

FINAL REPORT OF RECOMMENDATIONS

**By the Nebraska State Board of Health
on the Proposal by the Perfusionists for Licensure**

**To the Director of the Department of Health and Human Services
Regulation and Licensure and the Legislature**

March 19, 2007

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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 Health and Human Services Department of Regulation and Licensure. The Director of this Agency 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 four 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 Agency 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.

MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

| | |
|---------------------------------------|-----------------|
| Sam Augustine, RP, PharmD | (Omaha) |
| Janet Coleman, Public Member | (Lincoln) |
| Tim Crockett, PE | (Omaha) |
| Edward Discoe, MD | (Columbus) |
| Kent Forney, DVM | (Lincoln) |
| Linda Heiden, Public Member | (Bertrand) |
| Russell Hopp, DO | (Omaha) |
| Linda Lazure, PhD, RN (Chair) | (Omaha) |
| Pamela List, MSN, APRN | (Beemer) |
| Roger Reamer, Hospital Administrator | (Seward) |
| Paul Salansky, OD | (Nebraska City) |
| Robert Sandstrom, PhD, PT (Secretary) | (Omaha) |
| Clint Schafer, DPM | (North Platte) |
| Leslie Spry, MD (Vice-Chair) | (Lincoln) |
| Gwen Weber, PhD | (Omaha) |
| Gary Westerman, DDS | (Omaha) |
| Daryl Wills, DC | (Gering) |

SUMMARY OF THE APPLICANTS' PROPOSAL

The Perfusionists' proposal calls for the licensure of all practitioners of this profession in Nebraska. The proposal would grandfather in those persons who satisfy the licensure requirements within one year upon renewal of the license. There would be a continuing education requirement for renewal of the license.

SUMMARY OF BOARD OF HEALTH RECOMMENDATIONS ON THE PROPOSAL

The members of the full Board of Health recommended approval of the Perfusionists' proposal for licensure.

FULL ACCOUNT OF BOARD RECOMMENDATIONS ON THE PROPOSAL

(State Board of Health Meeting, January 22, 2006)

Dr. Linda Lazure, Chairperson of the Nebraska State Board of Health (BOH), asked Dr. Edward Discoe, Chair of the Board of Health Credentialing Review Committee, to comment on the work of the committee on the proposal during its January 11, 2007 meeting. Dr. Discoe informed the Board members that no opposition to the proposal was expressed during this meeting. He noted that the details of the Technical Review Committee recommendations, as well as those of the Board of Health Credentialing Review Committee, were available in written reports as handouts to the Board members.

Dr. Lazure asked Dr. Westerman to comment on the work of his technical review committee on this proposal. Dr. Westerman noted that there was no opposition to the proposal and that the review went smoothly throughout the entire review process. Dr. Westerman commented that the intent of the technical review committee was to be proactive in advancing this proposal so that harm to the public could be averted.

Dr. Lazure asked whether there were any interested parties that wished to speak on the issues raised by the proposal. No one came forward to speak.

Dr. Lazure then reminded the Board members that the committee recommendations constitute a motion, and that no second is necessary. Dr. Lazure stated that an "aye" vote would uphold the committee's recommendation while a "nay" vote would overturn the committee's recommendation and in effect deny approval of the applicants' proposal.

The Board members then voted on the standing motion from their Credentialing Review Committee to approve the proposal. Voting aye were Coleman, Discoe, Heiden, Hopp, Lazure, List, Reamer, Salansky, Sandstrom, Spry, Weber, and Westerman. There were no nay votes or abstentions. Motion carried.

By this vote the Board members endorsed the recommendation of their Credentialing Review Committee on the proposal which had taken action on the following criteria on January 11, 2007.

These committee recommendations had been formulated by applying the following criteria:

Criterion one: 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.

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.

Criterion three: The public needs and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state.

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

THE RECOMMENDATIONS OF THE CREDENTIALING REVIEW COMMITTEE ON THE PROPOSAL

(January 11, 2007)

Dr. Ed Discoe called the State Board of Health (BOH) Credentialing Review Committee to order at 2:00 p.m. The roll was called and the following committee members were present: Ed Discoe, M.D., Chair, Janet Coleman, and Gary Westerman, D.D.S. Also present from the BOH was Linda Heiden. The following staff persons were present: Ronald Briel, Anne Owens, and David Montgomery.

Comments from the Chairperson of the Perfusionists' Technical Review Committee

Dr. Discoe began the proceedings by asking Dr. Westerman, the Chairperson of the Technical Review Committee, to present comments on the work of his committee. Dr. Westerman presented information about the committee members and stated that Dr. Gangahar, one of the committee members, had offered the other members the opportunity to actually watch open heart surgeries from inside the operating suite. He indicated that everyone who took advantage of the opportunity enjoyed it and was able to see the role that perfusionists play in these surgeries. He stated that the technical review committee found the proposal to be in agreement with the four criteria. Dr. Westerman added that the committee members supported the proposal in order to address potential harm to the public that they felt was inherent in the current unregulated situation of the profession. He also informed the committee members that no opposition emerged during the review of his committee.

Dr. Discoe then asked Ben Greenfield, the representative of the applicant group on the technical review committee, to present a summary of the proposal. Mr. Greenfield began by stating that he is the President of the Nebraska Perfusion Society, which consists of thirty members. He indicated that the major concern of the society has been with the national trend towards perfusionist licensure. He went on to state that most perfusionists in Nebraska are certified by a national board, that most facilities hire board certified or board eligible practitioners, and that there is a minimum educational requirement for board membership. Mr. Greenfield then stated that the current trend toward licensure has weakened the national board because once a given state issues licenses, those practitioners tend to drop their national certification. According to Mr. Greenfield, the long-term consequence of this trend might be that the national certifying board would cease to exist. If this were to occur, it would create a situation where Nebraska's perfusionists would be without a credential of any kind, and thereby without a means of clearly separating themselves from those who might seek to provide perfusion services without any formal education or training.

Mr. Greenfield continued his remarks by stating that the scope of practice of his profession focuses around the operation of the heart/lung machine during bypass surgery. He stated that he and the other members of his group sought to be as inclusive as possible regarding

other professions whose scopes of practice include this type of work. He added that professions such as Respiratory Care would be exempted from the terms of the proposal.

Mr. Greenfield indicated that he would be glad to answer any questions about his remarks or about the proposal. Dr. Discoe asked Mr. Greenfield how many states require licensure. Mr. Greenfield indicated that there are currently sixteen states that have passed licensure laws. Dr. Discoe then asked how many practitioners in Nebraska are certified or board eligible. Mr. Greenfield responded that there are thirty practitioners in Nebraska, and that 100% of them are certified. He added that of these, there are three or four that were trained on the job, but have since been grandfathered in. Dr. Discoe asked Mr. Greenfield who sets the standards of practice. Mr. Greenfield responded that no one sets the standards of practice in Nebraska and that compliance to the national board certification process is entirely voluntary. This means that no employer has to hire a certified practitioner. Dr. Discoe then asked Mr. Greenfield what education and training he has that enables him to do this work. He responded that he graduated with a double major in biology and chemistry and then received a master's degree in perfusion science. He indicated that he has published research in his field. Mr. Greenfield stated that in order to maintain board certification he is required to show proof of a minimum of fifty cases per year where he is listed as the primary perfusionist.

Dr. Discoe asked Mr. Greenfield whether he utilizes anesthesia. Mr. Greenfield responded that he does, and that this occurs when a patient experiences a collapsed lung. Dr. Discoe then asked whether perfusionists are likely to branch out into other specialties. Mr. Greenfield responded in the affirmative and indicated that pediatrics is one area where this might occur. He then described some procedures done by perfusionists, such as washing the blood shed by a patient within six hours of a surgical procedure and then giving it back to the patient. In another procedure, the perfusionist creates a platelet gel to promote healing.

Dr. Discoe asked whether licensure would likely advance the professional standards of perfusionists in Nebraska. Mr. Greenfield indicated that state licensure would make the board standards mandatory for things such as continuing education. The proposal would also take the overall education and training standards for board certification and make these mandatory for Nebraska practitioners. Additionally, board standards pertinent to the number of cases experienced would also be made part of the licensure requirements under the terms of the proposal.

Dr. Discoe asked Mr. Greenfield whether any educational program is clearly recognized nationally as being the leader in perfusionist training. Mr. Greenfield stated that Nebraska has the best program in the country, and this is at UNMC. Linda Heiden asked if there are any other schools in Nebraska where perfusion is taught. Mr. Greenfield responded that UNMC offers the only program in Nebraska.

Janet Coleman commented that she sees licensure as being for the purpose of protection of the public. She then commented that it seemed to her that the current proposal is more for the protection of heart surgeons and anesthesiologists than for the protection of the patient. Ms. Coleman asked Mr. Greenfield whether a patient gets to pick their perfusionist.

Mr. Greenfield responded that in point of fact, some people do make such a choice, and that he personally meets with patients before a surgical procedure to discuss aspects of care pertinent to the services he provides. Ms. Coleman commented that if someone in her family died under these circumstances, the lawsuit would probably be against the surgeon, not the perfusionist. Mr. Greenfield responded that if the perfusionist makes an error during a surgical procedure, the patient will die within seconds. Ms. Coleman stated that she was not sure that licensure would prevent problems in this area of care. Mr. Greenfield responded that licensure would help by ensuring and maintaining a minimum level of clinical competency, and thereby ensuring that an employer does not attempt to cut costs by hiring someone who lacks this minimum level of education and training to provide perfusion services. After this discussion, Ms. Coleman indicated that she felt that she could change her mind and support the applicants' proposal.

Mr. Montgomery stated that initially he had similar concerns, but that the applicant group showed that in other states where "OJT" was accepted, there were concerns about poor quality of care.

Dr. Discoe asked whether or not the surgeon knows in advance who the perfusionist will be during surgery. Mr. Greenfield responded by stating, "Not in Nebraska", and that when a surgeon walks into the operating room, he's just glad that the whole team is there.

At this point, Dr. Discoe asked whether there was anyone in attendance who wanted to speak in opposition, or otherwise comment on the proposal. Dick Bauer, a member of the technical review committee, came forward to speak. Mr. Bauer stated that he is a licensed nursing home administrator, and that he is the Director of the Midlands Area Agency on Aging. He stated that he was impressed with the importance of the work that perfusionists do, and with their desire to be accountable and to protect the public. He added that he was able to witness an open heart surgery, and now knows firsthand how critical the work of perfusionists is as part of the heart surgical team. He also stated that he knows that unless the law prevents it, institutions can go through "the back door" to obtain practitioners. He added that he wants to be assured that those who perform this work are duly credentialed.

Jeffrey Gonzalez, a licensed respiratory therapist and a representative of the Nebraska Society for Respiratory Care, came forward to speak. He stated that when Mr. Greenfield began to talk with the society about licensure, the members were surprised that perfusionists weren't already licensed. He stated that perfusionists perform many of the same types of procedures as respiratory therapists. Mr. Gonzalez concluded his remarks by stating that his group supports the perfusionists' efforts to get licensed. Janet Coleman asked whether the proposal would seek an independent board or attempt to become part of another board such as the Board of Respiratory Care Practice. Mr. Greenfield responded that this is an issue that has not yet been resolved.

Dr. Discoe asked whether the proposed changes in the Uniform Licensing Law (ULL) would in any way complicate the incorporation of perfusionists into the ULL if the proposal were to pass. Mr. Montgomery responded that, assuming that both the ULL bill and the perfusion bill pass, the perfusion bill would be molded to fit the ULL. He added that a scenario in which the

perfusion bill was to pass and the ULL bill did not pass could create a complication.

Dr. Discoe then asked the committee members whether they were ready to take action on the four criteria. The committee members responded in the affirmative. Mr. Briel asked whether the committee members wanted to discuss the four criteria before moving on to apply them to the proposal. The committee members indicated that they did not need such a discussion. Ms. Coleman asked Mr. Briel to read each criterion immediately before the voting on that criterion occurred.

Criterion one states: 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.

Dr. Westerman moved and Linda Heiden seconded that the proposal satisfies criterion one. Voting aye were Coleman, Discoe, Heiden and Westerman. There were no nay votes. Motion carried.

Criterion two states: 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.

Dr. Westerman moved and Janet Coleman seconded that the proposal satisfies criterion two. Voting aye were Coleman, Discoe, Heiden and Westerman. There were no nay votes. Motion carried.

Criterion three states: The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state.

Dr. Westerman moved and Janet Coleman seconded that the proposal satisfies criterion three. Voting aye were Coleman, Discoe, Heiden and Westerman. There were no nay votes. Motion carried.

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

Dr. Westerman moved and Linda Heiden seconded that the proposal satisfies criterion four. Voting aye were Coleman, Discoe, Heiden and Westerman. There were no nay votes. Motion carried.

By these actions the committee members advised the full Board of Health to approve the applicants' proposal.

**PUBLIC FORUM
ON ISSUES RAISED BY THE PROPOSAL HELD BY THE CREDENTIALING
REVIEW COMMITTEE OF THE STATE BOARD OF HEALTH**

(January 22, 2007)

Dr. Discoe called the State Board of Health (BOH) Credentialing Review Committee to order at 8:00 a.m. The roll was called and the following committee members were present: Edward Discoe, M.D., Chair; Janet Coleman; Russell Hopp, D.O. and Gary Westerman, D.D.S. Also present from the BOH were Linda Heiden; Linda Lazure, Ph.D., R.N. (BOH Chair); Robert Sandstrom, P.T. (BOH Secretary) and Leslie Spry, M.D. (BOH Vice-Chair). The following staff persons were present: Ronald Briel and David Montgomery.

Dr. Discoe stated that the purpose of the meeting is to provide additional opportunity for public comment by interested parties regarding the proposal to license Perfusionists.

Dr. Discoe began the proceedings by asking Dr. Gary Westerman, Chairperson of the Technical Review Committee, to come forward to comment on the work of his committee on this proposal. Dr. Westerman stated that the committee review went smoothly and that there was no opposition to the proposal. He noted that the committee members were determined to be proactive in addressing what they saw as serious potential for harm inherent in the current unregulated situation of perfusion practice.

Dr. Spry asked whether the applicant group was seeking to create an independent board or whether they might seek to join a preexisting board. Dr. Discoe asked Ben Greenfield, the applicant group representative, to respond to Dr. Spry's question. Mr. Greenfield stated that his group had considered the idea of joining the Board of Respiratory Care Practice but have since been informed by the RRTs that they would prefer that their statute not be opened up for this purpose. He commented that this means that his profession will probably have to create its own board. Dr. Spry asked Mr. Greenfield what the cost of creating an independent board would be. He responded that he was not sure about the cost. Dr. Lazure commented that she too had concerns about the cost of an independent board given that there are only about thirty perfusionists in the entire state of Nebraska. David Montgomery stated that costs are now pooled amongst the various regulatory boards and that this would significantly reduce costs associated with creating an independent board. He noted that the proposed board in question would consist of a total of five members; three of whom would be perfusionists, and two of whom would be public members.

Mr. Greenfield commented that his group would continue to seek out the most cost-effective way of addressing issues surrounding a regulatory board.

Dr. Discoe asked whether there were any other comments on the issues raised by the perfusion proposal. There being no response, this ended the discussion on this issue at this meeting.