

MINUTES
of the Third Meeting of the
Applied Behavior Analysts Technical Review Committee
June 29, 2022
9:30 a.m. to Noon

TRC Members Present

David Reese (Chair);
Darrell Klein, JD;
Denise Logan, BS, RT
Kevin Low, DDS
Debra Parsow
Stephen M. Peters, BA, MA

TRC Members Absent

Jeffrey L. Howorth

Program Staff Present

Matt Gelvin
Jessie Enfield
Ron Briel

I. Call to Order, Roll Call, Approval of the Agenda

Chairperson Reese called the meeting to order at 9:30 a.m. The roll was called; a quorum was present. Mr. Reese welcomed all attendees. The agenda and Open Meetings Law were posted and the meeting was advertised online at <https://dhhs.ne.gov/Licensure/Pages/Credentialing-Review.aspx>. The committee members unanimously approved the agenda for the third meeting and the minutes of the second meeting with corrections.

II. 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 the ability of practitioners to provide their services.

III. Applicant Responses to Committee Questions

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.

IV. 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.

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.

V. Next Steps

The committee members agreed that the next meeting should be the public hearing.

VI. Public Comments

Karen Fry, an ABA provider, commented that, like her, some ABAs treat only adults with developmental disabilities.

VII. Other Business and Adjournment

There being no further business, the committee members unanimously agreed to adjourn the meeting at 11:20 a.m.