[LB773 LB788 LB831 LB834]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, January 19, 2012, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB773, LB834, LB831 and LB788. Senators present: Kathy Campbell, Chairperson; Mike Gloor, Vice Chairperson; Dave Bloomfield; Gwen Howard; Bob Krist; and R. Paul Lambert. Senators absent: Tanya Cook.

SENATOR CAMPBELL: I suppose I better be on the mike here. Good afternoon. I'm Kathy Campbell, and I serve as the senator from District 25 here in Lincoln and a part of Lancaster County, and we want to welcome you to the hearings for the Health and Human Services Committee. I'm going to go through a few of the reminders for everyone in the room, and that is to please turn off your cell phones or put them on silent, because it's very distracting when you're testifying and there is some sound in the background for you to hear, so we'd appreciate that. Although handouts are not required in testimony before the committee, if you are providing handouts, we would like 12 copies, and if you need information about how to get additional copies or help, the two pages will be glad to assist you. We would ask that if you plan to provide testimony this afternoon, that you complete one of the bright, very bright orange pieces of paper that are located on either side of the room, and the clerk would ask that you print very legibly, and so when you're ready to testify and you come forward, you just need to give the orange sheet to the clerk, Diane Johnson, and if you have handouts, you can certainly give them to the clerk, and she'll have the pages distribute them for you. If you are not going to testify this afternoon but you would like to make known your presence and any comment, you can leave that on the sign-up sheets. I think those are white in color, and you can put that down. In this committee, we do use the light system to make sure that every hearing in the afternoon gets a fair shot at the time, so it's five minutes, and when the amber or yellow light comes on, it means just exactly that, it's a caution, you have one minute. And when the red light goes on, you're probably going to look up, and all of the sudden you're going to see me going cut or, you know, try to get your attention, so we hope that you will honor that system. When you come forward and sit down to testify, start off by identifying yourself and spelling your name. That way we make sure that all the records are exactly correct. As is the practice in the Health and Human Services Committee, we have self introductions, so I will start to my far right. Senator, would you like to start today?

SENATOR LAMBERT: I'm Senator Paul Lambert from District 2.

SENATOR BLOOMFIELD: Senator Dave Bloomfield, District 17, made up of Wayne, Thurston, and Dakota Counties.

SENATOR GLOOR: Senator Mike Gloor, District 35, which is Grand Island.

MICHELLE CHAFFEE: I'm Michelle Chaffee. I'm legal counsel to the committee.

SENATOR CAMPBELL: And we'll sort of stretch the time because we have...

SENATOR HOWARD: Yes, yes, yes. Tap dance.

SENATOR CAMPBELL: ...tap dance. (Laughter).

SENATOR HOWARD: Senator Gwen Howard, District 9 in Omaha.

SENATOR KRIST: Senator Bob Krist, District 10 in Omaha, and we're not late if we can introduce ourselves.

SENATOR HOWARD: That's right. (Laughter).

SENATOR KRIST: That's the rule. (Laughter).

SENATOR CAMPBELL: I think that's a new rule (laughter), and Senator Cook is ill today, so she will not be able to join us. With all of those introductory remarks, we will start the agenda, and our first hearing is on LB773, and Senator Smith is here to open on that bill to change the Uniform Credentialing Act fee provisions. Welcome, Senator Smith. Glad to have you. [LB773]

SENATOR SMITH: (Exhibit 1) Good to be here, and good afternoon, Senator Campbell and members of the Health and Human Services Committee. For the record, my name is Jim Smith, J-i-m, S-m-i-t-h, and I represent the 14th Legislative District in Sarpy County. Hopefully, this is going to be a very short hearing, as LB773 is what I would consider to be a cleanup bill. It would amend the Uniform Credentialing Act to allow the Department of Health and Human Services to prorate fees for the renewal of a credential. Current law only allows the initial credential fee to be prorated if the credential will expire within 180 days of issuance. The issue addressed by this measure was brought to my attention by a constituent. This individual was a licensed RN in Nebraska, moved to Florida for a period of time, and then returned to our state in August. She paid $123 for the credential and $35 for reinstatement of the license. Then she received a notice shortly thereafter that her license would expire in October of that same year and that she would have to pay another $123. Needless to say, she was not very happy. The simple reason for her having to pay the full price in such a short period of time was that our statutes do not allow for the department to prorate renewals. I believe this was probably an oversight when the original law was passed, and the current policy doesn't do much to encourage experienced and well-trained individuals to return to Nebraska to practice. I do want to thank the department for helping me with the language in the bill; but upon further review, they felt that the language in the green copy might have unintended consequences. They have therefore provided alternative

language which I am offering to you to consider as an amendment. And that ends my testimony today, and I ask the committee to please advance LB773, and I would be happy to answer any questions you may have. [LB773]

SENATOR CAMPBELL: Are there any questions that the senators have? Senator Gloor. [LB773]

SENATOR GLOOR: Thank you, Senator Campbell. Thank you for bringing this bill forward, Senator Smith. It sounds reasonable, although I'm surprised that there is no fiscal note. I would have thought maybe there was some reduction in revenue to the department as a result of this, but apparently not? [LB773]

SENATOR SMITH: I would assume that may be because there is probably few of these instances occur, the infrequency of it, I would assume. [LB773]

SENATOR GLOOR: Thank you. [LB773]

SENATOR CAMPBELL: Wouldn't be enough to really catch that attention. Any other questions? Senator Smith, I have one question. We have a letter from the department. Is there someone from the department that will be testifying on this? [LB773]

SENATOR SMITH: No, there is not. [LB773]

SENATOR CAMPBELL: (Exhibit 2) We need to note for the record that the department has provided a letter to the committee with some suggested changes. Does your amendment here reflect their changes, Senator Smith? Have you seen this? [LB773]

SENATOR SMITH: That is my understanding that what I distributed to you included the changes that they recommended. [LB773]

SENATOR CAMPBELL: Alright. Let the record note that we received the letter, and the letter should be reviewed in context of the amendment that Senator Smith has provided to us. Any other questions or comments? Thank you very much, Senator Smith. [LB773]

SENATOR SMITH: Thank you very much. [LB773]

SENATOR CAMPBELL: Are there others in the room who would like to testify in favor of the bill before us? Is there anyone who wishes to testify in opposition to LB773? Anyone in the hearing room who would like to provide neutral testimony? You know, when Senator Smith said this was going to be short, (laughter), and you are waiving closing, Senator Smith? Senator Smith has waived closing on LB773. Thank you very much for coming. And our next bill on the agenda, and I'm now realizing that I put my agenda someplace, is LB834, and Senator Gloor is making his way. LB834 is to change the

Nebraska Regulation of Health Professions Act. Senator Gloor, we are ready when you are. [LB834]

SENATOR GLOOR: Thank you, Senator Campbell, and good afternoon, fellow committee members. My name is Mike Gloor, M-i-k-e, G-l-o-o-r. Some would say this is also a cleanup bill. Some would say it's not a cleanup bill. Some would say it's a cleanup bill in such a manner as spring cleaning where you go through your closet and throw things away that are a little dated and old to make room for new things, and from that standpoint, I do think that part of it makes it a cleanup bill. This committee, for the most part, I think understands the 407 process, which governs the review of health professions' proposals for initial licensure or change in scope of practice before those proposals come before this body and then on to the Legislature, if we so decide. 407 is both optional and advisory and is intended to help us in our deliberations, and I am proposing some significant changes. That review process, again by way of reminder, is that an application comes into the Department of Health, goes to the Board of Health, they set up a technical committee that does a review. There is then a review and a recommendation that comes from the director of the division, Dr. Schaefer, and the final approval or denial comes from this committee and the full Legislature. So these changes I went into with an understanding that there ought to be opportunities for this to be a better process and in ways that would help us legislatively in our decision making. It can be a complicated process, and LB834 is an attempt to improve on that. That's a little history. The department and Board of Health has taken stakeholder input for approximately the last six years on this process through a variety of mechanisms, including public meetings. When I introduced LB222 last year, I found out that a committee had already been formed looking at this that included the Board of Health. Senator Campbell, I believe, had served for awhile on that committee; and they had been working, as I said, for a number of years on amending this process. Their request to me is rather than pull out a small subsection for change, let's talk about taking the work that they had been doing and rolling that into a more substantive change to this whole process, and I agreed. We had a legislative resolution, had several meetings to bring this together during the summer, and that's what resulted in LB834 that I am bringing forward to you. And my thanks to the Board of Health, my thanks to the department, those that got involved in those meetings and the work that they did helping bring it together. The bill, there are six major changes. It changes the scope of practice criteria. For scope of practice criteria, the requirement that an applicant group must show that the current situation creates a risk of harm is removed, but an applicant must still show that the change does not create a new harm or danger to the public. And if that's confusing to you, that's one of the reasons we are making the change. Still have to show that the change being requested in scope of practice does not create a new harm or danger to the public. The harm factor we think is more appropriate for new applications than it is for scope of practice changes. Current criteria are retained for applications for all new credentials. This change is only for changes in scope. Several of the definitional changes clearly state that the application will only be granted if it does

no harm to public health. The scope of practice criteria also require consideration of the benefit this change in scope of practice would bring to the public. And there is also language that talks about making sure that there is education and discipline in place to assure proficiency of the individual who is asking to do this. It simplifies the application requirements. Current language regarding what an application must include is removed and replaced with language that focuses on three key issues: stating the problem, stating how the application corrects that problem, and providing evidence and documentation to validate what they had just stated in the application. There are also, and I believe this is very important, two new pieces of information spoken to. An explanation of third-party reimbursement. It comes up in the discussions a lot, yet it's not one of the criteria. And the experience of other states; and we know from floor debate, inevitably the question comes up, so what are they doing in Kansas? What are they doing in Colorado? What are they doing in South Dakota? That's not part of the application requirements right now that the 407 looks at. This would provide that that's one of the things that's looked at. That's an example of some of the ways that it can help us in our deliberation. Changing the role of the technical review committee. Again, the committee is set up by the board to take a look at the specific request or application. Currently, the technical committee feels that the statutes limit them to working only with documentation provided by the applicant, and you can see how that might make people feel they were a little hand-tied. LB834 makes it clear the technical committee should do whatever investigation it deems necessary, within reason. If they feel a trip to take a look at a hospital in Minsk would be important, they can't do that, clearly; but to do whatever investigation is deemed necessary. This may include asking the applicant group for further information; and, as far as I'm concerned, and seeking scientific evidence from sources other than the applicant group. An opportunity for the technical review committee to bring more science, more of what the growing practice of medicine sees as appropriate for things, to ask those questions. Currently, that wasn't something that could be done. Now it can be with LB834. LB834 also allows the technical committee to comment on any benefit they anticipate to the health, safety, and welfare to the public. It retains the criteria that the committee evaluate the proposal based on the criteria in the law. It eliminates requirements the committee recommend denial if any one of the statutory criteria are not met. The current rule has been one strike, and you're out. Instead, the committee will be able to weigh all the evidence in total in order to make their recommendations. A preponderance of information that they think allows them to say yes in this case, as opposed to one of the criteria not met, they were in a position of having to say no. The committee will also be able to recommend amendments to the proposal or comment on other solutions to problems identified during the review. Currently, amendments may only be done with the approval of the applicant group. Now I think this is another big benefit to the Legislature. Technical committee membership is changed to one member of the applicant group, not two. It was felt that two representatives of the applicant group was an inappropriate weighting, and one representative was enough. It also expands coverage. Currently, coverage of 407 process is limited to professions directly related to healthcare. LB834 expands the

range of groups and individuals eligible for review through the 407 process to occupations such as nail technicians, funeral directors, and veterinarians. In general, there isn't a lot of enthusiasm to cast the net a little wider except those groups already come to the Department of Health and ask for changes in scope of practice, and the department is in the uncomfortable position of saying we'd like some help evaluating this; but they're not included in statute, so the department itself finds itself having to do its own internal investigation. They wanted this included so that they could seek the help of a technical committee in looking at some of these other professional groups that ask for things like expansion in scope of practice. The bill will give them that authority. And the last is an updating in the funding mechanism. Currently, a percentage of all the credentialing fees is separated out to pay for the 407 reviews. Credentialing fees like Senator Smith just talked about. LB834 will eliminate that percentage going to that fund and leave the funding in the existing Professional and Occupational Credentialing Cash Fund, where all expenses will be credited. LB834 transfers the remaining money from the Nebraska Regulation of Health Professions Cash Fund to the Professional and Occupational Credentialing Cash Fund, from which the administrative costs for all credentialing activity are paid. And finally, it changes the time frame of application. The starting point will be when the application is received by the division and deemed complete instead of simply picking the submission date as the starting point. More importantly, I believe the division will have 12 months to make a final recommendation instead of current nine months. That allows the technical committee a little more time, based upon the additional investigative powers we're giving them, to be able to do their review. How will these changes improve the process for us as senators? It enables the technical committee to do more investigation, gain access to some scientific information and studies that are out there, comment on a variety of aspects of the application. We put more weight in decisions with them, and this gives them an opportunity to get more information back to us. And I think as a committee then we're better able to make our decisions. The technical committee, I believe, has more expertise and is the best group to advise us in this process. The changes in the application should make the process, I think, a little better and clearer for the applicant. There's no fiscal impact in any of this, and I would be glad to answer questions although there are going to be testifiers after me, and I think they will also be able to give you some additional information and maybe answer your questions. Thank you. [LB834]

SENATOR CAMPBELL: Questions from any of the senators? Senator Krist. [LB834]

SENATOR KRIST: Could you add in there that if you go through the 407 process, you can't reapply for scope of practice for at least five years, or make it six years, would you do that? (Laughter). [LB834]

SENATOR GLOOR: You know, if I had thought about that a little earlier... [LB834]

SENATOR KRIST: Oh, it's always a committee amendment. We could always... [LB834]

SENATOR HOWARD: That's true. That's true. [LB834]

SENATOR GLOOR: On the other hand, as big an issue as we all know this is, there are possibilities that with the advances made in medicine as quickly as they are, somebody who is well-deserved and well-meaning, and in fact, could expand their scope of practice in ways that everybody would unanimously agree would help Nebraskans, it may be a little too restrictive. But there is that urge, I know, to perhaps want to consider that as an amendment. [LB834]

SENATOR KRIST: Well, thank you for considering my sarcasm. (Laughter) [LB834]

SENATOR CAMPBELL: Any other questions for Senator Gloor at this point? Thank you, Senator Gloor, for opening on the bill. [LB834]

SENATOR GLOOR: Thank you. [LB834]

SENATOR CAMPBELL: We will start with the proponents to LB834. [LB834]

SENATOR GLOOR: Do you want us to come back? [LB834]

SENATOR CAMPBELL: Yes. I do want to indicate that I have asked the committee if they are opening on a bill that they are free to resume their seat with the committee. Good afternoon, Dr. Schaefer. Again, second day. [LB834]

JOANN SCHAEFER: (Exhibit 3) Good afternoon. I know, okay. Good afternoon, Senator Campbell, members of the Health and Human Services Committee. My name is Dr. Joann Schaefer, J-o-a-n-n, S-c-h-a-e-f-e-r, M.D. I am the chief medical officer and the director of the Division of Public Health in the Department of Health and Human Services. I am here to testify in support of LB834. The legislation is a result of a collaborative effort that stretches over six years and has most recently been facilitated by the active interests of Senator Gloor and Senator Campbell. It makes long-needed revisions in a very important piece of existing legislation, the Regulation of Health Professions Act. The sole purpose of the Regulation of Health Professions Act is the credentialing review commonly known as the 407 process, and that, as created, has supported the Legislature's ability to make sound policy decisions regarding the credentialing of health professions and evaluating the need for changes in scope of practice. The goal of the changes identified in LB834 is to make the program more helpful to you, more accessible and transparent for our stakeholders, and a better steward of licensure fees that support it. The most important change proposed under LB834 is revamping the statutory criteria by which applications are evaluated. The new language is more direct, more relevant to the purposes of the program. It resolves many of the frustrations expressed by stakeholders over the years. The composition and

charge of the technical review committee in this program is also revised. The new language lays out a process for ensuring that most science-based evidence is included in each review. The bill also streamlines the application itself and the committee process used in evaluating the applications. In addition, clarifying language has been inserted for several definitions. Financial procedures for support of the program have been updated to conform with the Uniform Credentialing Act, but no new costs are created by this bill. I believe that if you choose to enact LB834, you will find the resultant credentialing review or 407 process to be even more informative and supportive of your public policy decision making. I'm happy to answer any questions. [LB834]

SENATOR CAMPBELL: Thank you, Dr. Schaefer. Are there questions from the senators? Thank you very much. Our next proponent testifier, please. Good afternoon, Dr. Michaels. [LB834]

DALE MICHELS: (Exhibit 4) Good afternoon, Senator Campbell. My testimony is electronic. I apologize in understanding the controversy. I'm not sure whether I should send it to you by e-mail after I am done or not (laughter) to avoid any concerns, but it's a real privilege to be here. Good afternoon, Senator Campbell, members of the Health and Human Services Committee. My name is Dr. Dale Michels. I'm a family physician here in Lincoln, and I'm here representing the Nebraska State Board of Health to testify in support of LB834. I currently serve as Secretary of the Board of Health. I am also testifying on behalf of the Nebraska Academy of Family Physicians where I serve on their legislative committee. And as you know, LB834 proposes six revisions to the current LB407 process. I'm not sure if this process will become the 834 process (laughter), or if it will remain as the 407 process when this goes forward. As you know, LB407 was passed over 25 years ago. It's designed to assist the Legislature with background information, expertise and recommendations regarding credentialing and scope of practice issues for health professionals. It used language from other states originally. The premise was that this three-pronged approach, which has been discussed, a technical committee report, a report of the Board of Health, a report of the Chief Medical Officer. The technical review committee is chaired by a Board of Health member and is set up to review the information, and in the current situation, answer four questions, all of which must be in the affirmative to recommend the change. Information is then presented to the Board of Health which must answer the same four questions in the same way. Information from these sources is then provided to the Chief Medical Officer who also researches the proposal and makes recommendations. This information is presented to the Legislature for action and becomes as an LB proposing licensure expansion of the scope of practice. Every credentialing review final report is routinely sent to the Speaker of the Legislature, the Chair of the Executive Board, the Chair of the HHS Committee, and copies to all other HHS Committee members. I have chaired a technical review committee on behalf of the Board of Health, and I've seen some of the difficulties that have gone through, so I think these changes are well warranted. It doesn't change the three-legged approach of providing the information. It

just simply improves the language of the application and makes it simpler. It expands the role of the technical committee, and that was one of our frustrations as a technical committee, as we felt somewhat tied by what was in current statute as to what we could and could not do. And it will give that committee more flexibility in working with the applicant group, change the application during the process to better serve Nebraskans. Any proposal to a change in scope of practice is now handled in a way that attempts to determine more appropriately if the real need exists and proper training is present. The proposed changes of the format of the questions asked no longer requires the technical committee to have to answer affirmative to all four questions in order to be able to recommend approval. It cleans up some other archaic language, and it also broadens the scope of the process to include all health occupations, including establishing funding for it. The Board of Health feels that LB834 brings the process into a better position to serve the Legislature, and we encourage you to move this bill out of committee for action by the Legislature and Governor this year. Thank you. [LB834]

SENATOR CAMPBELL: Are there questions for Dr. Michels? And, Dr. Michels, I think you are free to send that in an e-mail to us. [LB834]

DALE MICHELS: Okay, I will be happy to. [LB834]

SENATOR CAMPBELL: I am assuming that someday, all of us will have the ability to watch a screen while you read your testimony. Any other questions? Thank you, Dr. Michels. [LB834]

DALE MICHELS: All right. Thank you. [LB834]

SENATOR CAMPBELL: The next proponent? Good afternoon. [LB834]

NANCY GONDRINGER: (Exhibit 5) Good afternoon, Senator Campbell. My name is Nancy Gondringer. I'm a nurse anesthetist. Nancy Gondringer is N-a-n-c-y, G-o-n-d-r-i-n-g-e-r. Like I said, I'm a certified registered nurse anesthetist. I reside at 7216 Parkridge Circle here in Lincoln, and I am here to testify in support of LB834 on behalf of the Nebraska Association of Nurse Anesthetists. LB834 actually is an outgrowth like Senator Gloor stated LB222 introduced in 2011. Prior to the introduction of LB222, we met with Senator Gloor to discuss concerns we have with the current Regulation of Health Professions Act, or what is fondly referred to, or maybe not as fondly referred to, as the 407 process. Our association has experienced the 407 process twice during my professional career. The first was in the early nineties when our association requested the removal of physician supervision from our statute. The second one has been recently when we've added or requested to add a change to our practice which was the ability to use fluoroscopy during the placement of catheters such as central lines. The ability to use the fluoroscopy in our practice as certified registered nurse anesthetists has helped to make insertion of such catheters or lines more

efficient, safer, as well as improve the care for the Nebraska residents. During both of these times, we have had and continue to have specific concerns with this regulation and process. The current process requires the applicant profession to demonstrate to the committee that Nebraska citizens are being harmed in an obvious and concrete manner in order to receive favorable considerations to expand the scope of professional practice. It truly is a catch 22, and the wording needed to be changed or removed from the current statute. Although we as a profession do not anticipate any current changes to our scope of practice, we do know the 407 process needs to be modified. We took our concerns to Senator Gloor, and after explaining the issues, Senator Gloor came to share our view this law needed to be changed. As it happens, other interests as stated earlier by other testifiers, the Board of Health and Division of Public Health were also considering changes to the 407 process. Senators Gloor and Campbell joined in convening a workgroup of interested parties to comprehensively address and update the current 407 process. We were pleased to be able to participate in that process and fully support its work in LB834 that is before you today. We believe LB834 not only addresses our original concerns, but sets up a review process we feel is more deliberative, collaborative, and helpful to the Legislature, the original intent of the 407 process. We believe the changes in LB834 will assist the committee consider future legislation proposals to license presently as well as unlicensed health professionals as well as expand scope of practice of currently licensed professions. Just as we believe that LB834 will facilitate a more useful exchange of views and information, we believe the process, which has resulted in the introduction of LB834 legislation, is public policy formation at its best. We appreciate Senator Gloor's support with the initial introduction of LB222, and now Senator Gloor and Senator Campbell's leadership with the introduction of a more comprehensive bill which is LB834. We urge your favorable consideration of LB834 and request that you advance it to general file in a very timely manner so it can receive legislative action this session. I appreciate you allowing me time to present. If you have any questions, I would be glad to answer them. [LB834]

SENATOR CAMPBELL: Are there any answers from the senators? Thank you very much for your testimony. [LB834]

NANCY GONDRINGER: Thank you. [LB834]

SENATOR CAMPBELL: Are there any other proponents? [LB834]

DAVID BUNTAIN: (Exhibit 6 and 7) Senator Campbell, members of the committee, my name is David Buntain. It's B-u-n-t-a-i-n. I am counsel and registered lobbyist for the Nebraska Medical Association and am appearing today in support of LB834. And I thought it might be helpful to give the committee some context beyond what you've heard. Twenty-seven years ago, this committee was sitting here at the start of the hearings process with 11 bills that would involve new licensure or scope of practice changes for different professions. Some of us who were aware that that was going to

happen and were aware of the concerns that was going to create came to the Legislature with LB407, which was also being considered at that same time. And basically, the goal of the 407 process, as it's come to be known, was to provide a mechanism for groups that have an interest both in favor of and against proposals to license or to change scope of practice, to gather the information, and to provide the input to the Legislature so that the first time that you consider the bill, you have that information in front of you. And we think that the 407 process has done a good job of doing that. I have offered the committee two exhibits, if you will. One of which is a chart that is kept by the department which shows, I believe there are 58 reviews that have been conducted in the last 27 years. The two-page item is something that I prepared which basically analyzes the decisions that have been made at each of the three review levels where there have been unanimous recommendations in favor, unanimous recommendations in opposition, and where there have been a mixed result and then how that has played out in the Legislature. I think if you look at that chart, I think a couple of things will strike you. 1) There has been a wide diversity of licensure and scope of practice issues that have been reviewed. There are some issues in some professions that have come before the review process several times; but in many instances, it's just a single profession. What you will also see, I think, is that in at least two-thirds of the instances, the result of the 407 process has been basically accepted by the Legislature and enacted into law, and I submit that it's been very helpful to the Legislature in addressing those issues. There are always going to be some where there are going to be differences. Those end up coming here and being lobbied and argued on the floor and the kinds of things we do with bills; but I do think that overall, the effect of the 407 process has been to make this whole issue more rational and really accessible for everyone that is involved in the process. It's interesting to me in that if you look at it, 38 of the 58 applications were in the first 10 years. We have only had 20 in the last 17 years, so although it seems like you're overwhelmed with, sometimes with scope of practice issues, they're relatively few compared to what the Legislature was dealing with before. I think the numbers are roughly split between new licensing and scope of practice. So we were happy to be involved in the review that took place over the last year. I will note that not all of the provider groups were at the table when this was discussed. I know there are some provider groups which still have concerns in a couple of areas. I think for the most part, what's before you is not controversial. It's basically an updating of the current law; but there may be areas where there needs to be further discussion, and we would be happy to be involved in this process. I think that the 407 process has served this state well, and I think that the changes that are being suggested here will continue the value of the 407 process. [LB834]

SENATOR CAMPBELL: Questions that the senators have for Mr. Buntain? You know, Mr. Buntain, I have to make a comment on your chart, because I've seen this chart several times, and I agree with you. I mean, we tend to have one or two bills or discussions, and we get really wound up in them without realizing that they have lessened over the years than what was started, that's number one. And number two,

you really can't...the longer you're around, and I'm saying this for our new colleagues, the more that you really do look at the reports that come from the review team and the Board of Health and the director. They lend a direction, particularly in questioning, I think, that are there. So I appreciate the charts, because it's helpful. [LB834]

DAVID BUNTAIN: Well, the department gets the credit for the long one, because they keep that as a running... [LB834]

SENATOR CAMPBELL: And you get the credit. [LB834]

DAVID BUNTAIN: ...yes, but yeah, I think it is helpful because you're right, we tend to deal with the last issue or the current issue and not really see this in the whole context. [LB834]

SENATOR CAMPBELL: Exactly. Thank you very much for testifying today. [LB834]

DAVID BUNTAIN: Thank you. [LB834]

SENATOR CAMPBELL: Our next proponent. [LB834]

DON WESELY: Senator Campbell, members of the Health and Human Services Committee, I'm Don Wesely representing the Nebraska Nurses Association here in support of LB834. You've heard a lot of testimony in support. You'll hear some opposition to the bill before you. I can give you some background as Dave Buntain did, because LB407 was a committee bill when I was chair of the committee back in 1984, and I can assure you that we were faced with a multitude of scope of practice issues that were overwhelming as we figured we had to find a better way to do this and a fairer way where everybody sat down and actually talked about the issues instead of just the tug-of-war politics and who had the power and influence. And what we came up with was a compromise with all of the different groups, and it's worked, I think, really well over the years; but after 27 years, everything needs an update, and this bill certainly does that. One of the things I point out at the time when we passed this, if I remember right, the figure was there were 1 out of 14 Nebraskans were affected by scope of practice issues in the health field or related fields which are covered. I don't know what figures you have now, but this is a big part of the workforce of the state of Nebraska. There are over 20,000 nurses, 25,000 plus, nurses alone let alone all of the other groups that are affected in one way or another by the scope of practice issue. And as you probably know, the medical profession is the only health profession without a scope. Everybody else has a scope. Their work is defined by the laws that you pass dealing with these issues over the years. So it's an extremely important issue, and I'm glad you don't have as many of those problems coming to you, but they still continue to come to you. So I think we made a process that has worked; but it can be improved upon, and probably the one thing that you might hear in opposition is, well, who does

this help or hurt? How does this change, tip the scale one way or another? And I can tell you from the nurse's point of view, and I've told our legislative committee, I don't know if this is going to help or hurt nurses. I don't, because we don't have any plans to expand our scope, and there are other groups out there that probably are thinking about expanding their scope that would maybe set up a competition with some of our, the work that we do, and so it could help or could hurt us. We don't know at this point, and the future is unclear to any of us. But at the same time, the real question here is not the who wins and who loses, but is it fair? Is it a process that is reasonable? And I think what you have before you, and I thank Senator Gloor for introducing it and all of you for cosponsoring it. This is an improvement in the process, an updating of the process, and it is still going to be a fair process and, I think, an even better process once this legislation is passed. So I come before you urging your support and hope that this will become the law. [LB834]

SENATOR CAMPBELL: Questions for Mr. Wesely? One of the...continues to be the sterling benchmark that you look at, is the safety of the public. And I'm assuming that at the beginning of that process when you were sitting in our places that that was still and remains a benchmark. [LB834]

DON WESELY: It is, and it was actually one of the main reasons we passed this. Because we weren't the experts, so we were being told by one group that well, this will injure people, you can't do this. And the other group is saying no, we can do this. Don't worry, we have the education. And we didn't know. And one of the last things you want to do as a legislator is pass a bill and then end up having somebody harmed by it, somebody hurt, somebody injured, somebody killed perhaps. And so we definitely thought well, we need expertise to come in here, people that really understand "will people be harmed?" And that was the main focus of the whole process is "will the public be well served?" And it's worked. [LB834]

SENATOR CAMPBELL: Thank you, Mr. Wesely. [LB834]

DON WESELY: Um-hum. [LB834]

SENATOR CAMPBELL: Are there any other proponents in the room for the bill today? Okay. We will move to the opponents to 834. Good afternoon. [LB834]

KATIE ZULKOSKI: Good afternoon, Senator Campbell, members of the Health and Human Services Committee. My name is Katie Zulkoski, Z-u-l-k-o-s-k-i. I'm testifying on behalf of the Nebraska Academy of Eye Physicians and Surgeons. We are testifying today, we have two concerns. As those going before me have said, this bill has six changes. Some of the changes we do think are beneficial and certainly understand the causes. There are, however, two changes that we would like to discuss a little further and bring to your attention. The first concern that our group has is on page 10 of the bill

which would remove the first criteria when you're changing the scope of a regulated health profession. If I may paraphrase that first criteria, really what that criteria looks at when you're going through the review process is what is the problem that is caused by the current scope? Is the current scope causing the public some harm? And we think really that that's an important thing to look at for the technical review committee, for the Board of Health, for the Director of Public Health to look at and say, what is the problem we are trying to solve? In general, with any legislation that we all look at, certainly from different perspectives, the beginning question that we take a look at is, what is the problem we are trying to solve, because once you've looked at that question, then you are better able to create the appropriate solution. Once you know the hole you are trying to fill, or if there is an access problem, how can we craft that solution is really easier to look at once you recognize what the problem is. And for that reason, we think that first criteria, certainly we understand that paraphrasing that it is a longer sentence, and it could use some paraphrasing and maybe some clearing up as to what we're really trying to get after. If that language needs to be changed, we are happy to continue to discuss that, but we think that that should in some way be retained. The second concern we have is on page 19 of the bill. There is language being deleted there that would take out what clearly states that each criteria must be met before an application is recommended either for approval or denial. Unless that language is retained, you really have lost the importance of each individual criteria. If we no longer require an applicant to meet all of the criteria, whether there is the current four or whether we go to the six or seven proposed by the bill, you really have taken out the importance of each one of those. If I don't have to meet a certain question, then that question loses the importance in the review process. And we think in a process as important as scope expansion, each of those criteria when we're looking at public harm, benefit to the public, those are all important enough that they deserve really to all be met in one of these review processes. As I said, we do think some of the changes in this bill are positive changes. We certainly agree with Don Wesely who spoke earlier that this process could use some updating. It's been through certainly a lot of reviews as it stands, and we know that there are some improvements that can be made, and there really are some parts of the process that have been beneficial to the groups coming before and to the Legislature as they look at these changes. NAEPS would just ask at this time that this be something that all of the groups that are impacted by this legislation could continue to discuss. This really would have major impacts on a lot of groups in Nebraska and the citizens of Nebraska, and we think this is an important discussion that we would like to continue having. [LB834]

SENATOR CAMPBELL: Are there questions for Ms. Zulkoski? Ms. Zulkoski, I have one question. I just want to make sure I'm taking down the right notes from your testimony. And you are saying retain the original language, so you don't have a language change for either of the two suggestions, you just want it kept as the original? [LB834]

KATIE ZULKOSKI: Our suggestion is that we have a criteria that looks at that. We

understand that the word harm is causing some, you know, using the word harm is causing some people to sort of...you come in maybe a little defensive when you have to say about harm. And so if we need to look at other language, we certainly can, and we can provide the committee some suggestions. I don't have any at this time, Senator. [LB834]

SENATOR CAMPBELL: Okay, and we certainly would welcome looking at any alternative language. [LB834]

KATIE ZULKOSKI: (Exhibit 8) Absolutely, and I do, I do have a letter I did not hand out earlier. This is a letter written personally by Dr. Shiffermiller from Methodist Hospital. This does not represent the views of Methodist Hospital. Dr. Shiffermiller was on the Board of Medicine and so has unique perspective that way and some concerns with the bill as well. [LB834]

SENATOR CAMPBELL: Okay, and is that for distribution? [LB834]

KATIE ZULKOSKI: Yep. Yep, I'll hand it to... [LB834]

SENATOR CAMPBELL: Okay. Any other questions or comments from the senators? Thank you for your testimony today. Our next opponent. You want to go next? [LB834]

DAVID O'DOHERTY: (Exhibits 9, 10, and 11) Good afternoon, Senator Campbell and committee members. My name is David O'Doherty, O-'D-o-h-e-r-t-y, and I'm the executive director of the Nebraska Dental Association representing nearly 80 percent of the dentists in this state. Last year I appeared before this committee testifying in opposition to LB222 which really only addressed one issue, and that was the removal of the harm sentence that we've already been talked about. I have been involved in two 407 applications in the last six years, and I'm surprised to hear that this has been going on, this review process has been going on for six years. This just come to my attention with LB222. My first handout is a couple pages from the transcript of last year's LB222 testimony, and the reason I hand that to you is my recollection, that is why I went back to the testimony, is that people were commenting that don't throw out the first criterion, let's redraft it. Even the Nebraska Medical Association testified to that. So when it came out again and it was totally stricken out and not redrafted, I was a little bit surprised. The second handout is a little bit thicker. I looked for that phrase tenuous argument or remote, and 16 other states use almost identical language when they're looking at a new applicant group trying to be credentialed. So we're not alone in using that phrase, even though we are, you know, concerned it might be a little bit confusing. There are 16 states, and I'll be referring to this a little bit later. Regarding new applications on page 8, LB834 proposes to strike the second part of the sentence which reads, "and the potential for harm is easily recognizable and not remote or dependent on tenuous argument." Like it said in the maps, 16 states use that language, including Kansas and

Washington, which are the two states that we looked at back in the mid-eighties. The Utah statute, which I would direct your attention to, splits that long sentence into basically two. That's what I would recommend for the committee to do. It reads much better. Because when I look at statutory history, if language has been deleted, it tells me that it is no longer important. And I don't think the committee wants to send the language that the harm could be a tenuous argument, or it could be a remote argument. That's how I would read it if that language were stricken. Regarding the scope of practice change on page 10, lines 6-10 again deletes this harm requirement which we've been talking about. However, there's no redrafted text that we discussed about last year during LB222. However, in LB834, the application must address on page 14, "the problem created by not changing the scope of practice." So the application addresses a problem, but the criteria mentions no problem that they must address. Later on, the committee must make recommendations to problems identified. My point here is that there is a problem, and it doesn't have to be termed harm. A problem could be we're not efficient enough in our delivery system. That could be a problem. We could be seeing more people if we were a better, more efficient workforce, and so that could be a problem. It's a good...I mean it's not a harm problem. So, my final handout is a statute from the state of Arizona. Actually, there's two statutes, Arizona and I believe West Virginia, but I believe I am recommending you look at Arizona, especially sentence one, "a definition of the problem and why a change in scope of practice is necessary, including the extent to which consumers need and will benefit from practitioners within this scope of practice." I think that flushes out why we're here or why a group is before you seeking a scope of practice change. What are they trying to address, and what is the benefit that will result from changing that scope of practice? I would recommend that that sentence be replaced or used in...be the new paragraph A in LB834. I would be happy to answer any questions. [LB834]

SENATOR CAMPBELL: Questions that you have? Mr. O'Doherty, I have a couple questions, and I was trying to take good notes, but I'm not sure... [LB834]

DAVID O'DOHERTY: I was trying to speak fast. [LB834]

SENATOR CAMPBELL: (Laugh) I know. You were watching the light. I could see that. You started out and said you thought that there were two statements that should be put together. Is that contained in this document? [LB834]

DAVID O'DOHERTY: This...if you look at the state of Utah... [LB834]

SENATOR CAMPBELL: Oh, okay. [LB834]

DAVID O'DOHERTY:: ...which I tried to write on the side. [LB834]

SENATOR CAMPBELL: Oh, it's Utah. All right. [LB834]

DAVID O'DOHERTY: It's basically that same sentence that has been broken in half. It's an A and B. Utah uses it as an A and B in their statute. [LB834]

SENATOR CAMPBELL: Okay, so I just need... [LB834]

DAVID O'DOHERTY: That would be my recommendation on when it appears in a new grouping credentialed. [LB834]

SENATOR CAMPBELL: Okay, so I need to look at Utah for that. And then this statement... [LB834]

DAVID O'DOHERTY: Would be replacing new paragraph A that was stricken on the page 10, lines 7-10. [LB834]

SENATOR CAMPBELL: Okay. I just wanted to make sure I had the right notes here. [LB834]

DAVID O'DOHERTY: We'd be happy to be involved in presenting further discussion on the language. [LB834]

SENATOR CAMPBELL: Okay. [LB834]

DAVID O'DOHERTY: There are a lot of good things going on in LB834, but these two I think were important enough for us to show up in opposition. [LB834]

SENATOR CAMPBELL: Okay, and if the wording is different than what's here in Arizona or what we would look at in Utah, you're more than welcome to submit that to the committee too, because I'm not sure that I was following as close... [LB834]

DAVID O'DOHERTY: No, I think that would be perfectly fine to submit. [LB834]

SENATOR CAMPBELL: Okay. [LB834]

DAVID O'DOHERTY: Actually, Arizona combines the benefit sentence in the same...page 10, line 14 and 15 talks about the enacted proposed change would benefit the health, safety and public. Arizona's combines that with the problem identified and then tell us what the benefit to the consumer and why they would need this, so it kind of combines those two. [LB834]

SENATOR CAMPBELL: Did you want to make a comment on West Virginia? Did you have it attached? [LB834]

DAVID O'DOHERTY: My point is that two states use the problem, you know, there's a problem we're here to address. [LB834]

SENATOR CAMPBELL: Oh, all right. [LB834]

DAVID O'DOHERTY: Which I think is good. It doesn't have to be a harm. It can be we're just not efficient enough. That's not harming anyone, but we could be better. [LB834]

SENATOR CAMPBELL: But the wording is in Arizona...oh, okay, I'll follow that up. [LB834]

DAVID O'DOHERTY: We tried that at sentence number one highlighted in yellow. [LB834]

SENATOR CAMPBELL: Got it. Okay, I could follow that. Are there any other questions for Mr. O'Doherty? Thank you for coming today. [LB834]

DAVID O'DOHERTY: Thank you very much. [LB834]

SENATOR CAMPBELL: The next opponent to the bill? Any other opponents to the bill? Those who wish to provide neutral testimony? I saw you, and I thought, oh, I better get to the neutral then. Good afternoon. [LB834]

STEVE GRASZ: Good afternoon, Chairman Campbell and members of the committee. My name is Steve Grasz, S-t-e-v-e, G-r-a-s-z. I am testifying today on behalf of the Nebraska Chiropractic Physicians Association as their legal counsel. The NCPA commends the sponsors of this bill for addressing a significant problem with the current statutory language regarding the 407 review process, and especially the standards governing proposed changes in the scope of practice of health professions. As this committee is keenly aware, scope of practice issues can be very contentious and have enormous implications for the regulated professions involved. With this in mind, we wish to express general support for the concept of LB834 while urging careful attention to each and every detail. LB834 makes extensive and substantive changes to the 407 process. Changes this major should be given careful consideration by the committee as to their practical consequences. For example, Section 16(3) of the bill significantly alters the standard under which proposed changes in scope of practice are reviewed. The former standard is replaced by three new sections. These new sections appear to be much better tailored to appropriate scope of practice review than the old language. However, the bill states these new criteria are to have specific standards established by regulations issued by the Division of Public Health. As in many situations, the one who makes the rules can determine who wins and who loses before a contest even begins. Therefore, consideration should be given to adding more legislative direction to those crucial regulations. The amendments in Section 17 of the bill alter the requirements in

an application for a scope of practice change from having to show why a change in scope of practice is necessary and why the public would be harmed if the change is not made to just identifying the problem created by not changing the scope of practice. This is a big shift. The current standard heavily favors the status quo, while the proposed standard is much more favorable to changes in scope of practice. Again, we're not necessarily saying that's bad, it's just something, it's a big change. Overall, the proposed new standard facilitates changes in scope of practice to match what is being taught by educational institutions. This is not necessarily bad, but it should be recognized that it also allows for agenda-driven curricula to impact scope of practice decisions; and I am familiar with some of those agenda-driven curricula. Finally, Section 19(3) amends current law regarding the authority of a technical review committee. Under the proposed language, the committee is given more power to recommend approval or disapproval. Again, this may be a good thing, but it is a very significant change. In conclusion, these comments are not meant to discourage reform of the 407 process, nor are they meant as criticism of the bill. Rather, we wish to encourage careful consideration of the long-term consequences of the specific provisions of the bill so that it can achieve the desired results. We would be happy to work with the committee to offer additional input aimed at specific improvements to the bill. I would be happy to answer any questions. [LB834]

SENATOR CAMPBELL: Are there any questions from the senators? Certainly, as I have indicated to other testifiers today, if you have wording changes or additions, they are always welcome. [LB834]

STEVE GRASZ: (Exhibit 12) Okay, thank you, and I do have copies of the testimony. [LB834]

SENATOR CAMPBELL: Oh, that would be great. Good afternoon. [LB834]

JONI COVER: Good afternoon, Senator. My name is Joni Cover, It's J-o-n-i, C-o-v-e-r. I'm the executive vice president of the Nebraska Pharmacists Association, and I'm here today to testify in a neutral capacity. Our legislative committee and our board of directors have not yet met to have any discussions about the legislative bills that have been introduced this session. Last year, we testified in opposition to LB222 for the primary reason that we thought the 407 review process needed to be looked at and to be updated and asked to be a part of the process. And we do support the 407 process being reviewed, but we have not been a part of the process. So I've had several of my members reach out to me in the last week or so to kind of get some information about this bill, and quite honestly, I wasn't able to share a lot of the information with them, because I was a little uncertain about sort of the intent and what was going on too. So my recommendation, and after listening to the testimony today, would be if it's at all possible, to pull the stakeholders together and have an opportunity for all of us to talk about the process and the bill and sort of where we're going. I thank Senator Gloor for

getting involved in all of this, but I do think that there is some opportunities that maybe some more input from stakeholders would be appropriate. [LB834]

SENATOR CAMPBELL: Thank you, Ms. Cover. [LB834]

JONI COVER: So hopefully when I get done with my legislative committee, I'll have more of an opinion on whether we like this bill or not. (Laugh) [LB834]

SENATOR CAMPBELL: And, of course, the comments are welcome. Any questions from the senators? Thank you for your testimony today. [LB834]

JONI COVER: Thank you. [LB834]

SENATOR CAMPBELL: Others in a neutral capacity? Good afternoon. [LB834]

JIM CUNNINGHAM: Good afternoon, Senator Campbell, members of the committee. My name is Jim Cunningham, J-i-m, C-u-n-n-i-n-g-h-a-m. I represent the Nebraska Catholic Conference on behalf of the interests and concerns of the archdiocese of Omaha and the diocese of Lincoln and Grand Island. I am here as someone who has only enough knowledge of the 407 process to be uninformed and dangerous (laughter), and I'm here for a very specific, limited purpose, and that is just to request and preserve an opportunity on the record to explore a question or an issue that I have regarding some of the specific wording of this bill. It has to do with lines 5-8 on page 6. I have discussed this with committee counsel and also with Senator Gloor's legislative aide, and they told me they don't think I have anything to be concerned about, but I think they understand my desire to avoid any unintended consequences. That new wording that you see, particularly on lines 7 and 8, my reading of that, and I think it's a fair reading, would be that any vocation that involves health services or health-related services in any way would fit under the definition of health profession for this purpose. What I would hope to be able to do is explore a little further with the proponents of this bill, is that particular definition as to how it might intrude or relate to counseling by members of the clergy, clergy of all faiths. It has been a long-standing policy that members of the clergy are not considered a health profession when they are engaged in faith-based counseling within the context of their own religious function as members of the clergy. I don't presume to know that this would interfere with that or cause a problem, but I would sure like an opportunity to explore it a little bit just to make sure that there are not unintended consequences in that particular context. Thank you. [LB834]

SENATOR CAMPBELL: Any questions from any of the senators? Mr. Cunningham, if there is any, again, questions about language, they are always welcome and you can submit those to the committee. [LB834]

JIM CUNNINGHAM: Right, and if deemed necessary, I will do that, Senator. Thank you

very much. [LB834]

SENATOR CAMPBELL: Okay. Thank you very much for coming today. Other testifiers in a neutral position on this bill LB834? I think they're tracking you down, Mr. Cunningham (Laughter). Nothing gets by Diane Johnson. (Laughter). You can get by a lot of senators (laughter), but not the clerk. Testifying in a neutral position? Okay. Good afternoon. [LB834]

MICHAEL MUNRO: Good afternoon. I'm Michael Munro. I'm general counsel with Madonna Rehabilitation Hospital. Madonna's position is neutral on this bill, and we are represented by the Nebraska Hospital Association as well. However, our interests are slightly different than some of our fellow members of the Nebraska Hospital Association, so we would request an opportunity to be at the table with all the constituent groups discussing any revisions or additional changes to the bill. [LB834]

SENATOR CAMPBELL: Okay, Mr. Moore (sic), there weren't specific recommendations that you had? [LB834]

MICHAEL MUNRO: No. [LB834]

SENATOR CAMPBELL: You just would like to hear...oh, thank you. Unfortunately, both of us have a slip by the clerk. Mr. Moore (sic), would you spell your name for the record? [LB834]

MICHAEL MUNRO: It's Munro, actually. [LB834]

SENATOR CAMPBELL: Oh, Munro. I'm sorry, I'm saying that wrong. Could you spell it for the record? [LB834]

MICHAEL MUNRO: Last name is M-u-n-r-o. [LB834]

SENATOR CAMPBELL: It's a good thing we ask. [LB834]

MICHAEL MUNRO: Thank you. [LB834]

SENATOR CAMPBELL: Did I get everything, madam clerk? Okay. Any others in the room who would like to testify in a neutral position? Okay. Senator Gloor, I see you ready to go on a closing statement. [LB834]

SENATOR GLOOR: Thank you, Senator Campbell. Dr. Michels made some comment about changing the name from 407 to 834. I don't think that is likely to happen, although given his years of service to this community and this state, maybe we should call it the Dr. Dale Michels review process. (Laughter). He probably deserves better than that

given his service to the state. A couple of comments. I want to reiterate a couple of points Mr. Wesely made. This process came about and was developed in 1985, and then three years later there was a you know, we really need to do this also with scope of practice, but it wasn't changed...the process wasn't changed to reflect scope of practice. So the criteria that are really being used are criteria that were developed for the overall credentialing process of professionals, not what we end up finding ourselves struggling with far more often, and that is the issues around scope of practice, and that is one of the reasons that I think all testifiers said we really do need to make some changes here. I know some of the concerns expressed by people who are here as opponents of it is that this tilts the field one way or the other, and it's interesting that the testifiers represent people who might be expected to be concerned about the field being tilted in some way. Those in favor and those opposed seem to come from both camps, interestingly enough, and so I think what that tells us is there's probably opportunity here with the recommendations we've had to sit down and continue talking about it. Will certainly be taken under consideration, and we'll see if we can't work on that. The problem has always been that over the past six years, there has been a lot of input from folks that's been forgotten, or the individuals involved in that are no longer actively involved in their associations, apparently. That actually, I believe, has occurred to a certain point. But who are the interested, and who are the invested parties in all this? There are (laugh) so many. Do we bring the body artists in, because they're covered under this. I mean, you could easily sit down, and we have, and looked at the people who may have some, to use the body artist thing a little further, skin in the game (laughter), dozens and dozens and dozens of individuals. So we have to be really careful here that in our effort to be far more inclusive we don't become so all inclusive that this bill literally stagnates because there are so many people that we're trying to accommodate with changes that are out there. So I only put that out as a caveat to what we may be able to expect or may not be able to accomplish when we bring parties together, but we'll certainly look at that. Some of the suggestions certainly merit looking at further. And with that, that finishes my testimony. Thank you. [LB834]

SENATOR CAMPBELL: (Exhibits 13 and 14) Okay. I would like to note for the record that...and Mr. O'Doherty I think is...probably might apply to you, but almost to everyone here. It would be helpful when you provide comments to us that you give us some idea whether these are new regulations or whether this is a change in or increase in the scope. So in other words, some of the statutes that we may be looking at have to deal with new, and some have to do with an updated, so that might be helpful to us. And I have to give that good suggestion credit to our legal counsel here. And I would also like for the record to note that we received a letter of support from Ms. Janet Coleman who has been a long-standing member of the Board of Health, and I believe she still serves in that capacity, and has been involved with the 407 process for over 20 years. And any of you who have been around the 407 process probably know Ms. Coleman, and she sends a letter of support. We also received a letter from the Nebraska Nurse Practitioners, from Ms. Cathy Phillips, in support of the bill. And I believe that's the only

other correspondence that has been given to the committee today. Thank you, Senator Gloor, very much. [LB834]

SENATOR GLOOR: Thank you. [LB834]

SENATOR CAMPBELL: That concludes the hearing on LB834. While Senator Howard is making her way to the table, we'll have a little break here to let everyone who needs to leave the room or wants to leave the room. (Laugh). So I would ask you if you are leaving to leave quickly. We're giving them a little time. Okay. [LB834]

SENATOR CAMPBELL: All right. [LB831]

SENATOR HOWARD: Ready to go? [LB831]

SENATOR CAMPBELL: I am. We will open the public hearing on LB831 as Senator Howard's bill to adopt the Genetic Counseling Practice Act. [LB831]

SENATOR HOWARD: Thank you. [LB831]

SENATOR CAMPBELL: Go right ahead. [LB831]

SENATOR HOWARD: Good afternoon, Chairwoman Campbell and members of the Health and Human Services Committee. My name is Senator Gwen Howard, H-o-w-a-r-d, and I represent District 9. I appear before you today to introduce LB831 at the request of the Nebraska Association of Genetic Counselors. This bill would allow individuals who have achieved the appropriate level of training to obtain a license in the state of Nebraska to provide genetic counseling services. As each of us is aware, the ability of genetic science to predict disease and guide treatment evolves at a very rapid rate. Because of this, I believe it's important that we enact some type of state licensure to protect the public from individuals or groups who might hold themselves out as genetic counselors when in fact they may not be competent to perform the expected services. In some cases, genetic evaluation and counseling may lead to significant life-changing medical decisions. Currently, this profession is completely unregulated in Nebraska. By way of background, the Association of Genetic Counselors completed its 407(b) process two weeks ago. While both the technical committees and the Board of Health unanimously recommended licensure, and that was on December 1, 2010, and March 21, 2011, respectively, Dr. Joann Schaefer was not convinced that the criteria for license were met and has recommended against licensure. While I deeply respect Dr. Schaefer and I appreciate her opinion, and I would say have often conferred with her, this is an issue that we don't agree on. During testimony today, you will receive additional information. I would note that there are approximately 15 members of the organization, all of whom are nationally board certified or board eligible genetic counselors. The most frequent employers of genetic counselors are hospitals,

universities, medical clinics, and laboratories. Current employers in Nebraska include BryanLGH Center for Maternal & Fetal Care, Saint Elizabeth Regional Medical Center, the Southeast Nebraska Cancer Center, Boys Town National Research Hospital, and the University of Nebraska Medical Center. While most association members work in Omaha and Lincoln, many travel regularly to hospitals in greater Nebraska to provide genetic counseling to individuals and families. These practitioners who work most closely with genetic counselors are M.D. endocrinologists, pediatricians, obstetricians, oncologists, and neurological...you know, they might be able to say this better than I can. (Laugh). Genetic counselors may also work closely with advanced-practice nurses, physician assistants or other mid-level providers whose specialties include patients with genetic conditions. Following me in testimony today will be three genetic counselors and one individual who can no doubt pronounce these words correctly, and I encourage the members of the committee to listen to their thoughts and feel free to ask questions to them. [LB831]

SENATOR CAMPBELL: Any questions for Senator Howard? You did pretty darn good on those words. [LB831]

SENATOR HOWARD: Thank you. I appreciate that. I appreciate the experts that are going to be behind me and their knowledge. [LB831]

SENATOR CAMPBELL: Well, as typical, as I looked across the audience, those professionals were trying to help you. They were going... [LB831]

SENATOR HOWARD: (Laughter) They weren't grimacing? [LB831]

SENATOR CAMPBELL: (Laugh) No, they weren't grimacing. They were articulating the word. I thought that was interesting. [LB831]

SENATOR HOWARD: That's very kind. (Laugh) [LB831]

SENATOR CAMPBELL: For those of you who read articles in the newspaper related certainly to medical, I found it interesting the studies that was done on very young children reading lips this past week, and so I was watching them. I was reading your lips, and you're trying to help her. [LB831]

SENATOR HOWARD: Don't you have to be in front of the person? (Laughter) [LB831]

SENATOR CAMPBELL: I think that might have helped you, Senator Howard. (Laugh). With that, we will start up with the first proponent for the bill. Good afternoon, and welcome. [LB831]

BRONSON RILEY: (Exhibits 15 and 16) Good afternoon. Thank you. My name is

Bronson Riley, R-i-l-e-y, and I'm a cancer genetic counselor at the Southeast Nebraska Cancer Center in Lincoln and Morrison Cancer Center in Hastings. I'm a Nebraska native originally from McCook. I went to UNL for undergrad, and after attending graduate school in Ohio, I wanted to come back to the best state to start a family, so I call Lincoln home with my wife and 16-month-old son. I appear before you today in support of LB831 because it will help protect the wellbeing of Nebraskans. Currently in Nebraska, any individual can hold himself or herself out as a genetic counselor. Healthcare providers and consumers in Nebraska are unsure where to turn for assistance in ordering, interpreting, and acting on genetic test results. To complicate matters, direct-to-consumer genetic testing is permitted in Nebraska and unregulated by state law. Combining these factors increases the chance for misunderstanding or misinterpretation of results which may lead to inappropriate medical management, intervention, emotional injury, and financial loss. Licensure in Nebraska is a recognized regulatory process in healthcare and it helps individuals determine who is a qualified provider. Nebraska can establish and enforce minimum competency standards to help ensure that quality genetic counseling services will be delivered. Consumers and healthcare providers can be reassured that the individual who provides genetic counseling has the necessary qualifications to do so. Just to give you some background on what genetic counselors do and who they are, genetic counselors are healthcare professionals who provide genetic counseling services to individuals and families seeking information about the occurrence or risk of occurrence of a genetic condition. We interpret and provide clear and comprehensive information about the risk of any medical condition that may have a genetic contribution. We also ascertain the usefulness of genetic technologies for individual families and facilitate an informed decision-making process that elicits and respects the spectrum of personal beliefs and values brought by families. Information is presented fairly and evenhandedly, not with the purpose of encouraging a particular course of action, which is important to note. Adherence to this nondirective approach is the most defining feature of the counseling one receives from a trained genetic counselor. Genetic counselors have specialized graduate degrees and training in the areas of medical genetics and counseling. This training encompasses human, medical and clinical genetics, psychosocial theory and techniques, social, ethical and legal issues, healthcare delivery systems and public health principles, teaching techniques and research methods. As Senator Howard said, LB831 is well supported by interested parties in Nebraska. Since October 2009 with the help of the Nebraska Credentialing Review Program, which is timely that we were talking about this, the Nebraska Association of Genetic Counselors has been inviting interested parties to share their feedback and concerns about a proposal for genetic counseling licensure. There was a public hearing about our proposal on September 22, 2010. A technical committee appointed by the Director of Public Health, Dr. Joanne Schaefer, held six public meetings and unanimously approved our proposal on all four statutory criteria of the Regulations of Health Professions Act. Following that on January 4, 2011, the State Board of Health invited the public to provide comments and unanimously approved our proposal. Early in the session, we received a communication

from Dr. Schaefer that indicated that she did not believe that the Nebraska Association of Genetic Counselors had met the statutory requirements under the 407(b) process. We respectfully disagree with her assessment and have provided with you, just today, the members of the committee, a copy of our response to these concerns by Dr. Schaefer. With the passing of LB831, consumers and referring healthcare providers can feel reassured that the individual who provides genetic counseling has the necessary qualifications to do so. Therefore, I urge the Health and Human Services Committee to support LB831. Thank you for your time. I would be happy to answer any questions. [LB831]

SENATOR CAMPBELL: Are there any questions from the senators? Senator Krist. [LB831]

SENATOR KRIST: Thanks for your testimony. If I'm reading this correctly...first of all, how many counselors current? [LB831]

BRONSON RILEY: Fifteen. [LB831]

SENATOR KRIST: Fifteen. And on or after January 1, 2013, no individual shall hold himself or herself as a genetic counselor unless he or she is licensed in accordance with. Is there a grandfather clause in here, or... [LB831]

BRONSON RILEY: There is not. We researched actually the implications of that, and there aren't any counselors currently that would qualify for the clause, so we did not include that into the bill. [LB831]

SENATOR KRIST: So you all will have to take the same kind of license or testing that this... [LB831]

BRONSON RILEY: Right. Correct. [LB831]

SENATOR KRIST: Okay, thank you. [LB831]

SENATOR CAMPBELL: Any other questions? I particularly appreciate that you have put together a response. We don't always see that, and I think that's helpful, because then we can review that in addition. [LB831]

BRONSON RILEY: And we've appreciated the 407(b) process despite all that you've heard today. (Laughter) It's been...it is seriously, it is an opportunity to provide more information for you, and an opportunity for the public and the community to comment whether they choose to do so or not. We've learned quite a bit, so thank you. [LB831]

SENATOR CAMPBELL: And it certainly is a help to us without a doubt. [LB831]

BRONSON RILEY: Yes. [LB831]

SENATOR CAMPBELL: Thank you very much for testifying today. The next proponent? Welcome to the committee. [LB831]

REBECCA RAE ANDERSON: (Exhibit 17) Thank you so much. Good afternoon. My name is Rebecca Anderson, R-e-b-e-c-c-a, A-n-d-e-r-s-o-n. I am an attorney as well as a genetic counselor. I'm on the faculty of the College of Public Health in Omaha, and I teach law and ethics to medical students and public health students. I am speaking today as a private citizen and not as a delegate of the college. And addressing actually the four issues that we talked about earlier in the day, I do think that we have satisfied our burden of proof on the 407 process and that it represents sound public policy. As I read Dr. Schaefer's comments, it seemed to me that she was applying a clear and compelling evidence standard rather than a preponderance standard. And I think that the regulations themselves actually call for preponderance, because I see her clear potential for harm, no significant economic hardship or unwarranted diminution of service availability, public benefit from assurance of professional ability, no more cost-effective means of protecting the public. So as I read them, we don't need to produce empirical studies or statistical analysis or even a demonstration of actual harm to a Nebraskan in order to establish a case for licensure. They ask us to use common sense to determine the potential for adverse physical, emotional, social or economic consequences from erroneous or incompetent care. As genetic counseling professionals, we can point to many instances of actual harm including a fruitless $13,000 laboratory test that actually lead to a bill being introduced two years ago asking for a change in the informed consent process, invasive prenatal testing following a miscalculated blood screen, an adopted woman who was informed that her birth defects were caused by her mother taking LSD and therefore her own children were not at risk for birth defects, a couple advised to abort a pregnancy because the man was taking Accutane, women informed that breast cancer on their father's side doesn't affect their breast cancer risks and many additional citations that you'll find in that response packet. We don't expect that licensure will put an end to misinformation and mismanagement of genetic conditions. In fact, with direct-to-consumer testing and aggressive marketing of genetic tests by pharmaceutical companies, we foresee an even greater risk of such problems in the future, so this is a particularly important time to assure the availability of capable genetic counselors by licensing them. Genetic counselors are currently licensed in 14 states, and 20 other legislatures are considering licensure. Now Section 17 of the bill specifically provides that other licensed professionals may continue to practice within their scopes regardless of licensure of genetic counselors, so long as they don't hold themselves out as genetic counselors. So we don't expect to exclude any legitimate care providers by enacting this bill, but we do intend to exclude others from using the title genetic counselor, that's under Section 21 of the bill, so that people who seek the skill set and the ethical commitment of a genetic counselor will be able to

find the genuine article. Our aim is to support the moral agency of our patients by providing accurate information on medically appropriate management options and helping our patients find the paths most consonant with their own beliefs, goals, and values. As you've heard, board certified genetic counselors undergo two years of graduate-level scientific and psychosocial training at accredited programs to earn their master's degrees. They undergo clinical skills supervisions and sit for a rigorous national exam. They must maintain continuing education hours to maintain their certification; but in Nebraska, there is nothing to prevent a person with a ninth-grade education from hanging out a shingle and claiming to be a genetic counselor. In a field such as this, I really can't think of a legitimate argument against formal assurance of initial competence and ongoing training. Number four, among the options available to us, I think the status quo is the least desirable. Credentialing by an employer is nice, but it doesn't prevent somebody from hanging out a shingle. Registration wouldn't assure ongoing training, although it would be better than nothing, so it seems to me that only licensure really allows us to articulate that clear scope of practice, establish minimum standards for entry, assure ongoing education. Since this bill does provide that the existing Board of Medicine will manage the licensure, the added cost to the Department of Health and Human Services is pretty minimal. In short, it appears to me that licensure is the most cost effective way to meet the needs of the public, and I hope you'll agree. Questions? [LB831]

SENATOR CAMPBELL: Are there questions? Senator Bloomfield. [LB831]

SENATOR BLOOMFIELD: Thank you. Ms. Anderson, how many people are involved in this now that you would say are hanging out a shingle that are not qualified under your licensing requirements for you to be licensed? [LB831]

REBECCA RAE ANDERSON: I can't say. It's hard to know, because we don't know where this information comes from when people come in with misinformation. [LB831]

SENATOR BLOOMFIELD: And medical doctors, are they included in that group that you would... [LB831]

REBECCA RAE ANDERSON: Medical doctors have sometimes erred, yes, and obviously we're not going to change their practice, because they do whatever they please. One of the things that we hope that this bill will accomplish is let physicians know who to call when they have a question. Now, there's no telling. [LB831]

SENATOR BLOOMFIELD: But is there a possibility that you would at some point require the doctor to take this same test that you are taking? [LB831]

REBECCA RAE ANDERSON: No, no. [LB831]

SENATOR BLOOMFIELD: Okay, thank you. [LB831]

SENATOR CAMPBELL: Senator Gloor. [LB831]

SENATOR GLOOR: Thank you, Senator Campbell. Thanks for the information. This is helpful. Talk to me a little bit, if you can, about the significance of licensure as connected to reimbursement by third-party payers. Is it a requirement by some? Does Medicaid require licensure? Does anybody pay for this, or is that just not happen? [LB831]

REBECCA RAE ANDERSON: Most people, because we don't have licensure, do not reimburse directly for genetic counseling services. Our understanding is that licensure would permit direct billing fee-for-service. Currently, we essentially bill under the auspices of the physician with whom we work, and in order to make that legal, the physician has to be in the room, so it really reduces efficiency. [LB831]

SENATOR GLOOR: Do you know, is the licensure, does that affect all payers? Is it just Medicaid? Is it just... [LB831]

REBECCA RAE ANDERSON: I don't know that. [LB831]

SENATOR GLOOR: Okay. [LB831]

REBECCA RAE ANDERSON: I think that as a rule, once Medicaid starts paying, the privates do too; but I'm not entirely sure if that's the case. [LB831]

SENATOR GLOOR: Actually, quite frequently, it's the other way around. (Laugh). [LB831]

REBECCA RAE ANDERSON: Interesting, okay. [LB831]

SENATOR GLOOR: Thank you. [LB831]

SENATOR CAMPBELL: Any other questions that are there? I would like to ask one question, and it's based on a letter that we received from the Nebraska Catholic Conference, and one of the...the question is if licensure would require certification by a national board, we're concerned that either now or in the future, a certification board would require abortion counseling and referral as a prerequisite for certification or as part of professional context standards. Do you have any knowledge of that? [LB831]

REBECCA RAE ANDERSON: I do not anticipate that our national board would ever go in that direction to say that one must discuss something that a patient was not interested in discussing. Now when I talk about this in standard of care when I talk to my

medical students, what I say is, you have the ability as a conscientious person to limit the scope of your practice. But if you make that choice, you also have the obligation to tell your patients beforehand what your parameters are so that, for instance, if I as a physician don't write prescriptions for birth control, I need to let people know that before they come in so that they can seek another provider who is willing to do that. And I think, as far as I know, for the 40 or so years that genetic counselors have been functioning, people who have conscientious objection to abortion just make that known to their patients, and the patients go elsewhere if they feel that that's a discussion that they want to have. [LB831]

SENATOR CAMPBELL: I appreciate that. If anyone else is testifying in the room, if you want to make comment on my question, you certainly can. Senator Krist. [LB831]

SENATOR KRIST: I'll save my question. Thank you. [LB831]

SENATOR CAMPBELL: Okay. Thank you, Ms. Anderson. [LB831]

REBECCA RAE ANDERSON: Thank you. [LB831]

SENATOR CAMPBELL: Our next proponent? Welcome. [LB831]

ELIZABETH CONOVER: Number three. [LB831]

SENATOR CAMPBELL: Absolutely. [LB831]

ELIZABETH CONOVER: (Exhibit 18) Thank you, Senator Campbell. Thank you, committee. My name is Beth Conover, C-o-n-o-v-e-r. I've been a genetic counselor in Nebraska for 28 years, initially at Children's Hospital and much more recently at Munroe Meyer Institute at UNMC, and I appear before you in support of LB831. I think this might be the same room I testified in 20 years ago (laugh) when Nebraska initially considered licensing genetic counselors, and we were at the forefront of states dealing with that. Actually, we had one of the bigger services in the country. At that time, there was a decision not to proceed because of expense. Fortunately for us, there is a way to now license genetic counselors as the group of other allied healthcare providers which makes this essentially budget neutral and the time to reintroduce it. At this point, 20 years later, genetic counseling is a well-established, valued component of healthcare. Many other states, as we've already discussed, have licensed or are considering licensing genetic counselors, and I would say Nebraska needs to be proactive in protecting citizens who need and rely on genetic counseling. It's also a way to make the state genetic-counselor friendly, because we definitely notice who licenses genetic counselors, and I think that Nebraska deserves to have the best genetic counselors, and treating them right is one way to hold onto them. I'm not from Nebraska, but I love it. I am not thinking of moving, so I'm not threatening; but I think that when you replace

me and I retire, you will want a really great genetic counselor to take my place, and licensure has something to say about that. I am going to diverge from my written, I always do, and I'd like to tell you just a little bit about what I do as a genetic counselor. I am an active clinician. In a given week, I do general genetics clinic, I see babies with birth defects, I see teenagers with autism, mental retardation behavior problems. I see adults with neuromuscular diseases. I have a very diverse practice in general genetics. Certain days I do prenatal at a high-risk prenatal center. I see mostly people who have babies with known problems. I think that my practice in general genetics really helps me to talk to families about what this will mean to them, what the best resources are for them, and the value I place on children who are different in certain ways but normal in so many other ways. I do fetal alcohol syndrome clinic. That's how I met Senator Howard, and I evaluate children who have been exposed to drug and alcohol during pregnancy. I do Down syndrome clinic. I did that yesterday, probably my favorite clinic, and I run the Nebraska Teratogen Information Service. I provide information to physicians and nurses who call about exposures in pregnancy and breastfeeding, what's safe to use and what might be dangerous to the fetus. I also do out-state clinics in Kearney and North Platte. I teach the medical students, graduate nursing students, pharmacy students, genetic counseling students. I do some research. I have a really interesting job. I would like to talk a little bit about the art and science of genetic counseling. As you can tell just from what my job is, the complexity of the cases we handle mean that I have to have a really strong science background and also the flexibility to adapt my approach to widely different patients. Another day, another patient, (laugh) another situation. Even when the condition is the same, the patient is so different. So we also have to have the counseling skills, because it isn't just the diagnosis, it's how the family is going to handle that. We must be adept at attaining a specialized family history, and I will say I can get a family history out of anyone. Developmental history, extracting the really important information. It's not just what's there on the paper, but what does that mean? How is that being inherited? What does that mean for that particular family so that we can go on into diagnosis and mode of inheritance? We have to explain complicated genetic things to people who often have no background in that, and I really stress (inaudible) we're doing it. And of course, that means we have to adapt it to each individual patient. So assessing and assisting patients in all this means we really have to have training and knowledge in the different religious and cultural backgrounds, and Becky didn't talk much about that, but one of her areas of expertise is how people of different religious groups deal with the ethical and even biological issues we deal with in genetics. Knowing about different cultural issues, interpersonal issues. And when a person or their child is newly diagnosed with a genetic condition, the compassionate and informed discussion of prognosis and care provides crucial and otherwise difficult to obtain information. I feel really strongly that we may be able to offer realistic hope and support in situations that otherwise appear intolerable. May I finish my last paragraph? I see my yellow light. [LB831]

SENATOR CAMPBELL: Yes, of course. Go right ahead. [LB831]

ELIZABETH CONOVER: Genetic counselors also...ooh, I have two. Genetic counselors also provide consultation to other healthcare providers in areas such as healthcare resources for individuals with genetic disease and the most economic and effective testing strategies. This includes what is the best test for the right person at the right price, and I can't emphasize enough that that's a really important thing that we do. Providers rely on the accuracy of the specialized information, and knowing that an individual is a licensed genetic counselor assists them in establishing the expertise and training of the consultant. So as you can see with all the things I do and all the questions I answer, it's really important that that person knows what my credentials are. Patients in Nebraska deserve knowledgeable and skilled practitioners who will address their concerns in the best possible fashion, and I really mean this. If you were a patient or this were your daughter, wouldn't you want to be assured that your genetic counselor had a graduate degree in medical genetics with the intended coursework we've discussed, passed the challenging genetic counselor board exam and was required to remain up to date since information in genetics changes literally monthly. A group of individuals offering Nebraska patients and their providers critical professional services should be licensed. Licensure is a proven strategy for ensuring that healthcare providers have appropriate and adequate training, follow ethical standards and have remained current in their field of study. I really want to emphasize this, waiting for medical errors to occur before approving genetic counseling licensure seems short sighted and cruel. I appreciate your attention to the issue and would be happy to answer any issues, and thank you for letting me go overtime. [LB831]

SENATOR CAMPBELL: You're welcome. Any questions here? Senator Krist. [LB831]

SENATOR KRIST: About 99.9 percent of the time, I defer to Senator Gloor for medical issues and these kinds of questions, but I feel uniquely qualified to tell you that I think it is extremely important that licensure for genetic counseling happens in this state. I feel that way, and I will talk to my committee members and let them know why in more detail. But briefly, I had the pleasure of having a special needs child, and going to UCLA to visit with Dr. Ramoine (phonetic)... [LB831]

ELIZABETH CONOVER: Um-hum. Famous. [LB831]

SENATOR KRIST: ...who probably is the most qualified person to give genetic counseling, a pediatrician, an endocrinologist and dysmorphologist. Those people, that qualification uniquely put him in a position to tell us that had we had genetic counseling during the gestation period and known what was going to happen, they would have referred us to the book of pediatric horrors and told us what could happen to our daughter. We then would have had a choice to make. My background, those who know me know that there would have been no choice to make. But genetic counseling in preparing for life, a new life, is probably more important than conception itself, so I'm

here to tell you that you have my support. But I have one huge question I would like to ask you. In the state of Nebraska, we currently allow termination of pregnancy by law up until 20 weeks. Your genetic counselors would be faced with a situation where you would know, spina bifida, I mean, you go right down the list of the pediatric horrors, and you could tell me better than I. It is then your responsibility to do what? And how do you advise the patient? And in your answer, I couch it in my way of thinking, if we don't have a licensure process, then we can't take action against someone who is not doing ethically what should be done, and I would like you to answer that as part of the question as well. I'm saying that as...it's an interrogative, okay? Answer it that way. Thank you. [LB831]

ELIZABETH CONOVER: It's okay. You'll help me as I go along then (laugh) (inaudible). So I do work with families all the time who have been diagnosed during pregnancy with a child with a genetic condition. I think that one of the important...there are really two important things that I have, that I think are what a family needs. One is that as I've mentioned, I work in general genetics, so I have a really accurate idea of what the range is, what they can expect. And I think that people hear that something is genetic or different, and they think that there is going to be nothing normal about that child, that they won't still look like their parents or have a lot of the same emotions, or you know, that everything will be wrong instead of talking about so many things that will still be right. And I think that we know that a lot better than most people, and we see families all the time whose physician, you know, through their best intention, have given them misinformation, honestly, and sometimes misdirection about what they should do. So it's not uncommon for a family to come and see me and they've been told to end the pregnancy, and they can legally do that. I think that my job is to help them know the broader range of what the good and the bad that they can expect from their child, the implications of what that means in their own family, and as a genetic counselor, I'm really trained to be non-directive. I would never tell them what to do except to provide the information and support and services and resources that will help them in doing that. That's really my concern. I will say because I'm working with several families who have been diagnosed with children with Down syndrome in utero right now, and that a lot of it...gosh, with one of them we're already working on the right school system to live in, and we've kind of moved past some of the shock and grief into really working through some other issues. But one of the families isn't certain that it's the right thing for them to raise a child with Down syndrome, and one of the things that I help with, is there is a waiting list for people who want to adopt children with Down syndrome, so I feel it's important that I know all of the options and that I'm able to say all of the options. There are some things that are really very, very serious with very poor prognosis that happen to babies. I would never hide that from families. I would not hide their options; but I feel that it's their decision, my job to support them. I think we're very broad based in how we do that. Did that answer your question? [LB831]

SENATOR KRIST: Absolutely. Thank you. [LB831]

SENATOR CAMPBELL: Any other questions? Thank you for coming today and testifying. [LB831]

ELIZABETH CONOVER: Thank you for listening. [LB831]

SENATOR CAMPBELL: (Exhibits 19, 20 and 21) Next proponent? Okay. Is there anyone in the hearing room who wishes to oppose the bill? Is there anyone in the room who wishes to provide neutral testimony? All right. While Senator Howard is making her way, she obviously wishes to have a close. I'd like to note for the record that the committee did receive a letter from Dr. Schaefer, and she provided attached to it her comments with regard to recommending...not recommending that this be approved. And the next letter that I have already referenced was from the Nebraska Catholic Conference expressing a concern and also that they would be willing to visit with Senator Howard on any of those, and a letter from the Nebraska Hospital Association which supports LB831. So Senator Howard, you are more than welcome to close. [LB831]

SENATOR HOWARD: Thank you, Senator Campbell. In closing, I would like to say here is a group of professionals who have come to us wanting to be licensed in order to provide the best quality medical care. I can't think of a better reason for a group to come together than to police and to manage their own profession. And I will say, no one could have done a better closing than Senator Krist and Dr. Conover, so thank you. [LB831]

SENATOR CAMPBELL: Thank you, Senator Howard, and with that, we will close LB831. And if you are leaving at this point, again leave quietly and quickly, and we'll turn...Senator Gloor will conduct the hearing, and I'll make my way to the table. [LB831]

SENATOR GLOOR: Thank you. Senator Campbell, feel free to begin when you're ready. [LB788]

SENATOR CAMPBELL: Thank you, Senator Gloor. Good afternoon, colleagues. I am Kathy Campbell, K-a-t-h-y, C-a-m-p-b-e-l-l, representing District 25 here to introduce today LB788. LB788 amends the Respiratory Care Act to reflect the Centers for Medicare & Medicaid Services or CMS policy on who may order respiratory therapy. CMS policy affects the conditions for participation in these federal programs. The bill also reflects scope of practice for nurse practitioners and physician assistants in Nebraska. The bill was suggested to me by Julie Sundermeier, APRN, and Julie was aware that CMS policy had been updated last spring to provide that respiratory services must only be provided under the orders of "a qualified and licensed practitioner who is responsible for the care of the patient acting within his or her scope of practice under state law, and who is authorized by the hospital's medical staff to order the services in accordance with hospital policies and procedures and state laws." CMS guidelines

provide that "practitioner" includes physicians and may also include nurse practitioners and physician assistants. Nebraska's scope of practice allows these professionals to order and prescribe therapeutic treatments and measures. LB788 would bring our statutes up to date with current Nebraska practice as well as federal policy, and I ask for your support to advance the bill. There are others here today who have a more detailed and certainly technical background. I'm going to concur with my colleague, Senator Howard. The folks behind me can provide a lot more information on this subject, and I certainly would like to defer technical questions to them. Otherwise, I would be happy to answer any general questions that you may have. [LB788]

SENATOR GLOOR: Are there any questions for Senator Campbell? Thank you, Senator Campbell. [LB788]

SENATOR CAMPBELL: I'm grateful for that (laughter), and I think I'll just sit over here and let you finish. [LB788]

SENATOR GLOOR: Thank you. We'll start with proponents. [LB788]

JULIE SUNDERMEIER: (Exhibit 22) Hello, all. Thank you, Senator Campbell. My name is Julie Sundermeier, and that's spelled S-u-n-d-e-r-m-e-i-e-r. I am a member of Legislative District 16, and I'm here today to testify in support of LB788. I represent myself as a nurse practitioner and recommend this change based on professional practice. I think Senator Campbell did a great job introducing the bill and stated some of the things that I was going to say today, but she did a good job. The current Respiratory Care Practice Act in Nebraska states that the practice of respiratory care shall be ordered by a licensed physician. These statutes date back to 1986 at a time when they were in alignment with CMS, which is the Centers for Medicare & Medicaid Services regulations. The Nebraska respiratory statutes and national CMS regulations regarding respiratory care went largely unnoticed and unenforced until 2009 when the Joint Commission wanted to get deemed status with CMS, so they aligned their regulations with CMS, and the resulting outcome was that there was public notification since Joint Commission was requiring this regulation in the hospital. As the regulations resurfaced, there was interpretation of the regulations that physician could delegate the ordering of respiratory services to a qualified health professional, but a physician needed cosignature on all of those orders. Eventually, luckily, in 2010, CMS and the Joint Commission revised these regulations to state that qualified licensed practitioners such as NPs and PAs acting within their scope of practice may order respiratory care services. These regulations, however, are written in such a way that individual state laws as well as hospital policy prevail. In public forums, it was interesting that CMS stated that there was no evidence to indicate that ordering of respiratory care services should be kept to a different and possibly higher standard than other hospital services. There are no documented studies, they stated, indicating that qualified licensed practitioners such as nurse practitioners and PAs should be restricted from ordering

those necessary services for their patient. The process of physician countersignatures of orders they declared was burdensome to practitioners, and that was physicians as well as nurse practitioners and PAs. I am employed by the Nebraska Medical Center. I'm the lead neonatal nurse practitioner, and in the NICU, we take care of babies that are extremely premature or very sick newborns, many of whom have complex respiratory issues. NNPs are educated and trained on the pathophysiology and management of congenital and acquired conditions, including those involving respiratory disease. I have hospital privileges for ventilator management and procedures such as intubation and chest tube placement. From the time I graduated as an NNP in 1998 to 2010, I ordered these respiratory care services without a cosignature, but then on September of 2010, a letter was sent to all hospitals from the state...in the state from the Nebraska Board of Respiratory Care bringing to the attention of all that the fact that the existing Nebraska law required respiratory care be performed only upon the order of a licensed physician, and that all other orders needed to be cosigned by a physician. So until this Respiratory Care Act is changed, this extra step is required, although CMS and national guidelines have changed. As an acute care practitioner, this affects many orders. Consider the scenario of a very recent night just this week of mine at a hospital in Omaha. The NNPs in this newborn intensive care unit provide 24/7 in-house coverage, and the physicians are on call. The preterm infant that we were caring for was nearing discharge but had a sudden and unexpected deterioration in the middle of the night. We are called to the bedside, and as I approached the bedside, my fellow NNP is placing a breathing tube in the trachea due to respiratory arrest. I place an emergent IV and order medication to increase the heart rate. The breathing tube needs to be replaced, so I place another breathing tube, and we hand ventilate the infant while respiratory therapy is setting up the ventilator. We order the ventilator settings, and luckily, due to the medications and IV volume that we gave as well as respiratory therapy, the infant stabilized prior to the physician being present. We continued to order many respiratory care orders and blood gases and things to monitor the patient and assess the patient based on those. This is one incident in my healthcare setting, but there are others across the state of Nebraska. I have heard stories from other practitioners based on a wide variety of settings from urban to rural, acute to chronic, and pediatric to geriatric. The Institute of Medicine issued a monumental report in the fall of 2010 entitled "The Future of Nursing." This report emphasized, among other things, the need for APRNs to practice to the full extent of their education and training. I am not asking for any increase in my scope of practice. I am just asking to practice within my scope. There are over 850 nurse practitioners in Nebraska, and nearly two-thirds of those work in hospitals and physician offices and clinics. Much has changed in the healthcare arena in the more than 25 years since the statutes, and these need to be updated. I feel Nebraska will benefit by replacing antiquated legislation to be in alignment with national standards, and I hope for your support on this bill. Thank you very much. Are there any questions? [LB788]

SENATOR GLOOR: Thank you. Are there any questions for Ms. Sundermeier? See

none. Thank you very much. Good testimony. [LB788]

JULIE SUNDERMEIER: Thank you. [LB788]

SENATOR GLOOR: Other proponents? Please step forward. Good afternoon. [LB788]

DARCY O'BRIEN-GENRICH: (Exhibit 23) Good afternoon. Welcome, committee. My name is Darcy O'Brien-Genrich, D-a-r-c-y, O'-B-r-i-e-n,-,G-e-n-r-i-c-h, and I am here today as President of the Nebraska Society for Respiratory Care, the statewide profession association for Nebraska respiratory therapists. I am a licensed respiratory care practitioner at the Nebraska Medical Center in Omaha. Respiratory care is an allied specialty that provides a wide range of therapeutic and diagnostic services to patients of all ages with heart and lung disorders. For example, we provide temporary relief to patients with chronic asthma or emphysema as well as emergency care to patients who are victims of heart attack, stroke, drowning, or shock. Respiratory therapists work in collaboration with the physicians in order to treat all types of patients ranging from premature infants whose lungs are not fully developed to elderly people with lung disease. We assist physicians in helping people by providing aerosol treatments to managing life support equipment for the most critically ill. Respiratory therapists need to be able to provide safe and effective care in collaboration with the mid-level practitioners that have the education and the training to order respiratory care services. LB788 allows two of those areas of practitioners to order services, and we support the intent of the legislation. LB788 does not fully cover advanced practice registered nurses under the nurse practitioner language. From a safety and effectiveness rationale, we want to encourage inclusion of certified registered nurse anesthetists, CRNA, because they have the qualifications and training to expertly prescribe respiratory care services. In addition, a certified nurse midwife should be included, because respiratory care services are involved in resuscitation efforts during complicated newborn deliveries. By including CRNAs and CNMs, the state of Nebraska assures that residents have proper access to trained individuals to provide this life changing care. In most instances, a licensed physician is recognized as the first caregiver to order services. We also recommend that the physician is listed first in the language with the mid-level practitioners to follow in the absence of the physician. Thank you for your time today, and I would be available for any questions. [LB788]

SENATOR GLOOR: Thank you for your testimony. Let me make a...or ask a question I guess. It's not a comment. So you're testifying on behalf of the Nebraska Society for Respiratory Care. [LB788]

DARCY O'BRIEN-GENRICH: Yes. [LB788]

SENATOR GLOOR: And you're supportive of LB788, but you have some suggestions to make including CRNAs and certified nurse midwives. [LB788]

DARCY O'BRIEN-GENRICH: Yes, correct. [LB788]

SENATOR GLOOR: Have you had that conversation with Senator Campbell and her staff yet, or is this the first time that... [LB788]

DARCY O'BRIEN-GENRICH: We had some calls earlier this month when we were made aware that this bill was going to be introduced, and so those questions were being asked at the time...we wanted to make sure that was also included in the wording since it seemed unclear when we had those discussions. I did contact the board from the CRNA to get clarification, were they included in this wording. And they said that they weren't considered nurse practitioners, but they were considered advance practice RNs, so we just wanted to make sure they were included. [LB788]

SENATOR GLOOR: Okay. All right. Noted. Other questions from senators? I see none. Thank you for your testimony. [LB788]

DARCY O'BRIEN-GENRICH: Thank you. [LB788]

TIMOREE KLINGER: Good afternoon, Senator Gloor, members of the committee. My name is Timoree Klingler, spelled T-i-m-o-r-e-e, last name K-l-i-n-g-l-e-r. I am here on behalf of the Nebraska Nurses Association as the executive assistant. I will keep my comments very brief. The NNA supports this legislation, as we believe it enhances the quality and efficiency of care patients are able to receive. Nurse practitioners are adequately trained to order respiratory care without the supervision of a physician as described in LB788. Thank you, and I'd be happy to entertain any questions. [LB788]

SENATOR GLOOR: Are there any questions, senators? See none. Thank you, Ms. Klingler. [LB788]

TIMOREE KLINGER: Thank you. [LB788]

SENATOR GLOOR: Other proponents? [LB788]

STEPHANIE VANDERMEULEN: (Exhibit 24) Thank you Senator Gloor and members of the committee. My name is Stephane Vandermeulen spelled V-a-n-d-e-r-m-e-u-l-e-n, and yes, I married that moniker (laugh), and I am a certified physician assistant, and I am an academic coordinator and assistant professor at the University of Nebraska Medical Center's physician assistant program. I don't speak on behalf of the University of Nebraska Medical Center; however, I am here testifying on behalf of the Nebraska Academy of Physician Assistants. My comments are quite reflective of some of those that you've heard already today. The Nebraska Academy of Physician Assistants supports LB788. This bill modernizes the state's Respiratory Care Practice Act so that it

conforms to federal standards. As you've heard before, effective October 1, 2010, the Centers for Medicare & Medicaid Services changed regulations to allow PAs and NPs to order respiratory care services without the need for physicians cosignature. This was part of the 2011 Hospital Inpatient Prospective Payment Systems rule, or the IPPS rule. Individual states now must amend their respiratory care law to reflect this federal change. There are over 700 PAs licensed by the state of Nebraska. Physician assistants perform medical services under the supervision of a licensed physician in the specialty areas for which the PA is trained or experienced. These physician-delegated medical services define the PA's scope of practice. Furthermore, physician assistants are credentialed by hospitals to provide services that are within their scope of practice and expertise. All policies must be followed by physician assistants, and the hospital's physician medical staff is intimately involved in credentialing PAs and establishing hospital policies. Updating the Respiratory Care Practice Act would follow CMS and the Joint Commission standards and removes any ambiguity regarding patient care services ordered by PAs and NPs. I would be happy to entertain any questions. [LB788]

SENATOR GLOOR: Senator Krist. [LB788]

SENATOR KRIST: Just for the record, your second paragraph here says that Medicare and Medicaid changed, federal level changed in 2010. [LB788]

STEPHANE VANDERMEULEN: Um-hum. Correct. [LB788]

SENATOR KRIST: But that the state needs to change, which we are doing with this piece of legislation... [LB788]

STEPHANE VANDERMEULEN: Correct, yes. That's what this bill proposes. [LB788]

SENATOR KRIST: ...so that you are allowed to do what you need to do. [LB788]

STEPHANE VANDERMEULEN: Correct. [LB788]

SENATOR KRIST: Thank you. Just for the record. Thanks. [LB788]

SENATOR GLOOR: Other questions? Seeing none. Thank you. Other proponents? [LB788]

TOM DANEK: (Exhibit 25) Thank you, Senator. My name is Tom Danek, D-a-n-e-k. I'm going to present maybe a little bit different perspective on this. I'm a respiratory therapist. I've spent most of my career working in home medical equipment companies. I'm currently the respiratory manager for Jim's Home Health here in Lincoln. We do a lot of non-respiratory equipment, but we also do a lot of respiratory equipment, ventilators, oxygen, CPAP machines for sleep apnea, and so forth, so I want to talk about maybe

some of the day-to-day issues that this has created for us. Everybody before me has talked about the expertise of the mid-level practitioners. I won't spend time on that, but I want to talk about a couple things specific to us. One, operationally how it affects us and secondly, clinically how it can affect us and our patients. Operationally, this creates an extra step in our process, you know whether, in our process to get paid. When we get an order from a nurse practitioner, then we have to funnel it back to get cosigned by the physician. You know, those guys are pretty busy, and that process is really slowed down. Subsequently, our paperwork tends to be on the bottom of their pile of things that they need to do. It takes a long time for it to get back. That slows down the time it takes us to submit our bill to third party payers and subsequently slows down our cash flow, which all of us know slowing down cash flow is not a good thing for business. Second, clinically, it's just a whole lot easier to get a hold of mid-level practitioners in respiratory care. Being in the home-care setting, we're not in a setting where we have access to physicians very quickly like people in hospitals do, they have hospitals around and so forth, so we don't have as much access to them. So if I'm out in a patient's home with a ventilator and they're having difficulties, it's a heck of a lot easier for me to get a hold of a nurse practitioner to make some often very simple changes in the ventilator that can alleviate a patient in distress pretty quickly. So if we can feel comfortable with the process of going through a nurse practitioner as opposed to a physician, it certainly can alleviate a lot of stress in the patient's home and potentially alleviate having to send them to the hospital if we can't get the changes necessary for the ventilator. [LB788]

SENATOR GLOOR: Let me ask a short question. You make mention of calling the mid-level practitioner in an emergent situation. [LB788]

TOM DANEK: Um-hum. [LB788]

SENATOR GLOOR: But are we putting ourselves in the position that whoever is out providing the home care is going to call this practitioner with something that might, in fact, be a push on their scope, stretch on their scope of practice, urging them to make some decisions appropriately on behalf of the patient, but maybe putting them in an uncomfortable position of having to make decisions that might be again a little push on their scope of practice? Do you see that as a potential... [LB788]

TOM DANEK: A push on whose scope of practice, I'm sorry. [LB788]

SENATOR GLOOR: The mid-level practitioners. We've got an emergent situation here. We need help. Will you do this for me, and the mid-level practitioner is caught between a rock and a hard place here. [LB788]

TOM DANEK: You know, I suppose that's possible that that scenario exists in many healthcare settings, not just in-home care. But certainly in a hospital that those...the description of the situation is given over a phone, and that practitioner, based on the

feedback from the respiratory therapist, whatever nurse, RN or whatever professional is giving them feedback, that practitioner has to make a decision. No, I don't think that's outside of their scope. I think that's very well within their scope. [LB788]

SENATOR GLOOR: Well, I'm asking you the question primarily because you would have more experience of being in the home in that situation, I think, and just curious. I mean, I could also see that under that same scenario currently, you would pick up the phone then and have to get the countersignature of the physician, so that currently exists. I can certainly see how this is quicker, I'm just trying to look at it from a quality standpoint. [LB788]

TOM DANEK: Yeah. Yeah. [LB788]

SENATOR GLOOR: Any other questions? Seeing none, thank you. [LB788]

TOM DANEK: Thanks. [LB788]

SENATOR GLOOR: Are there other proponents? Seeing none, are there any opponents of this bill? Anybody who would like to testify in a neutral capacity? Senator Campbell, would you like to close? [LB788]

SENATOR CAMPBELL: (See also Exhibits 26, 27, and 28) I would, and I will be very brief. I very much appreciate the professionals who answered technical questions and provided that. As you can see, I think this is an important piece of legislation that would bring Nebraska into compliance and, Senator Gloor, I do want to address your question. Yes, they were very kind to provide an e-mail to our office as well as Ms. Sundermeier did, and we will sit down with both of them and work out any of their concerns; but yes, they sent that courtesy. Unfortunately, the bill was already out to print, so we will sit and work with them; but they were very kind, and that's all that I have. [LB788]

SENATOR GLOOR: Thank you, Senator Campbell. We'll then close the hearing on LB788, and that ends the hearings for today. Thank you all for attending and for participating. [LB788]