

REPORT OF THE NEBRASKA STATE BOARD OF HEALTH
On the Recommendations on CADACs by the CADAC Technical Committee
To the Director of the Health and Human Services Department of
Regulation and Licensure and the Health and Human
Services Committee of the Legislature

December 18, 2003

THE BOARD OF HEALTH REVIEW PROCESS

The reviews of the Board of Health on credentialing proposals are always the second stage of a three stage review process defined in the credentialing review statute (Section 71: 6201- 6230) that begins with the review of the technical committee and culminates with the review of the Director of the Health and Human Services Department of Regulation and Licensure. The Board's review is a two-step process wherein the Credentialing Review Committee of the Board meets one time to review the record of the review to that point in time, listen to any new testimony from interested parties, and take formal action on the four criteria of the credentialing review statute to formulate their advice to the full Board of Health. The full Board of Health then meets to review the record of the review and consider the advice provided to them by the Credentialing Review Committee. The full Board usually makes its recommendations by a formal roll call vote on this advice.

SUMMARY OF BOARD RECOMMENDATIONS

The outcome of the Board's review was a positive recommendation on the recommended actions contained in the technical committee report on CADAC issues. The Board's recommendations differed from the technical committee pertinent to the number of years allowed for a fully certified CADAC to become grand-parented into licensure. The Board recommended that this be two years rather than the six years recommended by the technical committee.

BOARD OF HEALTH MEETINGS TO REVIEW CADAC ISSUES

The Credentialing Review Committee of the Board of Health met in the morning of December 18, 2003 to review these issues and to formulate its advice to the full Board on them. The full Board of Health met in the afternoon of December 18 to review the record of the review including the advice of its Credentialing Review Committee and then formulated its recommendations on these issues. **Section "A"** (beginning on Page One of this report) describes the discussions and actions taken during the committee meeting on December 18. **Section "B"** (beginning on Page six of this report) describes the discussions and actions taken during the full Board meeting on December 18.

**Section A: The Formulation of the Advice of the Credentialing Review Committee,
Morning, December 18, 2003**

Committee chairperson Vaughan began the meeting by asking the technical committee chairperson Robert Sandstrom to comment on the work of the committee. Dr. Sandstrom began his comments by stating that the technical committee's focus was primarily on CADAC regulatory issues rather than on issues pertinent to funding or matters pertinent to court ordered drug and alcohol assessments. Dr. Sandstrom then proceeded through the report of recommendations beginning with the findings on charge directive number one, and informed the committee members that the following items represent baseline facts of current CADAC regulation in Nebraska:

- 1) That CADACs possess a regulatory process, and that this is a certification mechanism.
- 2) That this regulatory process is in rule and regulation rather than in statute.
- 3) That this regulatory process is in the Health and Human Services Department of Services rather than in HHS Regulation and Licensure, and that this regulatory process is known as "Title 209."

Dr. Sandstrom then summarized what the technical committee found to be the shortcomings of the current regulatory process for CADACs, and that these are:

- 1) That the certification mechanism per se cannot deal with uncredentialed practice, nor does it possess clear authority to discipline those who choose to be certified under the current regulatory process.
- 2) That the current regulatory provisions do not constitute a statutorily defined scope of practice.
- 3) That ULL applies indirectly to the current credentialing process.
- 4) That the current regulatory process would be vulnerable to any judicial review of its statutory authority to discipline credentialed providers.
- 5) That the current regulations do not clearly define referral requirements pertinent to mental health problems other than substance abuse.
- 6) That there is no provision for peer review or public input into disciplinary issues.

Dr. Sandstrom then commented that the current provisions of CADAC scope of practice are not subject to legislative review since they are defined entirely in rule and regulation.

Pertinent to referral issues, Dr. Hoover asked whether CADACs are trained to do more than simple screening. Dr. Sandstrom responded by stating that CADACs are trained to screen, assess, and treat substance abuse problems, but that they are trained only to screen for other mental health problems and conditions. Dr. Sandstrom continued his response by stating that the current wording of the scope does not require that CADACs must refer mental health problems other than substance abuse, only that they "may refer" them, and that this is a shortcoming of the scope that needs to be corrected. Dr. Sandstrom added

that there was a consensus among the technical committee members that this needs to be clarified, and that CADACs need to be limited to screening for other mental health problems.

Dr. Vaughan asked for more information on how and when referrals are currently done in real practice situations. Jack Buehler, CADAC, responded that the program rules that CADACs work under require a multi-disciplinary approach to dealing with referral issues, and that CADACs do not attempt to make decisions pertinent to referral in a service vacuum. Mr. Buehler added that it is regrettable that the credentialing review process has not had more time to examine exactly how CADACs do their work so that a clearer picture of the extent to which their services occur within a larger professional and collegial context could have been clarified.

Dr. Hoover then asked about the role other health professions have in the provision of substance abuse services, and whether there might be exemptions under any new regulatory mechanism created for CADACs stemming from the current review. Dr. Sandstrom responded that psychology and LMHPs are professions that have expressed great concern about what they see as their exclusion from the provision of these services. Dr. Schiefen commented that currently psychiatrists can be barred from doing court ordered assessments. Dr. Sandstrom then commented that the technical committee members discussed these concerns but concluded that they had limited ability to have an impact on these kinds of concerns given that they are associated with decisions made within the judicial branch of government.

Dr. Sandstrom then stated that the technical committee members concluded that the best solution to the problems of CADAC regulation was to do the following:

- 1) That a statutory scope of practice for this profession be created.
- 2) That CADACs be licensed
- 3) That the licensure credential be located in the Health and Human Services Department of Regulation and Licensure
- 4) That the scope of practice for CADACs be clarified regarding referral of mental health conditions other than substance abuse.
- 5) That a board of examiners be created for CADACs.
- 6) That any board created have a majority of members who are credentialed only as CADACs, but with representation for those who are dually credentialed in some other mental health field.
- 7) That standards of education and training for CADACs be adopted from the International Certification and Reciprocity Consortium and specifically placed in statute.

Pertinent to the recommendation on IC and RC standards, Dr. Sandstrom stated that these standards have been the foundation of CADAC credentialing for many years and that the profession needs the assurance that at least this aspect of their professional regulation will stay the same. David Montgomery cautioned that if these standards are placed in statute that it is vital that this be done in such a way as to avoid delegating authority to define the

standards to an organization outside of state government such as IC and RC. Mr. Montgomery added that it might be best not to place these standards in statute, and instead place them in rules and regulations.

The Credentialing Review Committee members then discussed some of the specific recommendations, and there was a consensus among these committee members that the Board of Health needs to recommend that any legislative bill carrying forward the recommendations of the credentialing review process for CADACs reconsider the number of years allowed for the grandfathering of currently certified CADACs in recommendation number seven under charge directive three on page 23 of the technical committee report. They wanted this number changed from six years to two years. They felt that this is more consistent with the way these matters are typically handled.

The Credentialing Review Committee members then discussed the two ancillary recommendations contained on page 25 of the technical committee report pertinent to problems associated with, and concerns expressed about, specific documentation received during the technical committee review process from the HHS Services Office of Mental Health as well as a statement made by one employee which indicated that employees of that office had been prohibited from making any further comments to the technical committee after the second meeting of their review process. Dr. Schiefen stated that the concerns expressed by the technical committee regarding this matter were well stated, and that the Board of Health needs to independently look into these two matters. Dr. Schiefen then moved and Dr. Hoover seconded that the full Board send these matters for further review to the Board's Executive Committee. The rest of the committee members expressed agreement with this motion. Dr. Sandstrom commented that the two documents in question did not negatively impact the review, but that there was potential for that, and that this was clearly an effort on the part of someone to manipulate the review process. Dr. Schiefen commented that it is vital that ways be explored to prevent such attempts to manipulate the review process in the future.

The Board members then took action of the four criteria of the credentialing review statute in order to formulate committee advice to the full Board of Health.

The four criteria of the credentialing review statute applied by the committee members in formulating their recommendations on CADACs are as follows:

Criterion One states, "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."

Board member Hoover moved and Board member Nelson seconded that the technical committee recommendations satisfy the first criterion. Voting aye were Hoover, Vaughan, Nelson and Schiefen. Board member Sandstrom abstained from voting. There were no nay votes. By this vote the Board members in attendance at this meeting recommended that the technical committee recommendations satisfy the first criterion.

Criterion Two states, "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 not consistent with the public welfare and interest."

Board member Nelson moved and Board member Hoover seconded that the technical committee recommendations satisfy the first criterion. Voting aye were Hoover, Vaughan, Nelson, and Schiefen. Board member Sandstrom abstained from voting. There were no nay votes. By this vote the Board members in attendance at this meeting recommended that the technical committee recommendations satisfy the second criterion.

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

Board member Hoover moved and Board member Nelson seconded that the technical committee recommendations satisfy the third criterion. Voting aye were Hoover, Vaughan, Nelson and Schiefen. Board member Sandstrom abstained from voting. There were no nay votes. By this vote the Board members in attendance at this meeting recommended that the technical committee recommendations satisfy the third criterion.

Criterion Four states, "The public cannot be effectively protected by other means in a more cost-effective manner."

Board member Nelson moved and Board member Hoover seconded that the technical committee recommendations satisfy the fourth criterion. Voting aye were Hoover, Vaughan, Nelson, and Schiefen. Board member Sandstrom abstained from voting. There were no nay votes. By this vote the Board members in attendance at this meeting recommended that the technical committee recommendations satisfy the fourth criterion.

By these four votes the Board members in attendance at the meeting recommended that the full Board of Health adopt the technical committee recommendations as their recommendations on issues pertinent to the regulation of CADACs.

The Credentialing Review Committee members made one recommendation pertinent to grand parenting that varied from that of the technical committee. These board members recommended that the time period provided for fully certified CADACs to complete grand parenting to licensure be made two years instead of the six years that the technical committee members had recommended. These Board members clarified that this does not alter the wording of the technical committee report, and only affects the wording of the Board of Health report.

**Section B: The Formulation of the Recommendations of the full Board of Health,
1:00 p.m., December 18, 2003**

The Board member discussion during the afternoon session reiterated many of the same points that had been made during the morning meeting including the following:

- 1) That licensure would greatly improve the ability of regulators to discipline those not in compliance with the statute.
- 2) That due process of law would be greatly improved by moving the proposed changes.
- 3) That peer review and public input into the regulation of CADACs would be a benefit of the proposed changes.
- 4) That the creation of a CADAC board of examiners as called for in the proposed changes would be a benefit to the profession.

After completing their discussion on the issues and the advice of the Board's Credentialing Review Committee on these issues, Board member Vaughan moved that the members of the full Board of Health approve the recommendations of the Board's Credentialing Review Committee on the CADAC technical committee recommendations. Dr. Vaughan clarified that his motion includes the proposed change in the grand-parenting provision for currently certified CADACs, and that this is a Credentialing Review Committee motion. Voting aye were Augustine, Hoover, Vaughan, Lazure, Ihle, Nelson, List, Forney, Crockett, and Schiefen. Board members Sandstrom and Schafer abstained from voting. There were no nay votes. By this vote the members of the full Board of Health approved the recommendations of their Credentialing Review Committee and thereby recommended approval of the technical committee report of recommendations.

Board member Vaughan then moved that the full Board recommend that the matter surrounding the two controversial letters from the HHS Services Office of Mental Health and the matter pertinent to the prohibitions placed on the employees of this same office on presenting testimony to the technical committee during its review process be reviewed by the Board's Executive Committee pursuant to the presentation of its advice to the full Board on these matters. This was made as a Credentialing Review Committee motion. Voting aye were Augustine, Hoover, Vaughan, Lazure, Ihle, Nelson, List, Forney, Crockett, and Schiefen. Board members Sandstrom and Schafer abstained from voting. There were no nay votes.

This completed the review of the Board of Health on CADAC regulatory issues.

RB

January 6, 2004