

**THE REPORT OF THE MEMBERS OF THE STATE BOARD OF HEALTH ON THE PROPOSAL TO
REGISTER PHARMACY TECHNICIANS
(September 26, 2005)**

The Recommendations of the Credentialing Review Committee on the Pharmacy Technicians' Proposal

Comments by the Chairperson of the Technical Review Committee

Chairperson Edward Discoe, M.D., began the review on this proposal by asking Dr. Gary Westerman, the Chairperson of the Pharmacy Technicians' Technical Review Committee, to comment on the work of the committee. Dr. Westerman briefly described what happened during each of the five committee meetings. Dr. Westerman informed the Board members that the main issue of this review was the idea of registering pharmacy technicians, and that this concept for credentialing would require that all persons working as pharmacy technicians in Nebraska be placed on a registry. Dr. Westerman informed the Board members that under the terms of the proposal, disciplinary action could be taken against pharmacy technicians found to be in violation of its provisions, and that the State would have the authority to remove offending individuals from the registry if that action were deemed necessary. He went on to state that removal from the registry would have the effect of preventing offending individuals from practicing in Nebraska.

Dr. Westerman stated that the committee recommendations showed that there was general agreement among the committee members that the proposal to register pharmacy technicians was needed in order to protect the public. Dr. Westerman went on to inform the Board members that the principal point of controversy during the review was not the idea of registration per se, but whether or not it would be a good idea to include a mandatory reporting requirement in the registration provisions. He went on to state that some committee members were concerned that applying the concept of mandatory reporting to pharmacy technicians might impose an unfair burden on the members of this profession given the limited amount of education and training they receive. Dr. Westerman informed the committee members that the original draft of the committee report included a statement of concern regarding these concerns about mandatory reporting. He went on to state that during the final meeting, the committee members heard testimony from Department legal staff that addressed these concerns and led to their removal of the statement of concern from the final version of their report. This concluded Dr. Westerman's comments.

Testimony from Interested Parties

Chairperson Discoe then proceeded with the agenda for the meeting by asking the applicant group if they had any comments to make to the Board members. Rick Zarek, R.P., the applicant group representative on the technical committee, came forward to testify. Mr. Zarek began his comments by informing the Board members about the role that pharmacy technicians play in pharmacies. Mr. Zarek stated that pharmacy technicians have become an indispensable part of the delivery system for medications in the modern pharmacy, and that they typically do the actual counting, pouring, compounding, and labeling of medications under the supervision of a pharmacist. Mr. Zarek commented that this enables the pharmacist to spend more time giving information to patients and other health professionals about specific medications, counseling patients regarding the proper use of medications, and monitoring medication therapies than was previously possible. Mr. Zarek went on to inform the Board members that the statute regulating pharmacy technicians states that they may perform those tasks that do not require professional judgement, and that a pharmacist must verify their work.

Mr. Zarek continued his remarks by informing the Board members about problems with the current practice situation of pharmacy technicians in Nebraska. Mr. Zarek stated that drug diversion by members of this profession is a problem. He informed the Board members that states that have established processes to track and discipline pharmacy technicians have found that complaints pertinent to drug diversion against pharmacy technicians are equal to, or greater than, the number of complaints against pharmacists. Mr. Zarek went on to state that the current unregulated practice situation of pharmacy technicians in Nebraska makes our state particularly vulnerable to those practitioners who seek to divert drugs. He commented that currently Nebraska has no method of systematically identifying or tracking pharmacy technicians who violate drug laws, and that this makes Nebraska vulnerable to practitioners from other states that have created processes to track and discipline offenders. He stated that Nebraska needs to create a system to track and discipline pharmacy technicians, and that registering them would be a significant step in that direction.

Dr. Discoe asked Mr. Zarek whether the use of background checks would be helpful in getting information on the activities of individual pharmacy technicians. Mr. Zarek responded that this is something that can be done now, but added that he feels that this approach alone is too limited, and would not be a viable alternative to the proposal.

Dr. Discoe asked Mr. Zarek how the registration process would actually work to protect the public. Mr. Zarek responded that every pharmacy technician in the state would be placed on the registry, and would be subject to disciplinary procedures as defined under the Uniform Licensure Law. Mr. Zarek commented that the full range of disciplinary options would be available to use against any pharmacy technician who has been charged with an offense, and that among these options is the revocation of the privilege to practice their profession in Nebraska.

The Formulation of Committee Recommendations on the Proposal

The Board members then indicated that they were ready to discuss the four criteria. However, at that juncture of the meeting a quorum of members was lacking, which meant that no formal action could be taken on the criteria. The Board members in attendance decided to discuss each criterion and communicate their thoughts to the full Board via this document. The Board members then took up each of the four criteria, beginning with criterion one, which asks whether unregulated practice can clearly harm or endanger the health, safety, or welfare of the public, and the potential for the harm is easily recognizable. Dr. Westerman commented that there is significant potential for harm in the current unregulated situation of pharmacy technicians. Dr. Daryl Wills commented that the risk of harm arises from those pharmacy technicians coming to Nebraska from other states. He stated that currently we have no method of identifying who these people are, or in what kinds of activities they are engaging.

The Board members commented on the second and third criterion, which state that regulation of the profession does not impose significant new economic hardship on the public, and that the public needs, and can reasonably expect to benefit from assurance of initial and continuing professional ability by the state. Dr. Westerman and Dr. Discoe commented that the cost of the proposal would be minimal, and that the benefits associated with the public protection it would provide far outweigh these minimal costs.

Pertinent to the fourth criterion, which states that the public cannot be effectively protected by other means in a more cost-effective manner, Dr. Wills stated that the proposal would be the best way of addressing the problems under review. Dr. Westerman commented that there is no better way of addressing the problems with the current situation, and that he hopes that the full Board of Health would recommend in favor of the proposal.

The Recommendations of the Full Board of Health on the Proposal

Comments by the Chairperson of the Credentialing Review Committee of the Board

Dr. Edward Discoe, Chairperson of the Board's Credentialing Review Committee, asked Dr. Westerman, Chairperson of the Pharmacy Technicians' Technical Review Committee, to comment on the review process of his committee. Dr. Westerman briefly described the five meetings that were held by his committee. Dr. Westerman commented that the technical committee members unanimously recommended the approval of the applicants' proposal.

Dr. Discoe then commented on the review process on this proposal by the Board's Credentialing Review Committee. Dr. Discoe stated that the members of this committee heard testimony from interested parties and then discussed the four criteria pertinent to new credentialing proposals. He also noted that the committee members could not formally apply the four criteria to the proposal because there was not a quorum of members present at that time during the meeting.

Comments by Interested Parties

Dr. Jim Schiefen, the Chairperson of the Board of Health, asked whether there were any interested parties who wished to come forward to address the Board members on the issues raised by the proposal. There was no response to this request for input from interested parties. Dr. Schiefen then asked whether there were Board members who wished to comment on these issues. There being no response from the Board members, Dr. Schiefen then asked the Board members if they were ready to apply the four criteria pertinent to new credentialing proposals to the pharmacy technicians' proposal. The Board members indicated that they were ready to take action on these four criteria.

Formulation of Recommendations by the Full Board of Health Using the Four Criteria

Dr. Schiefen asked for a motion on the first criterion. Dr. Discoe moved and Dr. Spry seconded that the proposal satisfies this criterion. The first criterion states as follows:

Unregulated practice can clearly harm or endanger 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.

Voting aye were Augustine, Discoe, Forney, Heiden, Lazure, List, Reamer, Salansky, Sandstrom, Schafer, Schiefen, Spry, Westerman, and Wills. There were no nay votes or abstentions. The motion passed.

Dr. Schiefen asked for a motion on the second criterion. Dr. Discoe moved and Dr. Wills seconded that the proposal satisfies this criterion. The second criterion states as follows:

Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are consistent with the public welfare and interest.

Voting aye were Augustine, Discoe, Forney, Heiden, Lazure, List, Reamer, Salansky, Sandstrom, Schafer, Schiefen, Spry, Westerman, and Wills. There were no nay votes or abstentions. The motion passed.

Dr. Schiefen asked for a motion on the third criterion. Dr. Discoe moved and Dr. Spry seconded that the proposal satisfies this criterion. The third criterion states as follows:

The public needs, and can reasonably expected to benefit from, assurance of initial and continuing professional ability by the state.

Voting aye were Augustine, Discoe, Forney, Heiden, Lazure, List, Reamer, Salansky, Sandstrom, Schafer, Schiefen, Spry, Westerman, and Wills. There were no nay votes or abstentions. The motion passed.

Dr. Schiefen asked for a motion on the fourth criterion. Dr. Discoe moved and Dr. Wills seconded that the proposal satisfies this criterion. The fourth criterion states as follows:

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

Voting aye were Augustine, Discoe, Forney, Heiden, Lazure, List, Reamer, Salansky, Sandstrom, Schafer, Schiefen, Spry, Westerman, and Wills. There were no nay votes or abstentions. The motion passed.

By these four votes the Board of Health members recommended approval of the applicants' proposal.