



## Final Regulation Agency Background Document

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| <b>Agency name</b>                                 | Board of Medicine, Department of Health Professions                                |
| <b>Virginia Administrative Code (VAC) citation</b> | 18VAC85-150-10 et seq.   |
| <b>Regulation title</b>                            | Regulations Governing the Practice of Behavior Analysis                            |
| <b>Action title</b>                                | New regulations for licensure of behavior analysts and assistant behavior analysts |
| <b>Date this document prepared</b>                 | 12/27/13   |

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 14 (2010) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Brief summary

*Please provide a brief summary (no more than 2 short paragraphs) of the proposed new regulation, proposed amendments to the existing regulation, or the regulation proposed to be repealed. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation. Also, please include a brief description of changes to the regulation from publication of the proposed regulation to the final regulation.*

Chapter 3 (House Bill 1106) of the 2012 Acts of the Assembly mandated that the Board of Medicine promulgate regulations to implement the licensure of behavior analysts and assistant behavior analysts. The Board has established criteria for licensure and requirements for fees and applications, standards of practice, procedures for the supervision of assistant behavior analysts and criteria for supervision of unlicensed individuals who assist in the provision of applied behavior analysis. In its final adoption, the Board made no changes to the regulation from publication of the proposed regulation.

### Statement of final agency action

*Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency or board taking the action, and (3) the title of the regulation.*

On December 27, 2013, the Board of Medicine adopted final regulations for 18VAC85-150-10 et seq., Regulations Governing the Practice of Behavior Analysis.

**Legal basis**

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant citations to the Code of Virginia or General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Your citation should include a specific provision authorizing the promulgating entity to regulate this specific subject or program, as well as a reference to the agency/board/person’s overall regulatory authority.*

Regulations are promulgated under the general authority of Chapter 24 of Title 54.1 of the Code of Virginia. Section 54.1-2400, which provides the Board of Medicine the authority to promulgate regulations to administer the regulatory system:

**§ 54.1-2400 -General powers and duties of health regulatory boards**

*The general powers and duties of health regulatory boards shall be:*

...

*6. To promulgate regulations in accordance with the Administrative Process Act (§ 9-6.14:1 et seq.) which are reasonable and necessary to administer effectively the regulatory system. Such regulations shall not conflict with the purposes and intent of this chapter or of Chapter 1 (§ [54.1-100](#) et seq.) and Chapter 25 (§ [54.1-2500](#) et seq.) of this title. ...*

In § 54.1-2957.16, the Board of Medicine is mandated to promulgate regulations for the licensure of behavior analysts and assistant behavior analysts:

**§ 54.1-2957.16. Licensure of behavior analysts and assistant behavior analysts; requirements; powers of the Board.**

*A. It shall be unlawful for any person to practice or to hold himself out as practicing as a behavior analyst or to use the title "Licensed Behavior Analyst" unless he holds a license as a behavior analyst issued by the Board. It shall be unlawful for any person to practice or to hold himself out as practicing as an assistant behavior analyst or to use the title "Licensed Assistant Behavior Analyst" unless he holds a license as an assistant behavior analyst issued by the Board. The Board shall issue licenses to practice as a behavior analyst or an assistant behavior analyst to applicants for licensure who meet the requirements of this chapter and the Board's regulations.*

*B. The Board shall establish criteria for licensure as a behavior analyst, which shall include, but not be limited to, the following:*

- 1. Documentation that the applicant is currently certified as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;*
- 2. Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary; and*

3. Documentation that the applicant for licensure has not had his license or certification as a behavior analyst or as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction.

C. The Board shall establish criteria for licensure as an assistant behavior analyst, which shall include, but not be limited to, the following:

1. Documentation that the applicant is currently certified as a Board Certified Assistant Behavior Analyst by the Behavior Analyst Certification Board or any other entity that is nationally accredited to certify practitioners of behavior analysis;

2. Documentation that the applicant conducts his professional practice in accordance with the Behavior Analyst Certification Board Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards and any other accepted professional and ethical standards the Board deems necessary;

3. Documentation that the applicant for licensure has not had his license or certification as an assistant behavior analyst suspended or revoked and is not the subject of any disciplinary proceedings by the certifying board or in another jurisdiction; and

4. Documentation that the applicant's work is supervised by a licensed behavior analyst in accordance with the supervision requirements and procedures established by the Board.

D. The Board shall promulgate such regulations as may be necessary to implement the provisions of this chapter related to (i) application for and issuance of licenses to behavior analysts or assistant behavior analysts, (ii) requirements for licensure as a behavior analyst or an assistant behavior analyst, (iii) standards of practice for licensed behavior analysts or licensed assistant behavior analysts, (iv) requirements and procedures for the supervision of a licensed assistant behavior analyst by a licensed behavior analyst, and (v) requirements and procedures for supervision by licensed behavior analysts and licensed assistant behavior analysts of unlicensed individuals who assist in the provision of applied behavior analysis services.

E. The Board shall establish a fee, determined in accordance with methods used to establish fees for other health professionals licensed by the Board of Medicine, to be paid by all applicants for licensure as a behavior analyst or assistant behavior analyst.

## Purpose

*Please explain the need for the new or amended regulation. Describe the rationale or justification of the proposed regulatory action. Detail the specific reasons it is essential to protect the health, safety or welfare of citizens. Discuss the goals of the proposal and the problems the proposal is intended to solve.*

The intent of the Board of Medicine is to adopt regulations for the licensure of behavior analysts and assistant behavior analysts as mandated by legislation passed by the 2012 General Assembly. The purpose of the regulations is to set out criteria for licensure, fees for applicants and licensees, renewal and continuing education requirements, rules for supervision and professional standards of practice. The Board has adopted regulations that are consistent with standards and criteria of the Behavior Analyst Certification Board (BACB), the professional credentialing body of applied behavior analysis and with rules for other professions currently licensed by the Board of Medicine. It is the intent and goal of the regulation that those who are currently certified by the BACB and who engage in the ethical, professional practice of applied behavior analysis be

able to continue providing services to those children diagnosed with autism spectrum disorder, as licensees of the Board of Medicine.

Since behavior analysts and assistant behavior analysts seeking licensure are providing services to a very vulnerable population (including children with autistic spectrum disorder), the Board has adopted regulations for ethical practice and supervisory responsibilities that may protect the health and safety of those clients. Specific criteria for supervision by behavior analysts and standards of professional conduct for both types of licensee will provide a framework for ethical, responsible practice in which the welfare of the client is foremost.

**Substance**

*Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. A more detailed discussion is required under the "All changes made in this regulatory action" section.*

The Board has established criteria for licensure and requirements for fees and applications, provisions for renewal and reinstatement of licensure, standards of practice, procedures for the supervision of assistant behavior analysts and criteria for supervision of unlicensed individuals who assist in the provision of applied behavior analysis.

**Issues**

*Please identify the issues associated with the proposed regulatory action, including:*  
1) *the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*  
2) *the primary advantages and disadvantages to the agency or the Commonwealth; and*  
3) *other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please indicate.*

1) The primary advantage to the public is a regulatory standard by which to judge minimal competency to practice behavior analysis. Additionally, third party payers are required to cover BA services for children with autism, so there is a financial benefit to licensure. During the development of regulations, the autism community expressed concern that Board regulations may restrict the use of unlicensed person acting under supervision of a licensed behavior analyst. The Board has reiterated that it believes certain tasks may be delegated within the provisions of law and regulation to persons who are appropriately trained and supervised. Public comment seems to indicate that the autism community believes the current regulations have been effective.

2) There are no particular advantages or disadvantages to the agency or the Commonwealth.

3) There are no other pertinent matters of interest.

**Changes made since the proposed stage**

*Please describe all changes made to the text of the proposed regulation since the publication of the proposed stage. For the Registrar’s office, please put an asterisk next to any substantive changes.*

There have been no changes made to the text of the proposed regulation since publication of the proposed stage.

**Public comment**

*Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.*

The public comment period was from October 7, 2013 to December 6, 2013. A public hearing was conducted by the Board on October 24, 2013. The following comments were received:

| <b>Commenters at 10/24/13 Public Hearing</b>                | <b>Comment</b>  | <b>Board response</b>   |
|---|---|---|
| Bethany Marcus  | Outlined four issues with the applied behavior analysis (ABA) services delivered in VA:<br>1) Oversight and supervision of licensed assistant behavior analysts. Limited levels of training and skills have almost independent clinical practice with almost no on-site supervision and no limit to the number of assistants that a licensed BA can supervise. Board should impose a maximum of 5 assistants for supervision by a BA and require at least 2 hours of face-to-face time with each patient. Licensed BA and licensed ABA should be on site or in the office suite with services are provided.<br>2) Oversight and supervision of unlicensed assistants implementing ABA. Unlicensed assistance are provided direct, on-site supervision by the licensed behavior analyst and/or licensed assistant behavior analyst or at minimum be on-site in the office suite or home at the time service is delivered.<br>3) Supervision, use and billing practices for persons certified or being trained in ABA. The only services that should be billable are those rendered by a licensed professional.<br>4) Composition of an advisory panel for ABA should include a licensed clinical psychologist. | 1) Since there are varying levels of client care and expertise required in different situations, the Board does not recommend a limit on the number of assistants that can be supervised or any additional, mandated face-to-face time with each patient. Regulations specify that the licensed BA is fully accountable for services and the welfare of the patient.<br>2) A requirement for the licensed person to be on site whenever services are being provided would eliminate almost all in-home services and severely affect the effectiveness of behavior analysis for autistic children.<br>3) The Board does not regulate billing practices and reimbursement by third party payors.<br>4) The composition of an advisory board or panel would be determined by the General Assembly through legislation. |
| Michael Chiglinsky<br>President, Va.<br>Academy of Clinical | VACP concurs with comments by Dr. Marcus. Regulations should be amended to: 1) limit the number of assistants that may be   | Response same as above.   |

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| Psychologists (VACP) | supervised by a licensed behavior analyst (BA); 2) require licensed BA to have at least 2 hours of face-to-face time with each patient; 3) require BA and assistant behavior analyst (ABA) to be “on site” or “in the office suite” at the time services are delivered; 4) require only ABA services provided by a licensee to be billable as billing of services by poorly trained individuals is misleading to the public. The Board should seek legislation to form an Advisory Panel with seats for licensed clinical psychologists  |  |
| James Morris         | <p>1) The practice of behavior analysis does not appropriately fall under the Board of Medicine; should be regulated by the Dept. of Education.</p> <p>2) The Behavior Analyst Certification Board (BACB) has no university or professional association affiliations.</p> <p>3) The scope of practice of a profession is typically defined in the Code, not in regulation; the regulation does not have details about actual behaviors or interventions that the individual can perform. There is no definition of the term “environmental modifications” as used in the scope of practice.</p> <p>4) There is no scope of practice for assistant behavior analysts; the domains of competency are not listed in regulation and no requirement for an assistant to demonstrate competencies.</p> <p>5) The language on supervision of unlicensed personnel appears to allow the BA to delegate any and all professional activities to unlicensed persons, in opposition to the law.</p> <p>6) Proposed regulations are less clearly defined than for other health professions.</p> | <p>1) Legislation for regulation of the profession authorized the Board of Medicine; a bill in the General Assembly would be required to change that authorization.</p> <p>2) The BACB is the recognized accrediting body for graduate programs in behavior analysis. Professional credentialing bodies are not typically affiliated with a university.</p> <p>3) The scope of practice is defined in the Code in the definition of the “practice of behavior analysis.” Professional licensure regulations do not typically specify the details of the practice and the interventions that may be performed.</p> <p>4) Assistant behavior analysts do have competencies that must be attained and a certification examination that must be passed for licensure.</p> <p>5) The language in Code and regulation does not allow the BA to delegate any and all professional activities to unlicensed persons.</p> <p>6) Regulations for behavior analysts closely follow, in content and format, regulations for other professions under the Board of Medicine.</p> |

| Commenters in writing or on-line | Comment  | Board response   |
|----------------------------------|--|--|
| Christy Evanko                   | Support the regulations as currently written   | Final regulations are identical to those currently written |
| David Mittermaier                | Regulations are working well; families in need of services receiving them from qualified professionals | Final regulations are identical to those currently written |

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| Kristin Helgerson   | Current regulations represent the fields well and have enabled the continued delivery of quality services by licensed professionals. Regulations should remain as written. An advisory board should be created.  | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Laura Stacey-McKane | Same as above  | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Chris Hudson        | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Lisa Bragg          | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Carmel Soergel      | Support the regulations as currently written; BACB certification and an advisory board are recommended   | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Jessica Philips     | Current (emergency) regulations have supported licensed BCBA's practice and are working.   | Final regulations are identical to those currently written   |
| John Prickett       | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Christina Eppnk     | Support the regulations as currently written; BACB certification should remain as requirement for BA's providing services in VA.   | Final regulations are identical to those currently written   |
| Lisa Falke          | Support the regulations as currently written; provide access to staff highly trained and educated in behavior analysis to clients  | Final regulations are identical to those currently written   |
| Matthew Osborne     | Current regulations are sufficient; have enabled thousands of children and adolescents to overcome the challenges associated with Autism Spectrum Disorders. Proposed changes (from psychologists) will negatively impact the current services delivery model. | Final regulations are identical to those currently written   |
| Sara Mamsila        | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Stephanie Miller    | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Kate Lewis          | Current regulations represent the fields well and have enabled the continued delivery of quality services by licensed professionals. Regulations should remain as written. An advisory board should be created.  | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Maria Soldatenkov   | Support the regulations as currently written; BACB certification should remain as requirement for BA's providing services in VA. An advisory board should be created.  | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Kristina Zaccaria   | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Michelle VanSetten  | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Anna Quigley        | Applied Behavior Analysis is scientifically proved to help those that have autism; we need to be proactive.  | Final regulations are identical to those currently written   |

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| Tania Gonzalez   | Current regulations are effective but BACB certification should be requirement for licensure and standard for profession. Regulations should remain as written. An advisory board should be created.  | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Karin Koga   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Brittany Frey  | Support the regulations as currently written; BACB certification should remain as requirement for BA's providing services in VA. An advisory board should be created.   | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Eli Newcomb  | On behalf of the Faison Center, supports the regulations as currently written; commends the Board for promulgating regulations that have led to many positive outcomes for recipients of behavior analytic services.                                      | Final regulations are identical to those currently written   |
| Spring Dolbec  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Kelly Smith  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Heather Weston   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Miguel Macaspac  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Suzanna Myers  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Thomas Budd  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Carol Woodall  | Support the regulations as currently written; changes proposed threaten the delivery of these services to those diagnosed with autism   | Final regulations are identical to those currently written   |
| Dave O'Brien   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Prasanna Pasyavala   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| James Parker   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Sheryl Eppink  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Fred Baumberger  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Allison  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Nathan Habel   | Support the regulations as currently written; as a practicing BA, have seen children benefit from services as outlined in regulations   | Final regulations are identical to those currently written   |
| Officers of the Virginia Association for Behavior Analysis | Current regulations are enabling licensed BA's to practice; concerned about the comment made at the public hearing. Believe the emergency regulations are working but are supportive of comment from Association of Professional Behavior Analysts (APBA) | Final regulations are identical to those currently written; see response to comment below                        |
| Association of Professional                                | 1) Require current BACB certification for   | 1 and 2) Issue discussed at length   |

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| <p>Behavior Analysts (APBA)</p> | <p>renewal, reactivation or reinstatement of licensure; regulations will not have to be revised each time the BACB changes its requirements.<br/>                 2) Delete continuing education requirements since maintenance of BACB certification requires CE.<br/>                 3) Add language from the BACB's description of scope of practice<br/>                 4) Add language to require supervision activities to comply with the BACB <i>Policy on Supervision....</i> and other BACB standards, requirements and guidelines pertaining to supervision.<br/>                 5) Consider specifying the number of ABA's that a BA can supervise concurrently.<br/>                 6) Revise supervision of unlicensed personnel to clarify that supervision is required. Strike last sentence to allow licensed BA's and ABA's to delegate ABA assessment and treatment activities to unlicensed personnel. Add supervision activities must comply with BACB <i>Guidelines for Responsible Conduct of Behavior Analysts....</i><br/>                 7) Add to the unprofessional conduct section a requirement that licensees must comply with <i>Guidelines for Responsible Conduct....</i></p> <p>The APBA also provided detailed suggested responses to the comments made at the public hearing conducted on October 24, 2013.</p> | <p>in development of proposed regulations; the Board is satisfied with continuing education requirements for maintenance of licensure, so there is no need to require maintenance of a professional certification.<br/>                 3) The scope of practice is defined in the Code of Virginia.<br/>                 4 and 5) Supervisory responsibilities are delineated in regulation; specificity about the number of ABA's that can be supervised was not supported because there are varying levels of care and competencies required.<br/>                 6) The Code does not authorize licensed BA's and ABA's to delegate activities that require a license for practice.<br/>                 7) Grounds for unprofessional conduct are set forth in the Code and regulations of the Board and may be cited in a disciplinary proceeding. It is not necessary to rely on the BACB Guidelines.</p> |
| <p>Shantel Pugliese</p>         | <p>Support the regulations as currently written</p>   | <p>Final regulations are identical to those currently written</p>   |
| <p>James Santoyo</p>            | <p>Support the regulations as currently written</p>   | <p>Final regulations are identical to those currently written</p>   |
| <p>Brittney Bolin</p>           | <p>Support the regulations as currently written</p>   | <p>Final regulations are identical to those currently written</p>   |
| <p>Shonnet Brand</p>            | <p>Support the regulations as currently written</p>   | <p>Final regulations are identical to those currently written</p>   |
| <p>Kara Hartman</p>             | <p>Support the regulations as currently written</p>   | <p>Final regulations are identical to those currently written</p>   |
| <p>Nicole Morris</p>            | <p>Support the regulations as currently written; currently completing M.Ed. and being supervised by a BA to work with clients. Ability to collaborate and receive support from a licensed BA influential in allowing me to continue my education while building practical experience.</p>   | <p>Final regulations are identical to those currently written</p>   |
| <p>Jada Ikekwe</p>              | <p>Support for ABA but should not be limited to services for children age 7 and under. African-American children are often diagnosed later than Caucasian children.</p>   | <p>Final regulations are identical to those currently written; the age limit on mandated coverage by insurance is specified in Code</p>   |
| <p>Katherine Robinson</p>       | <p>Support the regulations as currently written;</p>  | <p>Final regulations are identical to</p>   |

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|                   | proven to be effective   | those currently written  |
| Jody Liesfeld     | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Amanda Buchmeier  | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Ethan Long        | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Cresse Morrell    | Support the regulations as currently written; immense benefit to children with autism  | Final regulations are identical to those currently written   |
| Scott Sparrow     | Support the regulations as currently written; as written, provide necessary and impactful services for the families affected by autism | Final regulations are identical to those currently written   |
| Ashley Mackall    | Strongly support as currently written  | Final regulations are identical to those currently written   |
| Laura Lindsay     | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Joyce Collins     | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Gary Fletcher     | Support the regulations as currently written; son has benefitted from an ABA-based curriculum  | Final regulations are identical to those currently written   |
| Adrian            | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Richard Kuhlbars  | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Daniel Lambdin    | Support the regulations as currently written; protects an important public service for families with autistic children                 | Final regulations are identical to those currently written   |
| Amy Belzile       | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Charles Hudson    | Support the regulations as currently written; law should require coverage beyond age seven.  | Final regulations are identical to those currently written; the age limit on mandated coverage by insurance is specified in Code |
| Laura Carter      | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Tyler Proulx      | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Kate Rawles       | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Julie Patterson   | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Catherine Hogan   | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Peggy Halliday    | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Jessica St. Clair | Support the regulations as currently written; progress with ABA therapy has been incredible  | Final regulations are identical to those currently written   |
| Megan Atthowe     | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Jennifer Wade     | Support the regulations as currently written   | Final regulations are identical to those currently written   |
| Nikia Dower       | Support the regulations as currently written;  | Final regulations are identical to   |

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|   | BACB certification process is highly respected. Should have an advisory board   | those currently written; creation of an advisory board requires a Code change                                    |
| Amy Lliffe  | Support the regulations as currently written; BCBA certification should remain unchanged.   | Final regulations are identical to those currently written   |
| Mark Stafford   | Worked in ABA for 30 years; Va. regulations are appropriate and adequate safeguards for the public as written. Suggests composition of an advisory board.   | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Jessica Bensimon  | Support the regulations as currently written; recommends an advisory board  | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Nicole Shriver  | Support the regulations as currently written; suggests composition of an advisory board.  | Final regulations are identical to those currently written   |
| Teresa Champion & Board of Directors for the Va. Autism Project | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Krystle Hedrick   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Rorie Hutter  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Autumn Kaufman  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Christine Welgan  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Kylie Zoller  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Grafton   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Emily Callahan  | Support the regulations as currently written; imperative that non-licensed personnel continue to be allowed to implement ABA programs under supervision and direction. Supervision requirements rely on a model of service delivery supported in the literature and have the potential to increase access to needed services. | Final regulations are identical to those currently written   |
| Elizabeth Gilmore   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Courtney Keegan   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Amelia DuMond   | Support the regulations as currently written; recommends composition of an advisory board   | Final regulations are identical to those currently written; creation of an advisory board requires a Code change |
| Katherine Klarenbach  | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Jackie Shaw   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Peninsula School for Autism                                     | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Brittney Paye   | Support the regulations as currently written  | Final regulations are identical to those currently written   |

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| Megan Miller    | Support the regulations as currently written; have provided access to services. Should have an advisory board. Suggests amendments: 1) require BACB certification for renewal; 2) Add supervision activities must comply with BACB Guidelines; 3) newly certified persons and those moving into Va. should be allowed a “grace period” to practice without a license until application is approved. | Final regulations are identical to those currently written; creation of an advisory board requires a Code change. In the development of proposed regulations, the Committee and the Board discussed the issues of BACB certification for renewal and supervisory activities. There was no recommendation for amendments at the final stage. Those practicing behavior analysis have been given one year to come into compliance with the licensure law; there is no provision in the Code for a “grace period” for practice without a license. |
| Hiroko Evans    | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Vania O’Keefe   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Brandi Acosta   | Support the regulations as currently written; changes in ABA services would negatively impact lives   | Final regulations are identical to those currently written   |
| Angela Kahler   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Angela McCord   | Support the regulations as currently written  | Final regulations are identical to those currently written   |
| Jessica Andrews | Support the regulations as currently written; BACB certification test is very challenging and a good basis of quality provider; comment on advisory board   | Final regulations are identical to those currently written; creation of an advisory board requires a Code change   |

**All changes made in this regulatory action**

*Please list all changes that are being proposed and the consequences of the proposed changes. Describe new provisions and/or all changes to existing sections.*

Currently, the professions are licensed and regulated under emergency regulations which became effective September 19, 2012. The final regulations are identical to the emergency and proposed regulations adopted by the Board.

| Section number | Proposed requirements  | Other regulations and law that apply | Intent and likely impact of proposed requirements                         |
|----------------|--|--------------------------------------|---|
| 10             | A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:<br>Board | § 54.1-2900                          | The intent is clarification of terms and acronyms used in the regulation. |

|    |  |   |   |
|----|--|---|---|
|    | <p>Practice of behavior analysis</p> <p>B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:</p> <p>BACB means the Behavior Analyst Certification Board, Inc.</p> <p>BCBA® means a Board Certified Behavior Analyst®.</p> <p>BCaBA® means a Board Certified Assistant Behavior Analyst®.</p>   |   |   |
| 20 | <p>A separate board regulation, 18VAC85-10-10 et seq., provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.</p>   | 18VAC85-10-10 et seq.                         | <p>The intent is consistency with other regulations promulgated by the Board.</p>   |
| 30 | <p>Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when mailed to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.</p>  |   | <p>The intent is consistency with other regulations promulgated by the Board and to ensure that licensees maintain a current name and address.</p>  |
| 40 | <p>A. The following fees have been established by the board:</p> <ol style="list-style-type: none"> <li>1. The initial fee for the behavior analyst license shall be \$130; for the assistant behavior analyst, it shall be \$70.</li> <li>2. The fee for reinstatement of the behavior analyst license that has been lapsed for two years or more shall be \$180; for the assistant behavior analyst, it shall be \$90.</li> <li>3. The fee for active license renewal for a behavior analyst shall be \$135; for any assistant behavior analyst, it shall be \$70. The fees for inactive license renewal shall be \$70 for a behavior analyst and \$35 for an assistant behavior analyst. Renewals shall be due in the birth month of the licensee in each odd-numbered year.</li> <li>4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50 for a behavior analyst and \$30 for an assistant behavior analyst.</li> <li>5. The fee for a letter of good standing or verification to another state for a license shall be \$10.</li> <li>6. The fee for reinstatement of licensure pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.</li> <li>7. The fee for a returned check shall be \$35.</li> <li>8. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall</li> </ol> | <p>§ § 54.1-2400 (5) and 54.1-2957.16 (E)</p> | <p>The intent is consistency with other regulations promulgated by the Board and to have sufficient revenue to cover the licensure and disciplinary processes associated with regulation of these professions. Applicants and licensees will have additional costs for obtaining and maintaining licensure for the practice of their professions.</p> |

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|    | <p>be \$15.</p> <p>9. The fee for an application or for the biennial renewal of a restricted volunteer license shall be \$35, due in the licensee's birth month. An additional fee for late renewal of licensure shall be \$15 for each renewal cycle.</p> <p>B. Unless otherwise provided, fees established by the board shall not be refundable.</p>   |   |   |
| 50 | <p>An applicant for licensure shall submit the following on forms provided by the board:</p> <ol style="list-style-type: none"> <li>1. A completed application and a fee as prescribed in 18VAC85-150-40.</li> <li>2. Verification of certification as required in 18VAC85-150-60.</li> <li>3. Verification of practice as required on the application form.</li> <li>4. If licensed or certified in any other jurisdiction, verification that there has been no disciplinary action taken or pending in that jurisdiction.</li> <li>5. Verification from the BACB on disciplinary action taken or pending by that body.</li> </ol>  | §§ 54.1-2915 and 54.1-2957.16                   | The intent is consistency with other regulations promulgated by the Board and to provide sufficient information to determine whether there may be cause to deny licensure under the provisions of § 54.1-2915.                                |
| 60 | <p>An applicant for a license to practice as a behavior analyst or an assistant behavior analyst shall hold current certification as a BCBA® or a BCaBA® obtained by meeting qualifications and passage of the examination required certification as a BCBA® or a BCaBA® by the BACB.</p>  | §54.1- 2957.16                                  | Current certification by the Behavior Analyst Certification Board is a requirement of statute for licensure by the Board of Medicine.   |
| 70 | <p>A. Every behavior analyst or assistant behavior analyst who intends to maintain an active license shall biennially renew his license each odd-numbered year during his birth month and shall:</p> <ol style="list-style-type: none"> <li>1. Submit the prescribed renewal fee;</li> <li>2. Attest to having met the continuing education requirements of 18VAC85-150-100.</li> </ol> <p>B. The license of a behavior analyst or assistant behavior analyst which has not been renewed by the first day of the month following the month in which renewal is required is lapsed. Practice with a lapsed license may be grounds for disciplinary action. A license that is lapsed for two years or less may be renewed by payment of the renewal fee, a late fee as prescribed in 18VAC85-150-40, and documentation of compliance with continuing education requirements.</p> | §§ 54.1-2400 (4), 54.1-2912.1 and 54.1- 2957.16 | For consistency with other regulations and professions under the board, the renewal cycle is biennial and the licensee is allowed to renew for up to two years by payment of a late fee and documentation of compliance with CE requirements. |
| 80 | <p>A behavior analyst or assistant behavior analyst who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license</p>   | § 54.1-2400 (12)                                | The intent is consistency with other regulations promulgated by the Board and with powers and duties of health regulatory boards.   |

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|     | to practice as a behavior analyst or assistant behavior analyst in Virginia.   |                  |   |
| 90  | <p>A. To reactivate an inactive license or to reinstate a license that has been lapsed for more than two years, a behavior analyst or assistant behavior analyst shall submit evidence of competency to return to active practice to include one of the following:</p> <ol style="list-style-type: none"> <li>1. Information on continued practice in another jurisdiction as a licensed behavior analyst or a licensed assistant behavior analyst or with certification as a BCBA® or the BCaBA® during the period in which the license has been inactive or lapsed;</li> <li>2. Twelve hours of continuing education for each year in which the license has been inactive or lapsed, not to exceed three years; or</li> <li>3. Recertification by passage of the BCBA® or the BCaBA® certification examination from the BACB.</li> </ol> <p>B. To reactivate an inactive license, a behavior analyst or assistant behavior analyst shall pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure.</p> <p>C. To reinstate a license which has been lapsed for more than two years, a behavior analyst or assistant behavior analyst shall file an application for reinstatement and pay the fee for reinstatement of his licensure as prescribed in 18VAC85-150-40. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience or reexamination.</p> <p>D. A behavior analyst or assistant behavior analyst whose licensure has been revoked by the board and who wishes to be reinstated shall make a new application to the board, fulfill additional requirements as specified in the order from the board and make payment of the fee for reinstatement of his licensure as prescribed in 18VAC85-150-40 pursuant to § 54.1-2408.2 of the Code of Virginia.</p> <p>E. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.</p> | § 54.1-2400 (12) | <p>The intent is consistency with other regulations promulgated by the Board.</p> <p>Reactivation or reinstatement requires some evidence of competency to return to active practice in Virginia. If an individual has continued to practice in another jurisdiction or has maintained BACB certification, the Board will accept such evidence. If not, continuing education or recertification will be required.</p> |
| 100 | <p>A. In order to renew an active license, a behavior analyst shall attest to having completed 24 hours of continuing education and an assistant behavior analyst shall attest to having completed 16 hours of continuing education as approved and documented by a</p>  | §54.1-2912.1     | <p>The Code (§54.1-2912.1) mandates the Board to prescribe by regulation requirements to ensure continued competence which may include continuing education. The requirement for 24 hours within two</p>  |

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|            | <p>sponsor recognized by the BACB within the last biennium.</p> <p>B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.</p> <p>C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.</p> <p>B. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.</p> <p>C. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.</p> <p>D. The board may grant an extension of the deadline for continuing competency requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.</p> <p>F. The board may grant an exemption for all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.</p> |                                     | <p>years for the BCBA or 16 hours for the BCaBA is consistent with the maintenance of certification by the BACB (36 hours/3 years for BCBA and 24 hours/3 years for BCaBA). Therefore, if a licensee chooses to remain board-certified, he will fulfill the CE requirement for renewal of licensure.</p>  |
| <p>110</p> | <p>Scope of practice. The practice of a behavior analyst includes:</p> <ol style="list-style-type: none"> <li>1. Design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior; and</li> <li>2. Supervision of licensed assistant behavior analysts and unlicensed personnel.</li> </ol>  | <p>§§54.1-2900 and 54.1-2957.16</p> | <p>The scope of practice is consistent with the definition of practice of behavior analysis found in the Code.</p>  |
| <p>120</p> | <p>A. The licensed behavior analyst is ultimately responsible and accountable for client care and outcomes under his clinical supervision.</p> <p>B. There shall be a written supervisory agreement between the licensed behavior analyst and the licensed assistant behavior analyst that shall address:</p> <ol style="list-style-type: none"> <li>1. The domains of competency within which services may be provided by the licensed assistant behavior analyst; and</li> <li>2. The nature and frequency of the supervision of the practice of the licensed assistant behavior analyst by the licensed behavior analyst.</li> </ol>   | <p>§ 54.1-2957.16 (D)</p>           | <p>The Code requires promulgation of regulations for the “requirements and procedures for the supervision of a licensed assistant behavior analyst by a licensed behavior analyst.” The regulations adopted are consistent with the standard of the BACB which requires that the BCaBA demonstrate competency with the procedures involved under the direct supervision of a BCBA and that an assistant practice under the supervision of a BCBA. The specific requirements for</p> |

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|     | <p>A copy of the written supervisory agreement shall be maintained by the licensed behavior analyst and the licensed assistant behavior analyst and made available to the board upon request.</p> <p>C. Delegation shall only be made if, in the judgment of the licensed behavior analyst, the task or procedures can be properly and safely performed by an appropriately trained assistant behavior analyst or other person, and the delegation does not jeopardize the health or safety of the client.</p> <p>D. Supervision activities by the licensed behavior analyst include:</p> <ol style="list-style-type: none"> <li>1. Direct, real-time observation of the supervisee implementing behavior analytic assessment and intervention procedures with clients in natural environments and/or training others to implement them, with feedback from the supervisor.</li> <li>2. One-to-one real-time interactions between supervisor and supervisee to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.</li> <li>3. Real-time interactions between a supervisor and a group of supervisees to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.</li> <li>4. Informal interactions between supervisors and supervisees via telephone, electronic mail, and other written communication are encouraged but may not be considered formal supervision.</li> </ol> <p>For the purposes of this subsection, “real-time” shall mean live and person-to-person.</p> <p>E. The frequency and nature of supervision interactions are determined by the individualized assessment or treatment plans of the clients served by the licensed behavior analyst and the assistant behavior analyst, but shall occur not less than once every four weeks, with each supervision session lasting no less than one hour.</p> |                       | <p>supervisory activities were recommended by a BCBA member of the Workgroup and are considered to be minimal standards for adequate supervision.</p> |
| 130 | A. Unlicensed personnel may be supervised by a licensed behavior analyst or an assistant  | §§54.1-2901 and 54.1- | §54.1-2901 specifies exemptions licensure under the Board of  |

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|            | <p>behavior analyst.<br/>                 B. Unlicensed personnel may be utilized to perform:<br/>                 1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and<br/>                 2. Certain routine client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis.</p>   | <p>2957.16</p> | <p>Medicine. Number 6 allows a “practitioner licensed or certified by the Board from delegating to personnel supervised by him, such activities or functions as are nondiscretionary and do not require the exercise of professional judgment for their performance and which are usually or customarily delegated to such persons by practitioners of the healing arts, if such activities or functions are authorized by and performed for such practitioners of the healing arts and responsibility for such activities or functions is assumed by such practitioners of the healing arts.”</p> <p>Consistent with the statutory exemption for delegation to unlicensed persons, the Board has adopted regulations that permit delegation of client-related tasks that do not constitute the practice of behavior analysis. Unlicensed persons may assist in the provision of services provided those tasks do not require the exercise of professional judgment and are usually delegated to unlicensed persons.</p> |
| <p>140</p> | <p>A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.</p>   |                | <p>The Standards of Professional Conduct in Part V are identical to all professions under the Board of Medicine.<br/>                 The intent is consistency with other regulations promulgated by the Board and to provide standards for practice to protect public health and safety.</p>   |
| <p>150</p> | <p>A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.<br/>                 B. Practitioners shall provide client records to another practitioner or to the client or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.<br/>                 C. Practitioners shall properly manage and keep timely, accurate, legible and complete client records.<br/>                 D. Practitioners who are employed by a health care institution, educational institution, school system or other entity in which the individual</p> |                | <p>The intent is consistency with other regulations promulgated by the Board and to provide standards for practice to protect public health and safety.</p>  |

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|            | <p>practitioner does not own or maintain his own records shall maintain client records in accordance with the policies and procedures of the employing entity.</p> <p>E. Practitioners who are self-employed or employed by an entity in which the individual practitioner owns and is responsible for client records shall:</p> <ol style="list-style-type: none"> <li>1. Maintain a client record for a minimum of six years following the last client encounter with the following exceptions:             <ol style="list-style-type: none"> <li>a. Records of a minor child shall be maintained until the child reaches the age of 18 or becomes emancipated, with a minimum time for record retention of six years from the last client encounter regardless of the age of the child;</li> <li>b. Records that have previously been transferred to another practitioner or health care provider or provided to the client or his legally authorized representative; or</li> <li>c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.</li> </ol> </li> <li>2. Post information or in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.</li> <li>3. When closing, selling or relocating his practice, meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client or legally authorized representative.</li> </ol> |  |   |
| <p>160</p> | <p>A. Communication with clients.</p> <ol style="list-style-type: none"> <li>1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a client or his legally authorized representative in understandable terms and encourage participation in decisions regarding the client's care.</li> <li>2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided or directed by the practitioner.</li> <li>3. Before an initial assessment or intervention is performed, informed consent shall be obtained from the client or his legally authorized representative. Practitioners shall inform clients or their legally authorized</li> </ol>   |  | <p>The intent is consistency with other regulations promulgated by the Board and to provide standards for practice to protect public health and safety.</p> |

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|            | <p>representative of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner would tell a client.</p> <p>a. Informed consent shall also be obtained if there is a significant change to a therapeutic procedure or intervention performed on a client that is not part of routine, general care and which is more restrictive on the continuum of care.</p> <p>b. In the instance of a minor or a client who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.</p> <p>c. An exception to the requirement for consent prior to performance of a procedure or intervention may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the client.</p> <p>4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from clients prior to involving them as subjects in human research with the exception of retrospective chart reviews.</p> <p>B. Termination of the practitioner/client relationship.</p> <p>1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make the client record available, except in situations where denial of access is allowed by law.</p> <p>2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.</p> |  |   |
| <p>170</p> | <p>A. A practitioner shall not:</p> <p>1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;</p> <p>2. Knowingly allow subordinates to jeopardize client safety or provide client care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate client care only to subordinates who are properly trained and supervised;</p> <p>3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with client care or could reasonably be expected to adversely impact the</p>  |  | <p>The intent is consistency with other regulations promulgated by the Board and to provide standards for practice to protect public health and safety.</p> |

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|            | <p>quality of care rendered to a client; or<br/>                     4. Exploit the practitioner/client relationship for personal gain.<br/>                     B. Advocating for client safety or improvement in client care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.</p>  |  |   |
| <p>180</p> | <p>A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.2-100 of the Code of Virginia or hospital as defined in § 32.1-123 of the Code of Virginia.<br/>                     Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320 a-7b(b), as amended, or any regulations promulgated thereto.</p>   |  | <p>The intent is consistency with other regulations promulgated by the Board and to provide standards for practice to protect public health and safety.</p> |
| <p>190</p> | <p>A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:<br/>                     1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or<br/>                     2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it.<br/>                     B. Sexual contact with a client.<br/>                     1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a client until the client-practitioner relationship is terminated.<br/>                     2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.<br/>                     C. Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual</p> |  | <p>The intent is consistency with other regulations promulgated by the Board and to provide standards for practice to protect public health and safety.</p> |

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|     | <p>contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.</p> <p>D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client means spouse or partner, parent or child, guardian, or legal representative of the client.</p> <p>E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.</p> |  |   |
| 200 | <p>A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.</p>   |  | <p>The intent is consistency with other regulations promulgated by the Board and to provide standards for practice to protect public health and safety.</p> |