



Advisory on Behavior Analysis

**Virginia Board of Medicine
September 19, 2022
10:00 a.m.**

Advisory Board on Behavior Analysis

Board of Medicine

Monday, September 19, 2022 @ 10:00 a.m.

9960 Mayland Drive, Suite 201,

Henrico, VA

	Page
Call to Order – Christina Giuliano, BA, Chair	
Emergency Egress Procedures – William Harp, MD	i
Roll Call – Pamela Smith	
Approval of Minutes of May 23, 2022	1 - 4
Adoption of the Agenda	
Public Comment on Agenda Items (15 minutes)	
New Business	
1. Periodic Review of Regulations Governing the Practice of Behavior Analysis Erin Barrett	5 - 20
2. Review of Bylaws for Advisory Board Erin Barrett	21 – 22
3. Approval of 2023 Meeting Calendar Christina Giuliano, BA	23
4. Election of Officers Christina Giuliano, BA	

Announcements:

Next Scheduled Meeting: February 6, 2023 @ 10:00 a.m.

Adjournment

PERIMETER CENTER CONFERENCE CENTER
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS
(Script to be read at the beginning of each meeting.)

PLEASE LISTEN TO THE FOLLOWING INSTRUCTIONS ABOUT EXITING THESE PREMISES IN THE EVENT OF AN EMERGENCY.

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Upon exiting the building, proceed straight ahead through the parking lot to the fence at the end of the lot. Wait there for further instructions.

---DRAFT---

ADVISORY BOARD ON BEHAVIOR ANALYSIS

Minutes

May 23, 2022

The Advisory Board on Behavior Analysis met on Monday, May 23, 2022, at 10:00 a.m. at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Richmond, Virginia.

MEMBERS PRESENT:

Christina Giuliano, LBA, Chair
Mark Llobell, Citizen Member
Jerita Dubash, D.O. - [Joined at 10:20 am]
Autumn Kaufman, LBA

MEMBERS ABSENT:

None

STAFF PRESENT:

William L. Harp, M.D., Executive Director
Michael Sobowale, LLM, Deputy Director for Licensing
Colanthia M. Opher, Deputy Director for Administration
Erin Barrett, JD, DHP Senior Policy Analyst
Pam Smith, Licensing Specialist

GUESTS PRESENT:

Christy Evanko, VABA
Amanda Randall
Kate Lewis
Ting Bentley
Shantel Pugliese
Eli Newcomb, LBA
Brian (no last name provided)
Jennifer (no last name provided)

CALL TO ORDER

Christina Giuliano called the meeting to order at 10:02 a.m.

EMERGENCY EGRESS PROCEDURES

Dr. Harp announced the emergency egress procedures.

ROLL CALL

Pam Smith called the roll. A quorum was established.

---DRAFT---

APPROVAL OF MINUTES OF JANUARY 31, 2022

Mark Llobel moved to approve the minutes from the January 31, 2022 meeting. Autumn Kaufman seconded, and the motion carried.

ADOPTION OF AGENDA

Mark Llobell moved to adopt the agenda. Autumn Kaufman seconded. The agenda was adopted as presented.

PUBLIC COMMENT

Christina Giuliano announced that the public comment period has closed on the petition for rulemaking that requests an amendment to Board of Medicine regulation 18VAC85-150-60 on the licensure requirements for behavior analysts and assistant behavior analysts. No public comment would be taken on this agenda item during the meeting.

Christy Evanko provided public comment on the time it takes to process applications for behavior analysis.

NEW BUSINESS

1. Legislative Update from the 2022 General Assembly

Erin Barret indicated that currently there were no regulatory actions affecting the profession. She gave an update on 2 bills at the General Assembly. HB1245 repeals the sunset provision in a bill passed in 2020 that reduced the years from 5 to 2 of full-time clinical experience that a nurse practitioner must have to be eligible to practice without a practice agreement. HB191 would have created the position of Special Advisor to the Governor for Health Workforce Development and also create a Virginia Health Workforce Development Fund to address various health workforce issues in Virginia. Neither bill passed in the Regular Session and were sent to the Special Session for further consideration.

2. Petition for Rulemaking

Closed Session

Christina Giuliano announced that, pursuant to Section 2.2-3711 (A) (7) of the Code of Virginia, it is appropriate that the Advisory Board convene a closed session to obtain legal consultation and briefings by Board staff members because actual or probable litigation had been threatened. Christina Giuliano moved to convene a closed meeting. Additionally, she moved that the Board/DHP staff present attend the closed meeting because their presence in the closed meeting was deemed necessary and would aid the Advisory Board in its deliberations. The motion was duly seconded by Autumn Kaufman. The motion carried.

---DRAFT---

Reconvene

Mark Llobell moved to certify that the matters discussed in the preceding closed session met the requirements of Virginia Code Section §2.2-3712. Autumn Kaufman seconded the motion, and the motion carried. The Advisory Board re-convened in open session to continue its discussion on the petition for rulemaking.

Discussion

An Advisory Board member stated that the Qualified Applied Behavior Analysis credential (QABA) does not meet the requirements for comprehensive practice in the field of behavior analysis. QABA's restriction chiefly to autism does not meet the definition of an appropriate accrediting body's requirements for practice in the field of behavior analysis. Another questioned how disciplinary actions taken by the QABA credentialing board are reported and to which entities they are reported. It was stated that the Advisory Board does not want to run the risk of having an applicant disciplined by another accrediting body unrecognized by the Board of Medicine and have the applicant subsequently apply for a license without the Board's knowledge of the disciplinary action. This would be contrary to the Board's mission to ensure safe and competent patient care by licensed healthcare professionals by enforcing standards of practice. It was noted that comments during the public comment period from recognized experts reinforced the standards in the Board's regulations for accreditation of behavior analysis. It was also stated that QABA's certification criteria do not meet the licensure requirements in the Board's regulations to protect the public in Virginia. By allowing applicants to be credentialed for practice in behavior analysis apart from what is already written in regulations by the Board, the Board is opening the door to lesser quality of care for patients in Virginia.

Erin Barrett stated that the regulations are currently in conflict with the law. Based on the petition, members may choose to initiate a Notice of Intended regulatory Action (NOIRA) to include a definition of acceptable nationally accredited entities for behavior analysts in the definition section. Forming a Regulatory Advisory Panel to discuss the definition of what is considered "nationally accredited" was discussed.

Mark Llobell moved that the Advisory Board recommend to the full Board to initiate rulemaking in response to the petition to conform the regulation with the language in 54.1-2957.16 and to define the term, "nationally accredited to certify practitioners of behavior analysis." The Advisory Board also recommended a Regulatory Advisory Panel be appointed to assist with the definition. The motion was seconded by Dr. Dubash, and the motion carried.

3. Adoption of Bylaws

Erin Barrett stated that since all the Advisory Boards will be recommending adoption of Bylaws to the full Board, it would be more efficient, process-wise, for all the Bylaws for each Advisory Board to be covered in a uniform Guidance Document. Mark Llobell moved that the Bylaws for the Advisory Board to be placed into a single Guidance Document as suggested. Autumn Kaufman seconded, and the motion carried.

ANNOUNCEMENTS

---DRAFT ---

Michael Sobowale provided the licensing statistical report. For licensed behavior analysts, there is a total of 2,067 with 1,443 current active in Virginia and 1 current inactive. 615 are current active out-of-state, and 3 are current inactive out-of-state. There are currently a total of 223 licensed assistant behavior analysts. 193 are current active in Virginia; 2 are current inactive, and 28 are current active out-of-state.

NEXT MEETING DATE

September 19, 2022 @ 10:00 a.m.

ADJOURNMENT

There being no other business, Christina Giuliano adjourned the meeting 11:27 a.m.

Christina Giuliano, LBA, Chair

William L. Harp, MD, Executive Director

Michael Sobowale, Recorder

Agenda Items: Recommend periodic review result and potential regulatory changes to full Board

Included in your agenda package are:

- Notice of periodic review
- Public comment received
- Recommended revisions to Chapter 150

Action needed:

- Consider any additional changes needed
- Motion to recommend full Board retain and amend Chapter 150 with suggested amendments



Agency Department of Health Professions
Board Board of Medicine
Chapter Regulations Governing the Practice of Behavior Analysis [18 VAC 85 - 150]

[Edit Review](#)

Review 2156

Periodic Review of this Chapter

Includes a Small Business Impact Review

Date Filed: 6/16/2022

Review Announcement

Pursuant to Executive Order 14 (as amended July 16, 2018) and §§ 2.2-4007.1 and 2.2-4017 of the Code of Virginia, this regulation is undergoing a periodic review.

The review of this regulation will be guided by the principles in Executive Order 14 (as amended July 16, 2018). <http://TownHall.Virginia.Gov/EO-14.pdf>.

The purpose of this review is to determine whether this regulation should be repealed, amended, or retained in its current form. Public comment is sought on the review of any issue relating to this regulation, including whether the regulation (i) is necessary for the protection of public health, safety, and welfare or for the economical performance of important governmental functions; (ii) minimizes the economic impact on small businesses in a manner consistent with the stated objectives of applicable law; and (iii) is clearly written and easily understandable.

In order for you to receive a response to your comment, your contact information (preferably an email address or, alternatively, a U.S. mailing address) must accompany your comment. Following the close of the public comment period, a report of both reviews will be posted on the Town Hall and a report of the small business impact review will be published in the Virginia Register of Regulations.

Contact Information	
Name / Title:	William L. Harp, M.D. / <i>Executive Director</i>
Address:	9960 Mayland Drive Suite 300 Henrico, VA 23233
Email Address:	william.harp@dhp.virginia.gov
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Publication Information and Public Comment Period

Published in the Virginia Register on 7/18/2022 [Volume: 38 Issue: 24]

Comment Period begins on the publication date and ends on 8/17/2022

Comments Received: 2

Review Result

Pending

Attorney General Certification

8/31/22, 8:18 AM

Virginia Regulatory Town Hall View Periodic Review

Pending

This periodic review was created by Erin Barrett on 06/16/2022 at 12:28pm



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Agency Department of Health Professions

Board Board of Medicine

Chapter Regulations Governing the Practice of Behavior Analysis [18 VAC 85 - 150]

2 comments

All good comments for this forum [Show Only Flagged](#)

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Commenter: Prof. Michael Moates, MA, LP, LBA, LMHC, LADAC

7/30/22 1:04 am

Comment

The Advisory Board admitted the current text does not comply with the statute. It should be amended to comply with the law or it would be unlawful.

CommentID: 124186

Commenter: Christy Evanko, Virginia Association for Behavior Analysis

8/17/22 2:51 pm

Comments on Behavior Analysis Regulations

We, the Public Policy Committee of the Virginia Association for Behavior Analysis, are of the opinion that the Regulations Governing the Practice of Behavior Analysis should be amended. First, they should more similarly conform to other professions under the Board of Medicine. Second, to protect consumer safety, they should clarify the qualifications of organizations who can nationally certify someone who is to become licensed as follows. This is to best protect the consumer of these services.

Certifications and other credentials should be accepted as evidence of qualification for licensure to practice behavior analysis in this state only if they are issued by a non-profit credentialing organization that has all of the following features and safeguards:

- A mission to protect consumers of behavior analysis services by establishing professional standards of practice
- Published, publicly available bylaws, standards, and procedures
- A governing body (typically a Board of Directors) whose voting members are
 - Unpaid
 - Credentialed (certified and/or licensed) behavior analysts representing the range of practitioners in the field and 1-2 consumers of behavior analytic services
 - Selected or elected in accordance with procedures specified in the bylaws
 - Independent of any other organizations or entities in making decisions about the organization's credentialing programs
- Key leadership personnel who are credentialed professional behavior analysts
- A well-established track record in managing credentialing programs for practitioners of behavior analysis

- Credentialing programs that are accredited by the National Commission for Certifying Agencies (NCCA) of the Institute for Credentialing Excellence or American National Standards Institute. Accreditation by the NCCA is preferred because that organization
 - Was the first to develop standards for professional certification programs
 - From its inception in 1977, designed its standards to (a) ensure the health, welfare, and safety of the public; (b) to be consistent with the Standards for Educational and Psychological Testing; and (c) to be applicable to all professions and industries
 - Requires certifying bodies to demonstrate that they are free of undue influence from any other body and are autonomous in making decisions about certification activities
 - has been accrediting professional credentialing programs in behavior analysis and similar professions for many years.

- Requirements and standards for each credential that have been derived from job (or occupational) analysis studies that
 - Involved subject matter experts in behavior analysis and psychometrics (test construction) and large numbers of practitioners of behavior analysis
 - Were designed to identify the knowledge, skills, and abilities (KSAs) required to practice behavior analysis generally, not with any specific client or service recipient population(s) or in any specific settings
 - Were conducted in accordance with standards and procedures that are widely accepted and followed by other similar professions
 - Resulted in a comprehensive list of KSAs (often called a task list) that is publicly available
 - Are published and available to the public

- Credentialing requirements set by the organization's governing body that include
 - Completion of a degree or degrees
 - Successful completion of specified coursework in behavior analysis
 - Successful completion of specified experiential training in delivering behavior analytic services to clients under the supervision of credentialed professional behavior analysts
 - Passage of an objective, valid, and reliable professional examination in behavior analysis that is derived from the applicable job analysis study and managed in ways that assure the security of exam items, administrations, and results
 - Continuing education in behavior analysis to maintain the credential
 - Adherence to ethical and disciplinary standards that have been developed by professional behavior analysts, are publicly available, and are enforced by the organization in accordance with publicly available procedures

Third, the regulations must address the time gap between certification and licensure and allow for practice under supervision while certificants are waiting for the paperwork to be completed. Finally, it is necessary to add that licensees must maintain certification in order to renew their license, similar to other professions.

We thank you for your time and dedication to the safety of consumers who receive services provided by licensed behavior analysts and licensed assistant behavior analysts.

CommentID: 127313

Commonwealth of Virginia



REGULATIONS

GOVERNING THE PRACTICE OF BEHAVIOR ANALYSIS

VIRGINIA BOARD OF MEDICINE

Title of Regulations: 18VAC85-150-10 et seq.

**Statutory Authority: § 54.1-2400 and Chapter 29
of Title 54.1 of the *Code of Virginia***

Effective Date: March 5, 2020

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TABLE OF CONTENTS

Part I3
General Provisions3
 18VAC85-150-10. Definitions3
 18VAC85-150-20. Public participation.3
 18VAC85-150-30. Current name and address.3
 18VAC85-150-40. Fees.3
Part II4
Requirements for Licensure as a Behavior Analyst or an Assistant Behavior Analyst4
 18VAC85-150-50. Application requirements.4
 18VAC85-150-60. Licensure requirement.4
Part III Renewal and Reinstatement5
 18VAC85-150-70. Renewal of licensure.5
 18VAC85-150-80. Inactive licensure.5
 18VAC85-150-90. Reactivation or reinstatement.5
 18VAC85-150-100. Continuing education requirements.6
Part IV Scope of Practice7
 18VAC85-150-110. Scope of practice.7
 18VAC85-150-120. Supervisory responsibilities.7
 18VAC85-150-130. Supervision of unlicensed personnel.8
Part V Standards of Professional Conduct8
 18VAC85-150-140. Confidentiality8
 18VAC85-150-150. Client records.8
 18VAC85-150-160. Practitioner-client communication; termination of relationship.9
 18VAC85-150-170. Practitioner responsibility.10
 18VAC85-150-180. Solicitation or remuneration in exchange for referral.10
 18VAC85-150-190. Sexual contact.11
 18VAC85-150-200. Refusal to provide information.11

**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, 18VAC85-11, entitled Public Participation Guidelines, 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 sent 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 license, 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 license, it shall be \$90.

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. For 2021, the renewal of an active license as a behavior analyst shall be \$108, and the renewal fee for an inactive license shall be \$54; the renewal fee for an active license as an assistant behavior analyst shall be \$54, and the renewal fee for an inactive license shall be \$28.

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 handling fee for a returned check or a dishonored credit card or debit card shall be \$50.

8. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.

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

18VAC85-150-50. 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 18VAC85-150-40.
2. Verification of certification as required in 18VAC85-150-60.
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.

18VAC85-150-60. 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 for certification as a BCBA® or a BCaBA® by the BACB.

**Part III
Renewal and Reinstatement**

18VAC85-150-70. Renewal of licensure.

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; and
2. Attest to having met the continuing education requirements of 18VAC85-150-100.

B. The license of a behavior analyst or assistant behavior analyst that 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.

18VAC85-150-80. Inactive licensure.

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.

18VAC85-150-90. 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 as a licensed behavior analyst or a licensed assistant behavior analyst or with certification as a BCBA® or BCaBA® during the period in which the license has been inactive or lapsed;
2. Sixteen hours of continuing education for each year in which the license as a behavior analyst or 10 hours for each year in which the license as an assistant behavior analyst 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 that 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 license 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.

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.

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.

18VAC85-150-100. Continuing education requirements.

A. In order to renew an active license, a behavior analyst shall attest to having completed 32 hours of continuing education and an assistant behavior analyst shall attest to having completed 20 hours of continuing education as approved and documented by a sponsor recognized by the BACB within the last biennium. Four of the required hours shall be related to ethics in the practice of behavior analysis. Up to two continuing education hours may be satisfied through delivery of behavioral analysis services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.

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 education 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 from 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**

18VAC85-150-110. ~~Scope of practice.~~

Commented [VP1]: Consider deletion. The first part is in statute, and the second is unnecessary because it's in the next regulation

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, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior; and~~

~~2. Supervision of licensed assistant behavior analysts and unlicensed personnel.~~

18VAC85-150-120. Supervisory responsibilities.

A. The licensed behavior analyst is ultimately responsible and accountable for client care and outcomes under his clinical supervision.

B. There shall be a written supervisory agreement between the licensed behavior analyst and the licensed assistant behavior analyst that shall address:

1. The domains of competency within which services may be provided by the licensed assistant behavior analyst; and

2. The nature and frequency of the supervision of the practice of the licensed assistant behavior analyst by the licensed behavior analyst.

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.

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.

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.

For the purposes of this subsection, "real-time" shall mean live and person-to-person.

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 no less than once every four weeks with each supervision session lasting no less than one hour.

18VAC85-150-130. Supervision of unlicensed personnel.

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

18VAC85-150-140. 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.

18VAC85-150-150. 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 years 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.~~

Commented [VP2]: This is in code.

18VAC85-150-160. 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.~~

Commented [VP3]: Ch 20 may have this removed. Consider removing here

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 that 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.

18VAC85-150-170. 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 a subordinate 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.

~~18VAC85-150-180. 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.~~

18VAC85-150-190. 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 practitioner-client 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.

18VAC85-150-200. 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.

Chapter 29 of Title 54.1 of the Code of Virginia
Medicine

§ 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.

(2012, c. 3.)

§ 54.1-2957.17. Exceptions to licensure requirements; supervision of unlicensed individuals by licensed behavior analysts and licensed assistant behavior analysts.

A. The provisions of § 54.1-2957.16 shall not be construed as prohibiting any professional licensed, certified, or registered by a health regulatory board from acting within the scope of his practice.

B. The provisions of § 54.1-2957.16 shall not be construed as prohibiting or restricting the applied behavior analysis activities of a student participating in a defined course, internship, practicum, or program of study at a college or university, provided such activities are supervised by a member of the faculty of the college or university or by a licensed behavior analyst and such student does not hold himself out as a licensed behavior analyst and is identified as a "behavior analyst student," "behavior analyst intern," or "behavior analyst trainee."

C. The provisions of § 54.1-2957.16 shall not be construed as prohibiting or restricting the activities of unlicensed individuals pursuing supervised experiential training to meet eligibility requirements for certification by the Behavior Analyst Certification Board or for state licensure, provided such activities are supervised by a licensed behavior analyst who has been approved by the Behavior Analyst Certification Board to provide supervision, the individual does not hold himself out as a licensed behavior analyst, and no more than five years have elapsed from the date on which the supervised experiential training began.

D. The provisions of § 54.1-2957.16 shall not be construed as prohibiting or restricting the activities of an individual employed by a school board or by a school for students with

disabilities licensed by the Board of Education from providing behavior analysis when such behavior analysis is performed as part of the regular duties of his office or position and he receives no compensation in excess of the compensation he regularly receives for the performance of the duties of his office or position. No person exempted from licensure pursuant to this subsection shall hold himself out as a licensed behavior analyst or a licensed assistant behavior analyst unless he holds a license as such issued by the Board.

(2012, c. 3; 2014, c. 584.)

§ 54.1-2957.18. Advisory Board on Behavior Analysis.

A. The Advisory Board on Behavior Analysis (Advisory Board) shall assist the Board in carrying out the provisions of this chapter regarding the qualifications, examination, and regulation of licensed behavior analysts and licensed assistant behavior analysts.

B. The Advisory Board shall consist of five members appointed by the Governor for four-year terms as follows: two members shall be, at the time of appointment, licensed behavior analysts who have practiced for at least three years; one member shall be, at the time of appointment, a licensed assistant behavior analyst who has practiced for not less than three years; one member shall be a physician licensed by the Board who is familiar with the principles of behavior analysis; and one member shall be a consumer of applied behavior analysis who does not hold a license as a behavior analyst or assistant behavior analyst who is appointed by the Governor from the Commonwealth at large. Vacancies occurring other than by expiration of terms shall be filled for the unexpired term.

C. The Advisory Board shall, under the authority of the Board, recommend to the Board for its enactment into regulation the criteria for licensure as a behavior analyst or an assistant behavior analyst and the standards of professional conduct for holders of such licenses.

The Advisory Board shall also assist in such other matters relating to behavior analysis as the Board in its discretion may direct.

(2014, c. 584.)

Agenda Item: Bylaws for all Advisory Boards

Included in your agenda package are:

- ❖ Copy of Approved Guidance Document 85-3

Action Needed:

- None

**BYLAWS FOR
ADVISORY BOARDS OF THE BOARD OF MEDICINE**

Article I - Members of the Advisory Board

The appointments and limitations of service of the members shall be in accordance with the applicable statutory provision of the advisory board governing such matters.

Article II - Officers

Section 1. Titles of Officers - The officers of the advisory board shall consist of a chairman and vice-chairman elected by the advisory board. The Executive Director of the Board of Medicine shall serve in an advisory capacity.

Section 2. Terms of Office - The chairman and vice-chairman shall serve for a one-year term and may not serve for more than two consecutive terms in each office. The election of officers shall take place at the first meeting after July 1, and officers shall assume their duties immediately thereafter.

Section 3. Duties of Officers.

- (a) The chairman shall preside at all meetings when present, make such suggestions as may deem calculated to promote and facilitate its work, and discharge all other duties pertaining by law or by resolution of the advisory board. The chairman shall preserve order and conduct all proceedings according to and by parliamentary rules and demand conformity thereto on the part of the members. The chairman shall appoint all committees as needed.

The chairman shall act as liaison between the advisory board and the Board of Medicine on matters pertaining to licensing, discipline, legislation and regulation of the profession which the advisory board represents.

When a committee is appointed for any purpose, the chairman shall notify each member of the appointment and furnish any essential documents or information necessary.

- (b) The vice-chairman shall preside at meetings in the absence of the chairman and shall take over the other duties of the chairman as may be made necessary by the absence of the chairman.

Article III - Meetings

Section 1. There shall be at least one meeting each year in order to elect the chairman and vice-chairman and to conduct such business as may be deemed necessary by the advisory board.

Section 2. Quorum - Three members shall constitute a quorum for transacting business.

Section 3. Order of Business - The order of business shall be as follows:

- (a) Calling roll and recording names of members present
- (b) Approval of minutes of preceding regular and special meetings
- (c) Adoption of Agenda
- (d) Public Comment Period
- (e) Report of Officers
- (f) Old Business
- (g) New Business

The order of business may be changed at any meeting by a majority vote.

Article IV - Amendments

Amendments to these bylaws may be proposed by presenting the amendments in writing to all advisory board members prior to any scheduled advisory board meeting. If the proposed amendment receives a majority vote of the members present at that advisory board meeting, it shall be represented as a recommendation for consideration to the Board of Medicine at its next regular meeting.

2023 Board Meeting Dates

Advisory Board on:

Behavioral Analysts			10:00 a.m.
Mon - February 6	June 12	October 2	
Genetic Counseling			1:00 p.m.
Mon - February 6	June 12	October 2	
Occupational Therapy			10:00 a.m.
Tue - February 7	June 13	October 3	
Respiratory Care			1:00 p.m.
Tue - February 7	June 13	October 3	
Acupuncture			10:00 a.m.
Wed - February 8	June 14	October 4	
Radiological Technology			1:00 p.m.
Wed - February 8	June 14	October 4	
Athletic Training			10:00 a.m.
Thurs - February 9	June 15	October 5	
Physician Assistants			1:00 p.m.
Thurs - February 9	June 15	October 5	
Midwifery			10:00 a.m.
Fri - February 10	June 16	October 6	
Polysomnographic Technology			1:00 p.m.
Fri - February 10	June 16	October 7	
Surgical Assisting			10:00 a.m.
Mon - February 13	June 19	October 10	