

# **REPORT OF RECOMMENDATIONS AND FINDINGS**

By the Dental Anesthesia  
Technical Review Committee

To the Nebraska State Board of Health, the  
Director of the Division of Public Health, Department of Health and Human  
Services, and the Members of the Health and Human  
Services Committee of the Legislature

January 6, 2014

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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.

## The Dental Anesthesia Technical Review Committee Members

<b>John Tenny, D.P.M. (Chairperson)</b> Representing the State Board of Health Podiatry representative	<b>(Lincoln)</b>
<b>Jeffrey Baldwin, Pharm.D., R.P.</b> UNMC College of Pharmacy Professor of Pharmacy	<b>(Omaha)</b>
<b>Ryan McCreery, Ph.D.</b> Associate Director of Audiology Boys Town National Research Hospital	<b>(Omaha)</b>
<b>Corrinne Pedersen</b> Manager of Member Development Nebraska Municipal Power Pool	<b>(Lincoln)</b>
<b>Connie Benjamin</b> State Director for AARP Nebraska	<b>(Lincoln)</b>
<b>Janet Rochford</b> Retired, Rochford Custom Homes	<b>(Kearney)</b>
<b>Edmund Bruening</b> Self-employed Business Manager, Consultant	<b>(Lincoln)</b>

### Meetings Held

Orientation and initial discussion: July 8, 2013  
Discussion one: August 28, 2013  
Discussion two: September 25, 2013  
Preliminary recommendations: October 30, 2013  
Public hearing: November 20, 2013  
Final recommendations: December 18, 2013  
Approval of the final report: January 6, 2014

## **Part Two: Summary of Committee Recommendations**

The committee members unanimously recommended approval of the dental anesthesia proposal. Ideas for ancillary recommendations were considered but were not made.

## **Part Three: Summary of the Applicants' Proposal**

The proposal would eliminate the requirement that dentists must have a permit to administer nitrous oxide, but would require them to acquire permits to provide other types of sedation. Currently, dentists are only required to have a permit to administer nitrous oxide.

The proposal would require dentists to comply with current American Dental Association standards and guidelines for anesthesia. Current Nebraska requirements do not comply with these standards and guidelines. The proposal would accomplish this by establishing the following requirements for dentists, depending on the level of sedation to be utilized:

- A Minimal Sedation Permit would be required for sedation procedures that provide an amount of sedation that is greater than nitrous oxide but less than that provided under moderate sedation (see 'Moderate Sedation', below). The proposal would require each permit holder to take at least six hours of continuing education directly related to the administration and management of sedation in a dental office every two years. They would be required to hold a valid certificate in basic life support for healthcare providers.
- A Moderate Sedation Permit would be required for a level of sedation beyond minimal sedation in which a patient is brought to a drug-induced depressive state. For this permit, the dentist would be required to have advanced cardiac life support training, basic life support training, and receive at least six hours of continuing education training directly related to the administration and management of sedation in a dental office every two years.
- A Deep Sedation Permit, sometimes called a General Sedation Permit, would require advanced education and training in sedation, advanced life support training, basic life support training, and six hours of continuing education every two years.

The applicants stated that these requirements would provide greater assurance that dentists receive sufficient education and training to be competent in administering sedation.

The original proposal was amended by deleting all references to dental auxiliaries. **(The full text of the current proposal can be found on the credentialing review program link at <http://dhhs.ne.gov/licensure/Pages/credentialing-review.aspx>)**

## **Part Four: Discussion on issues**

All sources identified in Part Four of this report can be found on the credentialing review program link at <http://dhhs.ne.gov/licensure/Pages/credentialing-review.aspx>

**How well does the current situation meet the needs of Nebraskans?**

Applicant group representatives informed the committee members that the proposal is an attempt by the Board of Dentistry to update the Nebraska dental statutes to reflect current American Dental Association guidelines regarding sedation, and to make dental anesthesia services safer and more accessible to the public.

**(Guidelines for the Use of Sedation and General Anesthesia by Dentists, by the American Dental Association (ADA), as adopted by the ADA House of Delegates, October, 2007)**

The applicants were asked what the worst case scenario would be if their proposal does not pass. The applicants responded that if Nebraska does not update its requirements for dental anesthesia, eventually, someone is going to suffer serious injury or death. The applicants added that Nebraska is not currently in compliance with American Dental Association guidelines for safe anesthesia practice. **(Minutes of the First Meeting, Held on July 8, 2013; And the Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students, by the American Dental Association (ADA), as adopted by the ADA House of Delegates, October, 2012)**

Committee member McCreery stated that there are two areas of concern as regards the current practice situation, and they are: 1) A continuing education process that lacks clarity, and, 2) Insufficient protection for the public. He added that there is not adequate definition of the various levels of sedation under the current situation, which creates potential for harm to the public. Committee member Benjamin commented that Nebraska is currently not in compliance with American Dental Association guidelines, and this raises safety concerns for Nebraska dental patients. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Committee member Bruening asked for clarification from the applicants regarding what they think is wrong with current dental continuing education. The applicants responded that there are now multiple levels of competency pertinent to the administration of dental anesthesia, and that dental continuing education needs to adjust to this reality of dental practice by offering continuing education that is geared to each of the levels of dental sedation. The applicants said that current dental continuing education does not fit the realities of current dental anesthesia administration. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Committee member Benjamin stated that there is potential for harm inherent in the current situation because of inadequate educational and training requirements for the various levels of sedation that are now part of dental practice. Committee

member McCreery added that the sophisticated computer-based technologies that are now used in anesthesia procedures add urgency to the need to update dental education and training and protect the public. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Committee member Baldwin stated that the current situation does not require adherence to nationally defined standards, and there is a need to update Nebraska's statutes to bring dental practice in line with these national standards. Committee member Pedersen stated that updating Nebraska's standards on dental anesthesia administration would provide greater assurance that the education and training in dental anesthesia in dental schools would eventually be updated. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

### **Would the public benefit from the proposal?**

Committee member McCreery stated that the proposal would clearly enhance public protection. Committee member Baldwin commented that the American Dental Association (ADA) guidelines on anesthesia have been in place for five years. He stated that they have stood the test of time, with no efforts being made to modify them in any way. He added that implementing these guidelines in Nebraska would serve to add significant new protection for Nebraska dental patients. Committee member Bruening asked the applicants whether the ADA guidelines are the final word on dental anesthesia standards, or whether there are alternative guidelines competing with them. The applicants responded that the ADA guidelines are the definitive word on dental anesthesia. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Chairperson Tenny made the observation that the ADA guidelines would enhance the ability of the Board of Dentistry to protect the public. Committee member McCreery commented that clearer delineation of sedation levels and requirements would greatly assist the Board of Dentistry in enforcing improved standards of dental sedation. Committee member Rochford commented that the proposal would also improve monitoring of dental practice in the area of sedation. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

### **Would passing the proposal result in any new harm to the public?**

Chairperson Tenny asked the applicants whether new harm might result from eliminating the requirement that dentists must have a permit to administer nitrous oxide. He asked the applicants if there are currently any dentists who are not adequately trained to administer nitrous oxide. The applicants responded that there are no longer any dentists practicing who are deficient in administering nitrous oxide sedation. Committee member Bruening asked whether there could be practicing dentists who were educated and trained outside of the United States who might not meet the education and training standards necessary to safely administer nitrous

oxide without a special permit. The applicants responded that this scenario cannot occur in Nebraska because Nebraska does not allow anyone to practice dentistry unless they have graduated from an accredited program. This effectively excludes anyone who graduated from substandard dental programs from administering nitrous oxide. The applicants added that new technologies currently in use in nitrous oxide administration have a 'lock out' feature that automatically shuts off once a predetermined dosage limit has been achieved. They added that this makes the administration of nitrous oxide a relatively safe procedure. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Committee member Bruening asked whether agency staff could by-pass the requirements for dental sedation, allowing those who graduated from unaccredited programs with lower standards to teach dentistry in Nebraska. Vonda Apking, DHHS staff to the Dental Board, responded that staff would never by-pass Board authority. Ms. Apking went on to state that all graduates of dental programs in Nebraska must take the national boards examination and prove that they have had two years of post-graduate courses at an accredited college of dentistry to be allowed to practice dentistry in Nebraska without restrictions. Committee member Baldwin asked if this would assure that those who graduated from unaccredited programs had adequate training in sedation to teach it. Dr. David Blaha, DDS, speaking on behalf of the applicant group, responded that the Board of Dentistry does a thorough review of each application for a teaching permit. Ms. Apking stated that those educated and trained in unaccredited programs may be issued a permit to teach in a particular dental school, for example, but that they are not allowed to practice anywhere else other than at that particular institution. Committee member McCreery asked whether there might be an access problem as regards the course work necessary to complete the new permit requirements. Dr. Blaha responded that the courses are very accessible and can be taken on line at any time. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Committee member Bruening stated that he could not identify anything in the proposal that would create a new danger to the public. Dr. Blaha commented that, given the way the proposal would regulate dental sedation, it is actually safer for children than the standard defined in the current ADA guidelines. Committee member Baldwin expressed concern about the proposed six hours of continuing education because the proposed 'live' on-line presentation format might be difficult for some dentists in remote areas of Nebraska to access. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

## **Would the proposal be too restrictive?**

The committee members discussed the contents of a letter received from some pediatric dentists which challenged the proposed regulations on minimal sedation, commenting that the monitoring requirements in the proposal are too restrictive, and are not consistent with ADA guidelines. **(Letter from Brent D. Johnson, DDS, MS; Jessica A. Meeske, DDS, MS; Melissa J. Sveen, DDS; Heidi Stark, DDS; and Gina D. Waite, DDS, dated October 26, 2013)** Committee member McCreery commented that he does not perceive these proposed regulations as being too restrictive, adding that he sees them as being necessary to protect children. Dr. Blaha, speaking on behalf of the Board of Dentistry, acknowledged that the proposal is more stringent than the ADA guidelines on monitoring but that the Board of Dentistry believes that the standard in their proposal is necessary to ensure the protection of children. Committee member McCreery commented that there is no reason why the proposal has to conform to every provision of the ADA guidelines, and commended the applicant group for taking additional steps to ensure the safety of children. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

Dr. Charles Bauer, DDS, speaking on behalf of the Board of Dentistry, commented that there are other differences between the ADA guidelines and the proposal, one being that the ADA standards allow dentists to administer various combinations of sedation drugs to a child, simultaneously. The proposal would not allow this. Dr. Bauer clarified that the applicants believe that the standards defined in their proposal are safer for children than are the ADA guidelines. He clarified that, for the purposes of sedation, children are defined as persons twelve years of age or less. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

## **Would the proposed education and training adequately prepare dentists to perform sedation procedures safely and effectively?**

Committee member Baldwin asked the applicants whether dental education is accredited at a national level to meet a national standard. The applicants responded in the affirmative. Chairperson Tennity asked whether someone could get a degree from a school located in the Caribbean and then come to Nebraska to practice dentistry. Dr. Blaha responded that such a school would not meet ADA accreditation standards. He added that there are some states that do accept such graduates, but that Nebraska does not. Committee member Baldwin asked if there is a national examination for dentistry. Dr. Blaha responded in the affirmative. Committee member Bruening expressed concern that there seems to be no national review committee to enforce educational standards. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Committee member McCreery stated that the proposal would improve education and training in the area of sedation for the entire dental profession. Committee member Baldwin stated that the proposed standards for dental sedation will bring Nebraska dental practice in line with national standards. Committee member Bruening stated

that the proposed educational and training standards would benefit the public, and that the public would also benefit from the requirement that all training programs must meet national accreditation standards. Committee member Pedersen expressed concern that older dentists might not comply with the proposed standards. She also expressed concern that at least some dental students might have difficulty finding the proposed education and training programs. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

**Would there be post-professional programs and competency assessment measures available to ensure that dentists are qualified to perform sedation procedures safely and effectively?**

Chairperson Tenny asked the applicants how their proposal would address concerns about competency assessment. The applicants responded that the new six-hour course continuing education course addresses this concern for their profession. Dr. Blaha informed the committee members that there is a 'refresher' course in sedation that is a component of the continuing education program. Committee member Bruening asked the applicants if there is a testing component with this course. Dr. Blaha responded that this is something that the Board of Dentistry could require, but that this is not a component of this course at the present time. Committee member Bruening asked whether online testing could be made a component of this course. Dr. Blaha responded that this could be done if the Board wants to do that. **(Minutes of the Third Meeting, Held on September 25, 2013)**

Committee member Baldwin commented that continuing education often lacks rigor. Committee member Bruening commented that concerns about continuing education should not override the fact that there is a need to make changes in the education and training requirements for dental sedation in Nebraska. Committee member Pedersen expressed concerns about older practitioners, and stated that refresher courses and periodic retesting might be a good idea for these practitioners. Chairperson Tenny commented that every profession struggles with issues about continuing education, and that these are not unique to dentistry. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

Committee member McCreery commented that the committee cannot solve problems regarding the shortcomings of continuing education, adding that the applicants' proposal attempts to make improvements to continuing education. These proposed changes need to be judged in terms of whether or not they improve safety for Nebraska dental patients. Committee member McCreery went on to state that we cannot hold the dental profession to a higher standard than any other licensed profession in our state with regard to continuing education. **(Minutes of the Fourth Meeting, Held on October 30, 2013)**

**Would there be measures available to determine whether dentists are competently performing sedation procedures safely and effectively, and can action be taken if they are not?**

Chairperson Tenny asked the applicants to discuss how they would address concerns about the enforcement of the proposed guidelines and standards if the proposal were to pass. The applicants stated that the Board of Dentistry is the body that would play the key role in helping dentists satisfy the new guidelines and standards. They added that the Board's disciplinary actions would provide protection for the public. Dr. Blaha commented that the Board of Dentistry has authority to require retesting if that is deemed to be necessary. He added that the Board of Dentistry has the authority to take action against a sedation permit if that is necessary to protect the public. **(Minutes of the Third Meeting, Held on September 25, 2013)**

## **Part Five: Committee Recommendations**

### **Committee Actions Taken on the Six Statutory Criteria:**

**Criterion one: The health, safety, and welfare of the public are inadequately addressed by the present scope of practice or limitations on the scope of practice.**

Voting aye were Baldwin, McCreery, Pedersen, Rochford, Benjamin, and Bruening. Tenny abstained. The proposal passed this criterion.

#### **Comments by committee members:**

- Rochford stated that there is a public protection concern inherent in the current situation.
- McCreery stated that the current scope does not adequately define the various levels of sedation, which creates potential for harm to the public.
- Baldwin stated that the current situation does not require adherence to nationally defined standards, and that the proposal is needed to bring dental practice in line with these national standards.
- Pedersen stated that updating Nebraska's standards regarding dental anesthesia is needed to ensure that the educational process for dentists is also up-to-date pertinent to sedation.
- Benjamin stated that there is a need to upgrade sedation standards in dentistry.
- Bruening stated that there is a need for clearer standards for dental anesthesia in Nebraska and that the proposal would accomplish this, thereby enhancing public safety.

**Criterion two: Enactment of the proposed change in scope of practice would benefit the health, safety, or welfare of the public.**

Voting aye were Baldwin, McCreery, Pedersen, Rochford, Benjamin, and Bruening. Tenny abstained. The proposal passed this criterion.

#### **Comments by committee members:**

- McCreery commented that clearer delineation of sedation levels and requirements will greatly benefit health and safety. He added that the proposed improvements to continuing education would also greatly benefit health and safety.

**Criterion three: The proposed change in scope of practice does not create a significant new danger to the health, safety, or welfare of the public.**

Voting aye were Baldwin, McCreery, Pedersen, Rochford, Benjamin, and Bruening. Tenny abstained. The proposal passed this criterion.

**Comments by committee members:**

- Bruening stated that he could not identify anything about the proposal that would create a new danger to the public health and welfare, and that he sees only good things coming from the proposal.
- Pedersen commented that old habits are hard to change, and that some dentists might be slow to adopt the new standards.
- Baldwin expressed concerns about the ability of dentists in remote rural areas to access the proposed six hours of continuing education, since it requires the ability to access it via 'live' on-line presentations, which might be difficult in some remote areas of Nebraska.
- Benjamin stated the proposal would prevent danger to the public.
- Rochford stated that the proposal is beneficial and that she could see no new harm from passing it.

**Criterion four: The current education and training for the health profession adequately prepares practitioners to perform the new skill or service.**

Voting aye were Baldwin, McCreery, Pedersen, Rochford, Benjamin, and Bruening. Tenny abstained. The proposal passed this criterion.

**Comments by committee members:**

- McCreery stated that ADA accredited programs are of good quality and satisfy standards necessary to protect the public.
- Baldwin stated that the new standards for dental sedation will bring Nebraska dental practice in line with national standards.
- Bruening stated that younger dentists are already benefiting from updated educational and training standards. We must ensure that older dentists get the benefit of this education and training as well.
- Pedersen commented that it is vital to ensure that older dentists also receive the benefit of the new education and training programs, not just the younger dentists.

**Criterion five: There are appropriate post-professional programs and competence assessment measures available to assure that the practitioner is competent to perform the new skill of service in a safe manner.**

Voting aye were Baldwin, McCreery, Pedersen, Rochford, Benjamin, and Bruening. Tenny abstained. The proposal passed this criterion.

**Comments by committee members:**

- Tenny commented that previous committee discussions indicated that there is a consensus among the committee members that the proposed continuing educational program would protect the public.

**Criterion six: There are adequate measures to assess whether practitioners are competently performing the new skill or service and to take appropriate action if they are not performing competently.**

Voting aye were Baldwin, McCreery, Pedersen, Rochford, Benjamin, and Bruening. Tenny abstained. The proposal passed this criterion.

**Comments by committee members:**

- Tenny commented that previous committee discussions indicated that there is a consensus among the committee members that the Board of Dentistry would be able to oversee the administration of the proposal so as to ensure the protection of the public.

**Action taken on the entire proposal was as follows:**

The committee members took action to determine whether or not to recommend approval of the proposal, as follows:

Voting yes were Baldwin, McCreery, Pedersen, Rochford, Benjamin, and Bruening. Tenny abstained. By this vote the committee members agreed to recommend approval of the proposal.

**Committee discussion on ideas for ancillary recommendations:**

The committee members considered formulating ancillary recommendations on the following issues:

- The role of dental auxiliaries in dental anesthesia procedures:

After some discussion the committee members agreed that they did

not have sufficient information to make a recommendation on this issue.

- The concerns raised by pediatric dentists about the proposal:

After some discussion the committee members agreed that they did not receive sufficient information from pediatric dentists to be able to make a recommendation on this issue.

- The concern that dentists need to be more diligent in providing information to their patients about the risks of dental anesthesia procedures:

The committee members were told that informed consent procedures already in place provide this kind of information.