

NEBRASKA

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DEPT. OF HEALTH AND HUMAN SERVICES



Jim Pillen, Governor

February 17, 2023

Senator John Arch, Speaker of the Legislature
State Capitol, Room 2103
P.O. Box 94604
Lincoln, NE 68509-4604

Senator Tom Briese, Chairperson of the Executive Board
State Capitol Room 2108
P.O. Box 94604
Lincoln, NE 68509-4604

Senator Ben Hansen, Chairperson of the Health and Human Services Committee
State Capitol, Room 1117
P.O. Box 94604
Lincoln, NE 68509-4604

RE: Credentialing Review Final Report: Applied Behavior Analysts

Dear Speaker Arch and Chairpersons Briese and Hansen:

In accordance with Neb. Rev. Stat. § 71-6226, the Division of Public Health in the Department of Health and Human Services submits the final report of the credentialing review process to license Applied Behavior Analysts. This report includes the recommendations of the technical review committee, the state Board of Health, and the Director of the Division of Public Health.

Sincerely,

A handwritten signature in blue ink, appearing to read "Matt Donahue".

Matt Donahue, MD
Interim Chief Medical Officer
Department of Health and Human Services



THE REPORT OF THE DIRECTOR OF THE DIVISION OF PUBLIC HEALTH ON THE PROPOSAL TO LICENSE APPLIED BEHAVIOR ANALYSTS

Date: **November 29th, 2022**

To: **The Speaker of the Nebraska Legislature
The Chairperson of the Executive Board of the Legislature
The Chairperson and Members of the Legislative Health and Human
Services Committee**

From: **Gary J. Anthon, MD
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services**

Introduction

The Regulation of Health Professions Act (as defined in Neb. Rev. Stat., Section 71-6201, et. seq.) is commonly referred to as the Credentialing Review Program. The Department of Health and Human Services Division of Public Health administers this Act. As Chief Medical Officer I am presenting this report under the authority of this Act.

Summary of the Applied Behavior Analysts Proposal

Applied Behavior Analysts are seeking to license those practitioners who satisfy the educational and training standards defined in the current ABA proposal.

The full text of their proposal can be found under the Applied Behavior Analysts subject area of the credentialing review program link at

<https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Summary of Technical Committee and Board of Health Recommendations

The technical review committee members recommended in favor of the ABA proposal. The Board of Health also recommended in favor of the ABA proposal. I concur with these recommendations. My comments regarding my reasons for supporting the proposal follow, below.

The Director's Recommendations on the Proposal

Discussion on the four statutory criteria of the Credentialing Review Program as they relate to the Applied Behavior Analysts

Criterion one: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.

Information provided by parents of vulnerable children who had bad experiences with providers of ABA services convinced me that real harm is occurring from unqualified practice of ABA services in Nebraska.

Criterion two: Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.

I found nothing in the ABA proposal that would diminish the supply of qualified providers or in any way create barriers to accessing ABA services.

Criterion three: The public needs assurance from the state of initial and continuing professional ability.

Evidence of harm provided by parents of children who need ABA services shows that there is a need for state regulation of these services in Nebraska.

Criterion four: The public cannot be protected by a more effective alternative.

I see no other way that the concerns raised by Nebraska families about the quality of the ABA services being delivered to their children can be addressed other than by licensing ABA professionals.

Final Thoughts

Some mental health professionals with concerns about the ABA proposal have stated that licensing ABAs could complicate relationships with other mental health professionals pertinent to such things as the provision of comprehensive mental health evaluations and diagnoses, for example, since many ABAs are not qualified to render comprehensive mental health evaluations or diagnoses of their patients. This is a matter that needs to be successfully addressed in any legislative version of the ABA proposal.



Gary J. Anthonie, MD
Chief Medical Officer
Director, Division of Public Health
Department of Health and Human Services

**REPORT OF RECOMMENDATIONS AND FINDINGS ON THE
PROPOSAL TO LICENSE APPLIED BEHAVIOR ANALYSTS**

By the Nebraska State Board of Health

To the Director of the Division of Public Health of the Department of
Health and Human Services and the Members of the Health and
Human Services Committee of the Legislature

November 14, 2022

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Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

LIST OF MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

Douglas Bauer, DO

Heather Cramer, RN

Russell Crotty, OD

Jaime Dodge, MD

Diane Jackson, APRN-FNP

Denise Jansen

Michael Kotopka, DDS

John Kuehn, DVM

Donald Ostdiek, DPT

Mark Patefield, PharmD

David Reese

Daniel Rosenthal, PE

Robert (Bud) Synhorst

Timothy Tesmer, MD

Douglas Vander Broek, DC

Dan Vehle

Joshua Vest, DPM

The Board's Credentialing Review Committee met in the morning of November 14, 2022 to formulate its recommendations on the proposal.

The members of the full Board of Health met in the afternoon of November 14, 2022 to formulate their recommendations on the proposal.

Part Two: Summary of Board of Health Recommendations

The Board Committee members recommended approval of the ABA proposal.

The members of the full Board recommended approval of the ABA proposal.

Part Three: Summary of the Applicants' Proposal

Proposed Credential

This application seeks to establish licensure for behavior analysts in the state of Nebraska.

Scope of Practice

PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, cognitive therapy, psychoanalysis, and counseling.

Administered

The applicant seeks to establish a licensing board to administer the licensure program and oversee the practice of behavior analysis. The board will be established based on the guidelines in the Limited Liability Company (LLC).

The costs of administering the program will be covered by licensing and re-licensing fees.

- In Nebraska, some administrative costs to the DHHS Licensing Department is anticipated. Those costs will be covered by fees paid by the applicants and licenses, with no net cost to the state anticipated. It is anticipated that the operation of the proposed licensing program will be revenue neutral.

Proposed exemptions from licensure are as follows:

- Individuals licensed to practice psychology in Nebraska and those who deliver psychological services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the Nebraska psychology licensure law; (b) the applied behavior analysis services provided are within the boundaries of the Licensed Psychologist's education, training, and competence; and (c) the Licensed Psychologist does not represent that s/he is a Licensed Behavior Analyst unless also licensed under this Act.
- Individuals licensed to practice other professions in Nebraska and those who deliver services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the profession's licensure law; (b) the applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and (c) the licensed professional does not represent that he or she is a Licensed Behavior Analyst unless also licensed under this Act.

- Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a Licensed Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as “ABA technician,” “behavior technician,” or “tutor.”
- Caregivers of recipients of applied behavior analysis services who deliver those services to the recipients under the extended authority and direction of a Licensed Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts.
- Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior unless licensed under this Act.
- Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such professionals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act
- Matriculated college or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a Licensed Behavior Analyst in this jurisdiction or a qualified faculty member. Such individuals must not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as “student,” “intern,” or “trainee.”
- Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity
- Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- Individuals employed by a school district performing the duties of their positions. Such individuals shall not represent themselves as Licensed Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer.

- A 2-month grace period will be provided for individuals to submit an application for licensure after meeting the necessary qualifications. During this grace period, applicants must be under the ongoing supervision of a licensed behavior analyst.

An Amendment to the ABA Proposal

The amended version of the proposal was proposed by the applicant group and allowed to be added to the wording of the original proposal pertinent to question nine on page 20 of the proposal by the members of the ABA Technical Review Committee. The wording of this amendment is as follows:

In Nebraska, licensed behavior analysts would not be supervised. BCBAs practice independently and must follow the supervision guidelines outlined by the BACB. The only exception is that new BCBAs within the first year of their credential who are providing supervision to BCBA and BCaBA trainees must have a consulting supervisor. This consulting supervisor must have at least 5 years of experience holding the BCBA credential.

See more information at https://www.bacb.com/wp-content/uploads/2022/01/BCBAHaNDBOOK_220110.PDF on page 47.

The text of the most current version of the applicants' proposal can be found under the Applied Behavior Analysts subject area of the credentialing review program link at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Four: Recommendations of the Members of the Credentialing Review Committee of the Board of Health on the Applied Behavior Analysts Proposal

Comments from the ABA TRC Chairperson

Chairperson David Reese informed the BOH members in attendance at this meeting that his TRC did a very thorough job of reviewing the issues surrounding the ABA proposal. He went on to say that the various interested parties worked together to form a consensus supporting the advancement of the idea of licensing ABA professionals.

Comments from Interested Parties

Desiree Dawson came forward to speak on behalf of the applicant group. Ms. Dawson stated that Nebraska is surrounded by states that have already licensed ABA professionals which has made Nebraska prime territory for unqualified ABA providers no longer allowed to practice ABA legally in these surrounding states. Nebraska needs to take action to deal with this influx of unqualified ABA providers, and licensure would be the most effective course of action.

Dr. Diana Marti, PhD, LP, provided testimony on behalf of the Nebraska Psychological Association. Dr. Marti identified several areas of concern with the ABA proposal, one being the need for some kind of oversight of ABA practice once ABAs are independently licensed to ensure that each patient has at some point received a comprehensive mental health diagnosis. Another concern is the applicant groups' insistence on having their own independent credentialing board. Dr. Marti stated that this idea would further complicate the achievement of some kind of necessary oversight of ABA by mental health professionals who have broader and more comprehensive mental health training and education. Insurance might not reimburse for ABA services without some kind of assurance of oversight by better trained and educated providers.

John Kuehn asked Dr. Marti if the proposal would address access to ABA services. He also asked Dr. Marti if her group would work with ABAs after they become licensed. Dr. Marti responded that they would work with ABA professionals.

The Board of Health Credentialing Review Committee members then applied the version of the four statutory criteria that are most pertinent to the Applied Behavior Analysts proposal by voting on each as follows:

Criterion one: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.

Voting "yes" were: Cramer, Kuehn, Rosenthal, Vander Broek, Reese

Voting "no" were: There weren't any "no" votes

Abstaining was: Tesmer

Criterion two: Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.

Voting "yes" were: Cramer, Kuehn, Rosenthal, Vander Broek, Reese
Voting "no" were: There weren't any "no" votes
Abstaining was: Tesmer

Criterion three: The public needs assurance from the state of initial and continuing professional ability.

Voting "yes" were: Cramer, Kuehn, Rosenthal, Vander Broek, Reese
Voting "no" were: There weren't any "no" votes
Abstaining was: Tesmer

Criterion four: The public cannot be protected by a more effective alternative.

Voting "yes" were: Cramer, Kuehn, Rosenthal, Vander Broek, Reese
Voting "no" were: There weren't any "no" votes
Abstaining was: Tesmer

The Credentialing Review Committee Recommendations on the Applied Behavior Analysts Proposal as a Whole

The Board's Credentialing Review Committee members made their recommendation on the proposal via a yes / no, up-down vote, as follows:

Voting "yes" to recommend approval of this proposal were:

Cramer, Kuehn, Rosenthal, Vander Broek, Reese

Voting "no" to recommend against approval of this proposal were:

There weren't any "no" votes

Abstaining was: Tesmer

By this vote the Board's Credentialing Review Committee members recommended approval of the ABA proposal.

Part Five: The Recommendations of the Members of the Full Board of Health on the Applied Behavior Analysts Proposal

The recommendations of the members of the full Board of Health on the Applied Behavior Analysts proposal

The Board of Health members made their recommendation on the proposal via a yes / no, up-down vote on the recommendation of their Credentialing Review Committee, as follows:

Voting “yes” to recommend approval of this committee’s recommendation which was to recommend approval of the applicants’ proposal were:

Cramer, Crotty, Dodge, Kotopka, Kuehn, Ostdiek, Reese, Rosenthal, Synhorst, Tesmer, Vander Broek, Vehle

Voting “no” to recommend against approval of this committee’s recommendation which was to recommend approval of the applicants’ proposal were:

There weren’t any “no” votes.

By this vote the members of the full Board of Health recommended approval of the ABA proposal.

REPORT OF RECOMMENDATIONS AND FINDINGS

By the Applied Behavior Analysis
Technical Review Committee

To the Nebraska State Board of Health, the
Director of the Division of Public Health, Department of Health and
Human Services, and the Members of the Health and Human
Services Committee of the Legislature

October 5, 2022

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Part One: Preliminary Information

Introduction

The Credentialing Review Program is a review process advisory to the Legislature which is designed to assess the need for state regulation of health professionals. The credentialing review statute requires that review bodies assess the need for credentialing proposals by examining whether such proposals are in the public interest.

The law directs those health occupations and professions seeking credentialing or a change in scope of practice to submit an application for review to the Department of Health and Human Services, Division of Public Health. The Director of this Division will then appoint an appropriate technical review committee to review the application and make recommendations regarding whether or not the application in question should be approved. These recommendations are made in accordance with statutory criteria contained in Section 71-6221 of the Nebraska Revised Statutes. These criteria focus the attention of committee members on the public health, safety, and welfare.

The recommendations of technical review committees take the form of written reports that are submitted to the State Board of Health and the Director of the Division along with any other materials requested by these review bodies. These two review bodies formulate their own independent reports on credentialing proposals. All reports that are generated by the program are submitted to the Legislature to assist state senators in their review of proposed legislation pertinent to the credentialing of health care professions.

**LIST OF MEMBERS OF THE APPLIED BEHAVIOR ANALYSIS TECHNICAL REVIEW
COMMITTEE**

David Reese (Chair)

Jeffrey L. Howorth

Darrell Klein, JD

Denise Logan, BS, RT

Kevin Low, DDS

Debra Parsow

Stephen M. Peters, BA, MA

Part Two: Summary of Committee Recommendations

The committee members recommended approval of the applicants' proposal, with four Committee members voting to approve. One member, the Chairperson, abstained.

Part Three: Summary of the Applicants' Proposal

Proposed Credential

This application seeks to establish licensure for behavior analysts in the state of Nebraska.

Scope of Practice

PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders, psychological testing, cognitive therapy, psychoanalysis, and counseling.

Administered

The applicant seeks to establish a licensing board to administer the licensure program and oversee the practice of behavior analysis. The board will be established based on the standards of the Uniform Credentialing Act.

The costs of administering the program will be covered by licensing and re-licensing fees.

- In Nebraska, some administrative costs to the DHHS Licensing Department is anticipated. Those costs will be covered by fees paid by the applicants and licenses, with no net cost to the state anticipated. It is anticipated that the operation of the proposed licensing program will be revenue neutral.

Proposed exemptions from licensure are as follows:

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- Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity
- Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts unless licensed under this Act.
- Individuals employed by a school district performing the duties of their positions. Such individuals shall not represent themselves as Licensed Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer.

- A 2-month grace period will be provided for individuals to submit an application for licensure after meeting the necessary qualifications. During this grace period, applicants must be under the ongoing supervision of a licensed behavior analyst.

An Amendment to the ABA Proposal

The amended version of the proposal was proposed by the applicant group and allowed to be added to the wording of the original proposal pertinent to question nine on page 20 of the proposal by the members of the ABA Technical Review Committee. The wording of this amendment is as follows:

In Nebraska, licensed behavior analysts would not be supervised. BCBAs practice independently and must follow the supervision guidelines outlined by the BACB. The only exception is that new BCBAs within the first year of their credential who are providing supervision to BCBA and BCaBA trainees must have a consulting supervisor. This consulting supervisor must have at least 5 years of experience holding the BCBA credential.

See more information at https://www.bacb.com/wp-content/uploads/2022/01/BCBAHaNDBOOK_220110.PDF on page 47.

The text of the most current version of the applicants' proposal can be found under the ABA topic area of the credentialing review program link at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Four: Discussion on issues by the Committee Members

Initial Applicant Group Comments

Chairperson Reese asked applicant representatives in attendance to provide the committee members with a brief overview of their proposal. Mark D. Shriver, Ph.D., BCBA-D, came forward to speak on behalf of the applicants' proposal. Dr. Shriver informed the committee members that he works for the Munroe-Meyer Institute located at the Nebraska Medical Center in Omaha, and that he is a Board-Certified Behavior Analyst. Dr. Shriver informed the committee members that currently there are serious service shortages vis-à-vis mental health services in Nebraska. In an effort to fill these service gaps private health care agencies—many from outside of Nebraska—have come to Nebraska to provide badly needed mental health care services including those provided by Applied Behavior Analysts. Dr. Shriver continued his remarks by stating that currently there is no way to monitor or oversee the services provided by these private agencies or the personnel they employ to do the work associated with these services. Dr. Shriver added that currently there is no way to know what amount of training those employed by these agencies possess, adding that this situation creates potential for harm to the public.

Dr. Shriver provided a brief overview of the education and training standards that would be required under the terms of the ABA proposal if it were to pass. He then summarized the scope of practice defined in the ABA proposal, stating that this scope of practice focuses around the concept of behavior modification. Dr. Shriver went on to state that the proposed ABA scope of practice does not include diagnostic procedures or counseling services. Dr. Shriver concluded his remarks by stating that the proposal calls for the creation of an independent credentialing board for licensed Applied Behavior Analysts once the proposal passes.

Initial Opponent Comments

Chairperson Reese then asked if there was anyone in attendance who wanted to come forward to express concerns about the proposal. Psychologist Dr. Judith Bothern, Ph.D., stated that she has concerns about the proposal and came forward to express them. Dr. Bothern stated that there are serious gaps in the education and training of ABAs that raise serious concerns about their ability to provide safe and effective services if they were to become independent licensed practitioners. Dr. Bothern went on to state that current ABA education and training does not prepare them to diagnose or recognize mental health illnesses or conditions, and that this creates great potential for misdiagnosis and inappropriate treatment regimens for misdiagnosed patients. Dr. Shriver responded to Dr. Bothern by stating that ABAs do not diagnose. ABAs only take clients that are referred to them by licensed providers such as psychologists for example.

Committee Questions / Discussion

Chairperson Reese then asked if there were committee members who had comments or questions about the proposal. Committee member Darrell Klein, J.D., asked the applicant representatives the following questions:

- Please address why under Nebraska Law, Certification or Registration is insufficient to protect the public and to help with third party reimbursement? See 71-6206 & 38-

110 and 71-6217 & 38-120. This would replace or augment part of their response to “additional question 2a on page 33.

- In response to part of question 2, at page 8, listing the “practitioners of the occupations similar to or working closely with members of the occupation dealt with in the application” LMHPs are omitted although they were discussed in the 2010 407 review and are included in the response to question 6 at page 16. Was this intentional? And relatedly at page 10 there was no response to “any other group that would have an interest in the application.” Was this intentional?
- In your application on page 11, answering question 3, you are not presenting that ABAs are currently credentialed by Nebraska, correct? Secondly, the links cited in the application as regulations are not regulations. Please explain their source.
- In response to question 9 at page 20 can you present an answer focusing on the current situation in Nebraska, rather than in other states?
- My understanding of their answer to question 16—no prescription is required before the services can be provided, but third party insurers may require a prescription as proof of necessity. No ban on providing services, but it’s a prerequisite for payment.
- “Additional question” 1a page 33 and elsewhere: can hot links be provided to the literature cited in the application if you have them?
- Regarding your response to “additional question” 8a, page 42 is it your intention that ABA be licensed under the UCA as contemplated by the 407 statutes and so the costs of administration would be borne by the ABA licensees in accordance with the UCA?
- I saw references to a model act but did not see a link to one. Is there a model act the applicants propose?

Committee member Peters then articulated a series of questions for the applicant group, as follows:

- I cannot find anywhere in your proposal where you have clearly defined the issue or issues that your proposal is intended to address. Is there a missing document? Can we ask them to provide such a comment?
- On pages 12-14 they list exemptions but exemptions to what?
- ABA is a therapy, not a profession. Why are they trying to license a therapy?
- Are ABA assessments based on rigorous evaluation of empirical data?
- Clear documentation of harm has not been provided.
- There is a need for more documentation about the efficacy of ABA treatment regimens.
- Why is licensure needed to address the issues in question? Might there be better alternatives?

Committee members Low and Peters indicated that they wanted clarification on how the referral process works vis-à-vis the delivery of ABA services. How do other health professionals such as LMHPs interface with clients who need these kinds of services? How do referral patterns work in rural areas of our state? What happens to clients in counties that currently have no mental health services at all? Denise Logan asked the applicants how many recipients for these kinds of services are there in Nebraska?

Additional Committee Questions and Concerns

Committee member Darrell Klein asked the applicants whether they would be willing to consider another amendment to their proposal pertaining to the administration of their proposal—if it were to pass, that is—to wit: that the applicants consider replacing the current provision in their proposal for an independent board with the idea of regulating ABAs under an existing board? Mr. Klein commented that the current political climate in Nebraska is not friendly to the idea of creating additional regulatory boards.

Committee Chair David Reese asked the applicants whether there are organizations in Nebraska that refuse to reimburse for unlicensed ABA services, and if so, to please name them. Applicant representative Desiree Dawson responded by stating that she would check and see if there were any organizations that refused to reimburse for unlicensed ABA services.

Committee member Darrell Klein asked the applicants how the proposal, if passed, would deal with attempts to use telemedicine to provide ABA services from outside of Nebraska. Mr. Klein continued with a follow-up question regarding how the applicants' proposal would identify "the least restrictive method consistent with public protection" would be in cases like this. Mr. Peters asked the applicants whether there would be a way in which telemedicine vis-à-vis ABA could be practiced if the proposal were to pass. Applicant representative Nancy Lamb responded to these concerns by stating that the applicant group is not seeking to prevent everyone from outside of Nebraska from providing ABA services, rather, the applicant group seeks only to prevent unqualified practice.

Mr. Peters asked the applicants to identify the source of harm to the public in the current practice situation of ABA, indicating that nothing provided so far by the applicant group has clearly identified a source of harm to the public vis-à-vis ABA services in Nebraska. Desiree Dawson responded by stating that one problem with the current practice situation is that there is no way to take action against an ABA practitioner for incompetence or inappropriate conduct, and that licensure would provide a means of taking action against incompetent or inappropriate practice.

Mr. Peters asked the applicants if there would be professionals who would be exempt from the terms of the proposal. Desiree Dawson responded by stating that the proposal would exempt any licensed providers of mental health services. Mr. Peters then asked the applicants to provide examples of providers who would not be exempt from the terms of the proposal, or, how may "problem people" are there? Desiree Dawson responded by stating that Nebraska is "prime territory" for unqualified providers looking for a place to practice.

Mr. Peters asked whether Nebraska has ever licensed a modality before. A Credentialing Review Program staff person responded by stating that Acupuncturists were licensed several decades ago by the State of Nebraska, and that their entire scope of practice consists of the application of acupuncture needles.

Darrell Klein asked the applicants to provide information regarding any example wherein a third-party payer refused to reimburse for ABA services under the current practice situation of ABA in Nebraska.

Committee members Peters and Klein stated that they would submit written questions and comments on the amended application inclusive of questions not yet answered by the applicant group.

Amy Reynoldson with NMA suggested that the applicants submit a version of the proposal in the form of an actual legislative bill, commenting that this would be helpful to both the committee and other parties interested in this review. Darrell Klein agreed with this suggestion and went on to state that it would also be helpful if the applicant group would review the practice acts of other health professions as well as the current Nebraska Uniform Credentialing Act, for example.

Discussion on the Amended Version of the Applicants' Proposal

At their second meeting the Committee members approved an amendment to the proposal pertinent to the process by which ABA practitioners attain independent practice. The text of this amendment is posted on the Program link for the ABA review. This amended version of the proposal comprised the discussion that occurred during the third meeting as follows:

Committee member Klein commented on problems he observed with the use of such terminologies as certification and registration in the applicant's proposal. Mr. Klein commented that the applicants seem to be unaware that there are differences in the way these terms are defined by Nebraska State government compared to the way some private organizations define these terms, for example. The details of Mr. Klein's comments were as follows:

The applicants need to look at Neb. Rev. Stat. section 71-6223 (3) and determine if they have submitted all that is needed to meet subsections (a) through (i). At least some of the additional materials submitted should be formally made part of the application.

The application and subsequent materials still contain misstatements regarding current unregulated practice of ABA and discipline of certified and registered professions. "Certified" and "registered" are terms have specific meaning under the Uniform Credentialing Act and the Nebraska Regulation of Health Professions Act, for example. The national organization may certify, but that is not the term under discussion for a Nebraska Regulation of Health Professions Act review. The Nebraska Regulation of Health Professions Act at section 71-6222, directs the type of credential that should be given.

Currently there are no prohibitions on the practice of ABA. This may allow delivery of less than optimal ABA. The applicants present evidence of barriers for reimbursement/compensation which may, speculatively, increase cost and impact delivery of services.

There are legally established processes and dedicated personnel for the discipline of all professions licensed, certified, or registered under the Uniform Credentialing Act.

Mr. Klein then went on to clarify that the Credentialing Review Statute also includes a "least restrictive" standard for the evaluation of new credentialing proposals for which applicant groups are to provide information to show that their proposed new credential would protect the public without imposing needless restrictions on practitioners.

Applicant representative Desiree Dawson responded to committee questions and comments via a power point presentation that illustrates the seven-step process by which ABAs achieve professional competency. This power point has been posted on the program link for the ABA review at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Dr. Low asked the applicants who determined this seven-step educational process. Desiree Dawson responded by stating that the ABA professional association defined this process and its associated criteria as components of the professional standards that all ABA practitioners must follow. Mr. Peters asked the applicants if there is overlap between the way ABA practitioners are trained to provide ABA services and the way a psychologist is trained to provide ABA, for example, and then added to his question by asking if psychologists adhere to the seven-step process described by the applicant group.

Dr. Low asked the applicants if ABA practitioners collaborate with other mental health professionals. The applicants responded that collaboration with other mental health professionals as part of a team providing services is common practice for ABAs.

A psychologist asked the applicants if ABA training and education provides ABAs with the ability to see the “big picture” associated with co-mental health collaboration with other mental health professionals. The applicants responded that they are trained to work together with other mental health professionals as part of a team. They added that licensure would be helpful to ABAs in their efforts to work together with other mental health professionals.

Comments on, and Discussion on, the Four Statutory Criteria

Applicant group representatives began a series of comments on the four statutory criteria pertinent to the evaluation of new credentialing proposals.

The first criterion states as follows:

“Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.”

The applicants stated that the controlled environment typical of ABA treatment sessions creates great potential for harm if the ABA practitioner in question does not possess the requisite skills and abilities to provide care to vulnerable clients, safely and effectively. The applicants submitted a handout that referenced a specific case wherein abuse of a client at the hands of an incompetent provider occurred. This document can be accessed at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Mr. Klein asked whether real harm can occur in these sessions. An applicant representative responded in the affirmative and stated that harm from abusive providers is likely to get worse given the lack of effective oversight of the ABA services that are coming into Nebraska from other states that have already passed licensure laws for the provision of these services.

One applicant representative informed the committee members that there is some public rejection of ABA because of abusive services being provided by unqualified providers. One group wants to have ABA outlawed because of all the bad services being provided. This representative went on to state that reports of abuse from previous patients who Received these bad services when they were vulnerable children are now being received, further highlighting the need for licensure to establish clear standards of

practice in our state for these services.

Mr. Peters responded to these applicant comments by stating that they are largely unsubstantiated or anecdotal in nature and do not prove that ABA services coming into Nebraska from other states are “bad.”

A representative of Nebraska Medicaid commented that Nebraska’s lack of licensure standards in this area of care puts us in a bad situation vis-à-vis ABA services given that most surrounding states have established licensure for the provision of ABA services and that this situation does create potential for harm.

Dr. Low asked the applicants if they intend to include a grandfather clause in the Legislative version of their proposal. The applicants responded that they were not going to include a grandfather clause. Mr. Klein responded that the issue of grandfathering will come up during legislative debate on these issues.

The second criterion states as follows: “Regulation of the profession does not impose

significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.” The applicants stated that their proposal would do no harm. There is already a large pool of qualified providers to meet current demands. There is no reason to believe that passing licensure for ABAs would restrict access to qualified ABA providers.

The third criterion states as follows:

“The public needs assurance from the state of initial and continuing professional ability.”

The applicants stated that licensure would provide the public with assurance that the ABA providers they choose for their vulnerable family members are going to be qualified and competent.

The fourth criterion states as follows:

“The public cannot be protected by a more effective alternative.”

The applicants stated that their proposal would establish effective oversight of all ABA services in Nebraska which would greatly enhance public protection.

Mr. Peters expressed concerns about the apparent narrowness of the current ABA proposal and asked the applicants if their proposal could become more open to allowing other licensed mental health professionals being allowed to provide ABA services. The applicants responded by citing comments from the Surgeon General who is reported to have said that “non-verbal” patients approved for ABA treatment need to be treated by ABA-trained providers, whereas clients who are defined as “verbal” could be treated by non-ABA-trained providers. However, Dr. Diane Marti, PhD Psychologist, expressed doubts about this judgment and stated that each state has a right to make their own determination on such matters.

During the public hearing testimony was received from parents of children who received services from unqualified providers of ABA services and suffered as a result. These parents indicated that licensure would establish standards of practice that would have prevented this harm from occurring. The full text of this testimony is provided on the Program link.

NPA Comments about the ABA Proposal and ABA Responses to these Comments

To: Members of the 407 Technical Review Committee (TRC)
From: Licensed Psychologists in Nebraska
Re: Licensure Application for Behavior Analysis
Date: September 24, 2022

The undersigned are licensed psychologists in the state of Nebraska. The undersigned have expertise in behavior analysis as demonstrated by Board Certification in Behavior Analysis (BCBA) or documented history of practice, research and/or teaching in behavior analysis. Many of us are also members of the Nebraska Psychological Association (NPA). We are writing in response to the statement of opposition to behavior analysis licensure provided by NPA on August 12, 2022. We are disappointed that the statement provided by NPA was not reviewed with the membership of NPA prior to being provided to the TRC nor were members of NPA or other Licensed Psychologists in Nebraska with documented expertise in behavior analysis approached by NPA for their perspective on this issue.

We will respond to NPA's points by the order in which they were presented. Throughout this letter, the term "clients" will be used to refer to all individuals receiving any type of services, including patients, families, consumers, students, and so on, consistent with the term used by NPA in this context.

1. NPA Statement: "NPA continues to support the need for any practitioners who provide ABA services be required to obtain education and training inclusive of "mental health focus" (172 NAC 94) relating to mental health practitioners. Or as is currently in practice to date, be under the supervision of such qualified practitioner to oversee treatment." The basis for this position stated by NPA is that NPA believes that behavior analysts are not trained to "recognize and refer clients who are multiply involved."

Our Response: It is a fact of modern service delivery in mental and behavioral health, education, medicine, and other allied health services that clients requiring care typically receive such care from multiple disciplines respective to the client needs. All disciplines have a scope of practice and have ethical obligations to practice within that scope of practice, and even more narrowly within the individual practitioner's scope of competence. If an occupational therapist, speech therapist, counselor, social worker, or psychologist sees that a client may need another discipline involved then they make that referral. The same expectations regarding scope of practice and scope of competence, recognition of need for referral, and referral apply to behavior analysts. Interdisciplinary collaboration and referral are explicit in behavior analysis professional code of ethics, required as part of behavior analysis course training, and required as part of the extensive supervised fieldwork experience of 1500-2000 hours required prior to attaining a Master's degree.

It would be a dangerous precedent to set a standard that every discipline needed to have explicit training in the topical area of disciplines they may refer to before they are allowed to practice. For example, this would mean that all mental health providers would be required to have explicit training in behavior analysis before they can practice so that they know when to refer to behavior analysts. Currently, no psychology or mental health

graduate degree program in Nebraska has a required course on behavior analysis. None of the mental health or psychology graduate degree programs require supervised practicum or other fieldwork experience in behavior analysis. By NPA's argument above, how do they know when to refer to behavior analysts? As a state, it is left up to the psychology and mental health graduate training programs, and all other disciplines, to prepare their students on when and how to refer to other disciplines. We ask for the same consideration for behavior analysts.

2. NPA Statement: The application indicates "members of the board shall be appointed by the director upon recommendations submitted by the Nebraska Association for Behavior Analysis." This appears to establish a licensing board outside of the statutory authority of the Nebraska Uniform Credentialing Act and is in sharp contrast to current practice where the State Board of Health appoints members to the boards.

Our Response: This statement is taken from a *draft* of a licensure bill that members of the TRC committee asked NEABA to write as part of the review process. This is a draft bill, and the language will be changed to conform with Nebraska statutes as we move to the legislative process. We do not see this as an issue of concern.

3. NPA Statement: "The application presents the need for independent licensure for ABA services in Nebraska due to there being no recourse for individuals to report their concerns. However, any professional currently practicing in Nebraska has a licensing board for oversight."

Our Response: Yes, licensed professionals in Nebraska such as psychologists and mental health practitioners operate under a licensing board. Consumers of services provided by these professionals know where to go to file complaints if needed. However, behavior analysts do not have a licensing board currently in Nebraska and consumers of services by behavior analysts do not have an easily identifiable process for filing complaints. A licensing board would help protect the public by providing a clear avenue for the public about where to report concerns regarding services provided by behavior analysts.

4. NPA Statement: "The application's list of exclusions to the scope of practice for behavior analysis appears limited. For example, would assessment and treatment of substance abuse disorders, biofeedback, psychoeducation evaluations be excluded? In addition, the scope of practice is narrow but the application does not require the behavior analysts to refer a client with co-occurring mental disorders."

Our Response:

- a. The list of exclusions is consistent with the scope of practice of behavior analysts. Other potential areas of practice such as particular disorders (e.g., substance use disorders) or services (e.g., biofeedback) are dependent upon the individual behavior analyst's scope of competence evidenced by their training, supervised experience and continuing education.
- b. As noted earlier, like other disciplines, behavior analysts receive extensive training in ethical and professional practices related to interdisciplinary collaboration and referral. The application for licensure does not need to require that behavior analysts refer a client with co-occurring mental disorders when necessary to another discipline, the behavior analysis ethical and professional standards already require this just like any other discipline.

5. NPA Statement: The Behavior analysis and therapy is already regulated in Nebraska statute (The Psychology Practice (Act, 38-3108). In addition, there is a section that exempts Licensed psychologists from their licensure as long as it is in the scope of practice section of the Nebraska psychology licensure law. However, there is concern that the long-term consequences and next logical step of this independent licensure is that insurance companies will refuse to pay for any form of behavior analysis and intervention not provided by a “Licensed Behavior Analyst”. Essentially, it would limit if not impair qualified clinicians providing or implementing behavioral analysis interventions such as doctoral-level licensed psychologists, physicians, nurse practitioners, licensed mental health practitioners, speech pathologists, teachers, and other professionals. This would in turn have an impact of creating barriers to services not consistent with public welfare and interest.

Our Response: The concern appears to be that the scope of practice of psychology, which already includes behavior analysis, will potentially be limited in practice by insurance companies expecting psychologists or others to demonstrate competence in behavior analysis before they are allowed to bill applied behavior analysis service codes. As noted previously, and admitted in the statement above, the ABA licensure application explicitly exempts licensed psychologists since behavior analysis is within the scope of practice of psychology in Nebraska. The licensure application also exempts other disciplines which have behavior analysis within their scope of practice as outlined by Nebraska statute.

Scope of practice is not synonymous with scope of competence. Insurance companies frequently expect some evidence that a professional has competence in a particular service area before they can bill that service. This protects the consumer and the insurance provider. Expecting licensed professionals to demonstrate evidence of competence in behavior analysis before they can bill behavior analysis service codes does not appear problematic to us.

6. NPA Statement: “ABA is a narrow approach to therapy **and not the only one considered effective in treating autism.**” [bold in original]

Our Response: It is categorically false that ABA is a narrow approach to therapy. Behavior analysis encompasses philosophies of science with foundational assumptions about science and human behavior that go back centuries, a century of experimental science, and applied science and practice that extends back over a half-century. Applied Behavior Analysis *is a discipline* that encompasses many types of treatment for a diverse range of problems across many settings and populations and across the age-span. It is accurate that Autism is an area that applied behavior analysis has been very successful and for which ABA likely receives the most attention currently. In popular press and lay public parlance, ABA is often misconstrued as a treatment. Unfortunately, NPA also misconstrues ABA as a treatment in this statement. We note that several of the evidence-based treatments listed as examples by the NPA statement as alternatives to ABA for young children with autism are directly derived from ABA including Picture Exchange Communication System (PECS), verbal behavior approaches to treatment, positive behavior supports, and behavioral teaching. These various types of treatment are further evidence for ABA’s categorization as a discipline, not as a treatment

7. NPA Statement: “It appears there continues to be no evidence suggesting a failure to protect the public under the current regulatory structure. Currently, trained ABA clinicians with the ability to treat mental disorders independently can be licensed under the board

of psychology or under the board of mental health practice. Additionally, trained ABA clinicians with “limited supervision but not full independence”, can qualify as a mental health practitioner under the Mental Health Practice Act. The Mental Health Practice Act was created to address situations specifically suited for the current application.”

Our Response: The suggestion is that psychologists and mental health providers are currently trained to provide the behavior analysis services to Nebraskans in need of such services. This statement is false. While behavior analysis may be part of the scope of practice of mental health and psychology, and some mental health practitioners and psychologists certainly have demonstrated expertise in behavior analysis, it is not regularly taught as a required competence, let alone as a discipline, in these graduate training programs. As demonstrated in the licensure application, there is clearly a need for behavior analysis services in Nebraska which is not being met by current graduate training programs in psychology and mental health in the state of Nebraska. There is a need for behavior analysts in Nebraska and it is important that the practice of the discipline of behavior analysis be regulated through licensure to protect the public from those without adequate training or competence in behavior analysis.

We appreciate the committee’s time and work addressing this important matter for the citizens of Nebraska and strongly support approval of the licensure application for behavior analysts.

*Signed by:

Keith Allen, PhD., LP, BCBA-D
Brenda Bassingthwaite, LP, BCBA
Christa F. Brown, PhD, LP
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All sources used to create Part Four of this report can be found on the credentialing review program link under ABAs at

<https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>

Part Five: Formulation of Recommendations on the Applicant's Proposal

Final Discussion on the Proposal

On the first criterion, Darrell Klein commented that in accord with the Nebraska Regulation of Health Professions Act the application presented anecdotal evidence that there is harm to the public inherent in the current unregulated situation of ABA services in Nebraska. Mr. Klein also stated that the current ABA proposal still contains inaccuracies pertinent to regulation and administration of health care professionals in Nebraska, but he is voting in favor of the concept of issuing a credential under the Uniform Credentialing Act as the best way to protect the public.

On the second criterion, Mr. Klein remarked that he found the proposal to regulate ABA as a profession does not impose economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest. Currently, the only 'standards' set are related to reimbursement.

On the third criterion, Mr. Klein noted that previous legislation already requires third party reimbursement for ABA for autism, and that Medicaid pays for the services under certain circumstances. Further, under the UCA Nebraska already licenses many professions for which the potential for harm is less than the potential for harm stemming from the current unregulated state of ABA. All of this argues for regulation of ABA as a profession in order to protect the public, as, in effect, the state has already endorsed the practice of ABA.

On criterion four, Mr. Klein referenced provisions of the Nebraska Regulation of Health Professions Act that mandate that the least restrictive level of credentialing consistent with public protection must be identified but noted that less restrictive credentials such as certification and registration have for all practical purposes ceased to be used, and that licensure has become the norm and probably works the best.

Debra Parsow and Kevin Low expressed agreement with Mr. Klein's remarks.

Committee actions on the Four Statutory Criteria pertaining to this Proposal

Criterion one: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public.

Voting “yes” that the proposal or application DOES “satisfy” this criterion were:
Parsow, Low, Klein, and Logan

Voting “no” that the proposal or application DOES NOT “satisfy” this criterion were:
There were no nay votes

Chairperson Reese abstained from voting.

Criterion two: Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.

Voting “yes” that the proposal or application DOES “satisfy” this criterion were:
Parsow, Low, Klein, and Logan

Voting “no” that the proposal or application DOES NOT “satisfy” this criterion were:
There were no nay votes

Chairperson Reese abstained from voting.

Criterion three: The public needs assurance from the state of initial and continuing professional ability.

Voting “yes” that the proposal or application DOES “satisfy” this criterion were:
Parsow, Low, Klein, and Logan

Voting “no” that the proposal or application DOES NOT “satisfy” this criterion were:
There were no nay votes

Chairperson Reese abstained from voting.

Criterion four: The public cannot be protected by a more effective alternative.

Voting “yes” that the proposal or application DOES “satisfy” this criterion were:
Parsow, Low, Klein, and Logan

Voting “no” that the proposal or application DOES NOT “satisfy” this criterion were:
There were no nay votes

Chairperson Reese abstained from voting.

Action taken on the proposal as a whole occurred as follows:

The Committee members took action on the proposal as a whole via an up/down roll call vote as follows:

Darrell Klein Voted “Yes” to recommend approval of the ABA proposal

Comments: Darrell stated that the information supporting the concept of credentialing ABA under the Uniform Credentialing Act including its ability to protect Nebraskans who need these services is consistent with other health professions that are already covered by the Uniform Credentialing Act. Darrell noted that credentialing under the Uniform Credentialing Act would protect those receiving ABA under existing Nebraska’s third-party reimbursement mandates.

Denise Logan Voted “Yes” to recommend approval of the ABA proposal

Comments: Denise stated that she voted to approve the proposal because it would provide greater assurance that quality of care would improve if the proposal were to pass. Denise agreed that credentialing under the Uniform Credentialing Act would protect those receiving ABA under existing Nebraska’s third-party reimbursement mandates.

Kevin Low Voted “Yes” to recommend approval of the ABA proposal

Comments: Kevin stated that it was the testimony of the parents of ABA patients that won him over to support approval of the proposal.

Debra Parsow Voted “Yes” to recommend approval of the proposal

Comments: Debra stated that approving this proposal would be a good thing for those Nebraskans who are patients of ABA providers.

Chairperson Reese abstained from voting.

By this roll call vote the members of the Applied Behavior Analysts Technical Review Committee recommended approval of the ABA proposal.