



# **Advisory on Behavior Analysis**

**Virginia Board of Medicine  
May 20, 2019  
10:00 a.m.**

# Advisory Board on Behavior Analysis

Board of Medicine

Monday, May 20, 2019 @ 10:00 a.m.

9960 Mayland Drive, Suite 201, Henrico, VA

Training Room 2

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Call to Order – Kate Lewis, BA, Chair	
Emergency Egress Procedures – William Harp, MD	i
Roll Call – Pam Smith	
Approval of Minutes of October 1, 2018	1
Adoption of the Agenda	
Public Comment on Agenda Items (15 minutes)	
<b>New Business</b>	
1. Report of the 2019 General Assembly .....	4
2. Follow-up on initiative to require active BACB certification for renewal .....	13
3. Regulations Governing the practice of Behavior Analysis .....	15
Announcements	
Adjournment	
Next Scheduled Meeting: September 30, 2019 @ 10:00 a.m.	

**PERIMETER CENTER CONFERENCE CENTER  
EMERGENCY EVACUATION OF BOARD AND TRAINING ROOMS  
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**Training Room 2**

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**---DRAFT UNAPPROVED---**

## ADVISORY BOARD ON BEHAVIOR ANALYSTS

### Minutes

**October 1, 2018**

The Advisory Board on Behavior Analysts met on Monday, October 1, 2018 at 10:00 a.m. at the Department of Health Professions, Perimeter Center, 9960 Mayland Drive, Henrico, Virginia.

**MEMBERS PRESENT:** Kate Lewis, MS, BCBA, LBA, Chair  
Amanda Kusterer, BCaBA  
Asha Patton Smith, MD  
Christina Giuliano, BCBA  
Gary Fletcher, Citizen Member

**MEMBERS ABSENT:** None

**STAFF PRESENT:** William L. Harp, M.D., Executive Director  
Elaine Yeatts, DHP Senior Policy Analyst  
Colanthia Morton Opher, Deputy for Administration  
Denise Mason, Licensing Specialist

**GUESTS PRESENT:** Christy Evanko, BCBA, VABA  
Keven Schock, EPIC Developmental Services  
Joshua Baker, PSCA

### **CALL TO ORDER**

Ms. Lewis called the meeting to order at 10:06 a.m.

### **EMERGENCY EGRESS PROCEDURES**

Dr. Harp announced the Emergency Egress Procedures.

### **ROLL CALL**

Ms. Mason called the roll, and a quorum was declared.

### **ADOPTION OF AGENDA**

The agenda was amended to reflect that Ms. Lewis is Chair of the Advisory Board. Ms. Giuliano moved to make the correction. The motion was seconded and carried.

**APPROVAL OF MINUTES OF JUNE 5, 2017 and JANUARY 29, 2018**

Dr. Smith moved to approve the minutes for the June 5, 2017 meeting. The motion was seconded and carried. An amendment was suggested to the January 29, 2018 minutes to reflect Ms. Evanko's title as a BCBA.

**PUBLIC COMMENT**

Ms. Evanko thanked the Board for reviewing the regulations.

**NEW BUSINESS****1. Periodic Review of the Regulations**

Ms. Yeatts covered the comments from Regulatory Town Hall, particularly those submitted by APBA, and asked the Advisory to note any comment that she had not covered.

She then opened the discussion of the regulations by pointing out that in 18VAC85-150-30, the word "mailed" needed to be replaced with "sent."

Next was 18VAC85-150-70, which does not require current BACB certification for the renewal of a license. After a lengthy discussion, Ms. Kusterer moved to amend the regulation to require current BACB certification for renewal of licensure. The motion was seconded and carried 3-2.

18VAC85-150-90 was discussed since there is no requirement that BACB certification be current for reactivation or reinstatement. Ms. Guiliano moved that the language regarding current BACB certification suggested for renewal be incorporated into this section as well. The motion was seconded and carried.

**2. Carr & Noski (2017) "Professional Credentialing of Behavior Analysts"**

Dr. Harp stated that this topic was information for the Advisory Board's review. Ms. Kusterer pointed out that the second paragraph of the Conclusions would be good support for requiring BACB certification as discussed above.

**3. Board Member Badges**

Dr. Harp told the Advisory Board that the Department of Health Professions would no longer be issuing Board member badges. Board members will now be given a temporary badge when working at DHP which will be turned in upon completion of their duties.

**4. 2019 Meeting Calendar**

Mr. Opher pointed out that the next Advisory Board meeting was scheduled for January 21, 2019, which is a holiday. She asked the Board members if they would be able to attend on the alternative date of January 28, 2019 at 10:00 am. All members agreed to the change.

**6. Election of Officers**

Dr. Smith nominated Ms. Lewis to service as Chair of the Advisory Board. The motion was seconded and carried. Dr. Smith also nominated Ms. Kusterer to serve as Vice-Chair of the Advisory Board. The motion was seconded and carried.

**Announcements**

Ms. Opher informed the Advisory Board that there are currently 1,055 Behavior Analysts and 156 Assistant Behavior Analysts licensed by the Virginia Board of Medicine.

**Next Meeting Date**

The Advisory Board's next meeting is January 28, 2019 at 10:00 a.m.

**Adjournment**

The meeting was adjourned at 12:13 p.m.

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Kate Lewis, MS, BCBA, LBA,  
Chair

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William L. Harp, M.D.  
Executive Director

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Denise W. Mason, Licensing Specialist

**Board of Medicine  
Report of the 2019 General Assembly**

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**HB 1952 Patient care teams; podiatrists and physician assistants.**

*Chief patron:* Campbell, J.L.

*Summary as passed House:*

**Patient care team podiatrist definition; physician assistant supervision requirements.** Establishes the role of "patient care team podiatrist" as a provider of management and leadership to physician assistants in the care of patients as part of a patient care team. The bill modifies the supervision requirements for physician assistants by establishing a patient care team model. The bill directs the Board of Medicine to adopt emergency regulations to implement the provisions of the bill and is identical to SB 1209.

02/22/19 Governor: Acts of Assembly Chapter text (CHAP0137)

**HB 1970 Telemedicine services; payment and coverage of services.**

*Chief patron:* Kilgore

*Summary as passed:*

**Telemedicine services; coverage.** Requires insurers, corporations, or health maintenance organizations to cover medically necessary remote patient monitoring services as part of their coverage of telemedicine services to the full extent that these services are available. The bill defines remote patient monitoring services as the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload. The bill requires the Board of Medical Assistance Services to include in the state plan for medical assistance services a provision for the payment of medical assistance for medically necessary health care services provided through telemedicine services. This bill is identical to SB 1221.

03/05/19 Governor: Acts of Assembly Chapter text (CHAP0211)

**HB 1971 Health professions and facilities; adverse action in another jurisdiction.**

*Chief patron:* Stolle

*Summary as introduced:*

**Health professions and facilities; adverse action in another jurisdiction.** Provides that the mandatory suspension of a license, certificate, or registration of a health professional by the Director of the Department of Health Professions is not required when the license, certificate, or registration of a health professional is revoked, suspended, or surrendered in another jurisdiction based on disciplinary action or mandatory suspension in the Commonwealth. The bill extends the time by which the Board of Pharmacy (Board) is required to hold a hearing after receiving an application for reinstatement from a nonresident pharmacy whose registration has been suspended by the Board based on revocation or suspension in another jurisdiction from not later than its next regular meeting after the expiration of 30 days from receipt of the reinstatement application to not later than its next regular meeting after the expiration of 60 days from receipt of the reinstatement application.

02/22/19 Governor: Acts of Assembly Chapter text (CHAP0138)

**HB 2169 Physician assistants; licensure by endorsement.**

*Chief patron:* Thomas

*Summary as passed:*

**Physician assistants; licensure by endorsement.** Authorizes the Board of Medicine to issue a license by endorsement to an applicant for licensure as a physician assistant who (i) is the spouse of an active duty member of the Armed Forces of the United States or the Commonwealth, (ii) holds current certification from the National Commission on Certification of Physician Assistants, and (iii) holds a license as a physician assistant that is in good standing, or that is eligible for reinstatement if lapsed, under the laws of another state.

03/12/19 Governor: Acts of Assembly Chapter text (CHAP0338)

**HB 2184 Volunteer license, special; issuance for limited practice.**

*Chief patron:* Kilgore

*Summary as passed:*

**Volunteer dentists and dental hygienists.** Removes certain requirements for dentists and dental hygienists volunteering to provide free health care for up to three consecutive days to an underserved area of the Commonwealth under the auspices of a publicly supported nonprofit organization that sponsors the provision of health care to populations of underserved people.



03/08/19 Governor: Acts of Assembly Chapter text (CHAP0290)

**HB 2228 Nursing and Psychology, Boards of; health regulatory boards, staggered terms.**

*Chief patron:* Bagby

*Summary as introduced:*

**Composition of the Boards of Nursing and Psychology; health regulatory boards; staggered terms.** Alters the composition of the Board of Nursing and replaces the requirement that the Board of Nursing meet each January with the requirement that it meet at least annually. The bill also removes specific officer titles from the requirement that the Board of Nursing elect officers from its membership. The bill replaces the requirement that a member of the Board of Psychology be licensed as an applied psychologist with the requirement that that position be filled by a member who is licensed in any category of psychology. The bill also provides a mechanism for evenly staggering the terms of members of the following health regulatory boards, without affecting the terms of current members: Board of Nursing, Board of Psychology, Board of Dentistry, Board of Long-Term Care Administrators, Board of Medicine, Board of Veterinary Medicine, Board of Audiology and Speech-Language Pathology, Board of Pharmacy, and Board of Counseling.

02/27/19 Governor: Acts of Assembly Chapter text (CHAP0169)

**HB 2457 Medicine, osteopathy, podiatry, or chiropractic, practitioners of; inactive license, charity care.**

*Chief patron:* Landes

*Summary as passed:*

**Practitioners of medicine, osteopathy, podiatry, or chiropractic; retiree license.** Provides that the Board of Medicine may issue a retiree license to any doctor of medicine, osteopathy, podiatry, or chiropractic who holds an active, unrestricted license to practice in the Commonwealth upon receipt of a request and submission of the required fee. The bill provides that a person to whom a retiree license has been issued shall not be required to meet continuing competency requirements for the first biennial renewal of such license. The bill also provides that a person to whom a retiree license has been issued shall only engage in the practice of medicine, osteopathy, podiatry, or chiropractic for the purpose of providing charity care or health care services to patients in their residence for whom travel is a barrier to receiving health care.

03/14/19 Governor: Acts of Assembly Chapter text (CHAP0379)

**HB 2557 Drug Control Act; classifies gabapentin as a Schedule V controlled substance.**

*Chief patron:* Pillion

*Summary as passed:*

**Drug Control Act; Schedule V; gabapentin.** Classifies gabapentin as a Schedule V controlled substance. Current law lists gabapentin as a drug of concern. The bill also removes the list of drugs of concern from the Code of Virginia and provides that any wholesale drug distributor licensed and regulated by the Board of Pharmacy and registered with and regulated by the U.S. Drug Enforcement Administration shall have until July 1, 2020, or within six months of final approval of compliance from the Board of Pharmacy and the U.S. Drug Enforcement Administration, whichever is earlier, to comply with storage requirements for Schedule V controlled substances containing gabapentin.

03/05/19 Governor: Acts of Assembly Chapter text (CHAP0214)

**HB 2559 Electronic transmission of certain prescriptions; exceptions.**

*Chief patron:* Pillion

*Summary as passed House:*

**Electronic transmission of certain prescriptions; exceptions.** Provides certain exceptions, effective July 1, 2020, to the requirement that any prescription for a controlled substance that contains an opioid be issued as an electronic prescription. The bill requires the licensing health regulatory board of a prescriber to grant such prescriber a waiver of the electronic prescription requirement for a period not to exceed one year due to demonstrated economic hardship, technological limitations that are not reasonably within the control of the prescriber, or other exceptional circumstances demonstrated by the prescriber. The bill provides that a dispenser is not required to verify whether one of the exceptions applies when he receives a non-electronic prescription for a controlled substance containing an opioid. The bill requires the Boards of Medicine, Nursing, Dentistry, and Optometry to promulgate regulations to implement the prescriber waivers. Finally, the bill requires the Secretary of Health and Human Resources to convene a work group to identify successes and challenges of the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid and to report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2022.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0664)

**HB 2731 Lyme disease; disclosure of information to patients.**

*Chief patron:* Edmunds

*Summary as passed House:*

**Lyme disease; disclosure of information to patients.** Requires every laboratory reporting the results of a test for Lyme disease ordered by a health care provider in an office-based setting to include, together with the results of such test provided to the health care provider, a notice stating that the results of Lyme disease tests may vary and may produce results that are inaccurate and that a patient may not be able to rely on a positive or negative result from such test. Such notice shall also include a statement that health care providers are encouraged to discuss Lyme disease test results with the patient for whom the test was ordered. The bill also provides that a laboratory that complies with the provisions of the bill shall be immune from civil liability absent gross negligence or willful misconduct.

03/18/19 Governor: Acts of Assembly Chapter text (CHAP0435)

**SB 1004 Elective procedure, test, or service; estimate of payment amount.**

*Chief patron:* Chase

*Summary as passed:*

**Advance estimate of patient payment amount for elective medical procedure, test, or service; notice of right to request.** Provides that every hospital currently required to provide an estimate of the payment amount for an elective procedure, test, or service for which a patient may be responsible shall also be required to provide each patient with written information regarding his right to request such estimate, to post written information regarding a patient's right to request such estimate conspicuously in public areas of the hospital, and to make such information available on the hospital's website.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0671)

**SB 1106 Physical therapists & physical therapist assistants; licensure, Physical Therapy Licensure Compact.**

*Chief patron:* Peake

*Summary as introduced:*

**Licensure of physical therapists and physical therapist assistants; Physical Therapy Licensure Compact.** Authorizes Virginia to become a signatory to the Physical Therapy Licensure Compact. The Compact permits eligible licensed physical therapists and physical therapist assistants to practice in Compact member states, provided they are licensed in at least one member state. In addition, the bill requires each applicant for licensure in the Commonwealth as a physical therapist or physical therapist assistant to submit fingerprints and provide personal descriptive information in order for the Board to receive a state and federal criminal history record report for each applicant. The bill has a delayed effective date of January 1, 2020, and directs the Board of Physical Therapy to adopt emergency regulations to implement the provisions of the bill.

03/08/19 Governor: Acts of Assembly Chapter text (CHAP0300)

**SB 1167 Medicaid recipients; treatment involving opioids or opioid replacements, payment.**

*Chief patron:* Chafin

*Summary as passed:*

**Medicaid recipients; treatment involving opioids or opioid replacements; payment.** Prohibits health care providers licensed by the Board of Medicine from requesting or requiring a patient who is a recipient of medical assistance services pursuant to the state plan for medical assistance to pay out-of-pocket costs associated with the provision of service involving (i) the prescription of an opioid for the management of pain or (ii) the prescription of buprenorphine-containing products, methadone, or other opioid replacements approved for the treatment of opioid addiction by the U.S. Food and Drug Administration for medication-assisted treatment of opioid addiction. The bill requires providers who do not accept payment from the Department of Medical Assistance Services (DMAS) who provide such services to patients participating in the Commonwealth's program of medical assistance services to provide written notice to such patient that (a) the Commonwealth's program of medical assistance services covers such health care services and DMAS will pay for such health care services if such health care services meet DMAS's medical necessity criteria and (b) the provider does not participate in the Commonwealth's program of medical assistance and will not accept payment from DMAS for such health care services. Such notice and the patient's acknowledgement of such notice shall be documented in the patient's medical record. This bill is identical to HB 2558.

03/18/19 Governor: Acts of Assembly Chapter text (CHAP0444)

**SB 1439 Death certificates; medical certification, electronic filing.**

*Chief patron:* McClellan

*Summary as passed:*

**Death certificates; medical certification; electronic filing.** Requires the completed medical certification portion of a death certificate to be filed electronically with the State Registrar of Vital Records through the Electronic Death Registration System and provides that, except for under certain circumstances, failure to file a medical certification of death electronically through the Electronic Death Registration System shall constitute grounds for disciplinary action by the Board of Medicine. The bill includes a delayed effective date of January 1, 2020, and a phased-in requirement for registration with the Electronic Death Registration System and electronic filing of medical certifications of death for various categories of health care providers. The bill directs the Department of Health to work with stakeholders to educate and encourage physicians, physician assistants, and nurse practitioners to timely register with and utilize the Electronic Death Registration System.

03/05/19 Governor: Acts of Assembly Chapter text (CHAP0224)

**SB 1547 Music therapists; Board of Health Professions to evaluate regulation.**

*Chief patron:* Vogel

*Summary as passed:*

**Music therapy.** Directs the Board of Health Professions to evaluate whether music therapists and the practice of music therapy should be regulated and the degree of regulation to be imposed. The bill requires the Board to report the results of its evaluation to the Chairmen of the Senate Committee on Education and Health and the House Committee on Health, Welfare and Institutions by November 1, 2019.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0680)

**SB 1557 Pharmacy, Board of; cannabidiol oil and tetrahydrocannabinol oil, regulation of pharmaceutical.**

*Chief patron:* Dunnavant

*Summary as passed:*

**Board of Pharmacy; cannabidiol oil and tetrahydrocannabinol oil; regulation of pharmaceutical processors.** Authorizes licensed physician assistants and licensed nurse practitioners to issue a written

certification for use of cannabidiol oil and THC-A oil. The bill requires the Board to promulgate regulations establishing dosage limitations, which shall require that each dispensed dose of cannabidiol oil or THC-A oil not exceed 10 milligrams of tetrahydrocannabinol. The bill requires the Secretary of Health and Human Resources and the Secretary of Agriculture and Forestry to convene a work group to review and recommend an appropriate structure for an oversight organization in Virginia and report its findings and recommendations to the Chairmen of the Senate Committees on Agriculture, Conservation and Natural Resources and Education and Health and the House Committees on Agriculture, Chesapeake and Natural Resources and Health, Welfare and Institutions by November 1, 2019.

03/21/19 Governor: Acts of Assembly Chapter text (CHAP0681)

**SB 1760 Diagnostic X-ray machines; operation of machine.**

*Chief patron:* DeSteph

*Summary as introduced:*

**Diagnostic X-ray machines; operation.** Provides that no person who has been trained and certified in the operation of a diagnostic X-ray machine by the manufacturer of such machine is required to obtain any other training, certification, or licensure or be under the supervision of a person who has obtained training, certification, or licensure to operate such a diagnostic X-ray machine, provided that (i) such diagnostic X-ray machine (a) is registered and certified by the Department of Health, (b) is being operated to conduct a body composition scan, and (c) is not operated to determine bone density or in the diagnosis or treatment of a patient and (ii) the subject of the body composition scan is notified of the risks associated with exposure to radiation emitted by the diagnostic X-ray machine.

01/31/19 Senate: Passed by indefinitely in Education and Health with letter (15-Y 0-N)

**SB 1778 Counseling minors; certain health regulatory boards to promulgate regulations.**

*Chief patron:* Newman

*Summary as introduced:*

**Health regulatory boards; conversion therapy.** Directs the Board of Counseling, the Board of Medicine, the Board of Nursing, the Board of Psychology, and the Board of Social Work to each promulgate regulations prohibiting the use of electroshock therapy, aversion therapy, or other physical treatments in the practice of conversion therapy with any person under 18 years of age.

02/06/19 Senate: Left in Education and Health

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**Board of Medicine**  
**Regulatory/Policy Actions – 2019 General Assembly**

**EMERGENCY REGULATIONS:**

Legislative source	Mandate	Promulgating agency	Board adoption date	Effective date Within 280 days of enactment
HB1952	Patient care team – PAs	Medicine	6/13/19 or 8/2/19 (signed 2/22)	11/25/19
HB2559	Waiver for electronic prescribing	Medicine	6/13/19 or 8/2/19 (signed 3/21)	12/24/19

**APA REGULATORY ACTIONS**

Legislative source	Mandate	Promulgating agency	Adoption date	Effective date
HB2457	Retiree license	Medicine	NOIRA – 6/13/19	?

**NON-REGULATORY ACTIONS**

Legislative source	Affected agency	Action needed	Due date
HB1970	Department	Review of telehealth; practice by adjacent physicians	11/1/19
HB2169	Medicine	Review/revision of application content & process to identify & expedite military spouse apps	7/1/19
SB1557	Medicine/Pharmacy/Department	Inclusion of NPs and PAs for registration to issue certifications Participation in workgroup to study oversight organization	7/1/19
SB1760 (not passed)	Department (Medicine)	Study of Xrays in spas – VDH	11/1/19
HJ682 (not passed)	Department	Study of foreign-trained physicians to provide services in rural areas	11/1/19

**Future Policy Actions:**

**HB793 (2018)** - (2) the Department of Health Professions, by November 1, 2020, to report to the General Assembly a process by which nurse practitioners who practice without a practice agreement may be included in the online Practitioner Profile maintained by the Department of Health Professions; and (3) the Boards of Medicine and Nursing to report information related to the practice of nurse practitioners without a practice agreement that includes certain data, complaints and disciplinary actions, and recommended modifications to the provisions of this bill to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health and the Chairman of the Joint Commission on Health Care by November 1, 2021.

**HB2559 (2019)** - requires the Secretary of Health and Human Resources to convene a work group to identify successes and challenges of the electronic prescription requirement and offer possible recommendations for increasing the electronic prescribing of controlled substances that contain an opioid and to report to the Chairmen of the House Committee on Health, Welfare and Institutions and the Senate Committee on Education and Health by November 1, 2022.

**VIRGINIA BOARD OF MEDICINE  
FULL BOARD MINUTES**

October 18, 2018

Department of Health Professions

Henrico, VA 23233

**CALL TO ORDER:** Dr. Tuck called the meeting to order at 8:40 a.m.

**ROLL CALL:** Ms. Opher called the roll. A quorum was established.

**MEMBERS PRESENT:** Ray Tuck, DC, Vice-President  
Lori Conklin, MD, Secretary-Treasurer  
Syed Ali, MD  
David Archer, MD  
James Arnold, DPM  
Manjit Dhillon, MD  
Alvin Edwards, PhD  
David Giammittorio, MD  
Jane Hickey, JD  
L. Blanton Marchese  
Jacob Miller, DO  
Karen Ransone, MD  
Brenda Stokes, MD  
David Taminger, MD  
Svinder Toor, MD  
Kenneth Walker, MD  
Martha Wingfield

**MEMBERS ABSENT:** Kevin O'Connor, MD, President

**STAFF PRESENT:** William L. Harp, MD, Executive Director  
Jennifer Deschenes, JD, Deputy Executive Director, Discipline  
Colanthia M. Opher, Deputy Executive Director, Administration  
Barbara Matusiak, MD, Medical Review Coordinator  
Cheryl Clay, Administrative Assistant  
Daniel Carey, MD, Secretary of Health and Human Resources  
David Brown, DC, DHP Director  
Barbara Allison-Bryan, MD, DHP Deputy Director  
Lisa Hahn, DHP Chief Operating Officer  
Erin Barrett, JD, Assistant Attorney General

**OTHERS PRESENT:** A. Rose Rutherford, VAPA  
Scott Johnson, JD, MSV  
Sara Heisler, JD, VHHA



September 7, 2018 meeting. The Committee made recommendations for edits and clarifications, but no substantive amendments. Dr. Harp also noted that no comments were received during the NOIRA period.

**MOTION:** After a brief discussion, Dr. Edwards moved to adopt, by fast-track action, the amendments to Chapter 20, Regulations Governing the Practice of Medicine, Osteopathic Medicine, Podiatry and Chiropractic recommended by the Legislative Committee from its periodic review. The motion was properly seconded and carried unanimously.

- **Adoption of Fast-Track Action**

Dr. Harp advised that, during review of the regulations for all professions, it was noted that §54.1-2904. Biennial renewal of licenses, copies, fee, lapsed licenses; reinstatement, penalties, needed to be amended to comply with the Board's new statutory authority to e-mail notices (including renewal notices). As such, the proposed amendment to the regulations of all professions say "sent" instead of "mailed."

**MOTION:** Dr. Edwards moved to adopt the amended regulations as a fast-track action. The motion was properly seconded and carried unanimously.

- **Periodic Review of Chapter 150: Regulations Governing the Practice of Behavior Analysis**

Dr. Harp explained that, at the meeting of the Advisory Board for Behavior Analysis held October 1, 2018, the regulations were periodically reviewed pursuant to Executive Order 14. The Advisory Board reviewed and considered significant amendments recommended by the Association of Professional Behavior Analysts (APBA) to defer licensure, renewal and ethical standards to the Behavior Analyst Certification Board (BACB). After much discussion, the Advisory Board recommended an amendment to require maintenance of current certification with BACB for renewal of licensure. The vote was 3-2 with the MD member and the citizen member voting nay.

Ms. Deschenes stated that this topic comes up frequently with the advisory professions, especially when they've been part of a national organization prior to licensure. However, it is rare for an outside entity to be part of our renewal process.

**MOTION:** Dr. Tuck called for a motion to adopt a Notice of Intended Regulatory Action to require licensed behavior analysts and licensed assistant behavior analysts to maintain board certification with the BACB in order to renew or reinstate a license. No motion was made: no action was taken.

- **Adoption of Fast-Track Action – Acupuncture regulations**

Dr. Harp explained that the Advisory Board on Acupuncture conducted a periodic review of the regulations on October 3, 2018, and there were two amendments recommended:

- 1) Amendment to the name of the Point Location examination to be consistent with the new name used by the national examination, and
- 2) Clarification in the section on the use of vitamins, minerals and food supplements to include herbs and herbal supplements. The term "dietary supplements" used by the FDA is inclusive

*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 22, 2019**

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## 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 2019, 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 fee for a returned check shall be \$35.

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.**

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 not 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.

**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.

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.