

Report of Final Findings and Recommendations

By the
Technical Committee for the Review of the
Application for Credentialing by the
Nebraska Dietetic Association

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

December 9, 1986

The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the Dietitians and Nutritionists Technical Committee are as follows:

Jeanette Masek, M.D. (Chairperson) - Physician, HealthAmerica, State
Board of Health Member (Lincoln)

Cathy R. Anderson - Quality Assurance Coordinator, Office of Mental
Retardation, Nebraska Department of Public
Institutions (Lincoln)

Debra Anderson - Nebraska Nutritionists Association representative
(Lincoln)

Gary Bieganski - President of McCook Community Hospital

Sheila M. Ciciulla, R.N., Ph.D. - Nursing Educator at Creighton
University (Omaha)

Betty G. Foster, Ph.D. - Geriatrics Professor, UNMC (Omaha)

Joan Werblow, M.S., R.D. - Nebraska Dietetic Association representative
(Ralston)

SUMMARY OF COMMITTEE FINDINGS AND RECOMMENDATIONS

The technical committee decided not to recommend credentialing for dietitians and nutritionists at this time. Despite the fact that the committee determined that there was harm to the public in the current practice situation, the majority of the committee decided that the extent of the harm did not justify a favorable recommendation on the establishment of state credentialing for this occupation. The committee was concerned about the costs associated with credentialing, in particular the administrative costs, and the potential for the restriction of freedom of choice to the public.

Even though the committee recommended against credentialing, there was considerable support for the idea of mandatory registration. A number of committee members stated that mandatory registration would provide the public with the means of making an informed choice in a cost-effective manner. There was considerably less support for the idea of certification. Some committee members did not believe that state certification would provide the public with a greater degree of protection than that already provided by private certification by the ADA.

Several technical committee members discussed the idea of public education as a means of addressing the problems identified by the applicant group. However, they were not sure as to how this might be done, nor did they discuss the costs associated with such an alternative.

INTRODUCTION

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

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

SUMMARY OF THE APPLICANT PROPOSAL

The Nebraska Dietetic Association seeks certification for anyone claiming to be a Dietitian or Nutritionist, and mandatory registration for all other practitioners engaged in the provision of dietetic and nutrition services for remuneration.* Under this proposal each certified dietitian and nutritionist would have his or her qualifications assessed and endorsed by the State. This proposal requires each certified or registered practitioner to present a disclosure statement in writing to a person who is seeking dietetic and nutrition services from a practitioner. These disclosure statements will be designed to delineate relevant education, training, and experience of each practitioner. Under the terms of this proposal disclosure statements of registered practitioners are not to be construed as providing any endorsement by the State of the qualifications of the registrants, and no registrant is to use any title which includes the terms dietitian or nutritionist or any facsimile thereof.

According to this proposal the Department of Health would issue a certificate to each nutritionist if they:

- I. Satisfy the following criteria:
 - a. Possess a baccalaureate or postbaccalaureate degree with a major course of study in human nutrition, food and nutrition, dietetics, or food systems management, or an equivalent major course of study approved by the department;

* See note on page 7.

- b. Satisfactorily complete a program of supervised clinical experience approved by the department; and
 - c. Pass an examination.
- II. The department could also issue a certificate to each nutritionist who has received a Master's or Doctorate Degree in human nutrition, nutrition education, foods and nutrition, or public health nutrition, or otherwise has furnished proof of bona fide credentials as a nutritionist accepted by the department.
- III. A person shall be qualified to be a registered practitioner if he or she submits his or her name and address to the department. There is no training or education prerequisite for registration.

The proposal would establish a Board of Examiners in Dietetics and Nutrition. The Board would consist of four persons, two of whom are to be either certified dietitians and/or nutritionists. The rest of the Board would be composed of one registered practitioner and one lay person.

The proposal would require all applicants for certification to pass a competency-based examination given by the Department of Health. The department may adopt any nationally developed standard examination as the required examination for certification of dietitians and nutritionists in Nebraska, subject to the approval of the Board of Examiners. The Board may exempt an applicant from the written examination who has been in active practice prior to the effective date of the proposal.

The proposal would establish a grandfather clause stating that any person may be issued a certificate without examination if they file an application with the department within a certain period after the operative date of this act and the application satisfies the qualification requirements.

The proposal authorizes the department to enter into reciprocity agreements with other jurisdictions, or makes analogous provision for credentialing by waiver of examination for persons meeting equivalent standards and who are credentialed by examination in another jurisdiction. The department would be authorized to adopt rules and regulations for reciprocity consistent with the Uniform Licensing Law.

A credentialed dietitian or nutritionist may renew his or her unexpired certificate without examination by paying a renewal fee, complying with continuing education requirements, and abiding by a code of ethics.

As regards exclusions from the provisions of the proposal, the applicants state that nothing in the proposal shall be construed to prevent or restrict:

- (1) Qualified members of currently credentialed professions from doing work consistent with the scope of practice of their respective professions;
- (2) Students or interns from engaging in dietetic or nutrition services under the supervision of a dietitian or nutritionist;
- (3) Any person who is employed by the federal government, state government, or any other political subdivision;
- (4) Any person who has a degree from an accredited home economics program from being employed as a nutrition educator;

- (5) Any person from doing research in the area of nutrition;
- (6) Any person who has a degree from an accredited program in food service management or has completed an approved food service management training program from working in such a field.

Note:

The applicant did submit an amendment to the technical committee which would eliminate the use of the term "dietitian" in any proposed credentialing legislation. Such amendment would provide alternatives for an individual to become a "certified nutritionist."

OVERVIEW OF COMMITTEE PROCEEDINGS

The Dietitians and Nutritionists Technical Committee held its first meeting on September 11, 1986, in Lincoln at the State Office Building. An orientation session given by the staff focused specifically on the role, duties, and responsibilities of the committee under the credentialing review process. Other areas discussed were the three criteria for credentialing contained in the Nebraska Regulation of Health Professions Act, and the potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on October 3, 1986, in Lincoln at the State Office Building. After studying the proposal and relevant material compiled by the staff, the committee formulated a set of questions and issues it felt needed to be addressed at the public hearing. Contained within these questions and issues were specific requests for information that the committee felt was needed before any decisions could be made. (See pp. 21 and 22)

The committee reconvened on October 17, 1986, in Lincoln at the State Office Building for the public hearing. Proponents, opponents, and neutral parties were given the opportunity to express their views on the proposal, and to discuss the questions and issues raised by the committee at the second meeting. Interested parties were given ten days to submit final comments to the committee.

The fourth meeting of the committee convened on November 14, 1986, in Lincoln at the State Office Building. After studying all of the relevant information concerning the proposal, the committee formulated its recommendations. These recommendations were based upon the three criteria found in the Nebraska Regulations of Health Professions Act.

SUMMARY OF EVIDENCE AND FINDINGS

Criterion 1

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.

Information Provided by the Applicant Group

In their application, the applicant group stated that harm to the public is inherent in a situation where persons who lack academic credentials can present themselves to the public as bona fide dietitians and nutritionists. (p. 51 of the application)

The applicants state that persons representing themselves as nutritionists without credentials from accredited universities pose a threat to the public through inaccurate interpretation of scientific literature and by offering services that they are not trained to provide. The applicants state that many of these poorly trained persons are charlatans who pander in "miracle cures" and fad diets that in many cases are harmful to public health. (p. 45 of the application)

The applicants claim that there is documented evidence that misrepresentation of credentials and the presentation of misleading information by poorly trained or dishonest practitioners has harmed the public. As evidence they describe research done by the American Cancer Society, the FTC, and the Center for Disease Control. For example, the FTC found that some so-called cures for arthritis contain substances which, if used as prescribed, could cause injury to health. An American Cancer Society study was quoted concerning so-called cancer cures of

various health food faddists. The study stated that some of the diet regimens of these so-called cancer cures are so nutritionally deficient or toxic as to cause serious illness or death. (The Transcript of the Public Hearing, pp. 16 and 17)

The applicants mentioned a study by the Center for Disease Control which described improper diet and weight loss techniques associated with some very low calorie diets and liquid protein diets. The applicants claim that this study has demonstrated that such diets can severely harm the health, or take the life of otherwise healthy persons. In their judgment this is why the FDA requires warning labels to be placed on all liquid diet containers. (p. 45 of the application)

The applicant group also presented anecdotal testimonial commentary describing the harm done to individuals by unqualified health food counselors. The harm documented by these testimonials included hair loss resulting from participation in fad diet programs, and the harmful effects of taking brewer's yeast in an attempt to cure bulimia. In both of these cases, the testifiers stated that they participated in these fad diets because they were advised to do so by so-called "nutrition counselors" who were later found to be unqualified.

The applicant group sought to demonstrate that the absence of supervision of untrained persons in many private practice situations in the field of dietetics and nutrition creates a practice situation that is harmful to the public. The applicants stated that a significant proportion of the practitioners in the field are directly involved in the provision of services to the public, and that there is no guarantee that practitioners are supervised by qualified personnel. (pp. 7 and 43 of the application)

Information From Other Sources

Opponents of the proposal presented testimony which stated that the public is sufficiently protected by regulatory machinery already in place. A representative of the National Nutritional Foods Association stated that such federal regulatory organizations as the FDA and FTC as well as state departments of health, state attorney generals' offices, and county attorneys collectively provide the public with sufficient legal recourse against fraudulent practice in the area of dietetics and nutrition. A representative of the Nebraska Nutrition Association stated that the public is already aware that dietitians have exclusive legal claim to their title. The speaker added that all institutions hiring dietary personnel write into their job description the requirement for at least a bachelors degree in nutrition with preference for a masters degree or a Ph.D. in nutrition. The Nebraska Nutrition Association representative also stated that private, voluntary certification of dietitians by the ADA gives the public additional protection from unqualified practitioners. The establishment of state certification would provide no additional protection for the public beyond that already provided by the ADA. (Transcript of the Public Hearing, p. 100)

The opponents stated that the proposal itself is potentially harmful. The Nebraska Nutrition Association representative stated that the proposal would facilitate the efforts of the ADA to get control over the entire field of dietetics and nutrition. Opponents stated that this would be detrimental to research in this field, since some of the best research in dietetics and nutrition has come from outside of the ranks of the ADA. Another nutritionist opposed to the proposal stated that

the passage of the proposal would place noncredentialed members at a competitive disadvantage in the marketplace. He stated that even though noncredentialed practitioners would be allowed to continue their practices, they would be reduced to second-class status, since they could not use the terms dietitian or nutritionist. Such a restriction would have negative impacts on their ability to earn a living.

(Transcript of the Public Hearing, p. 75)

In the opinion of the opponents, the applicant group has not successfully demonstrated who is and who is not a qualified nutritionist; nor have they adequately defined what nutritional advice is, or is not, consistent with public health and welfare. The opponents used several examples to support these judgments. One example that the Nutrition Association representative used was that of a widely respected Rutgers University horticulturist. This scholar, although he would not be eligible for credentialing under the terms of the applicant proposal, has proven his competence in the area of dietetics research. His research has demonstrated that there is a link between diet and such diseases as arthritis, contrary to the assertions of the ADA. His observations support the theory that alkaloids in some foods aggravate the symptoms of arthritis and that the elimination of such foods from the diet will often result in the remission of the symptoms.

(Transcript of the Public Hearing, pp. 60-63)

A representative of the National Nutritional Foods Association stated that applicant group statements asserting that liquid diets are harmful have never been substantiated. They claimed that no regulatory entity has ever taken action against liquid diets. (Transcript of the Public Hearing, p. 119)

In summary, the opponents state that the proponents have not clearly defined what is "quackery" and what is not; nor would their proposal for certifying dietitians and nutritionists eliminate the problem of "quackery" even if it could be defined.

Analysis and Final Committee Findings

Werblow moved that the unregulated practice of Dietetics and nutrition can clearly harm or endanger the health, safety, or welfare of the public, and that the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument. Bieganski seconded the motion. Voting aye were Bieganski, Werblow, and Masek. Voting nay were Ciciulla and Debra Anderson. Committee members Foster and Kathy Anderson were absent. By this action, the committee determined that there was harm to the public inherent in the current practice situation as regards dietetics and nutrition.

A majority of the committee perceived that there was harm in the current practice situation of dietetics and nutrition. However, there was considerable disagreement as to the nature and extent of the harm. Some committee members stated that the harm identified by the applicant group has occurred as a result of the exercise of free choice by the consuming public. Regardless of what action the Legislature takes as regards this proposal, there will always be people who put their health in jeopardy by either seeking the advice of off-beat practitioners, or by participating in fad diet programs.

Other committee members stated that the public has no way of knowing which practitioners are qualified and which are not. They stated that bad dietary advice can cause people to alter their dietary habits in such a way as to damage their health. Some committee members

stated that bad dietary advice can cause economic harm to the public in that people spend money on useless or unnecessary dietary items. The vote in favor of the motion was indicative of the fact that a majority of the committee believed that bad dietary advice can cause harm to public health and well being.

Criterion 2

The public needs, and can reasonably be expected to benefit from an assurance of initial and continuing professional ability.

Information Provided by the Applicant Group

The applicant group stated that the public needs to be given the ability to make an informed decision relative to a practitioner's level of expertise, as well as the ability to get legal recourse in the event of inappropriate conduct by a practitioner. The applicant group stated that practitioners in their profession have direct contact with the public. The applicants added that many practitioners in their field operate without supervision. The public has no way of knowing how to select a qualified practitioner. The applicants state that the purpose of their proposal is to correct this situation by providing the public with the means of making an informed choice. They believe that the creation of a system of certification with minimum education requirements will provide the public with the ability to make meaningful choices in the area of dietetics and nutrition. (The application, pp. 51, 63, 67, 68)

Information from Other Sources

The National Nutritional Foods Association representatives stated the opinion that there is no harm to the public in the current practice situation, and therefore there is no need for additional assurance of professional ability in the field of dietetics and nutrition. The representative of the Nebraska Nutrition Association stated that private certification for dietitians already provides the public with assurance of professional ability. However, this speaker expressed willingness to support mandatory registration for all practitioners in the field, requiring each practitioner to produce a disclosure statement describing their educational and experiential background so that the public can judge their qualifications. The opponents stated that in any case there is no need for any greater degree of assurance of professional ability than that provided by registration. (Transcript of the Public Hearing, p. 69)

Analysis and Final Committee Findings

Werblow moved that the public needs and can reasonably be expected to benefit from an assurance of initial and continuing professional ability. Ciciulla seconded the motion. Voting aye were Debra Anderson, Werblow and Masek. Voting nay were Bieganski and Ciciulla. Kathy Anderson and Betty Foster were absent. By this action the committee determined that the public needed the state to provide additional assurance of professional ability.

A majority of the committee felt that the public would benefit by being able to make an informed choice when selecting a dietetic or nutrition practitioner. A minority of the committee members felt that the public would benefit very little from the various ways in which this

proposal would provide for informed choice. Some committee members felt that the current method of private certification was already providing the public with the ability to make an informed choice. The establishment of regulation in the form of registration or state certification in their opinion would not significantly add to public protection. They stated that it is doubtful that most consumers would become aware of, or understand, the regulatory mechanisms created by registration and certification. They added that it is doubtful that the public's choice of dietary practitioner would be influenced by such efforts at providing the opportunity for informed choice.

However, the majority felt that such regulatory mechanisms as registration have the potential of significantly assisting the public in making an informed choice in the area of dietetics and nutrition. For example, mandatory registration requires that all practitioners provide a disclosure statement detailing their education, experience, and qualifications. Such information in the opinion of the majority of the committee would provide the public with significantly more protection than they currently have.

Criterion 3

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

Information Provided by the Applicant Group

The applicant group stated that such alternatives as strengthening current legislation would not be effective in protecting the public. Present laws do not cover dietetic and nutrition services. The

regulation of business employers rather than employee practitioners would be time-consuming, costly, and ineffective. A large number of self-employed dietitians and nutritionists in Nebraska would need a separate system of regulation anyway. In any case dietitians and nutritionists are professionals who are responsible for their own actions. According to the applicants, the regulation of programs or services rather than individual practitioners would not be a satisfactory solution either, for reasons of cost, practicality, and because of the ineffectiveness of such an approach.

In their discussion of federal regulations, the applicants state that enforcement efforts associated with these programs are virtually nonexistent. They state that the FDA established standards for product safety of vitamin and mineral supplements, but these were revoked in 1979. Labeling laws for the protection of the public against the false labeling of dietary products has not eradicated problems associated with fraudulent advertising by charlatans. The belief that current regulatory approaches are ineffective has caused the applicants to advocate state regulation of personnel standards as the only way to cope with fraudulent or incompetent practice in the field of dietetics and nutrition. (pp. 60-62 of the application)

Information from Other Sources

Opponents of the application stated that current regulations are sufficient to protect the public from harm. They stated that such federal regulatory entities as the FDA, FTC, and Department of Agriculture already provide effective regulation at the national level. The opponents added that such state institutions as the Attorney General's Office and the Department of Health provide further assurance

to the public that they are protected from fraudulent practice in the field of dietetics and nutrition. Further protection is provided by county attorneys. The opponents stated that the way to deal with problems in their field is to use the legal system and file civil suits against fraudulent practitioners. In their judgment, there is no need to add an additional layer of regulatory bureaucracy.

Analysis and Final Committee Findings

Werblow moved that the public cannot be effectively protected by other means in a more cost-effective manner than by credentialing dietitians and nutritionists. Debra Anderson seconded the motion. Voting aye was Werblow. Voting nay were Anderson, Bieganski, and Ciciulla. Chairperson Masek abstained from voting. Kathy Anderson and Betty Foster were absent. By this action, the committee decided that the public can be protected by other means than by the credentialing of dietitians and nutritionists in a more cost-effective manner.

The discussion on this criterion focused on the costs of regulation as opposed to the costs associated with various alternatives to credentialing. A majority of the committee members expressed concern about the administrative costs of credentialing. The majority did not believe that the fees imposed on members of the profession would cover all of the costs of regulation. There was concern about start-up costs, costs associated with staffing a new board, and various overhead costs that would have to be covered by the budget of the Department of Health.

The committee discussed such alternatives to credentialing as nutrition education. However, a majority of committee members felt that this approach would also be very costly to the public. A majority of the committee members expressed the viewpoint that both credentialing

and educational alternatives to credentialing were unacceptably costly to the public. They concluded that the best approach would be to leave the practice situation as it is, and recommend that no action of any kind be taken in the realm of dietetics and nutrition at this time. They felt that the problems identified by the applicant group were not severe enough to justify the high costs associated with the various alternatives for dealing with them.

The fact that a majority of the committee voted against Werblow's motion on the third criterion meant that the committee had decided not to recommend the credentialing of dietitians and nutritionists at this time.

Levels of Credentialing

In their application, the Nebraska Dietetic Association sought mandatory registration for all persons providing services in the area of dietetics and nutrition, and certification for those qualified academically, clinically, and by examination to engage in dietetic and nutrition practice in Nebraska.

Even though the technical committee recommended against the credentialing of dietitians and nutritionists at this time, there was strong support for the idea of mandatory registration. Several committee members stated that of all the levels of regulation provided by LB 407, mandatory registration would best provide the public with the means of making an informed choice in a cost-effective manner. In their judgment this method of regulation would provide the public with the amount of protection that is needed without imposing a financial burden on the public.

There was considerably less support on the committee for the idea of certification. The majority of the committee members did not believe that state certification would provide the public with a greater degree of protection than that already provided by private certification by the ADA. Several committee members made the observation that those who would qualify for certification are not the source of the problems identified by the applicant group. These persons are already qualified practitioners, and no additional regulations are required for them.

Some committee members made the observation that licensure is an option that other review bodies might consider for this occupation. Although it is the most restrictive level of regulation, the establishment of licensure would mean that all practitioners would be treated the same, and it would ensure the protection of the public. However, other committee members felt that licensure would be too restrictive and too costly, as well as being unnecessary for the protection of the public.

Other Considerations

The technical committee expressed interest in the idea of public education as a means of addressing the problems identified by the applicant group, but were unsure as to how this could be financed. They also expressed considerable support for the idea of mandatory registration.

Appendix:

Questions and Issues Formulated by the
Dietitians and Nutritionists Technical Committee at its Second Meeting
that were to be Addressed at the Public Hearing

1. What is the distinction, both in practice and in qualifications, between Dietitians and Nutritionists?
2. How will credentialing protect the public from unqualified persons? In particular, will certification protect the public? How will the public know that a certified practitioner is more qualified than an uncertified practitioner? How will public education be carried out?
3. Would anyone doing any of the acts in the scope of practice have to be registered under this proposal?
4. The Committee asked the applicant group to prepare a list of exclusions from registration to encompass persons who do not have input into the nutritional content of food preparation.
5. Would all certified persons have to fulfill ADA requirements and pass the exam? In other words, would the requirements for a certified nutritionist be the same as those for a certified dietitian?
6. The Committee asked the applicant group to precisely define the requirements for becoming a certified dietitian and a certified nutritionist under this proposal.
7. Would an approved nutrition program have to have ADA approval?
8. What would be the status of a person with an advanced degree in nutrition but without the required internship?
9. If the Committee recommends certification, what provisions should be made for persons who are qualified but who might not have all the ADA requirements?
10. Is the applicant group equating registered dietitians with qualified nutritional personnel?
11. Why is state regulation needed, given that the profession already has a well-recognized designation?
12. How does the state police registered practitioners to make sure they are providing a disclosure statement and what disciplinary provisions could be made to deal with them?

13. What would the registered group be called under the terms of such an act, so as to avoid confusion with current terminology?
14. How many registered dietitians in Nebraska are directly accessible to the public? Is the figure of 90 that was mentioned accurate? Could this be substantiated?
15. How is the public in danger from private practitioner nutritional counselors, nutritionists, or dietitians?
16. Is there another health profession that is similar to this that the committee can draw guidance from?
17. How will the certification of dietitians in Nebraska stop the circulation of advertisements of nutritional products, given that the applicant group has identified this as harmful to public health? Would this proposal prevent persons from selling liquid diets and other similar products in Nebraska?
18. What requirements should be imposed for registration under this proposal?
19. Would this proposal restrict the sale of health foods or nutritional products?
20. Will this proposal prevent the practice of nutritional medicine?
21. Will current practitioners be required to receive more training? Will institutions be required to change their hiring practices?
22. Should there be a grandfather clause?
23. Are there requirements currently in place which require institutions to hire employees with the best qualifications?
24. The Committee requested direct evidence from third-party payers that they will reimburse hospitals for services provided at little or no cost to both inpatients and outpatients.
25. Will practitioners be able to pay the fees associated with supporting a regulatory board? Or will these fees restrict the supply of practitioners?
26. What kind of fiscal control will there be in the regulatory process?
27. Are there safeguards to control the marketing of harmful substances or products?
28. Should licensure be considered as an alternative form of regulation?

