

**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](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.***