[LB686 LB862 LB891 CONFIRMATION]

The Committee on Health and Human Services met at 1:30 p.m. on Thursday, February 22, 2018, in Room 1510 of the State Capitol, Lincoln, Nebraska, for the purpose of conducting a public hearing on LB862, LB686, LB891, and a gubernatorial appointment. Senators present: Merv Riepe, Chairperson; Steve Erdman, Vice Chairperson; Sue Crawford; Sara Howard; Mark Kolterman; Lou Ann Linehan; and Matt Williams. Senators absent: None.

SENATOR RIEPE: (Recorder malfunction)...this is the Health and Human Services Committee. It's February 22, on a Thursday. And we're glad that all of you are here. I am Merv Riepe and I serve as the Chairman of the Health and Human Services Committee. And they...we have a caller on the line. And we're going to do an appointment here, and this is going to be our first thing up. Before I go on with that, I know Senator Erdman won't be here...I think I'll wait just a little bit, maybe, until after we get through our hearing to go through kind of the rules of engagement and who the senators are, so you know who they are and where they're from. So, with that, I think we're good to go, are we Tyler? And we have an interpreter on, Jenny Corum; is that correct, Ms. Corum? [CONFIRMATION]

JENNY CORUM: That's correct, yep. [CONFIRMATION]

SENATOR RIEPE: Okay, and you're going to be the interpreter for...Norman Weverka? [CONFIRMATION]

JENNY CORUM: Yeah. [CONFIRMATION]

SENATOR RIEPE: Did I butcher that terribly? [CONFIRMATION]

JENNY CORUM: Yes, Weverka. [CONFIRMATION]

SENATOR RIEPE: Thank you, thank you. We are ready to go ahead if you and Norman are. And we would ask you to simply tell us who you are, or who...and have him explain a little bit of who he is, obviously, and why he has an interest in serving. And then we will have some questions and we'll afford you an opportunity if he has some questions. So, I'm going to turn the show over to you and we'll go from there. [CONFIRMATION]

NORMAN WEVERKA THROUGH INTERPRETER: (Exhibit 1) All right. My name is Norman Weverka. I live in Brainard County, it's near...I'm sorry, it's near the town of Brainard, Nebraska. I have been on the board here recently and I am looking for a reappointment because I

truly believe that I can make at least a little bit of a difference within the deaf community here in Nebraska. I'm very supportive of advocating for people who are deaf and hard of hearing. I have worked for many years with the deaf and hard of hearing community and the commission itself. And also, I have been traveling all over the state of Nebraska, so I'm very familiar with the area and what are the true needs for people in the deaf and hard of hearing community, in finding what their needs are. I've also been the president of Omaha Association for the Deaf in Omaha for many years, for 35 years I've served as the president. So, that's kind of where I stand right now. I truly love working with people who are deaf and hard of hearing, advocating for them and...yeah. [CONFIRMATION]

SENATOR RIEPE: Okay. [CONFIRMATION]

NORMAN WEVERKA THROUGH INTERPRETER: I don't...is there any other...is there any other questions you guys might have for me? [CONFIRMATION]

SENATOR RIEPE: We're going to see. I guess, my first question would be is what's been the one most rewarding experience that Norman has had? [CONFIRMATION]

NORMAN WEVERKA THROUGH INTERPRETER: Oh, there's too many to name. I guess I would say my most rewarding is working for the Commission for the Deaf and Hard of Hearing. It gave me an opportunity to truly help people who have special needs. Additional...and I've always just been involved in so many different ways and so many different...you know, providing different activities that were very successful. And just continuing to not only just educate people about deaf and hard of hearing, but also to hearing people as well. I am always happy to be involved, you know, for an example: Husker Harvest Days. That serves a ton of people--farmers, people all over the state of Nebraska that go--and, you know, they ask so many questions about, you know, how do I make life better because I can't hear on the phone, or they can't hear in general. Simple little things that pop up, and so it's just, I mean, that's probably the most rewarding thing that I have been able to do is just to get involved. [CONFIRMATION]

SENATOR RIEPE: Okay, thank you very much. I'm going to ask the committee members if they have particular questions that they would like to ask. So, we're open for the committee. Is there...are there any questions? Okay, it appears not. We thank you very much. Does Norman have any questions of us? [CONFIRMATION]

NORMAN WEVERKA THROUGH INTERPRETER: No. [CONFIRMATION]

SENATOR RIEPE: Okay. [CONFIRMATION]

NORMAN WEVERKA THROUGH INTERPRETER: No, I am looking forward to the work again and just, you know, continuing my work with deaf and hard of hearing, especially at this level. So thank you. [CONFIRMATION]

SENATOR RIEPE: Okay, thank you very much and thank you for your patience while we got organized. So that concludes our appointment for the day. Before we go on into the official hearing, I am going to walk through a few little rules of engagement. But first I would like to have all of the members of the Health and Human Services Committee introduce themselves from my far right, if you will.

SENATOR KOLTERMAN: Senator Mark Kolterman, District 24: Seward, York, and Polk Counties.

SENATOR HOWARD: Senator Sara Howard. I represent District 9 in midtown Omaha.

KRISTEN STIFFLER: Kristen Stiffler, legal counsel.

SENATOR CRAWFORD: Good afternoon. Senator Sue Crawford from District 45, which is eastern Sarpy County; Bellevue and Offutt.

SENATOR WILLIAMS: Matt Williams, Legislative District 36: Dawson, Custer, and the north portion of Buffalo Counties.

SENATOR LINEHAN: Good afternoon. Lou Ann Linehan, District 39, which is western Douglas County.

TYLER MAHOOD: Tyler Mahood, committee clerk.

SENATOR RIEPE: And our wonderful page who is fearless and works exceptionally hard. And she will be available for any copies or anything that are needed. We'll also...when you come forward with your orange slip in hand, we will ask you to give that orange slip to her before you take the seat to be...before you testify. The committee will take up the bills in the order that they're posted outside of this room. And this is your legislative opportunity to participate in the process here in Nebraska, and we welcome that. At times, you will see some of our committee members, our senators, coming and going. Part of that is they will have other bills that they may be opening on or they have to testify at. So it's not a lack of interest in your particular piece of legislation or in the subject that you're presenting, it's simply that we have to multitask, if you will. You'll also see some of our senators working with iPads and our staff, or with computers,

and that says we moved into the 21st Century and try and move away from paper. A few rules of engagement. I would ask you to please turn off or silence your cell phones. And also to...if you're going to testify, please, when it comes close to when you think that you will be up, please move up to the front. We have, like, six chairs up there. They're not the hot seats, but we'd ask you to move up there just to help us move along to make sure we can get everyone in to testify. The order of testimony will be the senator who's introducing the bill will have the opportunity...they will open on it, as we call it, and they will not be on the clock. And from that, following their conclusion, they will be potentially asked questions from the committee members. Then we go to...we go to proponents, those that want to speak in favor of the bill. Then we go to opponents, those in opposition. Then we go to a neutral capacity. And after that I will have Tyler read in any letters that we've received. And a rule of the letters is, is that we need to have the letters 24 hours in advance of the meeting and we also need to make sure that people ask us to put those in the minutes. That's just some of the rules of engagement that come out of the Unicameral. When you come up to the microphone, we will ask you to share this particular pink/orange--I guess it's orange--slip with the page, who will give it to Tyler, the committee clerk. We will ask you to have a seat, to state your name, spell your name, and share the organization that you're with and then we will proceed on. Today we're going to be working on a five-minute clock, which means we're four in to the red (sic--green), one in to the amber, and then we go to the red. And I will try to be somewhat flexible on the red, it's not my intent to be rude in any way and to cut you off. But I also, in the interest of other presenters, cannot let this go on. If you're fortunate enough after concluding your remarks, we'll call for the committee, if they have any questions. And you might be able to then...they might invite you to finish your remarks or you might be able to kind of work it around a little bit that you can finish your own remarks in your own way. I'd also ask you, if you can, to be concise. I want to add, too, that if you will not be testifying on the mic but you want to go on record as having a particular position on a bill being heard today, there are white sign-in sheets at each entrance--look like this--and we would ask you to simply leave your name and other pertinent information and these sheets will become a part of the permanent record at the end of today's hearing. If you do have some materials that you want to hand out--and those are handed out not to the entire audience but rather to the committee--we were going to ask you for...to have ten copies. That's what we need to cover our...for us to get access. And if you don't happen to have ten copies, please share that with the clerk or with our page and she is light of foot and will have those ten copies to you in short order. With that, I would like to open today's hearing with LB862, Senator Howard. Welcome, Senator Howard, you've been here before so I won't give you the drill. [LB862]

SENATOR HOWARD: (Exhibits 1, 2 and 3) I have been here before, okay. All right, good afternoon, Senator Riepe and members of the Health and Human Services Committee. My name is Senator Sara Howard, H-o-w-a-r-d, and I represent District 9 in midtown Omaha. Today I'm presenting to you LB862, The Prescription Drug (Cost) Transparency Act. This bill is intended to promote the transparency of the cost of pharmaceuticals. It provides a number of reporting

requirements for manufacturers of prescription drugs to ensure that costs are not being raised needlessly and to the detriment of consumers. Many of you may remember the controversy surrounding the EpiPen and its significant price increase. That's really the impetus for this piece of legislation. Because there are a lot of sort of technical terms, we created a one-pager to just help the committee with some of those more difficult things. And then, at the end, we did do...the second handout is some drug price increase highlights that we just Googled and found for you. So, LB862 states that a manufacturer of a prescription drug with a wholesale acquisition cost of more than $40 for a course of therapy shall provide notice to certain entities if the increase of such cost is more than 16 percent. The 16 percent includes the proposed increase and any cumulative increase that occurred within the previous two calendar years prior to the year in which the sale is made. Wholesale acquisition, or a WAC, means what the manufacturer sells the drug for before there are any rebates or discounts. The price is defined in federal law. The prescription drugs that the act applies to are those which are purchased or the price is reimbursed by the following; a state purchaser--including our DHHS or our DAS, our Department of Administrative Services or Corrections--or any entity acting on behalf of one of these, an HMO, a health insurer who's authorized to transact business in Nebraska, a fraternal benefit society such as Woodmen, or a pharmacy benefit manager--and that's also defined. The notice required in this legislation shall occur in writing at least 60 days prior to the planned effective date of the increase and shall include: the date of the increase, the wholesale cost at the time of the notice, the dollar amount of the increase and the wholesale acquisition cost, and a statement regarding whether a change or improvement in the drug necessitated the price increase and, if so, such change or improvement. If a pharmacy benefit manager receives a notice under LB862 they shall provide the notice of the increase to the contracting public and private purchasers such as insurance companies they contract with which provide coverage for more than 500 individuals. Quarterly reporting to DAS is required by a manufacturer if their drug price increase is more than 16 percent and if the manufacturer produced the drug for the past five years, a schedule of the wholesale acquisition cost increases for the previous five years; if the manufacturer acquired the prescription drug within the past five years then the wholesale acquisition cost at the time it is acquired and in the calendar year prior, the name of the company from which it was acquired, the date of acquisition and the purchase price; the year the drug was introduced to the market and the acquisition cost at that time; the patent expiration date if applicable; an indication of whether the drug is a multiple source, single source, innovator, or noninnovator drug; a description of the change or improvement in the drug that necessitated the price increase; and the volume of sales by the manufacturer of the drug in the U.S. for the calendar year prior to the increase in the wholesale acquisition cost. For the reporting requirements I just described, DAS may prescribe a format and schedule for this report and limit what information is otherwise in the public domain or publicly available. They shall also publish this report on the department Web site within 60 days of receipt and shall update it quarterly. The information will be published in a manner that identifies the disclosures for each prescription drug and may not be aggregated in a manner that would prevent association of the disclosures with the applicable prescription drug. Finally,

LB862 provides notification requirements for manufacturers who produce a new prescription drug and the wholesale acquisition price exceeds the threshold set for a specialty drug under by the Medicare Prescription Drug, Improvement, and Modernization Act from 2003. This shall include a description of pricing plans, the estimated volume of patients, if the drug was granted breakthrough therapy designation or priority review by the FDA prior to final approval, and the date and price of acquisition if the drug was not developed by the manufacturer. This section also provides publishing requirements for the Department of Administrative Services that are similar to the previous requirements. LB862 is based on legislation that was recently passed in California. The version signed by the governor there was much more extensive than this one. Which--if you can believe it after that meaty explanation--their bill was much more extensive and it also required reporting by insurance companies on what medications they spend the most on. And I felt as though pharmaceutical reporting would be a good first step here in Nebraska. I don't want to be overly burdensome, but consumers do deserve to know why a drug that they rely on might significantly increase in cost. Through LB862, I'm attempting to address the high cost of prescription drugs and how requiring transparency by a pharmaceutical company may provide some answers on why. According to a study in the Journal of American Medical...the Journal of American Medical Association, or JAMA, spending on prescription medications is higher in the U.S. per capita than in any other country in the world. Many patients face high cost of prescription medication and, because of this, may decide to only take important medication some of the time or even not at all because they can't afford it. Also, many drugs are covered by insurance but still have an extremely high copay. Many of these medications also help combat chronic disease that help keep other costs of healthcare down. Pharmaceutical companies often come under scrutiny because of the high cost of medications and respond that their cost of research, development...that their cost to research, develop, and bring a drug to market are astronomical and they have to cover those costs and make a profit to continue to stay in business and develop even more innovative prescription medications that will help save more lives. This is true, to a point. A 2017 AARP cover story states that even after accounting for their own research investments however, drug companies are among the most profitable public business in America. And an analysis from the research company GlobalData reveal that nine out of ten big pharma companies spend more on marketing than research. This legislation may also be a chance for a company to avoid scrutiny on why they need to raise a cost of a drug by showing their increased production costs and sort of allowing for that transparency for consumers. Prescription drug price transparency is really only a small part of bringing down and stabilizing the cost of care, but I contend that it's a good place to start. And this committee is really the place where we need to have those conversations about how do we address the rising cost of care. I do appreciate your time and attention to this matter. I'm happy to try to answer any questions. In regards to the drug price increases, we just did a Google search this morning because there were so many articles about them. But when you look at something like Vimovo...which is a painkiller, something my sister was prescribed. In 2013 it was $138 a bottle, and now it's $2,979 a bottle. Insulin, their price tripled between 2002 and 2013 but there was no

change in the makeup in the drug. And the EpiPen, of course, had a 500 percent increase since 2007. So, it's $609 for two injections and there's been no change in makeup of the drug. The other thing I wanted to point out is that there are plenty of drugs that would be below the 16 percent threshold called for by the legislation. And those are things like on the backside; Bystolic, Restasis, Linzess, and Namenda really only saw a 9.5 percent increase in 2018. And so they wouldn't be subject to this piece of legislation per se. But when we also look at our cost of prescription drugs compared to other countries, something like Xarelto is 100 percent higher in the United States than in Britain. Or...some of these have very difficult to pronounce names. Humira in the United States is 96 percent more expensive than in the U.K. Harvoni is 42 percent higher than the U.K. Truvada is 44 percent higher in the U.S. than in Switzerland. I can't even pronounce that one, I do not take it...Tecfidera, we'll say that sounds right, is 174 percent more expensive in the United States than it is in Switzerland. And so I think that LB862 is a really great start to what I believe should be a broader conversation for this committee. Not just around the cost of care, but around how we help our constituents and consumers in Nebraska really fully understand when drug price increases are occurring and how we as a body are obligated to help with that type of transparency. So, I'm happy to try to answer any questions you may have. [LB862]

SENATOR RIEPE: Are there questions? Senator Crawford. [LB862]

SENATOR CRAWFORD: Thank you, Chairman Riepe. And thank you, Senator Howard, for bringing this bill. I had people contact me about this issue as well. Specifically, I believe my constituent contacting me was talking about the insulin issue and that they had, I believe, a child that needed that and how much that had increased in price. Is insulin covered? Is that considered a prescription drug or do we need to add language for insulin to be a part of this bill? [LB862]

SENATOR HOWARD: Insulin is considered a prescription. [LB862]

SENATOR CRAWFORD: Oh, it is? Okay. [LB862]

SENATOR HOWARD: So, fun fact, I used to have a diabetic cat... [LB862]

SENATOR CRAWFORD: Okay. [LB862]

SENATOR HOWARD: ...named Jimmy (phonetic) who was wonderful. This is all true, I'm not even making this up. And so I would have to get a prescription for his insulin vial and then I would also have to get a prescription for his syringes because they don't want you just buying them off the shelf. So, yes, insulin is included. [LB862]

SENATOR CRAWFORD: So... [LB862]

SENATOR RIEPE: Before you ask, did Jimmy have health insurance? (Laughter) [LB862]

SENATOR HOWARD: (Laughing) I wish he had, he got kind of expensive. [LB862]

SENATOR CRAWFORD: And so, if someone has prescription for a nutrient replacement, we've had that issue... [LB862]

SENATOR HOWARD: Oh, yes. [LB862]

SENATOR CRAWFORD: ...before our committee also, where someone needs a really special kind of formula or nutrient replacement. [LB862]

SENATOR HOWARD: Um-hum. [LB862]

SENATOR CRAWFORD: That's another issue we might think about, whether that's... [LB862]

SENATOR HOWARD: Absolutely. [LB862]

SENATOR CRAWFORD: ...is it the prescription itself that kicks this in, or is it the definition of a drug...however... [LB862]

SENATOR HOWARD: Yeah. [LB862]

SENATOR CRAWFORD: ...so, anyway, just thought that would be something for us to also think about in relation to this... [LB862]

SENATOR HOWARD: That's actually a really... [LB862]

SENATOR CRAWFORD: ...approach. [LB862]

SENATOR HOWARD: ...that's very helpful, actually. [LB862]

SENATOR CRAWFORD: Okay. [LB862]

SENATOR HOWARD: Thank you. [LB862]

SENATOR CRAWFORD: You're welcome. [LB862]

SENATOR RIEPE: Are there any other questions? I see...let me go to Senator Williams first, then Senator Linehan. [LB862]

SENATOR WILLIAMS: Thank you, Senator Riepe. [LB862]

SENATOR RIEPE: Yes, sir. [LB862]

SENATOR WILLIAMS: Now, did you use those syringes more than once (laughter)? [LB862]

SENATOR RIEPE: On Jimmy? [LB862]

SENATOR WILLIAMS: Now, my real question. Not knowing much of anything...for those of you that are here, we had an interesting topic yesterday about safety and drug use. And there was a situation of multiple users of the same syringe. So, that's what we're talking about. I don't know and understand very much about the supply chain in the business models used for the distribution of pharmaceuticals. Your legislation is talking about the cost of the manufacturing of the drug. [LB862]

SENATOR HOWARD: Right. [LB862]

SENATOR WILLIAMS: Aren't there other considerations in this supply chain, and can you walk me through that? About, you know, the wholesale end, the retail end, and what happens before it's actually bought by a consumer and/or paid for by an insurance company? [LB862]

SENATOR HOWARD: I would love to be able to walk you through that, and unfortunately this is new...this is a new area for me as well. I can certainly research it and sort of give you that sort of cost. But generally when manufacturers are discussing their cost it's not around the supply chain, it's really around research and development and the cost there as that's the thing that eats up most of their profits. [LB862]

SENATOR WILLIAMS: Okay. Do you know if somebody else coming behind you might be able to talk about that some? We'll see? [LB862]

SENATOR HOWARD: I didn't invite anybody... [LB862]

SENATOR WILLIAMS: Okay. [LB862]

SENATOR HOWARD: ...but I will certainly research it... [LB862]

SENATOR WILLIAMS: Well, I'm making the assumption that the price of that drug continues to climb from the manufacturer's cost to some degree... [LB862]

SENATOR HOWARD: To the retail cost. [LB862]

SENATOR WILLIAMS: ...before it gets to the ultimate consumer. [LB862]

SENATOR HOWARD: Right, right... [LB862]

SENATOR WILLIAMS: Okay. [LB862]

SENATOR HOWARD: ...absolutely. [LB862]

SENATOR WILLIAMS: Thank you. [LB862]

SENATOR HOWARD: I apologize I didn't know that. [LB862]

SENATOR RIEPE: Senator Linehan. [LB862]

SENATOR LINEHAN: Thank you, Chairman Riepe. And thank you, Senator Howard, for bringing this. Do we have similar legislation for any other product? I mean, do we... [LB862]

SENATOR HOWARD: You know, I don't know. I don't know of any other product. I also don't know of any other product whose cost has gone up so remarkably that consumers have taken such notice, but I can certainly look for a comparison. [LB862]

SENATOR LINEHAN: The one that I can think of, which there was much grinding of teeth, was when gas prices went from whatever they were... [LB862]

SENATOR HOWARD: Um-hum. [LB862]

SENATOR LINEHAN: ...to they exploded overnight. [LB862]

SENATOR HOWARD: Right. [LB862]

SENATOR LINEHAN: And then there was a lot of...but I don't know that anything has ever been put in to law in Nebraska to...except in...way back in the '40s, I think they had price controls on things. But, you're not asking for price controls, you're just asking for it to be public. [LB862]

SENATOR HOWARD: Um-hum. [LB862]

SENATOR LINEHAN: Do you have any concerns that if you make them publish it...how far ahead? How many days or weeks or months? [LB862]

SENATOR HOWARD: DAS has to publish quarterly, and they have about 60 days from the time that they get the information to when it has to go on the Web site. [LB862]

SENATOR LINEHAN: I'm sorry, I didn't ask the question right. So when do the companies...the drug companies, how many...how long before they increase the prices do they have to say they're going to increase the prices? [LB862]

SENATOR HOWARD: So they...let me double check, because it's the 16 percent is the trigger but I do think they have at least 60 days prior to the planned effective date of the increase...they have to report it prior to the effective date of the increase. [LB862]

SENATOR LINEHAN: Okay. All right, thank you very much. That's helpful. [LB862]

SENATOR HOWARD: Thank you. [LB862]

SENATOR RIEPE: Senator Kolterman. [LB862]

SENATOR KOLTERMAN: Thank you, Senator Riepe. Senator Howard, you alluded to the fact that California has done this already. What's the experience been out there? Can you tell me, has it been...how long has the bill been... [LB862]

SENATOR HOWARD: Just a year. So it's very new. [LB862]

SENATOR KOLTERMAN: And so, it is legislation? It's already in place? [LB862]

SENATOR HOWARD: It is legislation that's already in place. It was more expansive. Pharma has...did start a lawsuit... [LB862]

SENATOR KOLTERMAN: Um-hum. [LB862]

SENATOR HOWARD: ...around it. I believe there were some...they brought a lawsuit around the Fourteenth Amendment, the Commerce Clause, and the First Amendment. [LB862]

SENATOR KOLTERMAN: Okay. [LB862]

SENATOR HOWARD: And then...but they are continuing on with implementation regardless of the lawsuit. But they're still in implementation. [LB862]

SENATOR KOLTERMAN: Are there any other states that are looking at doing this that you're aware of? [LB862]

SENATOR HOWARD: I don't know. No, I haven't...I'm not... [LB862]

SENATOR KOLTERMAN: I'm all about transparency because my...you know, I've had several bills here, pharmacy benefit managers. But I just don't if this is the way to go yet. [LB862]

SENATOR HOWARD: Well, and this is... [LB862]

SENATOR KOLTERMAN: I mean, I'm about transparency, but when I start looking at the fiscal note, I'm thinking, wow. [LB862]

SENATOR HOWARD: Well, you know, I actually thought it would be more. It is a Howard bill (laughter), so 98 FTEs. I'm shocked I only got one. I actually feel like I'm falling down on my game. I agree that maybe this isn't ready for prime time, but I do want the committee to start thinking about how do we consider the cost of pharmaceuticals in this country and how do we as a body help address those cost increases. And so the first step, obviously, would be transparency for us to know exactly what they are. [LB862]

SENATOR KOLTERMAN: And part of that problem is what Senator Williams alluded to, how it flows through the system. I think if we had a better understanding of that we'd all be...we probably wouldn't be sitting here. [LB862]

SENATOR HOWARD: We'd be very wealthy. [LB862]

SENATOR KOLTERMAN: Yeah. [LB862]

SENATOR HOWARD: No, and actually this is something that I can gripe for an interim study where we can all, as a committee, really learn a little bit more about how those increases occur. [LB862]

SENATOR KOLTERMAN: Thanks for bringing the bill. I just am curious, I'd like to see more of, like, how it's going to work... [LB862]

SENATOR HOWARD: Absolutely. [LB862]

SENATOR KOLTERMAN: ...someplace else before we dive in, get sued. [LB862]

SENATOR HOWARD: We do like to be 49th. [LB862]

SENATOR RIEPE: A question that I would have is. do you think that we're able to address this before, you know, national Medicare is able to, because they're not allowed to negotiate with pharmacies for prescriptions? [LB862]

SENATOR HOWARD: Well, but they do negotiate with manufacturers, just not pharmacies. [LB862]

SENATOR RIEPE: Well, fairly limited, I think, with Medicare. You know, there's some protection that the pharmaceutical companies have that disallows Medicare, from my understanding, to negotiate nor will they allow us to import pharmacy items from Canada or other parts of the world. So, we're kind of locked in to a tough situation as an entire country. [LB862]

SENATOR HOWARD: Are you referring to the Medicare Prescription Drug, Improvement, and Modernization Act? [LB862]

SENATOR RIEPE: I think that's it. [LB862]

SENATOR HOWARD: Right, and so they're able to do both pricing and bulk purchasing under that to make it a little bit cheaper for Medicare beneficiaries, but it doesn't necessarily help everybody else. [LB862]

SENATOR RIEPE: My only question is this: chicken or the egg, which one do we have to solve first? My guess is going from the...probably more from the general to the specific. But, you know, like Senator Kolterman, I appreciate the fact that you bring it forward. I'm all about trying to do something with healthcare without destroying the quality of it. Senator Linehan. [LB862]

SENATOR LINEHAN: Thank you, Chairman. I'm trying to think of how to put this in a question. If I recall correctly, when the Medicare Prescription Drug, Improvement, and Modernization Act was passed in 2003... [LB862]

SENATOR HOWARD: Were you there? [LB862]

SENATOR LINEHAN: ...there was a huge...yes. There was a huge battle about whether or not they could negotiate prices. And we do for the veterans, VA does negotiate prices. But, as it was passed, and I'm not sure what the situation is now... [LB862]

SENATOR HOWARD: For Medicare, yeah; no. [LB862]

SENATOR LINEHAN: ...as Medicare was passed, they weren't allowed. That was part of the deal. [LB862]

SENATOR HOWARD: I think so, yeah. [LB862]

SENATOR LINEHAN: Now, maybe it's changed, but...I'm still trying to figure out how to ask it. It would be good if you can figure out for the committee... [LB862]

SENATOR HOWARD: Yes. [LB862]

SENATOR LINEHAN: ...whether the way the Medicare Prescription Drug, Improvement, and Modernization Act was passed is still the way it is today, because that was a battle about whether the federal government could basically put price limits on drugs. So, I think that would be very helpful. [LB862]

SENATOR HOWARD: Oh, I don't think there were any price limits. [LB862]

SENATOR LINEHAN: Well, you couldn't negotiate...we just need to know, I think it would be helpful to the Chairman's questions and yours; what is the law today and if it's changed since when the bill was passed. [LB862]

SENATOR HOWARD: Absolutely, perfect. Thank you. [LB862]

SENATOR RIEPE: Okay. Are there other questions from the committee? We assume you'll be staying around? [LB862]

SENATOR HOWARD: I have another bill in Judiciary, but I will hang around for as long as I can. [LB862]

SENATOR RIEPE: Okay, very good. [LB862]

SENATOR HOWARD: Thank you. [LB862]

SENATOR RIEPE: Thank you very much. I'd like to now hear from proponents; those supporting the testimony...the bill. If you'd be kind enough to state your name, spell it, and then who you represent. [LB862]

JINA RAGLAND: Certainly. Good afternoon, Chair Riepe and members of the Health and Human Services Committee. My name is Jina Ragland, that's J-i-n-a R-a-g-l-a-n-d. Here testifying today in support of LB862 on behalf of AARP Nebraska. AARP is a nonprofit, nonpartisan organization that works across Nebraska to strengthen communities and advocates for the issues that matter most to families, especially those aged 50-plus in our state. AARP supports increased transparency in the prescription drug development and pricing process. It is our policy that federal, state, and local government should ensure that prescription drug launch prices and subsequent pricing decisions are reasonable, justified, and support improved consumer access and flexibility. Prescription drug prices in America are among the highest in the world and remain at the top of the list of concerns Americans have about their healthcare. According to the May 2017 AARP Bulletin, the average cost for a year supply of medication for someone with a chronic illness has more than doubled since 2006 to over $11,000. That's about three-fourths of the average Social Security retirement benefit or almost half the median income of people on medicare. Keeping in mind the average monthly Social Security Benefit in 2016 was $1,345. Too many adults 50 and older report struggling to pay for their prescription drugs, delaying or deciding not to fill a prescription due to costs, or by taking less medication to make it

last longer. If these trends continue, America's 50 and older will not be able to afford the prescription drugs they need, leading to poorer health and higher health costs in the future. AARP also surveyed 50-plus Americans in 2015 to learn about their prescription drug use and any struggles they face with regard to prescription drug costs. The survey also examined their views on how prescription drugs and pharmaceutical companies are regulated and what should be done to help reduce prescription drug costs. Some of the key findings are as follows: most 50-plus adults, or 81 percent of those surveyed, think prescription drugs are too expensive and most of those, 87 percent, say it is important for politicians to support efforts to make prescription drugs more affordable. Over four in ten, or 44 percent, of those 50-plus adults are concerned about being able to afford their medication. Fifty-plus adults want more regulation on prescription drugs, and 76 percent report that there is not enough regulation when it comes to limiting the price of prescriptions. Eighty-four percent of 50-plus adults think that drug companies should be required to publicly explain how they price their products. AARP is supportive of ensuring American's over 50 have affordable access to the medicine they need to live their fullest lives. We feel that LB862 is a good step in addressing this issue. We thank Senator Howard for introducing the bill and her interest on this issue. And I would be happy to answer any questions at this time. [LB862]

SENATOR RIEPE: Okay, are there questions from the committee? Seeing none, thank you very much for being here. Additional proponents please. Are there additional proponents, supporters? If not, is there anyone speaking in opposition? If you would, sir...if you'd be kind enough to give us your name, and spell it, and then share with us the organization or yourself that you represent, and please go forward. [LB862]

DOUGLAS WILKEN: (Exhibit 4) Good afternoon, Senator Riepe and members of the committee. My name is Doug Wilken, spelled D-o-u-g W-i-l-k-e-n. I'm the interim material administrator and general counsel for the Department of Administrative Services. And I'm here today to offer opposition testimony regarding to LB862. I won't go through my summary of the bill, the senator did an excellent job. My testimony simply deals with the issues the DAS believes will impact the implementation of this bill. The first issue is informing pharmaceutical companies of the existence of the state's requirement. While some pharmaceutical companies may independently learn of the requirement, our belief is that DAS will actually have to notify the estimated 1,200 to 1,500 pharmaceutical companies in the United States of the requirements. DAS will then have to educate the pharmaceutical companies on how to comply with the bill, provide the reporting form, and monitor and probably actively seek the pharmaceutical companies' compliance. I thank you for your time and I'd be happy to answer any questions you have. [LB862]

SENATOR RIEPE: Okay, are there questions from the committee members? Seeing none, thank you for coming in here. [LB862]

DOUGLAS WILKEN: Thank you. [LB862]

SENATOR RIEPE: We will take any other opponents please. [LB862]

ZACHARY POSS: Good afternoon, Mr. Chair and committee members. My name is Zachary Poss, Z-a-c-h-a-r-y P-o-s-s. And I'm the manager of state advocacy at the Pharmaceutical Research and Manufacturers of America. We represent the innovative pharmaceutical companies, those who are generating the often life-saving treatments that Americans take. Today I'm here to voice our opposition to LB862, a bill that would require pharmaceutical manufacturers provide 60 days advance notice to state purchasers regarding certain price increases. It would also require the disclosure of certain information. This legislation would also place a significant burden on the Department of Administrative Services, as you just heard, with an estimated fiscal note of nearly $500,000. Firstly, discussions about the cost and affordability of medicines are important. But legislation like this will not help patients nor the state in any way. Seeking information about the components of a drug's price is a precursor to a price control. Price controls can jeopardize patient access to innovative treatments. It can drastically reduce overall healthcare spending by reducing hospitalizations, emergency room visits, and doctor visits. Such price controls would stifle competition and could perversely lead to higher prices in Nebraska. Second, the notion that medicine is the primary driver of healthcare cost growth is false. The legislation ignores that drugs are the only segment of healthcare where costs actually decrease after time. In most cases, a first-in-class medicine faces brand-to-brand competition in less than two years, and the savings seen by the use of generics are dramatic. In fact, a report issued in January of 2017, by the Berkeley Research Group, examines the complexity of drug spending and the many entities that make up the drug supply chain including drug wholesalers, pharmacies, pharmacy benefit managers, or PBMs, and payers that impact the net price of a medicine and the price a patient pays at the pharmacy. Specifically, in 2015, brand manufacturers paid more than $130 billion, with nearly $60 billion going to PBMs and health plans in the forms of rebates, discounts, and fees. And because of these rebates that manufacturers give to PBMs, Express Scripts, the nation's largest PBM covering nearly 80 million lives, announced that their prescription spending only grew 1.5 percent in their commercial plans in 2017 and projects similarly low growth over the next three years. Additionally, CVS Health stated that its drug spending was kept at 3.6 percent in the first half of 2016, which is down from 5 percent in 2015 and 11.8 percent in 2014. These trends reaffirm that after a spike in 2014, increases in drug spending are stabilizing and are projected to remain in line with overall healthcare service cost growth. Third, the notification disclosure requirements based on wholesale acquisition costs, or WAC, fail to account for the current practice of drug pricing and rebating in the country. Simply put, payers are not paying WAC for a medicine. Furthermore, the FTC has acknowledged that disclosure of competitively sensitive information could undermine beneficial market forces within the industry. Such advance notification and disclosure requirements regarding prices could have the opposite of the intended effects and

undermine the competitive marketplace, leading to increased prices. Additionally, the constitutionality of advanced notification requirements is questionable and is currently the subject of litigation in California, as you heard earlier. Finally, it is important to understand that there is no formula for setting a drug price. For example, a manufacturer could consider past research and development, including the many failures in bringing a drug to market, the needs of future research and development, and the value of treatment to patients, payers, and society. We look forward to working with this committee to find real solutions to ensure affordability for patients at the pharmacy counter and ensure access to the right medicine at the right time for every patient. Thank you, and I'd be happy to take any questions. [LB862]

SENATOR RIEPE: Okay, let's see if we have any other questions. Senator Williams. [LB862]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you for being with us today. And I've got a couple of questions here. And you did hear the testifier from AARP talking about how important drug costs are and how, you know, people look at that, especially those consumers. How do you...what happens when we see a list of drugs like Senator Howard has presented us, that go from one price to so much higher in a short period of time? What happens that causes that? [LB862]

ZACHARY POSS: I'm not sure...are you asking...can you restate the question, please? [LB862]

SENATOR WILLIAMS: I'm asking you, for instance, one of the first things that she has on her list is a drug that in 2013 cost $138 a bottle and four years later cost nearly $3,000 for a bottle. And I'm not asking about that specific drug, but what happens in this process, in this pipeline, that would cause a drug to increase at that level, if the drug is the same? [LB862]

ZACHARY POSS: Sure. So I obviously can't comment on the specific drug, but a manufacturer takes into...a lot of various factors into consideration, including the past R&D that went into a drug, the future R&D needs, and the value of the drug. But unfortunately, these prices that are often reported are the wholesale acquisition cost are the list price of a drug, which isn't what patients are typically seeing at the pharmacy counter. They don't account for the massive discounts, rebates and others that are being paid by the manufacturer to the health plans and the PBMs. But they don't tend to make their way to patients at the pharmacy counter. As a matter of fact, the Milliman group just recently released a study which found that if this was the case, if these rebates made their way to the patient at the pharmacy counter, patients would see savings of $800 annually and plan premiums would only go up 1 percent at most. [LB862]

SENATOR WILLIAMS: Why don't those discounts get to the consumer at the counter? And that goes back to my initial question... [LB862]

ZACHARY POSS: Right. [LB862]

SENATOR WILLIAMS: ...to Senator Howard about this pipeline, I don't understand it... [LB862]

ZACHARY POSS: Right, so the typical... [LB862]

SENATOR WILLIAMS: ...but I think you do. [LB862]

ZACHARY POSS: ...process is that there are many players in the supply chain, including the wholesalers, pharmacies, pharmacy benefit managers, and health plans. But typically a drug manufacturer will negotiate a rebate with a health plan or PBM and after that the money is out of the manufacturer's hands. It's intended to make drugs cheaper for patients, but unfortunately we're not really seeing that at the pharmacy counter. The plans and PBMs tend to say that they're using it to pay down the premiums. However, the Milliman group released their study which did state that if the rebate was passed along in full to the patient at the pharmacy counter, premiums would only see an increase on average of 1 percent or less, but patients could see savings of up to $800 a year. [LB862]

SENATOR WILLIAMS: I understand your comment that the cost of prescription drugs is not the only cost that's increased that we have with medical things, but if not this approach, what approach? What is a solution that you would offer as an alternative to this if this...you're testifying in opposition to this bill. [LB862]

ZACHARY POSS: Right. [LB862]

SENATOR WILLIAMS: What is something you would testify in support of? [LB862]

ZACHARY POSS: You know, this bill, unfortunately, very myopically targets prescription drug manufacturers which, as I said before, are just one small piece of the supply chain. We believe that it's important to have a very full understanding of the supply chain, but also that the real prices that affect patients are examined and that's what they're actually paying at the pharmacy counter, not an arbitrary list price. [LB862]

SENATOR WILLIAMS: Thank you, that's helpful. [LB862]

ZACHARY POSS: Um-hum. [LB862]

SENATOR RIEPE: Senator Linehan. [LB862]

SENATOR LINEHAN: Thank you, Chairman Riepe. And thank you very much for being here. You, I think, mentioned in your opening that there was a spike in 2014? [LB862]

ZACHARY POSS: Correct. [LB862]

SENATOR LINEHAN: Why was there a spike in 2014? [LB862]

ZACHARY POSS: 2014 was an unusual year, you saw in influx of patients getting health insurance due to the Affordable Care Act. Additionally, there were fewer drugs than usual that year going off patent. As a matter of fact, over the course of the next ten years we expect that savings due to drugs going off patents and the increased use of generics and biologics can be as much as $150 billion. [LB862]

SENATOR LINEHAN: How long does it take for a drug to go off patent now? [LB862]

ZACHARY POSS: There's no set time frame. Typically it takes about ten years for a drug to make it from the initial patent date to market, but there's no set time frame on when the patent expires. [LB862]

SENATOR LINEHAN: Okay, let me ask the question different. So, you're a manufacturer, you manufacture a drug and you have a patent on it so nobody can make a generic for a certain time, right? [LB862]

ZACHARY POSS: Correct. [LB862]

SENATOR LINEHAN: How long is it before the generics can make that same drug not a brand name? [LB862]

ZACHARY POSS: It all depends on when the patent first came out and how long it takes to actually get that drug through the clinical trial process. There's not really a set time from when the drug comes to market because the patent is filed before the drug comes to market, its inception. [LB862]

SENATOR LINEHAN: Okay, but there has to be some...I mean, I don't mean to be argumentative but, am I asking the question wrong? We don't have a new law every time there's a new drug, so there must be some kind of direction of when... [LB862]

ZACHARY POSS: I'm not entirely sure what the... [LB862]

SENATOR LINEHAN: Okay, that's fine. [LB862]

ZACHARY POSS: ...original patent life for a drug is, but I can get that information for you. [LB862]

SENATOR LINEHAN: Okay, thank you very much. [LB862]

ZACHARY POSS: Um-hum. [LB862]

SENATOR RIEPE: Senator Crawford, go ahead. [LB862]

SENATOR CRAWFORD: Thank you, Chairman Riepe. And thank you for being here today. So what I think I heard you say in response to Senator Williams' request for a solution is that this bill is a myopic focus on prescription drugs. So would you support a similar bill...and also your concern is about advance notice. So if instead this was identifying and publicizing price increases in drugs and price transparency and other health services and durable medical goods, would you come in support of that bill? [LB862]

ZACHARY POSS: You know, we believe that a healthy bill should be transparent across the entire pharmaceutical supply chain, not specifically to one sector... [LB862]

SENATOR CRAWFORD: Oh, okay. [LB862]

ZACHARY POSS: ...but additionally, you know, we really support bills that focus on the actual prices that medicine...that patients pay. What they're paying at the pharmacy counter and how to get that price down, not an arbitrary list price for the drug, or other goods or service. [LB862]

SENATOR CRAWFORD: Okay, just so I can be clear and before Senator Howard, who will be working on this issue, so the other places in the chain that we should focus on are what? What are the other parts of the chain we should include? [LB862]

ZACHARY POSS: There are drug wholesalers... [LB862]

SENATOR CRAWFORD: Okay. [LB862]

ZACHARY POSS: ...health plans, pharmacy benefit managers, pharmacies. Those are the typical players in the supply chain besides the manufacturer... [LB862]

SENATOR CRAWFORD: Okay. [LB862]

ZACHARY POSS: ...and the patient themselves. [LB862]

SENATOR CRAWFORD: And if we're getting the actual price that the patient paid...probably again has to do with this rebate. Why are rebates an important part of this process? Why not just lower the price of the drug? [LB862]

ZACHARY POSS: So drug pricing is...it's complicated. But drug companies are often negotiating with health plans and PBMs for better formulary placement. Companies want patients to be able to better access these medicines, but often with this formulary placement comes higher rebates. And unfortunately, the way the system is currently set up there is a perverse incentive for the rebates and the list price to be higher on behalf of the health plans and PBMs and we're not seeing these rebates actually make their way to patients at the pharmacy counter. [LB862]

SENATOR CRAWFORD: So you're trying to raise the initial price so you can offer these rebates to get better placement, but you're concerned the money isn't getting to the patient? [LB862]

ZACHARY POSS: We're concerned that the rebates aren't making their way to the patients... [LB862]

SENATOR CRAWFORD: Okay. [LB862]

ZACHARY POSS: ...and, unfortunately, the rebates and list prices tend to go up in this formulary placement negotiation. [LB862]

SENATOR CRAWFORD: Thank you. I have to go present a bill at another hearing, so thank you again. [LB862]

SENATOR RIEPE: Thank you. Senator Linehan, please go ahead. [LB862]

SENATOR LINEHAN: Thank you, Chairman. Just one other quick question. If there was a spike in 2014 because of the Affordable Care Act, was there also a spike in prices after we added drugs to Medicare? [LB862]

ZACHARY POSS: I'm not entirely sure, but I can find out for you. [LB862]

SENATOR LINEHAN: Okay, thank you. [LB862]

SENATOR RIEPE: Okay, I have a question. Does the pharmaceutical industry have special agreements with other countries outside of the United States? I recently read a--tipped my hand here a little bit--in the Wall Street Journal that talked about the Hep B that was...I think it's for the treatment. In the United States it's $83,000, thereabouts. In India, it's $900 under a generic agreement between the manufacturer. That, quite frankly, doesn't bode well with the American public. Maybe that's more of a statement than it is a question. [LB862]

ZACHARY POSS: You know, I can't comment on any one particular drug manufacturer's agreements. But what I can say is that a lot of other countries have a very different health insurance system than we do, so it's not an apples-to-apples comparison. [LB862]

SENATOR RIEPE: This wasn't anything to do with insurance, this was cost of the drug. And India was specific and had not violated any exporting of this drug, even as tourists would try to leave they were not allowed to take a prescription out. I found that quite interesting. The other one I think that I had was; seems to me that the...and maybe it's the distributors beyond the manufacturers who have gotten a black eye because they have been told they are not able to be transparent and share with patients what the cost of the drugs are because they've been told if they do they will lose their distribution process. That's...I call that a threat, maybe it's called business, but...I don't know whether you want to respond to that. [LB862]

ZACHARY POSS: I'm not sure what the question is, but what I can say is that, you know, something that we've been seeing a lot recently is pharmacists being unable to tell patients what the actual cost of their medicine is. For example, if they could pay less for their medicine by paying cash instead of using their insurance benefit... [LB862]

SENATOR RIEPE: Um-hum. [LB862]

ZACHARY POSS: ...and unfortunately that's often a contract issue with the pharmacies and the pharmacy benefit managers. [LB862]

SENATOR RIEPE: Yes. Okay. Interesting topic, not easy. Are there other questions from the committee members? Seeing none, thank you very much for being here. Thank you for your testimony. Additional opponents, if you will please come forward. If you would be kind enough, sir, to state your name... [LB862]

PHIL KOZERA: Absolutely. [LB862]

SENATOR RIEPE: ...spell it and then go forward. [LB862]

PHIL KOZERA: Good afternoon, Chairman Riepe, members of the committee. My name is Phil Kozera, it's P-h-i-l K-o-z-e-r-a. And I'm the executive director of the Bio Nebraska Life Sciences Association. We have a statewide membership of over 70 organizations, large and small, making innovative products and services across the spectrum from human health to animal health to plant sciences and renewable products. And, you know, my compliments on listening to this significant issue today and we've had some good testimony. I'd like to give a little bit of a perspective from a Nebraska company standpoint. We are opposition to LB862 and we feel like the modern biotechnology is still a young industry, but in just over four decades the scientists and researchers and entrepreneurs working in this field have really established themselves in the forefront of medical innovation globally. And today...what was likely a terminal or debilitating disease thirty years ago, today is curable and oftentimes manageable because of healthcare innovation. Over 70 percent of the companies working on these innovations are small pre-revenue enterprises. And 90 percent of these companies involved in medical research do not earn a profit, they focus solely on innovative R&D for future products. Their success in getting new cures and therapies to market rest on the ability to attract enormous amounts of private capital required to fund these challenges and risky endeavors. And each new drug therapy will likely cost $2.6 billion dollars and take over a decade to develop. And during this period 90 percent will fail for a variety of reasons along the drug-discovery pipeline. We believe the requirements in LB862 will upset the innovation ecosystem that allow biotechnology companies to take risks in pursuit of new treatments and cures, and fails to provide the meaningful benefits to patients. It also forces burdensome reporting requirements on small and mid-size biopharmaceutical manufacturers which, in turn, puts innovation at risk. In Nebraska we have many small innovative companies that are spinning out of the university system and their focus is solely on the specific area of a cure. And when we look at the demands and the challenges that these innovators face, the addition of the regulatory challenges and the reporting challenges would be an additional barrier to put in front of them. We have several challenges as we look at our emerging biotech industry. One of those is access to venture capital. We find that often our

young innovative companies or technologies leave Nebraska to kind of follow the flow of dollars that are found on the East Coast. And that's one of the concerns we see with this, that in addition to being light on our venture capital dollars in Nebraska, to put an additional barrier, a reporting barrier, an administrative barrier on top of those would be another strike against Nebraska growing our innovative culture. And looking specifically at LB862, any price transparency provision should focus on what matters most for patients, including the out-of-pocket costs and improving patient access. The focus on the wholesale acquisition cost or list price is fundamentally flawed, as we've already heard. You know, focusing on that is much like focusing on the MSRP when buying a car, it's the starting point for a complex series of negotiations that occur today. In addition to the notification, we have concerns that that provision will cause wholesalers, hospitals, pharmacies, large provider networks, and buying groups to engage in stockpiling of drugs, which will limit access. And in closing, Bio Nebraska members are focused on comprehensive and sustainable solutions to improve patient access to medicines. We welcome a holistic debate about the value of innovative medicines that are committed to exploring how value-based approaches to payment can facilitate smarter healthcare spending. However, as LB862 is currently structured, it would harm the innovative biopharmaceutical manufacturers yet really provide no meaningful benefit to patients, payers, or policymakers. [LB862]

SENATOR RIEPE: Okay, thank you. I guess I was intrigued a little bit; you talked about it's a, if I heard right, a starting point on price and almost negotiable but I don't think there's a consumer in the world that is able to go in and negotiate with the local Kohll's or Walgreens or anyone else. I mean, it's the old take it or leave it. [LB862]

PHIL KOZERA: Well, I think, as we've talked with the previous testifier, you know, the supply chain that's involved in this discussion needs to be a part of any true solution because today we're focused on one stakeholder. And that stakeholder, from a Bio Nebraska standpoint, is the one that's innovating, the one that's finding solutions to the healthcare challenges that we have. And so, when we look at any holistic discussion of drug costs, I think it's really critical for us to look at that entire supply chain and include them in the discussion because, when we do that, I think we'll really find the answers that you're seeking today. But by focusing solely on the manufacturers, it's our opinion that it's not going to achieve the objective and it's going to hurt the innovation that we have in the state of Nebraska. [LB862]

SENATOR RIEPE: Okay, thank you. Are there other questions? Seeing none, thank you very much for being here today. [LB862]

PHIL KOZERA: Thank you. [LB862]

SENATOR RIEPE: Additional opponents? Are there any additional opponents? Any in opposition? Is there anyone in a neutral capacity? Seeing none, I'm going to ask Tyler to read any letters that we might have. [LB862]

TYLER MAHOOD: (Exhibits 5, 6, and 7) Okay, I have a letter, signed by Joshua Keepes of America's Health Insurance Plans, in support; a letter, signed by Erin Archer of the Association for Accessible Medicine, in opposition; and Thomas Schatz of the Council for Citizens Against Government Waste, in opposition. [LB862]

SENATOR RIEPE: Okay. We will see if Senator Howard is... [LB862]

TIMOREE KLINGLER: She got called to Judiciary. [LB862]

SENATOR RIEPE: Pardon me, she's waiving? [LB862]

TIMOREE KLINGLER: Yeah. [LB862]

SENATOR RIEPE: Okay, thank you so very much. We appreciate it. Okay, that concludes our hearing on LB862. And we appreciate everyone that's been here for that. We're going to move on now to LB686, and Senator Blood. Just the perfect timing. [LB862 LB686]

SENATOR BLOOD: Thank you, I try. It helps that you're across the hall from my other committee that I'm on. [LB686]

SENATOR RIEPE: Oh, we planned it that way. [LB686]

SENATOR BLOOD: It looks like I cleared the room, what was that about? I do have some handouts for you as well. [LB686]

SENATOR RIEPE: Okay. You're welcome to, if you would, state your name and spell it and then you can start. Or if you want to wait until they're out, you can do that. [LB686]

SENATOR BLOOD: I'm happy to start. [LB686]

SENATOR RIEPE: Okay. [LB686]

SENATOR BLOOD: (Exhibits 1 and 2) Thank you, Chairperson Riepe. And hello and good afternoon to the Health and Human Services Committee. My name is Senator Carol Blood, spelled C-a-r-o-l B-l-o-o-d. And I represent District 3, which is comprised of western Bellevue and southeastern Papillion. Thank you for the opportunity to speak with you today about advancing the interjurisdictional practice of psychology here in Nebraska. LB686 is an interstate compact designed to facilitate the practice of telepsychology and temporary in-person, face-to-face practice of psychology across state lines inside pact states. I bring this bill forward today as part of my military families initiative, attempting to remove as many hurdles to employment as possible for both our veterans and military spouses. However, the great thing about this bill is that it also benefits psychologists who are not in the military. This is a cooperative agreement that will be enacted into law by participating states that addresses the increased demand to provide and receive psychological services via electronic means for telepsychology. It also authorizes both telepsychology and temporary in-person, face-to-face practice of psychology across state lines inside pact states. PSYPACT states then have the ability to regulate telepsychology and temporary in-person, face-to-face practice. This compact becomes operational when seven states enact PSYPACT into law. Currently, three states have enacted this legislation: Arizona, Utah, and Nevada. And six states will be bringing forward legislation this year. Those states are Colorado, Illinois, Georgia, Missouri, Rhode Island, and Nebraska. There is yet another four states where the psychology board has endorsed the PSYPACT and we can expect legislation in those areas in the near future. Those states are Wisconsin, Texas, New Mexico, and Ohio. As I'm sure you've already noted, the compact is quite simple and has nothing to do with scope of practice. If you're a psychologist wishing to practice under the PSYPACT, you will need to obtain--and that's what your handouts are right now--an E. Passport certificate for telepsychology and an Interjurisdictional Practice Certificate, also known as an IPC, for temporary in-person, face-to-face practice. The E. Passport is an important component of the Psychology Interjurisdictional Compact. In order to provide telepsychological services within any participating compact state, a psychologist must hold an E. Passport. It promotes standardization in the criteria of interjurisdictional telepsychology practice and it facilitates the process for licensed psychologists to provide telepsychological services. It also provides a more consistent regulation of telepsychology practice and allows consumers of psychological services to benefit from regulated interjurisdictional telepsychology practice. I should have picked a compact with shorter words (laughter). The Interjurisdictional Practice Certificate, also known as IPC, grants temporary authority to practice based on notification to the licensing board of intention to practice temporarily and verifications of one's qualifications for such practice by the Association of State and Provincial Psychology Boards. It also allows psychologists to provide temporary psychological services in jurisdictions that accept the IPC for up to 30 work days per calendar year without obtaining a full licensure in that jurisdiction without proper notification. Nebraska does allow this, but not as part of any compact. Now let's talk about the benefits to Nebraska residents, as there are many. This compact increases client and patient access to care. It facilitates continuity of care when a client or patient relocates or travels. It certifies that

psychologists meet acceptable standards of practice. It promotes cooperation between states in the areas of licensure and regulation. And it offers a higher degree of consumer protection across state lines thanks to the ongoing communication between the states. But there are also benefits for the psychologists themselves because it allows licensed psychologists to practice telepsychology and/or conduct temporary in-person, face-to-face practice across state lines in the PSYPACT states without having to become licensed in those states. It also permits psychologists to provide services to populations currently underserved or geographically located--excuse me, geographically isolated--and standardizes time allowances for temporary practice regulations in PSYPACT states. Like most interstate compacts, this is a win-win for underserved areas that may depend on telemedicine. It eliminates yet another stumbling block for potential job seekers. It helps to maintain the quality of service provided to consumers, and it supports Nebraska's ongoing efforts to provide quality mental health services to the underserved population. The numbers were quite telling in last year's mental health needs assessment for Nebraska from the College of Public Health at the University of Nebraska Medical Center. Over the last year prior to the publishing of that report, one in five Nebraskans had reported experiencing mental illness within that previous year. This indicated that mental health disorders are relatively widespread chronic health...relatively widespread chronic health conditions within our state. In that same report, both consumers and stakeholders emphasized the importance of follow-up care and support after hospital discharge or upon release from incarceration. This compact is yet another driver to provide these quality services. Improvement and access to care has resulted from reimbursement of mental health services through both government-funded programs, like Medicare and Medicaid, and private medical insurance policies. Currently, there are 39 state Medicaid programs that provide some sort of reimbursement for telehealth services, with mental health having the greatest change within the reimbursement policies. Even with this increase in reimbursement, the unmet mental healthcare needs of children, families, the seriously mentally ill, our veterans, and older Americans are well-documented. Individuals in rural areas especially benefit from increased availability of telehealth services provided by qualified licensed psychologists who are not physically located in their local area or even in a nearby community. Mental health services for adults and children have been shown to be effective for a variety of conditions, leading to an increased quality of life, more successful recovery from substance abuse, more positive marital, family, and school functioning, and better post-deployment adjustment for veterans. With studies showing that 1 in every 88 children living in the United States has some sort of autism spectrum disorders, telehealth has been found to be a viable mechanism for these children and their families to gain support and professional services from a distance. Additionally, using telehealth procedures for psychological treatment has been repeatedly demonstrated to be effective and provide several advantages over traditional treatment methods such as accessibility, versatility, and affordability. Finally, psychological and other mental health services are particularly conducive for the use of telecommunication modalities since they are most frequently conducted through verbal communications without the need of expensive, elaborate medical equipment or physical intervention. Although evidence continues to

accumulate about the effectiveness and applicability of telehealth services, the use of technologically enhanced methodologies by licensed psychologists has been restricted in large part because of the barriers imposed by the state-based system of psychology regulation through psychology licensing boards. I appreciate the opportunity to share this with you and I hope that you will ultimately vote to advance this bill out of committee to General File. I'd be happy to answer any of your questions you may have, but would like you to know that I believe there are several psychologists here today who will also be speaking in favor of this compact and available to answer your more technical questions. [LB686]

SENATOR RIEPE: Very good... [LB686]

SENATOR BLOOD: And can probably pronounce the words better than I can (laughter). [LB686]

SENATOR RIEPE: Let's see if there are any questions from the committee members. Seeing none, thank you very much. Proponents, please. Before we start, I would like to ask the Senator just joining us to introduce himself. [LB686]

SENATOR ERDMAN: Steve Erdman, District 47. [LB686]

SENATOR RIEPE: Which is...47, ten counties in... [LB686]

SENATOR ERDMAN: Ten counties in the Panhandle, correct. [LB686]

SENATOR RIEPE: Thank you. If you'd just be kind enough, sir, to state your name and spell it. [LB686]

DANIEL ULLMAN: (Exhibit 3) I am Dr. Daniel Ullman, D-a-n-i-e-l U-l-l-m-a-n. Chairman, Senators, I represent the Nebraska Psychological Association. My colleagues and I are grateful to Senator Carol Blood and Senator Tom Brewer for introducing LB686. The Nebraska Psychological Association strongly supports this legislation that would authorize Nebraska to join an interstate compact to facilitate telehealth and temporary in-person, face-to-face practice of psychology across state lines. Joining the psychology interstate compact, referred to as PSYPACT, would be a win for Nebraska consumers, especially the geographically isolated areas of Nebraska that need more options for the delivery of mental health services. Enacting LB686 would not only help reach underserved areas but would ensure those delivering telepsychology services are abiding by the highest practice standards. This is somewhat redundant with Senator Blood's comments, but...the benefits: one, facilitating continuity of care when patients relocate or

travel, for example patients who move across state lines due to military service, job opportunities, college, divorce; increasing access to specific professionals with special expertise who may be geographically remote; reducing travel and other costs for consumers, such as consumers with physical limitations or limited access to transportation; increasing patient access to care and increasing satisfaction for patients who want the convenience of using the internet; allowing for the combining of face-to-face and remote care; allowing for more frequent therapeutic contacts to assess treatment compliance and progress; certifying that psychologists meet acceptable standards of care; promoting cooperation between PSYPACT states in the area of licensure and regulation; offering a higher degree of consumer protection across state lines; lastly, reducing the red tape and costs for qualified health professionals who seek to practice across state lines and when professionals relocate--example, military spouses. As you are aware, Nebraska has joined the Interstate Medical Licensure Compact and the Nurse Licensure Compact. Enacting LB686 would broaden the range of telehealth services available to Nebraska citizens. My colleagues with expertise in telepsychology have provided letters of support for LB686. These letters give specific examples of how enacting PSYPACT would further benefit patients. Also, I have colleagues here to also testify live, so. Thank you for your consideration of LB686. [LB686]

SENATOR RIEPE: Thank you. Are there questions? Senator Williams. [LB686]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Doctor, for being here. Can you give us a little history on this particular compact? How long it has been in existence and, Senator Blood told us I think, the members of it currently. [LB686]

DANIEL ULLMAN: It was in development and finalized in, I think, 2015 or 2014. And then Arizona was the first state, as was mentioned, that joined it. And then two other states, and now we have six states with legislation. Georgia had their hearing yesterday and passed out of committee. And then we have, I think, another six to eight states that have to wait until 2019 because of the legislative cycle. They couldn't introduce it this year. So, in terms of the other thing I mentioned with history, I think, is we're...I'd like to see we were up to the plate a little sooner on this, because medicine and nursing had been doing this. Although we have, I think, benefited by seeing how those compacts are. And the attorneys and experts and compacts have been very careful about the language so you don't have to go back and redo this. And then Senator Blood and I attended a conference in D.C., there were other legislators there, members of licensing boards to go over the history of this. So, it is a recent history. [LB686]

SENATOR WILLIAMS: Senator Blood mentioned in her opening that there's not a scope aspect... [LB686]

DANIEL ULLMAN: Right. [LB686]

SENATOR WILLIAMS: ...to this bill. But from your perspective as a practicing member of this group, are there scope differences between the states that are involved and, just so we understand it, how is that handled with the compact? [LB686]

DANIEL ULLMAN: Good question. There could be some minor modifications. So for example, if you're practicing in schools or doing neuropsychology, certain specialties, some states may have a particular standard for that. You may be able to practice that in Nebraska, but in the distant state, you may or not meet those qualifications. So you have to be aware of the scope of practice and the specifics for those licensing...those jurisdictions. A lot of these things are covered in your informed consent. So if I'm in Nebraska and I have a patient in Colorado, I will need to inform them that the services I provide them in Colorado need to confine themselves to the psychology licensing scope of practice there. And also, very importantly, the laws in terms of mandatory reporting--if there is abuse and those kinds of things--you have to deal with those issues up front. And that's part of the compact, that's a requirement that that's all dealt with up front. [LB686]

SENATOR WILLIAMS: Thank you. [LB686]

DANIEL ULLMAN: Good question. Thank you. [LB686]

SENATOR RIEPE: Are there...Senator Linehan, please. [LB686]

SENATOR LINEHAN: Thank you, Chairman Riepe. Do you...how many psychologists do we have in Nebraska? [LB686]

DANIEL ULLMAN: We're getting up near 600 licensed psychologists. That's not all the licenses that are issued because there's also associate psychologists and I think a few special licensed psychologists, but. [LB686]

SENATOR LINEHAN: Do we have a goal? A goal for how many we should have? [LB686]

DANIEL ULLMAN: A goal? [LB686]

SENATOR LINEHAN: A goal, like g-o-a-l. Like, is 600 enough or do we need more? [LB686]

DANIEL ULLMAN: Well, it's been growing. So about the last ten years it increased 128 psychologists. So I...that was over 25 percent increase. We're very fortunate in Nebraska that we have school counseling and clinical graduate programs, so we're growing them up here. We're very fortunate in Nebraska that we have over 45 internship slots in this state, and I imagine a lot of credit goes to the Legislature and administration in supporting those internships. This is a wonderful pipeline. I see no reason why it would slow or stagnate, so. The 128 increase...I can't remember the exact time frame, but it's available online, it's easy to look up. That's how I did, I just went to public safety and looked it up. [LB686]

SENATOR LINEHAN: Okay. [LB686]

DANIEL ULLMAN: But...so it's very encouraging down the road. And if you even back up further...you know, and psychology is a very popular major in college and there's a number of masters-level programs and they're growing. So it's very important to look at those things. As a specific goal, I don't know what would be, you know, the number you'd shoot for. I know, like for example, in the area of psychiatry they looked at we need this many more to meet the needs of the country, and I'm not aware of what that estimate would be. [LB686]

SENATOR LINEHAN: Okay, thank you very much. [LB686]

DANIEL ULLMAN: Okay, thank you. [LB686]

SENATOR RIEPE: Help me out; in your definition of a psychologist, is that at the doctoral level? [LB686]

DANIEL ULLMAN: Yes, yes... [LB686]

SENATOR RIEPE: Okay... [LB686]

DANIEL ULLMAN: ...yes. [LB686]

SENATOR RIEPE: Okay, are there other questions? Seeing none, thank you very much for being here. [LB686]

DANIEL ULLMAN: Thank you, Senators. [LB686]

SENATOR RIEPE: Additional proponents, please. [LB686]

DIANE MARTI: (Exhibits 4 and 5) I'm submitting...well, let me say my name first. I'm Diane Marti, Ph.D., a psychologist who is licensed in Nebraska and owner of Williamsburg Behavioral Psychology... [LB686]

SENATOR RIEPE: Would you make sure to spell your name? [LB686]

DIANE MARTI: Oh, thank you; D-i-a-n-e M-a-r-t-i. [LB686]

SENATOR RIEPE: Thank you. [LB686]

DIANE MARTI: The practice is located in Lincoln, Nebraska. I'm submitting another letter of a colleague who could not be here today who has expertise in this area. My area of specialty is working with individuals on the autism spectrum. My previous partner, who was diagnosed with Asperger's, which is the...comes from the DSM-5 we changed it to Autism Spectrum Disorder. The old way we used to call it Asperger's Disorder, Autistic Disorder and/or Pervasive Developmental Disorder. She, having that diagnosis, was a mentor, a partner, and a teacher and associate of myself who I was...I worked with her for 20 years. So Dr. Wilson and myself started to work clinically with this population over 20 years ago. This intense work includes myself with over 15,000 hours of direct service to the population. This intense work includes working with individuals across the life spectrum, whereas most of the training and support is for early intervention. Now with this expertise it's rare for adults to get adequate assessment because we don't have as many clinical standardized type of protocols available. Given this, I provide service across many states. The furthest was Florida. Another was someone who sought an expertise in New York. And I've also worked in Wyoming, Iowa, Kansas, and Missouri. So unfortunately for many of these families, the hardship of traveling, getting hotels, paying for food has been highly burdensome. The ability to receive an accurate diagnosis, with not only the early childhood years but across the lifespan, is challenging. It typically provides access here, more services, as I said earlier, in childhood services such as occupational therapy, physical therapy as well as ABA services. Early intervention will change the course of their lifespan, including their families and future potential relationships. Adults receiving an accurate diagnosis will typically change the course of their marriages, interpersonal relationships and, of course, the quality of their living. Personally, my example would be my grandson, Jaxton. Jaxton, by age 13 months I knew he was going to be on the spectrum. But I'm a grandmother, so, as that, I waited patiently for someone to provide that referral until basically, at 19 months, I was done and directing my son and his wife to get a proper diagnosis which, of course, happened. Now, given his early diagnosis in the span...now he is 8. He has full conversation skills. He is reciprocal in conversation, uses good social skills. And research supports that the earlier the diagnosis and language development, they have a higher benefit of being able to be successful and work in a job, basically, when they become older. As a part of that, I'm looking at and have always looked at costs. No matter what,

you're going to have increased diagnoses, earlier intervention. And what we're going to do at federal and state levels that save an enormous amount of money because the earlier we get to this, basically, these are individuals that won't be on disability. They'll be working, they'll be providing tax and support. So basically...I'm just focusing on the success rate. Related to the importance of early identification access to expert clinicians to evaluate these symptoms is critical. Unfortunately, access to this expertise is limited in the state of Nebraska and, unfortunately, across the nation as well, especially within the adult population. Having the ability to access telehealth services across state lines would be a tremendous support for the affected individuals improve outcomes for all. LB686 would make individuals more accessible to the diagnosis and treatment options. In addition, early intervention will save future costs, as I previously said. Although the financial concerns are important, there is nothing more important to a healthy and informed family response to the challenges their child faces and improves quality of life. I believe issues I brought up are important regarding autism, but you will see, with multiple letters from psychologists across Nebraska and neighboring states, that LB686 could impact all forms of mental health needs. For example, I had access to telehealth within a nursing home in midstate Nebraska for an individual who was highly depressed, recently disabled, and only in her 60s. The nursing home knew she needed counseling, but the burden to drive her to a location where there was easy access to the licensed mental health practitioner would have been physically overwhelming to her, given her levels of pain. The treatment was highly successful, opens the door to different immobile populations that need access to mental health. And finally, a note that I was thinking about with this recent shooting in Florida. If there was increased options to access support consultation in an intervention, there could be basically more mental health services for somebody who's in that state. On a side note, individuals on the spectrum, not that they're any more dangerous than anybody else, often have difficulties with challenging thoughts due to bullying in school or different anger issues. And if they had someone working with this individual, possibly identifying the issues they were having, we could have actually prevented, and we can in the future prevent many issues that... [LB686]

SENATOR RIEPE: We have hit the red light, can you kind of... [LB686]

DIANE MARTI: I'm done. [LB686]

SENATOR RIEPE: ...try to pull it together. [LB686]

DIANE MARTI: Thank you for consideration. [LB686]

SENATOR RIEPE: Okay, thank you very much. Any questions from the committee? Seeing none... [LB686]

SENATOR WILLIAMS: Hey, I have... [LB686]

SENATOR RIEPE: Senator Williams, please. [LB686]

SENATOR WILLIAMS: I have two really quick questions. You mentioned, Doctor, that you have practiced in multiple states and you heard my question about scope of practice. [LB686]

DIANE MARTI: Um-hum. [LB686]

SENATOR WILLIAMS: How do you know what differences there are as a practicing... [LB686]

DIANE MARTI: Well, I have not done telepsychology in these states. They have traveled to me. [LB686]

SENATOR WILLIAMS: Okay, they were from there. [LB686]

DIANE MARTI: Yes, correct. And I think if I were able to practice across those lines in this type of capacity then, obviously, I could affect more. [LB686]

SENATOR WILLIAMS: Last question: On your letter that you have submitted, you mention at the end of it that you are an autism spectrum disorders. Do you limit your practice to that area? [LB686]

DIANE MARTI: No, I do not. [LB686]

SENATOR WILLIAMS: Thank you. [LB686]

DIANE MARTI: It's approximately 60 percent. [LB686]

SENATOR RIEPE: Are there any other questions? Seeing none, thank you very much for being with us today. Are there additional proponents? Okay. I know you've been here before, so we'll let you... [LB686]

NICOLE FOX: (Exhibit 6) (Laughing) Yeah, I know you guys don't know who I am. Nicole Fox, N-i-c-o-l-e F-o-x, director of government relations for the Platte Institute. And I'll keep my testimony brief since pretty much most of what I have said has already been stated. But thank

you, Senator Blood, for introducing LB686. I'm here today to testify in support of this bill. The Psychology Interjurisdictional Compact, also known as PSYPACT, provides a mechanism to allow for the legal, ethical and regulated practice of telepsychology for temporary in-person and face-to-face practice. This issue is especially important in Nebraska because of Offutt Air Force Base. We have mentioned in this committee before the importance compacts serve in order for military spouses to maintain their career upon relocation, and that holds true with the PSYPACT. The US Department of Defense has identified PSYPACT as one of their top initiatives for 2018. PSYPACT would provide greater access for military personnel and allow psychologists to provide services at military events. And Senator Williams, I know you had asked a question about the timing and, based on our research, it looked like Arizona enacted it first, and that was in 2016. So...and then Nebraska, along with neighboring states Colorado and Missouri, as well as Georgia, Illinois and Rhode Island, have introduced this legislation this year to adopt the compact. The Nebraska Legislature has recognized the importance of telehealth as a means of delivery of healthcare services by enacting legislation in 2017, expanding coverage for telehealth by requiring commercial insurance plans to cover telehealth services. PSYPACT is another important step in advancing the practice of telehealth and expanding access to psychological care for Nebraskans. The Platte Institute strongly supports occupational licensing reform as a means of lessening burdens to those trying to enter the state's workforce, and adopting PSYPACT would be a good reform for Nebraska to embrace. I ask that you advance LB686 out of committee. And with that, I am happy to answer any questions committee members may have. [LB686]

SENATOR RIEPE: Thank you. Are there questions from the committee? [LB686]

NICOLE FOX: All right, thank you. [LB686]

SENATOR RIEPE: Apparently not, thank you very much. Any additional proponents? Anyone testifying in opposition, opponents? Seeing none, is there anyone testifying in a neutral capacity? Seeing none, Tyler...and you're welcome to come back up, Senator Blood, for closing if you'd like. I'm going to first ask Tyler to read in any letters that we have for the benefit of the hearing those. [LB686]

TYLER MAHOOD: (Exhibits 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17) Okay, I have the...all the following letters are in support: Bryon (sic--Bryon) Line of the Nebraska Democratic Party Veterans and Military Families Caucus; Fred Craigie on behalf of the Nebraska Veterans Council; Andy Hale and David Slattery on behalf of the Nebraska Hospital Association; Karen Sharer-Mohatt on behalf of herself; Pamela Richardson on behalf of the Panhandle Health Group; Cathrine Jones-Hazledine on behalf of the Western Nebraska Behavioral Health; Rebecca Schroeder on behalf of herself; Daniel Donovan on behalf of the Military Officers

Association of America, Heartland of America Chapter; Dean Kenkel on behalf of the Nebraska Veterans Coalition; Twila Preston on behalf of herself; and Dr. Richard Azizkhan and Liz Lyons on behalf of the Children's Hospital and Medical Center. [LB686]

SENATOR RIEPE: Okay... [LB686]

SENATOR BLOOD: That was quite a list. [LB686]

SENATOR RIEPE: Okay, Senator Blood, you're welcome to close. [LB686]

SENATOR BLOOD: Thank you. I'd actually like to answer some of the questions that were asked. Specifically, Senator Williams, I would ask that you go to page 21 and start on line 17 for your first question, that the participants must meet other criteria as defined by the rules of the commission: a psychologist practicing into a receiving state under the authority to practice interjurisdictional telepsychology, self practice within areas of competencies, and the scope of practice authorized by the home state. Question number two that you asked is right in the paragraph above that, about how will they know. There are attestations in regard to areas of intended practice, conformity with standards of practice, competence in telepsychology, technology, criminal background and knowledge, blah blah blah... [LB686]

SENATOR CRAWFORD: Can you repeat what page that is, I'm sorry. [LB686]

SENATOR BLOOD: Yeah, they are both on page 21. The first one is line 17 the second question that he had is line 11, above it. [LB686]

SENATOR CRAWFORD: Okay, thank you. [LB686]

SENATOR BLOOD: He needed to ask them in a different order, so I had to go backwards. Also, Senator Linehan had a question in reference to what is the goal of how many psychologists we need in Nebraska. The reason I started looking in to this compact was actually because I have a constituent and a friend who owns a business in Bellevue. And I don't have permission to use her name, but I have permission to tell her story. And she is the spouse of a retired military personnel. And she has been dealing, for years...she's bipolar. And her husband was recently diagnosed with B-Cell cancer. And she's going through a really tough time right now. She had missed one of her appointments and got dropped, as a result of it, by an excellent psychologist and she has been struggling to find a good psychologist. Eastern Nebraska has what I would consider a shortage based on the many, many people I have spoken with. I don't think we're at the maximum point of how many psychologists we need in Nebraska. And I've had some other

psychologists tell me that they unknowingly have committed a crime by answering a phone call from maybe a patient that's gone to Florida on vacation and has had a crisis and needing to talk to their psychologist. Legally, they can't do that. So this will help them not accidentally break the law. You noticed that Senator Brewer was a cosponsor in this bill. It's because, as was mentioned, this is very important to the Department of Defense. I worked with them on all of my military family bills. And we worked on things that were the most important. And then lastly, there was the mention of the recent shooting. Every time we talk about school shootings, every time we talk about that type of violence, the message is always the same; what could we do better in the mental health arena? And the one thing that we can do is we can make services more accessible. And really, this is only changing one part of our law here in Nebraska because we already allow for that 30-day permit for any one-year period. So by joining the compact, we of course still include that, so telepsychology is really the only thing that's new in this bill. And as you can see there are no opponents, there's no staggering fiscal note, and it's just good policy as we remove more hurdles for people to do good works. [LB686]

SENATOR RIEPE: Okay, thank you. Are there any other questions by the committee? Seeing none, thank you very much for being here. [LB686]

SENATOR BLOOD: Thank you for your time. [LB686]

SENATOR RIEPE: Thanks for bringing us this bill. [LB686]

SENATOR BLOOD: Thank you. [LB686]

SENATOR RIEPE: With that, that concludes the hearing on LB686, by Senator Blood, and we will now proceed on to LB891, which is Senator Pansing Brooks. Welcome to the Unicameral's finest committee. [LB686 LB891]

SENATOR PANSING BROOKS: (Exhibits 1, 2, and 3) Thank you. This is my first and last time here this year. [LB891]

SENATOR CRAWFORD: Oh, yeah, ha. [LB891]

SENATOR RIEPE: Unless we call you back. [LB891]

SENATOR PANSING BROOKS: Just think how little time I've taken of yours. So thank you, Chairman Riepe and members of the Health and Human Services Committee. For the record, I am Patty Pansing Brooks, P-a-t-t-y P-a-n-s-i-n-g B-r-o-o-k-s, representing District 28, right here

in the heart of Lincoln. I'm here today to introduce LB891, to fix an ongoing problem with the adoption of Nebraska psychological practice regulations. I'm also introducing one amendment to this bill today. AM1519 gives the same protections to mental health practitioners that are established in the original bill and stipulates the Department of Health and Human Services shall not adopt and promulgate any rules or regulations or approve, implement, or enforce any policies, practices, or protocols which contradict, contravene, negate, or violate their code of ethics described in Nebraska Revised Statute 38-2138. After introducing the original bill, the mental health practitioners came to me and said they were having the same issues as the psychologists, and wished to be included. I was not aware that they had the same issues, so I was very willing to include them in this bill. The Nebraska Psychology Practice Act provides that only the Board of Psychology shall adopt the set of regulatory rules of professional conduct to protect the public welfare. The Board of Psychology has lived up to its statutory requirements, adopting regulations in the fall of 2008, after a year-long review process. Yet the Department of Health and Human Services has put these regulations on hold for almost ten years. I have provided you with a time line that shows the origins of the problems and the frustrating developments and aggravating lack of developments which have taken place since the problem began in 2008. I won't go into the entire time line, but I will talk to you about how some of the impasse began. When the Board of Psychology adopted the updated regulations, they, as usual, included the most current version of the American Psychological Ethical Principles of Psychologists and Code of Conduct. Our statutes currently state, in Nebraska Revised Statute 38-3129, that, "A psychologist and anyone under his or her supervision shall conduct his or her professional activities in conformity with the code of conduct." Clearly the code of conduct serves as a significant ethical guide for the psychological profession and mental health, and it protects consumers. However, after the adoption of the rules, the Department of Health and Human Services told the board that they were submitting the regulations to the Nebraska Catholic Conference for special review. I am not sure why one religious organization has been singled out for a special review, but several meetings followed between the Nebraska Board and the Catholic Conference whereby the Catholic Conference demanded that the insertion of a "conscience clause" would allow...that would allow psychologists to deny professional services and an appropriate referral for patient problems related to sexual orientation and gender identity. The psychologists were being asked to violate their own APA ethics code that had already been included in the Nebraska psychology regulations. So the department created a special problem in 2008 that never should have been created in the first place, and the problem has lingered for ten years. After looking into the situation and hearing about it quite frequently with every time that we vote to admit somebody like the new doctor for the Department of Health and Human Services, I decided it was time for the Legislature to finally intervene, to ensure that the Board of Psychologists (sic--Psychology) are able to perform their duties in conjunction with their own ethical standards, first and foremost to do no harm. LB891 does this by providing that a psychologist, pursuant to their code of conduct, cannot discriminate against anyone by failing to refer. No clinic should be forced, or provider should be forced, to treat, and that's not what I'm

talking about here. But the ethical standards of the industry do require referrals, and they should. LB891 also prevents the Department of Health and Human Services from adopting and promulgating any rules and regulations or approving, implementing, or enforcing policies, practices, or protocols which contradict, contravene, negate, or violate the code of conduct. This is necessary because the statutory authority of the Board of Psychologists (sic) has been placed in doubt by the Department of Health and Human Services. We must ensure that these industry professionals retain the authority to adopt their own regulatory rules of professional conduct, pursuant to our state laws. I know the individuals testifying behind me will discuss the importance of these regulations from a provider and a consumer point of view, but I wanted to take a couple of minutes to offer a few data points that could make all of us understand what is at stake. Suicide is the second leading cause of death among young people, ages 10-24, according to the Centers for Disease Control. According to the report of 2015 U.S. Transgender Survey, 40 percent of transgender adults reported having made a suicide attempt, and 92 percent of these individuals reported having attempted suicide before the age of 25. The LGBT community is at a higher risk for suicide because LGBT individuals more often lack peer and family support, so facile and easy access to mental health treatment can be critical to their lives. Because of that, this bill is not about religious freedom. I have heard from a number of Catholics in my district who say they do not believe that the clinics should be able to turn away people without referral--talking about referral. Therefore I refuse to make this a Catholic versus non-Catholic issue. In fact, I would say most people, and most Catholics with whom I've discussed, believe their religious faith compels them to do the humanitarian thing and give the referral. This is about hierarchy and the leadership of the Catholic Conference digging in their heels on the issue of referral. Most of my Catholic brothers and sisters recognize the folly and the danger of that stand. To suggest that the lives of these people are not worthy of a basic referral for mental health treatment is unimaginable to me. When they make their way into any clinic in Nebraska, they shouldn't be guaranteed services. That's not what we're arguing; this bill does not do that. But they should be guaranteed more than a phone book: Here, I don't agree with your lifestyle, go to somebody else. They are human beings. They are worthy and they are our Nebraska citizens and taxpayers. So that you are all aware, I have reached out to the Department of Health and Human Services, and I've also met with representatives of the Catholic Conference to find a solution prior to this hearing. I will tell you that those discussions have been entirely unsatisfactory and extremely disappointing to this point, which is why we're here today. I did offer to pull the bill had we been able to come up with some solution after ten years. My sincere hope is that this will be resolved internally through a collaboration and productive and respectful dialogue. This is my sincere hope. In closing, we know that this bill has not been designated a priority bill, and its chances of making it to the floor are remote. But I want you to know that I'll be introducing an interim study to look into this issue, if this does not get resolved, and I will continue to have meetings with HHS, the psychologists, and the mental health practitioners to forge a path forward. I will not let this issue die. The ethical practices of these mental health providers and the health and safety of those in our communities are just too important. We must

recognize the critical need for a psychologist to be fully and comprehensively able to perform their vitally important services in these exceptionally stressful times. The integrity and the duty of our governmental agencies to act in accordance with the public welfare, and to exercise its legal responsibilities, independent of any influence, persuasion, or barrier from an outside entity, most particularly a religious stakeholder, flies in the face of our Constitution and of our democracy itself. If the interim study does not get a hearing, I pledge that I will utilize any and every form available to me to bring public light to this situation in order to protect the mental health of all Nebraskans and the public safety of all of our state. All means all. And with that, I will be glad to answer any questions or refer them to the professionals behind me. [LB891]

SENATOR RIEPE: Okay, we'll see what we have. Are there questions from the committee members? Senator Crawford. [LB891]

SENATOR CRAWFORD: Thank you, Chairman Riepe. And thank you, Senator Pansing Brooks; I appreciate you bringing this issue to our attention again... [LB891]

SENATOR PANSING BROOKS: Thank you. [LB891]

SENATOR CRAWFORD: ...and your pledge to be persistent and continuing to pursue this issue. I just wanted to confirm what I think I heard you say in your testimony. I believe I heard you say that our current statutes say that--I think it was 38-3829 or something--we already, by law, recognize that we expect our health professionals to act in conformity with the codes of conduct. Is that true? So we have, as a state, already recognized in our statute that those codes of conduct are meaningful and that we expect professionals to follow them. Is that correct? Is that what you said? [LB891]

SENATOR PANSING BROOKS: That is true. That's 38-3129. [LB891]

SENATOR CRAWFORD: 3129, okay. [LB891]

SENATOR PANSING BROOKS: And we had...that code of conduct was followed until 2008, and the code changed. And at that point there was pushback from the Department of Health and Human Services about putting that into the regulations. [LB891]

SENATOR CRAWFORD: So I think what...it says the nondiscrimination...your handout here says the nondiscrimination language has been in the psychology regulations since 1992. It's not new language. [LB891]

SENATOR PANSING BROOKS: That's correct. [LB891]

SENATOR CRAWFORD: So thank you. So when you had your communications with the Catholic--representatives from the Catholic Conference, were there specific Catholic ethical, medical ethical--excuse me--let me start all over again. When you had these conversations with members of the Catholic Conference, were there specific Catholic medical ethical principles that they stressed that were of concern to them? [LB891]

SENATOR PANSING BROOKS: You can certainly talk to them and ask them, because... [LB891]

SENATOR CRAWFORD: I will. [LB891]

SENATOR PANSING BROOKS: ...I did recognize that they're here. But when I was speaking with them, it was my understanding that they have no problem about treating certain LGBT people but they don't want to have any kind of marriage counseling or gender-reassignment representation. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

SENATOR PANSING BROOKS: So you know, clearly there could be people who are in great stress and strife with some of that and, if we don't have a referral under every circumstance, I don't think it's appropriate. [LB891]

SENATOR CRAWFORD: Okay. And I'll ask the professionals behind you... [LB891]

SENATOR PANSING BROOKS: That'd be great, if you could. [LB891]

SENATOR CRAWFORD: ...about what an appropriate referral would be. [LB891]

SENATOR PANSING BROOKS: Thank you. [LB891]

SENATOR CRAWFORD: Since you are a lawyer, I'll ask you a law question. [LB891]

SENATOR PANSING BROOKS: Okay. [LB891]

SENATOR CRAWFORD: So it's my understanding that we understand protections, in terms of gender identity, sexual orientation. Those are currently understood as part of what we mean when we say we're not going to discriminate against someone based on sex. Is that correct? Is that how these are pulled in? [LB891]

SENATOR PANSING BROOKS: That is what is happening nationwide in many of the courts. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

SENATOR PANSING BROOKS: So that's correct. They are broadening the term "sex" to include sexual orientation, and that's what...some people say it's not necessary to go forward, but it probably needs... [LB891]

SENATOR CRAWFORD: That's understood. That's what we mean by saying this is a protected class. [LB891]

SENATOR PANSING BROOKS: Um-hum, um-hum. [LB891]

SENATOR CRAWFORD: And also, the Affordable Care Act provisions...this is also important because we use Medicaid dollars, state Medicaid dollars, which also federal dollars, for this care, as well. And I believe that the Affordable Care Act prohibits discrimination... [LB891]

SENATOR PANSING BROOKS: It does. [LB891]

SENATOR CRAWFORD: ...if people receive federal dollars as well. [LB891]

SENATOR PANSING BROOKS: So it...so there's a chance that we could...that those dollars could be at risk and not used, yeah. [LB891]

SENATOR CRAWFORD: Right, that's a serious issue, as well. Well, obviously... [LB891]

SENATOR PANSING BROOKS: It is; thank you. [LB891]

SENATOR CRAWFORD: ...patient care is a serious issue. So thank you. [LB891]

SENATOR RIEPE: Okay. [LB891]

SENATOR CRAWFORD: I appreciate your attention to this bill. [LB891]

SENATOR PANSING BROOKS: Thank you. [LB891]

SENATOR RIEPE: Are there other questions? I have a couple questions. [LB891]

SENATOR PANSING BROOKS: Okay. [LB891]

SENATOR RIEPE: First of all, is it fair to say that the Catholic Conference is not the only voice, they just happen to be the strongest voice? Because I know some evangelicals and some Baptists and some other folks out there that would also have a voice, just not as strong. [LB891]

SENATOR PANSING BROOKS: Maybe that's true, but when I spoke with Dr. Williams, he said he talked to one of the main stakeholders and said it was the Catholic Conference. So I was just going from what he told me. [LB891]

SENATOR RIEPE: Okay. I know that you also said that the, quote-unquote, Catholic Conference has dug in its heels, and it sounds like maybe the senator has dug in her heels, as well. [LB891]

SENATOR PANSING BROOKS: Well, I'd like there to be some resolution to this after ten years, and so I think that there's a hope. And in Judiciary we've been able to work and get some things resolved in controversial issues. This seems like, if it is controversial, that something should be able to be resolved in this regard. And nobody is asking somebody to treat when they don't feel that they can, but certainly to refer somebody for the safety of our communities, as well as the safety of the individual. It's highly necessary, and it's the moral and correct thing to do. And I think most people would agree to that. If somebody is really hurting and having trouble, that we're going to outweigh somebody's religious preference against a desire to get somebody to the right person that has to get help and mental health help in our community, I don't think those outbalance each other. [LB891]

SENATOR RIEPE: Well, I'm sorry because...go ahead and then I'll come back. [LB891]

SENATOR LINEHAN: Thank you, Chairman. Thank you, Senator, for bringing this. How do...so this is psychologists, right? So how... [LB891]

SENATOR PANSING BROOKS: It's the psychologists...there are two groups that... [LB891]

SENATOR WILLIAMS: The amendment. [LB891]

SENATOR CRAWFORD: The amendment. [LB891]

SENATOR PANSING BROOKS: The amendment includes, yeah... [LB891]

SENATOR LINEHAN: Mental health practitioners, okay. [LB891]

SENATOR PANSING BROOKS: ...mental health practitioners. [LB891]

SENATOR LINEHAN: So okay, what if you're a psychiatrist? [LB891]

SENATOR PANSING BROOKS: I don't know what's happening on that. I just am hearing this from the psychologists, and the mental health practitioners were the ones that are having that. [LB891]

SENATOR LINEHAN: Can you...since you're a lawyer, can you figure out how this...is this language, if you're a psychiatrist or if you're a medical doctor...I mean, it seems to me that this is health professions, right? [LB891]

SENATOR PANSING BROOKS: Yeah. [LB891]

SENATOR LINEHAN: So this is one health profession and a whole group of health professions: doctors, psychiatrists, nurses. So how are the rest of them handling this thorny issue? It evidently got handled or we would be here talking about them, too. Right? [LB891]

SENATOR PANSING BROOKS: I think so, and we're effecting the statute 38-3121, which already has there a psychologist and anyone under his or her supervision. So this directly just relates to the statutes that deal with such things. [LB891]

SENATOR LINEHAN: Okay. [LB891]

SENATOR PANSING BROOKS: And but I think it has...I think it has been. I mean, I haven't heard from the psychiatrists, so I presume they've handled this. And that's what I think is really too bad. I think this could be handled positively, and we could move forward and just... [LB891]

SENATOR LINEHAN: So what happened in 2000? This is...so the law was, so in '92, sexual orientation was added but then, because of administration, it became problematic in 2008? [LB891]

SENATOR PANSING BROOKS: Yes. [LB891]

SENATOR LINEHAN: And sexual orientation hasn't always been in law, you know. [LB891]

SENATOR PANSING BROOKS: No, you're right. [LB891]

SENATOR LINEHAN: Right. [LB891]

SENATOR PANSING BROOKS: So that's why...yes, I think that's what happened. [LB891]

SENATOR LINEHAN: Okay, all right. Thank you. [LB891]

SENATOR PANSING BROOKS: That they had adopted the code of ethics for the Board of Psychology and then, when it changed in 2008, even though it says they're supposed to follow the board--the code of conduct--they refused to place it on the Web site, or wherever it is, showing the regulations or passing. The statutes say that the Board of Psych is supposed to create the rules under which the psychologists work, and they've refused to adopt those rules. [LB891]

SENATOR LINEHAN: Thank you very much. [LB891]

SENATOR RIEPE: And then, Senator Williams, did I (inaudible)? [LB891]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Senator. A couple of questions that have nothing to do with those specific types of issues... [LB891]

SENATOR PANSING BROOKS: Okay. [LB891]

SENATOR WILLIAMS: ...just helping me understand. In your proposed legislation, it talks a couple of places about the code of conduct. I'm assuming there's a written code of conduct someplace. [LB891]

SENATOR PANSING BROOKS: Yes, there is. I should have probably passed that out to you. And I could get, I know, up to... [LB891]

SENATOR WILLIAMS: And it's my understanding from looking at it here that it has the same list of--I will use the term protected classes--that you have in your legislation. [LB891]

SENATOR PANSING BROOKS: Yes, it does. And I...go ahead with your question, because... [LB891]

SENATOR WILLIAMS: Nothing in what I'm reading there, or what I'm reading in your legislation, talks about referral. [LB891]

SENATOR PANSING BROOKS: I know. [LB891]

SENATOR WILLIAMS: And yet your concern is about the referral. Can you help me figure out that piece? [LB891]

SENATOR PANSING BROOKS: I can, and I'd be willing, you know, if there's some agreement that comes forward, I have to say that I specifically put that in there because I know the people to whom they are trying to discriminate against, so I get that. So I purposely put that in there. That's all within the code of conduct. I could have just said follow the code of conduct and refer people, and that's fine. I wanted especially the newest senators, since we've been hearing... [LB891]

SENATOR WILLIAMS: But what I'm missing is it doesn't say... [LB891]

SENATOR PANSING BROOKS: Referral? [LB891]

SENATOR WILLIAMS: ...these things, and I'm not finding referral. [LB891]

SENATOR PANSING BROOKS: I know. That's...it's within the code of conduct about not abandoning, doing no harm. [LB891]

SENATOR WILLIAMS: Okay. [LB891]

SENATOR PANSING BROOKS: And so you can ask the people... [LB891]

SENATOR WILLIAMS: Okay, it's in that side? Okay. [LB891]

SENATOR PANSING BROOKS: Yeah, it's just..and when I brought this, I wanted to point out what is the problem, who we are choosing to not... [LB891]

SENATOR WILLIAMS: Okay, put your lawyer hat on for me one minute. [LB891]

SENATOR PANSING BROOKS: I will. [LB891]

SENATOR WILLIAMS: And I know you always have it on because it...and again, it has nothing to do with the particular issue that you're bringing up. But under this legislation, it appears to me there's some potential that we've created, in statute now--this code of conduct, and if I am a--not me, I'm certainly not qualified. If there is a person here that is a child psychologist... [LB891]

SENATOR PANSING BROOKS: Yes. [LB891]

SENATOR WILLIAMS: ...and they only deal, and they limit their practice to dealing with children, and an adult comes in to them for services and they deny services there, have they discriminated against that? [LB891]

SENATOR PANSING BROOKS: No, they haven't. And it's like with the lawyers. [LB891]

SENATOR WILLIAMS: I read this, and you say, based on age, and there's no referral language in here. I'm missing something. [LB891]

SENATOR PANSING BROOKS: Okay. But you're also supposed to, within the code of conduct, treat according to your capabilities and your...and so that's why we're not talking about treatment. If somebody has a religious preference and doesn't feel that they can treat somebody, we're not talking about treatment; we're talking about referral. [LB891]

SENATOR WILLIAMS: And I'm not talking about a religious choice here. [LB891]

SENATOR PANSING BROOKS: I know you're not. [LB891]

SENATOR WILLIAMS: I'm talking about a practice there. [LB891]

SENATOR PANSING BROOKS: What I'm telling you is that this language is directly out of the code of conduct. And I lifted it and put it here so that we could be aware of what we really are discussing today, which is the fact that the Department of Health and Human Services chooses to violate the psychologists' code of conduct under the auspices of religious....worrying about a religious belief, and... [LB891]

SENATOR WILLIAMS: It's...I don't want to get into a legal discussion on that, but... [LB891]

SENATOR PANSING BROOKS: Well, you just did get into a legal discussion. [LB891]

SENATOR WILLIAMS: ...the language says shall not discriminate against a client or patient on the basis of age. [LB891]

SENATOR PANSING BROOKS: Okay. [LB891]

SENATOR WILLIAMS: And I proposed an example where you could say you have discriminated, based on age. [LB891]

SENATOR PANSING BROOKS: Excuse me. [LB891]

SENATOR WILLIAMS: And I know that's not the intent of what you're doing. [LB891]

SENATOR PANSING BROOKS: No, and it...but it does say and pursuant to the code of conduct, and the code of conduct does not say that you can't discriminate because of...the code of conduct allows you to treat appropriately, just like the legal code of conduct and the ethics for lawyers doesn't say you must deal with a divorce, even though you're a corporate lawyer. So we put that in there purposefully. Again, I will tell you it's lifted directly from the code of conduct, in order to have this discussion about who we are willing to refer and who we're not. And I clearly can...I mean, I can change it. What we're talking about is referral, and that's what...and an ability to not abandon somebody and say my religious belief tells me I can't deal with you, and I'm not going to refer you on. That is what this is about, so maybe I went about it incorrectly by quoting part of this. It was directly related to the people who are not getting the referrals from everybody. [LB891]

SENATOR WILLIAMS: Thank you. [LB891]

SENATOR RIEPE: I wanted to come in on that. You know, having spent a number of years as the administrator of a multispecialty group practice, I would never... [LB891]

SENATOR PANSING BROOKS: You talked of... [LB891]

SENATOR RIEPE: ...expect an adolescent psychologist to refer... [LB891]

SENATOR PANSING BROOKS: Absolutely. [LB891]

SENATOR RIEPE: ...someone to an adult service. I don't care who it is. I have contingent liability. Unless it's their brother-in-law, you know, I don't...it's just...it's illogical to say that you must refer them, and then we get into, of course, the situation, they refer them to bogus situations. I...it's...I think it's very hard to mandate how you would do that. [LB891]

SENATOR PANSING BROOKS: How to refer? [LB891]

SENATOR CRAWFORD: No. [LB891]

SENATOR RIEPE: No. [LB891]

SENATOR PANSING BROOKS: Oh. [LB891]

SENATOR RIEPE: That you would...how you would refer in a qualified way. [LB891]

SENATOR PANSING BROOKS: Yeah. [LB891]

SENATOR RIEPE: A child psychologist is not going to have much inclination about who to send someone to. [LB891]

SENATOR PANSING BROOKS: No, and I did talk to Director Courtney Phillips about whether or not there could be, you know, a grouping of people. You know, I mean so then the other thing is maybe we should have the list on the Web site saying these people have a fervently held religious belief, and so will not handle LGBT people. So why isn't that just as reasonable? Make it so that they aren't up on the Web site, and give notice to the public that these people will not serve LGBT people because of their fervently held religious beliefs. [LB891]

SENATOR RIEPE: Well, I don't know that you can exclude them from some common Web site, but I guess... [LB891]

SENATOR PANSING BROOKS: Well, if they feel like... [LB891]

SENATOR RIEPE: where I'm going to follow up where I think you're going, and that is you're expressing a willingness to carve them out of a referral requirement, is that... [LB891]

SENATOR PANSING BROOKS: You know, I sit and think about the hospitals. What happens when some...a transgender person comes in, in an emergency situation? If a doctor says I won't treat this person, well I presume, in the hospital, that you would've moved him on to somebody else quickly. [LB891]

SENATOR RIEPE: Well, we have EMTALA laws. If they come in and they're, quote unquote, as you've described it, in emergency, I can assure you that they will be taken care of, at least to the point of stabilization. [LB891]

SENATOR PANSING BROOKS: Well...well, that's what we're talking about here. Seems reasonable. [LB891]

SENATOR RIEPE: Are there other questions? Senator Crawford. [LB891]

SENATOR CRAWFORD: Okay, I'm trying to decide whether to go down that line anymore, or just start a new line. But if...I'll do one more on that, and then I'll switch to something else. [LB891]

SENATOR PANSING BROOKS: Okay. [LB891]

SENATOR CRAWFORD: If someone were to come to, and this may be the professional behind you can answer the question, but I guess if someone were to come to you, and you're a child psychologist and they're an adult, and they're in clear distress, you similarly wouldn't just hand them a phone book. I mean you would probably try to help make sure you know who is someone who handles someone in their age group. So you would probably, even if you didn't recommend a specific person, you would give them some care. [LB891]

SENATOR PANSING BROOKS: Yeah. [LB891]

SENATOR CRAWFORD: And some kind of... [LB891]

SENATOR PANSING BROOKS: Hopefully. [LB891]

SENATOR CRAWFORD: And we'll ask the professional what an appropriate referral, in that case, would be. And...but so I guess I wanted to ask two questions, if you know the answers to these questions--sort of technical. And if you don't, then somebody behind you can answer it, too. So given that our...these regulations have been...that this process has been going on for ten years, are we currently in a state where we have regulations in place from 2000, from earlier than 2008? Or are we currently without regulations for this profession? [LB891]

SENATOR PANSING BROOKS: I think you need to ask the people behind me how they're operating on that. [LB891]

SENATOR CRAWFORD: Okay. Okay, all right. I will. And the other question is, do you know, it says in the time line in September 2016, the DHHS administration verbally reports "termination." Do you know if that is actually an allowable action under our Administrative Procedures (sic--Procedure) Act in Nebraska, a verbal termination as a step in the Administrative Procedure (sic) Act? [LB891]

SENATOR PANSING BROOKS: It...from what I've worked on and the research I've done, I feel that the...with the...that the Department of Health and Human Services is currently in noncompliance and violating our laws, is what I believe. [LB891]

SENATOR CRAWFORD: I...okay. I think so; I think so, too, but I wanted to see if you had any other information on that, that you agree. Thank you. [LB891]

SENATOR PANSING BROOKS: I do. Thank you. [LB891]

SENATOR RIEPE: This may be a statement...oh, Senator Erdman. [LB891]

SENATOR ERDMAN: Go ahead; finish. [LB891]

SENATOR RIEPE: This may be a...you know, I have a problem with mandates in a free market. And these are physicians and psychologists. And many of these are not employees of the state; they're free market. And I also...I come from the days when a physician and a patient relationship was considered a sacred trust. And at that same time, either party...the patient could

leave abruptly; the physician had to make sure there was not a breakdown in continuity of care, so that they had, I think by state law, legally it's 30 days that they have. But they can divorce, separate... [LB891]

SENATOR PANSING BROOKS: Absolutely. [LB891]

SENATOR RIEPE: ...and go "hasta la vista." That's after the practice is established but, prior to that, some doctors don't necessarily accept all patients either. They don't feel like they're qualified for it. [LB891]

SENATOR PANSING BROOKS: No, absolutely. And that's what...I agree with you totally, Senator Riepe, for asking referral. [LB891]

SENATOR RIEPE: Yeah. Well, thank you, thank you. [LB891]

SENATOR PANSING BROOKS: Oh my Gosh, we'd better write this down. [LB891]

SENATOR RIEPE: Senator Erdman, (inaudible). [LB891]

SENATOR PANSING BROOKS: Can you notarize this? [LB891]

SENATOR ERDMAN: Thank you, Senator Riepe. Good to see you this afternoon. So I was on the same page as Senator Williams with the referral. You refer to that several times in your testimony. So let's say you change that and so they're required to make a referral, and they don't make a referral. What is the ramification of that? Do they lose their license? [LB891]

SENATOR PANSING BROOKS: I...there are no ramifications set forward. I think that if there were a suit against them at some point, and they hadn't followed state law, then I think they would be more subject to the penalties. And again, I think you'll have to talk to the people. They've got this whole board of psychologists that deal with just like the board of doctors and the board of lawyers and everybody that they have their own sort of... [LB891]

SENATOR ERDMAN: Okay. I thought it was kind of peculiar that you... [LB891]

SENATOR PANSING BROOKS: I know. [LB891]

SENATOR ERDMAN: ...referred to referral five or six times. And I read the thing while you were talking, and I thought no place does it say anything about referrals. So... [LB891]

SENATOR PANSING BROOKS: I could have used your help writing that one. [LB891]

SENATOR ERDMAN: Thanks. I had other things that I was doing, but thank you. [LB891]

SENATOR PANSING BROOKS: Thank you. [LB891]

SENATOR RIEPE: Okay. You've been very engaging. We appreciate that very much. [LB891]

SENATOR PANSING BROOKS: Thank you. [LB891]

SENATOR RIEPE: Are there other questions from the committee? Seeing none, will you be staying around for closing? [LB891]

SENATOR PANSING BROOKS: I will. [LB891]

SENATOR RIEPE: So we get another opportunity. [LB891]

SENATOR PANSING BROOKS: I know. You're so excited, I know. Thank you. [LB891]

SENATOR RIEPE: I know. Thank you very much. I'd like to have proponents come forward, please, at this time. Welcome, sir. We would ask you to give us your name and spell it, and then tell us who you represent, if that's helpful to us. [LB891]

WILLIAM SPAULDING: (Exhibit 4) All "righty". I'm Dr. Will Spaulding. I'm the legislative chair of the Nebraska Psychological Association, for whom I'm speaking today. We support LB891. I'm not going to do a better job of explaining these issues than Senator Pansing Brooks. That was a virtuosic performance. I'm looking forward to addressing many of the questions that I've heard before. So let me be brief in my initial comments. Consider this scenario: An agitated, desperate young woman finds her way to the psychologist's office. She tells the psychologist she's anxious, depressed, and suicidal because her marriage is in deep trouble. The psychologist notes that she's employed as a bank teller. This offends the psychologist's deeply held beliefs which are that a woman's place is exclusively in the home. The psychologist refuses to help her and sends her away. The woman goes home, kills her husband and her children and then herself. Under laws and regulations in every state, the psychologist would be liable for this disaster, and

his or her license would likely be revoked. The Nebraska Catholic Conference wants to give this psychologist protection against liability and, in collusion with two gubernatorial administrations, they have been holding our healthcare regulations hostage until they get what they want. The Catholic Conference claims that they want to protect Catholic psychologists from being forced to treat certain people; this makes no sense. No psychologist anywhere has ever been successfully sued, prosecuted, or disciplined for refusing to treat a patient. Psychologists are trained to not provide treatment when they have beliefs or values that may compromise their effectiveness. However, they are required to take actions needed to protect the patient and the public. Usually this means making sure the patient gets to someone who will help them. Refusing to do this would be comparable to an emergency room physician refusing to treat an accident victim because of deeply held beliefs. If this seems implausible, think again. Every encounter a psychologist has could be the next suicide statistic, the next domestic violence fatality, or the next school massacre. The only rational reason for this Catholic Conference's actions is to promote discrimination and harassment toward vulnerable populations. To achieve this purpose, they expose the public to the very significant risks of removing accountability for malpractice, and they obstruct much needed updating of standards of practice. This politicization of our healthcare violates the public interest and protects nobody. It's a shame that it takes an act of the Legislature to stop it, but that is the world in which we live today. [LB891]

SENATOR RIEPE: Thank you very much. Are there questions from the committee? Senator Crawford. [LB891]

SENATOR CRAWFORD: Thank you, Chairman Riepe. And thank you, Dr. Spaulding, for being here today. I appreciate your willingness to answer our questions. So try to ask some of the same questions. I'm going to start with kind of a legal question here. So currently, right now, are there...are the old standards in place? [LB891]

WILLIAM SPAULDING: Yeah. [LB891]

SENATOR CRAWFORD: Or...okay, yeah, so... [LB891]

WILLIAM SPAULDING: We're operating under standards that are about ten years out of date. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

WILLIAM SPAULDING: It's got nothing to do with discrimination. These days these regulations, for all healthcare professions, have to be updated every four to five years, at

least...electronic medical records, all of the privacy and confidentiality problems that those create. Training and education practices change. They need to be updated quite a bit more frequently than every ten years. [LB891]

SENATOR CRAWFORD: And if they're not updated, then a patient who's harmed by one of those practices that hasn't been updated has no standing to seek remedy, or... [LB891]

WILLIAM SPAULDING: I think that would depend on the particular way in which they're harmed. In my example, the patient would have recourse because the patient discriminated on the--or the psychologist discriminated on the base of gender. But the reason for the discrimination becomes pretty irrelevant when people are dead. [LB891]

SENATOR CRAWFORD: Yeah. So we were just scanning through the code of ethics up here, trying to find a section on referral. [LB891]

WILLIAM SPAULDING: Yeah. [LB891]

SENATOR CRAWFORD: Can you help us understand what is an appropriate... [LB891]

WILLIAM SPAULDING: I certainly can. [LB891]

SENATOR CRAWFORD: ...patient-centered referral, and... [LB891]

WILLIAM SPAULDING: Let me start... [LB891]

SENATOR CRAWFORD: ...how that ties to the ethics. [LB891]

WILLIAM SPAULDING: Let me start with the historical perspective on this. Originally, when the Catholic Conference first made this an issue, it was not a referral issue. It was you're forcing Catholic psychologists to treat the abomination of homosexuality. When we pointed out that no psychologist is ever required to treat anybody for anything, for whatever reasons, whether it's discrimination or competence has been raised here, that's fine. In fact, you're trained to do something about that. In most cases, standard practice is you refer the patient to someone who can help them. Independent of that is when you hold yourself out to the public as a healthcare licensed professional, you have a certain obligation to prevent safety hazards to the patient and the public. And if it's either by failing to make a referral or by failing to take other action, you create those hazards, then you are, or should be, liable. [LB891]

SENATOR CRAWFORD: So it's like do no harm, as the ethical principle, or beneficence is the ethical principle that would require a referral if you do not...if you cannot, for religious reasons or competence reasons, treat someone. I'm trying to get to the ethical principle. [LB891]

WILLIAM SPAULDING: Well, we get to the referral question because, nine times out of ten, that's the thing to do. And the discussion here has reflected that. If you're a child psychologist and an adult comes in, you don't have the competence to treat that person, you tell them that, and you help them find someone who can treat them. And in many cases, that may be tantamount to saying: Look, here's the state association's directory. There's several hundred people in here who could potentially help you, and you can talk to any of them and see. But what if that patient can't read? What if that patient is psychotic or demented? Or what if they're already so far gone that the next thing they're going to do, if they don't hear that they're getting help, is go out and kill somebody. That's what creates the problem. In that case, simple referral is not enough. Early on in this dispute, the Catholic Conference suggested the alternative of well, instead of requiring a referral, why can't you just give them a phone directory or a directory of all mental health professionals? Wouldn't that serve your ethical obligation to make a referral? No, it would not. Even if in 90 percent of the cases, that would be just fine and appropriate, it's those 10 percent of cases that cause disasters. And as many people have said, in what they may have thought was an opposing context, that's exactly what you do. You have to think of the safety of the patient and the public first, and then make your decisions, based on your assessment of that. [LB891]

SENATOR CRAWFORD: So has the dispute been over the language describing what a referral must do? [LB891]

WILLIAM SPAULDING: This dispute has been protean. [LB891]

SENATOR CRAWFORD: Pardon? [LB891]

WILLIAM SPAULDING: It's changed over time. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

WILLIAM SPAULDING: The pattern has been: The Catholic Conference raises a concern. We say, no, that's not really a concern for these reasons. And then the response is, well no, that really wasn't our concern. We have these other concerns. And for ten years we've been going around that block. [LB891]

SENATOR CRAWFORD: But if you were to be able to propose referral language that would satisfy your code of conduct, what would that look like? [LB891]

WILLIAM SPAULDING: I would not. [LB891]

SENATOR CRAWFORD: You would not. [LB891]

WILLIAM SPAULDING: That would be... [LB891]

SENATOR CRAWFORD: You would not. [LB891]

WILLIAM SPAULDING: I would not. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

WILLIAM SPAULDING: That would be micromanaging practice. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

WILLIAM SPAULDING: And I think Senator Riepe's point is very pertinent to that. You want to put in regulations instructions for how a healthcare person should make a referral? I don't think so. What you have to do is give that healthcare professional the responsibility to protect the safety of the patient and the public. And that person is licensed because we think they're qualified to make those kinds of judgments free of discrimination. [LB891]

SENATOR CRAWFORD: So the fact that the regulations refer to the code of conduct, well, I guess I'm still trying to understand if you aren't...if there isn't specific referral language in the regulations, how they're getting caught up because they want to just pass out a phone book and you're wanting to make sure it's person-centered referrals. [LB891]

WILLIAM SPAULDING: Well, that was one round of the dispute. So currently the impasse seems to be that they're going to refuse to approve, HHS is going to refuse to approve any regulations coming out of the licensing board that includes gender or sexual orientation as people that can't be discriminated against. [LB891]

SENATOR CRAWFORD: Okay. So because the code of conduct has those as special classes and the regulations refer to the code of conduct or we're not going to approve them or the code...or the regulations themselves specifically mention those classes? [LB891]

WILLIAM SPAULDING: Yeah, there's the usual list that everybody knows. [LB891]

SENATOR CRAWFORD: Okay. Okay. [LB891]

WILLIAM SPAULDING: And gender and sexual orientation have been specifically removed from the draft of the regulations by HHS. [LB891]

SENATOR CRAWFORD: And they were approved by the Board of Psychology. [LB891]

WILLIAM SPAULDING: Well, no. What happened was the regulations sat on the Chief Medical Officer's desk for several years. When the Governor's administration changed, Courtney Phillips became the HHS Director and actually had the statutory prerogative of signing off on those regulations, which she could have done. What she did was she declared the previous regulations on the Medical Officer's desk as no longer existent and told the licensing board to start over. The licensing board asked Courtney Phillips whether any regulations would ever be approved that included prohibition against discrimination based on gender or sexual orientation and she has declined to answer that question. [LB891]

SENATOR CRAWFORD: I have other questions but I'll let somebody else go ahead if anyone else has some. [LB891]

SENATOR RIEPE: I have a...it seems, and maybe this is an observation, it's a battle of competing rights, the rights of, in your perspective, the rights of the patient and the rights of providers. Whether they happen to be of religious beliefs or for any other reason, providers have rights too. [LB891]

WILLIAM SPAULDING: Let me ask you, Senator. [LB891]

SENATOR RIEPE: Yeah. [LB891]

WILLIAM SPAULDING: Suppose you found out after your spouse's death that she actually had an operable cancer. [LB891]

SENATOR RIEPE: Inoperable? [LB891]

WILLIAM SPAULDING: She had an operable cancer but her physician, knowing that, decided not to tell her that because she's employed and the physician doesn't believe in women being employed. Now if you think that's okay, then I suppose you could argue that it would be okay for a psychologist to withhold the information from a patient that there is actually a therapist out there that can help them. [LB891]

SENATOR RIEPE: Well, I'm having a little hard time following your logic... [LB891]

WILLIAM SPAULDING: Uh-huh. [LB891]

SENATOR RIEPE: ...because at that point in time there's an ongoing, established relationship, and the one that you/we have been talking about earlier is simply referral one, which means maybe they've gotten no further than the waiting room, so totally different things. [LB891]

WILLIAM SPAULDING: Okay. Okay, let's go to the emergency room then. Let's go to the emergency room. Your wife is taken to the emergency room. The physician in the emergency room has never seen your wife before but he declines to treat her for whatever reason and he has a pamphlet that's a list of other emergency rooms and he puts that on the gurney and walks away. Now has that physician done his ethical due? [LB891]

SENATOR RIEPE: Well, I still think that... [LB891]

WILLIAM SPAULDING: He didn't have a relationship before then so there was no relationship to break. [LB891]

SENATOR RIEPE: (Inaudible.) [LB891]

WILLIAM SPAULDING: But don't we expect physicians have a certain responsibility that transcends their deeply held beliefs in some circumstances? [LB891]

SENATOR RIEPE: Well, the issue at hand is not limited to psychology. The issue at hand is throughout the entire healthcare delivery model. [LB891]

WILLIAM SPAULDING: It's the psychology regulations that are getting held up. And in answer to the previous question of why... [LB891]

SENATOR RIEPE: Yeah, but you just brought in the emergency department, so you're spreading this. You're the one that's leading this discussion outside of psychology. [LB891]

WILLIAM SPAULDING: Well, I think you have to look at healthcare in general and ask, what are the general responsibilities of healthcare professionals and why would we hold one type of healthcare professional to a lower set of standards than another? [LB891]

SENATOR RIEPE: Well, this has become argumentative and I don't want to take it any further into an argument so (inaudible). [LB891]

WILLIAM SPAULDING: There was a...there's the previous related question about what the surgeons, what the...if physicians are doing this. They have not been approached. They have not been asked to deal with this at all. The Catholic Conference has targeted psychologists and master's level health providers. I'm not aware of any other actions such as this that have been taken for any physicians. [LB891]

SENATOR RIEPE: Not across the country? I am very keenly aware of it, so. But anyway, Senator Crawford. [LB891]

SENATOR CRAWFORD: Yes. [LB891]

WILLIAM SPAULDING: There...well, I can respond to that. There is one statute that's been passed. It was in Tennessee. It was pertinent to mental health, master's-level mental health professionals, and it was affirmed that those professionals have a right to not treat and to refer, but there's a very explicit provision that in doing so they have an obligation to protect the patient and the public. [LB891]

SENATOR RIEPE: Senator Crawford. [LB891]

SENATOR CRAWFORD: Thank you. I was just going to ask that very question, so you answered that question. I see in the handout that Senator Pansing Brooks gave us that in 2016 the American Psychology Association had a conscience clause working group and it looks like that group understood nondiscrimination and specific patient-centered referrals as connected to their key ethical principal of do no harm. And I'm still trying to under...still trying to make sure I understand, so we understand. Specific patient-centered referrals means addressing the need of the patient in front of you but we're not wanting to put that in statute or in our regulations. We're just wanting to protect the right of psychologists to follow their code of conduct, including doing no harm, which includes saying that you must...we're holding one another accountable with this

code of ethics if you're a psychologist in Nebraska to do no harm and provide that specific patient-centered referral if you can't treat someone. Is that correct? [LB891]

WILLIAM SPAULDING: I agree. And by licensing psychologists we're acknowledging their responsibility and their ability to identify potential threats to the patient and the public and to respond accordingly. [LB891]

SENATOR CRAWFORD: So even though we're not going to put it in statute, just so we understand it, if you happen to be someone with deeply held religious beliefs that felt you could not provide marriage counseling to someone with a homosexual orientation and that...and you were a marriage counselor, say, and that person came into your office, what would you expect an ethical, professional response to be? [LB891]

WILLIAM SPAULDING: It would be to individually assess the patient's needs and possible signs of danger to the patient or the public and respond accordingly. Most of the time, there is none. [LB891]

SENATOR CRAWFORD: What do you mean there is none? There's none... [LB891]

WILLIAM SPAULDING: There is no safety hazard. A person, say a well-functioning person comes into your office and says, you know, I'm really doing fine in life but I think I may be homosexual and I'd like to talk about that and maybe how to develop this relationship. You say, well, you know, I really don't have any competence in that or you could even say that I have trouble with that based on my deeply held beliefs, but I have several colleagues that do that and I will give you their names and you can discuss this with them. Usually that would be fine. [LB891]

SENATOR CRAWFORD: So you would need to know who is able or willing to provide that kind of care because they have different religious, deeply held beliefs. [LB891]

WILLIAM SPAULDING: Either that or you need to be committed to finding out. I mean I have experiences myself, regularly, not too often but fairly regularly, where a patient comes in and describes a problem to me and I've heard about that problem and I sure don't know what to...or how to deal with it myself and offhand I don't know of any colleagues who do, so I better get on the phone myself... [LB891]

SENATOR CRAWFORD: Okay. [LB891]

WILLIAM SPAULDING: ...and find out what's available out there. [LB891]

SENATOR CRAWFORD: So you want the psychologist to call and say, can you provide marriage counseling, as opposed to asking someone who is experiencing trauma or distress having to call until they find somebody who is willing to treat them. Is that kind of what we're talking about? [LB891]

WILLIAM SPAULDING: If I thought that the patient was in good enough shape to do that themselves, I would suggest so. [LB891]

SENATOR CRAWFORD: Oh, okay, so that's... [LB891]

WILLIAM SPAULDING: If the patient were saying, I'm hearing voices telling me that if I don't get this straightened out I'm going to go kill someone, I would not give them a phone book and say, here, go find someone who can help you. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

SENATOR RIEPE: We've been on Google. We have a question here, or I do. Is the...are we working with the 1992 edition or... [LB891]

WILLIAM SPAULDING: Ninety-two is the year that's generally cited as when the sexual orientation nondiscrimination language was inserted into the national code of ethics. [LB891]

SENATOR CRAWFORD: In '92. [LB891]

WILLIAM SPAULDING: It's been there since then. [LB891]

SENATOR RIEPE: The reason I say is we have a handout in front of us that says some...January 1, 2017. I'm trying to figure out the difference there. [LB891]

WILLIAM SPAULDING: I can't...I don't know what that handout is and I don't know what you're talking about. [LB891]

SENATOR RIEPE: Senator Williams, please. [LB891]

SENATOR WILLIAMS: And I will make this short and my comments, I want to make it extremely clear, are not dealing with the issue that has been talked about a great deal here, and that's the relationship between the psychologist, Department of Health and Human Services, and the Catholic Conference, okay? My concern is, as drafted and as I have now had the opportunity to review the code of conduct that is referred to, that we are catching a lot of stuff in this legislation that could expose your practitioners to a whole lot of liability that I don't think you want. But I will deal with that privately with Senator Pansing Brooks and talk about that. I just want to make sure I'm not talking about... [LB891]

SENATOR CRAWFORD: Sure. [LB891]

SENATOR WILLIAMS: ...the issues that you're talking about. But I think under this legislation my exact example of a child psychologist with an older person walking in there, if that person walked out of there and said, I'm going to sue them, they have potentially exposed them to that, and I want to be careful that that is not happening. [LB891]

WILLIAM SPAULDING: But do you have a question for me about that? [LB891]

SENATOR WILLIAMS: No. I'm making a statement. [LB891]

WILLIAM SPAULDING: All right. Then let me make a statement. You know, I... [LB891]

SENATOR RIEPE: No, sir, you're not allowed to ask questions. [LB891]

SENATOR WILLIAMS: I didn't ask a question. [LB891]

WILLIAM SPAULDING: All right then. All right. It wasn't going to be a question. [LB891]

SENATOR RIEPE: Well, I don't know how else you'd frame it. But are there any...Senator. Okay, Senator. [LB891]

SENATOR CRAWFORD: Thank you, Chairman Riepe. And so I'm going to switch gears for just a moment here. As a practicing psychologist,... [LB891]

WILLIAM SPAULDING: Yes. [LB891]

SENATOR CRAWFORD: ...can you tell us the implications of having ten-year-old regulations in terms of recruiting for academic or practicing psychologist positions in the state? [LB891]

WILLIAM SPAULDING: One of the things that needs urgently to be updated is accommodation of changes in training practices, and the bottom line of that is it used to be that after the Ph.D., a couple of years of supervised practice was required. Because of changing in the predoctoral training, that's not the case anymore. When we try to recruit new Ph.D.'s for the university,... [LB891]

SENATOR CRAWFORD: Right. [LB891]

WILLIAM SPAULDING: ...they still are coming in under the old provisions, so we actually have people at the university now who have been licensed psychologists in other states who can't get licensed in Nebraska because of our obsolete regulations. This includes a couple of brilliant child neuropsychologists who are waiting for the regulations to be updated. [LB891]

SENATOR CRAWFORD: So they cannot get licensed... [LB891]

WILLIAM SPAULDING: That's correct. [LB891]

SENATOR CRAWFORD: ...because of the change. I have one more question and then...I have lots of questions but I'll stop at one more since other people want to testify. I just want to clarify for the record, in 1992, you said language was added about sexual orientation, nondiscrimination on sexual orientation? [LB891]

WILLIAM SPAULDING: Yeah. The code of conduct that we're referring to is a code that's promulgated by the American Psychological Association, has been updated periodically. [LB891]

SENATOR CRAWFORD: And our current codes use that 1992...I mean our old codes, like the ones we have in place right now because we haven't updated them, use that 1992 version, correct? [LB891]

WILLIAM SPAULDING: The ones concerning discrimination, the discrimination language, yeah. [LB891]

SENATOR CRAWFORD: In the old...like the 1992 code was used in the last iteration. [LB891]

WILLIAM SPAULDING: Yeah, and the discrimination language is essentially the same. [LB891]

SENATOR CRAWFORD: That's what I was... [LB891]

WILLIAM SPAULDING: It is the same. [LB891]

SENATOR CRAWFORD: So the discrimination language has not gotten stricter... [LB891]

WILLIAM SPAULDING: No. [LB891]

SENATOR CRAWFORD: ...or included new classes. [LB891]

WILLIAM SPAULDING: No. [LB891]

SENATOR CRAWFORD: So we have not seen a change in the code of conduct classes or discrimination language. It's just been a change in how people have reacted to that language. [LB891]

WILLIAM SPAULDING: That's correct. [LB891]

SENATOR CRAWFORD: Okay, thank you. I'll stop. [LB891]

SENATOR RIEPE: Any other questions? Hearing none, thank you very much. Additional proponents? [LB891]

WILLIAM SPAULDING: Thank you. [LB891]

SENATOR RIEPE: If you'd be kind enough to state your name, spell it, and then tell us who you represent. [LB891]

RENE PRETORIUS-PARKS: (Exhibit 5) Good afternoon. My name is Rene Pretorius-Parks, R-e-n-e P-r-e-t-o-r-i-u-s, hyphen, Parks, P-a-r-k-s, and I am the president of the Nebraska Association for Marriage and Family Therapy. Committee Chair Senator Riepe, Vice Chair Senator Erdman, other committee members, we come here today to support LB891 and the amendment which Senator Pansing Brooks added to the bill. It's been a really long nine-year

journey for us, one that's been too long and unnecessary, and we hope that with a judicious decision of the Health and Human Services Committee that this journey can come to an end, proving that politics has no place in ethics. Nine years ago the Governor's Office, in alliance with the Nebraska Catholic Conference, mandated that when a therapist declines services to an LGBTQ client that...due to personal convictions, that that therapist does not need to make an appropriate referral to another provider to address those consumers' needs but instead can refer to a list or a directory and this list or directory could also include other non-LGBTQ-affirmative therapists, so it's like a default escape clause. The Nebraska Association for Marriage and Family Therapy has maintained throughout this kind of willful generic referral that it is discrimination, saying do not discriminate but if you have to this is the way to do it. There may be Catholic therapists that are afraid of complicity should an appropriate referral like this mean advocacy of gay marriage. Ethically, the bottom line is that any referral that is made needs to be based on the behavioral healthcare needs of the client and not on the religious conscience or needs of the therapist or the practitioner. The ethical intent is always to refer a client or a patient to better care and not generic care. All Nebraskans are entitled to quality care by healthcare professionals and a client's needs should always be considered first and foremost. Our proposed regulations have gone through four public hearings, and the Mental Health Practice Board has undergone extreme pressure and persuasion to compromise, but ethics is beyond compromise. Finally, the current Mental Health Practice Board, in early 2017, held a positive unanimous vote advocating for the language "appropriate referral." The language of referral to the phone book has since been thrown out. In addition, the protected classes of sexual orientation and gender identity that was removed by DHHS has now been restored by the Mental Health Practice Board. The Mental Health Practice Board governs licensed mental health practitioners, licensed independent mental health practitioners, and subsumed under those are three specialties: the social workers, the professional counselors, and the marriage and family therapists. This is the largest mental and behavioral work force in Nebraska. It includes 4,357 practitioners that also includes provisionally licensed therapists. This is as of January 2018. The predicament is that the proposed regulations that govern all of these providers to ensure that they have quality services that they are providing to the consumers have now been upheld for nine years. We simply aspire that the Nebraska credentialing of licensees be consistent with the code of ethics of these specialties, which is the National Association of Social Workers, the American Counseling Association, and the American Association of Marriage and Family Therapy, by which we abide and are proud. No other state has experienced what Nebraska is experiencing. Some well-intentioned government officials have pleaded for compromise. Our ardent counter plea is, how does one compromise the public's mental health or anybody's mental health, for that matter, be it yours or mine? We hope that with the passage of this bill, the credentialing boards and the office can go about their business, serving consumers ethically. Thank you. I'll answer any questions. [LB891]

SENATOR RIEPE: Thank you very much. Let's see what we have. Senator Crawford. [LB891]

SENATOR CRAWFORD: You say that with enthusiasm. Thank you, Chairman Riepe. [LB891]

SENATOR RIEPE: I'll work on that. [LB891]

SENATOR CRAWFORD: Okay, thank you...appreciate that. [LB891]

SENATOR RIEPE: It was the other hand, I think. [LB891]

SENATOR CRAWFORD: Okay. I'll use the other hand. Thank you for being here today. [LB891]

RENE PRETORIUS-PARKS: Yes. [LB891]

SENATOR CRAWFORD: I'm going to ask you a similar question. I understand just a list of providers is not appropriate referral. [LB891]

RENE PRETORIUS-PARKS: Yes. [LB891]

SENATOR CRAWFORD: So tell me some forms of appropriate, ethical referral. [LB891]

RENE PRETORIUS-PARKS: So I've been thinking about this since listening. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

RENE PRETORIUS-PARKS: So if I was in my office, and you used the example of a provider working with children, which I actually do, and I happen to have adult or a parent that I see, which happens a lot, that I feel like may need services, I would then through different means, whether it's people that I know, whether I get on the phone and figure out if I talk to my colleague down the hall and say, hey, who do you know that treats adults with these specific difficulties, and I typically give them a list of several providers, two, three, four, and again it depends on the function of the adult that's sitting in front of me. Some of them might say, you know, these people all in private practice happens to be so. For an example, if you Google their names, all their Web sites will pop up, their contact information will be right there, or if I know, based on the function of that individual, I need to make the phone call for them,... [LB891]

SENATOR CRAWFORD: Okay. [LB891]

RENE PRETORIUS-PARKS: ...which I've done before, or I need to specifically write down the name and the address, the person's name, the phone number, multiple phone numbers. It really depends on your assessment at that time on what their functioning is. But that would be more of an appropriate referral than me just handing them a big list of names, I mean, and if we think about 4,357 individuals that they have to page through, I would be concerned about whether they would access care. I think the other important part is that it's really hard initially for patients to start the process. There's some research that talks about... [LB891]

SENATOR CRAWFORD: Right. [LB891]

RENE PRETORIUS-PARKS: ...that initial first appointment is the most hardest part of the therapy process. And if we know, based on their functioning, that that's really hard to do, the concern would be that they would get ongoing assistance for that. [LB891]

SENATOR CRAWFORD: That's an interesting point that that may be a harder step in this medical practice than in other practices. [LB891]

RENE PRETORIUS-PARKS: Um-hum. And so that's part of the assessment, too, is do I think they're going to follow through, based on whatever information I've gathered from them. [LB891]

SENATOR CRAWFORD: Okay. And so in this dialogue or push for compromise, have they been asking we want to explicitly list permission that it's ethical if we just provide a directory, is that what I'm hearing, if you just provide a list? [LB891]

RENE PRETORIUS-PARKS: Say that again. Sorry. I just want to make sure I'm following you. [LB891]

SENATOR CRAWFORD: So you..we've talked about we don't want to micromanage, we don't want to say exactly what... [LB891]

RENE PRETORIUS-PARKS: Yes. [LB891]

SENATOR CRAWFORD: ...it should be. [LB891]

RENE PRETORIUS-PARKS: Yes. [LB891]

SENATOR CRAWFORD: But what they're asking you to compromise is they're asking you to say it's appropriate ethical behavior to give someone just a generic list of providers and you don't have any obligation to figure out which ones would be willing to provide marriage counseling to a gay couple. You don't have to figure that out. You just give them a list and they're call and find out who would be willing to give them counseling. [LB891]

RENE PRETORIUS-PARKS: I think to me the term "appropriate referral" would mean if I give them a list of 4,357 individuals, that's not an appropriate referral. [LB891]

SENATOR CRAWFORD: Okay. So they're asking for that 4,000 list... [LB891]

RENE PRETORIUS-PARKS: Yes. [LB891]

SENATOR CRAWFORD: ...to be an appropriate referral, just to clarify. [LB891]

RENE PRETORIUS-PARKS: Yeah. Yeah. [LB891]

SENATOR CRAWFORD: Okay. Could you also answer the question I asked for your profession? [LB891]

RENE PRETORIUS-PARKS: Yes. [LB891]

SENATOR CRAWFORD: What are the implications for recruiting and work force of having ten-year-old...nine-year-old regulations? [LB891]

RENE PRETORIUS-PARKS: I knew you were going to ask that question, too, and I, you know, I think there's a lot of different implications. I can't think of like specific examples right now, but I know it covers all the way from confidentiality all the way to competence. And we also have several universities in the state of Nebraska are...not several, more than several that provide degrees to licensed mental health practitioners. And so I know that those regulations need to be updated to look at these students that are graduating and coming up as well. [LB891]

SENATOR CRAWFORD: So the universities need to have the standards to know what the curriculum needs to be, I assume, and so they need to have the curriculum matching the appropriate standards. [LB891]

RENE PRETORIUS-PARKS: Right. You know, one of the examples in the marriage and family therapy piece is our supervision. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

RENE PRETORIUS-PARKS: And there are some changes we want to make with how we count hours and the expectations that we have for students coming up to be licensed as marriage and family therapists and we can't make any of those changes in the regulations right now because they're stagnant, so that would be one example. [LB891]

SENATOR CRAWFORD: Okay. Have you been involved in the regulation process like as a member of the...your professional board or a member of the Board of Health or any of those roles? [LB891]

RENE PRETORIUS-PARKS: I have not, no. [LB891]

SENATOR CRAWFORD: Okay. So do you happen to know if it's legal for the department to strike language after it's gotten to that stage in the process? [LB891]

RENE PRETORIUS-PARKS: I don't know that I can answer that question. [LB891]

SENATOR CRAWFORD: Okay. We'll save that for someone else. Thank you. Thank you. [LB891]

RENE PRETORIUS-PARKS: Sorry. [LB891]

SENATOR CRAWFORD: I appreciate your testimony. [LB891]

RENE PRETORIUS-PARKS: Sure, sure. [LB891]

SENATOR RIEPE: Okay. Are there other questions? Seeing none, thank you very much for being here. Additional proponents, please. I know you know the drill. I will just let you go. [LB891]

ANNETTE DUBAS: Good afternoon, Senator Riepe and members of the Health and Human Services Committee. My name is Annette Dubas, A-n-n-e-t-t-e D-u-b-a-s. Today I am here representing myself and my family. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

ANNETTE DUBAS: I'm not here in a professional capacity at all. And I want to thank Senator Pansing Brooks for her steadfast commitment to this issue and support that she gives voice for the LGBTQ individuals. This is a very important issue for my family. If it weren't for mental health professionals being there for my brother, I can absolutely say with certainty he would not be alive today. My brother is gay and he knew that from a very young age. But he also knew that he had to keep it a secret, that he would not be accepted, and that he could not live his life as his authentic self. The only way he could keep that secret as he continued to grow older was by turning to drugs and alcohol. He started out with alcohol and pot and then progressed to meth, LSD, and cocaine. The pain became so unbearable for him that in his late 20s he decided that suicide was his only answer and he planned it down to the very last detail. But something happened. We still don't know for sure what, but he decided to reach out for some help. He went to a counselor and when he was...and I can't say honestly what type of counselor he saw, if it was a psychologist or an LIMHP or anything like that, but he sought professional help. When he filled out his health information sheet, in the part that said "other comments," he wrote down "I think I'm gay." Through intensive treatment he was finally able to get clean and sober and to say out loud that he is gay. That was over 30 years ago. It was a very long and very difficult road to recovery, but he's made it because he sought help and a professional provided the care and treatment that he needed to survive. He is now an MSW and works with at-risk foster youth. But today I wonder: What if? What if that first provider had said, no, I won't treat you, nor will I give you a referral to someone who can. His suicide plan was in place. This was his last plea for help. What if no one had been there? Whether we need treatment for high blood pressure, diabetes, cancer, depression, anxiety, or addiction, we should be able to trust that a healthcare professional will provide that treatment or find someone who can if they are not able, no matter that person's race, gender, economic status, ethnicity, or sexual orientation. This is a matter of life and death. It was for my brother and I know it is for very many, many more today. My family and I will be forever indebted to that professional who threw my brother a lifeline and treated him simply as a person who was asking for help. I ask you to please advance LB891 and I'd be happy to answer any questions should you have them. [LB891]

SENATOR RIEPE: Thank you. It took bravery to share your story, so thank you. [LB891]

ANNETTE DUBAS: You're welcome. [LB891]

SENATOR RIEPE: Are there questions? Seeing none, thank you. Always good to see you. [LB891]

ANNETTE DUBAS: You too. [LB891]

SENATOR RIEPE: Additional proponents, please. And I believe you are the witness who is going to speak for two different individuals. [LB891]

MARY BAHNEY: (Exhibits 6 and 7) Amazingly enough, yes. [LB891]

SENATOR RIEPE: Yes. Okay. [LB891]

MARY BAHNEY: I already...we had a little preconference. My name is Mary Bahney, M-a-r-y B-a-h-n-e-y. I am the advocacy chair for the National Association of Social Workers-Nebraska Chapter, and I'm here today to read testimony for two people: Terry Werner, executive director of our chapter, he is getting acquainted with his brand-new grandson; and Amanda Randall--and I'll let you know when they switch--she's the director of the School of Social Work in Omaha. And I don't know whether it was the weather but, whatever, she's not here. But first I'm going to speak on behalf of Terry Werner, executive director of the National Association of Social Workers-Nebraska Chapter. Chairperson Riepe and members of the Health and Human Services Committee, I will start by apologizing for my absence in person on this bill, as I have literally worked on this issue since 2007, when independent licensure for social workers was passed in the Unicameral. I want to thank Senator Pansing Brooks for bringing this bill and especially for the amendment to include licensed mental health practitioners. The Nebraska Chapter of the National Association of Social Workers wishes to go on the official record in support of LB891 to protect the NASW code of ethics in our regulations. There are times when one must draw a line in the sand, and abiding by our code of ethics is one such time. The state should not ask practitioners to compromise on ethics. The regulations are there for the safety of the public, not to protect social workers. Our code of ethics talks extensively about self-determination. This means that the client's interest is the primary concern when seeking services, not the interests of the provider. Every day, social workers are working with people in crisis, often in life and death situations. You will likely hear similar arguments that practitioners also should not have to compromise their religious or moral values. We at NASW could not agree more. In fact, our code of ethics tells us that if the practitioner is not competent working on certain populations--such as families, adolescents, or the LGBT community--not only should they not provide services, they must not provide such services. Doing so is a violation of our code of ethics. However, our ethical code does require us to provide a quality referral. This means that, after the social worker assesses the client's needs, a referral will be made to a therapist, or several therapists, that are most qualified to address those needs. Please do not allow politics to dictate to our governing board. The Board of Mental Health Practice is composed of professional, licensed mental health practitioners and I believe that common sense generally prevails in their deliberations. Please allow them to do their work as they deem is in the best interest of Nebraskans. Thank you for your consideration, and please advance LB891. Sincerely, Terry Werner, W-e-r-n-e-r, BSW, executive director. Now I'm switching to Amanda Randall's letter: Chairperson Riepe and members of the Health and Human Services Commission (sic), my name

is Amanda Duffy Randall, and I am a licensed clinical social worker in Nebraska. I am the director of the Grace Abbott School of Social Work at the University of Nebraska-Omaha, but I am speaking for the Association of Social Work Boards in support of LB891, pertaining to the nondiscrimination by psychologists and mental health providers. I am the past president of the Association of Social Work Boards, the organization comprised of the licensing boards for social work practice in the United States and Canada, and formerly a member of the Board of Mental Health Practice in Nebraska. I was chair of the Board of Mental Health Practice ten years ago when the revised regulations were introduced, incorporating the ethical codes of conduct of social work, marriage and family therapy, and the counseling professions, stating that licensed professionals in mental health practice could not discriminate in the provision of services to clients. This has been a core principle in all ethical codes, and mental health practitioners agree to abide by it. The clients we serve range from those with lifelong severe and persistent mental illness to families in crisis and individuals struggling with grief and loss or a challenging life cycle transition. Mental and behavioral health challenges affect all races, all genders, all sexual orientations, all gender identities, all religions, all ethnic groups, all of us. I urge you to support LB891, prohibiting discrimination in service delivery for psychologists and mental health providers in Nebraska, so that all of us can receive the help we need. Amanda Duffy Randall, R-a-n-d-a-l-l, Ph.D, LCSW. I would also maybe just...what happens when all three lights are on? I would like to speak to our code of ethics. [LB891]

SENATOR RIEPE: Okay, well,... [LB891]

MARY BAHNEY: May I? May I? The social work code of ethics... [LB891]

SENATOR RIEPE: ...let's see if you get a question... [LB891]

SENATOR CRAWFORD: Question. [LB891]

SENATOR RIEPE: ...from the committee. [LB891]

MARY BAHNEY: Okay. I'm just saying I would be open to a question. [LB891]

SENATOR RIEPE: I'm suspecting you will. Senator Williams. [LB891]

SENATOR CRAWFORD: Question, okay. [LB891]

MARY BAHNEY: I would be open to a question on our code of ethics. [LB891]

SENATOR RIEPE: (Inaudible) general (inaudible). Senator Williams. [LB891]

SENATOR WILLIAMS: Thank you, Chairman Riepe. [LB891]

MARY BAHNEY: Just saying. [LB891]

SENATOR WILLIAMS: Thank you for being with us. Would you like to... [LB891]

MARY BAHNEY: Well, thank you. [LB891]

SENATOR WILLIAMS: ...tell us about your code of ethics? [LB891]

MARY BAHNEY: I would. I would. [LB891]

SENATOR WILLIAMS: And specifically,... [LB891]

MARY BAHNEY: Yes. [LB891]

SENATOR WILLIAMS: ...is it from your organization, not psychologists? [LB891]

MARY BAHNEY: We have our National Association of Social Workers... [LB891]

SENATOR WILLIAMS: You have your...and that's what I want to be sure. [LB891]

MARY BAHNEY: ...at the national level. And, well, I didn't bring today but I'd be glad to send you the link. And if I may speak a little, amplify on that just a little bit, they have recently been revised. I think they went into effect as of January 1 this year. One issue that required a lot of the changes and revisions had to do with was based on the time that the...and I can't tell you the date of the last one, but social media, all of that, Facebook, how do you interact with your clients? Do you text your clients? Do you do, you know, do you...are they your Facebook friends? Do you...all of those things. Those didn't exist the last time we had our code of ethics. And so as a matter of fact, we...there is a national expert that we are bringing in. We already have him engaged--he's from Rhode Island--for the 20...our 2019 conference, when we would invite all you to come, in September. He's a national expert and has given...I just heard a webinar from him in November. He's used at the national level of our association. He's a social worker and he is going to speak. We already know about these but we just couldn't get him engaged until September. [LB891]

SENATOR WILLIAMS: Could you specifically talk about your code of ethics as it relates to referrals and discrimination. [LB891]

MARY BAHNEY: What it does, it says we are to be open to serving all people but we also are not to go out of our own area of competence. We're viewed as professionals who can determine that. [LB891]

SENATOR WILLIAMS: And then the referral part? [LB891]

MARY BAHNEY: And then the referral, and that is specifically laid out in our code of ethics, because as much as you see here in some of the things I've written, by my colleagues, that we do try to serve all people. Some of us work in...I was a school social worker and some of us work in...with elderly and some of us work with other populations. So we can't all be... [LB891]

SENATOR WILLIAMS: But I am correct, aren't I, that the legislation we're talking about today, LB891, deals with psychologists and mental health practitioners, not social workers, or do you... [LB891]

MARY BAHNEY: Mental health practitioners are composed of social workers, psychologists, and marriage and family therapists. [LB891]

SENATOR WILLIAMS: Thank you. Thank you for clearing that up for me. [LB891]

MARY BAHNEY: You need to be one of those three to be a licensed mental health practitioner in the state of Nebraska. [LB891]

SENATOR RIEPE: Senator Linehan, please. [LB891]

SENATOR LINEHAN: Thank you, Chairman Riepe, and thank you for being here. Can you...before 2007, your first paragraph here, it says, "...I have literally worked on this issue since 2007, when Independent Licensure for social workers was passed in the Unicameral." Before that, did you have to work under a psychologist or what was... [LB891]

MARY BAHNEY: Well, we've...that's when the licensed independent became into being and, yes, in a consulting capacity as an LCSW. And I don't...I am not a licensed independent, but that's when that came into being with this round of regulations. [LB891]

SENATOR LINEHAN: Okay, so are your code of ethics in regulation? [LB891]

MARY BAHNEY: It's referred to. That is referred to as the code of ethics we need to follow, yes, our nation... [LB891]

SENATOR LINEHAN: In regulation it says you follow your code of ethics. [LB891]

MARY BAHNEY: It says that we follow our code of ethics. [LB891]

SENATOR LINEHAN: It doesn't put your code of ethics in regulation? [LB891]

MARY BAHNEY: They aren't printed there. It just says that we are to follow the National Association of Social Workers' code of ethics. [LB891]

SENATOR LINEHAN: Okay, thank you very much. [LB891]

SENATOR RIEPE: I'm sure there are many more social workers in the state of Nebraska than psychologists. My question is this. Do you have any of your social workers that ever declare, you know, a moral objective? [LB891]

MARY BAHNEY: I can't say that there hasn't been. I would not begin to say that. [LB891]

SENATOR RIEPE: It's not common knowledge though. [LB891]

MARY BAHNEY: It's...I don't know all the social workers. I think my... [LB891]

SENATOR RIEPE: But you would have probably heard about it if it became...maybe? [LB891]

MARY BAHNEY: My colleagues, I know of no one personally. [LB891]

SENATOR RIEPE: Okay, that's fair. I just wanted to ask that question. [LB891]

MARY BAHNEY: Is that okay? [LB891]

SENATOR RIEPE: That's...everything is okay. Are there any other questions for Ms. Bahney? [LB891]

MARY BAHNEY: Senator Riepe and I go back a ways. [LB891]

SENATOR RIEPE: Yes. Thank you so very much. We appreciate you being here. [LB891]

MARY BAHNEY: Okay. Thank you for the time and thank you for this consideration of this long enduring issue. [LB891]

SENATOR RIEPE: Yes. Okay. Thank you very much. Additional proponents? [LB891]

DANIEL ULLMAN: Chairman, Senators,... [LB891]

SENATOR RIEPE: Thank you, sir. [LB891]

DANIEL ULLMAN: ...Dr. Daniel Ullman, D-a-n-i-e-l U-l-l-m-a-n. I did not come with a prepared statement. In fact, I came just to testify on the earlier bill. But there were some questions asked and I happen to have been on the licensing board (inaudible). So I served on the psychology licensing board from 1997 to 2007 so toward the end of that we were doing the update with the regulations, which is, as you've indicated, is some standard procedure. And there was a question asked about, well, what's the implications of holding up regulations? And certainly I remember at that time--I'm going on my memory, I did not prepare for today--but there was certainly the earlier comment where early career people were finding it difficult given the existing regulations to get licensed in the time frame that was allowed. So, you know, that's a problem for recruitment and retention, certainly. The other thing was a very kind of basic thing, is record retention, which, you know, the state of Nebraska has its own record retention schedule. We needed that and it's still a problem because we don't have...we don't specify that in the regs. And I think now Nebraska is kind of getting a reputation for...or that's...there's very few states that don't give guidance on that. We're one of them. Now toward the end of this, actually I was off the board by the time a lot of these...the time, as you go through the time line, you can see... [LB891]

SENATOR CRAWFORD: Okay. [LB891]

DANIEL ULLMAN: ...it came after me. I think at the time we were thinking, that the board was thinking, is that just, you know, keep the code of conduct. There's not been a problem before. You want to keep it current and you don't want to, you know, like take out certain groups that before were...you know, you...the antidiscrimination language. So why would you take those out? What would be your motive for that? As far as the referral issue, you know, the licensing board, they deal with things on a case-by-case basis. So I would help screen complaints on

licenses so I worked with an attorney and there were some investigations and it was always case specific and what was the patients complaint, what was the...how did the psychologist handle it. We never had anything like this, by the way. It's usually family law and custody and...that come in complaints usually, or sharing information. So, you know, we were, I think, as a board at that time was just like just keep the code of conduct as it is and adopt the latest version. I did want to get up and say, you know, it is holding up some certain things. I'm dismayed to see that we still haven't updated the regs all this time and the bill is like, okay, let's just follow the code of conduct. Okay. So that's all I have. Again, I didn't have prepared. [LB891]

SENATOR RIEPE: Well, we appreciate you being here. Thank you very much. [LB891]

DANIEL ULLMAN: Okay. Thank you, Senator. [LB891]

SENATOR RIEPE: Any questions? Just a second. You don't get off that easy. Senator Crawford. [LB891]

SENATOR CRAWFORD: I didn't ask any questions. All right. So just to clarify, so one of the things that the previous testifier talked about, social media, electronic health records,... [LB891]

DANIEL ULLMAN: Right. [LB891]

SENATOR CRAWFORD: ...those are some things that are updated, it sounds like another key item that you mentioned is changes in the preparation of professionals. And some of our professions, we've found new ways to get people ready more quickly... [LB891]

DANIEL ULLMAN: Right. [LB891]

SENATOR CRAWFORD: ...and reduce barriers... [LB891]

DANIEL ULLMAN: Right. [LB891]

SENATOR CRAWFORD: ...to licensure, right? [LB891]

DANIEL ULLMAN: Right. [LB891]

SENATOR CRAWFORD: And so basically by not updating these, we're keeping in barriers to licensure that we could get rid of... [LB891]

DANIEL ULLMAN: Um-hum, right. [LB891]

SENATOR CRAWFORD: ...by updating it, right? [LB891]

DANIEL ULLMAN: Correct, Senator. [LB891]

SENATOR CRAWFORD: Yeah, that's correct. [LB891]

DANIEL ULLMAN: Yeah. [LB891]

SENATOR CRAWFORD: Yeah, thank you. That was one of my...and since you have been on the Psychology Board, I wondered if you could just help us just walk through a little bit of the Administrative Procedures (sic) Act process, if you know it, from your activity to the Governor's desk. [LB891]

DANIEL ULLMAN: Right. [LB891]

SENATOR CRAWFORD: Okay, so if...so it comes from you and then it would...well, I'll let you do that and then I'll ask you questions, if you know that. If you don't know it, that's fine. [LB891]

DANIEL ULLMAN: To the best of my recall, and just to refresh your memory, the, you know, the psychologists aren't running the Board of Psychology. I mean this is under the public health. We have an administrator. We follow the rules, as you indicate, so... [LB891]

SENATOR CRAWFORD: Do you mean you have other health professions on that board, as well? [LB891]

DANIEL ULLMAN: Well, we have psychologists and we have two public members. [LB891]

SENATOR CRAWFORD: Okay, thank you. [LB891]

DANIEL ULLMAN: And one of them that was on our board was a medical ethicist from Creighton--very interesting. [LB891]

SENATOR CRAWFORD: I saw that, yes. [LB891]

DANIEL ULLMAN: Yeah, and so we made a public...there were public...it's all public, the information or agenda and our meetings that we were updating the regulations. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

DANIEL ULLMAN: So like some group, you know, some people came in and said these regulations as you have them currently really restrict recruiting new psychologists and retaining them. So we worked on that and then, as I said before, you know, we need guidance on record retention. This is very important. Okay. So we dealt with that. And then we had like a public hearing, proponents, opponents, just like here. And then... [LB891]

SENATOR CRAWFORD: Can I interrupt you for one second? [LB891]

DANIEL ULLMAN: What's that? [LB891]

SENATOR CRAWFORD: Can I interrupt you for one minute? Were religious groups part of the hearing participants in that process? [LB891]

DANIEL ULLMAN: Now this is where my memory kind of fails me, the sequence. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

DANIEL ULLMAN: I think there was like, hey, slow down, we need to re-, kind of, -do some of this, kind of a loop back kind of thing, so. [LB891]

SENATOR CRAWFORD: Okay. Thank you. [LB891]

DANIEL ULLMAN: And I apologize. That's...(inaudible) thinking. [LB891]

SENATOR CRAWFORD: That's all right. It's ten years ago. [LB891]

DANIEL ULLMAN: If I had known I was going to...I would have left my notes. [LB891]

SENATOR CRAWFORD: Yeah. You're welcome to send the committee other information as you have it. Thank you. [LB891]

DANIEL ULLMAN: Okay. [LB891]

SENATOR CRAWFORD: No, no, no, I just meant you don't have to apologize for not remembering. [LB891]

DANIEL ULLMAN: Oh, okay. Well, there...the regs did get to, and I think it's included in here, did get to the Board of Health, get voted. [LB891]

SENATOR CRAWFORD: Okay, yes. [LB891]

DANIEL ULLMAN: I think there was one person that said, no, don't move them on... [LB891]

SENATOR CRAWFORD: Okay. [LB891]

DANIEL ULLMAN: ...from there and the rest did. And then it went to the Chief Medical Officer at that point, and it could just stay there. I guess, per our regs, it can just stay there. [LB891]

SENATOR CRAWFORD: And it did. [LB891]

DANIEL ULLMAN: Yeah. Yeah, so... [LB891]

SENATOR CRAWFORD: Okay. Thank you. [LB891]

DANIEL ULLMAN: ...that was new to me, knowledge to me. I went, oh, that's interesting. [LB891]

SENATOR CRAWFORD: Thanks. [LB891]

SENATOR RIEPE: Additional questions? Seeing none, thank you again. Thanks (inaudible). [LB891]

DANIEL ULLMAN: Thank you, Senator. [LB891]

SENATOR RIEPE: Additional proponents, please. [LB891]

ADELLE BURK: Hi. [LB891]

SENATOR RIEPE: Welcome. [LB891]

ADELLE BURK: Welcome. [LB891]

SENATOR RIEPE: And please introduce yourself. Spell your name, please. [LB891]

ADELLE BURK: (Exhibit 8) Yeah. My name is Adelle Burk, A-d-e-l-l-e B-u-r-k. Thank you for letting me speak today. I'm a resident of Lincoln. I'm also a lesbian. And I am not a psychologist or a social worker or a lawyer, but since I was a teenager I have dealt with depression, anxiety, and occasionally, in the past, suicidal thoughts. If you haven't experienced these struggles in your own life, it would be difficult to understand exactly what that means, but I'll try to describe it. For me, depression is like a constant weight, a voice in my head that's telling me life is meaningless, nothing will ever make me happy or whole. Anxiety is not just a mental state but a physical tension that seizes the body, that gives you panic attacks, especially when you're in unfamiliar situations or around people you don't know, so this is a really fun experience for me. In college, I finally dragged myself to see a therapist and a psychiatrist and today I am in a more stable and healthy place than I've ever been. But I want to say, as an aside, that doesn't mean that I was always in such a great place, and the services that I received really did save my life in a lot of ways, because I'd been in some pretty bad places. But imagine being a lesbian, being gay, bisexual, or transgender. Imagine if you finally built up the courage, after years of suffering, to see a mental health professional and being turned away but also not receiving a referral. Imagine being LGBTQ and especially living in rural Nebraska where there are very few options for providers to begin with. LGBTQ people face social stigma and that ranges from dirty looks of strangers on the street to discrimination from your own friends and family. We face disproportionate mental health issues because of this stigma and that's why LB891 is so essential to fill in those gaps. One argument that's being made against this bill is that we should allow providers to refuse to provide counseling related to transgender healthcare. What I wanted to emphasize is that treatment for gender dysphoria for trans people is not just elective, it's essential healthcare, and so it is, you know, essential part of the Hippocratic Oath which says that first do no harm. Turning away an LGBTQ patient who is in a place of real suffering and giving them no other options or just, you know, a phone book, is cruelty. Please vote to protect your LGBTQ constituents, of which, I can assure you, there are many more than you think, and advance LB891 from committee. Thank you. [LB891]

SENATOR RIEPE: Okay. Thank you. Did a nice job. Are there questions from the committee? Seeing none,... [LB891]

ADELLE BURK: Thank you. [LB891]

SENATOR RIEPE: ...again, thank you. Additional proponents. How many...may I have a show of hands of how many more witnesses we have? One, two, three, four, five. Okay, thank you. Sir, if you will just, please, introduce yourself, spell your name, and if you'd be kind of enough to tell us who you represent, other than yourself, then please go ahead. [LB891]

LUCAS PETERSON: (Exhibits 9, 10, and 11) Absolutely. My name is Lucas Peterson. It's spelled L-u-c-a-s P-e-t-e-r-s-o-n. You can please call me Luke. And I do not represent anyone but myself. I live here in Lincoln, in Legislative District 46. I come today not only as a proponent of LB891 but as a living example for the need of mental health services in the state of Nebraska. I've been following this issue for many years now because I do have a special interest in the topic. However, as noted for my last...the last person speaking, this isn't just about me. It's about the ones we love so dear, that we shed tears over. Before I go further, I want to thank Senator Patty Pansing Brooks for being my advocate with this legislation. My appreciation for her has no words. As mentioned, I've been an activist for the need of including our LGBT loved ones for access over mental health services. Today I'm submitting for the record two articles for your review. First is a letter to the editor that I wrote myself--one of my favorites--dated back in October 29, 2011. The second is from a Web site that I found, madinamerica. It's actually discussing a study "publicated" by the Journal of American Medical Association over the very topic of suicidal rates between heteronormative individuals versus those who identify as LGBTQIA in the ages of youth. I would encourage you to read them. But I took my time today to be here with you all to share a little bit about me, which is something that I have a very hard time doing. Some here know very well that I'm not ashamed of being honest. That wasn't always the case with me because as a child I lied. I lied not only to myself but to those who love unconditionally for a very long time over some very hurtful and upsetting circumstances. I didn't know it then but I was in the making of becoming a person who needed mental health services as if his life depended on it. Now I can say with a forward face that it's taken me six years of seeing two different mental health therapists throughout my 33-year existence, the first being a drug and alcohol abuse counselor, the second being a grief therapist. You are in the presence of someone who has beaten addiction, survived suicidal tendencies, and lives with post-traumatic stress disorder. I wouldn't be here today if I had met a therapist would who tell me, essentially, go kick rocks because you are too much. That's just the truth. I wouldn't be alive if someone told me that I don't care for you, go kick rocks. That's what the conscience clause does: tells biased therapists that they don't have to treat anyone who violates their conscience and it could not...it could be anything. It could be being an atheist. It could be a woman getting an abortion. It could be anything that is deemed socially unconscionable. Anyway, I actually really wanted to come here to talk about, and I'm just going to deviate a little bit from my written testimony, but I did have a friend who killed himself. I don't have enough to hand you these. This is my copy. But this is my friend Brian. He died, unfortunately, a little...about a year ago. He was a wonderful person. He was great. He was also a UNL student trying to become a lawyer and he also had an undergrad in psychology. And I don't have the heart to tell you how he died, but I know what killed him. And

I wrote a little bit about it in my testimony but Brian was afraid of some certain test results that he was going to get. And I don't know the answer or the results of those test results, but I know that he was living in fear because of them. And I feel like I failed him because I wish I could tell him now that it's going to be okay, it's going to be fine and, you know, even if they came back horrible, my love for him wouldn't have changed. I don't know if he had found services. I don't know if he reached out to anyone. But I know that with the current rules and regulations in play right now, if he had met someone who would tell him go kick rocks while you're waiting for your HIV results, that's horrible. So I'm here to let you know that we can't continue down this road of discrimination for our LGBT loved ones in terms of mental health services. If you have any questions, I would be glad to answer them and I want to thank you for your time. [LB891]

SENATOR RIEPE: Thank you very much. Stay right there for a second. Let's see if the committee has any questions. I don't see any. We appreciate your time and willingness to share. [LB891]

LUCAS PETERSON: Thank you. [LB891]

SENATOR RIEPE: Additional proponents? If you would, good sir, introduce yourself, spell your name, please, and share with us the organization if you represent someone other than yourself. Thank you. [LB891]

JAMES WOODY: Yes. Good afternoon, Chairman Riepe, members of the Health and Human Services Committee. For the record, my name is James Woody; that is J-a-m-e-s W-o-o-d-y. Similar to the last two testifiers, I am not a doctor and I am not a lawyer. Some of the things that I am is a Nebraskan. I am a veteran. I'm a voter. I'm a taxpayer. And I fancy myself as a law nerd because I enjoy listening to litigation and legislation. On the legislation side of the house, I am very thankful to have the privilege of being in close proximity to the Nebraska Unicameral. NET live streams the floor debate and I take the opportunity to listen to those on a daily basis. Very thankful that it allows us to be involved in the process. Also involved in the process would be these public hearings that are also live streamed. And I know that if I miss a public hearing on a topic that I have interest in, that I can go back to the record and pull transcripts. This is very important to me as a citizen. Speaking of public hearings, last night before this committee there was a public hearing to expand access to healthcare for 90,000 of my neighbors. And I watched that public hearing from the comfort of my couch. This is actually the first time that I've come down to speak to my senators. And that LRCA was brought here because for eight years the Nebraska State Legislature has not had the political will to do, in my opinion, the right thing. And I believe that the impetus behind LB891 is another very similar instance where a problem has been going on for nearly a decade and the people who are in charge, who have the power to do the right thing, will not do it. In my family, we offer thanks before we have a meal. If

someone were to watch this process, they would probably call it a prayer. We close it with the words "in Jesus' name" and I think an outside observer watching us do this would consider us to be Christians. For seven years I've worshiped with Southern Baptists here in the city of Lincoln. I have love for those people as creatures made in the image of God. As I would say, my LBGTQ brothers and sisters are creatures made in the image of God. I specifically remember the public hearing for the current Chief Medical Officer which was before this committee. I believe it was in 2016. And I remember specifically this issue of codes of conduct and acceptance of DSM current versions, of being accepted by DHHS being an issue in that public hearing. I remember when this committee forwarded that recommendation to the full body. I remember Senator Chambers at length put comments in the record dealing with the impetus behind why LB891 is here on your desk. At that time, Senator Krist, who I believe the record will show is a Catholic and I believe the record will also show that on this specific thing, the codes of conduct, is an issue where he disagrees with the Nebraska Catholic Conference. If you want to call me a Christian, I would throw myself behind Senator Krist. I have respect for religious beliefs, but I think that this specific thing, I don't think it's about religion. I think it's about politics. And I have become very frustrated in the last two years watching this body and watching the national discussion, of seeing how religion can be politicized. And so I would simply come here and ask you to do whatever you can to stop that from happening because it does two things. It gets in the way of people who profess faith. It gets in our way of doing the right thing, which is serving our neighbors, sticking up for marginalized communities. And two, it breeds hatred and discontent, I think needlessly. And with that, I thank you very much for listening to me and I'd be happy to answer any questions. [LB891]

SENATOR RIEPE: Thank you. Your timing is impeccable. Are there questions from the committee? Seeing none, we thank you very much for being here today. We know you waited. Additional? Senator, welcome. [LB891]

DANIELLE CONRAD: (Exhibit 12) Hi. Good afternoon. Hi. My name is Danielle Conrad; it's D-a-n-i-e-l-l-e, Conrad, C-o-n-r-a-d. I'm here today on behalf of the ACLU of Nebraska. Initially we want to extend our gratitude to Senator Pansing Brooks and her impressive list of cosponsors for her important leadership on this important legislation. I've had a page take a wraparound, our written comments, and I know it's already getting late in the day and you have additional work before you as you come to the end of your committee hearings this session, so congratulations on that feat almost. So not to belabor the point, you have the written testimony that provides some policy and legal framework to help enrich your dialogue and consideration of this issue. But I just want to put a few top lines of our position on the record and before you today. There's well over 60,000, tens of thousands of our Nebraska neighbors who are LGBT who live in Nebraska, spanning from Omaha to Scottsbluff and every community in between. They pay taxes, they serve in the military, they contribute to their communities, they attend church, and they raise families, and they shouldn't be treated as second-class citizens when they seek to access critical,

life-saving mental healthcare, and that's what the status quo is today and that's what the status quo has been for almost a decade. And that's why Senator Pansing Brooks has taken this important proposal forward to the legislative level to say, no more, they haven't been able to work it out on the rules and regs side, so we're going to come in and we're going to address it through state law. And the state law isn't specific to the referral issue which they're currently hung up on, I think, for a variety of reasons. One is you've already heard a little bit about the experience of those who are serving on those public health boards, about how the ball gets moved and moved and moved and moved every time the issues are presented. Now it's referrals today, but it's been other issues along the way and in this very long and very painful journey for all stakeholders involved with deeply held perspectives across the political spectrum. Additionally, it's very simple in its approach and it says you shall not discriminate when you promulgate these rules and regulations, you shall be consistent with the professional codes and the professional codes of ethics so that we don't put our hardworking medical professionals in an untenable position when we're asking them to have different standards for their professional ethics and different standards for their state license on critical issues about the provision of care. I think the other thing that we want to really impress upon you, from our perspective, is that we completely understand, respect, appreciate, and devote our resources to the strong support for freedom of religion grounded in the First Amendment very, very clearly through both the free exercise clause and the establishment clause and those important issues that come out. But case after case after case and issue after issue after issue surrounding these intersections between religious freedom and nondiscrimination have all thus far come down on the side of the fact that having a deeply held religious belief does not give you a license to discriminate or harm others. And I want to leave it there because that's what the status quo is afforded today is...it afforded a license to discriminate that's rooted in deeply held religious beliefs but that's hurting our fellow Nebraskans who are seeking critical lifesaving care. And I think that it goes without saying. Other testifiers have done a tremendous job of laying out the actual harms here, but there are significant health disparities for our LGBTQ neighbors and they have a great need for this care. And how many times do they have to be turned down and restigmatized when they seek that care before we have tragic outcomes? And I think it's important that we take politics out of it. I think that we can have different points of view about these issues but I think it's fair to say that no one should be discriminated against, particularly in their doctors' offices and their mental healthcare providers' offices, simply because of who they are and who they love. And that's what happening today and that hurts us all, not just those in the LGBTQ community. So thank you so much for your time and attention. Thank you for your service. I'm happy to answer questions... [LB891]

SENATOR RIEPE: Thank you. Thank you for being here. [LB891]

DANIELLE CONRAD: ...or otherwise let you continue with the hearing. [LB891]

SENATOR RIEPE: Let's see if we have some questions. [LB891]

DANIELLE CONRAD: Okay. Thank you. [LB891]

SENATOR RIEPE: You must have done a really good job. [LB891]

DANIELLE CONRAD: I'll take it with that and now I get to head to the Riley Elementary Science Fair, which I'm real excited about. [LB891]

SENATOR RIEPE: Have fun. Additional proponents, please. [LB891]

JOHN SHEEHAN: Good afternoon, Senator Riepe, members of the committee. I am John Sheehan, J-o-h-n S-h-e-e-h-a-n. I live in Bellevue and I'm a proud constituent of Senator Crawford. I'm a retired hospital administrator. I am a life... [LB891]

SENATOR RIEPE: We won't hold that against you. [LB891]

JOHN SHEEHAN: You won't hold that against me. I'm a life fellow in the American College of Healthcare Executives. I am board certified in healthcare management and I have 40 years' experience. Most recently I was director of the Douglas County Community Mental Health Center in Omaha before I retired. Before that, I spent 27 years in the Air Force as a hospital administrator. As we've been talking this afternoon, I think the important point that's being made is there needs to be an appropriate professional referral if you're not going to provide the care yourself. And let me give you three examples of what an appropriate professional referral looks like. Number one, when I was at Douglas County we had a young woman come in and say, you're a hospital, I'm pregnant, I'm here to deliver my kid, and we said, sorry, we're a psychiatric hospital, we don't deliver babies here but, according to EMTALA, we will make sure that we refer you to an appropriate facility who has the capability to provide that service and we'll have a person-to-person contact from the sending facility to the receiving facility, make sure there is an accepting provider, and we'll provide transportation for you. Now I would submit to you that that's the gold standard of what a professional referral looks like. Granted, not every referral requires that level of intervention. When I was in the military we had several providers that were...that had moral compunction with doing sterilization procedures, so we could not, and did not, it was not appropriate for us to order them to accomplish those procedures because it was against their conscience, and that was okay but it was up to the provider to refer that patient to someone who could provide the service that they needed because that was an authorized service for that individual. So if someone isn't going to do it because of their religious belief, they have to provide someone else who will do that. Example number three is last summer I am treated at Ehrling Bergquist Hospital at Offutt and I needed a cardiology consult. They don't have a cardiologist at Offutt, so they didn't give me the phone book and say here's all the cardiologists in Omaha, go find one. They gave me a list of 15 cardiologists that were competent and capable

at providing the test that I need done. So it's not a matter of giving somebody a telephone book. It's a matter of making the referral, giving specific individuals who are known to provide the service that you need. Now I'm here because of the ethics of my professional organization, the American College of Healthcare Executives, which says the fundamental objectives of the healthcare management profession are to maintain or enhance the overall quality of life, dignity and well-being of every individual needing healthcare service and to create an equitable, accessible, effective, safe, and efficient healthcare system. In organizations that deliver healthcare services, they must work to safeguard and foster the rights, interests, and prerogatives of patients or others served. And here's the real key. The role of moral advocate requires that healthcare executives take actions necessary to promote such rights, interests, and prerogatives. So I'm here today to say we need this nondiscrimination clause to uphold my code of ethics from the American College of Healthcare Executives. Now I took the liberty also of copying the code of ethics from the American Psychological Association. By the way, I'm not a psychologist. I'm a hospital administrator. But in my whole career, I had psychologists on my staff, so I'm well familiar with what they do. The guidelines, the code of ethics for the American Psychological Association says psychologists consult with, refer to, or cooperate with other professionals and institutions to the extent needed to serve the best interest of those whom they work. And just merely saying I'm not going to treat you, you're out of here, that's not serving the best interest of people that they work with. Psychologists recognize that fairness and justice entitle all persons to access to and benefit from the contributions of psychology and to equal quality in the processes, procedures, and services being conducted by psychologists. And finally, psychologists respect the dignity and work of all people. Psychologists are aware of and respect cultural, individual, and role differences, including those based on age, gender, gender identity, race, ethnicity, culture, national origin, religion, sexual orientation, disability, language, and socioeconomic status and consider these factors when working with members of these groups. And again, the key... [LB891]

SENATOR RIEPE: Sir, your red light is on. [LB891]

JOHN SHEEHAN: Can I take one minute? [LB891]

SENATOR RIEPE: Okay. [LB891]

JOHN SHEEHAN: Psychologists try to eliminate the effect on their work of biases based on these factors and they do not knowingly participate or condone activities of others based upon such prejudices. Thank you for your support of LB891. [LB891]

SENATOR RIEPE: Okay. Are there questions from the committee? [LB891]

SENATOR CRAWFORD: Very short. [LB891]

SENATOR RIEPE: Senator Crawford. [LB891]

SENATOR CRAWFORD: Thank you. Would you send us links to those two documents? That looks like a different code of ethics document than we have in front of us. If you'll send that the committee or send it to me and I'll forward it to the committee. [LB891]

JOHN SHEEHAN: Okay. I will do that. [LB891]

SENATOR CRAWFORD: Okay. Thank you. [LB891]

JOHN SHEEHAN: I will do that. [LB891]

SENATOR RIEPE: I have a copy of that at home. My question is, how do you feel about CHI having to do an abortion referral? You were in the military. That's a different...whole different... [LB891]

JOHN SHEEHAN: Yeah, that was...because, see, abortion was not an authorized service for our patients and so we wouldn't refer somebody for that. Well, we wouldn't refer somebody for that service and have it paid for by the government. An ethical person would say, we can't do that service but there's a provider here, Dr. So-and-so, who will help you with that and you can go see him. [LB891]

SENATOR RIEPE: Thank you. Okay. I'm going to take that as... [LB891]

JOHN SHEEHAN: So there's a warm hand-off. It's not a, you know, here's a list. [LB891]

SENATOR RIEPE: I'm going to take that as an opinion, okay? Any other questions? Hearing none, thank you very much. [LB891]

JOHN SHEEHAN: Thank you. [LB891]

SENATOR RIEPE: Additional proponents, please. Seeing none, are there any opponents? Welcome, sir. If you'd be kind enough to state your name and spell it for us, please. You've been through this drill. [LB891]

TOM VENZOR: (Exhibit 13) Good afternoon, Chairman Riepe and members of the Health and Human Services Committee. My name is Tom Venzor, T-o-m V-e-n-z-o-r. I'm the executive director of the Nebraska Catholic Conference, which represents the mutual public policy interests of the three Catholic bishops serving in Nebraska. The Catholic church agrees that no one should be unjustly discriminated against because of who they are. Everyone has inherent dignity and deserves to be treated as a child of God. Prohibiting discrimination on the basis of sexual orientation and gender identity, as LB891 seeks to do with regard to the practice of psychology, applies not just to discrimination based on someone's sexual preference or gender identity, but also to decisions not to participate in another person's same-sex relationships or gender decisions. The latter is not unjust discrimination but concerns a provider's professional judgment and/or sincerely held beliefs, sincerely held faith beliefs that same-sex relationships or gender transition services are not beneficial to the patient's overall mental health. As the U.S. Supreme Court stated in its decision in Obergefell v. Hodges, the traditional view on marriage is by its nature a gender-differentiated union of a man and woman. This view long has been held and continues to be held in good faith by reasonable and sincere people here and throughout the world, yet LB891 treats differing views on medically, morally, and socially contentious issues like the nature of marriage and human sexuality flippantly, disallowing any divergence of a belief or action. However, as one state court has recognized, compelled professional speech, which LB891 constitutes, on issues at the center of a national public debate is particularly suspect for the purposes of First Amendment free speech analysis. Or as one federal circuit court has stated: Tolerance is a two-way street; otherwise, the rule against discrimination mandates orthodoxy, not antidiscrimination. But LB891, which claims to create tolerance and diversity, is, in fact, the imposition of the heavy hand of government on faith-based providers who hold particular beliefs on marriage and human sexuality. While the government may attempt to create sexual orientation and gender identity nondiscrimination laws, these laws must be balanced against the timeless liberty interests such as the First Amendment rights. Consider, for example, Julea Ward. Julea was expelled from her graduate counseling program at Eastern Michigan University for attempting to refer rather than counsel a gay client seeking affirmance of a same-sex relationship. The court discussed the school's own special speech interest in implementing an academic curriculum in accord with the national association's standards of practice. But the court still ruled that the curriculum is not an excuse for discrimination against a student's religious views. Such conduct likely violated the free speech clause of the U.S. Constitution according to the Sixth Circuit Court of Appeals. The court also held that EMU likely violated Julea's free exercise of religion rights under the First Amendment since the referral policy of the university allowed for various exceptions but made no exception for Julea's faith-held beliefs on marriage. In short, to sum up what has been said so far, creating special legal treatment for additional protected classes for sexual orientation and gender identity will inevitably have the challenge of meeting other competing demands of state, federal, and constitutional law, as has been demonstrated. Putting the legalities aside for a moment, this committee must make another critical threshold policy decision. The policy decision is this: Will the state force certain

psychologists to decide between following their conscience, perhaps informed by faith or no faith at all, or leave the profession? In a recent survey of nearly 3,000 members of faith-based medical associations, 91 percent of those responding said they would rather stop practicing medicine altogether than be forced to violate their conscience. Furthermore, similar nondiscrimination laws based on sexual orientation and gender identity have been implemented in other states which have forcibly closed the doors of Catholic social service providers in Michigan, Illinois, Massachusetts, San Francisco, and Washington, D.C. These closings all tell a story. When you enact laws that outlaw providers from exercising their traditional beliefs about marriage, you effectively force them out of business and reduce access to care to those who most need it. But it seems that the introducing senator's intent is to do this very thing. Shortly after the legislation's introduction, the Lincoln Journal Star reported that Senator Pansing Brooks said if psychologists have such fervently held, particularly tender beliefs that they couldn't possibly refer a person to another psychologist, maybe they should not be practicing in that area. Such a suggestion is deeply disturbing and constitutionally problematic to the extent that it provides evidence of targeting certain providers, namely, those with conscientious or faith-held beliefs on marriage and human sexuality. In Nebraska we can do better than tell our faith-based mental health providers to quit their profession and vocation of healing minds, hearts, and souls. In short, LB891 is a solution in search of a problem. It undermines the ability of faith-based psychologists the freedom to serve the vulnerable populations of clients they assist on a daily basis to create a healthier Nebraska. We urge this committee to indefinitely postpone LB891. Thank you for your time and consideration and happy to take questions. [LB891]

SENATOR RIEPE: Okay. Thank you very much. Senator Crawford, please. [LB891]

SENATOR CRAWFORD: Thank you. [LB891]

TOM VENZOR: Yep. [LB891]

SENATOR CRAWFORD: Thank you. Welcome. I appreciate you being here to answer questions and express your perspective on this issue. I guess I'm going to start with the first footnote because that's actually part of what I wanted to really bring out and talk about in terms of the Catholic values. So the Catholic...the Catechism of the Catholic Church, paragraph 2358, as you cite here, as I brought with me, is part of the catechism talking about homosexuality. And it says that homosexual persons "must be accepted with respect, compassion, and sensitivity. Every sign of unjust discrimination in their regard should be avoided. These persons," talking about people with homosexual orientation, "are called to fulfill God's will in their lives and, if they are Christians, to unite to the sacrifice of the Lord's Cross the difficulties they...encounter from their condition." We are...so the very Catholic principle says, "Every sign of unjust discrimination in their regard should be avoided." If someone comes to me as a counselor and I'm, let's just say, a

psychologist that focuses on marriage counseling--so I'll go right to that, marriage counseling--and I have deeply held religious beliefs, it looks to me like the catechism still says I'm not supposed to discriminate against a homosexual Christian who comes into my office and to say...and again, to recognize I'm maybe not the best...I'm probably not the person to provide that counseling to them because it just doesn't match my beliefs. And I want to emphasize that while your testimony at parts talks about forcing people to provide service, that's not the issue here. The issue is forcing them to provide a referral, force...so it's making sure that they have that referral so that they get care. So if I am...again, so I am a Catholic marriage counselor, which is a psychologist, and someone, a homosexual, comes into me, talks about I want some counseling and I have a gay partner and we need help, and to unjustly discriminate against them would be to not treat them the way you might treat someone else that comes in and needs help and you know you're not the person to serve them. So it seems to me that...so help me understand how not providing compassion...says we're supposed to be providing "respect, compassion, and sensitivity" to people of the homosexual orientation. How is appropriate referral not a fulfillment of the catechism which says to treat them with "respect, compassion, and sensitivity"? [LB891]

TOM VENZOR: Um-hum, yeah. Thank you for that question. There’s a lot in it and that's good because it's...this is...as we've seen, it's not necessarily an easy issue or cut and dry. If it were, I don't think we'd be here today. So if I can start just for one brief moment to just be kind of philosophical here, in the idea here of referral in service and kind of making a distinction between providing them services and providing a referral, certainly I understand the distinction there, but we also have to remember that providing a referral is also a human activity. It's a human action, so...and somebody who is a psychologist or--I'll keep it here to mental health issues--a psychologist or a licensed mental healthcare practitioner, that referral is part of their human action. And so for them that's a moral action. Especially if they're a faith-based provider, that might even be a spiritual or theological act for them. So in that regard, they also have to act in a way that comports and behaves with their own faith beliefs. And so the idea here, and to be clear, is so if we have this situation where we would...and if we have the situation where we had, you know, a client who is same-sex attracted, comes in with their same-sex partner and they seek, you know, sort of relationship-enhancement therapy, of course, our Catholic counselors would not be able to handle that. Notably, they also would not be able to refer directly for that service because, for them, that would constitute a cooperation with the very act. So you'd be asking them to refer for something they themselves wouldn't do. And for that provider, that would be problematic because they can't refer on for something they themselves wouldn't do. And I think maybe as a thought exercise, I think we can all find that thing that we don't really like or we don't...morally we find problematic or we have certain beliefs about it and then the question would be, you know, if you were asked to do that and you couldn't do it, you know, would it violate your faith or your conscientious beliefs about sending them to the very person who could help them with that? And there might...we might come up with different answers on that. But the point here for me to identify here is that we have psychologists, those who work for

Catholic Social Services, others who are faith-based providers who may not work for Catholic Social Services, they would have an issue there with that direct referral because they cannot refer for something they themselves cannot do. And so to take it back to this issue of respect, compassion, and sensitivity, obviously for a Catholic that idea of respect, compassion, and sensitivity also goes down to core beliefs about marriage and human sexuality. In a certain sense, it wouldn't be compassionate to pass them along for services for something that (a) in their professional judgment they may not think is in the best interest of the client; and then (b) as a faith-based provider they don't see as good for their psychological or spiritual health. And so you have to also read that information in light of the fullness of the Catholic church's teaching, which I think is very critical here. And I should, and if I could wax a little bit longer on this, and I think I need to identify something that's been said multiple times today and in the past, and Father Kubat will follow me. Father Kubat is the executive director of Catholic Social Services. He'll talk about this a little bit more. We also have Catholic Social Services has an arm of charitable outreach that does counseling services. Their executive director couldn't make it today because she had patients and clients to take care of. But Father Kubat will also talk about some of these things from the angle of Catholic Social Services. But what I want to say is that there's this idea somehow that our faith-based providers are going to be engaged in patient dumping or patient abandonment or kicking them to the curb or giving them...there's all sorts of things that have been thrown around here and it needs to be said very directly. Our counselors, to the extent they can provide the services, will help with any number of mental healthcare services they can assist with. Whether it's bipolar disorder, whether it's schizophrenia, whether it's ADHD, whether it's depression, whether it's suicidal ideation, you name it, they will assist with that service even if that...whether that client is heterosexual, whether they're homosexual, whether they're transsexual, you name it, they can assist with those services to the extent that they're obviously competent to do so. And so if any client came to Catholic Social Services, for example, they would be able to assist them with those services even if perhaps they had some other things like relationship counseling that they wanted to pursue. That counselor, that psychologist would be able to serve those issues, like depression or suicidal ideation or whatever might be presented, even though they wouldn't be able to deal with the, you know, relationship counseling. So again, I want to make that very clear because there seems to be this constant idea that is constantly being thrown around here that somehow we're engaged in patient dumping or patient abandonment, and I want to make that very clear on the record because that is a pretty harsh claim to be making against these providers. So I take that back in terms of that's how we would understand that respect, compassion, and sensitivity. And we've also argued that while we couldn't do that direct referral, we could do something if we had to, some sort of general referral. And obviously you've heard a lot of testifiers now talk about what that even means for them in their own profession. [LB891]

SENATOR CRAWFORD: Okay. So let's talk about what kind of referral would be considered ethical to someone in that position you're describing. [LB891]

TOM VENZOR: Um-hum. Yeah, so...finding out where to start here because there's been a lot been said. Basically the position right now that we've been offering is, you know, we've identified that the sexual orientation/gender identity, including that in the rules and regs process, there's a lot of questions there about statutory authority and whether the regulatory board has it or doesn't have it and to what extent they do have it. Even if they wanted to put it in there, again, like I said earlier, when you insert a private association's code of ethics into state law, you have to abide by other competing laws. And so what I'm saying here is to go over to what's an adequate referral. We've argued... [LB891]

SENATOR CRAWFORD: Let me just interrupt there... [LB891]

TOM VENZOR: Yeah, please. [LB891]

SENATOR CRAWFORD: ...because you've introduced the second question, which that is... [LB891]

TOM VENZOR: Yeah. [LB891]

SENATOR CRAWFORD: ... you're talking about introducing a single organization's principles into regulations, is that appropriate by statute. Now our statute lays out the steps for putting these regulations in place and the professional associations were following those steps. So the language that's in the regulations is language that's authorized by the statute because they were following the statutory requirements to put that language in place. And also our statute, as Senator Pansing Brooks said, already authorizes that professionals can be compelled to follow codes of ethics, so it is authorized in our statute. But now I'll let you go back and explain what a professional reference would be. [LB891]

TOM VENZOR: Yeah, correct. Yeah, and again, I...to make a brief statement on that, I mean, there's going to be arguments there about to what extent can you incorporate every aspect of your private association's code of ethics into state law. And then secondarily, when you incorporate those, you now have to balance that out with other competing legal interests. Just because, you know, there is a rule or reg that says you should incorporate these, doesn't all of a sudden mean that it supersedes every other legal interest and protection on the books. So now, to get to the referral issue, that's really...the way I've seen this now in my about two-and-a-half years at the conference, and so that means this issue has preceded me by several years, the way I've seen the issue here is that the impasse really comes down to the referral issue on the side of the Catholic Conference, what is an adequate referral, what's an appropriate referral. And as I think you've heard from the testimony that preceded me on the proponent side, it's not real clear what it is and it seems to be a case-by-case standard depending on what the situation is. And I think that

becomes some of the precise issue here. You know, you've had some proponents talk about that the gold standard is a direct referral. Okay, does that mean that a direct referral always has to be provided for in every situation regardless of how much knowledge or information you have? We've come to argue that a general referral, if there was some sort of accommodation for that sort of general referral that we have situations...the same-sex relationship counseling situation right, if that couple comes to the Catholic Social Services, is engaged in a, you know, patient-client relationship and eventually that issue is presented and says, I'd really like help with this. Well, I'm sorry I can't quite help you with this. Well, can you tell me who can provide it for me? No, I can't, because of my professional judgment and my faith-held beliefs, I don't think that's in your best interest. Now, well, then who should I go to? Well, we've argued that if there was something...if there was standards in place, if there were some sort of accommodation language, that it would allow us to make some sort of general referral, you know, to a list, and that be... [LB891]

SENATOR CRAWFORD: So what about if, as Senator Pansing Brooks said, what about if HHS has a Web site that has all the psychologists listed and those who are willing to treat people who have...people with different gender orientations or identities are listed with an asterisk and you tell the person that Web site...I mean, that still seems a little general but okay. So, I mean, is that something that would still be...would that be seen as ethical? [LB891]

TOM VENZOR: I mean, yeah, obviously, we've have to talk through the details of that in terms of, hey, there's this list, it's a list of general providers on the Web site, there's all sorts of asterisks that mark the varying areas of expertise whether it's same-sex marriage issues or whether it's ADHD issues. I don't really know. I mean, if there was sort of delineations in there, it would be like here's your kind of one-stop shop for providers and I think... [LB891]

SENATOR CRAWFORD: Okay, and what you wanted for general referral is not any reference to who can provide care for someone with a homosexual orientation because for you is it true that the Catholic principle you're concerned about is cooperation? Is that true? [LB891]

TOM VENZOR: Cooperation is the issue in there. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

TOM VENZOR: And so again, what you have going on here is we have offered something of a general referral type of accommodation. [LB891]

SENATOR CRAWFORD: And that is what, exactly? What's a general referral? [LB891]

TOM VENZOR: Excuse me? [LB891]

SENATOR CRAWFORD: What is a general...you said we have offered a general referral. What is a general referral? [LB891]

TOM VENZOR: So we've discussed one example here would be, yeah, you know, let's say we're in Lincoln, for example. The provider gets the situation and then the provider could say, hey, you know, I'm not suited for this type of therapy,... [LB891]

SENATOR CRAWFORD: Okay. [LB891]

TOM VENZOR: ...here's a list of providers in Lincoln that are psychologists, and you could use that list and then find... [LB891]

SENATOR CRAWFORD: And that's as far as you feel your ethics would allow? A general referral means a list of all psychologists who provide marriage counseling in Lincoln. [LB891]

TOM VENZOR: I think if you're trying to get me to say what specifically at this very moment I would agree to, I'm not going to go down that road. I'm giving... [LB891]

SENATOR CRAWFORD: I'm just trying to understand where the...how the ethical principle of cooperation limits you or how you would say that's like in... [LB891]

TOM VENZOR: Sure. [LB891]

SENATOR CRAWFORD: ...this is my ethical principle, is cooperation, here's as far as I can go and not violate my ethical principle of cooperation. [LB891]

TOM VENZOR: Well, as you would know, an ethical principle always has to be accompanied by a pretty specific fact pattern for...to figure out how that principle would play out in reality. [LB891]

SENATOR CRAWFORD: Okay. Right, and that's when I gave you a fact pattern of... [LB891]

TOM VENZOR: Yeah. [LB891]

SENATOR CRAWFORD: ...a person comes into your office for marriage counseling and they have homosexual orientation and they want marriage counseling for their gay marriage. That's the fact pattern. [LB891]

TOM VENZOR: Um-hum, yeah, and I've provided you an example of something that would probably be acceptable in terms of like, if let's say you were working in the city of Lincoln, you know, here's a list of area providers. [LB891]

SENATOR CRAWFORD: And it would be all the marriage counselors. [LB891]

TOM VENZOR: What's that? [LB891]

SENATOR CRAWFORD: It would be all marriage counselors. [LB891]

TOM VENZOR: Yeah, it could. It could be a list of all marriage counselors. [LB891]

SENATOR CRAWFORD: And then I say to you, can you tell me who would actually care about or can you tell me who would actually be willing to serve a gay marriage, of someone who was in a gay marriage for marriage counseling, can you tell me which of these providers to call first or which of these providers would be able to help me? [LB891]

TOM VENZOR: I think that psychologists at that point, if you're asking can you tell me specifically where I can go to, then you're getting into more of a direct referral in the cooperation that they could engage with. [LB891]

SENATOR CRAWFORD: Okay. Okay. And so another question: Catholic ethical principles, cooperation is a Catholic ethical principle. Right? [LB891]

TOM VENZOR: It's a broad moral principle not just... [LB891]

SENATOR CRAWFORD: Okay. [LB891]

TOM VENZOR: It's a...you find that... [LB891]

SENATOR CRAWFORD: Right. [LB891]

TOM VENZOR: ...in healthcare ethics and all sorts of other areas, um-hum. [LB891]

SENATOR CRAWFORD: Okay. All right. Now as with any ethical principle, we have to look at, balance it with other ethical principles as well. And isn't it true that Catholic ethics, including Catholic medical ethics, recognizes the need to balance cooperation with other principles such as duress, necessity, and gravity? It's not cooperation like is everything. Cooperation is one of the ethical principles that we put on balance with the other ethical principles, and cooperation itself, specifically, has to be weighed with necessity, gravity, duress. I'm going to get away from duress now. I'm just going to say necessity and gravity. You have someone...let's go away from marriage counseling. [LB891]

TOM VENZOR: Sure, uh-huh. [LB891]

SENATOR CRAWFORD: Well, let's stay with marriage counseling since we're there, right? [LB891]

TOM VENZOR: Wherever you want to go. [LB891]

SENATOR CRAWFORD: And someone is feeling suicidal, because they're like I, you know, I entered this marriage and I just am not sure and I don't know if I can go on, then you've got cooperation concerns but then you've got gravity and necessity concerns, as well. Surely, as a Catholic, as a Christian with compassion, you have those concerns that you're balancing with cooperation. [LB891]

TOM VENZOR: Um-hum. So let me touch on your fact pattern for...to begin with, because you've thrown in the issue of suicidal ideation into that fact pattern. [LB891]

SENATOR CRAWFORD: Yes. [LB891]

TOM VENZOR: And what I had said earlier is that our providers would be able to assist and work and therapeutically counsel that individual on their suicidal ideation issues. [LB891]

SENATOR CRAWFORD: Even if the suicidal ideation is about sexual orientation or gender identity? [LB891]

TOM VENZOR: So in talking with, for example, I was talking with the executive or the director of the counseling center here at Catholic Social Services, and I asked her basically something along those lines as a sort of hypothetical... [LB891]

SENATOR CRAWFORD: Right. [LB891]

TOM VENZOR: ...what would you do in that situation. She said she would obviously explore what is going on there with that client to find out what exactly the issues are, to find out is that really the issue here at the crux of your suicidal ideation, does it really have to do with your sexuality or does it have to do with some other issue, etcetera. They would be exploring that realm. I'm sure if it came down to it, that this individual or this client, the patient, excuse me, needed assistance with basically affirming their, you know, same-sex identity, their same-sex...the way they...their sexual orientation, excuse me, then you're going to be getting into the issue of marriage and human sexuality issues and at that point that psychologist is going to have to make a break. Now, notably, if there are suicidal ideation issues there, they are not going to abandon that patient. They're going to work with that patient to make sure that they can deal with it. And if for some reason they can't deal with it, they will refer for that suicidal ideation to make sure that that individual gets into the hands of somebody who can assist them. [LB891]

SENATOR CRAWFORD: All right. And so if the code of ethics...we've heard from everyone else the code of ethics includes attention to referrals and allowing professionals to do referrals in a professional way. People with deeply held religious beliefs would be attentive to this material cooperation principle you're talking about, but also Catholics support principle of human dignity and sanctity of life and so you have all these other principles that you're balancing with cooperation as well. [LB891]

TOM VENZOR: Yeah, absolutely. [LB891]

SENATOR CRAWFORD: Yeah. [LB891]

TOM VENZOR: And that's what I've been saying here is that, again, if these...if an individual is presenting themselves with any array of mental health issues--again, depression, ADHD, suicidal ideation, you know, go down the list--if we can care for those in our facility, they're going to care for those things out of those fundamental concerns for human dignity, the sanctity of life, the goodness of mental health, all of those things. But again, when you get into this niche area over here on marriage and human sexuality, there is going to be faith-held beliefs of that provider when it comes to whether they will or will not provide that service. Let's use a little bit different example here so we can step out of what can be a very contentious issue on same-sex marriage or gender transition or gender identity issues. Let's say you are a family therapist, a marriage

counseling therapist, and you have a client who comes in and the client, you know, has a wife over here but has decided now that they have a mistress over here and they're feeling a lot of guilt about this relationship over here and that guilt is rooted in all sorts of things, let's say. [LB891]

SENATOR CRAWFORD: Sure. [LB891]

TOM VENZOR: Let's say somebody told them once upon a time it was the wrong thing to do. And they come to you as a provider and they basically say, hey, look, I'm going to quit feeling guilty about this, I want to be able to engage in this relationship without any sort of guilt or problems and maybe my sexual orientation is that I'm polyamorous, I want to engage in multiple relationships at once. Again, that Catholic psychologist should not be expected to assist them with that extramarital affair that they're having, nor should they be expected to then, well, if you can't service that, then you've got to directly refer them to a psychologist who can help them with that extramarital affair because, again, you get into the issue of cooperation. I have a sincerely held religious view on marriage that it's between one man and one woman for life and for the good of children. And this psychological issue that's been presented to me, I can't assist with because it violates my sincerely held religious beliefs; not only that, my professional judgment. I don't think that's good for you and I don't think that's healthy behavior. So again, I put it into a different...I give you a different hypothetical to make it hopefully a little bit less politically divisive to just kind of show what issue we're dealing with here... [LB891]

SENATOR CRAWFORD: Yeah. [LB891]

TOM VENZOR: ...because that would apply in that situation just as much. [LB891]

SENATOR CRAWFORD: Right. [LB891]

TOM VENZOR: Um-hum. [LB891]

SENATOR CRAWFORD: So I hope that as we continue these conversations, you'll be attentive to human dignity and compassion and the required compassion and respect and sensitivity of catechism as we think about how to move forward on this issue. [LB891]

TOM VENZOR: Yeah, and I would say that we have been very attentive to respect, compassion, and sensitivity and human dignity throughout this process, so just to be sure about that, to make sure that the suggestion isn't that we haven't been. [LB891]

SENATOR CRAWFORD: Thank you. [LB891]

SENATOR RIEPE: Okay. [LB891]

TOM VENZOR: Um-hum. Thank you. [LB891]

SENATOR RIEPE: Thank you. Are there more? It's been a good exchange. [LB891]

SENATOR HOWARD: Oh, I have a question. [LB891]

SENATOR RIEPE: Senator Howard. [LB891]

SENATOR HOWARD: Thank you, Senator Riepe. Thank you, Mr. Venzor, for visiting with us today. I'm glad you're here because we missed you on LB787 when our nuns were losing healthcare coverage, but I know that you're working on it and I appreciate that. I apologize. I misspoke. Our nuns have lost healthcare coverage, but I know that you're working on it and I do appreciate it. Just some basic questions: Is it beneficial for us to have no regulations for some of these mental health providers? [LB891]

TOM VENZOR: I'm not quite sure what the question is, if you could, yeah, if you could... [LB891]

SENATOR HOWARD: Well, for LMHPs, they don't really have any right now. Is it beneficial for Nebraskans for them to not have them? [LB891]

TOM VENZOR: Are you...I'm not sure I'm here to answer that policy question in terms of whether we should have certain standards for certain areas of practice. I'm here to speak on behalf of LB891, the scope of what that bill does and does not do. [LB891]

SENATOR HOWARD: Is it beneficial for there to be no regulations or policies? They've been held up, and so I'm trying to decide if there's an overriding policy interest in us having some rules and regs for them or if it's better for us to just stall them out. [LB891]

TOM VENZOR: Yeah, so let me speak generally to that process. And again, a lot of it predates me. When I came on to the Catholic Conference, again, two-and-a-half years ago, this issue was at such a stalemate that I don't...I was attending the Board of Psychology and Board of Mental Health meetings every other month when they had them and really there was very little

discussion on this particular issue, which was the reason I was attending was to, you know, basically find out what the discussion is on the matter and chime in when there was public comment available. My understanding here is, you know, there has been a lot of...I think there's been accusations thrown at the conference, as well, that somehow, you know, we're the sole perpetrator here in holding up the entire rules and regs process and, I mean, I guess one could...I guess that could be a matter of perspective, merely, because one could say that it's the other side holding it up because we have offered general referral accommodation language that the other side has not agreed to. And why? Because I think what you heard from the proponents earlier was something along the lines of they don't want to codify anything very specific because they want to leave that up to a case-by-case basis. And when you leave it up to a case-by-case basis, you're going to create a lot of ambiguity and you're going to create problems for a mental health provider, a psychologist who is faith based or, for example, practicing at Catholic Social Services. So again, I think there's a little bit of perspective here as to, you know, whose fault is it or whose fault is it not. In addition, you know, I haven't suggested this out loud at one of these meetings and because I haven't chimed in yet, but an idea that came to me recently was if this particular issue is so contentious and it's really the thing holding up the regs, one suggestion would be why not put...bracket that issue, put it to the side, pass everything else that they're trying to update in the regulatory process so that the issue can be taken care of, and then come back and revisit this specific issue. To me that would be kind of a way around the obstacle and a way to negotiate at least through some of this matter. That's just one idea. I just propose it today so if anybody wants to discuss it later, we can. But again, and this is the problem here, is you have a real impasse and a real stalemate and I'm not here to say whose fault is it one way or the other. I know there's been accusations on that front, so I guess that's what I would say to that matter. I understand that there's a lot of other things that need to be updated and on those matters the Catholic Conference doesn't have an opinion, one way or the other, how those updates of the regs and the rules go. [LB891]

SENATOR HOWARD: Are there other conscience clauses in our regulations for medical providers? [LB891]

TOM VENZOR: Yeah, that's a great question. So for example, let's go to medical providers more generally, which I think is what your question was asking, and let's go into the context of abortion. So on the issue of abortion, both at the federal level and at the state level, there is a number of different, and I can get you the document that shows, that outlines all of these protections, but you have a number of different protections on the area of abortion for medical doctors and medical providers about whether they have to perform an abortion and, if not, whether they would have to directly refer for an abortion, and there are protections for those medical providers that they do not have to refer for an abortion. And so this idea of referral and protecting the conscience of a conscientious objector or whatever you want to call it or somebody of faith or somebody of no faith who says the dignity of the human child begins at the

moment of conception and I can't engage in an activity that takes their unborn life, I can't engage in that nor can I say when they come to me as a doctor, hypothetically, because I'm not unless...I'm a juris doctor, if that counts, but--it's a lawyer joke-but, for example, in that situation, if you have somebody come to the doctor and says, you know, doctor, I want an abortion, doctor says, I'm sorry, I don't think that's...I can't do that, I don't think it's in your best interest, also I have, you know, conscience beliefs or faith beliefs on the issue of abortion, well, can you tell me where to go? That provider is not obligated to now direct them to LeRoy Carhart. So they have protections in that area of abortion, for example. And I think now the question here for...let's...so we do know that there's areas like that where you provide protections for faith-based providers. We know that we've seen this issue come up. This is not medical but we've seen that issue come up in the foster care/adoption agency realm in terms of faith-based providers of adoption and foster care services: Should they have to place with certain families or not if they have sincerely held beliefs on the issue of marriage? Now I would bring it back to the mental health issue and there's been a lot of question of, well, what are they doing across the country, how is this issue going? And obviously, while that's always a relevant analysis that you want to do--what's kind of...what's the comparative analysis, what are other states doing that can inform us on what we should do, I think the crux issue here, especially as we've been studying this issue, is there's a real movement in the mental health profession, whether it's the American Psychological Association, whether it's the American Association for like Marriage and Family Therapists, whether it's the American Counseling Association, there's a movement in terms of having to nix the interest of faith-based providers and people of conscience and they will say, if you can't provide it, tough luck, you need to directly refer. And that's the standard of the industry, and there's a push for that and we see that on the abortion issue. We see that now as the end-of-life issue, on end-of-life/assisted suicide issue. We see that movement trying to force certain providers to do things that they in good conscience could not do themselves, nor would they directly refer for that very thing, or even, in some of those instances, generally refer for those services. So I say that. That's just kind of to give you a layout of some of the things. And we're particularly concerned about what it means to refer if there's referral language that's accepted. And again, as I listened to the proponents, what is a referral, what's an appropriate referral, you heard all sorts of things and all of them I think hinged on case-by-case analysis. So now we're going to put the faith-held beliefs of a particular Catholic psychologist and they're going to...whatever they did or did not do in that moment is now going to be controlled by the Board of Psychology or the licensing board or whoever that might be to determine whether they did the right thing or not. That's... [LB891]

SENATOR HOWARD: Thank you, Mr. Venzor. [LB891]

TOM VENZOR: Yeah, thank you. [LB891]

SENATOR HOWARD: I just wanted to ask another question. So your...so you say that there's no patient dumping so they're still offering support for other issues. So like if you had bipolar or if you had depression, how...and the issue here is that when there's a referral you feel that there is complicity with the...in the act of referral. But how is there lack of complicity in continuing to provide care? [LB891]

TOM VENZOR: Because what they're providing care for, so if we go back to kind of the hypothetical we've been using, for the individual who comes in and is having some sort of psychological issue--depression, suicidal ideation, anxiety--but also has issues dealing with, you know, same-sex relationship issues, again the psychologist, their activity is to serve the psychological issues presented insofar as it's depression or anxiety or suicidal ideation. They're serving that particular issue that's been presented. They... [LB891]

SENATOR HOWARD: But not the root causes. [LB891]

TOM VENZOR: You've just assumed that that was the root cause. And so then we get to the issue if, let's say that psychologist was serving that client, they...let's say they were engaged in six counseling sessions and they've...and as they were kind of going through, you know, all of their psychological techniques and training and evaluations, they come to find out that the root cause or what this person is presenting with stems in some sort of same-sex relationship issue. I think at that point that Catholic psychologist would not be able to assist in furthering that same-sex relationship issue and at that point they would make sure that they're not harmed insofar as it deals with suicidal ideation or the depression or whatever, But they wouldn't be able to service this particular issue over here, nor would they be able to directly refer for that issue, although they could refer over here for the, you know, the suicidal ideation or the depression. [LB891]

SENATOR HOWARD: So help me understand sort of the priorities within Catholic social teaching. So is it marriage first and then life or how...what's the priority list? [LB891]

TOM VENZOR: Um-hum. I don't...I'm not sure how to... [LB891]

SENATOR HOWARD: Does it start with human dignity or does it go (inaudible)? [LB891]

TOM VENZOR: Well, I mean, yeah, I mean the right to life I guess is fundamental because without the right to life, you know, we're not here to begin with, so one is owed that right in justice and in charity. But as well as that, boy, you're asking me to talk about all of Catholic social teaching here. You got other principles here, yeah, of human dignity, of the family, of marriage; you have other issues related to education. Those are high priorities. Religious liberty

is a highly cherished component of Catholic social teaching. You have other components of faithful citizenship, you know, being engaged actively in your community, in the politics, in the social aspects. I mean I guess I could provide a list. I could also...yeah, I mean, I could provide a list. I could probably get you a better list of that if I went back to the compendium of Catholic social teaching, which there is one of those and it's kind of a condensed version if you consider a few hundred pages condensed but... [LB891]

SENATOR HOWARD: I would love a list. I would appreciate that. [LB891]

TOM VENZOR: Yeah, I can get you that, yeah, um-hum. [LB891]

SENATOR HOWARD: And I've always appreciated your...you are a very good lawyer and you know a lot about the First Amendment, which is welcome. So will you walk me through Cutter v. Wilkinson and the findings there? [LB891]

TOM VENZOR: Excuse me, which case? [LB891]

SENATOR HOWARD: Cutter v. Wilkinson. And I apologize I'm using the ACLU, but I'll give you some tips. [LB891]

TOM VENZOR: Yeah, I... [LB891]

SENATOR HOWARD: So, "courts must take adequate account of the burdens of a requested religious accommodation may impose on nonbeneficiaries." And when we consider a nonbeneficiary, a mental health patient has significant rights that will be burdened. And then that goes into Employment Division v. Smith (sic--Employment Division, Department of Human Resources of Oregon v. Smith). Both of those are First Amendment cases. [LB891]

TOM VENZOR: Yeah, I'll plead ignorance. I don't know Cutter v. Wilkinson, and I don't know it off the top of my head, and I don't have that document in front of me, so... [LB891]

SENATOR HOWARD: That's okay. [LB891]

TOM VENZOR: ...I just...I simply couldn't speak to it, but I certainly would be happy to research that case more and have a discussion on it. [LB891]

SENATOR HOWARD: Sure. And I'll...so just to help you when you are researching, so it says: The First Amendment of the Constitution insists that religious people should be allowed to practice their religion without any barrier. But an exemption from a neutral law that applies to everyone is not a barrier to religious practice. The United States Supreme Court has said, 'Courts must take adequate account of the burdens a requested [religious] accommodation may impose on nonbeneficiaries.'" That's from Cutter. And then, "In other words, the 'nonbeneficiary' or mental health patient has significant rights that will be burdened if we allow the practitioner to assert her religious rights. A law may not intentionally burden a religious practice. For example, the licensing board could not order credential holders to abstain from attending worship services. But generally applicable laws and regulations apply to all, including religious people. A generally applicable law, according to the U.S. Supreme Court, does not violate the Constitution if it is inadvertently encumbering a religious belief." From Employment Division v. Smith. [LB891]

TOM VENZOR: That's very helpful, actually. Thank you for giving me the full quote there. I think...I don't, again, I don't know Cutter v. Wilkinson off the top of my head. But what it sounds like it's doing is basically implementing the holding of the Smith case, and there's a lot of dispute about whether the holding in the Smith case is good constitutional principles when it comes to laws of general applicability. And in fact, after the Smith case, you saw the implementation of religious freedom restoration acts that were signed bipartisan at the federal level in the '90s and were signed by President Bill Clinton, as well, so I will say that I get the issue there when you're talking about laws of general applicability and that those are valid and all providers would have to abide by that and there wouldn't be a First Amendment argument for a faith-based provider. And that's very...that is the current sort of jurisprudence, or legal principle, when it comes to that issue at the Supreme Court level. Nevertheless, you have exceptions to the Smith rule and when you don't have laws that are of general applicability, you run into a lot of troubles. And I mentioned this in my testimony and I think I will mention it again right now because it is...I think it's the just thing to do, but I think in the proponent testimony you heard a lot of targeting of the Nebraska Catholic Conference, Catholic psychologists, and faith-based providers. I can't say for a fact right now, but that sounds like a lot of religious discrimination and I don't know, I don't know what a court would do if they read the transcript from today's hearing, but it runs into a lot of issues as to whether this is really about being neutral and generally applicable. So you have that issue of religious targeting. I think another issue you run into is the issue of whether there's going to be exceptions to when you have to directly refer and when you don't have to directly refer, so I gave an example...actually let me go back to an example that Senator Williams used earlier which was something about, you know, which was rooted in something like in age-based discrimination. What if you were an adolescent psychologist and you had geriatric clients coming to you and you just say, you know, I can't provide you services, my expertise and my competence is in the area of adolescents? You know, well, do you know who I can go to? No, I really don't because, again, my area of expertise is adolescents, it's not geriatrics, I don't really

know who the providers are and, even if I did, I don't know who the good ones are, and so I wouldn't want to send you the wrong person, so I'm sorry I can't provide a direct referral to you right now. If there were some sort of exception for that situation, let's say, but there wasn't an exception for the faith-based provider who, on the issue of marriage or some human sexuality issue, did not receive an exception, then you would no longer have a law that in its effect it is generally neutral or generally applicable and neutral. You'd have a...and this is why I got into it. I don't know if I have it in here, but we have another law that dealt with there's another case basically where the...I think it was a psychologist or a medical doctor--I can't recall specifically and I can get you the case--but basically the policy that was implemented wasn't general and neutrally applicable. They had all sorts of exceptions for different areas. There was an exception for not having to counsel people on assisted suicide. There were some exceptions for not having to counsel on, like, the adultery issue. But there wasn't an exception when it came to the same-sex marriage counseling and that's when you really are going to create First Amendment problems. And so you did cite the general rule. And how it was applied in, you know, that case that you mentioned, I'd have to look more into. But I do know that there's real serious exceptions to that rule. And some of them, I wonder if they're already taking place in this hearing. [LB891]

SENATOR HOWARD: And this is my last one,... [LB891]

TOM VENZOR: Yeah, please, um-hum. [LB891]

SENATOR HOWARD: ...I very much promise that (inaudible). [LB891]

TOM VENZOR: Well, you don't have to promise anything. [LB891]

SENATOR HOWARD: Anyway, so the Catholic teaching that marriage is between a man and a woman, is that from the Bible? [LB891]

TOM VENZOR: Yeah, that's both rooted in scripture and tradition and as a Catholic we would also argue that, you know, to get to the finding, so to speak, that marriage is between one man and one woman and it's for the good...for life and for the good of children, one doesn't have to be Catholic, one doesn't have to be Christian to arrive at that. I mean you could find an atheist who would hold that same belief; you could find people that predate Christianity with that same belief, whether they were of the Jewish faith or whether they were Roman or you name it. There's other societies that have had a similar standard, so. So, yeah, we certainly find it in our theology, in our scripture, and we find it in the tradition of the church and the teaching of the church. But also, you know, there's a great book out there right now called What is Marriage? and it's basically making the argument for what marriage is without any incorporation of any religious arguments or principles or tenets. So again, the answer to that is yes but I would also

make sure I answer that with one can arrive at that conclusion about reality and life without the assistance of faith. [LB891]

SENATOR HOWARD: But we don't think that everything in the Bible is meant to be taken literally. [LB891]

TOM VENZOR: Well, it's...so if you want to get into biblical interpretation, I'd love to because I have a lot of theology and an undergrad in scripture, but, yeah, actually, fundamentally everything is meant to be taken literally. They're words on a page so the word "literally" means letters. But then there's issues of how do you interpret different aspects of scripture? I mean, yeah, we could...we'd be here for a long time if you want to talk about that, yeah, um-hum. [LB891]

SENATOR HOWARD: It's just that this is all old school from when I was in high school. [LB891]

TOM VENZOR: Yeah, sure, uh-huh. [LB891]

SENATOR HOWARD: But, I mean, Exodus has all that worrisome stuff about selling your daughter into slavery and not wearing garments of multiple threads, and these are things that you shouldn't take literally because they're concerning, right? Or they would be concerning for us now. [LB891]

TOM VENZOR: Um-hum. Well, they're...I mean, they're words on the page and to that extent you have to read them for what they are and in that sense you're reading them literally. But then it becomes questions of were they ceremonial laws, were they abolished. I mean there's all sorts of things we could talk about. I find it interesting that we would have this discussion in this hearing, too, about what exactly...what exactly is it that the Catholic church teaches and believes. And why should we even dig into that? And frankly, a court would never go into that, into that analysis--you know, what is your belief and is it really rooted in the right interpretation of scripture? That's a fundamental problem of when it gets down to internal church governance, which, as you mentioned, the Sisters of Mercy, that's one of the problems. The state can only go so far in interpreting or trying to figure out what a faith believes. At some extent they're going to have to take it on face value. So when we say that we believe that marriage is between one man, one woman, for the good of children and for life, and that God created us biologically male and female and that's a gift of our sexuality, you know, that's about as far I think as a legal analysis or the court analysis should go. But certainly we can have those discussions just generally as kind of a friendly theological matter. Thank you. [LB891]

SENATOR HOWARD: Thank you for presenting with us today, Mr. Venzor. [LB891]

TOM VENZOR: And I... [LB891]

SENATOR HOWARD: And thank you for your work helping the Sisters of Mercy. I know it's important. [LB891]

TOM VENZOR: Anytime. Thank you. [LB891]

SENATOR RIEPE: Senator Crawford, (inaudible). [LB891]

SENATOR CRAWFORD: Thank you. I just want to kind of respond to a couple of those points. Now, one, you pointed out, you said, is the Catholic...the Nebraska Catholic Conference the one in the way or are we picking on you as a religious group? Well, in my time here it has always been discussed and understood from other political actors that the Nebraska Catholic Conference has been the entity that is pushing back against regulations. I do agree there are other religious groups who share your deeply held religious beliefs about marriage and sexual orientation but I have never had any of those groups; I have never seen or heard discussion about those groups' involvement. And to the time line, and I will say I'm coming off the time line and it may or may not be accurate, the time line says June 2010--this is just one example--Chief Medical Officer Schaefer announces that despite the Board of Health's decision, she will not allow the revised psychology regulations to go forward without Nebraska Catholic Conference approval. It's my understanding that the administration is putting you in that position and they are telling us they're not going to move forward unless you approve, so I...we're not putting you in that position. We're not picking on you. But the administration has said you are the ones that we have to satisfy. [LB891]

SENATOR RIEPE: I think that was the past administration, right? [LB891]

SENATOR CRAWFORD: Well, the current as well. I mean... [LB891]

SENATOR HOWARD: Yeah, they're now with Courtney Phillips. [LB891]

TOM VENZOR: So if I could, yeah, so if I could answer that, again, I don't think we should be surprised that we're inviting stakeholders to the table on an issue. It just so happens that on this issue the stakeholder is Nebraska Catholic... [LB891]

SENATOR CRAWFORD: Right. [LB891]

TOM VENZOR: I just would like to finish. [LB891]

SENATOR CRAWFORD: Yeah, yes. [LB891]

TOM VENZOR: It just so happens that the stakeholder on this particular issue is the Nebraska Catholic Conference, and why: because we represent Catholic Social Services that has faith-based counselors... [LB891]

SENATOR CRAWFORD: Yes. [LB891]

TOM VENZOR: ...and we serve 700-some clients a year, as you'll hear from Father Kubat. Okay. So we're invited to that table because the question is, are these rules and regulations good, are they good policy, do they...and I think most people in this body know that when the Catholic Conference comes to the table, one of the things we're looking at are First Amendment issues. Now what I've heard in the...in hearing all of the proponents, and I need to read Ms. Conrad, the rest of her testimony, because I'm...again, I know ACLU will be raising issues in the First Amendment, so I shouldn't say nobody raised them, but very few people are raising those issues, and in part I really wouldn't expect them to because their area of expertise, their area of specialty is maybe psychology and dealing with those things. So what I'm saying here is that we were invited to the table to look at these regs and then when they ask do these regs have an issue, yeah, it has a really fundamental problem. If you adopt it, if you adopt this language,... [LB891]

SENATOR CRAWFORD: Right, but let me just...yeah. [LB891]

TOM VENZOR: ...if you adopt this language without accommodation language on referral, you're going to either shut CSS down or you're going to end up in litigation. Choose. [LB891]

SENATOR CRAWFORD: So but now so our process that we use to put regulations in place brings the stakeholders to the table. The time to come to the table are those hearings. The hearings are where the stakeholders are at the table, and I hope you were there at the table then, and you probably gave... [LB891]

TOM VENZOR: My predecessor, yeah, um-hum. [LB891]

SENATOR CRAWFORD: Your predecessor was there. They gave their perspective. Their perspective is one, one of many that were given at the hearing. From those hearings, from those comments the Board of Psychology put those together and came to this conclusion. There is not a set of hearings in front of the Governor that stakeholders get to come and come again. You were invited as a special group to come, I guess, but that...but you said it's regular to get the stakeholders together. Yes, we put the stakeholders together, but this is a democratic process and we say here is when the stakeholders come and here's when they give their input, so everybody knows because if you were invited to give comment but my Baptist church wasn't invited to give comment and the congregationalists were invited to give comment at that stage, the stage of comment is the public open comment. That's where the stakeholders come. But you, you were I guess invited at a special case to give comment at the Governor's stage and that's not the process, that's not when we ask for public comment is when the Governor or the Chief Medical Officer is choosing to pass these regulations on. [LB891]

TOM VENZOR: Okay, so again, now that we want to talk about the administrative process, and I'm not an expert on this at all but I have some familiarity with it, yeah, you're right, there's a public comment period, and we were involved in that. Jim Cunningham, my predecessor, attended those hearings religiously. He was there constantly. He was engaged with that board. They obviously had impasses and major disagreements. Something was adopted by the board. They even signed off on it. But to act as if that's the end of the process is...that's a very static understanding of the process. The process is much more dynamic than they signed off on it and you should have no more say in it. No, that's fundamentally not the case. After they go to that board, they still have to be approved by other people in the political process. And if I am understanding this right, I mean, that would include, you know, I think the Attorney General has to sign off on rules and regs if...unless I'm missing something. [LB891]

SENATOR CRAWFORD: That's true, yes, they sign off and the Governor has to sign off. [LB891]

TOM VENZOR: So there's a lot of people looking at these after that process and they're looking at it with all sorts of different lenses and interests. So the public comment period is not the be-all, end-all. I mean they...it's...and I think you'll probably hear it from other people, you know, behind me, because we've had these discussions, the administrations have had issues with inserting certain language in here because they recognize the issue that we're raising as legitimate and it should be dealt with and accommodated for. And if it is not, that's going to create a real practical problem because, again, I go back to this issue of...excuse me. I go back to this issue which we have made the argument you're going to lose providers, faith-based providers--for our sake specifically, Catholic Social Services--if this rules and regs get implemented as is with no accommodation language, or what you're going to end up is in litigation. [LB891]

SENATOR CRAWFORD: So I understand from our other testimony that no other state has made this accommodation. Do you have evidence that those other states have lost substantial Catholic healthcare providers? [LB891]

TOM VENZOR: And that's where I have not been able to do kind of the full-fledged, you know, what is everybody else doing out there and because, again, while it is important and that needs to... [LB891]

SENATOR CRAWFORD: Right. [LB891]

TOM VENZOR: ...that's informative, that's not the be-all, end-all, because my job here is to look specifically at Nebraska, apply the law, look at these regs and say, is there a problem here? And there is a problem. And whether somebody in Colorado identified that or whether somebody else identified that in a different state, you know, maybe they did, maybe they didn't. Now if you heard my testimony earlier which...I'm sorry. I shouldn't question that. I know you heard my testimony earlier. But what I mentioned earlier was that we've seen the closure of Catholic Social Services in several other locations because of sexual orientation/gender identity language that was not accommodating to those services. So again, that's a threshold policy issue for this body to decide. You could implement this language. You could adopt it. You might also lose these nine providers at Catholic Social Services--again, Father Kubat will get into this--seeing nearly 700 clients a year, almost 7,000 clinical sessions offered, $200,000 in pro bono services, nearly $200,000 in pro bono services offered last year. If you want to do that, great, but I don't think the state can afford to do that when we've already heard about access issues and lack of providers. [LB891]

SENATOR CRAWFORD: Okay. Great. Thank you. [LB891]

TOM VENZOR: Those are fundamental issues that are policy questions for all sorts of people to be considering along the way, not just in a public hearing period. Thank you. [LB891]

SENATOR CRAWFORD: I appreciate your time and attention to putting this all on the record. [LB891]

TOM VENZOR: Thank you. [LB891]

SENATOR CRAWFORD: Thank you. Thank you. [LB891]

SENATOR RIEPE: Okay. Thank you very much. Seeing no other questions, thank you very much for being here. [LB891]

TOM VENZOR: Thank you. [LB891]

SENATOR RIEPE: Next opponent, please. Welcome, sir. If you will be kind enough to share your name and spell it... [LB891]

CHRISTOPHER KUBAT: (Exhibit 14) Thank you, Senators. My name is Father Christopher Kubat, C-h-r-i-s-t-o-p-h-e-r K-u-b-a-t. I'm the executive director of Catholic Social Services, otherwise known as CSS, and I've served in this capacity since 2005. CSS is the charitable outreach arm of the Diocese of Lincoln. Our diocese spans the entire area of the state of Nebraska south of the Platte River, 24,000 square miles. We've been in business since 1932, in the midst of the Great Depression. Our activities include things such as feeding the hungry, clothing the naked, visiting the sick, prison ministry, giving drink to the thirsty, sheltering the homeless. And among our various activities such as refugee resettlement, housing for abused and battered women, food pantry services, we also operate the Immaculate Heart of Mary Counseling Center. This was founded in 1995. The counseling center is a community-based mental health service delivery system implemented throughout the diocese. The counseling center's main office is located here in Lincoln, with outreach offices in Beatrice, David City, Hastings, and the Newman Center at UNL. The counseling center currently employs nine mental healthcare practitioners, including two licensed psychologists. These practitioners are able to treat most psychological difficulties. The Nebraska Catholic Conference has presented some of the legal issues with LB891. Since I was trained as a medical doctor and then later as a priest, I'm not a lawyer so I won't try to reiterate those points. But I do want to speak to a specific claim of client abandonment made over the years and today. This claim is slanderous. It disparages the good work of the mental healthcare practitioners at CSS who devote their life's work to ensuring access to critical mental healthcare services to vulnerable people. It's been frequently claimed that faith-based providers, like us, engaged in client abandonment and willingly dumped clients and kicked them to the curb. Nothing could be further from the truth. Such a claim has no basis in reality of what truly goes on at CSS. Our mental healthcare practitioners are committed to offering many mental healthcare services to any number of people, regardless of their religion, race, gender identity, or sexual orientation. While the Catholic Church has certain beliefs of the nature of marriage and sexuality, which goes back all the way to Abraham and even before, that does not stop us from treating clients for their psychological needs. If a client who identifies as gay or transsexual comes to CSS and seeks assistance for depression, anxiety, suicide ideation, our practitioners are committed to ensuring the psychological issues presented are treated with utmost professionalism and care. We would never abandon such a patient because they are gay or transsexual. Notably, for example, if a gay client came to us for same-sex relationship enhancement counseling, we would be unable to fulfill their request. For one, our practitioners

believe, as a matter of professional judgment, that such therapy would be not in the client's best interest. Furthermore, our practitioners hold that the belief that the nature of marriage is a union between one man and one woman for life and for the good of children. Our practitioners would also not be able to refer to...such a client directly to another practitioner who could provide such a service, as this would amount to cooperation with the service that we find morally problematic. And as I sit back and listen, this is the key to the issue. Abortion was brought up. If I'm an MD and I'm an ob-gyn, if a lady comes and says, I want an abortion, if I refer her to an abortionist, referring for something that's immoral is immoral. So this cuts at the heart of the problem. To be clear, if a gay client were to seek such a relationship counseling, relationship counseling, but also presented some other issue such as suicide ideation--and Senator Crawford, this was your question--we would certainly treat that patient for their suicide ideation. If for some reason we were unable to treat the suicide ideation, we would refer them directly to another provider for that suicide ideation. So I heard many things talked about, hearing voices, being in distress, being psychotic and all sorts of things, we would, if unable to...if heard that, gee, I want relationship...I want marital therapy, same-sex medical therapy, and I've got these other issues, we would make that direct referral for those psychological problems. And so we wouldn't give those people a general referral. Would never abandon the client in time of their need. To claim as much against our providers, especially without any real evidence, is an injustice to their character and commitment. As we have stated to the Board of Psychology and the Mental Health Practice, to pass language like that contained in LB891 would put CSS in a precarious situation. It would force our practitioners to violate their conscience or leave the profession. And I could tell you they will not violate their consciences. That would put them in a position of not conforming to the heavy-handed and onerous mandates of the profession imposed by government, which would most certainly lead to professional disciplines such as the loss of their license. CSS provides critical services to vulnerable people across the southern part of the state, and last year alone we provided nearly $200,000 in pro bono counseling services to impoverished clients. These are clients who are unlikely to find an alternative provider to meet their needs. Furthermore, many clients see us for the faith integration. As you well know, as I do, that Nebraska cannot afford to lose these practitioners who provide such a critical access point. So LB891 does not ensure freedom for all practitioners to serve these most in need and, for that reason and the reasons outlined, I oppose LB891 and would ask you to indefinitely postpone this legislation. So I welcome your questions regarding this or any theological questions too. I'd be happy to answer. [LB891]

SENATOR RIEPE: Thank you, Father. And, Senator Crawford. [LB891]

SENATOR CRAWFORD: Thank you for being...thank you, Senator Chairman Riepe. And thank you, Father Kubat, for being here. [LB891]

CHRISTOPHER KUBAT: Yes. [LB891]

SENATOR CRAWFORD: I appreciate you being here to answer questions. So...and I appreciate the care that you provide to so many people in our state. And I know, I mean the Catholic institutions have provided all kinds of care for many, many years. It's been an important part of our health system in our...not only in Nebraska but across the country, obviously, and many times serving our most vulnerable people. So I appreciate that. So I just want to come back to...and I don't think any of us have talked about patient dumping or kicking people to the curb. We're trying to understand what referrals are appropriate and how you would want to...how referrals could be made in a way that is ethical from your perspective. So I want to just come back to that example you have on the top first full paragraph of the back of the second page. And you know the client comes for same-sex relationship enhancement counseling and you're, you know, I understand you wouldn't want to fulfill that request so...and then you're saying we won't want to. So how...what happens next that allows you to somehow not abandon them? Yeah, if this happened, what could you do next? [LB891]

CHRISTOPHER KUBAT: Well, when someone comes to our office, we ask them what's the problem, you know, when we're screening. Is it a gambling addiction problem? Is it a substance abuse problem? Is it depression? Is it whatever? So when they come to us for the first time we have a pretty good idea what that is. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

CHRISTOPHER KUBAT: So if somebody comes in, they have a gambling addiction and then their second therapy, oh, by the way, I want marital counseling... [LB891]

SENATOR CRAWFORD: Uh-huh. [LB891]

CHRISTOPHER KUBAT: ...for my (inaudible), the first thing, is there any problem such as suicide ideation, depression, things of those nature that you need to worry about. And if there is, we would make a direct referral for those if they didn't feel comfortable staying with us. [LB891]

SENATOR CRAWFORD: Okay. [LB891]

CHRISTOPHER KUBAT: So we'd make a direct referral. [LB891]

SENATOR CRAWFORD: I appreciate that you do that. Good. [LB891]

CHRISTOPHER KUBAT: But if there's, no, I'm fine and I just need this, then a general referral of a list of counselors. And then you mentioned, gee, what if there's a link on the Web site. [LB891]

SENATOR CRAWFORD: Right. [LB891]

CHRISTOPHER KUBAT: And so this is...it would be akin to, gee, I want an abortion. Well, I can't provide that service but here's a Web site where it lists all the abortionists. Well, that would be inappropriate. So what that general referral would look like, that needs to be discussed further--and this is really not the proper place to do that--but, generally, a list of the providers in their area that they could contact. But if it's a problem, an issue of depression, suicide ideation and they felt uncomfortable staying with us because we're not going to provide marital counseling, we're going to make a direct referral for their suicide ideation or their depression and not a general referral. That would be inappropriate. So I hope that answers. [LB891]

SENATOR CRAWFORD: I think I understand your perspective. Thank you. [LB891]

CHRISTOPHER KUBAT: Yeah. [LB891]

SENATOR RIEPE: Senator Howard. [LB891]

SENATOR HOWARD: Thank you, Senator Riepe. Thank you, Father, for visiting with us today. I wanted to ask you what happens in the instance of adultery? Mr. Venzor brought that up as an example. So what happens with the same scenario? [LB891]

CHRISTOPHER KUBAT: Well, if a married man comes to the office and says, gee, I have a paramour and we argue a lot and I'm married, and has his nice wedding ring on, and he said, I do at the office, and cake was really good at the reception and...but I want you to help me get along with my adulteress, well, that would be immoral. And so it would be immoral for us to refer him to another counselor who would help them get along better with his adulteress. And...but is that...? [LB891]

SENATOR HOWARD: I'm trying to understand the parallel between adultery and a same-sex relationship, but I think that was helpful. Thank you. [LB891]

SENATOR RIEPE: Senator Crawford. [LB891]

SENATOR CRAWFORD: I know in some of the conversation around the Affordable Care Act there was conversation about the challenges of cooperation and then a principle of accommodation in an instance where there's cooperation but then there's other duress or other principles, like gravity, also involved. Is there a general Catholic principle of accommodation that we could use in thinking about this issue? [LB891]

CHRISTOPHER KUBAT: And what do you exactly mean by accommodation in this issue? [LB891]

SENATOR CRAWFORD: So the example I'm thinking about was the example of healthcare, excuse me, about places like religious-based universities being required to cover contraception. And it's like, okay, no, we're not going to make them do it but we're going to kind of have an accommodation where the insurance company has to provide it but you don't have to be involved in it. [LB891]

CHRISTOPHER KUBAT: You know, I'm glad you brought up the issue of contraception. As you know, I'm a medical doctor. I was involved in writing a paper about the link between contraception and breast cancer. And I'm old enough to remember that breast cancer really wasn't talked about much. It was colon and lung cancer. And now that contraception is on the scene and abortion, one out of eight women get breast cancer in this country and the two reasons are contraception and abortion. And doctors, if they're ignorant of this, I don't know what's worse: they're ignorant or they know this and they ignore it. But so...and they're...and so this is the theological aspects aside. So to force a practitioner to I want...I want to be on the pill, which is medically harmful, so I'm leaving religion out of this and you're going to...it is just beyond the pale to force that person to, that practitioner to write that script or refer them to another practitioner to write that script, that and it's against my faith. So to force... [LB891]

SENATOR CRAWFORD: Okay. [LB891]

CHRISTOPHER KUBAT: ...somebody, yeah, so... [LB891]

SENATOR CRAWFORD: All right. [LB891]

CHRISTOPHER KUBAT: ...it's...and this isn't going to end here in this room. This is going to leach into medicine. So then you'll have a gay man...and as a physician, I had gay patients. I did surgery on gay patients. I had no problem with that, and wonderful individuals and been friends as much as patients and doctors could be friends. But I can see this is...where this is heading is a gay...a Christian doctor will be willing to treat their gay man for their heart attack, their stroke,

their diabetes, their hypertension, or cancers or infections, brucellosis, sarcoidosis, all the "osises," all of it, but if that physician doesn't write the script for Viagra or make a direct referral so someone does write that script for Viagra, he's going to lose his license. So this is where this is all going, so that's why it's important to have accommodation in terms of a conscience clause. And then when I hear...it's so insulting to me when I hear if medical professionals aren't...if they aren't willing to provide this service or refer for this exact service they ought to get out of the business. I find that insulting and very, very disturbing. And I haven't just heard it here locally but nationally. And this is where this is heading. And so many people in this country are just asleep and...but it's going to end here. So we're just really fighting for our lives, and I'm very disturbed. [LB891]

SENATOR CRAWFORD: Thank you. [LB891]

CHRISTOPHER KUBAT: Thank you. [LB891]

SENATOR RIEPE: Thank you. Are there additional questions? Thank you, Father. [LB891]

CHRISTOPHER KUBAT: Thank you very much. [LB891]

SENATOR RIEPE: And thank you for your patience in waiting too. Are there additional opponents? [LB891]

KAREN BOWLING: Good evening. [LB891]

SENATOR CRAWFORD: Good evening. [LB891]

SENATOR RIEPE: And welcome. [LB891]

KAREN BOWLING: You've gone from afternoon to evening. [LB891]

SENATOR RIEPE: If you'd be kind enough to state your name and spell it, please. [LB891]

KAREN BOWLING: I certainly will. [LB891]

SENATOR RIEPE: Thank you. [LB891]

KAREN BOWLING: (Exhibit 15) I'm Karen Bowling, K-a-r-e-n B-o-w-l-i-n-g. I am the executive director at Nebraska Family Alliance and I'm testifying on their behalf. Licensed mental health practitioners understand the intersection between the scientific and faith communities. Psychology as a science and faith traditions as theological systems should respect their different methodology and philosophical viewpoints. The Psychology Board licenses and regulates professionals who serve in secular settings as well as those in agencies and private practices that are governed by values derived from faith traditions. Acknowledging and respecting both does not have to be mutually exclusive. The first liberty embodied in the First Amendment grants freedoms of conscience. The U.S. Supreme Court has interpreted the First Amendment to require that state actors maintain a nonhostile neutrality towards religion and ensure freedom of conscience. In 2008, NFA received our first contact from a licensed mental health professional concerned about including gender identity and sexual orientation into the code of conduct Psychology Board regulations. I actually was present at the July 2008 meeting of the board and provided testimony, as well as some other psychologists. Recently I've had conversations with eight licensed mental health professionals that remain concerned about LB891. Section 2 and 3 of statute 38-3129 will have adverse consequences. These eight practitioners, none of them are Catholic. None of them are Catholic. They have provided testimony at different times before boards. We tried a few years ago to get a RFRA here in Nebraska, as well as conscience protection for healthcare workers, and were unsuccessful. They've also experienced what I would say the wrath of being treated inappropriately. These professionals recognize the sensitivity of the matter and acknowledge that freedom of conscience protections affirm the need to provide quality of care to patients. Conscience protection does not create an affirmative right to do anything your conscience is calling you to do. Rather, it protects licensed mental health practitioners against being forced to affirmatively act and participate in activities which violate conscience. This has become as significant a problem that, in January of this year, the U.S. Department of HHS announced the formation of a new Conscience and Religious Freedom Division of the Office for Civil Rights. The division has been established to restore federal enforcement of our nation's laws that protect the fundamental rights of conscience and religious freedom. Organized in 2009 to address threats to conscience freedom in healthcare, the Christian Medical Association noted that 90 percent of professionals will leave the field of their expertise, of where they've been trained, if they have to violate their conscience. In Nebraska, I believe we can get there. We should be able to live and work according to our conscience. Chairman Riepe, I am submitting a copy to you, it's a 30-page, two-sided, that if others on the committee want a copy they may have, for the public record with a list of summaries of U.S. Supreme Court cases which involve the protection of First Amendment rights, specifically with healthcare. Chairman and members of the committee, I appreciate your time and respectfully ask that you not advance LB891 ensuring that freedom of conscience be protected for all licensed mental health practitioners, including those in training to practice in their field according to their individual conscience. And my light hasn't gone to red yet. (Laugh) On the abandonment of care, one of the things when we were trying to work on religious

protections, freedom of conscience for healthcare providers, what always trumped, what was always the key factor was what is called the standard of care, or the healthcare function. So when we're hearing about patients being abandoned, if someone comes--and it doesn't matter what their orientation is--if they're suicidal, that clinician is going to address that. That's the standard of care. [LB891]

SENATOR RIEPE: Your red light is on. [LB891]

KAREN BOWLING: Okay. Thank you and once again. [LB891]

SENATOR RIEPE: You may get a chance to, if you have any sentences that you'd like to complete, you may get an opportunity. [LB891]

KAREN BOWLING: Yeah, sure. Sure. [LB891]

SENATOR RIEPE: We'll see if there are any questions. [LB891]

KAREN BOWLING: Thank you, sir. [LB891]

SENATOR RIEPE: Seeing none, thank you very much for being here. [LB891]

KAREN BOWLING: Yes. Thank you kindly. [LB891]

SENATOR RIEPE: Any additional opponents? Okay. Dr. Williams, welcome. You know the routine. [LB891]

TOM WILLIAMS: (Exhibit 16) Good evening. You have amazing stamina. This is the first time I've done this, this late. So, Chairman Riepe and the committee, I'm not going to read my testimony. I'd just like to share a few thoughts. It's late and I've sketched some thoughts out in hearing what I've heard already. My name is Thomas Williams, T-h-o-m-a-s W-i-l-l-i-a-m-s. I've been privileged, in this position as the Chief Medical Officer and director of Division of Public Health, to serve now for 18 months. It's been a fast 18 months. I've learned a lot. And we have a nine- or ten-year history of a dilemma and I have inherited it. When I accepted the job, I didn't know it was there. (Laughter) I want to tell you that I was, before my confirmation and conferring with several senators, a number of whom are cosponsors of this legislation, I was challenged to work on this problem... [LB891]

SENATOR CRAWFORD: Yeah. [LB891]

TOM WILLIAMS: ...and I told them I would. And I can tell you it's near the top of my list. I have a long list, but it's near the top. I am working with the boards. There was, as you know, suspension of regulatory activity toward the end of last year that is now resuming. There are two new boards, the Board of Psychology and the Board of Mental Health, and within the last two weeks I have met with both of the board members, board chairs. We've had preliminary discussions about where to begin. We did not specifically address referral because referral has been the big issue and I think it will be one that we need to address. I really am seeking to protect the health and welfare of all Nebraskans, and by that I also mean those that have same-sex relationships as well as providers that are providing mental health services for the people of the state. We have a big state and we don't have enough mental health providers. And I've listened to all the testimony today and it's been...it's always compelling on both sides. I would have to say that I do share concerns with more recent testifiers who are concerned about these four words. And I would also like to say that in reference to what's been said, I would also concur with what they've said about abandoning patients and knowing people that are involved in mental health in the faith community, and I am in the faith community, and seeing what is being done in the faith community to help take care of people in churches such as Christ Community in Omaha. I'm suspicious of two things. One, the people who are more on the secular side of mental health, psychology, and psychiatry really don't know all the good that happens there, all the people that are helped from various addictions and all sorts of other things, and that the faith community has, for people of faith, a force multiplier. I'll use the term, Colin Powell liked that. They can pray. They're with people that are...that they share a faith, they share a relationship in Christ or another faith, and they are being paired with mental health professionals that can do a wonderful job in working with them and often, as you heard from Mr. Venzor, at no charge. And they provide a lot of service to our communities and I desperately want to protect that. I am concerned about the concerns of our people that are in the same-sex LGBT community, but I'm also concerned about what we've heard today. And I think they're serious. I think there is real concern about this. And the comments that have been made today about abandoning patients and they've also been in...I've seen them in editorials, I've seen them in the paper. I've heard them a lot. I've seen them in testimony. I read all of the testimony for...that I was given for many years back, and both the mental health side and the psychology side, and there's a tremendous mischaracterization that these people just don't like people that are LGBTs (sic) and they're out to get them, and that is not the case. I'm certain that's not the case. And I'm sorry that Luke left because if there was someone that actually told somebody who was in that community to go kick rocks, I can tell you that they should be disciplined. And if it came to me, I would discipline them and I can say that because I'm the CMO and I do discipline people. (Laughter) So we do not treat people like that in our state. So I will be seeking to work on middle ground with all the stakeholders. I think some of the stakeholders are not here because they're not as well organized perhaps as the Catholic Conference. But I want to talk to all the stakeholders that are involved

and work this issue. I don't know that I can fix it but I promised I would try and I will try. And so that's all I have to say. I'll answer questions if you have any. [LB891]

SENATOR RIEPE: Thank you very much. Are there questions? Senator Williams. [LB891]

SENATOR WILLIAMS: Thank you, Chairman Riepe. And thank you, Dr. Williams, for being here. My question is very simple and you had tried to address it there at the end. In your judgment, having been around this for a long time and being a doctor, do you believe this fix can happen without legislation? And do you have a time frame under which you think it might be able to be fixed? [LB891]

TOM WILLIAMS: I think it would be better to not have it be a statutory revision. I actually am concerned that running this up the flagpole in this way might...I see myself sort of as a shuttle diplomat and John Kerry, if you will, and I think that there can be things done behind the scenes and meeting behind the scenes. I would confess I'm new at this. I've been in government now for 18 months. Before that, I was a pathologist at Methodist Hospital. Chairman Riepe and I knew each other back in the day. [LB891]

SENATOR RIEPE: We did. [LB891]

TOM WILLIAMS: We still have stories back in the day. But the current...the incoming board chairs are wonderfully caring people. I think we're developing a good relationship. I've learned to work with Tom and there will be others. I think we can work behind the scenes and have meetings that perhaps can get someplace. And I've heard some things today that are encouraging in certain ways that might satisfy what would be faith concerns about referral. So I would like a chance to do it. I am...I will pursue it as promptly as I can. I do have a 60-hour week other job right now. I'm working harder than ever for much less money. But the people are motivated and caring and it's an honor to be there. [LB891]

SENATOR WILLIAMS: And we thank you for your commitment to the state. Thank you. [LB891]

SENATOR RIEPE: Thank you. Are there other...Senator Crawford. [LB891]

SENATOR CRAWFORD: Thank you, Chairman Riepe. And thank you for being here, Doctor. [LB891]

TOM WILLIAMS: You're welcome. [LB891]

SENATOR CRAWFORD: I appreciate you being here and that you're stepping into the situation at this time. So you are the Chief Medical Officer, correct? And so you have a specific step in this process. [LB891]

TOM WILLIAMS: I do. [LB891]

SENATOR CRAWFORD: Yes. Okay. Is it the case that in that step in your process or your boss at DHHS can at this stage remove language after it's been through all the steps of the process getting to you? Do you have power to remove certain terms and then keep it going on, or is it going to have to go back and start all over again? [LB891]

TOM WILLIAMS: I would prefer to reach consensus on the language on the front end. In the end, the administration in regulations, it's my understanding, has the power to do revisions as they see fit. But I would like to resolve it on the front end if I can. I just shared my belief that I really, given the fact that the terms that we're talking about, while carrying a great deal of emotion and certainly are not unimportant, I think that we have no demonstrated evidence that there is a systematic problem in this particular arena. I think actually having the language in there, as we've heard from some of our faith providers, may put our mental health base at risk. And you know I...for some reason this thought comes to me. There's a line from Red October which is there is a torpedo in the water and it is homing. Well, these words to me kind of, for them, I think that's what that means. And, you know, I think religion can be politicized but nonreligion can also be politicized. And I think their...some of the comments that are particularly on the mental health side in some of the hearings were quite unkind and I can see why they have concerns. Given that we haven't a demonstrated problem and given that what generally has been cited as fearful by most people that believe we need this language are very flagrant violations of care that anybody would discipline. Just because you're being... [LB891]

SENATOR CRAWFORD: What do you mean by that? [LB891]

TOM WILLIAMS: Turning somebody who's suicidal out on the street. I mean seriously? That's inhuman. And so I, you know, I think that the current language is sufficient for us to manage what seems to be a nonproblem and to protect the rights of those that are in the faith-based community who shared what are sincere concerns today. [LB891]

SENATOR CRAWFORD: What do you mean it's not a problem? [LB891]

TOM WILLIAMS: It's not a problem because I have...we've never had, and it's been stated by many, a complaint that's been lodged of this issue, of someone who has appeared for...at a faith-

based provider, the Catholic Conference or otherwise, who was said, well, just go away, you're gay, we don't want to take care of you, and even though you have a serious psychological problem. I think what we've heard today is correct. I think that if some...as they've said, Father and Tom have said, they do treat people that are in the LGBT community for a variety of situations, particularly acute situations. But if they're seeking to do the rather narrow realm of things that have been cited that they are not either competent to do or they don't have the conscience to manage, then that's where they would decline. But it would seem to me to be a very narrow area, probably an area that is not life-threatening or acute, and seemingly kind of an area you wouldn't necessarily think that someone seeking that would seek to seek Catholic counseling. One reason, as Mr. Venzor has mentioned, that they do see clients is that they provide services free. [LB891]

SENATOR CRAWFORD: Right. [LB891]

TOM WILLIAMS: And we need that. So I mean I... [LB891]

SENATOR CRAWFORD: So that might be a reason someone would come to them. [LB891]

TOM WILLIAMS: It might be. That's right, it absolutely might be. I agree with you, Senator. [LB891]

SENATOR CRAWFORD: Yeah. I mean we need to be respectful and have care and attention to people of all faiths... [LB891]

TOM WILLIAMS: Yes. [LB891]

SENATOR CRAWFORD: ...and perspectives. So...and also I would just say, as you're thinking about this and sometimes in policy we want to respect religious beliefs and allow people to exercise their religious beliefs, sometimes as a state we have to figure out structures and ways to make that happen so it doesn't cause harm for other people. I mean that's just part... [LB891]

TOM WILLIAMS: Agreed. [LB891]

SENATOR CRAWFORD: ...of what we have to figure out. [LB891]

TOM WILLIAMS: Agreed. [LB891]

SENATOR CRAWFORD: And I would also say it is true that these Catholic organizations have been a key part of our healthcare network and...but...it is true that they're a key part of our Catholic healthcare network and it is also true that we also have to be attentive to recruiting and retaining professionals from many different backgrounds. And so we also have to be attentive to what failing to act in an appropriate way that fits professional codes of ethics, what impact that would have on our ability to attract the brightest and best to our academic programs... [LB891]

TOM WILLIAMS: Uh-huh. [LB891]

SENATOR CRAWFORD: ...and our failure to attract and retain people who...to practice in our state. [LB891]

TOM WILLIAMS: Uh-huh. [LB891]

SENATOR CRAWFORD: And so we have to think...I mean, again, sometimes these things, they send signals about... [LB891]

TOM WILLIAMS: Understood. [LB891]

SENATOR CRAWFORD: ...about your state, right? And so people might see this as, well, Nebraska doesn't care enough about professional ethics to treat them seriously if there's a group that's pushing the other direction. Also we want to make sure we say as a state we care about people's religious rights. So I mean it's...we need to be careful about those messages sent in both ways. [LB891]

TOM WILLIAMS: I concur. [LB891]

SENATOR CRAWFORD: Thank you. [LB891]

SENATOR RIEPE: Okay. Are there additional questions from the committee? Thank you very much for being here at this late hour. [LB891]

TOM WILLIAMS: Thank you. [LB891]

SENATOR RIEPE: We appreciate that. [LB891]

TOM WILLIAMS: Thank you. [LB891]

SENATOR RIEPE: We appreciate everyone. We're still in the...are there other opponents? Okay, seeing none, is there anyone who wants to testify in a neutral capacity? Seeing none, Senator Pansing Brooks. But while you're coming up to close, I'm going to have...I'm going to ask Tyler to read any letters so that you have advantage of hearing those as well. [LB891]

TYLER MAHOOD: (Exhibits 17, 18, 19, 20, and 21) I have a letter, signed by John Else and Sherry Miller of the League of Women Voters of Nebraska, in support; a letter, signed by Annette Dubas on behalf of the Nebraska Association of Behavioral Health Organizations, in support; Terry Moore, on behalf of the National Association of Social Workers, Nebraska Chapter, in support; Kristin Mayleben-Flott, of the Nebraska Planning Council on Developmental Disabilities, in support; and a letter, signed by Dr. Aaron Stratman on behalf of himself, in opposition. [LB891]

SENATOR RIEPE: Okay. [LB891]

SENATOR PANSING BROOKS: Thank you. [LB891]

SENATOR RIEPE: Senator, the floor is yours. [LB891]

SENATOR PANSING BROOKS: Thank you for your patience. It was only one time here but it was a doozy, (laughter) so I'm sorry about this length of time. But as you can see, it is an issue that is worthy of, at least, discussion. And I feel, as a mother of a gay son, I feel it's very heartbreaking. And I appreciate the fact that, you know, the groups that come up talk about that no one should be unjustly discriminated because of who they are, and then there's always the "but." But meanwhile, as we sat and listened to them, they basically don't abandon and...but they want to be able to in case they have to. And so to me, I mean to me there's a very simple fix, that if you're not going to abandon, they all said they don't abandon, so if they're not abandoning people, then what's wrong with the referral? And again, it's just we heard the circuitous solutions that there could be a general referral, and then Senator Crawford asked, well, what does that...what is that. And then the answer is, well, it depends on the fact pattern. And so these just go...you can hear what's happening on the board at the board level that it's this continuous circuitous, oh, we don't abandon, we believe in helping all people, but we have our religious rights to abandon if we really want to. The quote from Mr. Venzor was referral is cooperation with the very act. As a lawyer, I am required and I represent and get appointed different cases at different times. I don't have to necessarily always represent that client. But to say that someone who's representing a murderer is cooperating with the very act, that's not reasonable. And Smith was quoted as in opposition to the two Supreme Court cases you mentioned. Smith deals with government-created excessive burdens and said that these excessive burdens violated First Amendment rights. So again, we're talking about referral. I would say to you that that is not an

excessive burden on somebody. We have to weigh out our public safety. We have to weigh the health of our citizenry and the mental health of our citizenry. So asking the board to follow...or HHS to allow the board to follow the law which says that they create the rules, it doesn't seem unreasonable to me. So unfortunately, we're in this Catch-22. I don't hear any hope from Dr. Williams. You know, he doesn't...we've got this...we had the same arguments about he opposes creating protected classes for sexual orientation and gender identity. Those same arguments were given in the '20s for women and their right to vote, exact same thing: I get to discriminate against women because it's in the Bible. And the same thing happened about African-Americans in the '50s and the '60s. There's a Supreme Court case about a diner that says, I get to, because of my religious preferences, not serve. So we're at the same point and all that's being discussed is referral, referral so that somebody can get the help they need. This isn't a hard issue. This is a humanitarian issue. I, again, one of the testifiers talked about targeting. I started this by saying this is not a Catholic versus non-Catholic issue. I have had many supportive letters from my Catholic friends and neighbors and brothers and sisters, and I will say to you that this is not about that. This is about making sure that people in our communities are safe, that our communities are safe. This, to threaten that, well, we're going to have to leave and not work, no one wants that. How hard is this to come up with some sort of solution? I thought I could help solve it over the phone and pull this bill prior to this. I thought, as we had in Judiciary with Director Frakes, I thought we had a possibility of coming to a common-sense solution on this. That's why it's been raised to the level of the Legislature, because they can't decide. And I heard nothing that gave me confidence that Dr. Williams, who's only been there 18 months but it's still 18 months--I came close to an agreement--he cannot get to an agreement. And, yes, it's two sides. There's a side that says our people should be protected, all people should be able to be referred even if you don't agree with them, and then they don't abandon. Well, if they don't abandon then no problem. Accept the Board of Psychology's code of conduct and let's move forward. Let's not talk about this anymore. Let's let people go forward and let's treat our people, not politicize our healthcare. Go forward and take care of our brothers and sisters in this state. I'm happy to bring any amendments. I'm happy to do whatever. If the committee has any ideas, I'd love to work with you. This needs to be discussed. It's been ten years. Surely we can figure out something and, if not, I know that I can get shut down on this by not having an interim study. I know that I can get shut down on this because it's not going to be prioritized. But I still have a forum as a state senator and I have a voice, and I will continue to work on this and I will continue to bring it to the public. And I think that we can come to a solution and a resolution of this, and I ask you to help me. I ask you to help the Department of Health and Human Services. We can...they can't do it yet so I'm asking the Legislature to help on this. Thank you very much for all your time. I'm sorry about how long it was, but it was... [LB891]

SENATOR RIEPE: Thank you. [LB891]

SENATOR PANSING BROOKS: ...really good discussion. [LB891]

SENATOR RIEPE: I want to see if there are any questions from any of the committee members. Seem to be none. Thank you so very much. [LB891]

SENATOR PANSING BROOKS: Thank you. [LB891]

SENATOR RIEPE: And it's been a long day for you as well. With that, that concludes the public hearing on LB891. And with that, we are adjourned for the evening. [LB891]