

FINAL Report of Preliminary Findings and Recommendations

By the  
Technical Review Committee for the  
Review of an Application to  
License Medical Nutrition Therapists

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

October 25, 1994



The following individuals were appointed by Mark B. Horton, M.D., M.S.P.H., Director of Health, to serve on the Medical Nutrition Therapy Technical Review Committee:

Michael Cullen, D.P.M., Committee Chairperson, Nebraska Board of Health  
Member, Private Practitioner (Omaha)

Walter Conard, D.C., Conard Chiropractic Center (Lincoln)

Debra L. Ingram, Manager, The Principal Financial Group (Grand Island)

Allison Jorgensen, Pharm. D., R.P., Employed by the Nebraska  
Pharmacists Association (Lincoln)

Kathy E. Livingston, Director, Institutional Data and Analysis,  
University of Nebraska-Kearney (Kearney)

Annetta Richards, C.N., R.D., Director of Dietary Services, Fillmore  
County Hospital (Geneva)

Timothy O. Wahl, M.D., Internal Medicine Associates (Omaha)



## Introduction

The Nebraska Credentialing Review Program, established by the Nebraska Regulation of Health Professions Act (LB 407) in 1985, is a review process advisory to the Legislature which is designed to assess the necessity of state regulation for health professionals in terms of the need to protect public health, safety, and welfare.

The law directs those health occupations seeking credentialing or a change in scope of practice to submit to an application for review to the Director of Health. An appropriate technical committee is then formed to review the application and make recommendations after a public hearing is held. The recommendations are made according to four criteria contained in Section 71-6221 Nebraska Revised Statutes; and if credentialing is deemed necessary, the committee is enjoined to recommend the least restrictive level of credentialing consistent with public protection. 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 three recommendations are then forwarded to the Legislature.



### Summary of Committee Conclusions and Recommendations

The committee members decided not to recommend approval of the proposal, voting against the proposal on each of the four criteria. There were no ancillary recommendations. The full account of the recommendations is included in this report in the section entitled "Committee Conclusions and Recommendations" on pages 36-40 of this report.





## The Applicants' Original Proposal

The Nebraska Dietetic Association submitted a proposal to establish licensure for those dietitians who are qualified to do "medical nutrition therapy," and to eliminate the current state certification credential. The proposal would not license the services of those who provide "general nutrition." Medical nutrition therapy was defined in the proposal as follows:

the assessment of patient nutritional status followed by therapy, ranging from diet modification to administration of specialized nutritional therapies such as intravenous or tube feedings, and monitoring to evaluate patient response to such therapy. (The Applicants' Proposal, Page 6)

The proposal defines general nutrition as follows:

the combination of appropriate food (nutrient and fluid intake) and physical activity to meet an individual's needs for health maintenance. (The Applicants' Proposal, Page 6)

Under the terms of the proposal the practitioners who would be eligible for licensure would be registered dietitians who satisfy the education, experience, and examination requirements for licensure defined in Appendix A of the proposal. Other health care professionals must become licensed in order to provide the services in question unless they are members of health care professions whose licensed scopes of practice include the elements of medical nutrition therapy. (The Applicants' Proposal, Page 7)

The proposed scope of practice for medical nutrition therapy states that only licensed medical nutrition therapists or those exempted from the terms of the proposal may provide dietary counseling for persons,

...with a disease, illness, injury, or medical condition that places them at high risk for protein-calorie malnutrition, or already has protein-calorie malnutrition. Diseases, illnesses, injury or medical conditions may include cancer, surgical wounds, severe burn injury, atherosclerosis, renal failure, diabetes, AIDS, high risk pregnancies, pediatric failure to thrive, pulmonary conditions, or conditions related to geriatric care.

(The Applicants' Proposal, Page 6)

The proposal would continue the current Board of Examiners for the licensing credential. The original proposal would have used the examination that is currently used for state certification as the licensing exam. (The Applicants' Proposal, Page 26) The applicant group later informed the committee members that a special examination in medical nutrition therapy is being developed, and would be considered by the board of examiners once it is available.

The proposal would grandfather individuals who meet the education and experience requirements who apply for licensure during the initial licensing period. These individuals would not be required to take the examination. In addition, the examination requirement would also be waived at any time for applicants who present evidence of having practiced medical nutrition therapy without censure for a period of ten years immediately prior to September 30, 1987. (The Applicants' Proposal, Page 25)

The proposal would continue the current CE requirement of thirty-hours of CE every two-years for renewal of the credential. (The Applicants' Proposal, Pages 26 and 27)

Amendments to the Original Proposal Made Prior to the Public Hearing

The applicant group made the following amendments to their proposal prior to the public hearing, in a document submitted ten days before the public hearing:

Pertinent to exemptions the amendment stated:

This proposal shall not prohibit the practice of medical nutrition therapy by professionals licensed or certified under the Uniform Licensing Law when such practice is within the scope of practice for which such person is licensed or certified, except that such professionals shall not hold themselves out to the public by title as being engaged in the practice of medical nutrition therapy.

Pertinent to food stores and weight-loss centers the amendment stated:

Nothing in this proposal shall be construed to apply to prevent any person, including persons employed in health food stores, from furnishing nutrition information as to the use of food, food materials, or dietary supplements, nor to prevent in any way the free dissemination of information or literature as long as no individual engaged in such practices holds oneself out as being licensed under this proposal, or to prohibit any individual from marketing or distributing food products, including dietary supplements, or to prevent such person from providing information to customers regarding the use of such products.

Pertinent to gratuitous care the amendment stated:

This proposal shall not prohibit the gratuitous care, including the practice of medical nutrition therapy, of the ill by a friend or member of the family or by a person who does not represent himself or herself as a medical nutrition therapist.

Pertinent to the scope of medical nutrition therapy the amendment stated:

Medical nutrition therapy shall be: the use of specific nutrition services to treat an illness, injury, or condition. It shall involve two phases:

1. the assessment of patient nutritional status,
2. followed by a prescription for treatment, ranging from diet modification to specialized nutrition support, such as enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment. The practice of medical nutrition therapy is based in clinical research and practice.

Also pertinent to the scope, the amendment included a table describing the six stages of nutritional injury, representing the sequence of events in the development of nutritional deficits. These stages are:

1. Preliminary
2. Biochemical
3. Physiological
4. Clinical
5. Anatomical reversible
6. Anatomical irreversible

The applicants stated that the first three stages represent the area of preventive care, while the last three stages represent the area of medical nutrition therapy.

The amendment stated that only medical nutrition therapists or those exempted from the proposal may treat the health problems of persons who are defined as "at risk," and stated that licensed or

certified health practitioners whose scope of practice allows them to diagnose a patient would be the practitioners who could determine whether a patient is "at risk."

Amendments to the Proposal Made After the Public Hearing

The committee members approved an amendment to the proposal that would allow the term "assess" to be used as an alternative term for "diagnose" in that part of the proposal that defines which practitioners can determine whether a patient is "at risk." (Response to Committee Regarding Concerns Addressed at the Public Hearing, Submitted by the applicants, September 19, 1994)

The committee members approved an amendment to clarify the terms "prescribe" and "facility" as used in their proposal:

Prescription: shall mean a lawful written or verbal order or recommendation for medical nutrition therapy of a licensed registered dietitian, or licensed or certified health care practitioner with medical nutrition therapy in their scope of practice, not to include legend drugs, surgery, medical devices, phlebotomy, x-rays, or radiation. Procedure for orders or recommendations shall follow the established standards/guidelines/protocols of the facility.

Facility: shall mean something built or installed for a particular purpose, including, but not limited to, a hospital, long term care or extended care center, outpatient clinic, physician's clinic, or free standing medical nutrition clinic under the direction of a medical director.

(Response to Committee Regarding Concerns Addressed at the Public Hearing, Submitted by the applicants, September 19, 1994)

At the fourth meeting the committee members approved an amendment to the proposal which stated that a technical advisory council would be created to review the credentials of persons who have been educated and trained in schools other than those which educate and train the members of the applicant group for the purpose of determining whether such persons are eligible for grandfathering under the terms of the proposal during the grandfathering period. This advisory council would function under the auspices of the board of examiners. After the grandfathering period the advisory council would review the credentials of persons educated and trained in schools other than those which educate and train the members of the applicant group in order to determine eligibility to take the examination in medical nutrition therapy. (The Minutes of the Fourth Meeting of the Technical Review Committee, October 5, 1994)

The committee members approved an amendment to exempt the following persons from the licensure requirement as long as they do not represent themselves as medical nutrition therapists:

1. Licensed physicians and surgeons, osteopaths, physician assistants, registered nurses, nurse practitioners, pharmacists, psychiatrists, psychologists, licensed mental health practitioners, chiropractors, dentists, dental hygienists, physical therapists, and athletic trainers within the normal practice of their profession, or as otherwise authorized by law;
2. Any person licensed or certified in this state pursuant to Chapter 71 and under its provisions, engaging in the profession of occupation for which he or she is licensed or certified;
3. Dietetic students engaged in clinical practice under the supervision of a licensed medical nutrition therapist as part of a

- dietetic education program approved or accredited by the American Dietetic Association, and are designed with a title which clearly indicates those persons' status as students or trainees;
4. Persons in the process of fulfilling the experience requirements for licensure, if the activities and services constitute a part of the experience necessary to meet the requirements of licensure and the persons are designated as students or trainees;
  5. Persons who do not meet the academic requirements for licensure and who provide clinical nutrition care services under the supervision of a licensed medical nutrition therapist, or a dietitian licensed in another state that has licensure requirements considered by the Board of Examiners to be at least as stringent as the requirements for licensure;
  6. Persons practicing medical nutrition therapy who serve in the Armed Forces, the Public Health Service, or are employed by the Veterans' Administration, provided that their practice is limited to that service or employment;
  7. Persons practicing medical nutrition therapy who are licensed in another state, United States' possession, or country, or have received at least a baccalaureate degree and are in this state for the purpose of:
    - a. Consultation, provided the practice in this state is limited to consultation;
    - b. Conducting a teaching clinical demonstration in connection with a program of basic clinical education, graduate education, or postgraduate education which is sponsored by a dietetic education program or accredited by the American

Dietetic Association and carried out in an educational institution or its affiliated clinical facility or health care agency, or before a group of licensed medical nutrition therapists;

8. Persons who market or distribute food, food materials, or dietary supplements, including persons employed in health food stores, or persons engaged in the advising of the use of those products, or the preparation of those products, or the counseling of individuals or groups in the selection of products to meet normal nutrition needs;
9. Persons conducting classes or disseminating information related to nonmedical nutrition;
10. Persons who care for the sick in accordance with the tenets and practices of any bona fide church or religious denomination;
11. persons who counsel or provide weight control services as part of a franchised or recognized weight control program or a weight control program that operates under the general direction of a person licensed to practice under the healing arts, nursing, or a medical nutrition therapist licensed in this state; and
12. Persons with advanced postgraduate degrees involved in academic teaching, or research, if the practice is within the scope of their responsibilities.

(The following item was not included: This item stated, "Persons having received a baccalaureate degree in home economics, performing normal nutrition tasks incidental to their practice of their profession, insofar as it does not exceed the scope of their education and training." The committee members felt that this



item was not necessary.)

Whenever another profession which defines medical nutrition therapy within its scope seeks credentialing or a change in its level of credentialing, then the exemptions within the statute must be amended to include that profession. (Response to the Committee Regarding Concerns addressed at the Public Hearing, September 19, 1994)



## Discussion on Issues Raised by the Proposal

Information was provided during the review process by committee members, by the public, and by interested parties on the following:

### The Proposed Scope of Practice

During the review, the committee members requested that the proposed scope of practice for medical nutrition therapy be clarified. The committee members expressed concern that the current wording of the scope of practice does not adequately clarify what unlicensed practitioners can or cannot do in the area of nutritional counseling. The committee members were concerned as to what unlicensed persons could do in the area of nutritional counseling for pregnant clients, clients that are HIV positive (but who do not have AIDS), or clients that have such problems as hyperlipidemia, hypertension, or obesity. Several committee members wanted further clarification on what health food stores could and could not do in the area of advising their customers. The committee members requested information from the states of Iowa and Kansas which have licensure programs for dietitians regarding this issue. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

### Applicant Group Comments on Scope of Practice

After the second meeting the applicant group responded to committee concerns about the scope of practice by submitting the following revised definition of medical nutrition therapy:

Medical nutrition therapy shall be: the use of specific nutrition services to treat an illness, injury, or condition. It shall involve two phases:

1. the assessment of patient nutritional status, and

2. followed by a prescription for treatment, ranging from diet modification to specialized nutrition support, such as enteral and parenteral nutrition, and monitoring to evaluate patient response to such treatment. The practice of medical nutrition therapy is based in clinical research and practice.

The new language included a table describing the six stages of nutritional injury, representing the sequence of events in the development of nutritional deficits. These stages are:

1. Preliminary
2. Biochemical
3. Physiological
4. Clinical
5. Anatomical reversible
6. Anatomical irreversible

The applicants stated that the first three stages represent the area of preventive care, while the last three stages represent the area of medical nutrition therapy. The first three stages represent the area of unlicensed practice. Stages one and two are associated with the lowering of nutrient concentrations. Stages three and four are associated with the lowering of enzyme activity and metabolites. Stages five and six are associated with manifest functional and/or morphological disturbances. (Amendment to the Applicants' Proposal, submitted on August 31, 1994)

The applicant group stated that the proposal does not seek to interfere with the services of those who provide what they define as "general nutrition," or those who sell products or disseminate nutritional information as long as the persons so involved do not attempt to treat the diseases or injuries of persons that have been diagnosed by qualified

licensed practitioners as being "at risk." (Amendment to the Applicants' Proposal, submitted on August 31, 1994)

The applicants felt that this scope or practice provides protection for the public without being unduly restrictive of the activities and services of unlicensed persons and enterprises. The applicants believe that the area of medical nutrition is an area wherein the state needs to provide assurance that practitioners meet minimum standards of competency.

Responding to questions regarding credentialing laws in Iowa and Kansas, one applicant testifier stated that licensure laws for dietitians in these states have also made extensive exemptions for health food stores and commercial weight-loss centers. (Transcript of the Public Hearing, September 9, 1994, pages 47 and 48)

#### Other Comments on the Proposed Scope of Practice

The committee received written commentary and testimony at the public hearing from persons who expressed concerns about the proposed scope of practice. A testifier for commercial weight-loss centers informed the committee that weight-loss centers are in a position to help persons with illnesses, and that weight-loss is something that helps sick people. (Transcript of the Public Hearing, September 9, 1994, page 93)

One testifier informed the committee members that the scope of practice being proposed would prevent all unlicensed people from being involved and using nutrition to treat the health care problems of their clients. This testifier informed the committee members that there are unlicensed providers who are good therapists, and that some of these people are more qualified than the applicant group to do nutritional therapy. This testifier informed the committee members that he is one of those persons, and that he would not be eligible under the current proposal to get a license. This testifier

added that he is currently not licensed in any other profession in Nebraska. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated August 12, 1994)

This testifier went on to state that the professionals represented by the applicant group are relative newcomers to the field of clinical nutrition, and that for the most part, the group represented by the applicants has practiced clinical dietetics in a hospital setting rather than in private practice settings. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated September 3, 1994) This testifier added that he is one of the few clinical nutritionists in Nebraska who can be accessed directly by patients. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated August 12, 1994)

This testifier added that although most dietitians have only approximately twelve credit-hours an undergraduate academic education in the area of clinical nutrition, and many of these practitioners have never practiced anything but food service management, the proposal would license all dietitians as medical nutrition therapists. He added that the proposal makes no distinction between people who have undergraduate degrees, masters degrees, or doctoral degrees. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated September 3, 1994)

This testifier went on to state that the proposal would exclude highly qualified biochemists, many of whom are at the forefront of nutritional research. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated September 3, 1994)

Another testifier presented a somewhat different viewpoint from that presented in the proposal as to what medical nutrition therapy is, stating that this can be described as, "the use of supplemental vitamins and

minerals and other 'food supplements.'" (Letter to the Technical Committee Members from Susan Schriever, September, 1994) This testifier informed the committee members that it has been practitioners outside of the profession represented by the applicant group who have developed the knowledge and skills to use food supplements to improve peoples' health, and that it is not in the public interest to grant the applicant group a monopoly to provide medical nutrition therapy.

#### The Exemptions from the Terms of the Proposal

The committee members requested further clarification on who would be exempted from the terms of the proposal. Several committee members expressed concern that many of the licensure acts of currently licensed health professions in Nebraska do not specifically include the term "medical nutrition therapy." These committee members wanted assurance that these licensed practitioners would be exempted from the terms of the proposal. One committee member wanted assurance that physicians assistants be exempted from the proposal, and pointed out that exempting only licensed people only would not help this group because they are certified rather than licensed. The committee members requested information from Iowa and Kansas on how the licensure programs of these states has handled exemptions. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

#### Applicant Group Comments on Exemptions

The applicant group submitted an amendment to their proposal which stated that:

...the proposal shall not prohibit the practice of medical nutrition therapy by professionals licensed or certified under the Uniform Licensure Law when such practice is within the scope of practice for which such person is licensed or certified, except that such

professionals shall not hold themselves out to the public by title as being engaged in the practice of medical nutrition therapy. (Amendment to the Proposal, submitted by the applicant group, August 31, 1994)

The applicants also stated that:

Nothing in this proposal shall be construed to apply to prevent any person, including persons employed in health food stores, from furnishing nutrition information as to the use of food, food materials, or dietary supplements, nor to prevent in any way the free dissemination of information or literature as long as no individual engaged in such practices holds oneself out as being licensed under this proposal,... (Amendment to the Proposal, submitted by the applicant group, August 31, 1994)

The applicants stated at the public hearing that the exemption for health-food stores also applied to the activities of commercial weight-loss centers. The applicants stated that their proposal seeks only to license the activities associated with the use of nutritional counseling to treat serious disease and injury that would place a person at risk, not activities associated with the sale of food products or weight-loss counseling. (The Transcript of the Public Hearing, September 9, 1994, pages 9 and 10)

The applicants also stated that:

This proposal shall not prohibit the gratuitous care...of the ill by a friend or member of the family or by a person who is not licensed to practice medical nutrition therapy if such person does not represent himself or herself as a medical nutrition therapist." (Amendment to the Proposal, submitted by the applicant group, August 31, 1994)



### Other Comments on Exemptions

One member of the technical committee advised the applicant group to exempt the members of all licensed health professions regardless of the wording in their scopes of practice to avoid legal problems. This committee member also advised the applicants to exempt all certified physicians assistants so as not to interfere with their services. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

At the public hearing one committee member stated that some people take charge of their own health care, and asked the applicants whether an employee of a health food store would be in violation of the proposed statute if he or she provided food supplements to such a person if the person in question had asked them to provide such supplements in order to treat their disease, injury or condition. One applicant responded by stating that health food stores should not become involved in treating disease, and that this is what licensed people should be doing. This committee member then expressed concern that the proposal might in effect prohibit persons from engaging in self-treatment of their own disease processes. The applicant testifier responded by stating that the application would not restrict the activities of persons engaged in such self-treatment. (Transcript of the Public Hearing, September 9, 1994, pages 15, 16, 17, and 32)

Another committee member expressed concerns about wording in the amended proposal which stated that only licensed practitioners who can "diagnose" would be involved in determining who is "at risk." This committee member went on to state that if determining the need for treatment is to be based on diagnosis per se, there would be no means by which such licensed practitioners as pharmacists could know whether or not the person

in question has a serious health problem since they cannot diagnose a patient's condition. This committee member also stated that such establishments as commercial weight-loss centers would have the same problem, and asked, how would they know if their clients have a health problem or not? (Transcript of the Public Hearing, September 9, 1994, pages 18, 19, 20, and 21)

Another committee member expressed concern about the possible impact of the proposal on athletic trainers, and stated that it was not clear to him whether the proposal would exempt these practitioners. An applicant testifier responded that her group did not think that athletic trainers were involved in treating disease processes with diet. The committee member responded that they are involved in treating athletic injuries and that diet is one of the modalities that they use to treat such injuries. This committee member went on express concerns about educators and researchers at institutions of higher learning whose work would frequently overlap with the scope of practice being proposed for medical nutrition therapy. This committee member felt that the proposal as currently written would not exempt them, and that if it were to become law, would have a negative impact on freedom of inquiry. (Transcript of the Public Hearing, September 9, 1994, pages 25, 26, 27)

One applicant responded to these concerns by stating that there is no intention to interfere with the work of persons engaged in the dissemination of information on nutrition or selling nutritional products as long as such persons do not claim to be medical nutrition therapists or attempt to set up practice as therapists. (Transcript of the Public Hearing, September 9, 1994, pages 34 and 35)

The applicants also stated that they would address these concerns by

developing a complete list of professions and occupations that would be exempt under the terms of the proposal. (Transcript of the Public Hearing, September 9, 1994, page 21) The applicants submitted a list of exempted professions and activities prior to the ten-day cutoff period. (Response to the Committee Regarding Concerns Addressed at the Public Hearing, Submitted by the applicant group, September 19, 1994) This list of exemptions is included on pages 10-12 of this report.

#### Harm to the Public from Unlicensed Practitioners

The committee members wanted more information on the public's need for licensure vis-a-vis medical nutrition therapy, and on the extent to which the current state certification credential provides protection for the public. Pertinent to this issue, several committee members wanted clarification on whether the members of the applicant group directly serve members of the public or whether their clients come to them only from referrals from other licensed practitioners. The committee members wanted clarification regarding the extent to which lack of direct reimbursement for dietary providers is a restriction on access to services per se, and whether the proposal would be able to do anything to correct this problem if it were to become law. The committee members also requested information on how the proposed licensure would prevent unqualified practitioners from giving dietary counseling to persons who have health problems that place them "at risk" if it were to become law. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

#### Applicant Group Comments on Harm

The applicant group responded to questions about the ability of the current certification credential to protect the public from harm by stating that certification only provides for title protection, and that revocation

of a practitioner's certification by the state does not prevent a practitioner from practicing. Such action only means that the practitioner in question cannot use the protected title. The applicants also pointed out that certification cannot protect someone who utilizes the services of an uncredentialed provider, and noted that the public generally does not have a good grasp of the meaning of titles and credentials. The applicants indicated that the only effective way of protecting the public from unqualified practitioners in the area of medical nutrition therapy is to license those who wish to practice in this area of health care. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

The applicants submitted documentation of specific cases of harm stemming from the activities of unqualified practitioners in the area of medical nutrition. (The "Cost Savings" document submitted as part of the Applicants' Proposal, Pages 32 through 34)

The applicants also submitted a document that described the types of harm that could result from inappropriate dietary intervention. (The Applicants' Proposal, Pages 45 through 47) The applicants stated that this document illustrates the potential for harm inherent in the current situation of medical nutrition, and that only qualified people should be using diet to treat persons who are at risk.

The applicants informed the committee members that it is the policy of third-party payers to reimburse only for the services of licensed health care professionals, and that certification does not carry weight with third-party payers. (Minutes of the Second Meeting of the technical committee, August 16, 1994) The applicants stated that this situation has limited access to their services, especially in rural areas of the state, and that this is a situation that is harmful to the public. The applicants stated

that comments from members of their profession in Iowa and Kansas indicate that licensure has improved the reimbursement situation of their profession in those states, and that this is something that could eventually improve access to nutritional care in those states. (Transcript of the Public Hearing, September 9, 1994, page 69)

The applicants addressed the contention that there is no need for direct reimbursement for their services because they supposedly do not see patients without a referral. The applicants responded to this contention by stating that their practice does not preclude seeing patients "off-the-street," but that patients must first receive a diagnosis of their overall condition from someone qualified to do so before a medical nutrition therapist can begin their treatment. If a client were to request services from a medical nutrition therapist without first getting the benefit of such a diagnosis, the medical nutrition therapist could do an assessment and note the need for a referral to another practitioner for the purposes of diagnosis. As soon as the overall condition of the client has been determined, the medical nutrition therapist could begin their treatment regimen. The applicants stated that this hypothetical scenario shows that the public does have the opportunity to select a medical nutrition practitioner, and that the public would benefit from direct reimbursement as well as the establishment of minimum standards of practice in this area of care. (Response to the Committee Regarding Concerns Addressed at the Public Hearing, Submitted by the applicants, September 19, 1994)

The applicants responded to the contention that licensure would provide no assurance of direct reimbursement for medical nutrition therapy services by stating that licensure would at least remove one barrier to such reimbursement. (Response to the Committee Regarding Concerns Addressed at

the Public Hearing, Submitted by the applicants, September 19, 1994)

Other Comments on Harm

Several committee members expressed skepticism regarding the applicant group contention that licensure would improve access to medical nutrition therapy because it would enable practitioners to get direct reimbursement for services. One committee member stated that third-party payers use multiple criteria to determine whether they are going to reimburse for services, and that licensure is only one of these criteria. (Minutes of the Second Meeting of the technical committee, August 16, 1994) The applicants responded by stating that licensure for dietitians in Iowa and Kansas has helped to bring down barriers to reimbursement for dietitians in those states. (Transcript of the Public Hearing, September 9, 1994, page 69)

Several committee members commented on the case studies provided in the applicants' proposal by stating that some of the examples cited raised questions regarding the scope of practice. Some examples of harm, for example, seemed to these committee members to comprise problems that are outside of the realm of "medical" concerns. It was also unclear to these committee members how the proposal would prevent unlicensed persons from taking clients who have "medical" problems since there would be no way that unlicensed persons could know whether their clients had such problems in the first place. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

One testifier informed the committee members that there are unlicensed providers in this area of care who are doing good work, and that some of these people are more qualified than the applicant group to do nutritional therapy. This testifier informed the committee members that he is one of those persons, that he would not be eligible under the current proposal to

get a license, and that he is currently not licensed in any other profession in Nebraska. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated August 12, 1994)

One testifier at the public hearing stated that the use of nutrition to address health problems is one of the safest health modalities there is, and that there is virtually no danger of side effects from this kind of care. This testifier went on to say that there have been deaths associated with dietary disorders and inappropriate use of vitamins, but that:

...these deaths do not occur suddenly and without warning and they generally happen while a person is under the care of a physician. Changing the credentials of a dietitian will not change this. Changing the awareness of physicians as to the importance of nutrition in their total treatment plan requires improved education, not licensing laws." (Letter to the Technical Committee Members from Susan Schriever, September, 1994)

This testifier also stated that she believes that the general public does recognize the titles of registered dietitian and certified nutritionist and understands that this group of people have met certain educational and training criteria, and that there is no reason to believe that current credentialing mechanisms are not working. (Letter to the Technical Committee Members from Susan Schriever, September, 1994)

This testifier responded to applicant group comments on third-party reimbursement by stating:

I fail to see how licensing this group will assure that a consultation with them will be covered by insurance when insurance companies are not even willing to pay a doctor to provide...  
...nutritional counseling. Once insurance companies have become

agreeable to paying for nutrition consultations in general, I am quite sure they will be agreeable to paying for a number of sessions with a registered dietitian or a certified nutritionist. In other words 'licensing' is not the determining factor here." (Letter to the Technical Committee Members from Susan Schriever, September, 1994)

#### Third-Party Reimbursement Issues

The committee members wanted more information on whether licensure would improve the prospects of third-party reimbursement of dietary services. The committee members requested information on this issue from Iowa and Kansas. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

#### Applicant Group Comments on Reimbursement

The applicant group responded to these concerns by stating that licensure for dietitians in Iowa and Kansas has brought down barriers to direct reimbursement for their services in those two states. Applicant group testifiers added that there is as yet no hard data regarding this assertion. (Minutes of the Second Meeting of the technical committee, August 16, 1994; and Transcript of the Public Hearing, September 9, 1994, page 69)

#### Other Comments on Reimbursement

Several committee members stated that third-party payers base their decisions on who to reimburse for services on multiple factors, and that licensure is only one consideration out of many other factors. These committee members were skeptical that a licensure law for dietitians in Nebraska would necessarily lead to great improvement in their reimbursement



situation. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

One testifier stated that licensing this group will not assure that a consultation with them would be covered by insurance, and that insurance companies are not even willing to reimburse a doctor for providing nutritional counseling. This testifier did not believe that licensure is the determining factor in reimbursement. (Letter to the Technical Committee Members from Susan Schriever, dated September, 1994)

The applicants responded to the contention that licensure would provide no assurance of direct reimbursement for medical nutrition therapy services by stating that licensure would at least remove one barrier to such reimbursement. (Response to Committee Concerns Addressed at the Public Hearing, Submitted by the applicant group, September 19, 1994)

#### The Possible Impact of the Proposal on Access to Care in Rural Nebraska

The committee members wanted more information on possible impacts of the proposal on health care in rural Nebraska. The committee members wanted information on how the proposal might impact the services provided in rural areas of Nebraska by practitioners from neighboring states that do not have licensure laws for dietitians. The committee members wanted to know what impact the proposal might have on resident RDs in rural Nebraska. Is it likely that these practitioners would be interested in getting licensed under the proposal? The committee members wanted to know if the proposal would attract new RD practitioners to rural areas. The committee members asked for information from Iowa and Kansas on these questions and issues and for any other impacts that licensure for dietitians in those states might have had on the availability of dietetic practitioners in rural areas.

(Minutes of the Second Meeting of the technical committee, August 16, 1994)

### Applicant Group Comments on Access to Care in Rural Areas

Applicant group testifiers at the public hearing informed the committee members that they had asked their counterparts in Iowa and Kansas what impact licensure had on the availability of practitioners in rural areas. One testifier informed the committee members that there is apparently no data on this issue in either Iowa or Kansas. However, the applicants stated that persons in Iowa and Kansas informed them that improvements in the reimbursement situation for practitioners had improved overall access to services, and that this might have the affect of improving access to services in rural areas in particular. (Transcript of the Public Hearing, September 9, 1994, pages 69 and 70)

The applicants also stated that the current shortage of medical nutrition therapy practitioners in rural areas will not improve without licensure and subsequent progress in the area of third-party reimbursement. The applicants added that without licensure, not only would these problems of access not be resolved, but members of their profession would eventually seek out states that already have licensure so that they would have a better chance of being directly reimbursed for their services. (Response to the Committee Regarding Concerns Addressed at the Public Hearing, Submitted by the applicant group, September 19, 1994)

### Other Comments on Access to Care in Rural Areas

At the public hearing some committee members expressed the concern that unless the proposal required all RDs to get licensed that services in rural areas could be impaired by the proposal. These committee members were concerned that RDs in rural areas might not feel that licensure would be worth the cost, and remove themselves from providing medical nutrition therapy services. These committee members asked the applicants to consider

requiring all RDs to get a license in order to prevent this from happening. (Transcript of the Public Hearing, September 9, 1994, pages 101 and 102; and, The minutes of the Second Meeting of the technical committee, August 16, 1994)

The applicants responded to these concerns by stating that many RDs have no intention of doing the protected scope of practice, and that these practitioners could not be required to get a license. The applicants stated that they would do all they could during the grandfathering period to encourage RDs who do dietetic counseling to get licensed. The applicants added that those RDs who seek licensure after the grandfathering period would be required to meet all requirements for licensure, and that this would include taking an examination in the area of medical nutrition.

(Response to the Committee Regarding Concerns Addressed at the Public Hearing, by the applicant group, September 19, 1994)

#### The Impact of the Proposal on the Services of Unlicensed Practice

The committee members wanted information regarding the impact of the proposal on the services of unlicensed providers. The committee members wanted to know approximately how many unlicensed providers are currently providing services that overlap with the proposed scope of practice, and the extent to which the elimination of these services would affect the public. The committee members also wanted to know the extent to which the proposal would affect the services of health food stores and commercial weight-loss centers. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

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

The applicants stated that their proposal seeks to license only the

medical aspects of nutrition and to leave what they call "general nutrition" unregulated. As long as unlicensed providers do not attempt to use diet to treat the health problems of persons defined as "at risk" the proposal would not interfere with their services. The applicants submitted an amendment to their proposal after the second meeting which identified six stages of the disease process. The applicants stated that the proposal would allow general nutritionists to use nutritional counseling to treat the first three stages of the disease process, while only medical nutrition therapists or those licensed persons exempted from the terms of the proposal could use nutritional counseling to treat the last three stages of disease. (Amendment to the Proposal, submitted by the applicant group, August 31, 1994)

The applicants also stated that the proposal would not interfere with the commercial activities of health food stores or weight-loss centers as long as they did not attempt to treat the health problems of persons defined as "at risk." (Amendment to the Proposal, submitted by the applicant group, August 31, 1994) The applicants added that it would be good public policy to require commercial weight-loss centers to routinely correspond with a licensed health care provider as to the health status of each client, initially, to require at prescribed intervals an update of the health status of any client known to have a medical condition, and that they require clients to inform them of any medical condition they may have. (Response to the Committee Regarding Concerns Addressed at the Public Hearing, by the applicant group, September 19, 1994)

#### Other Comments on the Impact of the Proposal on Unlicensed Practice

One naturopath expressed concern that the proposal as written would bar qualified persons such as himself from providing the services that the proposal defines as "medical nutrition therapy." This testifier informed

the committee members that he would not be eligible for licensure under the proposal and that he does not possess a license in any other field of health care in Nebraska, although he is licensed in Washington and Arizona as naturopathic physician. This testifier stated that he provides his patients with an alternative regimen of care to that provided by applicant group practitioners, and that the proposal would deprive his patients of their practitioner. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated August 12, 1994)

This testifier stated that the proposal would license all RDs to do the proposed scope of practice of medical nutrition therapy, but would exclude all other practitioners unless they are already licensed in some other field of health care. This testifier stated that this situation would not be in the best interests of the public since not all RDs are qualified to do the proposed scope and that there are unlicensed people whose training is in other fields of nutrition who are qualified to provide the services in question. (Letter to the Technical Committee Members from Randall Bradley, N.D., dated August 12, 1994)

Several committee members expressed concern regarding the potential impact of the proposal on the employees of health food stores and commercial weight-loss centers. These committee members stated that the scope of practice is not sufficiently clear regarding what these employees can and cannot do. (Minutes of the Second Meeting of the technical committee, August, 16, 1994)

At the public hearing one committee member stated that some customers of health food stores specifically ask for products to treat their health care problems, and that the proposal does not clarify whether answering such questions would or would not be a violation of the terms of the proposal. A

testifier for commercial weight-loss centers expressed concerns about provisions in the proposal which would restrict her business to clients who have no health problems. This testifier stated that her service can help persons who have health problems, and that such a restriction would not be appropriate. This testifier informed the committee that there have never been any complaints from the public regarding her business. This testifier also informed the committee that her business uses a standard form that each client must complete which asks the client to provide a medical history. This testifier added that a physician is contacted regularly for clients that have a history of health problems. (Transcript of the Public Hearing, September 9, 1994, pages 92, 93, 94, and 97)

A testifier for health food stores informed the committee members that there are already laws in place which make it illegal for health food stores to offer prescriptive advice for persons with health problems and that additional legislation is not needed. This testifier added that the proposal needs to be made more inclusive so as not to restrict the activities of educators and researchers in the area of nutrition. (Transcript of the Public Hearing, September 9, 1994, pages 103, 105, and 106)

### The Costs of Licensure

The committee members wanted to know whether a licensure program would increase the costs of services for clients and whether such a program would drive up the costs for those who would be credentialed. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

### Applicant Group Comments on Costs of Licensure

The applicant group responded that to the best of their knowledge the cost of services to the public would not increase under licensure. (Minutes of the Second Meeting of the technical committee, August 16, 1994)

The applicant group submitted documents at the public hearing pertinent to the budget status of their current Board of Examiners which indicated that their board is financially sound. (Budget Status of the Board of Examiners in Dietetics and Nutrition, submitted at the public hearing, September 9, 1994)

### Other Comments on the Costs of Licensure

At the public hearing some committee members expressed the concern that some dietitians in rural areas might forego the costs of getting licensed and thereby adversely impact the availability of services in rural areas. Some committee members stated that it might be a good idea to require all RDs to get licensed as a way of preventing this from happening. (Transcript of the Public Hearing, September 9, 1994, pages 101 and 102)

The applicants responded that they cannot require those RDs who will not be doing the scope to get a license, but that they would do all they could to persuade RDs who do dietary counseling to get licensed. (Response to the Committee Regarding Concerns Addressed at the Public Hearing, submitted by the applicants, September 19, 1994)

At the fourth meeting one committee member stated that the financial information in the proposal pertinent to the cost of credentialing made no provision for the cost of investigations. This committee member stated that higher fees for practitioners associated with the costs of investigations are likely to result from the establishment of the new credential, and that these higher fees would likely be passed on to the public in the form of higher health care costs. The applicants responded that passing their proposal would likely result in more persons getting credentialed under the current situation, and that this would compensate for any increased costs of credentialing associated with the proposal. The applicants also stated that there are costs associated with inappropriate care, and that this also needs to be taken into consideration. (Minutes of the Fourth Meeting of the technical committee, October 5, 1994)



### Committee Conclusions and Recommendations

At their fourth meeting the committee members allowed the applicant group to make the following amendments: (after ten days prior to the public hearing program rules require approval of all amendments to a proposal by a majority of committee members)

1. A list of exemptions was included. The entire list is described in the section summarizing the applicants' proposal, pages 10-12 of this report.
2. A redefinition of the terms "prescription" and "facility" was included. This amendment is described in the section summarizing the applicants' proposal, page 9 of this report.
3. The term "assessment" was added as an alternative to the term "diagnosis" in the proposed scope of practice, allowing a wider range of licensed and certified health care practitioners who could make the determination of the need for medical nutrition therapy.
4. The idea of creating a technical advisory council under the auspices of the board of examiners was added in order to allow for a review of the credentials of persons trained and educated in schools other than those which educate and train registered dietitians for the purpose of determining eligibility for grandfathering. After the grandfathering period this body would review credentials of such persons to determine eligibility to take the examination in medical nutrition therapy.

In commenting on these amendments, one committee member suggested that amendment number two needed to be worded more clearly in any statutory

version of the proposal in order to eliminate ambiguities regarding the meaning of the term "facility."

The committee members then discussed the set of criteria most pertinent to the proposal.

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." Committee member Conard moved and committee member Livingston seconded that the proposal does not satisfy the first criterion.

In the ensuing discussion one committee member asked the applicants to clarify what the harm is in the current situation. The applicants responded that they were concerned about the harm from lack of access to their services arising from the fact that they are not directly reimbursed for their services. The applicants stated that licensure would help them achieve such reimbursement and thereby improve access to their services, especially in underserved areas of the state. Another committee member responded to applicant comments by stating that the applicants provided no evidence demonstrating that licensure would have any impact on their reimbursement situation, and that the testimony presented at the public hearing pertinent to the impact of licensure on the reimbursement situation for the profession in Iowa and Kansas provided no data on this subject.

The applicant group representative reminded the committee that their proposal did include case studies pertinent to harm to the public. One committee member responded to this comment by stating that the cases in question did not demonstrate that serious harm is occurring to the public, and added that the proposal would not be able to resolve the situations described in these cases anyway.

The committee members then voted on criterion one. Voting aye were Wahl, Jorgensen, Conard, and Livingston. Voting nay were Richards and Ingram. There were no abstentions. By this vote the committee members decided to recommend against approval of the proposal on this 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." Committee member Jorgensen moved and committee member Ingram seconded that the proposal does not satisfy the second criterion.

One committee member asked what would happen to the practices of persons such as Randall Bradley if the proposal were to become law. The applicants responded that they intend to establish an advisory council under the auspices of their board of examiners that would review the credentials of persons trained and educated in schools other than those which educate and train registered dietitians for the purpose of determining eligibility for grandfathering. After the grandfathering period this body would review credentials of such persons to determine eligibility to sit for the exam in medical nutrition therapy. One committee member asked the applicants what examination would be used for these people. The applicants responded that an examination specific to medical nutrition therapy is being developed, and that their board could adopt this exam once it is ready.

Another committee member stated that requiring persons from a different educational background to take an exam developed within the RD community might not be fair, especially if the persons in question are trained in schools which differ philosophically from those of the applicant group.

Another committee member expressed concern about the potential

liability of an employee of a nutrition center in a situation in which a customer does not divulge information to the employee regarding a serious illness that they have, and went on to state that it is unclear whether the employee would be in violation of the terms of the proposed statute or whether the responsibility lies with the customer to provide the employee with such information.

One committee member stated that the aspect of the proposed scope pertinent to the six stages of the disease process is not comprehensible. This committee member added that many "general nutrition" providers are not trained to assess the extent of nutritional injury, and therefore could not know whether a client is "at risk" or not. The applicants responded that this aspect of the proposed scope represent general guidelines for a diagnosing physician, and as such are not "black and white." Another committee member responded that the scope of practice must be clearer than as described in the current proposal in order to be operational.

The committee members then voted on criterion two. Voting aye were Wahl, Jorgensen, Ingram, Conard and Livingston. Voting nay was Richards. There were no abstentions. By this vote the committee members decided to recommend against approval of the proposal on this 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." Committee member Jorgensen moved and committee member Ingram seconded that the proposal does not satisfy the second criterion.

One committee member stated that the financial information in the proposal pertinent to the cost of credentialing made no provision for the cost of investigations. This committee member stated that higher fees for

practitioners associated with the costs of investigations are likely to result from the establishment of the new credential, and that these higher fees would likely be passed on to the public in the form of higher health care costs. The applicants responded that passing their proposal would likely result in more persons getting credentialed than under the current situation, and that this would help to compensate for any increased costs of credentialing associated with the proposal. The applicants also stated that there are costs associated with inappropriate care, and that this is also something that needs to be considered when the subject of cost of credentialing is under review.

The committee members then voted on criterion three. Voting aye were Wahl, Jorgensen, Ingram, Conard, and Livingston. Voting nay was Richards. There were no abstentions. By this vote the committee members decided to recommend against the proposal on this criterion.

Criterion Four states -- "The public cannot be effectively protected by other means in a more cost-effective manner." Committee member Jorgensen moved and committee member Conard seconded that the proposal does not satisfy the fourth criterion.

One committee member stated that the proposed solution of licensure does not solve the problems of access associated with lack of direct reimbursement for the services of the applicant group. This committee member also stated that the applicants did not present a convincing argument that there are quality of care problems pertinent to the area of care under review, and that since there is no problem, there is no need for a solution.

The committee members then voted on criterion four. Voting aye were Wahl, Jorgensen, Ingram, Conard, and Livingston. Voting nay was Richards. There were no abstentions. By this vote the committee members decided to

recommend against the proposal on this criterion. As a result of these four votes the committee members decided to recommend against approval of the proposal.

Committee member Jorgensen then moved and committee member Conard seconded that the committee ask the Department of Health to help remove the requirement that a health profession must be licensed in order to receive third-party reimbursement. Voting aye were Jorgensen and Conard. Voting nay were Wahl, Richards, Ingram, and Livingston. There were no abstentions. The motion failed.

## Overview of Committee Proceedings

The technical committee members met for their first meeting on August 2, 1994, in Lincoln, in the Nebraska State Office Building. The purpose of this meeting was to orient the committee members to their duties and responsibilities as members of a review body in the credentialing review program. Copies of the proposal were submitted to the committee members by the members of the applicant group at this meeting.

The technical committee members met for their second meeting on August 16, 1994, in Lincoln, in the Nebraska State Office Building. The committee members discussed the applicants' proposal, and formulated a list of questions and issues that they wanted addressed at their public hearing.

The technical committee members met for their public hearing on September 9, 1994, in Lincoln, in the Nebraska State Office Building. The committee members gave the applicant group one-hour-and-fifteen-minutes to present their testimony. Other testifiers received the same amount of time. Each individual testifier was given five-minutes to present their testimony.

The technical committee members met for their fourth meeting on October 5, 1994, in Lincoln, in the Nebraska State Office Building. The committee members formulated their recommendations on the proposal at this meeting by taking action on the four statutory criteria of the credentialing of the credentialing review statute that pertain to the proposal in question. The votes of the committee members on these criteria can be found on pages 38-40 of this report.

The technical committee members met for their fifth meeting on October 25, 1994, in Lincoln, in the Nebraska State Office Building. The committee members approved their report on the proposal at this meeting, and thereby

completed their duties and responsibilities as part of the credentialing review program. The committee members then adjourned sine die.