

Report of Final Findings and Recommendations

By The

Technical Committee for the Review of the  
Application for Credentialing by the  
Nebraska Society of Dispensing Opticians

To The

Director of Health and the Nebraska Legislature

December 3, 1985



The members appointed by Gregg F. Wright, M.D., M.Ed., Director of Health, to serve on the Vision Care Credentialing Review Technical Committee are as follows:

Julie Brown-Arfmann, D.D.S. - Chair, Member of Board of Health (Gering)

Charles E. Baasch, F.N.A.O. - optician, private practice (Grand Island)

Carol Barr - consumer member (York)

David Brown, Ph.D. - Chairman, Department of Oral Biology and Director of  
Research, UNMC Dental School (Lincoln)

John T. Ramsell, M.D. - ophthalmologist, private practice (Omaha)

Edmund Schneider, O.D. - optometrist, private practice (Lincoln)

Bernard Wilson, R.Ph. - pharmacist, private practice (Omaha)



## Summary of Committee Recommendations

The Committee recommended that the legislature approve licensure for opticians in the State of Nebraska. The committee also recommended that the legislature approve an appropriation for additional staff for the Bureau of Examining Boards for enforcement purposes.

The committee recommended that in section 6, line 5, item 2 be removed from the list.

The committee recommended that the reference to licensed optometrist in section 22 also be eliminated.

The committee also recommended that the list of amendments contained in Appendix 1 be adopted as part of LB 291.



## 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 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 21 of LB 407; 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 (after 1985) and the Director of Health for their review and recommendations. All recommendations are then forwarded to the Legislature.

In order to accommodate the health occupations that submitted credentialing legislation in the 1985 session, priority has been given to them so that they may complete the review process before the 1986 legislative session. This accommodation has resulted in a shortened review process in which the technical committee recommendations are sent directly to the Director of Health, bypassing the Board of Health for 1985.





## Summary of the Proposal

The Nebraska Society of Dispensing Opticians seeks licensure of opticians by the State of Nebraska. According to the proposal, no individual could engage in ophthalmic dispensing or claim to be an ophthalmic dispenser (optician) without being licensed as such by the State. In addition, ophthalmic apprentices would be registered, and no more than three apprentices could be employed at one location under the personal supervision of a licensed ophthalmic dispenser. The proposal would not restrict the practices and services of any individual under the direct supervision of an ophthalmologist or optometrist, nor expand the practice of ophthalmic dispensing into medicine or optometry. It does not restrict any person or corporation from the employment, contracting, or conducting business with a licensed ophthalmic dispenser or registered apprentice.

The proposal creates the Board of Examiners in Ophthalmic Dispensing, consisting of five members (one ophthalmologist, one optometrist, and three ophthalmic dispensers) appointed by the Governor. The board will be empowered to administer the act and promulgate the necessary rules and regulations with approval of the Nebraska State Department of Health. Other procedural guidelines for the board are provided in the proposal, including the establishment of licensure fees.

The board would license ophthalmic dispensers for spectacle dispensing and contact lens dispensing. Both levels require an apprenticeship; 18 months for spectacles and 36 months for contacts. Both require the successful completion of an examination. Included in the proposal is a grandfather clause that allows previously practicing ophthalmic dispensers who can show adequate qualifications to become licensed without taking an examination.

Under the proposal, a prescription would be necessary before an ophthalmic dispenser can dispense contact lenses. The proposal would require the ophthalmic dispenser to keep such prescriptions and necessary records on file for at least ten years. In addition, after contact lenses are dispensed, the ophthalmic dispenser would be required to attempt to secure a final written approval of the fit of the lenses from the prescribing ophthalmologist or optometrist. After 60 days, in the absence of notice from the ophthalmic dispenser, the board will consider disciplinary action against an ophthalmic dispenser who fails to secure a final approval, or for repeated failure to receive final approval. Suspension or revocation of a license are possible courses of disciplinary action.

The prescribing ophthalmologist or optometrist retains liability for the prescriptions issued. Violation of this proposal would result in a Class II or III misdemeanor.

## Overview of Committee Proceedings

The Vision Care Credentialing Review Technical Committee first convened on August 1, 1985, 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 touched upon were the charge to the committee, the three criteria for credentialing contained within Section 21 of LB 407, and potential problems that the committee might confront while proceeding through the review.

The second meeting of the committee was held on August 22, 1985, in Lincoln at the State Office Building. After study of the proposal and relevant material compiled by the staff and submitted by interested parties between the meetings, 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.

The committee reconvened on September 20, 1985, 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 the questions and issues raised by the committee at their second meeting. Six people spoke in favor of the proposal and there was no opposition. Interested parties were given ten days to submit final comments to the committee.

The committee met for the fourth time on October 10, 1985, in Lincoln at the State Office Building. After studying all of the relevant information concerning the proposal, the committee then formulated its recommendations upon the three criteria found in Section 21 of LB 407.

## 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 from the Applicant Group

The proponents state that the unregulated practice of Ophthalmic Dispensing harms the public in several ways. The current situation provides the public with no protection from unscrupulous practitioners. Anyone can "hang up a sign" and call himself an optician in the State of Nebraska. No formal training or technical experience of any kind is required for an individual to become an optician. This situation can harm the customer financially. Contact lenses or spectacle lenses that have been incorrectly fabricated cause monetary loss and inconvenience for the customer. The current situation gives the customer no recourse against unscrupulous or unqualified opticians. (pp. 13 and 14 of the Transcript of the Public Hearing of the Vision Care Technical Committee).

The contact lens can also cause physical damage to the eye if incorrectly fabricated or administered. Physical harm can take the form of blurred vision, eye strain, corneal abrasion, corneal edema, and various infections that in turn can lead to permanent eye damage, including blindness. All of these maladies can be caused by or accentuated by inappropriately fabricated contact lenses. (pp. 17 and 18 of the Application).

### Information from Other Sources

There was no opposition information or testimony on this particular criterion.

### Committee Findings and Recommendations

The committee decided by a vote of 7-0 that the unregulated practice of ophthalmic dispensing could clearly harm or endanger the health, safety, or welfare of the public.

#### Criterion 2

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

#### Information from the Applicant Group

The proponents state that credentialing of opticians will protect the public by ensuring that persons engaged in ophthalmic dispensing meet necessary standards of competence, and will provide a means by which incompetent practitioners can be removed from practice.

#### Information from Other Sources

There was no opposition to the proposal on Criterion two.

### Committee Findings and Recommendations

The committee voted 7-0 that the public needs and can reasonably be expected to benefit from, an assurance of initial and continuing professional ability.

#### 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 considered several alternatives to state regulation. Among these were regulation of the employers of opticians and

the regulation of the service provided. With regard to the former, additional regulations on business employers would not have an affirmative impact upon individual dispensers during their normal workday. Practical problems would also be encountered in regulating the business environment in which dispensing opticians work. As regards the second alternative, there is no single, identifiable program or service. The proponents say that there is not a method short of licensure in which the service they perform can be adequately regulated and the public protected. (p. 23 of the Application).

#### Information from Other Sources

Some neutral observers expressed reservations about the costs associated with credentialing, especially if the level of credentialing were to be licensure. The costs associated with the creation of the bureaucracy needed to enforce licensure provisions can place a burden on the general public.

#### Committee Findings and Recommendations

The committee decided by a vote of 7-0 that the public cannot be effectively protected by other means in a more cost-effective manner.

#### The Appropriate Level of Credentialing

##### Information Provided by the Applicant Group

The proponents of credentialing for opticians in discussing their views on the various levels of credentialing stated that licensure was the most desirable. In their view registration does not impose the standards of quality or the oversight necessary so as to protect the public from harm. Certification provides standards, but the voluntary nature of certification

prevents this method of regulation from being sufficiently effective in protecting the public. Only licensure creates and provides for the enforcement of standards of practice that can be effective in protecting the public from harm. (pp. 23 and 24 of the Application; the Memorandum to the Vision Care Committee from Tews and Radcliffe, September 17, 1985).

#### Information from Other Sources

Some neutral observers expressed opposition to licensure because of the costs associated with the bureaucracy that it would create. There was also concern that enforcement might not be as effective as the proponents believe it would be, given lack of adequate numbers of staff persons in the Bureau of Examining Boards.

#### Committee Findings and Recommendations

The committee voted 5-0 with two abstentions to recommend that the Legislature approve licensure for Opticians in the State of Nebraska.

#### Other Committee Recommendations

The committee voted 7-0 to recommend that the Legislature approve an appropriation for additional staff for the Bureau of Examining Boards for investigation and enforcement of the provisions of licensure.

The committee recommended that in section 6, line 5, item 2 be removed from the list.

The committee recommended that the reference to licensed optometrist in section 22 also be eliminated.

The committee also recommended that the list of amendments contained in Appendix 1 be adopted as part of LB 291.





## APPENDIX 1

### AMENDMENTS TO LB 291

1. On page 3, strike line 2; in line 3 strike "(e)" and insert "(b)" and strike "(f)" and insert "(c)"; in line 6 strike "(g)" and insert "(d)"; in line 12 strike the first comma and insert a semicolon; and in line 14 strike the comma and insert a semicolon.
2. On page 6, line 4, after "years" insert ", except that of the members initially appointed one member shall serve for one year, two members shall serve for two years, and two members shall serve for three years as the Governor shall designate"; and in line 9 strike "1986" and insert "1987".
3. On page 9, line 18, strike "five years" and insert "thirty-six months".
4. On page 10, line 22, strike "(1)".
5. On page 11, strike lines 11 through 27.
6. On page 12, strike lines 1 through 4.
7. Strike original section 22.
8. On page 13, line 23, strike "23" and insert "22".
9. On page 14, line 11, strike "1985" and insert "1986".
10. Renumber the remaining sections accordingly.

