[LB144 LB194 LB427 LB463 LB538]

The Committee on Health and Human Services met at 1:30 p.m. on Wednesday, January 31, 2007, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB144, LB194, LB427, LB463, and LB538. 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 public hearings for the Health and Human Services Committee of the Nebraska Legislature. First let me start by introducing the people that are here and remember that senators are at other committees and that they are not absent because of your bill being here. Rather they're testifying in other places. First of all, let's start with Senator Pankonin from Louisville. Phil Erdman is from Bayard. Then Tim Gay is here from Papillion. Jeff Santema is our committee counsel. Erin Mack is our committee clerk. Senator Stuthman from Platte Center. I just about said Columbus, I'm sorry. And Senator Tom Hansen from North Platte. And also joining us in a few minutes will be Senator Howard from Omaha. A couple of ground rules for those you that haven't been here before. First of all, the proceedings are recorded and transcribed. Oh, we do have one rule as well and that is if you have a cell phone that rings, you will be rung. (Laughter) The committee will first hear proponent testimony followed by opponent and then neutral. We ask very sincerely that your testimony be limited to three minutes. We have not put in a light system. There was one time last week where I wish I had. (Laughter) So please be kind to those people that are testifying in the later bills. Yesterday people were still testifying at 5:30 in the afternoon and they had come a long way to do that. And you know, our attention span wanes late in the day as well. So they have, you know, I guess I'm just saying is be courteous to the people that are going to follow you. A testifier sheet is available in the back of the room for those wishing to testify publicly and then put it in the hopper up here. Fill it out completely. When you testify, please give us your full name and spell it for the person transcribing this. Let me see, anything else on this list. Oh, yes. If you have any materials, we like there to be 12 copies. If you didn't bring 12 copies, the pages will be glad to make additional copies and distribute them. Also if we do run into where there are a lot of people that want to express their opinion on a bill but don't want to get in that chair and talk about, we will circulate so that you can be publicly on record as being favoring or opponent or whatever. That being the case, let's start. And if I can find the right one here, here we go. The first one today is Senator McDonald, LB144. Let's commence with the hearing on that. [LB144]

SENATOR McDONALD: (Exhibit 1) Thank you. Good afternoon, Senator Johnson and members of the committee. I'm Senator Vickie McDonald and I represent the 41st Legislative District. I'm here to introduce LB144, the Hepatitis C Education and Prevention Act. This committee heard the bill last year and advanced it to General File

without amendments. Unfortunately, time ran out on Senator Combs before the full Legislature could take up her bill last session. For many people, hepatitis C is an unknown disease. A recent survey showed that only 49 percent of the general public is aware of this disease as compared to 81 percent who are aware of HIV/AIDS. Hepatitis C affects four times as many people as HIV. Currently, over 4 million people in our country are affected with hepatitis C. Compare that to the 800,000 or 900,000 who are living with HIV/AIDS. A 2005 Duke University study showed that the United States incidents of undiagnosed hepatitis C cases is a latent threat to public health. Hepatitis C is a silent and patient disease. There are often no symptoms for many years after the patient becomes infected. Like most Nebraskans, I first heard about hepatitis C during the tragic outbreak in Fremont five years ago. I was shocked to learn that the patients receiving cancer treatment at a Fremont clinic were infected with the potentially fatal and incurable disease. What a shame for those patients and their families, as if cancer wasn't enough to cope with. Hepatitis C is commonly transmitted by blood-to-blood contamination. I was saddened when health officials disclosed that improper medical techniques and procedures and gross negligence at the clinic resulted in the infection of 99 cancer patients. Did you know that if you had a blood transfusion in the United States prior to 1992, you meet one of the risk factors for hepatitis C? I didn't know that until a couple of days ago. And I'm going to pass out a chart that lets you know what the risk factors for hepatitis C are. And as you read that first risk factor, and that first one is if you received any blood prior to 1992, you do have a risk factor. And I thought back into my own life. Do I have a risk factor for hepatitis C? My second daughter was born in 1969. I hemorrhaged after the delivery and I did receive blood in 1969. I am going to have a hepatitis C test because I could be at risk for hepatitis C. And not only am I at risk for hepatitis C, my children born after that are at risk, too, and my grandchildren. So that is something I think many of us don't even think about. You know, some of the other risk factors don't apply to me. But that one does. And you know, that blood was there to save my life. Little would I realize that that could have been contaminated blood. So it's a risk factor that many of us need to look at. Hepatitis C is a public safety threat which is made worse by the lack of knowledge and awareness in the general public and, surprisingly, in healthcare professionals. Nebraska does not have a plan in place to address hepatitis, the epidemic of hepatitis C. And we do not appropriate any funds to support treatment of those infected with the disease, train healthcare professionals on how the disease is spread and how it can be prevented, and educate the public about the disease. I have a couple of other handouts, too, and this one deals with the facts of hepatitis C and the Nebraska statistics. So you might be interested in that one. We are fortunate to have a federally funded hepatitis C coordinator in our state. However, without additional funds and an organized way in which to address the epidemic, this one person can only make just so much progress. LB144 creates the Hepatitis C Education and Prevention Act. The act provides for an 18-member task force to develop a comprehensive strategic plan to address the increasing hepatitis C epidemic we face in Nebraska. The strategic plan is be finished by the end of 2007 and will generate policy recommendations for future legislation. LB144 creates an emergency clause. It is

our hope that a strategic plan with its emphasis on prevention and education will prevent another disaster like the ones that occurred in Fremont. For the record, I also have some letters of support for LB144. One of those is from Joann Schaefer on behalf of the Health and Human Services System. We have one from the Lincoln-Lancaster Health Department. And also one from former Senator Jeanne Combs-Pence. I'd like you to direct more specific questions to the medical experts who will follow me because I'm not an expert in hepatitis C. But as a legislator, I recognize the state's desperate need for awareness education and prevention of this disease. LB144 will go a long way towards providing the framework that we can use to help Nebraskans avoid this disease. This morning, I found out that the Health and Human Services would like more technical changes to LB144. I did not prepare an amendment because the letter came to my office right before noon today. HHS recommends that the appointments of the HHS Regulation and Licensure, Corrections, and Veterans Affairs should be made by the Governor. Currently the bill allows for the director of these departments to make those appointments. Although I was not aware of these technical changes until this morning, I want you to know that I have no problem if the committee makes the policy decision to include these technical changes in a committee amendment. I encourage you to advance this bill to General File and I thank you for your time and interest. I also have a couple other handouts that might be important to you as you look at this bill. One of them is the state of Nebraska's financial disease burden related to hepatitis C, what it's actually costing us in the state of Nebraska for hepatitis C. And the last one that I have that's very important is a youth risk behavior survey, taken from grades 9 to 12. It talks about all chances of risky behavior for our youth and it appears that that is increasing every year, that our youth are allowing themselves to be in risky behaviors, which also creates more opportunity for hepatitis C to be spread. With that, I'll take some questions. And if not, I'll let you speak to those that are going to testify behind me. [LB144]

SENATOR JOHNSON: Any questions of Senator McDonald? [LB144]

SENATOR McDONALD: Yes? Oh, sorry. [LB144]

SENATOR JOHNSON: Senator Erdman. [LB144]

SENATOR ERDMAN: It's hard to see over these large bills that you've brought to us, Mr. Chairman. (Laughter) Not surprised by the late notice of their position or recommendation, as I see former Senator Byars isn't either. The question I guess is that I see that in the bill and on page 2, line 12, it talks about a state hepatitis coordinator designated by the director of HHS. Do we have someone doing that currently and is this just designed to focus it specifically on hepatitis C? And if you're aware, where are the efforts being done by the department in regards to some of those issues that have arisen out of the Norfolk situation? Because obviously something, I'm assuming, has been done, both in the regards to the disciplinary actions against those that were

involved in that case but also what type of education opportunities is the department undertaking. Are you aware? [LB144]

SENATOR McDONALD: Kathryn White is here and she will be speaking on that behalf. So she'll be able to answer your questions better than I. [LB144]

SENATOR ERDMAN: Super. [LB144]

SENATOR JOHNSON: Any other questions? Senator, I see none. Will you be able to close? [LB144]

SENATOR McDONALD: I'm going to probably waive closing but in lieu of the amount of people that are going to testify on all bills today. Thank you for letting me be first. [LB144]

SENATOR JOHNSON: (Exhibits 3, 4, and 5) All right, thank you. Let me just say that here is a letter on behalf of Joann Schaefer, the chief medical officer. There is a letter here in support from Bruce Dart of the city of Lincoln, health director. Letter from Bruce Rieker and Carly Runestad from Nebraska Hospital Association. From the Nebraska Pharmacists Association, Joni Cover. And also a letter from former Senator Jeanne Combs, who was the sponsor of this bill a year ago when it passed this committee. How many people do we have that will speak in support of this bill? One, two, three, four, five, six, seven. And opposed? And neutral? All right, let's proceed with the proponents and again would ask that you be precise and concise. [LB144]

MARK MAILLIARD: Senator Johnson, committee, first of all, I am Dr. Mark Mailliard, M-a-i-l-l-i-a-r-d, and I thank Senator McDonald for continuing to carry Senator Combs' torch and asking me to come back this year and speak again about the hepatitis C bill. Let me just spend a brief time telling you who I am. I am an associate profession and chief of the division of gastroenterology and hepatology at the University of Nebraska Medical Center. We have 15 faculty, 8 physicians and 7 Ph.D.'s, and are very active in clinical research, basic research, clinical patient care, and teaching. For example, my group supports an internationally regarded liver transplant program that did nearly 120 adult liver transplants last year. I am a native Nebraskan. I went to Creighton High School in Omaha, am a graduate of Northwestern University and the University of Nebraska School of Medicine. And following my internal medicine training at UNMC, I did four years of training in gastroenterology, some at the University of Nebraska and three at the University of Florida in Gainesville. I stayed at the University of Florida for eight years, concentrating on liver disease and hepatitis, before going to Texas Tech University as the chief of gastroenterology. And then I finally returned to Omaha after my lifelong mentor, Mike Sorrell, asked me to return. Sometimes I think academic physicians have a lot in common with college coaches. Let me just say that the focus of my clinical work is on viral hepatitis and I am particularly interested in the natural history

of hepatitis C and its therapy. But we also do investigations on the role of nutrients in liver repair, regeneration, and fat removal. As the director of the hepatitis C clinic at the Nebraska Medical Center, I see around 500 hepatitis C patients per year. Let me just expand on a little bit of what Senator McDonald said. There is probably around 25,000 individuals in the state of Nebraska that have hepatitis C. Hepatitis C, as she said, is primarily transferred blood to blood. So if infection control measures are in place and we could stop drug abuse and needle sticks and, since sexual transmission is an unusual phenomena, we would be able to curb the growth of this infection by a great deal. Now most of the patients who are infected or who would be infected in any time in the near future have already been infected. The average person who's infected is about 52 years old and has been infected for about 30 years. This person believes he or she is well. Perhaps they are fatigued but most patients believe that they are well and only through careful questioning about their quality of life is the clinical symptoms revealed. Now about 20 percent of these patients will go on to what's called cirrhosis of the liver with the risk of liver failure and cancer of the liver in their lifetime. So in 2025, there will be a lot of deaths in the United States, as well worldwide, as a result of hepatitis C primarily from liver disease that is not going to be able to be rectified by liver transplant because there is nowhere near the number of organs available, as well as cancer of the liver. Now this, hepatitis C is the major reason in the world for an adult to have a liver transplant. So this is a major global, national, local public health problem. Now as has already been mentioned today, the outbreak in Fremont, Nebraska, which may be the largest outbreak of hepatitis C in the western world, has brought a fair amount of attention to the risk of hepatitis C transmission that's ongoing. There is no vaccine and there will be no vaccine anytime soon. As I told you, the disease is quiet when it's transmitted and most patients do not remember any sort of illness associated with its acquisition. Therefore, most people who have it don't know it and only through recognition of their risk factors would the diagnosis be made. Now this disease is fortunately treatable. Probably about 50 percent of patients that I see are able to achieve a sustained remission. And that sustained remission should be lifelong and only rarely associated with reappearance of the virus. Now in biology, this is very unusual. Most chronic viral infections cannot be eradicated, it can only be suppressed. So interferon-based therapy of hepatitis C can eradicate the treatment. So it's a myth that this is not treatable. However, the treatment is imperfect. It is getting better every day. And I suspect within five years the average person, the percentage of persons who will be treatable to eradication to sustained remission is probably going to be more like 80 percent. Now with that background, I of course am very interested in passage of this bill because of its four aims. And hopefully the aims, after my introduction and background today, is clear to you. First of all, public awareness is slim regarding this infection. And if you ever get the chance to talk to a patient from Fremont who's been infected, the stigma associated with this infection, the fear associated with this infection, the community embarrassment and inappropriate action to the patients who are infected was very, very striking to all involved. And I think that that's a part of this. But also, in order to keep it from spreading, in order to get the patients treated, in order to get

access for the patients we need better public awareness. Unfortunately, we need education of professionals at all levels. There's a lot of different reasons for this. Sometimes professionals can be intimidated by the spectrum of disease with hepatitis. And I think this kind of mirrors what we've seen nationally in response to HIV and AIDS. But just as many states recognize the need to stress the importance of diagnosis and therapy for HIV and AIDS and its remarkable effect on the natural history of HIV. States now are recognizing, too, that the same thing needs to be done for viral hepatitis, particular hepatitis C. The needs of those infected cannot be stressed any more than I already am doing; access to care, information about getting treatment, the importance of knowing that treatment is effective. Most patients come to me feeling disgraced, feeling injured, feeling like there's no hope. And I really don't think there's a reason for that. Then finally, we can talk about evaluation of funding sources. Now Nebraska is an extremely generous state when it comes to healthcare. And most of my patients can receive care. And I think they just have to know that it's out there for them. And a lot of this would have to do with education. But clearly, you know, I sit in a rather isolated area, in what's called the "Ivory Tower," and patients who make their way to me usually have quite a path. I think it takes them a couple of years before they finally make their way to me before they first told their physician or principal care provider that they are at risk for hepatitis C or the diagnosis was made. So there's lots of facets to this and I think that exploring this and bringing this committee to light really has an important role in healthcare for Nebraskans and I am a strong proponent for it. Trying to be concise as I can, let me ask you if you have any questions for me. [LB144]

SENATOR JOHNSON: Any questions from the committee? Senator Pankonin. [LB144]

SENATOR PANKONIN: Thank you. Doctor, how do you usually...do people really realize when they have like a routine medical checkup or some other procedure and they do blood work and they find it. Is that how it's usually discovered? [LB144]

MARK MAILLIARD: That's right. I think...well, since patients don't suspect they have it, we need their care providers to ask them about the risk factor history in their life. So you've got to ask about the risk factors. Second thing is that they may have abnormal liver tests but probably a third of people don't. So the risk factors plus doing the blood testing would be the key to get things going. [LB144]

SENATOR PANKONIN: But a typical blood test that a person would have in an annual physical or whatever... [LB144]

MARK MAILLIARD: Would not show it. [LB144]

SENATOR PANKONIN: Okay. [LB144]

SENATOR JOHNSON: Senator Erdman? No. Any other questions? Senator Stuthman.

[LB144]

SENATOR STUTHMAN: Thank you, Senator Johnson. Mark, you mentioned that a lot of the hepatitis comes from the use of drugs, the use of the needles and injections. If we could run a bigger hammer on the illegal use of drugs, would this help solve part of the problem? [LB144]

MARK MAILLIARD: You know, when you talk about the epidemic of hepatitis C, the infections occurred 30 years ago, principally. So again, the number of the new infections occurring in young people is actually quite small. Okay, new infections, but still there's a vast reservoir of infections that occurred in the 60s and 70s, probably principally from drug use, okay, during that period. Certainly there are so many things that could be changed if we could apply a hammer to drug use and abuse in the United States. But I don't know if it's possible. So I think that education is really, really important at the risk of infection from doing such practices. But I don't know if that's a big enough hammer as what you have in mind. [LB144]

SENATOR STUTHMAN: Okay, thank you. [LB144]

SENATOR JOHNSON: Any other questions? Thank you, Doctor. [LB144]

MARK MAILLIARD: You're welcome. [LB144]

SENATOR JOHNSON: Now as you see, I'm a little bit more liberal with the first testifier because we used about at least 15 minutes. That means the rest of you better be more concise than that. So next, please? [LB144]

EVELYN McKNIGHT: Good afternoon, Senator Johnson and members of the committee. I'm Evelyn Vinduska McKnight, M-c-K-n-i-g-h-t. I live in Fremont. My husband lives with me in Fremont. He's a family physician. I'm an audiologist. We are lifelong Nebraskans. We have three sons, two in medical school and one in college. I'm a member of the St. Patrick's Church Community in Fremont. I'm a community volunteer. And we love Nebraska and will always live in Nebraska. In addition, I'm also infected with hepatitis C. I was diagnosed with breast cancer in 2000. I was treated at the Fremont Cancer Center and contracted hepatitis C through lack of sterile technique. I was one of 99 people who were found to have hepatitis C transmitted through the Fremont Cancer Center. So when you look at me, don't see on middle-age woman, see 99 people; young people, old people, people in their 20s, people in their 90s, truck drivers, farmers, housewives, professionals, bankers, lots and lots of people. And we were just part of the Fremont hepatitis C outbreak. We're not all of Nebraska. There's thousands of people in Nebraska who are infected with hepatitis C. The mode of transmission of the hepatitis C in the Fremont Cancer Center was because a patient came to the clinic with known hepatitis C. This patient had contracted hepatitis C many

years ago while living on the east coast. Subsequently, this patient moved to Nebraska, developed cancer, came to the Fremont Cancer Center. The nurse accessed this patient, this index patient, and then used the same needle to access a common flush bag of saline. That saline bag then was contaminated with the index patient's blood. She reused that saline bag to flush other people's ports and that's how the hepatitis C was transmitted. The port is an access where...a way for the chemotherapy infusions to be done. These cases were entirely preventable and all cases of healthcare-transmitted hepatitis C are preventable. Approximately 1 to 2 percent of the cases of hepatitis C nationwide are healthcare-transmitted, at least 1 to 2 percent. Ten percent of all cases are unknown as to what the mode of transmission was. So it could be even a greater amount of cases that are transmitted through healthcare and lack of sterile technique and accidental needle sticks. One would think that the Nebraska outbreak was a fluke, that that was just one bad nurse in one bad clinic in, oddly enough, in the middle of the United States. However, it was not a fluke. We know that in the years 2000, 2001, there were four large outbreaks of hepatitis C through healthcare transmission in the United States; two in New York City and one in Oklahoma City, and then us in Nebraska. We found--we being the hepatitis C victims--that when we went to our doctor to seek information, to find out what is it, what does this mean for us, how will this affect our lives, often we didn't get very much information. Usually when I was told I had hepatitis C, I said, well, what is that? And when I went to my primary care physician, he wasn't very well-educated either about what it is, what it means for us, what it means for our life, how it will impact us. I think that there's more education there but it continues to be a great need, both with the healthcare professionals and with the general public. I think I can speak for my cohort mates and their loved ones by saying that our experience with hepatitis C has been very lonely, very confusing, very frightening, very stigmatizing. At the start of the public exposure of the outbreak, we felt we were stigmatized and avoided because of the community's fear that we were readily contagious. Our own personal physicians acknowledged they knew very little about the course of the disease, its treatment, or the possibility of us infecting our loved ones. The local media's coverage of the disease vacillated between saying, oh this is nothing, it's not big deal, it's no worse than a common cold, to speaking of it as the direst of diseases. I urge you to advance LB144, the Hepatitis C Education and Prevention Act. The Fremont outbreak is a prime example of the lack of education and awareness of hepatitis C in Nebraska. In 2002 when we were diagnosed with hepatitis C, the common response was, what's that. I haven't seen a lot of progress in that regard since 2002. Our group has been forced to educate itself about hepatitis C but I venture that for the majority of Nebraskans, both healthcare providers and the general public, hepatitis C is still an unknown entity. So please bear that in mind and advance this bill to educate and prevent hepatitis C. [LB144]

SENATOR JOHNSON: Any questions? I see none. Thank you very much. [LB144]

DENNIS BYARS: Senator Johnson, members of the Health and Human Services

Committee, I am Dennis Byars, B-y-a-r-s, from the...Senator Wallman's "Caring and Sharing District." (Laughter) It's good to be here with you this afternoon and I will be brief. I can be brief, Senator Erdman. (Laughter) It's possible. You're going to hear all the technical information relative to this issue. I think your last testifier did an absolutely fantastic job of informing you why it is that we need a plan. I think all of us, in making public policy, go back to look at history and where were we and try to assess where we are today, then look at where it is that we need to go. And I always ask, if we know where we need to go, how do we get there? Senator McDonald, as Senator Combs brought to this committee last year, has brought you the beginning of a plan, giving you the opportunity through making public policy of saying, what is it that we need to do? There's a tremendous lack of education in the healthcare industry alone. Individuals who for whatever reason don't have the knowledge to deal with this issue. Obviously, the general public is very naive and really the stigmas attached to the issue are huge. So again, in my briefness, I feel strongly enough that I came back to visit with this committee and tell you very clearly that I think the legislation, LB144 that Senator McDonald has brought to you, is good legislation and will allow you to make a plan. Thank you for you allowing me to testify today. [LB144]

SENATOR JOHNSON: Thank you very much. Any questions? Senator, thank you very much. Oh, we've got one. Senator Erdman. [LB144]

SENATOR ERDMAN: Senator Byars, I have no doubts in your ability and it's good to see you again. (Laughter) [LB144]

DENNIS BYARS: Thank you very much, Senator. It's good to be here. [LB144]

SENATOR JOHNSON: Thank you. Next, please? [LB144]

JERRY STILMOCK: Good afternoon, Senators. Jerry Stilmock, J-e-r-r-y, Stilmock, S-t-i-l-m-o-c-k, lobbyist on behalf of the Nebraska State Volunteer Firefighters Association. It wasn't too long ago that a volunteer showed up, taking time off of work to share with the members of the Health and Human Services Committee of his contacting hepatitis C as performing his volunteer services. We certainly support the measure. We think it's important to not only bring public awareness but also, as has been stated, to let the professionals and those including the volunteer firefighters and volunteer rescue personnel throughout the state, to let them know of what this disease is and how it can be prevented. I would ask the committee's support. Thank you. [LB144]

SENATOR JOHNSON: Any questions for Jerry? I see none. Thanks very much. [LB144]

JERRY STILMOCK: Thank you. [LB144]

BRUCE BEINS: Thank you, Senators. I will endeavor to be shorter than Mr. Stilmock. (Laughter) My name is Bruce Beins, spelled B-e-i-n-s. I represent the Nebraska Emergency Medical Services Association. And on behalf of about 7,000 EMS providers in the state, I urge you to go ahead and pass this bill, forward this bill. We really like the strategic plan of it. We have a saying, you know, failure to plan is planning to fail. The fact that we can promote public awareness and also educate the providers themselves, I think are real qualities that this bill has. We would like nothing more than, through prevention and education efforts, to eventually put us all out of business. So with that, I would like to say I would hope you would advance this bill. [LB144]

SENATOR JOHNSON: Any questions of Bruce? Yes, Senator Erdman. [LB144]

SENATOR ERDMAN: Bruce, I don't see a designation in plain reading that may include EMS or EMT providers in the bill. Is that your understanding as well? [LB144]

BRUCE BEINS: Well, we are licensed healthcare providers by the state. So I would assume... [LB144]

SENATOR ERDMAN: And there would be one of those appointed and you'd be in competition with every other licensed... [LB144]

BRUCE BEINS: Yes. But reading the other definitions of this task force, I'm very comfortable with the people that are chosen as part of that task force, to be professionals that would be looking out for everybody's best interests. [LB144]

SENATOR ERDMAN: Very gracious of you. Most folks come and want their name in the bill. (Laughter) That's nice of you to do. [LB144]

BRUCE BEINS: Well, we realize that there are those that are experts and are going to deal with this more on a daily basis and we want to be able to get the education and so forth that we need. And of course, our main goal is to see that the public is education. [LB144]

SENATOR JOHNSON: Any other questions? I guess my comment would be, if it were listed there that you'd be under unpaid professionals. [LB144]

BRUCE BEINS: There you go. [LB144]

SENATOR JOHNSON: Thank you very much. Next, please? [LB144]

KATHRYN WHITE: (Exhibit 6) I can read fast. (Laughter) Good afternoon, Senator Johnson and members of the committee. My name is Kathryn White, K-a-t-h-r-y-n W-h-i-t-e. I'm a public health nurse in Nebraska and I sit on the executive council for the

National Nurses Advisory Council for Liver Wellness and Hepatology. I am here today in support of LB144, the Hepatitis C Education and Prevention Act. The National Institute of Health states that the hepatitis C virus is the most common blood-borne pathogen in the United States. It is the leading cause of liver disease in this country. It is the leading cause of liver cancer and liver transplants in this country. Current Center for Disease Control and Prevention statistics show that in the United States, 1 of every 50 Americans are infected with the hepatitis C virus. If you apply that CDC statistic of 1.8 percent infection rate to the last Nebraska census, statistically that's over 30,000 cases in Nebraska. Hepatitis C is often called a silent epidemic. The liver is a noncomplaining organ. It doesn't say, ow, I hurt, like your head or your stomach. Most people are infected for two or more decades before they're diagnosed with the infection. According to the CDC, the Center for Disease Control, 80 percent of the people infected with hepatitis C have no clinical signs or symptoms of the disease and are unaware that they are infected and capable of transmitting it to others. In 2001, the Center for Disease Control and Prevention developed a comprehensive strategic plan for the prevention of hepatitis C within the United States. The core element of this plan was the education of healthcare professionals, public health officials, and the integration of hepatitis C prevention efforts into existing programs that work with other blood-borne diseases. As there is no vaccine to prevent the transmission of this virus, education remains the primary venue for public health efforts to decrease transmission of the disease and identify currently infected individuals. The integration... [LB144]

SENATOR JOHNSON: I hope you don't have too many more pages, by the way. [LB144]

KATHRYN WHITE: No. [LB144]

SENATOR JOHNSON: Thank you. [LB144]

KATHRYN WHITE: (Laugh) The integration of the CDC plan recognizes that any population of people that are risk for the infection of one blood-borne pathogen is at risk for the others. The National Nurses Advisory Council supports this bill. The Hepatitis C Prevention Act develops a strategy to raise awareness and educate the public regarding hepatitis C. The importance of educating people regarding risk factors is the key fight against hepatitis C virus. Eight-six percent of all new hepatitis C cases are directly related to behavioral choices, according to the CDC. Sixty-eight percent of all new cases are related to illegal injectable drugs. Eighteen percent are related to high-risk sexual activity. With 80 percent of the people not having any clinical signs or symptoms, it's crucial for healthcare professionals to stay current on technology advances, medical management, and risk factors associated with hepatitis C infection. A recent study done by the American Gastroenterological Association revealed that only 55 percent of physicians routinely screen their patients for the presence of hepatitis C risk factors. This education prevention act will develop strategies to foster collaborations between

agencies working with populations at risk. The National Nurses Advisory Council recognizes that any efforts or interventions used to decrease the transmission of one blood-borne pathogen will have an impact on other blood-borne pathogens. The Hepatitis C Prevention Act will evaluate available funding sources to address the hepatitis C in Nebraska. Currently, the CDC financial disease burden is $15 billion a year in this country. The CDC is predicting that this burden will increase to $26 billion by the year 2021. The National Nurses Advisory Council, we feel strongly it's a more effective use of resources to educate and prevent rather than to medically manage. And at this time, I'd be happy to answer any questions you may have. [LB144]

SENATOR JOHNSON: Any questions? Senator Erdman. [LB144]

SENATOR ERDMAN: I'm assuming that you're the kind individual that Senator McDonald has passed that question that I asked her off on? [LB144]

KATHRYN WHITE: I will be following up at the end of the testimonies as neutral from HHS at that point, yes. [LB144]

SENATOR ERDMAN: I'll ask you then. Okay. [LB144]

SENATOR JOHNSON: Yes, and that will be the case is that she is going to come back and testify from the standpoint of the HHS Department. So if you have any questions of a nurse, this is the time. Senator Howard. [LB144]

SENATOR HOWARD: Kathy, thank you for coming in and bringing us really interesting, helpful information. And the question that I have for you is, can you tell us how hepatitis C is affecting children? [LB144]

KATHRYN WHITE: There is...the national average, we see about a 5 percent...the CDC says there's a 5 percent vertical transmission of moms to unborn babes. In that instance then, their children that are female, if they have children, you would see another 5 percent in their offspring as well. The males would not be able to pass it along to the next generation. We also know that in the children when they are born, they don't...they're not able to fight the disease as well as somebody who has a more advanced immune system. So the children tend to progress a little bit faster to an end-stage liver disease than an adult that's infected. [LB144]

SENATOR HOWARD: Is this detected at birth? [LB144]

KATHRYN WHITE: I'm sorry, what? [LB144]

SENATOR HOWARD: Is this condition, can this be detected at birth? [LB144]

KATHRYN WHITE: No, this is...the babes at birth are going to have their mom's antibodies. So just like the HIV virus, you don't test the infant's blood until they're about a year old when they have their own antibodies to see if it's transmitted. And fortunately, we really do only have a 5 percent transmission rate so that's good. [LB144]

SENATOR HOWARD: All right, thank you so much. [LB144]

SENATOR JOHNSON: Any other questions? Kathryn, thank you. Any other proponents? [LB144]

ANNETTE HARMON: (Exhibit 2) My name is Annette Harmon, A-n-n-e-t-t-e H-a-r-m-o-n. I'm the executive director for the Nebraska Nurses Association and I'm glad that you asked Kathryn the nurse questions because I am not a nurse. I'm simply the executive director and do the work. I can be brief as well. I'm appearing on behalf of the Nebraska Nurses Association, NNA. We represent over 20,000 registered nurses in the state. Basically I want to tell you that we are in support of this bill and would gladly assist in any way that we can, either in identifying members of the task force, as well as assisting in the development and presentation of educational materials. Do you have any questions for me? [LB144]

SENATOR JOHNSON: Thank you. Any questions? Seeing none, thank you very...woops, Senator Erdman. [LB144]

SENATOR ERDMAN: Just real quick, you mentioned in here that you're concerned about the time frame but you don't specify what you think would be appropriate. Do you have an idea of what... [LB144]

ANNETTE HARMON: We are a little concerned about the seven months and hoping that is sufficient time to develop comprehensive strategic plan. Just knowing people's schedules and how busy they might be in order to get together and actually make that happen. If it's necessary to extend the time, we would be in support of that. [LB144]

SENATOR ERDMAN: Okay. [LB144]

SENATOR JOHNSON: Any other questions? Seeing none, thank you very much. [LB144]

ANNETTE HARMON: Thank you. [LB144]

SENATOR JOHNSON: Any opponents? And I know there's a neutral going around so I guess you're up, Kathryn. [LB144]

KATHRYN WHITE: Okay. Again, my name is Kathryn White, K-a-t-h-r-y-n W-h-i-t-e, and

I'm with Nebraska Health and Human Services. I'm here in a neutral capacity today for Nebraska Health and Human Services to answer any technical questions you may have. [LB144]

SENATOR JOHNSON: Senator Erdman. We're not going to let you go out of town again. [LB144]

SENATOR ERDMAN: You probably just won't let me back in, Mr. Chairman. (Laughter) Kathryn, tell me about...the bill outlines the state hepatitis coordinator and in your previous testimony, in your other life, you mentioned the 2001 hepatitis C strategic plan from the CDC. My understanding, or at least my logical conclusion, would be that we're trying to implement some of those things, based on your previous testimony. I guess I'm looking for some direction as to more insight into this approach versus what we're already doing and how this enhances what we're already doing. I'm assuming we're doing something so maybe you could comment on that. [LB144]

KATHRYN WHITE: Yeah, we are. I am actually the federally funded position. Every state has one of me to prevent hepatitis and to integrate it into other disease programs that we have. I work very closely with the state HIV program, the state sexually transmitted disease program, and the state family planning program and do education. We go out and do education, the public and with various healthcare professionals. I'm one person though and there really does need to be more. I mean, Dr. Mailliard is one person. He's done a couple trainings with the docs and there's just so much more education that needs to be done. But you know, we are doing it, but we are only funded for me. [LB144]

SENATOR ERDMAN: Is there...sorry, is there an effort being made by the hospital associations, the docs, the folks that have professional organizations to work with you in distributing information? The testifier from Fremont mentioned that most of the physicians at the time of her case really had little information. I'm assuming that there's probably more information available now and we need to make sure that that information gets to the right folks. And I'm sure the Med Center is doing their part as well. But can you kind of give me an insight... [LB144]

KATHRYN WHITE: Yeah, I actually started, my position started the week of the Fremont outbreak. So that was my baptism by fire in public health. (Laughter) And Fremont actually is probably the best educated medical community in the state for obvious reasons. They've had to be. But a great deal of my time is spent working with the public health departments, doctors in the rural health...you know, they'll get their first case and they just don't know what to do with it. And so I will send them the national recommendations and guidelines from the appropriate discipline and ultimately, as Dr. Mailliard alluded to, a couple years down the line they'll wind up in his clinic if they can get there. But a great deal of my time is done working with healthcare providers in that

capacity. I'm listed on the CDC web site and the state web site as a contact. So often I get phone calls and e-mails from patients, such as Evelyn. They've just been told that they're diagnosed with this disease and they're absolutely terrified, they think they're going to die, are their children going to die. And it's just a lack of knowledge. You know, healthcare professionals, if we understood it better we could educate our patients better. I think the saddest phone call I ever had was the day before Thanksgiving in 2002. A grandmother called me and she was just in tears that her daughter had asked her not to come to the family dinner because she'd been found out that she was positive for hepatitis C and didn't want the children exposed. So these are the kind of things that people deal with and I can help them. You know, I was able to call her daughter and smooth the way out with her. But a great deal of my time is spent doing just that, just putting out the little fires. And I have to get only the very tip of the iceberg out of it because there's so much more of it there. [LB144]

SENATOR ERDMAN: And final question, I don't mean to keep interrupting here, Senator Pankonin. If you go to, say, the CDC's web site or maybe a site that we run, are there places where individuals can access that information on-line as well if they have questions, you know, what some of those basic things that people just simply don't understand? I mean, is that information readily available and is there an effort being made, through your efforts, to make sure people know how to access that additional information? [LB144]

KATHRYN WHITE: Yeah, we actually did, two and half years ago, put together a hepatitis C web site as part of, it's a springboard off of the HHS web site. And there is a lot of information on that. You know, medical is almost a second language itself and I think sometimes patients are just afraid they really just need to have it explained to them a little bit more simple language than what they can read. But we do have the links there. We do, we've done a public health education booth at the State Fair for three years now and every year we average 10,000 plus in literature, just geared towards the guy on the street. [LB144]

SENATOR ERDMAN: Cool. Thank you. [LB144]

SENATOR JOHNSON: Senator Pankonin. [LB144]

SENATOR PANKONIN: Thank you, Senator Johnson. I just have two questions to ask. [LB144]

SENATOR ERDMAN: I only had one, so go ahead. (Laughter) [LB144]

SENATOR PANKONIN: The first one is, Kathryn, the material that was handed out that Senator McDonald handed out about...roughly over the last five years, the state has spent over $10 million, of which half has been in the Department of Corrections. You

know, the trendline was down a little bit this year of 2006. But I think for the other three years in the middle that were high, this is a problem then for our corrections system as well, an expense? [LB144]

KATHRYN WHITE: Yes. We have, at intake, we have a 20 percent positive, 20 percent of the inmates are positive for hepatitis at intake. And they have a protocol in place for the Department of Corrections and they do treat them when they get to a point to where their liver, you absolutely have to treat them or they'll die. So they do treat them. The downward trend, if you're looking at the disease burden, in 2006 there was 18 inmates that we treated whereas in 2005 there was 28. So it's a 48-week treatment, it's fairly expensive. So that would make a difference in that. The other thing is also, in 2003 the CDC put out a testing recommendation where, by following that algorithm, you can really save hundreds of dollars in laboratory fees and testing. So that has saved us some money in our labs. And then one of the medications for the treatment went generic, so that's cut us a little bit there. So you'll see a little bit of downward swing there. [LB144]

SENATOR PANKONIN: Okay. My second question is, I signed on to this bill because I think it is an important public policy issue for...not only the education part. But in your opinion, there would be costs involved, obviously, in having this study done and there always is, in bringing these people together. But do you think that there would be financial benefits for the state of Nebraska, for citizens down the road, from the group getting together, that a comprehensive plan could potentially save much more than the cost? [LB144]

KATHRYN WHITE: Yeah. Actually, you know, I was raised with the old adage, an ounce of prevention is worth a pound of cure. And if you look simply at the difference of $500,000 in 2005 and 2006, and that's 10 people being treated. That financial disease burden is what we're already paying in tax money to Medicaid patients. So yeah, if we can prevent somebody, educate them, prevent them from ever getting sick or treat them earlier on before they advance to an end-stage disease, definitely you'll save money in the long run. [LB144]

SENATOR PANKONIN: Okay, thank you. [LB144]

SENATOR JOHNSON: Thank you. Any other questions? Senator Gay. [LB144]

SENATOR GAY: I just have one. On your...18 members on this task force. When you look at this list of who's on there, have you looked at it? [LB144]

KATHRYN WHITE: Um-hum. [LB144]

SENATOR GAY: Do you feel that's...I mean, is it too many, too few? What's your

professional opinion? Because it seems like this is a quick...well, you know, we need it that quickly. Is that too many people or not enough? [LB144]

KATHRYN WHITE: No, I think this is a comprehensive group of expertise. There is different...this is such a broad spectrum epidemic, you need to have the different expertise levels looking at it and from different viewpoints. What I'm going to see as a public health nurse is going to be a lot different than what somebody who's working in Dr. Mailliard's office is going to see, someone who's seeing a more of one-on-one patient. When I first started this position, I came from working with the VA system. I totally saw, and do see, hepatitis C differently than others because I'm used to working with the veterans and they have such a higher overall infectious rate. A pharmacist is going to look at things differently. Certainly doctors and nurses are going to look at things differently. And the rural and the urban providers are going to see different things differently. So I think it's a comprehensive group but it has such a nice mixing that they would be able to address all angles that come into play with the discussion as the create a strategic plan that's going to encompass the whole state. [LB144]

SENATOR GAY: Well, as I look at this list that was handed out about youth risk behavior and I didn't see a whole lot...well, I suppose they will cover that, somebody from the public health or somebody would cover that but I hope that wouldn't be overlooked. [LB144]

KATHRYN WHITE: Yeah, I think there's somebody on there from the Department of Education. [LB144]

SENATOR GAY: Okay, so that would cover that then. Okay, thank you. [LB144]

SENATOR JOHNSON: Any other questions? Thank you very much. Any other neutral testimony? I see none. That closes the hearing on LB144 and we will proceed to LB427. I relinquish the chair to our Vice Chair, Senator Gay. [LB144 LB427]

SENATOR GAY: Thank you, Senator Johnson. All right, we'll open the public hearing on LB427. Can I see a show of hands, those in favor? And those that would be opposed? Any neutral? Okay, thank you. Go ahead, Senator Johnson. [LB427]

SENATOR JOHNSON: Senator Gay, I'm Senator Joel Johnson from Kearney, the 37th District. I come before you today with LB427. I might add that Senator Schimek behind me has a similar bill, LB538. Both bills outline what a dental hygienist can do in their profession. We have had many meetings between these two groups about these two bills and have found much common ground. However, there still remains a divide as to what direction we go from this point. What is new is this: where is the place where these procedures can be carried out; the level of supervision by a dentist and a responsibility, both from a liability standpoint and from a credentialing standpoint; the level of

accountability required of the dental hygienist; and lastly, whether Medicaid should pay the dental hygienist directly or may pay the place where they are employed for their services. That's...these last four things are the meat of the two bills and I will turn over the discussion at this point to Mr. Larry Ruth, who represents the Nebraska Dental Association. [LB427]

SENATOR GAY: Thank you. Are there any questions for Senator Johnson? Thank you. [LB427]

LARRY RUTH: (Exhibit 1) Senator Gay and other members of the committee, my name is Larry Ruth, L-a-r-r-y R-u-t-h, and I'm appearing today on behalf of the Nebraska Dental Association in support of LB427. Thank you, Senator Johnson, for giving me the task to give you an overview of the bill. There will be others to follow on more the questions and philosophy perhaps. LB427 addresses the use of dental hygienists, in our opinion, for improving oral health for children eligible for Medicaid. Number one, it builds on the structure of the current expansion of the scope of practice that Dr. Schaefer has given to dental hygienists when working in a public health setting. Number two, it builds on the current structure for providing public health services in Nebraska. Number three, it provides accountability and necessary safeguards for patients. And number four, it makes appropriate adjustments to the statute providing the current scope of practice of dental hygienists. Let me take those in order. First, it builds on the current expansion by the director. I just might ask you to turn to LB427 and specifically to page 2. And you find that that section of law that it opens, and I'll just call it point 15 because that's the last two numbers of the section. In 71-193.15, this section of law gives to the chief medical officer, in this case, the authority to give to dental hygienists without supervision some certain duties. And what Dr. Schaefer did--and she is here, she can speak to it--is to authorize licensed dental hygienists to conduct screening examinations, oral health education, as is allowed by the section specifically, and then in addition she selected a couple of other duties that were otherwise allowed to dental assistants. And she allowed that as inspection of the oral cavity, pulp vitality testing, and the application of certain topical agents. This bill would codify that expanded scope of practice into point 15. In other words, lines 10 through 14, actually 15, 16, would codify that expanded scope. One of the things that this bill does, in that area though, is very importantly to allow a dental hygienist, without supervision, to provide sealants. Now sealants is not something that Dr. Schaefer specifically provided for. We'll have people who speak to that. But that is in LB427. But this additional scope of practice is to be done only in a public setting, and this is important from our perspective. The public setting that is set forth in LB427 is contained on page 2, lines 16 through 19. And for the purposes of this section, the public setting is a little bit narrower than in the area where the dental hygienists have their bill. And specifically, the public setting would be, number one, a federal or state public health facility; that's on line 17. Number two, a community clinic. And number three, or other program or agency that primarily serves public health care program recipients. What we would envision this public health setting to primarily be is

typically district health departments, the 20 that we have around the state. Now what can the hygienist then do in these public settings? Just what I said before, can make an inspection on oral examination, can do oral health education, apply topical agents, and do pulp vitality testing. Additionally, this bill limits that application in that setting to patients who are eligible to receive...children who are eligible to receive services under the Medical Assistance Act; that's Medicaid. So we are focused on just children who are Medicaid eligible. Additionally, the bill builds on the current structure of health in Nebraska--I said that before--and that's by using these public health setting locations. It provides accountability and safeguards. That was the third point I was making. It does this by requiring that copies of the report of treatment be sent to the Department of Health and Human Services. And it assumes, I think, that there will be a similar report given to the public health setting, the health departments. It also requires that patients be advised that the services they're getting do not constitute a complete dental diagnosis and care and are preventative in nature. And I think that's done so that the patient understands when they're getting care from the dental hygienist, that they're only getting something preventative in nature and not to depend on that as a full-fledged dental diagnosis and care. That's done so there is not confusion. It also requires that liability coverage be given, and that's to make sure that we have a financial resource in the case of malpractice. It requires that, finally, that a dental hygienist would not be eligible as a provider of Medicaid services. That is, would not be able to get a Medicaid number and charge themselves for those services. Once again, it anticipates the dental hygienist work within a current entity which is part of our public health setting. And it would be anticipated that the public health setting would have a Medicaid number or would be able to get a Medicaid number, and then be able to use that for the provision of this kind of service. Finally, LB427 makes some adjustments to the current scope of practice. These are adjustments to a different section of law, that's Section 2 of the bill, and it's 71-193.17. That's the long list of about 14 different duties that a dental hygienist can do under supervision. And we've been able to work the dental hygienists in coming to a great common ground on what those additional duties or upgrading, updating of those duties are. I think that most of...I don't find any difference of opinion on Section 2, with the exception, I think, in the dental hygienist bill they would add two words later and we can speak to that when we get to their bill. I want to return just a moment to why we put this additional scope of practice within point 15, and I think this is very important. We want to keep the director of the Department of Health and Human Services Regulation and Licensure in control over this authorization of new scope of practice to dental hygienists. And accordingly, by putting it in point 15, it keeps the director in charge. And we think that's important because this is an expansion of the scope and it is in the public health setting. So it seems to us that it's something that the chief medical officer in this case should well have the ability to determine as to whether or not to give this additional scope. And that's what point 15 allows. I might finally add and conclude that I want to address one part of the bill that isn't in the bill, but I have an amendment. And it's an important amendment. I have had discussions with Senator Johnson and conversations with a number of you. I have heard concern about nursing home Medicaid recipients

and I think that it's a valid concern. I've been asked, can we allow a limited expansion of the scope of dental hygienists in nursing homes to meet the needs of Medicaid recipients in these facilities? And I can return to, having gone to the nursing home for my parents were for the last years of their life and recognizing the need for a greater concern and care for the Medicaid eligible in those nursing facilities. We have prepared an amendment which would list nursing homes as a public health setting. It would therefore allow a dental hygienist the limited scope of practice expansion that we have here in nursing homes. Once again, the inspection of the oral cavity for examination purposes, possible referral then to a dentist if that was needed. I think it recognizes something that others can speak to here, and that is that nursing homes are very difficult and present a significant challenge for the provision of oral care. It's a challenge for the residents, challenge to the nursing home caregivers. I was speaking to a dentist yesterday from one of your legislative districts and he said that he has gone to nursing homes and the problem that he's had there, he's had to put nursing home Medicaid residents in a beautician chair and had the sink nearby and tried to provide dental care under those circumstances. And because of that, it has been very difficult for him to do that and he basically hasn't been willing to do it there, therefore wants the nursing home resident to go to his office. But for the limited purpose of providing examination of the oral cavity and possible referral to a dentist, we think it would be appropriate. I have no further comments. If you have any questions, I'd be willing to answer them. [LB427]

SENATOR GAY: Thank you, Mr. Ruth. Are there any questions from the committee? Senator Erdman. [LB427]

SENATOR ERDMAN: Larry, here's how I understand the rub, if you will. The limitation on this bill is that Medicaid recipients are eligible for services under this bill. [LB427]

LARRY RUTH: Right, um-hum. [LB427]

SENATOR ERDMAN: And in a public facility, which you have now defined as a public health facility as it would be traditionally known or in a assisted living facility. [LB427]

LARRY RUTH: Let me be a little more specific. In a public setting, because there is also a definition in the dental hygienist for health facility, I believe. I want to make sure we keep those two separate. A public setting for us is a federal or state public health facility, community clinic, or, in the case of FQHC. A public facility in the Dental Hygienist Act goes further than that. Health facility, I believe, is the term. And what they would do is to broadly define that, much broader than we would, by including hospitals, schools, including private schools and preschools. So I hope that clears it up, Senator. [LB427]

SENATOR ERDMAN: Sure, and I'll have questions for Dr. Schaefer later so I'll just wait then. [LB427]

LARRY RUTH: Sure, okay. And we will be prepared to respond to that bill, LB538, and draw a comparison at that time. When we get all done with this, I hope to be able to present to you a document that compares one to the other so we can kind of put some summary to this. [LB427]

SENATOR ERDMAN: Thank you. [LB427]

LARRY RUTH: Thank you. [LB427]

SENATOR GAY: Thank you. Are there any other questions? Seeing none, thank you. [LB427]

LARRY RUTH: Thank you. [LB427]

SENATOR GAY: Other proponents? [LB427]

LARRY RUTH: Oh, I do have this amendment and... [LB427]

SENATOR GAY: Okay, we can hand that out. Go ahead, state your name. [LB427]

JAMES WALKER: Vice Chairman Gay and members of the Health and Human Services Committee, my name is James A. Walker, J-a-m-e-s A. W-a-l-k-e-r, speaking on behalf of the Nebraska Dental Association in support of LB427. My name is Dr. James Walker. I am the president of the Nebraska Dental Association. I am a full-time practicing periodontist located in Lincoln, Nebraska. A periodontist is a specialist in dentistry who deals with oral disease, specifically the soft and hard tissues surrounding the teeth. My group practice dental team includes periodontists, dental hygienists, dental assistants, and dental administrators. I was a past faculty member at UNMC College of Dentistry, where I taught dental students, dental hygiene students, and periodontal residents specializing in my speciality of periodontics. I continue to provide continuing education programs to all members of the dental team. I would like to present a practical description of LB427 and how we vision it will improve the access to care for Medicaid eligible children and Medicaid eligible nursing home residents in the state of Nebraska. The goal of LB427 is to expand access to care for children eligible for Medicaid who have not had an opportunity for an oral cavity inspection and to benefit from dental sealants. And there are many of those children in our state. The intent is to allow dental hygienists to organize within their Nebraska health districts. And there's 20 in our state, and I know you probably have all seen this and are aware of that. But what I want to point out is that the health districts do indeed cover and blanket our state and so that lends a sense of organization to this. So within those public health districts in the public health settings, they would establish a comprehensive program for screening examinations and providing dental sealants to the Medicaid eligible population of

children who do not presently have a dentist or a dental home, which would be a dental office where they go regularly to be seen. Following the oral cavity inspection and screening and identification of children who qualify for the program, the dental hygienist will work through their public health setting to perform dental sealant procedures. The public health setting would receive reimbursement through Medicaid. Other public grants might also serve as a form of reimbursement. Appropriate forms for application and accountability will be designed for this process. As stated, the dental hygienist will be reimbursed through the public health setting, probably a health district which will have or acquire a Medicaid provider number. The individual dental hygienist will not have a Medicaid provider number. However, the participating dental hygienist's name and license number would be submitted in some manner, along with the application for the Medicaid reimbursement. The procedures specifically granted to a dental hygienist to perform under this legislation are the following--and Larry has gone over those--conduct preliminary charting and screening, provide oral health education for patients, including the teaching of appropriate plaque control techniques. And in the nursing home environment, this would be particularly important that they would work with individual clients with their dental health maintenance program. They could take the staff of the nursing home and they could do education because one of the big things we see is that the nursing staff in nursing homes have lots of responsibilities and oftentimes this is one that just falls to the back. Inspecting the oral cavity, pulp vitality testing, and then of course applying fluoride, sealants, and other recognized topical agents. This proposal has accountability and necessary safeguards. And that's why we feel it is good, both for patients and for the Nebraska Medicaid program. It would be done through existing public health settings which will ensure the evaluation of the program and avow determination of success or failure. And all over the state, not just an isolated pocket where a hygienist on an independent basis would do this kind of work. But we could have accountability for the state of Nebraska because we are concerned about access to care all over the state of Nebraska, not just Omaha, not just Lincoln, not just Scottsbluff, not just Ogallala, but all over the state of Nebraska. A copy of the report would be provided to the Department of Health and Human Services, so follow up on eligible participants, the procedures completed, and the effectiveness of the program can be evaluated. All large programs like this which have fiscal impact should be evaluated after a period of time and we want to know if we are being successful. Obviously, proof of professional liability coverage and then notice to the patients in both issues--children, parents, and those in the nursing homes--that these services are preventive and they're not comprehensive. If initial visual examination of the oral cavity shows dental disease or pathology which requires more advance treatment, appropriate referral to a dentist would be completed. Dental sealants will be provided only after visual examination. The scientific literature shows that dental sealants can provide prevention of decay, which will benefit this specific population kids. Even if nonvisual decay is not identified and the sealant would be applied to the teeth, studies support significant benefit from the topical sealants. In summary, this program should provide improved access. It should provide a decrease in tooth decay and, consequently, avoid

pain and suffering for many children. It should result in a decrease in future Medicaid costs for repair of decayed teeth, which is in the millions. And it should provide accountability and oversight through the existing public health setting while providing control of Medicaid expenditures as well. You know, this has been an arduous journey for the Nebraska Dental Association and me personally as president of the Nebraska Dental Association. In the past, there has been serious misgivings about the quality of care which would be provided by dental hygienists without supervision. We have done lots of work to convince our population that this is important through this venue. It is in a controlled setting under the auspices of the health department and those in the public health setting. Where there is now a limited number of their practices which can now only be conducted under supervision, the NDA supports conducting of these limited procedures without supervision. This is a significant step for organized dentistry. Providing this additional means of examination screening plus the opportunity for more sealant applications on our kids is beneficial to Medicaid eligible children. Under the amendment from Mr. Ruth, providing this additional means of examination and screening is beneficial to our Medicaid residents in nursing homes as well. And finally, working through health districts in the public health setting is the right way to assure accountability and cost control for the Medicaid system. I thank you for your time. I would answer any questions and I ask you for your support of LB427. [LB427]

SENATOR GAY: Thank you. Senator Howard. [LB427]

SENATOR HOWARD: Thank you, Senator Gay. Well, I'd like to tell you how much I appreciate that the dentists have endorsed this and are really work the hygienists on this program. I've always appreciated that the dentists were into prevention rather than correction, which I think is the right message for all of us. I'm wondering, how young a child...how young or old, maybe, does a child have to be to be able to have the sealant placed on their teeth? When does that begin? [LB427]

JAMES WALKER: Well, Jessica, could you tell us the age? I'm sorry. [LB427]

SENATOR HOWARD: Oh she'll... [LB427]

JAMES WALKER: She'll be up here and maybe she should better answer that question. She's a pediatric dentist from Hastings and that would be good. [LB427]

SENATOR HOWARD: All right, thank you. [LB427]

SENATOR GAY: Senator Hansen. [LB427]

SENATOR HANSEN: Thank you, Senator Gay. Doctor, how would you address the problem of the chairs, the light, the access to the oral cavity in nursing homes in that public setting, Mission of Mercy... [LB427]

JAMES WALKER: Well, in the public setting where we have described, as far as with a flashlight, with a mirror, you could do preliminary charting and screening. We do that at our Mission of Mercy projects all the time. You can provide education for a patient if they're sitting in a wheelchair, if they're laying in a bed. They brought up the beauticians clinic. Obviously, in nursing homes this is difficult. But that's why we feel moving beyond this to full mouth cleaning and so forth in those environments, it's almost impossible and could in some situations even be dangerous. So we do have concerns about that. But what we do think is we can organize, we can find those clients that are having problems and then appropriate referral can be made for those clients. And that's something that's not being done at this time. But you're absolutely right, it is a difficult venue to do that. You know, perhaps at some point in time there might be nursing homes that might provide a dental chair or some equipment or some type of ambulatory equipment which might be available. [LB427]

SENATOR GAY: Thank you. Any other questions? Thank you. [LB427]

JAMES WALKER: Thank you. [LB427]

SENATOR GAY: Were there other proponents after this? Okay, thank you. Go ahead, and state your name. [LB427]

JESSICA MEESKE: Okay. Vice Chair Gay and members of the Health and Human Services Committee, my name is Dr. Jessica Meeske. I'm a pediatric dentist. I practice in Hastings. I'm board certified in pediatric dentistry and I also have a master's in dental public health. Besides focusing on care for children, I have a strong interest in working with underserved children, both in the private and in the public sectors. And I do do that in my home town in Hastings. For example, in my private practice about 50 percent of my patients are Medicaid. However, I also founded and direct a public health clinic at the Central Community College. It's called the Sonrisa Project. And what we do is we target this program for low-income, uninsured kids that fall within the four counties in my health district. And Senator Erdman, I'd be remiss if I didn't thank you for coming to the Mission of Mercy project. I want to make sure you're feeling the love and how much we appreciate that you care about Nebraskans not receiving dental care, as well as Senators Hansen and Stuthman. And for others that haven't had a chance to visit our Mission of Mercy, that's going to be in Norfolk in the fall on September 7 and 8. LB427 is a logical and practical step in creating ways to reach underserved populations in Nebraska that may not have access to care through the ways that you and I do, through a traditional private practice setting. In my testimony today, I'd like to address just two issues; basically safety and cost. LB427 is safe for patients because it maintains that the responsibility for total patient care lies with the dentist or with the health district in which there is a dentist on its board. But it does offer flexibility to populations in public health settings where getting a dentist to be able to provide care might be difficult. This

is primarily due to cost, but it's also due to the fact that we just have a maldistribution of dentists in rural Nebraska. This bill would allow hygienists to provide a limited set of preventive services that would be helpful in preventing dental disease. The public health settings, these can include city, county, district health departments, outreach programs that are geared at targeting these populations, mobile dental clinics, nursing homes, and there's many, many other types of settings that one could create under this bill. Dentistry supports that the most ideal program utilizes the dentist as the supervisor of the team because it's efficient and it provides the most optimal care for patients in terms of quality. However, we recognize that sometimes it's just not possible. I also feel that it's safe because there's accountability built into this program within this bill. Dr. Schaefer would be overseeing the program or outcomes would be given in statistical form to the health districts or the public health setting. You know, from an educational standpoint there is a difference here. When you talk about dentistry, we go to school for four years to a baccalaureate degree and then we go on to a four-year doctoral program. Dr. Walker and I, we've gone on to do specialty programs. I've done two specialty programs. When you're looking at a dental hygiene education program, you can do a four-year program and get a bachelor's degree. But many of our hygienists just have two-year degrees. So there's really only two years where they're getting dental training. And if you do a comparison to medicine, in medicine where you have physician assistants and nurse practitioners, these people have master's degrees and even they're not practicing in an independent type of manner. Cost is another factor. In my opinion, our version of the bill will minimize Medicaid expenditures while the hygienist version of the bill will increase Medicaid spending. And let me tell you why this is. It's because you're going to have a duplication of services. Under their bill, where they're going to be able to see new patients and checkup patients, the same procedures they're doing and the bills that they're coding for, if they find dental disease they refer that child for me. I'm going to be doing everything again because I have to reevaluate the patient, come up with my own diagnosis, and a total patient care treatment plan. So you really do get a duplication of services. It's going to be very tough for the few dental Medicaid providers in our network that we already have. And last week, I spoke about how fragile it is. There's very few of us that are in the business of providing care to Medicaid. And many of those reasons, it's a whole another hearing but you brought up some last week the problems with no-shows. This is literally going to duplicate those services under their vision of the bill. I certainly want what's in the best interest of the kids. I want to do more to help underserved Nebraskans. But to weaken the Medicaid program that already has so many inherent problems, it just wouldn't be good for patient care. You know, I just want to leave you with one example and then I'll close my testimony. The best example that I can give you is the Sonrisa Program that I've talked about. This is a free clinic for children in my health district. They have to qualify for free and reduced lunch, not have a dental home, and have some sort of unmet dental problem. And they get referred by dentists, school nurses, they can be referred by anybody. The dental delivery team, it consists of one dentist--that's myself--several licensed hygienists--they're excellent, a very important part of the team--we have hygiene

students at the CCC, we have dental assistants, and then we have about eight senior dental students that come out and provide the restorative care. So how does this work with this dental delivery team, 100 children, and a budget of $10,000 a year? Well, these kids come in, I do the exams on the kids, I do the total treatment plans. I make sure medically they're okay, they're safe to have treatment, they qualify for the program. Then I might delegate to a dental hygienist to do cleaning, sealants, fluoride treatments, or such. Then when these children need restorative care, then we have the senior dental students do it. So I'm not actually doing the physical drill and fill, I'm overseeing their work. And we accomplish this in seven days, that's all we do. The difference is, is when I'm responsible for total patient care, I'm the one at the end of the day that has to make sure the treatment was done, it was the right treatment, the right tooth, the right kid, and that that patient is doing okay. And if it's not, if their treatment doesn't get done, it falls on me to make sure that that child gets their treatment done. I might do it pro bono in my office, I might call a fellow dentist. I might send them down to Dental Day at the College of Dentistry to get that done. But it falls on me and it falls on my dental license what that quality and outcome was for that child. Also it's my phone number I give the families at night. They get my phone number to call me in case of an emergency. So I'll just conclude...okay, I'll just conclude by saying LB427 is a good bill because it improves access to dental care for underserved Nebraskans, it's safe for patients, it has accountability, it limits Medicaid spending. And I urge you to help us improve access to dental care by supporting it. [LB427]

SENATOR GAY: Thank you, Doctor. And just for the record, can you spell your last name? [LB427]

JESSICA MEESKE: I'm sorry. It's M-e-e-s-k-e. [LB427]

SENATOR GAY: Okay, thank you. It looks like we have a question. Senator Erdman. [LB427]

SENATOR ERDMAN: I've become the question guy. Thank you, Senator Gay. Your Sonrisa program sounds very interesting. As you just explained it, the individuals that qualify are students who would be under a free or reduced lunch qualification. They have no dental home. They have no dental need. As I read the bill it says that only children who are eligible for Medicaid would be able to meet the terms of LB427. It's probably possible, and I can't prove it off the top of my mind, but there may be students that would qualify for your program who don't qualify for Medicaid. [LB427]

JESSICA MEESKE: Um-hum. [LB427]

SENATOR ERDMAN: Your bill would still put them in an underserved category and they would be ineligible for what you would generally be allowed to do under your program. I guess...I understand the line you're trying to draw. I understand the thought process that

you've tried to give us for the justification of why LB427 is drafted the way that it is. But I guess I'm looking for some additional insight because you deal with Medicaid, you see those cases, but you also deal with other kids in your other program who may not be eligible for Medicaid but still have a dental need. You're still not addressing their needs in LB427. [LB427]

JESSICA MEESKE: You know, it's really a good point that you bring up and we noticed that the Nebraska Dental Association, late in the game, that somehow we may be leaving out a group of kids that essentially are undocumented when the use the language, Medicaid-eligible. [LB427]

SENATOR ERDMAN: And I'm not talking undocumented. I'll disclose a reality here: We qualified for free and reduced lunches when I was a kid but we had health insurance. And so we may not have had the dental care and the things, and so I'm not talking about illegal aliens or undocumented folks. I'm talking about kids that are born in Nebraska. They may come from a family that doesn't qualify then for Medicaid based on family farm income or whatever classifications we use to determine eligibility. I guess I'm hearing your comments to say that we're trying to help meet a need for those who are underserved, and I'm trying to give you an example that maybe your language needs to be addressed because you're not actually targeting that audience as effectively as you might be thinking. That's just a comment. I mean, you don't have to respond. [LB427]

JESSICA MEESKE: Um-hum. You're exactly right. We have kids that fall through the cracks where their income level is enough they don't qualify for Medicaid but they may not have dental insurance. And we do have kids that fall through the gaps, and that's where we hope that FQHCs, like what you have in Columbus, is going to help fill that need with a sliding scale. You're right; it's not addressed. [LB427]

SENATOR ERDMAN: And so it wouldn't be your intent then that the language would allow for those children to receive services under LB427. [LB427]

JESSICA MEESKE: Children that aren't eligible for Medicaid? [LB427]

SENATOR ERDMAN: And that's a question not to be...I mean, we can have that discussion later but... [LB427]

JESSICA MEESKE: Yeah. You're right. As the way the bill is written, that's correct. [LB427]

SENATOR ERDMAN: Okay. [LB427]

SENATOR GAY: Thank you. Any other questions? Senator Stuthman. [LB427]

SENATOR STUTHMAN: Thank you, Senator Gay. Doctor, you work in the health department setting as a dentist. [LB427]

JESSICA MEESKE: Um-hum. [LB427]

SENATOR STUTHMAN: The question that I have is, the ones that are under you, the dental hygienists start working under your dental license, under your supervision. Does it ever happen that a dental hygienist from another dentist in the local community comes out and volunteers time in the health department? [LB427]

JESSICA MEESKE: No. I wish they would. I would love to do that and I would be more than willing to work with them. But I haven't been able to recruit anybody to do that. [LB427]

SENATOR STUTHMAN: Well, the situation that I'm thinking of is who is that person under then? Does that dental hygienist still work under the supervision of the dentist that individual is working for or is it under your supervision? [LB427]

JESSICA MEESKE: If I'm responsible for the program and the patients, they would be working under my supervision, I believe. [LB427]

SENATOR STUTHMAN: Even if they are an employee of another dentist in town and want to volunteer their service to the health department as a dental hygienist under your supervision. [LB427]

JESSICA MEESKE: Yes. I think it's under my supervision if they're working on a patient I'm responsible for. [LB427]

SENATOR STUTHMAN: Okay. Yeah, that was where I wanted to get some clarification as to who realistically are they under. Okay, thank you. [LB427]

SENATOR GAY: Senator Howard. [LB427]

SENATOR HOWARD: Thank you, Senator Gay. I'm going to repeat the question that I've asked earlier regarding the age. And the reason I wonder how young a child can be to receive this treatment, for the dental hygienists to be able to administer this, is because sadly there are still many cases of baby-bottle mouth out there, which I'm sure you see too. So I will ask you (inaudible) you at the age when that's appropriate. [LB427]

JESSICA MEESKE: It's a great question. So your question is, at what age are dental sealants indicated? [LB427]

SENATOR HOWARD: Exactly. [LB427]

JESSICA MEESKE: Okay. Normally, dental sealants are indicated about the age the child turns six, and that's because that's when the permanent six-year molars come in. But then between the ages of about 10 and 12, you have other back permanent teeth that come in, that have grooves on the chewing surfaces susceptible for risk of tooth decay. That tends to be the majority of kids. When you talk about a higher risk population, and mainly in a low-income population, we're seeing more and more research that supports doing sealants on primary teeth. So primary teeth, for the back molars, erupt about 18 months, two years of age. When I start sealing a child's primary teeth in the office would be when they're cooperative enough to sit for a cleaning. That's different for every dental provider. [LB427]

SENATOR HOWARD: That's makes a lot of sense. Thank you. [LB427]

SENATOR GAY: Thank you. I see no other questions. Thank you. Last call for proponents. Okay, we'll have opponents. Please come forward. State your name; if you could spell your name, too, we'd appreciate it. Go ahead. [LB427]

ANNETTE BYMAN: Members of the Health and Human Services Committee, my name is Annette Byman. That's spelled A-n-n-e-t-t-e, the last name, B-y-m-a-n. I am a dental hygienist from Omaha. I represent the Nebraska Dental Hygienists Association and in opposition to LB427. For many years, the Department of Health and then the Department of Regulation and Licensure has had the authority to authorize, in public health settings, unsupervised practice for dental hygienists by allowing us to use a very limited scope of practice. Now, the department has never really utilized that authority, but in the few cases that it has we feel there has not been a significant impact by those services that a hygienist has been able to perform, because they've been very limiting. And really that is the whole basis why our association has brought forth LB538. It's really to serve the population groups that are not receiving care, and especially preventive care. I would like to just reiterate a few of the components of LB427 that are of concern to our association. As has been mentioned previously, this bill is severely restricting the population groups that a dental hygienist can see. It's restricting it to children and only those children that fall underneath the Medicaid program or medical assistant program. And Senator Erdman, as you pointed out, we feel that leaves out still a substantial number of individuals. Not only just children, but also an individual that ranges from age up to the elderly. LB427 also severely limits the services that a dental hygienist can perform. Specifically it prohibits a dental hygienist from performing a prophylaxis, which is a teeth cleaning, and we feel that is critical. The bill then further goes on to prohibit dental hygienists from receiving Medicaid payment for the services that they have performed. The population groups that would fall underneath a public healthcare setting are mostly Medicaid patients. We fell that it's important that a

hygienist be reimbursed for the services that he or she has performed. LB427 also requires that a hygienist would have to receive approval from the director of Regulation and Licensure in order to perform services. And a concern of ours is, is that really provides no assurance of consistency in the administration of one individual holding that position to the next individual. And that lack of consistency is really a concern to us. Dr. Meeske had touched upon a couple points, one being the educational status of a dental hygienist. In this state, a minimum of three years is what a dental hygienist obtains through her dental hygiene education. The majority of hygienists in this state have a four-year degree or higher. Another comment that was made was accountability. As professionals, we fall underneath the accountability of every other professional in this state, and that is we fall underneath our statute, the ULL rewrite. We are upheld to follow statute with our Board of Dentistry. We hold our own liability insurance. We're held to the same ethical responsibility of every other professional. When you take a look at this bill, I think it looks really good from the outside, but when you really open it up and take a look at what is inside, it really doesn't amount to much. We feel LB427 is actually taking a step backwards from present law, which we already feel is insufficient. We feel that this bill abandons the professional responsibility of a dental hygienist and we ask what message is that really carrying. Well, we feel that it carries the message that to all of those population groups that are unserved, whether it be children, minorities, elderly, whoever, you know you're really not that important; your dental care is not really important. We also feel that it carries the message that it's better to leave the pathology or the dental disease untreated than it would be to allow an educated and experienced dental hygienist to utilize their education and skills to provide preventive care. And we really think that that's a shame. This is legislation that has been introduced by one profession to regulate the practice of another profession. We feel that's unique and we really don't think we've seen that happen before. This bill does not represent a reasonable solution to what the Dentists Association and the Dental Hygienists Association has already agreed upon, and that is we have a serious public health threat in our state. Passing LB427 is not going to make much of a change. It is not the answer to the serious public issue that we have in front of us. Thank you and I'd be happy to answer any questions. [LB427]

SENATOR GAY: Thank you. Are there any questions from the committee? Senator Stuthman. [LB427]

SENATOR STUTHMAN: Thank you, Senator Gay. Annette, as a dental hygienist, do you feel that in a health department setting there is an opportunity for you to do things under your scope of practice? [LB427]

ANNETTE BYMAN: I am not a public health hygienist so I have never worked in public health. I have always worked in private practice. I understand that there are currently five out of those 20 public health departments that do have some type of a dental component to them. I believe that there would possibly be the ability to, yes, provide

service underneath that public health department in those that have a dental component. the others that do not, obviously no. [LB427]

SENATOR STUTHMAN: Because I'm very familiar with the one we have in Columbus, and that's a federally qualified health department that has a dental component to it. And I'm not totally familiar with whether we can utilize a dental hygienist in there. [LB427]

ANNETTE BYMAN: There are a number of FQHCs that do utilize a dental hygienist, yes. [LB427]

SENATOR STUTHMAN: And those dental hygienists are working under the supervision of their own dentist, the one that... [LB427]

ANNETTE BYMAN: They are working underneath the supervision of the dentist that is...assigned isn't the word I want to use...but in charge of or that has been hired by that FQHC. [LB427]

SENATOR STUTHMAN: And the health department. [LB427]

ANNETTE BYMAN: Yes, and by the health department. Yes. [LB427]

SENATOR STUTHMAN: Okay, thank you. [LB427]

ANNETTE BYMAN: You're welcome. Any other questions? [LB427]

SENATOR GAY: Thank you. I have a couple. You mentioned that you hold liability insurance? [LB427]

ANNETTE BYMAN: Yes. [LB427]

SENATOR GAY: Do you pay for that individually or does the dentist? [LB427]

ANNETTE BYMAN: Oh, no. I pay for that individually. [LB427]

SENATOR GAY: And what is that? What kind of coverage do you have, dollarwise and...? [LB427]

ANNETTE BYMAN: Yeah. We have a choice. I would say the majority of hygienists, whichever company they go with, have the ability to choose. Mine is a $1 million coverage. [LB427]

SENATOR GAY: Okay. And then you had also mentioned something about you thought this was limiting your...limitations of services. [LB427]

ANNETTE BYMAN: Absolutely. [LB427]

SENATOR GAY: The amendment that was proposed, this would also open to nursing homes. Would that have...? How does that make you feel? I guess it's a little broader. [LB427]

ANNETTE BYMAN: It's a little broader but as far as answering your question as far as the scope of duties, it's still not enough. We still are not able to perform an oral prophylaxis. Now, I have worked with the elderly so I feel I am knowledgeable to be able to speak on this. You know, of course, many elderly individuals are medically compromised. There are a number of medications that they take that cause a lot of dry mouth, xerostomia, those kinds of things, dental decay. Many times you cannot really assess or diagnose, a dentist could not even diagnose unless the mouth was clean and a lot of the plaque and calculus was removed to really see exactly what the patient was presenting. So, no, we do not feel...I mean, the oral prophylaxis, it is one of the important services. [LB427]

SENATOR GAY: Okay, thank you. I see no further questions. Thank you. [LB427]

ANNETTE BYMAN: You're welcome. [LB427]

SENATOR GAY: (Exhibit 3) Other opponents? Okay, anybody neutral? Dr. Schaefer. And then, Dr. Schaefer, you'll be our last testifier. I would like to say, while Dr. Schaefer is coming, we do have a neutral letter from Joni Cover, Nebraska Pharmacists Association, for the record. [LB427]

JOANN SCHAEFER: (Exhibit 2) Good afternoon, Senator Johnson, Vice Chair Gay, and members of the Health and Human Services Committee. I am Joann Schaefer, S-c-h-a-e-f-e-r, MD, director of the Department of Health and Human Services Regulation and Licensure and Chief Medical Officer. I'm here to testify in a neutral capacity to LB427 because white it clarifies and enhances the currently existing authority of dental hygienists to provide services in a public health setting, there are some technical concerns. LB427 clarifies the department's authorization of dental hygienists to conduct public health-related dental hygiene services as limited to a public health setting. These are defined in the bill as a federal or state public health facility, community clinic, or other program or agency that primarily serves public healthcare program recipients. The bill also adds the application of dental sealants to the list of duties that dental hygienists may perform in these public health settings without the authorization or supervision of a licensed dentist. I want to take a second now that you've the handouts and point to you the 407 Review. Some of you may have gotten this on July 28, 2006. This is where we did, as part of the Nebraska credential review process, a technical review on the applicant for expansion of scope of practice. And it

thoroughly discusses this issue with recommendations. It's a standard process that we use. Technical committee members and the Board of Health register, and those reports are given to me and I make final recommendations based on the information provided. So I think you'll find that information very helpful to you. In addition, I've provided you with two maps that should help lay out some of the context of this discussion and why this is so important. Currently, Nebraska actively practicing dentists are on this colorful, multicolored map here. Out of the current 991 dentists, 219 or 22 percent of them are over the age of 60. Not that I'm not fond of being over the age of 60, but that does have some demographic shift changes that we need to be prepared for over the next decade or two. If you would look at that map, those in each county represented, 17 counties currently have no dentist. In each county the number of dentist is represented by the total, and in the little yellow bubbled area it does show the number of dentists that are aged over 60. In addition, I gave you the Nebraska Licensed Dental Hygienists for 2006, and a significant number of counties that also lack dental hygienists. But you will see that we do have a great number, and those two overlap. So these maps, I think, will be helpful to you. Although incentive programs currently exist to recruit dentists to underserved areas of Nebraska, access to preventive dental care is not sufficiently being addressed. As of March 2005, 17 of Nebraska's counties have no dentist at all. Also, the Medicaid-to-dentist ratio in Nebraska is 4,000 to 1. In addition to procedures such as the scaling of teeth, dental hygienists are trained to provide oral health education and preventive measures such as application of fluorides, sealants, and other topical agents for the prevention of oral disease. Dental hygienists are licensed by the state of Nebraska and carry their own malpractice insurance. This bill will allow dental hygienists to provide needed preventive dental services to at-risk populations and will enable dental hygienists to increase efforts to educate families about the importance of oral healthcare as part of total health. It is recommended that the Health and Human Services Committee look closely at LB427 because it provides for expansion of the dental hygiene scope of practice but does not include clinical practice requirements that was originally proposed and supported by the Department of Health and Human Services Regulation and Licensure through the credentialing review process. And that is mentioned in the 407 report that you have. I would also like to point out that there are some technical concerns with the current wording. In Section 1, the language does not specify whether the requirements to provide proof of professional liability coverage and whether they are working in a public health setting are a condition of initial licensure issuance or renewal. Therefore, it is recommended that the language be included just to clarify this issue. Section 2, one of the exceptions to the practice of pharmacy in existing statutes is a provision that certain practitioners may dispense prescription drugs incident to their practice without having to obtain a pharmacy license or a dispensing practitioner license. Dental hygienists are not currently included in this exception. If LB427 intends for dental hygienists to be included in this exception so that they may dispense antimicrobial rinses, fluorides, and other anticariogenic or anticavity agents, that language does need to be added. Section 1, add provide oral prophylaxis to the list of procedures that the department may authorize a licensed dental hygienist to provide.

And Section 1, delete "who are eligible to receive services under the Medical Assistance Act." While income is a factor impacting access to dental care, the availability of access to providers is also a factor. Limiting this service to children who are eligible to receive services under the Medical Assistance Act would leave out many children who live in underserved counties. For example, children who are uninsured or do not qualify for Medicaid but could qualify for a sliding fee scale at a community health center or federally qualified health center. With that, I'd be happy to answer any questions. [LB427]

SENATOR GAY: Thank you, Dr. Schaefer. Senator Howard. [LB427]

SENATOR HOWARD: Thank you, Senator Gay and Dr. Schaefer. I'm wondering if you have a third map or could give me information regarding the number of dentists that accept and will bill under the Medicaid program. [LB427]

JOANN SCHAEFER: You know, we could do that. [LB427]

SENATOR HOWARD: I think that would be really helpful information because even in Omaha there are not that many dentists that are willing to bill under that program. And I wonder how that will affect the hygienists' ability to have a supervising dentist that will bill that way. [LB427]

JOANN SCHAEFER: From my practicing days, I have firsthand experience in that. [LB427]

SENATOR HOWARD: I think that's a critical problem, so I would appreciate that information. Thank you. [LB427]

SENATOR GAY: Than you, Senator Howard. Senator Stuthman. [LB427]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Schaefer, in your opening comments...I'll just review the sentence that I have a concern about. LB427 also adds the application of dental sealants to the list of duties that dental hygienists may perform in these public health settings without the authorization or supervision of a licensed dentist. I've been under the impression that they could not perform anything unless there was the supervision of a dentist. Now, tell me, am I understanding this wrong or what? [LB427]

JOANN SCHAEFER: I think everyone here today, unless I am incorrect in that, that is okay. That is something that everyone is willing to go along with, that this is good practice, that that was something that was supported on 407 review, that this is an expansion of scope but the folks that have presented today believe that that is a good practice to go ahead and do. They are trained. They do this readily. Many other states

do this. We surveyed many states and came to the conclusion that this was a safe and effective procedure to do without the supervision. [LB427]

SENATOR STUTHMAN: Without the supervision of a dentist. [LB427]

JOANN SCHAEFER: Um-hum. [LB427]

SENATOR STUTHMAN: Okay. Thank you. [LB427]

SENATOR GAY: Senator Erdman. [LB427]

SENATOR ERDMAN: Dr. Schaefer, I appreciate your testimony. It answered a couple of the questions that I have. Just so that I'm clear, the determination that you came to is that the dental hygienists would be authorized or allowed to conduct dental hygiene services in federal or state public health facilities, community clinic, or other program or agency that primarily services public healthcare program recipients. Is that accurate? [LB427]

JOANN SCHAEFER: Yes. I think we've covered them. [LB427]

SENATOR ERDMAN: Okay. So I'm just reading back your testimony to make sure that I understand that. Your decision in the process didn't limit the expansion to only a certain category of recipients, as your testimony pointed out. Are there other examples in practice, in Nebraska, that have such a restriction as what is placed on the dental hygienists in LB427? In other words, can you give me an example, physician assistant, whoever, that has a similar type of restriction on whom they can provide service to as what is outlined in LB427? [LB427]

JOANN SCHAEFER: I am not aware of any at this time, but if... [LB427]

SENATOR ERDMAN: So this would be the only example where we limit service not based on the qualifications of the individual to provide the service, but rather on who they would be providing the service to? [LB427]

JOANN SCHAEFER: Yep. [LB427]

SENATOR ERDMAN: Okay. [LB427]

JOANN SCHAEFER: If I find any information contrary to that, I'd be happy to provide that to you, but to my knowledge there are not. [LB427]

SENATOR ERDMAN: Okay. Thank you. [LB427]

SENATOR GAY: Senator Pankonin. [LB427]

SENATOR PANKONIN: Thank you, Senator Gay. Dr. Schaefer, for those of us that are new and this is the first time we've seen the 407. We've seen...we've got nice people on both sides that have got a contrast here. I was hoping you would tell us what to do here. (Laughter) And now I see we're going to have to try to figure this out. Are you going to speak after the next bill, as well? [LB427]

JOANN SCHAEFER: Yes. [LB427]

SENATOR PANKONIN: Okay. [LB427]

JOANN SCHAEFER: It's not going to be a whole lot different though. (Laughter) [LB427]

SENATOR PANKONIN: All right. [LB427]

JOANN SCHAEFER You know, I think you're going to find the 407 Review very helpful and I'd be happy to work with you on that. I think everyone has the great goal in mind of what they want to do. I think some of the concerns would be happy to work with you on other concerns that you may have and the issues that have been brought up. But I think the 407 addresses a lot of issues, and the technical issues that are brought here today, we are happy to address. [LB427]

SENATOR GAY: Hold on. You're not done. Senator Erdman. [LB427]

SENATOR ERDMAN: And so just so that I'm clear, because this is going to be a precursor to LB538 then, your ruling or your determination under the 407 Process did not find or did not rule that dental hygienists should be allowed to practice in their own facility or essentially you're limiting it just to that public health facility as outlined in your testimony, which is found in both bills, and then the second bill that Senator Schimek has I believe also allows for a healthcare facility option for an individual to be able to provide some services, as well. [LB427]

JOANN SCHAEFER: Well, if you look at the way the law was at the time the option that I had in place in front of me because of the issues that needed to be addressed, I felt rather urgently I had the authority to expand that and the public health direct. And if you look at the line in the 407 report, it says, until such changes can be made, referring to the statutes to take it beyond that. Meaning, I only had the authority to do it under the public health, so... [LB427]

SENATOR ERDMAN: So I shouldn't read into your ruling that it was limited to that. You were simply using the authority granted to you under existing statute... [LB427]

JOANN SCHAEFER: At that time. [LB427]

SENATOR ERDMAN ...to do what you did. [LB427]

JOANN SCHAEFER Yes. [LB427]

SENATOR ERDMAN: Okay. [LB427]

SENATOR GAY: Dr. Schaefer, I have a question. You brought up the provide proof of professional liability coverage, and I'm glad to see you do that. I asked Ms. Byman about what she carries. Is there a standard that you look for? Is there a standard or...? I guess, is it a million dollars? Is it...? When you look for that insurance coverage, how much do they have to have? [LB427]

JOANN SCHAEFER: You know, I'm not really sure, to tell you the truth, that there is one specifically for that. This is kind of new ground for...this would be new ground for independent practice, so to speak. So if there is a new category that that would have to fall into, that would up the malpractice insurance required. I'd have to check on that for you. But currently I believe that they self-select based on their risk and companies make recommendations to them based on their risk, as well. [LB427]

SENATOR GAY: So, no standard. There's no standard. Okay. Thank you very much. [LB427]

SENATOR GAY: Thank you. With that, we'll close the public hearing on...oh, Joel, do you want to close?...on LB427. [LB427]

SENATOR JOHNSON: Let's open the hearing then on LB538. Senator Schimek. [LB538]

SENATOR SCHIMEK: Thank you, Mr. Chairman and members of the Health and Human Services Committee. For the record, my name is DiAnna Schimek. I represent the 27th Legislative District, the "Historic District," and it is a pleasure to be with you today to introduce LB538. And I have to say at the outset I feel at a little bit of a disadvantage because I didn't get to hear all the testimony on Senator Johnson's bill. There were other things like death penalty and robocalls and things like that I had to hear. But I hope that we don't be too repetitive on this bill because it occurs to me that the testimony will be just the reverse of what it was on the last bill, probably, and that's not necessary. But I think Senator Johnson and I both agreed that hearing the bills at the same time might confuse, for the record, who was for what and who was against what. So they are being held separately, the hearings are. LB538 was brought to me by the Dental Hygienists Association. Actually it was brought to me last year and it was introduced as LB182 last year. During the interim, after the bill did not advance, I

worked with both the hygienists and the Dental Association with the goal of coming to a compromise on this issue. We had a series of meetings in my office over the fall and summer and even into the beginning days of this session, or I guess it was early in January. It did seem as if we were going to get something worked out, but in the final analysis we just couldn't quite bring it together. And at that point then, each association introduced their own bill. As drafted, as you probably already know but I need to say this for the record, LB538 authorizes licensed dental hygienists to perform a number of intra and extra oral procedures, many of them already permissible under the guidance of a licensed dentist. The bill obviously enables dental hygienists who are qualified to perform the procedures on their own. The dental hygienists feel it is vital for smaller communities that have a scarcity of resources. In these smaller communities, there may not be an abundance of dentists or maybe even any dentists. Women, men, and children may not be able to conveniently find the dental care they need and may have to travel some distance to a larger community to do so. Under LB182, these people may find dental care more readily available...and I'm talking about preventative care now...by visiting a hygienist. The bill helps these people and communities by empowering licensed dental hygienists to provide the necessary preventative care for individuals who may otherwise go without. As Senator Johnson explained earlier, the two organizations do not agree upon the settings in which the hygienists could perform the procedures listed in LB538. Perhaps...well, my testimony says perhaps this is the place to mention that the 407 Review took place last summer but you already know that now and I believe you've even heard from the person who issued that report. But the gist of the report, to me, said that it's good to allow the dental hygienists to provide this preventative service in public settings. I would like to just point out what I think...and maybe it's already been pointed out, but at the risk of not having it pointed out I would like to point out the portions of the two bills that are different. And there's three different things. First of all, on LB427, at the bottom of page 2, the language that's in this bill that's not in the other bill, it says not be eligible as a provider under the Medical Assistance Act, in other words the Medicaid. On page 3, on line 5, when it says properly authorized and directed, that "and directed" is in this bill but not in the dental hygienists' bill. And the hygienists' bill is more expansive as to where they can actually practice. So those...and that's listed, I believe, on page 2, on lines 16 through...no, starting with line 24. So there's really just three little, big differences here that we're talking about. And if you could just help us resolve these little, big differences, we'd be thrilled to death. With that I'd be happy to take any questions that you might have. [LB538]

SENATOR JOHNSON: Any questions? Senator Howard. [LB538]

SENATOR HOWARD: Thank you, sir. The critical piece that I feel is missing for me to have a complete picture is not only how many dentists are we short, how many places are dentists not available, but how many places are dentists not available that will bill under the Medicaid program. And I think that's a much more severe program than anyone realizes. Billing under the Medicaid program is a lot of paperwork that some

dentists just really choose not to take on. And without that information, it's kind of incomplete. [LB538]

SENATOR SCHIMEK: You raise a really significant point, and I don't have the facts and figures with me, but I did just read an article that told how many dentists were going to lose. So no matter where we are right now, we have a number that are near retirement age, which could just exacerbate the problem. So we have to probably have some of that kind of... [LB538]

SENATOR HOWARD: So that's another layer of problem that... [LB538]

SENATOR SCHIMEK: Yeah. [LB538]

SENATOR HOWARD: Thank you. [LB538]

SENATOR SCHIMEK: Um-hum. [LB538]

SENATOR JOHNSON: Any other questions? You're the first person that Erdman hasn't asked a question of. Are you...? (Laugh) [LB538]

SENATOR SCHIMEK: He's probably worn out from asking all his questions, right? Thank you. [LB538]

SENATOR PANKONIN: That's because he was talking to me. [LB538]

SENATOR JOHNSON: No, thank you. And in order that we be fair to your side, Senator Schimek, let's be...let's testify as if this were the only bill heard today. Now, I again ask you to be brief and concise when you do that. If you get up and read long letters, I can tell you we fall asleep just like everybody else in the room does. So let's proceed with a full-scale hearing, to be fair. Proponents, please. How many do we have? Three. And opponents? One, two, three. All right. That gives us an estimate. Go ahead, ma'am. [LB538]

TEENA BEEHNER: Chairman Johnson and members of the Health and Human Services, my name is Teena Beehner, T-e-e-n-a B-e-e-h-n-e-r, a lot of e's. I am the president of the Nebraska Dental Hygiene Association and I am in support of LB538. I am a dental hygienist. I am practicing dental hygiene. I am on the faculty of a teaching institution and I've been practicing my profession for 37 years. LB538 will allow dental hygienists to provide direct access to traditional dental hygiene services in public health settings and healthcare facilities, allowing them to practice in these settings without the supervision of a dentist. Direct access to care allows dental hygienists to plan and initiate dental hygiene treatment without the specific permission of a dentist, mainly in nursing homes, schools, mobile hygiene practices, and other public health facilities.

Direct access can pipeline and bring people who need dental care who normally wouldn't see a dentist. It can even be a lifesaver for people who have serious health problems like oral cancer with symptoms the dental hygienist is trained to detect. The burden of oral disease is spread unevenly throughout the United States population. According to the first ever Surgeon General report on oral health, serious disparities exist in access to oral healthcare, especially among low-income populations. One in four American children are born into poverty. Children and adolescence living in poverty having twice as much tooth decay than their more affluent peers, and they're more likely to not seek treatment. This is information that mirrors the national statistics and it's gathered from the 2005 Nebraska Open Mouth Survey. This phenomena, if it's apparent anywhere it's apparent in the unmet dental health needs, particularly in children, the fastest group of Nebraska's Medicaid population. As dental hygienists, we see perhaps the most graphic presentation of these needs, and know that the educational and preventative services we provide are the most appropriate answer to this problem. At the same time, no one dentist wants to be exposed to having to accept all these potential patients into their practice if he agrees to supervise his hygienist who would like to work in these arenas. The same can be said for nursing home residents, over half of whom in Nebraska are Medicaid clients and whose healthcare needs are not being appropriately met. I work in a teaching institution, a dental teaching institution, and I see patients every day who show up because they are in pain. And they have come...they have never been to a dentist. Their only experience with dental care has been emergency and painful experiences. If they would have, at some point, been able to have preventative care done, educational services performed, they would not possibly have be in the situation they are. We have children that come in. They have missed days of school because of tooth aches. That's one of the highest causes of absenteeism in work and school, is dental pain. And if dental hygienists can get out there and do their prevention and their education, we can save thousands of dollars, both to employers and the government. Registered dental hygienists must be allowed access to the lower socioeconomic population who don't receive regular care. By passing LB538, the Legislature will untie the hands of dental hygienists and allow them to provide affordable preventative programs, such as fluoride varnishes, sealants, prophylaxes, and oral health education to those in need. Nebraska Dental Hygiene Association introduced a very similar bill, as we all heard about, in 2005, and we went through the 407 credentialing review process, and that was a very, very painful process for us. The technical review committee gave the bill an unfavorable report, and although there was considerable discussion by the Board of Health, they too rendered a negative vote. However, Dr. Schaefer, the director of Health and Human Services and Regulation and Licensure provided a supportive report. And I'm going to quote some of what she said. "The record of the review does show that most dentists in our state are reluctant to allow their employees to provide outreach services to those who cannot afford healthcare insurance or who are located in underserved areas of our state. This practice creates a barrier to the provision of care for these populations. This practice reduces access to dental care, and therefore harms the underserved. This is a practice that I feel

needs to change, given the increasing crisis in oral healthcare that we are facing among various underserved populations in our state." She also states that she finds that the benefits to the public health outweigh any potential risk or harm. Given Nebraska's changing demographic and access issues, it will be very difficult to maintain the same dental practice model that we've used for so many years. Dr. Schaefer's report goes on to state, I find that the proposal would be the most cost-effective means of addressing problems associated with providing care to underserved populations. Allowing dental hygienists to practice independently in a public health context, as this proposal would do, will increase access to preventative care, especially for at-risk populations. Preventative dental care is less expensive than advanced treatment such as endodontics and prosthodontics. I further quote, while opponents fear that allowing hygienists to practice independently would create a dual standard of care of one for the middle class and another for the poor, I contend that it would improve over the current system of the have and the have-nots. Dr. Schaefer's final statement is: "I hereby recommend that the proposal be approved." Legislators in 19 other states have agreed and loosened their supervision requirements for hygienists, and they are making a positive impact in their states. Washington State indicates that hygienists working under similar provisions have already seen an increase in their clients. They have more specifically, over the last...the year of 2004, have placed 19,000 sealants. All the surrounding states, Minnesota, Iowa, Missouri, Kansas, and Colorado, all allow a level of direct access to the at-risk population. The Nebraska Dental Hygiene Association thanks the Nebraska Unicameral for being visionary in developing a statewide public health system. Let's go one step further and allow dental hygienists, the preventative and educational professionals, not the restorative and reparative group, to work to their fullest potential. Thank you, Senator Johnson and committee, for your interest in LB538. Are there any questions? [LB538]

SENATOR JOHNSON: Thank you. Any questions? Senator Stuthman. [LB538]

SENATOR STUTHMAN: Thank you, Senator Johnson. Teena, do you feel that by allowing the dental hygienists to open a practice on their own would allow them to utilize their scope of practice, what they have been trained to do? [LB538]

TEENA BEEHNER: I don't think we're asking to open up a practice of our own. I think we are asking to work in settings that are already established. We would like to go into places like schools. I can see going into an obstetrician's office and working with pregnant women, teaching them about baby-bottle syndrome and nutrition. Going into a pediatric office and doing fluoride varnishes, giving mothers instructions on patient education and home care. I don't think our bill at all addresses the fact that we want to go across the street and open up our own practice; that's not what we're looking for at all. [LB538]

SENATOR STUTHMAN: Okay. Thank you, and that is what I wanted to get from you

because... [LB538]

TEENA BEEHNER: Yeah. No, that is not where we are going. Absolutely not. [LB538]

SENATOR STUTHMAN: What you want is to be able to assist in the education and the help with the dental. [LB538]

TEENA BEEHNER: Yes. And prevention and get into places where we can't go because a doctor will not accept responsibility of all the patients. [LB538]

SENATOR STUTHMAN: Okay. Thank you. [LB538]

SENATOR JOHNSON: Senator Howard. [LB538]

SENATOR HOWARD: Thank you, Senator Johnson. I'm going to return to this issue of the Medicaid providers. When I was doing case management for Health and Human Services before I was elected here, I knew firsthand how difficult it was to find a provider who would accept a patient and bill under Medicaid. And this is in Omaha; this is where we have many dentists. Do you see this as limiting your ability your ability to do this outreach work that you want to do if you have to bill under a Medicaid dentist? [LB538]

TEENA BEEHNER: Absolutely. You know, I work for a wonderful dentist, and if I said I would like to go to Montclair Nursing Home, can I please go in there and do patient education and "prophys" and fluoride varnishes, would you please take care of...you know, would you accept responsibility for all those people that I see? No way. No way. [LB538]

SENATOR HOWARD: And it comes down to the billing issue and the...I'm imagining the paperwork. [LB538]

TEENA BEEHNER: And being responsible...being responsible for the complete oral health of all those patients that I would treat. [LB538]

SENATOR HOWARD: Thank you. [LB538]

SENATOR JOHNSON: Senator Erdman. [LB538]

SENATOR ERDMAN: Just for clarification, I guess, on your last answer then. Why wouldn't the dentist accept that responsibility based on the actions you would be doing under your scope that you feel that you're qualified for, when under the bill you would be able to do it without the supervision and you would feel comfortable doing that? I guess I'm trying to understand, is it because of the other areas that they would then have to be responsible for that patient... [LB538]

TEENA BEEHNER: Right. [LB538]

SENATOR ERDMAN: ...as well, in addition to the things that you would be actually...? [LB538]

TEENA BEEHNER: Um-hum. [LB538]

SENATOR ERDMAN: Okay, I was just... [LB538]

TEENA BEEHNER: And ethically, we would say this is not complete treatment. You know, here's...we're doing the prevention and the education; now you need to...you know, we can refer you to other dentists but...you know. They don't become patients of record for this other dentist. [LB538]

SENATOR ERDMAN: I wanted to connect the dots and also restore my ability to ask questions to every testifier today because... [LB538]

TEENA BEEHNER: And you've asked wonderful questions. I've loved them all. [LB538]

SENATOR ERDMAN: I guess that's what my new role is around here, so I'll try to fulfill it effectively. [LB538]

SENATOR JOHNSON: As you can tell, he does ask pretty good questions. [LB538]

TEENA BEEHNER: Yes, he does. [LB538]

SENATOR JOHNSON: Any other questions? Yes, sir. Senator Hansen. [LB538]

SENATOR HANSEN: Senator Johnson, thank you. I would like to ask you the same question about how you would provide the light, the chair, especially for teeth cleaning in a school setting, any setting, any health setting? [LB538]

TEENA BEEHNER: You know, there are portable units that we have access to. We can get grants, you know. And I've had visions of being employed by the school system, you know, just as we have school nurses who come in and do their thing and send letters to the parents saying, you know, my son was diagnosed with color blindness because the school nurse found it. You know, I could see working in a school and sending a note home to Mrs. Smith, I recommend that you have your child go see the dentist. And I think there's more credibility to have the dental hygienist send the note home than the school nurse. [LB538]

SENATOR HANSEN: Thank you. [LB538]

SENATOR JOHNSON: Senator Howard. [LB538]

SENATOR HOWARD: Thank you, sir. I would say you make a really good point with that. I remember when my children were small and the school that my second daughter was in, did do a health screening and it was really helpful to get that information and then it's my responsibility to follow up with it, so. [LB538]

TEENA BEEHNER: For the children to have access right there, to be right there. You know, we would cut down on the failure to keep appointments because we would be there. [LB538]

SENATOR HOWARD: Thank you. [LB538]

SENATOR JOHNSON: Any other questions? I see none. Thank you very much. Next please? And again, if we can follow the rule that we did before, we let the first person talk a longer period and then if we could have the courtesy of being a little shorter. [LB538]

JANE BROEKEMEIER: (Exhibit 1) Thank you, Chairman Johnson and members of the Committee on Health and Human Services. My name is Jane Broekemeier, J-a-n-e, last name B-r-o-e-k-e-m-e-i-e-r. I'm a licensed dental hygienist in private practice in West Point, Nebraska, and I'm here today to testify in favor of LB538 on behalf of the Nebraska Dental Hygienists Association. As well as my private practice, I also have had the opportunity to be involved with the Minority Health Initiative grant that serves northeast Nebraska. And a segment of my responsibilities with that project has been the coordination of screenings for children who may attend the University of Nebraska College of Dentistry's Dental Day where they can receive free services. And at one of the very earliest screenings, the first one that I ever helped with, I had the opportunity to visit with a little boy, beautiful sad brown eyes, and I looked at him and I said, do you have any teeth that hurt? And he nodded his head and he opened his mouth. And my first thought was, how did we let this happen? Dental caries is preventable. Why do we let this happen? And I've been asking my colleagues that since that time. I've been asking the members of the Nebraska Dental Hygienists Association and I've been living with that issue, the issue captured in LB538 since that day, about six or seven years ago. I had the opportunity to represent the association in the 407 review of the proposal. I worked with Senator Schimek to draft the legislation and introduce it in the One Hundredth Nebraska Legislature and testified on its behalf two years ago. And I have been present for literally every meeting with the Nebraska Dental Association to come to common ground on this issue. And so from that background, I would describe this as one of the situations where we all decide we need to build a church but we just can't decide and agree on the architectural design of the church. So the NDHA and the Dental Association, I believe, are in complete agreement that we have a profound,

documented, unmet need for dental care in Nebraska. If you were present for the fluoridation bill, you got to see a great exposure of the dimensions of that need. And of really all the healthcare that gets neglected, dental is probably the easiest for people to neglect, especially those people who lack the necessary funds. I think that we are also in agreement with the Dental Association regarding the fact that if dental hygienists could access these unique settings where the underprivileged frequent, we could make a positive impact and make a difference for those individuals. At that point though, that's where we start breaking down and don't necessarily agree. Presently, dental hygienists are required to practice under the supervision of a licensed dentist who is responsible for the total oral healthcare of the patient and also serves as a referral catchment for patients seen by the hygienist. Now, it's important to understand that that supervision doesn't necessarily mean that the dentist is on the premises. That means that the dentist just somewhat oversees the practice. The dentist can be across the street, could be down...you know, across the country, or even on the other side of the world. So given that, you might say, well, so why can't we just work within that ramification of that supervision because maybe the dental hygienist could work a couple days in the area public health facility and the dentist then would just provide the supervision. But what happens is the dentist then has to be responsible for the total oral healthcare of that patient or all of those patients. And you can understand, as we can understand, that that might not be an attractive package. You know, that would be a difficult situation to assume that responsibility, given the income level of most of those people. It would have a definite economic impact on a practice. The solution that we see is to reduce that supervision level or eliminate that supervision level in public health settings and healthcare facilities, all of which would have possibly a dentist on the board or some sort of accountability to that facility or public health setting. Perhaps there are other ideas. We welcome any that you might have, but so far we haven't heard any alternatives from the Dental Association that we think would benefit the public, give the benefit to the public that we actually need. The other major bar to allowing unserved and underserved populations access to dental hygienists' services, independent of dental supervision, is probably the most difficult issue to resolve, and that is that the dental community does view this legislation as a stepping stone to completely independent practice for dental hygienists. The reason this issue is so difficult to get around is that we all know that you really can't prove a negative. And for example, you can't prove or I can't prove that I didn't speed on the way down here to Lincoln today on my drive, but I can assure you I didn't. The roads were icy. (Laugh) [LB538]

SENATOR JOHNSON: I would remind you, we are trying to stay to three minutes. [LB538]

JANE BROEKEMEIER: So I can't prove that to you but I am staking my reputation, personal and professional, on it, okay? Senators, no one action, including LB538, is going to eliminate all the dental pain portrayed in the sad eyes of the hundreds of children I continue to see in my public health experience. Not this bill and not the

Missions of mercy that are so beneficial and that the dentists are justifiably proud of, but this legislation, I believe, will make a positive impact in providing quality of preventive services to those who need it. Thank you very much and I would accept any questions. And one thing, somebody was continuing to ask about Medicaid information. The Office of Rural Health does have that information and I will certainly try to get that to you and forward it. [LB538]

SENATOR JOHNSON: Thank you. Any questions? Yes, Senator Hansen. [LB538]

SENATOR HANSEN: Thank you, Senator Johnson. Jane, does your license allow you to work under two supervisors? The reason I ask that question is you said in the public health setting, if you had a dentist on the board, so that might be a different dentist supervisor than your normal rest of your job? [LB538]

JANE BROEKEMEIER: Well, under this bill, if there was a dentist on that board...for example, the public health departments all have a dentist. That's, I think, required in statute that there is a dentist on their board. But they are just...they are volunteer, essentially. I don't think they are paid at all and they are more there for consultative purposes. So they might say, yes, that's a great program; I think we should implement it. But for them to assume the responsibility for the total oral healthcare of those patients in their own personal, private offices, I think would be something that they might not find attractive. Can...and I'm going back to can you have two supervising dentists? Well, certainly many hygienists practice in two separate offices, so yes. Did I answer your question though? [LB538]

SENATOR HANSEN: Yes. Yes, that was the question. [LB538]

SENATOR JOHNSON: Any other questions? I have one. Does West Point fluoridate their water? [LB538]

JANE BROEKEMEIER: Yes, they do. [LB538]

SENATOR JOHNSON: Great. Thank you very much. [LB538]

JANE BROEKEMEIER: Norfolk does not. [LB538]

SENATOR JOHNSON: Next please. [LB538]

CYNTHIA CARLSON: Hello, Senator Johnson and the rest of the committee. My name is Cynthia Carlson, C-y-n-t-h-i-a C-a-r-l-s-o-n, and I am a registered dental hygienist. I have worked throughout Nebraska, from communities from Holdrege, Kearney, Hastings, Grand Island, Nebraska City, and I'm currently here in Lincoln. You may be aware that the Surgeon General's report on oral health has called attention to the link

between periodontal disease and systemic health problems, and states that, if left untreated, poor oral health is often the silent X factor which promotes the onset of life threatening diseases--diseases such as cardiovascular problems, lung, stroke, diabetes. It also has a direct link to premature deliveries and low birth-weight babies. This link is only growing stronger. By providing a prophylaxis or dental cleaning, periodontal problems can be prevented and improved upon. The nursing home population frequently suffers from severe periodontal disease and root decay, yet studies show that remineralization or healing of these small lesions, even in this high-risk elderly group, can be improved. The elderly are also a high-risk group for pneumonia related to oral bacteria. If it's the uninsured children or the elderly, they are often frequently faced with barriers such as transportation and financial constraints that prevent them from seeking care. This makes it so important that we take the care to them. If we do not, they will remain a population neglected. Where better to treat them than in an individual medical setting, nursing home, or the school where they're at. There are many patients that I personally know that I could take my services to but I've only been permitted from my employer to go to a nursing home and treat one patient. She was so appreciative. Yes, it was very difficult work. She was in a sofa chair rather than a dental chair, but I accomplished quite a bit and I think really helped. And I was a curiosity to the rest of the people there. They wanted to know who I was, what I was doing, how can get that help. So currently there are 46 percent of those people 70 and older who have 20 or more teeth, and I think that's only be increasing. The elderly are keeping their teeth. One of the most current medical links to periodontal disease is Alzheimer's disease. There is a link there and that's being studied, and I think it's important to remember that Alzheimer's disease was the second largest Medicaid expenditure for 2004, with about $25.5 million spent on that. So any help along those lines would be beneficial. Also currently, private major medical insurance companies are currently researching the benefits of improved oral health to the actual lowering the cost of their medical expenses for their clients. They see the connection there. They know there's a benefit. I've crossed a few things out that have already been talked about. So basically I would like to conclude that no harm will come in supporting this bill of LB538. No harm will come to the public if this is passed. I feel the only harm is if this bill is not passed and we do nothing to change our current system of neglect to those who are unable to help themselves. To not care for our elderly, those people who have cared for us, to allow them to develop the preventable dental decay, periodontal disease, and systemic diseases associated with that is professionally unacceptable. Thank you, Senator Johnson and committee, and I'd be happy to answer any questions. [LB538]

SENATOR JOHNSON: Do we have any questions? I don't see any. Thank you very much. I might say that...come ahead...we have a letter that's a neutral letter from Nebraska Pharmacists Association and a letter from the Nebraska Health Care Association in support. (Exhibit 5, and LB427 Exhibit 3.) Next please. Any other proponents? Opponents? How many opponents do we have? One, two, three, four. Any neutrals? And one neutral. Okay. [LB538]

LARRY RUTH: (Exhibit 2) Senator Johnson and members of the committee, my name is Larry Ruth, L-a-r-r-y R-u-t-h, and I'm with the Nebraska Dental Association and appearing in opposition to LB538. My first comment would be to lend some further elaboration to the 407 process. It's been mentioned that by one of the opponents...pardon me, one of the proponents, that something occurred that I would like to emphasize. The 407 process is three-tiered in nature. There is a technical review committee, there is the Board of Health, and then there is the Chief Medical Officer. And Dr. Schaefer is here and presented her comments and her director's report as the Chief Medical Officer. A part of her report, and I would just to read it to you because it gives a little further elaboration on how the 407 process goes. In her report she says the technical committee recommended against the proposal, citing concerns about the need to protect the public from potential harm stemming from the inability of dental hygienists to diagnose and appropriately refer serious oral diseases and conditions. Concern was also expressed about the potential of the proposal to fragment the dental health delivery system. So the technical review committee, which is one-third of that process, ruled against or found against the expansion of the scope of practice to mean an unsupervised practice. The other part of it is that the Board of Health also reviewed the proposal and ruled against the proposal for similar reasons. This is just to indicate to you that the 407 process itself was fragmented, and two of the three levels were against the proposal by the dental hygienists. I might also say, and this is by way of further comment on 407, the proposal, I believe in front of the 407 was LB182. And in that proposal from the dental hygienists last year if required 3,000 hours of experience before this unsupervised practice would be allowed. And that 3,000 hours of experience is not in their bill this year, so it's interesting that we have a bill this year with asking for basically the same thing as last year but with no requirement for additional education, which gets to part of the competence issue, I think, that the other two parts of the 407 process were looking at. Now, I would like to have delivered a summary, rather a comparison between the two bills, and I think that might be helpful. I prepared it so you'll have to consider its source, and I said at the top, Nebraska Dental Association. So understand that it comes with a bit of bias because of my representation. But I tried to keep it as straightforward as possible. One of the things that I would like to comment on that, though, is right off the bat, the population served. And Senator Erdman, you raised this with your comments about there being people who weren't Medicaid-eligible perhaps but who would not be able to get services, unsupervised service under our bill, that would under the other bill. And if we're looking at something like an amendment relating to free and reduced lunch as trying to pick up part of that additional population, that's something we would certainly consider. But I wanted you to know that we are sensitive to that issue. That would just relate to children, however. That would not relate to those who are older. So that is really one part of the very first comparison that I would like you to look at, and that deals with population served. And I see your legal counsel shaking his head, so I think he's following through this too. The second deals with supervision. And here's something I'd like to dwell on just a moment. Both bills have a

public health setting defined, as far as I can tell I think those definitions are equal. What is different is the LB538 has also a healthcare facility listed. And I just might point out that that's any hospital, nursing home, tribal clinic, or a public or private school or preschool. And I don't believe I've seen before the characterization of a school as a healthcare facility. That seems to me to have some ramifications in other areas that I would like you to think about. But think about this for a moment: One of the previous witnesses did testify that she would like or anticipated, if I was hearing her testimony correctly, would anticipate setting up certain educational services in a pediatrician's office with this bill. And if I understood that right, she was reading a pediatrician's office as a place where you would be able to provide this service. And Senator Johnson, it occurs to me, as you have a doctor's office, that a pediatrician's office would not normally be called a healthcare facility, and I don't see anywhere in the definition of healthcare facility that a pediatrician's office, where she wants to be able to provide the education, would be covered. I don't understand that. I'm troubled by this kind of an analysis because it is precisely this kind of an analysis that does lead dentists to wonder whether or not there is an attempt to have an independent practice. Because if you're working in a pediatrician's office, that is an independent practice. That, to me, is not a healthcare facility. Now, a couple of other comparisons, procedures without supervision. The comment was made in some earlier testimony that that would prohibit teeth cleaning or oral prophylaxis, and Dr. Walker will be addressing that shortly as we talk about those kinds of things which are supervised now and are supervised because they're part of the dental practice and with a dentist on hand and whether or not you can just say that those should be unsupervised now, talking specifically about some of those other duties. Administrative oversight. We've tried to limit this kind of...rather I'll address myself to LB538. LB538 does not have any administrative oversight as our proposal does. One of the comments...and I had a note here...one of the comments that was made in the previous testimony was that .15, which is the direction of our bill, which is under the Chief Medical Officer, that there's not assurance of consistency from one chief medical officer to another. And I think that goes to whether or not we do have procedures without supervision, because we think that that should be under the oversight of the Chief Medical Officer. And we don't find that in LB538 as we would in LB427. And I'm getting to the end so be patient one more time, please. Access. The differences there are fairly significant. What we are proposing is no private patients limited to Medicaid population or if we would make some other amendments we can clear that up. But the proposal of LB538 is not limited in any way. It applies to all private patients being eligible--that's to all private patients. Obviously of some concern. It is not the indication or the intention of the Nebraska Dental Association or the Nebraska Dentists, as it has been suggested, to leave pathology untreated. That's not it at all. The proposal that we have would anticipate referral to a dentist, and that is very important. I think that Dr. Walker has a few comments and then Dr. Meeske, and that would conclude our position. Thank you. [LB538]

SENATOR JOHNSON: Thank you. Any questions? I see none. Thank you. Next

please? [LB538]

JAMES WALKER: Chairman Johnson and members of the Health and Human Services Committee, my name is James A. Walker, J-a-m-e-s A. W-a-l-k-e-r, speaking in opposition on behalf of the Nebraska Dental Association of LB538. I'd like to paint a picture of in my practice, and I see approximately 50 patients a day with my dental team, which includes four dental hygienists and assistants. I see patients for an examination, a diagnosis is made, and then a treatment plan is laid out. And my dental hygienists then participate with that treatment plan with the full scope of dental hygiene duties as outlined. My hygienists do an excellent job with that. But I am the one that is examining the patient and completing a full range of diagnosis. As a periodontist, I probably treat older patients and I have many patients that come from nursing homes in that situation, and so consequently I am an advocate of general supervision because my hygienists come to me multiple times during the day; I don't know what's going on here; I need some help; will you interpret this for me. And I'm available and able to do that. Now, picture a dental hygienist going into a public health setting, into a nursing home, not attached to a supervising dentist, and patients in nursing homes are not healthy people. They are oncological patients. They have cardiovascular disease. They have orthopedic appliances that have been placed in their bodies. They have larger numbers of medication, immunosuppressive agents, and so forth. And with all those kinds of things, oftentimes those patients will require medication evaluation and obviously need for premedication. Now, if you have a supervising dentist and you're going into that home, you pick up the phone and say, Doctor, I have Mary in the nursing home; she has this medical history; what do we need to do; where do we need to go; can you right the medication for that? Obviously, you can do that. Here's a situation going into an environment with this situation, no supervising dentist, no one to talk to about this. And who would talk to you about that? Are you going to call an independent person up and say, hey, I got a patient in the nursing home with this issue; can you help me out here? I mean, that seems to be a very irresponsible approach. And in my mind and how I treat patients and what's good for the public, we have to keep in mind that this is an issue. Now, on LB427 we talk about having the experience of going into the nursing home, outlining what the patient's problems are, seeing what they are, helping them with oral hygiene, working with those issues. If there are other issues, then they can be...a referral can be made to an appropriate place so proper supervision can be made. The facts are the facts and that is the situation. I have to do it 20 times every day. Who's going to do that in those situations? So we are putting this together in comparison here. There's a narrow focus. I think a great focus with kids and people working in nursing homes to provide those things, but the general supervision and on private patients, I think that there's problems that (inaudible). I would answer any questions for you. [LB538]

SENATOR JOHNSON: Senator Erdman. [LB538]

SENATOR ERDMAN: So what is the difference between the example that you gave under LB538. I guess I'm still trying to follow that. You gave an example that would be permissible under LB427. It's my understanding that even under the bill that you're supporting and LB427 and then under LB538, that they would still be operating under a certain scope of practice. They would still have the responsibility, if it was beyond that scope to refer it to a dentist. I guess I appreciated the example you gave and I'm just trying to make sure I understand what you're... [LB538]

JAMES WALKER: What I'm saying is, under LB427 the dental hygienist in the nursing home would do an evaluation of that patient, determine their needs. And their needs could be within the scope of dental hygiene but they could be within the scope of soft tissue pathology, restorative, prosthetic, surgical. Way out of the means or the scope of the dental hygienist. But they could help determine that. They could do oral hygiene instruction as far as cleaning. They could teach nurses, other people within that organization to do that. They could help those patients nutritionally, talk to them about their diet, those kinds of things. Those are the kinds of things under a public health setting that we're talking about in LB427, but not the full scope of dental hygiene where they would go in, be able to do prophylaxis, and so forth. Here's another example. In the scope of dental hygiene, it says scaling and root planing. In my mind, as a periodontal specialist in this area, that cannot be done without local anesthesia. A dental hygienist cannot do local anesthesia without direct or indirect supervision. There would be no one there to do that. They could not provide the quality of service for that patient in that environment without local anesthesia, and that's documented. [LB538]

SENATOR ERDMAN: So I'll take that last part as part of the explanation, and then I'm assuming that the assessment is the real rub on the first part of that answer... [LB538]

JAMES WALKER: Well, assessment means... [LB538]

SENATOR ERDMAN: ...because they're assessing more than... [LB538]

JAMES WALKER ...in my mind assessing means...exactly right. Assessment, and hygienists are trained to do assessment. Gathering data, finding what the issues are, and presenting that to a supervising dentist for diagnosis and outlay of a treatment plan for that particular individual. [LB538]

SENATOR ERDMAN: Okay. Thank you. [LB538]

JAMES WALKER: Okay. [LB538]

SENATOR JOHNSON: Senator Hansen. [LB538]

SENATOR HANSEN: Thank you, Senator Johnson. Dr. Walker, I think I wrote this down

right. You said that the dental hygienists idea is a irresponsible response and then you said that who is going to do this in this situation when you were talking about the lack of a supervising dentist at a healthcare facility or whatever that includes. So what responsibility to take care of the elderly and the youth in this state are the dentists going to suggest? [LB538]

JAMES WALKER: We are suggesting a very responsible position here. And you know what? You know, I had taken argument against someone who says that dentists don't take responsibility for treatment of children and the elderly in our state, because we make a significant attempt at doing that. There are lots of issues surrounding that, but most dental offices are working hard every day in order to accomplish that fact. So it's not that we're not doing that. Dentists around Nebraska are working to get people into areas of access to need and where there's issues. You know, there has been a possibility for dental hygienists for a long time to be able to work in these environments under the supervision of dentists. And I will say...I mean some people say that they have asked their dentist about that opportunity, but as president of the Nebraska Dental Association, I don't know very many hygienists who have made (inaudible) to their dentist to go out and do that. And I would tell you, I would be personally responsible for asking and have done that, and I feel that most dentists are welcome to those kinds of opportunities. But it has to be a two-way street in order to accomplish that. But in the public health setting in LB427, we want to accomplish dental sealants on children that have not had that opportunity. We've opened the door to work into the nursing home in order to find patients that are in need and get those triaged to the appropriate dental persons. But we don't feel it's responsible to have unsupervised care on those particular patients for the reasons that I pointed out here. There's lots of complications associated with that. There are reasons why on a the dental team there is a dental hygienist and dental assistant and why there is a doctor. There is a big difference in the training and evaluation and so forth that takes place between those different areas. [LB538]

SENATOR HANSEN: Okay. Thank you. [LB538]

SENATOR JOHNSON: Any other questions? I see none. Thank you. Yes. Any other testimony other than for neutral? Okay. [LB538]

DR. JESSICA MEESKE: Okay. Dr. Jessica Meeske, M-e-e-s-k-e. I just want to make the point about how difficult this is going to be, and how I think it's going to be socially unjust to create what I see as a two-tier system--a standard of care for the poor, and a standard of care for those who can afford it. This just...this is what this is going to create, is this dichotomy. And it's going to make it very, very tough to try to reach out to these kids that I think we're doing a good job reaching out to. Are we reaching everybody? No. But it's not...I almost feel like there's a sentiment that it's the dentists' fault that we're not doing this. So many of us do reach out. The majority of the dentists in the state, we do take Medicaid. Many of us participate in outreach, like the Mission of

Mercy, Sonrisa, Hope Medical Outreach, Lincoln-Lancaster Health Department. The real problem lies in what you decide as a government--and I would go all the way to the federal government--in how you choose to spend your healthcare dollars. And the bottom line is, is our federal government has chosen to spend public healthcare dollars in the Medicare program and in care for the elderly. And then there is this smaller program called Medicaid, and a very, very tiny sliver of that is dental, less than 2 percent. So until there is a shift in the political will for public policymakers to want to take care of low-income and kids, it is all going to go to the elderly. And so I guess I just don't think it's the dentists' fault. My final point would be, you know, the kids with the baby bottle tooth decay--and I do think hygienists can make a great impact on helping us with this, whether it's fluoride varnish, or the things they're talking about--but the bottom line is, is you've got to have parents who are willing to be parents. And I can't tell you how many times families come in, low-income, high-income, and I'll say things like, did you know that sleeping with the bottle or drinking Mountain Dew every day could cause tooth decay? Yeah, we knew that. (Laughter) [LB538]

SENATOR ERDMAN: (Laugh) Already told them to. [LB538]

JESSICA MEESKE: And then I said, you know, so why do you do it? Well, because he begs for it and he cries and we're busy and we're tired. Well, you've got to have parents who are willing to say no to bad sugar and to diet, and you have to have parents who are willing to get a toothbrush out and brush kids' teeth. And the last thing is, is you have to have parents that are willing to take kids to the dentist. I have lots of low-income families who are great about bringing their kids in; some aren't. I also have high-income families, they have the means; dental is simply not a priority. I'll just close in saying, I was part of the LB407 process. That's the process you all created to have us go through all the detail, to look at all the studies, many, many years. I testified over a week's worth of time. They made their decision about it. Dr. Schaefer has a difference of opinion. She has a right to that opinion. But let the process work as it's supposed to work. [LB538]

SENATOR JOHNSON: Thank you. Any other questions? Don't see any. Sir, I think you are next. [LB538]

JEREMY MURPHY: (Exhibit 3) Good afternoon, Senator Johnson, Mr. Chairman. My name is Jeremy Murphy, J-e-r-e-m-y M-u-r-p-h-y, and I'm the associate director of education issues for Nebraska Catholic Conference. I should indicate, the conference is opposing this bill. And to give you some understanding of my background, my father has been a dentist for over 36 years, and my youngest sister is in dental hygiene school right now. I tried to get their feedback on this bill, and I wasn't able to get it in time for the hearing. Our concern with the bill is the definition of "health care facility" including public and private schools or preschools in the definition. Now, if what is meant by public and private schools is university dental clinics, that is one thing. For example, my sister is working at the Creighton dental school clinic on patients, learning the dental

hygiene profession under direct supervision of hygienists and dentists. And that direct supervision by dentists in particular is very important. However, if the definition of "health care facility" is broadened to include public and private schools and preschools and to possibly create an entitlement to dental hygiene services at these schools, that could create some serious concerns for us regarding cost and liability issues. If the language, quote, or a public or private school or preschool, is stricken from section (2)(a), that would probably alleviate almost all of our concerns. As written, it's our position that LB427 is a cleaner bill, in the sense that it does not contain the expansive language adding schools as healthcare facilities. Are there any questions? [LB538 LB427]

SENATOR JOHNSON: I see none. Thank you very much, sir. [LB538]

JEREMY MURPHY: Thank you. [LB538]

SENATOR JOHNSON: Any other opponent testimony? Seeing none, let's proceed to neutral. [LB538]

JOANN SCHAEFER: (Exhibit 4) Good afternoon, Senator Johnson, members of the Health and Human Services Committee. I'm Joann Schaefer, S-c-h-a-e-f-e-r, MD, Director of Health and Human Services Regulation and Licensure, and chief medical officer. I'm here to testify in neutral capacity to LB538. LB538 would allow dental hygienists to practice without dental authorization or supervision in public health settings and healthcare facilities, which are defined in the bill to include hospital, nursing home, assisted-living facility, or home health agency licensed under the Health Care Facility Licensure Act, a correctional facility, a tribal clinic, or a public or private school or preschool. In addition, LB538 authorizes dental hygienists to perform all dental hygiene functions within their scope of practice in these settings. LB538 also authorizes dental hygienists to provide assessments of preliminarily charting and screening examinations. Such is assessment not currently a part of the dental hygiene scope of practice. This bill would allow dental hygienists to provide needed preventive dental services to at-risk populations, and will enable dental hygienists to increase efforts to educate families about the importance of oral health as a part of their total health. Again, I've provided you with a copy of the 407...the two dental maps, and I will provide the map from our Office of Rural Health regarding the number of Medicaid-providing dental hygienists. I'd like to comment on the prior testimony given about the 407 process. The 407 process, it is correct, there's a technical committee and the Board of Health review that goes in front, and it comes to me for recommendation. The initial report that I received led me down a path that allowed me to make the initial recommendation actually to go in agreement with the other two committee recommendations. This was based largely upon some statements that were made in the testimony that were incorrect and based on no science, no evidence at all. We attempted to find that out. This was pointed out to us from a group that noted in my report that also wound up in my report that pointed that

out to us. We attempted to find the literature references to these pieces of information, and could not. That is why I retracted the report, and did a subsequent literature search and survey of other states, that you will find on page 2 of my 407 report that you have now in front of you. That led us down a different recommendation. Perhaps if those committees were given the correct information at the time, and not incorrect information in that testimony, they would have reached the same conclusion that I did. I cannot speak for them, and I cannot speak for the past and their decision-making process, but that is why you had a report issued by me, then retracted, and new report granted by me and with some evidence based on surveying some states. I would note that one state noted that in 20 years, no cases against dental hygienists had ever been brought before their licensing board. Actually, there was one, and it was dismissed prior to it even going to their board. This bill, however, in its recommendations to Health and Human Services Committee, I do recommend that you look closely at LB538, because it provides for some broad expansion of dental hygiene scope of practice, but does not include some clinical practice requirement that was originally proposed and supported by the Health and Human Services Regulation and Licensure through the credentialing review process. In other words, when that applicant group came to us, they recommended that they had an education or a clinical requirement. We supported that, and it's not in either bill. Specifically, we have concerns on LB538 because of the following technical points. I will read those again, out of courtesy to Senator Schimek and reading them for the record. Section 2, one of the exceptions to practice of pharmacy in existing statutes is a provision that certain practitioners may dispense prescription drugs incident to their practice without having to obtain a pharmacy license or a dispensing practitioner license. Dental hygienists are not included in that exception. If LB538 intends for dental hygienists to be included in this exception, then language to that effect would need to be added Section 1, rather than create a different definition of "health care facility" than what exists in Section 71-413 of the Health Care Facility Licensure Act, it is recommended that the term "health care facility" be deleted and the facility types as remained...or, as specified, remain. Section 1, the language does not specify whether the requirements to provide proof of professional liability coverage and whether they are working in a healthcare facility or other identified public health settings are conditions of initial license issuance or renewal. Therefore, it is recommended that the language be included to clarify this issue. I'd be happy to answer any of your questions. [LB538]

SENATOR JOHNSON: Senator Erdman. [LB538]

SENATOR ERDMAN: Welcome back, Dr. Schaefer. Let me go back to your second bullet point here, where it talks about the definition of a "health care facility." Am I to understand that your recommendation is that the language only refer to the public health setting, or that it refers to the same definition of "health care facility" that exists in the Licensure Act? [LB538]

JOANN SCHAEFER: Thank you. That exists in the licensure act. [LB538]

SENATOR ERDMAN: So it's not limiting; it's just making sure that it's consistent? [LB538]

JOANN SCHAEFER: That it's consistent. [LB538]

SENATOR ERDMAN: Okay. [LB538]

JOANN SCHAEFER: It's just technical. [LB538]

SENATOR ERDMAN: The second issue is that you mentioned the 3,000 hours. As I read both of the reports that you have given us, which appear to be identical, you mentioned that was part of the stipulation of the process. Is it your opinion that for either of these bills to go forward in consistency with your findings, that that be included, to be consistent with what you found and recommended under your survey? [LB538]

JOANN SCHAEFER: That was what was recommended at that time, and that was exactly my recommendation. And it was the recommendation. It was brought to...in that form. [LB538]

SENATOR ERDMAN: Right. And that was in LB182 from last year. It would appear, based on the position that you have on your 407...and I appreciate the additional information that you shared as to why there was discrepancies between the three groups. I think that's valuable and I think that's why we have the system as we do, that allows you the opportunity to actually research and find out. And it would be interesting to see if there would be different results from the first two groups, but we obviously may never know that. It would appear that one bill overreaches, and one bill doesn't go far enough, and somewhere in the middle is probably where the reality is. And if the two groups could have figured that out, we probably would have saved ourselves two and a half hours this afternoon. Is that accurate? [LB538]

JOANN SCHAEFER: That is correct. [LB538]

SENATOR ERDMAN: Okay. Thank you. [LB538]

SENATOR JOHNSON: Any other questions? I see none. Thank you. Any other neutral? I see none. Therefore, we will close the hearing on LB538. (See also Exhibit 5) Senator Erdman, would you Chair the next section, please? [LB538]

SENATOR ERDMAN: Gladly, Mr. Chairman. Can I see a show of hands of those that wish to testify on LB463, please? Oh, goodness. Four,...keep your hands up, please. Six, nine, ten, eleven. Neat. Any in opposition? Well, we'll just count them all as one,

because you all put your hands up, because I wasn't clear. I have 11 total. Mr. Chairman, you're recognized to open. As the Chairman is coming forward, we would also encourage you that if you do plan to testify, to try to have a testifier sheet filled out ahead of time; that if you also are going to come and testify, that you would move forward to the front of the room. That way, it facilitates our process. We're going to be here as long as you need us to be here to hear your testimony, and try to be respectful of that. But we want to make sure that the process goes smoothly, as the Chairman has outlined in his introductory comments for this afternoon. [LB463]

SENATOR JOHNSON: Senator Erdman, members of the Health and Human Services Committee, I'm Senator Joel Johnson, representing District 37. LB463 is a recodification of the Uniform Licensing Law, commonly known as the ULL. The ULL is the body of law that deals with the licensure and regulation of healthcare-related professionals and occupations. Since the passage of LB183 in 1997, Health and Human Services System has been engaged in an effort called Nebraska Credentialing Reform 2000, to substantially revise and rewrite state statutes for the licensure and regulation of healthcare professionals and healthcare facilities and services. Comprehensive legislation relating to the licensure and regulation of healthcare facilities and services was adopted in the year 2000. LB1021 in 2002 established uniform continuing education provisions. LB242 in the following year changed credentialing and fee provisions for healthcare professions and occupations. In the past several years, legislation has been enacted for the licensure and regulation of nail technology, acupuncture, aesthetics, and body art. LB463 adopts the Uniform Credentialing Act, now known as UCA. The bill includes all healthcare professions and occupations credentialed by the Nebraska Health and Human Services within the preview of the new act. The bill reorganizes and recodifies all provisions pertaining uniformly to all regulated professions and occupations, and separates provisions relating to the practice of individual professions, occupations, and businesses. The bill deletes obsolete provisions and outright repeals several sections. The bill does not change existing requirements for obtaining a credential, nor does it change the scope of practice of any regulated profession, occupation, or entity. Let me repeat that. The bill does not change existing requirements for obtaining a credential, nor does it change the scope of practice for any regulated profession, occupation, or entity. The bill becomes operative on December 1, 2008. This would allow the bill to be adopted, and still allow time for changes in the future. The bill tries to clarify provisions relating to requirements necessary to initially obtain, renew, and reinstate a credential, or to voluntarily surrender a credential; acts and behaviors which constitute grounds for discipline against a credential; processes for filing a complaint for alleged violation of the act and activities and subsequent to such filing, including investigation, confidentiality, and the process of imposing disciplinary action; and the types of disciplinary action that can be imposed. The bill is 1,053 pages in length. Here is a copy. Dr. Joann Schaefer will testify after me to further explain the bill. And I think one comment that I do want to make is this. People have been working on this bill for over three years. It has been gone over time and time

again, and there constantly have been working on this for, like I say, over three years. I would hope that LB463 remains intact, and will not be used as a vehicle to address a host of other licensure issues at this time. We will be able to address other issues that may arise in the 2008 session. LB463 represents a culmination of years of effort. There have been many meetings with unbelievable numbers of people. The bill has undergone great scrutiny. I think we need to have a new starting place that we can all basically agree on, and then there will be ample opportunity, as we've noted, for changes in the future. [LB463]

SENATOR ERDMAN: Thank you, Senator Johnson. Any questions? On page 432,...I'm just messing with you. (Laughter) I'm just messing with you. We have a number of letters...I don't see any questions. We have a number of letters in respect to those who may be here. They may be duplicative to those who are here, so we'll wait and see who is testifying before we announce those. Can I quickly see a show of hands...Dr. Schaefer, please come forward. Can I quickly see a show of hands of how many wish to testify in support? Two, four, six, eight. Can I see a show of hands of those who wish to testify in opposition? Four, five, six. It's 5:45...4:45. Yeah, I can tell time; just not right now. Try to be respectful with your time. And obviously, Dr. Schaefer is here to give more detail on the background, in addition to the Chairman. And I will defer to the Chairman here briefly to find out his time line for this hearing. But welcome, Dr. Schaefer. [LB463]

JOANN SCHAEFER: (Exhibit 1) Thank you, Senator Erdman. Good afternoon, Senator Johnson, members of the Health and Human Services Committee. My name is Joann Schaefer, S-c-h-a-e-f-e-...I forgot my own name. (Laughter) S-c-h-a-e-f-e-r, MD, Director of Department of Regulation and Licensure, chief medical officer. I'd like to thank Senator Johnson for introducing this bill on behalf of the department. I'm here to testify in support of LB463. You were given a packet of information. Hopefully it's spread? Okay, all right. LB463 represents ten years of work by the department, led by a 17-member steering committee and hundreds of stakeholders who have invested significant time and effort to bring about the changes encompassed in this bill. For all the time and effort that everyone put into this project, I wish to personally and publicly thank them. This bill would not have been possible without the invaluable input and the direction of the staff, licensing boards, professional associations, licensees, and the staff of the Attorney General's Office. The ultimate goals of LB463 are to update the bill, originally passed in 1927, so that greater consistency and efficiency are gained for licensees in the department, and that the public and licensees are better educated about who must be licensed in order to provide services, what the license or credential authorizes them to do or not do, and what actions the state can take when certain inappropriate acts, behaviors, or omissions occur. The package you have in front of you has some things. First is a little more of a summary in it. The second part is a summary of each section that you might have. That might be helpful for you. The third, with the yellow lines on it, has the chart of proficiency...or, efficiencies to be realized as this bill

comes into effect. And then this pie chart I'm going to spend just a few moments talking to you about. If you think of the ULL, which will be named the Uniform Credentialing Act, what we're talking about right now in this 1,053-page bill are three main sections. And if you look at the first 167 pages, or this green little pie wedge here, that's really the meat of the bill, and that is where we're talking about trying to get all the uniformity addressed into the bill. 742 pages, or the big blue piece of the pie, is really where the individual practice acts fall--so cosmetology, Board of Medicine, Board of Nursing. And there are no substantive changes into those large chunks in there. In the 144-page portion, in the smaller portion, 13 percent of the bill, that includes just harmonizing language, when you have to bring about a change of a bill that is so large, and all the cross-referencing that has to be done. So I just wanted to point that out, and hopefully that will bring some ease when you're looking at the bill. The next handout that you have are sections for the individual practice acts that are on that big blue part of the pie, and referenced for you. And then I'll address the last page at the end of my testimony. General provisions of the bill. It renames the Uniform Licensing Law as the Uniform Credentialing Act, or UCA. It recodifies all credentialing requirements into one act, to be known as the UCA, in Chapter 38. It identifies all professions, occupations, and businesses that must have a credential, and places these in one list, close to the front of the statute. It provides uniformity to the look and feel of credentials, so that every credential will bear the name of the Governor, the agency director, the board officers where a board exists. It removes obsolete language that requires posting credentials at all places, such as where we were once required to post credentials in all places that one practices. You think about how many different places a physician may practice, how many different hospitals. You would have to have a large number of people...a large wall to cover all the licenses and multiple places that that posting requirement would have required. It also provides authority for establishing rules and regulations clarifying these regulations that boards have full authority to promulgate, and those regulations of which boards make recommendations to the department. Regarding procedures for issuing, renewing, and reinstating credentials, with reference to just the initial credentialing, LB463 establishes three eligibility requirements for receiving a credential. The person must be 19 years of age or older, except when a practice act requires a different age. For example, under the Cosmetology Practice Act, persons who are younger than 19 are permitted to hold credentials. The person must be of good character; and the person must be legally in this country, either by being a U.S. citizen, an alien lawfully admitted or eligible under the federal law, or a nonimmigrant whose visa for entry or application for visa is related to the employment in the United States. With reference to renewing credentials, it changes the renewal time line for all professions and occupations to every two years. Currently, renewal time frames vary, with some professions renewing annually, others biannually, and still others triannually. It's more efficient and more cost-effective to have one time line and one computer system. Only one board has shown opposition to this thus far, and that is the EMS Board. All boards except this one pay their own fees; EMS Board is paid for federal and state...by federal and state dollars, all the more reason to be cost-conserving. LB463 also eliminates the

requirement for the department to issue multiple notices to a person who fails to renew their credentials. It eliminates the requirement that the department issue revocations for failure to renew the credential. Nonrenewal of credentials will simply automatically expire without further notice. It standardizes the circumstances for which continuing competency requirements may be waived, such as service in the United States Armed Forces, or when persons are first credentialed in the period that just preceded that renewal period. It also authorizes boards to establish any rules or regulations, additional circumstances for waiving such continuing competencies. It streamlines, clarifies, simplifies, standardizes the reinstatement process for all professions. In the area of discipline, LB463 does not in any way change the division of power of the duties and responsibilities of the departments, the boards, or the Attorney General, nor does this bill change the discipline process. Those professions covered by the petition model will not change, and those covered by the notice model will not change. The department has taken the position that it would be inappropriate and unfair to try and include a major shift, such as wholesale changes to the discipline process, in a bill of this size and scope of LB463, given the far-reaching and oftentimes complicated implications involved in and associated with changing the processes for disciplining professionals and occupational credentials. The process has evolved over several years, resulting from in-depth thinking and deliberate legislative action. Therefore, LB463 makes only the following changes related to discipline. The grounds for disciplinary action are being expanded or clarified to include: (a) illness, deterioration, or disability that impairs the ability to practice a profession; (b) failure to maintain the requirements necessary to obtain a credential; (c) violation of an order issued by the department--for example, if an order is issued to a well driller...that a well driller must register all wells he or she drills and this order is disobeyed, such failure would be grounds for discipline against his or her license; (d) a violation of assurance of compliance; and (e) unprofessional conduct is currently grounds for disciplinary action; however, such conduct is being expanded to include: disclosing confidential information; failure to comply with federal, state, or municipal law pertaining to an applicable profession; and disruptive behavior, such as intentionally striking another healthcare professional during the course of treating a patient. There are three other changes in LB463 in the discipline area. (1) Elimination of the letters of concern. Letters of concern are not disciplinary actions, yet are a matter of public information, and regarded by licensees as damaging. Licensees have no recourse so far as contesting the basis for the issuance of such letters, nor is there any specific authority for removing such letters from the records. (2) Making a permanent revocation. Current statutes state that a revocation is for all time, but licensees may petition for reinstatement two years from the date of revocation after it is imposed. The allowance for seeking reinstatement seems adverse to the concept of revocation, which should be reserved only for use in very egregious situations, which the person is being barred from seeking the restoration of the credential that has been revoked. And (3) it clarifies the provisions surrounding voluntary surrender of the credential. In closing, I have summarized the most significant changes contained in LB463, except for those changes relating to boards, choosing instead to allow persons who have served or who

are currently serving on boards to attest to the benefits of the proposed changes. I understand that there might be some opposing testimony, particularly relating to discipline processes. I would urge the committee to restrict the inclusion of wholesale changes in this process without the benefit of careful and considerable deliberation. By no means is the department opposed to further examination or changes in the processes, as long as the ultimate purpose and impetus for any such change is grounded in the improved public protection and improving the system's effectiveness. Again, I express my thanks to Senator Johnson for introducing this bill on behalf of the department, and I thank the committee in advance for the insightful deliberations that you will give to this bill. I sincerely hope that you will advance the bill. To that end, I am offering a few technical amendments for things that we found that were inadvertently deleted or omitted. If you'd like me to read these for the benefit of the audience, I'd be more than happy to. LB463 technical amendments. (1) Page 181, line 12, strike "licensed as." (2) On page 238, line 9, after "specialist" insert: or whether...I'm sorry, "or, when such certification is not available, an alternative method of competency assessment by any means approved by the board." (3) On page 408, reinstate lines 9 through 14, begin with "Authorize" in line 9, through "life;" in line 14, and number of subsection (4). Remember the remaining subsections of Section 501...I'm sorry, renumber the remaining sections of Section 501. (4) Page 782, line 2, before "veterinary" insert "licensed." (5) On page 782, line 9, after "United States" insert ","; strike "or" before "the District"; after "Columbia" insert ", or a Canadian province." (6) On page 782, line 17, before veterinarian...I'm sorry, before "veterinary" insert "licensed." (7) On page 782, line 18, "United States" insert ","; strike "or" before "the District"; after "Columbia" insert ", or a Canadian province." That's it. [LB463]

SENATOR ERDMAN: Thank you, Dr. Schaefer. And... [LB463]

JOANN SCHAEFER: Thank you. I'd be able to any questions. [LB463]

SENATOR ERDMAN: Those that didn't want us to do that, we wanted to make sure, in case you didn't have a copy of her testimony. And she might have covered some of your concerns that they were there, as well as those that may be following along at home, at least in their offices. Are there any questions for Dr. Schaefer? Senator Hansen. [LB463]

SENATOR HANSEN: Thank you, Senator Erdman. Dr. Schaefer, so can we take this home now, this bill, this LB463 bill? Anyone who has licensure questions of us, can we share that with them now, I mean, assuming this passes? Is that what we use? Is this the manual for licensure? [LB463]

JOANN SCHAEFER: Yes. Yeah. [LB463]

SENATOR HANSEN: Okay, because there are a lot of licensure questions out there.

[LB463]

JOANN SCHAEFER: Yeah, there are. And you know, we're always there for any technical assistance that you might have, or any questions that you have when you have constituents that have concerns, absolutely. But no, this is going to be the Uniform Credentialing Act, so... [LB463]

SENATOR HANSEN: Okay. Thank you. [LB463]

SENATOR ERDMAN: Thank you, Senator Hansen. Further questions for Dr. Schaefer? I see none. Thank you. I had a show of hands, and I believe I had approximately eight proponents, and it's about 5:05. The Chairman has requested approximately three minutes, if you can hold your testimony to that. So I'm thinking that we should be able to get through the proponent testimony by 5:30. Obviously, if you're quicker than that and you can say it more succinctly, we'll probably remember more of it. But we want to make sure that if you need to go through your testimony specifically, as Dr. Schaefer outlined, that many of you represent boards that have specific comments regarding the act, we want to make sure that you have the opportunity to do that. So if you don't need to take the full time, don't. But feel free to do that. And like I said, hopefully we can get this done in approximately 25 to 30 minutes. And I will turn the chair over to our Vice Chair, Senator Gay. [LB463]

SENATOR GAY: Thank you, Senator Erdman. Just to follow up on that, with the scope of the bill, to not be repetitive, we will take the time to look into these things, so state specific as you can, and we sure would appreciate that. Go ahead. [LB463]

LINDA LAZURE: (Exhibit 2) I can do it under two minutes. Good afternoon, members of the Health and Human Services Committee. My name is Dr. Linda Lazure, L-a-z-u-r-e, Ph.D., RN. I'm here to testify in support of LB463, obviously. I'm the Chair of the Nebraska Board of Health, and also associate dean for student affairs at Creighton University School of Nursing. The Nebraska Board of Health is comprised of 17 Governor-appointed members, representing chiropractic, dentistry, engineering, hospital administration, medicine, mental health professionals, nursing, optometry, osteopathic medicine, pharmacy, physical therapy, podiatry, and the public. I review this information because the Board of Health takes endorsing legislation very seriously, since there must be unanimous agreement. Only a handful of bills are selected for active support, and LB463 is one of them. The Nebraska Board of Health has a statutory requirement to appoint members to serve on 26 healthcare professional boards managed by the Department of Health and Human Services Regulation and Licensure. In 2006, after screening and interviewing applicants, we made 36 appointments to healthcare professional boards. We are extremely cognizant of the need for public protection, and take our appointing responsibilities very seriously. Each health or health-related board has at least one public member, and several professional members. Many of the boards

have defined, unique requirements for board members. Public member applications often are eligible for one board, but not another, because of different requirements that apply. LB463 would implement uniform minimum standards for all members of boards...that all members of boards must meet. These minimum standards will make the application and selection process easier for all. Standards for public board member include: represent...they must represent the public interest and viewpoint; be a resident of Nebraska; be at least 19 years of age; and cannot have held an active credential in any profession or business which is subject to the Uniform Credentialing Act at any time during the five years prior to appointment. Standards for professional board members include that he or she must have held a credential for five years just preceding appointment, and shall maintain each credential and remain in active practice while serving as a board member. Each board member will have the same length of term--five years. Anyone who possesses the necessary qualifications may apply. Now, the Nebraska Board of Health has been involved in the ULL rewrite since its inception. The project has been participated, and opportunities to become involved have been many and varied. As Senator Johnson reported, from the beginning, efforts were made to make information available to all stakeholders. Materials were mailed to everyone on the interested parties list, and to get on that list was simply a matter of sending the department a request to be added. In 2005, there were multiple mailings to more than 500 interested stakeholders. Public meetings and suggestions for improvements were encouraged by the department. In 2006, there again were multiple mailings to more than 570 interested stakeholders. The mailings included copies of the sections of the draft legislation, and encouraged stakeholders to provide comments and suggestions. The ULL rewrite has been on each professional board's meeting agenda at least once. The Nebraska Board of Health received regular updates on the project, and discussed the significant changes of the ULL rewrite at public meetings. In December 2006, the department sent interested stakeholders a summary of the comments received, and explained changes that were made to the draft legislation. And one personal note. I have been the public...Board of Health representative to the Credentialing Reform Committee since at least 1998, when it was called Credentialing Reform 2000--we thought it would end in 2000. My daughter was married that year, and now I have two grandchildren. (Laugh) Five, and less than two. Since...and then during the last session, I testified in front of this committee, urging LB1177, an act for introduction of this legislation. The Nebraska Board of Health urges the Health and Human Services Committee to consider LB463 positively and advance it out of committee. How did I do? [LB463]

SENATOR GAY: Thank you, Doctor. Pretty good. Pretty quick. [LB463]

LINDA LAZURE: Any questions? [LB463]

SENATOR GAY: Any questions? Seeing none, thank you. [LB463]

LINDA LAZURE: Thank you. [LB463]

SENATOR GAY: Other proponents? [LB463]

MARCY WYERNS: Good afternoon, Senator Gay and other members of the Health and Human Services Committee. My name is Marcy Wyrens, M-a-r-c-y W-y-r-e-n-s. I'm here to testify in support of LB463. I'm a licensed respiratory care practitioner, and have served on the Board of Respiratory Care for two terms, totaling ten years, nine of those as chair. I have been a member of the Nebraska Credentialing Reform Committee since this group started back in 1996. During the rewrite process, the NCR committee spent considerable time discussing the role of the board. Current statutes do not use the same terminology or clearly define the role of boards. The goal was not to eliminate or reduce the board's role, but to clarify that role by defining what the board should consist...when the board should consistently have final authority. The NCR committee's recommendations that boards should have the authority to determine profession-specific standards, given the professional expertise, ended up in LB463. In this legislation, the appropriate board is given the authority to adopt rules and regulations for the following: the first, specify minimum standards required for a credential; the second is to designate examinations and passing scores; the third is to provide authority to provide examination results from other jurisdictions; the fourth is to set continuing competency requirements in conformity with Section 45 of this bill; number five is to set standards for courses of study; number six is to specify acts in addition to those in Section 79 of this bill that constitute unprofessional conduct. The appropriate board provides the department with a recommendation for reinstatement of a credential, noted in Section 49. This section states that an applicant for reinstatement after discipline can request a hearing before the board, and that the department may consider...only consider applications for reinstatement with an affirmative recommendation of the board. Next is the issuance or denial of credentials, disciplinary actions, or changes in legislation. The next is regulation other than those specific to the practice of the profession that the board has the authority to adapt...to adopt, excuse me. These changes make it clear when the board has the authority to decide and when the board is responsible for making recommendations. The existing language does not give all boards the authority to adopt profession-specific standards. The clarification provided in LB463 will improve our regulatory system. Any questions? [LB463]

SENATOR GAY: Thank you. I see none. Thank you. [LB463]

MARCY WYRENS: Thank you. [LB463]

SENATOR GAY: Other proponents? [LB463]

JANET COLEMAN: Good afternoon. It's almost time to say good evening, but I think it's still good afternoon. My name is Janet Coleman, and I am...it's C-o-l-e-m-a-n; Janet,

J-a-n-e-t. I did that backwards, but... [LB463]

SENATOR GAY: Thank you. [LB463]

JANET COLEMAN: I'm here to speak in support of LB463, the Uniform Credentialing Act. I am a member, and have been a member since the beginning of the Nebraska Credentialing Reform Act in 1960...(laugh) that's a...not that early...1996. I don't know how many committees that are solely volunteer last 11 years and we all hang in there, but there are quite a few of us who were original members of that committee who have stayed, and that's an indication of how important it has been to those of us who are on...who were on that original committee. I'm also currently a member of the State Board of Health as a public member, and I served two terms, ten years, as a public member of the Board of Mental Health Practice. I think that probably I have been on almost every kind of committee that exists in Regulation and Licensure that requires a public member. I'm not exactly a quiet public member, but I don't talk very long. There's...the purpose of LB463 as it's stated in the bill is to ensure that the public is...the health, safety, and welfare of the public is protected. And that is done by credentialing, and then by the establishment...or, the development, establishment, and enforcement of standards for the various health and healthcare-related professions. The boards are also required...or, stated in the statute that they also will protect the health, safety, and welfare of the public by ensuring that standards...appropriate standards are developed, as outlined in the bill. I can't emphasize too much that the real...only reason for the credentialing of any individual in the state of Nebraska in healthcare is to protect the public. We, by...the purpose is to ensure that the public has a way of knowing that the practitioners of health and health-related activities are neither incompetent, unethical, or unscrupulous. It also assures the public that the people that are licensed and...that are credentialed are using safe and effective treatment methods. And it provides for disciplinary action for those individuals who are not demonstrating adherence to the requirements of the credentialing provision. There's nothing more important, as far as I'm concerned, than to know that the importance of this kind of a law is to protect the public. I have worked for a long time in healthcare-related activities, in the Lincoln community and in the state, and I have never encountered a healthcare professional who was not equally committed to the idea that protecting the public was the most important thing to do. It has also sort of been my mantra that while we protect the public--and that's what's most important--we also protect the practitioner. Thank you. [LB463]

SENATOR GAY: Thank you. Senator Hansen, you have a question? [LB463]

SENATOR HANSEN: Thank you, Senator Gay. Janet, I have one quick question for you. I hope it's not too long. But whenever we...it looks to me like--and I'm a freshman senator--it looks to me, whenever we talk about changing credentials or changing licenses from one form to another, one question that's always asked is, do they do harm

in the present situation? I've seen a couple of instances that have been brought to my attention where people were practicing a profession for a long time, and then when they read that they have been doing harm to the public, that's very hurtful, very...they resent that very much. I guess that's a statement rather than a question. [LB463]

JANET COLEMAN: Okay. [LB463]

SENATOR HANSEN: Thank you. [LB463]

JANET COLEMAN: Are you saying that the healthcare professions do not think they have been doing harm, but they have been deemed to be doing it? [LB463]

SENATOR HANSEN: That's a...it seems to be a question when you change credentials or change license requirements, and that's one of the questions that HHS asked: Have they been doing harm? And if that question is answered yes, it's quite resentful. [LB463]

JANET COLEMAN: Okay. I don't know exactly how to answer that. I think that... [LB463]

SENATOR HANSEN: I don't either. (Laugh) [LB463]

JANET COLEMAN: I don't believe that anyone under...in my experience, I don't believe that there are any licensure requirements that would require someone to say that they had been doing harm, or that they felt they had been doing harm. I think most of the licensure requirements are pretty general. And I guess there are some issues when I...my impression would be that sometimes I think some have been doing harm and they have not been disciplined for it. I think that's a much more likely thing to happen, that sometimes harm is done but it is not...there's no reason for disciplinary action. That, I think, is sometimes an issue. I have not heard the reverse as an issue, though. But could be. [LB463]

SENATOR HANSEN: Okay. All right, thank you. [LB463]

SENATOR GAY: Thank you, Janet. Other...no further questions? Other opponents...proponents, I'm sorry. Can you state your name and spell it for the record? [LB463]

TERESA HAWK: This is...I am Teresa Hawk, H-a-w-k; and Teresa is spelled without an "h," T-e-r-e-s-a. Good afternoon, members of the Health and Human Services Committee. I am here to testify in support of LB463. I'm retired from Chadron State College, and served as a public member on the Board of Nursing for 13 years. I have been a member of a number of other regulatory committees, including the Credentialing Review, or 407 committees, and the Nebraska Credentialing Reform, NCR committee, and several work groups. I would like to speak about the need to rewrite the Uniform

Licensing Law, from the perspective of a board member. LB463 will remove obsolete language, to use correct or modern terminology. It will remove from the general section in the Uniform Credentialing Act professional-specific language, and more appropriately place such language in the appropriate practice act. It will clarify definitions and use the same terms for all professions an occupations. It will organize statutes so that information relevant to a subject is located together. For example, the applicable statutes for the discipline process are not located together within the ULL, so following and understanding the process is difficult. Uniformity and process is established in LB463, where possible. For example, all professions and occupations would use the same process to apply for and receive an initial credential, and would use the same process when renewing a credential. Changes would encourage communication across professions, because they likely would be less confusing, and the understanding when the same provisions for the process are applicable to all. For board members, LB463 broadens the definition of conflict of interest to include financial, professional, or personal obligations, and...that may compromise or present the appearance of compromising the judgment of a board member in performance of his or her duties. Board members strive for fair, uniform, and consistent interpretation and application of statutes, rules, and regulations. LB463 would...makes changes in the organization, clarity, and uniformity. These changes will make it easier for board members, and offer the public better protection. Thank you. [LB463]

SENATOR GAY: Thank you. Questions? Seeing none, other proponents? [LB463]

LEE ORTON: (Exhibit 3) Senator Gay, members of the Health and Human Services Committee, my name is Lee Orton, L-e-e O-r-t-o-n. I'm the executive director for the Nebraska Well Drillers Association. I'm here this afternoon representing Mr. Wayne Madsen, who was not able to stay for the remainder of the hearing today, having a four-and-a-half-hour drive back to Trenton, Nebraska, and a commitment this evening. So I agreed to offer his testimony. I'm not going to read the testimony. You have a copy of it that's being circulated. I simply want to mention that Mr. Madsen has also been a member of this Nebraska Credentialing Reform process since its inception, served admirably in that regard, participated in almost...if not every meeting, almost every meeting, and was excellent at reporting back to the industry and to the Water Well Standards and Contractors' Licensing Board what was going on in the process, to make sure that they were up to speed on all of it. Based upon his review and recommendations, the Nebraska Water Well Standards and Contractors' Licensing Board and the Nebraska Well Drillers Association are both here to support this legislation, and we encourage you to move it forward. I'd be happy to answer any questions if you have some, or Mr. Madsen would be pleased to discuss it further with members if you'd like. [LB463]

SENATOR GAY: Thank you. Are there questions? I see none. Thank you for your brevity. [LB463]

LEE ORTON: Thank you very much. [LB463]

SENATOR GAY: Other proponents? Come on forward. [LB463]

TERRI NUTZMAN: (Exhibit 4) I'll be fast. Senator Gay and members of the committee, my name is Terri J. Nutzman, N-u-t-z-m-a-n. I'm an Assistant Attorney General, and I appear today on behalf of Attorney General Jon Bruning in support of LB463. I work in the health division of the Attorney General's Office, and am charged with the statutory responsibility of making decisions based upon professional board recommendations and Department of Health and Human Services Regulation and Licensure investigative reports as to whether or not discipline actions against a health professional's license will be brought for violations of the Uniform Licensing Law and the rules and regulations governing the practice of the professions. LB463 is the result of several years of discussion and compromise amongst the Nebraska Department of Health and Human Services Regulation and Licensure, the Attorney General's Office, the professional boards, the Governor's Policy and Research Office staff, the professional associations, and other interested party's. LB463, better known as the Uniform Credentialing Act, affords basic due process rights for the health professionals who find themselves involved in the disciplinary process, as well as protects the best interests of the public against health professionals who engage in misconduct. It maintains the basic checks and balances system of the current discipline process as set out in the Uniform Licensing Law, and continues to provide for the exercise of independent legal judgment by the Attorney General's Office in the resolution of cases. LB463 balances the public's interests, the licensee's interest, and the government's interest. The public's interest requires that it is served by competent and qualified health professionals. The licensee's interest requires that he or she be given fair treatment, due process in the disciplinary process, including the obligation placed on the state to prove by clear and convincing evidence any violation of the statutes or rules and regulations that pertain to the professional. The government's interest certainly requires that the process be fair, be cost-efficient, and that it protects the public. LB463 in its entirety provides for and balances all of those interests. In closing, the Attorney General strongly supports the passage of LB463, and expresses his appreciation to the committee staff, including Jeff Santema. Thank you for promoting the continued discussions over the last several years, so that all involved in this effort were able to reach a consensus, in order to bring a uniform and a comprehensive bill to the table. Thank you. [LB463]

SENATOR GAY: Thank you. Are there any questions? I see none. Thank you. [LB463]

TERRI NUTZMAN: Thank you. [LB463]

SENATOR GAY: Other proponents? [LB463]

CHARLES PALLESEN: Senator Gay, members of the committee, my name is Charles Pallesen, P-a-l-l-e-s-e-n. I'm an attorney in Lincoln and a registered lobbyist for the Nebraska Medical Association. And I echo what Terri Nutzman said about the overall views with respect to the bill. The Nebraska Medical Association supports LB463. I also have worked with licensees in a number of the healthcare professional areas over the years in the disciplinary process, and so I can attest to the balance that we're talking about. I don't do that as NMA counsel, but do that in my private practice. There's only two thoughts that I want to leave with you with respect to this, that I have been involved in the process throughout its birthing and moving forward to this position that it's in today before you, and I've made these points before and I think they're valid. Since the licensee does not have the right to appear before the chief medical officer, who makes the final decision--and really should not, because of the volume of cases that would go to a hearing officer and then to her--I do believe that because of that situation, the practitioner should have the right to appear before his or her governing board, who makes the recommendation to the Attorney General's Office. It doesn't prohibit it in this statute or in present statutes, but it's become a policy of the board's, and I think it's a wrong policy. This committee and all the committees of the Legislature are open to the public and open to those who want to bring their issues to you, and so should the boards with respect to the practitioners that they make recommendations concerning. It wouldn't take but a three-minute appearance for many practitioners to feel like they had met with their peers and discussed the matter, and that would, in many cases, be the end of the disciplinary process, in my estimation. And so I'm hoping that the Health Department and the boards will look at that as a possible avenue to pursue. I don't know that it needs to be legislative, but I think it needs to be policy. The other item that I wanted to comment on is the move towards never looking at revocation. Now there is a reinstatement process, and I think it's a mistake to put in the bill something that lasts forever. Only death is sure, and we're not so sure about that. But to say that a practitioner, when he or she is early in their profession and makes a serious mistake, is out forever, is wrong in my estimation, because there could be a lot of water under the bridge or water over the dam as the years go by, and the boards should have the right, and the chief medical officer the obligation, to look at a reapplication. The Supreme Court has set standards for that, and we ought to abide by those, rather than changing the laws. Even a person that is convicted of murder has the right to ask for a pardon. Those that have life sentences without parole have the right to ask for a pardon. But here, the law is written so that the revocation can never be readdressed, and I think that's wrong. Other than that, the support for the Nebraska Medical Association is here full force. Thank you. [LB463]

SENATOR GAY: Thank you. Any questions? Thank you. Other... [LB463]

CHARLES PALLESEN: I...go ahead. I want to say one other thing, if I could. [LB463]

SENATOR GAY: Very briefly. [LB463]

CHARLES PALLESEN: Working with the Department of Health and with the Attorney General's Office as I have over the years, both as an NMA counsel and in the disciplinary process, I have the highest degree of respect for the efforts which those people put in, in this balancing act that you have been addressing here. And I know there's some testimony that will be given here in the next bill that is contrary to that, and I can only say, my experience is that they're very fair, very...individuals that are very professional, even though I sit on the opposite side of the table with them very often. Thank you. [LB463]

SENATOR GAY: Thank you. Other proponents? [LB463]

ANNETTE HARMON: (Exhibit 5) Good afternoon, members of the Health and Human Services Committee. My name, again, is Annette Harmon, A-n-n-e-t-t-e H-a-r-m-o-n. I'm executive director of the Nebraska Nurses Association, here in support of LB463. The Nurses Association is the largest nursing organization in Nebraska, and the only one representing the over 20,000 registered nurses in the state. We support the uniform and consistent procedures and requirements across the regulations of healthcare professions. We believe it will streamline the licensure process, and we feel it's important to distinguish between a certification granted by an accredited body, and a license issued by the state of Nebraska. We do strongly feel that the bill should be adopted in its current form with few amendments. We would oppose any amendments that change the scope of practice for any of the regulated healthcare professions or occupations, and it's our understanding that changing scope of practice is not the purpose of this legislation, so we would urge you to advance LB463 out of committee. I do want to also thank you for your time and your service this long day. [LB463]

SENATOR GAY: Thank you. Questions? Seeing none, thank you. [LB463]

ANNETTE HARMON: Thank you. [LB463]

SENATOR GAY: (Exhibits 10-15) Other proponents? Okay, before we get started, just for the record real quick, we do have, for proponents, I have a letter of support from Sue Rowland, president of the Speech-Language-Hearing Association, in support; Frank Freihaut, on the Board of Respiratory Care, has a letter of support; Jody Spalding, Board of Audiology and Speech-Language Pathology, letter of support; Wayne Stuberg, Board of Physical Therapy, supporting; and Marcy Echternacht, with Nebraska Board of Nursing. Okay. Oh yeah, the Nebraska Hospital Association has also sent a letter of support. So for the record, we will put that in. A quick show of hands on opponents to this? About six. Come on forward, start working your way forward. And we do want to give you time. One thing I would say--the day is late for all of us--if you have a written testimony, just hand it out; please don't read it for us. We will read those. So go ahead with opponents. [LB463]

BRENDON POLT: (Exhibit 7) Good evening, Vice Chairman Gay and members of the committee. My name is Brendon Polt. That's B-r-e-n-d-o-n P-o-l-t. I'm assistant executive director of the Nebraska Health Care Association. I appear in opposition to two very specific provisions within LB463. The Nebraska Health Care Association represents approximately 400 nursing homes and assisted-living facilities. Now, pivotal to providing quality healthcare in a nursing home or an assisted-living facility are first-rate nursing laws and regulations, as well as quality professionals regulated and credentialized pursuant to them. Because of that, we object to two specific...or, to a proposed change in the Board of Nursing. Currently, there's a requirement that nursing service administrators, staff nurses, and licensed practical nurses equally represent acute care, long-term care, and community-based care. And under this bill, on page 580, lines 15 through 18, this requirement is eliminated and the Board of Health would attempt to ensure representation from those groups. But we feel that "attempting to ensure" is the same thing as saying "don't have to ensure." So we would propose restoring the prior language. And the only other amendment that I would propose to this bill is that...the definition of "unprofessional conduct" would now include something called "disruptive behavior," which is defined as verbal or physical interfering with consumer care or could reasonably be expected to interfere with consumer care. We're unclear what this means specifically, and we believe it's overly broad, and would ask that you strike that text. I have no other testimony. [LB463]

SENATOR GAY: Thank you, Brendon. Are there any questions? I see none. Thank you. Other opponents? [LB463]

TIMOTHY ADAMS: (Exhibit 6) Good evening. My name is Dr. Timothy Adams, T-i-m-o-t-h-y, Adams, A-d-a-m-s. I have some handouts here for the clerk. There you go. Okay. I speak for all the innocent healthcare professionals, no matter how small a percentage we are in light of the total number of complaints filed, who have been unjustifiably harmed, or those excessively punished for only minor violations. This is really difficult for me to go through, because it's been very hard on my family. I realize it is difficult for anyone, even executive members or officers of professional organizations, whether it's the Nebraska Medical Association, Nebraska Dental Association, etcetera, who have not been through the complaint process to comprehend just how corrupt it is, for on paper, the ULL seems reasonable, and even the ULL rewrite seems reasonable. But the abuses of power and process and the violation of constitutional rights are not written down. The ULL and proposed UCA enable the abuses of not...the abuses by not specifically stating basic rights and due process. Unchecked power with absolute immunity that is granted by this Legislature towards the department, towards boards, and towards the Attorney General's Office can lead to corruption and abuses of process of power, and that's exactly what the ULL and the proposed UCA does. I'd like to give you kind of an idea--I realize...I'll try to be as concise as possible--my case. This is my case right here. It details all the violations that have happened with my case, and the

harm to my family. It's a good read. It's shocking. And what's really shocking is that there are other worse cases out there, because of time, I can't go into. But if you guys have a time, please, for the sake of us who have been through this process, please read that. I would like to...first of all, in January of 2005, my life changed forever--the way I view life, the way I view justice, the way I view honor and integrity. It...backing up, in 2003, in August, an employee that I terminated filed a bogus complaint against me, as to get back for terminating her. Eighteen months later, an investigator shows up at my door while I'm seeing patients, and announces in the reception room that I'm being investigated for illegal duties being delegated to assistants, and he has a subpoena, and unless I cooperate with him, I could be in more trouble. Right in front of everybody. He then proceeded to conduct his investigation, and I let him, because I thought, I haven't done anything wrong, I've got nothing to hide, go ahead, check me out. But the damage he did, first of all, by coming to my office as he did,...the word spread in the dental community. I'm an orthodontist in Omaha. I haven't been in practice long. I've got eight children to support. I've got a staff and their families to support. My referrals dried up to zero in six months. Two months after that, I had to file bankruptcy. It's been a hard climb back, but I'm a fighter. I will not give up. I'm going to fight, and I'm going to fight until things change. Now, so I ask the investigator, what am I guilty of? Still would not give me a specific answer. He did his investigation, and the questions got very personal, about my personal life, my business life. He interviewed my staff, asking them questions about my personal life. What does this have to do about what I supposedly did? He went well beyond the scope of the investigation, well beyond, to try to stack the deck for the Attorney General's Office, charging as many allegations as they can against me, to justify a severe, severe punishment. Is that the American way? Is that due process? So then he left my office. I still was not allowed to know what I was guilty of. The board held a meeting four months later. I wasn't allowed to defend myself. As the gentleman said earlier, and I wholeheartedly agree, we should be allowed to defend ourselves to a board. In essence, that is a constitutional right--a jury of our peers--that's being denied us right now. The board made a recommendation to the Attorney General's Office, sent me a letter, told me...didn't tell me anything. What did I do, and what is the recommendation? Six more months went by. I still remember this day because, the bottom hit the floor...or, (laugh) I hit the floor. I got a petition for disciplinary action from the Attorney General's Office. And if that doesn't shake you up,...I've been a law-abiding citizen, like I said, a father. I love what I do. God, I love what I do. I treat my patients exactly the way I would like to be treated. I'm very blessed. But the harm this has done to me is irreparable, the stress it has caused my family. Dollars can be earned back, okay? But the time it took away from my children is unforgivable. And because of that, I won't stop in fighting certain provisions of this proposed bill. It's got to change. Now, Senator Johnson made it clear that a lot of time has been put into this, a lot of committee meetings, etcetera, etcetera. But does that...to pass something just because of the essence of the amount of effort and time that went into it, does that make it right, foregoing all the harm investigators have done, an overly zealous Attorney General's Office, boards with agendas? I'd like to back up one second about the Dental Board.

Now, I realize this is the past Dental Board, and hopefully the new Dental Board won't act in the same way, but with my case, they had an agenda. And that's not uncommon for other cases, too. For example, I have names of other people you can contact--Bill Gwayne (phonetic), Van Nguyen, Dave Hall (phonetic), James Sliminski (phonetic), Bill Graves (phonetic), Derek Walrod--and these guys are only the tip of the iceberg of what's going on out there. I have met with attorneys, respected attorneys, Dave Domina in Omaha, Vince Valentino in York, Vince Powers here in Lincoln, several attorneys in Omaha. They all agree, the system is out of control. And the way these Gestapo investigators are treating professionals is unconscionable, okay? For myself, 12 years of college, $250,000 in student loan debts that are not discharged in bankruptcy, not to speak of the hundreds of thousands of dollars I had to go in debt with to purchase a practice, okay? No benefit of the doubt is being given to healthcare professionals. And I'm not just speaking for dentists--all healthcare professionals. Healthcare professionals right now are terrified of terminating employees, because of the credibility the department and the screening process is giving these individuals to basically railroad us, to make an example, to serve an agenda. And it's wrong. How does that serve the patients, to have a healthcare assistant treating a patient? Say one of you senators goes in, and there's a young man or a young lady working on you, and the practitioner knows, this person is not in the best interest of that patient. They're incompetent. But, God, fire them, and the hell that person can put you through, because of the enabling of the UCA and the ULL provides to the department, Attorney General's Office, and the boards. Now, earlier, somebody said that, you know, we've tried to get...involve as many people as possible to get the most comprehensive rewrite out there, okay, 500 party members, stockholder, party members, whatever you want to call them. Joann Schaefer, I respect Joann Schaefer. Is she passionate about what she does? Absolutely. She's got the patients out there that we treat at the forefront. But there needs to be balance, and right now, as attorneys have said, the system is out of control. I asked her one time, how do I get on that party list? I was not aware of some party list--500 people who represented thousands of healthcare workers. This...and I want to read you something. This is a letter from Dr. Joann Schaefer, dated September 22. It is addressed to me. To incorporate your proposal in the ULL rewrite at this stage in the legislative development process would distort the very transparent collaborative process which has been in place over the last three years to propose changes for existing statutes that govern the licensure of health and health-related professions and occupations. This process has had the active and participant involvement of representatives from various professional licensing boards, the Attorney General's Office, the department, and consumers. Through this process, agreement has been reached on the major portions of the changes being proposed by the ULL. This is how I responded. To Dr. Schaefer: Why have the professionals that are governed by the ULL been kept out of the process of rewriting the ULL? Why have there been no publicly announced hearings for professionals to attend to voice concerns and provide valuable input regarding the ULL rewrite? This process to rewrite the ULL has been anything but transparent? How can you assert that a truly comprehensive rewrite may exist without

input from the very professionals it is to govern? The process was anything but transparent and inclusive. It was absolutely exclusive. [LB463]

SENATOR GAY: Dr. Adams. [LB463]

TIMOTHY ADAMS: Yes? [LB463]

SENATOR GAY: I appreciate your patience. You've been with us all day today. There are four others after you. [LB463]

TIMOTHY ADAMS: I realize that. And I... [LB463]

SENATOR GAY: And then we have another bill after that. [LB463]

TIMOTHY ADAMS: ...I would ask for your latitude, because I know, because I'm probably the only one representing those being accused. And it's... [LB463]

SENATOR GAY: No, and I appreciate it. Just...thank you. [LB463]

TIMOTHY ADAMS: So I just want you all to truly understand. I realize I've got some of this stuff in writing. But the thing is here, can you...Bill Gates once had a famous quote: Those leaders who are truly responsible cannot be afraid to eat their young. What does that mean? It means you can work on something for months and for years and only at the very end have something brought to your attention that something is wrong. You've got to be...you cannot be afraid to eat your young and start over. We're not saying start over with this process, but there are provisions here that need to be changed, so there can be checks and balances in the system. There are none right now. It's a collaborative effort. Read it carefully, especially the first hundred and so pages. There's no checks and balances. It's a collaborative effort to severely punish professionals. Now, is a complaint process needed? Absolutely. There are evildoers out there, and they need to be punished. Now, there's a flaw I'd like to point out regarding the Dental Practice Act, and it was passed out, I believe. [LB463]

SENATOR GAY: Is that this right here? [LB463]

TIMOTHY ADAMS: Correct. Okay. Now, again, that has been used by the Attorney General's Office to severely punish a man. And that man right now--to let you know just how bad it can be--if you are punished, severely punished for only minor violations--and the Attorney General's Office and the boards are doing that--here's what happens: you lose all your rights to be an insurance provider. That's a practice-killer, okay? There needs to be more balance in the system. I also have a booklet I'm going to have...that is provided to you when we talk about LB194 more. But please, for the sake of decency, for civility, for balance, for due process, for fairness, there can be changes that actually

enhance the protection of the public, and I will introduce that next when we talk about LB194. Any questions, please? [LB463 LB194]

SENATOR GAY: Thank you. I see none. Other opponents? Thank you. I will...it's getting late. I'm going to ask, Erin, can you kind of tell me when we're in the five-minute range, if we can? And we do have another bill after this, as well. But I do want to be heard. [LB463]

CONNIE WAGNER: (Exhibit 8) It will take me one second. [LB463]

SENATOR GAY: No problem. [LB463]

CONNIE WAGNER: I'm Connie Wagner, W-a-g-n-e-r. I'm the lobbyist for the LPN Association. I'm here on behalf of our president, who had to work this afternoon. You have a written testimony in opposition to LB463. [LB463]

SENATOR GAY: Thank you, Connie. [LB463]

CONNIE WAGNER: Any questions? [LB463]

SENATOR GAY: Any questions? Thank you. I see none. Thank you. [LB463]

BRUCE BEINS: Good afternoon, Senators. My name is Bruce Beins. It's B-e-i-n-s. I'm here representing the Nebraska Emergency Medical Services Association. I also serve as chair of the Nebraska Board of EMS. I'm actually testifying in opposition, although very easily could be a proponent of this bill. There were opportunities that we had along the way to provide our concerns with the rewrite. The one that we are still in opposition to was the one that we raised at the very beginning, and that has to do with changing the renewal period for EMS providers from three years down to two years. The healthcare professions are not the same. I understand that we would like uniformity in the process and so forth. EMS is the second-largest healthcare profession licensed by the state, and we're different in a lot of aspects, number one being that, by and large, the vast majority of them are volunteers. As you've heard in other hearings from this committee, volunteers don't necessarily like being ruled and regulated. Nobody likes change, they say, except for a wet baby, and that's pretty much the same with EMS providers also. Going from a three-year to a two-year is going to cause a lot of problems as far as the feelings of the EMS providers that already feel burdened by recruitment and retention, that now they're going to have to renew every two years. They see that as an added regulatory burden. If the true aim of the state is to be more efficient, we think it would be a lot...make a lot more sense to take everybody to three years. Save some dollars. Do like driver's licenses and take everybody to five years. Now, I understand that's problematic. But if that's truly the game, is to be uniform and efficient, then maybe we should think about a three-year change instead of a two-year change.

And with that, that's really all I have for you. [LB463]

SENATOR GAY: Thank you, Bruce. Are there any questions? I see none. Thanks. [LB463]

PATRICIA M. SAMUELS: Good afternoon, Senators. My name is Patricia M. Samuels, P-a-t-r-i-c-i-a, M. Samuels, S-a-m-u-e-l-s. I come to you today as someone who's had a little bit of experience in the dental field. I have been an office manager in an orthodontic office for 10 to 15 years. I am a licensed attorney. I am not coming today as an attorney, in that respect. I do want to speak from my own personal experience and the effect that this bill, I believe, has on the dental community. I am greatly appreciative of the work of the department and the various boards and the persons in this rewrite. I have two areas of concern, and one of these deals with the due process rights that I feel are being abrogated in this case. The rewrite on page 108, Section 82, subparagraph (4), refers to the failure of...they're talking about instances where a credential can be refused, denied, disciplinary measures taken against, in accordance with another section. And this subparagraph (4) particularly states, the failure to allow an agent or employee of the department access to the business for the purposes of inspection, investigation, or other information collection activities necessary to carry out the duties of the department. I believe that this is a total violation of the due process rights. I believe there's case precedent that can be looked at that even businesses come under protection of search warrants. There doesn't seem to be any rights afforded to the license holder, regardless of what profession they're in, to question a subpoena, to request a search warrant for someone to come in. And if they refuse, if they even ask for this, going to the district court for it...to ask for something like this, that itself is grounds for denial of their license. So I think that that needs to be addressed. I think it needs to be looked at a little more carefully. The other area that I would like to discuss is...and I know this personally because of the work that I was able...that I did in my capacity as an office manager. It has a quashing...this rewrite, as it is presented, has as quashing effect on being able to weed out incompetent employees or those who would be guilty of misconduct, because of the fear of retribution, because it can be an anonymous investigation. The license holder has no information, and they're not given any of that information until well into the process. And I believe that they should be able to weed out inadequate employees without this fear of retribution as it currently is written. And that's all I have to say. [LB463]

SENATOR GAY: Thank you. Questions? Senator Erdman. [LB463]

SENATOR ERDMAN: And that...as you can see, the 1,053 are still nicely bound with a piece of plastic here. The language that you referred to specifically, is that existing language, or is that new language that...? [LB463]

PATRICIA M. SAMUELS: This is new language. [LB463]

SENATOR ERDMAN: Okay. And is that the same with your other concern? Is that the new language added to the act, or is that an existing problem on...? [LB463]

PATRICIA M. SAMUELS: It's existing, and it doesn't correct it. [LB463]

SENATOR ERDMAN: Okay. Okay. Thank you. [LB463]

SENATOR GAY: Thank you. Other questions? I see none. Thank you. [LB463]

PHIL SAMUELS: Senator Erdman and committee members, my name is Phil Samuels, P-h-i-l S-a-m-u-e-l-s. I'm an orthodontist from Norfolk, Nebraska. I've been a licensed dentist and practitioner in Nebraska and Wyoming for 12 years for a total of 35 years. And I'm speaking on behalf of myself. I am a member of the NDA and I do hold an office in the Nebraska Society of Orthodontics and am a member of the AAO. But I'm speaking strictly on my own behalf here today. I think there is a significant problem with this bill, LB463. I think it could be repaired and it would otherwise, it would be okay. And I do respect all the work that's gone into it. Obviously there's been a lot of man-hours and that's, you know, that's to be commended. But I think that it's being, there's abuse or misuse in the system and I just would kind of like to parallel to some extent what Dr. Adams has said. Quite honestly, I didn't go out looking for this problem. I think it kind of came looking for me. Dr. Adams has kind of made somewhat of a reputation for himself with several mailings that he's done statewide to all of the dentists and, quite frankly, that's the first I ever knew or heard of him. I had never met him before. But there was another young dentist in our community who went through the disciplinary process and I knew of his situation somewhat. I didn't know him real well, he was new to town. And everybody kind of knew of the situation and it was kind of unfortunate. And he was kind of a quiet-type individual, he just kind of withdrew and moved away to another community. Well, I happen to have a satellite office in that other community. So since he's moved, I've gotten to know him and I've heard of his experience, now in detail. And then Dr. Adams' letters started to arrive and I started to read those. And just by happenstance, my wife, who you just heard from, happened to have a legal matter going on here at the Lincoln City-County Building the day that Dr. Adams' hearing was being conducted at the old Golds Building. And so I just walked up and sat in the back of the room and heard the hearing. And I'm very proud to be a dentist. It's been a great opportunity for me and my life. I could get emotional, too, about that but I want to maintain my composure here. But I wasn't so proud to be a dentist that day when I heard the charges that were brought against him and I heard the state's expert witness dentist, who I've known for years and I won't mention his name--but it's all a matter of public record--give what I thought was a very misleading testimony and a very biased testimony against him, all in accordance with, quote, the laws. Now I've read the laws, I'm not an attorney, but I've read them enough to kind of understand, I think, what is going on there. And good people, good lives, good men and women are being hurt

severely in the guise of protecting the public. The public's not being protected or served by these laws, in my humble opinion. And I've not been through the disciplinary process, I hope never to be. But I just would say for your consideration, I'd like to see that thing not passed out of your committee. It needs some additional work as far as I can tell. And I think Dr. Adams has some good ideas about what might be done to improve it. And I would encourage you to maybe give him an ear, listen to what he has to say. So I don't know. If you have any questions that I can... [LB463]

SENATOR GAY: Thank you, Doctor. Any questions? I see none. Thank you. [LB463]

PHIL SAMUELS: Thank you for your time, appreciate it. [LB463]

SENATOR GAY: (Exhibit 9) Other opponents? Anybody who would like to speak in a neutral capacity? I see none. Okay, I'm going to...Senator Johnson, would you like to close? Okay, with that we'll close the public hearing. Oh, wait, one more. I've got, just for the record, neutral letter from Joni Cover with the Nebraska Pharmacists Association on LB463. With that, that would close the public hearing on LB463. Thank you. [LB463]

SENATOR JOHNSON: Senator, do you want to come forward? Let's then open the hearing on LB194. Senator Pahls, thank you. Sorry to keep you so late. [LB194]

SENATOR PAHLS: Oh, no, you kept me out of an exec session which is not always all bad. Good afternoon or good evening, Senator Johnson and members of the committee. I've been listening to some of the testimony so I'm going to rearrange some of my comments. I know you've been working...HHS has been working a long time on this ULL procedures. Just to give you an idea, I was contacted by a constituent who is an orthodontist, I think you've already heard part of his testimony. He was concerned that the department had not solicited enough input from the affected professions. I agreed. My staff has been working with him. I agreed to introduce LB194 on behalf of him and any others who may be dissatisfied with the results of the three-year HHS study. Just going to give you a couple points of LB194. Under LB194, HHS is prohibited from investigating or sanctioning any licensed healthcare professional without the unanimous consent of the professional board appointed to represent each discipline. This bill sets up a procedure for HHS to work in tandem with the professional boards. The bottom line in LB194 is found in the new language on page 13. If the decisions of HHS are based on precedence and are consistent with similar cases, the licensed professionals will feel more comfortable with the HHS decision. I will not take any more of your time because I do think there are proponents who would like to address their concerns. [LB194]

SENATOR JOHNSON: Any questions? I see none. How many proponents do we have? One. Opponents? One, two, three, four about, a couple more back there. All right. [LB194]

SENATOR PAHLS: And I will waive closing. Thank you. [LB194]

SENATOR JOHNSON: All right, fine. Thank you. Would you like to come forward? Certainly. I think we feel obligated to give you a little bit more time since you are on this side of it and you're going to be the only one. So go on and take about 15 minutes or whatever. [LB194]

TIMOTHY ADAMS: (Exhibit 1) Thank you, Senator. A question that must be answered by this committee... [LB194]

SENATOR JOHNSON: I need you to introduce and spell your name. [LB194]

TIMOTHY ADAMS: I'm sorry. Dr. Timothy Adams, T-i-m-o-t-h-y, Adams, A-d-a-m-s. You can see here, I'm very loud and proud today, okay, about my feelings about LB194 and LB463. You know what I'd like to do? I'd like to put "yes" on this and walk around taking no and LB194 off. I'd like to walk around proudly with this. And I will be a great supporter of LB463 if some basic rights and considerations are placed in this bill. And I'm going to show you how easy it is. Now a question that must be answered by this committee is this. Am I a vindictive individual that only wants to cause strife and turmoil without any constructive purpose to those who unjustifiably cause great harm to my practice and hurt my family? Or am I a very motivated and passionate person who fights against injustices and I fight for basic rights so that other healthcare professionals and their families do not have to suffer the same injustice as my practice and my family and many others have had to endure? I will let the information I'm providing you today and your conscience answer that question for you. But let there be no misunderstanding. The abuses of power and process by investigators, the department of regulation, boards, and the Attorney General's office must stop immediately--it cannot wait until 2008--so no other practitioners and their families will have to suffer as my family has, as well as the countless other practitioners and their families, like I mentioned earlier. And those individuals are only the tip of the iceberg. Now this is kind of preachy but I'm going to do it anyway. Nebraska is one of the new states in the union that actually sees the pursuit of happiness as a guaranteed right. The Declaration of Independence, I'm not going to read it all, "We hold these truths to be self-evident that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty, and the pursuit of happiness." And I think sometimes entities, governmental entities, need to be reminded of these facts, that whenever any form of government becomes destructive of these ends, it is the right of the people to alter it. "All experience hath shown, that mankind are more disposed to suffer, while evils are sufferable, than to right themselves by abolishing the forms to which they are accustomed. But when a long train of abuses and usurpations, pursuing invariably the same object, evinces a design to reduce them under absolute despotism, it is their right, it is their duty, to throw off such government, and to provide new guards for their future

security." Wow, that was written a long time ago but it still applies today. What is due process? Due process is fairness. Fairness is the idea of doing what is best. It may not be perfect, but it's the good and decent thing to do. It requires being levelheaded, uniform, and regular when all around you is prejudice. Fairness is difficult to put in the form of any strict legal rules and principles that cover every situation. But which is fairer: a system of rules so strict that even a few innocent people get unfairly punished, like the current ULL and the proposed LB463; or a system not so strict that even a few guilty people go unfairly unpunished? Due process of law holds that the second answer is more correct, for many reasons. On a practical level, there's less danger to the whole legal system. If your system is convicting a few innocent, chances are it's railroading many of the guilty. So you've got two problems on your hands; those who are falsely imprisoned and those who have stronger habeas corpus claim. If your system is letting a few guilty slip, chances are that those lucky evildoers might change their ways, or in any case, law enforcement or informal methods of social control can pick up the slack. However, on the more important theoretical level, it depends on what kind of system you want to have; one that just rolls over people indiscriminately or one that is individualized and takes into account the need for your society to expand freedom. The U.S. Constitution, as well as the Nebraska State Constitution, guarantees due process because it is designed to be a living document that expands freedom. Now I don't want this to be a tug of war between LB194 and LB463. As stated earlier, I'd like to change my shirt, make it yes to LB463. I had an epiphany Monday night at 3:00 in the morning. Got up, started typing. And here's what I came up with. Each one of those folders have your names on there. Now I have a proposal: merging LB194 into LB463. I have the exact constitutional violations that LB463 violates, not to be redundant. Pursuit of happiness. It also violates that no person shall be deprived of life, liberty, or property, which is our healthcare licenses property, without due process of the law. It violates trial by jury, as a gentleman earlier spoke up. That's why we need to be represented at the boards to defend ourselves. Right now, we're not allowed to do that. It provides for cruel and unusual punishment. There are severe punishments being...let me put it this way. Practitioners are being put on probation for years for minor violations. I went to a board meeting this last January and Dr. Schaefer talked about the role of probation. As far as putting people on probation, for example, alcohol abuse, drug abuse, to monitor them. How does putting people on probation, in which they lose all their rights to be an insurance provider, I mean, that's cruel and inhuman and it's a practice buster. And Van Neigen (phonetic) here in town, in Lincoln, is going through that right now and I really feel for the guy. Also, it violates the rights of accused to demand the nature and cause of accusation and to meet the witnesses against him face to face. And also proportionality of penalties is extremely being violated. Okay, now under here I've got...I'm not going to go into it because basically it's very simple. I basically have, some provisions need to be edited in LB463, some provisions need to be replaced, need to be restored. One of those is the letter of consent. Why? If you take that away, an individual has the option...they are forced to either admit they did something they didn't do and/or the Attorney General's office is going to force them into a plea that's unreasonable. A

letter of consent basically is in those instances where the matter is gray. Let's say I have an employee file a complaint against me. The board takes it up. They go, you know, what Dr. Adams did here, it doesn't match up with any violation of any rule or regulation but, you know what? We still would like for him not to do that. And that's what a letter of consent does. It says, hey Dr. Adams, the board has ruled and we don't want you to do this anymore. But more teeth need to be on that. And I've added that teeth by saying that now I or that person that the board is addressing, I need to provide proof that I have actually put into action what the board has demanded of me. Okay, therefore there's some teeth to it now. And also I had provisions that needed to be replaced on here, restored, and also added, too. For example, Senator Pahls talked about the one provision on page 13. There has been a real problem here, and even Dr. Schaefer admits it, of the boards in the arbitrary and capricious manner which they are dispensing punishment. Probation for a minor infraction, a letter of assurance for somebody...using a high-speed hand piece in which you can do harm (inaudible) assistant do something like that. Another thing, too, that added the department shall not adopt any rule or regulation without having some type of public hearing. Now there's one provision in here that is going to cause some controversy. And that is, I believe that to have some checks and balances...if a complaint is filed against anyone, they should receive notification of that complaint within 14 days. Now it gives the department, the Attorney General's office, and the boards 14 days to nail those guys, those real truly evildoers. But for those only guilty of minor violations, it gives us a benefit of the doubt that may be out of ignorance. It gives them a chance to rectify the situation. Let me bring up an analogy here. You're driving down the road and you're some salesman. You need your license to sell. You see a cop up there. Okay, aren't you going to slow down and make sure that you're following the speed limit. You've got your seat belt buckled, okay. Your tags are up to date, okay. It makes you go through your whole practice, your whole driving regiment to make sure you're following the rules and regulations. The current system doesn't do that. Okay, and therefore I'm proposing that what is in LB194 that I want to institute into LB463 will provide for better compliance with rules or regulations, okay, and it's going to benefit the public because of that. Okay, and it's (inaudible) 14 days will really go up for those people really doing harm to the public. And the other thing I know is a bone of contention with LB194--take it out--is the unanimous vote of the board. Take it out. Okay, people get hung up on that and therefore it's dismissing all the good in that bill. Now please, I'm not going to go in great detail regarding this. I've got it well spelled out as my 3:00 in the morning epiphany. Okay, even highlighted, I've got everything highlighted in here what exactly in reference to here. Therefore, I've done a lot of the work for you. So please, you know, we can achieve balance between protecting the public and seeing to the rights of individuals, which our country was based on. Okay, what I propose here will protect the public, I think, even more so. You know, and if you guys have any...please, any questions regarding this bill, please call me. Okay, and I thank you for your time. Any questions, please? [LB194]

SENATOR JOHNSON: Thank you. Any questions? Yes, Senator Pankonin. [LB194]

SENATOR PANKONIN: Thank you, Senator Johnson. Dr. Adams, I appreciate your passion, you coming today. Obviously just feel for your circumstances, what you went through. Don't know that much about the case so I'm not going to make a judgment on that but... [LB194]

TIMOTHY ADAMS: By the way, I was vindicated. (Laugh) [LB194]

SENATOR PANKONIN: Well, that's good, and it was nice of you to come. I think the thing I appreciate the most in going through your packet, I know it's going to take a lot more time to do it, was this letter from David Hull, a dentist in Fremont. I thought that was an interesting letter, wanted to make sure everybody at the bottom of the packet found that. [LB194]

TIMOTHY ADAMS: And if I could compliment that lady right there. She was the only person in the entire complaint process that offered me any civility and respect and saw the logical argument. The rest, there was an agenda. And they used the ULL and now the proposed UCA to abuse the process and the power unjustifiably upon somebody to make an example. And I commend her greatly. And in the dismissal, she said, with prejudice, because she saw right through what was going on here. But, ladies and gentlemen, I'm not alone. The stories that I've heard have motivated me to be here today, not because of me; the stories I've heard. And it's shocking, some are worse than mine. Please, please do right, don't be afraid to do right. My mom told me once, and I've been alone a lot of this time doing this process, to never in your life be afraid to do what is right even if you have to do it alone. Thank you. [LB194]

SENATOR JOHNSON: (Exhibits 6 and 8) Any other questions? I see none. How many proponents do we have? Proponents? I see none other. Opponents, how many do we have? Four or five. Let's go ahead with the opponent testimony then. While you're passing those out, and I'll try not to duplicate things here, a letter of opposition from the Nebraska Board of Nursing, a letter of opposition from the Nebraska Heath Care Association, letter of opposition to LB194. Why don't you go ahead while I'm sorting through these a little bit more. That's enough for now. Go ahead, please. [LB194]

JOANN SCHAEFER: (Exhibit 2) Okay. Good evening, Senator Johnson and members of the Health and Human Services Committee. My name is Joann Schaefer, S-c-h-a-e-f-e-r, M.D., director of the Department of Regulation and Licensure and chief medical officer. I'm here to testify in opposition to LB194. The primary reason that the state regulates healthcare professions is to protect the public. As the law states in Section 71-112.03: The purpose of each professional board is to: (1) Provide for the health, safety, and welfare of the citizens; (2) insure that licensees or certificate holders serving the public meet minimum standards of proficiency and competency; and (3) control the profession in the interest of consumer protection. The practice of any

profession is a privilege; it is not a right. I do agree that every licensed professional should be afforded basic due process, but the current disciplinary process found in the Uniform License Law and reaffirmed in the proposed Uniformed Credentialing Act, LB463, does that. On the other hand, LB194 changes the focus to put the interest of the licensee before the interest of the public. The most disturbing aspect of the bill is the reversal of the process which has been in effect for over 20 years and was changed in response by the very perception that boards were protecting members of their professions from valid complaints. The proposed changes in LB194 that require unanimous agreement by the members of the professional board before various aspects of the disciplinary process may proceed represent just the kind of things that can be abused for the benefit of an unprofessional licensee. Unanimous consent can slow the process, which appears to be contrary to other aspects of LB194, specifically Section 6 and two provisions in Section 8, which look to speed up the process, again, simply to benefit the licensee. Additionally, the places in the disciplinary process where LB194 adds the requirement for unanimous agreement of the professional before action may be taken or which prematurely terminate an investigation involve the boards in the aspects of the disciplinary process where they are now not involved. These changes significantly alter the current process. Currently, the professional boards' expertise is used in the investigative part of the process. In Section 3, a temporary suspension would not take effect without unanimous approval. Other areas that would be affected and be required to have unanimous approval are in Section 4, the discipline that could not be initiated without unanimous approval. The Attorney General would not be able to file a petition without it. The director could not enter an order of discipline without it. An agreed settlement could not be negotiated or approved without it. And a complaint could not be reviewed by the department to determine whether it should be investigated without a unanimous approval, even though other changes in Section 8 would require the department to notify the licensee of receipt of the complaint within 14 days; but again, only with the unanimous approval of the professional board. In Section 10, the director could not impose discipline under the Cosmetology Practice Act without the unanimous approval of the Board of Cosmetology as well. The requirement of the unanimous approval by the professional board--and I appreciate the comments, the willingness to strike this, but for the record I must continue--in conjunction with the short time frames would place the terrific burden on the individuals who serve on these boards. The majority of the boards meet quarterly. The requirement for approval of these boards before a petition can be filed essentially gives the boards veto power over the Attorney General, contrary to current law. Providing for the involvement of the boards and the approving an imposition of discipline and approval on the agreed settlements involves them then in both the investigation and decision making aspects of the disciplinary process, raising serious concerns over the possible violation of due process. The changes in this bill also place hurdles in the path of investigators. The requirement proposed in Section 8 that the identity of all complainants be made known to the professional will lead to fewer complaints being made. The current law allows people to file complaints and to remain unnamed if proof of the violations can be made

in some other way. It is critical that individuals continue to be allowed to file complaints without being identified, because this is a valuable source of information, especially about impaired licensees. Impairment from the use of narcotics and alcohol is a serious problem in health professions and it puts the public at great risk. Oftentimes, people close to the errant licensee want to have the licensee face up to the problem but do not want that person to know that they were the ones who reported them. We do not want to put anything in the way of the interventions in those cases. Fear of retaliation of any sort should not keep people from initiating a confidential complaint. It is very important to recognize that there is a protection for the licensee. While the individual can confidentially or anonymously complain, that complaint and all complaints and any investigation are kept highly confidential unless and until a petition is filed by the Attorney General. And in fact, a violation of that confidentiality is a crime. The ability of the individual to file a complaint and to not have their name released must remain. The provision in Section 8 would require the dismissal of complaints after a very short time frame also serves no valid purpose. Specific time frames should not be put into statute. The hepatitis C cases in Nebraska related to a physician's poor infection control practices at a Fremont oncology clinic are examples of why this would not protect the public. A person with hepatitis C can be asymptomatic for years. The law which currently requires the department to consider whether the complaint is timely protects both the licensee and the public. Removing the provision in the law that allows the department to decide not to notify a licensee before an investigation also takes away an important investigative tool. If a drug-diverting practitioner is informed that the investigators are on their way, this will provide them with the opportunity to tamper with the records before they arrive. Section 8 also requires complaints, whether valid or not, be dismissed simply because the board and the department disagree on whether additional investigation needs to occur. What possible basis could support that requirement, except simply placing unreasonable hurdles in the path of public protection? The provisions of LB194 would also significantly increase cost. The additional involvement of the boards as noted above, in addition to imposing much more work on them, would also increase cost. Not allowing the use of hearing officers, as provided for in Section 6, would also significantly increase the cost because the chief medical officer would be doing nothing other than hearing cases and the other functions of the office would have to be provided by another individual. The same effect would occur, but possibly not to the same extent, if every decision had to be handed down in 60 days as also required in Section 6. In the very first change suggested in LB194, the giving of notice above and beyond that already required by Administrative Procedure Act to every credentialed person about the change to a regulation to which that they may be subject will increase costs. And it's simply not cost-effective. The department's use of the Internet and its web site already provide extra notice, including notice to associations of these changes. Generally, LB194 proposes changes to a process that currently provides due process to every licensee, protects their confidentiality and rights, yet also affords protections to the public, to the individuals who may be wronged by a licensee. The process has been reviewed very recently by hundreds of licensees,

by professional associations, by members of the public, by the Attorney General, and has been found an excellent process, which presumes the licensee is innocent and requires the state to prove any allegations by clear and convincing evidence. There is simply no reason to give up that protection to the public, to undermine the authority of the Attorney General, to increase cost, all to benefit the licensee over the protection of the public. I enclosed with your testimony a current brief, not to be 100 percent inclusive of the process because there are many more details than that. But it gives you a basic overview of the division of power and the division of where the decisions are made along the process. Happy to answer any of your questions. [LB194]

SENATOR JOHNSON: Senator Pankonin. [LB194]

SENATOR PANKONIN: Senator Erdman actually had his hand up first. [LB194]

SENATOR JOHNSON: But it was his left hand [LB194]

SENATOR PANKONIN: Oh, it was his left hand. (Laughter) [LB194]

SENATOR HANSEN: While they're arguing, I have a question. (Laughter) [LB194]

SENATOR PANKONIN: I guess I'll go ahead. Thank you, Senator Johnson. Hearing what we've heard with this testimony and some of the written things that maybe you haven't even...have you seen this red packet that Mr. Adams handed out? [LB194]

JOANN SCHAEFER: No. [LB194]

SENATOR PANKONIN: There was a letter from a gentleman, a dentist in Fremont that is quite a bit more than maybe this other testimony. But what this gentleman went through and the changes that we've made, and you've talked to him, you've had personal conferences with him. Do you think the new system would have been a better situation for him? [LB194]

JOANN SCHAEFER: Actually, his case is a matter of public record. He brought it up and I appreciate the compliments that he gave me. But the fact that his case was dismissed with prejudice is proof that the system worked. The state failed to prove clear and convincing evidence. So there was no case and I dismissed it. And that is due process. [LB194]

SENATOR PANKONIN: And that's true, but it probably was devastating financial and stress and all these things. So is there, from that experience, is there something in LB463 that's better or it's the same? You know, I guess I don't want to have a... [LB194]

JOANN SCHAEFER: Right. [LB194]

SENATOR PANKONIN: ...chilling effect on professionals that don't want to practice here. I'm going to give you this letter... [LB194]

JOANN SCHAEFER: Sure. [LB194]

SENATOR PANKONIN: ...about this gentleman in Fremont because it's, to me it was more important to me. So I guess I'm just concerned that, I mean, I think he had, you know, if he had proven innocent but you lose your practice and reputation and go through all that. You know, where's the middle ground here that... [LB194]

JOANN SCHAEFER: I think that it's important to take the context of the case when you consider this and put it in the context of the number of cases that we deal with. There's no doubt that there are issues that can be administratively addressed within the department from time to time. And I'm certainly willing to continue to work on those within the...I believe very strongly that the department has done a very good job in trying to weed through very complex issues. There are no large changes to the disciplinary process in the ULL that is presented before you today, other than the ones that I briefly mentioned. The ones that are mentioned in LB194 go well beyond the scope of what we were looking at for changing. Be happy to work on that. [LB194]

SENATOR PANKONIN: Yeah, and getting back to LB194, I'm not saying that's the answer. My question is, is there a few things or, from what we've heard today--and there's another pile of material here and I'd like to have you read this one--but is there some things we can do to improve at this late date, after there's been all these years, all these hours spent in here, is this something that you think needs to be reopened at all? [LB194]

JOANN SCHAEFER: I'm happy to look at anything that the committee would like us to look at. Based, you know, I have not read that information that you've received. I have not received that information. I think the process, as it is today, works well. I think, you know, the timing issues that were there, and I'm speaking on a case that was started long before I came into the department... [LB194]

SENATOR PANKONIN: I understand that. [LB194]

JOANN SCHAEFER: ...so it's a little bit frustrating for me. We have set in new guidelines for the timing of cases and investigations and quality assurance processes and investigative training and all sorts of other issues to be addressed. I've worked with the boards. And I'd like to correct a statement that was made about my having said that the boards are overly harsh in one area and not another. That's not true. My statement was that when I'm getting the cases from each board, many times I, sitting from a different perspective, I'm seeing what all the boards are doing. So one board may be

very consistent in the way they handle alcohol abuse and they don't see, they deal with it in that way. But this board over here deals with it in a very different way. And my job is to work with all the boards so that there's some level of consistency between them. And those are not things that you can put into law because science changes, recommendations change, how you deal with a recovering practitioner. And those are the overwhelming majority of the cases that we are dealing with, are the impaired practitioner. [LB194]

SENATOR JOHNSON: Yes, Senator Erdman. [LB194]

SENATOR ERDMAN: Dr. Schaefer, isn't it fun to inherit other people's problems? (Laughter) [LB194]

JOANN SCHAEFER: I'm not placing blame on anyone. [LB194]

SENATOR ERDMAN: No, I'm just saying that... [LB194]

JOANN SCHAEFER: I mean, it's a complex issue. (Laugh) [LB194]

SENATOR ERDMAN: I'm not placing blame on the former state senators that served before me, but I'm 29 years old and had to address Medicaid and other issues. I wouldn't have had to do it either. But we've all inherited things, not because of incompetence, but because of lack of will or lack of information or whatever it is. I am interested, I guess, in the process. And as I read some of Dr. Adams', his epiphanies he called it, he had pointed out in there some of the changes that you're recommending, some of the things that you're putting in place. And I think from his standpoint he recognizes that efforts are being made and I think that's providing him some comfort, I would hope. My questions are, you have the whistle blower option, I guess, is probably the example that you use, anonymous. We've got this person that's violating the law or using alcohol or something that needs to be addressed. You obviously need the ability as a department to be able to investigate those individuals. And the example you gave about an individual being able to move the drugs or other things that would prevent the investigator from actually catching them or from tampering with records. When your investigators arrive on a facility and confront a licensed practitioner, are they informed at that point what they're being investigated for? I mean, once you have arrived, is there a time line? I guess, is that some of the things you're looking at? Because if someone comes to my house with a search warrant, they're going to state in the warrant what they're searching for. And so I'm trying to... [LB194]

JOANN SCHAEFER: Right. [LB194]

SENATOR ERDMAN: ...draw the parallel with my understanding of the law, being a nonattorney, how this process is different. And then the last question that I would have

is, are you the judge in the case? In other words, are you the one who has to make the decision, and your flow chart kind of directs that way. But it seems to be a pretty lengthy process to get to you, where a certain individual, like Mr. Adams, is vindicated. [LB194]

JOANN SCHAEFER: Okay, you might need to refresh me on some of those lengthy questions. [LB194]

SENATOR ERDMAN: The first one is, when are they notified, if at all, of the charges that are against them or the complaints that have been filed? And then the second is what your role specifically is in making the final determination based on... [LB194]

JOANN SCHAEFER: Okay. They're notified of the complaint after the Attorney General has made, filed the petition. So they're aware of that information that is coming from. Your question about the search warrant issue and whether or not, I believe that is in reference to whether or not we can put down in the subpoena for search and going into a property, whether or not we can list everything there. That has always been left, that is not something that we have recommended at this time and it's not something that we believe is a good process because many times you don't know all of the things that you're going to get into when you get there and it may lead you down the trail of a correct investigation. And this is not too far out of due process. And the Attorney General's office is here and can answer some of the more technical legal questions regarding that. But that would not be unlike a search warrant. And I've given the example of search warrant, you arrive on the scene and you have to, you find other things such as a dead body. You have to obviously look at that even though your search warrant didn't say you were looking for that. [LB194]

SENATOR ERDMAN: Sure, right. [LB194]

JOANN SCHAEFER: And so it's not possible to say I'm going in just to look. [LB194]

SENATOR ERDMAN: And I guess maybe that's not, maybe I've not posed the question correctly. [LB194]

JOANN SCHAEFER: Okay. [LB194]

SENATOR ERDMAN: And I'm not interested in, you know, I recognize that in the process of completing the investigation, you have to have a certain level of autonomy to make sure that... [LB194]

JOANN SCHAEFER: Sure. [LB194]

SENATOR ERDMAN: ...the investigation will be successful to find the facts. And then those facts can be presented in a case. And then at that point then, once the Attorney

General's office determines that there is a case there after they've completed their investigation, they've filed their petition. Is that the point in which...you know... [LB194]

JOANN SCHAEFER: They are aware of what... [LB194]

SENATOR ERDMAN: ...I don't want to get into the details of you put into subpoenas and search warrants. I mean, that's, I guess, not my question. [LB194]

JOANN SCHAEFER: Right. [LB194]

SENATOR ERDMAN: But so it's at that point then that the individual is aware of what the complaint is based on the grounds that the Attorney General has... [LB194]

JOANN SCHAEFER: Yes. [LB194]

SENATOR ERDMAN: ...to bring forward a case against them. They go before the board that credentials them. They're not allowed to be present at the hearing, as I understand the testimony, which may or may not be true. I'm just trying to sort all this out. I know it's late at night. [LB194]

JOANN SCHAEFER: Sure. [LB194]

SENATOR ERDMAN: And logically, the best time to have this conversation is probably at a different date. But I guess I just...I'm frustrated because I do believe most of the folks are probably receiving a fair process. I will tell you, based on what I've seen from your work in the last 18 months, that it appears that your approach is to try to do the right thing. And you know, the example that Dr. Adams gave was to do the right thing even if you're only one. Those bills this afternoon from the dentists is a prime example of that, where you step back and said this was wrong, we're going to do the right thing, we're going to make it true and we're going to stand up and say why. And I understand that you're in that process. And I just need more information. This probably isn't the right time. There are others that want to testify. But I have some great concerns to hear this testimony. I want to make sure that there are processes in place to protect or to preserve the rights of folks so that they're not unfairly penalized in the process. [LB194]

JOANN SCHAEFER: Absolutely. And however you'd like me to do it, and it's getting late and I really don't know where you'd like me to proceed from here. [LB194]

SENATOR ERDMAN: We can visit at a later date. [LB194]

JOANN SCHAEFER: Because we...it is fairly complex but the system, as you walk through it, guarantees the due process and the rights along the way. [LB194]

SENATOR JOHNSON: Senator Hansen. [LB194]

SENATOR HANSEN: Senator Pankonin has... [LB194]

SENATOR PANKONIN: No, I just have a question for Senator Johnson. [LB194]

SENATOR JOHNSON: Yes, sir. [LB194]

SENATOR PANKONIN: I'm going to have to leave pretty soon and it's late. And I think this is an important issue and I don't know how procedurally it works. We've got people that drove a long ways, we may need to hear them. [LB194]

JOANN SCHAEFER: We have a couple more folks. [LB194]

SENATOR PANKONIN: But, and I don't know if we can (inaudible) continuation or whatever, but I think there's some... [LB194]

SENATOR JOHNSON: I think Jeff and I will be here until we're done at least. And so if you have to go, we understand that. Any other questions of Dr. Schaefer? Thank you. Any others? [LB194]

LINDA LAZURE: (Exhibit 3) Well, I would have said good afternoon, but good evening. I'm Dr. Linda Lazure. I am the chair of the Board of Health. And I do have a one-page testimony but I'm going to hit three points. You know how important the Nebraska Board of Health unanimous agreement to oppose or support a bill and we are opposing this bill. Three points. The change in the authority proposed to increase the professional boards' involvement in the discipline process would literally tie the hands of the Attorney General's office and the Regulation Licensure Division, as you have heard. In addition, LB194 takes away the anonymity of complainants. Taking away this anonymity flies in the face of whistle blower legislation which has shown to enhance public interests and public protection. Preservation of anonymous complaints, even while distressing--and I empathize with what we have heard this afternoon--but it must be preserved. Number three, the requirement to, prior to adopting any new rule and regulation and prior to amending any rule or regulation under the Uniform Licensure Law, that the department must notify each credentialed health professional of the proposed changes would be costly and inefficient, would not enhance public protection. So therefore, the State Board of Health believes that the extreme changes to the health professional disciplinary process identified in LB194 is not in the best interest and would urge you not to advance the bill. [LB194]

SENATOR JOHNSON: Thank you. Any questions? I have additional letters opposed to LB194 from the Nebraska Board of Nursing and from the office of the Attorney General. Any opponents? [LB194]

TERRI NUTZMAN: (Exhibit 4) You do have the letter from the Attorney General opposing LB194, so I'll submit it on that. And then if you have any questions, you know, I'd sure be glad to answer... [LB194]

SENATOR JOHNSON: Better identify yourself so they know who's talking. [LB194]

TERRI NUTZMAN: Oh, I'm sorry. Terri Nutzman, N-u-t-z-m-a-n, assistant attorney general. [LB194]

SENATOR JOHNSON: Thank you. Any questions? See none, thank you very much. Anyone else? [LB194]

CHARLES PALLESEN: Charles Pallesen, P-a-l-l-e-s-e-n, representing Nebraska Medical Association in opposition to the bill. Let me just say just a couple of comments. It's never a pleasant experience for the healthcare provider or any other licensee to have an investigator come and ask them about their paperwork or their conduct. I've sit in on a number of those investigations on behalf of the healthcare provider. But I've never found that those investigators have poor manners. And if they do, maybe should be talking to them about it. But they do have a job to do and it isn't easy to serve a subpoena and have somebody happy about it. My concern is, as far as Dr. Adams is concerned, I don't know his case. He probably had a good reason to leave but he could have learned something if he had stayed. This is a difficult position, it's an adversarial position. And the states versus the healthcare practitioner or the licensee and we have due process that brings it to a conclusion. I think the chief medical officer's testimony with respect to this case shows that, she said there is due process. He won. Thank you. [LB194]

SENATOR JOHNSON: One second, Mr. Pallesen. I want to pay you a compliment. (Laughter) When you testified earlier, I thought that you had some suggestions that were worth our consideration. And I guess I would entertain a letter from you regarding that. [LB194]

CHARLES PALLESEN: I certainly will do that. [LB194]

SENATOR JOHNSON: I thought that they had some merit. [LB194]

CHARLES PALLESEN: Thank you very much, Senator Johnson. [LB194]

SENATOR JOHNSON: So thank you. [LB194]

CHARLES PALLESEN: Any other questions? You all stayed with us and we stayed with you. (Laughter) [LB194]

SENATOR JOHNSON: Thank you very much. [LB194]

LARRY RUTH: Senator Johnson, my name is Larry Ruth, R-u-t-h, representing the Nebraska Dental Association today in opposition. The provisions requiring unanimity for board action could lead to inaction by the board concerned. For that and other reasons, the NDA opposes the bill. [LB194]

SENATOR JOHNSON: Any questions? Thank you. And I don't think I gave this opposition before from the Nebraska Nurses Association, but here is a letter in opposition to LB194 from that group. Any others? Neutral? Well, let me say this. It's been a long day but I felt a good day when it was all done. And I think our committee members here are...can't give them applause, but they've done very well, too. Thank you very much for coming. (See also: Exhibit 7) [LB194]

Disposition of Bills:

LB144 - Advanced to General File, as amended.
LB194 - Held in committee.
LB427 - Advanced to General File, as amended.
LB463 - Advanced to General File, as amended.
LB538 - Indefinitely postponed.

Chairperson

Committee Clerk