

VIRGINIA BOARD OF MEDICINE  
ABA Work Group

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Monday, April 23, 2012

Department of Health Professions

Henrico, VA

**CALL TO ORDER:** Dr. Hoch called the meeting to order at 10:07 a.m.

**ROLL CALL**

**MEMBERS PRESENT:** Lauren-Lee Askew, BCaBA  
Christine Evanko  
Kristin Helgerson, M.S., BCBA  
Theodore Hoch, Ed.D., BCBA-D  
Eli Newcomb, M.Ed., BCBA  
Anthony Pelonero, M.D., CPE  
Virginia Van de Water, Ed.D.

**MEMBERS ABSENT:** None

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Colanthia Morton Opher, Operations Manager  
Elaine Yeatts, DHP Policy Analyst

**OTHERS PRESENT:** Annie McLaughlin, Ph.D., BCBA-D, Virginia Institute of Autism  
Laura Lee Viergever, Virginia Association of Health Plans  
John Lupo, Kaiser Permanente  
Angela Bezik, Autism Speaks  
Bethany Marcus, Ph.D.

**MEETING SUMMARY**

Dr. Harp provided the emergency egress instructions.

**ROLL CALL**

The roll was called and a quorum declared.

**Approval of the March 12, 2012 Minutes**

Dr. Pelonero moved to accept the minutes with the following amendment:

*J. D. Ball, Licensed Clinical Psychologist and representative for the Virginia Academy of Clinical Psychologists (VACP) spoke in support of licensure for applied behavior analysts and applied behavior analyst assistants. Dr. Ball asked the Work Group to keep in mind that a clause in the*

~~new bill specifies that there is no intent to limit the scope of practice for currently licensed health care clinicians.~~ He ~~Dr. Ball~~ asked that a policy be enacted that regulates the billing for applied behavior analysis services and ensures transparency regarding the nature of the services provided and the qualifications and licensure status of the persons who deliver such services. Dr. Ball also offered a statement from Bethany Marcus, Ph.D. which voiced concerns about having to obtain additional licensure in order to continue providing behavior services. Dr. Marcus' statement also asked the Work Group to address the current model being used by some ABAs for billing Tri-Care and private pay families.

The motion was seconded and carried unanimously.

### **Adoption of Agenda**

Dr. Pelonero moved to adopt the agenda as presented. The motion was seconded and carried unanimously.

### **Public Comment on Agenda Items**

Dr. Hoch welcomed the public and asked for introductions. After the public had identified themselves, Dr. Hoch opened the floor for public comment.

Bethany Marcus, Ph.D. addressed the Work Group and voiced her support for and concerns about the development of the regulations for this profession. She raised the issue as to whether clinical psychologists currently providing behavior services would be able to continue to identify themselves as behavioral analysts, how this law may affect other professional and paraprofessionals that provide these services, and concern about the minimum requirements for tutors. Dr. Marcus stated that families oftentimes make the determination as to what is acceptable with perhaps not enough information. Dr. Marcus asked that the level of services provided by those involved in behavior therapy be made clear for all, including families choosing services and others, including third party carriers.

Dr. Harp advised that the Board of Medicine has no authority to tell insurance companies which professionals are allowed to bill and at what rate. The Board's concern is that the care provided meets the standard of the profession according to its law and regulations.

Ms. Yeatts reviewed with the Work Group the suggestions from individual members of the group as they related to the draft regulations prepared by staff. During discussion of the draft regulations, Work Group members raised questions about appropriate billing and compensation. Some members of the Work Group spoke to how they saw the 2011 and 2012 laws reading together to make a coherent whole. Some believed that the intent of the 2011 law was to ensure compensation for services provided by unlicensed individuals. Staff stated that dealing with financial issues was beyond the scope of the Board of Medicine and the Work Group.

The draft proposed regulations presented by Ms. Yeatts were as follows:

# **DRAFT PROPOSED REGULATIONS**

## **Outline based on regulations of other professions at the Board of Medicine**

CHAPTER 150

REGULATIONS GOVERNING THE PRACTICE OF BEHAVIOR ANALYSIS

### **Part I**

#### **General Provisions**

##### **18VAC85-150-10. Definitions.**

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:

Board

Practice of behavior analysis

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

BACB means the Behavior Analyst Certification Board, Inc.

BCBA® means a Board Certified Behavior Analyst®.

BCaBA® means a Board Certified Assistant Behavior Analyst®.

##### **18VAC85-150-20. Public participation.**

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.

##### **18VAC85-150-30. Current name and address.**

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.

**18VAC85-150-40. Fees.**

A. The following fees have been established by the board:

1. The initial fee for the behavior analyst license shall be \$130; for the assistant behavior analyst, it shall be \$70.

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.

3. The fee for active license renewal for a behavior analyst shall be \$135; for an 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.

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.

5. The fee for a letter of good standing or verification to another state for a license shall be \$10.

6. The fee for reinstatement of licensure pursuant to §54.1-2408.2 of the Code of Virginia shall be \$2,000.

7. The fee for a returned check shall be \$35.

8. The fee for a duplicate license shall be \$5, and the fee for a duplicate wall certificate shall be \$15.

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.

B. Unless otherwise provided, fees established by the board shall not be refundable.

## **Part II**

### **Requirements for Licensure as a Behavior Analyst or an Assistant Behavior Analyst**

#### **18VAC85-40-40. Application requirements.**

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-150-30.
2. Verification of certification as required in 18VAC85-150-50.
3. Verification of practice as required on the application form.
4. If licensed or certified in any other jurisdiction, verification that there has been no disciplinary action taken or pending in that jurisdiction.
5. Verification from the BACB on disciplinary action taken or pending by that body.

#### **18VAC85-150-50. Licensure requirement.**

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.

## **Part III**

### **Renewal and Reinstatement**

#### **18VAC85-150-60. Renewal of license.**

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:

1. Submit the prescribed renewal fee;
2. Attest to having met the continuing education requirements of 18VAC85-150-90.

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 18VAC85-150-30, and documentation of compliance with continuing education requirements.

**18VAC85-150-70. Inactive license.**

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 to practice as a behavior analyst or assistant behavior analyst in Virginia.

**18VAC85-150-80. Reactivation or reinstatement.**

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:

1. Information on continued practice in another jurisdiction during the period in which the license has been inactive or lapsed;
2. Twelve hours of continuing education for each year in which the license has been inactive or lapsed, not to exceed three years; or
3. Recertification by passage of the BCBA® or the BCaBA® certification examination from the BACB.

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.

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 18VAC85-150-30. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience or reexamination.

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 18VAC85-150-30 pursuant to § 54.1-2408.2 of the Code of Virginia.

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.

**18VAC85-150-90. Continuing education requirements.**

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 sponsor recognized by the BACB within the last biennium.

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

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.

D. 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.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. 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.

G. 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.

## **Part IV**

### **Scope of Practice**

#### **18VAC85-150-100. Scopes of practice.**

A. The practice of a behavior analyst includes:

1. Design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis to produce socially significant improvement in human behavior;
2. Empirical identification and analysis of functional relations between behavior and environmental factors;
3. Interventions based on scientific research and the direct observation and measurement of behavior and environment;
4. Utilization of contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions;
5. The conduct of descriptive and systematic behavioral assessments, including functional analyses, and provision of behavior analytic interpretations of the results;
6. Development and implementation of appropriate assessment and intervention methods for use in unfamiliar situations and for a range of cases; and

7. Training of assistant behavior analysts, family members of clients, other service providers, and unlicensed personnel to implement behavior analytic assessments and interventions, and supervision of the delivery of behavior analytic services by such individuals.

B. The practice of an assistant behavior analyst is under the supervision of a licensed behavior analyst and includes:

1. Participation in assessment and intervention planning and design in consultation with the supervising behavior analyst;
2. Implementation of interventions in accordance with demonstrated competency and consistent with dimension of applied behavior analysis as determined by the supervisor;
3. Documentation of client responses to interventions and consultation with the licensed behavior analyst about client functionality;
4. Assistance to the licensed behavior analyst in the design and delivery of ~~introductory level~~ training in behavior ~~analysis~~ analytic services for family members of clients, other service providers, and unlicensed personnel.

**18VAC85-150-110. Supervisory responsibilities.**

A. A licensed behavior analyst supervises the delivery of behavior analytic assessments and interventions by assistant behavior analysts and the collection of data and specified tasks and interventions by family members of clients, other service providers, and unlicensed personnel. The licensed behavior analyst is ultimately responsible and accountable for client care and outcomes under his clinical supervision.

B. A licensed behavior analyst shall not delegate the discretionary aspects of the initial assessment, evaluation or development of a treatment plan for a client nor shall he delegate any task requiring a clinical decision or the knowledge, skills, and judgment of a licensed behavior analyst.

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 behavior analyst assistant or other person, and the delegation does not jeopardize the health or safety of the client.

D. Supervision activities by the licensed behavior analyst include:

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.

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.

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.

4. Informal interactions between supervisors and supervisees via telephone, electronic mail, and other written communication are encouraged but may not be considered formal supervision.

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 two weeks, with each supervision session lasting no less than one hour.

**18VAC85-150-120. Supervision of unlicensed personnel.**

A. Unlicensed personnel may be supervised by a licensed behavior analyst or an assistant behavior analyst.

B. Unlicensed personnel may be utilized to perform:

1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and
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.

**Part V**

**Standards of Professional Conduct**

**18VAC85-150-130. Confidentiality.**

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.

**18VAC85-150-140. Client records.**

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.

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.

C. Practitioners shall properly manage and keep timely, accurate, legible and complete client records.

D. Practitioners who are employed by a health care institution, educational institution, school system or other entity in which the individual practitioner does not own or maintain his own records shall maintain client records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner owns and is responsible for client records shall:

1. Maintain a client record for a minimum of six years following the last client encounter with the following exceptions:
  - 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;
  - 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
  - c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.
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.
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.

**18VAC85-150-150. Practitioner-client communication; termination of relationship.**

A. Communication with clients.

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.
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.
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 representative of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner would tell a client.
  - 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.
  - 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.
  - 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.
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.

B. Termination of the practitioner/client relationship.

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.
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.

**18VAC85-150-160. Practitioner responsibility.**

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;
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;
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 quality of care rendered to a client; or
4. Exploit the practitioner/client relationship for personal gain.

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.

**18VAC85-150-170. Solicitation or remuneration in exchange for referral.**

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.

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.

**18VAC85-150-180. Sexual contact.**

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:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or
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.

B. Sexual contact with a client.

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.
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.

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 contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

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.

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.

**18VAC85-150-190. Refusal to provide information.**

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.

Dr. Pelonero moved that sections 18VAC85-150-130 through 18VAC85-150-190 be accepted as written. The motion was seconded and carried unanimously.

Dr. Pelonero moved that the draft proposed regulations be recommended to the Full Board at the June 21, 2012 meeting. The motion was seconded and carried unanimously.

Ms. Yeatts announced that she will be providing a revised draft of the regulations to each member. She asked the members not to discuss this document among themselves, but to send any further comments or suggestions to her or Dr. Harp. She also commented that this Work Group might wish to convene one more time before the June Board meeting to consider any additional revisions.

Dr. Harp suggested that a member of the Work Group be available to the Full Board in June to field questions.

**Announcements**

No announcements.

**Adjournment:** With no other business to conduct, the meeting adjourned at approximately 1:43 p.m.

**Next scheduled meeting:** TBA

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Theodore Hoch, Ed.D., BCBA-D  
Chair

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William L. Harp, M.D.  
Executive Director

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Colanthia M. Opher  
Recording Secretary