

Licensure Issues and the Practice of Behavior Analysis in North Carolina

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In North Carolina, pursuant to N.C. Gen. Stat. § 90-270.2(8), behavior analysis and behavior therapy have long been part of the definition of the practice of psychology. The Association of State and Provincial Psychology Boards (ASPPB) also includes behavior analysis and therapy in its definition of the practice of psychology in both its current Model Psychology Practice Act and its proposal for the next revision of the Act. Specifically, ASPPB's definition of the practice of psychology includes, but is not limited to "...counseling, consultation, psychoanalysis, psychotherapy, hypnosis, biofeedback and behavior analysis and therapy."

Evolution of Behavior Analysis

Behavior analysis is the scientific study of behavior. The term "behavior analysis" was coined by B. F. Skinner, who is generally considered the founder of the field. Skinner is perhaps the best known learning theorist of the twentieth century. Skinner followed in a tradition of American psychologists including Edward Thorndike, who described the *law of effect* in 1911, and Clark Hull, who inspired a wealth of animal learning research in the 1940s -1950s.

Skinner (1935) observed that there were two different models for learning or conditioning. Behavior was either controlled by antecedent, eliciting stimuli (respondent or *classical conditioning*, as first demonstrated by Ivan Pavlov), or by consequent stimuli (*operant conditioning*).

The term *Applied Behavior Analysis* (ABA) was defined in 1968 in the first issue of the *Journal of Applied Behavior Analysis* by Baer, Wolf and Risley. In summary, "*applied*" defines a subject matter that is important to people and society, "*behavior*" defines the reliable quantification of observable physical events, and "*analysis*" defines the ability to convincingly demonstrate the variables which control the behavior.

Since the 1960s, the field of behavior analysis has developed significant applications for the improvement of human behavior. Much of the early application was directed toward persons with developmental disabilities, a population chosen perhaps for both their obvious needs relating to learning, and the ability to structure their environment in controlled settings such as schools and institutions. Over time, great advances have been made in the field's ability both to enhance adaptive behavioral repertoires and to reduce significant, often life-threatening,

maladaptive behaviors in this population. The last 50 years have seen significant contributions of ABA in other areas, including organizational management, education, health, addiction, behavioral medicine, brain injury rehabilitation, and sports psychology. Various programs in North Carolina have made significant contributions to the field of behavior analysis, including research in the areas of developmental disabilities (Murdoch and J. Iverson Riddle Developmental Centers), education (UNC-Charlotte), basic research in learning (UNC-Wilmington), and student education (East Carolina University and UNC-Wilmington).

Interest in the interventions derived from ABA for the treatment of autism spectrum disorders (ASD) has skyrocketed in the past 20 years. While treatments that derive from ABA are not the only effective interventions derived from research and funded by insurance coverage, they are clearly the most popular. Although the application of behavioral intervention principles to ASD is not new (Lovaas, 1987; McEachin, Lovaas, and Smith, 1993), its popularity has soared for at least two reasons. First, the number of individuals diagnosed with ASD has increased dramatically since the 1980s. A sample of children in North Carolina revealed autism occurred in 1:58 eight-year-old children (1.7%). Using census data, we can estimate that there are roughly 39,000 children (under age 18) with autism in North Carolina. Second, intensive treatments using behavior analytic principles have been extensively researched, and have documented success in treating the behavioral excesses and deficits of individuals with ASD.

Expansion of Insurance Coverage

Insurance coverage for behavioral treatment for children with ASD is expanding. Coverage in North Carolina began with TRICARE providing benefits to military families. The State Employees Health Plan followed when it began to cover treatment in 2015. In 2016, the North Carolina legislature passed SB 676 requiring health insurance companies to cover treatment for children. Now, in 2017, the North Carolina Department of Health and Human Services is developing a proposed benefit for Medicaid recipients.

Although many states have adopted legislation mandating health insurance companies to provide coverage for behavioral treatment for children with ASD, there has been limited progress for adults. Even though there are tens of thousands of adults who might also benefit from ABA based treatment, recent insurance mandates in North Carolina cover only children.

Regulation of Behavior Analysis

As behavior analysis and behavior therapy are included in the definition of the practice of psychology, the specific tasks of treatment design, planning and evaluation for the modification of human behavior by the application of psychological principles (in this specific example,

ABA) shall be done only by individuals licensed by the North Carolina Psychology Board or other licensed individuals in North Carolina, so long as it is within their scope of practice. Board Certified Behavior Analysts (BCBAs) who practice behavior analysis are required to be in compliance with the North Carolina Psychology Practice Act, or be licensed by another regulatory board in North Carolina that includes such activity within its scope of practice, in order to work legally in this state.

However, under the North Carolina Psychology Board's ancillary services rules (see 21 NCAC 54 .2800), non-licensed persons may assist psychologists in the delivery of psychological services. As the provision of ancillary services can involve a degree of technical skills, training, and judgment, non-licensed individuals providing ancillary services must be trained and supervised by a Licensed Psychologist or Licensed Psychological Associate. In addition, non-licensed individuals providing ancillary services may not supervise other persons in the provision of ancillary services. It is important, therefore, that psychologists who employ or supervise BCBAs to provide ancillary services must carefully define the BCBA's duties in compliance with 21 NCAC 54 .2800.

Persons who fill a paraprofessional role in implementing an intervention plan strictly as designed by a psychologist are likely not providing ancillary services, and do not need to be supervised by a psychologist. Reference to this distinction is found in 21 NCAC 54 .2006(c) which describes the "actual implementation of such interventions" (behavior intervention programs) "that were designed for others to implement that may or may not constitute ancillary services." There is no prohibition against ancillary service providers supervising direct care (that is, paraprofessional) providers who are strictly following a plan with minimal technical skills and independent judgment, and who are therefore not providing ancillary services that would require training and supervision by a psychologist.

It is a common misstatement to state that a non-licensed person who is following a treatment plan developed by a licensed professional is providing "behavior analysis" or "ABA." It is more accurate to explain that the paraprofessional is following an ABA plan or, in reimbursement terms, providing "adaptive behavior treatment" or "behavioral health treatment." The distinction is between designing the treatment versus implementing it.

The Road Ahead

As previously discussed, with the recent mandate for insurance companies to cover behavioral health care/adaptive behavior treatment services for children with autism, and the possible expansion of this service to Medicaid recipients, the demand for services will continue to

increase. One solution to address the increased demand would be a separate licensure for behavior analysts. The latest data (2015) from the Association of Professional Behavior Analysts indicates that 24 states now have licensure for behavior analysts. In 2016, the North Carolina Legislature considered a bill to establish licensure for behavior analysts, but this bill was not passed. It is expected that legislation regarding BCBAs will be considered during the current legislative session. Should North Carolina adopt licensure for behavior analysts in the future, persons licensed under that act could practice within the scope of their specialty, while Licensed Psychologists could continue to practice all forms of psychology for which they have received education and training, as guided by the APA Ethical Principles.

In the interim, psychologists who supervise persons providing ancillary services (whether or not the person is a BCBA) should carefully consider the North Carolina Psychology Practice Act rules for ancillary services (21 NCAC 54 .2800) to assure that the persons they supervise are not engaged in the illegal practice of psychology. Additionally, psychologists may become aware of persons who appear to be practicing behavior analysis illegally. You may wish to make the person aware that this is a prohibited act according to the licensing law (NC Gen. Stat. § 90-270.16) that may constitute a Class 2 misdemeanor (NC Gen. Stat. § 90-270.17). Also, psychologists should be aware that aiding or abetting the unlawful practice of psychology by any person not licensed by the board is a violation of the Code of Conduct (NC Gen. Stat. § 90-270.15 (a)(8)).

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