HOWARD: [RECORDER MALFUNCTION] Health and Human Services Committee. My name is Senator Sara Howard and I represent the 9th Legislative District in Omaha and I serve as Chair of the Health and Human Services Committee. I'd like to invite the members of the Committee to introduce themselves, starting on my right with Senator Murman.

MURMAN: I'm Senator Dave Murman, District 38: Clay, Webster, Nuckolls, Franklin, Kearney, Phelps, and part of Buffalo County.

WALZ: Hi. Happy Valentine's Day. I am Lynne Walz. I represent District 15, which is all of Dodge County.

ARCH: John Arch, Legislative District 14, which is Papillion/La Vista in Sarpy County.

WILLIAMS: Matt Williams from Gothenburg, Legislative District 36, which is Dawson, Custer, and the north portions of Buffalo Counties.

HOWARD: Also assisting us are our legal counsel, Jennifer Carter, and our wonderful committee clerk, Sherry Shaffer. And then we have Maddy. Is Erika with us today?

SHERRY SHAFFER: Later.

HOWARD: Later, and Erika's coming later. Those are our two pages. A few notes about our policies and procedures. We ask that you turn off for silence your cell phones. This afternoon we'll be hearing four bills, and we'll be taking them in the order listed on the agenda outside of the room. On each of the tables near the doors to the hearing room you will find green testifier sheets. If you are planning to testify today, please fill one out and hand it to Sherry when you come up to testify. This will help us keep an accurate record of the hearing. If you are not testifying at the microphone, but want to go on record as having a position on a bill being heard today, there are white sign-in sheets at each entrance where you may leave your name and other pertinent information. Also, I would note, if you are not testifying but have written testimony to submit, the Legislature's policy is that all letters for the record must be received by the committee by 5:00 p.m. the day prior to the hearing. Any handouts submitted by testifiers will also be included as part of the record, as exhibits. We would ask that, if you do have handouts, that you please bring ten copies. If you have multiple pages, we ask that you collate them in advance for the committee. We do use a light system

for testifying. Each testifier gets five minutes: four minutes with a green light, one minute with a yellow, and then, when it turns red, we'll ask you to wrap up your final thoughts. When you come up to testify, please begin by stating your name clearly into the microphone and then please spell both your first and last name. The hearing on each bill will begin with the introducer's opening statement. After the opening statement, we will hear from supporters, then opponents, then anyone wishing to testify in a neutral capacity. And then the sponsor will be given the opportunity to make closing statements, if they wish to do so. We have a strict no-prop policy in this committee. And with that, we will begin today's hearing with LB422, my bill to adopt the Art Therapy Practice Act. And I will hand it over to my Vice Chair, Senator Arch.

ARCH: Thank you. And this opens LB422 hearing. And, Senator Howard, you may proceed.

HOWARD: Thank you, Senator Arch. I think I'm getting faster and faster at that introduction every time I do it. All right. Good afternoon, Senator Arch 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. I'll take a [INAUDIBLE]. I was, I just introduced a bill in Exec Board, and they prefer for you to go quicker because they have a short amount of time. And so I was trying to speed read through my introduction. So today I'm here presenting to you LB422, a bill that creates the Art Therapy Practice Act. I brought this bill on behalf of Nebraskans for the Arts and a young woman I met with over the summer who is training to be an art therapist and wishes to return to Nebraska to live and practice art therapy. Art therapy is a growing practice, a growing health profession that is serving patients with cancer, anxiety, PTSD, traumatic brain injuries, eating disorders, and much more. And with hospitals, schools, veterans' associations, and mental health agencies, Nebraska has a plethora of locations where art therapists can serve a number of diverse populations through clinical work and research. Art therapists receive graduate level training in accredited art therapy programs and practices of psychotherapeutic principles of the creative art process in the assessment and treatment of emotional, cognitive, physical, and developmental disorders in individuals of all ages. This bill will encourage advocacy for art therapy and attract professionals to the state. It also will allow for the individuals with this certification to be able to bill for these services, which they are not able to do currently. With a growing demand for art therapy by patients, there is a need to ensure that

Nebraska's consumers have access to certified professionals that have the education, clinical training, and board examination requirements of similar mental health professionals. It's important to create licensure for therapists, as currently they are nationally certified through the Art Therapy Credentials Board and legally bound by a code of ethics to protect clients from harm. Currently there are 12 certified art therapists across the state who practice with a variety of populations. Protecting this title will also give consumers a clear understanding of what services their practitioner can provide for them. Practicing art therapy without the proper training can do irreparable harm, as the individuals are treating, treating individuals with diagnosed health conditions. Currently 16 states have licensure, including: Arizona, Connecticut, Delaware, Kentucky, Louisiana, Maryland, Michigan, and others. And at least 16 other states are seeking licensure. I've introduced LB422 as a placeholder piece of legislation, as art therapy is currently undergoing a 407 review. With a favorable review, I anticipate we can make changes, any changes needed to solidify the scope of practice over the interim. I respectfully would ask the committee to hold this bill until the 407 review is done. But because we talked about yesterday the timing of a 407 can be about a year, we wanted to have a bill in so that it's essentially a shell until we can see what the 407 decides. The Board of Health has come in neutral, sent a neutral letter, and that's really because the 407 isn't concluded. Finally, I do know that the Platte Institute intends to testify in opposition. That's absolutely fine. They don't like occupational licensure, any additional licenses. But in this instance there are two issues. One is you can't bill for a service if you don't have a certification, and so it's really hard to say, hey go get your art therapy degree and then come back to the state where an insurance company doesn't consider you to be certified for billing. And the second one is we don't want people holding themselves out as art therapists when they don't have the proper education or certification. And so without that, we don't have any assurances that people have met a certain standard for practice. And because we're dealing with individuals who have a lot of, a variety of intense, both emotional and physical needs, it's really important that we make sure that the people who are serving them are well-trained and certified. And so with that, I'm happy to try to answer any questions you may have.

ARCH: Any questions? I always have one. Oh, Senator Williams, please.

WILLIAMS: Thank you, Vice Chairman Arch. And thank you, Senator Howard. Will somebody behind you be able to describe, in some detail, what an art therapist-- give some specific examples of the type of therapy they perform? I would like to hear some things on that.

HOWARD: I believe so, yes.

WILLIAMS: And the second thing I would like to know-- you mentioned something that I'm not sure I quite heard you right. Do they diagnose illnesses? Do art therapists actually diagnose?

HOWARD: And have a diagnosis code--

WILLIAMS: Or do they--

HOWARD: Or just a service code? That's a good question.

WILLIAMS: OK. We'll--

HOWARD: That's a great question.

WILLIAMS: Someone coming behind you I'm sure will be able to answer those questions.

HOWARD: I hope so, but if--

WILLIAMS: They just, they just shook their head, yes.

HOWARD: Oh, good. OK. If not, I will get to the bottom of it and circle back with you.

WILLIAMS: Thank you, Senator Howard.

HOWARD: Thank you, Senator Williams.

ARCH: Other questions? I think my question is probably going to be similar. But I-- from healthcare, I understand there's a big difference between being able to bill and being able to be paid.

HOWARD: Right.

ARCH: Does anybody pay for this? And the codes. But if there's someone else coming behind, I'll, I'll talk about, I'll talk to them.

HOWARD: And if that question doesn't get answered, I will get to the bottom of it and circle back with you.

ARCH: OK. All right, thank you. All right. I don't believe there's any other questions.

HOWARD: All right. Thank you so much.

ARCH: Thank you. We'll now ask for any proponents of the bill, give them an opportunity to speak, as well. Welcome to the Health and Human Services Committee.

DOUG ZBYLUT: Thank you. Good afternoon, members of the Health and Human Services Committee. My name is Doug Zbylut, and I'm the executive-- oh-- D-o-u-g Z-b-y-l-u-t, and I'm executive director of Nebraskans for the Arts. And I'm handing out written testimony about what, why we wanted this bill supported, the intent and the benefits of it, and also our willingness to work with everyone to make sure, as we go through the 407 review process, that we come up with the most effective and efficient licensing for this. But I thought, for my verbal testimony, I'd kind of share some more professional and personal reasons why this was a need in our state. And there's four things I hope I get to cover. One is my work when I was the executive director of the Ronald McDonald House Charities in Omaha. I had partnered with WhyArts in, in Omaha to come in and do art work with the children and the parents there, so they could work through there. And that provided quite a bit of comfort for those folks. But at last-- when we had our State Arts Advocacy Day, Carolyn Anderson, the founder of that, was there and I talked to her about this bill. And she said it would have just been such a great benefit, knowing who licensed art therapists would be as a resource to support their activities. Second, many of you are familiar with our NebraskARTS awards that we give to schools, school districts that excel in arts education. And I had a chance to visit one of our previous recipients, Schuyler public schools. And when I took a tour with the superintendent there, they had artwork throughout the-- all the hallways and everything. And the superintendent said, well it's such a, you know, just an uplifting, positive thing, you know, that kids could get through there [INAUDIBLE]. But he said sometimes this is that, a school district that flipped in populations from, you know, 90 percent traditional student to, you know, to now 90 percent diversity or minority students. He said when something would occur, like when they had the immigration raid at O'Neill, and then a few weeks ago there was the car accident by Fremont in which they lost several

students in there, he said he can see a, quite a change inside that the art teachers and counselors say they could see that change in there. And he said, boy, it would, if we knew who we could go reach out to, to get to come in and help us, you know, diagnose or try to figure out what's going on in this, because this is beyond our scope, when we see that change, on how to handle the students. We thought this would be, you know, knowing who [INAUDIBLE] art therapists are, it could be a resource at-- that could also be listed in the works that are being done for the help, mental health registry for schools proposed in LB727 that's going to be up in committee, Education Committee, next week. Third, in my position, I get a chance to go out and visit all across the state, arts organizations and artists. And one of my trips this week was through the, or last summer was through the Panhandle. And I talked to folks about this; we were exploring this idea. And you know, folks out in North Platte, they said, oh yes, we've got-- we're trying to do artwork with our autism students, our art autism kids. In Scottsbluff they're saying, we have volunteers, artists that are going to the domestic violence shelter and working with those folks, and said, gosh, you know, if we knew someone that, you know, when we see something going that's beyond our capability, they want to be able have a resource like they know they-- someone that's licensed that they know can help them with diagnosis, interpretation, and support. And then on a personal note for-- I'm going through some medical treatment right now. And while talking with the nurses during my chemotherapy visit this past Monday, they talked, well, what do you do for living and stuff. I told them what I was doing and then we talked about this bill. And they said, well, we, we bring in, we have these easels. We, we bring in all kinds of art materials so people can do that if they want to. He's sitting in here doing it. And they also, like-- they said that it would be wonderful if they had this as a potential resource, know who the art therapists are in the state that are licensed. They could come in, and if they see something that's beyond what they know from their nursing "practitioning" and, you know, medical stuff. So those are some of those reasons I, that I saw that when we, when it was first brought up to me about pulling this bill forward, introducing this; this is what I saw. These are great reasons to do it.

ARCH: Very good, thank you. Thank you. Any questions?

WALZ: I just have a comment.

ARCH: Sure.

WALZ: I just want to thank you for coming in and opening our eyes as to all the opportunities that we have with the art therapy. So those examples were very good. Thank you for that.

DOUG ZBYLUT: You bet. And they, they, the folks are coming behind you can give you so many more examples. And I have introduced this. I've been talking to Lieutenant Governor Foley about this, because there's a national initiative from the Lieutenant Governors Association and American Arts group that-- Americans for the Arts-- its arts and healing in the military. And of course we had a speaker that was going to come here of an organization called Midwest Arts for Veterans [SIC] and Caregivers; she's from Bennet. But she fell ill today, so she would have been one of the speakers but-- which we'll definitely have her as part of the process, too. That's one of the people that would be working with these art therapists to help the veterans in our state.

ARCH: Very good. Seeing no other questions, thank you very much.

DOUG ZBYLUT: All right; thank you.

ARCH: Other proponents? Welcome. Thank you for coming.

JENELLE HALLAERT: Thank you. What's being passed out now is the testimony and then a 12-question, frequently-asked questions sheet. So--

ARCH: Thank you.

JENELLE HALLAERT: --maybe it will be able to answer some of those questions that you have.

ARCH: OK.

JENELLE HALLAERT: So good afternoon, members of the Health and Human Services Committee. My name is Jenelle Hallaert, J-e-n-e-l-l-e H-a-l-l-a-e-r-t, and I'm a founding member of the Nebraska Art Therapy Licensure Coalition, which is a grassroots team that advocates for art therapy legislation in Nebraska. I'm also a current graduate student at George Washington University Art Therapy Program in Washington, D.C., and I'm here today in support of LB422, adopt the Art Therapy Practice Act. Now in 2017, the Virginia Art Therapy chapter released a study that stated that 78 percent of graduate art therapy students reported that lack of licensure in the state posed a barrier to remaining in Virginia. Now I would love to tell you that I'm moving

back home to Nebraska in 2020 when I graduate, but I am reconsidering this decision after witnessing the numerous benefits that licensed art therapists receive elsewhere. Now there is one great thing about Nebraska, and it's the undergraduate art therapy program which is housed at Concordia University-Nebraska in Seward. Back in 2015, I was the only one to graduate from that program. And this spring, 2019, there are 12 more proposed graduates to be coming. So we can see that there is an obvious increase in the profession of art therapy. And I also had a chance to talk with the president of the university and it's a possibility to have a master's program there develop in the future, because one of the issues that these students are facing is that we have to move out of state to earn a master's degree in art therapy and then find a reason to come back to Nebraska to work. And I think a license, through LB422 could really help with that. So there are also a couple misconceptions about art therapy that I'd like to clear up. So art therapy may look like arts and crafts to some people but, whether we're working with children or adults, I guarantee you that it is not just arts and crafts. Art therapists are trained to administer arts-based assessments to diagnose and treat clients with a theoretical and experiential, experiential understanding of the creative process. We are also using appropriate art materials for particular populations. We're also trained to help clients accurately interpret visual imagery. And finally, we're also ethic, we also ethically protect and preserve client artwork, which is part of their clinical file. The second misconception I'd like to clear up is that art therapists want to restrict similar professions from using art materials; and that is not true, as well. Counselors, expressive art therapists, teachers, occupational therapists-- you name it. We encourage all professionals in similar careers to use art materials and the creative process with prudence, but to describe their work accurately to clients, which means not using the term "art therapy" to describe their work because that's confusing, and also not using the title "art therapist," as well. One of the best things that LB422 is going to do is to eliminate harm from the public. And this is very important because there have been many accounts over the years that we've seen art therapy progress, we've seen untrained practitioners misconstrue arts-based assessments, we've seen untrained practice, practitioners misapprehend the outcomes of art making, we've seen retraumatization in clients from memories that are evoked through the creative process, we've seen a devaluation of the significance of culture in art making, and we've also seen an exploitation of client artwork. Though these mistakes may be made out of ignorance rather than malice, they do leave a lasting harmful effect, which is

important to consider and why a license can be very important to help protect our public, our Nebraskans. And so now that you've heard some of the things that distinguish art therapy as a unique profession, and the importance of an occupational license, I encourage you to consider LB422, not only for art therapists, but also for your Nebraskans. Thank you.

ARCH: Thank you. Thank you. Questions? Senator Williams.

WILLIAMS: Thank you, Vice Chairman Arch. And thank you, Ms. Hallaert, for making the trip from D.C. to be here.

JENELLE HALLAERT: Thank you.

WILLIAMS: So if I've got it right, you have an undergraduate degree in art therapy from Concordia University and now you're in--

JENELLE HALLAERT: Yes, sir.

WILLIAMS: --in grad school and want to come back. When you come back, what do you see yourself doing, and in what setting? And who might be your employer?

JENELLE HALLAERT: Um-hum. I would like to become an art therapist when I move back to Nebraska. Luckily, I have my master's in counseling already from University of Kansas. So I may be able to earn my counseling degree. And, and I'd like to become an art therapist, but there's no way that I could ethically practice that without already becoming a counselor, which is a burden in itself. So having a license, an individual occupational license for art therapy would be great so I wouldn't have to have two. But I would love to become a practitioner of art therapy, and I'd also love to work in private practice possibly, being able to bill and see clients, and I would need to be supervised by a board-certified art therapist. And it would be nice to also teach at the university level and conduct research.

WILLIAMS: OK.

JENELLE HALLAERT: Um-hum.

WILLIAMS: Thank you.

JENELLE HALLAERT: You're welcome; thank you.

ARCH: Questions? I have one.

JENELLE HALLAERT: Yeah.

ARCH: And it just was prompted by something you just said: board certification.

JENELLE HALLAERT: Yes.

ARCH: So we're talking about licensure.

JENELLE HALLAERT: Um-hum.

ARCH: But there is also board certification available for art therapy?

JENELLE HALLAERT: At the national level there is. At the national level there's board certification which goes beyond the ATR, which is the art therapy, registered art therapist credentials at the national level. So that's the standard for art therapists nationally, but in no way does that protect our Nebraskans at all.

ARCH: Right.

JENELLE HALLAERT: Um-hum.

ARCH: It's not licensure. That's--

JENELLE HALLAERT: Yeah, absolutely.

ARCH: --national boards.

JENELLE HALLAERT: Yes.

ARCH: OK.

JENELLE HALLAERT: So they set a good standard,--

ARCH: OK.

JENELLE HALLAERT: --which is part of the modeling of LB422.

ARCH: OK.

JENELLE HALLAERT: But there are some ways we can improve.

ARCH: OK. All right. Thank you very much for your testimony.

JENELLE HALLAERT: Um-hum; thank you.

ARCH: And thank you for coming. Other proponents?

JENNIFER JACKSON: Hi.

ARCH: Welcome to the committee.

JENNIFER JACKSON: Thank you. My name is Jennifer Jackson, J-e-n-n-i-f-e-r J-a-c-k-s-o-n. I am so excited to be here. Thank you so much to members of the Health and Human Services Committee. My name is Jennifer Jackson, and I'm a registered, board-certified art therapist. I've been practicing for 18 years. I, too, am a member of the Nebraska Art Therapy Licensure Coalition, and I am the current secretary of the American Art Therapy Association, and I'm the past president for the Iowa Art Therapy Association and the Kentucky Art Therapy Association. I'm currently the executive director at Heartland Counseling Services, and we cover 11 counties in northern Nebraska for mental health and substance abuse services. We're a Region 4 provider. So I'm here today in support of LB422. At this time there's no legislation that protects Nebraskans from receiving art therapy services from anyone that proclaims they can do art therapy, regardless of their occupation, education, and experience. This bill would safeguard clients from harm by requiring the state to regulate the practice of professional art therapy through title protection of the occupation and rigorous educational and, also, internship experiences. So the coalition, the American Art Therapy Association, as well as consumer organizations, are asking this to be passed and for four reasons: One is to expand behavioral health care in Nebraska-- a year ago it took me over a year to hire a therapist, just in general, for our O'Neill office; two, to protect the public and Nebraska's behavioral health consumers by distinguishing a level of education and training while reducing confusion and misuse regarding art therapy; three, name and define art therapist in the state of Nebraska to be licensed, ensuring title protection for this professional clinical practice; and four, kind of like with Jenelle, promote professional clinical growth in our state in order to retain and attract professional clinical art therapists. I grew up in South Sioux City, Nebraska. I went to Briar Cliff College [SIC] where I double majored in art and psychology, and then I went to graduate at the University of Louisville in Louisville, Kentucky. And that last semester my husband-- this was almost 20 years ago-- but my husband moved home and got a job in north Omaha at an elementary school. And I was all ready to come home, move back, and I could not find a

board-certified art therapist to supervise me. I found one person, Janet. She worked at the Children's Hospital in Omaha, and she just said: I just am too busy; I just cannot supervise a new graduate. And so my husband packed up, moved back to Louisville, and we stayed there for another ten years, where I continued to practice in Kentucky. I've now been home for the past eight years, but that was one of the big restrictions of moving back. So the problem is that art therapists work with vulnerable populations and we assess, treat, rehab. We are capable, we are-- receive the training to diagnose, and we are treating clients with mental, emotional, physical, and developmental disorders. This includes a huge range of individuals, from fragile children to veterans returning home with PTSD, and yet there's no license in, licensure in Nebraska. So it's just so important that we have this. In Nebraska, suicide is the second-leading cause of death for kids 14-24. One in four kids experience trauma, and one in five adults experience mental illness, yet only 40 percent are receiving services. So this is why we need to expand health care and have art therapist licensure in the state. And as the public becomes more aware, I think, I mean I've seen on TV a lot and in the media people are starting to recognize art therapy and see that-- they're actually seeking this out. Parents, soldiers, and other consumers deserve the peace of mind knowing that those who offer this psychotherapeutic treatment and services of art therapy are trained at the master's level and regulated. In addition, the lack of quality control and uncertainty regarding those who presently can legally call themselves art therapists have made third party payers reluctant to bill art and reimburse us for this. So again, the biggest thing is consumer protection and access to proper mental health care in-- at an affordable cost-- are the two main things. So I am, again, so thankful that you all are hearing this today. And thank you to the committee, thank you to Senator Howard. And happy Valentine's Day.

ARCH: Thank you; same to you.

JENNIFER JACKSON: Yes, thank you.

ARCH: Questions? Ah, Senator Williams.

WILLIAMS: Thank you, Vice Chairman Arch. And thank you, Ms. Jackson, for, for being here. Our K-12 education system in our state, largely public schools, are dealing with a student base that has some serious times-- mental health issues, autism issues, things like this-- and they're dealing with that today. Can you assure me that we're not starting down a path of those schools having to spend additional funds

for a licensed person versus the art teacher, the school nurse, the current employees at the school system that are having to handle these situations because they're in front of them every day?

JENNIFER JACKSON: Yes. I really, I fully believe that this would be no extra cost to the schools. And I can give you an example right now. I employ four school-based therapists, licensed mental health practitioners, in the schools. And it's no cost to the schools; we actually do all the billing. And so I don't see this as being any different. If somebody would want to have an art therapist based in the school-- actually OPS has art therapists in the schools right now. Kari is an art therapist in OPS. And so I don't know how she's funded. However, what I'm saying is, if it's, if there's a licensed art therapist and the schools to want a contract with them, or if they would be employed by, let's say, Heartland with me, then that would still be no cost to the school. The only cost the school would be that they would need to give us a room to utilize.

WILLIAMS: Let me ask the question a little bit different way and--

JENNIFER JACKSON: OK.

WILLIAMS: --go down a different path.

JENNIFER JACKSON: OK.

WILLIAMS: That school system is sitting right now, dealing with some of, some of these young people that have this. And I, I want to be careful that we're not pushing this down to-- that says, well, now we can only deal with that person if we have an art therapist.

JENNIFER JACKSON: Oh, that's not what we're saying. Again, that's not what we're saying at all. So let's say an art teacher, you know, if they're, if they are seeing things, they could always refer to even another type of-- their mental health therapist, a licensed professional counselor, or an art therapist. But this would not-- we're not saying that we're the, we're the, the golden child up here, that they can only see an art therapist; that's not what we're saying at all. We just want to protect the people that are saying that they're receiving art therapists, or I mean-- excuse me-- receiving art therapy. And it would be no extra cost to the school. I hope I answered that thoroughly, but--

WILLIAMS: We can discuss more; thank you.

JENNIFER JACKSON: OK. OK.

ARCH: All right. Senator Cavanaugh.

CAVANAUGH: Thank you, Vice Chairman. I think I'm understanding a little bit about what Senator Williams is asking. So I'm going to ask a little bit different question.

JENNIFER JACKSON: OK.

CAVANAUGH: So currently you have an art teacher in the school.

JENNIFER JACKSON: Yes.

CAVANAUGH: And an art therapist provides therapy.

JENNIFER JACKSON: We're-- correct; we're a mental health profession.

CAVANAUGH: That's right. So it's not, it has nothing to do with the curriculum within the school.

JENNIFER JACKSON: No.

CAVANAUGH: And you're only in a school if a client-- student-- requires your services.

JENNIFER JACKSON: Correct.

CAVANAUGH: So it's, you, you're not, there's not really an opportunity or an option for art therapists to become part of the curriculum.

JENNIFER JACKSON: No.

CAVANAUGH: I think that's the distinction that--

JENNIFER JACKSON: Yes.

CAVANAUGH: At least that's what I was understanding.

JENNIFER JACKSON: So are our degree is equivalent-- it's a 60-hours master's degree equivalent to a licensed social worker, licensed marriage and family therapist, licensed professional counselor.

CAVANAUGH: And you go, and you go into the school but, also, students can come to you?

JENNIFER JACKSON: Yes. We-- I mean, art therapists work with-- I would say 3, I would say 3 to a zero-- 103.

CAVANAUGH: Um-hum.

JENNIFER JACKSON: We work with every age, and I think that's a misconception, too, that art therapy is only for children. That is not-- that's far from it. Actually most of my career is actually with adults with severe, persistent mental illness and adults with dual diagnosis of developmental disability and a severe, persistent mental illness. So I worked at a state institution for six years in Kentucky, and it was all people that were-- had severe, persistent mental illness. So that's--

CAVANAUGH: So when we're talking in the school setting, if there's a child that's presenting with some develop, behavioral issues, and they're referred to any type of therapist, you're in that pool--

JENNIFER JACKSON: Correct.

CAVANAUGH: --of therapists. So it's--

JENNIFER JACKSON: Exactly.

CAVANAUGH: --counseling, it's art therapy, etcetera. OK, thank you.

JENNIFER JACKSON: Yes, yeah.

ARCH: Thank you. Any other questions? Senator Hansen.

B. HANSEN: Hi.

JENNIFER JACKSON: Hi.

B. HANSEN: Sorry, I showed up so I kind of, might have missed part of it. But how many other states recognize this as a license?

JENNIFER JACKSON: Well, right now we have 13 states that have an actual license, and there's-- in the works is another 16 right now. And then there's also-- oh, I don't think I have it with me but I can provide that to Senator Howard-- but there's probably another 15 that we can practice along with a related license.

B. HANSEN: OK.

JENNIFER JACKSON: So there's a lot.

B. HANSEN: OK, thank you.

JENNIFER JACKSON: Yeah.

B. HANSEN: Thank you.

ARCH: Any other questions? All right, thank you.

JENNIFER JACKSON: Yes, thank you.

ARCH: Thank you very much. Other proponents for the bill? OK. Seeing none, we did receive some letters in support: Connie Benjamin from AARP-Nebraska; Christianne Strang from the American Art Therapy Association; and Lisa Vogel from West Maple Counseling Association [SIC]. Are there any people that want to speak in opposition to this? Welcome to the committee.

LAURA EBKE: Thank you, Vice Chair Arch, members of the committee. My name is Laura Ebke, L-a-u-r-a E-b-k-e. I'm the senior fellow for job licensing reform at the Platte Institute. LB299, the Occupational Board Reform Act, passed last year, created a framework for the regular review by the Legislature of all occupational licenses created by the state. The bill also reaffirmed the general policy where occupational licensing is concerned, established in the 407 process and explained in numerous documents that can be found on the DHHS credentialing Web site, of regulating "only when necessary to protect the public." I understand that this is essentially a placeholder bill, awaiting the results of the 407 process for art therapists, and that action will likely occur next-- not a, not occur until next year after that review completes. With that in mind though, I'd encourage the committee to consider a couple of things. First of all, why is the licensing being requested? Is there an identifiable public health or safety risk involved with art therapists not being properly licensed? What is that risk? Are there verifiable examples of someone being harmed or, more likely than not, to be harmed? Second, is the primary interest to assure that art therapists can, if they so choose, potentially be a, be reimbursed by insurance providers? If so, I would refer you to another option: a certification or other recognition in law which would allow for the official recognition and creating of billing codes for art therapy, while not creating a new licensing board or excluding those who might seek to perform some elements of art therapy from doing so if they choose not to pursue full

certification. This Legislature has heard a number of bills this year, asking for licensing reciprocity for military spouses and others. There is significant economic evidence out there-- and I would be happy to provide you with links and/or references if you'll e-mail me-- which suggests that more licensing results in less mobile, mobility for workers, higher costs for consumers, and less competitive advantages versus states which have less or no licensing requirements in certain fields. One NCSL policy brief that I read recently suggested that one way that we might look at the need for licensing to protect the public health, safety, and welfare at this point in time is by looking at how many states already provide for full licensing as a standard for recognizing a public need. And looking at the American Art Therapy Association Web site-- and it sounds like it may be a little bit outdated-- it appears that only five states fully license art therapists today: New Jersey, New Mexico, Kentucky, Mississippi, and Maryland-- and there may be others-- although only one of those has a separate art therapy licensing board. Likewise, there are five other states which allow a specialization via certification or registration in art therapy under their professional counselling, mental health, or related licenses. I would note, as well, that Wisconsin, which fell into the latter category, recently recommended the elimination of their art therapy record, registration. Before the Legislature pursues additional licenses, the Platte Institute encourages the careful consideration of why additional licenses are necessary and whether there are lesser means of regulating, should regulation be shown to be needed in response to a well-known need for public safety. Thank you for your time, and I'd be happy to take any questions.

ARCH: Are there any questions? I don't see any.

LAURA EBKE: OK.

ARCH: Thank you very much. Are there any other testifiers in opposition? We had no letters submitted in opposition. Are there any that would like to speak in a neutral capacity? And we had one letter, submitted by Bo Botelho from the Department of Human Services, Health and Human Services. Senator Howard, you may proceed with closing.

HOWARD: Thank you, Senator Arch and colleagues. I'd like to reiterate that my, my hope is that you will hold this bill over until their 407 process is complete. There are a few things that I want to clear up. There are 16 states that have obtained art therapy license and title protection. Those are: Arizona, Connecticut, Delaware, Kentucky,

Louisiana, Maryland, Michigan, Mississippi, New Hampshire, New Jersey, New Mexico, New York, Oregon, Pennsylvania, Texas, Utah, and Wisconsin. But what's interesting about Wisconsin is that Wisconsin actually has a registry and to date there hasn't been any legislation introduced to eliminate that registry. So they just have a lower level of certification, but it still monitors the work that they're doing. My recommendation is that the committee show deference to the recommendations from the 407 committee. If the 407 committee comes out and recommends a certification or a registry or recommends that the certification be housed under the Mental Health Practice Act, that is, that is certainly what I would recommend. While I know that we should always be considering risk, the actual language of the 407 is always going to be health, safety, and welfare. And welfare can be interpreted in multiple ways. It's not just risk. It's not just that the janitor is going to do brain surgery. It can also be that somebody is holding themselves out as, as a certain thing and then we're not able to punish them for doing so because there is no license. So with that, I'm happy to try to answer any final questions you may have.

ARCH: Any questions?

MURMAN: So if we wouldn't, if Nebraska wouldn't have licensure for art therapists, insurance companies wouldn't, would not pay for art therapy?

HOWARD: That's my understanding is that there are specific, codes specific to art therapy that are unable to be billed because we don't have the certification.

MURMAN: OK, thanks.

HOWARD: Thank you.

ARCH: Any other questions? All right. Thank you very much.

HOWARD: Oh, I thought you might have had one. All right, thank you.

ARCH: Oh, I do, but I won't ask you [LAUGHTER]. That, that closes the hearing for LB422.

HOWARD: This will open the hearing for LB449, Senator Walz's bill to prohibit scleral tattooing.

WALZ: Good afternoon, Chairman Howard and members of the Health and Human Services Committee. For the record, my name is Lynne Walz,

L-y-n-n-e W-a-l-z, and I proudly represent Legislative District 15. Today I'm here to introduce LB449. LB-- I'll make this short and sweet. LB449 is an act that would prohibit the practice of using needles, scalpels, and other equipment to produce a permanent mark in the human eye, otherwise known as scleral tattooing, except when performed by a healthcare professional in the scope of the healthcare professional's practice. Scleral tattooing is when dye is inject, is injected, using a needle, in between two layers of the eye. This changes the color of the eyeball. There has not been extensive medical or scientific study on this issue at this time and, because it is not a traditional practice with tattooing, the individuals engaging in this practice are not likely to be trained to perform this task. Needless to say, there are a number of risks to an individual's health if they have this procedure performed on them by an untrained individual. I have an amendment, based on the language brought to my office by DHHS. I'm still looking at this amendment to make sure that there are no problems with the language or any accidental scope-of-practice change that I plan to bring to you at a later date. With that, I would be happy to try and answer any questions that you may have.

HOWARD: Are there questions [LAUGHTER]? All right. Seeing--

WILLIAMS: It's Valentine's Day; we're not going to [INAUDIBLE].

HOWARD: Seeing none, thank you, Senator Walz. Our first proponent testifier. Good afternoon.

DAVID INGVOLDSTAD: Hi. Thank you. My name is David Ingvoldstad, D-a-v-i-d I-n-g-v-o-l-d-s-t-a-d. Chairman-- Chairwoman Howard and members of the committee, thank you for giving me the opportunity to speak today in support of LB449. I would also like to specifically thank Senator Walz for introducing this important legislation. Today I am speaking on behalf of the Nebraska Academy of Eye Physicians and Surgeons, the Nebraska Medical Association, the medical, the Metro Omaha Medical Society, and the American Academy of Ophthalmology. And I currently hold or have held leadership positions in all, all of those organizations named. A little bit about me: I was born in Iowa, I grew up in South Dakota, I attended college in New Hampshire and then medical school in Georgia, followed by a surgical ophthalmology residency in Kansas City. Finally, I completed a vitreoretinal surgery fellowship here in Omaha-- or in Omaha, the road in Omaha-- at the University of Nebraska Medical Center, Center. Thirteen years later I'm a Nebraskan for good. One of the main reasons that my wife, who is

also a physician and also not from Nebraska, decided to stay here is because what I would call the pace, patient-first focus of our medical community. My ongoing passion for patient safety and quality, quality care is also why I'm here testifying before you today. During my nine years of postgraduate medical and surgical training, and subsequent 13 years in Nebraska in private practice, I've seen and treated all manner of tragic eye injuries. Many of these are life changing, life altering, blinding injuries. But none have been so heart-wrenching and preventable as some recent case, case reports of so-called "scleral tattooing" gone wrong. Surgery on an eyeball-- and this includes the injection of superficial tissues encasing the eye or the conjunctiva-- requires specialized surgical skill and judgment. Therefore, the public should be protected from untrained providers performing these procedures which have the potential, again, for life-altering complications. The term "scleral tattooing" is used to describe what is actually the act of injecting dye into the subconjunctival space, or under the thin tissue which covers the eye. In the best case scenario, this would result in permanently changing the white of the eye to a different color but, all too often, the procedure results in devastating complications. Even the body modification artist who claims to have invented the procedure in the 1990s, has, was quoted in a USA TODAY article as saying that he regrets that the procedure has made a way, its way into the hands of those who are untrained and that, quote, in his words, "people are hurt all the time." He goes further to say that he believes that the procedure should be banned for anyone who is not a licensed eye surgeon. As a licensed, board, board-certified eye surgeon myself, I would go one step further in saying that scleral tattooing really has no place in our society as the risks are too high and the benefits are minimal. There are several reports in the medical literature and popular media documenting cases-- some of you may have seen these in social media-- but well-documented cases of severe complications and permanent blindness and even total loss of the eye and eye removal. The short term complications can include things like headaches, light sensitivity, foreign body sensation, and migration of ink into nearby tissues. But more devastating long-term complications have also been well documented. These include: permanent blindness due to inadvertent penetration of the eye, or globe; traumatic cataract; ink staining of internal eye tissue, resulting in vision loss; retinal detachment, detachment and ophthalmitis, which is an infection inside the eye; and even complete loss of the eye, requiring enucleation, or surgical removal. Loss of an eye under these circumstances is not only tragic, but it is completely unnecessary and preventable. It is with these

concerns in mind that I wholeheartedly support the legislation being considered here today, and I'm happy to answer any questions. Thank you.

HOWARD: Thank you. Are there questions? Senator Arch.

ARCH: I have a question. Is, is it reversible?

DAVID INGVOLDSTAD: No. To my knowledge, it is-- well, so there was a case in Canada of a woman who had a scleral tattoo that caused significant vision problems, and she underwent procedure, underwent, she did undergo procedures to try to remove the ink. But the problem is that this ink permeates the tissues, the conjunctiva which covers our eye. The only way to remove it is to remove the conjunctiva, which leaves the eye exposed to all kinds of secondary problems. So no, there is no easy way to remove this without completely disfiguring the eye.

ARCH: OK, thank you.

HOWARD: Other questions? Senator Hansen.

B. HANSEN: So have you had people in your office with this, like issues with this before?

DAVID INGVOLDSTAD: Fortunately, I have not seen a patient with this yet.

B. HANSEN: Just trying to see the prevalence, like if it's--

DAVID INGVOLDSTAD: Yeah, it's--

B. HANSEN: --it's like--

DAVID INGVOLDSTAD: --uncommon.

B. HANSEN: --getting more popular [INAUDIBLE].

DAVID INGVOLDSTAD: But if you go on social media, you know, and-- or Google Images, you will see this is being done.

B. HANSEN: Yeah, I just did it-- very interesting.

DAVID INGVOLDSTAD: Yeah, you'll see things. And if you go to the American Academy of Ophthalmology Web site, there's actually a video on there of a patient who had dye injected into the eye and ended up

needing surgery to remove the intraocular head, a retinal detachment, a traumatic cataract. It's very striking when they make the incision into the eye, a gush of black fluid comes out of the eye itself; and that's dye that was injected into the eye. This eye ended up being removed completely because it was so infected and painful. They did histological staining of the eye to look at, because this had never been reported before and there was staining of all the various structures of the eye: the retina, the optic nerve, which is nerve tissue that goes directly to your brain. I mean, so we're talking-- we're not talking about tattooing the eyelids or the skin around the eye; we're talking about the eye itself which is, essentially, neurological tissue that's exposed to the world. And so, really, we feel that that should be sacrosanct from this type of procedure.

B. HANSEN: It's always that, that fine line between letting somebody do something they want to their body, even though they know the risks--

DAVID INGVOLDSTAD: Sure.

B. HANSEN: --versus--

DAVID INGVOLDSTAD: And I--

B. HANSEN: --what should a government do to stop something. And I realize--

DAVID INGVOLDSTAD: This is--

B. HANSEN: And I realize also, too--

DAVID INGVOLDSTAD: This is by no means anti-tattoo legislation.

B. HANSEN: Yeah.

DAVID INGVOLDSTAD: This is a safety-- eye--

B. HANSEN: Sure.

DAVID INGVOLDSTAD: --safety legislation, and, and there's that balance.

B. HANSEN: Yep.

DAVID INGVOLDSTAD: Correct.

B. HANSEN: And I've been pronouncing conjunctiva.

DAVID INGVOLDSTAD: Correct.

B. HANSEN: I've always been saying it's, you know, conjunctiva.

DAVID INGVOLDSTAD: Conjunctiva, conjunctiva--

B. HANSEN: So yeah, you know, I just learned something here--

DAVID INGVOLDSTAD: --you'll hear it both ways.

B. HANSEN: --so that's great. OK. Thanks.

DAVID INGVOLDSTAD: Yeah.

HOWARD: Other questions? All right.

ARCH: I, I have a question.

HOWARD: Senator Arch.

ARCH: It's in, it's in line with what Senator Hansen said. If I understand the bill correctly, it-- this does not prohibit completely. It prohibits it unless it is an act of a healthcare professional when performed in the scope of the healthcare professional's practice. So should an ophthalmologist decide to do this--

DAVID INGVOLDSTAD: Right.

ARCH: --it would be permitted. But it would be within a medical practice.

DAVID INGVOLDSTAD: Yes. I'm glad you asked that question; that's an interesting question. To my knowledge, no ophthalmologist has ever performed this and never would, but the reason that's in there is there are situations where ocular tattooing is performed as a medical procedure, and this has been described long ago. The most common type of tattooing we'll see, of the eye, is corneal tattooing. And this is done in a person who's lost vision. So usually these are blind eyes or a nonseeing eye. And we've all seen people who've had an eye injury or a sick eye that turns white. The cornea, which is the windshield of our eye-- the watch crystal of our eye-- turns scarred and white. And there are ophthalmologists who will tattoo an iris and a, and a pupil artistically on this to actually create a more normal look. So we're taking an abnormal pathologic condition and making it look normal. So

that would be the one circumstance. The other one would be, there are rare conditions such as one called aniridia, which is a congenital condition where someone is born without adequate iris tissue, the colored part of our eye. So the colored part of our eye is what blocks light from, too much light from coming into the eye. And if you're born without an iris, you're very light sensitive and it can lead to many, many vision problems. And actually, one way to treat this is to tattoo the cornea, again, to block light. So you create an artificial iris by tattooing ink onto the cornea. So it's pretty fascinating; there are actually medically indicated reasons for this. It's few and far between, but--

ARCH: Thank you.

DAVID INGVOLDSTAD: Yep.

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

DAVID INGVOLDSTAD: OK, thank you; thank you.

HOWARD: Our next proponent testifier. Good afternoon.

PATTY TERP: Hi. My name is Patty Terp, P-a-t-t-y T-e-r-p, and I am a board-certified eye surgeon who practices in Fremont. After growing up in Arkansas, I came to Nebraska to complete college and then a medical doctorate at Creighton University. I then completed a four-year residency and surgical residency training in ophthalmology at the Nebraska Medical Center before starting practice in Fremont three and a half years ago. I want to thank the committee for taking the time to listen to the many reasons to support LB449 and, most importantly, thank you to Senator Walz for introducing this bill on behalf of the state and the people of Fremont. Our vision is, oh, so precious. I chose to pursue ophthalmology as a medical subspecialty so that I could dedicate myself to restoring vision and maintaining vision, preserving vision in patients, knowing that in doing so I could enhance and maintain their quality of life. It is baffling to me that I now need to sit here before you today to defend patients from untrained individuals and also, admittedly, from themselves when it comes to the practice of scleral tattooing. Scleral tattooing, as you've heard, is the practice of injecting tattoo ink under the conjunctiva, which is the thin skin that covers the white of the eye, which we call the sclera. To fully accomplish this, the needle must puncture the conjunctival tissue multiple times, each time injecting

additional dye. This results in a permanent color change to the white of someone's eye. As you might imagine, this has potential for many complications. Not only has the ink itself been shown to cause localized problems under the tissue but, on multiple occasions, needles have penetrated the scleral wall, penetrated the wall of the eye itself, causing devastating effects to the eye. Case reports have described numerous instances of individuals suffering significant eye pain, infection, cataract, glaucoma, ink damage to eye structures themselves, and, worst of all, decreased or even total blindness. These consequences have been so bad for some patients that they only received relief from the pain after having the eyeball itself completely surgically removed. To be clear, as Dr. Ingvoldstad mentioned, there are indications in which an ophthalmologist may use sterile ink to tattoo a patient's cornea, which is the clear outer window of the eye, and anatomically completely different from the conjunctival tissue. Indications for this, as we heard, would include improving the cosmetics of an opaque, or completely scarred, cornea and to decrease glare and light sensitivity in individuals with iris defects, again, the iris being the colored part of the eye. These techniques are done sterilely by surgeons who have had years of experience in microsurgery training beforehand, and there is medical literature to support the benefits to patients who receive this procedure. Scleral tattooing, on the other hand, is not performed by trained surgeons. If you perform a medical literature search to look for any scientific studies evaluating scleral or conjunctival tissue, tissue tattooing, you will come up empty, except to only find horrific case reports of the many aforementioned complications patients have suffered at the hand of this procedure. An individual who is not medically trained in eye surgery should have no role using needles or other surgical instruments to infiltrate a part of the eye, particularly if the aim is to solely inject tattoo ink to cosmetically change the color of the whites of someone's eyes. This should be common sense but, unfortunately there are already individuals who have needlessly lost sight or their eye itself, secondary to complications of this practice. Thankfully, I have not personally had to treat a patient who has had a scleral tattooing procedure as of yet. I hope our proactive approach to maintaining patient safety with LB449 may circumvent such blinding complications in our state. I hope you join us in our support of LB449. Thank you, and I look forward to any questions.

HOWARD: Thank you, ma'am. Are there questions? Seeing none, thank you for your testimony today.

PATTY TERP: OK, thank you.

HOWARD: Our next proponent testifier. Good afternoon.

MARIE NORDBOE: Thank you. Senator Howard and members of the committee, my name is Marie Nordboe, M-a-r-i-e N-o-r-d-b-o-e. The Nebraska Board of Cosmetology, Electrology, Estheticians [SIC], Nail Technology and Body Art is in support of LB449, introduced this legislative session, prohibiting scleral tattooing. We discussed this proposed legislation at our February 4th board meeting. It is the position of the board that's scleral tattooing procedure is performed using hypodermic needles and instruments that are not used in the tattooing industry. It is not in the realm of the scope of the practice of tattooing. Technically there is absolutely nothing about the practice that reflects our industry and, as licensed professionals in the state in Nebraska, we believe this is a-- confusing to the general public and is signed by all of our board members.

HOWARD: Thank you. Are there questions? Senator Hansen.

B. HANSEN: So what does this mean by body art? Do you represent people who do tattoos?

MARIE NORDBOE: Yes.

B. HANSEN: OK.

MARIE NORDBOE: Tattooing is licensed under our board; we represent them.

B. HANSEN: OK.

MARIE NORDBOE: And Melanie Judkins, on the second list of members, is our body art member of our board.

B. HANSEN: OK. And do you know, by chance, what other, like do all the other-- I read in the previous testimony that the states of Oklahoma and Indiana both now ban the practice of scleral tattooing. Do you know-- do all the other states still allow it, do you know, by chance?

MARIE NORDBOE: I don't know anything about that. This was actually the first time that this term came before our board and myself,

personally. It was-- I was just like, why? Why would you do that? And so I have no knowledge of what other states are doing and, in fact, there aren't as many states licensing or registering tattoo artists as we might like to see in the future. But it really has nothing to do with tattoo and body art at all. It's a hypodermic needle; that's something that tattoo artists don't use. It's a different type of pigment. We don't want anything to do with it.

B. HANSEN: OK; thank you.

HOWARD: Any other questions? Seeing none, thank you for your testimony.

MARIE NORDBOE: You're welcome.

HOWARD: Our next proponent testifier. Seeing none, we do have one letter for the record: Eric Gengenbach, from the Nebraska Optometric Association. Is there anyone wishing to testify in opposition to this bill? Is there anyone wishing to testify in a neutral capacity? Good afternoon.

MATTHEW BAVOUGIAN: Good afternoon, and thank you, committee. My name is Matthew Bavougian, M-a-t-t-h-e-w; last name is B-a-v-o-u-g-i-a-n. Thank you for allowing me speak to you for a moment on LB449 and its amendment. The pieces of papers that are being handed out to you are kind of written testimony, kind of our general position or my general position. I've also included notes on both the original bill, as submitted, and then the amendments that were discussed. I've already been in discussion with Senator Walz's office and as well as with some of the lobbyists and proponent for this, and everybody has been very well received in transferring information; and that's greatly appreciated. I'm a local business owner and body artist with 20 years' experience. Over those years I've been a lobbyist and educator. I currently teach my peers as well as health inspectors and other regulators. I sit and work with the Association of Professional Piercers' Legislation and Regulatory Affairs Committee. I sit with the National Environmental Health Association and the Association of Food and Drug Officials, and I'm also the count, founding cochair of the Body Art Education Alliance, which is a group of like-minded organizations and individuals dedicated to developing resources and programs to educate regulators, body artists, industry members, and the general public on the practices and policies surrounding body art, body art studios, and body art studio inspections, in order to protect public health. I'm testifying neutral on this and I really wish

ambivalent were the right answer. Nobody in Nebraska thinks that this is a good idea. Nobody thinks that eyeball tattooing is a good idea; it's not. It's terrible; it's the worst idea ever. It's not body art. It's not an issue. It sounds silly, and I know that these doctors are terrified of the outcomes of what happened because, when this stuff goes wrong, it is the worst thing ever. People lose sight and that affects people forever; nobody's arguing that. But the truth of the matter is it's not really happening that much. It's not really an issue. And even if it were really an issue, there are already plenty of ways that this is taken care of legally in this state. Number one, it's not defined as tattooing; therefore, anybody with a body art license who would be doing so would already be breaking the law. If anybody with the proper licensing is doing it in a body art facility, that would also be count, contraindicated by the laws; they would already be breaking the law. There are plenty laws on the books that regulate the use of the tools, such as the hypodermic needle that one would use. It would be out of scope of license for me to use that tool or for a nonlicensed professional at all to use it. So we already have plenty of laws on the books and plenty of rules in place that make this practice illegal. It doesn't seem necessary to inject yet another spot. In doing so, I do feel that trying to insert something midbill or midact is always problematic, as it can lead to more confusion, more room for interpretation. On something like this, we don't want any room for interpretation. I do appreciate and understand the medical field's desire to leave the practice open to them. We're not medical professionals. If they deem there's a reason they need to do something, they absolutely need to make sure they have the right to do that. That's on them to guide and figure out what they feel is appropriate, based on their training that I don't have. What I have suggested is that I think that the problem, if it is even deemed to be a problem, can be solved with some simple definition changes in the body art act, in general. And by doing so in definition, once again, there's no code to be misinterpreted. I have suggested, through Senator Koltenberg's [SIC] office, who is also working on a body art bill, I believe, to use the definition of the word "tattooing" that has been accepted by the National Environmental Health Association, the Association of Food and Drug Officials, the Association of Professional Tattoers [SIC], and the Society for Permanent Cosmetic Professionals. That definition would be: Tattooing means the act of placing ink or other pigment into or under the skin or mucosa by the use of needles or other method used to puncture the skin resulting in permanent or temporary colorization of the skin or mucosa. This includes all forms of permanent cosmetics. That would be the standard

definition. If the professionals in this state feel that scleral tattooing needs to be more appropriately addressed, the addition of one simple sentence: This includes all-- or sorry-- this definition does not include tattooing of any part of the eyeball, known as scleral tattooing, which may only be done by the appropriate licensed medical professional. We already know that, but restating in the definition makes it perfectly clear.

WILLIAMS: OK.

MATTHEW BAVOUGIAN: Therefore, scleral tattooing may need to be defined. They have done this in the middle of the bill through eight or nine lines of code. It could be simply transferred into a definition and inserted into the definition section. Scleral tattooing means the act of using needles, scalpels, hypodermic needles-- which is something they've left out, unfortunately-- or other related equipment to produce an indelible mark or figure on the human eye by scarring or inserting a pigment on, in, or under the fornix conjunctiva, bulbar conjunctiva, ocular conjunctiva, or other ocular surfaces. And that definition is basically adapted from what they have already submitted.

HOWARD: Thank you. Let's see if there are any questions. Are there any questions from the committee? Senator Hansen.

B. HANSEN: I just want to clear one more thing up.

MATTHEW BAVOUGIAN: Yes, sir.

B. HANSEN: So you, if you're saying that it is illegal for them to do this in a, in a tattoo shop--

MATTHEW BAVOUGIAN: Yes, sir.

B. HANSEN: Yeah, OK. Where do these, where are these done at then?

MATTHEW BAVOUGIAN: This is the type of thing that is being done by what people refer to as body modification artists or modifiers or sometimes referred to as basement wizards or kitchen wizards.

B. HANSEN: OK, sounds interesting.

MATTHEW BAVOUGIAN: Yeah, yeah; it's, it's, it's, real nice stuff. These are being done, unfortunately in some cases, in the backs of licensed or unlicensed studios. These are being done in hotel rooms.

These types of procedures-- if you look on-line, I'm sure you can find a Holiday Inn Express suite that is draped, from top to bottom, in visqueen plastic sheeting; and it's being done there. Some of these things are also being done in medical suites that are being rented privately after hours. This is stuff that does happen. It's in the fringes. It's been going on for 20-plus years. The first person, I believe, to ever have it done has passed away since. It was atrocious. He refused to tell people the problems he was having. He was going blind. It was reckless and, hence, one of the men who invented this procedure speaks out about it openly now. The fact of the matter is I just feel that we already have plenty of laws that prevent us from doing this, and adding more bloat to our regulations doesn't help. That being said, everybody in the body of our community stands behind these doctors, that nobody should be allowed to do this unless they have a need or a reason to and they have the appropriate training. And at this point they even say it themselves-- there's no appropriate training for tattooing sclera; it doesn't exist.

B. HANSEN: Oh, OK. Thank you.

MATTHEW BAVOUGIAN: You're welcome.

B. HANSEN: And I think that's where my hang up here is, I really don't have too much of a problem with people doing what they want to their body and this kind of-- and the body art modification type thing.

MATTHEW BAVOUGIAN: Either do I.

B. HANSEN: However, the big differences here are, typically, you guys will have informed consent. A medical doctor [INAUDIBLE] informed consent. And there's no way to monitor at all with these people that are not having any kind of informed consent, telling them the risks about what's happening here. So that's kind of where my hang up is with this.

MATTHEW BAVOUGIAN: Absolutely.

B. HANSEN: Thank you.

MATTHEW BAVOUGIAN: Absolutely.

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

MATTHEW BAVOUGIAN: Thanks for your time, Senators.

HOWARD: Our next neutral testifier? Seeing none, Senator Walz, you are welcome to close.

WALZ: All righty. Well, first of all, I just want to thank the testifiers for coming today, especially the professionals. I have a hard time even sitting for an eye exam when they do that little puff thing in your eyes. So I'm so glad that they were here to talk about it for me. I guess, obviously, I felt that this was a piece of legislation that was important because, if ophthalmologists think it's important or if there's a need, then I felt that there was a need to bring the piece of legislation. There are some disagreements about this, but some individuals just want to make sure that there's some clarification. And I think what it clarifies is the consequences for engaging in this act. So I just want to thank you again. Oh. And Senator Hansen, Oklahoma has passed this bill.

B. HANSEN: OK; thank you.

WALZ: So with that, I just want to thank you for listening, and that ends my testimony [INAUDIBLE].

HOWARD: All right. Any, any final questions? Seeing none, thank you, Senator Walz.

WALZ: Thank you.

HOWARD: This will close the hearing for LB449. And we will open the hearing for LB607, Senator Kolterman's bill to change provisions relating to nail technology and body art. Senator Kolterman, welcome.

KOLTERMAN: Good afternoon, Senator Howard, members of the Health and Human Services Committee. I'm Senator Mark Kolterman, M-a-r-k K-o-l-t-e-r-m-a-n. I represent the 24th District in the Nebraska Legislature. I'm here today to introduce LB607, on behalf of the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art. LB607 is an extension of the effort of the Health and Human Services Committee, and the Legislature has taken over the past few years in updating the statutes that govern these professions. First and foremost, LB607 updates the definition of manicuring to include the practice of performing on the natural fingernails of a person, and provides a clear-cut definition for the practices of pedicuring. Before LB607, the act of pedicuring fell under the definition of

manicuring, but the practice was never defined itself. LB607 also updates stat, statutes regarding tattooing to align the definition with current industry standards and includes the practice of permanent makeup, microdermal pigmentation, micropigment implantation, microblading, and dermagraphics in the new definition. LB607 puts into statute language that will allow for temporary body art facilities and temporary body artists. This is important. This is important as it will allow our state to host body art conventions at locations such as the Pinnacle Bank Arena, I guess it's called the CHI Health Center in Omaha, the old CenturyLink Center. The temporary body art facility will be licensed and inspected by the Department of-- and the license is only valid for up to 72 hours and shall expire at the conclusion of the event. The temporary body artist's license could allow the artist to offer services at the temporary body art facility or be hosted in by a facility licensed as a traditional body art facility. An individual must register, be registered by the state before they can practice as a temporary body artist, and their registration only lasts for 14 consecutive days, which can be renewed up to two times for a calendar year. Additionally, LB607 allows for nail technology apprentices and nail technology apprentice salons. Nail technology salons will now allow cosmetology salons or nail technology salons licensed by the state to serve as a site for the teaching of the practice to apprentices. LB607 lays out specific requirements that a nail technology salon or cosmetology salon must meet in order to qualify as a nail technology apprentice salon. Finally, LB607 allows for individuals wishing to practice in the profession governed by the board to take the licensing examinations in different languages. Nebraska has seen an increase in individuals who do not speak English as their first language. These people want to practice in these fields and they have the sufficient skill and training to practice safely, but the current language barrier prohibits them from doing so. The board believes that, by allowing these immigrants, most commonly from Vietnam and Mexico, to take an examination in their first language, more individuals would be able to join these professions. As I stated earlier, I've worked closely with the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art on this legislation. Members of the board will follow me and will be able to answer specific questions relating to these practices and the need to update these statutes. With that, I'd like to thank you and ask for your support. And I would try to answer any questions, but I'm not an expert and I will let them answer the technical questions. I will say that this is, this is a continuation of what we've kind of done in the past couple of years. This was originally brought to me, originally by

the cosmetology board and they felt like we've missed it on our last-- a year ago or two years ago when we passed many of the updates. And since then, there's also been some safety issues which will be brought forward by, I believe, an attorney and some of the people that are working in the field. So with that, I'd try to answer any questions you might have.

HOWARD: Thank you. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman Howard. Thank you, Senator Kolterman. The temporary license, it says that-- you mentioned the C-- it is the CHI Health Center in Omaha. So that has a physical address. So does this mean that something, like we have the Maha Festival, also in Omaha, that at--well, I suppose it has an address, but--

KOLTERMAN: Yeah, it can, it can go--

CAVANAUGH: --it's not a facility; it's an outdoor festival.

KOLTERMAN: I, I, I don't know how that would be handled. It'd probably be handled through the rules and regulations. The concept behind that is body art has become more commonplace--

CAVANAUGH: Um-hum.

KOLTERMAN: --than it was 15 years ago, when the regulations for body art were put into place. But it's my understanding that there are experts in the field of body art that would like to come and train people, and so they do this at their conventions or at their trade shows.

CAVANAUGH: Oh.

KOLTERMAN: And so they would be able to come in and show the, the people in Nebraska that do body work, body art,--

CAVANAUGH: Um-hum.

KOLTERMAN: --the up-to-date trends, maybe the different types of tattooing body art that are going on. And so they would have to get a license temporarily. They can come in, they can teach, they can leave; and perhaps then we'll pick up some new ideas from that.

CAVANAUGH: So would did it allow them to also have clients getting actual new tattoos then?

KOLTERMAN: I believe it would under it, because they'd be, they'd be held to the same--

CAVANAUGH: Sure.

KOLTERMAN: They'd be held to the same standards that the people in our, in--

CAVANAUGH: Yeah.

KOLTERMAN: They'd have to be credentialed. In other words--

CAVANAUGH: Yeah.

KOLTERMAN: I think we're giving them some reciprocation, from other states.

CAVANAUGH: I'm, I'm just interested and, and I guess--

KOLTERMAN: Well--

CAVANAUGH: I think it's a cool idea is what I'm saying, but I [INAUDIBLE].

KOLTERMAN: The idea behind it was if we're going to promote having people come--

CAVANAUGH: Sure.

KOLTERMAN: --into the state and have these types of seminars, we need to have the experts from around the country.

CAVANAUGH: Right.

KOLTERMAN: It's my understanding there quite a few that have done this but I think they can answer those questions--

CAVANAUGH: OK.

KOLTERMAN: --in more detail.

CAVANAUGH: Thank you.

KOLTERMAN: Thank you.

HOWARD: Other questions? Seeing none, will you be staying to close?

KOLTERMAN: I will.

HOWARD: Thank you, Senator Kolterman. Our first proponent testifier for LB607. Good afternoon.

VICKI CRISWELL: Good afternoon, senators. My name is Vicki Criswell, V-i-c-k-i; Criswell, C-r-i-s-w-e-l-l. And I am here representing the Nebraska Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art. We are in support of LB607, as introduced this legislative session. The board discussed this proposed legislation at our February 4th board meeting. It is the position of the board that natural nail services, manicures and pedicures, require licensure and oversight in the cosmetology industry for public health and safety. Natural nail services, particularly pedicuring, by far has the highest risk to public safety. Nail services uses some of the most dangerous chemicals in the industry. Nebraskans and nail, natural nail care professionals deserve the protection of the licensure. With regards to the nail apprentice salon and temporary body art establishment license, this is an effort to reduce barriers in our industry and merely a cleanup of the current legislation. In an effort to be more uniform with other states, we support the legislative change to have the ability to examine in other languages. And you will see all the board members listed below. I thank you for listening to us. And we have discussed this at the meetings in a lot of different ways. So if you have any questions, I'd be happy to answer.

HOWARD: Sure. Are there questions? Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman. Thank you for your testimony. Senator Kolterman had mentioned two different nationalities that would be utilizing this, and I'm just wondering-- how many languages would we be able to offer the exams in?

VICKI CRISWELL: As far as I know, I didn't-- I mean I know it would be Hispanic and different Asian because we have so many in the state. Pam Rowland will be testifying and she has worked on that, so she would be able to help you--

CAVANAUGH: OK.

VICKI CRISWELL: --answer that question. So sorry I--

CAVANAUGH: No; that's OK.

VICKI CRISWELL: --don't know any further, but I know, we know we have to open that up. Many states at this time have opened their licensing up for other languages.

CAVANAUGH: Great; thank you.

VICKI CRISWELL: Um-hum.

HOWARD: Other questions? Senator Murman.

MURMAN: Thanks for coming in. If there was a problem at one of these festivals or something that they, that was using a temporary license that we have provided from the state, would that make the state responsible for, on a lawsuit?

VICKI CRISWELL: No. Actually, actually, they're going to be under a salon or a tattoo that already is licensed, and then it-- they would basically-- they're already licensed in that state, coming into this state, to do the convention.

MURMAN: Um-hum.

VICKI CRISWELL: But they would go under that type of license, so that salon would also make sure that they have the proper techniques and sanitation available.

MURMAN: OK. So that salon--

VICKI CRISWELL: That salon, um-hum.

MURMAN: --would be responsible--

VICKI CRISWELL: Um-hum, um-hum.

MURMAN: --if there was a problem.

VICKI CRISWELL: And so we're making sure that all the-- everything that's covered, that there isn't going to be any issues with that. Many of these other states are throwing those conventions. And our tattoo artist on the board has brought this to our attention, that it

would be a nice thing to have a convention in Nebraska and open that towards further education for the tattoo people.

MURMAN: OK; thanks.

VICKI CRISWELL: Um-hum.

HOWARD: Other questions? I just have one. How many other states license natural nails?

VICKI CRISWELL: We are, as far as I know, the only state that is not licensed in natural nails. The rest of the states have been licensed, and we have wanted this to happen for 19 years. So it's something that we've worked really hard to get. And Pam would actually have exactly but I believe, at this time, we are the only state that is not licensed under the union.

HOWARD: Thank you.

VICKI CRISWELL: Um-hum.

HOWARD: Anything further? All right. Thank you for your testimony today.

VICKI CRISWELL: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

TONY BROCK: Good afternoon, senators, Chair, members. My name is Tony Brock, T-o-n-y B-r-o-c-k. I'm a lawyer, practicing here in Lincoln, Nebraska. I appreciate you allowing me to go so that I can get out of here; I really do appreciate that. I don't represent anybody except people who get hurt and so, as a trial lawyer, you know, we always come in after the damage is done. And so I was asked to talk to you today about, you know, what happens to some of these people who walk into nail salons as consumers and walk out as patients. And today I've heard the term "patient safety" and "consumer safety." I think this bill is a good step in the right direction, and I urge you to, to promote that. You know, a few years ago, having cases involving nail salons was almost unheard of. And that they're happening more and more now and, the more I read about it, the scare, the scarier it gets. If you imagine a couple of young ladies who want to spend an afternoon together and they want to treat each other-- let's go get our nails done-- and then go for some lattes, or whatever, at the coffee shop-- and they walk in and they get their nails done. You know it's only

after the infection gets in there, and it's only after hospitalization after hospitalization after hospitalization after hospitalization, and round and round and round and round of antibiotics and permanent scarring and permanent impairment, so then the medical bills add up. So what do they do? They call a lawyer 'cause they can't get anywhere with nail salon. Then they find out that there's no standards; I mean it's like the Wild, Wild West in Nebraska when it comes to nail salons. So this bill or any legislation that kind of, I think, promotes consumer safety or patient safety is a good idea. There have to be some minimum standards that people should have or should, people should have met before they are allowed to work on other people and provide this kind of surface-- or service. You know, what I've, what I'm coming to learn is some of these folks have little to no training at all, and they're allowed to do this, these services to people. And it creates just incredible medical problems, disfigurement and, you know, in one case, one of the cases I'm involved in, it involves a pregnancy where treatment options are limited, and that just allows the infection to run wild, wild and, you know, it just gets worse from there. So just as, as a lawyer and, you know, I see the human aspect because that's who I represent. I don't represent companies or corporations; I represent people. And I just see a lot of people going in there, having no idea that they're about to be worked on and provided services by somebody with no training or no evidence of any training, and with no standards or protocol that they got to meet for patient safety or consumer safety. Hopefully, we prevent these folks from becoming patients. I appreciate the opportunity to be heard today. Thank you.

HOWARD: Thank you. Are there questions? Senator Murman.

MURMAN: So if we would allow the-- you're a proponent, correct?

TONY BROCK: Yes.

MURMAN: If we would allow this temporary licensing, do, do we know, I mean, what it takes to be licensed in other states? And wouldn't that possibly be making things more dangerous?

TONY BROCK: I certainly don't think it would make it more dangerous. It's certainly, it, I think Ms. Rowland and others will know about the licensing in other states but, in terms of making licensing requirements, you're, what you are doing is you are requiring people to meet at least a minimum standard or show that they've achieved a minimum level of education or training and know what they're doing. I

mean we don't want to bring in people just--they have to also know their limits, and if they have to meet some, or do a test to get a license, you know, they, they should know that they shouldn't be able to perform surgery on a foot, right? They shouldn't be able to cut.

MURMAN: Right.

TONY BROCK: And if they're not trained, guess what's happening? And guess what happens after that? I mean it's just, it's so predictable and it's so easily prevented.

MURMAN: So what they're licensed to do in other states, they would have to meet that minimum requirement, or whatever the requirement is in Nebraska, to get the temporary license, no matter what the other state does. What, what--

TONY BROCK: I don't want to go that far because that might be, that's a little bit further than my competency to answer that question. But if, if you're-- they, I, it-- to me, it makes common sense that they would have to meet that minimum standard in order to come in here in Nebraska and start working on Nebraskans. Because this bill is about protecting Nebraskans, is it not? They should meet the very minimum standard. I don't care what state they're from. If they're here in Nebraska, they have to meet our minimum standards.

MURMAN: Yeah, I hope that would be the case. Thank you.

HOWARD: Thank you. Are there other questions?

TONY BROCK: Thank you.

HOWARD: Seeing none, thank you for your testimony today.

TONY BROCK: Good day.

HOWARD: Our next proponent testifier. Good afternoon.

PAM ROWLAND: As they circulate--

HOWARD: Sure.

PAM ROWLAND: --paperwork, good afternoon, Senator-- Senator Howard, Committee Chair. My name is Pam Rowland, P-a-m R-o-w-l-a-n-d. I am a licensed nail technician and nail technology instructor. I have been practicing in the industry for 23 years. My previous medical training

was a dialysis technician in the hospital. Thank you for allowing me to speak on, and in support of, LB607. And a lot of those questions you were just asking, I can clarify, clarify for you at the end. Infection control is one of my many health and public safety concerns. My first exhibit for you was from the CDC, and that is titled "Why We Legislate Cosmetology-Public Health and Community Safety," that I'd like to share with you. This document for your review graphically explains the reasons for legislation and, hopefully, this will answer Senator Ebke's questions, as well. The real risk associated with the transmission of pathogens within the salon have increased substantially due to the following: One, the antibiotics are now resistant; pathogens-- pathogens that are new to our country; and lastly-- which I think is huge for our state-- limited government resources, which has led to reduced surveillance and accountability. While Nebraska has limited funds to complete its required inspections, there are areas of the state where salons are not being inspected. So again, complete, comprehensive education by an examination is a must for competency to protect the public. That's what LB607 will accomplish. What should scare you most of all, senators, is MRSA. This is the most harmful strain, or bacteria, that can kill a healthy person within 48 hours. In California, 2009, a pedicure patron became infected with MRSA and dies within four days. I spoke with Alan Murphy and, also, you have a letter handed out to you by Leslie. Both of those persons are the owner and manufacturer of Barbicide-- you know, senators, the blue stuff that you see all of our combs and nippers soaking in. And Leslie is the national director of education and does a lot of international education, and also is a, a science concept writer from Milady, which is our textbook. They both said, and Alan Murphy, and I quote: Of all the cosmetology-related fields, nail technology by far has the highest risk to public safety. Nail technology is the most hazardous profession in cosmetology to public safety. Did you know Nebraska does not currently license natural nails, meaning manicures and pedicures; we're not talking about any kind of enhancement. Particularly, the most important, pedicuring, is the most hazardous. I've handed out, again, that letter. You've got some of the photos I've sent you from Barbicide. They go around nationally and talk, and in Washington, D.C., on public safety. Over the years, I've seen lawsuits for nail technology start at zero, start at six states and then increase to 16 now to 20 states. The state of California, Arizona, Virginia, Texas are states that have actually had litigation on nail technology services. The state of Virginia two years ago had a lawsuit where a woman was awarded $1.3 million for injuries obtained during a pedicure. This topic has been all over the

national news-- Dateline, local news-- numerous times. Last year I came to you and I said, thank God, not in our state. Nebraska has it right with high standards of education and, and excellence. Well, I'm sad to report that that's no longer true. I have been asked by an attorney to be an expert witness in two lawsuits in the state of Nebraska. I have the attorney letter; there is an attachment. I recently found out there is now a third lawsuit. I can only say generically that one of the lawsuits involves nail technology and the other lawsuit involves unlicensed, exempt natural nail services. The source of infection transmitted to both of these patrons have been verified by a medical professional and traced back to the services. The in, infection spread to the bone, leading to surgery and possible amputation. Nail technology services can be performed by all scopes of licensed professionals: cosmetologists, barbers, and nail technicians. Again, natural nail services are not licensed in our state. They are currently an exemption.

HOWARD: Ms. Rowland, let's see if there are any questions from the committee. Are there questions? Senator Williams.

WILLIAMS: Thank you, Senator Howard. And thank you again, Ms. Rowland, for being here. Can you describe once again so I can clearly understand what, what natural nails--

PAM ROWLAND: Yes.

WILLIAMS: --are versus--

PAM ROWLAND: OK. So when we talk about natural nail services, they do a manicure and pedicure, some cuticle work, and that they don't put an acrylic product on top or a gel, any kind of chemical enhancement. That enters the realm of nail technology. What I want to point out to you, what years ago the state of Iowa and Illinois did, all states have gotten rid of a manicurist's license. They have moved it all into nail, to nail technology services. So that's all we're asking. We don't want a new license. We're asking for the safety of the public that that gets moved into nail technology.

WILLIAMS: So the, that, that service is currently, the natural nails is currently--

PAM ROWLAND: Not.

WILLIAMS: --not licensed--

PAM ROWLAND: That is--

WILLIAMS: --or regulated--

PAM ROWLAND: Anyone can--

WILLIAMS: --in any [INAUDIBLE].

PAM ROWLAND: --do it anywhere, any place. And again, if someone had it in their home, there's no licensure, so there's no accountability and no surveillance to make sure they're safe to the public.

WILLIAMS: Thank you.

HOWARD: Other questions. Senator Hansen.

B. HANSEN: So I didn't determine yet-- I'm sorry, thank you for coming, first of all-- that these infections are in fact due to the person performing the procedure or the person who did not follow directions after the procedure.

PAM ROWLAND: Well, it could be both.

B. HANSEN: OK. All right. I mean, I was curious about--

PAM ROWLAND: And, and again, we don't know what kind of education that person has had. Did someone just show them within an hour to help them out, to support their busy business? We don't know of numbers of unlicensed salons out there doing the natural nails because we don't inspect those; we don't know they're not licensed. But it seems to me it's more important. I don't want to be called as an expert witness. I don't want our state to go through this. It's more important that we get this taken care of. We tried this for a number of years. And I'm hopeful, and I implore you to please move LB607 forward for the nail technology. I think, too, you're kind of getting the bill confused. If I might just add, there's different sections. The temporary license portion is for tattoo, and then the other section is for, to license natural nails just under nail technology-- the 300 hours-- they can still get a license and so on. So there's different components that we kind of use this bill as a cleanup bill, so to speak.

HOWARD: Other questions? Ms. Rowland, has there been a 407 on any of the, on either of these issues, either the guest registry or the natural nails?

PAM ROWLAND: We did not at that time, and the reason being is we're not creating a new license for the nail section of the bill, nail technology. A lot of the other states, as I mentioned-- Iowa, Illinois-- just moved it right into nail technology, and they did ask, if they take the examination, it's only 300 hours as far as, possibly, proof and verification that they've been doing this practice, and move it right in there and take the exam to show competency. On the other question about the languages, a lot of other states do test. And our, our provider for our state exam already does have that. It's just moving that right in, and it is for the Vietnamese community and Hispanic. A lot of times they have to retake that exam up to three and four times. And it's more the English barrier on certain words versus they know. They've graduated, they've received their diploma; it's more the English language. So to become current with what other states are doing, we requested that.

HOWARD: Have, have the nail technologists ever done a 407?

PAM ROWLAND: We did years ago with Senator-- back then Senator Deb Suttle-- we did that in the year 2000, was when nails became licensed as nail technology. The exemption at that time-- which we had to concede to, did not want to-- was requested by another senator.

HOWARD: And then--

PAM ROWLAND: And we spent--

HOWARD: When was the last body art 407?

PAM ROWLAND: Body art-- I mean, one of the body art can tell me. I think it licensed in-- I want to say 2007.

HOWARD: Thank you. Any other questions? Seeing none, thank you for your testimony today.

PAM ROWLAND: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

BECKY PETTIGREW: Good afternoon. Good afternoon, senators and Committee Chair, Senator Howard. My name is Becky Pettigrew, and I've been a nail technician since 1997, and I live in Valentine.

HOWARD: Could you spell your name for me?

BECKY PETTIGREW: B-e-c-k-y P-e-t-t-i-g-r-e-w.

HOWARD: Thank you.

BECKY PETTIGREW: Thank you for the opportunity to speak to you in support of LB607, as introduced by Senator Kolterman. There is a rising number of harmful and life threatening bacteria and viruses being discovered in salons today. In the past the concern has been hepatitis, HIV, and influenza. Today we have the concern of a widespread presence of methicillin-resistant staphylococcus aureus, or MRSA, and necrotizing fasciitis, known as flesh-eating, flesh-eating bacteria. These are real threats with documented deaths and horrific, long-term health issues directly linked to the lack of sanitation and cleaning of implements used in manicures and pedicures. I feel that by licensing manicures and pedicures, we will be able to protect the public, and those individuals providing these services will be able to be trained the proper way, to not only clean and sanitize their implements, but also properly clean the pedicure basin-- also, the proper way to cut someone's toenails so as not to cause an ingrown toenail after the service. Proper removal of cuticle and callus is very important so as not to cause permanent damage to the nail or to overfile a callus, especially if that client has diabetes or neuropathy. Senators, I, myself, am the recipient of a pedicure gone wrong. Had the technician been properly trained and educated, I might not have the issues I do with my right foot. Many people in the community are unaware that you have to have an education or training in Nebraska to perform a manicure or pedi-- that you do not have to have education or training in Nebraska to perform a manicure or a pedicure on a client. I feel it is our duty and obligation, as a licensed professional, to educate our customers. Senators, I have had the opportunity to speak to you the last two years on LB347 in 2017, and LB1042 in 2018. At that time, I was able to tell you that Nebraska has had no loss of limb or death in our state, due to our high standards of education. As you have heard already today, we are no longer able to say that. In 2019, when I interviewed for the nail technician position on the Board of Cosmetology, Electrology, Esthetics, Nail Technology, and Body Art, I was asked by a member of the Board of Health what one thing I would like to see change or happen in the nail industry. I stated, to license manicures and pedicures in the state of Nebraska. As I am nearing the end of my term on the board, I come to you today with the hope that you will see the importance of protecting the public and see how important it is to

license manicures and pedicures in our state. Senators, I ask you to please vote in support of LB607. Thank you.

HOWARD: Thank you. Are there questions? Senator Hansen.

WILLIAMS: All right; go first.

B. HANSEN: Just a quick question. And maybe you don't have to answer it if you, if you don't want to. You said you were the recipient of a pedicure gone wrong before.

BECKY PETTIGREW: Um-hum. Yes.

B. HANSEN: Where was that done at?

BECKY PETTIGREW: It was done here in Lincoln.

B. HANSEN: OK. And it says by a technician, yet they were, hadn't been, been properly trained and educated.

BECKY PETTIGREW: Um-hum. First off, it, there was a very large language barrier. I knew, being on the board-- and I will say it was totally my fault. It was, I was part of a wedding party and I didn't want to cause a scene. I sat through the pedicure. I got done and I did notice the uncleanliness. When I got ready to walk out the door I seen the establishment license. They had no personal licenses, but they were there performing natural nails. They were doing pedicures, they were doing acrylics, and they were doing everything that a nail technician should be doing.

B. HANSEN: OK, thank you.

HOWARD: Senator Williams.

WILLIAMS: Thank you, Senator Howard. And welcome back,--

BECKY PETTIGREW: Thank you.

WILLIAMS: --Ms. Pettigrew. My question goes along the line of, you know, where we, we are charged, I believe, as a Legislature, to look at public safety and weigh that.

BECKY PETTIGREW: Um-hum.

WILLIAMS: And that, that's high priority. At the same time we always are concerned by barriers of entry into a business. And in this case,

protecting public safety would require someone who is currently not licensed to go through some education--

BECKY PETTIGREW: Yes.

WILLIAMS: --and licensing. Do you have an idea what the, what the parameters of that education are, what the potential cost of that is, and how long it takes to go through that process?

BECKY PETTIGREW: Not yet. That is something that I think would be finished up. And when we-- we've talked about a grandfather clause and "grandfather-clausing" them in. I'm not real sure yet as far as the cost or anything like that. That is something that we would definitely have to work on, and I know we have discussed it as a board, as well.

WILLIAMS: In addition, it's my understanding that, as we've heard testimony, a number of these people are either speaking only Vietnamese or only one of the Spanish languages.

BECKY PETTIGREW: Yes.

WILLIAMS: Where, are-- is the education available in those languages?

BECKY PETTIGREW: Generally, they are going out of the state to get their education. A lot of the-- what you are seeing is they are coming into the state. I do know of one gal in Omaha that is Vietnamese, and she had a school. I spoke with her a couple of years ago. I'm not sure if she is still-- has her school open or not, but I have spoke with her in the past, as well.

WILLIAMS: OK. Are, are these issues that you're talking about--it's, it-- you're indicating that these are things we're going to have to work on?

BECKY PETTIGREW: No, no. As far as what I'm seeing now, I don't know that we have even discussed the education part of it, as a board. I do know, as I said, I have spoke with the lady-- and I believe she's in Bellevue-- who is Vietnamese. And she does have a school.

WILLIAMS: Thank you.

BECKY PETTIGREW: All right. And there is nothing right now as far as Hispanic, as far as a school that I know of.

HOWARD: Any other questions? Thank you for your testimony today. Our next proponent testifier.

HAROLD SIMS: Good after, Senators--

HOWARD: Good afternoon.

HAROLD SIMS: --and Committee Chair, Senator Howard. My name is Harold Sims, H-a-r-o-l-d; last name Sims with one "m," S-i-m-s. Thank you for the opportunity to speak in support of LB607. I'm a celebrity-ranked nail tech, and I also work for an international nail manufacturer, and I also work as their lead educator. I'm an advocate for Politics Beauty and Barber and Nebraska Cosmetologists United. Over the years I've traveled while working closely with industry insiders, business owners, clients, and nail techs that all stand in support of LB607. If the bill does not pass, Nebraska could be the only state without manicure, pedicure, and shellac legislation. There's a map that's going around right now that shows you the entire country, what their hours are. Of course, you'll see Nebraska has one of the lowest standards. I'll give a correction from earlier. There is one other state that is not licensed for manicures and pedicures. That would be Connecticut. Their legislation is in hearing, just like we are today, and it will most likely pass, so that would leave us to be the only one without. I had the pleasure of working on this bill, and I'm thankful to Senator Kolterman for introducing the bill after meeting with him and Governor Ricketts. I'm so proud that we have their support and the hard work we have put into LB607. I also took the lead in garnering thousands of supporters, many of which have sent letters and signed petitions, totaling more than 2.500. You'll notice that there's a packet of some of the different petitions we've had over the last two years while we've been working on this legislation. Social media, however, has created a firestorm of supporters, adding up to a growing 4,000 interactions in support of the bill. Above and beyond my experience, I'm a licensed nail technician. I went to school here and eventually moved on to educating and owning my own salon. My concerns run deep, as I've worked closely with students, techs, and clients who were fearful for their safety and the health of your constituents. With that being said, we're confident that you will vote in support of LB607 to protect safety and the safety of Nebraskans. I've come today to share my factual observations, as well as my frustrations on this topic. With a severe lack of requirements in nail technology, clients come to my salon sharing their bad experiences; and I, too, have one of my own. The very first manicure I ever received led to large,

painful warts on every single finger. They progressed so fast. It took months of uncomfortable procedures to rid them, to rid myself of them, though this is one story of many, including the three lawsuits that you've only heard, that you've already heard about today. And it's the state's responsibility to ensure there are high standards so your constituents can be guaranteed safety. These voters should not be put at risk by low regulations. I called them my monster hands, and I cried and sat in a corner until, months later, they finally were taken care of by painful freezing processes. Additionally, higher standards in education are a major factor in helping to ensure success and increased income. The way our industry is able to earn and justify our higher income is solely based on the level of education acquired by the technician. With this bill, we do not want to put people out of work, but we are concerned about worker success and client safety while using these dangerous chemicals. We want to allow these unlicensed workers the chance to obtain a license. I've spoken with concerned members of the unlicensed nail community and with women's groups, as we know the majority of the industry is women practitioners working. And we want to help ensure them and the committee today that putting people out of work is not the goal nor will it be the outcome. Many of the individuals working as unlicensed practitioners can find it more difficult to earn and, a higher income and, in some cases, feel as if they have little to no options about when, where, and how they can earn an income while utilizing their talents. Having a license will not only legitimize them, but our industry, and it will allow them the choice to work anywhere they choose. Our suggestions to marry them into our scope of practice makes it fair, easy, and will only help them be more successful and safe. As a salon owner myself, my insurance agent, as well, would also like us to make sure that all practitioners are licensed when touching the public. To answer a question of Senator Murman, to the last gal-- she didn't have the information just yet-- all they would have to do is prove that they've worked 300 hours. Then they could take the test and get their license. There's nothing beyond that. They don't have to go back to school. They don't have to pay for that tuition. If they can prove that they've worked that amount of time and they can pass the basic testing, we will give that license to them. I'd also like to touch on the immense amount of products they, that have been introduced in the last ten years. The technology in our industry has moved just as fast as the world around us. With over 200 brands offering as many as 1,000 chemically-based products, that puts the numbers in the hundreds of thousands. And there are new ones being introduced every day, and it's the state's responsibility to take into account the advancement in

technology and how the potential misuse can be very hazardous to the client and the worker. These products and tools should only be purchased by a professional. I brought a couple of fun little tools for you, if you want to pass these around and look at them. This one's my favorite.

HOWARD: Unfortunately, we have a no-prop--

HAROLD SIMS: Yeah.

HOWARD: --policy--

HAROLD SIMS: Yeah.

HOWARD: --in this committee. But you can--

HAROLD SIMS: Oh, OK.

HOWARD: --share that with--

HAROLD SIMS: Yeah.

HOWARD: --the committee members later.

HAROLD SIMS: So I just kind of wanted to show you some of the different tools.

HOWARD: And let's see if there are any questions from committee members.

HAROLD SIMS: Yeah.

HOWARD: All right. Are there questions? Senator Williams.

WILLIAMS: Thank you, Chairwoman Howard. And thank you, Mr. Sims, for being here.

HAROLD SIMS: Yeah.

WILLIAMS: You drive around any community-- Lincoln, for instance-- and you see a nail shop here, a nail shop there. What do you think the expectations are of a consumer that wants to get their, wants to get a pedicure or whatever, and they see this shop and they walk in there? What do you think their expectations are?

HAROLD SIMS: Well of course, there's the aesthetic portion of it. They want to walk out and know that the work that's been done looks nice, but they also want to know that they aren't going to have to worry about any sort of infection or medical issues that would arise after that. I think any of us would agree that, if we're going to spend our hard-earned money on any type of product or service, one of the main things that we should receive in return, no matter what we're purchasing, is some level of safety. So those would be the two things, I think, the consumer would expect.

WILLIAMS: And help me remember back, because this testimony was over the last couple of years. Certain license requirements that we have, maybe for cosmetology, include a portion of nail training, also.

HAROLD SIMS: Correct.

WILLIAMS: That would be there. But what we're talking about here is, is, is a separate nail technology. It could be the other thing, but it could be that. But it's 300 hours, right?

HAROLD SIMS: That's what our current standards are here.

WILLIAMS: That's what the current for that. Do you-- can you give us a ballpark idea of what the cost is for that kind of training?

HAROLD SIMS: When I went to school it was about $3,800. I do know that now it's closer to about $5,000, between $4,500 and $5,000.

WILLIAMS: For that training?

HAROLD SIMS: Correct.

WILLIAMS: OK. Thank you.

HAROLD SIMS: Yep.

HOWARD: Other questions? Seeing none, thank you for your testimony today.

HAROLD SIMS: Thank you.

HOWARD: May I ask, how many more folks are wanting to testify on LB607? OK, perfect. All right, our next proponent testifier. Good afternoon.

MARIE NORDBOE: Senator Howard and members of the Health and Human Services Committee, my name is Marie Nordboe, M-a-r-i-e N-o-r-d-b-o-e. I'm a licensed cosmetologist, barber, and cosmetology instructor; received that first license about 40 years ago. And I'm here in support of LB607. As an educator, I feel it's of utmost importance to protect the public health of our clients that receive these personal care services. Today I hope to enlighten you on some of the information and techniques that are taught in Nebraska's professional schools pertaining to these services. Currently, a person without any training can perform these services, for compensation, to the public. This is definitely a health risk. To perform the professional and responsible services, the manicurists and pedicurists must learn about the structure and the growth of the nail. They must also learn about the diseases and disorders of the nail and the skin so that they will know when it is safe to work on the client. The nails are small mirrors into an individual's general health. Certain health conditions can first be revealed by the changes in nails. This is why, when you report for surgery, you're often asked to remove your polish and your nail enhancements. Some of these conditions are infectious and the service should not be performed. Often the client should be referred to a doctor. Athlete's foot, for example, is actually ringworm of the feet. It's very contagious. A client with athlete's foot should not receive services, and proper sanitation is paramount. Disinfected implements must be stored in a clean, dry container until ready for use. Bacteria can spread through the air, and disinfected tools must be kept clean until they're ready for use. This is one of the first things taught in our schools. The manicure table and the drawer must be cleaned and disinfected with an EPA-registered disinfectant, such as Barbicide. Windex and Spic and Span don't count. It is a, it's been a common practice for some untrained manicurists to put implements in Ziploc bags and put the name of the client on those so they can be used again the next time. Actually, abrasives such as emery boards and buffing discs or other implements should never be stored in plastic bags or sealed containers. It actually creates a breeding ground for the pathogenic bacteria to multiply. Credo blades cannot be used. These are like razor blades that are used to remove calluses. Credo blades are prohibited in our state for the licensed professionals, due to the risk of cutting the client and passing on blood-borne pathogens. The untrained pedicurist may not understand that one small cut is extremely dangerous, especially to a person with diabetes. Nail dusters, to dust off the client's nails, cannot be used because the brushes are not able to be disinfected. These are similar to the old-fashioned neck dusters that used to be used in the barbershops--

one brush all day long, lots of bacteria from one person to the other. Nail files and nail clippers must be disinfected between clients. Therefore, the manicurist needed three sets of tools so that there is always one ready for use. Some sanitation procedures take from 10 up to 20 minutes. Client and manicurist must wash their hands before the service. It's the most basic of health rules, but it's often skipped. However, if the manicurist or pedicurist has studied bacteriology, they would understand the importance of this step to preserve the health of both they and the person they are working on. A simple hand, arm, foot, or leg massage can be a serious, can cause a serious injury if performed with too much pressure and the wrong direction. Massage must always be done from the insertion to the origin of the muscle. An untrained, untrained person would not have knowledge and could pull the bone, pull the tissue away from the bone. Piped foot baths have an enclosed system that allow the water to be trapped in the system, and bacteria and fungus can cause infections from that trapped debris. This is why it's recommended that a pedicure customer not shave their legs, legs at least 48 hours before receiving a pedicure service to avoid infections on those abraded surfaces. Even a simple plastic dishpan that is often used for a footbath can house bacteria as the plastic begins to break down. Without licensing, individuals are working on the natural nail that are lacking valuable information and possess significant health risks to themselves and the client. A short, abbreviated program would teach them about such sanitation, chemical safety, first aid, bacteriology, and nail composition, as well as diseases. Also about having them licensed, we can do inspections on the establishments. This bill proposes a 300-hour training program in a school, with an exam. That's basically a two-month program. The national average for nail technicians is actually 425 hours, so we're, we'd be much less than that. As a licensed cosmetology instructor and a salon owner, I fully support this bill. I believe it's important to educate and license manicurists and pedicurists to protect the citizens of the state of Nebraska.

HOWARD: Thank you. Are there questions?

MARIE NORDBOE: One of the things you ask about, Senator Williams, was--

HOWARD: Senator Williams,--

MARIE NORDBOE: --the program.

HOWARD: --do you want to ask your question again?

WILLIAMS: Thank you, Senator Howard.

MARIE NORDBOE: A little prompting on my behalf there.

WILLIAMS: It is-- the question, the one question I would like you to address again, that I asked before, is what the cost of the education is.

MARIE NORDBOE: I am not currently teaching in a school. I have gone on to be a salon owner so I do not--

WILLIAMS: Do you have knowledge of what that cost might be, from your experience?

MARIE NORDBOE: For an entire cosmetology problem, program, I would but I do not know for a nail program. I could show you how much of the [INAUDIBLE]--

WILLIAMS: And what was the question you wanted to answer?

MARIE NORDBOE: Oh. Well, we were talking about, as part of the cosmetology program-- this is the entire Milady textbook-- about one-fourth of it is-- you see all my little yellow notepaper-- that's how much is covered for nail diseases and disorders and nail enhancements. It's a really fast growing curriculum.

WILLIAMS: Thank you.

HOWARD: All right. Any other questions? Seeing none, thank you for your testimony today. Our next proponent testifier. Good afternoon.

VICKI CRISWELL: Good afternoon again. Senators, I am here. My name is Vicki Criswell, V-i-c-k-i C-r-i-s-w-e-l-l. I've been a licensed aesthetician in the state of Nebraska for 15 years and a licensed aesthetics instructor and a licensed cosmetologist for 39 years. I'm here in support of LB607. In the last years, aestheticians have been allowed training in their school program to service clients with natural nail manicure and pedicures. Aesthetics students have been properly trained in the correct procedures and safety for the public. The reason the aesthetics students learned this service was to help build their business as a professional when the aesthetician had no other skin care appointments. When LB607 passes, this will, how will this affect, presently, the aesthetician that has been doing natural

nail manicure and pedicures? Yes, but not in a negative manner. With LB607, it will give those aestheticians that have the desire to just do nails other opportunities. LB607 passes, those aestheticians will then have another license, making them dually licensed, given them more, more opportunities, more education and become more marketable. Most aestheticians do not perform any natural nail manicure and pedicures in the salon even though they have been properly trained to do so. Aestheticians' main focus is to do services for the skin: skin care, product knowledge, corrective facials, antiaging procedures, microdermabrasion, chemical peels, hair removal, eyelash and eyebrow services, plus other modalities in the aesthetics scope. LB607 will be a good step for keeping the state of Nebraska properly educated, and protecting the public. And I thank you for your time today and keeping our public safe.

HOWARD: Thank you. Are there any questions? Seeing none, thank you for your testimony today.

VICKI CRISWELL: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

BRANDI BENTLEY: I get really nervous and I giggle, so I apologize if I start laughing. My name is Brandi Bentley, B-r-a-n-d-i Bentley, B-e-n-t-l-e-y. Thank you for allowing me to speak today. I am a licensed cosmetologist. I also do nails, pedicures at a podiatrist's office owned by Dr. Eric Palmquist. I am here to speak in support of LB607. I have been a cosmetologist for 18 years, and when I became a cosmetologist, my focus was on hair. However, when I was in school, we were required to learn all aspects of hair, skin, and nails. I remember when my first pedicure was. It was with a lady who had Alzheimer's. Her daughter had brought her in for some pampering and, as I removed her shoes, I noticed that her nails had grown all the way into the back of her toes into the skin. That is when I realized that this industry is more than beauty; its health, wellness, and peace of mind. Again, not only do I do pedicures at a salon, but I also do pedicures at Momentum Foot and Ankle Wellness Center. A medical pedicure is for anyone, but mostly I work on high risk patients: diabetics, HIV, fungus, ingrown toenails, elderly, handicapped, and recent surgeries and, lastly, cancer. Did you know that 50 percent of Americans will be diagnosed with some form of cancer in their lifetime? Unfortunately, what I've seen in the office-- I've been there for two years-- is that these patients come in with high risk [INAUDIBLE] issues. Insurance will only allow them certain amount of

nail care a year. So some of them come in to get-- they will end up back in an unlicensed salon because they are not getting it through the doctor. They'll be, they'll go to a nail salon, then referred to their primary care physician, then back to specialist, and then from a specialist, if that specialist cannot help them, they are moved back to someone else or referred to someone else. And then they're back into a salon just to get a nail trimming. It saddens me to see that these people are not getting the help that they need for that and they end up back in my, in the doctor's office. And it's not just trimming nails; there's a lot more to it. I get to see all ages and witness things that they have done to themselves or what someone else has done. Unlicensed individuals may not know the risks and the warning signs that can lead to the client having to suffer, leaving them to suffer for the rest of their lives with pain, fungus, or even the loss of toes. By having a licensed tech working on hands and feet who are trained in skin conditions and disease, they can become the first line of defense for long-term health issues, therefore providing health and safety to the public. I also brought with me a letter from Dr. Palmquist, and I'd like to read that on his behalf: Dear Senators, I would like to express my support of LB607 and working to ensure the safety of the public in regards to licensing of individuals involved in the nail technology industry in Nebraska. As the owner of an independent podiatry clinic and wellness center, I am well aware of the disease processes of the nails and skin. I have also seen the repercussions and consequences when services are provided by individuals who are not properly trained or when they fail to recognize the individuals whom they should not be providing services to for medical reasons. In my opinion, it is extremely important that all in, individuals who provide this service have the appropriate education and are properly licensed by the state of Nebraska to ensure the safety, public safety is maintained. It is also critical that all types of nail services mentioned in LB607 are provided in a properly licensed establishment. I thank you for taking our concerns into consideration and know that you will make the right choice by voting in support of LB607, to move it out of committee. If you have any questions, I'd be happy to answer them.

HOWARD: Thank you. Are there questions?

CAVANAUGH: [INAUDIBLE].

HOWARD: Senator Cavanaugh.

CAVANAUGH: Thank you, Chairwoman-- more of a comment. Thank you for coming today and for sharing your background and story with us. One of the kind of cool things of getting to be sitting over here is learning new things. And it never would have occurred to me that a cosmetologist would be working in a podiatrist's office for those very reasons. So thank you; it's fun to learn new things. Appreciate it.

BRANDI BENTLEY: Thank you.

HOWARD: All right. Anything else? Thank you; thank you for your testimony today. Anyone else wishing to testify as a proponent? Is there anyone wishing to testify in opposition to LB607? Good afternoon, Senator.

LAURA EBKE: Good afternoon again. Chair Howard, members of the committee, my name is Laura Ebke, L-a-u-r-a E-b-k-e, and I'm the senior fellow for job licensing reform at the Platte Institute. LB299, again, the Occupational Board Reform Act, created a framework for the regular review by the Legislature of all occupational licenses created by the state. The bill also reaffirmed a general policy where occupational licensing is concerned, established in the 407 process and explained in numerous documents that can be found on the DHHS credentialing Web site, to regulate only when necessary to protect the public. While LB607 raises many questions about the need for additional licensing requirements, I want to talk specifically about changes in the manicuring and pedicure portions of the bill. The current status of the law, as noted on the DHHS cosmetology and aesthetics page, and as numerous folks have already mentioned, currently notes that, quote: You do not need a Nebraska license to do manicure or pedicure of the natural nail, unquote. This bill raises the standard for simple manicures and pedicures and will undoubtedly require educational hours-- we've heard 300-some hours-- as well as testing. The added cost to become licensed will very probably result in one or more of these things happening: one, reduced practitioners in the field of manicures and pedicures; two, increased costs to consumers; or previously-- three, previously served populations becoming unserved. Senator Williams, to some of your points-- I'm just going to digress here a moment. One of the things in my community of Crete, which you probably notice in your in your district, as well, is that we have a lot of folks who have kind of set up, you know, put out their shingle in terms of manicures and pedicures. And they do business by virtue of, of word-of-mouth advertising. You know which ones are good, which ones aren't, aren't so good, which ones are

clean, and which ones aren't. But these are low-cost-- these are relatively low-income folks who are going to be, in many cases, Hispanic or, or Vietnamese. LB299 has established a framework whereby committees will review all licenses on a five-year rotation. Since I don't see-- and Senator Howard addressed this already-- I don't see a 407 review process having been done in this area, I would encourage Health and Human Services Committee to at least hold this bill in committee until next year and include related licenses in the first year's review during the coming interim, so that you can make a more objective, more fully-informed determination of need. Questions that the committee should ask before increasing the barriers for relatively low-wage workers to earn a living should include: First, is changing the scope of this licensure addressing a consumer need or a clearly demonstrated safety issue? Have there been complaints or injuries documented? How many? We've heard that there have been some. I would remind folks that anecdotes, anecdotes oftentimes make bad policy. Two, can some of these concerns be addressed through inspections of places of businesses for sanitation purposes, rather than through licensing of those who may be working there? And three, could a requirement for liability insurance for the business address, address whatever risk remains for businesses that practice manicures and pedicures? The Platte Institute is concerned about efforts to create licensing requirements that don't exist, that didn't exist previously or increasing licensing requirements without a demonstrated need. We oppose this bill, at least until a thoughtful review process is able to better gauge the need. Thank you, and I'd be happy to take any questions.

HOWARD: Thank you. Are there questions? Senator Williams.

WILLIAMS: Thank you, Senator Howard. And thank you for being here, Senator Ebke. You heard my question about expectations. In Crete, when you're going around and, you know, there's these shops set up. What do you think the real expectation of a person going in there, when they think about their own safety?

LAURA EBKE: Well, I think they expect a level of cleanliness. I think the consumer walks in and there are some. There are, quite frankly, some in Crete that I wouldn't go in just because of the way that they look or the reputation that they have. But I think that they have an expectation that they will have a nice, a nice result in terms of their nail or foot care. But beyond that I don't know that the expectation is that high. I know lots of high school girls who go in

and, you know, it's a fun afternoon. I don't, you know-- I think that there is an expectation that, you know, that [INAUDIBLE].

WILLIAMS: Those same high school kids go to extreme limits to prevent MRSA on the wrestling mat.

LAURA EBKE: Right.

WILLIAMS: I would expect those same kids wouldn't want to--

LAURA EBKE: They don't want to--

WILLIAMS: --be exposed to that.

LAURA EBKE: Of course not, which is why I think that, you know, that there is an expectation of sanitation. And why I wouldn't go to some places, which is why I think, also, that, you know, we can solve some of these problems less through licensing because licensing doesn't guarantee. In fact, Senator Arch could probably verify that a fair number of deaths that occur in hospitals occur as a result of infection. You know, that's, that's, that's, the, that's acquired as part of the hospital process. So I mean, licensing in and of itself doesn't protect us from anything. Sanitation standards are important, but simply being licensed doesn't guarantee that there won't be problems.

WILLIAMS: Thank you for your help.

LAURA EBKE: Um-hum.

HOWARD: Other questions? Senator Ebke, remind me. Does the LB299 framework supersede the 407?

LAURA EBKE: No. It works with the 407 process.

HOWARD: And then, so is the position of the Platte Institute that they would recommend more, more rigorous inspections as opposed to additional licensure?

LAURA EBKE: Well, as opposed to additional licensure, yes. I think that adding more rigorous inspections of the facilities would be positive, or a better alternative, rather than licensing individuals.

HOWARD: All right. Perfect; thank you.

LAURA EBKE: Um-hum.

HOWARD: Any other questions? Seeing none, thank you for your testimony today.

LAURA EBKE: Thank you.

HOWARD: Is there anyone else wishing to testify in opposition to LB607. Seeing none, we have one letter for the record: Dr. Travis Teetor from the Nebraska State Board of Health. Is there anyone wishing to testify in a neutral capacity? Seeing none, Senator Kolterman, you are welcome to close.

KOLTERMAN: Always forget about that neutral; been around Erdman too long. Thank you. It's been an interesting afternoon. Couple of things that come to my mind. First of all, I've experienced some of the same challenges that they've talked about. Ironically, I've had a pedicure or two in my day, and I've been cut. I got over it but, when they came in with, with this bill and I realized that natural nails are not regulated; I didn't realize that. I think there's a certain expectation, when you go into a facility, that you think, well, they're licensed and they've got some sort of registry or something. And apparently they don't. So what they're asking us for here is to license-- the 407 has already been accomplished for, for this type of what they're requesting. It was established, as they said, a long time ago. And we could use that same 407 to license these people and get them taken care of. Will there be a cost for those? There's two ways they can do this. They can, as you, as you-- they indicated they can be an apprentice and they can learn through it the apprenticeship or they can go back to school and then get a license through the school and complete the 300 hours and take the test. Either way, they can take the test if they've already been doing this. I understand the Board of Health is, is-- you've got a letter of opposition from them but, again, I don't, I, when the industry themselves is coming to us and saying we're, you know, a couple years ago we didn't see this kind of activity but today we're seeing more and more of it, I think that's a reason to bring a, a piece of legislation like this. As we move forward on this, I'm more than willing to work with anybody, but I will remind you that natural nails and natural pedicures are not inspected. They don't have to be inspected. So an inspector can't go in there inspect them and shut them down if they don't have to have a license anyway. So that, that's a concern of mine. We do have places that do, do the-- they are licensed to do acrylic nails and they might be doing pedicures, but the pedicures aren't required to have the

license, same license as the acrylic nail person. So there's kind of a fine line there in who's regulated and who isn't regulated. This clears that up. The last thing I want to talk about is the body art. You asked about the body art. This is really ironic, but when my daughter Jessica was Senator Stuhr's LA, they passed the first body art legislation, and that was her, that was her bill that she and Senator Elaine Stuhr passed back in 2007. I thought that was kind of ironic; now I'm working on it. I'd like to ask you to give it strong consideration. If there's things that we can do to improve the bill, I understand that. I don't know if putting another 407 in place is going to answer the problems that we're seeing, because we'd have to have a 407 on natural nails, as I-- the way I would interpret it. And I don't know if that makes any sense or not. So with that, I'd try to answer any questions you might have.

HOWARD: Are there questions? Senator Williams.

WILLIAMS: Thank you, Senator Howard. I have one quick question because you brought it up, Senator Kolterman, the, the apprenticeship. Can, can some, can either you or somebody catch me afterwards and explain, does the apprenticeship remove the requirement of going to a school and--

KOLTERMAN: I believe it does. If you look at the actual bill--

WILLIAMS: OK.

KOLTERMAN: And I, and I, I could refer you to it.

WILLIAMS: Yeah, everybody's shaking their head, so--

KOLTERMAN: It does. I think it's on page 3 or 4. But it does, and it allows him to work in a facility--

WILLIAMS: Yeah.

KOLTERMAN: --right beside somebody that's already licensed and then go take the test.

WILLIAMS: Thank you.

HOWARD: Senator Kolterman, I wanted to ask, I wanted to ask about the apprenticeship level, because Dr. Teetor mentioned that that's not currently a recognized level of credential for nail technology. Then

the other piece is that-- so we've only had a 407 on natural nails, the Suttle 407-- that was when she brought that bill.

KOLTERMAN: I don't remember the 4-- on the natural nails?

HOWARD: On the natural nails.

KOLTERMAN: See, I thought we had the 4-- well, the 407 preceded us on the other. That's what--

HOWARD: So the old 407 included natural nails, and then they made a compromise and removed them.

KOLTERMAN: Correct.

HOWARD: OK. So we have a 407 for the natural nails. Do we have a 407 for the other pieces?

KOLTERMAN: And that's what she was talking about when she came up and talked about the fact that they did it years ago.

HOWARD: Yeah.

KOLTERMAN: They have had a 407.

HOWARD: On the natural nails, but do we have a 407 on the guest registry or the body art?

KOLTERMAN: No, we do not have on that.

HOWARD: OK, perfect. Thank you.

KOLTERMAN: No, we do not have on that.

HOWARD: OK, any other questions? Seeing none, thank you, Senator Kolterman.

KOLTERMAN: Thank you.

HOWARD: This will close the hearing for LB607, and the committee will take a break until 4:00.

[BREAK]

HOWARD: [RECORDER MALFUNCTION]-- open the hearing for LB312, Senator Hansen's bill to change and eliminate provisions relating to dental hygienists. Senator Hansen, welcome.

B. HANSEN: Thank you. Good afternoon, Chair Howard and members of the committee. My name is Ben Hansen, B-e-n H-a-n-s-e-n. I'm the senator for District 16. I'm here to introduce LB312, to change and eliminate provisions relating to dental hygienists. As the published statement of intent indicates, my intent with this bill is to allow and encourage dental hygienists to serve the communities that really need their expertise the most. As we know, there are healthcare service shortages in many rural areas across the state. I am passing out a packet with two different documents. The very back page is a map of state designed [SIC] shortage areas for general dentistry. Every county filled gray is a shortage area and, as you can see, the map is filled with a lot of gray. You may notice that the majority of counties and shortage areas are also rural counties. In addition to state designed [SIC] shortage areas, 53 of Nebraska's counties are federally designed [SIC] dental shortage areas. The rest of the handout is a 2017 Nebraska registered dental hygienist survey summary compiled by the Department of Health and Human Services. In respect of your time, I'd like to point out a few important facts. In the middle of page 2, the report states that 22 counties in Nebraska have no practicing registered dental hygienist. We even highlighted them for you so you see them a little bit faster. The middle of page 3 breaks down practice settings and shows that 67 percent of nursing homes, 71 percent of preschool settings and 62 percent of student health settings are in rural areas. Although I encourage you to read the report in its entirety, I also want to draw your attention to two final places on the report. On page 6, it states that 33 counties are without the service of a public health registered dental hygienist. The top of page 7 states that 81 percent of public health registered dental hygienists are interested in working in a public health setting in the future. Authorizing dental hygienists to do what they are educated and trained to do is good public policy. These hygienists are highly trained, highly skilled, and highly competent people. This bill does not allow them to do anything they are not prepared for and does not force them to do anything they do not want. It's simply trust the education, training, and experience they've been accumulating their entire lives. I think you'll hear testimony after me that speaks to the level proficiency these hygienists are able to achieve during their schooling, and we should do our job as lawmakers and get out of their way so they can do theirs. It's important to note that this bill

does not expand the scope of practice of hygienists. In fact, after working with, and at the recommendation of, the Dental Association, I will be recommending an amendment to clear up one minor point of confusion in this bill. Hygienists are currently authorized to perform periodontal scaling and root planing in alignment with their scope of practice. These procedures often require use of anesthesia or nitrous oxide, which this bill disallows hygienists to administer. I'll be working with, I'll be working with the committee to bring an amendment, making some minor changes that would disallow root planing or periodontal scaling without administration of proper anesthesia, anesthesia by qualified persons. Hygienists say there's a need, rural Nebraskans say there's need, and these stats show there is a need for expanding care across Nebraska. Let's trust our hygienists to do what we've all, what we've already been asking them to do. Although I'm a physician, I'm not a dentist or hygienist. If you have technical questions I will do my best to answer them, but I'm sure there'll be others after me who would be better-- serve you. Still, I'm happy to answer any questions you may have. Thank you.

HOWARD: Are there questions? Can you tell me what, what people thought were the changes in scope within the bill?

B. HANSEN: I think there was little concern, which is what I brought about in an amendment about the ability to do periodontal-- let me make sure I get this right-- periodontal scaling and root planing, which typically requires use of anesthesia. And that would make it very difficult to do when you're not inside a dental clinic with the proper lighting, with the proper setting that you could have in a dental office. So those are kind of the scope of practice issues they're concerned about.

HOWARD: And so this just changes the location where they can practice within their current scope?

B. HANSEN: Yes.

HOWARD: OK.

B. HANSEN: Yeah. They already get public healthcare setting, training in school which, from my understanding, they did not get very much of before; and so now they do.

HOWARD: And what are the new locations?

B. HANSEN: The new locations would be hope, home healthcare, through a home health agency, and hospice care--

HOWARD: OK.

B. HANSEN: --if needed.

HOWARD: Thank you. Any other questions? Senator Arch.

ARCH: I should know the answer to this question.

B. HANSEN: OK.

ARCH: I don't. What, what-- is there a definition of a public health setting? We can, we can get that later.

B. HANSEN: Yes, but, you know, I, what I'm always used to the terminology being is, like especially like in schooling, it's a, like a part of the clinic that's, that they have affiliated outside of the clinic that the public can come in, almost like a clinical setting like you get in the medical doctor's office, but it's outside of the clinic, you know. So you can actually take care of the public, but still under supervision and training.

ARCH: Um-hum.

B. HANSEN: From my understanding-- maybe somebody can answer that better behind me.

HOWARD: Other questions? Were these changes that you're discussing already part of a previous 407?

B. HANSEN: I can't remember for sure.

HOWARD: OK, that's fine.

B. HANSEN: Sorry.

HOWARD: All right, thank you. All right. Will you be staying to close?

B. HANSEN: Yep.

HOWARD: Perfect. All right. We'll now invite our first proponent testifier to speak on LB312. Good afternoon.

HEATHER HESSHEIMER: Good afternoon. Thank you, Chairman Howard and the committee. My name is Heather Hessheimer, H-e-a-t-h-e-r H-e-s-s-h-e-i-m-e-r, and I am the vice president of the Nebraska Dental Hygienists' Association, and I am an assistant professor at the University of Nebraska Medical Center in the Department of Dental Hygiene. On behalf of the NDHA, we thank you for taking the time to consider our suggested changes to the public health authorization for dental hygienists. The NDHA is very concerned about access to oral health services across the state of Nebraska. A couple of months ago, President Trump made the statement on his ideas for reforming America's healthcare that states should consider eliminating requirements for rigid collaboration practice and supervision requirements-- or excuse me-- agreements between physicians, dentists, and their care extenders. Examples given was hygienists that are not justified by legitimate health and safety concerns. Dental hygienists understand the tremendous need for preventative services, especially to those unable to travel to dental offices. NDHA desires to help mobilize our members to expand access to care in Nebraska. Oral health is integral to overall health, yet those who need the dental care the most are often the least likely to receive it. Underserved and vulnerable populations face several barriers that significantly affect their ability to access and navigate the oral healthcare system. For example there are many Nebraska citizens in assisted living, hospice, nursing home, and home healthcare. They have medical staff on site to help with many of their needs, but no access to dental care without travelling to an office. While this may not be a struggle for all those in these care settings, it can be a barrier to arrange travel from qualified services to meet their special transporting needs and drive hours to get to a dental office. This can be very costly. The future of geriatric care is trending towards home health, so it also would be beneficial to allow public health hygienists to provide dental hygiene care in conjunction with home health agencies. The number of dentists per 100,000 population in the state has decreased over the past 10 years. You can see in the chart and my testimony that there is a maldistribution of dentists in Nebraska. The research evidence showing the advantages of preventative oral healthcare is overwhelming. One of the major medical concerns in the nursing home setting is risk of aspiration pneumonia. As bacteria builds in the patient's mouth, they become more at risk to breathing in the bacteria, causing these lung infections. In turn they end up in hospitals, which is far more costly than prevention. We believe that the dental hygiene profession is poised to play a pivotal role in the resolution of these oral health disparities. Nebraska is fortunate

that state law allows dental hygienists to obtain the public health authorization permit, enabling them to provide the services listed in my testimony currently. Dental hygienists with this status have been providing services to underserved populations for the past 10 years. LB312 would allow public health hygienists to provide their entire scope of practice with the exception of local anesthesia and nitrous oxide to those in hospice or associated with home health agencies, as Senator Hansen told us. While we celebrate the care many public health hygienists have been able to deliver due to the public health permits, we also believe that U.S. policymakers should consider the potential with expanding the scope of practice to address these barriers, including elimination of the 3,000-hour requirement to obtain the permit. Students in Nebraska dental hygiene schools all graduate with hands-on experiences in nursing home settings, yet they are not allowed to get a full permit without practicing 3,000 hours, which usually takes a couple of years. As a faculty member at the UNMC College of Dentistry, I know our dental hygiene students graduate with a better understanding of nursing home care than most practicing hygienists who have not had the experiences. It is important to remember that not every person in a nursing home, assisted living, or a home health setting is elderly. There are many, there are many young adults and children with trauma and other illnesses who could benefit from the changes in this bill. Upon graduation, a dentist is allowed to practice in any setting they wish for full, with their full scope of practice. They have three years of clinical experiences, learning a vast amount of procedures, some very difficult in nature. All dental hygiene students graduate with two years of clinical experiences to learn a much smaller scope of practice. Because of the experiences during their dental hygiene education with the total dental hygiene scope, we feel it is unnecessary to limit what services dental hygienists can provide to these patients upon graduation. Our license is only granted after graduating from a rigorous professional education, through an accredited dental hygiene program, and our license should grant us the ability to practice our full scope, hence the recommendation to eliminate the 3,000 hours. Oral health is an essential part of everyday life and greatly affects the quality of life. Our understanding of the oral systemic link is constantly expanding. I thank the Nebraska Legislator, Legislature for having the foresight 10 years ago to support the need for the public health permit. And we hope to continue to get more into the public health settings so we can assist those patients with getting into dental offices for referral, as well.

HOWARD: Thank you.

HEATHER HESSHEIMER: Sped read.

HOWARD: Are there questions?

HEATHER HESSHEIMER: Can I answer any questions?

HOWARD: Can you answer the question about the 407?

HEATHER HESSHEIMER: Yes, we have gone through the 407 process and-- with this, with this bill in the past.

HOWARD: And then what did it recommend?

HEATHER HESSHEIMER: I don't know if I can answer that, but I bet that somebody falling behind me can, because they were on the board of, on our dental hygiene board at the time.

HOWARD: Perfect. Other questions? Seeing none, thank you for your testimony today.

HEATHER HESSHEIMER: Thank, thank you.

HOWARD: Our next proponent testifier. Good afternoon.

JEREMY ESCHLIMAN: Good afternoon. Good afternoon, Senator Howard, members of the Health and Human Services Committee. My name is Jeremy Eschliman. I'm the health director at Two Rivers Public Health Department. And Jeremy Eschliman is spelled J-e-r-e-m-y, and the last name, E-s-c-h-l-i-m-a-n. Two Rivers Public Health Department is located in south-central Nebraska. It covers four legislative districts: District 36, about half of that; all of district 37; a wide swath of District 38; and I think, I believe one county in District 44. I want to take this opportunity today to talk to you about and share more information on the role of public health dental hygienists within our health department. They are critical in improving access to dental care through the services they provide in our rural communities. They play a crucial role in addressing unmet needs through use of evidence-based preventive dental health practices within our most vulnerable communities, our children and our elderly. However, few current oral health programs are sustainable long-term without the ability to be reimbursed for commonly provided CMS procedure codes for assessment and education. And I'll talk about that just a little bit more. Access to care has already been alluded to. It

has been identified for a significant period time, over 10 years in most health districts in Nebraska, and it's been a prioritized health need. To address this growing need over the last 10 years, the Legislature created the scope of practice for public health dental hygienists working in community health settings. And I believe there was a question in regards to the definition of a public health setting.

ARCH: Yeah, I called it.

JEREMY ESCHLIMAN: That really is a school, a long-term care, any place that's not a typical clinic setting. And that's what we, we utilize right now, is any place that'll allow us to set up shop. That's, that's where we're providing services at but, for the most part, a lot of, of lot of services would probably be in schools and long-term care. Local public health departments are utilizing public health dental hygienists to provide a range of preventive oral health services including screenings, cleanings, fluoride varnish, and sealants to address the lack of access for dental services in their areas. Public health registered dental hygienists work efficiently to fill the voids of unmet dental needs by providing cost-effective services within our community settings. One of our key partners in the work that we do in Two Rivers are school systems and, obviously, time is important to them. There's so many different demands that are put upon school systems. That's one area we've really excelled in, is making our process very efficient. Within every child, it's usually down to just a few minutes, for most children, to have a fluoride varnish and assessment; so it's a very efficient process. And one of the things I'd like to mention is-- that's one of the key things I'd like to allude to in our district is our partnerships. Without the partnerships of our schools and long-term care facilities, we wouldn't be doing this work at all. So just to talk a lot more about the, the codes and some of the concerns I want to bring forward today, some of the most significant benefits derived from community-based oral health programming correspond to CMS procedure codes, as listed in the letter I submitted, screening code, assessment of the patient, and nutritional counseling, just to name a few. Currently, these codes are not recognized by the Department of Health and Human Services in Nebraska or MCNA, Nebraska's managed, managed Medicaid dental provider. Without the addition of these billing codes, many local health departments are unable to initiate or have-- are very concerned of sustainability in the long term. At Two Rivers Public Health Department, we've built great relationships with our dentists. As we,

as we often discuss with the community members we serve, our oral health services are intended to augment, not replace, regular visits with the dentist. Unfortunately, as illustrated by our most recent data from 2016, the trends for-- at least adult reporting continues to trend up, in that two out of every five adults have not visited a dentist for any reason in the past year. I was just talking with a colleague up in north-central Nebraska just yesterday, and he had mentioned that, on average, it's about an hour to an hour and a half travel time to the local dentist just because of access to care issues there. So with decreased dentist office visits, it's even more imperative that low-cost preventive treatments are provided in the community setting to populations at highest risk, our children and elderly, and that they are continuing to be served by public health dental hygienists. Allowing public health dental hygienists to practice at the top of their scope makes good financial sense and is a good public policy decision. We will continue to work with the Department of Health and Human Services and MCNA to encourage the allowability of the federally-approved CMS procedure codes, already approved and utilized by many other states, in order for public health dental hygienists to provide these valuable services for our children and our elderly. These services increase the quality and quantity of life in our communities. Thank you for your time, and I'd be happy to answer any questions you may have.

HOWARD: Thank you. Are there questions? Could you tell us a little bit more about the billing code situation? So the Department doesn't recognize those codes even though in statute we allow people to do this work?

JEREMY ESCHLIMAN: That's correct. So there's-- the billing codes are established by the federal government. And in this case in Nebraska, there's a few codes that dental hygienists are allowed to bill for; and those after me can speak more clearly to those codes. But the codes I mentioned and I provided in the letter are codes that are not currently recognized to be billed for. We've had discussions with the department and also with MCNA, and it hasn't gained traction at this point.

HOWARD: Do you know why you're not able to bill for those codes?

JEREMY ESCHLIMAN: It's, it's because it's not currently approved in Nebraska. So those codes are not-- if you think of like a toggle

switch, it's-- they're not turned on at this point. So we could we could bill for them, but they would not be paid.

HOWARD: But you can provide the service--

JEREMY ESCHLIMAN: Correct.

HOWARD: --through your scope.

JEREMY ESCHLIMAN: Correct.

HOWARD: OK, thank you. Other questions? All right. Seeing none, thank you for your testimony today. Our next proponent testifier.

ROXANNE DENNY-MICKEY: Good afternoon. Long day on Valentine's Day.

HOWARD: Good afternoon.

ROXANNE DENNY-MICKEY: Thank you, Senator Howard and the committee. My name is Roxanne Denny-Mickey. That is a mouthful, spelled R-o-x-a-n-n-e, last name Denny, D-e-n-n-y-hyphen-M-i-c-k-e-y. I'm here today, and hopefully I can contribute some insight as a public health hygienist myself. And I also am a coordinator with Two Rivers Public Health Department. I manage the LifeSmiles Dental Health Program and the clinical services coordinator. I am obviously in support of LB312. I'm looking at being passionate about finding more opportunities to close the care gap with those having barriers. As a program coordinator, I receive calls all the time from people that are desperate to be connected with a dental home. They're seeking our help. Matter of fact, I had one this morning from a nurse of a 72-year-old man. They're trying to work with him. He's going through kidney failure and has multiple dental issues, and nobody will see him. My concerns are obviously-- I'm doing my best to get him with care, working with any dentist or federally qualified clinic. The problem is it's such a distance. Also, he only has Medicare which doesn't identify or recognize dental reimbursement. But I also think about that and think could we have saved his teeth, which would have been very helpful? But as is, he is dealing with active infection, and he is a very high-risk person, dealing with kidney problems. This is not a good issue. And this happens to me every day. So I'm a little passionate. You might hear that in my voice. We-- it's a multifaceted problem, though. It's not so much a blame on dental offices. There is an unfortunate low reimbursement for Medicaid reimbursement. Many don't even have dental insurance, so then that goes to trying to have

a successful practice and working with that. In lieu of that, that ends up leaving us with many of our, our individuals and our communities without any dental care. We, as the public health dental hygienists, at least we can step in. For every $5.00 spent on prevention saves up to $80 in restorative care. And we need to start addressing things and putting our money where our mouth is, as far as prevention. Prevention is where is going to be the future of things if we're going to spend our dollars wisely and, as a public health authorized hygienist, we are highly trained in educating people on good health behaviors. My program does that, and all my colleagues that I know, that are out in this, in the-- should I say-- the trenches, as soldiers, are doing that. We're also providing prevention services that are low cost and have a very-- they're best practice, such as: sealants, which can show up to 80 percent reduction in decay; fluoride-- silver diamine is a wonderful product that, again, is a low-cost option; and there's risk assessments we do; have screenings; care referrals. We try to be a liaison with those patients and working with those. The dental hygienist is a competent individual that has been highly trained, and you have heard from that from our educator that came and testified before me. We go through rigorous-- as a nurse would-- training, boards, continuing ed-- 30 credit hours every two years, just as a dentist does-- and to our scope of practice, obviously. And hence, I'm in support of the reduction of that 3,000 hours as I try to get more soldiers to help me fight this battle. I don't like to turn away a interested new graduate that has been out weekly, hands on, in care facilities and working and has shown they're competent. They may be green; they're new. But they're competent; they are skilled. And yet I have to tell them, you know, well, go to work elsewhere and I'll see you after your 3,000 hours. And that's unfortunate. We don't have that-- to me, we just can't afford that. We need to see them out there. And so this offers more opportunities for them that they can get out. They're allowed to serve children, and they are just as needy as the adults. I think they're all very important. Oral disease is our number one unmet chronic disease. I don't know if many know that. And the incredible research out there is showing such a connection with so many systemic diseases. So it's beyond Hollywood smiles. It is about maintaining general health and reducing community costs, improving health outcomes. If we can address, in our long-term care facilities, partnering with those that are serving underserved, at working in schools-- we work with WIC, all of that. And the more we can provide those prevention services and work and coordinate for other services, such as restorative, I think the more we're empowered to produce healthier communities. With that,

I have a little piece, and what I have passed out to you, that is a piece from the Nebraska State Oral Health Assessment and Dental Burden Report [SIC]. And it does really impress upon the need to increase the delivery of underutilized community prevention services and bring partners together to address our existing disparities. We need to go to them. They're unable to always get to us. And we can do that if we are unleashed and allowed to practice at our fullest scope of our abilities.

HOWARD: Thank you.

ROXANNE DENNY-MICKEY: I see that red light I better hold back.

HOWARD: Well done; well done. All right.

ROXANNE DENNY-MICKEY: Any questions?

HOWARD: Are there questions? Seeing none, thank you for your testimony today.

ROXANNE DENNY-MICKEY: Thank you.

HOWARD: Our next proponent testifier. Good afternoon.

DEB SCHARDT: Good afternoon. Senator Howard, Health and Human Services Committee, my name is Deb Schardt, D-e-b S-c-h-a-r-d-t. I'm a member of the Nebraska Dental Hygienists' Association, and I'm here in support of LB312. I've been a public health dental hygienist for 10 years and a hygienist for nearly 30. I worked in public health through Public Health Solutions Health Department, serving a wide variety of ages and in a variety of locations. I also serve as adjunct clinical faculty at Central Community College in Hastings. I would like to share a little history as to the services provided by dental hygienists. Thirty years ago most of our aging population went to long-term care with a full set of dentures. As dentists and hygienists, we have really been successful since that time, helping our patients to keep their teeth for a lifetime. As we know, people are living longer than they did 30 years ago. Thirty years ago Nebraska dentists were in favor of general supervision for dental hygienists. This means that a dentist can go on vacation anywhere, or out of the country, and their hygienist is still allowed by law to see patients of record, with varied medical histories, for preventive services, cleaning, scaling and root planing, and debridements in that office while the dentist is absent. As the oral health needs of the

senior population have increased, hygienists have looked for avenues to serve this growing population. In 2008, the dawn of the public health permit hygienist became a reality. This allowed low-income, high-needs patients with difficulty accessing care to directly access the services of a dental hygienist. Now the trend continues with 42 states allowing some form of direct access. Realization that the education for dental hygienist was also changing to allow direct clinical experience for these varied population groups, the Nebraska dental hygienists believe that our new graduates were prepared and ready for work in these settings. In 2013, the NDHA came to the Legislature, asking for elimination of the 3,000 hours that were required with the initial inception of the public health hygienist. The compromise from that bill was that the Legislature would allow newly licensed graduates to see children in a public health setting, without the additional experience. Part of the justification was that, although Central Community College graduates have experience in nursing homes, UNMC graduates had not had that clinical experience, only the didactic component. Five years ago, when the split-- five years ago, when the split into two permits occurred, UNMC began providing that hands-on clinical dental hygiene in their curriculum. We are training competent clinicians, but we're telling them that their education, national and clinical board exams, licensure, and 30 hours of continuing education every two years is not enough. The Legislature doesn't put these restrictions on new dental graduates. We don't tell dentists that we realize there's decay on two surfaces, but you're only allowed to fill one of those surfaces. Our students critically assess every patient they have, whether in the clinic or in the public health setting. They determine a dental hygiene care plan that reflects realistic goals and treatment strategies for that patient. It may be a regular "prophy," or cleaning, a scale and root planing, or a debridement. This is the curriculum and accreditation requirement for being a licensed dental hygienist. Also, just newly released for 2018, the U.S. Office of Management and Budget released the occupational reclassification for dental hygienists. We have been changed, as a profession, to the health care diagnosis and treating practitioner. This is now the same class as dentists are in the United States. The ability of a public health hygienist to take x-rays remotely is also necessary with increased use of teledentistry. It is wonderful to be able to connect those with limited resources to a dentist that can offer treatment in one visit. Also, LB18 allowed for public health dental hygienists to place an interim therapeutic restoration, and the standard of care for performing this is to take an x-ray of the tooth to be treated, to evaluate the depth of the

lesion and the proximity of the pulp. If you are in a nursing home and need on-site care, you have an access problem, as I don't know of many dentists who are making this a priority in their practice. That is a sad thing. These patients have invested in their oral health and we have treated them in the private practice but, when their address changes, so does their ability to receive care. Thank you. Any questions?

HOWARD: Thank you. Are there questions? Seeing none, thank you for your testimony today. Our next proponent testifier. All right, seeing none, we do have some letter, proponent letters for the record: Brandi Dimmitt, representing herself; Gina Uhing, Friends of Public Health in Nebraska; Heath Boddy, Nebraska Health Care Association; Jason Brisbin, representing himself; Kelsey Tomjack, representing herself; Geri Johnson, representing the Nebraska Home Care Association; Diane Alden, representing herself; Colleen Benson, representing herself; and Roxanne Denny-Mickey from the Two Rivers Public Health Department. Is there anyone wishing to testify in opposition to LB312? Good afternoon.

DAVID O'DOHERTY: Good afternoon, Senator Howard and Health Committee. My name is David O'Doherty, O-'-D-o-h-e-r-t-y. I'm the executive director of the Nebraska Dental Association and have been for the past 15 years. The three handouts that are coming around for you, I thought my job was to basically review the last 15 years of history. You asked about the 407 process. Yes, unsupervised hygiene has gone through two 407 processes. The first one was in 2005. The NDHA submitted a bill for complete--their hygiene practice in an unsupervised setting. After several meetings, and hours and hours of testimony, the 4, 407 review committee found the NDHA failed all four criteria for the 407. The Board of Dentistry, Board of Health, and chief medical officer agreed. Two years later they introduced a bill, LB182, requesting the same thing, full hygiene practice unsupervised. We submitted a counter bill, and the result of that compromised bill created what is currently known as the public health hygienist's permit that we're talking about today. In January 2011, the NDHA submitted a bill, LB330, to remove the 3,000 hour requirement. The result of that is it passed, amended as you heard. Just to treat children, the 3,000 requirement was removed, but to treat adults, it was kept because adults are an incredibly vulnerable and medically compromised population group. And as we were looking at this, we looked at what other states-- I've heard you ask before, what are other states doing here? Twenty-four other states that have some version of this public

health hygienist also have experience requirements, ranging anywhere from 1,000 hours to 3,000 of clinical experience. We feel that's important because of this special patient group and their medical issues and what they have going on. Most recently in 20,000-- 2014-- NDHA submitted an application for a 407 for unsupervised hygiene practice in a public health setting, exactly what's going on in LB312. We submitted our application also, that involved public health hygiene, but it was mostly directed at expanded function for auxiliaries. After another six months of hearings, and hours and hours of testimony, the 407 committee approved the NDA application and did not approve the hygienists' application. Our application resulted in LB-- what is LB18-- which passed in 2017. Just on the back of this little summary sheet is, is the picture of the 407 committee. They did a lot of work, spent a lot of time going through. This the first time, I believe, in HHS history, they've had two competing 407s at the same time. The second handout is basically a side-by-side comparison of the-- on the left side is the hygiene statute on the right side is the, is the public health hygienist statute. A bold, blue text is what overlaps in both, both statutes, so you can see the public health hygienist can do quite a few of the duties that are already in the hygiene statute. The red text is what was added, as far as our bill, LB18. So we've added quite a few more duties under the public health hygienist and the hygiene statute. So I'm looking at this. It's kind of like, what's left? They can already do almost everything that's, that we've already got in the statute from LB18, except scaling and root planing, which we'll hear Dr. Hinrichs speak about later. The final handout-- since we had-- one of the things we put in the bill in 2008 was a reporting requirement, because we heard the same testimony 15 years ago as you heard today-- all these underserved areas, we've got all these qualified hygienists who can go out and do this. Dentists aren't going there, so we will; just untie our hands and we'll go do it. So we, we recorded, required reporting so we could see where were these services being performed and what kind of services. It took the department several years to even get this form in place and it still isn't very good. I'm running out of time, so maybe I'll ask a follow-up on this. So what I did, what this is, it's a list of 100, of current 117 permit holders. The names in red are those who live in underserved counties. So of the 117 permit holders, I believe only 17 live in underserved. And in 2017, only 43 percent of the permit holders actually provided services. At the very bottom, I also checked-- we heard about, you know, these young, young students getting out wanting to go right into doing this, and they can't do it with a 3,000 hour requirement. Every year HHS licenses about 75

hygienists, and every year they give out-- or issue permits for about three or four public health. So there's not very many people doing it, even right out of school, right off the bat, just for serving kids. So I'll stop there; my light's off.

HOWARD: Thank you. Are there questions? Do you know anything about this odd billing situation that we heard from the previous testifier?

DAVID O'DOHERTY: I was trying to hear what the service was. I know they can bill MCNA for what, under the public health services that they're providing. So I don't, I didn't hear what the service was that they're having issues with. We have-- there's one thing I, you know, the MCNA being in place is really good because they have, they've hired specialists-- or dentists for every specialty that is billed. So if somebody is billing a periodontal issue, there's going to be a licensed periodontist looking at that, not just-- in the past they had two general dentists; so that's really good. And they've got people advocating for billing. So we are advocating that they are getting, that we would, that they'd be getting paid for whatever they're doing out in these settings.

HOWARD: Um-hum.

DAVID O'DOHERTY: Absolutely.

HOWARD: The codes are things-- are screening codes, assessment, and nutritional counseling; those were the examples we were given.

DAVID O'DOHERTY: And I'm not sure. I don't, I don't work with MCNA directly. But I know they've got an advisory committee, so they should bring that to the MCNA advisory committee, because they interact with MCNA on issues like this.

HOWARD: Perfect. And then in the previous 407, had they discussed the location of service?

DAVID O'DOHERTY: The, the new location was not part of that 407, the one that's in this bill.

HOWARD: Um-hum.

DAVID O'DOHERTY: I'm trying to think about how it was phrased, the home health service, I guess.

HOWARD: Um-hum; um-hum.

DAVID O'DOHERTY: I guess one concern would be, since there's only 45 hygienists providing services, adding another area to go to would either dilute the nursing homes or schools or whatever else but, if they can rally the 1,300 that aren't, have a permit, that'd be really good--

HOWARD: Um-hum.

DAVID O'DOHERTY: --because we're hearing a lot, well, you know, all the things that dentists aren't doing. Well, a couple of mentions were made about Medicaid and the poor reimbursement. I think they're finding out the same thing that dentists have known for years. It's tough, you know; the whole process is tough. You don't get paid what, you know, the work you're doing, so--

HOWARD: Were the 3,000 hours included in the previous 407?

DAVID O'DOHERTY: The removal of the 3,000 hours. Ours was never to have it taken out.

HOWARD: And then what was the recommendation of the technical review committee on the 3,000 hours?

DAVID O'DOHERTY: Specifically? I don't know if they commented specifically on the 3,000 hours. But the reason we're, we're-- two reasons-- is because the medically compromised issues of those patients and the fact that there really aren't, you know, recent graduates pouring out, trying to get this. You know, there are barely three or four a year.

HOWARD: Um-hum.

DAVID O'DOHERTY: And they're, you know, we don't even know if they're doing anything because I can't get the-- the reports don't gather that. This just tells me who has it and what percent are doing something. So if I did 40 percent of four, then maybe two of them are doing something somewhere; we don't know.

HOWARD: OK, thank you. Are there any other questions? Seeing none, thank you for your testimony today.

DAVID O'DOHERTY: Thank you very much.

HOWARD: Our next opponent testifier. Good afternoon.

MARK HINRICHS: Good afternoon. Senator Howard, committee members, thanks for being here today. Happy Valentine's Day. My name's Mark Hinrichs, Mark with a "k," H-i-n-r-i-c-h-s. Brief background about me real quick. I served on the State Board of Dentistry for ten years, five of those ten as vice chair. I was asked to serve and, ultimately, became president of the American Association of Dental Boards-- represents every state in the country, as well as the Commonwealth of Puerto Rico, on dental board issues, both dental and dental hygiene. And I am currently serving as the president of the Nebraska Dental Association. And today, hopefully, I can answer your questions, but mainly I'm here to talk to you about periodontal disease and, specifically, scaling and root planing, which was mentioned earlier, and how the Nebraska dental hygienists, through this bill, LB312, are asking to be allowed to perform scaling and root planing outside the confines of a dental office. Periodontal disease involves a myriad of problems with the alveolar process and our teeth, but basically inflammation, both of the bone and the soft tissue, as well as bone loss, tissue loss, tissue attachment loss, tooth mobility, as well as tooth loss. It affects all populations sometimes. Most of the time it's in the older populations, but it can affect children-- not, but not as often. It can, it can affect the entire mouth or it can affect just certain areas of the mouth. Scaling and root planing is a procedure that is performed, based on a diagnosis, the diagnosis of periodontal disease. It's also a procedure that, by definition, in almost every instance requires anesthesia. When you, when an individual has periodontal disease, it can be, and almost always is, uncomfortable to get that resolved. So anesthesia is extremely important. Almost all, if not all, periodontists-- it's the special, specialty of treating gum disease-- they will use anesthesia for this type of procedure. Currently by state law, a diagnosis is only allowed by a licensed dentist, and administering anesthesia by a dental hygienist is allowed, but a dentist must be on the premises; there are no exceptions to that. And finally, what this bill is asking for is, not only a scope of practice change for dental hygienists, but also the ability to practice independently without the presence of a dentist and make a diagnosis-- that clearly we don't support that, but we're also really concerned with where this is going. There are a few provisions that they're looking to change. And we think that 3,000 hours, you know, a year and a half worth of experience, is, is actually a good thing for adult care. We, I wouldn't say we capitulated, but we agreed to allowing no experience for children--

doesn't mean children aren't important, but a lot of times children have different needs. And then also, you know, the location-- I don't want to get into too much of the clinical detail, but I, it can be kind of messy when you scale and root plane. And you need proper equipment, you need proper sterilization, and in it-- I just can't imagine performing that type of service outside of a dental office, let alone somebody's home, let, let alone a nursing home that may or may not have proper equipment, suction, proper lighting, chairs, sterilization. It's just there's a lot of concerns we have about changing the location of this type of service. So with that I would offer up any questions.

HOWARD: Are there questions from the committee?

WALZ: I have to ask a question.

HOWARD: Senator Walz.

WALZ: So is periodontal disease-- I think-- is it painful?

MARK HINRICHS: You know, the treatment of it without anesthesia--

WALZ: Is it painful?

MARK HINRICHS: It can be painful, but it's also kind of like a silent disease. It's-- a lot of patients don't realize how bad it is.

WALZ: Um-hum.

MARK HINRICHS: When it becomes painful it can be-- you know, you're starting to lose teeth usually.

WALZ: Yeah. And I don't know the process here so I'm just trying to learn. So if there was a dental hygienist who was in a nursing home visiting a patient, and she-- I know she can't diagnose that disease. But if she thinks that there is a problem with that, what happens then? Like does she call a dentist? And the dentist-- how does that happen? How do we make sure that that person in the nursing home is going to get treatment?

MARK HINRICHS: Well-- well, I think a public health hygienist has a responsibility to, to help that individual get the care they need. And if, if the level of care they need should be performed in a dental office, then they need to help them find a dental office. And I don't-- there are no mechanics, as I understand it, for requiring them

to find a dental home; but they should. You can't, you can't treat this disease in somebody's home.

WALZ: Um-hum.

MARK HINRICHS: It's just-- I just don't understand that.

WALZ: OK. So they would have to be transported, for sure, to a dentist's office, is what you are saying.

MARK HINRICHS: Sure.

WALZ: If they're able.

MARK HINRICHS: Yes, if they're able. There are some portable dental offices, mostly in the metro areas. But yeah, dentistry is, you know-- treating gum disease is a part of dentistry. You know, the foundation of what we do, it relies on good home care, of course, but, but absence of gum disease, absence of inflammation. We can do great dentistry, but without having clean healthy tissue, it's-- so it really starts with that. That's, that's the foundation of dentistry.

WALZ: Um-hum.

MARK HINRICHS: And so, you know, if these patients have this level of need, the care they're going to get needs to be delivered in, in a facility that can offer up the proper equipment. Now I would tell you, I do believe if nursing homes would have a dental room with sterilizers and, and a dedicated employee to clean the room after each procedure, after each patient, I, I don't think it would be very hard to find a dentist to come and help. It's just really hard to do this work outside of the operating room, if you will.

HOWARD: All right. Any other questions? Seeing none, thank you for your testimony today.

MARK HINRICHS: OK. Thank you so much.

HOWARD: Our next opponent testifier. Good afternoon.

KIM ROBAK: Senator Howard and members of the committee, my name is Kim Robak, K-i-m R-o-b-a-k. I am here today on behalf of the Nebraska Dental Association. And I want to first of all thank Senator Hansen for his hospitality. We've met a couple of times on this issue, and we've talked about ways that we could make the bill better and perhaps

something that we can both live with. But at this point in time, the Dental Association is not there. And I want to give you, particularly for new members of the committee, a little bit of background. And David O'Doherty gave you some of that background, about way, way back. But amazingly, I was here for a large portion of this, fortunately or unfortunately. I will say that the Nebraska Dental Association thinks that the public health permit is a very, very good thing. So the impression that's being left today is that, for some reason, the NDA does not support the public health permit. That is absolutely incorrect. It's a very good thing, and we hope that more dental hygienists will go into the public health arena. It is a very helpful thing in schools and in nursing homes-- absolutely. Let's go clean the teeth, let's go find a dental home. If there is a need for a dentist, let's get them in to see a dentist. So that's a very good thing. What this bill does, however, is go beyond that, and it's a little confusing because the implication is that there isn't a scope of practice change. That is technically correct, but let me explain why it's not accurate, even though it might be technically correct. For those of you were here a couple of years ago, the dentists, and the hygienists, and the assistants all sat down and worked out this big, massive scope change. It added a whole bunch of stuff to what dental assistants could do, and a whole bunch of stuff to what dental hygienists could do in order for them to be able to do more and help and reach more-- particularly Medicaid-- patients. And so they have this expanded scope, and the expanded scope now is what is in statute. Unfortunately, the Department of Health and Human Services still doesn't have the regulations on this bill that was-- I know, it's amazing they don't have the regulations yet for us to be able to implement this process, which is a very good process. We're helping everybody get more dental services out there. But in that process, one of the things that we agreed to, as a group, was adding this periodontal care in a dental office with dental supervision. That's under the scope of practice of a dental hygienist. So now the dental hygienists want to come back and take this scope of practice and say, but we can do it outside of the dental office without a dental, a dentist present. So, so technically it's on the list of things they can do, but it was put on the list of things that they could do as part of this expanded function with a dentist available. Now one other thing I should point out is-- two things. First of all, currently today, if, if an individual in a nursing home has a dental home, that hygienist that works for that dentist can go there and do, and go, go do functions for them. They can go clean the teeth, they can go do what they would do in the dental office. That can happen today under

this statute or under all of the dental statutes. So if there is a dental home, there is a mechanism to getting this person care. The problem exists that a lot of people don't have dental homes for the reason that-- and you will hear this over and over if there are any more dental bills before you-- we pay our dentists horribly in Medicaid. And not-- and it's not just the payment, but anybody who was here over the past several years heard the way that they're treated by both the department and the federal government, in which they come in after the fact and say, the way that you are treating somebody is no longer the way we're going to accept, and you now owe us back payment for the past 10 years for services that you are required to provide. You will hear that, I hope, sometime this year, but it's a, it's a horrible story. And you heard similar stories when we went through the RAC audit bill a couple of years ago. So we treat our dentists so badly that they say, OK, fine, I just can't do it anymore. I'm not going to provide services. And so we do need to figure out a way to get those services in. My last comment, Senator Howard, is, is with regard to the codes. I worked on this issue when Senator Campbell was here and we, as a dental association, tried to work with her to figure out a way to get the department to provide for payment. Right now the department and MCNA will pay for cleaning, they will pay for certain, certain codes; so they do get paid. What they don't get paid for, I think, are some things that are, are required by federal law that, that I don't think we can change. We tried; we worked on it. We even set up appointments with HHS to get the coding changed so that they could get paid. And I just don't think it's possible. I'm happy-- we're happy to work with you again to try and work that out.

HOWARD: Thank you. Are there questions? Senator Williams.

WILLIAMS: Thank you, Chairperson Howard. And thank you, Ms. Robak, for being here. I want to be sure I understood your comment fully. So if a person in a nursing home has a dental home, the hygienist from that office, whether they had a public health endorsement or not, could go. OK. I just want to be sure that I--

KIM ROBAK: Yeah, yes.

WILLIAMS: --that, that I--

KIM ROBAK: I, I believe that is the case.

WILLIAMS: I just wanted to be sure that I understood that.

KIM ROBAK: Yes, I think that is exactly right--

WILLIAMS: --that this thing should--

KIM ROBAK: --as long as they have a dental home. And since you brought that up, I just want to point out that one of the things that does happen in the public health setting is that there is a lack of coordination sometimes. So when someone will treat somebody in a school setting or in another setting, and then they come to a dentist's office, if they don't know about that coordination, Medicaid won't pay for it. And we may double the services-- I think we heard about this, too, in the RAC audits. So there needs to be a coordination between the public health setting and the dental home in any instance, and sometimes that doesn't happen. So it causes confusion, so--

HOWARD: Other questions? Seeing none,--

KIM ROBAK: Thank you.

HOWARD: --thank you for your testimony today. Is there anyone else wishing to testify in opposition to LB312? Seeing none, we have two letters for the record: Dr. Travis Teetor, from the Nebraska State Board of Health; and Crystal Stuhr, from the Nebraska Dental Assistants Association. Is there anyone wishing to testify in a neutral capacity? Seeing none, Senator Hansen, you are welcome to close.

B. HANSEN: You might want to [INAUDIBLE] Senator Kolterman and [INAUDIBLE]. Thank you. And hopefully I can kind of clear up maybe a couple of questions here that Ms. Robak and the previous testifiers brought up. The-- one of their biggest concerns, especially with the second testifier in opposition, was the root planing and periodontal scaling. That's what you were going to bring up, you know, and that was a scope of practice issue that talked about, like that they talked about they all came to an agreement on, that would stay inside a dental health care setting. And that's something you cannot really administer outside of a dental health care setting because it does require nitrous oxide, or anesthesia. That was the amendment I talked about in my opening statement. We have been working with, with Ms. Robak and the Dental Association on making that amendment that, that would disallow root planing and periodontal scaling without administration, administration of proper anesthesia by a qualified person, so basically they still have to do it inside of a dentist's

office. So they cannot do root planing and periodontal scaling like in a retirement home. So-- because that does require proper lighting, proper, the proper equipment, and anesthesia and nitrous oxide, so. One, another big difference between now and even a few years ago is the training that dental hygienists get now. Like one of the testifiers in support alluded to, is at the university level now, they do get public health care setting education, which did not get before. That is a big difference. That was one-- from my understanding, one the biggest purpose, purposes. You would have 3,000 hours instead of a dentist's office so they could kind of train you, make sure things are up to code, make sure you're doing things well. Now they get that inside the school that they did not get before, hence the removal of the 3,000 hours. And I also just want to point to, as Senator Howard said, I want to point to all of the many letters of support, especially from home, home health care agencies and retirement homes-- and dentists, by the way, too; there were letters of support. So if I can answer any other questions, so--

HOWARD: Are there any final questions? Seeing none, thank you, Senator Hansen.

B. HANSEN: Yep.

HOWARD: This will close the hearing for LB312. Happy Valentine's Day, and we are done for the day, just before 5:00.

WALZ: Do you want to Exec?