Good morning, members of the Credentialing Review Committee of the Board of Health. Thank you for this opportunity to speak on behalf of the NHS's application.

My name is Misti Chmiel, spelled MISTI CHMIEL, and I am a Nebraska state-licensed, Board-Certified hearing instrument specialist. I have been working with the hearing impaired for 30 years and mainly provide hearing healthcare services to rural Nebraskans.

The Nebraska Hearing Society (NHS) is asking the Committee, and the State Board of Health, to approve the clarification of two hearing healthcare services that are within our scope of practice, and therefore could be clarified in our scope of practice by the Legislature, which are:

- Cerumen (earwax) removal, in the course of examining ears, taking ear impressions, and/or fitting of hearing aids, and

- Tinnitus care, the assessment, recommendation and selection of tinnitus management devices, such as turning on a white noise tinnitus masker that is built into almost all hearing aids.

Hearing healthcare patients often present with cerumen (earwax), which can cause hearing problems, limit a prescription hearing aid's effectiveness, prevent the assessment of an ear, or all three.

One of Nebraska's Medicaid companies, Nebraska Total Care, states "the routine removal of asymptomatic, non-impacted, non-obstructive cerumen does not generally require a physician's skill." However-to ensure public safety, this application requires

that a hearing instrument specialist must have been practicing for at least two years and have completed a comprehensive theoretical and practical cerumen removal course BEFORE removing cerumen (earwax).

Let me repeat that, in order for a HIS to remove cerumen, a Nebraska-licensed HIS MUST complete a comprehensive cerumen removal course BEFORE removing cerumen and have at least 2 years of professional, licensed experience, giving them approximately 4,000 hours of hands-on patient contact; and in 2018 the US Department of Labor re-approved the IHS's apprenticeship program and an outline of that program can be found online.[1] Many educational courses and workshops on cerumen removal are available, which include both theoretical and practical components for effective earwax removal. For example: Alan Lowell Seminars, the Pacific Audiology Group recommended by a highly regarded member of the NMA and expert in this field, AAO-HNS, AAA, IHS, and the Ear Care & Cerumen Management Institute of Otorhinolaryngology all offer wax removal courses.

The expectation of an HIS who provides cerumen (earwax) removal is if, DURING removal, a hearing instrument specialist discovers any trauma (e.g., continuous bleeding, lacerations), or BEFORE earwax removal becomes aware of prescription medications such as anticoagulants or medicines, that when combined, act like anticoagulants or concerning health history that could cause an issue, the HIS will immediately refer the patient to an otolaryngologist (ENT).

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[1] See document labeled "Work Process Schedule Hearing Aid Specialist;" and online: Guidelines for Apprenticeship Standards Developed by International Hearing Society for the occupation of Hearing Instrument Specialist. Appendix A - Work Process Schedule and Related Instruction. https://myhome.ihsinfo.org/Images/Adv_PDF/DOL%202018/HAS%20Apprenticeship%20Guidelines%20-%20Appendix%20A%20-%202018.pdf

According to a DHHS Disciplinary Actions Against Professional and Occupational Licenses 10-year report (covering March 2014-March 2024), no disciplinary action has been taken against a Nebraska licensed hearing instrument specialist during that time frame. That statement would include taking ear impressions past the second bend of the ear canal - much deeper than wax removal at the outer one third of the cartilaginous portion of the ear canal.

The second clarifying issue in the NHS' application is tinnitus care, assessing tinnitus, for example with a Tinnitus Handicap Inventory[2] and recommending or selecting appropriate tinnitus management devices or maskers, such as those built into hearing aids, when a patient exhibits tinnitus symptoms while being evaluated or reevaluated for hearing aids.

There is no cure for tinnitus and nearly everyone experiencing chronic tinnitus also experiences hearing loss. A tinnitus masker, built into almost all hearing aids, can help and the FDA does not restrict hearing aid specialists from using tinnitus maskers. Available tinnitus care education programs exist through IHS, AAA, and the American Tinnitus Association. We are currently working with the NMA on referral protocols and what severity of tinnitus that we can safely work within and we are happy to continue that dialogue throughout this process.

Currently, North Carolina, Tennessee, South Dakota, and Wisconsin explicitly authorize hearing aid specialists to perform cerumen management, with other states using terms like all or any – marking the growing recognition of this service and need for hearing instrument specialists to fill the need statutorily. Please see attached state scopes.

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[2] Please see "Tinnitus Handicap Inventory", included.

With North Carolina having the longest statutory history of allowing hearing aid specialists to perform cerumen removal, we are unaware of any disciplinary actions taken against a North Carolina hearing aid specialist for improper, patient-harm cerumen removal since they approved this service in 2013.

Throughout this process, we've made good faith efforts to improve our application. This includes making numerous changes to our application, incorporating the feedback we've received and suggested language. For example, we have included additional education standards, as well as a required two year minimum license period prior to performing cerumen management. The HIS would be required to successfully complete a board-approved cerumen removal course. They will also be required to take an additional hour of continuing education each year, and that hour must be specific to cerumen removal, as well as an hour of pharmacology to stay abreast of new medications relevant to our profession. These continuing education requirements are in addition to current requirements, which include infection control training. We already maintain a higher-than-average minimum of continuing education credits – 12 per year, over the national average of 10. Plus, they will be required to have an arrangement with a medical liaison, in order to refer a patient experiencing any contraindications to earwax removal.

In addition, we believe this scope clarification is in line with the stated goals of Governor Pillen's administration. Governor Pillen has been committed to enhancing Nebraska's workforce by reducing regulatory burdens on businesses and the labor market, stating in his 2024 State of the State Address, "To support and grow these incredible economic assets, among our chief goals in state government must be to get government out of the way, reduce regulations and bureaucratic hurdles, and empower people and businesses to thrive." Governor Pillen also said after touring the LPS Career Academy, "You don't

have to get a college degree to have a great career and a great life and do well for your family."

We feel this proposal will reduce barriers to individuals seeking hearing healthcare, as well as reduce barriers for those Hearing Instrument Specialists who wish to provide additional services their clients need.

The number of Americans with hearing loss is expected to grow from 44 million in 2020 to over 73 million by 2060[3]-and we should not limit Nebraskans access to hearing healthcare. Erecting barriers based on unfounded data, zero disciplinary actions, unsupported evidence, or scare tactics does not help Nebraskans seek hearing healthcare.

The NHS has been working with and will continue to work with all stakeholders and interested parties to address their concerns. We are disappointed by our opponents' tactic of raising entirely new concerns at each TRC meeting and the previous hearing. We have included documents with this testimony that refute incorrect claims made at previous TRC hearings as well as supporting documents.

For a full timeline of our application process and our communication with interested parties, please see the attached timeline and narrative, but in the interest of time I would state that we had one meeting in November of 2023 and we continued to revise our proposal based on feedback at the TRC hearings from opposition, but we did not receive any additional correspondence outside of these meetings, nor did we receive any further feedback despite reach outs in February and March seeking comments on the red-lined

[3] https://www.ncoa.org/adviser/hearing-aids/hearing-loss-statistics/

latest proposal revision (in order to address any remaining concerns **prior** to TRC meetings).

The NHS respectfully asks the committee to choose to place the NHS's application - clarifying cerumen removal and tinnitus care are within our scope of practice - before the state board of health notwithstanding the recommendation of the TRC. Thank you again for this opportunity to speak today.

Disputing Incorrect Information

Throughout our 407 process, our opposition, particularly the Nebraska Speech-Language-Hearing Association and the Doctors of Audiology, have continued to try and mislead the Technical Review Committee with, but not limited to, the following statements:

- Stating HIS could not work with or bill traditional insurance. This was proven wrong, please see the handout of insurance remits.
- Stating that cerumen and tinnitus services were not on the IHS website. This is incorrect, please see the hand out of IHS Position Statement approved by the Board of Governors in 2013.
- Stating that "tinnitus care" had never been heard of. This is incorrect, please refer to the "Tinnitus Care Provider Certificate Program" printout. Professor Richard Tyler (University of Iowa) has taught this class since 2018.
- Stated that HIS could not refer for Cochlear Implant surgery. This is incorrect, please see the included email from the Cochlear Implant Alliance Executive Director.
- There were many misleading references to tinnitus and suicide risk. Per an independent report from 2019 (included), it is not feasible to conclude a relationship between the two. We are simply asking to turn on white noise tinnitus maskers that are already built into hearing aids- which we specialize in.
- The ADA Executive Director falsely stated we would be changing the Nebraska statute that includes the notice to the buyer and therefore removing consumer protections - that is false. We are only proposing to clarify our scope of practice statute.
- Stating concerns about out of state audiologists having practicing rights in Nebraska – the Audiology & Speech-Language Pathology Interstate Compact gives rights to practice to audiologists in 31 participating states, with an additional 9 states pending.
- Insinuating the proposed medical liaison form was an attempt to forego our professional responsibilities or liabilities or make it look like we were affiliated with a medical staff.

Timeline

Summary:

We submitted our original application in July of 2023. After our first TRC meeting in September 2023, we received feedback from the Nebraska Medical Association, and met with them as well as a highly regarded member of the NMA who is a board certified Otolaryngologist. We incorporated their feedback, revised our proposal accordingly and submitted. At the second TRC meeting in October, we received extensive opposition from the doctors of audiology community for the first time. We held a Zoom meeting with representatives of the Nebraska Speech-Language-Hearing Association and doctors of audiology community on November 14th, 2023. We incorporated feedback based on this meeting, as well as concerns raised at the TRC meeting. After the third TRC meeting on November 21st, 2023, we again revised our proposal based on continued opposition and shared this proposal with interested parties on December 5th. We continued to revise our proposal based on feedback at the TRC hearings from opposition, but we did not receive any additional correspondence outside of these meetings, nor did we receive any further feedback despite reach outs in February and March seeking comments on the latest proposal revision.

Timeline of NHS' 407 Process

- June 9, 2023: Letter of intent
- June 16, 2023: DHHS Response to Letter of Intent
- July 14, 2023: Date of initial application
- September 5, 2023: First TRC Meeting
- September 25, 2023: Meeting between NHS and NMA
- October 5, 2023: First proposal revision
- October 17, 2023: Second TRC Meeting
- November 14, 2023: Zoom Meeting between NHS, Dr. Kopetzky, and other interested audiologists
- November 16, 2023: Email from Joe Kohout to Dr. Kopetzky and those on the 10/14 call, included draft changes to proposal

- November 21, 2023: Third TRC Meeting
- December 1, 2023: Second proposal revision
- December 5, 2023: Email from Joe Kohout to Dr. Kopetzky and interested parties with latest draft proposal
- December 29, 2023: Email from Dr. Kopetzky restating opposition to latest revision
- January 16, 2024: Fourth TRC Meeting
- February 9, 2024: Third proposal revision
- February 12, 2024: Email from Joe Kohout to Dr. Kopetzky and Paul Henderson seeking comment on latest proposal revision
- March 24, 2024: Follow up email from Joe Kohout to Dr. Kopetzky seeking comment on latest proposal revision
- April 2, 2024: Fifth TRC meeting
- May 21, 2024: Public Hearing