FINAL Report of Findings & Recommendations

By the

Nebraska Board of Health

on the Application

for a Change in Scope of Practice

of the

Nebraska Optometric Association

to the

Director of Health

and the

Nebraska Legislature

November 20, 1989

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Introduction

The Nebraska Regulation of Health Professions Act created a three-tier process for the review of proposals pertaining to the credentialing of health occupations. These three tiers are the technical review committees, the Nebraska board of Health, and the Director of Health. The board of Health reviews specific proposals for credentialing only after the technical committees have completed their reports on these proposals. After the Board completes its reports on the proposals, these reports, and those of the technical committees are presented to the Director of Health, who in turn prepares his own report on them. All reports are submitted to the Legislature for its consideration.

Each of these three review bodies issue reports that represent the advice of their membership on the proposals in question. Each report is a separate, independent response to the proposals, and is in no way dependent upon the reports that have preceded it.

The Board of Health reviews credentialing proposals only after receiving a preliminary recommendation on each proposal from an advisory subcommittee selected from its own membership. This subcommittee met on November 9, 1989, in order to give the full Board its advice on the proposal of the Optometrists. The full Board of Health then met on November 20, 1989, and formulated its own, independent report on this proposal. The following pages constitute the body of this report.

Board of Health Recommendations

The applicant group in its proposal sought to add the right to use oral medications for the treatment for eye diseases to optometric scope of practice. The applicants also sought to add the right to treat glaucoma with oral and topical agents to optometric scope of practice. The technical committee recommended approval of a version of the proposal amended in such a way as to require optometrists to communicate and collaborate with ophthalmologists prior to treating a patient's glaucoma. The 407 subcommittee of the Board of Health recommended that the full Board recommend approval of the proposal as amended by the technical committee. The full Board of Health approved the proposal as amended as well.

The Deliberations of the 407 Subcommittee

The discussion of the 407 Subcommittee on the proposal revealed that the subcommittee members were torn between concerns about the quality of eye care and the need to provide all Nebraskans with access to eye care. Dr. Shapiro expressed the opinion that the members of the technical review committee placed too much emphasis on the issue of access to eye care and did not give sufficient attention to the issue of quality of care. Dr. Shapiro stated that optometrists do not have sufficient clinical training or experience to treat such serious eye diseases as glaucoma safely and effectively. He stated that because of these concerns, approving the current optometry proposal would lower the quality of eye care services in Nebraska. Dr. Shapiro stated that his review of the report of the technical committee on the proposal convinced him that the proposal would not have received approval of a majority of the technical committee members if it had been considered on its own merits.

Dr. Shapiro expressed skepticism about the amendment (requiring collaboration and consultation with an ophthalmologist by an optometrist before the latter could treat glaucoma) that resulted from the technical committee deliberations. He stated that this amendment would do nothing to protect the public from potential harm that might result from the proposal.

Dr. Robert Livingston, testifying for the applicant group, responded to Dr. Shapiro's comments by stating that the amendment in question could provide the public with additional assurance of quality eye care. Dr. Livingston stated that the provisions of this amendment could be built upon the strong collaborative relationship that already exists between optometrists and ophthalmologists. Dr. Livingston then stated that the profession of optometry is committed to the continued improvement of the education and training of its membership. He stated that, if anything, optometrists overeducate themselves, and that optometrists would not seek to perform services and functions that they are not prepared to do safely and effectively.

Dr. Shapiro stated that optometrists lack sufficient training to adequately judge the contraindictations for various treatments for eye diseases. He also stated that optometrists do not see enough of such serious eye diseases as glaucoma in their day-to-day practice to fully know and understand the complexity of such diseases.

Dr. Livingston responded by stating that he diagnoses glaucoma cases "every day," and that his optometry education and clinical training has taught him to evaluate the impact of medications on patients. He stated that the pharmacological training of optometrists compares favorably to that of other health professionals.

Dr. Williams responded to Dr. Shapiro's comments about optometric education and training by stating that optometrists are not going to risk losing their practices by attempting to perform functions that they are not prepared to do safely and effectively. He stated that like other health professionals optometrists function within a "comfort zone" that comprises the sum total of the functions and procedures that they feel confident they can provide safely and effectively. He added that optometrists would not attempt to treat patients who have problems that are outside of the optometrists' "comfort zone." Instead, they would refer such cases to an ophthalmologist.

Dr. Masek expressed the opinion that optometrists may have a good academic background pertinent to the treatment of eye diseases, but that their clinical experience does not match that of medical doctors. Dr. Timperley then asked Dr. Masek whether or not she would be confident providing eye care. Dr. Masek responded by stating that she always refers patients with eye care problems to ophthalmologists, and that she would not feel confident attempting to treat eye diseases.

Dr. Livingston then stated that most general practitioners in rural areas feel the same reluctance to treat eye diseases, and that these practitioners frequently lack the technology and skills to provide such care. He added that this is why it is important to grant optometrists the right to treat such eye diseases as glaucoma.

Dr. Masek stated that maps showing the relative distribution of ophthalmologists and optometrists in Nebraska do not support the applicant group's case that the current system of eye care is preventing the public in rural areas from having the best possible access to eye care.

Dr. Livingston responded to these comments by stating that the maps in question came from the opponents of the proposal, and that the information on these maps should be evaluated with that fact in mind. Dr. Williams stated that the information on the maps in question was misleading. He stated that these maps do not reveal the frequency of physician visits to various clinics in rural areas. He stated that some physician visits occur only once a month, and in some cases, even less frequently. He also stated that he sees people every day who are in need of immediate treatment. These patients should not have to wait until a visiting physician arrives in their town before getting the eye care they need.

The subcommittee members discussed the effectiveness of medications in the treatment of such eye diseases as glaucoma. Dr. Shapiro stated that the applicant group has exaggerated the significance of oral and topical medications in the treatment of glaucoma. He stated that surgery is the most effective method of treating glaucoma, and that treatment of this disease with drugs alone will do nothing more than delay the onset of blindness. However, Dr. Gerald Christiansen in testifying for the opponents stated that glaucoma can be managed with the use of medications, and that the competence and experience of the individual practitioner plays a critical role in the degree to which the management of this disease is successful. He stated that glaucoma is a very complex disease, and that its successful treatment requires extensive academic and clinical preparation. Dr. Christiansen stated that glaucoma is recognized as a subspecialty of ophthalmology. Dr. Christiansen expressed skepticism as to the ability of optometrists to manage glaucoma cases in as competent a manner as ophthalmologists.

Janet Coleman asked whether or not there are other significant eye problems that should be discussed. Dr. Livingston responded by stating that the removal of foreign bodies is a major concern in eye care. Dr. Masek expressed the opinion that foreign body removal should be part of optometric scope of practice. Dr. Masek stated that optometrists provide an important service in this area.

Janet Coleman asked for comments on which party would assume liability under the system of communication and collaboration proposed by the technical committee to govern the relationship between optometrists and ophthalmologists vis-a-vis the treatment of glaucoma. Dr. Shapiro stated that his understanding of this proposed system of co-management was that physicians would be liable because the proposed system would place physicians in a supervisory capacity over optometrists as regards glaucoma care. However, Janet Coleman stated that there is nothing in this co-management system as described in the technical committee report that would require a physician to participate in such a process against his or her will.

Dr. Shapiro stated that the co-management system described in the report would not work. In his opinion, this concept was too vague and too poorly thought-out to work. He stated that the meaning of the expression "communication and collaboration" contained in the motion that the committee used to create this concept was not at all clear.

Dr. Shapiro then moved that the 407 subcommittee recommend that the proposal be referred back to the technical committee for further review. Dr. Masek seconded the motion. Dr. Shapiro stated that the technical committee needed to clarify the meaning of its recommendation on "communication and collaboration" in glaucoma care before other review

bodies could conduct a meaningful review of the proposal. Dr. Shapiro added that there was a need for another public hearing because the opponents need to have an opportunity to comment on the amended version of the proposal. Dr. Williams and Janet Coleman expressed opposition to this motion. They stated that no purpose would be served by another technical committee review of the proposal. Dr. Lawrence Lefler, the chairman of the technical committee, expressed the opinion that a second review would not produce anything significantly different from the first one. David Montgomery, principal staff person with the credentialing review program, stated that the 407 subcommittee does not have the authority to refer a proposal back to a technical committee because the applicant group is the sole arbitrator of the fate of its proposal. Mr. Montgomery then called the roll. Voting aye were Masek and Shapiro. Voting nay were Williams, Coleman, and Timperley. The motion failed.

The subcommittee members then voted on the four criteria of the credentialing review statute as they pertain to the proposal for a change in optometric scope of practice. Dr. Williams moved that, "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. Masek seconded the motion. Voting aye were Timperley, Williams, and Coleman. Voting nay were Shapiro and Masek. By this action the subcommittee members determined that the proposal satisfied the first criterion.

Dr. Williams moved that, "The proposed change in scope of practice does not create a significant new danger to the health, safety or welfare of the public." Dr. Timperley seconded the motion. Voting aye were Timperley,

Williams, and Coleman. Voting nay were Shapiro and Masek. By this action the subcommittee members determined that the proposal satisfied the second criterion.

On the third criterion, Dr. Timperley moved that, "Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public." Dr. Williams seconded the motion. Voting aye were Timperley, Williams, and Coleman. Voting nay were Shapiro and Masek. By this action the subcommittee members determined that the proposal satisfied the third criterion.

Dr. Williams moved that, "The public cannot be effectively protected by other means in a more cost-effective manner." Dr. Timperley seconded the motion. Voting aye were Timperley, Williams, and Coleman. Voting nay were Shapiro and Masek. By this action the subcommittee members decided to recommend that the full Board of Health recommend approval of this proposal.

Dr. Timperley moved that the subcommittee endorse the recommendation of the technical committee which stated, "patients be fully informed about the educational background and qualifications of those who provide eye care." Dr. Masek seconded the motion. Voting aye were Masek, Shapiro, Timperley, Williams, and Coleman. The motion passed.

The Deliberations of the Full Board of Health

The members of the full Board listened to testimony from both proponents and opponents of the proposal. Dr. Robert Livingston, an optometrist from Nebraska City and representative of the applicant group on the technical committee, presented proponent testimony. Dr. Livingston stated that optometry is ready to expand its scope of practice as described in the proposal. He stated that the education of optometrists has improved to the point where this profession is prepared to take on the additional

responsibilities described in the proposal. Dr. Livingston said that optometry has a good "track record" in the area of eye care, and that no harm to the public will occur as a result of the proposed change in scope of practice. Dr. Livingston concluded his testimony by stating that the Governor's Conference on Rural Health recommended that nonmedical health care providers expand their scopes of practice because there is a need to supplement and extend scarce medical resources in rural areas of Nebraska. Dr. Livingston stated that the current optometric proposal is consistent with these goals.

Dr. Gerald Christiansen, an ophthalmologist at the University of Nebraska Medical Center in Omaha, presented opponent testimony. Dr. Christiansen stated that the review process of the technical committee was unfair to the opponents. Dr. Christiansen stated that the opponents were not given a chance to comment on the amendment to the proposal that was developed by the technical committee at its fourth meeting. Dr. Christiansen stated that given the fact that the amendment in question was important to the outcome of the technical committee vote, another public hearing on the amended version of the proposal should be held by the technical committee in order to provide opponents with an opportunity to testify on the proposal as amended.

Dr. Christiansen also expressed concern about the fact that one member of the technical committee did not attend the public hearing on the proposal. Dr. Christiansen stated that because this committee member did not attend the hearing he could not be familiar with the testimony presented on the proposal, and therefore he could not have made an informed decision when he voted on the proposal at the committee's fourth meeting.

Dr. Lefler, chairman of the optometry technical committee, responded to Dr. Christiansen's comments on the conduct of the review process of the technical committee by stating that the committee gave all interested parties an opportunity to present testimony on the proposal. Dr. Lefler stated that the amendment in question was devised by the committee in order to address some of the opponent concerns about the proposal. Dr. Lefler added that he would have supported the proposal regardless of the amendment.

Dr. Lefler stated that there would be no benefit to holding another public hearing. He stated that such a proceeding would be unlikely to generate any new information, and that consequently, holding a second public hearing would be a waste of the public's time.

Dr. Shapiro, a medical doctor and the Chairman of the Board of Health, stated that the challenge to the integrity of the process is not called for, and that the Board members are growing weary of this kind of commentary. Janet Coleman stated that there is nothing unusual or inappropriate inherent in the amendment process that occurred at the technical committee level.

Dr. Charles Weaver, the representative of the osteopaths on the Board of Health, also expressed some concerns about the amendment requiring collaboration and consultating by an optometrist with an ophthalmologist prior to the treating of glaucoma. He stated that he personally would not want to be placed in a situation where he would have to "rubber stamp" what another health professional does. Dr. Weaver was concerned about being held liable for another health professional's actions. Dr. Weaver also stated that the amendment in question would subordinate optometry to ophthalmology, and that this would set a bad precedent for relationships between other licensed health professions.

Dr. Weaver expressed the concern that most Board members lack sufficient knowledge about optometric training and education to judge the appropriateness of the current proposal. He then suggested that what is needed is a definition of the minimum standards of training and education needed in order to treat glaucoma. Meeting these standards would be prerequisite for any optometrists seeking permission to treat glaucoma. Dr. Weaver indicated that in this idea these standards would be specifically stated in the optometric licensing statute.

Dr. Weaver expressed confidence in the professional integrity of the members of the optometric profession. He expressed his agreement with a statement that appeared in the 407 subcommittee report by Dr. Williams, the representative of the optometrists on the Board of Health, in which Dr. Williams stated that optometrists would not practice beyond their "comfort zone".

Dr. Shapiro then expressed his concerns about the amendment to the proposal. Dr. Shapiro stated that the expression "communicate and collaborate" contained in the amendment is virtually meaningless. He expressed concerned about the liability implications of this amendment for medical doctors. He added that the technical committee provided no mechanism by which their idea could be implemented. Dr. Shapiro then stated that the medical community was not consulted as regards the development of this amendment, and that he felt that this was not fair.

Janet Coleman responded to Dr. Shapiro's comments by stating that regardless of what an advisory body recommends, or how an advisory body words a recommendation, the Legislature will define both the meaning and the applicability of a given recommendation.

Dr. Lefler also responded to Dr. Shapiro's criticisms of the technical committee by stating that the technical committee's reason for making the amendment was due to concerns about the ability of optometrists to manage cases requiring long-term care. Dr. Lefler stated that the majority of committee members were confident that optometrists could handle acute glaucoma cases safely and effectively.

Regarding the meaning of the expression "community and collaborate" contained in the amendment, Dr. Lefler stated that in "the real world" optometrists and ophthalmologists communicate and collaborate all the time on an informal basis regarding eye care cases, and that this system of mutual consultation could easily be extended to embrace glaucoma care. Dr. Shapiro responded to Dr. Lefler's comments by stating that the concept contained in the amendment needs far more clarification because it is being proposed as a formal, statutory mechanism to define the relationship between two health professions.

Dr. Joe Williams also commented on the amendment by stating that he already consults with ophthalmologists on a routine basis regarding glaucoma care, and that this system of consultation has worked very well. Dr. Williams added that optometrists have been allowed to treat glaucoma in West Virginia for thirteen years without any system of collaboration at all. He stated that in these thirteen years not one malpractice case has occurred as a result of optometrists having this privilege.

The Board members then took up the four criteria of the credentialing review statute that pertains to the proposal. Dr. Lefler moved that, "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. Williams seconded the motion. Voting aye were Blair, Coleman, Jeffers, Lefler, Marcum, McQuillan, Schlachter, Weaver, and Williams. Voting nay was Masek. Shapiro abstained from voting. By this action the Board members determined that the proposal satisfied the first criterion.

Dr. Lefler moved that, "The proposed change in scope of practice does not create a significant new danger to the health, safety or welfare of the public." McQuillan seconded the motion. Voting aye were Blair, Coleman, Jeffers, Lefler, Marcum, McQuillan, Schlachter, Weaver, and Williams. Voting nay was Masek. Shapiro abstained from voting. By this action the Board members determined that the proposal satisfied the second criterion.

On the third criterion, Dr. Williams moved that, "Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public." McQuillan seconded the motion. Voting aye were Blair, Coleman, Jeffers, Lefler, Marcum, McQuillan, Schlachter, Weaver, and Williams. Voting nay was Masek. Shapiro abstained from voting. By this action the Board members determined that the proposal satisfied the third criterion.

Coleman moved that, "The public cannot be effectively protected by other means in a more cost-effective manner." Dr. Williams seconded the motion. Voting aye were Blair, Coleman, Jeffers, Lefler, Marcum, McQuillan, Schlachter, Weaver, and Williams. Voting nay was Masek. Shapiro abstained from voting. By this action the subcommittee members decided to recommend approval of the proposal.