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Executive Director

Committee on Behavior Analysts

SPECIAL MEETING WITH STAKEHOLDERS - MINUTES

March 26, 2021 - 8:30 a.m.

Held via Zoom

1. CALL TO ORDER

The meeting was called to order at 8:34 a.m.

2. ROLL CALL

Committee Members Present

Donald Stenhoff, Ph.D., BCBA-D – Chair
Diana Davis-Wilson, DBH, BCBA
Paige Raetz, Ph.D., BCBA-D
Tisha Denton, M.Ed., BCBA

Committee Members Absent

Bryan Davey, Ph.D., BCBA-D

Staff Present

Heidi Herbst Paakkonen, Executive Director
Jennifer Michaelsen, Deputy Director
Kathy Fowkes, Licensing Specialist

Attorney General's Office

Jeanne Galvin, Assistant Attorney General

3. REMARKS/ANNOUNCEMENTS

- **General Committee Remarks, Announcements and Updates**

Dr. Stenhoff acknowledged the efforts of Board staff to prepare for this meeting, and expressed his appreciation to the Committee members for their dedicated service.

4. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING THE MODEL PRACTICE ACTS OF THE BACB AND THE APBA

Ms. Paakkonen reminded the Committee that this item is on the agenda at the members' request. She noted that she provided both model practice act (MPA) versions in the event the members wish to compare and contrast. The members commented that these resources will be useful as they review the current statutes that regulate behavior

analysis and consider making recommendations for revisions to them. The discussion reflected that there are some concerns that some of the language could be overly prescriptive.

Given that Dr. Davey could not be present for the discussion, the Committee elected to table this item and revisit it on a future meeting agenda.

5. DISCUSSION WITH STAKEHOLDERS, AND CONSIDERATION AND POSSIBLE ACTION REGARDING LICENSURE AND REGULATION AS IT RELATES TO THE ENTIRE SCOPE OF PRACTICE OF BEHAVIOR ANALYSIS IN ARIZONA

Dr. Stenhoff explained that Board staff had reached out to some previously identified behavior analysts with invitations to share their expertise with the Committee, but none of those individuals were secured for this meeting. The Committee will revisit this topic on a future meeting agenda.

Ms. Paakkonen shared an overview of the research conducted by one of the agency's interns relative to the definitions of "behavior analysis" and "client" adopted by other states, as well as any language establishing licensure exemptions. The committee discussion noted that input from Organizational Behavior Management (OBM) professionals is essential to inform any future policy change recommendations with respect to regulation of these professionals. The stakeholders were invited to weigh in relative to whether they had input into the limits of licensure and regulation specific to OBM. Ms. Paakkonen explained that the language was collected from 20 jurisdictions. The discussion circled back to the language in the statute that describes what behavior analysis is not; the suggestion was made that the intern research whether this language is used in other states and to what extent. The Committee noted that Arizona's language is consistent with that of the model practice act; this means that challenges could present with an attempt to modify the language. It was further noted that rarely do practice definitions include what the practice does not encompass. The Committee indicated that any efforts to remove the restrictive language would need to be accompanied by a robust argument.

The members expressed concerns about maintaining narrow and prescriptive language in the statutes given the enhancements and advancements the profession continues to experience. The Committee will revisit this topic again in the future given its significance.

6. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING APPLICATION PROCESSING TIME FRAMES

Ms. Paakkonen informed the Committee that this item was placed on the agenda given that some stakeholders have contacted Board staff expressing concerns about application processing time frames. She noted that Board staff has acknowledged that several factors are adversely impacting the time frames to include a shortage of staff, lack of a functional application management system, an overwhelming number of application related inquiries, and many application errors/omissions/deficiencies. She also noted that the application time frames presented in the administrative rules are not always understood in that when an application deficiency notice is issued, the administratively complete time frame "clock" is paused; therefore what appears to be time frame violations are not. She reviewed the performance metrics for the administratively complete and the substantive review time frames since the Covid-19 pandemic began, commenting that while on average the average number of days during the administratively complete time frame is over by 3 days, this is more than made up for with the very low average number of days at the substantive review time frame phase of the process.

Ms. Paakkonen explained that the Board will soon be asked to make a decision whether to shift to an alternative licensing platform, and she commented that she is awaiting the filing of the General Appropriations Act for fiscal year 2022 as it will indicate whether the agency's request for an additional 0.5 time employee has been approved by the Arizona State Legislature (having already achieved support of the Governor's Office of Strategic Planning and Budget).

Dr. Adam Hahs addressed the Committee and explained that the concerns relate to the latency of responses issued by the Board staff during the administratively complete time frame. The Committee also acknowledged that

Arizona is not among the states that simply issues a license based on the achievement of BCBA certification in that the statutes require submission of primary-source verified documentation. This question was raised during the 2019 performance audit of the Arizona Auditor General and the Board determined it was not in the best interest of public protection to merely accept the BACB's certification – in part because the Board has received application documentation indicating that not only did an applicant fail to meet Arizona's requirements, that applicant should also have been rejected by the BACB. Ms. Paakkonen described how the Administrative Procedures Act presumes that the licensing board or agency performs the substantive review of an application and does not transfer that responsibility onto another entity (such as the BACB). She acknowledged the lack of transparency to applicants with respect to the status and completeness of their files and mentioned that there are online platforms that the agency could use that offer this feature (the current system to which the Board subscribes does not). Finally she noted that the current system does not allow the Board to customize application instructions to circumvent application error, omissions, and deficiencies.

Mr. Ned Carlson appearing on behalf of the National Coalition for Access to Autism Services (NCAAS) on whose Board of Directors he serves, addressed the Committee. He stated his appreciation for the response to the letter of concern recently issued to the Board on this topic, and for the care with which the Committee and the Board review applications for licensure. He expressed empathy for the technology deficiencies and staffing challenges the agency is managing. Noting that there is a shortage of services, he offered his organization's services relative to ensuring that applicants are educated in the importance of filing complete and error-free applications. The Committee members commented that while technology is the best solution, there is opportunity for education to be supplied to applicants relative to the importance of complete explanations concerning application disclosures and of preparing error-free and quality-checked applications. The discussion indicated that in some instances, applicants have been able to pass the certification exam and be on a Committee agenda as soon as the following month. In response to a question posed by Dr. Hahs, she indicated that Board staff has exhausted all of its options with respect to attempting to modify the current licensing system to meet application requirements. In response to questions posed by Mr. Carlson, Ms. Paakkonen noted that only one applicant has ever been denied licensure which was due to findings of unprofessional conduct, and she explained that the Committee minutes report every instance where application errors are identified.

Mr. Carlson asked whether a workgroup could be formed to develop strategies intended to circumvent applicant errors. This suggestion was met the Committee and staff favorably, and Ms. Raakel Elzy, representing the Arizona Association on Behavior Analysis expressed that organization's support for working with the Committee and Board staff on this effort.

In response to a question posed to Ms. Galvin concerning the Committee's authority to form such a workgroup, Ms. Galvin advised that the proposal should be made to the Board for purposes of authorizing it and its charge. Dr. Davis-Wilson agreed to bring this matter to the Board for consideration and possible action. The Committee encouraged stakeholders to attend its meetings in order to learn about application processes and requirements.

7. DISCUSSION WITH STAKEHOLDERS, AND CONSIDERATION AND POSSIBLE ACTION REGARDING ADVANCING COMPETENCY-BASED SUPERVISION

Dr. Stenhoff introduced the agenda item noting that previous discussions have presented the question whether Arizona requires or would benefit from a program designed to advance competency-based supervision of behavior analysis professionals. Kyle Leininger of AzABA addressed the Committee acknowledging this concept could have some value, but expressed some concerns that this type of approach could be too prescriptive. The Committee discussion noted that this could be addressed by the BACB Code of Ethical Conduct. The members discussed the genesis of this agenda item as coming out of previous Committee discussions and some recommendation concerning a specific case. It was noted that the Committee has seen evidence that virtually anyone may be tasked with this responsibility without demonstrating a reasonable degree of competency to do so. The Committee discussion reflected that this is an ideal topic for the professional association to address with its membership through education – some of which needs to focus on the risks involved in supplying inadequate supervision. Brian Van Meerten of AzABA indicated that he could bring this idea to the association leadership for purposes of exploring strategies on how to address this issue within and among the profession. The Committee expressed

concerns that there are too many licensees who do not understand the responsibility associated with practicing independently under a Board-issued license. The Committee also reminded the stakeholders that its role is to protect the public and therefore providing guidance to licensees is outside of its charge; however, the association is well-poised to take on this role. The discussion also reflected the fact that future licensees, as students, receive considerable exposure to the BACB Code of Ethical Conduct.

8. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING THE ROLE AND VALUE OF THE BCABA IN SERVICE DELIVERY

The Committee noted that this item is on the agenda for purposes of memorializing the discussion and to promote awareness on the topic. There is anecdotal evidence that BCaBAs are struggling to be hired and the perception may be that it is illegal in Arizona for them to practice. The question was raised relative to how do we educate stakeholders that these certificate holders can practice and can provide valuable supports to licensed BCBAs? Given that AHCCCS billing is approved for BCaBAs, how can a service model that includes them be promoted? The Committee questioned whether it would be helpful for the Committee to issue some kind of explanation or clarification relative to this specific practice level, or whether language clarification would be helpful. The Committee received some feedback to these questions from stakeholders who explained that it is often a matter of challenging infrastructure and economics, and the positions that BCaBAs fill are often considered to be temporary by those professionals.

9. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING OTHER REGULATORY CHALLENGES AND ISSUES SPECIFIC TO BEHAVIOR ANALYSIS

Ms. Paakkonen explained that this item is on the agenda in order to allow for discussion of any issues that do not fit elsewhere on the agenda, and that this is an opportunity for the Committee to task the staff with doing any needed research, and to prepare any topics for future discussion.

Mr. Leininger raised the question concerning SB1269. Ms. Paakkonen explained that this is a strike-everything bill intended to replace two previous attempts to pass legislation that restricts local governments from prohibiting the use of conversion therapy. At this time this bill has only narrowly passed through one committee review. She affirmed that the bill does not impact the Board's authority to find that a licensee has committed unprofessional conduct.

10. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECOMMENDATIONS FOR REVISIONS OF THE STATUTES THAT REGULATE THE PRACTICE OF BEHAVIOR ANALYSIS IN ARIZONA (A.R.S. TITLE 32, CHAPTER 4, ARTICLE 4)

Ms. Paakkonen explained that this agenda item is intended to be an all-encompassing opportunity to discuss possible recommendations for statute revisions, but suggested the Committee revisit this once Dr. Davey is present. She reminded the Committee that some discussions have been held specific to A.R.S. §32-2091(A) concerning whether there are a sufficient number of members of the profession who are prepared to serve on the Committee once the current members' terms are completed.

The members concurred that this item should also be tabled for a future agenda.

11. DISCUSSION, CONSIDERATION AND POSSIBLE ACTION REGARDING RECOMMENDATIONS FOR REVISIONS OF THE ADMINISTRATIVE RULES THAT REGULATE THE PRACTICE OF BEHAVIOR ANALYSIS IN ARIZONA (A.A.C. TITLE 4, CHAPTER 26, ARTICLE 4)

The members concurred that this item should also be tabled for a future agenda.

12. DISCUSSION WITH STAKEHOLDERS, AND CONSIDERATION AND POSSIBLE ACTION REGARDING TRAINING OPPORTUNITIES FOR THE BEHAVIOR ANALYST PROFESSION

Ms. Paakkonen advised the Committee that the purpose of this agenda item is to help identify training and education topics and opportunities that AzABA can lead, with the support and partnership of the Committee, the Board, and Board staff.

The discussion reflected the fact that the Committee will continue to see an increase in complaints, and that there will be a growing need for LBAs to serve as practice monitors. It was noted that some of the complaints coming to the Committee reveal that there is a need for mentoring and consultation (evidence-based) around practice and business management competencies, and for education around supervision responsibilities and risks. Ms. Galvin spoke to this topic, advising that every practice monitor set of responsibilities will vary based on the outcome of the case and the terms of the order. The discussion also noted that some behavior analysts are seeking practice monitor guidance proactively. Ms. Paakkonen stated that on the next meeting agenda of the Committee she will present some potential strategies that are intended to establish a pool of behavior analysts who are willing and prepared to serve as practice monitors. Continuing education alone will not effectively address these needs, but this may be a focus that AzABA wishes to take on. Additional comments were offered by stakeholders emphasizing the importance of ensuring the definition of “client” is all-encompassing.

13. NEW AGENDA ITEMS FOR FUTURE MEETINGS

No additional items were suggested

14. ADJOURNMENT

MOTION: Dr. Davis-Wilson moved to adjourn the meeting. Ms. Denton seconded the motion.

VOTE: The motion was approved 4-0.