

Report of Final Findings and Recommendations

By The

Technical Committee for the Review of the
Application for Credentialing by the
Nebraska Dental Assistants Association

To The

Director of Health and the Nebraska Legislature

December 16, 1985

The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the Dental Care Credentialing Review Technical Committee are as follows:

Richard Powell, O.D. - Chair, Member of Board of Health

Jody Jurging - Home Economics Extension Agent, University of Nebraska
(Fremont)

Robert P. Marshall, R.P. - Executive Director, Nebraska Pharmacist
Association (Lincoln)

Margaret Moravec, M.D. - anesthesiologist, private practice (Lincoln)

Corrinne Pederson - Executive Vice-President, Broken Bow Chamber of
Commerce (Broken Bow)*

Richard Tempero, D.D.S., M.D. - oral and maxillofacial surgeon, private
practice (Omaha)

Joan Trimpey - Instructor, Dental Assisting, Metropolitan Technical
Community College (Papillion)

*Corrinne Pederson was appointed to replace Judy Cada, who resigned after the first two committee meetings.

Introduction

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407), is a review process advisory to the Legislature which is designed to assess the necessity of state regulation of health professions in order to protect the public health, safety, and welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit an application for review to the Director of Health. At that time, an appropriate technical committee is formed to review the application and make recommendations after a public hearing is held. The recommendations are to be made on whether the health occupation should be credentialed according to the three criteria contained within Section 21 of LB 407; and if credentialing is necessary, at what level. The relevant materials and recommendations adopted by the technical committee are then sent to the Board of Health (after 1985) and the Director of Health for their review and recommendations. All recommendations are then forwarded to the Legislature.

In order to accommodate the health occupations that submitted credentialing legislation in the 1985 session, priority has been given to them so that they may complete the review process before the 1986 legislative session. This accommodation has resulted in a shortened review process in which the technical committee recommendations are sent directly to the Director of Health, bypassing the Board of Health for 1985.

Synopsis of the Dental Assistants Proposal
Nebraska Dental Assistants Association

The Nebraska Dental Assistants Association seeks registration for all dental assistants by the State of Nebraska as a requirement to practice as such. According to the proposal, a person wishing to be registered as a dental assistant must be at least eighteen years of age, a graduate of an accredited high school or its equivalent, and must either be a graduate of an approved dental assisting school or program, or be serving as an intern under a licensed dentist and be enrolled in an approved course of instruction in dental assisting which must be completed within two years of commencing the internship. Failure to complete the course of instruction within the prescribed period shall mean forfeiture of the dental assistant's registration.

The proposal provides for grandfathering of dental assistants who have worked under the supervision of one or more licensed dentists for at least two thousand five hundred hours in a three year period immediately preceding the effective date of the proposal. In this three year period, a dental assistant must have worked under the supervision of one licensed dentist for at least eight hundred hours.

In addition, the proposal provides for an additional position on the Board of Examiners in Dentistry for a registered dental assistant. A registration fee will cover the entire cost of the program, and a registration must be renewed every two years.

The proposal does not prohibit a dental assistant from taking dental roentgenograms while under the supervision of a licensed dentist if he or she has completed a course in dental radiology that is approved by the State Department of Health. Any person who shall knowingly employ a person

as a dental assistant who is not registered as a dental assistant shall be guilty of a Class III misdemeanor, and any person who shall knowingly hold himself or herself out to be a registered dental assistant who is not, shall be guilty of a Class IIIA misdemeanor.

Overview of Committee Proceedings

The Dental Care Credentialing Review Technical Committee first convened on August 8, 1985, in Lincoln at the State Office Building. An orientation session given by the staff focused specifically on the role, duties, and responsibilities of the committee under the credentialing review process. Other areas touched upon were the charge to the committee, the three criteria for credentialing contained within Section 21 of LB 407, and potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on August 23, 1985, in Lincoln at the State Office Building. After study of the proposal and relevant material compiled by the staff and submitted by interested parties between the meetings, the committee formulated a set of questions and issues it felt needed to be addressed at the public hearing. Contained within these questions and issues were specific requests for information that the committee felt was needed before any decisions could be made.

The committee reconvened on September 19, 1985, in Lincoln at the State Office Building for the public hearing. Proponents, opponents, and neutral parties were given the opportunity to express their views on the proposal and the questions and issues raised by the committee at their second meeting. Two people spoke in favor of the proposal, and one person in opposition. Interested parties were given ten days to submit final comments to the committee.

The committee met for the fourth time on October 28, 1985, in Lincoln at the State Office Building. After studying all of the relevant information concerning the proposal, the committee then formulated its recommendations upon the three criteria found in Section 21 of LB 407.

These criteria are as follows:

Criterion 1

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.

Information from the Applicant Group

The proponents state that under the current practice situation there is no requirement that dentists hire competent dental assistants. The proponents believe that this situation is a threat to the public health and welfare. They state that the creation of a new practice situation in which only qualified dental assistants work in dental offices is essential to the protection of the public.

The proponents provided examples of the harm that the current practice situation can do to the public. Examples include harm done by dental assistants who incorrectly select rubber dam clamps. The latter can result in the fracture of the tooth or laceration of tissues. Unqualified dental assistants can do harm to the public during cement removal with a sharp instrument, causing microleakage and sensitivity and recurrent caries of the tooth. Improper placement of orthodontic bands, brackets, and appliances can result in undue movement of teeth, while adverse drug reactions can result from the improper anesthetic solution loading in anesthetic syringes. Disease transmission can result from improper aseptic techniques, while overfilling the impression tray with material may cause a gag reaction. Proponents also discuss emotional and financial harm caused by bad work done by unqualified dental assistants. (pp. 15-17 of the application.)

These problems highlight the need for the credentialing of dental assistants, according to the proponents. Credentialing would create educational standards that would serve to upgrade the qualifications of those who become dental assistants in Nebraska. The proponents hope to correct situations in which children are providing such direct patient care as intra-oral procedures and aseptic techniques. They argue that current statutes are vague regarding what duties are properly delegated to trained and untrained dental personnel. (p. 15 of the application.)

The applicants state that the public is unaware that unsafe conditions exist, and assumes that all dental personnel are properly educated. Complaints against dentists that arise from the inappropriate conduct of their dental assistants have not been recorded with the Board of Health, so the public remains unaware of the problem. When complaints are lodged with peer review committees, they are dealt with locally, never reaching the attention of the Board of Examiners in Dentistry or the Board of Health. The public has no means by which to ascertain the qualifications of dental assistants. (p. 15 of the application.)

The proponents cited evidence from the states of Florida, South Dakota, Pennsylvania, and Virginia which showed that dentists have frequently allowed their assistants to perform unlawful activities, or to perform duties for which they were neither trained nor properly supervised. The proponents used these examples to show that there is a real danger to the public posed by the current practice situation of dentistry. (Documents from Donald A. Balaso of the American Dental Assistants Association, March 31, 1980.)

Information from Other Sources

The opponents state that there has been no demonstrated need for the proposal. According to them, there have been no complaints against dental offices in Nebraska due to the clinical performance of dental assistants. Dentists are capable of training people to provide chair-side help, and are prepared to take responsibility for what their assistants do. (p. 21 of the Transcript of the Public Hearing of the Public Health and Welfare Committee of the Nebraska State Legislature.)

Taking on such responsibility is inherent in the practice of dentistry and in no way can this responsibility be transferred through legislation. Dentists exercise the necessary controls to assure the highest quality of care that can be provided.

Protection for the public rests with the Board of Examiners in Dentistry. It has the power to take appropriate action against those dentists who misuse the services of dental assistants. Potential problems can be handled through the Board to enforce the Dental Practice Act and current Department of Health Rules and Regulations. (Document presented by the Nebraska Dental Association to the Dental Care Technical Committee, September 19, 1985.)

The opponents dispute the accuracy of the evidence cited by the proponents, evidence that supposedly demonstrates the need for credentialing. They state that there is no evidence that there are any problems in Nebraska pertinent to dental assistants. Statements by proponents to the effect that children are working as dental assistants in various dental offices in this state are based upon hearsay, not hard evidence. Even if these stories were true, by no means would such examples be representative of the practice of dentistry in Nebraska. (p. 23 of the Transcript of the Public Hearing of the Dental Care Technical Committee.)

Committee Findings and Recommendations

The committee voted 6-1 that the proposal does not meet the requirements of criterion one.

Criterion 2

The public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability.

Information from the Applicant Group

According to the proponents, the establishment of some type of credentialing for dental assistants will provide the consumer with protection from unqualified practitioners. The proposal calls for specific mandatory educational requirements, which will upgrade the quality of dental assistants. This alone will serve to protect the public, since the public has no other means of ascertaining the qualifications of dental assistants.

Information from Other Sources

The opponents argue that the current practice situation provides the public with an assurance of continued professional ability. The dentist, who is the sole responsible provider of treatment, is licensed and examined by the State of Nebraska to practice dentistry. The dentist is subject to a system of mandatory continuing education. It is this which provides the public with an assurance of professional ability. There is no need for a system of mandatory education for dental assistants, since they are supervised by dentists.

Committee Findings and Recommendations

The committee did not vote on this criterion, since their vote on criterion one resolved the question of the committee's recommendation on the proposal.

Criterion 3

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

Information Provided by the Applicant Group

The proponents discussed several alternatives to credentialing by the state. These included voluntary attempts at establishing of a code of ethics and peer group evaluation. With regard to the first alternative, the proponents stated that there had been a code of ethics, but it was dropped because the association had no statutory or professional authority to enforce the code and penalize violators. As for peer evaluation, the proponents claim that the absence of state statutes recognizing dental assistants makes peer group evaluation impossible.

The proponents state that there are no present laws for providing the public with recourse against incompetent dental assistants. The Board of Examiners in Dentistry indirectly supervises dental auxiliaries through the regulation of dentists. Most complaints against dental assistants are heard by dentists' peer review groups, not by the Board of Dental Examiners.

The proponents rejected the concepts of state certification and licensure, stating that these levels of regulation are too restrictive and costly. They are asking for registration, a lower level of certification. However, they want certain educational qualifications to be prerequisite to

being on the list, with the additional provision that dentists must hire only those dental assistants that are registered. The proponents believe that is concept of certification is one that will provide protection for the public at minimum cost.

Information from Other Sources

The opponents state that the current practice situation is far more cost-effective than the one proposed under LB 267. There is no need for an additional layer of credentialed practitioners in dentistry. Dentists are already licensed practitioners, and are totally responsible for all who work in their offices.

The opponents argue that the proposal if passed would limit the supply of dental assistants available to the public. Dental assistant schools provide between 86 and 97 students per year, but the need is much greater. According to the opponents, there are 2,000 dental assistants in Nebraska, and there is a 20 percent turnover rate per year. Given this situation, the number of graduates of dental assisting schools could never match the demand. (p. 24 of the Transcript of the Public Hearing of the Dental Care Technical Committee.)

The opponents state that rural Nebraska would bear the brunt of such a shortage of dental assistants. Dentists in rural areas would have a more difficult time than their urban counterparts in staffing their offices with registered dental assistants. The cost of their services would be too great for many rural dentists to bear. Rather than pay for a registered dental assistant, many rural dentists would not hire one at all, much to the detriment of the public. In addition, opponents state that when one gets away from Omaha and Lincoln, there just aren't any trained dental assistants available. These dental assistants are largely an urban

phenomenon. Dental assistants in rural areas are unlikely to avail themselves of the formal education necessary for registration. (p. 25 of the Transcript of the Public Hearing of the Dental Care Technical Committee.)

The existence of a grandfathering provision in the proposal will not alleviate the above-mentioned dental assistant shortage. The turnover rate is high and since training is an ongoing process, a grandfather clause would be useless. Many dentists would rather let non-registered dental assistants go after two years, and simply do without auxiliaries after that time, rather than face a fine or a misdemeanor charge. (p. 21 of the Transcript of the Public Hearing of the Public Health and Welfare Committee of the Nebraska Unicameral Legislature.)

Committee Findings and Recommendations

No vote was taken on this criterion by the committee.

The Discussion of the Appropriate Level of Credentialing

Information from the Applicant Group

The proponents seek registration as the appropriate level of credentialing, stating that it is the least restrictive alternative. Certification and licensure are more restrictive than is necessary to protect the public. Registration will enable the state to verify that qualified dental assistants are serving the public. Only dental assistants who meet a minimum entry age and specific educational requirements or, grandfathered dental assistants who meet certain experience requirements, will be able to register. Dentists employing unregistered dental assistants will be subject to criminal penalties. The proponents feel that this is a minimum program for the protection of the public. (p. 23 of the application.)

Information from Other Sources

The opponents argue that no level of state regulation is appropriate for this group. Voluntary certification by private dental assisting organizations will suffice. Supervision by dentists makes mandatory state regulation unnecessary. The dentist is held responsible for the quality of dental assisting work in his office. The current practice situation will suffice to protect the public.

Committee Findings and Recommendations

No vote was taken by the committee on the appropriate level of credentialing, since the question of whether or not to regulate this occupation had been settled earlier.