

Advisory on Behavior Analysis

Virginia Board of Medicine
June 3, 2024
10:00 a.m.

Advisory Board on Behavior Analysts

Board of Medicine

Monday, June 3, 2024 @ 10:00 a.m.

9960 Mayland Drive, Suite 201, Henrico, VA

Training Room 2

	Page
Call to Order – Christina Giuliano, LBA, Chair	
Emergency Egress Procedures – William Harp, MD	i
Roll Call – Joshlynn Jones	
Introduction of Members – Christiana Giuliano, LBA	
Minutes	1
Adoption of the Agenda	
Public Comment on Agenda Items (15 minutes)	
New Business	
1. Regulatory Update2 Matthew Novak	
2. Legislative Report of the 2024 General Assembly 3 Matthew Novak	
3. Orientation to the Board of Medicine and Advisory Board 4 - 35 Dr. Harp	

Announcements:

Next Scheduled Meeting: October 7, 2024 @ 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.

Training Room 2

In the event of a fire or other emergency requiring the evacuation of the building, alarms will sound.

When the alarms sound, leave the room immediately. Follow any instructions given by Security staff

Exit the room using one of the doors at the back of the room. **(Point)** Upon exiting the doors, turn **LEFT**. Follow the corridor to the emergency exit at the end of the hall.

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.

Behavior Analysts Advisory Board Minutes

There are currently no previous minutes needing approval. The final approved minutes of the advisory board can be viewed on the Virginia Regulatory Town Hall at <https://townhall.virginia.gov/L/meetings.cfm> .

Board of Medicine – Advisory Board on Behavior Analysis
Regulatory Actions
As of May 2024

In the Governor’s Office

None.

In the Secretary’s Office

VAC	Stage	Subject Matter	Date submitted	Office; time in office	Notes
18VAC85-150	Fast-track	Implementation of changes following 2022 periodic review of Chapter	10/6/2022	Secretary 347 days	Periodic review changes voted on at 2022 October Board meeting

At DPB or OAG

None.

Recently effective/awaiting publication

None.

Legislative Report
Board of Medicine – Advisory Board on Behavioral Analysts
June 3, 2024

SB 96 Parental Behavior Technician Registration and Participation Pilot Program; established.

Chief patron: Stanley

DEAD

Special education; Parental Behavior Technician Registration and Participation Pilot Program; established. Establishes the Parental Behavior Technician Registration and Participation Pilot Program (the Pilot Program), to be developed and administered by the Board of Education in collaboration with the Department of Health and the Advisory Board on Behavioral Analysis, for the purpose of assisting parents of students with autism spectrum disorder (ASD) with becoming a registered behavior technician (RBT) in order to provide assistance to their children both in the classroom as a volunteer under the supervision of a licensed behavior analyst or other qualified Applied Behavior Analysis (ABA) individual and outside the classroom in the home environment. The bill provides that the Pilot Program shall assist any eligible parent, defined as any parent of a child with ASD who is enrolled in a public school in the Commonwealth and receives special education, by (i) providing assistance, resources, and support to any eligible parent in meeting the requirements to receive an RBT credential and (ii) coordinating with the school board of the school division in which the child of an RBT-credentialed parent is enrolled to set up a volunteer position for the parent to provide assistance as an RBT in his child's special education program under the supervision of a licensed behavior analyst or other qualified ABA individual. The bill provides that funds appropriated for the at-risk add-on or for support services from basic school aid, pursuant to relevant law, may be used to fund the Pilot Program. Finally, the bill requires the Board of Education to report annually to the Governor and the Generally Assembly by October 1 of each year for the duration of the Pilot Program on the progress of the Pilot Program. The provisions of the bill expire on July 1, 2027.

01/02/24 Senate: Prefiled and ordered printed; offered 01/10/24
01/02/24 Senate: Referred to Committee on Education and Health
01/24/24 Senate: Assigned Education and Health Sub: Public Education
02/08/24 Senate: Continued to 2025 in Education and Health (15-Y 0-N)

Orientation
to the Board of Medicine &
Your Advisory Board

June 2024

Executive Branch

- Governor Glenn Youngkin
- Secretary of Health and Human Resources – John Littel
- DHP Director – Arne Owens
- Board of Medicine President – Randy Clements, DPM
- Board members cannot speak for the Board or anyone in the Executive Branch.

Department of Health Professions

- Umbrella Agency for 13 Health Regulatory Boards
- Director Owens and Deputy Director Jenkins appointed by the Governor
- Administration, Communications, Finance, Enforcement, Administrative Proceedings, Prescription Monitoring, Health Practitioners' Monitoring, Healthcare Workforce Data Center, IT
- Medicine joined the Department in 1977

Today's Board of Medicine

18 members
appointed by
the Governor

1 MD from each
Congressional
District

1 DO

1 DPM

1 DC

4 citizen
members

Today's Board

- Pure Board of Medicine
- Composite Board
- Doctors of Medicine, Osteopathy, Podiatry & Chiropractic
- Physician Assistants, Acupuncturists, Athletic Trainers, Licensed Midwives, Licensed Certified Midwives, Occupational Therapists, Occupational Therapy Assistants, Radiologic Technologists, Radiologic Technologists-Limited, Radiologist Assistants, Respiratory Therapists, Polysomnographic Technologists, Behavior Analysts, Assistant Behavior Analysts, Genetic Counselors, Licensed Surgical Assistants, Certified Surgical Technologists & Advanced Practice Registered Nurses

Today's Advisory Boards

Today's Advisory Boards

- 11 Advisory Boards
- Similar structure & function
- 5 members
 - 3 of the profession
 - 1 physician
 - 1 citizen member

Today's Advisory Boards

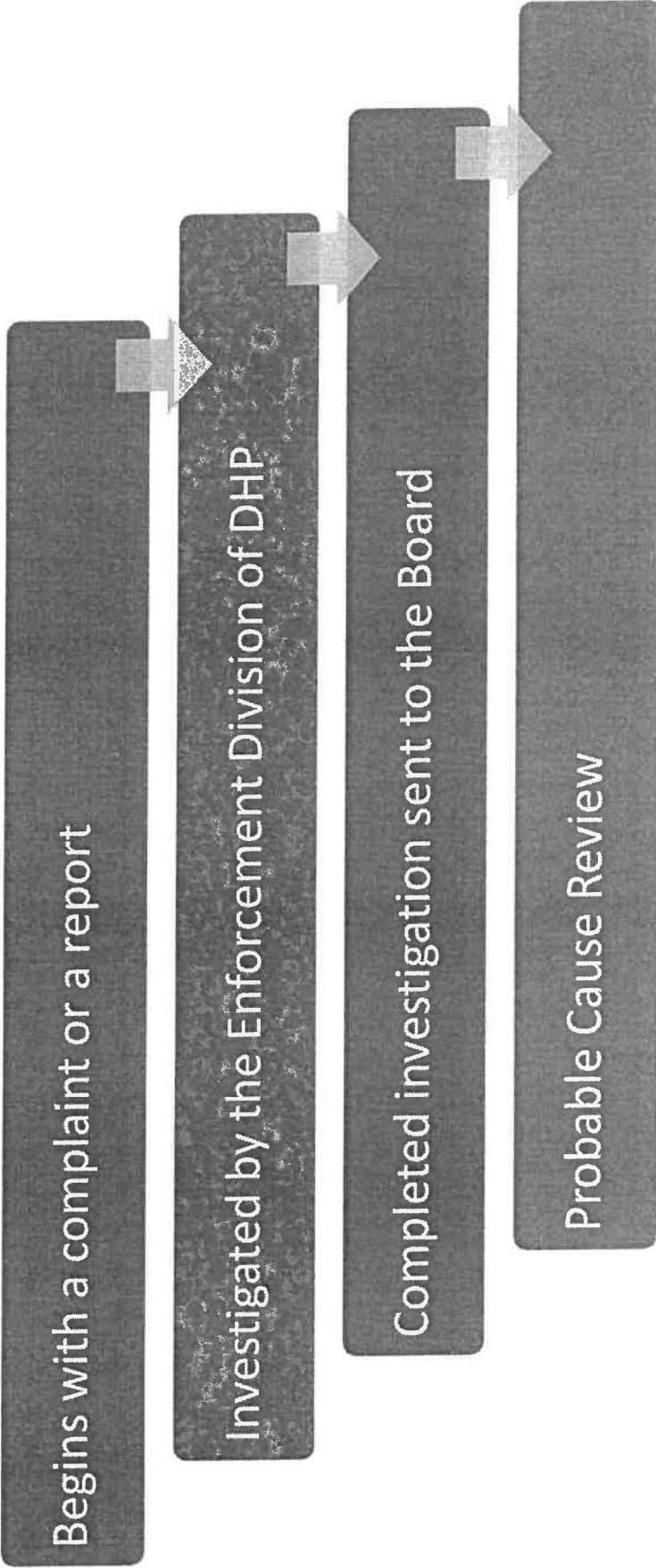
Today's Advisory Boards (cont.)

- Chair & Vice-Chair
- Meets at least once a year
- May attend 1 meeting a year
virtually for good cause
- Advise the Board of Medicine on:
 - Licensing
 - Discipline
 - Regulations

THE BOARD'S MISSION

- The protection of the public
- License only qualified applicants
- Discipline for unprofessional conduct
- Promulgate regulations to implement law

THE BOARD'S DISCIPLINARY PROCESS



PROBABLE CAUSE REVIEW



Board staff and Board members



Review to understand what happened in the case



Apply the law and the regulations to determine if a violation has occurred



Two Board members must agree on standard of care



If specialized review is required, retain an expert reviewer for the standard of care

OPTIONS FOR RESOLVING THE MATTER

- 85% are closed administratively
- Other options
 - Advisory letters
 - Confidential Consent Agreements
 - Pre-Hearing Consent Orders
 - Informal Conferences
 - Formal Hearings
 - Summary Suspensions

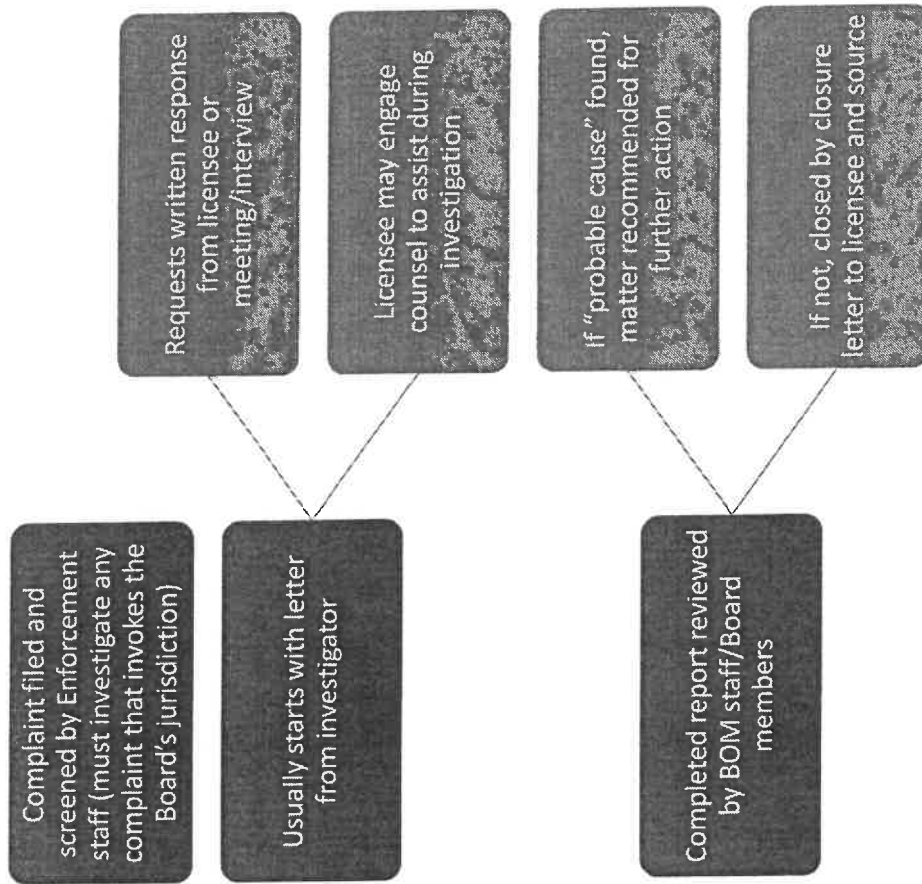
PRINCIPLES OF THE DISCIPLINARY PROCESS

- Confidentiality
- Protection of the public
- Due process
- Proportionate sanctions
- Strive to be fair to all parties

INVESTIGATIONS

- **Who Complains?**
 - The Public (e.g., patients, family members, anonymous, media)
 - Other licensees of the BOM (mandated reporters)
 - Employers
 - Healthcare institutions (e.g., hospital CEO = mandated reporter)
 - Medical malpractice insurance carriers

COMPLAINT PROCESS



ADVICE FOR RESPONDING TO COMPLAINTS

- Take the complaint seriously (even if you believe it to be frivolous)
- Fully cooperate w/the investigator (DHP/BOM is “health oversight agency” under HIPAA)
- You are responsible for ensuring a response and complete records are provided (not your office manager)
- Do NOT contact Board members to discuss your complaint
- Consult with an attorney (familiar with DHP/regulatory boards)

LAWS AND REGULATIONS TO KNOW

Fraud or Dishonesty

Substance abuse

Negligence in practice – standard of care

Mental or Physical Incapacity

Aiding and Abetting Unlicensed Practice

Ethical lapses – standards of professional conduct

LAWS AND REGULATIONS TO KNOW

Felony convictions or misdemeanors of moral turpitude

Any provision of the drug law

Failure to timely sign a death certificate

Opioid prescriptions submitted electronically

Surprise billing

Treating self and family

Patient records

LAWS AND REGULATIONS TO KNOW

Confidentiality

Communication/Termination

Subordinates and Disruptive Behavior

Sexual Boundary Violations

Reporting requirements

Continuing Medical Education

LAWS AND REGULATIONS TO KNOW



Office-Based Anesthesia



Mixing, Diluting or Reconstituting



Prescription Monitoring Program



Health Practitioners' Monitoring Program



Renew License every 2 years

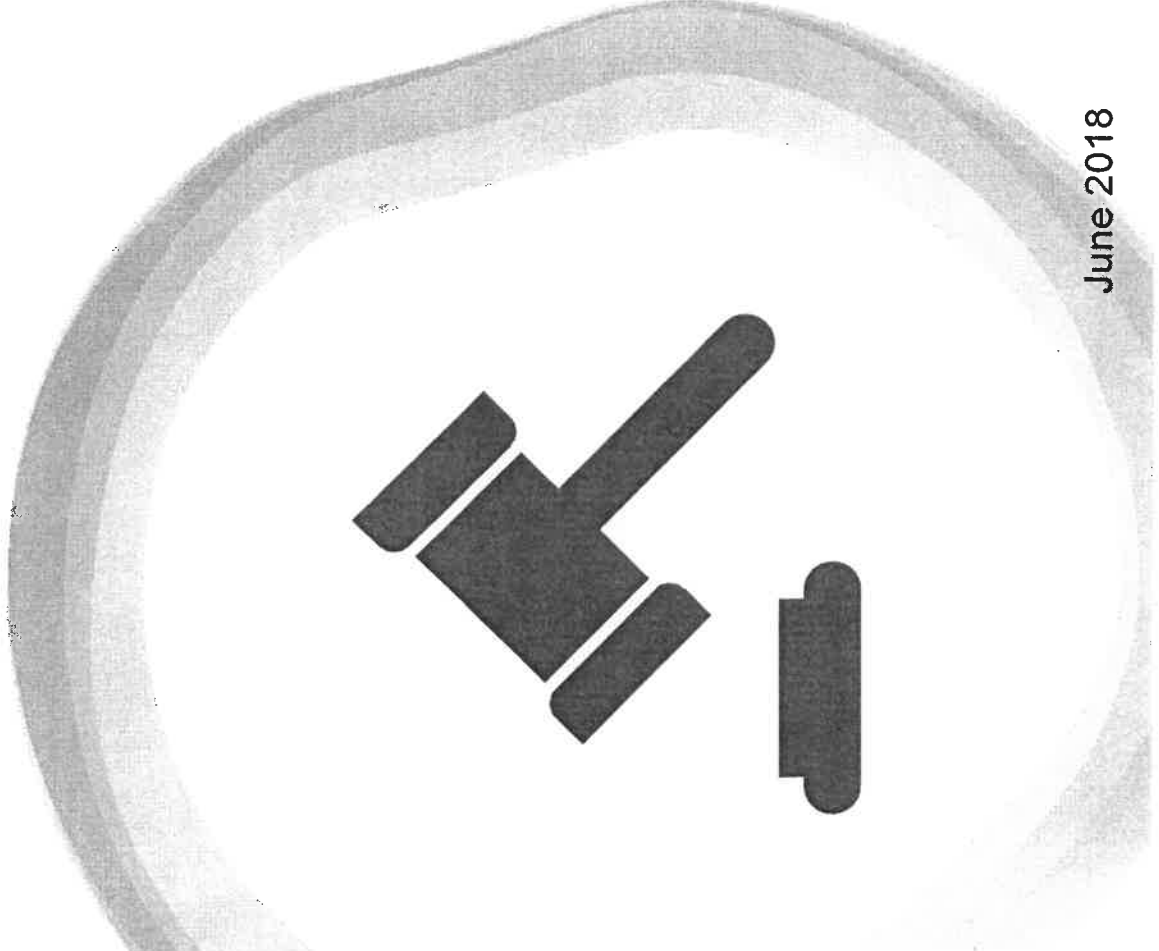
Hearing Protocol

Virginia Board of Medicine

June 14, 2018

Panel Members at Hearings

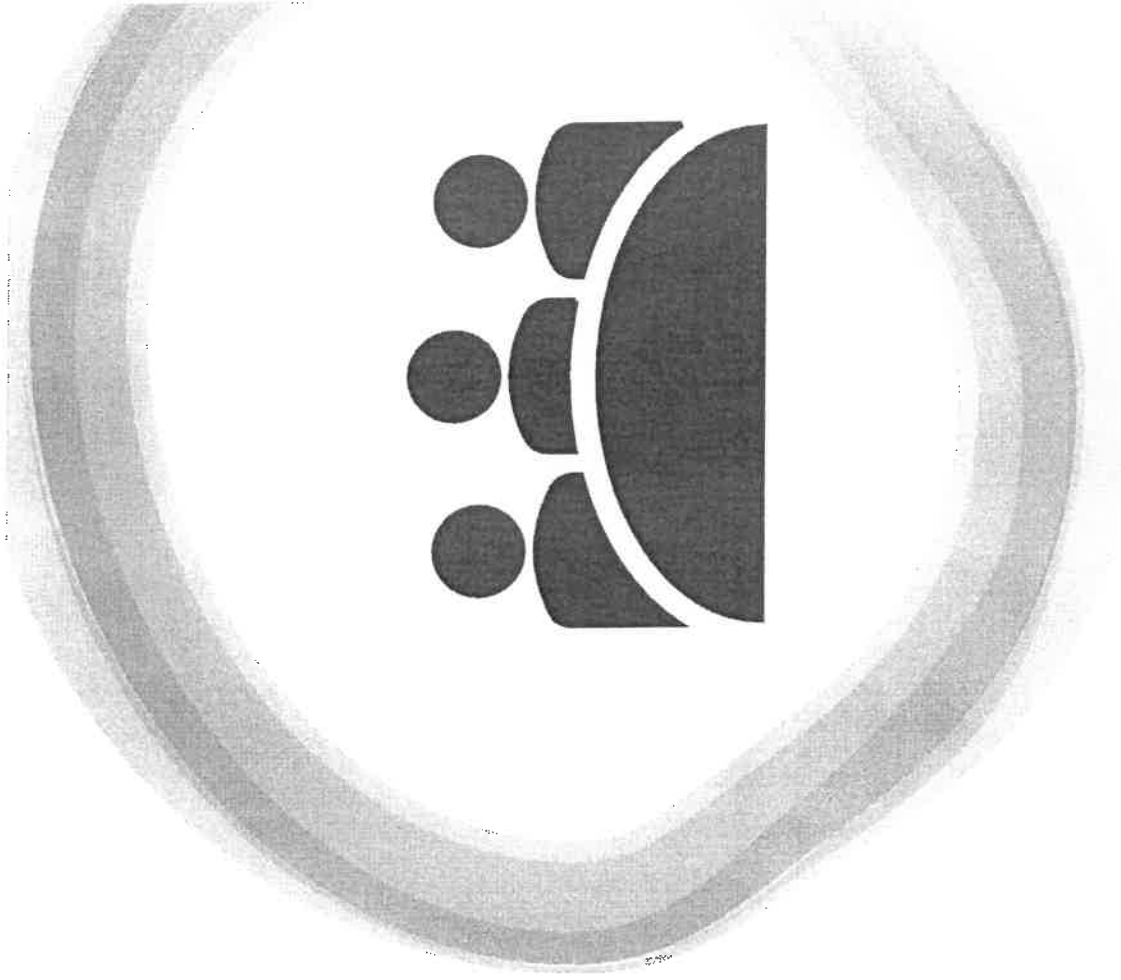
- Purpose of disciplinary proceedings is to protect the public by regulating professional conduct and provide fair and impartial consideration of the matter before the Board
- Panel members should avoid actual conflicts and the appearance of impropriety—if you receive case material and think you have a conflict, call staff! (procedure for potential conflict at hearing)
- Strive to be fair and impartial—goal is fairness to respondent and also to the public



June 2018

Open vs. Closed Sessions

- Board business takes place in open, public forums to foster public accessibility and confidence of the public in the integrity of the regulatory process
- Any meeting of three or more members of the Board at which the members discuss *anything* related to the Board should be considered an open meeting for FOIA purposes (includes group emails).
- Closed meetings: for the Board to deliberate or receive legal advice
- Disciplinary proceedings may also close to deliberate and to protect health information of a respondent



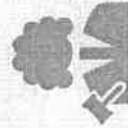
Formal Hearings – You are on the record!



A court reporter attends formal hearings



Your words are recorded



The transcript will be reviewed by the Circuit Court if the respondent appeals for evidence of violations of a respondent's constitutional rights, failure of the Board to observe required procedure, indications that the Board may not have had substantial evidence (Erin ex.)

June 2018

Hearings (IFC or formal)

- Cannot deviate earlier from noticed start time
- Choose your questions carefully (avoid answering questions from R)
- Hearings can be emotional; avoid engaging on emotional level (try not to be swayed by tears or manipulative behavior)
- Avoid texting board members (e.g., Loudoun meeting; FOIA Council)
- Do not state you have more knowledge than others-- or less-- based on specialty or non-MD status. All board members are experts in the matters before the board. This has been clearly stated by CAV.
- Do not give practice advice—do not want to bind the Board (especially if you are wrong)

Hearings (IFC or formal)

- Questions should relate to facts of the case and the allegations contained in the Statement of Particulars
- Do not sermonize, do not inject personal, religious, or political beliefs
- Do not express your personal opinion (i.e., "Well, I think your record-keeping was fine.")
- Do not argue with other panel members during hearings, or make statements disparaging other members' statements or questions
- Do not argue with witnesses, respondents, or counsel for respondents – we understand it can be hard with some!

Hearings (IFC or formal)



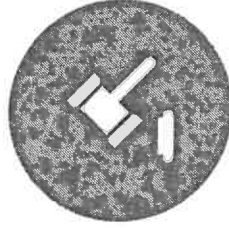
PANEL CHAIR WILL RULE ON ISSUES RELATED TO RELEVANCE OR THE ADMISSION OF EVIDENCE (WITH BOARD COUNSEL GUIDANCE)



AVOID "ATTORNEY TESTIMONY", THIS IS YOUR OPPORTUNITY TO HEAR FROM THE LICENSEE



DELIBERATION HAPPENS IN CLOSED SESSION



DO NOT ENGAGE, INFORM, INSTRUCT ONCE PROCEEDINGS ARE OVER (STAFF WILL HANDLE; E.G. FRIENDLY ATTORNEY AND PATIENT FAMILY IN AUDIENCE)

Procedural mysteries

Board counsel records and enters
evidence

Evidence must be formally admitted
even though Board members
received evidence prior to hearing

Must initial and date evidence to
provide record on appeal.

Procedural mysteries, cont.

Some cases appear old when they reach the formal hearing stage

Can be for any number of reasons (continuances prior to IFC or formal, length of investigation, etc.)

Staff and counsel will answer procedural questions in closed session – NOT open session!

What happens in closed session?



Decision on sanction



Craft order, including findings of fact
(refer to helpful notes you made
during proceeding)



Review conclusions of law alleged;
determine what stays



**What are
grounds
for an
appeal?**

- (1) Violation of a Constitutional right, power, or privilege;
- (2) Failure to comply with statutory authority;
- (3) Failure to observe required procedure where the failure did not result in harmless error; and
- (4) Substantial evidence did not support Board decision.

(Va. Code § 2.2-4027.)

June 2018

Helping to ensure that the Board's decisions do not get overturned

- Follow staff guidelines, procedures, and scripts for hearings.
- Ask legal questions in *closed session*. Do not state specific legal questions for board counsel on the record. This raises privilege issues.
- Only the chair of a panel may rule on motions made at a hearing.
- Avoid stating opinions on the record (i.e., "That does not sound like a standard of care issue to me.")
- Work with your fellow panel members, board counsel, and staff to craft well thought out orders.
- Be aware that any respondent can appeal.

June 2018

Carthage

2024 Board Meeting Dates

Advisory Board on:

Behavioral Analysts			10:00 a.m.
February 5	June 3	October 7	
Genetic Counseling			1:00 p.m.
February 5	June 3	October 7	
Occupational Therapy			10:00 a.m.
February 6	June 4	October 8	
Respiratory Care			1:00 p.m.
February 6	June 4	October 8	
Acupuncture			10:00 a.m.
February 7	June 5	October 9	
Radiological Technology			1:00 p.m.
February 7	June 5	October 9	
Athletic Training			10:00 a.m.
February 8	June 6	October 10	
Physician Assistants			1:00 p.m.
February 8	June 6	October 10	
Midwifery			10:00 a.m.
February 9	June 7	October 11	
Polysomnographic Technology			1:00 p.m.
February 9	June 7	October 11	
Surgical Assisting			
February 12	June 10	October 15	