

REPORT OF RECOMMENDATIONS

**By the Nebraska State Board of Health
Regarding a Proposal to License
Applied Behavior Analysts in Nebraska**

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

November 15, 2010

TABLE OF CONTENTS

<u>HEADINGS</u>	<u>PAGES</u>
Introduction	1
Members of the Nebraska State Board of Health	2
Summary of Sources, Data and Information	3
Executive Summary of Board of Health Recommendations.....	4
Board of Health Recommendations	5
• <i>Recommendations of the Credentialing Review Committee</i>	5
• <i>Recommendations of the Full Board of Health</i>	7
Discussion on Issues and Findings by the Board Members.....	8
• <i>Comments by Representatives of the Applicant Group</i>	8
• <i>Comments by Representatives of Opponent Groups</i>	9
Board of Health Meetings to Review the Proposal	11

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 then appoints 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 four 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.

MEMBERS OF THE NEBRASKA STATE BOARD OF HEALTH

(As of August 24, 2010)

Daniel Bizzell, EdD Mental Health Professional Member	Kearney
Janet Coleman Public Member	Lincoln
Edward Discoe, MD (Chair) Physician Member	Columbus
Theodore Evans, Jr., DVM Veterinarian Member	Tecumseh
Russell Hopp, DO Osteopathic Physician Member	Omaha
Diane Jackson, APRN Nurse Member	Franklin
Kenneth Kester, PharmD, JD Pharmacist Member	Lincoln
Dale Michels, MD Physician Member	Lincoln
Debra Parsow Public Member	Omaha
Roger Reamer, MBA Hospital Administrator Member	Seward
Richard Robinson, PE Professional Engineer Member	Omaha
Luisa Rounds, RN, BSN Nurse Member	Omaha
Paul Salansky, OD (Secretary) Optometrist Member	Nebraska City
Wayne Stuberg, PhD, PT Physical Therapist Member	Omaha
John Tenuity, DPM Podiatrist Member	Lincoln
Gary Westerman, DDS (Vice Chair) Dentist Member	Omaha
Daryl Wills, DC Chiropractor Member	Gering

SUMMARY OF SOURCES, DATA AND INFORMATION

The Board of Health utilized the following sources of information to conduct their review:

1. The Transcript of the Public Hearing held by the Technical Review Committee on June 2, 2010.
2. The Report of Findings and Recommendations of the Technical Review Committee, dated July 21, 2010.
3. Information from, and recommendations of, the Credentialing Review Committee of the Board of Health, formulated during that Committee's meeting on August 23, 2010.

EXECUTIVE SUMMARY OF BOARD OF HEALTH RECOMMENDATIONS

The members of the Credentialing Review Committee of the Board of Health recommended against approval of the applicants' proposal. The committee members approved four ancillary recommendations to clarify questions pertinent to training and exemptions. These ancillary recommendations are described on page six of this report.

The members of the full Board of Health approved the recommendations of the Credentialing Review Committee on the proposal, including the ancillary recommendations, which means that the Board of Health recommended against approval of the proposal.

BOARD OF HEALTH RECOMMENDATIONS

Recommendations of the Credentialing Review Committee

During their special meeting held on August 23, 2010, the members of the Board's Credentialing Review Committee formulated their advice to the full Board of Health on the proposal by taking action on the following four statutory criteria:

Criterion One:

Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.

Dr. Tennity moved and Ms. List* seconded that the proposal satisfies criterion one. Voting aye were Bizzell, Coleman, List and Tennity. There were no nay votes or abstentions. The motion carried.

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.

Ms. List moved and Dr. Tennity seconded that the proposal satisfies criterion two. Voting aye was Tennity. Voting nay were Bizzell, Coleman, and List. The motion failed.

Dr. Tennity asked for clarification regarding how the current proposal could restrict the services of other health care providers. Dr. Michels stated that the lack of a statutory definition of applied behavior analysis makes this a difficult question, and complicates one's ability to determine whether this service is or is not a component of the scope of practice of other health care professions. He added that the title protection aspects of the proposal have raised concerns that only those who would be allowed to use the protected title would be allowed to bill for services.

Criterion Three:

The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional by the state.

Ms. List moved and Dr. Tennity seconded that the proposal satisfies criterion three. Voting aye was Tennity. Voting nay were Bizzell, Coleman and List. The motion failed.

Criterion Four:

The public cannot be effectively protected by other means in a more cost-effective manner.

Ms. List moved and Dr. Tennity seconded that the proposal satisfies criterion four. There were no aye votes or abstentions. Voting nay were Bizzell, Coleman, List and Tennity. The motion failed.

*See note on page eleven

By these four actions the committee members recommended that the full Board of Health not approve the applicants' proposal for licensure. The committee members continued by formulating the following ancillary recommendations:

1. Professionals who are licensed, certified, or regulated under the laws of Nebraska, including Licensed Mental Health Practitioners (LMHPs) and Licensed Independent Mental Health Practitioners (LIMHPs), should not be excluded from rendering services that are consistent with their professional training and code of ethics, and are within their scope of practice as set out in the statutes regulating their professional practice. Such professionals, if appropriately trained in behavior analysis, should be able to continue to use the terms "applied behavior analyst" and "applied behavior analysis" to represent themselves and their services. Statutory language should also prohibit state agencies or third-party payers regulated by the State of Nebraska from excluding licensed psychologists or qualified LMHPs or LIMHPs from payment for authorized or mandated ABA services.
2. A statutory definition of applied behavior analysis needs to be created.
3. Pathways need to be developed to allow LMHPs and LIMHPs to acquire the training necessary to provide ABA services, and to allow a specialized track for psychologists seeking to supervise other professionals providing those services. These would include:
 - a. A certification track that could include additional training beyond that received to qualify for a license as a LMHP or a LIMHP. This would be for those LMHPs and LIMHPs seeking to provide ABA services.
 - b. A special training and experiential track for those psychologists who seek to supervise other professionals who provide ABA services.
4. Those practitioners who provide ABA services should be required to obtain education and training inclusive of "mental health focus" as defined in regulations (172 NAC 94) relating to mental health practitioners.

Recommendations of the Full Board of Health

On September 27, 2010, the full Board of Health took action on the recommendations of the Credentialing Review Committee. Voting aye to adopt the recommendations of the committee on the proposal were Bizzell, Coleman, Discoe, Evans, Hopp, Jackson*, Kester, Michels, Rounds, Salansky, Tennity, Westerman, and Wills. Parsow and Stuberg abstained from voting. The motion carried.

By this vote, the members of the full Board of Health recommended against approval of the applicants' proposal.

The members of the full Board of Health also took action on the ancillary recommendations of the Credentialing Review Committee during their September 27, 2010 meeting. These ancillary recommendations are described on page six of this report. Voting aye to adopt these ancillary recommendations were Bizzell, Coleman, Discoe, Evans, Hopp, Jackson, Kester, Michels, Salansky, Tennity, Westerman, and Wills. Parsow and Stuberg abstained from voting. Rounds was absent during this vote. The motion carried.

* See note on page eleven

DISCUSSION ON ISSUES AND FINDINGS BY THE BOARD MEMBERS

Wayne Fisher, Ph.D., presented testimony on behalf of the applicant group. He stated that although the field of applied behavior analysis (ABA) began as a subspecialty of psychology, it has emerged as a separate discipline from psychology. Membership in the behavior analysis division (Division 25) of the American Psychological Association (APA) has decreased to less than 700 members. In 1986 the APA dropped the requirement for having coursework in behavior analysis and behavior therapy from its model licensing Act, and most Board Certified Behavior Analysts (BCBAs) are now trained in programs outside of the departments of psychology. This situation has made it necessary for those persons interested in the profession of applied behavior analysis to seek education and training outside of traditional psychology programs.

Dr. Fisher identified aspects of the proposal that have raised concerns among representatives of Nebraska Psychology Association (NPA) and explained how the applicant group has responded to those concerns. Concern was expressed by both NPA and the technical committee members about the manner in which the proposal would be administered if it were to pass. The applicant group responded to these concerns by proposing that the administration of ABA licensure be placed under the Board of Psychology.

A second area of concern has been the potential impact of the proposal on limiting the provision of ABA-related services by psychologists because ABA is specifically included in the psychology practice act. Dr. Fisher stated that the applicant groups' proposal would not limit in any way the scope of practice of any licensed psychologist, including practicing and representing their services as applied behavior analysis. He added that the applicants also agreed to include a provision in their proposal prohibiting state agencies or third-party payers regulated by the state from excluding licensed psychologists from receiving third-party payment for authorized or mandated ABA services rendered.

NPA also expressed concern regarding independent practice for behavior analysts and argued that ABAs should practice under the supervision of a licensed psychologist with experience in ABA. Arguments have been made that ABA is a treatment modality or subspecialty group within the field of psychology. Dr. Fisher stated that applied behavior analysis is clearly a separate profession. He added that the applicant group has made modifications to the proposal in an attempt to address concerns about the supposed narrowness of ABA education and training. The applicant group has proposed that doctoral-level ABAs be required to be supervised by a psychologist during their first three years of practice as a precondition for independent practice. This would enable them to recognize when it is necessary to make an appropriate referral to trained mental health providers.

Ms. Coleman asked Dr. Fisher if his remarks mean that all qualified psychologists would be completely exempt from the terms of the proposal. He responded in the affirmative. Ms. Coleman asked if there might be any additional mental health professions, other than those that have been identified to date, that might have concerns regarding the proposal. Dr. Fisher indicated that he did not think so.

Dr. Bizzell said that he had asked colleagues if they were aware of the proposal to license ABAs, and their response was that the proposal was a "Munroe-Meyer thing, not a Nebraska thing". Dr. Fisher responded that the needs in this area of care are statewide, and ABAs are committed to serving the needs of autism patients all across Nebraska. He added that access to ABA services will increase with licensure.

Dr. Bizzell stated that he is not sure that the ABA profession in Nebraska is mature enough to provide the high level of service defined in the proposal. Dr. Fisher responded that the knowledge base of ABA is at least 100 years old, and the theoretical foundations for it were delineated by psychologists in the middle of the last century. He added that its principal journal was created during the 1960's. He stated that this information shows that ABA is not an immature field. Dr. Fisher added that it is true that there are some skill sets that ABAs lack, such as the ability to independently diagnose. However, ABAs work closely with other mental health professionals such as psychologists, and this fact should address concerns raised about the supposed narrowness of the ABA profession.

Ms. Coleman asked Dr. Fisher why the applicant group is seeking a license that is separate from, and independent from, the profession of psychology. Dr. Fisher responded that the applicants feel that ABA needs to have a separate licensing process because psychology schools and training programs do not provide the full range of training that ABAs need to work safely and effectively. He added that ABAs believe that independent licensure is the only way that they could receive direct, third-party reimbursement for their services.

Ms. List* commented that her concern is with the potential of the proposal to restrict access to care. She is a psychiatric nurse practitioner working in a rural area and is concerned that the pool of psychologists to whom she refers would be negatively impacted by the proposal. Ms. List asked Dr. Fisher whether the proposal would create a situation wherein anyone who seeks a diagnosis would be required to go to Munroe-Meyer, and if only Munroe-Meyer psychologists would be reimbursed for services. Dr. Fisher replied that under the terms of the proposal, any psychologist desiring to act as an ABA supervisor would be evaluated by the Board of Psychology to determine whether he or she possesses the necessary knowledge and skills to oversee that training. He added that diagnosis could occur anywhere, not just at Munroe-Meyer.

Dr. Bizzell asked Dr. Fisher whether possessing a degree in psychology is helpful in being able to oversee the work of ABAs. Dr. Fisher responded in the affirmative. Dr. Bizzell asked whether Dr. Fisher believes that after an ABA has completed three years of supervised experience, they would be ready to practice independently, and not require any additional oversight from his or her supervising psychologist. Dr. Fisher responded affirmatively.

Dr. Bizzell expressed concern about the potential of the proposal to further restrict access to services because it might require Nebraskans across the state to travel to Omaha to receive services.

Anne Buettner, MA, and Legislative Chair of the Nebraska Association for Marriage and Family Therapy (NAMFT), and Judith Bothern, Ph.D., presented testimony in opposition to

*See note on page eleven

the proposal. Ms. Buettner stated that ABAs lack the education and training to diagnose a patient's mental health condition. This effectively limits their ability to triage or recognize the symptoms of mental illness in order to make an appropriate referral. Autistic children may experience multiple mental health problems, such as depression and anxiety. Those who treat autism must be able to recognize the symptoms of these illnesses as well. Having 1500 hours of clinical training outside of autism spectrum disorders and working for three years under the supervision of a psychologist is not sufficient to satisfy standards of care and does not protect the public from harm. Ms. Buettner stated that ABAs are a valuable part of the health care system and some kind of credentialing for them is indicated, but not the current version described in the proposal. ABAs should either be better grounded in mental health or they should be required to practice entirely under the supervision of other licensed mental health providers if the public is to be adequately protected.

Dr. Bothern stated that the proposal would create new danger for the public health and welfare by granting independent licensure to practitioners who lack sufficient qualifications to practice independently. She stated that the total number of credit hours taken by ABAs in core mental health courses is far less than the amount of coursework taken by psychologists. Additionally, ABAs lack sufficient preparation to be considered a specialty group because all of their preparation is in only one modality, whereas psychologists become competent in a wide range of modalities.

Dr. Bothern added that the final version of the proposal still does not clearly exempt all qualified psychologists from the terms of the proposal. This version of the proposal still includes language prohibiting anyone except ABAs from advertising their services using the title Applied Behavior Analyst, or from describing services using the term "applied behavior analysis". This prohibition would limit the ability of psychologists to clarify to the public the nature of the services they are allowed to provide. This prohibition could also limit their ability to receive reimbursement for these services, since third-party payers expect to see the name of the service for which reimbursement is being sought specifically named on relevant billing documentation.

Dr. Tennity asked Dr. Bothern why the Board of Psychology would not be able to address the shortcomings of this credential. Dr. Bothern responded that this board has not received sufficient information about the proposal to do so. Ms. Buettner added that the problem under discussion goes beyond what a licensing board can address, and pertains to the need for additional education and training if ABAs are to practice independently.

Dr. Tennity asked Ms. List if she has concerns about the potential of the current version of the proposal to limit access to services. Ms. List responded that the current version of the proposal does still raise those concerns, but added that if the proposal had included the ancillary recommendations of the technical review committee it would not.

Mark Hald, PhD, a psychologist with Options in Psychology, LLC in Scottsbluff, stated that creating a separate ABA credential apart from currently licensed mental health professions would be confusing to the members of the public. He added that if ABA is to be credentialed, it should be credentialed under either Mental Health Practice or Psychology in order to ensure continuity of care.

BOARD OF HEALTH MEETINGS TO REVIEW THE PROPOSAL

The meeting of the Board of Health's Credentialing Review Committee to formulate its advice to the full Board of Health on the proposal was held on **August 23, 2010**.

The full Board of Health met to formulate its recommendations on the proposal on **September 27, 2010**.

The full Board of Health approved its report of recommendations on the proposal at its regularly scheduled board meeting on **November 15, 2010**.

*NOTE: Pamela List, APRN, RN, a Nurse member of the Board of Health, participated in the August 23, 2010 meeting of the Credentialing Review Committee and voted accordingly. Ms. List did not seek reappointment to the Board following her existing term. Governor Heineman appointed Diane Jackson, APRN, RN to the Board of Health as Ms. List's replacement.