

Public Comment for 12/12/18 ADSD Emergency NAC

My name is Ken MacAleese, and I am representing the Nevada Association of Behavior Analysis in the following comments.

First, we want to thank Aging and Disability Services for the work they have done and will do in establishing the Board of Applied Behavior Analysis on January 1st, 2019. It will take tremendous effort and a fearless approach to collaboration. Also, we appreciate the effort of ensuring our association is aware of the recent movement related to SB 286, board appointments, and proposed emergency regulations for the NAC, even when communication must be hurried.

Members of the Nevada Association for Behavior Analysis include professional, licensed behavior analysts, paraprofessional behavior analysts, and behavior analytic faculty and students. The following comments reflect the concerns of our association about the current emergency regulations proposed for the NAC.

1. The current regulations were established without the input of licensed behavior analysts. It is uncommon for regulatory language to be developed without participation of professionals in the field to be regulated. Doing so increases the likelihood that the regulatory language will require the arduous process of revision in order to avoid or address significant negative consequences to consumers and professionals. We encourage the Division to reach out to NABA, our state's professional behavior analysis organization, in the future to assist in crafting language *before* establishing *any* regulation. The future Board of Applied Behavior Analysis will also have a key role in maintaining these communications with those they are tasked with regulating.
2. Section 1-Fees
 - a. The fee schedule proposed in the temporary NAC appears to be built arbitrarily. Its appearance suggests it was harvested from previous language generated from when behavior analysts were regulated by the Board of Psychological Examiners. If this was the case, it may be problematic as this Board has larger numbers of licensees (Psychologists and Behavior Analysts), is an existing Board (not one just starting), and may have increased expense centers that may elevate fees. We have seen no study, report, or analysis that suggests that these fees are appropriate for the regulated profession of Behavior Analysis. Given the average income for paraprofessionals (i.e., RBTs), the fee may represent a financial hardship and prevent their participation in this occupation. It may also represent a hardship to small businesses who may reimburse their employees for those fees.
 - b. Fees that include "actual costs to the Division" (i.e., for an examination) when the future Board has not established whether or not professionals will be examined is presumptive. Additionally, the absence of a cap or upper limit on fees is cause for concern.
3. Section 2-Examination

- a. We oppose any regulatory language that allows the Division to act independently of the Board of Applied Behavior Analysis. The current regulations allow the Division to examine applicants without a consideration of the content of that examination. The Division, to our knowledge, does not have the capacity nor expertise in behavior analysis to generate examination questions.
4. Section 5-Provisional Licenses
 - a. We oppose any language, temporary or otherwise, that would allow the Division, without the expertise of behavior analysts (i.e., the appointed Board) to issue any license. They are not qualified to determine the eligibility of individuals for such a license.
5. Section 6-Registration of RBTs
 - a. We are concerned about the negative impact of required FBI background checks. It has been reported that these checks may take up to 120 days. A delay of that length would have a significant negative impact on the ability of the profession to provide services, and would likely increase wait lists and reduce access for consumers. It would also make it more difficult for small businesses to remain viable and continue to grow a workforce.
 - b. This is especially important to the RBT credential as they already receive a background check before becoming an RBT. This duplicative process delays the onboarding of critical treatment personnel to children's treatment teams, further delaying access to services.
6. Section 7-Educational Requirements
 - a. We again are not sure how non-behavior analysts (i.e., "The Division") are able to determine appropriate coursework equivalencies without specific training in behavior analysis. Determination of educational requirements is the job of the Board of Applied Behavior Analysis and language should be altered to reflect this.
7. Section 8-Supervision
 - a. This section of the temporary language is vestigial (borrowed from the current NAC to which the Psych Board adheres) and was in effect when a previous credential, the Certified Autism Behavior Interventionist, was under regulation by that board. It may be in place as an effort to establish standards for the State Certified Behavior Interventionist, but again, this task should fall to the future Board of Behavior Analysts, not agencies without experience in supervision requirements of the professional tiers.
 - b. The current supervision requirements for RBTs are outlined by the the BACB since the RBT credential is managed by that organization. There is no need to duplicate those in statute, temporary or otherwise. The language should be removed entirely or aligned with correct supervision language, "pursuant to rules set forth by the BACB, or successor organization."
8. Section 9-Continuing Education
 - a. Similar to the educational requirements, The Division should not decide what continuing education is appropriate. This is the job of the Board of Applied Behavior Analysis. The Division may administer the decisions of the Board of

Applied Behavior Analysis regarding continuing education once that board makes the determinations.

9. Section 10-Continuing Education (part 2)

- a. The Board, not the Division, evaluates written requests of CE approval as they have the expertise to make such determinations.

Thank you for allowing this public comment and considering the comments here today. We again want to impart the critical nature of ensuring this language is clear and carefully considered before enacted. The current iteration, even if temporary, is believed to negatively impact the profession and consumers of its services.

NABA