[LB1022 LB1104 LB1124]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 22, 2008, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB1124, LB1022, and LB1104. Senators present: Tim Gay, Vice Chairperson; Philip Erdman; Tom Hansen; Gwen Howard; Dave Pankonin; and Arnie Stuthman. Senators absent: Joel Johnson, Chairman. []

SENATOR GAY: All right. We'll get started with the Health and Human Services Committee meeting. I'll identify members of the committee: Senator Howard; Senator Tom Hansen; Senator Arnie Stuthman; our clerk Erin Mack; I'm Tim Gay; our legal counsel Jeff Santema; and Senator Phil Erdman; Senator Dave Pankonin is here and will be joining us in a few minutes. Senator Johnson will be absent. He may come a little later, but right now he's absent and will be back a little later. We have three bills. What I'd like to ask is sometimes these get very lengthy and we'd ask if you could not be too repetitive in testimony. We want to hear what you have to say, but sometimes as it gets late, the people behind you don't get as much attention possibly as the people in front of you. So be cognizant that there three hearings today and everyone deserves the same time and attention from the committee members. I'd ask that you shut off any cell phones, which me included. But if you could shut off any cell phones, that would be helpful. And we'll get started. The first bill we have is LB1124. Senator Engel, thanks for joining us. []

SENATOR ENGEL: Thank you, Senator Gay and members of the committee. I'm very happy to be here. I like the new scenery (laugh) from our committee. But anyhow, Senator John...or Senator Gay rather and members of the Health and Human Service Committee, my name is Senator Pat Engel, that's spelled E-n-g-e-l. And I represent the 17th District and am here today to introduce LB1124. And the purpose of LB1124 is to develop a process to ensure that mobile homes are safe to occupy. Currently, the Department of Health and Human Services only has the authority to inspect how the utilities hook to the individual mobile homes as part of the license renewal process for the mobile home park. HHS does not have authority to inspect the interior or exterior of an individual home, and LB1124 would authorize HHS to contract with the Public Service Commission to inspect any mobile home in a mobile home park for compliance with minimum health and safety standards. Cities, villages, and counties that have a certificate of exemption from the Uniform Standard Code for Mobile Home Parks as they provide their own regulation of mobile home parks, which are no less stringent than the state standards, by the way. They may also contract with the Public Service Commission for inspection of individual mobile homes. HHS was advised from the Public Service Commission shall adopt rules and regs pertaining to the minimum health and safety requirements for individual mobile homes in a mobile home park. The intent behind the bill is to inspect the mobile homes that are in the worst condition. A fee that covers the actual cost of the inspection shall be paid by the licensee of the mobile home

park, but may be recovered from the owner of the mobile home that is inspected. If upon inspection the mobile home fails to meet minimum health and safety standards, the Public Service Commission shall supply a notice of the efficiencies to the owner of the mobile home, the licensee of the mobile home park, and the Department of Health and Human Services. HHS shall then notify the owner of the mobile home that they have 90 days to correct the deficiencies or remove the home from the mobile home park or be subject to a condemnation order. Likewise, if the owner or the tenet of the mobile home refuses to allow the Public Service Commission to conduct the inspection within 30 days of being notified of the request, the mobile home shall be subject to a condemnation order. The bill also puts a condemnation process in place similar to the one in current statute pertaining to the authority of the State Fire Marshal. Currently, HHS may deny the issuance of a license to a mobile home park owner if not in compliance with the Uniform Standard Code for Mobile Home Parks. And if the owner fails to comply with the provisions of LB1124, it would also constitute grounds for denial of a license. In January of 2007, I met with Cecilia Huerta, the executive director of the Mexican American Commission, and we discussed the recent closure of a mobile home park and the associated problems that went with it. That happened to be in my area, South Sioux City, Nebraska, so I'm very familiar with it. The concern focused on the condition of some mobile homes in that they are not really fit to live in, and this led to a meeting in October with my office: the Mexican American Commission, the U.S. Department of Housing and Urban Development, the Public Service Commission, the Department of Health and Human Services, the Department of Motor Vehicles, the Equal Opportunity Commission, and the city of Lincoln. Several meetings have been held since that time leading up to the introduction of this bill, LB1124. Now, LB1124 is meant to start the discussion of minimum health and safety standards for mobile homes. This issue becomes more complicated as there is no one agency that has broad authority over individual mobile homes in a mobile home park. And since HHS does license a mobile home park, unless the city or county is exempted, it seems reasonable to make them the responsible party. However, since the Public Service Commission develops the standards for mobile homes when manufactured, it was decided that they should do the inspections through a contract with HHS. So before I close, I want to point out that many mobile home park owners do a great job of keeping the park and the individual homes in good condition, and this legislation is not aimed at them. Unfortunately, there are a few parks where health and safety issues are a real, real concern. And I realize that this legislation may force some people from their homes as it may not be feasible to fix the deficiencies. But to do nothing and read about a fire destroying the home and taking a life is much far worse. I ask that you consider LB1124 to determine if this is a reasonable first step in addressing this problem, the problem of mobile homes that are not fit for habitation. So with that, I'd entertain any questions you might have and I'll try to answer them. [LB1124]

SENATOR GAY: Thank you, Senator. Any questions for Senator Engel? Senator Erdman. [LB1124]

SENATOR ERDMAN: Senator Engel, what is the process or currently who is exempt under 71-4630? It seems like every other section is in this bill, but that one's not referenced. Why is... [LB1124]

SENATOR ENGEL: Oh, it's the cities and counties and I think that's in...someone behind me can answer, but that's in statute somewhere. But they are exempt from... [LB1124]

SENATOR ERDMAN: Okay. And the condemnation proceedings...I'm aware, either because of the proximity to my residence or other similar properties in my community that cities have certain authorities currently to condemn or to address the occupancy of properties. Do they not have that ability now because wouldn't there be or couldn't there be a potential where you'd have two separate entities having similar authorities? Or is the language in this bill based upon some of those similar practices that are currently available? [LB1124]

SENATOR ENGEL: I believe it's what district your last remark there is, and I think it's in statute of what the authority of the cities and counties is as far as what they can and can't do. But they do have the...maybe Mayor Gay would have a... [LB1124]

SENATOR GAY: I don't know. I don't know, but I had a question. [LB1124]

SENATOR ERDMAN: Were you mayor? [LB1124]

SENATOR ENGEL: He used to be, weren't you? [LB1124]

SENATOR GAY: No, county commissioner. (Laugh) So we didn't know as much as the mayor, that's for sure. [LB1124]

SENATOR ENGEL: But I do have some people behind me that can answer any of those types of questions. But there was a situation in South Sioux City that the city, I mean, with their authority that they did have, it took them a great deal of time to finally take care of a very hazardous condition because of the owner of that particular park. And those homes, the Humane Society wouldn't let the animals live in them. [LB1124]

SENATOR GAY: Senator, on...this won't be a question for you, but maybe someone behind you can cover. But if they...I always wondered, on a local health boards that are out there, if a mobile home is in a county which doesn't have a lot of jurisdictions, why aren't they involved in this process or maybe they could be to go ask for these inspections to? Because always the local health boards that were created...some of the task...not just this issue, but I've seen other issues where I thought they would be a good vehicle on some of these issues that come. [LB1124]

SENATOR ENGEL: It might be a vehicle that might happen in the future. But as now, it's the department of health who are the only ones who have that authority now to inspect. But that's just the park itself and not the individual homes. [LB1124]

SENATOR GAY: But they'd have a better look at it on a local level is what I'm saying. [LB1124]

SENATOR ENGEL: Yeah. Right, and so that's something that they might... [LB1124]

SENATOR GAY: So something going on in your area may be different than mine and they could... [LB1124]

SENATOR ENGEL: And they might be able to coordinate with the local. [LB1124]

SENATOR GAY: Yeah. Coordination. [LB1124]

SENATOR ENGEL: And that would be something, you know, you can always tweak things as you go. [LB1124]

SENATOR GAY: Exactly. [LB1124]

SENATOR ENGEL: But that's not in the bill. [LB1124]

SENATOR GAY: Okay. Any other questions? I don't see any. Are you going to stick around, do you think? [LB1124]

SENATOR ENGEL: Okay. With that, like I say, I do have...and there is someone here from the Department of Health. They aren't planning on testifying, but they're here to answer any specific questions you might have, and then we have others are testifying. [LB1124]

SENATOR GAY: All right. Are you going to stay around to close do you think or just play it by ear? [LB1124]

SENATOR ENGEL: I think I'll probably stick around to close. [LB1124]

SENATOR GAY: Okay. All right. [LB1124]

SENATOR ENGEL: Thank you very much and it's been a pleasure being here today. Thank you. [LB1124]

SENATOR GAY: Thank you, Senator. Other proponents? [LB1124]

CECILIA OLIVAREZ HUERTA: (Exhibit 1) Good afternoon, Senator Gay and members of the committee. My name is Cecilia Olivarez Huerta, and that's C-e-c-i-l-i-a O-l-i-v-a-r-e-z H-u-e-r-t-a, and I'm executive director of the Mexican American Commission. I appreciate Senator Engel's comments because a lot of what the information that he gave you is what I plan to give you. So my comments will be short, taking your advice. It says that I am here to support LB1124 and want to thank Senator Engel and his staff, along with the other agencies for working with the Mexican American Commission. The Mexican American Commission for many years, and specifically since the influx of Hispanics into the state of Nebraska in the early 1990s, has been concerned with health and safety issues surrounding mobile homes. A good number of mobile homes that are located in parks across the state are pre-1976 and in inhabitable conditions. Major concerns have arisen in South Sioux City, Omaha, Lincoln, Norfolk, Lexington, and Scottsbluff, just to name a few. Fires in some of the mobile homes have resulted in loss of life, as well as personal valuables. And as an example, in July 2006 in Norfolk, there was a Hispanic mother and her four children who died in the fire. The father survived that and spent many months in the hospital and was severely traumatized. In researching the issue...and the copy that you have was taken from the research information that we did, and we gave all of you a copy of this last year. But we found responsibility for mobile homes falls to many agencies. Much confusion exists as to which agency governs certain aspects of mobile homes or manufactured homes as to what action can be taken if a problem should arise. Records on mobile homes, which were first collected in the 1970s, are limited. Inspections on mobile homes and manufactured homes are limited past the initial inspection during construction. LB1124 places the authority of establishing health and safety standards with the Department of Health and Human Services and as explained by Senator Engel...that I won't go in to that. So in closing, I would just like to ask that you consider the health and safety of individuals in these dwellings and that you support LB1124. And thank you very much. [LB1124]

SENATOR GAY: Thank you. Any questions from the committee? Senator Erdman. [LB1124]

SENATOR ERDMAN: Cecilia... [LB1124]

CECILIA OLIVAREZ HUERTA: Yes, sir. [LB1124]

SENATOR ERDMAN: ...there's a situation where it could either be the home is owned by the occupants or the home is owned by the individuals--I don't know if it's the technical term, but in the trailer park. [LB1124]

CECILIA OLIVAREZ HUERTA: Right. [LB1124]

SENATOR ERDMAN: Technically, don't the owners or the occupants...whether they're the owner or not, obviously if they're the owner they have more responsibility, but if you're a tenant in a home, don't you have rights under the law? Is there two issues here? Is there the issue of the condition and the quality of the home, as well as the lack of understanding of their ability to have some of those issues remedied? [LB1124]

CECILIA OLIVAREZ HUERTA: Right. [LB1124]

SENATOR ERDMAN: Because it sounds to me like we're addressing one side of it, which is the standard, which is logical. But even if there is existing law that they need to be aware of, is there anything being done to inform them of their rights under the... [LB1124]

CECILIA OLIVAREZ HUERTA: Yes. One of the issues that we talked about is as this comes about is that we also need to follow up with an educational process information that will go to the tenants and to the park owners so that they can pass it out. The NEOC, I think, is here and they plan to talk about some of that also. [LB1124]

SENATOR ERDMAN: Okay. Thank you. [LB1124]

CECILIA OLIVAREZ HUERTA: Thank you. Any other questions? [LB1124]

SENATOR GAY: Any other questions? I don't see any. [LB1124]

CECILIA OLIVAREZ HUERTA: Thank you so much. [LB1124]

SENATOR GAY: Thank you. Other proponents? [LB1124]

JUDI GAIASHKIBOS: Good afternoon, Senator Gay and members of the committee. My name is Judi gaiashkibos, and that is spelled J-u-d-i g-a-i-a-s-h-k-i-b-o-s, and I am the executive director of the Nebraska Commission on Indian Affairs. And I am an enrolled member of the Ponca Tribe of Nebraska, and I am first generation to live off reservation and I grew up in Norfolk, Nebraska. And I am here today to thank Senator Engel for introducing this much needed legislation, and to support and encourage the committee to take action on this and move it to the floor because I do believe that there is a real need to have better regulation of these trailers that I believe are exploiting some of the more vulnerable people in our state. And I really don't have a whole lot more to say than that, that I would encourage you to give this bill good consideration because I think sometimes people don't understand the laws of process and they are taken advantage of. And so that I believe is our duty to advocate and to represent those who are trying to change their lives and empower their family and home ownership. And living in a home, your home is your place of sanctity where you should be provided safety. And so I would encourage you to give all of the people that are trying to raise families in

Nebraska, whether they're native, Hispanics, whomever, that don't always have the means to live in their own home owned, and so they're at the mercy of whoever will rent to them. And sometimes, as you've heard testimony, in Chadron, Nebraska, we have a lot of native people coming from the Pine Ridge Reservation and we've had a lot of complaints about homes there that have been deplorable. So I didn't live in a trailer, but I lived in some very sad housing in Norfolk when my mother moved to Norfolk. At that time, there weren't any landlords that would rent to Indian people, only an African American man name Henry Jones (phonetic). And so I grew up in Norfolk down on Verges Avenue and it was an area that was called "Squaw Valley" by the local citizens. And Henry Jones (phonetic) was a salvage junkyard owner and he had shacks. And so until I was 10 years old, I live with 13 people in a 3-room house without indoor plumbing. And so I can speak to knowing what it's like to live, not in a trailer, but in unsafe housing. So with that, I would close and thank Senator Engel again for introducing this. And along with everyone else that's testifying, hope you will move this forward. [LB1124]

SENATOR GAY: Okay. Thank you. Any questions? Senator Stuthman. [LB1124]

SENATOR STUTHMAN: Thank you, Senator Gay. Judi, in the majority of the mobile home parks, are those mobile homes rented to the people or are there some people own their individual mobile home? [LB1124]

JUDI GAIASHKIBOSH: I would suppose there are both. But I think with the people that we're concerned with, we're concerned with the safety of all people that are very financially in need, whether they're white, whether they're Indian, African American, Asian. They probably can't afford to own their own home, so they're renting. I would guess most of them are. So I think that's the answer to your question. [LB1124]

SENATOR STUTHMAN: Yes. Yes, that does answer that. The concern that I have is, you know, with this bill it would create something that, you know, inspects these homes to see whether they are fit to live in. [LB1124]

JUDI GAIASHKIBOSH: Um-hum. [LB1124]

SENATOR STUTHMAN: And the issue between the fact of some people owning their own homes, you know, would we have the right to go into their own home and tell them that it's bad and it could cause fire for the next home that is rented and endanger you. I mean, that's the concern that I have. [LB1124]

JUDI GAIASHKIBOS: I think that I would be supportive if it's owned as well because if it's not, then the children...and children are often at the mercy of their parents. So I am for protecting the children and the next generation. And if it needs to include that, I would support that. [LB1124]

SENATOR STUTHMAN: Okay. Thank you, Judi. [LB1124]

JUDI GAIASHKIBOS: Um-hum. You're welcome. Any other questions? [LB1124]

SENATOR GAY: No. Thank you. Other proponents who'd like to speak on LB1124? Any opponents that would like to speak on LB1124? Anybody neutral that would like to...okay. Senator, you want to close? [LB1124]

SENATOR ENGEL: I thought there might be some more proponents here. But if you do have questions, there's a person from Health and Human Services, I could call her up if you would like to hear from her or are you...questions been answered? [LB1124]

SENATOR ERDMAN: We'll get them. [LB1124]

SENATOR GAY: I think we'll find that out. Yeah, Senator. [LB1124]

SENATOR ENGEL: You'll get them outside. I understand that. It's Friday afternoon. And another thing, you do have a letter from Sam Franco (phonetic), a written testimony that was all e-mailed to your offices and he was unable to attend. So that should be in your file there. And then I just want to make one quick...I just want to mention very quickly that there's a lot of very reputable mobile home parks who do have standards. And as far as what mobile homes are in there, you know, they have to be in good shape and so forth and the grounds are kept up and so forth. And of those others that that's what we're worried about where there's a lot of rental properties in there, an there's not inspection or anything like that and they're just not safe to live in. So that's what this is all about because there are lives lost and they are unsafe and they are taking advantage of certain people. So I think that's what this is all about. So I would appreciate your advancing the bill to the next stage. [LB1124]

SENATOR GAY: Senator Erdman. [LB1124]

SENATOR ERDMAN: Senator Engel, the example that was handed out by Cecilia talks about the case in South Sioux about the 20 families that were forced to relocate because the owner didn't pay the water bill to the city and the garbage wasn't collected. There was not action taken by anybody in South Sioux? I mean... [LB1124]

SENATOR ENGEL: Oh, the city went through every legal action they could go through for a long period of time, and they had to shut...well, the person that owned the trailer court, they were cited many, many times for you had to do that and they just refused to do it. So the city shut them off because they were thousands of dollars in arrears. But then they also went ahead and opened up a fire hydrant and so forth so they could subsist. And as far as the garbage, they weren't paying the garbage bill, but the owner of the garbage facility did that pro bono, just to make sure that was cleaned up. So

there's just all kinds...there's so many lawsuits on that up there that it was just pathetic. And then finally, they finally got enough authority from the health department and so forth coming in to condemn the place and now it's gone. And then what happened there, the city paid to have all the trailers removed really and they just had to be destroyed. I mean, that's how bad of shape they were in. And then there was a lien against the land and the land is being sold now. So it's no longer a trailer park. But it took several years to do that. So they went through every legal hoop they could go through before they could finally get it done. So there's a lot of effort to, first of all, to force her to clean it up to make it habitable for everybody. So there's a lot of effort there. [LB1124]

SENATOR GAY: I've got a question for you, Senator. I've watched these type of things too, maybe not on a mobile home, but there is a lot of legal maneuvers you can make before you do something with somebody's property, rightfully there should be. But I guess if we're doing this, are we just creating another loophole or shouldn't we look at the way you go about...should it be a bigger look at things? I mean, so let's say we identify a health and safety problem, whether it's a mobile home or somebody's not keeping their property up. You know, it can take a year and a half or longer, even if we identified those situations here and we get this and we look into it...I mean, we're just having another agency identify the problem. What enforcement mechanism would they have that would be more so than a county attorney or some of these other legal... [LB1124]

SENATOR ENGEL: Well, the thing is with the way the bill is written, you know, they've got...if they find that the mobile home is inspected and it has some deficiencies, they have 90 days to clean it up. If not, then they get a condemnation notice and they're going to have to move out. I mean, so this speeds up the process. I think this puts a lot more teeth in it than we had before. [LB1124]

SENATOR GAY: Okay. [LB1124]

SENATOR ENGEL: It didn't have any teeth before. [LB1124]

SENATOR GAY: Yeah. So what you're saying then it just gives them a...here's what you've got. [LB1124]

SENATOR ENGEL: Right, and the Public Service Commission felt that they could make these inspections up to 40 a year with existing personnel so there would be no new funds needed. Above that, if you have to go through condemnations proceedings, that could add a few dollars to it. But I think most cases they will...this will take care of that situation. [LB1124]

SENATOR GAY: Okay. Senator Erdman. [LB1124]

SENATOR ERDMAN: Just a clarification, Senator Engel. The individuals who live in the property would not have the right to request an inspection. They would have to go through either the Department of Health and Human Services or their political subdivision for that to happen as I read the bill because it requires that the department of political subdivision request the inspection. I don't read anything in here... [LB1124]

SENATOR ENGEL: Well, I think that that is the way it reads because you're reading it. But I think if the Department of Health would get a letter from an occupant of a home, then they may go ahead with the inspection. So I'd think that would be a request to do it. You know, so I would hopefully they would follow through with that request if someone wanted an inspection of their particular home. And these would mostly be in rental issues. [LB1124]

SENATOR ERDMAN: But again should we not look then at that area where it provides for the opportunities for the inhabitants to have rights to make sure that it's specified that they have the right to request directly to the department of that inspection. I mean, I'm just thinking through practically speaking. Generally you're going to get to the cases like in South Sioux before one of the city leaders says, wait a second, we've got a problem here. I don't see a clear remedy to allow the occupant, the tenant to be able to say, hey, I've got a problem here unless they can convince somebody at the local government or the department and so... [LB1124]

SENATOR ENGEL: Well, see and that's how it came about there to start with. From the beginning, it was complaints from some of the tenants. But not all of them because some of them were afraid to complain. You know, and then that's the situation here. [LB1124]

SENATOR ERDMAN: Right. [LB1124]

SENATOR ENGEL: And so that's how...but I think if that could be added to make the bill better, I don't think that would cause and heartburn here at all. In fact, that's what we want. We want a good bill coming out here to protect the people. [LB1124]

SENATOR GAY: Okay. Any other questions? I don't see any. [LB1124]

SENATOR ENGEL: Thank you for your time. Have a good day. [LB1124]

SENATOR GAY: Thank you. You bet. Thank you, Senator Engel. That will close the public hearing on LB1124, and open it on LB1022. Senator Hansen, this adopt the Veterinary Drug Distribution Licensing Act. [LB1124]

SENATOR HANSEN: (Exhibit 1) Chairman Gay, members of the Health Services Committee, my name is Tom Hansen and I represent District 42 and I'm here to

introduce LB1022. LB1022 would place in statute a process by which those who sell or otherwise distribute veterinary legend drugs in Nebraska and are not a pharmacist or a veterinarian shall become licensed to sell as a veterinary drug distributor. To sell a veterinary legend drug you will find the definition on page 4 in Section 12 of this bill. This bill is necessary because of the revisions made to the Pharmacy Act in 2005 and to the Wholesale Drug Distributor Licensing Act in 2006. The unintended consequences of the revision of these two acts is that those entities who handle exclusively veterinary legend drugs are exempt from the acts and left without statutory authority to purchase, posses, or sell such items in the state as they have in some cases for four decades. Prior to this statutory revisions, these entities were subject to licensure, inspection, and oversight by the Department of Health and Human Services. This act creates a new class of license exclusively to those who handle veterinary legend drugs. The primary importance to this act is a legal authority to sell and deliver veterinary legend drugs directly to a client that has agreed to follow a veterinarian's instruction. Food safety is paramount concern to those of us in the livestock industry in Nebraska, and livestock producers have regular need of a professional veterinary care and the careful use of pharmaceuticals for the prevention and treatment of animal diseases. There are some amendments from the Nebraska Board of Veterinary Medicine and Surgery and I'd like to have those passed out if possible. And we can consider those as committee amendments Are there any questions? [LB1022]

SENATOR GAY: Thank you, Senator Hansen. Senator Erdman. [LB1022]

SENATOR ERDMAN: Senator Hansen, I look at the A bill, which is $170,000-some, when we pass the two acts that you mention, did the state not collect that money? I'm interested because it would seem that if we once did this...and I'm just going to speak hypothetically that we probably didn't lay off the people that did that job prior when we passed the bill. So they're probably still doing something. Have you looked at the fiscal note? Do you have any observation because I understand what you're telling me that we did this prior to that act. Now this new act has come in and has changed the way things are being done and we're trying, at least from what I'm gathering, is to try and reinstate what was previously done. Why does it cost us money to do what we were already doing? [LB1022]

SENATOR HANSEN: This is two full-time positions, $12,000 for hardware. [LB1022]

SENATOR ERDMAN: Right. [LB1022]

SENATOR HANSEN: And they expect to have 12 licenses in the state of Nebraska. [LB1022]

SENATOR ERDMAN: Now, are they only talking about the licenses in the state? Those are the only ones you're going to inspect or are they talking about inspecting other

entities outside of the state that may be an affiliate of those entities within the state? [LB1022]

SENATOR HANSEN: I don't know. I think you should ask that question of one the testifiers, but it's my understanding that it's just for the ones in Nebraska. And I mean, for 12 licenses, how can you spend $171, 000? I mean, it's doesn't... [LB1022]

SENATOR ERDMAN: You're not suppose to ask the question (laughter). That was my question to you. Senator Hansen, for 12... [LB1022]

SENATOR HANSEN: I don't understand... [LB1022]

SENATOR ERDMAN: Senator Hansen, for 12 licenses, how do you expect to spend $171,000? (Laugh) [LB1022]

SENATOR HANSEN: That's high math. [LB1022]

SENATOR ERDMAN: But obviously, as we've discussed, this session, whether it's Senator Pankonin's bills or others that deal with cash funding some of these inspections...I mean, there's some cost. But I'm just curious to know kind of if somebody--hopefully--can connect the dots for me about did we lay those people off? Did we not collect those fees? Obviously, in our current climate, a bill with an A bill is interesting, but sometimes A bill have their own agendas. And I just want to make sure that this is legit and not something that's designed to be otherwise. [LB1022]

SENATOR HANSEN: I would think that those 12...it explains in the bill how those licenses are arrived at and the information that's there. I would think that maybe one person for, you know, a full day's work would probably renew those licenses. But hopefully the A bill..the fiscal note anyway is not accurate. [LB1022]

SENATOR ERDMAN: Are the 12 entities currently licensed? [LB1022]

SENATOR HANSEN: Approximately. No they're not licenses at all. [LB1022]

SENATOR ERDMAN: Because of the act it took away their ability. [LB1022]

SENATOR HANSEN: They need license, they need to have a license. [LB1022]

SENATOR ERDMAN: So they were prior. [LB1022]

SENATOR HANSEN: Yes. [LB1022]

SENATOR ERDMAN: We know where those 12 were. We know where they are. Okay.

Thank you. [LB1022]

SENATOR GAY: Thank you. Any other questions? Senator Howard? [LB1022]

SENATOR HOWARD: Thank you, Senator Gay. Senator Hansen, just for my knowledge and information, I'm not real familiar with cattle ranching and I don't know what veterinarian legend drugs are. Is it only refer to cattle or is also for household pets or can you just tell me what that is? [LB1022]

SENATOR HANSEN: Okay. If you turn to page 4, in Section 12 it gives a definition of the legend of veterinary legend drug. And the main part of it is on line 14 where it has to be labeled: caution, federal law restricts this drug to be used by or on the order of the licenses veterinarian. So a veterinarian can prescribe legend drugs for cats, dogs, I'm sure all zoo animals and food animals also. [LB1022]

SENATOR HOWARD: So it falls into like the distemper area or it covers a broad spectrum of... [LB1022]

SENATOR HANSEN: Yes, very broad. [LB1022]

SENATOR GAY: Senator Hansen, I guess I have kind of the same question as Senator Howard and maybe someone behind you will testify to this, kind of what that is. I mean, how is it applied and I see people shaking their heads will tell you. But how is it applied in the industry and what percent of these drugs are we talking about? So I think it will be covered behind you. [LB1022]

SENATOR HANSEN: I think you better wait for someone that can answer that more correctly. [LB1022]

SENATOR GAY: All right. Will do. All right. Any other questions for Senator Hansen? Nope. Okay. Thank you. Other proponents who would like to speak on LB1022? [LB1022]

RYAN LOSEKE: Chairman Gay and members of the committee, my name is Dr. Ryan Loseke, that's spelled L-o-s-e-k-e. Both my wife and I are veterinarians and live near Columbus. We own and operate a cattle feedlot and provide consulting veterinary services for several feed yards in approximately 30,000 sows, as well as provide general veterinary services for predominately large animals around the Columbus vicinity. I'm on the board of directors of the Nebraska Cattlemen and currently serve as chairman of its animal health and nutrition committee. I'm here today to represent the Nebraska Cattlemen to provide testimony in support of LB1022. I'm going to kind of repeat Senator Hansen just because of the importance of the provision of how things changed. In recent years, the Legislature enacted laws to improve the control and

distribution of human legend drugs. In 2005, LB256 revised the Pharmacy Act. And then in 2006, LB994 revised the Wholesale Drug Distributor Licensing Act. The revision of these two was carried out with the exclusive focus on human drugs to curtail counterfeiting and illegal distribution of those human drugs. However, as Senator Hansen said, the unintended consequences of these revisions is that those entities who handle exclusively veterinary legend drugs are exempt from these acts, and they have no statutory authority to purchase, possess, and sell such items in the state as they've done, in some cases, for decades. Prior to these revisions, these entities were subject to licensure inspection and oversight by the Department of Health and Human Services. This act would create a new class of license exclusive to those who handle only veterinary legend drugs and of primary importance those this act is the legal authority to sell and deliver veterinary legend drugs directly to layman in control of an animal and pursuant to the specific conditions outlined in this act. Food safety is obviously of paramount concern to the livestock industry in Nebraska and livestock producers have a regular need of professional veterinary care, and the judicious use of pharmaceuticals for the prevention treatment of animal diseases. Last year, Nebraska Cattlemen brought this committee LB550 in an attempt to address this issue. The effort was hurried and not well thought out, and as you may recall, NC asked the committee to hold the bill. Beginning back in the summer, we called together several stakeholder groups to include the crafting of a more appropriate bill for your consideration. These groups include the Nebraska Veterinary Medical Association, the Nebraska Association of Pharmacists, Creighton University School of Pharmacy and Health Professions, and representatives from the licensure unit within the division of public health of the Department of Health and Human Services. Also the Pharmacy Board, the Veterinary Board, drug manufactures and those entities who are currently distributing veterinary legend drugs in the state. The bill before you today with some proposed modifications is the cumulative effort of these stakeholders. We have attempted to address the issues of both the state that is to protect the public safety and welfare, as well as the vested interest of those parties due to be regulated by this act, and ultimately livestock produces. There are several here today to testify regarding specific components of the bill. Some will offer you highly skilled and technical information, while others may address specific concerns. On behalf of the members of Nebraska Cattlemen and their staff, I pledge our readiness to provide the committee technical information that you may need as well as to answer questions that may arise out of today's hearing. I want to thank Senator Hansen for his willingness to sponsor the bill, and I ask you to advance the bill with committee amendments to the General File. Thank you for this opportunity to provide input and I'd be happy to respond to your questions. [LB1022]

SENATOR GAY: Thank you. Any questions? Senator Stuthman. [LB1022]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Loseke, can you explain to me we have animal health suppliers in our community and then we have veterinarians in our community and we have veterinarians that I can only purchase a certain type of

drug from, but I can't purchase them from that animal health supplier. What will this change if this bill goes forward? [LB1022]

RYAN LOSEKE: There's those behind me that will testify this, but there's different classes of drugs. Obviously, we talked about the veterinary prescription drugs, and those are that have the label to be used by or on the order of a licensed veterinarian. Those issued to a feedlot and it's talked about in the context of a VC valid veterinary-client-patient relationship. I have knowledge of that feed yard, that hog unit, that whatever. They use the drugs according to my protocol. A lot of the animal health distributors, the co-ops, so you say or whatever are going to distribute over-the-counter drugs, those that don't carry that legend. You can buy those anywhere unless they're...it gets detailed, but it should not effect those that are distributing nonlegend drugs for the co-ops... [LB1022]

SENATOR STUTHMAN: At the present time. [LB1022]

RYAN LOSEKE: At the present time. [LB1022]

SENATOR STUTHMAN: And then would this bill, if this bill is enacted it will not allow those retail distributors to sell those drugs that take veterinary prescription to put a label on. [LB1022]

RYAN LOSEKE: Should they pursue a license as outlined here, they would be able to. [LB1022]

SENATOR STUTHMAN: Yeah. They would be able to then. They would be able to. [LB1022]

RYAN LOSEKE: They would fall under the statute. Correct. [LB1022]

SENATOR STUTHMAN: Under the direction of you as veterinarians, right? [LB1022]

RYAN LOSEKE: Correct. Within the VCPR. [LB1022]

SENATOR STUTHMAN: Yes. Yeah. Okay. Thank you, Dr. Loseke. [LB1022]

SENATOR GAY: Doctor, I've got a question for you. Just general terms, you don't have to be exact. But so what percent of drugs are we talking about here that are used in the industry or is it 10 percent or what percent are these legend is what I'm... [LB1022]

RYAN LOSEKE: Well, of the drugs in the state that go through just drug distributor channels, it's probably about 70 percent of the volume, mainly because of it's in concentrated, you know, livestock operations. Of the distributors that distribute that,

probably about 35 to 40 percent of those drugs carry the legend label that, prescription label. [LB1022]

SENATOR GAY: Okay. Senator Pankonin. [LB1022]

SENATOR PANKONIN: Thanks, Senator Gay. Doctor, one more time. This legend designation, I mean, what's the context? What's the history? Why do we call some drugs legend drugs? [LB1022]

RYAN LOSEKE: I think as most of the...and those behind me can testify on this, but as new drugs came out, for instance I think in the last 15 years, any feedlot antimicrobial has been a legend drug that carries that label. For instance, the penicillin, some of the older drugs carried an over-the-counter label. I think the thinking as when they went through the drug approval process when they had a legend there was more oversight by the veterinarians to administer and prescribe the regiment accordingly. I don't know if I answered your question or... [LB1022]

SENATOR PANKONIN: Well, I'm just thinking about what the definition of legend is. Is that traditional or why did we start to use that phrase? What's the context of why... [LB1022]

RYAN LOSEKE: It's just another word for prescription drug. [LB1022]

SENATOR PANKONIN: Okay. Well, that helps. [LB1022]

RYAN LOSEKE: Sure. [LB1022]

SENATOR GAY: There you go. Did you have a question? [LB1022]

SENATOR HOWARD: No, no. That makes a lot of sense. I was glad he asked that question. [LB1022]

SENATOR GAY: I have a follow-up question. Did you just say that most the newer drugs coming out are prescription then? [LB1022]

RYAN LOSEKE: Correct. [LB1022]

SENATOR GAY: So are we by doing this, we're, in your view, better regulating the marketplace. But are we penalizing the nonprescription or nonlegend people that do that business? Is this...well, we'll have testimony, but I guess you're saying in the future most are going to be prescription, that's the trend. [LB1022]

RYAN LOSEKE: Sure. I think certainly with the costs of an approval of a new drug, and

obviously in our industry, food safety is of greater importance. Every year there... [LB1022]

SENATOR GAY: Right, right. So it's becoming more common and... [LB1022]

RYAN LOSEKE: Definitely. The industry just feels there needs to be more oversight. [LB1022]

SENATOR GAY: Okay. [LB1022]

RYAN LOSEKE: Correct. [LB1022]

SENATOR GAY: Senator Howard. [LB1022]

SENATOR HOWARD: Thank you. Well, now I'm wondering. Is there a downside to not having the supervision of the veterinarian over all these drugs and the administering of these drugs? [LB1022]

RYAN LOSEKE: Well, I'm kind of biased as a veterinarian. But yeah, by law. I mean, with the legend drugs, a veterinarian needs to supervise the administration of those drugs. I mean, you could talk about downside. You know, as I think of downsides to unsupervised administration of drugs if they're not given properly in the proper location, there would be residues within the product that we produce. [LB1022]

SENATOR HOWARD: Okay. Thank you. [LB1022]

SENATOR GAY: Okay. Any other questions? Senator Stuthman. [LB1022]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Loseke, in easy terms for people to understand is, you know, the drugs that I use, the Draxxin, the Nuflor, dexamethasone, the Banamine and stuff like that, will I be able to get those drugs from my retail distributor now if this bill is passed? And what will you have to do as far as the prescription for me to allow that to happen, to use that drug without going through your veterinary office? [LB1022]

RYAN LOSEKE: Sure. It should not change the way the ability to your doing it today. As you get prescription drugs, I'm sure you have a valid veterinary-client-patient relationship which as described. And that means that...it doesn't necessarily mean that the veterinarian administers the drugs, but it does mean that the veterinarian is available for follow up for those kind of things. You can issue the preliminary diagnose. The producer can administer the drugs. But the veterinarian basically has to have the script on these legend drugs on file at the distributor and it has to be given accordingly. [LB1022]

SENATOR STUTHMAN: Okay. Thank you. [LB1022]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB1022]

RYAN LOSEKE: Thank you. [LB1022]

SENATOR GAY: Other proponents? [LB1022]

ELAINE LUST: (Exhibit 2) Good afternoon, Senator Gay and members of the committee. My name is Elaine Lust. It's spelled E-l-a-i-n-e, the last name is L-u-s-t. I'm a licensed pharmacist and faculty member who teaches didactic and clinical rotation courses in veterinarian pharmacy at Creighton University School of Pharmacy. I reside at 1506 North 102nd Avenue in Omaha, Nebraska. I'm a paid consultant to Professional Veterinary Products Limited in Omaha and I advise them on regulatory issues at the state and federal level that apply to animal health businesses. We strongly support regulatory oversight via licensure of veterinary drug distributors in Nebraska. We feel that it is an important step in protecting public health, as well as the wholesomeness of our food supply. Currently there are no governing agency or regulatory oversights for a business entity that desires to engage in interstate or intrastate commerce of veterinary legend drugs in Nebraska. Given the threat that counterfeit medications pose to human as well as to animal patients, we feel there is a need to have clear and uniform licensing requirements of business entities that sell or ship veterinary legend drugs within or into the state of Nebraska for use in food animals in production agriculture settings. Unfortunately there was a criminal case prosecuted in the states of California and Washington in 2006 that implicated individuals for knowingly selling and distributing counterfeit veterinary drugs for use in food animals. LB1022 is a significant step towards preventing a similar occurrence in the state of Nebraska. Nebraska's economy is a state whose economy is fueled by the livestock industry. It is important to have access to prescription medications used to alleviate pain and suffering in livestock due to clinical disease states or conditions. The licensing requirements created by LB1022 would be a positive step in accommodating the production animal medicine needs in this state. Other states such as Texas, New Mexico, Kansas, Oklahoma, and Colorado whose economies are also fueled by livestock industry have met the needs of veterinarians and animal patients alike by passing similar veterinary drug distribution licensing requirements. Formal licensure of veterinary drug distributors places the company and its employees in a position to support food safety initiatives. This could be accomplished by providing drug information education or supplemental materials about the legend drugs that are sold and distributed to the caretakers of livestock. For example, there are instances when a veterinarian may choose prescribe a legend drug to be used in a manner that is different than is printed on the label directions. Cooperative partnerships between the veterinarian and the veterinary drug distributor can potentially be developed to facilitate safe and effective use of these types of drug therapies in

livestock. Lastly, there are two specific prescription veterinary drugs that can be used as precursors for illicit methamphetamine production. LB1022 will serve to further protect the health of Nebraska residents by requiring licensure of any business entity that engages in veterinary legend drug sales or distribution. Thank you for this opportunity to present my testimony. If you have questions, I'd be happy to take them. [LB1022]

SENATOR GAY: Thank you, Doctor. Any questions from the committee? Senator Stuthman. [LB1022]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Lust, will the retail distributing of animal health products, will they be putting that label on those drugs then as far as, you know, withdrawals, slaughter withdrawal or anything like that? [LB1022]

ELAINE LUST: Withdrawals. No. This bill does not authorize that. When there are instances where a veterinary wants that drug to be used in an extra label manner we fully support the intention where the plan for a veterinarian to supply written treatment guidelines or treatment protocols that he gives to the animal caretaker or layperson that can extensively explain the use of the drug, why it's different than what is printed on the label, withdrawal times, cautionary statements. So no, there would be no actually physical labeling by the distributors of veterinary legend drugs. [LB1022]

SENATOR STUTHMAN: But the normal labeling on it of the correct use for that drug, will they be...they will put that sticker on it? [LB1022]

ELAINE LUST: Under this bill, for example, the label that comes on your bottle of dexamethasone from the manufacturer would remain uninhibited in any way shape or form. So there would be no additional labeling by veterinary drug distributors under this act. [LB1022]

SENATOR STUTHMAN: Okay. Thank you. [LB1022]

SENATOR GAY: Any other questions? Thank you. [LB1022]

ELAINE LUST: Thank you. [LB1022]

SENATOR GAY: Other proponents? [LB1022]

LARRY WILLIAMS: Good afternoon, Senator Gay, members of the committee. My name is Larry Williams. I'm a veterinarian, retired and reside in Lincoln, Nebraska. I am currently chairman of the Nebraska Veterinary Medical Association's legislative committee and it's on their behalf that I'm introducing this testimony this afternoon. You have also testimony from the Nebraska Board of Veterinary Medicine and Surgery. And we have worked with them and are aware of their amendments. However, I think it's fair

to say that the association being the size it is, it's difficult to find 100 percent vote of confidence in support of the bill. And I'm taking it upon my own initiative to testify in support of the bill and address some of the concerns that some of our members have raised. I think I will start with maybe just giving a little bit of 101 pharmacology and I probably shouldn't do this because my college professor that taught that class is here today, which was 40 years and I don't know if he's changed any of his thoughts since then or not. I don't think so. But some of the confusion comes...or it came to me and I guess I shouldn't put everyone in the same position that I was, but I was having a problem differentiating between a veterinary drug order and a veterinary drug prescription. And the words are used synonymously and oftentimes I think together in the same sentence, but also used in different contexts in other words. And so I think for the purpose of our discussion it would be helpful if we just talk about the difference in a drug order and a drug prescription as we see it in this bill. A drug order as it's defined I think on Section 11 page 2 states that it's a meaningful order or prescription of a veterinarian licensed to practice in the state which order of prescription is issued pursuant to the establishment of a bona fide veterinary-client-patient relationship. So the veterinary order is an order for drugs. It does not go into the specific use of the drug as a prescription might. Or at least in my definition in my mind a prescription includes the use of the drug and how it's going to be used, the length of withdrawal time, and that sort of thing. So this legislation deals with the veterinary legend drugs and I want to describe that a little further. But it does not reflect on how those drugs are used by the end user. It's a distribution legislation. It's not veterinary use legislation. Many of the drugs that are going to be used in feedlot situation and some of the larger operations are going to be used as extra label use, and that was talked about a little bit earlier. The legislation deal with veterinary legend drugs and veterinary legend refers to that cautionary statement, and that is an FDA statement. That's in a CRF and it is very specific about which drugs come under that requirement. And if you check to see if our...there's not a list of drugs that have that label. But there are individual drugs under each section that have the uses and the stipulations and limitations and that sort of thing that go with that particular drug. And it will say whether or not it's restricted for use by or on the order of a veterinarian. So there are two distinct types of drugs. There are the restricted and then the over-the-counter drugs. I know that this legislation does not have any effect on over-the-counter drugs. Those are the drugs that you can buy at the feed store and whatever and you're expected to follow those directions that are on the label. Now, an extra label, which extra label use which would require a prescription from your veterinarian, could be for an over-the-counter drug. So if you buy drug X at the feed store and your veterinarian has prescribed that that drug be used at two times the normal dose rate, you'd have to have a prescription on hand to do that. And there are limitations on how that can be done. FDA governs that very strictly through the act that they call AMDUCA, which is the Animal Medicinal Drug Use Clarification Act of 1994. So there are very strict guidelines on the drug usage. But again, this legislation does not have any bearing on how the drugs are used. The veterinarian may order the drugs, may write the drug order for, Arnie, for you to use at your feedlot and you could submit

that order to a drug distributor. And on that drug order it would be only for the quantity of the drugs and then the type of...name of the drugs and the size of the container, the dosage rate that they come in. When they come to your facility, if he thinks that he would like to have you use that in a different manner, he would write out the protocol for that so that those protocols have to be written out. The other way that that's handled is if a person that has that prescription goes to the pharmacy, then the pharmacist would put that extra label on that drug. So it gets very confusing and I'm probably giving you more information than you really want on this. But I think it's important to remember that this is a distribution legislation. It provides a legal way for distributors to be licensed and to provide this service that they've been doing in the past. Just a couple of other comments that we heard from membership. [LB1022]

SENATOR GAY: Are these proponents, Doctor? [LB1022]

LARRY WILLIAMS: They were commenters. But they are not...it does not reflect an opposition. [LB1022]

SENATOR GAY: Are they written down or do you want to...I don't want to stop...I'm just wondering if you want to save it for maybe you can come up again and give those later as an opponent if you want or neutral. [LB1022]

LARRY WILLIAMS: Sure. I'll do it under the neutral part. [LB1022]

SENATOR GAY: You play it by ear, but we'll have that. [LB1022]

LARRY WILLIAMS: Sure. Yeah. [LB1022]

SENATOR GAY: Okay. Let's see if we've got any questions for you though. Are there any questions from the committee? Senator Erdman. [LB1022]

SENATOR ERDMAN: Are you going to ask Dr. Williams to come back and testify again? [LB1022]

SENATOR GAY: If it's an opponent or a neutral I'd like to. [LB1022]

SENATOR ERDMAN: On behalf of someone else or on his own behalf? [LB1022]

LARRY WILLIAMS: On behalf of the industry that he's going to represent. [LB1022]

SENATOR ERDMAN: So you're testifying on your behalf? [LB1022]

LARRY WILLIAMS: Well, I can do it either way. But the Veterinary's... [LB1022]

SENATOR ERDMAN: I'm just interested to make sure you don't testify three times if you don't... [LB1022]

LARRY WILLIAMS: Well, I just want to make it clear that there were some other comments and I think they've been resolved. Actually it doesn't result in any suggestions for change, so it's probably a mute point. [LB1022]

SENATOR ERDMAN: Okay. [LB1022]

SENATOR GAY: Okay. Any questions? I don't see any. Thank you. Other proponents? [LB1022]

DUANE GANGWISH: Good afternoon, Chairman Gay and members of the committee. My name is Duane Gangwish, and I'm a registered lobbyist for Nebraska Cattlemen. I just want to briefly touch on two items. But before that I do not represent the Nebraska Pork Producers, but I have been asked to state that they are in support of the bill. The amendments that were presented by Senator Hansen that were handed out to you I might just clarify, those were the collaborative effort of all the stakeholders. And I have been in conversation with the department addressing some of their concerns. One of those was a provisional type of license. This activity because today technically illegal in the state of Nebraska, it will take time to develop rules and regulations. It will then take some time to distribute or have people go through the application process, the review, and then issue the license. So one of the propose amendments is that a provisional license would go through July 1, 2009 allowing those that are currently doing business to do so under some specific conditions as outlined here. There was some other concerns about potential avenues of which a license could be denied, revoked, suspended, or otherwise put under scrutiny, and those are outlined for you in there also. The other portion I'd like to address is the fiscal note that's before you, and Senator Erdman, you had raised this question. I took the liberty of doing some research and looking back at when the Wholesale Drug Act was revised, and the fiscal note at that time for that particular area was $118,000 in '07 and $140,000 in '08. And Senator Erdman, I would agree with you. By our estimations, there may be as many as 20 locations in this state that would need to come under this type of license or program. If I might be so bold to project that it would take eight days per location to do inspections and reviews and paperwork, etcetera, it's approximately 160 days or about 3 months. It seems difficult that you could come up with $178,000 for 3 months worth of work in that, and so I just draw that into question. Even if there were some, you know, administrative costs and various things put into that, I think that the fiscal note that you have is a bit aggressive and I just wanted to draw attention to that. With that, I would be happy to answer any questions. [LB1022]

SENATOR GAY: Thank you. Senator Stuthman. [LB1022]

SENATOR STUTHMAN: Thank you, Senator Gay. Duane, are these retail animal health retail establishment, are they presently being inspected by anyone? [LB1022]

DUANE GANGWISH: No, they're not. [LB1022]

SENATOR STUTHMAN: There's no inspection, not state inspection over them at all? [LB1022]

DUANE GANGWISH: No. No. Prior to July 1, 2007, which was the date of enactment, the effective date of the Wholesale Drug Distributors Licensure Act, they were inspected, they were licensed, they went through the whole process. But because again, that shift that took place, they were no longer under that scrutiny. And so they are not now. [LB1022]

SENATOR STUTHMAN: But they have been in the past. [LB1022]

DUANE GANGWISH: Yes, sir. They were in the past and they were left without a licensure program, in fact, told that they could not be issued one. [LB1022]

SENATOR STUTHMAN: And they were inspected prior to that? [LB1022]

DUANE GANGWISH: Yes, sir. [LB1022]

SENATOR STUTHMAN: When they were under that licensure. So there's been a timeframe here because they weren't included in that licensure act that they weren't inspected. [LB1022]

DUANE GANGWISH: Yes, sir, since July. [LB1022]

SENATOR STUTHMAN: But they have been in the past, and now we're going to start that over again and I'm also concerned too about the amount of dollars in the fiscal note. So maybe it's not needed in there. But that's my concern. But they're not inspected at the present time, but they have been. [LB1022]

DUANE GANGWISH: Not to my knowledge, yeah. [LB1022]

SENATOR STUTHMAN: Okay. Thank you. [LB1022]

SENATOR GAY: Senator Pankonin. [LB1022]

SENATOR PANKONIN: Thank you, Senator Gay. Duane, I just want to make sure, these amendments that were handed out, the Nebraska Board of Veterinary Medicine and Surgery...eveybody's online with an agreement then? [LB1022]

DUANE GANGWISH: No. I could not agree with your statement. [LB1022]

SENATOR PANKONIN: Okay. [LB1022]

DUANE GANGWISH: Those amendments that were handed out are a compilation of many of the stakeholders. The Board of Veterinary Medicine has, I think, sent over their own letter addressing some concerns and issues. [LB1022]

SENATOR PANKONIN: They did. Right. [LB1022]

DUANE GANGWISH: We have addressed some of those concerns and issues in those that were handed out. There are some others that they have raised concerns and we'd be happy to work with the committee as we move through that. We have...I personally, along with Dr. Loseke and Dr. Lust, went before the state Veterinary Board. Not all of us at the same time, but three times, and were addressing some of those issues and concerns. [LB1022]

SENATOR PANKONIN: So I'm just trying to ascertain if we're at the point we have to make a decision or do you think there will be further work on this in the short term to come to mutual agreements or don't know? [LB1022]

DUANE GANGWISH: If you're asking my personal opinion, I think you're at a juncture to make a decision. Having said that, the Board of Veterinary Medicine has raise some questions and concerns and obviously that's your responsibility to entertain those questions and concerns. [LB1022]

SENATOR PANKONIN: Okay. [LB1022]

SENATOR GAY: Alright, any other questions? I don't see any. Thanks, Duane. [LB1022]

DUANE GANGWISH: Thank you. [LB1022]

SENATOR GAY: Other proponents? Any other proponents would like to speak on LB1022? Okay. I don't see any. Any opponents who would like to speak on LB1022? [LB1022]

RICHARD HEDRICK: That would be neutral. [LB1022]

SENATOR GAY: Oh, we're going to get to neutral. Hold on one minute. Is there any opponents who would like to speak on this? Now we're at neutral, I guess. All right. We'll hear neutral testimony. Go ahead and state your name and spell it. [LB1022]

RICHARD HEDRICK: I'm Richard Hedrick, H-e-d-r-i-c-k. I wonder why a conservative state like Nebraska needs all these regulations when the candidates run for office, they're against laws. When they get to their office elected, their brains turn to mush and they're out here...hundreds of bills. And will this interfere with my buying of pet medicine over-the-counter? Having pet medicine sent through the mail, they advertise it on (inaudible) TV, will they still be able to send you medicine? I have heard there is not enough veterinarians in the state. How we're going to have to be able to take care of your own cattle or pigs if you can't get medicine for them. I don't believe all these arguments for the regulation. This bill looks like something that came out of Washington, rented by lobbyists. Thank you. [LB1022]

SENATOR GAY: Thank you. Any questions? I don't see any. Thank you. All right. Senator...oh, more neutral. [LB1022]

JONI COVER: Good afternoon, Senator Gay, members of the committee. My name is Joni Cover, J-o-n-i C-o-v-e-r. I'm the executive vice president of the Nebraska Pharmacists Association. And the Nebraska Pharmacists Association offers our neutral testimony today. I have pharmacist members who are in support of this legislation, and I have pharmacist members who are opposed to it. So I'm just going to offer a few brief comments. I'd like to thank the Cattlemen's Association for including the Pharmacist Association in the drafting and the dialogue of this legislation. Pharmacists are always concerned about letting someone else do the dispensing of drugs. Pharmacists go to school to learn about the drugs. And so turning that responsibility over to a nonlicensed person that's not a pharmacist is always a bit of concern. However, we have heard today that this was a regulated activity and it is not now. And therefore, we very much support the regulation and licensure of these distribution companies that are getting the medicines to the cattle producers and the feedlots. A couple of things to point out just for your information. This bill does not allow controlled substances to change hands. That you still have to go to a pharmacist to obtain. And also, we very much appreciate the fact that both instate and out of state entities will be licensed by this legislation. Dr. Lust is our resident expert in animal medicine, and so we very much defer to her opinion and her expertise on the issues. She's been a very big help to both the pharmacist and the cattlemen in drafting the legislation. And again, I think it's been pointed out several times today that the economic impact if something were to go awry with tainted drugs or counterfeit medicines getting into the animal production supply in the state would be devastating. So those are the comments. If you have any questions you'd like me to help answer as far as legend drugs versus nonlegend drugs, I'd be happy to do so. And would make the commitment to the committee and to the Cattlemen's Association to continue the dialogue if we need to do so. [LB1022]

SENATOR GAY: Thanks, Joni. Any...Senator Pankonin. [LB1022]

SENATOR PANKONIN: Thanks, Senator Gay. Joni, appreciate you coming and your comments. I think you could probably answer what this gentleman's concerns were about drugs that he can buy over-the-counter or through the mail. And I heard...I saw people shaking their heads. This wouldn't have any affect on that. [LB1022]

JONI COVER: That is correct. If he purchases medicines for his pets, you could buy them at different pet stores and things like that, this won't impact that at all. [LB1022]

SENATOR PANKONIN: This bill...that's what my assumption was, but... [LB1022]

JONI COVER: So his pet will still be able to get the medicines that the pet needs from those suppliers. [LB1022]

SENATOR PANKONIN: Good. [LB1022]

JONI COVER: Okay? [LB1022]

SENATOR GAY: Senator Stuthman. [LB1022]

SENATOR STUTHMAN: Thank you, Senator Gay. Joni, the Pharmacy Association, are they concerned about me as a livestock producer, and I get a prescription drug from Dr. Loseke and I'm administering it under his direction. Are they concerned that I might not be administering right, not doing it according to the label or what would be the concern of the Pharmacy Association? [LB1022]

JONI COVER: For those that are concerned the concern is that you have someone dispensing or delivering a medication to you for use in your animal that maybe they haven't spent the time to explain to you the mechanism of action of the drug or those sorts of things. You know, pharmacists are by law required to counsel when they dispense their medications. And so that counseling provision won't be a part of this. Pharmacists won't be dispensing. It will be someone who is not a pharmacist supplying that medication. [LB1022]

SENATOR STUTHMAN: Well, I would hate to have to pay a counseling fee on top of the drug fee also (laughter). [LB1022]

JONI COVER: That's a whole nother hearing, Senator. [LB1022]

SENATOR STUTHMAN: But the fact is that the most important thing in my operation is is the labeling on it, you know, the withdrawal period and everything like that because it's food safety. [LB1022]

JONI COVER: Right. And it's very important too to know that the veterinary legend

drugs come with a label. That label will continue to be there. And so you know, the intent isn't to mess with that label because it's very important that you know how to give your herd that particular medication, whatever it is. So we're not going to mess with that. [LB1022]

SENATOR STUTHMAN: Yeah. Okay. Thank you. [LB1022]

SENATOR GAY: And any other questions? I don't see any. Thanks, Joni. [LB1022]

JONI COVER: Thank you. [LB1022]

SENATOR GAY: Anyone else who would like to speak neutral on this issue? [LB1022]

DAN UPSON: I brought my bottle. Good afternoon, Chairman Gay, members of the committee, it's my pleasure to be here to be asked to meet with you people in a neutral capacity speaking to LB1022. I'm going to go about giving you my background and... [LB1022]

SENATOR GAY: Sir, could you state your name and spell it in the record too if you could? [LB1022]

DAN UPSON: Oh, excuse me. [LB1022]

SENATOR GAY: That's all right. [LB1022]

DAN UPSON: Dan Upson, spelled D-a-n U-p-s-o-n. Thank you. I'm going to give you some of my background and I hope you don't interpret it as an ego trip because at my age I sure don't need any ego trip. My education, I have a doctorate of veterinary medicine, a master's degree and a Ph.D. in pharmacology. I taught and did research at Kansas State College of Veterinary Medicine for 36 years, taught pharmacology to the veterinary students and taught anatomy and physiology to the animal science students. My research has been in antibiotics and a lot of the consulting and lecturing I do is the proper use of antibiotics in food producing animals. And my research was in a time course after a drug was put in a food producing animal's body, when did it disappear? And of course this relates to residues. And again, it's easy to see most of this is food safety. I have served as a consultant to the pharmaceutical companies doing business in veterinary drugs. I have done extensive speaking to both producer groups and veterinarians. I had the pleasure appointed by the governor of Kansas; I served two terms on the Board of Pharmacy. I served two terms on the Manhattan-Riley County Health Board. I've done extensive work with the American Veterinary Medical Association. Three terms on the Board of the Academy of Veterinary Consultants. Throughout my career I've been a proponent of everything we can do for human health and welfare. I have read this bill. It's my opinion it's very well written. While I was on the

Kansas Board of Pharmacy, we rewrote the regulations having to do with veterinary prescription drug distributors. And a lot of the wording I see in this has a strong resemblance to what we did. And there were some very different terminologies that we had to work out. Some of the concerns, for example, the veterinary-client-patient relationship...as I was working with the Council in Biologic Therapeutic Agents at the AVMA, I wrote the first original draft of veterinary-client-patient relationship. And by the time we got through with it, it was quite wordy. But the bottom line, ladies and gentlemen, is that a veterinarian is in charge of the health and health protocols of these animals, and the reason he/she has that privilege is that they are acquainted, and the length of a script has been a concern. For example, this prescription is invalid after 180 days. Well, that seems like a lot. If I'm a consultant to large dairy, I could be there everyday. Some of the veterinarians consulting to the feedlot industry and swine industry are at producers place one a month, sometimes two months. But what about the ranchers with the mother cows and in the Sandhills? They may only see those cows twice a year. And that's when the veterinarian should and would be involved, and is my opinion that that satisfies all the objectives of the veterinary-client-patient relationship. An extra label drug use came up and actually not particularly pertinent to this bill, but the federal government has packed the Animal Medicinal Drug Use Clarification Act--how is that? AMDUCA--and that's very well covered there. And so the veterinarian follows AMDUCA. There's absolutely problem on the veterinarian side, and there's not human health hazard. Then I go over some terms that have come up. As Senator Howard talked about and many of you asked what's this legend drug business. Well first of all, from a practical standpoint a legend drug is the same as a prescription drug. The reason they came with the term "legend" is there is a legend on that label that says: caution, federal law restricts this drug to use by or on the order of a licensed veterinarian. I've had former students call and say well, Dan, send me a list of prescription drugs. And I say, I don't need. All you've got to do is look at the label and if that legend is on there, it is a prescription drug. And that's where the word "legend" came from. On a human drug it's prescription only is their wording, and why they chose to have everything, I'm not sure. The distributor, as I said, when we first looked at what was in the statute and the rules and regs in the pharmacy board in Kansas, we found that first of all you had to correct. In the human, it prevents a distributor from delivering a product to the end user. They have to send or convey in some manner to a pharmacist, and the pharmacist then dispenses to the end user. Now, what this bill speaks to and what in my opinion is needed is that the distributor on a veterinary drug order, which is all proper, may actually take that product and deliver it right to the producer, to the end user. And ladies and gentlemen, that's some major, major difference and it's provided for in the bill. Let me give you a quick analogy that's come up. What is a veterinary drug order? Well, again, that's just common sense. A veterinary drug order is the same as a prescription. And the analogy I would use is when the physician goes to the hospital, sees his patients, and he/she write an order, and the nurses then deliver it to the patient. And that's exactly the same thing in veterinary medicine in the food animal industry. It says nothing that a veterinarian has to do the administration. That's not

reasonable, not feasible. I could go down through a flowchart of how these drugs all come on the market. But one thing I'd like to have you remember please, F and DA Center for Veterinary Medicine does not approve a drug. They approve the label of a product. And this happens to be Micatil and everything that's on here was approved by FDA. And this happens to be a product that it's important that it's read because there is a real human health hazard here. There are cases of injection of this in people and death. And so the distributor wants protection from that practicing veterinarian must discuss this with the client. So the responsibility of the distributors is very great. They're a part of the team and in the interest of welfare, the animals, the interests of food safety, they must be made a part of the team. And it's my opinion and as they are part of the team, they need to have regulatory oversight. And that's my testimony, ladies and gentlemen, I'd be happy to answer any questions. [LB1022]

SENATOR GAY: Thank you. Thank you. Any questions? Senator Pankonin. [LB1022]

SENATOR PANKONIN: Thank you, Senator Gay. Doctor, appreciate you coming. I'm just curious. Are you representing anybody today or just came on your own and where did you come from? [LB1022]

DAN UPSON: The Nebraska Cattlemen asked me to come. I'm really representing myself as a consulting veterinary pharmacologist. [LB1022]

SENATOR PANKONIN: Okay. And you live where? [LB1022]

DAN UPSON: Manhattan, Kansas. I didn't want to tell this group that (laughter). [LB1022]

SENATOR PANKONIN: Well, we won't hold it against you. [LB1022]

DAN UPSON: Well, you beat us pretty hard the other evening (laughter). [LB1022]

SENATOR ERDMAN: Wednesday night was a little tough for you to take, wasn't it? [LB1022]

DAN UPSON: Oh, man. [LB1022]

SENATOR ERDMAN: I think there were more people surprised in Lincoln than there were in Manhattan to be honest with you (laugh). [LB1022]

SENATOR PANKONIN: Senator Erdman, do you have the floor? [LB1022]

SENATOR ERDMAN: Sorry. [LB1022]

SENATOR PANKONIN: I'm still asking legitimate questions. [LB1022]

SENATOR ERDMAN: Oh, I'm sorry. I never let that get in the way. [LB1022]

SENATOR PANKONIN: I appreciate...I did have a better understanding of some of these terms and the reason why the label is important. So I think your testimony was helpful. You're testifying neutral. You came on behalf, to a certain extent, of the Cattlemen. So how do you think we should proceed on this bill? Is it something with the amendments Senator Hansen has proposed as good legislation? Or do we need to spend some more time on it to try to get more of an agreement? [LB1022]

DAN UPSON: I hope I mentioned that. In reading it, I think it's very well written, very well written. And some of the amendments that have been proposed, as for example, the Veterinary Licensing Board, really don't have anything to do with this bill. They're having more to do with the responsibility of the licensing board of what the veterinarians are doing. [LB1022]

SENATOR PANKONIN: Okay. Thank you. [LB1022]

SENATOR GAY: All right. Any other questions? I don't see any. Thank you, Doctor. Thank you. All right. Anyone else like to speak neutral on this bill? Okay. Senator Hansen, you want to close? [LB1022]

SENATOR HANSEN: Thank you, Chairman Gay. There is some...we're not suppose to do that. There are some differences and there's some new terms here that I wasn't familiar with either. Senator Pankonin and Senator Howard asked too, but it's a learning process for me too. I'm one of the people that...oh, where did that bottle of Micatil go. I thought that was a handout. But these drugs are so expensive that, you know, we need help dispensing them. We really do. We need that veterinary...the veterinary-client-patient relationship is all important. I'll make one final suggestion here. In human health, the license is exactly the same as this bill. This bill took out "human health" and put in "animal health." And that's how important it is to us that we have as stringent of law dealing with animal, especially food animal health products, as we do in human health. In human health it would probably say the "pharmacist-doctor-patient relationship." In this bill we used "veterinary-client-patient relationship." In the human side, the patient has a little bit more to say about it than the patient in the animal side. But we're there to administer those to the best health that we can for our food animals. So thank you very much. [LB1022]

SENATOR GAY: (Exhibit 3) All right. Thanks, Senator Hansen. Any questions? I don't see any, thank you, Senator. And then just for the record, we did get a letter of support from Fort Dodge Animal Health that will be entered into the record as well as a proponent. So we'll close the public hearing on LB1022. And I see Senator Fulton is

here. LB1104 to provide for unlawful billing practices under the Uniform Credentialing Act. Welcome, Senator Fulton. [LB1022]

SENATOR FULTON: Thank you, Mr. Vice Chairman. [LB1022]

SENATOR GAY: Whenever you're ready. [LB1022]

SENATOR FULTON: Good afternoon. Thank you for allowing me to bring this bill before Health and Human Services Committee. For the record, my name is Tony Fulton, T-o-n-y F-u-l-t-o-n, and I represent Legislative District 29. LB1104 provides protection to patients against the practice of physician markups for anatomic pathology services. My intent in introducing this legislation is to ensure that this question receives the greatest statutory clarity so as to fully inform medical practitioners as to what billing practices are and aren't acceptable. As a result, I hope to eliminate the incidence of patients paying an additional arbitrary and unnecessary cost for services rendered by someone other than their own physician. To accomplish these goals, the bill provides (1) that a referring physician who does not perform or supervise a particular anatomic pathology service shall not charge the patient above the actual costs charged by the lab for such a service; and (2) that the referring physician disclose in his or her bill the identification of the pathologist or lab who actually performed the service and the actual amount to be paid for such services. This legislation represents a compromise with respect to my proposal for direct billing last session, LB513. There are now 18 states that have passed direct billing or anti-markup disclosure laws. I think that it is now apparent that Nebraska should join these others in passing anti-markup legislation. Last year, Chairman Johnson closed the hearing to LB513 by saying, do what's best for the patient and everything else will take care of itself. I agree and this legislation is necessary because it appears the house of medicine has not yet adequately addressed this issue. Over the course of this interim the Board of Medicine and Surgery, at the behest of this committee, held several meetings in which this matter was on the agenda. The board seemed unsure as to its role and whether it should address this issue during these meetings. Ultimately, the response was that the current process is working. However, when the board was asked how many cases they had processed, the answer was zero. It seems, therefore, that the process isn't working because the practice of marking up clearly continues. The board did indicate support for transparency. Transparency in and of itself is a solution, but it's not the solution to this issue. If transparency were sufficient, then marking up medical bills would be condoned, so long as it is disclosed. Given that marking up has been deemed an unethical practice under the AMA Code of Ethics, transparency only would allow for that marking up to continue, and that is the very problem. Concluding, marking up bills is contrary to the best interests of both the patient and the practitioner. I believe that LB1104 is the solution to repair the divisiveness which has occurred in the medical community. It is apparent that this problem will continue to fester without legislative action. I, therefore, respectfully request your support and advancement of LB1104. If there are any questions, I will try to answer

them. [LB1104]

SENATOR GAY: Thank you, Senator. Any questions for Senator Fulton? I don't see any right now. Proponents on LB1104? [LB1104]

GENE HERBEK: (Exhibit 1) Good afternoon. Mr. Chairman, members of the Health and Human Services Committee, my name is Dr. Gene Herbek, spelled H-e-r-b-e-k. I am a board certified pathologist and I practice at Methodist and Children's Hospital in Omaha, Nebraska. I am licensed to practice in Nebraska, Iowa, and South Dakota. I'm also a member of the Nebraska Medical Association, also known as NMA, and of the Nebraska Association of Pathologists. I also have the privilege of serving as secretary/treasurer of the College of American Pathologists, which has over 17,000 pathologist members. I want to thank Senator Fulton for introducing this legislation this year...last year and again this year, and thank you for allowing me this opportunity today. And personally, I want to thank you, the committee, for your dedicated work as public servants for the state of Nebraska. On behalf of the Nebraska Association of Pathologists, I am here today to support LB1104, which explicitly prohibits markups on anatomic pathology services, these services by physicians who order but do not perform such services for their patients. I have background material to share as part of my testimony, which I believe you all now have. It is the position of the Nebraska Association of Pathologists that no patient who is awaiting a biopsy result and possible cancer diagnosis should be exploited by a markup charge, it is ethically wrong and financially exploitative of a patient. If a markup occurs, for example, when a...a markup occurs, for example, when a laboratory charges $30 for an anatomic pathology test, such as a skin biopsy, Pap test or other tissue biopsy, and then the laboratory or pathologist bills the physician who ordered the test. The ordering physician then, for example, bills the patient or the patient's insurer $30, or $60, or $90 more for the service that cost the ordering physician $30. This markup billing practice on anatomic pathology services is a direct contravention of American Medical Association ethics policy for billing of pathology services. These markups are also contrary to AMA coding guidance that governs pathology billing codes used by practitioners. The federal government recognizes the integrity of these billing codes. This legislation would expressly outlaw such markups. How do we know that this markup practice is now occurring in Nebraska and the practice is ethically wrong? I would like to draw your attention to the testimony made before this committee last year. First, I would like the committee to note the opinion of legal counsel that was requested by the Nebraska Medical Association in 2006. If you turn to page 2 in your booklet, the opinion states, I quote, "we are of the opinion that when a physician purchases anatomic pathology services from a pathology service provider and then rebills the pathology services to private payers and/or patients with a markup in the price which does not constitute payment for a separate professional service for which a professional fee can be charged, such practice is contrary to the AMA Code." Again, that is the opinion of legal counsel retained by the Nebraska Medical Association. In deference to that opinion, the Nebraska Medical

Association testified before the committee last year that the markup was, in fact, an unethical practice under AMA code. I refer you to page 3. "The AMA Code of Ethics, as has been referred here many times this afternoon, prohibits physicians from billing patients for services that are not specifically performed by that physician. The AMA code further suggests that the addition of excess markup for contracted services rendered by another physician is unethical." The Nebraska Medical Association representative testified last year, found on page 4, in response to a question from Senator Erdman--Senator Erdman: "I'm saying that if there is a $30 profit made by somebody on what it cost versus what they are reimbursed, that is considered a markup and is unethical?" The Nebraska Medical Association representative replied: "If I served on the Board of Medicine and Surgery and looked at that practice, my opinion would be that's unethical." The Nebraska Medical Association has unequivocally and explicitly stated for the record of this committee that it believes the markup of anatomic pathology services by a referring physician is an unethical practice. Now let us review what the American Academy of Dermatologists has stated on this issue because it is in conflict with those who oppose this legislation. Referring to page 5 first, we have the August 31, 2007 statement of the Academy to the federal Center for Medicare and Medicaid Services or CMS on adoption of an anti-markup rule to close certain loopholes in the federal direct billing law for pathology services. This excerpt from their correspondence to CMS in support of the federal anti-markup rule states: "We agree that the physician performing the interpretation should be the only entity billing for this professional service. We recognize that some of these proposed measures may be needed in response to perceived Medicare abuses and to discourage business arrangements that carry significant risks of fraud and waste through kickbacks, fee-splitting and markups, reassignments, generation of unnecessary pathology lab tests, inappropriate referrals, and other dubious practices." Moreover, the very ethics policy of the American Academy of Dermatology, as seen on page 6, states: "In the practice of medicine, dermatologists should limit the source of their professional income to services actually rendered by them, or to their patients under their supervision when they are personally and identifiably responsible for the service." Referring to page 7, now we come to the testimony of Nebraska Dermatologists before this committee last year on the previous direct billing legislation that would have prohibited markups for these services. Again, in response to the question of Senator Erdman, "do you think that it is unethical or illegal to be charging and being reimbursed two different amounts in the event that the amount being reimbursed is higher than the cost of the actual service provided?" The past president of the Nebraska Dermatology Society stated, "According to AMA guidelines, it is not. I will say that what I believe AMA has stated in their regulation it is not unethical despite what the pathologists have said, so I'm going to go on that." Next on page 8, we have the testimony of another Nebraska dermatologist in response to the questioning of Senator Pankonin. "What do you do with it? Do you mark it up?" The second dermatologist, "Well, I tried to explain that I feel I'm adding a valued service." Senator Pankonin: "Okay, I understand that. So how much do you mark it up? Is it a percentage? Is it a certain dollar amount? Is it up to where the insurance is going to

pay?" The second dermatologist answered, "Well, it varies. It varies, as you know, what I mark it up doesn't matter, because what the insurance pays me is what I have to accept." And finally, on page 9 we have the testimony of a third Nebraska dermatologist who testified that day: "And I think that's, to me, the real value. The biggest value that I add is if there is a markup, and I do believe it's ethical if there is. I prefer to look at it as a discount, and we do get a markdown or a discount and take what the insurance company will pay, pay the lab what they require. And if there is a $30, I think that is ethical. I think the AMA guidelines do say that there shouldn't be double billing for a service, but the catch words in that opinion are 'if possible'." The Nebraska Association of Pathologists believes this testimony is strong evidence there exists egregious confusion in the medical community on this issue. Quite clearly, it should be evident that some Nebraska dermatologists believe that markup practices are legitimate and ethical, even given the fact that the Nebraska Medical Association has explicitly deemed such practices unethical in their testimony. On March 30, 2007, a copy of this committee hearing transcript was sent to the Nebraska Board of Medicine and Surgery by Senator Johnson with a request of the board to conduct a thorough review of the markup billing for anatomic pathology services and consider the adoption and promulgation of appropriate rules and regulations relating to such practices. In summary, the board was requested by Senator Johnson to examine the issue of these markups. In response, the board stated to Senator Johnson that it: "did not find sufficient evidence to warrant the specific regulation of billing for anatomic pathology services. The board currently considers investigative reports involving billing issues on a case-by-case basis, and this method has proven effective." We believe the board has failed to effectively address the markup issue and as a result is sending a muddled message to the provider community to continue such practices with impunity. Following along with page 10, as we have maintained for the last three years, we believe the Nebraska Association of Pathologists, we believe current law, Nebraska law is not adequate. The Administrative Code of Nebraska defines as unprofessional conduct: Any departure from or failure to conform to the ethics of the medical profession, which ethics are found in the American Medical Association's Code of Medical Ethics and Opinions. However, the board has failed to make the ethics policy of the American Medical Association clearly applicable to Nebraska physicians who are marking up pathology services and thereby exploiting patients for an unethical profit. Because of the lack of clarity in this law as it relates to the markup of anatomic pathology services, some Nebraska physicians are making a mockery of the current regulations by both unethically charging markups on anatomic pathology services and unethically failing to disclose to patients the actual charges for these services by the physician or laboratory that provided the service. LB1104, if enacted, makes absolutely clear to the board, the Nebraska Medical Association, dermatologists, and others that any markup of a patient's anatomic pathology bill is contrary to Nebraska law. It grants patients a fundamental protection they should be entitled to under our law. Nebraska should never be seen as a state where ethics is irrelevant, and where the law can be flaunted, and patients exploited with impunity. I apologize for my lengthy remarks. I greatly appreciate your time and would be happy to

answer any questions. Thank you. [LB1104]

SENATOR GAY: Thank you. Any questions from the committee? I don't see any. Thank you. [LB1104]

GENE HERBEK: Thank you. [LB1104]

SENATOR GAY: Other proponents? [LB1104]

STEFFAN LACEY: (Exhibit 2) Mr. Chairman, members of the committee, my name is Steffan Lacey, spelled L-a-c-e-y. I am the immediate past president of the Nebraska Association of Pathologists and a member of the Nebraska Medical Association, known as the NMA. I live in Norfolk, Nebraska, proud hometown of the Speaker of the house. I am a board certified pathologist. I have practiced for 25 years and am licensed to practice in the state of Nebraska and have been a member of the Nebraska Medical Association for 25 years. Thank you for allowing me to speak this afternoon. The Nebraska Association of Pathologists has, since 2005, attempted to work with the Nebraska Medical Association on the issue of referring physician markup of anatomic pathology services. For over two years now, the Nebraska Medical Association has resisted every effort to prohibit this markup practice on pathology services. The Nebraska Medical Association's conduct on opposition to this measure is unreasonable and cannot be reconciled with the ethical practice of medicine. Last year, the Nebraska Association of Pathologists supported legislation that would have eliminated the markup of anatomic pathology services by ordering physicians...by requiring that the bills for these services be directed by the laboratory to either the payor or the patient. That legislation would have denied ordering physicians the ability to markup anatomic pathology services. The legislation was, in fact, similar to laws of 13 other states and has been a requirement in Medicare since 1984 and is currently a requirement in Nebraska Medicaid. These laws have been enacted by other states and the federal government as the most effective mechanism for preventing markups from occurring. Last year, the Nebraska Medical Association opposed that effort. That very same year the Kansas Medical Society supported a substantively similar bill. Unlike the Nebraska Medical Association, the Kansas Medical Society stated, as you can see on page 12 in your booklet, this issue arose because of some billing practices in other states which involve the inappropriate markup of certain laboratory services by physicians. In those states, a few physician practices had charged the patient substantially more than the amount billed to the practice by the pathologist or laboratory that performed the tests. Charging for such services in this manner is unethical, and it also is impermissible in Medicare and Medicaid billing policies. Frankly, we do not have any evidence that this practice exists in Kansas, but we felt that it would make sense to be proactive and make it clear that such practices are inappropriate. The Kansas bill unanimously passed last year with Kansas Medical Society support. The reason I mention the Kansas experience to this committee is our perception that a small, but vocal, number of Nebraska

physicians are profiting from these markups and have been able to influence the Nebraska Medical Association to reject all governmental efforts to explicitly prohibit these practices. Most recently, a delegation of pathologists met with the Nebraska Medical Association to discuss this issue and subsequently presented them with a draft of the legislation now under consideration as a compromise. The Nebraska Medical Association responded to us in writing that they would still oppose this anti-markup legislation because "they are interested in better understanding the CMS delay in application of the expanded anti-markup rule that was published in the 2008 final physician fee schedule. The NMA is well aware of the fact that the federal Center for Medicare and Medicaid Services, effective January 1, 2008, closed a loophole in the federal direct billing law for pathology services by extending an anti-markup rule that applies to physicians who perform a component of the service. The NMA assertion that CMS has opted to delay this rule-making on anatomic pathology is completely false and cannot be a reasonable basis for the NMA objection. I refer you to page 13. Specifically, the committee should be aware that CMS, in proposing the expansion of the anti-markup rule and in its rule-making, expressed, and I quote, "concern that allowing physician group practices to purchase or otherwise contract for the provision of diagnostic testing services and to then realize a profit when billing Medicare may lead to patient and program abuse in the form of over-utilization of services and result in higher costs to the Medicare program." LB1104 emulates the 24-year-old prohibition on markups of pathology services by physicians who do not perform the service and makes it applicable to Nebraska patients who are not enrolled in Medicare or Medicaid. Given the long established history of this law, Nebraska Medical Association's effort to use the recent federal rule as a pretext for opposition is without merit. In another effort at finding a pretext for delay, the Nebraska Medical Association has also cited a resolution submitted at a recent American Medical Association meeting. Consideration of this resolution was deferred by the American Medical Association House of Delegates, as are many of the 500 or so resolutions that are introduced annually. Nevertheless, the particular resolution cited by the Nebraska Medical Association cannot be considered directly relevant to this legislation given that the text of the resolution does not in any way reference pathology or laboratory testing. Moreover, the resolution does not contemplate any change to existing American Medical Association ethics policies or AMA billing and coding guidance for pathology services. In point of fact, there exists two relevant, long-standing American Medical Association ethics policies on this issue that this legislation embodies. I refer to pages 14, 15, and 16. And I quote, "When it is not possible for the laboratory bill to be sent directly to the patient, the referring physician's bill to the patient should indicate the actual charges for laboratory services, including the name of the laboratory, as well as any separate charges for the physician's own professional services. The physician who disregards quality as the primary criterion or who chooses a laboratory solely because it provides low cost laboratory services on which the patient is charged a profit, is not acting in the best interests of the patient. However, if reliable, quality laboratory services are available at a lower cost, the patient should have the benefit of the savings. A physician should not charge a markup,

commission, or profit on the services rendered by others. A markup is an excessive charge that exploits patients if is nothing more than a tacked on amount for a service already provided and accounted for by the laboratory. A physician may charge an acquisition charge or processing charge and the patient should be notified of any such charge in advance." LB1104, in essence, places these two fundamental protections into Nebraska law by (1) requiring the disclosure to a patient of the actual charge of any anatomic pathology service; and (2) prohibiting a referring physician who orders an anatomic pathology service for a patient from marking up or increasing the laboratory charge for that service. Last year, one of the arguments against the legislation was that it would limit an ordering physician's ability to refer a specimen to a laboratory of their choice. That issue is now resolved because the referring physician can continue to use...can continue to receive the bill for the service and refer a specimen to any laboratory. Furthermore, as per AMA coding guidance and AMA ethics policies, the legislation makes clear that the referring physician can charge an acquisition and processing charge when it is separately identified for actual cost and properly coded. In summary, LB1104 is needed because we believe that the Nebraska Board of Medicine and Surgery has failed to address the markup issue, and as a result is sending a muddled, confused message to the provider community to continue such practices with impunity. Quite simply, the board does not have statutory clarity on its obligation to universally require disclosure of actual charges for pathology services and, furthermore, to forbid and enforce markup practices for anatomic pathology services. There is no greater proof of the board's nonfeasance than the testimony heard by this committee last year from three dermatologists that all defended markup practices. LB1104 is our effort at a compromise bill that is virtually identical to an anatomic pathology anti-markup bill enacted last year in Utah. That legislation passed unopposed by any medical society in that state. Unlike other states moving forward, the NMA urges delay and continues to obstruct any effort to fundamentally address the markup issue. However, we remind the committee that the ethics policy of the American Medical Association that prohibit markups and that require disclosure for pathology service charges are not new policies. These ethics policies have been in place since 1977. Furthermore, the federal direct billing law for pathology services, in order to prevent markups in Medicare, is almost one-quarter of a century old, having been enacted in 1984. Quite simply, there is no reasonable basis for delay in Nebraska on this issue. Nebraska physicians and Nebraska enforcement authorities need to have clear direction on the law as it relates to the practice of pathology in order to protect patients and to ensure the ethical practice of medicine. To those that say this does not belong in the Legislature, we disagree. For the reasons mentioned, which are: increased charges to patients by physicians, with patients charged for services not rendered to those patients, which in Nebraska is unprofessional conduct; billing practices that are contrary to American Medical Association Code of Ethics, which in Nebraska is baseline law applicable to physicians; violation of billing codes; violation of professional component/technical component services; inability of the Nebraska Board of Medicine and Surgery to effectively address current law; unwillingness of the Nebraska Medical

Association to enforce all of these. To those that say disclosure transparency of anatomic pathology services without anti-markup is the solution the Nebraska Association of Pathologists disagree. Disclosure/transparency alone condones markup and unethical billing, and is a step back from current Nebraska law as it relates to all laboratory services. For these reasons, we believe the only place where this belongs and can be addressed is in the Nebraska Legislature. It is clear that the current system is not clear regarding how to resolve these issues. We thank you for your help. Senators, as you can tell, there's a great deal of frustration. Never did I think I would be here testifying against an association that I've been a member of for 25 years. I do not take great pleasure in having this discussion in public. And I thought that if we could have addressed this on our own, I would not be here, but we cannot. Another year has gone by and we are here again. And here we will be again next year and for however long it takes, because what is happening is wrong and the status quo needs to be changed. Most of my fellow physicians do this right, but the actions of a few are giving all physicians a bad name and this is unfortunate. A strong and clear message need to be sent. We need your help. I ask for your support. I have a letter from Dr. Herb Reese, past president of the Nebraska Medical Association, that I would like to enter into the record. I will not read that, but I would be happy to answer any questions. [LB1104]

SENATOR GAY: We'll make copies of that and get it out. Any questions from the Committee? Senator Pankonin. [LB1104]

SENATOR PANKONIN: Doctor, we'll tell the Speaker you did a great job. So he'll be proud. [LB1104]

DR. STEFFAN LACEY: Okay. Thank you. [LB1104]

SENATOR PANKONIN: You know, this booklet has been helpful and how to see this was an NRC hearing last year from a lot of ways. But the...from the pathologist's side, the ethical issues are one thing. If this bill is passed, does it help your business model? Does it mean more business for pathologists in Nebraska? Is that part of the reason, besides the overall ethical considerations? [LB1104]

STEFFAN LACEY: The Nebraska Association...from the pathologist's perspective, it wouldn't increase our business. We still would provide a service for a patient, so it would not increase our business. In terms of what it would do would provide clarity for providers and physicians in the state of Nebraska as far as how these things can be billed. [LB1104]

SENATOR PANKONIN: A follow-up question would be, it would seem to me like you're upset because they're marking up on your work and you're not getting the financial benefit. Is that...I mean, is that part of the problem that...why this thing can't get resolved? I mean, is that just getting down to the basic problem if...you don't think that's

ethical that they're adding onto your work? [LB1104]

STEFFAN LACEY: We think that's...we do think that's an unethical practice that a physician is marking off a bill to a patient and there is no service provided to that patient for that markup. [LB1104]

SENATOR PANKONIN: Is there other specialities besides dermatology that you're concerned about in this situation? [LB1104]

STEFFAN LACEY: Yes, there are. [LB1104]

SENATOR PANKONIN: And they would be what? [LB1104]

STEFFAN LACEY: Family practitioners would be involved from the standpoint that their offices could be billed for skin biopsies or for Pap smears, obstetricians, gynecologists the same way. Those three specialties are probably the primary ones. Some internal medicine physicians also do markup billing. [LB1104]

SENATOR PANKONIN: Okay. Thank you. [LB1104]

STEFFAN LACEY: You're welcome. [LB1104]

SENATOR GAY: Senator Hansen. [LB1104]

SENATOR HANSEN: Thank you, Senator Gay. Dr. Lacey, on page 16 you say that a physician may make an acquisition charge or a processing charge, but the patient should be notified of that charge. So does this all come down to a billing, like we should have more things on the bill that the patient themselves can see what they're paying for? [LB1104]

STEFFAN LACEY: Right. There is a separate code for that processing and acquisition charge that is an acceptable code to use. So, yes, there should be an extra charge...excuse me, an extra code listed on the patient bill. [LB1104]

SENATOR HANSEN: But why should a physician have to explain to the patient how they came up with that charge, I guess? Or would you be satisfied with just line-item by line-item, this is an acquisition charge, this is a transportation charge, this is a fee for handling the material? Would that be sufficient to...in the bill to get that much of it out anyway? [LB1104]

STEFFAN LACEY: Well, the referring physician is entitled to that... [LB1104]

SENATOR HANSEN: Yes. [LB1104]

STEFFAN LACEY: ...as far as a line-item bill. In order...that's the rationale for the markup is that the physician feels I'm entitled to mark that up because I'm doing those things; I'm acquiring the specimen, I'm processing the specimen, and I'm sending the specimen off to the laboratory. So if the physician does a markup bill and in addition then to this line-item of acquisition, he's indeed...they are indeed double billing at that point. [LB1104]

SENATOR HANSEN: But how on a bill are you going to differentiate $50? And why can't the physician say, part of this was for acquisition, part was for...how is a patient going to know why those charges aren't right? How could I ever find out...I mean, transparency is one thing, but I mean totally explaining what the bill is for is not normal, I don't think, in any other...I mean, other than you take a tractor into Pankonin's outfit and have them go through it, they have line-item by line-item what everything is for. Is that what you're talking about doing? Is that what you want? [LB1104]

STEFFAN LACEY: We believe that is part of what our solution would entail, that there would be a line-item for what you're mentioning. [LB1104]

SENATOR HANSEN: For each one? [LB1104]

STEFFAN LACEY: Yes. Now the information in that packet does say that the patient should be...should have some acknowledgement that that is part of the bill. And that's indeed something that is a legitimate charge that's recognized by insurance companies. And I believe...and I may be wrong on this, but I don't believe it's practiced by many physicians at this point in time. [LB1104]

SENATOR HANSEN: Okay, thank you. [LB1104]

SENATOR GAY: Senator Howard. [LB1104]

SENATOR HOWARD: Thank you, Senator Gay. I'm just curious since Senator Hansen brought this up. Is a typical charge of $30 that's added into this, does that exceed what would be allowed for a service charge? I don't know what the standard is? [LB1104]

STEFFAN LACEY: You know, I'm probably not the best person to answer that question. The physicians that are involved in this type of practice, as they contract with insurance companies, would have a better handle on what the allowed charges are. [LB1104]

SENATOR HOWARD: I understand that. Thank you. [LB1104]

SENATOR GAY: Senator Erdman. [LB1104]

SENATOR ERDMAN: Dr. Lacey, welcome back. So if I get my explanation of benefits from Blue Cross and Blue Shield for going to see a doctor in which the doctor performs an office visit, and in the course of the office visit says we're going to...got something we need to send in for our lab, which my family have recently received one of those. It showed the office visit as one line, the lab or the pathology as a separate line, and it gave me the cost of both the office visit separately and the pathology or the lab service separately. That was all on the same EOB, it was all on the same sheet. Is that what you're talking...is that what the goal of LB1104 is, is that as a client, as a customer I will see the value placed on each service provided to me? [LB1104]

STEFFAN LACEY: From the insurance company. [LB1104]

SENATOR ERDMAN: Right, because technically then I get the same bill from the... [LB1104]

STEFFAN LACEY: From the physician? [LB1104]

SENATOR ERDMAN: ...from the physician. But, depending upon what's eligible to be reimbursed by the Blue Cross or whoever, it's going to be adjusted accordingly. [LB1104]

STEFFAN LACEY: Right. So that your EOB should line-item those charges. [LB1104]

SENATOR ERDMAN: I get more information from the EOB, usually, than I do from the physician. But I'm just curious, is that what we're talking about here? [LB1104]

STEFFAN LACEY: Well, our bill is what the physician would bill to the insurance company or to the patient. In other words, the laboratory charged me $30, I'm charging you $60 is what we're trying to get away from. We're saying that our bill is such that...excuse me, this legislative bill, LB1104, is such that the physician would have to line-item what he was charged by the laboratory that he referred the specimen to and that he would be prohibited from marking up that particular bill. He could, however, put...I mean, the acquisition charge is a separate line-item which is acceptable. [LB1104]

SENATOR ERDMAN: Right. Right. So as I understand it, when I get the bill...I mean, I get the EOB and it tells me the things that are above what's negotiated between the provider and the insurance company, and those are excluded from the cost. And so then they are reimbursed what they've agreed to. But when I get the bill back from the medical provider it will actually tell me the actual cost then instead of just a lump sum. [LB1104]

STEFFAN LACEY: Yes, that is our proposal with this bill. [LB1104]

SENATOR ERDMAN: Because if you don't know what the actual cost is, it doesn't really matter what the line-item is, because it could say that they billed insurance $90 and they were reimbursed $75, but it may have only cost them $60. And so unless you know the actual cost, it really doesn't do you any good to know that information, because I have no idea whether I'm overpaying for a service. Is that the theory? [LB1104]

STEFFAN LACEY: Yes. And that's very hard to find that information out. You have to actually be a patient and try to inquire about that or be in a physician's office that you know what a bill is from a laboratory and then what is being sent to the patient. But our bill would be...that it would be listed what the laboratory charges the physician, and then the physician would not be able to mark that up. [LB1104]

SENATOR ERDMAN: Thank you. [LB1104]

STEFFAN LACEY: Is that clear as mud? [LB1104]

SENATOR ERDMAN: About like pond water. Good job. [LB1104]

SENATOR GAY: Any other questions? I don't see any. Thank you. [LB1104]

STEFFAN LACEY: Thank you. [LB1104]

SENATOR GAY: Other proponents? No other proponents, we'll go to opponents. [LB1104]

JIM QUINLAN: (Exhibit 3) Good afternoon, Senator, members of the committee. My name is Jim Quinlan. Unfortunately, I have to tell you I'm a lawyer from Fraser Stryker, which is a law firm in Omaha. I've practiced in Nebraska for quite a while. Much of my practice is in the area of various aspects of health law. Currently,...Quinlan, Q-u-i-n-l-a-n. I'm a member of the American Health Lawyers Association, a member of the American Bar Association, health law section. I'm here today because Dr. David Watts, on behalf of the Nebraska Dermatology Society, asked me to come down and talk a little bit about the ethical issues that have already been addressed by the previous speakers, in light of some of the comments that apparently were made and came up at the hearing last year on LB513. As I'm going to tell you later, I don't necessarily think listening to lawyers interpret medical ethics is the right way to proceed here, but you'll have to listen to me for a few minutes this afternoon. In the end, in a nutshell, my assessment is that it's a fair interpretation of the language of the AMA Code of Ethics that (inaudible) which permits a physician to purchase anatomical pathology interpretation and then bill a private insurance company or a patient the cost of that purchased interpretation and some charge in addition to the cost of the purchased interpretation if the purchasing physician has provided additional services in exchange

for that extra charge. You have heard today that there are differing views on interpreting the language of the American...of the AMA Code of Ethics. The previous speaker referred you to a letter of an attorney, Lowell Brooks, and he specifically asked you to consider a conclusion of, excuse me, a conclusion of Mr. Brooks that is contained on page 3 of that August 3, 2006 letter where the conclusion is reached that when a physician purchases anatomical pathology services and then...from a pathology provider and then rebills those services to a private insurance payor with a markup in price which does not constitute payment for a separate professional service for which a professional fee can be charged, such practice is contrary to the code. So the conclusion is that if there is no service provided for that extra charge, there is an ethical violation. This gentleman concludes that the additional service provided must be one for which a separate professional fee can be charged. In the materials that have been provided to you today on behalf of the Nebraska Dermatologists...you guys ought to supply water to speakers. [LB1104]

SENATOR ERDMAN: We can get you that. You need some? [LB1104]

JIM QUINLAN: We'll see how I stumble. There's another opinion from another attorney, Karen Shuler in Omaha. And she analyzes the same principles of the Code of Ethics and concludes that if...thank you, I appreciate that...that there is a requirement and that it is ethically necessary that there be some additional services provided by, in this case, the dermatologist to justify a markup. She doesn't conclude that it requires a professional service which has to be separately coded. So there's...I think the difference of opinion here on ethics, in the minds of the lawyers, is what additional service is appropriate, and is it necessary to actually provide value for that "markup." And you heard last year, and I think you'll hear from Dr. Watts what the view of the dermatologist is as to what additional services they provide. Okay. So we've got this different opinion amongst the lawyers. And apparently, there is a substantial difference of opinion amongst the physicians, because the two prior speakers, on many occasions, talked about the lack of clarity, talked about the substantial confusion, suggested that the Board of Medicine and Surgery isn't addressing these issues. So apparently, it's not a clear-cut issue. And I think the bottom line is that the idea that some additional service must be provided in exchange for an added charge to the anatomical pathology charge is correct. And I think that from the lawyers point of view that's what the difference of opinion is about. So, you know, how did I get comfortable coming down here and talking to you about that and being willing to take a different point of view than Mr. Brooks? And the reason that I reached that point of view is that I think to myself, who outside of this room has an interest in these issues? And before I talk about that, I do want to address your attention to one AMA ethical code notion. There is a...Mr. Brooks letter actually includes this language. There's a definition from some old judicial opinions of the American Medical Society about what is a markup. And this is what they said, the word markup has traditionally been used in this context to describe the commercial exploitation of patients by charging for services that are not provided. That's on page 2

of the letter. So there's this notion of commercial exploitation of patients. In this setting that we're talking about, which is billing private insurers, we're not talking about billing Medicare or Medicaid, who are the experts, and what is a commercially reasonable charge for the services that we're talking about? That's the private insurers, the commercial insurers, the Blue Cross's, the United HealthCare's, they look at these bills, you, Senator, described the process that they go through their professionals. Their job is to determine what is a fair and reasonable charge for this service? How much are we going to pay as an insurer? And I've negotiated managed care contracts with these folks, and they've tons of data. They know everything about the services that they are paying for. And they are not here today talking to us about whether or not there is a charge that amounts to a profit or a referral charge. They're not suggesting, so far as I'm aware, that there is no service being provided when the dermatologists add some additional charge. So that's one place that gives me some comfort that the billing practice is viewed by experts in pricing medical services. In the private sector, that's reasonable. And I know it's...it's a long day, but let me just briefly comment on the discussion regarding the federal government and the Centers for Medicare and Medicaid, the CMS. They do...that...Medicare and Medicaid is a payor. They pay for medical services, just like United HealthCare, just like Blue Cross. And they've adopted some regulations that do eliminate the opportunity to add a charge. What's interesting is that in the private sector the United HealthCare's and the Blue Cross's, essentially, have that same option. They contract with physicians and they set out the payment terms in those contracts, and they could include fee limits or other limits to address this issue. They determine fee schedules, they determine usual and customary charges. So they have the opportunity to do the same thing in their contracting and in their payment protocols. And apparently, they're not doing that and they've chosen not to do that. The last comment, real quickly, is the other place where I got some comfort in coming to sit in front of you today is by looking at the fact that the Board of Medicine and Surgery apparently looked at this issue, my sense was, pretty rigorously. They had the two legal opinions that we talked about, they had a lot of input, as I understand it, from the dermatologists and the pathologists. Clearly, the idea of this ethical question was before them. And at least one account of their approach to it is that they're not...that they're shirking their responsibility. I don't know that that's true. But it sure seems to me that the Board of Medicine and Surgery is the group of experts, the physicians who are in the best position to interpret these AMA guidelines. And this is where I get back to you shouldn't be listening to a lawyer, you should be listening to an objective body which I think is the medical and surgery board regarding whether additional legislation is needed, and regarding their view that they have adequate tools to address ethical issues. And the fact that they haven't come out across the board and said, adding a charge is unethical, but rather have said, look at this on a case-by-case basis, you know, suggests that they have a point of view that the practice, per se, is not unethical, but clearly on a case-by-case basis should be examined if necessary. Okay. [LB1104]

SENATOR GAY: Okay. Thanks, Jim. Any questions? Senator Hansen. [LB1104]

SENATOR HANSEN: I have one question. Thank you, Senator Gay. Have you...if you represent the...are you representing the dermatologists, per se, or a larger group? [LB1104]

JIM QUINLAN: I was asked to appear today by the Nebraska Dermatology Society, by David Watts in particular. [LB1104]

SENATOR HANSEN: Okay. Have you looked at any of the other state's laws that deal with markup bills? [LB1104]

JIM QUINLAN: Not specifically, Senator. I'm aware that there are other states that have addressed this issue of direct billing, which is what I think was before you last year. My understanding informally is that anti-markup legislation of the type that is before you today is uncommon. It may be the next wave of legislation, but I'm not going to tell you that I'm an informed source on that. That's my gut, my take. [LB1104]

SENATOR HANSEN: Okay, thank you. [LB1104]

SENATOR GAY: Thanks. Senator Erdman. [LB1104]

SENATOR ERDMAN: Welcome. [LB1104]

JIM QUINLAN: Thank you. [LB1104]

SENATOR ERDMAN: I've heard one of my colleagues from western Nebraska make the statement that if you have one lawyer in a town they'll go bankrupt. [LB1104]

JIM QUINLAN: Yeah, there's no business. [LB1104]

SENATOR ERDMAN: But if you have two lawyers, they'll both be millionaires. And it's because if you don't like the answer you get from one, you go to the other. Ironically, the lawyer that goes bankrupt needs a lawyer to do that as well. But I don't think he thought of that when he made that statement. The term "additional services", and I'm not aware, so I don't have to hold myself out as that way, although I play one some days on TV. Additional services could be a range of things. If there is no service provided, I mean, you could technically say that I took the sample, sent it to the pathologist, technically I'm providing an additional service, therefore I am justified in at least in an ethical standpoint of marking up the service I'm providing to you to help cover the cost of my time and effort. Now if you are being...if you're able to charge, say, 20 percent more for simply sending something off and then looking at it ten seconds when you get it back, I'm probably going to argue that that's not probably a service. That's probably just... [LB1104]

JIM QUINLAN: (Inaudible) [LB1104]

SENATOR ERDMAN: Yeah, something else. But the issue with the Board of Medicine, at least, is interesting. Leslie Spry, who I believe at the time was a representative of the Nebraska Medical Association, testified on February 21 of last year that if markups, and the term that I would use or the example we were discussing last year was it costs you X to provide a service. You bill X plus $30, but he believed that that was unethical. Now he's not on the Board of Medicine, as I understand it, directly. I think he has some position somewhere, but he testified that he wanted to be a part of the solution. Why aren't there any cases? Is it because, and I'll just throw this comment that I wrote down and then you can answer, is it because we can't prove what we don't know and we don't know what we can't find? [LB1104]

JIM QUINLAN: Are you ready for my response? [LB1104]

SENATOR ERDMAN: Yeah, fire away. [LB1104]

JIM QUINLAN: I don't think that it's because we don't know. I think that there's been clear testimony today that there is a practice of adding charge to the anatomical pathology bill. I don't think it's a matter of nobody knows that's going on. I think it's a matter of is that a, per se, unethical practice? And I think it's a matter of assessing, the question that you really raised which is, what is the additional service that is necessary and appropriate to make that additional charge reasonable? And I don't know whether it's the relative insignificance of these charges, $20 or $25? I don't know why...I don't know how to answer that question, other than to say I don't think it's because it's an unknown issue. I'm certain there are many... [LB1104]

SENATOR ERDMAN: So we know that it's going on. So the question isn't necessarily whether or not we know it's going on, but whether it should be going on? [LB1104]

JIM QUINLAN: I think it's...from my perspective, the question that I was asked to think about is whether it is automatically an unethical practice by applying the American Medical Association Code of Ethics, you know, rules, about which there is a difference of opinion. And I think that the interpretation, and I think it's a reasonable one, is that some additional charge for additional service is appropriate. And then my thought about that is that the right forum to answer your question, which is, what amount of additional charge, how do we actually apply these concepts of additional professional services? How do we apply these rules ought best be done by physicians rather than lawyers. And the Board of Medicine and Surgery seems to me to be a perfectly logical body, you know, to be thinking about those questions. And my inference about why is nothing happening, why are there no enforcement cases, is that by and large they've concluded that the practice in and of itself isn't unethical, and nobody has brought egregious cases

to their attention. But again, that's an uninformed conclusion, because I haven't spoken to them and I don't know what their... [LB1104]

SENATOR ERDMAN: The issue of billing, you know, I think the folks that do manage plans and things like that, obviously, have an interest in...a twofold one. They're looking at it from a standpoint of their ability to keep their business running and providing a service that's valuable to individuals to receive healthcare. So Blue Cross has an interest in providing a service, but also in making sure that their expenses are covered in the course of them doing their business. Determining whether something is commercially exploitive may or may not be...I mean, if they're willing to pay $100 for somebody to do something, because that's what is typically done is probably the 35,000 foot perspective. But, as you know, your law practice is probably not the same as any other law practice. I think that's where the issue of direct oversight or the Board of Medicine comes in to be able to handle cases on a case-by-case basis. It just seems interesting to me the reason we're here is because the medical profession, at least from the perspective of some, isn't willing to address the issue. The reason why lawyers are sitting at the table talking with farmers and appraisers is because, you know, the analogy Senator Fulton gave was that the medical house isn't in order or they're not taking care of the issue. I mean, you know, I think that's part of the concern is, you know, the bar association addresses lawyers, the Board of Medicine addresses doctors. Are the foxes guarding the foxes or are they guarding the hen house? And that's kind of this debate. I don't know what the answer is. I'm wondering, and I'll ask Senator Fulton this later, I think whether it's creative or intentional, some of the resolutions that were passed by the different organizations were if you're going to pick on one group, pick on all of us, don't just pick on the dermatologists or whoever, pathologists. You know, if it's happening elsewhere, then everybody should be a part of the solution, not just one. And maybe there is a rationale here. But there seems to be more, it's kind of like an iceberg, it seems like we see what's going on above the water, but we know there's so much going on below. But the only people with scuba gear are the people in the Board of Medicine and it appears that they're still on dry land. And I'm wondering, I mean, we hear that all the time as a committee--don't respond with legislation, let us take care of it on the credentialing side of things. And I think, generally, that's a good answer. But I'm still at somewhat of a loss and got a trip down memory, reading from the transcript from last year. I don't know what the answer is. I don't know that the public is well-served by having medical professionals say that I can markup just because I can. I think that's the issue that probably needs to be flushed out so that people are aware what the additional services are. I think that does everyone a benefit to make sure that they're aware. I think our society, as we go forward, at least my hope is, that we become a more responsible consumer of healthcare services. And with the additional opportunities that citizens have, whether it's health savings accounts, or other things, to be directly in control of their medical costs, I think they're going to want to know that. I think it's in the benefit of the medical profession to be able to say, here's what you're getting and why. But that's a whole lot of other fun because you've got to read through all the wonderful things that

they put on your bill and figure out what they're doing anyway. [LB1104]

JIM QUINLAN: Well, and I'm going to not... [LB1104]

SENATOR ERDMAN: That's like drinking out of a fire hydrant, I realize that. Go ahead. [LB1104]

JIM QUINLAN: Well, but I mean I think the idea of additional information and the disclosure of information is something that has come out of all these sessions. And I know that Dr. Watts, on behalf of the society, intends to address that. And the only...the last comment I'll make is the one that you touched on. You know, maybe this is a bigger issue than dermatologists and pathologists. [LB1104]

SENATOR ERDMAN: But if the Board of Medicine isn't willing to address the dermatologists and pathologists, then who's going to address the bigger issue? [LB1104]

JIM QUINLAN: Well, I mean in the end, you have the opportunity to do what you believe is the right thing to do as a Legislature, clearly. And I think that the conclusion about, you know, I don't have information to suggest the Board of Medicine is not doing what it ought to be doing, you know, in light of my comments. But in light of what's going on in the industry, in light of the insurance, you know, what I view, and I may disagree with you a little bit from the perspective of what's the private insurance industry's bottom line about paying as little as they can get away with paying to providers. I mean, they have their own profit margin to protect. [LB1104]

SENATOR ERDMAN: Right, I agree. [LB1104]

JIM QUINLAN: But we're beyond sort of the... [LB1104]

SENATOR ERDMAN: I was trying to be a little more polite when I said it, but you said it more succinctly. So it was probably right. [LB1104]

JIM QUINLAN: We're beyond the scope of really why I was asked to come, which was really to kind of talk about at least my take on the ethical question. And you probably have heard as much of me as you like. [LB1104]

SENATOR ERDMAN: Okay. [LB1104]

SENATOR GAY: Are there any other questions? I don't see any. Thank you. How many more opponents do we have that want to talk on this issue? Okay, about two more. Anybody neutral on this that wants to speak today? Okay, we'll hear from other opponents. [LB1104]

DAVID WATTS: Chairman Gay, members of the Health and Human Services Committee, for the record, my name is Dr. David Watts, W-a-t-t-s. I'm testifying today on behalf of the Nebraska Dermatology Society in opposition to LB1104. I want to echo Dr. Herbek's comments and thank you each in advance for the hard work in sorting through these issues and the time you spend serving the citizens of Nebraska and for inviting me to testify before you. You have lots of exhibits up there. I'm not going to read from too many of them. Your time is valuable. I'll keep my comments as brief as possible to allow plenty of time for questions at the end. I'm a board certified dermatologist in private practice in Omaha. My practice is primarily treating skin cancer. I'm a member of the Nebraska Medical Association, as well as the American Academy of Dermatology. I currently serve as the president of the Nebraska Dermatology Society. I'd like to start out by emphasizing that we do have a good deal of respect for our pathologist colleagues. Ideally, we function as an interdisciplinary medical team and share the goal of providing the best care for our patients. Our similarities are far greater than our differences. I believe we all became physicians out of the sincere desire to make things better, and we all want to do the right thing with regard to the issues before us today. Although our goals as physicians are the same, our views on achieving these goals differ. We're disappointed that we have not yet been successful in working together with our colleagues to resolve these differences. We're also very disappointed by and take extremely seriously public allegations by spokespersons of the College of American Pathologists and Nebraska Association of Pathologists of unethical and even fraudulent professional and business practices. It also saddens us that we find ourselves at the point of attempting to legislate our differences rather than working together to resolve them to benefit patients. This threatens to undermine the trust in regard with which we are held by our patients and the public. We agree that Medicare and Medicaid have stipulated the rules by which they will pay claims for services. These rules may not be perfect or the most efficient, but they are the rules we abide by. Medicare sets the rates at which it will reimburse for services nonnegotiable. Private insurers have not followed the lead of Medicare, despite intense lobbying efforts by the CAP, College of American Pathologists. We have to ask the question, why? These are huge, smart corporations with eyes and ears everywhere. We would suggest that they find the current system to be efficient, in their best business interests, and in the best interests of their patients. They also set their usual and customary rates at which they will reimburse for services nonnegotiable. These are the experts on reimbursement. So what is all this fuss about? We think it boils down to competition. The relevant AMA ethics guidelines, and you have a copy of those, say that free market competition is good for patients. In fact, let me draw your attention to a resolution in front of the AMA House of Delegates, three things about this: (1) these are very complicated issues, being deliberated by committed individuals trying to do the right thing; (2) AMA thinking on these ethical issues continues to evolve; and (3) that the Georgia delegation, in this resolution, has before the American Medical Association a resolution to oppose any federal or state legislation that dictates how a physician bills for medical services. I won't read the rest. The AMA

will be addressing this resolution this summer, so this is in a preliminary stage. But the relevant ethics guidelines says free market competition is good for patients. We believe that. Now competition, large, national pathology laboratories, specializing in skin, are able to compete effectively with local pathologists because they are efficient, they provide great service, and they do so at substantially lower rates than local pathologists. That's the difference. That's how they become large. The CAP, the College of American Pathologists, would like to restrict these lower cost laboratories to protect local pathologists, it's simply business. But the strategy seems to be to publicly vilify the physicians who use these laboratories, alleging unethical business practices. Direct billing and anti-markup legislation really comes down to protectionism, cloaked in ethics issues. It is just business. We've outlined all of this in a letter that the Nebraska Derm. Society sent to the Nebraska Board of Medicine and Surgery last summer. It's this letter. I won't read from that. It's all there. That letter pertained to LB1104's predecessor, LB513. And you have a copy there. It's really the same issues, although anti-markup legislation appears to be somewhat of a new wrinkle in the College of American Pathologists campaign state by state. With regard to ethics, we agree with Drs. Herbek and Lacey that the AMA ethics guidelines are the code we live by, the Bible, if you will. Like the Bible, these ethics guidelines can be viewed quite differently by well-intentioned, honest, ethical individuals. When the College of American Pathologists spokespersons first leveled allegations of fraudulent billing practices and ethics violations at multiple subspecialty groups of physicians, including dermatologists, family practitioners, urologists, gastroenterologists, OB/GYN, both the Nebraska Dermatologists Society and the Nebraska Medical Association wanted to make sure there was nothing illegal going on. Both obtained legal opinions; you've heard about those. Those are included in the information in both packets. Mr. Quinlan discussed those opinions. The opinions were reviewed by the Nebraska Board of Medicine and Surgery, which does have statutory authority under Revised Statute 71-148, governing professional conduct. The board found no grounds to take further action. You have their letter in front of you, dated November 30, 2007. After careful review, however, the board did support full disclosure of all charges to patients. To our knowledge, there have been no complaints to the board by patients, physicians, or by insurers of any unprofessional conduct. We believe the AMA guidelines ethically allow the recovery of administrative costs and services in the form of markup. These administrative costs include processing and packaging of the tissue specimen, obtaining and maintaining patient demographic information, shipping and handling of specimens, billing and collecting from insurance carriers, reviewing the microscope slide and pathology report not for ten minutes but at length for accuracy, maintaining checks and balances on recordkeeping to assure quality, and communicating their results to the patient. The clinician assumes the risk for nonpayment. Dermatology training and board certification has a strong emphasis on skin pathology. Many dermatologists feel they provide the best service for their patients by interpreting the biopsies themselves, but send biopsy tissue out to have them microscope prepared. This is called the technical component. Actually reading the slide is called the professional component, and together with the technical component that

makes up the global service reimbursed by insurers and Medicare. That's the bill that Senator Erdman referred to on his EOB. Many other dermatologists prefer to have a separate skin pathologist read their slides. The American Academy of Dermatology position statements on pathology billing and physician choice of consultant are included in your information. I would like to draw your attention to item 3, which says, and I quote, "while dermatologists are entitled to fair compensation for their own derm/path services, they should not charge for derm/path interpretation services rendered by other providers, except in situations where (a) the patient is made aware of the charges; (b) the charge/markup is commensurate with professional or administrative services actually rendered by the dermatologist and/or his practice and does not violate state law and the dermatologists, see appends, the appropriate modifier. Dermatologists interpreting their own slides should be permitted to purchase the technical component and bill for the global service if allowed by law. As you can see, our position is not that much different than the pathologists, except that we do believe that a charge or markup that allows recovery of administrative costs is appropriate and ethical. Everything, however, hinges on full disclosure to the patient and the insurer of all charges. LB1104 has good intent but raises several concerns. First, if markup is to be prohibited it should be prohibited uniformly across all medical specialty lines rather than dealing narrowly and specifically with anatomic pathology. The prohibition should not exempt pathologists who send skin specimens for a second opinion, as this bill appears to do. Second, LB1104 restricts the ability of the clinician to recover administrative costs associated with providing anatomic path. services by specifying that separate codes be used that are not reimbursed by insurers. Third, we believe the appropriate jurisdiction lies with the Nebraska Board of Medicine and Surgery, under Revised Statute 71-148, and not with the Legislature. Fourth, although LB1104 does narrowly address transparency with regard to anatomic pathology services only, we believe transparency should be uniformly and fairly applied to the delivery of all healthcare services by medical professionals. The same set of rules should apply to all physicians. Full disclosure would serve to inform consumers, as well as to provide a mechanism to detect fraudulent or unethical business practices if those do occur. In summary, we agree with the Nebraska Medical Association that full disclosure of charges for all healthcare services delivered by medical professionals should be the ultimate goal, not a narrow protectionist bill specific to pathology. We understand the Nebraska Medical Association is in the process of drafting language for such a bill patterned after one passed in North Carolina. A copy of that bill is also enclosed in your exhibits. The only suggestion we have for that bill is that the disclosure provisions extend to the delivery of all healthcare services, not just pathology. We believe that LB1104 is well-intentioned and the concepts presented deserve careful study and deliberation. We cannot support this bill in its current form, but we do hope that fruitful discussion comes out of this, and in the future discussions that we can come up with rules that support full disclosure and are in the best interests of patients in Nebraska. Thank you for the opportunity to testify before you. [LB1104]

SENATOR GAY: Thank you, Doctor. Are there any questions from the committee? Senator Stuthman. [LB1104]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Watts, do you believe there should be a markup and that physicians should markup the services that are provided by someone else, and then the physician does also provide the service for which he is charging for? And the reason I'm asking this is, is when the doctor, when the physician gets the results from the service, the pathologist and there is a fee, let's just say $50 that the pathologist charges, then the doctor, you know, gets the client back in, charges for the office call and everything like that. Do you think that...and he's charging for his service because that patient is in his office again and he's telling him about the results of the test, and there's going to be a charge because of the office call and the patient is there. Do you think it's right for the physician to charge like $100 for that service that the pathologist put on plus the service that he's providing? [LB1104]

DAVID WATTS: In that case, no. One hundred dollars is excessive. [LB1104]

SENATOR STUTHMAN: But should there be any charge? [LB1104]

DAVID WATTS: I think that it's fair that the clinician who provides an extra service be able to recover those costs. [LB1104]

SENATOR STUTHMAN: But he really is not providing an extra service, because the extra service, the way I understand it, is telling his patient what the results came back to. And that's going to be all in his normal doctor's charge list. [LB1104]

DAVID WATTS: That visit would be that discussion. The extra services that I am talking about are the administrative, the billing, the maintaining records, the quality control, the looking at the slides, all of that other services that we provide that incur overhead. [LB1104]

SENATOR STUTHMAN: That you're providing additional... [LB1104]

DAVID WATTS: Additional to the taking of the biopsy, seeing the patient. [LB1104]

SENATOR STUTHMAN: But there is a charge for the patients being seen that... [LB1104]

DAVID WATTS: Yes. [LB1104]

SENATOR STUTHMAN: ...they're being seen. He's not going to say, well, I'm taking this $50 that I'm charging onto the pathology and the offices, it is going to be for nothing, and me counseling you on that is going to be free. Or is that what's happening?

[LB1104]

DAVID WATTS: I'm not...I'm sorry, I'm not sure... [LB1104]

SENATOR STUTHMAN: You're probably not understanding. Maybe I'm not clear. I'm saying you got a patient. You take a skin sample, send it to the lab. The lab sends the results back. The lab charges $50. Okay. Then the doctor calls the patient back in and... [LB1104]

DAVID WATTS: Actually, sometimes...I'm sorry to interrupt. Actually, sometimes the doctor or the staff call the patient on the telephone. They don't bring them back in, in fact frequently, in fact most of the time, probably, we don't bring the patient back in to discuss that result because most of the time it's a, in my practice anyway, it's a benign result. And we can give them the good news over the telephone. [LB1104]

SENATOR STUTHMAN: Okay. So it's a benign result and... [LB1104]

DAVID WATTS: And there's no charge for a telephone call. [LB1104]

SENATOR STUTHMAN: There's no charge for a telephone call or anything, you're giving them results. [LB1104]

DAVID WATTS: No, there's no charge coded for...that's part of the administrative services that, I think, should be part of what we should be able to recover cost for, and because it takes staff time to do that. [LB1104]

SENATOR STUTHMAN: Yes, I will say it probably does take staff time to do that. But I think in my opinion that's already billed...considered into your first visit with the person then and checking it out. [LB1104]

DAVID WATTS: I think the pathologists would agree with you. [LB1104]

SENATOR STUTHMAN: Yeah. Okay, thank you. [LB1104]

DAVID WATTS: Yes, sir. [LB1104]

SENATOR GAY: Senator Howard. [LB1104]

SENATOR HOWARD: Thank you, Senator Gay. And my question is kind of along the same lines as Senator Stuthman, because I can appreciate your line of thinking on this. It helps clarify how things really work. I heard you say Medicaid, so I would assume that your practice primarily is seniors? [LB1104]

DAVID WATTS: Yes, ma'am. [LB1104]

SENATOR HOWARD: And it's skin cancer? [LB1104]

DAVID WATTS: Yes, ma'am. [LB1104]

SENATOR HOWARD: And I'm a little familiar with this because my father had skin cancer. But now if you have someone that comes into the office and you do want to have a lab test done, which I assume is pretty routine that you do that next step with that. Do you generally have one lab that you use? [LB1104]

DAVID WATTS: Actually, in our practice we have our own lab. [LB1104]

SENATOR HOWARD: You have your own lab in there? [LB1104]

DAVID WATTS: Yeah, right. That's given us a lot better quality control and control over the slides. [LB1104]

SENATOR HOWARD: Okay. So when you have...you have another individual that does the actual testing, I assume. [LB1104]

DAVID WATTS: Yes, we have a dermatopathologist that contracts with us. [LB1104]

SENATOR HOWARD: So then that individual would have a particular charge for testing and writing up a report for you. They provide you with a report... [LB1104]

DAVID WATTS: Yes. [LB1104]

SENATOR HOWARD: ...on the results? [LB1104]

DAVID WATTS: Yes. [LB1104]

SENATOR HOWARD: And then you, and hopefully in most cases it will be benign, and you'll call someone and explain. Do you do that phone call, or do you have the staff do it? [LB1104]

DAVID WATTS: If they're benign spots, my staff is very familiar and reassuring. If they're malignant results, typically, I do that. [LB1104]

SENATOR HOWARD: Okay. I can understand that. And then what do you charge for the administrative fee for that, in addition to the office visit and the pathologist and the actual lab work? [LB1104]

DAVID WATTS: What do I charge for the... [LB1104]

SENATOR HOWARD: The markup. [LB1104]

DAVID WATTS: The markup? We charge what the...basically, we accept what the insurance company allows. We have contracts with our pathologists for substantially lower than that. We charge...we pay the pathologist $50 per read, and we charge the...or we accept what the insurance company allows or Medicare. In Medicare's case, it's about $90 for both components. And we run the lab off of that margin. [LB1104]

SENATOR HOWARD: Okay. Well, thank you for helping me better understand how it all works. [LB1104]

DAVID WATTS: Thank you. [LB1104]

SENATOR GAY: Senator Pankonin. [LB1104]

SENATOR PANKONIN: Thank you, Senator Gay. Dr. Watts, appreciate you coming. Just a series of three questions here. So the Board of Medicine has taken no opinion on this issue? Has...you know, we've talked about, you know, why are we trying to figure this out? Attorneys have said, why should attorneys or lay people like ours, ourselves...so, in your opinion, the Board of Medicine has taken a position...has not taken a position, or is it, you know, just can't figure it out, or it's two-sided, or what... [LB1104]

DAVID WATTS: Well, I think it's, you know, despite the contention that it's a black and white issue, I think it's extremely complicated. And I think the Board of Medicine and Surgery took a hard look at it and probably, in order to promulgate our regulation, felt that it was beyond their scope, especially since they hadn't received any complaints. Their normal function, as I understand it, is to respond to complaints of whatever, unprofessional conduct. And they have the authority to revoke, suspend, punish licenses, etcetera. They also have somewhat of a function to furnish regulations. But my understanding is they didn't feel there was the need to establish a regulation. Now I do know that, as I mentioned, and they are probably aware also that...and perhaps Dr. Spry will testify to this. The Nebraska Medical Association is part of its attempts to bring the two sides together, is working on draft language for a disclosure bill being the satisfactory compromise. And hopefully, a mechanism to find unprofessional conduct, if it's occurring. So I just think they...well... [LB1104]

SENATOR PANKONIN: Okay. My follow-up question is, so you have just stated you have a pathologist that works for your medical practice. [LB1104]

DR. DAVID WATTS: That's right, works as a subcontractor, independent contractor.

[LB1104]

SENATOR PANKONIN: Here in the state of Nebraska or... [LB1104]

DR. DAVID WATTS: That's right. [LB1104]

SENATOR PANKONIN: Okay. And so you don't send out any pathology reports anymore? [LB1104]

DR. DAVID WATTS: Rare. [LB1104]

SENATOR PANKONIN: Okay. Last year in your testimony you stated that you actually considered not as a...well, I'm going to read your own words. And I think that's, to me, the real value, the biggest value that I add, if there is a markup, and I do believe it's ethical if there is...I prefer to look at it as a discount. Seeking some pathology laboratories we do have relationships with, volume relationships, some call that a volume discount, what have you. And we do get a mark down or a discount and take what the insurance company will pay, pay the lab what they require. And if there is $30, I think that is ethical. I think the AMA guidelines do say that there shouldn't be double billing, but the catch words, in that opinion, "if possible". My line of questioning last year was my concern from...there's two things, well, there's a lot of things here. But part of it is my concern last year when folks were saying...some of your colleagues were saying, well, we send them out to the best possible places. And then your testimony was, we're going for volume because we get a volume discount. So how does that square with getting the best medical care, if you're going to get paid and it's all through testing. I know you get paid what the insurance is. But the more volume you send, you get a better volume discount, your own words. [LB1104]

DR. DAVID WATTS: I misspoke. There is no volume discount. There is a less...a lower priced laboratory. The national laboratory may charge, it may be $50, it may be $75, I don't know anymore. But we accept what insurance paid. And as I said, I thought that the services that we provided justified recovering that through that $25 margin. I lost my train of thought. [LB1104]

SENATOR PANKONIN: Well, can you see why a layperson would look at that statement and that business practice as possibly compromising medical care, when they can be sent out, in your own words, to get a volume discount? [LB1104]

DR. DAVID WATTS: Absolutely, I can see the conflict of interest there. One misdiagnosis, one malpractice claim, one injured patient can cost enough to destroy all the discounts you've ever gotten. It can be catastrophic to a practice. Our... [LB1104]

SENATOR PANKONIN: And to a patient. [LB1104]

DR. DAVID WATTS: Absolutely, absolutely. But I'm saying that the incentive in medical practice is to do the best medical care, because it's...that's not only the best medical care for the patient, but it's the best business. [LB1104]

SENATOR PANKONIN: Thank you. [LB1104]

SENATOR GAY: Any other questions? I have not so much a question, Doctor, but a statement. You brought...earlier when you testified, you talked about the trust of the patient and the doctor. And it kind of struck a chord with me because I think still being a politician, we're not too thought of in high esteem. But you know, that's number one in the country, I think, is the doctor-patient. So whatever you tell, I know this goes for both parties involved, whatever you tell your patient we kind of do, we trust you for getting good advice and things like that. But I just think as we look at this issue, whichever side you're on, you know, both parties I'm sure are aware of that. If that starts being eroded then I think the whole, you know the idea that somebody...Senator Erdman talked about transparency. Well, you know, we're no experts in these issues. You can't get transparency unless you know what the ultimate bill is. When they start questioning everything that is happening in the process, it won't be good for medicine, and it won't be good for the patients, won't be good for anybody. So I do hope...we're getting good testimony on this. But I hope as we go along, you know, that's in the back of everyone's mind that we're doing the right thing. And I know it is, and I know you brought it up. And I know everyone's concerned, we just have a difference of opinions here. But, you know, I'm looking for...hopefully, we can get something done here. But I thought that was kind of key. I know people will remember that. Thank you for your testimony. [LB1104]

DR. DAVID WATTS: Thank you. [LB1104]

SENATOR GAY: Other opponents? [LB1104]

DR. LESLIE SPRY: Chairman Gay, good afternoon, members of the committee. I'm back. (Laughter) [LB1104]

SENATOR ERDMAN: You're still not a lawyer, though, right? [LB1104]

DR. LESLIE SPRY: I'm not a lawyer. [LB1104]

SENATOR ERDMAN: Congratulations, again. [LB1104]

DR. LESLIE SPRY: (Exhibit 4) My name is Leslie Spry and I am a nephrologist, and that's translated into kidney guy. My address is 7520 North Hampton, here in Lincoln, 68506. And I come before you to speak in opposition to LB1104 as the president-elect

of the Nebraska Medical Association. And I speak for the board of directors of that organization. I was here last year and spoke also regarding LB513. And I think I'm here to tell you that I came before this same committee last year. And I do wish to report that we believe we have made some progress with our membership on this very difficult issue. And as you've seen this afternoon, there's enough difficulties, and confusion, and just difficult issues to hammer out. I think I've been involved in this also from the beginning. I can see some movement here and I think we are getting there. But we believe the citizens of Nebraska need every opportunity to understand the billing policies and procedures of physicians. We further advocate for transparency in that process. We believe that LB1104 may be premature to consider at this time. We say this for two reasons. First, the American Medical Association, as you heard earlier, is taking up a resolution from Georgia, specifically on this issue. And there will be a decision from the board of the American Medical Association at our annual meeting in Chicago, in June of this year. We have asked the guidance of the AMA in regards to this very complex ethical issue that are posed by markup billing. As is evidenced by the response from the Nebraska Board of Medicine and Surgery to your committee, significant confusion and debate continues to exist between physicians about the ethics of this particular business practice. We believe that all physicians want to be ethical in their billing practices. We await the deliberation of the American Medical Association and the Council on Ethical and Judicial Affairs, known as CEJA, as to the fine points of this particular debate. Second, we note with interest that the Centers for Medicare and Medicaid Services, or CMS, has elected to delay implementation of a uniform ban on all markup practices across all specialties from its original implementation date of January 1, 2008 to January 1, 2009, in order to study further the potential complications of such a universal ban. And I think you heard some testimony earlier about this particular issue. And the CMS did come forward with a determination that there would be a ban on all markup practices for Medicare and Medicaid services related to Medicare beneficiaries. This particular ban continues to be in effect for Medicare and Medicaid billing for anatomic pathology services. So as you heard, there has been no back peddling on that, in fact there's been clarification since 1984. That new clarification occurred January 1, 2008 for Medicare and Medicaid beneficiaries, such that the intent of LB1104 is actually current federal regulation for Medicare and Medicaid beneficiaries here in Nebraska. Hence, the Nebraska Medical Association is asking for review of these two important deliberative and informational sources prior to seeking universal legislation against markup for all physicians. So we would agree that we need some clarification and we shouldn't be picking out particular members of our organization. We think that this would best be served as potentially a universal bill. And at the present time the Nebraska Medical Association is prepared to support transparency legislation for all physician billing practices in Nebraska. We are particularly impressed with legislation that was passed into law in North Carolina in 2005. House bill 636 was enacted into law and provides that all persons licensed to practice medicine, podiatry, or dentistry, and all hospitals must clearly state amounts charged for professional anatomic pathology services. All other charges on the bill must be in writing, using a

separate itemized disclosure statement. Hence, we would be in favor of a North Carolina type of statute that would apply to all physician billing in Nebraska. And we believe that that particular type of approach would address some of the issues, and I think we're going to have...as time goes on, we may be in favor of anti-markup legislation. But again, I think I still want clarification, because the federal government actually had all intention of instituting anti-markup for all physicians for all contracted services. They decided to wait for a year. And we'd like to see what kind of determination comes from that deliberation. I want to emphasize that all Nebraska physicians want to ethically bill patients for healthcare services. We believe that some legislation may be needed in this area, but that LB1104 may be premature at this point in time. I'm happy to answer any questions you may have and thank you for your time. [LB1104]

SENATOR GAY: All right. Senator Stuthman. [LB1104]

SENATOR STUTHMAN: Thank you, Senator Gay. Dr. Spry, you're a doctor, aren't you? [LB1104]

DR. LESLIE SPRY: I'm hoping so, yes. [LB1104]

SENATOR STUTHMAN: The question that I have is, do you think that all physicians charge a markup? [LB1104]

DR. LESLIE SPRY: Well, I certainly don't because I don't have any contracted services that I, personally, provide. But I am told by people who contract for services, for example I know that some in my profession contract for ultrasound services in their offices where they invite an ultrasonographer into their office and take sonogram pictures of kidneys, and they bill for them. Now I don't choose to do that, but that is done across the country. Those are contracted services. Those are services provided and interpreted, in some cases, by someone else. And in some cases those, I would imagine, markups may be being applied to that. I don't personally know that, but I know that I get people in my office all the time trying to sell me an ultrasound machine. So those...and by the way, I just had somebody in my office just recently again trying to sell me such a machine, telling me and showing me the business model of how you make this work. So that in answer to your question, I don't do it, but I can tell you that that opportunity exists. [LB1104]

SENATOR STUTHMAN: Okay. I want to give you an illustration and we'll just use numbers. If a service costs $50 and you put a markup to it and you bill the patient $100, the insurance company will pay $75. And you're happy with that. But as a private pay person, I'm still having to pay the $100. [LB1104]

DR. LESLIE SPRY: That would be correct. And that's the problem with markup billing.

[LB1104]

SENATOR STUTHMAN: The private payers are the ones that are paying the bill. [LB1104]

DR. LESLIE SPRY: That's exactly right. And that has been an ongoing and difficult problem. In our particular practice, what we've done in that situation is if someone is truly a private pay, we can go back and look at the promptness with which they're likely to pay my bill, and we're able to negotiate that fee. We actually have a checkerboard that my office manager uses so that if somebody comes into my office and says, you know I'm a private...I don't have any insurance, I'm a private pay, what kinds of services can I purchase here? We'll be happy to show them what that is when it's cash...when it's fee for service at the time of service. [LB1104]

SENATOR STUTHMAN: So as far as a private pay person, he can negotiate that? [LB1104]

DR. LESLIE SPRY: That's exactly right. [LB1104]

SENATOR STUTHMAN: Okay, thank you. [LB1104]

SENATOR GAY: Senator Erdman. [LB1104]

SENATOR ERDMAN: Dr. Spry, welcome back. Sorry to...I couldn't see around the testifier to see that you were sitting in the back, so I didn't mean to prematurely reference your comments last year. But as I recall the discussion it was lengthy and it was informative not to be conclusive, but it was informative. And I appreciated at least the perspective that you brought to this discussion, at least your candor and your interest. If I heard you right, and you can correct me if I'm wrong, there are some similarities between LB1104 and LB636, depending upon, you know for example, definitional things. The NMA would support the version of the law passed in North Carolina today. [LB1104]

DR. LESLIE SPRY: That is correct. Our board of directors have passed that as...that is our policy. [LB1104]

SENATOR ERDMAN: And so to the one part of LB1104 that deals with disclosure,... [LB1104]

DR. LESLIE SPRY: We have no objection. [LB1104]

SENATOR ERDMAN: Disclosure is great. [LB1104]

DR. LESLIE SPRY: Disclosure is wonderful. [LB1104]

SENATOR ERDMAN: It's the other issues that you bring up about what's going on from the council, and that's going to Judicial Affairs from the AMA, as well as CMS's rulings and what they're doing. You don't want to get out ahead of that, but it appears that there is an interest in being a part of that solution. [LB1104]

DR. LESLIE SPRY: The third issue would be that we're not sure that it just should apply to anatomic pathology services. That all physicians should be subject to this same regulation and should be familiar with it. [LB1104]

SENATOR ERDMAN: So we take House Bill 636 and we give it to Senator Fulton and we ask him to draft it as an amendment to LB1104. Assuming that we can accommodate any differences in the way that our laws are applied versus the way that North Carolina laws are applied, the Nebraska Medical Association would support LB1104 with that amendment? [LB1104]

DR. LESLIE SPRY: That was the policy that was determined by the board of directors for the Nebraska Medical Association, yes. [LB1104]

SENATOR ERDMAN: Okay, thank you. [LB1104]

SENATOR GAY: Any other questions? I don't see any. Thank you, Doctor. Any other opponents at this time? Any neutral? Okay. Senator Fulton, you want to close? [LB1104]

SENATOR FULTON: Thank you. I'll be brief. From the American Medical Association Code of Ethics, I pulled this off the web site, a physician should not charge a markup, commission or profit on the services rendered by others. I know it would be more desirable for us in the Legislature to relegate this issue to the Board of Medicine and Surgery. But I submit to you, that's what we did last year and it has been thus for about the past three years. Will transparency alone, which is included in LB1104, elements of transparency, but will that alone be the appropriate be the appropriate policy, as Senator Erdman asked recently, almost volunteering me to amend something. Will that alone be appropriate? Let us say, for example, that Senator Stuthman, while up on the floor, reaches back from his seat to rap Senator Chambers over the head. Transparency alone would require us to report that that happened, but it would not address whether it's right or wrong. Transparency does not address whether one should be marking up for the services rendered another. A physician should not charge a markup, commission, or profit on the services rendered by others. There is one thing that I want to clarify. I'm not here trying to pick on dermatologists. In fact, the bill itself does not mention dermatologists. It's not...the only profession mentioned is that of pathologists and what is done with the work that they do. I brought this bill to you, I think

I said this last year, I want to do the right thing. It was brought to me by a constituent who is a pathologist. It encompasses the burgeoning costs of healthcare and it's the right thing to do. So if we can't charge markups, what this bill, LB1104, has done is that it has not provided in the negative way, it is provided that rationale in the positive way, saying that we should have direct billing. I try my hardest to look at this logically and I think that I am. It seems appropriate that that should be the course that we take. And I ask that you consider that this has been an issue for the past three years. We have an opportunity to put it away before we're all term limited. So thank you for your attention today. [LB1104]

SENATOR GAY: Thank you, Senator Fulton. Any questions for Senator Fulton? Senator Erdman. [LB1104]

SENATOR ERDMAN: Senator Fulton, would you like to correct the record on what Senator Johnson said as his last thing to the members who were here last year? [LB1104]

SENATOR FULTON: Yes. I appreciate this, Senator Erdman. I actually misquoted in saying that the final thing that Senator Johnson said last year was X, when in fact it was not X. What he did say to conclude things last night (sic), and it will be appropriate that I end on this note, he said, good night. Is that what it was? [LB1104]

SENATOR ERDMAN: You can't even read your own writing. (Laughter) I believe what... [LB1104]

SENATOR FULTON: Good night everyone. [LB1104]

SENATOR ERDMAN: ...good evening, I believe, is what he said, but... [LB1104]

SENATOR GAY: Thank you, Senator Fulton. All right. Well, good night then. That will close LB1104. Thank you all. [LB1104]

Disposition of Bills:

LB1022 - Advanced to General File.
LB1104 - Advanced to General File.
LB1124 - Held in committee.

Chairperson

Committee Clerk