

Assistant Behavior Analysts and Paraprofessional Rules Task Outline by RLM

1. 2016 House Bill 1141 created SDCL Chapter 36-38
 - a. SDCL 36-38-1
 - i. Applied behavior analysis.
 - ii. Behavior Analyst.
 - iii. The licensing Board is the “Board of Social Work Examiners.”
 - b. SDCL 36-38-6
 - i. License required to practice as Behavior Analyst.
 - c. SDCL 36-38-7
 - i. Qualifications for licensure before Board may issue license to a Behavior Analyst.
 - ii. 4 requirements or qualifications required.
 - d. SDCL 36-38-5
 - i. SDCL Chapter 36-38 do not apply to:
 1. Assistant behavior analyst or paraprofessional who delivers applied behavior analysis services under the extended authority and direction of a behavior analyst provided that the services are supervised in accordance with the requirements of the Behavior Analyst Certification Board, Inc.
 2. The assistant behavior analyst or paraprofessional may not represent himself or herself as a behavior analyst, and shall use a title that indicates assistant or paraprofessional status, such as an assistant behavior analyst, ABA technician, behavior technician, tutor, or line therapist.
 3. The assistant behavior analyst or paraprofessional shall submit to a criminal background check and fingerprint checks pursuant to the provisions of this chapter
 - e. SDCL 36-38-25
 - i. Criminal background checks required:

1. Any assistant behavior analyst or paraprofessional who delivers applied behavior analysis services under the extended authority and direction of a behavior analyst shall submit to a criminal background investigation, by means of fingerprint checks by the Division of Criminal Investigation and the Federal Bureau of Investigation.
2. If no disqualifying record is identified at the state level, the fingerprints shall be forwarded by the Division of Criminal Investigation to the Federal Bureau of Investigation for a national criminal history check.
3. The behavior analyst who supervises the assistant behavior analyst or paraprofessional is responsible for any fees charged for the cost of fingerprinting or the criminal background investigation as required by this section.
4. Each criminal record provided to the board under this section is confidential. The board may use the records only in determining an assistant behavior analyst's or paraprofessional's eligibility to be supervised by an applied behavior analyst for the delivery of applied behavior analysis.

f. SDCL 36-38-26

- i. Assistant behavior analyst or paraprofessional ineligible to deliver services:
 1. No assistant behavior analyst or paraprofessional who has been convicted of a felony or misdemeanor involving moral turpitude as defined in subdivision 22-1-2(25) during the past five years may deliver applied behavior analysis services under the direction of a behavior analyst.

g. SDCL 36-38-27

- i. The Board may promulgate rules, pursuant to chapter 1-26:
 1. that delineate qualifications for licensure,
 2. specify requirements for the annual renewal of licensure,
 3. establish standards of professional conduct,
 4. specify procedures for violations of professional conduct,
 5. permit inactive licensures,
 6. establish procedures for collection and management of fees and payments,

7. establish fees for initial applications and annual licensure not to exceed the amounts specified in this chapter,
8. delineate activities that may or may not be delegated to an assistant behavior analyst or paraprofessional, and
9. specify requirements for supervision of assistant behavior analysts and paraprofessionals.

h. PROBLEM IDENTIFIED:

- i. Although services may be delivered by assistant behavior analysts and paraprofessionals supervised in accordance with the requirements of the Behavior Analyst Certification Board, Inc., SDCL Chapter 36-38 does not identify any minimum qualifications for an assistant behavior analysts and paraprofessional.
- ii. **BUT:** In order to be a “licensed behavior analyst” under SDCL 36-38-7, the licensee must hold a current certification as a board certified behavior analyst by the BACB. <https://www.bacb.com/about/>
 1. The inference, and spirit and intent, appears to be that those who are assistant behavior analysts and paraprofessionals must be also certified by BACB in order for a board certified behavior analyst to supervise such person.
 2. Under the BACB, the paraprofessional is called is a Registered Behavior Technician (RBT – High School level education) who practices under the close, ongoing supervision of Board Certified Behavior Analyst (BCaBA – Bachelor’s level education) or Board Certified Assistant Behavior Analyst (BCBA – Master’s level education).
- iii. **BUT:** It does not appear that South Dakota law would allow a BCaBA (Bachelor’s level education), who is an “assistant behavior analyst” to supervise a RBT (High School level education) aka paraprofessional.
- iv. **My Opinion:** Since a “licensed practitioner” is someone who is licensed by the Board as a behavior analyst, and must have a Master’s or Doctoral Degree and be Board Certified by BACB, only a BCBA (Master’s level education) and BCBA-D (Doctoral level education) may supervise an “assistant behavior analyst” (BCaBA – Bachelor’s level education) and “paraprofessional” (RBT – High School level education).
- v. The following are certified RBT’s (paraprofessionals) in South Dakota as of 11-19-2017:

| HOME | | RBT Registry | | |
|---|------------------|--------------|---------------|---------------------------------|
| Search Results | | | | New Search |
| Showing records 0 to 39 of 39 | | | | |
| Click on  below for more information | | | | |
| Name | City | State | Country | Responsible Certificant |
| ▶ Beam, Chantal | Sioux Falls | SD | United States | Lisa Snyder |
| ▶ Bechen, Ashley | Brookings | SD | United States | Tracy Stephens |
| ▶ Blumhardt, Kamar | Aberdeen | SD | United States | Taylor Byrne |
| ▶ Bonrud, Jacqueline | Sioux Falls | SD | United States | Natasia Eastman |
| ▶ Bretkreutz, Kaele | brookings | SD | United States | Tracy Stephens |
| ▶ briannad@behaviorcarespec, Brianna | Mount Vernon | SD | United States | Tyler Anderson |
| ▶ Brower, Elizabeth | North Sioux City | SD | United States | Hanna Beck |
| ▶ Bye, Jennifer | Vermillion | SD | United States | Natasia Eastman |
| ▶ Clausen, Christine | Sioux Falls | SD | United States | Lisa Snyder |
| ▶ Cufier, Walker | Groton | SD | United States | Paul Boettcher |
| ▶ DeBoer, Alyssa | Sioux Falls | SD | United States | Natasia Eastman |
| ▶ DePola, Elizabeth | Rapid City | SD | United States | Patrick Millar |
| ▶ DeVries, Amanda | Arlington | SD | United States | Tracy Stephens |
| ▶ Emery, Tynell | Frederick | SD | United States | Taylor Byrne |
| ▶ Fodness, Casey | Sioux Falls | SD | United States | Lisa Snyder |
| ▶ Gelst, Katelynn | Spearfish | SD | United States | Patrick Millar |
| ▶ Grange, Amber | Brookings | SD | United States | Tracy Stephens |
| ▶ Haneen, Hayley | Souix Falls | SD | United States | Molly Kosel |
| ▶ Hoefert, Nicole | Sioux Falls | SD | United States | Lisa Snyder |
| ▶ Jacobs, Noelle | Rapid City | SD | United States | Patrick Millar |
| ▶ Koepf, Amanda | Belle Fourche | SD | United States | Patrick Millar |
| ▶ Kuharski, Erica | Rapid City | SD | United States | Patrick Millar |
| ▶ Larson, Elisabeth | Sioux Falls | SD | United States | Natasia Eastman |
| ▶ Lewandowski, Kelcie | Waubay | SD | United States | Jason Dybsetter |
| ▶ Lopez, Darlen | Vermillion | SD | United States | Destree Saucedo |
| ▶ Miller, Kayla | Sioux Falls | SD | United States | Lisa Snyder |
| ▶ Mitchell, Jordan | Greenville | SD | United States | Andrea Hudspeth |
| ▶ Murphy, Molly | Rapid City | SD | United States | Patrick Millar |
| ▶ Nelson, Salina | aberdeen | SD | United States | Taylor Byrne |
| ▶ Norton, Grace | Aberdeen | SD | United States | Taylor Byrne |
| ▶ Relchenberg, Gregory | Parkston | SD | United States | Tyler Anderson |
| ▶ Riedel, Jennifer | Brookings | SD | United States | Tracy Stephens |
| ▶ Robinson, Marcus | Aberdeen | SD | United States | Taylor Byrne |
| ▶ Seyfer, Dalsha | Spearfish | SD | United States | Patrick Millar |
| ▶ Shlehnia, Niki | Aberdeen | SD | United States | Taylor Byrne |
| ▶ Weber, Darcy | Watertown | SD | United States | Tracy Stephens |
| ▶ Welfenbach, Brittany | Rapid City | SD | United States | Molly Kosel |
| ▶ Welszhaar, Katie | Leola | SD | United States | Taylor Byrne |
| ▶ Witte, Geannia | Rapid city | SD | United States | Patrick Millar |

1.

2. I count 39 RBTs (paraprofessionals).
3. When cross referencing the RBTs with the BCBA/BCaBA/BCBA–D Registry, I note the following:
 - a. **Tyler Anderson (BCBA) of Sioux Falls supervises 2 RBTs.**
 - b. **Jason Dybsetter (BCBA) of Sioux Falls supervises 1 RBT.**
 - c. **Natasia Eastman (BCaBA) of Sioux Falls supervises 4 RBTs. Since Natasia is only a BCaBA, I question if she can supervise an RBT because she does not meet the definition of a “licensed behavior analyst” – SDCL 36-38-7.**
 - d. **Patrick Millar (BCaBA) of Rapid City supervises 8 RBTs. Since Patrick is only a BCaBA, I question if he can supervise an RBT because he does not meet the definition of a “licensed behavior analyst” – SDCL 36-38-7.**
 - e. **Lisa Snyder (BCBA) of Sioux Falls supervises 5 RBTs.**
 - f. **Tracy Stephens (BCBA-D) of Sioux Falls supervises 6 RBTs.**
 - g. **Taylor Byrne (BCBA) of Perham, Minnesota supervises 7 RBTs. Is Byrne licensed in South Dakota?**
 - h. **Hanna Beck (BCBA) of Omaha, Nebraska supervises 1 RBT. Is Beck licensed in South Dakota?**
 - i. **Paul Boettcher (BCBA) of Mesquite, Texas supervises 1 RBT. Is Boettcher licensed in South Dakota?**
 - j. **Molly Kosel (BCBA) of Colorado Springs, Colorado supervises 2 RBTs. Is Kosel licensed in South Dakota?**
 - k. **Desiree Saucedo (BCBA) of Oregon City, Oregon supervises 1 RBT. Is Saucedo licensed in South Dakota?**

I. Andrea Hudspeth (BCBA) of Greenville, South Carolina supervises 1 RBT. Is Hudspeth licensed in South Dakota?

vi. The following are BCaBAs (Bachelors level), BCBA (Masters level) and BCBA – D (Doctorate level) in South Dakota as of 11-19-2017:

| HOME | | BCBA/BCaBA Registry | | | | |
|--|-------------|---------------------|---------------|---------------|-------------|----------------------------|
| Search Results | | | | | | New Search |
| Showing records 0 to 23 of 23 | | | | | | |
| Click on  below to contact a certificant | | | | | | |
| <p>Supervision B = Willing to supervise BCaBAs C = Willing to supervise those pursuing certification</p> <p>NOTE: Supervision preferences will only show for individuals who have met the Requirements for Supervisors.</p> | | | | | | |
| Name | City | State | Country | Certification | Supervision | |
|  Anderson, Tyler | Sioux Falls | SD | United States | BCBA | | |
|  Asmussen, Heather | Volga | SD | United States | BCBA | | |
|  Balkovec, ellen | souix falls | SD | United States | BCBA | B,C | |
|  Barron-Galvan, Heather | Yankton | SD | United States | BCBA | | |
|  Barton, Amanda | Sioux Falls | SD | United States | BCBA | B,C | |
|  Bruns, Amber | Sioux Falls | SD | United States | BCBA | B,C | |
|  Cook, Kathleen | Sioux Falls | SD | United States | BCBA-D | B,C | |
|  Dybsetter, Jason | Sioux Falls | SD | United States | BCBA | B,C | |
|  Eastman, Natasia | Sioux Falls | SD | United States | BCaBA | | |
|  Isler, Vicki | Sioux Falls | SD | United States | BCBA-D | B,C | |
|  Knight, Darcie | Sioux Falls | SD | United States | BCBA | B,C | |
|  Koehler, Shannon | Aberdeen | SD | United States | BCBA | | |
|  Marso, Kimberly | Sioux Falls | SD | United States | BCBA-D | | |
|  Millar, Patrick | Rapid City | SD | United States | BCaBA | | |
|  Orr, Alexandra | Sioux Falls | SD | United States | BCaBA | | |
|  Osnes, Pamela | Burke | SD | United States | BCBA-D | B | |
|  Rausch, Brandon | Sioux Falls | SD | United States | BCBA | | |
|  Reit, Christie | Sioux Falls | SD | United States | BCBA | | |
|  Siem, Lonna | Tea | SD | United States | BCBA | B,C | |
|  Snyder, Lisa | Sioux Falls | SD | United States | BCBA | | |
|  Stabnow, Erin | Sioux Falls | SD | United States | BCBA-D | | |
|  Stephens, Tracy | Sioux Falls | SD | United States | BCBA-D | B,C | |
|  Weifenbach, Brittany | Rapid City | SD | United States | BCBA | | |
| -- Page 1 of 1 -- | | | | | | |

- 1.
2. From this list there are 14 BCBA (Master level), 4 BCBA-Ds (Doctorate level) and 3 BCaBAs.

2. 2017 House Bill 1195 amended certain sections of SDCL Chapter 58-17 to be effective January 1, 2018.
 - a. SDCL 58-17-15(3)(a) revised to define “Behavioral health treatment” as evidence based interventions to be provided **or supervised** by a licensed practitioner as provided in SDCL 58-17-159.
 - b. My understanding is that HB 1195 came about so that health insurance would provide payment for services performed by an “assistant behavior analyst” and “paraprofessional.”
3. 11-21-2017 Questions from Carol and Jill/RLM 11-22-2017 Responses.
 - a. *How can a Board be responsible for scope of practice and supervision of a body of people if they are not licensed by the Board.*
 - i. I do not interpret Chapter SDCL 36-38 as requiring the Board to be responsible for scope of practice and supervision of [assistant behavior analysts and paraprofessionals] that are not licensed by the Board. Effective January 1, 2018, the Board has jurisdiction over “any person who performs or supervises applied behavior analysis.” SDCL 58-17-159. In order to be a “behavior analyst” one must be licensed by the Board. SDCL 36-38-6.
 - ii. It seems to be similar to paralegals/legal assistants in the legal profession. The State Bar of South Dakota does not license or have jurisdiction over paralegals/legal assistants. But the State Bar does have jurisdiction over the attorneys who supervise the paralegals/legal assistants. Thus, if the paralegals/legal assistants commit an ethical violation etc., then the State Bar can take action against the licensee, who is the lawyer.
 - b. *Also, it appears that not all of the paraprofessionals working in the field may currently be certified by the BCBA.*
 - i. That is an issue that has arisen in going through this exercise. SD law does not identify who can or cannot be a paraprofessional or assistant behavior analyst. Nor does South Dakota law identify the minimum standards for becoming a paraprofessional or assistant behavior analyst.
 - ii. In order to be a licensed behavior analyst under South Dakota, one of the requirements is Board Certification by the Behavioral Analyst Certification Board (BACB). SDCL 36-38-7. Thus, the strong inference under the applicable law is that in order for a paraprofessional or assistant behavior analyst be “supervised” under South Dakota law, the

paraprofessional or assistant behavior analyst must be certified by the BACB.

- c. *Who is responsible for the background checks.*
 - i. That is another issue that has arisen through this exercise.
 - ii. SDCL 36-38-25 mandates criminal background checks for paraprofessional or assistant behavior analyst by both the SD Division of Criminal Investigation (DCI) and the FBI. The DCI does the first check and then if no disqualifying record is found in the State of South Dakota, fingerprints are to be forwarded by the DCI to the FBI.
 - iii. BUT – there is nothing in SDCL Chapter 36-38 which tells us what a “disqualifying record” is.
 - iv. I do note that the supervising behavior analyst is responsible for all fees associated with the criminal background check.
 - v. The “gaps” are probably going to have to be filled in by the Board’s rule making authority and process.
 - vi. I would note that it appears that the BACB requires an RBT (paraprofessional) to undergo a criminal background check but BACB does not appear to require a BaCB (assistant behavior analyst) to do so. Thus, SD law may have stricter requirements than BACB.
- d. *In SD only the masters and doctoral level may supervise the paraprofessionals. Where does that leave the bachelors level people that are currently supervising.*
 - i. If we are correct in that legal interpretation, then BaCBs cannot supervise under South Dakota law. And if they are doing so, they are violating South Dakota law effective January 1, 2018.
- e. *How are other states handling persons with less than a master’s degree.*
 - i. I do not know. But it would not matter as effective January 1, 2018, only a licensed behavior analyst (SDCL 36-38-7) can perform or supervise behavior analysis (SDCL 58-17-159).

4. Necessary Rules – To Be Determined.