

# Licensing Behavior Analysts: Risks and Alternatives

Gina Green, Ph.D., BCBA

Association of Professional Behavior Analysts

James M. Johnston, Ph.D., BCBA

Auburn University

## ABSTRACT

Under certain conditions, obtaining state laws to license practitioners of behavior analysis might be feasible and could produce benefits for practitioners and consumers. Those conditions are not yet in place in most states, however, and pursuing licensure prematurely carries substantial risks for the entire field. We describe the most serious risks and the conditions that make it more or less likely that licensure initiatives will succeed. Finally, we recommend strategies for securing recognition of practitioners of behavior analysis in laws, regulations, and policies that can minimize risks.

Descriptors: behavior analysis licensure

Licensure may afford certain benefits to members of a profession and to consumers, but it also has certain limitations and drawbacks. For a profession like behavior analysis that is comparatively young and small, pursuing licensure without first developing strategies and resources to enhance the success of licensure efforts is very risky. It is therefore important to consider the ramifications of licensure for practitioners of applied behavior analysis (ABA), consumers of ABA services, and the field of behavior analysis as a whole. Here we discuss some of the limitations of licensure, as well as some of the requirements of, and challenges to, establishing legislation to license behavior analysts. We conclude with suggested alternatives to licensure and recommended language for licensure laws where conditions are right for initiating such laws.

### What Licensure Won't Do

One of the oft-stated arguments for pursuing licensure is to assure that licensed individuals will have a legally protected right to practice. Although a licensure law will do that, it may not resolve all right-to-practice issues. The practice may be so narrowly defined in the law as to proscribe certain activities. Alternatively, the practice may be defined so as to overlap with the statutorily

defined practices of other professions, potentially leading to disputes. To illustrate, when the Florida Association for Behavior Analysis looked into licensure for behavior analysts, psychologists and social workers objected, partly because the state laws governing licensure of their professions included behavior analysis in their scope of practice. Another problem is that members of other professions may be allowed to practice ABA, or to supervise practitioners of ABA. These constraints may produce considerable difficulties for practitioners (Starin, Hemingway, & Hartsfield, 1993).

Although licensure is often seen as a means of obtaining third-party funding, it may not resolve all issues in that arena either. The ability of credentialed practitioners to bill for services is not always determined by whether the credential is a certificate or a license. Many American ABA practitioners who hold the Board Certified Behavior Analyst (BCBA) credential successfully bill Medicaid, state agencies, and insurance companies for their services. Their ability to do so depends on how the state Medicaid and insurance regulations are written, the availability of funding for BCBAs through other state agencies, and the policies of individual insurance companies. In fact, licensure laws do not generally address third-party reimbursement

policies and mechanisms, so those must be created in each state or province once a licensure law is passed. The challenges associated with creating third-party payments for credentialed practitioners are generally unrelated to whether the credential is issued by the profession or the state. Issues that are more important to payers include the credibility of the profession, the evidence supporting interventions for which funding is sought, and the quality of the credentialing process.

Neither does licensure resolve all regulatory issues. Regulations that define positions in government service systems, hiring criteria, and the work roles of members of a profession are largely independent of whether those professionals are certified or licensed. How a particular credential is treated in rules, regulations, and policies usually depends on factors other than whether the credential was granted by the profession or by a governmental entity like a licensing board (Starin et al., 1993).

### Requirements for Getting a Licensure Statute

The process of getting a new law adopted can be complex, arduous, and costly. Before behavior analysts pursue licensure laws, we suggest that the leaders of such efforts be fully prepared.

### *A Rationale for Licensing Behavior Analysts*

Successful adoption of a licensure statute requires making a compelling argument for the proposed legislation. Legislators who are asked to support such an initiative are likely to ask a number of questions, to which behavior analysts must provide persuasive answers. What is the profession of applied behavior analysis? How does it differ from other professions? Why does the profession of applied behavior analysis need to be licensed? What problems will be solved for the government and citizens of a state or province by licensing behavior analysts? What are the risks associated with failing to license behavior analysts? How will licensure protect the public? Are there enough practitioners eligible for licensure to provide easy access to services for consumers and to fund the licensing process? Who will benefit and who will lose if a licensure statute is adopted? What are the bureaucratic and financial costs of licensure? Why won't alternatives (e.g., exempting behavior analysts from existing licensure statutes, recognizing BACB credentials in state or provincial laws and regulations) work as well as licensure? Why should a legislator care?

The answers to these and other questions must take the form of succinct arguments that will make sense to legislators. The legislators' frame of reference will be the interests of their constituents. They will want to know how the legislation will help their image, complicate their work, and affect their voting constituents. Their interest in professional issues motivating behavior analysts will be limited, as will their availability for meetings and phone conversations.

### *Proposed Statutory Language*

In addition to a rationale for a licensure statute, it is important to offer legislators draft language for a proposed bill. Legislators will not know exactly what behavior analysts want, and minor aspects of phraseology can have important consequences. Legislators must be helped to understand why certain

features are critical so that when they meet with lobbyists representing other interests or negotiate with colleagues, the legislators can prevent any changes to the bill's language that might create problems for behavior analysts and consumers of behavior analytic services.

### *A Skilled Lobbyist*

Although it is certainly possible to achieve legislative success without a lobbyist, the odds surely favor those who can employ one. The key word here is "employ." Lobbyists do this for a living, which is why they are better at it than behavior analysts. Not all lobbyists are created equal, however. Some are more skilled than others, as some state behavior analysis associations have already learned. The BACB has addressed the need to identify capable lobbyists by working with a select network of lobbying firms with an office in each U.S. state capitol and in Washington, D.C. For state behavior analysis associations seeking lobbyists, this network may be a good place to start. In fact, two of the three state behavior analysis associations that currently employ lobbyists (Florida, California, and New York) hired individuals from this network.

### *Friendly Legislators*

Every new piece of legislation requires legislative sponsors, the more the better. If ABA practitioners are fortunate, they will identify legislators who have their own interests in public policies relating to the practice of behavior analysis, such as family members in the profession or constituents who have won their sympathies. Some legislators who have sponsored bills to require health insurance coverage of ABA treatment for autism, for instance, have a child with autism in their family or know someone who does (e.g., O'Brien, 2008). Absent these connections, behavior analysts must create the required interest and support from legislators. Of course, it is always advantageous if some ABA practitioners are constituents of those legislators, and it is particularly valuable to garner the support of constituents who will benefit from the legislation, such as consumers

of behavior analysis services.

### *A State or Provincial Behavior Analysis Association*

When an ABA practitioner walks into a legislator's office to discuss a proposed licensure law, the first question the legislator or their staffers will ask is, "Whom do you represent?" The answer should reference a state or provincial behavior analysis organization. State or provincial legislators are concerned with issues that affect the people who elect them. Having the support of national or regional associations can add credibility to the behavior analyst's position, but relatively few members of such organizations are the legislator's constituents.

It is important for the state or provincial behavior analysis association to take a formal position supporting licensure, but much more will be required. Association members must be willing to volunteer time and effort to work on the licensure law. It will be especially helpful if some of them live in or near the state or provincial capitol because they will need to develop relationships with legislators, legislative staffers, and consumers of behavior analysis services who may support licensure. They will have to attend meetings, perhaps speak at hearings at a moment's notice, and generally participate in the business of politicking. Those individuals should be prepared for a long haul because getting a bill passed by the legislature is only the first step. After a bill is signed into law, regulations spelling out how the law will be implemented must be developed. Behavior analysts will need to participate actively in that process to make sure that the regulations protect the interests of behavior analysts. Additionally, it is not unusual for a piece of legislation to fail the first time it is proposed. In that eventuality, behavior analysts must be prepared to re-introduce their licensure bill in the next legislative session and begin the process all over again.

### *A Cadre of Ready Professionals*

It should be obvious that the state or province must have enough ABA practitioners to warrant a licensure statute,

given that the statute will restrict consumers' access to the services provided by licensed practitioners. There is little point in pushing for licensure where the number of individuals who would qualify is relatively small. Of course, the number of license-eligible individuals will depend on exactly how eligibility is defined in the licensure law and regulations, but at this point in time this is a serious problem for behavior analysts in many states and provinces. Although there are presently over 7,000 BACB certificants worldwide, there are only about 130 BACB certificants per American state on average, and they are not evenly distributed geographically. Florida, California, New York, Massachusetts, Pennsylvania, New Jersey, and some other relatively populous states have a disproportionate share of trained ABA practitioners, while many other states have only a few. The number of non-BCBAs who might qualify for licensure (for example, individuals who hold doctorates from psychology departments with an American Psychological Association-approved specialty in behavioral psychology/applied behavior analysis or who hold the American Board of Professional Psychology credential in behavioral psychology) is unknown, but is not likely to be large. Legislators may find the argument for licensure weak in locations where there are not many people who could qualify for the license.

### *Bags of Money*

Behavior analysts will likely need substantial financial resources to pursue licensure laws. The first bag of money will go to the lobbyist hired to steer the proposed statute through the legislative and regulatory process. Lobbyists know how the legislative game is played, and their counsel on how to proceed should guide the development of a political game plan. They will require continual feeding. The second bag of money must be in the form of checks made out to legislators' campaign organizations. Most legislators will greet constituents or lobbying groups with larger smiles if they know they have supported their election efforts. It should be noted that

state and provincial behavior analysis associations may be legally constrained from making financial contributions to political campaigns, so contributions may need to come from association members, in the form of either personal contributions to politicians or contributions to the association's political action committee.

### *Miscellany*

The minimum requirements for proposing a licensure bill and getting it signed into law are not certain. It is the nature of the political process that carefully planned and sophisticated initiatives can fail and amateur, cobbled-together efforts can succeed. One factor that can help is having family members of consumers of behavior analysis services lobby legislators and speak at hearings in support of legislation governing the practice of behavior analysis. Consumers often have credibility with legislators that professionals cannot match. The right consumer partners can help win the day for behavior analysts in the public policy arena. State or provincial behavior analysis associations can play essential roles by developing alliances with consumers and mobilizing them to support legislative efforts. Without the help of large numbers of consumers, public policy efforts may be less likely to succeed.

### *Additional Challenges to Getting a Licensure Statute*

Before pursuing a licensure statute, behavior analysts might be well advised to educate themselves about how laws are introduced and passed, and how regulations to implement laws are developed. Aside from what we may remember from basic civics classes, few behavior analysts have had much training in these areas, and the way things work in the "real world" of legislation often bears little resemblance to textbook descriptions. Some of the obstacles that licensure efforts are likely to encounter are discussed next.

### *Political Nature of Legislative Processes*

Perhaps the greatest challenge to licensing behavior analysts lies in the unavoidably political nature of the process of creating, defending, and implementing a licensure statute. Some professions are well-equipped to participate in the political process. Behavior analysis is not one of them at present. Behavior analysts are generally not practiced in the legislative arts, where evidence and reasoned arguments often fail to carry the day. Those who get involved in public policy work often discover quickly that they do not control many of the relevant variables.

### *Opposition From Existing Professional Interests*

Behavior analysts seeking licensure statutes will be pushing for changes in the status quo. It will be easier for already-licensed professions to defend an existing statute than it will be for behavior analysts to narrow the scope of that statute or to carve out a slice of territory for their professional interests. Established professional groups are likely to bring to the battle not only existing relationships with legislators, but also experienced lobbyists, political allies, large memberships, and substantial financial resources. For example, most state professional associations have a "war chest" to pay for lobbyists and other political necessities. The Florida Psychological Association had eight registered lobbyists in 2008. This example should add credibility to our earlier suggestion that behavior analysis associations that wish to pursue public policy work will need to hire the best lobbyist they can find and afford.

### *Insufficient Support*

Legislative success in the form of a new licensure statute requires a mix of factors. Any shortcomings are likely to decrease the odds that a bill will be passed and signed into law. We have already noted that when the number of license-eligible professionals in the state is small, it is difficult to argue for a legal mechanism that limits access to the services they offer. Another consideration

is that only about half of the states in the U.S. presently have behavior analysis associations. A number of those organizations are relatively small and are not likely to be strong players in the public policy arena. Some may not be interested in pursuing licensure. Under fortunate circumstances, these limitations may not preclude passage of a licensure bill, but turning the resulting statute into an effective licensing process will be a substantial challenge.

### *Insufficient Funds*

As noted previously, the major cost associated with a licensure effort is hiring a good lobbyist. Although it is always possible to find a lobbyist who will monitor legislative activities for a relatively small fee, a serious licensure initiative requires a significant commitment of time by an established professional. The lobbyist must be contracted for several months of work, prior to and especially during a legislative session. If a licensure law is adopted, the lobbyist's help may well be needed while regulations are promulgated. If an initiative fails one year, a continued effort will be required the next year, further increasing lobbying costs. Few state and provincial behavior analysis associations are likely to have the necessary funds to hire effective lobbyists at this time.

### **How Licensure Initiatives Can Backfire**

Attempting to secure a licensure statute for applied behavior analysts is not a risk-free venture. Failures can result in greater difficulties for ABA practitioners than existed before the legislative effort. Mounting a licensure initiative is a public process, and other interested parties will immediately move to protect their interests. Faced with a challenge by applied behavior analysts to an existing licensure statute, for example, a state psychological association may fight back by attempting to further narrow the restrictive language already in their licensure law (Starin et al., 1993). Presently, although existing psychology licensure statutes in many states define

the practice of psychology as including behavior analysis, that inclusion is not always enforced. An effort to establish licensure for behavior analysts may provoke stricter enforcement, or a mandate that behavior analysts work under the supervision of licensed psychologists.

Even if ABA practitioners are successful in securing a licensure statute, it may include language that makes the definition of success questionable. For example, as a result of lobbying efforts by other groups and compromises among legislators, the language in a statute or its regulations may allow other professionals to practice behavior analysis. Even if other professionals are not automatically "grandfathered," they may have access to licensure by some means that will enable them to practice "ABA" without having adequate training or a credential in behavior analysis. For example, a bill recently adopted in Pennsylvania to mandate health insurance coverage of autism treatments, including ABA, apparently will license as "behavior specialists" practitioners who lack any legitimate credential or training in behavior analysis. Board Certified Behavior Analysts may not readily qualify for licensure under this law (Pennsylvania Act 62 of 2008). One consequence of "grandfathering" is significant variability in the quality of services available to consumers, who may not be able to differentiate licensees who do and do not have the training that the field has identified as necessary to practice behavior analysis. Another is that individuals who are "grandfathered" in an initial licensure law may resist subsequent efforts to change the licensure eligibility standards – for instance, by requiring more training in ABA.

Licensure statutes typically establish a state or provincial board that regulates the statutorily defined practice. The membership of these boards is usually specified in the licensure law or its regulations. Although a board might consist entirely of members of the referenced profession, the politics of the legislative process can produce other results. Licensing boards can also include members of other professions, including

some who might lack expertise in the field or who might have competing interests. This risk may be exacerbated by the fact that it costs money to operate a regulatory board. Even if some or most of the costs could be covered by fees paid by licensees, policymakers might be reluctant to establish a new licensing board just for behavior analysts. They may instead require that licensed behavior analysts be overseen by an existing board that regulates other professions. In states and provinces with low numbers of license-eligible behavior analysts, the government may well reason that it is not cost-effective to establish a new regulatory board to oversee such a small group. As an example, a licensure program for behavior analysts currently under development in Arizona falls under the Board of Psychologist Examiners (Arizona HB 2275). There are more psychologists than behavior analysts on the ad hoc committee developing the program. Under the Pennsylvania statute just described, the credentialing of "behavioral specialists" will be the responsibility of the state medical board, which includes no behavior analysts.

Another problem arises when individuals licensed in one state, province, or country wish to practice elsewhere. If the new state, province, or country does not license the profession, the license may have no legal merit. If the new location has a licensure law that differs significantly from the location where the license was obtained, the same outcome may apply. In other words, the location-by-location nature of licensure creates a risk that licenses will have limited portability. The greater the variation in licensure laws, the greater the portability issues. These problems may be especially likely to occur with a profession such as ABA that is only beginning to seek licensure. For practitioners of behavior analysis, licensure may mean that they will have to obtain a license in each state, province, or country in which they wish to practice (Moore & Shook, 2001; Starin et al., 1993).

In evaluating these risks, it is important to understand that once an



attempt to win licensure for a profession is started, there is no turning back. Although it is certainly possible to terminate a licensing effort if it is not going well, other interested parties are likely to move to strengthen their position. For example, licensed professionals from other disciplines might press to supervise ABA practitioners. This means that it is important for behavior analysts to be aware of how things can go wrong before initiating licensure efforts. Legislative and regulatory processes are fraught with uncertainty, and it is very easy for behavior analysts to wind up worse off than before they started. A bad or failed licensure bill may well be worse than no bill at all.

### Alternatives to Licensure

It is important to reiterate that licensure is generally not required for behavior analysts to practice and to obtain third-party payment for their services. The BACB credentials will usually suffice, especially now that the BACB program is accredited by the widely respected National Commission for Certifying Agencies (NCCA). The BACB credentials are already recognized in laws and regulations in a number of states in the U.S., thereby permitting BCBAs and BCaBAs (who must work under the supervision of BCBAs) to practice and to be reimbursed for their services. For instance, there are vendor categories for BCBAs and BCaBAs in the California Department of Developmental Services regulations, meaning that they can be contracted by Regional Centers throughout the state to provide services to people with developmental disabilities (California Code of Regulations, Title 17). Other states have similar provisions. Florida's Medicaid waiver refers specifically to BACB certificants, for example.

It is certainly true that most health insurance plans require practitioners who wish to be reimbursed for their services to have a legitimate professional credential. Our experience has been that many health insurance personnel assume that a license is the only type of professional

credential, or use "license" as a generic term for all types of credentials. Once they are shown that there is an accredited professional credential for practitioners of behavior analysis, companies are often willing to write the BACB credentials into their rules and policies. We have noted that Medicaid regulations in some states (e.g., Florida and Alabama), the U.S. military's healthcare plan (TRICARE; see <http://manuals.tricare.osd.mil/>), and the healthcare plans of several self-insured companies currently recognize BCBAs as qualified providers. The same is true of laws adopted recently in several states (including South Carolina, Texas, and Florida) to require health insurance plans to cover ABA treatment for autism spectrum disorders.

Another alternative to establishing a law to license behavior analysts is to seek an exemption for behavior analysts from existing licensure laws. For instance, if a state or provincial psychologist licensure law includes ABA, behavior analysts will probably find it easier to amend that law to state that BCBAs are allowed to practice ABA without being licensed clinical psychologists than to create a new license. In 1990, such an exemption was obtained to Florida's psychology licensure statute (Florida Statutes, Title XXXII, Chapt. 491).

The foregoing alternatives may allow behavior analysts to practice independently and to be reimbursed for their services without incurring the substantial costs and risks of licensure efforts. Pursuing alternatives to licensure may buy the field time to mature and develop the resources necessary to meet the considerable challenge of getting licensure statutes adopted in each state and province. The history of the BACB credentialing effort suggests that, with additional time, behavior analysts are likely to further increase the number of university training programs in behavior analysis, the numbers of credentialed practitioners, recognition of ABA professionals in regulations and statutes, reimbursement mechanisms for ABA services within public and private funding sources, the reputation of the field

with consumers and other professions, and the profession's political muscle.

### Summary

Although certification and licensure are similar means of credentialing individuals, there are important differences in how they are established and managed that can have significant ramifications for practitioners of ABA. Pursuing a licensure statute without proper preparation and resources is likely to fall short, and ABA practitioners may well find themselves in worse circumstances than they were before. Even with a successful outcome, a licensure statute for applied behavior analysts is unlikely to resolve most of the challenges faced by practitioners, which are generally no more easily addressed with licensure than with certification. We have suggested some alternatives to licensure that may serve behavior analysts well while the field develops its capacity to compete with other professions in the legislative arena.

We believe the critical issue is not whether licensing applied behavior analysts is appropriate, but how and when it should be pursued. Obtaining a licensure statute is complicated and risky, and requires careful planning. The Association of Professional Behavior Analysts has recommended that if a thorough analysis of the circumstances in a state or province indicates that licensure is desirable or necessary and is feasible, licensure requirements should be based on the well-established and accredited BACB certification program (see "APBA Position Paper on Licensure" at [www.apbahome.net](http://www.apbahome.net)). To that end, APBA recommends that state licensure laws be based on the BACB's model licensing act (see "Model Licensing Act" at [www.apbahome.net](http://www.apbahome.net)).

We encourage applied behavior analysts not to consider certification and licensure as competing with one another. Instead, it is important to see them as complementary approaches to credentialing that should be used in a coordinated effort to develop the professional wing of our field.

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## Author Note

The opinions expressed herein are those of the authors, and do not represent the position of the Association of Professional Behavior Analysts. Correspondence should be addressed to Gina Green; (e-mail: [ggreen3@cox.net](mailto:ggreen3@cox.net))

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