STATE OF NEBRASKA

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

MEMORANDUM

TO: Senator Donald Wesely

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

SUBJECT: Recommendations Regarding a Change in Scope of Practice of Dental Hygienists

DATE: January 3, 1986

Introduction

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

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

However, the statute gives little guidance as to what criteria should apply to a proposal for a change in the scope of practice of a profession or occupation currently regulated by the state. Each technical committee has had to determine an appropriate way to apply the intent of LB 407 in these circumstances. In general, the committee attempted to focus its attention on the question of harm to the public resulting from the current situation (i.e., the perceived problems that gave rise to the proposal for a change in the scope of practice) and of the potential harm or benefit to the public resulting from enactment of the change. The committee was, in effect, comparing a real and a hypothesized environment and endeavoring to determine which of those provided the best balance of public protection and cost-effective regulation.

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

I have attempted to identify each of these elements in the committee report, and I have scrutinized the application, and the evidence and testimony submitted by all parties. In making my recommendations, therefore, I have reviewed the same material that was used by the technical committee. But I have also been guided by the intent of LB 407 to provide a uniform application of a broad philosophy of regulation to all applications. I take this philosophy as one that views state regulation as a means of last resort. This philosophy finds the necessity for regulation to rest almost exclusively in the need to protect the health, safety, and welfare of the public from the prospect of widespread and significant harm. It seeks to balance this necessity against the very real economic and social costs of regulation, such as restriction of competition, potential increases in the cost of health care, limitation of the availability and accessibility of services, and increases in the size and cost of state government.

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

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

Recommendations

In their application the dental hygienists proposed new definitions of three levels of supervision, and proposed that dental hygienists be permitted to practice under general supervision in some instances, and to practice in an expanded group of work settings. The proposal further sought to allow dental hygienists to administer and monitor nitrous oxide analgesia and block and infiltration local anesthesia.

The technical review committee recommended that dental hygienists be permitted to practice under general supervision, with the Board of Dental Examiners being charged with the responsibility for recommending rules and regulations specifying appropriate work settings. The committee also recommended that dental hygienists be allowed to administer local anesthesia and to monitor nitrous oxide under the indirect supervision of a dentist. Other recommendations were made by the technical committee regarding supervision by a dentist and appropriate training for dental hygienists administering local anesthesia.

I concur with the recommendation that dental hygienists be allowed to function under general supervision in some instances, but do not agree with the recommendation concerning administering local anesthesia. Although the technical committee did not explicitly address the monitoring of nitrous oxide, I recommend that dental hygienists be allowed to do so.

Discussion

In making this recommendation, I would like to set forth a number of key assumptions and interpretations I have made regarding the proposal. Some of these were alluded to in testimony, but they were not, to my satisfaction, made explicit for the record. My support of the committee findings is, in large measure, contingent upon the validity of these assumptions and interpretations. The Legislature might consider incorporation language to clarify certain of these issues.

First, I assume that, contrary to an early statement by a representative of the dentists, general supervision is not the same as no supervision. Although general supervision does not require the immediate physical presence of the dentist, it requires the active involvement of a dentist who maintains the ultimate responsibility for the patient's care.

Next, I assume that dental hygienists would always perform services, even under general supervision, on a case-by-case basis rather than under a general grant of authority. Just as a patient receiving nursing care always has an admitting physician, a patient receiving dental hygiene services would have an "admitting" dentist.

In line with the above, I would expect that the dentist and his patient have a bona fide relationship prior to the authorization of services by a dental hygienist or immediately following the initiation of limited services by a dental hygienist.

In situations where dental services are being provided to residents of nursing homes and similar institutions, both the dentist and dental hygienist might be employees (full-time, part-time, or consultant) of the nursing home itself or the hygienist might be employed by the dentist who in turn has a contractual relationship with the nursing home. In either case, the dentist would still be responsible for the dental care of all patients, and would still have to authorize all hygiene services.

The key issue at the root of a number of these assumptions and interpretations is whether the practice of dental hygiene would become, by virtue of approval of this proposal, an independent practice profession. Dental hygienists have often stated that it is not their desire to seek independent practice, and such practice is clearly beyond their present scope. I support this view.

I disagree with the committee's recommendation concerning the administration of local anesthetics by the hygienist for the following reasons:

First, the proposal and subsequent testimony do not present a compelling need for such a delegation of the dentist's authority. The proposal is for the dental hygienist to be able to administer local anesthesia under indirect supervision; i.e., while the dentist is on the same premises. This is put forth as an important way to save the dentist's time so more patients can be seen. And yet, the testimony does not reflect a single dentist in practice (as opposed to university-based) saying that such a time saving was important. The dental organization is firmly opposed. As such a practice could only be used to the extent that a supervising dentist believed it was important and authorized it, there does not seem to be a need in Nebraska.

Second, there is significant opposition to the proposal, both on the technical committee and in the professional community. The vote was split four to three, with opposition from the committee chairman, an optometrist, as well as strong opposition from the anesthesiologist physician and the dentist/oral surgeon. These three represented three out of the four non-hygienist health professions on the committee. In addition, the dental society, the medical society, and the society of anesthesiologists all are on record as opposing this in Nebraska. This is not a conducive atmosphere for making such a change.

I would draw attention to the fact that neither of these reasons go to the medical safety issues directly. The evidence is that the administration of local anesthesia is a relatively safe procedure; it is proposed only to be done with the dentist immediately available; and hygienists have been allowed this privilege in other states without apparent problems. California has allowed hygienists to administer local anesthesia for ten years. A recent study showed that 89% of hygienists were being given this task in California. Interestingly this was primarily in specialty practices, and local anesthesia was delegated less frequently in general dental practice. In Nebraska, the general dental practice is predominant. (Journal of Public Health Dentistry, Winter 1984)

Neither the opposition of other groups nor the lack of a compelling need would necessarily be sufficient for the Department to recommend against. But together they suggest a delegation of authority whose time has not yet come.

Finally, although the technical committee report did not speak to the monitoring of nitrous oxide, I believe the sense of the committee was to allow it under indirect supervision. This is different from the local anesthesia issue because all agree that the dentist should initiate nitrous oxide and the task of monitoring is much less involved. I believe that dental hygienists should be able to monitor nitrous oxide under indirect supervision.

GFW/blw

Enclosure

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