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Health and Human Services Committee  
February 08, 2007

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[LB247 LB398 LB399 LB479]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 8, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB247, LB398, LB399, and LB479. Senators present: Joel Johnson, Chairperson; Tim Gay, Vice Chairperson; Philip Erdman; Tom Hansen; Gwen Howard; Dave Pankonin; and Arnie Stuthman. Senators absent: None.

SENATOR JOHNSON: This is the Health and Human Services Committee of the Nebraska Legislature and let me introduce who we've got here today. We've got Senator Pankonin from Louisville, finally got away from Louieville (phonetic). Senator Phil Erdman will be next in line and he's from Bayard; Senator Tim Gay from Papillion who is the Vice Chair. I've got Jeff Santema who is our legal counsel. I'm Senator Joel Johnson from Kearney. On my far left will be Senator Gwen Howard from Omaha. Next is Senator Tom Hansen from North Platte; and then Senator Stuthman from Platte Center; and Erin Mack, our committee clerk. A couple of things for those of you that are new is proceedings are recorded and transcribed and we always make this announcement. If you've got a cell phone that's on, please shut it off now or you will be. The committee will first hear proponent testimony, followed by opponent and then neutral. And it's...we've been running pretty late. We got kind of mean with people yesterday in order to shorten up the afternoon. Try and, we say three minutes, we'll let you go a little longer than that if you need to. But be considerate of the people that follow you for the bills later in the afternoon. Now for the bills, and this is Senator Gwen Howard showing up, there is sheets available for those of you that want to be noted on the record for testifying and yet don't want to appear at the microphone. And this is Senator Stuthman. At any rate, if you fill these out, they go to the transcriber and you are listed in the official record for completeness. When you do sit down up here, tell us your name and spell it. And if you have things that you want to pass out, we like 12 of them. If you didn't bring 12, the pages will make copies and pass them around. Other than that, I think that we're about ready to begin. We'll have Senator Gay take over and we will start with LB247.

SENATOR GAY: Thank you, Senator Johnson. We'll let you get set and be on our way. Open the public hearing on LB247. Senator Johnson. [LB247]

SENATOR JOHNSON: Senator Gay, members of the committee, we ought to breeze through this so that...before Senator Erdman shows up here. (Laughter) [LB247]

SENATOR GAY: We won't tell him. [LB247]

SENATOR JOHNSON: At any rate, I'm Senator Joel Johnson from...representing the 37th District. What this first bill, LB247, is, is the annual cleanup bill, and we've had several others, for changes in the Pharmacy Practice Act. LB247 makes a number of

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technical amendments to the Nebraska Controlled Substances Schedule and to the Pharmacy Practice Act and other provisions of law relating to the practice of pharmacy. An example, and I won't go through the list, I'll let someone else do that, I think we've got Mr. Hallstrom here, but as an example, the first change is designed to conform the definition of manufacture and manufacturer to the definition employed by the association of boards of pharmacy which does not include the word "compound." They used to talk a lot about compounding drugs. So these are the type of things and we'll let Mr. Hallstrom go through that in the interest of brevity, and I'm sure he will be quite complete. [LB247]

SENATOR GAY: All right. Thank you, Senator Johnson. Are there any questions before you leave? I see none. Proponents on LB247. [LB247]

ROBERT HALLSTROM: (Exhibit 1) Senator Gay, members of the committee, my name is Robert J. Hallstrom. I appear before you today as registered lobbyist for the Nebraska Pharmacists Association in support of LB247. Chairman Johnson has referenced the technical cleanup bill that the pharmacists have brought forward through Senator Johnson this session. There are six basic components of this bill somewhat technical in nature. For those of you on the committee that do double duty before the Banking Committee, you're probably surprised to see me testifying on a bill of a technical nature but we'll go through it nonetheless. The first issue as Senator Johnson mentioned that we are conforming the definition of manufacture and manufacturer under Nebraska law by removing the reference to the term "compounding" to correlate the definition to that employed by the National Association of Boards of Pharmacy. Compounding and manufacturing are separate and distinct concepts or functions. Pharmacists are allowed to compound as part of the Pharmacy Practice Act which is governed by state law. They are not allowed to manufacture drugs unless they are licensed and meet all federal requirements relating to manufacturing. The second change has to do with conforming again our state controlled substance law to that on the federal level with regard to anabolic steroids. Those that are exempted by the Drug Enforcement Administration list that currently exists would be similarly exempted under Nebraska law as provided under LB247. The next issue has to do with detoxification treatment and maintenance treatment for narcotic-dependent individuals. The current federal law recognizes an exception for the drug buprenorphine. We are similarly doing that exception under Nebraska law pursuant to this legislation. The next issue has to do with the verbal offer to counsel. Specifically with regard to the manner in which Nebraska law is currently set up, you have to provide all of the information on the written prescription label that is provided in writing to the patient or consumer. Many pharmacists provide medication guides to assist the patient in utilizing the drugs. And technically under Nebraska law, all of the information in that brochure or medication guide is technically required to be included on the prescription label. As you might imagine, that probably is not happening because of the volume of information. It is not a requirement under federal law and we are simply removing the technical nature of the language under the statute to remove

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that particular element regarding to the verbal offer to counsel. The next issue has to do with the state law that addresses the ability to return unused drugs subject to safeguards that are in place under our state law to a pharmacy from a long-term care facility. We are clarifying that the term "long-term care facility" does not include an assisted living facility. Patients in those living facility settings have greater access in administering their drugs. And it's unlikely that the safeguards or the strict conditions pursuant to which drugs can be returned to the pharmacy would be met in that particular setting. Finally, the aspect has to do with drug product selection when a physician or a prescribing practitioner places limitations, no substitution dispense is written. Our current statute has varying terminology or notations that can be used depending upon whether you have an oral prescription or a written prescription. We are simply conforming the notations and words that can be used in those context to apply uniformly to either an oral or a written prescription. And with that, I'd be happy to address any questions and would respectfully request the committee advance the bill to General File. [LB247]

SENATOR GAY: Thank you. Senator Howard. [LB247]

SENATOR HOWARD: Thank you, Senator Gay. I have a, I don't know if I would call it a concern, a question regarding Section 4, "verbal offer to counsel." When I have a prescription filled, I go to a certain pharmacy because I know the pharmacist will answer any questions (inaudible) and always asks me if there's anything he can tell me that's helpful about this medication that I hadn't even thought of. Does this verbal offer to counsel that we're going to give up, to take out of the language, does that address that issue or? [LB247]

ROBERT HALLSTROM: No. Senator, the requirement for counseling, whether you have verbal counseling provided or whether the written information is provided, we're not making a change in any respect with regard to the actual counseling or the information that has to be provided. The only thing that we're saying is that if we give you written information as a part of the counseling, the technicality under state law as interpreted is that everything that's in that written brochure is supposed to be, as the law is currently drafted, contained within the prescription label. And if I hand you a one-page or one side a sheet of information that says here's how you should administer your medication, technically interpreted the statute says everything that's on that piece of information should also be on the prescription label. As you might imagine, that's probably not being done. It's somewhat nonsensical in its interpretation. We're simply cleaning up the statute so we're not telling people to put all of that information down on the prescription label that is contained within the written information that we provide the patient. We'll still provide the same information. We just won't have to double up technically speaking by having a directive under state law that says you must also include it in the prescription label. [LB247]

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SENATOR HOWARD: Well, if it's on the label, then what's the verbal offer to counsel? [LB247]

ROBERT HALLSTROM: Senator, my understanding, I may have to go back to the pharmacists and get some technical information, which I'd be happy to do, but I think that under the federal requirements and the state law that's been adopted to implement the counseling requirements that you can satisfy the counseling requirements either by providing oral information by supplementing that with written information or by providing the written information to the patient that sets forth the manners for utilizing and administering the medications. [LB247]

SENATOR HOWARD: Thank you. [LB247]

SENATOR GAY: Thank you. Senator Hansen. [LB247]

SENATOR HANSEN: Thank you, Senator Gay. Mr. Hallstrom, a follow up to Gwen's question. Medication guides, I believe it is anyway, when drug companies come to represent a new product and they talk to the doctors, they talk to the pharmacists that they have. Every sample that they give them must have that medication guide in it. Is that being changed at all? [LB247]

ROBERT HALLSTROM: It's not being changed, Senator, in terms of what information you will be provided, I assume, whether it's in regard to a sample or a prescription. The issue again is simply put, whatever written information is in that medication guide we don't have to double up and also technically require to be in the prescription label. [LB247]

SENATOR HANSEN: I know it's very fine print, take up a lot of time. [LB247]

ROBERT HALLSTROM: Yes, it would. [LB247]

SENATOR HANSEN: Now the drug that you have in bullet point number three that I won't try to pronounce again, you said that's being administered now so. Is that correct? [LB247]

ROBERT HALLSTROM: Yes. It's an exemption. The general rule is that it's unlawful to prescribe narcotic drugs for detoxification treatment or maintenance treatment of narcotic-dependent individuals. The federal law realizes or recognizes an exception for buprenorphine. And we're simply adopting state law to conform with that exception under the federal law. [LB247]

SENATOR HANSEN: Is it being used now in Nebraska? [LB247]

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ROBERT HALLSTROM: I assume it is, yes. [LB247]

SENATOR HANSEN: Okay. My third question would be on the front page about compounding drugs. It's been awhile since I've been in anything but animal health, but it's always been illegal to compound drugs or the act of compounding drugs, mixing two drugs together. Is this being done now? Is that why we need to strike the word? [LB247]

ROBERT HALLSTROM: No. I think the issue is that pharmacists are allowed under state law under the Pharmacy Practice Act to engage in compounding. And to have compounding as a subset of manufacturing, there's a separate federal regulation in federal licensing in order to manufacture. And with compounding being a part of manufacturing, I think the technical issue is if I'm authorized to compound and that's pursuant to state law and the licensing requirements, but I don't have the authority from the federal licensing requirement to manufacture, we don't want compounding to be a subset of manufacturing just to clear that issue up. [LB247]

SENATOR HANSEN: Okay. So compounding is a normal practice now? [LB247]

ROBERT HALLSTROM: I don't know whether it's done frequently, but it's within the confines of the Pharmacy Practice Act is my understanding. [LB247]

SENATOR HANSEN: Okay. Veterinarians can compound drugs, but it's on a case-by-case basis, on an individual animal basis. [LB247]

ROBERT HALLSTROM: I am not familiar with the veterinarian law, but I assume that's the case, yes. [LB247]

SENATOR HANSEN: Okay, thank you. [LB247]

SENATOR GAY: Are there any other questions? I see none, Mr. Hallstrom. [LB247]

ROBERT HALLSTROM: Thank you, Senator. [LB247]

SENATOR GAY: (Exhibit 2) Any other proponents that would like to speak on LB247? Any opponents? Anybody who would like to speak in a neutral capacity? All right. I do have a letter of support from Nebraska Health and Human Services, letter of support for LB247. And with that, we will close the public hearing on LB247 and open the public hearing on LB398. Senator Johnson. [LB247 LB398]

SENATOR JOHNSON: Senator Gay and members of the committee, I'm Senator Joel Johnson, J-o-e-l, J-o-h-n-s-o-n, representing the 37th District. LB398 is another cleanup bill, this time for the optometrists. What we have here is a recodification of the optometry practice statute. The bill is not intended to change the scope of practice of

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optometrists. LB398 is not intended to make any changes except to restate their practice law in a more logical and understandable fashion. In summary, I might say that LB398 comes about from the history in the manner in which the practice of optometry has changed over the last couple of decades as new methods and technology have evolved. Originally, Nebraska optometrists were not allowed to even place drops in a patient's eyes to dilate their pupils for an exam. Over a period of years, optometrists were successful in that the Legislature changed this to permit this usage: topical diagnostic and then topical therapeutic agents, prescribe limited oral agents related to their scope of practice, and treat glaucoma with topical agents. What this bill is really just intended to do is to correct a statutory maze that has evolved over the years and make these statutes more easily acceptable and understandable. [LB398]

SENATOR GAY: Thank you, Senator Johnson. Are there any questions from the committee? I see none. Other proponents who would like to speak on LB398. Go ahead and state your name and spell it out for us. [LB398]

DR. JAMES KIRCHNER: (Exhibit 1) I'm Dr. James Kirchner, K-i-r-c-h-n-e-r. I'm an optometrist in private practice in Lincoln since 1977. I currently serve on the Board of Optometry for Nebraska. I additionally have served, I want you to know, as chairman of the task force that it was our job responsibility to develop this revision of our practice act and to modernize our practice act. I'm testifying on behalf of the Board of Optometry and we're in support of LB398. The state of current optometric practice act is one of complexity and confusion when we try to apply it to today's licensees. The current practice act, as you heard, is a cumulation of changes that have occurred over the last 30 years. Optometrists sought and we were successful numerous times over the last 30 years in passing legislation that altered our statutes to reflect modern skills and education of optometrists. The end result of these changes is a practice act that has become, it is, it's difficult to read, understand, and really virtually impossible to apply to circumstances of modern doctors as they seek to relocate to Nebraska. As a Board of Optometry, it's our responsibility to safeguard the interests of the citizens of the state. And part of this duty is to evaluate applicants for new licenses in Nebraska. This task is difficult at best when we're dealing with doctors who have been licensed in other states, even though they may be practicing at their highest level of optometric competency. Even though they're qualified to practice in Nebraska, our current statutes really do make it almost impossible to reasonably proceed with the licensure process. As the scope of optometry has been enhanced by this Legislature over these years, over these 30 years, additional education requirements were put into places for licensees. Many of these requirements were very specific, including statutory descriptions of particular continuing education courses, classes that would require optometrists to be licensed at these new levels of licensure for diagnostic, therapeutic, and treatment of glaucoma. But this has been a historical thing. It's been 30 years since the first time that we changed our law back in 1979. So over all of this time, virtually every licensed optometrist in this state has met these requirements, either through continuing

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education, through the curriculum of an optometry school as they graduated, or through testing required for licensure that was set down at that time. In fact, there's only 13 optometrists out of 350 that are licensed in this state that are not certified at the highest level of practice. And all of these 13 were licensed before 1987 so anything that we've done in this change and upgrade of the practice act does not affect those 13 individuals. However, anyone holding a license in another state, and this is the crux of the issue, that wishes to be licensed in Nebraska, would like to relocate here, this patchwork of educational requirements and the deadlines and exemptions creates unbelievable confusion. When we have to evaluate whether a person has met the requirements and specific courses and tests that no longer even exist, it becomes virtually impossible. Over the last number of years on the Board of Optometry, time and time again we have to evaluate a doctor who would like to relocate here, demonstrate his or her competency in the state that they're practicing, practicing at the highest level we know, they're practicing at the highest level from their application, our knowledge of their state laws, and yet our practice act being the way it is, we just can't compare. And our outdated requirements make it really a tough situation to try to apply to that person who is applying. That's why the Nebraska Board of Optometry is pleased to be part of this project. We feel we're rewriting and simplifying the current law in the best interests of the profession and the public. There was a joint task force that the Nebraska Optometric Association and the Nebraska Board of Optometry worked on as a project. Our overriding goal with this task force from the outset was just clean up the modernization, that's all, of the language in the practice act without changing any scope of the practice act or adversely impacting any safeguards to the public. That was our primary consideration, and we think that we were diligent to adhere to that mission and I believe we succeeded with it. Our original intent was to incorporate these changes into the overall rewrite that's going on known as the uniform credentialing act, LB463. However, as time went on, the Department of Health had a deadline last year of submitting any of our finalized additions and changes that we would make, and we just couldn't meet their deadline. So we proceeded on with our individual practice act to address the changes that need to be made and as a separate bill that you're seeing in LB398. That's why we're here today before you. Instead of simply having our changes included in that broad rewrite, we are introducing our addition, our bill, LB398. I want to say that everything we've done in this bill, though, we've worked in harmony with the department and made sure that we're harmonious and complementary to any changes that would occur in LB463 so that if that is passed and ours passed, they complement each other and there won't have to be any changes made. So we were very diligent in that aspect. So on behalf of the Board of Optometry, I would encourage you to advance LB398 for consideration by the Legislature. It would result in a law that's much easier for our licensing board and the Department of Health to interpret and administer as we protect the interests of the public. I just want to say there's no hidden agenda here. We have no desire to somehow change the scope of optometric practice through this, no secret initiative to lessen the requirements for licensing. Our only desire is to clean up the practice act so we can do our work on behalf of the citizens of the state of Nebraska

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and for the profession of optometry. Questions? [LB398]

SENATOR GAY: Thank you. Are there any questions? Senator Hansen. [LB398]

SENATOR HANSEN: Thank you, Senator Gay. Since you missed the deadline of LB463, and the way I understand it being a freshman senator who's been here a little over a month, that that was in the process of being written for several years. Can you live without this for one more year? Until...I assume that LB463 since that's the manual for all uniform licensure, that there's going to be a lot of changes made next year. [LB398]

DR. JAMES KIRCHNER: Yeah. And the beautiful thing about LB463 is the changes will take place over all of... [LB398]

SENATOR HANSEN: There's nothing beautiful in LB463. [LB398]

DR. JAMES KIRCHNER: Pardon me? [LB398]

SENATOR HANSEN: There's nothing beautiful about LB463. (Laughter) [LB398]

DR. JAMES KIRCHNER: Well, (laugh) I know it's an involved and thick document. That's why we've worked so hard to make it harmonious so if it does pass ours will be complementary to that. If it doesn't pass, ours still is effective and works for what we're trying to accomplish in this cleanup so that we can proceed on, especially as a Board of Optometry in these licensing issues. More and more we're seeing more people becoming more mobile in the profession and wanting to move. An example, we had a highly qualified doctor that practices in Iowa last year that wanted to move to Omaha, had been practicing at the highest level as we do in Nebraska, in Iowa and had been for years, and we just...it was almost impossible to find a way to make it work and say that he qualified based on what our practice act looks like right now, having to apply all of these different classes and all the language that was written in there back then. You know, it was very, very difficult to work that. So we're confronted with these situations all the time and so we really would like to proceed on with this and get this done. [LB398]

SENATOR HANSEN: Okay, thank you. [LB398]

SENATOR GAY: Thank you. Senator Stuthman. [LB398]

SENATOR STUTHMAN: Thank you, Senator Gay. Doctor, how many doctors have you had to turn away that wanted to come to Nebraska because of what we have on the books? [LB398]

DR. JAMES KIRCHNER: So far I think we've been able to break through and

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accomplish the requests of those that were qualified to come to this state, but it's been a difficult process. To say that we've now had to turn away somebody who was qualified, I don't think that's happened. But it took us months to work through some of these requests where it should have been just a very... [LB398]

SENATOR STUTHMAN: Slam dunk. [LB398]

DR. JAMES KIRCHNER: Yes, easy procedure to get done. So we've had to work with our...the people that we work with at the department and we've had to really work at it to make it work, but it has. But we'd like to move past that so. [LB398]

SENATOR STUTHMAN: Okay, thank you. [LB398]

SENATOR GAY: Thank you. Are there any other questions? I see none. Thank you, Doctor. [LB398]

DR. JAMES KIRCHNER: Thank you. [LB398]

SENATOR GAY: How many other proponents would like to speak on this? Okay. Come forward. Go ahead and state your name and spell it for us. [LB398]

DR. TERI GEIST: (Exhibit 2) Good afternoon. I'm Dr. Teri Geist. It's G-e-i-s-t. I'm an optometrist licensed in Nebraska and practicing in Omaha. And I currently serve as the president of the Nebraska Optometric Association. I'm testifying on behalf of the Nebraska Optometric Association in support of LB398. Our association has worked with the Board of Optometry to draft this rewrite of the practice act of our profession. NOA represents approximately 85 percent of the licensees who currently practice in this state. The Board of Optometry's primary charge, of course, is to ensure the interests and safety of the public. While we share those interests, NOA has another important charge: to represent and serve the interests of our members. In addition to the goals outlined by Dr. Kirchner, one of our many considerations in this initiative has been to assure that none of the doctors currently licensed in the state are accidentally or unfairly harmed by the contents of this bill. We are confident that this bill as it is written accomplishes the purposes for which it has been intended as outlined by Senator Johnson and Dr. Kirchner. And we're confident we are not adversely impacting the ability of any doctor licensed today to continue his or her practice. We believe this rewrite of the practice act is in the best interests of our profession and those who wish to be licensed to serve Nebraska patients in the future. The Nebraska Optometric Association wholeheartedly supports this bill and we ask you for your support of LB398 and advance it from committee. Thank you. [LB398]

SENATOR GAY: Thank you, Doctor. Are there any questions from the committee? I see none. Thank you. [LB398]

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DR. TERI GEIST: Thank you. [LB398]

SENATOR GAY: Other proponents. Any opponents? [LB398]

DR. JOHN PETERS: Good afternoon. My name is John Peters, M.D. I am a solo private practice physician from Omaha, Nebraska, and I've been practicing ophthalmology for nearly 14 years. I'm also an associate professor of surgery within the Department of Ophthalmology at the University of Nebraska Medical Center, and I've had a teaching position there for those same 14 years. I've previously served as president of the Nebraska Academy of Eye Physicians and Surgeons and been a member of its executive committee since 1996. I have been asked to speak with you regarding ophthalmology's position regarding LB398. I think it's important for the committee to realize that our organization was able to have an open and candid discussion with two of optometry's representatives last evening regarding our concerns and believe we now better understand the issues that they hope to address with LB398. I would like to emphasize at this point that we respect the stated intent of our optometric colleagues and remain open to discussions with them. After significant evaluation within the academy's executive committee over the last few weeks and then again last evening, the proposed changes as currently written in LB398 raise a few questions within our academy. That being the case, our stance on this bill is effectively neutral. It is our suggestion that the requested change of oversight of optometry from the Department of Health and Human Services to the Board of Optometry only occurs with the passage of LB463 which, as you know, regards a rewrite of the universal licensing law. This change in oversight was not really condoned by the ophthalmology community, but will occur effectively if LB463 is passed into law. Though we have no desire to object to LB463 insofar as it facilitates proper and efficient governance of healthcare for Nebraskans, we have some reservations regarding the alterations proposed pertaining to removal of oversight by the Department of Health and Human Services actually to all specialties. I would like to state that we believe we understand the stated intent of optometry in proposing LB398. However, we feel it's important that appropriate document and standards be stated and followed rigorously. And it is our main concern that LB463 can potentially eliminate some proper oversight of actually every specialty and that LB398 could potentially have a similar effect in the provision of eye care to Nebraskans. Our primary goal, as always, is the well being of the citizens of Nebraska, and we have to be absolutely unwavering in our efforts to provide excellence when they come seeking our care. [LB398]

SENATOR GAY: Thank you, Doctor. Are there any questions from the committee?  
Senator Hansen. [LB398]

SENATOR HANSEN: Thank you, Senator Gay. The oversight that you talk of, that you spoke of, the bill I assume takes that away from HHS then? I mean it's not in HHS now

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or is it, the oversight? [LB398]

DR. JOHN PETERS: It's my understanding that it is with HHS and the Board of Optometry. [LB398]

SENATOR HANSEN: In combination together. [LB398]

DR. JOHN PETERS: I believe that. [LB398]

SENATOR HANSEN: Okay. [LB398]

DR. JOHN PETERS: And this effectively removes the Department of Health and Human Services from that equation. [LB398]

SENATOR HANSEN: Okay, okay. That was my question. Okay. [LB398]

SENATOR GAY: Okay. Are there any other questions? I see none. Thank you. [LB398]

DR. JOHN PETERS: Thank you. [LB398]

SENATOR GAY: Any other opponents? Anybody who would like to speak in a neutral capacity on LB398? Senator Johnson, would you like to close on this? Senator Johnson waives his closing and with that we'll close the public hearing on LB398 and we'll open the public hearing on LB399. [LB398 LB399]

SENATOR JOHNSON: We're on a record course here. Senator Gay and members of the Health and Human Services Committee, I'm Senator Joel Johnson from Kearney, representing District 37. I come to you today with LB399. What we have here is being introduced on behalf of the Nebraska Perfusion Society. You probably wonder what in the world perfusion is. Well, what we're talking about here is this: It consists primarily of having the physiologic monitoring of the patient, and here we're talking particularly for operations on the heart and lungs, a provision for anesthesia and other pharmacologic agents, autotransfusion, coagulation, and anticoagulation--in other words, getting the blood both to coagulate, and at other times, that you want it not to coagulate--blood gases, electrolyte analysis, platelet gel formation, arterial and venous line insertions, monitoring intraortic balloon pumping of the blood, and many other direct procedures--a rather complex group of procedures that these carry out as part of the heart/lung team. The interesting thing here is that whereas these people have existed for 40 years or longer, they have...there's never been any state regulation or any society to govern them. So this was brought to me by Mr. Ben Greenfield here in Lincoln, who is one of these perfusionists, so that this gap may be closed. With the intricacy and the inherent harm with the practice of perfusion, obviously, it has to be done correctly, or there are catastrophic results. The public could be best served with a license going through the

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minimum standards of education and clinical competency and training, and this type of thing. Now what we did here is this: As we...this bill was written to follow the provisions of this Uniform Credentialing Act, which is the new name for the ULL, the massive bill that we've been dealing with in this committee. Now LB399 will have a grandfather clause which allows all practicing perfusionists in Nebraska to obtain a license. The legislation established an effective date that will limit future individuals who do not meet these minimum standards for licensure. As part of this, they will have their own board. There was a question of whether this could be combined with another board such as the respiratory therapy board, but it was not felt that that would work out satisfactorily, so there will be a separate board for this. Now if you look in the back for the fiscal note, you will see that there is a fiscal note, but then look closer, and you'll see this comes from cash funds. And this is a separate account, as many of you are aware, but basically, there is a fund into which the receipts for licensure are put in. There are excesses created in the fund by those professions that might have a lot of members, so that you make the licensing fees for small numbers better. In other words, there's kind of a way in which the larger group will pay a little bit of the cost of the others. So essentially, there isn't a fiscal note to create this. This will be done with license fees. Other than that...oh. No, I guess I covered that point here. So other than that, Senator Gay, I think... [LB399]

SENATOR GAY: Thank you, Senator Johnson. Senator Hansen has a question.  
[LB399]

SENATOR HANSEN: Thank you. Senator Johnson, how many people would this apply to in the state? How many perfusionists are there? [LB399]

SENATOR JOHNSON: I would guess that there's probably only a dozen, or 15. Somebody behind me can tell me a better number. It might be as high as 20 or 25, but it's a relatively small number of people. And I had a little fun in visiting with these people back here, because about 45 years ago, I used to put these machines together, and I think you'll find it kind of funny, because this was the Neanderthal period of heart operations. The heart/lung machines to oxygenate the blood we took and stacked up screens like you have in your windows, about 50 screens had the blood in there, and then let the oxygen bubble up through the screens and the blood, in order to oxygenate it. That was the heart/lung machine back in the Neanderthal period. (Laughter) So it was kind of fun visiting with these people. [LB399]

SENATOR GAY: You aren't that old, are you? (Laughter) [LB399]

SENATOR JOHNSON: I'm afraid so. (Laughter) [LB399]

SENATOR GAY: Senator Erdman. [LB399]

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SENATOR ERDMAN: Senator Johnson, perfusion isn't what the Supreme Court said they know if they saw, is it? (Laughter) [LB399]

SENATOR JOHNSON: I think you're right. [LB399]

SENATOR ERDMAN: Let me clarify what that was. They used that definition to describe pornography, because they wouldn't tell us what it was. They just said they knew it if they saw it, so I just wanted to make sure that this is not...I didn't want to trap you, because I think you'd misinterpret it. [LB399]

SENATOR JOHNSON: Well, you did. [LB399]

SENATOR ERDMAN: Since you were in such a lighthearted moment, I thought I would try to catch you, but I didn't mean to trap you, and we'll let you out. [LB399]

SENATOR JOHNSON: All right. [LB399]

SENATOR GAY: Senator Pankonin has a question. [LB399]

SENATOR PANKONIN: Thank you, Senator Gay. Senator Johnson, just looking through the letters on...from Dr. Schaefer recommending that you delay action on this bill until the 407 review is complete, had you seen this letter? [LB399]

SENATOR JOHNSON: Yes, but what's the date on that? [LB399]

SENATOR PANKONIN: Today. [LB399]

SENATOR JOHNSON: Okay. The...and again, that's perfectly fine, and it is logical that it be done that way, particularly for setting up the standards in this way. [LB399]

SENATOR GAY: Yeah, and for the record, it looks like a no position. We'll get to that as we go. [LB399]

SENATOR PANKONIN: Okay, I just wondered if you'd seen it. Okay, right now let's...are you done? [LB399]

SENATOR JOHNSON: Yes, thank you. [LB399]

SENATOR GAY: Thank you, Senator Johnson. Right now, other proponents that would like to speak on this? Can I see a show of hands? I think there might be some interest in this. Okay, just start working your way up, and as Senator Johnson said,... [LB399]

\_\_\_\_\_ : I believe I might be (inaudible). [LB399]

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SENATOR GAY: (Exhibits 3 and 4)...we'd like to learn--okay, thank you--not to be repetitive, but we'd like to hear what you have to say. And any questions we ask won't be held against time or anything like that, so. Before you get started, just for the record, we have a letter of support from the Nebraska Medical Association, and also from the Nebraska Hospital Association. Go ahead and state your name and spell it out. [LB399]

BEN GREENFIELD: (Exhibit 1) Senator Gay, members of the committee, good afternoon. My name is Ben Greenfield, B-e-n, G-r-e-e-n-f-i-e-l-d. I'm a cardiac perfusionist at the Nebraska Heart Hospital here in Lincoln. I'm testifying on behalf of the Nebraska Perfusion Society, where I serve as president, and we're going to try to keep this presentation fairly brief and succinct, to the point here. But I'll be happy to answer any questions that you have. I've handed out a couple of handouts. The first one is kind of a basic scope of practice of perfusion; it's kind of a rare field, and so I wanted to kind of fill you guys in on what it is that a perfusionist does. I've also handed out just another handout that just kind of outlines what I'm going to say. It has a few bold points there that you might want to refer to later on, so thank you for your time here. First of all, perfusionists are trained at education institutions--the med center at Omaha has one of these institutions. There are 17 nationally. Most are going to a master's degree program; however, there are some that still are a certificate-based program. They are didactic, clinical and research-based programs--there are three separate sections. Most are around two years in length straight through. There are a few perfusionists--I think three here in Nebraska--that were trained on the job. As Senator Johnson said earlier, heart surgery has only been around for 40 years, and there are a few perfusionists that are still practicing that were nurses or respiratory therapists that were trained in perfusion on the job, and our bill, LB399, would not discriminate those people and would not force them out of practice. Currently, Nebraska has 34 perfusionists; that number changes a little bit. It's not far off what Senator Johnson said. We have 34 perfusionists that are located primarily in Lincoln and Omaha. There are two perfusionists in Kearney, and one perfusionist in Norfolk. But primarily they're at the large heart centers, as perfusionists operate or maintain function primarily in the cardiac operating suite. Some vascular and some other...orthopedic procedures require the use of perfusionists, but for the most part, they're in heart surgery. Currently, perfusionists have a credential. It is a certification process which is overseen by the American Board of Cardiovascular Perfusion. This certification process is voluntary and consists of taking a two-part examination, which has both a didactic and a clinical section. Maintenance of that certification consists of passing the exam, obtaining a certain number of CEUs over a three-year period, and performing at least 40 cardiac procedures a year. Why should we license perfusionists? The big debate that we've run into with the 407 process and things is, is there a need to license perfusionists when you already have a credentialing process? And what I can respond to that is, there's no state regulatory process. The state is not guaranteed that each person will submit to that voluntary credentialing process. Most do. In Nebraska, I believe almost every person is certified, with maybe

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one being board eligible, which means they are able to take the board and gain certification. However, in some states that's not the case. I just found out last week New York has 203 perfusionists, and only 143 are certified. That means you have 20 to 25 percent of perfusionists practicing perfusion with no credential at all, no way to regulate who is practicing in that field. It's pretty scary when you consider what it is that we actually do. What licensure does is it guarantees that people meet minimum criteria. There's a great concern for the public, for the safety of the public, and there is no legal process to address the performance of perfusion. There's no way for our state to determine who is qualified to do perfusion right now. Currently, 17 states are licensed in perfusion. It's a fast-growing trend across the nation to license perfusionists, because of this glaring oversight. Half of the perfusionists in the United States--a little over half--hold a license currently. That number will grow exponentially when New York, who currently has bills in both their house and Senate to license perfusionists, when New York comes on board. The reason there's a little discrepancy there in the numbers is because a lot of the larger states have perfusion licensure, like Florida, Texas, California. Some of the states where they have large number of perfusionists, they already have perfusion license, so that's why the number is a little over half of the perfusionists in America. What this has started to cause is kind of a concern for states like Nebraska. The more people that become licensed across the nation, the more people you have that are finding no need to maintain certification--the voluntary certification. What that has done, in turn, has somewhat weakened the American Board, and they've tried to adapt to that, but there is no guarantee that years from now, fiscally that board will exist. And if that's the case, there will be no form of regulation, either nationally or at the state level, to regulate the practice of perfusion. A couple other points: Right now Nebraska is beholden to a national organization, which a detriment to the way our state works. Any time you have, especially healthcare professionals, who are beholden to a state...or to a national organization, you lose control with who is practicing in your state. This law will not force anyone out of practice, and nothing will be gained by anybody practicing, by this law. The same people are going to practice under the new license law as would be practicing now. All this law will do is establish minimum criteria. We've worked very close with the Nebraska Medical Association and the Nebraska Hospital Association, and we're not trying to drive anybody out of business or drive fees up or anything like that. This is...the sole purpose for this is to protect the public. With the license to practice medicine law here in Nebraska, many of the perfusionists...many of the duties within the scope of practice of perfusion are found under the practice of medicine act. So what this means is, currently in Nebraska, it's illegal for us to perform a lot of the functions that we do. That's kind of a conundrum, because you couldn't perform heart surgery without the use of a perfusionist, but everyday that we do that, it is currently illegal, under the license to practice medicine act here in Nebraska. Finally, one more point that's not to be overlooked is, there's a lot of eyes on your state. I was just in California in a perfusion licensure meeting, and everybody is watching Nebraska, because we're a Unicameral, and we have the 407 process. We've discussed that earlier. We are still held up by the 407 process. Dr.

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Schaefer has not given her final recommendation on this. However, throughout the whole procedure, we didn't meet any opposition. There was actually three or four votes taken, and there was never any opposition to the 407 process. It's just a matter of getting that confirmation from Dr. Schaefer that it's needed. What this perfusion model as a state does is, Nebraska's Medical Center perfusion program, one of the 17 in the nation, has always been looked at as the number one program in the United States. No one has ever failed the board exam, when the national failure rate is 35 percent yearly. No one has ever failed the board exam out of the med center's program, and people look to Nebraska Med Center perfusionists coming out as kind of the next group of perfusionists. And what that does, it turns eyes to our state, and people are kind of watching Nebraska and how that goes. And so we as the perfusion society kind of felt we could do one of two things. We could take a proactive stance on this and kind of be the forefront, and kind of lead the way in this process, or we could wait until something happening, like the American Board dissolved or something like that. And God forbid something drastic or catastrophic happened, people started to lose their lives, and we could be reactive and try to gain some form of regulation then. But we took a proactive stance and have a lot of support throughout the way, and that's why we're here and coming to you guys today, and asking that you support LB399. Any questions? [LB399]

SENATOR GAY: Thank you. Are there any questions from the committee? Senator Hansen. [LB399]

SENATOR HANSEN: Thank you, Senator Gay. It looks like on page 11 that you have a board that will consist of six members and one public member. Where do you find the public member that understands your profession? (Laughter) [LB399]

BEN GREENFIELD: That was a very unique circumstance that we had in the 407 process, too, because we had to have two public members that served on our board, our 407 committee. And I would say both of them know a lot more about perfusion now than when they came in. The first thing we did was we brought them in and, with me personally, watched a few heart surgeries. And nothing gives you a perspective of what a perfusionist does like watching a beating heart inside someone's chest, and providing anesthesia, and maintaining, you know, life support throughout a case. Nothing gives you the perspective like actually seeing it. So I hope, when we would get a public member in that position, we could do that, too. Although there aren't a lot of people who know what perfusion is, a lot of people have used perfusion services. A lot of people in Nebraska have had heart surgery, and so they've had work by a perfusionist, and just maybe haven't known exactly who the perfusionist was. And so those people are fairly easy to find, too. But I would hope, when we form the board--I think that's an appointed position, and I would hope that they would, you know, look for somebody that might have a little background in that setting. [LB399]

SENATOR HANSEN: Okay. We have one dinosaur on the committee if you need one,

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to borrow one. (Laughter) [LB399]

BEN GREENFIELD: You know, his comments were true about, in the last 40 years, how the changes in the heart and lung machine have gone from a film, to a screen, to a bubble oxygenator, and I can assure you, it's a little more refined now than it was 40 years ago. It's kind of gotten to be a streamlined process, and is a lot safer than it was even 10 to 20 years ago, so. [LB399]

SENATOR GAY: I suppose. Are there any questions? I have a question for you. Maybe I heard this. Did you come up...did you say you had to have 40 procedures in...explain that a little bit. I was looking through here. [LB399]

BEN GREENFIELD: Sure. The way perfusion works, it's very unique. Before you can sit for the board exam--the voluntary certification--you have to perform 50 heart procedures. So you have to get a job, and you are board eligible. When they hire you at an institution as...right out of school, you are not certified, so hospital...I was hired by the Nebraska Heart Hospital as a noncertified perfusionist. The only thing...the only way they could conform, or the only way they could decide that I was qualified was that I had graduated from an accredited perfusion education program. Now I, after performing 50 procedures, sat for the board, passed the board, and became a certified clinical perfusionist. Then our certification is also tied to case numbers, unlike some groups of license. You know, a licensed plumber doesn't have to fix so many sinks within a year's period of time, or a nurse doesn't have to care for a certain number of patients. There's a certain number of hours to maintain a license. But perfusion has a stipulation that in order to maintain your certification as a certified clinical perfusionist, you have to do a minimum of 40 cardiac procedures in a year. So that's what...and that is the American Board. Our LB399 also ties that in, and the reason it does is because it's felt that to maintain a certain level of competency in the profession, you need to be acting in it, because of the changes and the technical detail of it. [LB399]

SENATOR GAY: Okay. I didn't see that in the...I was looking through. I didn't see the procedures in this. [LB399]

BEN GREENFIELD: You know what? It doesn't say 40. It says whatever the board deems an acceptable number. That way, if the board goes and changes it in two years, we don't have to go through this whole process again. [LB399]

SENATOR GAY: Okay. That's the point I was getting to, why... [LB399]

BEN GREENFIELD: Yeah, we didn't put a number on it. [LB399]

SENATOR GAY: All right. [LB399]

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BEN GREENFIELD: We just did what the perfusion board would deem acceptable by the American Board, and we kind of tied them together so we didn't have to go and waste your time every year. [LB399]

SENATOR GAY: And change it every year. All right, thank you. Are there any other questions? I see none. Thank you. [LB399]

BEN GREENFIELD: Thank you. [LB399]

SENATOR GAY: Other proponents? Come on forward and just...and sit up in the front row, and we'll get to you. Go ahead and state your name and... [LB399]

BRUCE CAMPBELL: My name is Bruce Campbell. I'm president-elect to the Nebraska Society for Respiratory Care. Thank you, Senator Gay and senators of the committee. I'm here...I guess Mr. Greenfield pretty much summed quite thoroughly. I think we should be proud that the perfusionists have stepped forward and taken the proactive stance and proposed this legislation to make themselves licensed in the state. It's something that's much needed to help protect the public, and we have met with them on two different occasions. Initially, they were going to come in under our bill, because we are licensed individuals. We have almost 1,300 licensed respiratory care practitioners in the state. We were very willing to work to them in that capacity. They have rewritten and want to have their own licensure board, and that we endorsed 100 percent. Both times when we gathered and met, we have unanimously accepted their proposals. And I guess that's all I wanted to say, was that the Nebraska Society for Respiratory Care is 100 percent behind these people and think that you folks should be very proud that they have taken this step. [LB399]

SENATOR GAY: Thank you, Bruce. Hold on. Are there any questions? I see none. Thank you. [LB399]

BRUCE CAMPBELL: Okay, thank you. [LB399]

SENATOR GAY: Other proponents? [LB399]

JOE DEPTULA: Senators, good afternoon. My name is Joe Deptula, D-e-p-t-u-l-a, first name J-o-e. I am a practicing perfusionist. I'm a pediatric perfusionist at Children's in Omaha. I have served as secretary of the state society for five years now--roughly five years since inception, and have practiced for almost ten years. I graduated from the University of Nebraska Medical Center in '97, as well. We have a very, very strong membership...perfusion membership here in the state of Nebraska. Currently, the way things are practiced--the way we practice perfusion is directly under the license of usually the surgeon and M.D. in general. It could be in the intensive care unit, anesthesiology, whatever. But we practice under an M.D.'s license, and as Mr.

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Greenfield was saying earlier, at points illegally, because of the way the statute is in the state of Nebraska at this point in time. And it's not fair to the public, and it's definitely not fair to those practitioners, the actual medical doctors who we do practice under. Most of them look to us as professionals and ask us what we need to do our job, and then they okay it. So it's not really fair to them that they're putting their license on the line, as well, in order for us to practice. So it's not safe for the public, and it's not fair to other people. And that's currently the way we are supporting. And I am here and willing to answer any questions you might have, technically or otherwise. [LB399]

SENATOR GAY: Are there any questions from the committee? I have one for you. When you...in this practice, do you have your own liability insurance that you carry, or do you work under the doctor's? [LB399]

JOE DEPTULA: We fall under the umbrellas of the hospital, as well, just like other primary care physicians and advanced practice personnel of the hospital. [LB399]

SENATOR GAY: So are you usually hospital employees, or your own... [LB399]

JOE DEPTULA: I am a hospital employee. There are members in the audience who are private practice, and those private practice individuals do carry their own liability. There's a potential to also add to coverage within or on top of what you're covered under the hospital liability, as well. And it's not the standard for individuals to carry ancillary or accessory insurance, but there are practitioners who do, because they are also named in extensive lawsuits, as well. [LB399]

SENATOR GAY: Okay. Thank you. Any other questions? I see none. Thank you, Joe. [LB399]

JOE DEPTULA: Thank you. [LB399]

SENATOR GAY: (Exhibit 2) Other proponents? Are there any opponents? Anybody in the neutral capacity? Just for the record I would read...we do have a letter from the Health and Human Services System, taking no formal position. I'm going to...and I guess that's what it is, for the record, no formal position, but we do have a letter from them, for the record. Senator...do you want to close, Senator? Senator Johnson waives his close, and with that we'll close the public hearing on LB399 and we will open the public hearing on LB479. Senator Johnson. [LB399 LB479]

SENATOR JOHNSON: Senator Gay, before we begin I've got to talk to Senator Hansen over here, because he would enjoy this. One of the things that you used to do years ago is to lower the body temperature down to the high eighties or so, because the heart would slow, then, and the body would tolerate the procedure better at that point. So the patients were anesthetized and then put in a horse tank of ice water in order to get them

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down. So as an old rancher, why, it was kind of funny wheeling in one of those horse tanks. (Laughter) At any rate, regarding LB385, I'm Senator Joel Johnson, representing the 37th Legislature District here in Nebraska. [LB479]

SENATOR GAY: LB479. [LB479]

SENATOR JOHNSON: LB479, excuse me. [LB479]

SENATOR GAY: I get confused, LB479. [LB479]

SENATOR JOHNSON: (Exhibit 1) He's testing me, isn't he? At any rate, LB479 updates the licensure requirements for Nebraskans that are licensed, either as an audiologist or a speech language pathologist--either as an audiologist or as a speech language pathologist. Basically, what these people do is help us with both our speaking abilities and theoretically, our listening abilities. Their practices are so closely related that they are included together in our statutes. However, these specialists have either a master's or a doctorate level degree of higher education. LB479 reflects the recommendations of the Department of Health and Human Services Technical Review Committee and the Board of Health. All the provisions in LB479 have been vended by the multidisciplinary group of the Health and Human Services healthcare professionals and also, members of the public. Now here's kind of the meat of what we're talking about. The changes to the audiologist portion of the act relate to a more precise definition of audiologists, cerumen removal--fancy name for earwax--and other types of auditory augmentation that reflect current training, technology, and the practice within the profession. The changes to the speech language pathologist portion of the act specifically include dysphasia, inability to swallow normally, to the area of scope that speech language pathologists can engage. It removes the requirement that the licensed audiologist is required to get a separate hearing and dispenser's license. Let me read that one again. It removes the requirement that the licensed audiologist is required to get a separate hearing and dispenser's license. The Board of Health concluded that that was not necessary for the health...or the public health and safety. Now here's another term--the term "communication assistant" is changed to reflect whether the person is an audiology assistant or a speech pathology assistant. One of the recommendations of the department or board of health is not included in this bill. There are no changes to the section of the statute that relates that manner to the speech pathologists' and audiologists' function within our public schools. That part is unchanged. The Board of Health made a recommendation that specific exempt language for public schools in the existing language be removed. Now I'm told that neither professional organization representing the audiologists and the speech language pathologists or the Department of Education want to address that issue that we just talked about, at this time. I understand that there also is an amendment, AM255, that will be offered by the proponents to clear technical points. [LB479]

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SENATOR GAY: (Inaudible) Okay, thank you, Senator Johnson. Are there any questions from the committee? I see none. How many proponents will be speaking? Okay, any opponents? And neutral? Okay. All right, let's start off with proponents. Please step forward and state your name and spell it out. [LB479]

SUE ROWLAND: (Exhibit 2) Hello. My name is Sue Rowland, S-u-e, R-o-w-l-a-n-d. I am a speech language pathologist. Currently, I'm serving as the president of the Nebraska Speech-Language-Hearing Association. Just to give you a little bit of kind of history about where we've come...how we've arrived at LB479, about two years ago our association, the Nebraska Speech-Language-Hearing Association contacted Health and Human Services, wanting to just kind of know what treatment modalities, which would be the areas that we assess and treat, were included in the current speech pathology and audiology scopes of practice. It was found out that our current scope was implemented sometime in the 1970s, hasn't been updated since. Our fields are very dynamic in nature. Our areas of expertise have evolved and changed. Much of what we do in the course of our practice wasn't included, and the scope is out of date and needs to be revised. We've made some efforts to facilitate discussion of concerns about the practice standards and our goals. We've tried to have small group discussions across the state. We have updated our members through our newsletter of our association, through e-mail. We've also been able to do direct mailings to not only the audiologists and speech pathologists who are members of our association but also the nonmembers of our association. We at our state conventions in 2005 and 2006 provided some input and some time for discussion and feedback from people who were there. We also worked with our national organization on how other states have defined the two professions, and to get some help in drafting a scope of practice that reflected the up-to-date practice standards. We've received some model practice acts and have taken that information, reviewed it, applied it appropriately for Nebraska speech pathologists and audiologists. We have a legislative committee that has the task of drafting the language for the state of Nebraska statutes, rules and regulations related to our professions. We've gotten even more input from our members through a survey. We've had discussions with the Nebraska Department of Education, the Nebraska Association of Special Education Supervisors, the Nebraska State Education Association, and HHS. Along the way we've tried to keep in contact with our membership in e-mail or send out drafts of the proposal, to get that feedback, to clarify language. And as that's kind of evolved we've, before we started our 407 process last spring, sent out a final copy, what we had at the time, to our members for feedback. And as Senator Johnson states, recently both Health and Human Services Technical Review Committee and the State Board of Health voted unanimously to approve our application to update the scopes of practice for speech pathologists and audiologists in Nebraska. I'm just going to touch quickly on a few of the things that apply to the speech pathologists, and then my colleague, Ryan McCreery, is going to talk about the audiology portions. A couple of things that Senator Johnson mentioned is the addition of addressing the assessment and treatment of swallowing difficulties to our scope of

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practice as speech pathologists. We've tried to be a little more specific in the areas that we treat and assess. We have updated the requirements, as he talked about, about the speech language pathology assistants and just that term, from communication assistant, to delineate whether they're a speech pathology assistant or an audiology assistant. And as he alluded to, there was a recommendation from the Board of Health and the Technical Review Committee that isn't included in the current bill, so that is not changed. We are going to maintain the current exemption from licensing, for the speech pathologists who work in the schools. And that's pretty much it. Any questions from the committee? [LB479]

SENATOR GAY: Thank you. Senator Stuthman. [LB479]

SENATOR STUTHMAN: Thank you, Senator Gay. Sue, in this bill it...a lot of the new language is about speech language pathologist assistant. [LB479]

SUE ROWLAND: Um-hum. [LB479]

SENATOR STUTHMAN: I've had numerous e-mails that people have a concern about the assistant. Can you explain to me, you know, is that an individual that has the same education as the pathologist? [LB479]

SUE ROWLAND: No. That person would not have the same education as a speech language pathologist. Currently, in the current scope of practice, that person would have to have an equivalent of a high school diploma and then some additional training. We've proposing that we make those standards more rigorous, to where you would look at some sort of an associate's degree or bachelor's level degree. We are aware that there are some concerns from some other interested parties about some of that language, about assistants and aides and things like that, because there's also aides, paraeducators being used, as well, as we're working on that. I'm looking at some other language from other practice acts in other states, as to how we might be able to clarify some of that language, and I think it would be more of a matter of clarification, so there's not confusion about assistants versus aides. [LB479]

SENATOR STUTHMAN: But Sue, are you...you're a proponent of this bill. [LB479]

SUE ROWLAND: Um-hum. [LB479]

SENATOR STUTHMAN: And that's in the language of the new bill, (inaudible) pathology assistants. And you know, that's a concern. They said, you know, are we going to be...are they going to be hiring more assistants to do the work in certain places, and is it going to eliminate the need for the pathologist? And that's a concern that was raised to me, and you know, and it is a concern to you. But maybe we need to look at that in this bill, although you're supportive of the bill. [LB479]

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SUE ROWLAND: Yeah, and I think you're right. I think that, like I said, those concerns have been, you know, brought to our attention, as well, and I think it's just a matter of talking with those people and deciding how can we clarify that language, that we don't create, possibly, that situation. There are other states that are very specific in their practice acts, as to the duties of aides versus assistants; also, how many assistants a licensed certified speech pathologist can supervise. So I think there could be some compromise there or some clarification there, as to how we would want that to look for our state. Does that answer your question? [LB479]

SENATOR STUTHMAN: Would you recommend that we try to amend something into this, or is that going to be your responsibility, to...I mean, when we put it in the bill, you know, it's with the assistants and everything. [LB479]

SUE ROWLAND: Um-hum. [LB479]

SENATOR STUTHMAN: I'm a little bit concerned with that. [LB479]

SUE ROWLAND: I don't know. I don't know if I have a good answer to that question right now. [LB479]

SENATOR STUTHMAN: Okay. Thank you. [LB479]

SUE ROWLAND: Dr. Bernthal is here, as well, and he's going to talk a little bit about kind of training programs and from an education point of view, and he might be able to talk a little bit about that, as well. And if not, it's certainly something that I'd be happy to get back to you on. [LB479]

SENATOR STUTHMAN: Okay. Thank you. [LB479]

SENATOR GAY: Thank you. Senator Hansen? [LB479]

SENATOR HANSEN: Thank you, Senator Gay. Sue, give us a little bit of demographics, either through NSHLA or...how many speech language pathologists and audiologists are there in the state, and how many are we talking about, and how many new audiologists are there, coming through schools, and give us kind of an idea of the demographics of the industry. [LB479]

SUE ROWLAND: Okay. We have approximately 800 to 900 speech pathologists and audiologists in the state of Nebraska. Of that number, about 150 of them are audiologists, with the remainder of them being speech language pathologists, so that would be in the state. Now of that 800 to 900 people, we have approximately 400 of them as members of the NSHLA, as members of the state association. They're not

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required to join our association, so that's kind of that number. We have--and again, Dr. Bernthal can probably help back me up on this--but I believe, between the three training programs in the state of Nebraska, which is the university programs at Kearney, Lincoln, and Omaha, probably 50 or 60 new graduates, would you say, every year? And of that, audiologywise? [LB479]

DR. JOHN BERNTHAL: Probably about six to eight. [LB479]

SUE ROWLAND: Six to eight. The audiology program is only at the Lincoln campus, so...and did I get all of your... [LB479]

SENATOR HANSEN: I think so. Thank you. [LB479]

SUE ROWLAND: Okay. [LB479]

SENATOR GAY: Thank you. Senator Stuthman. [LB479]

SENATOR STUTHMAN: Thank you, Senator Gay. Sue, I just might add, the reason I ask these questions, I have a daughter-in-law that is a speech language pathologist, so. [LB479]

SUE ROWLAND: Um-hum, yeah. Yes, we've talked about that before. I remember that from the breakfast. [LB479]

SENATOR GAY: All right, are there any other questions? I don't see any. Thank you. [LB479]

SUE ROWLAND: Okay, thanks. [LB479]

SENATOR GAY: Other proponents? [LB479]

RYAN McCREERY: (Exhibit 3) Hi, my name is Ryan, R-y-a-n, McCreery, it's spelled M-c-C-r-e-e-r-y, and I'm an audiologist at Boys Town National Research Hospital in Omaha, Nebraska. And I just briefly, without reiterating anything that Sue has already discussed with you, wanted to touch on the four areas that we propose to be updated in the audiology licensure law specifically. Audiology and speech language pathology are unique, because we are two distinct professions that are...kind of grew out of the same early profession of helping children with hearing loss learn to speak. And as professions have grown further and further, we've been able to kind of separate ourselves a little bit more. The four areas that we identified and that were approved by the Board of Health and the 407 process were the removal of earwax, as it relates to doing a hearing evaluation or taking the impression of the ear for a hearing aid. You'll find in the bill that that's referred to as cerumen management. But it just deals with the removal of earwax.

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And we were able to work through the 407 process with Nebraska physicians, to get some great language that everyone had input to, that balances the need for access to those services, with public safety. And we feel that the language that we have is a good compromise between what the physicians wanted to preserve, and what we need to do to be able to measure hearing and take impressions of people's ears. The second area that we have proposed that be changed is related to the fitting and programming of sound processors for implantable hearing devices. The last time that we reviewed our audiology licensure law, we didn't have technological advances that are currently available to help people with hearing loss. Advances like cochlear implantation and bone-anchored hearing aids are surgical procedures that require, after the physician performs the surgical procedure, for a sound processor to be fit to the implant.

Audiologists currently provide this service, but we do not have that in our scope of practice, so we wanted to include that, as well. The third area is reflective of a national change. Up and to this point, to be an audiologist you had to have a master's degree in audiology. Since that time that we last updated our licensure law, the entry-level degree requirement for audiology has gone from a master's level degree to a doctoral, clinical doctorate in audiology. And the University of Nebraska currently does not...no longer grants a master's degree in audiology. It's an audiology doctorate. And so we wanted to update our practice act to reflect that change, as well. The fourth area that we are going to change, or that we propose to be changed, is to remove the current requirement for audiologists to maintain a separate hearing aid license to dispense hearing aids. Under the current practice act for audiology, an audiologist can do a comprehensive hearing evaluation, we can take an impression of the ear, we can select and indicate what hearing aids would be appropriate for a patient, and we can provide oral rehabilitation after a person receives a hearing aid. The only thing that's not included in the current audiology licensure law is the sale of that hearing aid to the patient. And so if you dispense hearing aids, as I do in my practice, I'm required to maintain two licenses, but the only portion of my practice that's covered by the hearing aid dispensing license is the transaction of selling the hearing aid to the patient. Audiologists have extensive training and experience in dispensing hearing aids, and to have to maintain a separate license in order to do that is redundant. It's also unprecedented. Despite the fact that many healthcare professions have job duties and things that overlap, it's unprecedented to have a profession that's required to maintain separate licenses for specific parts of their job duties. And the Board of Health agreed with us that public safety will continue to be ensured by the oversight of the audiology and speech and hearing board through the Health and Human Services. Thirty states currently allow audiologists to dispense hearing aids under an audiology license alone. So with that, those are the four areas that we are proposing be adopted, and if there are any questions, I'd be happy to answer those at this time. [LB479]

SENATOR GAY: Thank you, Ryan. Are there any questions from the committee? I don't see any at this time. Thank you. [LB479]

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RYAN McCREERY: Thank you very much. [LB479]

SENATOR GAY: Other proponents? [LB479]

DR. JOHN BERNTHAL: Good afternoon. I'm John Bernthal, B-e-r-n-t-h-a-l. I'm professor and chair of the Department of Special Education and Communication Disorders at UNL, University of Nebraska-Lincoln, and I'm getting old. I've been there 20 years, so. I've also served as president of the 124,000 member national association that represents speech language pathology and audiology, and I've also served as a site visitor, currently as well, of accreditation groups that...an accreditation group that accredits educational programs in the area of speech language pathology and audiology. And as has already been mentioned, we have three speech language pathology programs in the state--one at UNL, one at UNO, and one at UNK. We have one audiology program in the state, and that's at UNL. It's actually a joint program--some of you might be interested--with the Boys Towns National Research Hospital in conjunction with UNL. The thing I want to do today is assure the committee that our educational programs, as currently operating in Nebraska, include the scope of practice changes as reflected in LB479. We have had these provisions, in terms of our preparation program, for at least a dozen years. It's a matter of updating the licensure law to reflect what we currently are doing. LB479 does reflect the current scope of practice in speech language pathology and audiology in the state, as well as the nation. All of our students qualify for state licensure, school of certification, as well as a national certification. Many states also require the kind of scope-of-practice issues that are involved here, in order to meet the highest qualified providers of No Child Left Behind. So my bottom line is, our graduates currently meet the provisions in this bill, as reflected in the scope of practice as proposed in LB479. [LB479]

SENATOR GAY: Thank you. Are there any questions? I don't see any. Thank you. [LB479]

DR. JOHN BERNTHAL: You bet. Thank you. [LB479]

SENATOR GAY: (Exhibit 9) Other proponents? I see none. I would say, for the record, we do have a letter of support from the Nebraska Medical Association. We'll go to opponents. Any opponents who would like to speak on LB479? Come on up, work your way up here. [LB479]

DONNA MOSS: (Exhibit 4) You know, as you get older, it's a good thing I'm a speech language pathologist. My mouth works, but my fingers don't quite do the job any more! Good afternoon. My name is Donna Moss. I am a speech and language... [LB479]

SENATOR GAY: Can you spell that out? [LB479]

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DONNA MOSS: Oh, Donna Moss. Donna with two Ns, D-o-n-n-a, Moss, M-o-s-s. I'm a speech and language pathologist who's currently employed as director of student services for the Hastings Public Schools. A little historical perspective as, Sue was recounting the last time we revisited our scope of practice, I am an individual who holds an inactive licensed, dated...I think my number is number 59, and we were actively involved in the licensure process in 1978. So I'm one of those people who is also long of tooth. (Laugh) I am speaking in opposition today, and the information that's coming around is not specifically regarding the bill, the overall bill itself, but it is one of a concern for public schools' speech and language practitioners, and it deals with the definition and some conflicts we have regarding the speech and language pathology assistants. In the state of Nebraska, we are very fortunate to be citizens here, because we have two agencies who are providing oversight for the practice of speech and language pathology--one, the Department of Education for the practice of speech and language pathology in the public schools, and two, the Department of Health and Human Services, for providing oversight for those areas in any other areas. Part of the complication is trying to find some kind of clarifying language or...I'm using the term "harmonizing language" between the rules and regulations of two different agencies and institutions. What I tried to put down on my written information is simply that there are issues that are not quite clear. And to borrow information that I heard Senator Johnson say, maybe just in a summary, would be we're looking forward to an opportunity to make it clear what the actual intent and then the ramifications are of the language that we currently have for the speech and language pathologist assistant, as it impacts public school practice. [LB479]

SENATOR GAY: Okay. Thank you. Are there any questions from the committee? I don't see any. Thank you. Any other opponents? [LB479]

MARK GLASSMAN: (Exhibit 5A) Hello, members of the Health and Human Services. My name is Mark Glassman, G-l-a-s-s-m-a-n. I'm a licensed hearing aid dispenser and have been since 1976, testifying before you today in opposition of provision in LB479 that would exempt the audiologist from having to obtain a dispensing license. My testimony will specifically address how this provision will cause harm to the consumer. In exempting themselves from obtaining the license, the audiologists did not carry over at least two sections from the dispensing statutes specifically meant to protect the public. Those sections in Section 71-4702 that provides for the selling of the hearing aid instrument, and the conditions that must be met; and Section 71-4712, that provides that a dispensing license can be denied, revoked, or suspended if a licensee fits or sells hearing aids to a child under 16 who has not been examined by a otolaryngologist without a signed waiver by the legal guardian; or violates the trade practice rules for the hearing aid industry of the Federal Trade Commission or the Food and Drug Administration. There is also no requirement that audiologists have any continuing education in the area of dispensing and, therefore, are not required to be kept abreast of new hearing aid technologies, how to use new equipment as it becomes available,

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and learning new procedures for conducting hearing aid tests, nor did they recommend any changes to their broad membership to include at a minimum an otolaryngologist. Please disallow the proposal for audiologists to be exempted from obtaining a hearing aid dispenser's and fitter's license. It is not a redundant procedure for them, and it is no expensive at \$25 every two years, as the audiologists have recently argued, and it is certainly not beneath the audiologists to demonstrate competency in the narrow and specific hearing aid practice by taking an examination. So the real question is why the audiologists really want to exempt themselves from obtaining a separate license. My supported concern is that this provision is by design to break down and eventually remove the licensed hearing aid dispenser altogether. It's a known fact that dispensing audiologists are trying to further distance themselves from a licensed nonaudiologist dispenser. Perhaps the real difference between the two disciplines is simply what road both groups have taken to arrive at the same level of competency, when in private practice settings both disciplines perform the same tasks. The common red flag testing is performed for immediate referral to the proper medical and other professionals. Our testing is designed to find the appropriate hearing aid for that individual when no medical red flags are present. The audiologist with the master's degree has been trained as a physician or ear specialist assistant in conducting diagnostic hearing exams to allow the physician the ability to diagnose hearing loss and other diseases. The audiologist does not diagnose hearing loss. When in a clinical setting with a physician, the clinical audiologist may perform many types of tests, including nonhearing tests as the doctor deems relevant. But when in private practice the dispensing audiologist generally conducts hearing testing to rule out red flags that would require medical referral and to find appropriate amplification for that individual. These dispensing audiologists must hold a license as a hearing aid dispenser. Thirty-eight states require audiologists and nonaudiologists to hold a license to dispense hearing aids. This would be extremely poor access to hearing healthcare if the audiologists were the only ones to get third party provider status. Could you imagine having to drive 150 miles or more just to have a quick hearing aid cleaning that takes a hearing aid dispenser about three minutes to do? This would only create a hardship on the hearing impaired if they had to travel greater distances to see only an audiologist. It would allow the senior citizen who cannot drive far distances and the working class who can't afford to wait in line all day and miss work. Why are we thinking of reducing accessibility for those who need our services? Also, we hear complaints that hearing aids are too expensive! If audiologists become the only third party provider, the possibility is that there will be fewer locations to obtaining hearings aids, and the cost will go up for the consumer. Hearing aid manufacturers have told me the audiologists in clinical settings charge the consumer more than those dispensers in private practice. Part of that cost increase is that audiologists are less likely to provide bundled services when fitting a hearing aid. They may charge separately for post-fitting evaluations, reprogramming of the hearing aid after the first few visits, or annual hearing tests and other related office visits and continued services. The consumers in Nebraska are currently being well served by competent licensed hearing healthcare providers. The proposed changes would

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unnecessarily cause risk of harm to consumers when no such risk currently exists. Hearing instrument dispensing has greatly evolved over the last 30 years, and part of that evolution has been because of the partnership between audiology and dispensing. The licensing of audiologist and nonaudiologist dispensers has provided all dispensers with real world preparation and ensures that all dispensers are able to demonstrate the same minimum levels of competency and skill in performing dispensing tasks. If the state of Nebraska is committed to maximizing accessibility to hearing healthcare services, as they always have been, please do not support the proposal that audiologists should be exempt from obtaining a hearing aid dispenser's and fitter's license. Thank you. [LB479]

SENATOR GAY: Thank you. Senator Hansen. [LB479]

SENATOR HANSEN: Thank you, Senator Gay. Mr. Glassman, a little bit on the demographics of hearing aid dispensers. How many of them are there in the state? [LB479]

MARK GLASSMAN: Well, in the state there's about 150 licensed hearing aid dispenser, nonaudiologists, and about the same, 150 licensed dispensing audiologists. There's about 7,500 of each throughout the country. [LB479]

SENATOR HANSEN: But there's about 300 in Nebraska, then, total? [LB479]

MARK GLASSMAN: Yes, sir. [LB479]

SENATOR HANSEN: Your example in the second paragraph of the second page...you gave the example of driving 150 miles to have a quick cleaning. Why would that be...why did you give that example? [LB479]

MARK GLASSMAN: Well, because what I believe would happen is...right now, everyone that's a licensed hearing aid dispenser, you know, you have the 300 licensed hearing aid dispensers, you would break down the integrity of our discipline if you remove half those people, okay? So now we have only half the people that are actually dispensing. You know, if there would be fewer dispensing, well, then it would be harder to reach the dispenser. [LB479]

SENATOR HANSEN: So you're talking in the demographics...back to that again. You're talking 300 total, and a 150 of them are registered, or licensed audiologists? And you... [LB479]

MARK GLASSMAN: A hundred fifty are audiologists that dispense hearing aids...licensed to dispense hearing aids, and 150 are nonaudiologists licensed to dispense hearing aids. [LB479]

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SENATOR HANSEN: Do you see a trend that those licensed audiologists tend to the eastern part of the state? Is that why we'd have to drive 150 miles to do that, or just cutting the numbers in half? Do you... [LB479]

MARK GLASSMAN: Yeah, cutting the numbers in half, I do believe that, you know, you're certainly going to see more in the eastern... [LB479]

SENATOR HANSEN: Yeah, just because of the population. But still we need some in the western part of the state, in my district. [LB479]

MARK GLASSMAN: Well, everywhere, yeah, everywhere, all over...the central part of the state and the edges. I mean, there's quite a bit of, as you know, area to cover. [LB479]

SENATOR HANSEN: I think that's all I have. Thank you. [LB479]

SENATOR GAY: Thank you. Are there any other questions from the committee? I don't see any. Thank you, Mark. [LB479]

MARK GLASSMAN: Okay. Thank you. [LB479]

SENATOR GAY: Other opponents? [LB479]

STEPHEN BUSH: My name is Stephen Bush, S-t-e-p-h-e-n, B-u-s-h. I'm a board-certified hearing instrument specialist. I'm here on behalf of the Nebraska Hearing Society. I'm here to speak on the issue of exempting audiologists from obtaining a license under the Hearing Instrument Dispensers and Fitters Act. The bottom line here is that traditional dispensers and audiologists are all in the business of serving the public. We help people hear better. We need to be careful not to lose sight of that as we talk about changing the laws that regulate a practice that serves a vulnerable segment of our population. The guideline that we need to follow in making such a change has to be, are we improving the health, safety, and welfare for our patients? With regards to the audiology portion of LB479, it was not drafted to improve the safety, welfare, or promote health. It was designed to do two things--first, to save audiologists money, and secondly, to make audiologists' lives easier, in that they would no longer have to prove competency to fit hearing instruments. As our industry becomes increasingly complex, it's our responsibility to provide better safeguards for our patients, not fewer. The bill assumes that a certificate from ASHA, the American-Speech-Language-Hearing Association, is enough. But the truth is, hearing instrument science is a specialized practice within the broad field of audiology. In fact, not all audiologists pass the exam to receive a license to dispense hearing instruments the first time they take it. The ASHA test itself has little on hearing instruments and has no practical exam. As this process

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has moved forward, we've heard about the years of education that an audiologist has, and education is important. But education alone is not enough to prove competency. We have all known educated people that aren't too sharp. The question has also been raised about the viability of audiologists being tested by traditional dispensers, when in fact the test is written by some of the top audiologists and Ph.D.s in the industry. And then, it's psychometrically verified. The practical exam is developed and administered by the Nebraska Board of Hearing Aid Dispensers and Fitters. This board includes Sam White, a 30-year veteran hearing instrument specialist, Dr. Stephen Boney, who is an audiology professor at UNL; Kimberly Joyce; an audiologist with an M.A. and C.C.C., who works at Boys Town; Evelyn McKnight, an audiologist with 25 years' experience. But all of this is really a distraction. It's off the subject. The real question is, are the changes in the law going to better protect the health and the safety and welfare of the vulnerable population? If you ask yourself that question, the answer is obvious. The new bill, in fact, removes some of the protections provided by current law. It also further divides an already small profession, making continuity difficult, all without doing anything to improve health safety for the consumer. These two separate groups would be regulated by two different boards whose rules and guidelines will, with time, diverge and cloud the water for the hearing-impaired patient. We...what we should be doing is building bridges between the two groups, so that we can work together to better serve Nebraska. We should not be creating divisions. Let's keep the focus where it should be, working together to make Nebraska a better place, instead of creating divisions that will be difficult, if not impossible, to repair in the future. Thank you. [LB479]

SENATOR GAY: Thank you. Are there any questions? Senator Hansen. [LB479]

SENATOR HANSEN: Thank you, Senator Gay. Mr. Bush, hearing aids, I think, are fairly expensive. Is there any Medicaid payments for any recipients that need hearing aids? [LB479]

STEPHEN BUSH: Not currently. [LB479]

SENATOR HANSEN: So therefore, the people who wear hearing aids pay for them themselves. [LB479]

STEPHEN BUSH: There's Medicaid, not Medicare. [LB479]

SENATOR HANSEN: Medicaid, then, I'm sorry. [LB479]

STEPHEN BUSH: Medicaid does. [LB479]

SENATOR HANSEN: Yes. There are funds in Medicaid to pay for hearing aids? [LB479]

STEPHEN BUSH: Yes. [LB479]

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SENATOR HANSEN: I need a hearing aid, see? (Laughter) I didn't hear you. So...but most people buy them themselves? [LB479]

STEPHEN BUSH: Correct. [LB479]

SENATOR HANSEN: So do you believe that we need competition in this business, in your business... [LB479]

STEPHEN BUSH: Sure [LB479]

SENATOR HANSEN: ...to keep the price down? I think that it's very important, especially for the growing elderly population in the state. This is a very important aspect of our all getting older, and I think that your industry is pretty important right now, especially...and I think that the part that...the reason I bring up the competition part, because we need statewide dealers. [LB479]

STEPHEN BUSH: That's right. [LB479]

SENATOR HANSEN: We need statewide fitters and dispensers, so it's more of a statement than a question for you. I'm sorry. [LB479]

STEPHEN BUSH: Okay. Yeah, I agree with you, and the focus should remain on serving the public. How can we best serve the public? How can we best protect the public? [LB479]

SENATOR GAY: Thank you. Any other questions? I don't see any. Thank you. [LB479]

STEPHEN BUSH: (Exhibit 6A) I have a letter from Deena Holmes. She wanted to come and testify but was unable to. She is an audiologist licensed dispenser. This letter was directed towards the Department of Health, but due to the short period of time that she wasn't able to come...she's 25 years' experience in the business. [LB479]

SENATOR GAY: Okay. Just give it to the page and we'll submit it for the record. Thank you. [LB479]

STEPHEN BUSH: (Exhibit 6B) Okay, okay. And I also have a Nebraska Hearing Society position paper. [LB479]

SENATOR GAY: You can give that to the page, as well. Thank you. [LB479]

STEPHEN BUSH: Thank you. [LB479]

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SENATOR GAY: Other opponents? [LB479]

AMY PRENDA: (Exhibit 7) Hi. My name is Amy Prenda, it's P-r-e-n-d-a. I am testifying...I'm the registered lobbyist for the Nebraska Hearing Society; however, I have a letter in opposition from the American Academy of Otolaryngology--Head and Neck Surgery, that I'd like to submit to the committee. Their main concern is the academy believes that the bill is extremely flawed and inappropriately expands the scope of practice of audiology and speech language pathology, inappropriately changes the laws governing dispensing audiologists, and would potentially cause the misdiagnosis of life-threatening illnesses that manifest themselves as hearing, speech, and swallowing conditions. If the committee has any questions, I'd be happy to answer them. [LB479]

SENATOR GAY: Thanks, Amy. Are there any questions? Senator Erdman has a question. [LB479]

SENATOR ERDMAN: So the concern is, as the bill is written, and as I understand the bill, it's before the 407 process right now. If the 407 process comes back on March 19 and says it's okay, they'll still have the same concerns? [LB479]

AMY PRENDA: Yes, because part of the section in the letter--and the letter is kind of long, and I didn't want to read it--if you look at--let me see--one of the paragraphs. They were never part, or included in part of the 407 process, so they never received any notification of the changes, and they provided testimony at the very last Board of Health hearing in a letter form. And part of their concern was, is that they were never at the table as far as the discussion, when the scope of practice changes were going through. And that is paragraph...it's in there--tick, tick, tick--sorry. I just got this letter, so I didn't have chance to... [LB479]

SENATOR ERDMAN: I'll read it, Amy. That's fine. I just wanted to make... [LB479]

AMY PRENDA: Okay, okay. But there is...they...that was one of their concerns, is that they weren't brought along from the beginning of the process, and so they're having to do the catch-up through the legislative process. [LB479]

SENATOR GAY: Amy, I got a question for you. On the process, then, if they were...how do they monitor these things that, when it's--just for my education--through an outside group monitoring that process? Is there a letter sent out that we're doing this, or... [LB479]

AMY PRENDA: It's my understanding--and I...this is my first 407 process--the applicants do an application, and in it they list all the parties that are supposed to be contacted or might have an interest in this legislation. And so it was through that that AAO was concerned and the otolaryngologists specifically--there's a split between the

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otolaryngologists here in Nebraska--but that the AAO wasn't recognized as one of those that would be interested in this scope of practice change. [LB479]

SENATOR GAY: So they never received the letter? [LB479]

AMY PRENDA: They never received any notification of the 407 process, because they weren't in the application,... [LB479]

SENATOR GAY: Okay. [LB479]

AMY PRENDA: ...and they actually heard about it through IHS, which is the International Hearing Society, which is the...our international--Nebraska Hearing Society, the international. They heard it through International Hearing Society about the scope of practice changes. [LB479]

SENATOR GAY: (Exhibits 5B and 6A) Okay. All right, thank you. Any other questions? I don't see any. Thank you. Any other opponents? Any just for the record, while you're coming up, we do have a letter from opponents, from Deena Holmes, and the International Hearing Society, in opposition. Go ahead and state your name. [LB479]

JOY DUNNIGAN: My name is Joy Dunnigan, J-o-y, Dunnigan, D-u-n-n-i-g-a-n. I have a Ph.D. in Special Education from UNL, and I am here representing Beatrice Public Schools, as the director of student programs, and also I'm here representing the NASES association, which is the Association of Special Education Supervisors. We have, as Mrs. Moss has so succinctly put--and I'll not reiterate what she said--we do have concerns in regards to the language in LB479, as it regards to the communication aide assistants and the speech language technicians. We feel that there are some possible implications within that wording that could accidentally harm some of the employees that we currently have within our school systems that are working under the guidelines of 92, or Rule 51, and through the certification, and through the application of their duties. Within the state we have a large number of professionals within the speech language pathology profession; however, we also have a shortage of speech language pathologists, and because of that shortage, we have had to rely on the certification laws and the restrictions to help us find ways in which we can deliver programs for children. And so we're some concerned as to the current language, and so again, Mrs. Moss was able to succinctly, I think, make that statement. I just wanted to reiterate it. [LB479]

SENATOR GAY: Thank you. Are there any questions? I see none. Thank you. [LB479]

JOY DUNNIGAN: Thank you. [LB479]

SENATOR GAY: Any other opponents? Anybody would like to speak in the neutral capacity on this issue? [LB479]

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VIRGIL HORNE: Senator Gay and members of the committee, my name is Virgil Horne, V-i-r-g-i-l, H-o-r-n-e, representing the Lincoln Public Schools. I heard Senator Johnson say that schools under this bill would be exempt, and I just wanted to clarify for the committee, rather than testifying against the bill--which we have no concerns about the bill, the concept of the bill--I wanted to clarify for the committee that audio and speech language pathologists are essential to education. There are state and federal regulations that require us to do certain kinds of things in special education. We have to have these people. Unfortunately, there are not a lot of them around. It's one of the few jobs in the Lincoln Public Schools that there's always an opening. If we get someone who will come and apply for that job, they can just about walk in and get the job, and I think that's true of many school districts across the state. This bill, however, addresses some other issues that we would like to work with Senator Johnson and your very capable legal counsel, to just simply clarify exactly what we're talking about. As an example, as was just mentioned, when we start talking about assistants, what they can do. There are not enough people in Lincoln alone. We have like 50 different school buildings, and those students who need this assistance are located in all of those 50...or could be, and so consequently, we need aides who are out there doing that kind of work as a follow-up to what the speech pathologist is doing. With the bill written as it is, if it was interpreted that those aides had to have the type of education that is being specified in this bill, we couldn't hire them. We couldn't afford them, and we couldn't get them. They just wouldn't be available. The other issue that needs to be thoroughly clarified is the word "supervision." There's direct supervision, there's supervision. That's two different meanings. In Lincoln, under other circumstances similar to this, supervision means that the person who is doing the work under the direction of the licensed person is in contact with that person electronically, either by computer, telephone, or something of that nature. And consequently, they can continue the types of things that need to be done to serve the students. That's the type of thing that needs to be clarified, as well, and we did not want to oppose the bill, because that's not our intention, to stop this bill. And we've been very pleased with having the opportunity to work with Senator Johnson. Just wanted to make sure the committee understood that this is the kind of thing that we do have some real concerns about, but not to the point where we're trying to interfere with what the other folks are doing in this bill. [LB479]

SENATOR GAY: Thank you, Mr. Horne. Are there any questions? I have a question for you. I'm new to the committee myself, but on the 407 process, were you involved in that, or is this... [LB479]

VIRGIL HORNE: We were involved very early in that process, and we continue to work with the committee. How do I put this in a delicate manner? [LB479]

SENATOR GAY: You don't need to be delicate. [LB479]

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VIRGIL HORNE: What the law says, the law is, and so if we get into a court of law, we only have the law as it is stated in statute. In some cases, we're being asked to "trust us on this; we don't intend to have that happen." We can't afford to do that, because of the essential need for these folks to be available to our students. [LB479]

SENATOR GAY: All right. Senator Hansen has a question. [LB479]

SENATOR HANSEN: Thank you, Senator Gay. Mr. Horne, there is no amendments. Would you propose an amendment, to make it clear that the schools are exempt? [LB479]

VIRGIL HORNE: I heard Senator Johnson say what he said, and to me, that is an amendment, just as long as the amendment clarifies it, that public schools are not a part of this act, so that they would continue in the fashion that they have in the past. And if that's in here, that's...essentially, that excludes the public school services. That would be excellent. We have no desire to change anything else. [LB479]

SENATOR HANSEN: What about ESUs? Speech text and ESUs? [LB479]

VIRGIL HORNE: Well, I'm sorry. I said it in a limited fashion. [LB479]

SENATOR HANSEN: Okay. [LB479]

VIRGIL HORNE: I do not speak for...I would say public schools, ESUs, things of that nature. I don't know where the private and parochial schools would be on this issue, but as far as the issues in public schools are concerned, that would be critical, from my experience. [LB479]

SENATOR HANSEN: Okay. [LB479]

VIRGIL HORNE: And I want to add quickly that Senator Johnson and your legal counsel for the committee has worked with us very nicely, and this is by no means a reflection or a complaint in that nature. I just wanted to clarify. [LB479]

SENATOR GAY: Okay. Thank you. Any other questions? I don't see any. Thank you. [LB479]

VIRGIL HORNE: Thank you. [LB479]

KORBY GILBERTSON: Good afternoon, Senator Gay, members of the committee. For the record, my name is Korby Gilbertson. It's spelled K-o-r-b-y, G-i-l-b-e-r-t-s-o-n. I'm appearing today as a registered lobbyist on behalf of Boys Town National Research Hospital, just in order to make one point of clarification. Boys Town National Research

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Hospital had some concerns regarding the language that struck the medical diagnosis, medical treatment, or surgery limitations in the bill, which were located on page 4. It is my understanding that there is an amendment to address those issues, and with that, we would not have any further concerns with the bill. [LB479]

SENATOR GAY: Thank you, Korby. Any questions? I don't see any. Thank you. [LB479]

KORBY GILBERTSON: Thank you. [LB479]

SENATOR GAY: (Exhibit 8; see also Exhibit 10) Anyone else neutral? Senator Johnson, would you like to close? Before Senator Johnson speaks, we do have a letter from the Department of Health and Human Services--no position, but we did have a letter for the record. [LB479]

SENATOR JOHNSON: Well, Senator Gay, I won't take but a minute, but it's obvious that there still is a little distance between the parties and our office, and I'm sure the committee in general will be glad to work with the parties to see if we can bring about a resolution. [LB479]

SENATOR GAY: Thank you, Senator Johnson. Okay, with that, we will close the public hearing on LB479. Thank you. [LB479]

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Disposition of Bills:

- LB247 - Advanced to General File.
- LB398 - Advanced to General File.
- LB399 - Advanced to General File, as amended.
- LB479 - Advanced to General File, as amended.

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Chairperson

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Committee Clerk