice as well as any additional continuing education necessary to maintain the appropriate skills. They indicated that this would address the concerns expressed regarding the ability of optometrists to provide the expanded scope of practice safely and effectively. [41]

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[35] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

[36] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response

[37] The Transcript of the Public Hearing held on August 14, 2009, Pages 24, 31 and 32

[38] "Key points in Favor of the Optometric Proposal in Response to the 407 Criteria," Submitted by the Applicant Group during the June 29, 2009 meeting of the Committee

[39] The Minutes of the Seventh Meeting of the Committee, September 11, 2009

[40] The Minutes of the Second Meeting of the Committee, May 15, 2009

[41] "Key points in Favor of the Optometric Proposal in Response to the 407 Criteria," Submitted by the Applicant Group during the June 29, 2009 meeting of the Committee

The opponents stated that the proposal is not a safe and effective means of addressing any alleged shortcomings of the current situation. [42] Many of the procedures that the proposal would allow go beyond primary care and would put the public health at risk. The opponents also argued that, far from being a solution to access to care problems in the state, the proposal would likely create a situation wherein there would be too many practitioners for the number of patients present in rural Nebraska. Practitioners would not have sufficient case loads to maintain their skills, and the overall skill level of those who provide eye care services in the state would be diluted. [43]

Applicant testifiers stated that their practices already include sufficient case loads to cost-effectively support and maintain the expanded scope of practice in rural areas of Nebraska. Every day they see cases that are relevant to the proposed expansion in scope of practice and they must refer these cases to other practitioners under the current situation. [44]

The committee members discussed at length language in the applicant groups' proposal relating to dispensing of pharmaceutical agents. The applicants proposed and the committee members agreed to amend the original application by removing wording from the proposal that would have permitted optometrists to dispense medications and ophthalmic devices and medicated contact lenses to patients.

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[42] The Transcript of the Public Hearing held on August 14, 2009, Pages 25 and 31

[43] The Minutes of the Fifth Meeting of the Committee, July 24, 2009; and "LB 417 Optometric Scope of Practice Expansion: Ophthalmology's Response"

[44] The Transcript of the Public Hearing held on August 14, 2009, Page 55

COMMITTEE RECOMMENDATIONS

The members of the Optometry Technical Review Committee formulated their final recommendations on the proposal during their September 11, 2009 meeting by taking action on the four statutory criteria of the Regulation of Health Professions Act under Nebraska Revised Statutes, Section 38-6221. These four criteria and the committee recommendations are described below. When taken together, these four actions comprise the final recommendation on the entire proposal. The proposal must be supported on all four criteria for it to be positively recommended by the committee members.

Criterion one states:

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.

Vaughan moved and Bassett seconded that the proposal satisfies criterion one. Voting aye were Bassett and Vaughan. Voting nay were Langemach, Keathley, Millea, and Peters. Ms. List abstained from voting. The motion failed.

Ms. List then asked the committee members to discuss why they voted as they did on this criterion.

Dr. Vaughan stated that the current situation creates undue hardship for eye care patients associated with having to travel to obtain care, time away from home and work, and the stress of having to wait for treatment until travel arrangements can be made. He stated that an optometrist, in the absence of an ophthalmologist, is the most capable health care practitioner in dealing with such events as eye care emergencies, for example. He added that general practice physicians lack the specific education and training in eye conditions and diseases to handle such cases safely and effectively.

Dr. Peters stated that the patients he sees value quality of care over convenience, and that they feel that safety comes first and access concerns come second.

Ms. List commented that the part of the first criterion that is of the most concern to her is the part which states that evidence of harm must be easily recognizable. She stated that it is difficult to determine the extent to which the evidence provided by the applicants satisfies this part of this criterion. Mr. Bassett stated that he feels there is a need for improved access to eye care in underserved areas of Nebraska. Dr. Keathley stated that no clear evidence was presented to document the supposed need for improved access to care. Mr. Millea concurred, stating that to date there has only been anecdotal evidence presented, and that no actual patients have been heard from regarding these supposed shortcomings in access to eye care. Mr. Langemach stated that there might be some inconvenience associated with the current situation in some areas of the state, but that inconvenience does

not equate to harm. He would also have appreciated hearing from actual patients during the review process. Dr. Vaughan commented that in the case of elderly patients, the inconveniences in question can also be a source of harm given financial problems and mobility concerns often associated with the elderly patients.

Criterion two states:

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

Dr. Keathley moved and Dr. Peters seconded that the proposal satisfies criterion two. Voting aye was Vaughan. Voting nay were Bassett, Keathley, Langemach, Millea and Peters. Ms. List abstained from voting. The motion failed.

Ms. List asked the committee members to discuss why they voted as they did on this criterion.

Dr. Vaughan stated that optometry has a proven track record regarding the provisions of the proposed expanded scope of practice. He added that there is no evidence of any harm associated with the expanded scope of practice in Oklahoma where it has been in effect for many years. Some provisions of the expanded scope have been in effect in other states as well. Nine states allow the minor surgical procedures, twenty-one states allow the pharmaceutical provisions, thirty-three states allow for injections of medications and thirty-six states allow optometrists to prescribe any oral anti-glaucoma medications. He stated that Oklahoma optometrists have performed the surgical provisions of the expanded scope for twenty years. The relatively low malpractice rates for the members of his profession demonstrate that optometrists practice in a manner that is consistent with safety and effectiveness. He added that if the proposal were to pass, all optometrists in Nebraska would be held to the same standard of care as medical doctors regarding the services associated with the expanded scope of practice. He noted that there are other licensed doctoral-level professionals that are allowed to diagnose and prescribe medications to treat conditions and illnesses under current Nebraska law, including Advanced Practice Registered Nurses and Podiatrists.

Dr. Peters stated that much of what is being asked for in this proposal is beyond primary care and the parameters of optometric education and training. He added that twenty-one of the thirty-three states that permit injections by optometrists allow the mere use of epi-pens for emergency situations, which is minimal compared to the types of injections permitted in this proposal. These facts would make the proposal a source of significant new harm to the public health and welfare.

Mr. Bassett stated he feels there is a need for some improved access to care, but that the current proposal is too much, too fast. Mr. Langemach expressed his agreement with Mr. Bassett's remarks. Dr. Keathley stated that the wording of the proposal as it relates to medications is too open-ended. Mr. Millea expressed the concern that the proposal would, in effect, create a new category of provider, which would be of concern to him.

Criterion three states:

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

Dr. Keathley moved and Mr. Bassett seconded that the proposal satisfies criterion three. Voting aye were Bassett and Vaughan. Voting nay were Keathley, Langemach, Millea and Peters. Ms. List abstained from voting. The motion failed.

Ms. List asked the committee members to discuss why they voted as they did on this criterion.

Dr. Vaughan stated that it seemed to him that the benefits of the proposal are very clear, and that access to care would be significantly expanded by its passage. He noted the proliferation of department store and mall-based health care facilities across the state, and commented that this shows that there must be access to care problems in Nebraska, and that someone has already taken steps to address them. He added that there are thirty-eight counties in Nebraska that have no coverage by any ophthalmologists.

Dr. Peters stated that criterion three requires that benefits be widespread and not negated by significant new harm and that such is not the case with the current optometric proposal. He added that it would create new harm without any clear benefit to the public.

Mr. Millea commented that the proposal would have unintended consequences that would be a matter of concern. Mr. Langemach stated that the concerns raised by the proposal far outweigh its benefits. Dr. Keathley stated that public safety must come before concerns about access to care, and that the proposal is not safe and effective. Mr. Bassett commented that he does see benefits to the proposal for rural Nebraska.

Criterion four states:

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

Mr. Bassett moved and Dr. Peters seconded that the proposal satisfies criterion four. Voting aye were Bassett and Vaughan. Voting nay were Keathley, Langemach, Millea and Peters. Ms. List abstained from voting. The motion failed.

Ms. List asked the committee members to discuss why they voted as they did on this criterion.

Dr. Vaughan stated that there is a need for enhanced access to eye care services in rural Nebraska and that the most effective means of creating that access would be to pass the proposed expansion in optometric scope of practice. He added that he is not aware of any other means of effectively addressing the access to care problems in question.

Dr. Peters stated that there are better ways than the proposal to address the concerns expressed about access to care. These include telemedicine and related technologies that will one day enable a physician to direct the treatment of a patient from distant locations. He added that the current system of care, wherein optometrists stabilize a patient until they can be transported to, and treated by, an ophthalmologist, is a system that has worked very well in the state.

Mr. Millea commented that there is no evidence to suggest that the proposal would be more cost-effective in meeting the needs of rural Nebraska than does the current practice situation. Dr. Keathley stated that there is no way of knowing what additional costs might be incurred due to misdiagnoses and inappropriate treatment if the proposal were to pass.

By virtue of the votes taken on each of the four criteria, the committee members recommended against approval of the proposal.

After the voting on the four criteria had been completed, the committee members discussed whether there were any ancillary recommendations that should be advanced for consideration. Mr. Bassett observed that the proposal might have been more successful if the applicants had focused on only one of the three major topic areas in the proposal. He commented that he feels there is a need for some kind of expanded scope of practice for optometry in rural Nebraska, but that the current proposal goes too far to be acceptable. Mr. Millea and Mr. Langemach expressed agreement with Mr. Bassett. The committee members concluded this discussion without taking action on these thoughts and observations.

OVERVIEW OF COMMITTEE PROCEEDINGS

- The committee members met for the first time on April 11, 2009 for orientation to the review process and initial discussion regarding the proposal.
- On May 15, 2009, the committee members met to continue discussion regarding the applicants' proposal.
- On June 8, 2009, the committee continued their discussion regarding the applicants' proposal.
- The committee members met on June 29, 2009 to continue discussion on the applicants' proposal.
- The committee members met on July 24, 2009 to formulate their preliminary recommendations on the proposal.
- August 14, 2009 was the Public Hearing regarding the proposal.
- The committee members met on September 11, 2009 to finalize their recommendations on the applicants' proposal.
- The October 16, 2009 meeting was held via teleconference and in person, and the committee finalized their report and adopted it as the embodiment of their recommendations on the proposal.