Final Report of Findings and Recommendations

By the Nebraska Board of Health

on the

Application of the

Certified Registered Nurse Anesthetists

for a

Change in Scope of Practice

to the

Director of Health

and the

Nebraska Legislature

July 16, 1990

I. Recommendations of the 407 Subcommittee on the Proposal

The members of the 407 subcommittee of the Board of Health at their May 8, 1990 meeting recommended against approval of the proposal to change the scope of practice of CRNA's.

II. Discussion of the Issues Raised by the Proposal

Patricia McQuillan, the chairperson of the technical review committee, presented the report of the technical committee to the members of the 407 subcommittee. Following this presentation, Charles Rowse, a representative of the applicant group, presented testimony in support of the proposal. Following this presentation, Dr. Jerry Hynes then presented testimony in opposition to the proposal. In the ensuing discussion, the subcommittee members focused their comments on the issues of harm to the public in the current practice situation of CRNA's, the potential for harm that might result from the proposal itself, and the potential benefits that might result from the proposal.

Regarding the applicant group's comments that surgeons are reluctant to work with CRNA's under the current practice situation because of concerns about being liable for what CRNA's do, Dr. Shapiro stated that he had never heard of any situation under which surgeons were reluctant to work with CRNA's. Dr. Shapiro stated that medical doctors respect CRNA's for their expertise in the area of anesthesia care. Dr. Shapiro stated that the applicant group provided no evidence to support their comments on this matter. Carl Maltas concurred with Dr. Shapiro by stating that he has never encountered such an attitude among

surgeons toward CRNAs in his capacity as a hospital administrator. Charles Rowse, a representative of the applicant group, responded to these statements by stating that it is hard to provide evidence that would document applicant statements about surgeon's attitudes toward CRNA's, but that he knew surgeons who had expressed concerns about being liable for what CRNA's do.

Regarding the issue of access to CRNA services, Carl Maltas expressed the concern that the proposal might actually lessen the availability of CRNA's in rural areas of Nebraska. Mr. Maltas stated that the proposal would create opportunities for independent practice in the more lucrative markets of urban Nebraska, and that these markets would draw CRNA's away from rural areas.

Steve Wooden, the representative of the CRNA's on the technical committee, responded to these comments by stating that the proposal will help attract CRNA's to Nebraska by making CRNA practice in Nebraska more attractive. Mr. Wooden added that the proposal would not create any additional inducement for CRNA's to seek jobs in urban areas as opposed to rural areas for the reason that competition with anesthesiologists would be more intense in urban areas than in rural areas, where there are fewer anesthesiologists.

Regarding the issue of access to CRNA services in dental and podiatric offices, Dr. Wahl stated that dental and podiatric offices seldom if ever perform the kind of anesthesia that would

require CRNA services. Practitioners in these offices perform local anesthesia, and if an emergency were to arise requiring general anesthesia, these practitioners would request the services of emergency personnel rather than perform general anesthesia themselves. Dr. Wahl added that the practice of general anesthesia is something that dental and podiatric offices are not equipped to perform, regardless of the personnel available in those offices. He stated that general anesthesia is something that should be performed only in hospital settings. Dr. Wahl expressed the concern that the proposal might create potential for harm by encouraging poorly equipped dental and podiatric offices to attempt general anesthesia. Such a situation would not be in the interest of the public health and welfare.

Dr. Shapiro stated that the proposal creates the illusion that nurse anesthesia can be separated in practice from the medical management of anesthesia care. Dr. Shapiro stated that such a separation is not possible because anesthesia care by its nature has implications for patient care, and as such requires that a medical doctor be in a supervisory role over anesthesia services. Dr. Shapiro was concerned that the proposal, by artificially separating nurse anesthesia from medical anesthesiology, would undermine physician responsibility for patient care, which he felt would be a source of potential harm to the public health and welfare.

Dr. Wahl stated that CRNA's do not possess sufficient

training adequately to diagnose complex patient conditions, and therefore cannot function as independent practitioners in a manner consistent with the protection of the health and welfare of patients.

Dr. Shapiro asked representatives of both the opponents and proponents to comment on the potential benefits of the proposal. Dr. Gregorius, a representative of the opponents, stated that the proposal would not benefit the health and welfare of Nebraskans. Dr. Gregorius stated that there would be no economic advantages to the proposal because CRNA fees would not be significantly lower from those of anesthesiologists, and might actually be higher due to the "unbundling" of fees that would result from the proposal. Regarding the issue of access to anesthesia care, Dr. Gregorius stated that the proposal would have no impact on hospital care, where most general anesthesia is done. He stated that the only significant change that the proposal would make would be to encourage dental and podiatric offices to perform general anesthesia care, a change that he did not regard as a benefit to the public, but rather as a source of potential harm.

Charles Rowse responded to these comments by stating that the costs of anesthesia care would be significantly lower if they were provided for in a doctors office rather than in a hospital, and that this is something that the proposal would encourage. Mr. Rowse stated that significant anesthesia care is provided outside of hospital environments in rural areas, but that the quality of this care is a concern. He stated that the proposal

would make it easier for rural doctors and dentists to upgrade the quality of this anesthesia care by allowing them to utilize the services of fully independent CRNA's.

Dr. Hynes, a representative of the opponents, stated that the level of services possible in rural doctors' offices and clinics is such that the services of a CRNA could not be utilized anyway. Dr. Hynes stated that because of this, the proposal offers no benefits to the public health and welfare, but instead would jeopardize standards of care vis-a-vis anesthesia care.

Patricia McQuillan, the chairperson of the technical review committee, stated that the proposal held out the possibility that more anesthesia care could be provided in rural areas, and that as a result, more surgeries could also be done in rural areas, thereby keeping more dollars in these areas. Ms. McQuillan stated that this was one aspect of the proposal that she supported during the technical committee's review of the proposal.

The subcommittee members then voted on the four criteria of the credentialing review statute that pertain to the proposal. On criterion one, Dr. Wahl moved, "The present scope of practice or limitations on the scope of practice creates a situation of harm or danger to the health, safety, or welfare of the public, and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument." Dr. Shapiro seconded the motion. Voting aye was Williams. Voting nay were Wahl, Shapiro, Timperley, and Maltas.

On criterion two, Dr. Shapiro moved, "The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public." Mr. Maltas seconded the motion. Voting aye were Williams and Timperley. Voting nay were Wahl, Shapiro, and Maltas.

On criterion three, Dr. Shapiro moved that "Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public." Dr. Wahl seconded the motion. Voting aye were Williams and Timperley. Voting nay were Wahl, Shapiro, and Maltas.

On criterion four, Mr. Maltas moved that "The public cannot be effectively protected by other means in a more cost-effective manner." Dr. Shapiro seconded the motion. Voting aye were Williams and Timperley. Voting nay were Wahl, Shapiro, and Maltas. By these votes the subcommittee members decided not to advise the full Board of Health to recommend approval of the proposal.

Recommendations of the Full Board of Health on the CRNA Proposal

The members of the full Board of Health voted seven to five with one abstention to support a motion endorsing the recommendation of the 407 subcommittee of the Board of Health which was to recommend against approval of the proposal for a change in CRNA scope of practice.

Deliberations of the Full Board of Health on the CRNA Proposal

Chairperson Shapiro asked for comments from interested parties to the proposal. Charles Rowse, a CRNA from Norfolk, presented testimony on behalf of the applicant group. Dr. Charles Gregorius, an anesthesiologist from Lincoln, presented testimony on behalf of opponents of the proposal.

In the ensuing discussion, Dr. Wahl stated that his conversations with Richard Tempero, D.D.S., the president of the Nebraska Dental Association, indicated that only a small number of dental clinics would actually employ CRNA's if the proposal were approved. However, Dr. Wahl stated that Dr. Tempero expressed the concern that the proposal might encourage dental practitioners to perform general anesthesia in dental clinics, a development that in his opinion held out considerable potential for harm to the public health and welfare, given the fact that such clinics are not adequately equipped to perform such a service safely and effectively. Dr. Richard Jeffers, D.D.S., the dentist member of the Board of Health, expressed agreement with the comments of Dr. Wahl.

Dr. Lawrence Lefler, the podiatrist member of the Board of

Health, stated that the current trend in anesthesia is toward hospital-based anesthesia care rather than office or clinic-based anesthesia care. However, Dr. Lefler added that concerns about the implications of the proposal for anesthesia care in dental and podiatric offices should not be the focal point of the discussion on the CRNA's proposal.

Dr. Weaver then asked Dr. Jeffers whether or not untrained people are performing anesthesia in dental offices. Dr. Jeffers indicated that dental anesthesia is always provided by qualified personnel, and that there is no need to change the way anesthesia is currently conducted in dental offices.

At this juncture, a member of the audience, who identified herself as a dentist from Broken Bow, expressed support for the idea of allowing CRNA's to provide limited anesthesia services in dental clinics. This dentist stated that such services should be limited to conscious sedation only. This dentist stated that this would be of great benefit in the provision of dental anesthesia to mentally retarded persons. The presence of a CRNA would facilitate safer and more effective control of these persons during the provision of dental care. This dentist stated that the only alternative is to send these persons to a hospital setting for their dental care, which can be very expensive.

Dr. Charles Gregorius responded to these comments by stating that the hospital environment is the best place to take uncooperative patients. He stated that hospitals will be more likely to have the necessary equipment to meet whatever

contingencies might arise in the treatment of uncooperative patients, including the use of general anesthesia, should the need arise.

Dr. Gregorius stated that even if one assumes the desirability of establishing CRNA privileges in dental offices, the current proposal is not the best way to accomplish this. He stated that the best way to do this would be through an amendment to the rules and regulations of the current dental statute rather than by seeking to make statutory changes. Dr. Jeffers concurred with this statement. Dr. Jeffers stated dentists seldom do general anesthesia anyway, and that there is no reason for great concern about the provision of anesthesia in dental offices. Dr. Jeffers added that the dental statute has already been "cleaned up" as regards the provision of anesthesia in dental clinics. He felt that there is no longer a need to make changes to the dental statute regarding the issue of anesthesia.

A member of the audience who identified himself as Dr. Leon Books, a medical doctor from Broken Bow, conveyed the concerns of Dr. Doak Doolittle regarding the issue of access to anesthesia care in rural Nebraska. This medical doctor stated that Dr. Doolittle was concerned that the current practice situation of CRNA's in Nebraska adversely affects the ability of the public to gain timely access to anesthesia care. He went on to describe an event that Dr. Doolittle believes illustrates this access problem. According to Dr. Doolittle, a patient with a serious head injury was taken to a hospital in Kearney for surgery. The

neurosurgeon who was to have performed surgery on this patient refused to perform the surgery because there was no anesthesiologist present, and he did not want to accept the responsibility for supervising the services of the CRNA's that were in residence at the hospital. The patient was then flown to Lincoln for surgery. Dr. Doolittle felt that this event shows how the current situation can cause delays in receiving care, delays that could lead to loss of life. Dr. Doolittle believes that removing the requirement that medical doctors must supervise what CRNA's do would prevent such delays in receiving care as is described above.

Dr. Gregorius responded to these comments by stating that there is no corpus of law that clearly defines who is liable for the specific acts that constitute the provision of anesthesia. Liability is determined by the facts of each specific case. Dr. Gregorius then turned to the example presented by Dr. Book on behalf of Dr. Doolittle. Dr. Gregorius stated that he would need to have more information from the neurosurgeon as to why the neurosurgeon in question decided not to perform surgery than was presented by Dr. Book before he would be willing to believe that this neurosurgeon had indeed refused to perform surgery because of liability concerns. Dr. Gregorius then asked whether or not the neurosurgeon in question might not have refused to perform surgery because in his judgment the severity of the case required the presence of an anesthesiologist.

At this juncture an attorney representing the CRNA's stated

that the current CRNA proposal seeks to clarify the liability situation surrounding the provision of anesthesia services. He stated that current statutes are unclear, and that the lack of clarity has resulted in malpractice suits against CRNA's.

Dr. Weaver then spoke on the issue of supervision of CRNA's by medical doctors. Dr. Weaver stated that the unique skills and competencies of medical doctors are needed to provide proper care for severely ill patients and in emergency cases during surgical procedures involving anesthesia. He stated that CRNA's do not have sufficient medical training to practice independently.

Patricia McQuillan stated that there are not enough anesthesiologists in rural areas, and that the proposal would help rural Nebraskans gain better access to surgical care.

At this juncture, Chairperson Shapiro asked for discussion on the best way for the board members to formulate their recommendations on the proposal. The Board members were given the option of formulating their recommendations in a single motion or in four motions that would be based on the four criteria of the credentialing review statute. Dr. Lefler suggested that the Board members vote on a single motion based on the advice of the 407 subcommittee of the Board of Health. The board members adopted this suggested procedure. Carl Maltas then moved that the Board members endorse the advice of the 407 subcommittee which was to recommend against approval of the proposal. Ed Schlacter seconded the motion. Voting aye were Allington, Jeffers, Lefler, Maltas, Schlachter, Wahl, and Weaver.

Voting nay were Blair, Gilmore, Marcum, McQuillan and Williams. Dr. Shapiro abstained from voting. By this action the Board members endorsed the action of the 407 subcommittee which was to recommend against approval of the proposal.