



APPLIED BEHAVIOR ANALYSIS BOARD MEETING MINUTES

Date and Time of Meeting: May 18, 2020 1:00 PM
Name of Organization: The Board of Applied Behavior Analysis
Place of Meeting: Aging and Disability Services Division
Teleconference:

Please place your phone on mute unless providing public comment.

Due to the COVID-19 outbreak, Board members will be attending telephonically and via ZOOM. Members of the public will also participate via teleconference or ZOOM.

<https://zoom.us/j/93746340588?pwd=YkZGMDVma3J6S2JrMENZUDY5RWN4dz09>

Meeting ID: 937 4634 0588

Password: 096134

One tap mobile

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AGENDA

1. Roll Call and Verification of Posting

Laryna Lewis began roll call at 1:01pm. The following Board members were present: Dr. Brigid Fronapfel, Christy Fuller, Dr. Kerri Milyko, Matthew Sosa, and Rachel Gwin. 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.)

Matthew Lehman gave a public comment. He stated he is looking to see what the position of the board will be relative to Nevada Medicaid as opposed to CMS which allows the 97153 code for telehealth services. His concern is the limitation the Nevada Medicaid has is putting families and technician staff at risk because a lot of them are electing to have services anyway.

Deborah Meinberg gave a public comment. Ms. Meinberg had two questions. She asked if RBT licensure is still being processed and if so, is there any timeframe they can expect on it because they are waiting on one. Another question Ms. Meinberg wanted to know is if there were any plans for BCBA licensure for those that passed right before everything shut down and have not been able to license.

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

Matt identified a correction in the previous minutes for agenda item 2 and agenda item 5.

Dr. Milyko motioned to approve the meeting minutes for March 26, 2020 with Matt's suggestions. Matt seconded the motion. All in favor, motion passed.

4. Draft and Approve an Updated Statement Issued by the Nevada Board of Applied Behavior Analysis Regarding Guidance on COVID-19 (**For Possible Action**)

Dr. Fronapfel requested for any additions the board members would like to add or change to the previous statement.

Dr. Milyko stated some clarifications may need to be addressed for some misconceptions. Just because the board is not meeting does not mean there is no activity. Business is still being conducted and the board's staff are still processing completed applications.

Christy, Matt, and Rachel did not have any additions for the previous statement released.

5. Demonstration of Certemy Software and Discussion and Approval of Product (**For Possible Action**)

Matt Naiman gave his Certemy Software presentation.

Christy asked about the type of precautions this software has in place and how can they ensure that the individual's sensitive information, when applying for licensure, will be protected. Matt stated their data is encrypted and no one will have access to this information except for the board. Jennifer Frischmann explained on a higher level, this software has become a vendor with the State and is now vetted by the State of Nevada, Enterprise Information Technology Services (EITS) and internally

with ADSD IT. Jennifer asked Matt since this is cloud based if this information will be available anywhere and believed it shouldn't be tied down to the state's network. Matt stated she was right, and she would have access 24/7 from any PC, MAC or mobile device. There will always be the same functionality at home as there would be in the office.

The board members and ADSD staff discussed the software presentation regarding the improvements it offers compared to the current process. ADSD staff explained this would make the process much quicker and would save a lot of time.

Christy made a motion to proceed with the Certemy Software and take the steps necessary to help license and register the people in the State of Nevada. Matt seconded the motion. All in favor, motion passed.

6. Discussion of Current Status of Applications and other ADSD Activities Pertaining to Applied Behavior Analysis

Jennifer Frischmann stated for everyone's awareness that ADSD has never stopped the processing of RBT, LaBA, or LBA applications. They are working from home and Laryna is in the office two days a week. The jurisprudence exam was postponed once the Governor gave the directive that state offices were closed and ADSD took the order seriously. Exams were reopened and they were last offered to the individuals who were previously offered the exam, prior to cancelling, on May 12th, 14th, and 15th. Jennifer also explained the process when individuals arrive to take the exam as there are precautions taken to keep those individuals and staff safe. The Las Vegas location can accommodate up to 5 individuals at a time to take the exam as the room is large enough to maintain social distancing. Laryna will be coordinating the next exam dates and she has already reached out to see what locations they would like to sit at. Regarding fingerprinting, what they have heard is only certain fingerprint locations such as Fingerprint Express and 123 fingerprints have been closed. This has nothing to do with ADSD. Once the fingerprint submission is sent, this is out of ADSD's hands and it is then up to the FBI and DPS. It is taking longer to receive these results since it was taking 2-3 weeks. Laryna stated it was taking about 5 weeks to receive the results. Laryna stated there seems to be more improvement so it could be possible that they are now getting used to the new rhythm.

Laryna Lewis gave an updated on the application status. For pending applications, there are 99 RBTs, 4 LaBAs, and 16 LBAs. For total licensed and registered, there are 1206 RBTs, 31 LaBAs, and 258 LBAs. Laryna explained that she will be looking back to what the processing looked like before, during, and after the COVID-19 pandemic. In February, ADSD completed 36 RBTs, 3 LaBAs, and 5 LBAs. In March, there were 36 RBTs, 1 LaBA, and 2 LBAs. In April there were 22 RBTs, no LaBAs, and 1 LBA. Currently for the month of May there have been 9 RBTs, 1 LaBA and 10 LBAs.

Jennifer explained they have received several calls and emails regarding testing. Jennifer wanted to clarify there is a difference between the jurisprudence exam that ASD conducts which is separate from the BACB exams. What the BACB decides to do with their testing is up to them and ASD cannot offer testing that the BACB must provide.

7. Presentation by Nevada Medicaid to Provide Policy Updates on the Practice of Applied Behavior Analysis and Using Tele-Health for Registered Behavior Technician Services

Jamie Hutchinson, who is from the Division of Health Care Financing and Policy (DHCFP) and is the policy specialist for Applied Behavior Analysis as well as for telehealth, gave a presentation on telehealth as it relates to Nevada Medicaid. Nevada Medicaid released a memo on March 27th which outlined their coverage during the pandemic that included supervision, assessments, and parent training. They are not covering direct one on one services by an RBT, BCBA, or BCaBA. That was due to lack of guidance from the BACB. They have requested clarification from the BACB. Since there was no guidance, they landed on this decision to not cover direct services without receiving the guidance that it's within the scope of practice. This was discussed with administration.

Christy asked for clarification on practicing within a provider's scope of practice based on guidance from a licensing body. Christy wanted to know if Jamie meant credentialing body such as the BACB. Jamie responded by stating every provider type is different. It can either come from the state board or from the National Board. Jamie understands this board has stated that it is not within the NRS to make that determination, so they have gone to the BACB for that guidance.

Jamie clarified that the guidance must come from the credentialing agency which is the BACB and not the APBA and the BACB refuses to take a stance on this guidance.

8. Review of Financial Status

Jennifer gave the financial status update. The budget is currently \$322,000. Fiscal stated there is not really much to report.

Dr. Milyko addressed her concerns with any potential sweeping of the funds due to this current pandemic. Jennifer explained that she has not heard anything from the governor wanting to sweep money from the board funds. All the agencies have been asked to make some cuts. None of it has been finalized and is just in the talking stage. If Jennifer finds this to be the case, she will reach out the board members. Dr. Milyko asked what it would take for the funds to be swept. Jennifer stated at the minimum, it would have to go to the Interim Finance Committee.

9. Discussion and Possible Approval of Board Members Job Descriptions (For Possible Action)

Dr. Milyko discussed the proposed job description design provided by Shane Isley (Please see attachment A).

Christy wanted to clarify for Open Meeting Law (OML) regarding the time description Shane listed which is approximately five working sessions lasting sixty to ninety minutes. Christy wanted to ensure the Mr. Isley realizes there may be some additional time spent in a board discussion or the Open Meeting Law may hold things up with the ability to do this in four to six weeks. It must be done in a board meeting as an agenda item. Dr. Milyko and Dr. Fronapfel agreed with Christy's concern with OML.

Dr. Milyko motioned to approve the hiring of Shane to complete their job descriptions for the board. Christy seconded the motion. All in favor, motion passed.

10. Review, Discussion, and Possible Approval of Bylaws and Mission Statement (For Possible Action)

Dr. Fronapfel stated she realizes they have been waiting on bylaws for a while. A reason for this is the board has been waiting on job descriptions. Dr. Fronapfel recommended, as they move forward with the job descriptions, to start working on the bylaws a bit more rapidly.

Rachel recommended to come prepared to the next meeting with their ideas or drafts. Christy agreed with Rachel and asked if the materials that have been sent out in the past be resent.

Dr. Fronapfel will send out this information to Jennifer and Laryna to disseminate.

This agenda item was tabled.

11. Determine Future Date of Next Meeting and Hearing and Agenda Items (For Possible Action)

Jennifer Frischmann explained that they still need to pass the regulations and a Public Hearing is needed to do this. The Board agreed to hold the hearing on June 23rd at 2:30pm. The next board meeting will be held after the hearing.

Christy motioned to keep the standing items and in addition add a discussion for COVID, job descriptions with a possible presentation from Shane Isley. Matt seconded the motion. All in favor, motion passed.

12. 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.)

Natasha Roadruck gave a public comment. She is an RBT in the Reno/Carson City area. She wanted to make a statement regarding RBTs working via telehealth. She stated the state board is saying this is out of our realm of responsibility, the national board is saying telehealth is out of their realm of responsibility. Some RBTs are not working at all because they are worried about themselves. She is working but only a little bit and they are trying to take every precaution they can as they do put themselves and clients in harm by entering their homes. She feels like they are being spun in a circle and no one knows what is going on and no one is taking responsibility. She would like to see someone take some action and responsibility for this. From the RBT stance, she would like to have the ability to use telehealth. There are some clients she would be able to do this with.

Matthew gave a public comment. He thanked Natasha for stepping up with her comments. He would also like to point out again that Jamie needs a licensing board. The BACB is not a licensing board and it is his understanding that this is a licensing board who should be able to make that statement in order for the Nevada Medicaid to be able to provide that option so that they don't have a one size fits all or one size fits no one policy, given especially as some insurances are allowing this. He stated he is obviously not a lawyer so can't give legal advice, but he is concerned as a business professional having worked in this field for over eleven years, and been on multiple boards in other states, that if this board and/or NV Medicaid doesn't take a stance on that he thinks it opens up a fair number of people including the board, to a potential wrongful death lawsuit in terms of there were some known actions here, there were things brought to the board's attention as well as Medicaid's attention. This is creating a risk for the clients, the members of the public that the board was designed to protect, as well as the RBTs and BCBA's who are doing this kind of stuff. He has no idea where that would go or how that would result but he is concerned that at some point in time this could easily result in that kind of a lawsuit. He would like the board, for the next meeting, since it sounds like they are not making any changes to the statement now, to consider for that next meeting in potentially adding a statement about the provision of telehealth being something. Since it is a licensing board, that is kind of what a licensing board is supposed to do based on licenses in multiple states. He believes he has five or six licenses, all ABA licenses. All the other licenses have allowed him to do this. He is very concerned that they need to take some kind of action on this and he knows there are a number of people who don't want to put their name out there. He has received a number of text messages from other members of the community who don't want to put their face on it. To a certain extent, it is very discriminatory in that those families who have financial resources and are therefore able to have a commercial insurance plans have access to this stuff. Those families who do not have those kinds of financial resources are reliant on Medicaid are in fact being cut out of these services. Those families are also being cut out of access to supports, for example, through the school system. There have been numerous reports saying that those low SES families are the most impacted on that side as well and the least able to access some of this stuff. And as ABA providers, we can provide a lot of stuff for telehealth that would help address these

kinds of things. Many of them do have the experience doing this in order to be able to do it. Even if it was just to let the BCBAs do the 97153, that would be a step forward, although insufficient in his opinion, but would show a strong action taken in helping them move forward. That's one of his concerns that he would like to strongly encourage the board to consider if not for this meeting then for the next meeting.

Jeff Gesick gave a public comment. He would like to thank everyone for the work they have done so far and said thank you for trying to pull together some technology that is going to make registration and licensure less painful for everybody. He would like the board to consider something in regard to provisional registration for Behavior Technicians during the pandemic and government orders about social distancing. He stated it was shared earlier that a lot of the testing locations are closed, you have no control over that, but maybe releasing updated information about which ones are open or if none are open. Considering a provisional registration until those open would be really helpful.

Desirae Wingerter gave a public comment. She stated that she is piggy backing off Jeff's statement with the provisional licenses. She had a general question. When she got her BCBA license in 2016, she was able to receive a provisional license prior to testing. Is that still not the case anymore or is that something that is allowable for someone who has a BCBA but not yet an LBA and are waiting to get tested? Is that an easy question to answer?

Jennifer Frischmann replied to the comment by stating provisional licenses are still being offered. While Medicaid accepts a provisional license, what has been heard from the industry is most commercial insurances do not accept a provisional license which is why ADSD resumed the testing so these individuals can be fully licensed. Jennifer clarified a provisional license is issued by ADSD/ABA Board once the individual is certified by the BACB. If that has not occurred, the provisional license cannot be issued.

Christy wanted to make sure people are making a distinction on the difference between licenses and registration because she believes that is some of the confusion as well.

Jeff Gesick gave another public comment and clarified that he was primarily speaking about fingerprinting.

13. Adjournment

The President adjourned the meeting at 2:48 PM.

NOTE: Items may be considered out of order. The public body may combine two or more agenda items for consideration. The public body may remove an item from the agenda or delay discussion relating to an item on the agenda at any time. The public body may place reasonable restrictions on the time, place, and manner of public comments but may not restrict comments based upon viewpoint.

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.

Agenda Posted at the Following Locations:

1. Aging and Disability Services Division, Carson City Office, 3416 Goni Road, Suite D-132, Carson City, NV 89706
 2. Aging and Disability Services Division, Las Vegas Office, 1860 East Sahara Avenue, Las Vegas, NV 89104
 3. Aging and Disability Services Division, Reno Office, 9670 Gateway Drive, Suite 200 Reno, NV 89521
 4. Aging and Disability Services Division, Elko Office, 1010 Ruby Vista Drive, Suite 104, Elko, NV 89801
 5. Nevada State Library and Archives, 100 North Stewart Street, Carson City, NV 89706
 6. Desert Regional Center, 1391 South Jones Boulevard, Las Vegas, NV 89146
 7. Sierra Regional Center, 605 South 21st Street, Reno, NV 89431
 8. Rural Regional Center, 1665 Old Hot Springs Road, Carson City, NV 89706
 9. State Legislative Building, 401 S. Carson Street, Suite 3138, Carson City, NV 89701
 10. Grant Sawyer State Office Building, 555 E. Washington Ave., Suite 4401, Las Vegas, NV 89119
 11. Department of Health and Human Services, 4126 Technology Way, Suite 100, Carson City 89706
- Notice of this meeting is also posted on the Internet: <https://ADSD.NV.gov> and <https://notice.nv.gov/>