



APPLIED BEHAVIOR ANALYSIS BOARD MEETING MINUTES

Date of Posting: October 23, 2020
Date and Time of Meeting: October 29, 2020 9:00 AM
Name of Organization: The Board of Applied Behavior Analysis
Place of Meeting: Aging and Disability Services Division
Teleconference:

Please place your phone or your computer microphone on mute unless providing public comment.

In accordance with Governor Sisolak's Declaration of Emergency Directive 006; Subsection 1; The requirement contained in NRS 241.023 (1) (b) that there be a physical location designated for meetings of public bodies where members of the public are permitted to attend and participate is suspended.

Board members will be attending telephonically and via Teams. Members of the public will also participate via teleconference or Teams.

[Join Microsoft Teams Meeting](#)

[+1 775-321-6111](#) United States, Reno (Toll)

Conference ID: 427 063 046#

All times are approximate. The Board reserves the right to take items in a different order, items may be combined for consideration by the Public Body and items may be pulled or removed at any time to accomplish business in the most efficient manner.

AGENDA

1. Roll Call and Verification of Posting

Laryna Lewis verified posting. The following board members were present: Dr. Brigid Fronapfel, Christy Fuller, Matthew Sosa, and Rachel Gwin. Laryna stated for the record that Dr. Kerri Milyko was not present. Meeting proceeded with quorum.

2. Public Comment

(No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an item. Comments will be limited to three minutes per person. Persons making comment will be asked to begin by stating their name for the record and to spell their last name and provide the secretary with written comments.)

Laryna Lewis read a written public comment from Dr. Kerri Milyko. Please see attachment A and attachment A2 for full comment and the FARB outline that Dr. Milyko provided in support to her public comment.

Matthew Lehman gave a public comment. He stated he is also a BCBA. His comment is regarding agenda item number four and wanted to say that he is very excited and happy that this is being made available. As someone who is licensed in five or six other states, he has a large number of Behavior Analysts who would be happy to help provide services here but have been defeated in their ability to do so because of some of the particularities of the Nevada licensure law such as needing to be physically present to complete fingerprinting.

3. Approval of Previous Meeting Minutes (For Possible Action)

Christy stated that she believes a name from a previous public comment from Linda Kyriannis is still misspelled. Christy then spelled it for the record.

Dr. Fronapfel requested changes to item number 7 to reflect Dr. Milyko spent 10 hours a week in her past role, not current role. Dr. Fronapfel also requested to have a summary of the public written comment by Dr. Milyko for consistency with the other public comments who do have summaries.

Dr. Fronapfel requested a motion. Matt motioned to approve the previous meeting minutes from October 22, 2020 with the spelling correction, changing of current role to previous role, and a synopsis of Dr. Milyko's public statement. Rachel seconded the motion. All in favor, motion passed.

4. Discussion and Approval of In and Out-Of-State Applicants Seeking Waiver of Licensure/Registration Requirements in Nevada Under Governor's Declaration of Emergency, Directive 011 Including Submission of Fees and Renewal Process for Individuals Currently Licensed/Registered within Nevada (For Possible Action)

Dr. Fronapfel began this agenda item discussing the public comments around RBTs, out of state RBTs and if they qualified for this, Behavior Analysts out-of-state in terms of licensure requirements and renewals. Dr. Fronapfel asked Julie to clarify what the Directive is specifying. Julie explained the point of this Directive is for anyone who has a license out-of-state will be able to come into Nevada and practice without seeking a license in order to assist in this emergency issue and is only good for during the timeframe of the Emergency Declaration. They do have to notify the board and provide any information that the licensing board or agency requires. Dr. Fronapfel wanted to clarify they can be licensed or certified. Julie explained that it does not specify, so yes. Julie explained the national certification should work and does not know why it would not. Dr. Fronapfel clarified that this is for out-of-state and asked Julie about in-state providers. Julie explained the Directive discusses in-state may defer their license payment for renewal. She does not believe it was intended to apply

to someone who is living in Nevada. If they are living in Nevada, they have to be licensed in another state in order to qualify for this. RBTs have a national certification, so this should qualify them to defer their registration until the pandemic is over. They will ultimately have to go through that whole process.

Christy asked Julie for clarification regarding if someone could practice under this Directive who is not licensed out-of-state but is certified through the national credentialing board as a BCBA. Julie stated that she does not believe that is the intent of this Directive. In this instance, having only the national certification would not work.

Matt asked Julie if RBTs were coming from a state that does require licensure, if they would then also require that licensure as well. Julie stated that she believes they should but believes Nevada is about the only state that does this. Matt and Jennifer both stated there are a small amount of states that do. Dr. Fronapfel stated there are two but Nevada is the only one that requires the full registration process.

Dr. Fronapfel wanted to emphasize that this Directive is for a surge and needing additional medical professionals to help with it in which behavior professionals were also lumped into it. Although it allows out-of-state providers to get around the licensure requirements, it will end. When this Directive is pulled, they will be responsible to no longer engage in the practice within this state after 60 days. It also applies to the deference of fees. Once it is over, everyone must pay their fees within 60 days.

Jennifer Frischmann wanted to clarify the renewal process. She asked if a Behavior Analyst or RBT chooses not to renew and to defer their fees, do they still have to go through the process of submitting anything. Jennifer asked for clear direction from the board otherwise come January 1, they will be sending out letters stating their license is suspended. Matt stated that he believes they should still require everything except the fees and continued by explaining one of the reasons this board exists is for consumer protection. Christy's recommendation is to require LBAs, LaBAs and RBTs to complete all required information as they do with out-of-state individuals, with the option of deferring their fees. Jennifer stated no matter what, this will be an administrative challenge and burden to track this, although she understands this is the Governor's Directive and is absolutely allowable. Dr. Fronapfel clarified that no matter the date this becomes lifted, the full amount will be due.

Christy asked Julie if they could still encourage paying fees with the application. Julie stated there is nothing that would discourage this, so they could put out this statement. Julie explained that this is not on the Division to track these individuals, this is on the licensee to pay their fees. If they miss the window after the Directive is over, their license will be suspended. The Division is not required to notify them. Jennifer explained that this goes for LBAs, LaBAs and RBTs. If they do not pay their fees, they will be reported to the BACB.

Dr. Fronapfel suggested to post a quick explanation regarding the Directive.

Christy suggested to add a section where the individual can check if they will or will not be enclosing their fees as well as putting out statement to say the payment of fees are encouraged and appreciated. Jennifer asked if there could be a board member that can draft this. Christy stated she will update the forms and asked Laryna to send over the most updated ones so she could add the language. Laryna stated she would send those over after the meeting. Jennifer stated they will need that attestation on the renewal application so it can be put into a different bucket. Matt suggested to include the word "suspension". Jennifer continued to state that since this is a public meeting, they all must be cognizant that if someone fails to pay their fees and they continue to practice, under statute, that is a gross misdemeanor.

Dr. Fronapfel discussed having something drafted so everything this can be clear to the public. Dr. Fronapfel asked if they could ask for public comment to ensure clarity. Christy stated there will be another chance for public comment but know this is opening for public comment regarding the Governor's Emergency Directive. Jennifer encouraged for individuals to use the chat feature for questions.

Before opening for public comment, Matt wanted to clarify that they are not allowing pending RBTs who live in Nevada, who are certified nationally, to fall under the same circumstances as an out-of-state RBT, other than potentially fees. Julie stated that she does not know under this Directive if they could make that distinction. If they are certified with the national organization, she believes it would qualify for an outside certification. Julie stated it was certainly not the intent but is not sure if they could read that restriction into it. They have to be certified with the national board. Dr. Fronapfel clarified if an RBT in the state of Nevada holds a national credential, this Directive does apply to them. Julie stated yes.

Dr. Fronapfel opened this agenda item for public comment related to this item.

Mathew Lehman gave a public comment. He stated as a Behavior Analyst, he appreciates the contingency set. The contingency goes into effect whether they have reminded [the board] or not. He does not believe the lack of reminder is consistent with the other boards and how most places handle this situation. He suggests in order to avoid liability, to send out a letter stating it is due once the public health emergency is over, that way it is consistent with everything else.

Jennifer read a comment in chat. The question is to clarify, a BCBA is not sufficient for approval in Nevada. It must have the BACB and license from another state?

Christy responded by explaining per Julie, the BCBA must have both the BACB certification and a license within another state. Christy also explained that if the state does not require licensure, then it is still insufficient. Jennifer clarified that the national certification is sufficient for RBTs only, unless they are coming from a state that does have a registration requirement, then they will need to also provide this certification.

Rachel suggested once the Directive ends to send out one email blast to notify everyone that they have 60 days from this point on. Dr. Fronapfel witnessed nods in agreement with Rachel.

Jennifer read another comment in the chat that stated the BACB sends out two notifications for 30 days and then 10 days. Jennifer stated she understands this is how the BACB operates, but to understand that communication comes from Laryna and Jennifer. As they know when sending out email communications for agendas, folks do not always update their email, so they are going off the email from the original application. Some have stated they did not receive the communication but then find out they have not updated their email with ADSD. Dr. Fronapfel stated when sending in your renewal application to ensure you are sending in your most current information.

Matt stated that he agrees with Rachel to send out a blast once the Directive ends. He stated they are all professionals here and if they choose to purposefully delay fees that they know they need to pay, that is on the professional. Not being aware is not an excuse. If individuals want to avoid that situation, then they should pay their fees now.

Jennifer read another question in the chat asking under this Directive, can in-state RBTs practice with their national cert and no RBT license?

Dr. Fronapfel wanted to clarify that RBTs are under a different category, as they are becoming registered, not licensed. Julie stated that if they have the national certification, it is sufficient. It is not the intent of this Directive but a way to get around it. Jennifer wanted to clarify that anyone that comes in under this Directive who are not currently licensed or registered will not only have to pay their fees after this Directive is over and if they want to continue practicing, they will have to go through the fingerprinting/background check process. This is the same with anyone who wants to continue practicing out-of-state. Jennifer has heard the question if they have to use the Department of Public Safety in Nevada and that answer is yes since that is how the Nevada Revised Statute is written. There is no way around this. RBTs will need to have this completed within that 60-day period to be able to practice.

Matt asked if they are requiring the same thing from RBTs that are coming from out-of-state and in-state as they are requiring from out-of-state BCBAs and BCaBAs. Dr. Fronapfel stated she does not believe so since they instead are linking them with their BCBAs. Christy confirmed this with Dr. Fronapfel. Matt explained that his concern is collecting the information. Matt clarified that they are still gathering the information that they are practicing even though they may not be registered with them.

Laryna asked if they would want all the RBTs to sign the waiver as well. Whether they are in-state wanting to practice without a registration or waiting for their background or out-of-state wanting to practice, wouldn't they want everyone to sign it?

Jennifer began to read a question in chat that piggy backed on Laryna's question. Jennifer read for an RBT currently in the process, if they use the Directive to practice now and then their application moves forward, will this application need to be completed? If it is not, how long will ADSD hold this pending application before the RBT needing to start the process all over from the start? E.g. You guys are just waiting on the background check. This maybe a moot point. I am trying to think when we send in our checks.

Jennifer responded to this comment stating from an RBT perspective, they can start the process whenever and could just defer their fees. If they send in their application to include the Fingerprint Waiver, it will be helpful moving forward once the Directive ends. Christy explained the typical state credentialing process for RBTs. Christy continued to explain this Directive now allows people who are RBTs through the BACB, even if they are in the process of submitting their registration information to legally practice within the state, are able to do so once they have an RBT certification under this Directive. Christy stated that they would like for them to begin the process of registering with the state, but while they are waiting on fingerprint results, they will be able to practice as an RBT while waiting to complete their Nevada registration with the ABA Board as long as they are certified as an RBT through the BACB and have no disciplinary actions. Laryna asked if they would give them an official certificate. Christy stated no, like the LBAs and LaBAs, they will not be given a license, they will just be able to practice. Christy and Jennifer then discussed that even if the RBT has checked all the boxes with the exception to paying their fee, they still will not be considered registered with the state and will not be given the certificate. Jennifer stated if they send out the renewal stickers to the individuals who have not paid and does not follow through, they will then have a license that says they are good to go when they are not. Jennifer would be concerned for this reason to send out the renewal sticker. Matt agreed with Jennifer that if they do not have everything in to include their fees, they should not receive the sticker. Christy also agreed to not send out the sticker if they have not paid their fees.

Dr. Fronapfel reverted to Matt's point regarding the responsibility falling back on the licensee. The same will go for the fingerprints as well. Dr. Fronapfel highlighted the delays in background processing that it is not only the Nevada Central Repository, but there are also delays in mail. When keeping this timeline in mind, and an individual decides to defer fees, once that 60-day window is over and they do not have the background checks back, it will not be an excuse to elongate the allowance of practicing within the state.

Jennifer read another comment in chat stating, "No sticker means they cannot practice so it would defeat the purpose of allowing them to practice because insurances ask to see the sticker."

Matt responded and explained that is the same problem that they ran into with the provisional licenses. None of the insurances with the exception to Medicaid will

accept it. They want the full official license. Matt continued by stating if they want their official license, then pay your fees.

Jennifer read another comment in chat that said, "It states currently licensed or registered. A new applicant is new and therefore not licensed or registered. We are not withholding they are electing to use the Directive hence they are choosing to be influx so to speak until they complete their application."

Jennifer read another comment in chat stating, "Medicaid does not accept provisional after 2018." Jennifer responded to this comment stating that is incorrect and if that needs to be readdressed, they can do that.

Jennifer read another comment in chat stating. "The Directive does not say you will be licensed under the Directive, its states you can work without a license."

Jennifer read another comment in chat stating, "The ABA Board does not control insurance rules." Jennifer responded by stating that is correct.

Dr. Fronapfel asked for motions. Matt motioned for Christy to work with ADSD to add the statement of whether or not a renewal fee is being pushed off per the Directive. Christy seconded the motion. All in favor, motion passed.

Christy then motioned to appoint Dr. Fronapfel to work with the Aging and Disability Services to complete a statement on the Directive and fees and how the fees under the Directive will work and impact providers as well as reminding them once the Directive is over, they have 60-days to pay fees. Matt seconded the motion. All in favor, motion passed.

5. Discussion and Possible Approval of a Process to Address Complaints Brought Forward to the Board **(For Possible Action)**

Jennifer gave some background as to why this is back on the agenda. With the last complaint and looking into the NRS, they noticed it did not align with how the board decided to handle complaints. It was suggested that they bring this back to the board to decide how complaints will be processed. Julie stated this seems to put the investigation and prosecution of the complaints on the Division and the Attorney General rather than the board. Julie is not sure how this will work and explained the concern was, and as how Dr. Milyko put in her public comment, the subject matter expertise is the board and is what Julie believes is missing in the statutes.

Jennifer explained for transparency that any complaint the Division receives is shared with the current President of the board, so it is not ADSD arbitrarily making a decision. They just need to have a clear process going forward. Jennifer also explained that the NRS needs to be revised and they are too late in the season to get a Bill Draft Request (BDR) in to change the statute. The discussion will have to be how they will move forward and the board may need to look at hiring possibly a

retired Behavior Analyst to conduct investigations. Jennifer suggested to either not make a decision right now or to suggest other alternatives.

Dr. Fronapfel asked Julie if they are given wiggle room to remove one board member and have them become the investigator or if it would need to go to an outside entity to hold that role as an investigator. Julie explained that there is nothing in it that says you have to or don't have to as it is silent on that aspect.

Christy discussed her thoughts on whether to decide they elect a board member or hire an outside investigator to assist. She stated all behavior analysts are not trained equally and all have different expertise. In Christy's opinion, naming one person in the state would not be sufficient since different people have different training. They would need to hire a subject matter expert that is appropriate to the complaint. Dr. Fronapfel asked Christy if it would be a list that she is suggesting so then the Division would need to match based on area to the complaint. Christy does not know if they would want to do a list since it could change. Likely, the Division will not know who the expert in a particular area is. Christy's recommendation would be to identify someone from the board to help guide the Division as far as who the subject matter expert would be.

Jennifer explained that if they do decide to hire an investigator, her guess is this would be costly, and they will need to become a vendor with the state. This will take more thoughtfulness to make sure they have this piece hammered out. Dr. Fronapfel also discussed the importance of timeliness if they receive a dangerous complaint, they need to respond as quickly as possible.

Rachel recommended to have a board member that participates. Jennifer stated that if a board member does, they would have to recuse themselves from voting.

Christy explained her concerns of rushing to decide on something so important and that they are also down a board member. She recommended to have another meeting to be able to reflect on the discussion. Christy also suggested to try and use the board as much as possible and help the Division understand what their areas of expertise and trainings are and what potential conflicts they have in their state which may help lay some ground work so the Division knows who to contact.

Dr. Fronapfel requested for the board members to refresh themselves on NRS 437.

This agenda item was tabled.

6. Public Comment

(No action may be taken upon a matter raised under public comment period unless the matter itself has been specifically included on an agenda as an action item. Comments will be limited to three minutes per person. Persons making comment will be asked to begin by stating their name for the record and to spell their last name and provide the secretary with written comments.)

Molly Halligan gave a public comment. Molly stated that she knows they understand the NRS is messy and needs to be cleaned up but she wants to put on

record that she would like clarification as to what NRS 622A Section 090 means in terms of the Division's power for this chapter. Ms. Halligan stated that the Division is legally defined as the board, so under this line of thought, can the Division act without approval of the Governor appointed board members since the Division is the board? Specifically, NRS 437 states, "In the matter consistent with the provisions of Chapter 622A of NRS and with the approval of the Board..." How does this language ensure the Governor appointed board members have ultimate authority or any? Are the Governor appointed board members part of the investigation process? NRS 437.130 states the board has the right to revoke or suspend licenses and registrations. The Division is defined as the board under 622A.090. What role do the Governor appointed board members play in this process? Can the Division function as the authority? NRS 437.135 states the Division is authorized to hold hearings, conduct investigations, and take evidence with approval of the board in the manner consistent with the provisions of 622A. Again, what authority does that leave for the Governor appointed board member since the Division under chapter 622A is defined as the board. The Division shall request the approval of the board to conduct an investigation of each complaint filed pursuant to NRS 437.430 which sets forth for reason to believe that a person has violated NRS 437.500. Upon the approval of the board, the Division shall conduct an investigation. So, does the Governor appointed board have authority to weigh in on these complaints relating to practice with a license? Ms. Halligan continued to state, finally, what is the process by which evidence is collected? A complaint against a licensed or registered professional presumably will contain information protected by HIPAA. How is the professional involved suppose to provide protected information to the Division or the board without violating that?

7. Adjournment

Dr. Fronapfel adjourned the meeting at 10:40 AM

NOTE: We are pleased to make reasonable accommodations for members of the public who have disabilities and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify Laryna Lewis at (775) 687-0503 as soon as possible and at least one **business** day in advance of the meeting. If you wish, you may e-mail her at larynalewis@adsd.nv.gov. Supporting materials for this meeting are available at 3416 Goni Road, D-132, Carson City, NV 89706, or by contacting Laryna Lewis at 775-687-0503, or by email larynalewis@adsd.nv.gov.

In accordance with Nevada Governor Sisolak's Declaration of Emergency Directive 006 there will not be a physical location for the Nevada Board of Applied Behavior Analysis. The public is strongly encouraged to participate by phone or Teams link and download any material provided for the meeting at the website addresses below.

- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 3: The requirements contained in NRS 241.020 (4) (a) that public notice agendas be posted at physical locations within the State of Nevada are suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 4: Public bodies must still comply with requirements in NRS 241.020 (4)(b) and NRS 241.020 (4)(c) that public notice agendas be posted to Nevada's notice website and the public body's website, if it maintains one along with providing a copy to any person who has requested one via U.S. mail or electronic mail.

- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 5: The requirement contained in NRS 241.020 (3)(c) that physical locations be available for the public to receive supporting material for public meetings is suspended.
- As per Nevada Governor Sisolak's Declaration of Emergency Directive 006; Subsection 6: If a public body holds a meeting and does not provide a physical location where supporting material is available to the public, the public body must provide on its public notice agenda the name and contact information for the person designated by the public body from whom a member of the public may request supporting material electronically and must post supporting material to the public body's website, if it maintains one.

Agenda and supporting materials posted online on
the following sites:

<http://adsd.nv.gov/Boards/ABA/ABA/>

<https://notice.nv.gov/>