

**APPLIED BEHAVIORIAL ANALYSIS LICENSING COMMITTEE**

**DATE:** May 18, 2015  
**TIME:** 9:00 A.M.  
**LOCATION:** Health Related Boards Conference Center  
Poplar Room, 665 Mainstream Drive  
Nashville, TN 37243

**COMMITTEE MEMBERS**

**PRESENT:** Annette Little, Ph.D  
Melissa Switzer, Ph.D.  
Michael S. Tonos  
Tammy Davis

**STAFF**

**PRESENT:** Tammy Turner, Board Administrator  
Teddy Wilkins, Unit Director  
Patria Hampton, Assistant General Counsel

Ms. Turner introduced the administrative staff and advisory attorney to the Committee.

Ms. Turner welcomed the new members to the Committee and called the meeting to order at 9:00 a.m. A roll call vote was conducted and a quorum was present.

**Election of Officers**

Mr. Tonos made a motion, seconded by Ms. Davis, to nominate Dr. Little for chair. The motion carried.

Ms. Wilkins said Francine Baca-Chavez, Deputy General Counsel, is in the audience and Ben Simpson, Legislative Liaison, and is here to give the legislative report.

**Legislative Update**

Mr. Simpson said every year the Department of Health, through Commissioner Dreyzehner, present proposals for the Governor to review to change laws for the prosperity of all Tennesseans.

Mr. Simpson said there are currently two bills which affect the Committee:

Senate Bill 98 would allow the Commissioner of Health or his designee to have electronic access to medical records in order to facilitate investigations when responding to an immediate threat to

public health. Today the Commissioner of Health or his designee already has this authority but must go to the facility to review the medical records.

Senate Bill 99 defines “abuse” and “neglect” for purposes of placing a person on the registry of persons who have abused, neglected, or misappropriated the property of vulnerable individuals specifically within the statutes that govern the Dept. of Health. It does not impact the definitions within the statutes that govern the Dept. of Intellectual and Developmental Disabilities nor the Dept. of Human Services. It also increases the time within which placement on the registry may be appealed from 30 to 60 days.

The Universal Administrative Procedures Act (UAPA) governs all rules the committee compiles and requires certain language in the rules. A Committee member, the advisory attorney and administrative staff member will attend the General Assembly to meet with the Government Operations Committee should they have any questions or concerns relating to the new rules. The rules, by law, are only effective for one year unless they are codified by the committee.

### **Scheduled Committee Meeting Dates**

Mr. Turner said the following dates have been scheduled for the meetings:

**August 24, 2015**

**November 23, 2015**

**February 22, 2016**

**May 23, 2016**

**August 22, 2016**

**November 21, 2016**

Ms. Wilkins stated there are thirty-two (32) Boards that meet four (4) times a year and meetings must be scheduled in advance in order to ensure there is a meeting room available.

### **Discuss New Rules**

Ms. Baca-Chavez said Ms. Jennifer Putnam, the former attorney for the Psychology Board, is unable to be at today’s meeting but has prepared a draft of the rules for the Committee’s consideration.

Ms. Baca-Chavez said the proposed rules must go through an internal process and then to the chief deputy, general counsel, the Commissioner and then to the Governor’s Office. We will then discuss setting up a rulemaking hearing or seek these as an emergency and bypass the formal rulemaking process.

Ms. Wilkins said the format of the rules is standard for all Boards.

### **1180-05-.01 Definitions**

Ms. Hampton reviewed the rules with the Committee stating the definitions were defined by the legislature. Ms. Wilkins said 1180-05-.01(20) should read LABA. The Committee made no amendments to this section.

### **1180-05-.02 Scope of Practice**

Mr. Tonos said he reviewed the Scope of Practice for psychology and drafted a more specific definition for the scope of practice; however, he was unfamiliar with the practice of tele-psychology. Ms. Wilkins said tele-psychology is when practitioners counsel by electronic means. There is a law that permits tele-psychology but rules have not been promulgated. Practitioners cannot practice tele-psychology in other states unless the practitioner is licensed in that state. The Committee could use the term tele-counseling. Mr. Tonos said he included positive behavior support in his draft. Ms. Hampton said the duties are spelled out in the statute but is not necessarily required in the rules unless the Committee wishes to do so. Dr. Little stated she would like for the duties to be spelled out in the rules. Ms. Wilkins suggested the rules spell out the functions a behavioral analyst is permitted to do instead of just what they cannot do. Ms. Hampton said the scope of practice is under T.C.A. §63-11-305 and T.C.A. §63-11-306. Licensees cannot exceed the parameter of that but can add more clarity in the rules. Dr. Little suggested the Committee members review the draft Mr. Tonos prepared and submit suggested amendments for review at the next meeting.

The Committee reviewed the Necessity of Licensure. Ms. Wilkins stated school psychologists are licensed by the Board of Education and not the Board of Psychology.

### **1180-05-.03 Necessity of Licensure**

The Committee made no amendments to this section.

### **1180-05-.04 Qualifications for Licensure**

Mr. Tonos said (1) needs to include that if you're approved as a behavioral analyst by the Department of Intellectual Developmental and Disabilities you can apply for licensure as the Committee needs to be in line with the law to reduce potential conflict. Dr. Little said she agrees with Mr. Tonos and it should be included in this section even if it is located somewhere else in the rules. The Committee amended section (1)(a) to read: "The applicant is a board certified behavior analyst (BCBA) or a board certified behavior analyst-doctoral (BCBA-D) who is credentialed through the nationally accredited behavior analyst certification entity."

Dr. Switzer asked how the proof of ongoing supervision by a licensed behavior analyst will be provided. Ms. Wilkins stated the applicant must contact the certifying entity requesting that documentation be sent to the Board. A transcript from the applicant is not acceptable. Ms. Hampton said the certifying entity would have to submit the supervisory affidavit upon application and when changing supervisors and jobs. Ms. Wilkins said there is a form that the licensee and supervisor must sign upon licensure renewal. If they cannot provide this information upon license renewal there would be disciplinary action against the licensee.

Ms. Wilkins asked if in order any licensee to maintain their license in Tennessee they will also have to maintain the national certification. Mr. Tonos said yes, they must maintain the certification, renew their certification every two (2) years and obtain continuing education.

### **1180-05-.05 Procedures for Licensure**

Dr. Switzer said it would be very difficult to obtain a notarized letter from the certifying entity as requested in (1)(d). Ms. Wilkins said staff will amend this section. The Committee amended section (1)(e) to require the letters of recommendation be from a licensed behavioral analyst or a professional in a related field. The Committee deleted section (1)(f)(3) in its entirety and to add a new 3. to read “Revocation or restriction of licensure or certification.” The Committee deleted section (1)(f)(5) in its entirety.

The Committee amended section (2)(d) to change the language “that a notarized letter” to “proof of certification.” The Committee amended section (2)(f) to require the letters of recommendation be from a licensed behavioral analyst or a professional in a related field.

### **1180-05-.06 Fees**

Ms. Hampton said Ms. Tittle recommended these fees to keep the Committee out of the red and solvent. Ms. Wilkins said Beth Urbanczyk, past Association President, stated there are approximately four hundred (400) behavioral analysts in the state. Ms. Tittle researched these figures and determined the fees would keep the Committee operational. Since the renewals are good for two years the initial fees would need to keep the committee solvent for the first two (2) years. The Committee amended section (2)(d) to change the late renewal fee from \$75 to \$100. The Committee amended section (2)(e) to change the reinstatement fee from \$75 to \$100. Ms. Hampton suggested discussing the fees with Ms. Tittle to see if she has any concerns with lowering the fees. Dr. Little said she would like to look at the fees the BACB requires and look at the BACB-D certification numbers to get an actual number. Ms. Wilkins said there are costs associated with salaries for administrative staff, committee advisory attorney, cash office, communication, licensure data base, Committee members to attend meetings and numerous other fees. Ms. Hampton said Ms. Tittle will attend Committee meetings to inform the Committee of their financial status and the costs relating to maintaining the committee.

### **1180-05-.07 Application Review, Approval, Denial and Interviews**

The Committee amended section (1) to change the language from “Board’s” to “Committee’s” and add “or downloaded from the Committee’s website.” Ms. Turner said the rule allows her to review and approve application files upon completion or have the Committee review all applications, which can delay the application process up to three (3) months. Ms. Wilkins said there are no transcripts to review, no supervision logs to review and no specific courses requirements; therefore, when the applicant is approved for licensure they receive a temporary authorization to go to work letter but are not sent an actual license until ratified by the Committee. Mr. Tonos said he would like the DIDD approved applications to be reviewed and approved by the Committee.

### **1180-05-.08 Renewal of License**

The Committee amended section (1)(b) to delete <https://apps.tn.gov/hlrs/begin.jsp>. The Committee amended section (1)(c) to add: “3. Provide copy of current national certification.” The Committee amended section (2)(a)(1) to add “not to exceed two renewal cycles”. The Committee deleted section (2)(a)(3) in its entirety.

### **1180-05-.09 Client Records**

The Committee amended section (1)(a) to read: “To recognize that client records are an integral part of the practice of licensed Applied Behavior Analyst as defined in T.C.A. §63-11-310 and the respective certifying entity’s Professional Code.” The Committee questioned (2)(d)(1.) which reads “Records for incompetent clients shall be retained indefinitely.” Ms. Hampton said she would review the statute to see if the section is required.

### **1180-05-.10 Retirement and Reactivation of License**

The Committee moved this entire section to be placed under 1180-05-.08 Renewal of License. The Committee amended section (3) to read: “A person whose license has been retired and who has not practiced for up to two (2) years, or a person whose Tennessee license has been retired and who has been licensed in good standing and in continuous practice in another state, may re-enter active status provided they currently hold the National Board certification and there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Board administrative office a reinstatement application for licensure reactivation, and the license renewal fee.”

The Committee amended section (4) to read: “A person whose license has been retired and who has not practiced for two years up to five (5) years may re-enter active status provided they currently hold the National Board certification and there are no criminal or practice act violations which would prohibit initial licensure, by submitted to the Committee’s administrative office a reinstatement application for licensure reactivation, and the license renewal fee.

The Committee amended section (5) to read: “A person whose license has been retired and who has not practiced in a clinical or education setting for over five (5) years may re-enter active status provided there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Committee’s administrative office a reinstatement application for licensure reactivation, the license renewal fee, and by obtaining six (6) months of supervision.”

### **1180-05-.11 Continuing Education**

The Committee made no amendments to this section.

### **1180-05-.12 Professional Ethics**

The Committee amended section (1) to read: “The Committee adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Committee Position Statements, as its ethical standards of the B.A.C.B.”

The Committee amended section (3) to read: “A copy of B.A.C.B. Ethical Standards may be obtained from the B.A.C.B. at 8051 Shaffer Parkway, Littleton, CO 80127 or by phone at (720) 438-4321, or on the Internet at [www.bacb.com](http://www.bacb.com).”

Ms. Wilkins stated she researched other states and found eighteen (18) jurisdictions that license or certify Applied Behavior Analyst.

### **1180-05-.13 Disciplinary Grounds, Actions, Civil Penalties**

The Committee amended section (1)(i) to read: “Conviction of any criminal law violation of any country, state or municipality, except minor traffic violations.”

The Committee amended section (6)(b)(1.) to delete the language “Assistant.”

### **1180-05-.14 Display and Replacement of License**

The Committee made no amendments to this section.

### **1180-05-.15 Change of Address and/or Name**

The Committee made no amendments to this section.

### **1180-05-.16 Mandatory Release of Client Records**

The Committee requested that this section be moved to follow Section 1180-0-5.09 Client Records.

### **1180-0-5-.17 Committee Meetings, Officers, Consultants, Records and Declaratory Orders and Screening Panels**

The Committee deleted section (1)(b) in its entirety.

The Committee amended section (7) by deleting the language “to be the agency member.”

### **1180-05-.18 Advertising and Other Public Statements**

The Committee made no amendments to this section.

### **1180-05-.19 Consumer Right-To-Know Requirements**

The Committee made no amendments to this section.

### **Other Committee Business**

Ms. Wilkins said Ohio does not license Applied Behavior Analysts but has a certification fee of \$125. Kansas has a \$100 application review fee, a \$300 licensure fee for the first two years for Applied Behavior Analysts and a \$300 license renewal fee every two (2) years. Applied Behavior Analyst Assistants have a \$100 application review fee, \$200 licensure fee for the first two years and a \$300 license renewal fee every two years. Missouri has a \$150 application fee, \$150 renewal fee and \$50 delinquency fee for Applied Behavior Analysts and Applied Behavior Analysts Assistants. Oklahoma has a \$100 application fee and \$100 renewal fee for Applied Behavior Analysts, and a \$50 application fee and \$50 renewal fee for Applied Behavior Analysts Assistants.

Ms. Hampton stated she would make changes to the rules for presentation to the Psychology at their June 12-13, 2015 meeting to obtain their feedback and a revised copy will be available for the August 24, 2015 meeting. Ms. Hampton said once the rules are approved they will request these in the form of emergency rules, which will be in effect for one hundred (100) days.

### **Adjournment**

With no other business to conduct, Mr. Tonos made a motion, seconded by Dr. Switzer, to adjourn at 4:16 p.m. The motion carried.