

**REPORT OF RECOMMENDATIONS AND FINDINGS  
ON THE ACUPUNCTURISTS' PROPOSAL FOR A CHANGE IN SCOPE  
OF PRACTICE**

By the Nebraska  
State Board of Health

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

September 16, 2013

## Table of Contents

<b>Part One: Preliminary Information.....</b>	<b>Pages 3-4</b>
<b>Part Two: Summary of Recommendations on the Proposal.....</b>	<b>Page 5</b>
<b>Part Three: Summary of the Acupuncturists' Proposal.....</b>	<b>Page 6</b>
<b>Part Four: Discussion on the Issues by the Board Members.....</b>	<b>Pages 7-8</b>
<b>Part Five: Recommendations of the Full Board of Health.....</b>	<b>Pages 9-10</b>

# **Part One: Preliminary Information**

## **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 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 written reports on the same 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.

## **The Members of the Nebraska State Board of Health**

Janet Coleman (public member)

Luisa Rounds, RN, BSN

Paul Salansky, OD (Secretary)

Wayne Stuberg, PhD, PT

John Tennity, DPM

Gary Westerman, DDS

Daryl Wills, DC (Vice Chair)

Edward Discoe, MD

Theodore Evans, Jr., DVM

Russell Hopp, D.O.

Diane Jackson, APRN

Kenneth Kester, PharmD, JD

Dale Michels, MD (Chair)

Debra Parsow (public member)

Roger Reamer, MBA (hospital administrator)

Rich Robinson, PE

Jeromy Warner, PsyD, LP

## **Meetings Held**

The Meeting of the Credentialing Review Committee of the Board, Held August 30, 2013

The Meeting of the Full Board of Health, Held September 16, 2013

## **Part Two: Summary of Recommendations on the Proposal**

### **Summary of the Technical Review Committee Recommendations including Ancillary Recommendations**

#### **Committee Action on the Entire Proposal:**

The committee members approved an amended version of the applicants' proposal.

#### **Ancillary Recommendations approved by the Committee Members:**

- That referral criteria for Licensed Acupuncturists be considered by Nebraska.
- That Licensed Acupuncturists be required to develop and utilize an informed consent intake form for all first-time clients.
- That the rules and regulations for Licensed Acupuncturists be updated, and that a component of any updating process should include the replacement of the examination currently specified in these rules and regulations with the more up-to-date biomedical examination.
- That the continuing education units for Licensed Acupuncturists be reviewed every two years to ensure that they are current and appropriate.
- That the continuing education units of licensed professionals other than Licensed Acupuncturists who are also permitted to provide acupuncture services in Nebraska be reviewed periodically to ensure that they are current and appropriate.

### **Summary of Board of Health Recommendations including Ancillary Recommendations**

#### **Board action on the entire proposal:**

The Board members approved an amended version of the applicants' proposal. The amendment is described on page six of this report.

#### **Board actions on ideas for ancillary recommendations:**

The Board members approved the following ancillary recommendations:

- Nebraska should adopt standardized referral criteria for Licensed Acupuncturists, and these professionals should be required to adopt and utilize a standardized informed consent intake form for all first time clients.
- The rules and regulations for Licensed Acupuncturists should be updated, and such an updating process should include the replacement of the examination specified therein by one that is more current.

## **Part Three: Summary of the Acupuncturists' Proposal**

Applicant representatives stated that approval of the proposal would have the effect of eliminating the current requirement that a Licensed Acupuncturist must document that each potential new patient has been examined by a physician within the previous ninety days before they can accept them as a patient. **(The Applicants' Proposal, Page 4)**

***The proposal was amended during the technical committee review to add the following wording:***

“An acupuncturist licensed under the Uniform Credentialing Act shall refer a patient to an appropriate practitioner when the problem of the patient is beyond the training, experience, or competence of the acupuncturist.”

## **Part Four: Discussion on the issues by the Board Members**

### **Comments by Jeromy Warner, PsyD, LP, Chairperson of the Acupuncturists' Technical Committee**

Dr. Warner provided an overview of the work of the technical committee. He stated that the issues his committee considered during their review were access to care, education and training of Licensed Acupuncturists, public protection, potential for new harm if the proposal were to pass, information about complaints against Licensed Acupuncturists, and the implications of the amendment to the proposal that would create a reverse referral requirement. Dr. Warner indicated that the applicants successfully addressed committee concerns about the safety of the proposal by presenting information about their new biomedical examination and the course in western medicine that is now required for licensure. He noted that the committee's ancillary recommendations addressed the examination issue and the development of referral criteria for the reverse referral process.

### **Comments by Donna Huber, Lac, on behalf of the applicant group**

Donna Huber, a Licensed Acupuncturist, stated that the current pre-screening requirement does not protect the public from harm. Instead, it merely creates a barrier to accessing the services of a Licensed Acupuncturist. Licensed Acupuncturists have demonstrated that they have the education and training to practice safely and responsibly. National and state regulations for Licensed Acupuncturists are among the most extensive of any health profession. Licensed Acupuncturists are among the highest skilled and educated professionals in health care today.

Ms. Huber went on to state that no one can force someone to go to a physician. Deciding whether or not to go to a physician is a matter of personal choice. The current pre-screening requirement contradicts this basic tenet of American life. It is not the role of government to pick winners and losers by creating unjustifiable barriers to services. Rather, it is to ensure that all credentialed practitioners are sufficiently well trained to provide their services safely and effectively. This enables the public to select a practitioner of their choice from amongst those deemed to be qualified to provide the services they seek.

The current pre-screening requirement has been shown to be ineffective as a means of public protection, which is why so many other jurisdictions have eliminated it. Nebraska needs to do so as well. The applicant group is willing to assist in the drafting and editing of any new disciplinary codes and procedures that might be needed to enhance the safety of their services.

## **Comments by Steven Grasz on behalf of the CEO of the Nebraska Chiropractic Physicians' Association**

Mr. Grasz presented the written comments of Dr. Lou Anderson, CEO of the Nebraska Chiropractic Physicians Association. These comments begin by briefly describing the current applicant proposal and the restrictions placed on their practice under current law. Dr. Anderson's remarks then focused on the reasons why Licensed Acupuncturists have not been allowed direct access to patients. These include their inability to diagnose a patient's overall health condition or to order and interpret lab work. Being able to do these things is important for health professionals to be able to do if they are to have direct access to the public.

Dr. Anderson described a possible alternative to the proposal to address the applicants' concerns about access to their services. This is the idea of expanding the current referral list to include chiropractic physicians. This would add 620 active practitioners to that list and could lower the cost to patients. Texas has adopted this approach, and it is an option Nebraska should consider.

Dr. Anderson raised two additional concerns about the issues under review. One of these concerns is that the proposal might open the door to Licensed Acupuncturists engaging in the full practice of Chinese medicine. The second concern is the lack of discussion during the review process on the subject of 'dry needling'. This is an important matter that should have been included as part of the discussion on the issues under review.

Dr. Anderson concluded his remarks by stating that because of the concerns about the lack of diagnostic abilities on the part of Licensed Acupuncturists and their intent to practice Chinese medicine the current proposal should not be approved.

### **Discussion on the Issues by the Board Members**

Dr. Warner informed the Board members that Licensed Acupuncturists must take a biomedical course and pass a three-part biomedical examination as part of their requirement to become licensed. The purpose of these items is to prepare them to make referrals to other health professionals, and to know when such referrals are indicated. Comment was made that the amendment to the proposal would require Licensed Acupuncturists in Nebraska to refer patients to other providers under certain circumstances, if the proposal were to pass. Comment was made that other states such as Minnesota already require this and have developed practice guidelines to assist them in doing this.

Concern had been raised earlier in the meeting about the proposal opening up a door to a full scale Chinese medicine practice in Nebraska. Ms. Coleman asked whether the applicants currently practice Chinese medicine. Ms. Huber responded that Licensed Acupuncturists already do some Chinese medicine, but that most of their practice is acupuncture. Dr. Tenny commented that the proposal under review has nothing to do

with anything except acupuncture, and would have no impact on whether Chinese medicine is practiced in Nebraska or not.

Dr. Discoe asked the applicants how many health providers provide acupuncture services in Nebraska. Ms. Huber responded that she does not have information to answer that question, but did say that only Licensed Acupuncturists provide these services at the highest and safest level. She added that all Licensed Acupuncturists are trained in the 'clean needle' technique, but that many other licensed health professionals who provide acupuncture services are not trained in this technique. But these professionals are allowed to have direct access to the public, whereas Licensed Acupuncturists are not.

The Board members were informed that there are only two states that require pre-screening by other licensed health professionals before a patient can receive services from a Licensed Acupuncturist, and these are Mississippi and Nebraska. Ms. Huber commented that other states have found alternative means of addressing the public safety concerns that are far less restrictive.

Comment was made that one option for dealing with the public protection issue raised by this proposal is to expand the list of licensed health professions to which Licensed Acupuncturists could send potential clients to satisfy the pre-screening requirement. The applicants responded to this idea by stating that adding to the list of 'gatekeepers' is not the answer. The 'gatekeeper' approach has failed and new answers need to be found.

## **Part Five: Recommendations of the Full Board of Health**

### **Board actions on the entire acupuncture proposal:**

The Board members took action on whether or not to approve the applicants' proposal as amended. Voting aye were Coleman, Rounds, Salansky, Stuberg, Westerman, Discoe, Jackson, Kester, Michels, Parsow, Warner, and Robinson. Voting nay were Hopp and Wills.

By this action the Board members recommended approval of the applicants' proposal as amended.

### **Board actions on the following ideas for ancillary recommendations:**

Nebraska should adopt the standardized referral criteria for Licensed Acupuncturists currently used by the State of Minnesota, and Licensed Acupuncturists should be required to adopt and utilize the standardized informed consent intake form for all first time clients that is currently used by the State of Minnesota.

The rules and regulations for Licensed Acupuncturists should be updated, and such an updating process should include the replacement of the examination currently specified in these rules and regulations with the more up-to-date biomedical examination, or what is currently recommended by the NCCAOM.

The Board members took action on both of these ideas for ancillary recommendations in one roll call vote, as follows:

Voting aye were Coleman, Wills, Salansky, Stuberg, Discoe, Jackson, Kester, Michels, Parsow, Warner, and Robinson. Voting nay were Hopp, Westerman, and Rounds.

By this action the Board members approved these ideas for ancillary recommendations.

Discussion on these ancillary recommendations revealed that the Board members saw a great need to update current rules and regulations. The examination specified in the current rules and regulations, for example, no longer exists. Pertinent to the issue of referral, the Board members thought that it was important to reinforce the amendment in the proposal that calls for referral to a physician under certain circumstances by recommending that specific referral criteria be developed to assist them in doing this safely and effectively. One Board member expressed concern that the Board members were not shown the exact wording of the proposed referral criteria being proposed. Another Board member commented that the Board will have ample opportunity later in the process to review the legislative bill that comprises the proposal, as well as the proposed rules and regulations, if the proposal passes. Comment can be made on the exact wording of specific items in these documents at those times.