

FINAL Report of Preliminary Findings and Recommendations

By the  
Technical Committee for the  
Review of the Application on  
Mental Health Services  
Nebraska Department of Health

To the  
Nebraska Board of Health,  
the Director of Health,  
and the  
Nebraska Legislature

August 14, 1992



The members appointed by Mark B. Horton, M.D., M.S.P.H., Director of Health, to serve on the Mental Health Practitioners Technical Review Committee are as follows:

Margaret Allington, P.T., Chairperson (Lincoln)

Janet Coleman, Special Education Instructor, Lincoln Public Schools  
(Lincoln)

Becky Beane, Child Care Specialist, Lincoln-Lancaster County Health  
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William Morris, Attorney, Law Partner at Nelson Morris Holdeman  
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Corrinne Pedersen, Community Development Director, Nebraska Municipal  
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## INTRODUCTION

The Nebraska Credentialing Review Program, which was established by the Nebraska Regulation of Health Professions Act in 1985, is a review process advisory to the Legislature. It is designed to assess the necessity for state regulation of health professions or changes in scope of practice based upon criteria that require the examination of proposals to determine whether such proposals are necessary for the protection of public health, safety, or welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit an application for review to the Department 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 made on whether the health occupation should be credentialed according to the four criteria contained within Section 71-6221 Nebraska Revised Statutes; 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 and the Director of Health for their review and recommendation. All recommendations are then forwarded to the Legislature.

Summary of Committee Conclusions and Recommendations

The committee members approved the proposal to create an omnibus credentialing process for some mental health professions in Nebraska. The committee members approved the following ancillary recommendations pertinent to the education and training of mental health providers, and to various mental health issues in Nebraska:

The committee members recommended that all mental health practitioners meet the educational requirements of the proposal, and be required to take the proposed licensing examination or its equivalent as determined by the Board of Mental Health Practitioners.

The committee members recommended that practitioners whose licenses or certificates to provide mental health services are currently revoked should not be grandfathered in Nebraska.

The committee members recommended that the term "remuneration" be replaced by the term "consideration" in the scope of practice of the proposal.

The committee members recommended that the proposed Board of Mental Health Practitioners be composed of not less than two "lay consumer members," and that each of the certified mental health professions under the board's regulatory authority have two representatives.

The committee members recommended that Marriage and Family Therapy be certified in Nebraska.

### Summary of the Applicants Proposal

The Mental Health Task Force appointed by the Director of Health developed a concept to address the problem of unqualified providers in the area of mental health services in Nebraska. This concept calls for the creation of a new licensed mental health profession to be called "Mental Health Practitioners." Members of this profession would be those who hold a masters degree from an accredited educational institution in an accredited mental health counseling program, and who have successfully completed a 3000-hour clinical program, and successfully passed a credentialing examination. Providers who cannot satisfy the terms of this proposal would not be allowed to practice independently unless they are members of groups that are specifically exempted from the terms of the proposal. Groups that are specifically exempted include all psychologists, certified substance abuse counselors, nurses, medical doctors, and the clergy.

This proposal would recognize the state certifications of such groups as social workers and professional counselors. Under the terms of this proposal these would become voluntary specialty certifications that denote a specific area of expertise developed subsequent to the achievement of the basic licensure as a mental health practitioner. Only the achievement of basic licensure would enable one to provide mental health services. The proposal provides for the acceptance of the certification of other member groups after they have undergone credentialing review and have received the support of the legislature.

This proposal calls for the creation of a common Board of Examiners for all practitioners and groups that would be regulated by the act. Special subcommittees would be developed under the auspices of the full Board of Examiners in order to administer the specialty certifications of each mental health group that possesses state certification.

The proposal calls for the creation of a special licensing examination for

the candidates from mental health professions that do not currently possess an examination. The examination will be based on ethical standards, reporting procedures, applicable provisions of state law, and knowledge about treatment and/or referral of individuals needing the services of a mental health practitioner. This examination will be developed by a national testing company with input from Nebraska professionals in the field of mental health. Those candidates from professions that do possess an examination would not be required to take this examination if the Board of Examiners for mental health determines that their examination is equivalent to the above mentioned licensing examination (the Applicants' Proposal, pages 15-16, addendum to question #37).

The applicants defined their proposed scope of practice as follows: mental health practice is the provision of treatment, assessment, psychotherapy or counseling or equivalent activities for remuneration to individuals, families, or groups for cognitive, behavioral, emotional, mental, or social dysfunctions including interpersonal or intrapersonal situations of human conflict. This proposal excludes licensed mental health practitioners from practicing psychology or medicine as described in current legislation.

Licensed mental health practitioners do not:

- prescribe drugs or electro-shock therapy
- treat physical disease, injury or deformity
- diagnose major mental or emotional disorders except in consultation with and under direct supervision of a licensed clinical psychologist or qualified physician. Individuals licensed under this proposal are not precluded from the initial assessment of organic mental or emotional disorders for the purpose of referral to a licensed clinical psychologist or qualified physician.
- assess personality or intelligence for the purpose of diagnosis, use psychotherapy with individuals suspected of having major mental or emotional disorders except in consultation with and under the direct supervision of a licensed clinical psychologist or qualified physician.

-- use psychotherapy to treat the concomitants of organic disorders except in consultation with and under the direct supervision of a licensed clinical psychologist or qualified physician (the Applicants' Proposal, pages 5-6, addendum to question #8).



Discussion on Issues Raised by the Proposal

**Has the Public Been Harmed as a Result of the Lack of  
Licensure in the Area of Mental Health Regulation?**

Applicant Group Comments

The applicants informed the committee members that most of the evidence of harm to the public from unqualified providers of mental health services is anecdotal in nature, because statistical indicators of harm do not exist, and other indicators are not clear. One applicant stated that people fear to enter the counseling process, and that this is an indicator of a problem. This applicant added that such indices as these are impossible to document and subject to widely varying interpretations (the Transcript of the Public Hearing, June 29, 1992, page 74). The committee members stated that they understood the difficulties associated with generating "hard data" on the subject of harm in the area of mental health services, and indicated that they would accept testimony on harm to the public that is anecdotal in nature (the Minutes of the Second Meeting of the Mental Health Technical Committee, May 27, 1992).

The applicants presented anecdotal evidence that they said supports the contention that because of the lack of effective regulation, many persons who have sought the services of a mental health professional have been victimized by unqualified or unscrupulous mental health practitioners. The applicants presented examples of emotional, physical, and sexual abuse of clients from unscrupulous or unqualified providers. At the public hearing, testimony was received from clients who had been victims of sexual abuse by unscrupulous mental health providers. These testifiers told the committee members that psychotherapy is a powerful tool that can be used for good or evil, depending on the quality of the persons who provide the service. Persons skilled in psychotherapeutic techniques have the ability to take control of a client's life, and the state needs to ensure as well

as it can that such persons meet minimum ethical and professional standards (the Transcript of the Public Hearing, June 29, 1992, pages 79-93).

The applicants expressed concern that current law does not prohibit persons who have lost their licenses or certificates because of abusive treatment (or some other kind of unethical conduct) towards their clients from being able to resume their practices simply by changing their professional title to something that is not currently regulated by state statute. The applicants and other testifiers presented evidence to indicate that there are practitioners in Nebraska that have had their licenses revoked because of unethical conduct, but who continue to practice under an "unprotected" title (the Transcript of the Public Hearing, June 29, 1992, pages 79-93; and the Minutes of the Third and Fifth Meetings of the Mental Health Technical Committee, June 18, 1992 and July 16, 1992, respectively).

At the fifth meeting of the technical committee, the applicants showed the committee members a tape of a story from the ABC news program "Prime Time" which described the activities and conduct of uncredentialed mental health providers in three states. This account presented detailed examples of physical, and emotional abuse by unqualified providers based upon interviews with clients and law enforcement officials of these states. "Prime Time" indicated that there may be several thousand uncredentialed mental health providers in the United States ("Prime Time," ABC News, Spring, 1992).

The applicants also presented testimony indicating that many mental health treatment centers frequently hire people who lack sufficient education/training to accurately assess or treat a client's mental health problems. Many clients have been subjected to inappropriate care from such providers. This testifier stated that clients who receive inappropriate care must incur the additional costs and inconvenience of seeking out another provider to provide them with the kind of treatment that should have had in the first place. Some clients become so

discouraged that they drop out of treatment altogether (the Transcript of the Public Hearing, June 29, 1992, pages 8-9, 11, and 16).

One applicant testifier spoke from her direct experience with family-centered services in Nebraska. This testifier stated that these services frequently hire people who have little or no background in mental health counseling. Some of these services see that their hirees get additional training in the area, but most of them do not have the funds to provide them with additional preparation (the Transcript of the Public Hearing, June 29, 1992, pages 54-55).

#### Comments by Those with Concerns about the Proposal

Some committee members felt that the applicant group's evidence on harm to the public was not very compelling. One committee member stated that he understood that hard data is not readily available to address the question of harm, but that the absence of such evidence is not good reason why the committee members should vote in support of the proposal on the first criterion (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992). Another committee member stated that too much of the evidence of harm comes from those professionals who would stand to gain from the passage of the proposal, and too little from the members of the consuming public (the Minutes of the Second and Fifth Meetings of the Mental Health Technical Committee, May 27, 1992, and July 16, 1992, respectively).

One committee member stated that much of the harm comes from persons in the area of "Christian counseling," and that there is nothing that the proposal could do to regulate this area of endeavor in any case (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992).

#### Comments Regarding the Potential for Harm to the Public

One applicant testifier who is familiar with the mental health needs of

rural Nebraska stated that there has been a significant increase in the occurrence of serious problems in rural areas of the state with children who have emotional problems, and with families that suffer because of the emotional problems and behavioral disorders of family members. This testifier stated that these people often are not aware of what mental health services are available in their area, and are not able to evaluate the qualifications of service providers when they do seek treatment. This testifier stated that many rural Nebraskans do not understand the differences between the various professional titles used by those who provide services, and are reluctant to go to a counselor because they fear that if "bad things happen," they will have no recourse and nowhere else to go. This testifier stated that under current laws, there is no recourse for those persons who have a grievance against an uncredentialed provider. This testifier stated that the people of rural Nebraska need assurance that they can get access to good quality counseling, and that the current proposal holds out hope that this may occur (the Transcript of the Public Hearing, June 29, 1992, pages 72-74).

One committee member stated that law enforcement officials are reluctant to take action in cases involving mental health practitioners because their activities are essentially unregulated. This committee member stated that currently the only way that action can be taken is if there is documented evidence that the practitioner in question has committed a crime. The passage of a licensure law would greatly assist law enforcement and the consuming public in any efforts at gaining recourse from inappropriate conduct by a mental health counselor (the Minutes of the Third Meeting of the Mental Health Technical Committee, June 18, 1992). A testifier for the applicant group stated that in many instances people lack the money and/or the time and energy that it takes to get recourse through the legal system, and that what so often happens is that they seek out the services of another counselor instead of undergoing the arduous task of trying to get recourse for the bad.

counseling they received from their previous counselor. This testifier felt that a better mechanism needs to be developed to make it easier for the public to get recourse for inappropriate or abusive treatment at the hands of mental health counselors (the Transcript of the Public Hearing, June 29, 1992, pages 56-57).

One testifier who had concerns about the proposal stated that it is important to foster and protect the ability of the consuming public to exercise freedom of choice in the area of mental health counseling. This testifier felt that consumers are capable of making appropriate decisions with regard to their mental health needs, and that government needs to facilitate the empowerment of consumers by emphasizing consumer education and consumer participation as it considers new legislation in the area of mental health (the Transcript of the Public Hearing, June 29, 1992, pages 103-107).

**How Effective Would the Proposal be  
in Solving the Problems Identified Above?**

Comments on Those with Concerns About the Proposal

One testifier stated that licensure has frequently not served the purpose of public protection so much as it has served the economic and professional self-interest of the affected professionals. This testifier was concerned that the applicant group had apparently not considered alternatives to licensure such as public education and public participation to address the harm they have identified. This testifier took exception to the assumption that the applicant group seems to make that consumers are not able to evaluate the services they receive, and that they are confused about what the services are, and who is providing them. This testifier stated that those who are the consumers of mental health services become very well informed about mental health issues and services, and are capable of making good choices of service providers. This testifier added that there is need

for greater attention to be given to "self-help" programs, programs which mobilize the knowledge and abilities of consumers of mental health services to cope with their own problems (the Transcript of the Public Hearing, June 29, 1992, pages 102-103, and 107).

One committee member stated that the inability of state regulatory mechanisms to regulate clerical counseling might render the proposal ineffective as a means of addressing harm to the public. This committee member stated that a great deal of the harm in this area comes from those who call themselves "Christian counselors," and that constitutional restrictions will not allow this, or any other licensure proposal to regulate the activities of such practitioners, regardless of how desirable this might be from the standpoint of public protection (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992).

Another committee member expressed skepticism regarding the effectiveness of "paper and pencil examinations" to adequately measure the competence of providers. This committee member stated that quality assurance programs, internships that stress direct patient contact, and competency-based training that teaches the candidate understanding and empathy for the client are far better ways of discovering whether someone is prepared to be a good mental health practitioner (the Minutes of the Second, Third, and Fifth Meetings of the Mental Health Technical Committee, May 27, 1992; June 18, 1992; and July 16, 1992, respectively).

This committee member also stated that the core curriculum of the proposal was not adequate to prepare candidates for independent practice, and that this core curriculum needed to be expanded to include personality theory, intervention techniques, diagnostic techniques, neurophysiology, neuropharmacology, psychopathology, and training relevant to instilling awareness of and sensitivity to consumers' rights (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992).

Some testifiers expressed concern that the proposal would grandfather some current practitioners. The concern was that this could lower the overall quality of the group of practitioners who would be licensed. There was also concern that those who would be grandfathered-in would be less likely to have been exposed to new knowledge that has been generated within the last five to ten years than are those who are undergoing their education and training today (the Transcript of the Public Hearing, June 29, 1992, pages 102 and 106).

Other testifiers expressed the concern that any licensing examination must be at least in part competency-based, and should be more than just a "paper and pencil" test of knowledge. These testifiers felt that the licensing examination for this proposal should measure the ability of candidates to perform all of the functions of a mental health practitioner appropriately and effectively (the Transcript of the Public Hearing, June 29, 1992, pages 47-50, 96-98, 102, and 108).

#### Comments by the Applicant Group on Effectiveness

One supporter of the proposal stated that the proposal would "empower" consumers by diminishing their fear that they can be harmed without having any recourse, and by facilitating their ability to choose a good practitioner by limiting that choice to qualified providers (the Transcript of the Public Hearing, June 29, 1992, page 74). Another testifier stated that the proposal would assist those facilities that employ counselors and therapists in their efforts to hire people who satisfy minimum standards by providing assurance that those who use a certain professional title have appropriate qualifications to back it up (the Transcript of the Public Hearing, June 29, 1992, page 56).

One technical committee member stated that the proposed licensing process would make it easier for law enforcement officials and the courts to take action against practitioners who abuse their clients by creating a legally-sanctioned set of standards backed up by a state agency (the Minutes of the Third Meeting of the

Mental Health Technical Committee, June 18, 1992).

The applicants stated that the proposal would prohibit practitioners whose licenses or certificates were revoked from providing mental health counseling by establishing an enforceable scope of practice for mental health providers. One committee member was skeptical that this could be done effectively because there is no way that the proposal can regulate pastoral counseling, and argued that unethical providers would simply call themselves "Christian counselors," and the state couldn't "touch them" (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992).

One applicant testifier responded to those testifiers who were concerned about the proposal unduly limiting freedom of choice. This testifier stated that in his judgment, most mental health consumers do not understand the differences in qualifications between practitioners, and often do not inquire about the credentials or professional experience of practitioners. This testifier felt that because of this situation there is a need to limit the range of choice of mental health practitioners to those who meet certain minimum standards of practice. This testifier went on to say that the current state of the mental health sciences is such that we know what good mental health counseling is, and how to measure it. In his judgment, this level of knowledge means that it is not only possible to devise a regulatory mechanism that can ensure that only qualified people provide mental health services, but it is our duty to do so (the Transcript of the Public Hearing, June 29, 1992, pages 30-31, 34-35).

Regarding the issue of competency-based education and training, one applicant testifier informed the committee members that the 3000-hour clinical component in the proposal is intended to give candidates the "real-world" experience that their academic preparation cannot give them. This component will enable candidates to gain experience implementing what they have learned in the



academic portion of their preparation. This testifier stated that this component is analogous to internships in some other health professions (the Transcript of the Public Hearing, June 29, 1992, page 25).

Regarding concerns about grandfathering, one applicant testifier stated that the proposal would grandfather only those persons who currently possess state certification. All other persons who seek to be credentialed under this proposal would have to satisfy the standards of the proposal unless they are members of groups that are specifically exempted (the Transcript of the Public Hearing, June 29, 1992, page 38).

#### **What Would be the Overall Impact of the Proposal?**

##### Comments by Those with Concerns about the Proposal

One committee member expressed the concern that the evidence of harm as presented by the applicant group did not warrant the degree of state control over mental health counseling practice called for in the applicants' proposal. One committee member stated that the proposal would probably put a lot of people out of work, people whose credentials may not match the standards of the proposal, but who may be providing good services. This committee member stated that the proposal would cost the tax payers of Nebraska a great deal of money to implement, and would have an adverse impact on the ability of rural people and minorities to get access to mental health services. This committee member suggested that the current situation where each citizen can exercise his/her free choice in the selection of a mental health counselor is probably the best situation for Nebraska (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992; and the Transcript of the Public Hearing, June 29, 1992, page 59).

Another committee member stated that the applicants had provided very little evidence as to what would be the costs of their proposal, and requested that the

applicant group provide the committee members with more data on this issue. The applicants responded that they had no additional data on this issue beyond what was already provided in their application (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992). At the time that they wrote the application, the applicants estimated that the costs of administering their proposal during the first five years would be approximately \$100,000 a year, and that revenues from fees would pay all of these costs (the Applicants' Proposal, page 23). However, since that time the proposal was amended to include a content examination, and the applicants did not know what additional costs would result from the development of the examination.

Some committee members expressed concern about the impact of the proposal on minorities and rural Nebraskans. There was concern that the proposal might raise the cost of services, and significantly lessen the number of practitioners available to minorities and rural Nebraskans. These committee members stated that the proposal might also prevent minorities from getting access to the services of providers who are members of their own ethnic group, providers who might not satisfy the standards of this particular proposal. Concern was also expressed that it is unclear as to whether those who would be licensed under the terms of this proposal would be prepared to function in multi-cultural situations (the Minutes of the Third and Fifth Meetings of the Mental Health Technical Committee, June 18, 1992, and July 16, 1992, respectively; and the Transcript of the Public Hearing, June 29, 1992, page 59).

One testifier stated that there is a need to recognize the growing importance of peer self-help in the area of mental health counseling, and stated that this type of counseling needs to be encouraged, whatever else is done in the area of regulation of mental health professionals. This testifier stated that peer self-help groups constitute highly specialized endeavors conducted by knowledgeable

consumers who seek to find ways of addressing their own mental health problems. This testifier stated that what is done within these groups sometimes comes close to the scope of practice described in the proposal, and expressed concern that the work of these groups be allowed to continue if the proposal were implemented (the Transcript of the Public Hearing, June 29, 1992, page 101).

Another testifier expressed the concern that the proposal as currently written would undermine the separate identities of the various professions that comprise the applicant group. This testifier stated that no other state or political entity in the nation has created a common scope of practice and a common licensing process for a whole set of mental health professions. This testifier was also concerned that those who were already certified under processes in place for their respective professions would have to undergo an additional credentialing and examination process in order to be licensed as "mental health practitioners." This testifier felt that this would not only be inconvenient for these practitioners, but would be costly for them as well (the Transcript of the Public hearing, June 29, 1992, pages 114-115). Another testifier expressed skepticism regarding what she saw as an effort to "quilt together" mental health professions that are quite different under one label. This testifier was skeptical that there was sufficient commonality between the affected professions to put them under one overarching regulatory entity (the Transcript of the Public Hearing, June 29, 1992, page 108).

#### Applicant Group Comments on the Impact of the Proposal

One applicant testifier stated that the proposal would have a positive impact on access to mental health services for rural Nebraskans and for minorities because it would credential practitioners from many fields within the mental health community, and thereby create a substantial number of qualified providers from which all consumers can choose (the Transcript of the Public Hearing, June 29, 1992, page 45). Another testifier for the applicant group stated that the proposal

would not negatively impact the ability of minority consumers to access mental health services due to the fact that there are a variety of settings within which services can be accessed such as "not-for-profit" agencies, most of which have a sliding scale for fees to make services more affordable. This testifier pointed out that the current proposal pertains only to independent practitioners (the Transcript of the Public Hearing, June 29, 1992, page 69). Another member of the applicant group stated that the proposal, by virtue of raising the standards of mental health practice in Nebraska, would probably attract quality practitioners to Nebraska from other states, and thereby improve access to care (the Minutes of the Third Meeting of the Mental Health Technical Committee, June 18, 1992).

A testifier speaking in support of the proposal stated that we need to be concerned about the issue of access to care, but not at the expense of quality of care. This testifier stated that, "Five poor-quality counselors don't make up for one good one," and that what rural Nebraskans need regarding the issue of access is access to good quality mental health services (the Transcript of the Public Hearing, June 29, 1992, page 74). Another testifier speaking in support of the proposal stated that rural nebraskans often have little experience or knowledge about how to select a mental health provider, and consequently are particularly vulnerable in this area. This testifier stated that rural Nebraskans need to be protected from unqualified providers of psychotherapy, and that the issue of access needs to be seen in terms of providing access to good quality mental health services (the Transcript of the Public Hearing, June 29, 1992, page 96).

One testifier speaking in support of the proposal advised the applicants to strike the word "remuneration" from the scope of practice of the proposal. This testifier stated that the this limitation would prevent the proposal from regulating those persons who might seek to provide mental health therapy for no remuneration (the Transcript of the Public Hearing, June 29, 1992, pages 147, 150-

151). Some members of the technical committee agreed that this is one aspect of the proposal that needs to be changed. It was recognized that there is a need to protect the activities of groups that provide peer counseling, and that there is a need to protect freedom of speech, but those advocating that "remuneration" parameter be struck from the application stated that there are other ways that these goals can be met (the Transcript of the Public Hearing, June 29, 1992, pages 150-153).

One applicant testifier responded to concerns expressed about the ability of the proposal to prepare candidates to function competently in a variety of cultural contexts by stating that a proposal such as this could deal with these issues, but that this particular proposal has not as yet come to grips with this issue (the Transcript of the Public Hearing, June 29, 1992, pages 25-26).

#### **Is the Scope of Practice of the Proposal an Appropriate One?**

##### Comments by Those with Concerns about the Proposal

One committee member stated that the scope of practice of the proposal should exclude the treatment of "major mental disorders." This committee member felt that only psychologists and psychiatrists should be allowed to deal with those issues that comprise this category of mental health problem (the Minutes of the Second Meeting of the Mental Health Technical Committee, May 27, 1992). This committee member was also concerned about the fact that the proposal would allow those practitioners who would be regulated by it to perform "assessments" of a client's mental condition. He stated that "assessment" and "diagnosis" mean the same thing, and that only psychologists and psychiatrists should be allowed to diagnose (the Minutes of the Second Meeting of the Mental Health Technical Committee, May 27, 1992).

One committee member expressed concern that the proposal does not clarify

the ability of the various mental health professions that would be included under the proposed regulation to provide mental health services and to make an appropriate referral. This committee member also stated that those professions covered by the proposal offer degrees that are significantly different from one another; some are terminal degrees, some are not (the Minutes of the Second Meeting of the Mental Health Technical Committee, May 27, 1992). One testifier at the public hearing expressed concern that the proposal seems to be attempting to "homogenize" the professions that would be regulated under its broad umbrella, and that this could be very confusing to the public. This testifier stated that social workers, marriage and family therapists, and school psychologists, for example, are very different from one another, and that it is difficult to understand how all of their knowledge and expertise can be packaged under one all-encompassing label. This testifier was concerned that there isn't sufficient commonality to put these professions all together into one (the Transcript of the Public Hearing, June 29, 1992, pages 108-109).

Some committee members and a testifier at the public hearing stated that "remuneration" as a parameter defining who is and is not covered by the proposal should be removed from the scope of practice. The concern was that significant harm can be done by persons who offer services without pay if this "loophole" is not closed (the Minutes of the Third Meeting of the Mental Health Technical Committee, June 18, 1992; and the Transcript of the Public Hearing, June 29, 1992, pages 147-153).

One committee member sought to make it clear that the proposal will not be able to regulate the activities of the clergy, and stated that any such effort, regardless of how carefully crafted it might be, will result in a constitutional challenge (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992).

### Applicant Group Responses to Concerns

One testifier for the applicant group responded to the comments regarding the desirability of excluding "major mental disorders" from the proposal by stating that to do so would create a rigid and artificial limitation on the ability of the affected practitioners to serve the public (the Transcript of the Public Hearing, June 29, 1992, pages 41-42). Another applicant testifier stated that the best way to deal with this issue is to allow the proposed "Board of Mental Health Practitioners" to make decisions on such matters on a case-by-case basis, rather than attempting arbitrarily to prohibit all of the practitioners in question from dealing with any type of "major mental disorder." This testifier also stated that there is currently no consensus as to what is included under this term (the Transcript of the Public Hearing, June 29, 1992, page 32).

The applicants responded to the comments of those who were concerned that allowing the practitioners in question to assess a client's mental condition would be the same as allowing them to "diagnose" by stating that the two terms refer to significantly different procedures. One applicant testifier stated that "assessment" refers to a broad, "global" description of a client's general mental condition, while the term "diagnosis" has a narrower and more formal meaning pertaining to the types of disorders classified in the Diagnostic and Statistical Manual of the American Psychiatric Association (the Transcript of the Public Hearing, June 29, 1992, pages 43-44). The applicants felt that it is critically important for the practitioners covered by their proposal to be allowed to do assessments. Their ability to make an appropriate referral would be greatly diminished without this capability.

The applicants stated that the 3000-hour clinical component and the examination are the means by which the proposal would generate greater commonality among the various mental health professions covered by the proposal. To prevent

the "homogenization" of the member professions, the proposal would allow each member profession to seek specialty certification within the larger framework of licensure if they currently lack certification, and would allow those professions that already possess certification to maintain their credentialing mechanisms. The applicants were informed by Department of Health staff that a member profession that possesses a state certifying examination can use this examination as their official licensing exam if the "Board of Mental Health Practitioners" rules that it is equivalent to the licensing examination to be developed by the applicants (the Minutes of the Second and Fifth Meetings of the Mental Health Technical Committee, May 27, 1992, and June 18, 1992, respectively).

#### **Are There Cost-Effective Alternatives to the Current Proposal?**

The committee member discussed other ways of addressing the problems identified by the applicant group. One committee member stated that a quality assurance program does exist, but that it has never been implemented, and stated that the committee members need to make a recommendation that would facilitate the rejuvenation of this program. This committee member also stated that the committee needs to endorse the concept of a "Consumers' Bill of Rights and Responsibilities" as a means of providing empowerment to consumers in the area of mental health services (the Minutes of the Third and Fifth Meetings of the Mental Health Technical Committee, June 18, 1992, and July 16, 1992, respectively).

One testifier described an alternative approach to the education of mental health providers that she said is currently used in the State of Idaho. According to this testifier, in this program students are assigned to an individual who has a severe mental illness, and it is the task of the student to supervise this person's development. This testifier felt that this system gives the candidate a better understanding of what it takes to help clients than the traditional way of



preparing a candidate (the Transcript of the Public Hearing, June 29, 1992, page 105).

One committee member suggested that the current situation of mental health regulation wherein the consumer has the right to choose whomever they want in the final analysis is still the best approach to mental health regulation. This committee member felt that the evidence of harm presented by the applicant group was not sufficiently compelling to justify the costs and the restrictions on free choice that this proposal would require (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992). Another testifier suggested that self-policing by the various mental health professions of their members, and public education are aspects of the issue of providing competence in the area of mental health that need more attention (the Transcript of the Public Hearing, June 29, 1992, page 109). This testifier also stated that peer "self-help" programs have become a trend in mental health, not only in this country, but around the world. This testifier stated that this type of alternative approach is something that the committee should recognize and encourage (the Transcript of the Public Hearing, June 29, 1992, page 101).

One committee member suggested that the concept of a registry would be an idea that could assist an effort at public education in the area of mental health (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992). The committee was informed that a concept such as this had been a part of the professional counselors' bill in 1985, but that it had been amended out of the bill due to opposition from some interested parties. The applicants stated that the idea of a registry is a good idea, but that registration per se would not have sufficient "teeth" to cope with unqualified and unethical providers (the Minutes of the Fifth Meeting of the Mental Health Technical Committee, July 16, 1992).

The applicants stated that their deliberations on alternatives to licensure convinced them that only licensure for all mental health providers could address the problem of harm from unqualified practitioners. In support of this contention, one committee member stated that law enforcement officials are reluctant to get involved in the prosecuting offenders in the area of mental health because of the absence of legislation that clearly defines what is and what is not permissible in the area of mental health counseling and psychotherapy (the Minutes of the Third and Fifth Meetings of the Mental Health Technical Committee, June 18, 1992, and July 16, 1992, respectively; and the Transcript of the Public Hearing, June 29, 1992, page 85).

### Committee Conclusions and Recommendations

At their fifth meeting the committee members met to formulate their recommendations on the proposal by voting on the four criteria of the credentialing review statute.

**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." The discussion on this criterion focused on the quality of the evidence submitted to the committee members by the applicant group to support its contention that there is significant harm as a result of unregulated practice in the area of mental health services in Nebraska. Some committee members stated that the evidence submitted was not compelling. One committee member felt that the evidence was too "thin" to justify the creation of a costly and restrictive regulatory process. This committee member felt that the public would be better served by maintaining the current situation of mental health practice which allows the consumer the maximum amount of freedom of choice in selecting a practitioner. Another committee member stated that too much of the evidence came from those professionals who would benefit from the passage of a licensure act, and too little of the evidence came from the consuming public.

Other committee members acknowledged the difficulty in gathering data to support harm to the public in the area of mental health, and indicated that the anecdotal evidence provided was probably as good as there is in this area. Some committee members pointed out that the "Prime Time" video and the testimony from victims of counselor were significant pieces of evidence supporting the proposal on the first criterion. One of the committee members with concerns about the evidence submitted responded by stating that he understood the difficulties involved in collecting compelling evidence pertinent to harm, but that the inability to

generate compelling evidence does not free the applicant group from the responsibility for making a strong case on the criterion dealing with harm to the public. The committee members then approved a motion which stated that the proposal satisfies the first criterion.

**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." One committee member expressed concern about the potential of the proposal to raise the costs of services for lower and middle income persons. Another committee member stated that the applicant group did not generate sufficient information for a judgment to be rendered on this criterion. This committee member stated that the committee needed information on how many practitioners would be regulated under this proposal, as well as information on how many people would be put out of practice by the proposal. This committee member also wanted the applicants to present data that would provide an estimate on the fees that would be charged to practitioners resulting from the costs of implementing this proposal. One committee member disputed the estimate of \$100,000 for the total cost of the proposal put forth by the applicants.

One committee member responded to some of these concerns by stating that the proposal would attract better quality providers to Nebraska, and might even reduce economic barriers to access by poor and middle income consumers. A member of the audience stated that the proposal would provide incentive to practitioners who previously saw no advantage to becoming certified to seek credentialing under the terms of this licensing proposal, and that this situation would significantly raise the number of credentialed providers beyond what currently is available. The representative of the applicant group on the committee stated that the principal

goal of the proposal is to improve the quality of mental health services in Nebraska, and that access to these services should not be pursued at the expense of the quality of care. The committee members then approved a motion which stated that the proposal satisfies the second criterion.

**Criterion Three** states: "The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state." One committee member said that the expression "by the state" at the end of the criterion caused him concern. This committee member stated that the applicants haven't proven that the state needs to provide an "assurance" of professional ability in this area. Another committee member stated that the applicants haven't demonstrated that consumers lack the ability to evaluate the services or the qualifications of providers without the intervention of the state. The representative of the applicant group on the committee responded to these comments by stating that her group has provided sufficient evidence that there is a need to provide the public with additional assurance of professional ability in this area. This representative then asked that if such assurance is not to be provided by the state, then by whom? One committee member suggested that the professional associations should be responsible for standards within their disciplines. Another committee member responded to this suggestion by stating that professional associations do not have authority to enforce standards, and that this is something that only the state can do. Another committee member stated that there is a need for the quality assurance program to be revitalized in this aspect of health care in Nebraska. This committee member felt that the current proposal needs more of a consumer focus, and that it is too much oriented to what is good for the effected professions. The committee members then approved a motion which stated that the proposal satisfies this criterion.

**Criterion Four** states: "The public cannot be effectively protected by other

means in a more cost-effective manner." The committee members agreed that such alternatives as registration or certification would not address the harm identified by the applicant group. One committee member stated that such alternatives as quality assurance programs and a "consumers bill of rights" should be implemented separately as supplements to the proposal. Another committee member stated that the proposal needs the benefit of "a lot more work" before it is ready to go to the Legislature. The committee members then approved a motion which stated that the proposal satisfies the criterion.

The committee then made the following ancillary recommendations:

1. The committee members approved a motion recommending that all mental health practitioners meet the educational requirements of the proposal, and that they be required to take the proposed licensing examination or its equivalent as determined by the Board of Mental Health Practitioners.
2. The committee members approved a motion recommending that practitioners whose licenses or certificates to provide mental health services are currently revoked not be grandfathered in Nebraska.
3. The committee members approved a motion recommending that the term "remuneration" be replaced by the term "consideration" in the proposal's scope of practice.
4. The committee members approved a motion recommending that the proposed Board of Mental Health Practitioners be composed of not less than two "lay consumer members," and that each of the certified mental health professions under the board's regulatory authority have two representatives.
5. The committee members approved a motion recommending that Marriage and Family Therapy be certified in Nebraska.

### Overview of Committee Proceedings

The Mental Health Practitioners Technical Review Committee members met for their first meeting on May 14, 1992, in Lincoln at the Nebraska State Office Building. Staff described the role, duties, and responsibilities of the committee under the credentialing process. Other areas touched upon were the charge to the committee, the four criteria for credentialing contained within Section 21 of the credentialing review statute, and potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on May 27, 1992, in Lincoln at the Nebraska State Office Building. The task of this meeting which is to formulate a set of questions and issues that the committee members feel need to be addressed at the public hearing was completed at the subsequent meeting which was held on June 18, 1992, in Lincoln at the Cornhusker Hotel. Contained within these questions and issues were specific requests for information that the committee members felt was needed before they could formulate their recommendations.

The committee members convened on June 29, 1992 in Lincoln at the Nebraska State Office Building for the public hearing. The applicants and other testifiers were given the opportunity to express their views on the proposal, and to address the questions and issues raised by the committee members at their second and third meetings. Interested parties were given ten days to submit final comments to the committee.

The committee members met for their fifth meeting on July 16, 1992, in Lincoln at the Center for Continuing Education on the University of Nebraska East Campus. The committee members formulated their recommendations on the proposal at this meeting by taking action on the four criteria of the credentialing review statute pertinent to the proposal. William Morris moved that, "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." Wayne Price seconded the motion. Voting aye were Coleman, Pedersen, and Price. Voting nay were Morris and Wright. Chairperson Allington abstained from voting.

Janet Coleman moved that, "Regulation of the profession does not impose a 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." Corrinne Pedersen seconded the motion. Voting aye were Coleman, Price, and Allington. Voting nay were Morris and Pedersen. Virginia Wright abstained from voting.

Janet Coleman moved that, "The public needs, and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability by the state." Wayne Price seconded the motion. Voting aye were Coleman, Pedersen, Price, and Wright. Voting nay was Morris. Chairperson Allington abstained from voting.

Janet Coleman moved that, "The public cannot be effectively protected by other means in a more cost-effective manner." Wayne Price seconded the motion. Voting aye were Coleman, Pedersen, Price, and Wright. Voting nay was Morris. Margaret Allington abstained from voting.

The committee members met on August 14, 1992, in Lincoln at the Center for Continuing Education of the University of Nebraska East Campus for their sixth meeting. At this meeting the committee members made the following ancillary recommendations:

1. Wayne Price moved that the committee members recommend that all mental health practitioners meet the educational requirements of the proposal, and that they be required to take the proposed licensing examination or its equivalent as determined by the Board of Mental Health Practitioners. Janet



Coleman seconded the motion. Voting aye were Coleman, Price, Morris, and Allington.

2. Janet Coleman moved that the committee members recommend that practitioners whose licenses or certificates to provide mental health services are currently revoked not be grandfathered in Nebraska. William Morris seconded the motion. Voting aye were Coleman, Price, Morris, and Allington.
3. William Morris moved that the committee members recommend that the term "remuneration" be replaced by the term "consideration" in the proposal's scope of practice. Wayne Price seconded the motion. Voting aye were Coleman, Morris, Price, and Allington.
4. William Morris moved that the committee members recommend that the proposed Board of Mental Health Practitioners be composed of not less than two "lay consumer members." Janet Coleman seconded the motion. Voting aye were Coleman, Morris, Price, and Allington.
5. Janet Coleman moved that each of the certified mental health professions under the board's regulatory authority have two representatives. Wayne Price seconded the motion. Voting aye were Coleman, Price, Morris, and Allington.
6. Janet Coleman moved that the committee members recommend that Marriage and Family Therapy be certified in Nebraska. Wayne Price seconded the motion. Voting aye were Coleman, Price, and Allington. Voting nay was Morris.

