

Some actions for behavior analyst licensing bodies to consider in response to the COVID-19 pandemic

Brigid H. Fronapfel¹ | Erick M. Dubuque² | Kerri Milyko³ |
Christine M. Fuller⁴ | Gina Green⁵ 

¹Department of Special Education, Nevada Center for Excellence in Disabilities, University of Nevada, Reno, Nevada

²Department of Special Education, Early Childhood, and Preventive Science, University of Louisville, Louisville, Kentucky

³CentralReach, Pompano Beach, New Jersey

⁴Independent Scholar, Reno, Nevada

⁵Association of Professional Behavior Analysts, San Diego, California

Correspondence

*Brigid H. Fronapfel, Nevada Center for Excellence in Disabilities, University of Nevada, William Raggio Building, Mail Stop 0285, 1664 N. Virginia Street, Reno, NV 89557.
Email: bfronapfel@unr.edu

The COVID-19 global pandemic has had a significant impact on the practice of applied behavior analysis (ABA). Practitioners and caregivers have had to adapt quickly as physical distancing, stay-at-home orders, and shelter-in-place directives have become commonplace. As the field copes with the changes produced by the COVID-19 outbreak, many behavior analytic practitioners are seeking guidance from regulatory bodies to ensure they are practicing legally and ethically. This article outlines some actions that the regulatory bodies that manage state behavior analyst licensure programs may consider to assist ABA practitioners and consumers during this unprecedented time. Additionally, suggestions are offered as to how state licensing bodies might prepare to support the practice of licensees during future events that present challenges similar to the current pandemic.

KEYWORDS

applied behavior analysis, coronavirus COVID-19, licensing, pandemic, regulation

1 | INTRODUCTION

Many municipal, county, and state governments in the United States have issued stay-at-home or shelter-in-place orders in an attempt to limit the spread of the deadly novel coronavirus (Kates, Michaud, & Tolbert, 2020). Those orders have affected almost all segments of society, including providers and consumers of applied behavior analysis (ABA) services. One result is that many ABA practitioners and the consumers they serve are being forced to adapt to

service boards that function in a new era of physical distancing and other virus mitigation procedures; adaptation may also be required of entities that regulate the professional practice of ABA, including the entities that are responsible for implementing laws that require a state issued license to practice ABA professionally and/or to use specific titles (typically Licensed Behavior Analyst and Licensed Assistant Behavior Analyst). At this writing, 30 states have such laws in place (a law that was adopted recently in New Jersey has not yet gone into effect). The regulatory bodies that administer those licensure programs vary across states. In 23 of the 30 states, a board is charged with managing the licensure program. Ten of those states have behavior analyst licensing boards; that is, the boards are composed of professional behavior analysts (and in many cases, one or more public members) and their sole responsibility is to manage the behavior analyst licensure program. In eight states, licensure of behavior analyst falls under the auspices of the licensing board of another profession, and in five it is managed by a board that licenses several professions (often called an omnibus licensing board). Behavior analysts are represented on some, but not all, of the licensing boards in those latter 13 states. Some of those boards have behavior analyst advisory committees. In the remaining seven states there is no licensing board; instead a state agency (e.g., Department of Regulation and Licensing, Consumer Affairs, or Health) administers the licensing program. Again, some of those agencies have committees of behavior analysts that advise them (Green 2019; also see Association of Professional Behavior Analysts, 2019). Hereafter, we use the descriptor 'licensing body' to encompass all of the various state entities that manage behavior analyst licensure programs.

Overarching laws governing the functions and operations of behavior analyst licensing bodies vary across states. In general, however, those bodies are responsible for promulgating rules or regulations for implementing the licensure law (in most but not all states), revising the rules/regulation periodically, processing applications, enforcing the law and rules or regulations (including investigating alleged violations and taking disciplinary actions when necessary), and overseeing the practice of licensees in the state. The primary function is to protect consumers and ensure public safety (Bailey & Burch, 2016; Carr & Nosik, 2017; Green & Johnston 2009). In times of crisis, that may require revising regulations or issuing emergency regulations or bulletins to help licensees decide how to serve consumers within legal and ethical parameters (Association of Professional Behavior Analysts, 2020). Here, we describe some actions along those lines that state behavior analyst licensing bodies could consider to help ABA practitioners and consumers during the COVID-19 pandemic.

1.1 | Review and adapt to the state's open meeting laws, if applicable

Many states have laws specifying that the meetings of all licensing bodies must be open to the public (Aichinger, 2009). The aim is to keep the public informed and hold government agencies accountable for their actions. Such laws can, however, create barriers in a time of emergency crisis and prohibit quick action on the part of licensing bodies. For example, an open meeting law may require that all licensing bodies publicly post a meeting agenda several days in advance of each meeting. If an issue arises in the interim, the licensing body is not permitted to discuss it in an official capacity. Open meeting laws may also prevent licensing bodies from conducting business outside of a public meeting. For example, a licensing body may not be allowed to release an official statement until it is voted on during an open meeting. To navigate such constraints, licensing bodies can try to craft meeting agendas so that items that may arise between the posting of an agenda and the meeting time can be considered. For example, including a standing 'COVID-19 discussion' item on all meeting agendas may allow the licensing body to consider matters that arise abruptly as a result of the pandemic. The challenge is creating agenda items that are broad enough to allow for flexibility but not so broad as to become meaningless or to violate the open meeting law.

1.2 | Examine relevant laws and regulations in the context of the pandemic

Members and staff of bodies that administer behavior analyst licensure programs are expected to know the licensure law and regulations (if any) as well as other laws and regulations affecting the practice of behavior analysis in their

state. The latter may prove extremely challenging during a state or national crisis. For example, licensing bodies may encounter questions about telepractice of ABA for the first time during the COVID-19 pandemic, as many ABA practitioners turn to remote service delivery to ensure continuity of care for their clients when in-person services are restricted by government orders or fear on the part of consumers and staff. Licensing bodies may need to review existing behavior analyst licensure rules or regulations as well as other state laws or emergency government orders regarding telepractice by certain categories of service providers during the pandemic. That may set the occasion for a licensing body to revise the licensure rules or regulations, promulgate emergency rules, or issue a bulletin or other official guidance regarding the telepractice of ABA – whether it is allowed and if so, by whom and under what conditions (Association of Professional Behavior Analysts, 2020). Allowing telepractice may be especially important for states with large rural areas or with a limited number of licensed professionals and supporting staff, such as behavior technicians. Licensing bodies might monitor the telepractice of ABA during the emergency and use the data to determine whether to allow telepractice on a permanent basis after the pandemic has abated.

1.3 | Consider temporary suspensions, waivers, and/or modifications of requirements

State licensing bodies should evaluate whether any existing behavior analyst licensure regulations impede consumers' access to services and if so and if allowed by overarching state laws, consider making reasonable temporary accommodations during the coronavirus emergency. For example, if current regulations require licensees to meet with consumers or their caregivers in person before telepractice services can commence, the licensing body might consider waiving that requirement during the COVID-19 pandemic. If regulations specify that licensees must obtain clients' written consent for services, they could be modified to allow for electronic or digital signatures. Decisions to temporarily modify regulations should be consistent with the responsibility to protect the public as well as the profession's standards of care and analyses of risks and benefits in light of the challenging and complex conditions of the pandemic (Association of Professional Behavior Analysts, 2020; Behavior Analyst Certification Board, 2014, 2020; Cox, Plavnick, & Brodhead, 2020).

Other modifications that may be necessary or helpful during the coronavirus crisis include temporarily suspending or delaying requirements for applicants to complete jurisprudence exams or fingerprinting, allowing grace periods for renewing licenses, and allowing fees to be deferred or paid in installments.

1.4 | Assign liaisons to communicate with stakeholders

Regulatory bodies that manage licensure programs can help licensees and consumers contend with the COVID-19 pandemic by engaging in consistent, clear, and collaborative communication. That requires staying up to date on actions like emergency orders and regulations that affect those constituents. If allowed by overarching laws and regulations, the licensing body might consider appointing members to serve as liaisons to stakeholder groups. That may involve attending meetings hosted by those groups, inviting speakers to meetings of the licensing body, and otherwise sharing relevant information with stakeholders. A standing agenda item for community communication could also be added to the agenda for regular meetings. That would provide opportunities for the licensing body to learn about relevant concerns and actions.

Regardless of whether there are formal liaisons, licensing bodies should endeavor to stay in contact with various groups and organizations during the pandemic to the extent permitted by the relevant state laws. That might include national and state behavior analyst professional organizations like the Behavior Analyst Certification Board, various state agencies (e.g., department of licensure and regulation, public health, education, development, disabilities, insurance) and community and consumer groups. Licensing bodies might also consider reaching out to their counterpart in other states to identify solutions to common problems, if allowed by their state laws and regulations.

Many licensing bodies have a Frequently Asked Questions page on their website that is designed to address common questions around licensing. Adding questions and answers about practicing behavior analysis in the context of the COVID-19 pandemic could be very helpful to licensees, prospective applicants for licensure, employers, third-party payers, and consumers. Inviting stakeholders to submit questions may be beneficial. Answers should specifically cite and possibly link to relevant sections of the licensure law, regulations and any emergency guidance or bulletins.

Relatedly, if allowed, the licensing body might also provide on its website links to emergency orders from municipal, county, and state authorities that affect the practice of ABA during the pandemic as well as guidelines issued by the Behavior Analyst Certification Board and professional organizations in the field. That should only be undertaken however if there are sufficient resources available to keep that information updated given that such orders and guidelines are likely to change—often rapidly—as conditions of the COVID-19 pandemic change. Behavior analyst members of licensing bodies might also consider participating in similar efforts by other groups, if allowed under state laws and regulations. For example, a member could help establish a listserv to share information with other state entities or state and national behavior analysis associations.

1.6 | Disseminate information about practice by behavior analysts from other states

During the COVID-19 pandemic, it is especially important for each state licensing body to make clear the conditions under which individuals from other states may legally practice ABA in their state, either in person or via telepractice. Some behavior analyst licensure laws include provisions for individuals who are licensed in other states with similar requirements to obtain a license fairly quickly (often referred to as ‘reciprocity’). Other licensure laws allow such individuals to obtain a temporary or provisional license, and still others contain exemptions that allow any professional behavior analyst who is duly licensed in another state or certified by the Behavior Analyst Certification Board to deliver services to clients in the state for a specific, limited period of time (e.g., a total of X hours in a month or calendar year) without obtaining a state license (Association of Professional Behavior Analysts, 2020). That information should be posted and highlighted on the licensing body’s website if it is not already.

If the state behavior analyst licensure law does not include any of the provisions described above and it would be beneficial to facilitate the practice of ABA by professional behavior analysts residing in other states in the future, the licensing body might ask the state behavior analysis association to consider advocating with the legislature to amend the licensure law. That should be done cautiously, however, because opening a law to amendment can be very risky.

1.7 | Communicate information about ‘essential services’

Many of the emergency orders and regulations that have been issued during the COVID-19 crisis have included provisions regarding businesses and services that are deemed ‘essential’ and are therefore allowed or required to continue operating during the pandemic. Those orders and the definitions of ‘essential’ services have come from municipal, county, and state authorities and have varied considerably across jurisdictions and time. They are laws, so behavior analysts must comply with them (Association of Professional Behavior Analysts, 2020; Behavior Analyst Certification Board, 2020). Although it is generally not the role of licensing bodies to interpret those orders, they should be aware of the provisions regarding ‘essential’ services that are in effect in various locations within their state at any given point in time, whether the services provided by licensees fall into any of the ‘essential’ categories and if so, whether any special conditions are imposed on those service providers. Again, because orders can change at any time and may differ across locations within a state depending on the status of COVID-19 outbreaks it will

below the licensing body to keep abreast of all relevant orders and communicate changes that affect licensees as quickly as possible.

1.8 | Consider revising other operations

One function of a licensing body is processing applications for licenses and renewals. Like many other businesses during the pandemic the licensing body and administrative staff may have to work remotely. Following a strategic approach to ensure flexible and reliable operations and communication from a distance should prevent disruptions in workflow so that applications can continue to be processed in a timely fashion and consumers can continue to access services. Given the uncertainty around when 'business as usual' might resume, it is advisable for the licensing body to plan to conduct business remotely for an extended period of time.

2 | CONCLUSION

Within the constraint of laws and regulations governing the operation of state licensing bodies, those that manage behavior analyst licensure programs should consider taking actions like the ones described here to assist ABA practitioners and consumers during the COVID-19 pandemic and under similar emergency conditions should they occur in the future. Those actions could be initiated by behavior analysts who serve on their states licensing bodies or advisory committees if allowed by law, or by state behavior analysis associations. In addition, authors of future behavior analyst licensure bills should consider including provisions that will ensure consumer access to safe, ethical, and effective ABA services during state, national, or global emergencies.

CONFLICT OF INTEREST

Brigid Fronapfel, Kerri Milyko, Christine Fuller, and Erick Dubuque serve on behavior analyst licensing boards in Nevada and Kentucky. Gina Green is employed by the Association of Professional Behavior Analysts. The views and opinions expressed in this article are those of the authors and do not represent the official policies or positions of their employers or those licensing boards.

DATA AVAILABILITY STATEMENT

Not applicable.

ORCID

Gina Green  <https://orcid.org/0000-0002-4-9130>

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How to cite this article: Fronapfel BH, Dubuque EM, Milyko K, Fuller CM, Green G. Some actions for behavior analyst licensing bodies to consider in response to the COVID-19 pandemic. *Behavioral Interventions*. 2020;35:344-345. <https://doi.org/10.1002/bin.1>

