

**REPORT OF RECOMMENDATIONS AND FINDINGS ON THE
PROPOSAL TO LICENSE MUSIC THERAPISTS**

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

June 14, 2021

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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 reports on 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.

LIST OF MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

Joel Bessmer, MD

Russell Crotty, OD

Shane Fleming, BSN, MSN, RN

Diane Jackson, APRN-FNP

Michael Kotopka, DDS

John Kuehn, DVM

Donald Ostdiek, DPT

Colton Palmer, PMHNP

Mark Patefield, PharmD

David Reese

Daniel Rosenthal, PE

Robert (Bud) Synhorst

Timothy Tesmer, MD

Douglas Vander Broek, DC

Dan Vehle

Joshua Vest, DPM

The Board's Credentialing Review Committee met in the morning of June 14, 2021 to formulate its recommendations on the proposal.

The members of the full Board of Health met in the afternoon of June 14, 2021 to formulate their recommendations on the proposal.

Part Two: Summary of Board of Health Recommendations

The Board Committee members recommended against approval of the proposal.

The members of the full Board recommended against approval of the proposal.

Part Three: Summary of the Applicants' Proposal

Nebraska music therapists are proposing the creation of a music therapy license. Specifically, they propose that any professional who claims to be a “music therapist” or “board certified music therapist” must hold the Music Therapist-Board Certified (MT-BC) credential administered by the Certification Board for Music Therapists (CBMT) and be licensed by the state of Nebraska. Board certified music therapists possess the required education, clinical training, scope of practice, and professional competencies necessary to provide ethical and effective therapeutic services. In order to protect recipients of music therapy from potential harm or contra-indicated responses associated with inadequate assessment, treatment planning, service delivery, and documentation, licensure is determined as the most appropriate level of regulation. Given increasing patient involvement, acuity, and risk, music therapy, as delivered by a board certified music therapist, should require state licensure to protect the public from harm due to misuse of terms and techniques, ensure competent practice, and protect Nebraska citizens' access to music therapy services.

State licensure of music therapists would:

- Recognize music therapy as a valid, research-based health care service, on par with other therapy disciplines serving an equally wide range of clinical populations (e.g. speech-language pathology, occupational therapy).
- Validate the prominence of music therapy in work settings for serving consumers of health- and education-related services.
 - Establish educational and clinical training requirements for music therapists.
 - Establish examination and continuing education requirements for music therapists.
 - Establish music therapy scope of practice.
 - Establish an ethics review procedure for complaints and potential ethical violations.

Through establishing a music therapy license we also seek to gain:

- The inclusion of music therapy in state-wide legislation that protects consumers of music therapy;
- The ability for Nebraska residents and businesses to easily determine qualified music therapy practitioners;
- The ability for facilities interested in providing music therapy services to comply with state regulations in contracting with or employing licensed music therapists.

The proposed licensing of music therapists will protect the general public by creating a minimum standard for music therapists to practice in Nebraska. The licensing process will ensure that only qualified, trained individuals who have met the education, clinical training, and examination requirements will be able to practice music therapy. Furthermore, Nebraska residents and potential employers will have a state-established system for verifying competent music therapy practice as well as a disciplinary system to address issues of unethical behavior and practice.

Facilities interested in providing music therapy services would be able to utilize the state system to locate qualified professionals.

Licensure will prevent the incidence of unqualified individuals having access to clients' confidential information and potentially compromising clients' health and wellness issues. Licensing music therapists will ensure that those who have not been adequately trained as music therapists would not be able to step into or attempt to perform the duties of a music therapist, therefore increasing the safety and quality of music therapy services provided to Nebraska citizens. This maintains a high standard of care in the state of Nebraska by establishing a level of competence for a practitioner to abide by to provide music therapy services.

The Scope of Music Therapy Practice would define the range of responsibilities of a fully qualified music therapy professional with requisite education, clinical training, and board certification.

The full text of the applicants' proposal can be found under the Music Therapy topic area on the credentialing review program link at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Four: Discussion by, and Recommendations of, the Members of the Credentialing Review Committee of the Board of Health on the Music Therapy Proposal

Board Committee member Shane Fleming, Chairperson of the Music Therapy Technical Review Committee, commented that the review of this committee was smooth, seamless, and fast, and scholarly. There was some opposition and some concerns were expressed about some aspects of the proposed scope of practice by some committee members. Mr. Fleming expressed confidence in the work and recommendations generated by his committee.

Music therapist Felicia Vorhees provided an overview of the proposal and applicant group objectives in the review process for this proposal. Ms. Vorhees stated that music therapists assess, diagnose and treat the entire range of trauma conditions of patients by stimulating the patient's brain via a wide range of musical sounds. Ms. Vorhees stated that music therapists undergo a four year plus training program inclusive of internships and a professional examination at the end of this training program. She stated that among the reasons for this proposal is the need for third-party reimbursement for the services of music therapists. Currently, music therapists cannot bill Medicaid because they are not licensed. This adversely impacts the accessibility of their services.

Board Committee member Rosenthal asked the applicants why they are seeking licensure rather than a less restrictive mode of regulation such as certification, for example. Music therapist Tyanne Mischnick responded to this question by informing the Board Committee members the applicant group is seeking licensure because of a ruling by the Nebraska Department of Education whereby music therapists are not currently eligible for reimbursement under Federal guidelines for reimbursement because they are currently unlicensed, and that licensure is essential for a health profession to receive consideration for such reimbursement. Other optional kinds of credentialing such as certification would not be able to address this situation.

Tyanne Mischnick went on to say that another reason why the applicant group is seeking licensure pertains to concerns about harm to the public stemming from unqualified practice. She went on to say that there is a body of knowledge "out there" that documents this harm and that it is not anecdotal.

Board Committee member Kuehn responded to these applicant assertions by asking the applicants whether this ruling has had the effect of ending music therapy employment in Nebraska public schools. An applicant representative replied that music therapists can still work in public schools but that their pay will almost certainly be reduced as a result of this ruling. Dr. Kuehn questioned whether licensure would be successful in addressing this concern, anyway, given that the NDE would likely respond to the creation of licensure for music therapists by finding another administrative device to circumvent having to apply Federal pay standards to music therapists.

Board Committee member Reese commented that if the issue in this review is reimbursement then passing licensure would not be effective in addressing this issue, and would do little more than create another layer of regulation, one that would provide no clear benefit to anyone.

Board member Fleming commented that there are too few music therapists in Nebraska to justify passing licensure for them. One applicant responded that they would have preferred pursuing certification for their profession but that the NDE restrictions made seeking licensure their only viable option.

Board Committee member Kuehn commented that it seems to him that NDE actions requiring a profession to seek licensure in order to secure certain aspects of reimbursement are questionable from the standpoint of constitutionality, and advised the applicant group to seek the opinion of an attorney regarding NDE actions directed at their profession's ability to earn a living.

The Board of Health Credentialing Review Committee members then reviewed the four statutory criteria that are most pertinent to the music therapy proposal, as follows:

Criterion one: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.

One Board Committee member commented that there is potential for harm from the activities of unqualified providers of music therapy, but that this potential for harm does not rise to a level of significance sufficient to justify licensing the members of the music therapy profession.

Criterion two: 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.

One Board Committee member expressed the concern that passing the proposal might motivate the Nebraska Department of Education to attempt to circumvent this action by imposing new barriers or restrictions to music therapy practice in Nebraska public schools.

Another Board Committee member stated that there is no reason to think that passing the applicants' proposal would create barriers to service or restrict access to services.

Criterion three:The public needs assurance from the state of initial and continuing professional ability.

There was a consensus among the Board Committee members that the proposal satisfies this criterion.

Criterion four: The public cannot be protected by a more effective alternative.

There was a consensus among the Board Committee members that licensure is neither the only way to address the concerns raised by the applicant group during the review nor the best way to address these concerns. Some committee members expressed support for certification of music therapists as an alternative to the current licensure proposal.

Credentialing Review Committee Recommendations on the Music Therapy Proposal

The Board's Credentialing Review Committee members made their recommendation on the proposal via a yes / no, up-down vote, as follows:

Voting "yes" to recommend approval of this proposal was:

Rosenthal

Voting "no" to recommend against approval of this proposal were:

Kuehn, Reese, and Tesmer

By this vote the Board's Credentialing Review Committee members recommended against approval of the proposal.

Part Five: The Recommendations of the Members of the Full Board of Health on the Music Therapy Proposal

Discussion by the Members of the Full Board of Health

Music therapist Tyanne Mischnick summarized the reasons why the applicant group is seeking licensure rather than an alternative credential such as certification, which include: 1) Nebraska Department of Education policies and rulings that bar music therapists from being eligible for certain reimbursement opportunities in Nebraska public schools, and 2) addressing harm to the public from unqualified practice.

In response Board member Kuehn summarized his thoughts on the shortcomings of the applicants' proposal by stating that the current proposal seems to be primarily concerned about addressing the impact of NDE policies and rulings on music therapists who work in the public schools. He went on to state that creating a licensing system just to address this specific kind of concern would not be good public policy.

The recommendations of the members of the full Board of Health on the music therapy proposal

The Board of Health members made their recommendation on the proposal via a yes / no, up-down vote on the recommendation of their Credentialing Review Committee, as follows:

Voting “yes” to recommend approval of this committee’s recommendation which was to recommend against approval of the applicants’ proposal were:

Bessmer, Crotty, Jackson, Kopotka, Kuehn, Patefield, Reese, Synhorst, Tesmer, Vander Broek, and Vehle

Voting “no” to recommend against approval of this committee’s recommendation which was to recommend against approval of the applicants’ proposal were:

Ostdiek and Rosenthal

By this vote the members of the full Board of Health recommended against approval of the proposal.