

## DIRECTOR'S REPORT ON THE PROPOSAL TO LICENSE APPLIED BEHAVIOR ANALYSTS

**From:** Joann Schaefer, M.D., Chief Medical Officer   
Director, Division of Public Health, Department of Health and Human Services

**To:** The Speaker of the Nebraska Legislature  
The Chairperson of the Executive Board of the Legislature  
The Chairperson and Members of the Legislative Health and Human Services  
Committee

**Date:** March 2, 2011

### Introduction

The Regulation of Health Professions Act (as defined in Neb. Rev. Stat., Section 71-6201, et. seq.) is commonly referred to as the Credentialing Review Program. The Department of Health and Human Services Division of Public Health administers the Act. As Director of this Division, I am presenting this report under the authority of this Act.

### Description of the Issue Under Review

The applicant group is the Munroe Meyer Institute (MMI) at the University of Nebraska Medical Center. The issue under review is whether Applied Behavior Analysts (ABAs) should be licensed in Nebraska.

### Summary of Technical Committee and Board of Health Recommendations

The technical committee recommended approval of the proposal to license ABAs. The Board of Health recommended against the proposal. I am also recommending against the proposal, and more detailed comments regarding my recommendations follow.

### The Director's Recommendations on the Proposal

Applied behavior analysis is part of the scope of practice of psychologists and some specially trained Licensed Mental Health Practitioners (LMHPs). Over time, ABA has developed its own curriculum and therapies distinct from the practice of psychology and the applicants perceive their field as a separate profession. The applicant group is requesting that the State of Nebraska formally recognize this sense of identity by licensing ABAs as a separate profession. However, nothing in the information provided by the applicant group indicates that there is a need to create a new licensed profession separate from psychology. The applicants argue that their education and training is different and much more focused on specific behavioral issues than is psychology. While this is true, it does not create sufficient rationale for the creation of a separately licensed profession. ABAs should first receive the basic education and training in mental health that they need to safely and effectively diagnose a patient's overall mental health condition. The current education and training of ABAs does not adequately prepare them to perform diagnoses. Once they receive a background in mental health, they could then pursue specialized training in applied behavior analysis. The public health and safety would be much better protected under this approach than it would be under the terms of the

proposal. Additionally, access to care would be much better addressed as well, since psychologists and LMHPs are already eligible to receive third party reimbursement for their services. The issue of unqualified practice would be addressed since only those practitioners licensed as psychologists or LMHPs could provide ABA services independently. The following applies the four criteria of the Credentialing Review Program pertinent to new credentialing proposals.

**Criterion one: Unregulated practice can clearly harm or endanger the health, safety, or welfare of the public and the potential for the harm is easily recognizable and not remote or dependent upon tenuous argument.**

The information provided by the applicant group does not demonstrate that there is a need to create another licensed profession to provide ABA services. No evidence was introduced that there are unqualified practitioners providing these services, or that there is a shortage of professionals providing these services. For these reasons I find that the proposal does not satisfy criterion one.

**Criterion two: Regulation of the profession does not impose significant new economic hardship on the public, significantly diminish the supply of qualified practitioners, or otherwise create barriers to service that are not consistent with the public welfare and interest.**

The narrow focus of the education of the members of the applicant group raises concerns about public health and safety. ABAs lack sufficient education to independently formulate a reliable diagnosis of a client's overall mental health condition. The applicants attempted to address concerns about their diagnostic ability by amending the proposal to require oversight of their diagnostic training by a psychologist for a specified period of time. I do not believe that a practitioner can learn to be a good diagnostician this way. Diagnostic abilities need to be developed during education and training, not as an afterthought. Therefore, I find that the proposal does not satisfy criterion two.

**Criterion three: The public needs, and can reasonably be expected to benefit from, assurance of initial and continuing professional ability by the state.**

The proposal offers no tangible benefit to the public. There is already an ample number of qualified practitioners providing these services, including the members of the applicant group. The applicants argued that their proposal would increase access to services because it would facilitate third party reimbursement for their group. However, this assertion was not supported by compelling argument or documentation. For these reasons I find that the proposal does not satisfy criterion three.

**Criterion four: The public cannot be effectively protected by other means in a more cost-effective manner.**

The applicant group has not identified any significant problems with the current practice situation. Therefore, it is my determination that the proposal does not satisfy criterion four.

**By these actions on the four criteria I hereby recommend against approval of the proposal.**