



To: Health & Human Services Committee
From: Tom Venzor, Executive Director
Nebraska Catholic Conference
Subject: LB499 (Psychology Code of Conduct) (Oppose)
Date: March 27, 2019

Madame Chair Howard and Members of the Health & Human Services Committee,

The Nebraska Catholic Conference advocates for the public policy interests of the Catholic Church by engaging, educating, and empowering public officials, Catholic laity, and the general public. I am here today to express opposition for LB499 on behalf of the Conference.

LB499 is a problematic attempt at resolving a decade-long stalemate to update the code of conduct for the practice of psychology. It is a solution in search of a problem. This problem being the undercutting of mental healthcare professionals who hold particular views of marriage and human sexuality, which inhibits their freedom to serve those who present with mental healthcare issues.

To briefly recap the underlying issue. For ten years, the Board of Psychology has sought to update its code of conduct by adopting the most recent version of the American Psychological Association's *Ethical Principles of Psychologists and Code of Conduct*. The APA *Code of Conduct* contains protected classes—namely, sexual orientation and gender identity—in its anti-discrimination provision without additional language safeguarding the professional judgment or sincerely held moral or religious beliefs of a psychologist.

The NCC has consistently held that a private association clearly has the ability to hold their private membership to whatever standards they deem important to their profession. However, no private association has the right to impose these same standards through statutory law or regulation—at least not without first considering other public policy, legal, or constitutional concerns.

To begin with some public policy concerns, LB499 raises basic issues. First, Section 1 redefines the “code of conduct” to mean “a version” of the APA’s *Code of Conduct*. But the Board of Psychology already adopts “a version” of the APA’s *Code of Conduct*.¹ While the Board of Psychology, among others, notably argue that the current adopted version of the APA *Code of*

¹ See 172 NAC 157 (Code of Professional Conduct for the Practice of Psychology) (“The Board hereby adopts the Ethical Standards of Psychologists of the American Psychological Association as the Code of Professional Conduct for the practice of Psychology in Nebraska.”).

Conduct is inadequate and out-of-date, LB499’s redefinition of “code of conduct” does nothing to require the Board of Psychology to adopt a *particular APA Code of Conduct*.

Furthermore, LB499 restricts the Board’s code of conduct to the APA’s *Code of Conduct*. This limits the Board’s ability to adopt other rules and regulations as they see fit, since they would only have the statutory authority to adopt “a version” of the APA’s *Code of Conduct*—nothing more, nothing less. This take-it-or-leave-it approach is inflexible and inadequate to the rules and regs process, which would likely fail to serve the common good.

As well, Section 2(2) and (3) are redundant, as these are already clear ethical and legal standards which any licensed psychologist must already follow. The only exception to this assertion is the second sentence of Section 2(3) which appears to be a drafting error, since it would be highly problematic if psychologists “decline[d] to provide services in a manner consistent with the code of conduct.”

Section 2(4) raises grave concerns about ambiguity as to the meaning of “a professional referral”. The concept and meaning of referral has, over the years, been the core issue at the Board of Psychology. In a situation where a psychologist cannot provide a service requested by a client, such as same-sex relationship counseling or gender transition therapy, the question is what standard of referral is required of the psychologist. We have long argued that, in such a circumstance, the practitioner must have, at the least, the ability to provide for an indirect, general referral (as opposed to a specific referral to a particular provider or providers).

Without such a general referral standard, psychologists who cannot participate in a service they believe, in their professional judgment, is not in the best interest of the client’s welfare and contrary to the practitioner’s sincerely held moral or religious beliefs, are left in dire straits. First, they will be at the whims of a disciplinary body which may or may *not* deem their referral to be “professional” based on the circumstances. This unnecessarily places the practitioner in ethical and legal limbo, and violates the norms of predictability the law should strive to achieve. Second, if a direct referral standard is imposed by the government, the practitioner will be left with the decision to violate their conscience or leave the profession simply because they cannot provide a certain type of referral under very narrow circumstances (e.g., furthering same-sex relationship counseling or gender transition therapy).

In a recent survey of nearly 3,000 members of faith-based medical associations, 91% of those responding said they “would rather stop practicing medicine altogether than be forced to violate their conscience.”² Furthermore, similar laws in other states which advanced sexual orientation and gender identity non-discrimination laws, which LB499 is attempting to do, have forcibly closed the doors of Catholic social service providers in Michigan, Illinois, Massachusetts, San Francisco, and Washington D.C..³ These closings all tell a story: when you enact laws that

² *The Polling CompanyTM, Inc./WomanTrend, Highlights of The Polling Company, Inc. Phone Survey of the American Public, fielded March 31, 2009 through April 3, 2009; see also Memorandum from Jonathan Imbody, Christian Medical Association, Vice President for Government Relations to Office of Public Health and Science, Department of Health and Human Services (Apr. 9, 2009).*

³ *See, e.g.,* <https://www.osv.com/OSVNewsweekly/ByIssue/Article/TabId/735/ArtMID/13636/ArticleID/14666/Tough-times->

outlaw providers from exercising their traditional beliefs about marriage and human sexuality and use government coercion and sanctions to enforce a particular orthodoxy regarding these matters, you effectively force professional and competent providers out of service and reduce access to care for those who need it most.

Organizations, like the Immaculate Heart Counseling Center of Catholic Social Services of the Diocese of Lincoln, seek to serve those who are most vulnerable and face difficult psychological realities. CSS has served thousands of patients and provides extensive pro-bono services to low-income and working-class families. But advancing legislation like LB499 fundamentally undermines the freedom of their professional and competent psychologists to serve those most in need.

When our state already faces serious shortfalls in the area of mental healthcare, LB499 fails to be a prudent course of public policy. And to ensure I don't send the wrong message, even if there were no shortfall of mental healthcare providers, LB499 would still fail as prudent public policy, as it does not adequately protect the public welfare by ensuring that the concerns and interests of faith-based psychologists are adequately met.

The Nebraska Catholic Conference respectfully encourages you to indefinitely postpone LB499. Thank you for your time and consideration.