

THE REPORT OF THE FULL BOARD OF HEALTH ON THE PODIATRIC MEDICINE PROPOSAL FOR A CHANGE IN SCOPE OF PRACTICE

(July 19, 1999)

The members of the full Board of Health reviewed the podiatric medicine proposal for a change in scope of practice at their bimonthly meeting on May 17, 1999. The Board members approved an amended version of the proposal previously denied by the technical review committee except that the Board members approved an additional amendment that would allow hospital credentialing boards discretion in how they provide for professional input into their deliberations than was provided under the current version of the applicants' proposal. The proposal as it was would have required hospital boards to appoint an orthopedic physician as an actual member of the board. The amendment would allow for consultation with an orthopedic physician as a means of providing this input.

I) TESTIMONY OF THE CHAIRPERSON OF THE 407 COMMITTEE OF THE BOARD

Board Chairperson Richard Tempero, M.D., D.D.S., began the Board's review of the proposal by asking Richard Fitzgerald, D.D.S., the Chairperson of the 407 Committee of the Board, to comment on the work of the 407 Committee. Board member Fitzgerald complimented both the opponents and the proponents on the professional manner with which they each presented their case during the review, and added that each of the contending parties presented good information to the review bodies.

II) TESTIMONY OF THE CHAIRPERSON OF THE TECHNICAL COMMITTEE

Board Chairperson Tempero then recognized Board member Dennis Hirschbrunner, P.E., the Chairperson of the technical committee, for his comments on the review of the technical committee. Board member Hirschbrunner commented that there were two vital, unresolved issues that emerged from the technical committee review, and these are the length and content of podiatric post-graduate residency training, and the lack of uniformity and standardization in podiatric education and training in general. Board member Hirschbrunner also commended the participating parties for the very professional way in which they represented their concerns during the review.

III) TESTIMONY BY THE APPLICANT GROUP, QUESTIONS AND COMMENTS BY BOARD MEMBERS

Board Chairperson Tempero then asked the applicant group to present testimony to the Board on their proposal and the progress of the review. Kris DiNucci, D.P.M., presented applicant group testimony. Dr. DiNucci stated that podiatry in Nebraska is at a competitive disadvantage because of the restrictions on its scope of practice in our state. This testifier stated that thirty-four other states already have a scope of practice that is similar to that delineated in the proposal, and that the best podiatrists will chose to practice in these states where they can use all of their training and education.

Pertinent to the potential for harm from the proposal, Dr. DiNucci stated that the amendments to the proposal which require that the expanded scope could only be done in surgical centers and that the credentialing boards of these facilities would have to have the benefit if the expertise of an orthopedic surgeon would suffice to address concerns expressed about the safety of the proposal. Board member Allen Dvorak, M.D., responded to Dr. DiNucci's comments by stating that there is a need for peer review of the credentials of anyone who seeks surgical privileges, and that this dimension of the credentialing process would probably not occur in rural areas of Nebraska. Board member Dvorak added that the trend toward outpatient surgical services raises the concern that those podiatrists who would do the expanded

scope might be providing their services outside of a surgical center environment, a situation which this Board member indicated would not be good for public health and safety.

Dr. DiNucci responded by stating that under the terms of the proposal as amended during the fourth meeting of the technical committee the expanded scope could only be practiced in surgical centers, and that peer review should be a feasible procedure for most surgical centers and hospitals. This testifier added that in the case of an outreach clinic, consultative practitioners would be credentialed by the board of the facility sponsoring the outreach clinic.

Pertinent to the provision in the proposal requiring credentialing boards of surgical facilities to have an orthopedic physician as a member, Board Chairperson Tempero commented that to require such representation seems highly unusual and wondered whether this is something the state would want to do. Board member Tempero asked Dr. DiNucci if there is any other state that has such a requirement. Dr. DiNucci responded that there is no precedent in any other state for such an arrangement, and added that this provision arose as an amendment to the proposal, and that the applicants agreed to it in order to address concerns about the safety of the proposal.

Board member Bieganski expressed concerns regarding the appropriateness of requiring credentialing boards to appoint orthopedic surgeons as members, and stated that this would create a precedent for adding a new professional member to these boards every time a question is raised about a given medical specialty or subspecialty.

IV) TESTIMONY BY THE OPPONENTS, QUESTIONS AND COMMENTS BY BOARD MEMBERS

Board Chairperson Tempero then asked the opponents of the proposal to present testimony to the Board on the applicants' proposal. Keith Hughes, M.D., presented opponent testimony. Dr. Hughes stated that the key issue of the review is the current lack of consistent and uniform education and training standards of the podiatric profession. This testifier informed the Board members that conditions of the ankle can be complicated, and often involve vascular and muscular elements that go beyond the ankle per se, and that in these situations, the education and training of podiatrists is not sufficient to provide this care safely and effectively. This testifier stated that currently only physicians possess the necessary education and training to treat conditions of the ankle safely and effectively.

Dr. Hughes commented that there is no need for the proposal since all orthopedic surgeons in Nebraska are qualified to provide the services in question.

Dr. Hughes expressed concern that if the proposal were passed that there would be no effective way to prevent any podiatrist who wanted to practice the expanded scope from doing so, and the fact that there is a trend toward surgical services being provided in outpatient settings heightens the concern that unqualified practitioners might end up providing the surgical services associated with the expanded scope.

Board member Kent Forney, D.V.M., asked Dr. Hughes why podiatrists cannot be trusted to regulate themselves as other licensed professionals do, including the medical profession. Dr. Hughes responded by stating that they could if they had the necessary education and training. This testifier went on to state that if the proposal passes, there will be more cases wherein inappropriate or harmful care is provided, and that other practitioners will have to deal with these situations.

Board member Jerry Vaughan, O.D., then asked if there are serious concerns about the ability of podiatrists to provide the expanded scope safely and effectively why is there no evidence to indicate that malpractice rates for podiatrists have gone up in states wherein the expanded scope has been approved?

Board member Charles Ihle, D.C., asked Dr. Hughes whether he has seen errors committed by podiatrists. Dr. Hughes responded that he has seen "a lot of them." Board member Linda Lazure, R. N., then asked Dr. Hughes, "how many is 'a lot' "? Dr. Hughes responded that he has seen errors from all types of

practitioners, not just podiatrists, and commented that only the very best practitioners should do surgical procedures on the ankle.

Board member James Schiefen, D.O., then asked Dr. Hughes whether he thought general surgeons should be allowed to perform surgery on the ankle, or whether it was his judgment that only orthopedic physicians should provide this care. Dr. Hughes indicated that the kind of care in question requires considerable expertise and experience.

V) **THE FORMULATION OF BOARD OF HEALTH RECOMMENDATIONS ON THE PROPOSAL**

The Board members decided to formulate their recommendations by taking action on each of the four criteria of the credentialing review statute pertinent to scope of practice proposals. Board member Fitzgerald moved and Board member Hirschbrunner seconded that the proposal satisfies the first criterion which states,

THE PRESENT SCOPE OF PRACTICE OR LIMITATIONS ON THE SCOPE OF PRACTICE CREATE A SITUATION OF HARM OR DANGER TO 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 Fitzgerald commented that Nebraska will not be able to attract the best podiatrists given the current restrictions on scope of practice.

Board member Lazure commented that the key issue of the review is access to ankle care, and asked what persuaded the 407 Committee members that there was an access problem in this area of care. Board member Nelson responded by stating that the 407 Committee members were informed that some orthopedic surgeons will not accept Medicaid patients. Board member Dvorak responded by stating that the assertion that orthopedic surgeons do not accept Medicaid patients is totally unfounded.

Board member Steve Wooden, C.R.N.A., stated that for him freedom of choice of practitioner is an important issue in this review.

The Board members then voted on Board member Fitzgerald's motion pertinent to the first criterion.

VOTING AYE WERE BALTERS, DAY, FITZGERALD, FORNEY, HIRSCHBRUNNER, IHLE, LAZURE, NELSON, VAUGHAN, WOODEN, AND YORK; VOTING NAY WERE BIEGANSKI, DVORAK, FOOTE, AND SCHIEFEN; BOARD CHAIRPERSON TEMPERO ABSTAINED FROM VOTING. THE MOTION PASSED WHICH MEANS THAT, ACCORDING TO A MAJORITY OF THE BOARD MEMBERS, THE PROPOSAL SATISFIES THE FIRST CRITERION.

Board member Fitzgerald moved and Board member Hirschbrunner seconded that the proposal satisfies the second criterion, which states,

THE PROPOSED CHANGE IN SCOPE OF PRACTICE DOES NOT CREATE A SIGNIFICANT NEW DANGER TO THE HEALTH, SAFETY OR WELFARE OF THE PUBLIC.

Board member Bieganski expressed concern about the amendment to the proposal pertinent to the composition of hospital and surgical center credentialing boards, commenting that it is bad public policy to dictate to a facility who they must appoint to serve on one of their boards.

The Board members then voted on Board member Fitzgerald's motion pertinent to the second criterion.

VOTING AYE WERE BALTERS, DAY, FOOTE, FORNEY, HIRSCHBRUNNER, IHLE, LAZURE, NELSON, VAUGHAN, WOODEN, AND YORK; VOTING NAY WERE BIEGANSKI, DVORAK, AND SCHIEFEN; BOARD CHAIRPERSON TEMPERO AND BOARD MEMBER FITZGERALD ABSTAINED FROM VOTING. THE MOTION PASSED WHICH MEANS THAT, ACCORDING TO A MAJORITY OF THE BOARD MEMBERS, THE PROPOSAL SATISFIES THE SECOND CRITERION.

Board member Fitzgerald moved and Board member Hirschbrunner seconded that the proposal satisfies the third criterion which states,

ENACTMENT OF THE PROPOSED CHANGE IN SCOPE OF PRACTICE WOULD BENEFIT THE HEALTH, SAFETY, OR WELFARE OF THE PUBLIC.

The Board members took action on this criterion without further discussion.

VOTING AYE WERE BALTERS, BIEGANSKI, DAY, FITZGERALD, FOOTE, FORNEY, HIRSCHBRUNNER, IHLE, LAZURE, NELSON, SCHIEFEN, VAUGHAN, WOODEN, AND YORK. BOARD CHAIRPERSON TEMPERO AND BOARD MEMBER DVORAK ABSTAINED FROM VOTING. THERE WERE NO NAY VOTES. THE MOTION PASSED WHICH MEANS THAT, ACCORDING TO A MAJORITY OF THE BOARD MEMBERS, THE PROPOSAL SATISFIES THE THIRD CRITERION.

Board member Fitzgerald moved and Board member Hirschbrunner seconded that the proposal satisfies the fourth criterion which states,

THE PUBLIC CANNOT BE EFFECTIVELY PROTECTED BY OTHER MEANS IN A MORE COST-EFFECTIVE MANNER.

The Board members took action on this criterion without further discussion.

VOTING AYE WERE BALTERS, BIEGANSKI, DAY, FOOTE, FORNEY, HIRSCHBRUNNER, IHLE, LAZURE, NELSON, SCHIEFEN, VAUGHAN, WOODEN, AND YORK; VOTING NAY WAS DVORAK; BOARD CHAIRPERSON TEMPERO ABSTAINED FROM VOTING. THE MOTION PASSED WHICH MEANS THAT, ACCORDING TO A MAJORITY OF BOARD MEMBERS, THE PROPOSAL SATISFIES THE FOURTH CRITERION.

BY THESE FOUR VOTES THE BOARD MEMBERS DECIDED TO RECOMMEND IN FAVOR OF THE APPLICANTS' PROPOSAL.

VI) ANCILLARY RECOMMENDATIONS OF THE BOARD

The Board members then discussed a motion by Board member Bieganski which was seconded by Board member Hirschbrunner that would put the Board on record as recommending that hospital and surgical center credentialing boards be given the discretion as to how they get input from orthopedic specialists pertinent to the credentialing of podiatrists for surgical privileges.

VOTING AYE WERE BALTERS, BIEGANSKI, DAY, DVORAK, FITZGERALD, FOOTE, FORNEY, HIRSCHBRUNNER, IHLE, LAZURE, NELSON, SCHIEFEN, VAUGHAN, WOODEN, AND YORK. BOARD CHAIRPERSON TEMPERO ABSTAINED FROM VOTING. THE MOTION PASSED.

The Board members then discussed a motion by Board member Dvorak and seconded by Board member Hirschbrunner that would put the Board on record encouraging the podiatric profession to make their education and training uniform and standardized.

VOTING AYE WERE BALTERS, BIEGANSKI, DAY, DVORAK, FITZGERALD, FOOTE, FORNEY, HIRSCHBRUNNER, IHLE, LAZURE, NELSON, SCHIEFEN, VAUGHAN, WOODEN, AND YORK. BOARD CHAIRPERSON TEMPERO ABSTAINED FROM VOTING. THE MOTION PASSED.