

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.

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