

Dr. Kerri Milyko, BCBA-D, LBA
Personal, Public Comment
9:00 am

For emergency meeting 10/29/2020

I am unable to attend this morning's emergency meeting, my first ever missed meeting in almost 2 years. I encourage the public to attentively listen to the discussion around the board's ability to handle complaints. Put simply, the Board (4 behavior analysts and a community member) can barely be involved. Our licensure law, NRS437, is a statute written for an independent board with a foreign entity inserted into it, the Division (i.e., Aging and Disabilities Services Division). It is a square peg being forced into a round hole. And while I'm hopeful our Deputy Attorney General has done some digging and a bit of magic, what follows is my current understanding of how the Division holds the cards and the Board is a figurehead in this process. Read closely to sections 440 and 450 of our statute. The Division receives the complaint, reviews the complaint, performs the investigation, reviews the evidence, submits a summary of the evidence to the Attorney General's office (not to the board), makes a determination on the complaint, and issues the complaint to the Board. The Board's involvement is authorizing the investigation, approving the Division to deliver the summary report, and determining disciplinary action. So, other than delivering the disciplinary action, a lot of the Board's role is just saying 'yes' or 'no'. The board does not review the complaint, review the evidence, read the summary of the evidence, or assist in the investigation. Neither can they appoint a complaint committee to engage in these activities as the statute does not allow it. This means no behavior analytic professional is involved in reading complaint documentation, reviewing evidence, and forming questions specific to the practice and ethics of behavior analysis. This is frightening for the protection of the consumers, the support of our practitioners, and the liability of the Division staff. We cannot operate this way. The state action immunity doctrine provides active supervision in the form of our DAG. However, it also creates complications that we continue to experience by having an additional agency inserted into our statute making the division of labor and authority, especially as it pertains to those required by subject matter experts muddled, redundant, and harmful. I've attached a bulleted advocacy document from the Federation of Association of Regulatory Boards (FARB) that mentions as such. Finally, in doing a deep dive into the language of our statute around the complaint process, "chapter 622A" was referenced 9 times. This chapter, an entirely different statute, names the Aging and Disabilities Services Division as a "regulatory body" only in the case of our law, NRS437 - and that is the only government agency that is defined as a regulatory body in that chapter. So I'm really interested to learn more about this language. That clause either grants the division equal power to the board, or it doesn't and was just inserted for ancillary purposes, which then also proves how messy this statute is. Hopefully, we can salvage what is lawfully possible to properly protect consumers within the law's current language, which was the point of our licensure bill, and not refer everything to the BACB. However, our statute needs to be cleaned up- hard stop.