



# Licensure for BCBAs and BCaBAs Practicing in Nebraska

What you need to know

# Objectives

At the end of this presentation, participants will

- Know the basic elements of the Nebraska law (172 NAC 86) covering BCBAs and BCaBAs, including definitions, the practice of behavior analysis, and exemptions.
- Know the basic elements of the rules and regulations governing the law:
  - Be able to implement those elements of the rules that specify actions that are mandatory for all Licensed Behavior Analysts
  - Describe elements of unprofessional conduct as defined in rule
  - Describe the rule regarding restraint



# Disclaimer

I am providing a summary of the Law and the Rules & Regulations. For complete language and details, consult these documents directly. Links will be provided at the end of the talk.



# Some Confusion...

Initial Rules and Regulations to meet  
Sept 2 deadline.

“Final” Rules and Regulations

I am going over the “final” rules, if there  
are substantial changes a notice will  
be send by NEABA and information  
placed on the NEABA website.



## To be clear:

Any BCBA or BCaBA practicing behavior analysis in NE is required to be licensed now.

Any BCBA or BCaBA practicing behavior analysis in NE and not licensed by December 2 can be prosecuted for practicing without a license.



# Referenced Laws:

- Uniform Credentialing Act:
- NAC 10: Professional and Occupational Licensure



# The Law (LB227)

- Passed June 6, 2023, as part of a large package of bills submitted by DHHS.
- Practice and title act



# The Law: Definitions

- Behavior technician: a person who practices under the close, ongoing supervision of a LBA or LaBA.
- Certifying entity: The BACB or another essentially equivalent entity approved by the board. (NE Rev. Stat. 38-4405)
- Licensed behavior analyst meets requirement of law and has been issued a license...
- Licensed assistant behavior analyst: a person practicing under the close supervision of a LBA and has met the requirements of...





# The Law: Practice of ABA

- “The practice of ABA means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvement in human behavior.”
- “...[it] includes empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.”



# The Law: Practice of ABA

## Interventions:

- “are based on scientific research and direct and indirect observation and measurement of behavior and environment.”
- “utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors or decrease existing behaviors and emit behaviors under specific environmental conditions.”



# The Practice Excludes:

- Diagnosis of disorders
- Psychological testing
- Psychotherapy
- Cognitive therapy
- Psychoanalysis
- Counseling
- Functional movement analysis
- Practice by persons required to be credentialed under Audiology, SLP, or OT in the diagnosis or treatment of...



# The Law: Does not prohibit the practice of:

- Licensed psychologist (except if training in ABA is in their scope of practice and provided in their training...)
- Licensed in other professions (except...)
- Behavior technician under direction of LBA or LaBA
- Caregiver under direction of LBA
- Behavior Analyst who practices with animals
- Behavior analyst providing general ABA services to organizations as long as the service is to the benefit of the organization (not individuals)



# The Law: Does not prohibit the practice of:

- University student, postdoc, providing aba services as part of course of study, practicum, internship, fellowship directly supervised by a LBA or qualified faculty.
- An unlicensed individual pursuing experience in aba consistent with the experience requirements of the certifying entity.
- A teacher of aba or a person conducting behavior analytic research unless activities go beyond the typical parameters of applied research.



# The Law: Exemptions

- An individual employed by a school district performing the duties for which they were employed.
  - Must be being paid by the school district
  - Shall not accept remuneration for other aba services unless a LBA



# The Rules & Regulations



# Rules & Regs:

## 001.Scope and Authority

- These regulations govern the licensing of behavior analysts and related professions under the Behavior Analysis Practice Act
- Nebraska Revised Statute (Neb. Rev. Stat.) 38-4401 to 38-4414
- *Overlap with the BACB's Ethics for Behavior Analysts*





# Rules & Regs:

## 002.Definitions

- Client: a direct recipient of behavior analytic services
- Multiple Relationships: A business or close personal relationship between credential holder and a client, a client's parent, or a client's guardian.
- Stakeholder: a person that is not the direct recipient of services but is impacted by and has a vested interest in the behavior analyst services received such as a parent, guardian,...(etc)
- Behavior Analysis Services: The provision of services that fall within the scope of practice for Behavior Analysts.



# Rules & Regs:

## 003. Initial License

- The information you are required to provide in the initial license for BCBA and BCaBA.
- If credentialed in another state and been denied, refused renewal, suspension, revocation or other disciplinary action, must send documentation to the Department directly.



# **Rules & Regs: 004. Temporary License**

- Complete Application (for BCBA or BCaBA)
- Must be licensed in another jurisdiction or certified by the certifying entity
- May only practice for 30 consecutive days
- Only one issued per one-year period of time.



# Rules & Regs:

## 005. Renewal

- Prior the expiration date, complete application.
- Expires September 1<sup>st</sup> of each even-numbered year
- Proof of certification, etc.
- *We have been told, this is available online.*



# **Rules & Regs:**

## **006. Denial and Disciplinary Action**

- If listed as a perpetrator on any state's adult or child abuse and neglect registry, or failure to meet the licensing requirements in this chapter your application will be denied or an initial license refused, revoked, suspended, or other disciplinary action



# Rules & Regs:

## 007. Inactive Status

- You may place you license on inactive status. You may identify yourself as having an inactive license.
- You may not practice behavior analysis in NE while on inactive status.
- The length is indefinite.
- If you become inactive with the certifying entity (BACB), you must report this to the Department within 10 days.



# **Rules & Regs: 008. Continuing Education**

- Must meet the requirements of the certifying entity.



# **Rules & Regs: 009. Reinstatement**

- Meet the requirement as spelled out in 172 NAC 10.
- Basically: You can be reinstated if your license lapsed as long you meet the requirements of licensure plus CEUs





# Rules & Regs:

## 010. Fees

- Initial for behavior analyst: \$150
- Initial for assistant behavior analyst \$100
- Temporary license either BA or assistant: \$100



# Rules & Regs: 011. Unprofessional Conduct

- These rules plus Neb.Rev.Stat. 38-179 (Defines in law unprofessional conduct)
- 11.01: Ethics Code. Must conform to the Ethics Code for Behavior Analysts (January 1, 2022) by the BACB.
- 11.02. Competence: Cannot provide services for which you are not trained.
- 11.03. Confidentiality



# Rules & Regs: 011. Notification

## IMPORTANT

- 11.04. ... A credential holder must inform each client; the client's parent if the client is under the age of majority; and the client's guardian, if one is appointed, of how to access these regulations and the right to file a complaint with the Department and certifying entity. The credential holder must document completion of this notice in the client's file.
- *I strongly suggest: Develop a form signed and dated by the BCBA and the signee(s).*



# Rules & Regs:

## 11.05

### Discontinuation of Services

- Unprofessional conduct to fail to:
  - A. Discontinue services when a client has achieved the goals for which they were authorized
  - B. Discontinue services if they are no longer effective or beneficial for the client and take appropriate steps to transition to another provider
  - C. Create a written transition plan if the reason is other than A & B above.
  - D. Make appropriate and timely efforts to facilitate the continuation of services in the event of an unplanned interruption of services by the credential holder.



## **Rules & Regs: 11.06. Discrimination**

- It is unprofessional conduct for a credential holder to refuse to provide services or assistance to clients or stakeholders based on race, color, religion, sex, disability, marital status, national origin, age, familial status, and ancestry.



## **Rules & Regs: 11.07 Failure to Cooperate with Investigations**

- A credential holder must provide information and documentation for any investigation (DHHS or other).



# **Rules & Regs: 11.08 Failure to Report Registry Findings**

- A credential holder must report to the Department being placed on any state's adult abuse and neglect registry or child abuse and neglect registry within 10 days of being placed on the registry.



# Rules & Regs: 11.09 Charging for Services

- A credential holder must provide accurate information regarding fees charged to clients or relevant stakeholders and provide accurate information on reports, bills, invoices, requests for reimbursements, and receipts.





# Rules & Regs:

## 11.10 Multiple Relationships

- Credential holders must make every effort to avoid multiple relationships that could impair professional judgment or increase the risk of exploitation. If a multiple relationship cannot be avoided, it is unprofessional conduct for a credential holder not to seek supervision or professional consultation to ensure judgment is not impaired and no exploitation occurs.



# **Rules & Regs: 11.11 Sexual Misconduct**

- Unprofessional conduct to engage in a romantic or sexual relationship with:
  - Client, parent, client's guardian
  - Former clients for 2 years from the date the professional relationship ended
  - Former supervisees or trainees until there is documentation the professional relationship has ended
- Supervise or train individual with whom the credential holder has had a romantic or sexual relationship within the past 6 months
- Engage in sexual harassment
- Engage in any abuse of power



# Rules & Regs: 11.12 Public State- ments

Protect the rights of clients, etc. by

- Protecting confidentiality unless you have consent to release information
- Make sure statements are accurate, not misleading
- Take action to correct untruthful, misleading, or inaccurate information
- Refrain from advertising nonbehavioral services as behavioral
- Refrain from soliciting testimonials from current clients for advertising purposes
- Comply with intellectual property laws
- Refrain from posting confidential information on social media
- Not encouraging the practice of BA by untrained/unqualified persons
- Not providing info related to ABA services that is untruthful, misleading, fraudulent



# Rules & Regs:

## 11.13 Research with Human Participants

- Disclosure of procedures...
- If full disclosure is not possible...
- Right to decline or withdraw...
- Any physical or mental discomfort...
- Undesirable consequences...
- Failure to minimize the possibility that findings are misleading, prevent distortion, misuse, etc...
- Solicitation of participants...



# **Rules & Regs: 11.14 Professional Records**

- Records maintained for 5 years following termination of services. Document any destruction of records
- Stored in a way to maintain confidentiality
- Arrange for storage if moving away, leaving a job, etc.
- Client records **MUST** include a signed & dated consent agreement outlining confidentiality obligations and client's rights and responsibilities.
- Include documentation of the services provided and include applicable releases of information.
- Must allow a client access to his or her records



## Rules & Regs:

### 11.15

## Inappropriate Use of Restraint

- It is unprofessional conduct to fail to use the least restrictive measures to de-escalate a situation in accordance with the client's treatment plan and with informed consent. If the use of physical restraint occurs, it is unprofessional conduct to fail to use the restraints in accordance with the restraint curriculum guidelines for which the behavior analyst or assistant behavior analyst is trained.



**Rules & Regs:  
11.16  
Supervision of  
a Licensed  
BCaBA by a  
BCBA**

- Supervisor must be a licensed behavior analyst in NE.
- Consistent with the certifying entity
- Supervision of 2% of BCaBA's behavior analytic work
- Include direct observation of service delivery of the BCaBA once a quarter.
- Monthly discussion topics must include:
  - Identification of skills the BCaBA could use
  - Performance with clients
  - Overall job performance
  - Problem solving



**IMPORTANT**

## **Rules & Regs: 011.17 Client Meeting**

- If a LBA is providing services to a client at the effective date of these regulations, the licensed behavior analyst must meet with the client, the client's parent if the client is under the age of majority, or the client's guardian, if one is appointed, within 60 days.
- The LBA may include in the client's file documentation of meeting with the client, the client's parent, if the client is under the age of majority, or the client's guardian, if one is appointed, within six months prior to the effective date of these regulations, to satisfy this requirement.

**EFFECTIVE DATE WAS SEPT. 1.**





# Rules & Regs: 11.17 Service Delivery

**IMPORTANT**

## **LBA Must:**

- Provide quarterly progress documentation to clients, client's guardian, etc.
- Notify client or client's guardian of any meetings with stakeholders
- The BCBA must attend in person or by video conference an initial meeting at the beginning of service delivery
- The BCBA must attend in person or by video conference every 6 months to review and discuss the clients progress and goals. These meetings may be more frequent if agreed upon by the service delivery team.



**Rules & Regs:  
11.18 Last but  
not least:  
Collaboration  
with  
Colleagues**

- It is unprofessional conduct for a credential holder to fail to make efforts to collaborate with colleagues from their own and other professions identified in the client's service plan. The credential holder must document this collaboration or their efforts at collaboration.



## Links

- Public Hearing November 18<sup>th</sup>
  - <http://dhhs.ne.gov/Pages/Upcoming-Public-Hearings.aspx>
- Rule and Regulations: 172 NAC 86
  - <https://dhhs.ne.gov/licensure/Open%20Meeting%20Act%20Docs/172%20NAC%2086%208.28.24%20UPDATED.pdf#search=172%20NAC%2086>
- LB 227:
  - <https://legiscan.com/NE/text/LB227/id/2824262>

