



HEALTH LICENSING OFFICE

Kate Brown, Governor

Oregon
Health
Authority

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<http://www.oregon.gov/OHLA/Pages/index.aspx>

WHO: Health Licensing Office
Behavior Analysis Regulatory Board

WHEN: 1:30 p.m. June 18, 2015

WHERE: Health Licensing Office
Rhoades Conference Room
700 Summer St. NE, Suite 320
Salem, Oregon

What is the purpose of the meeting?

The purpose of the meeting is to conduct board business. A working lunch may be served for board members and designated staff in attendance. A copy of the agenda is printed with this notice. Go to <http://www.oregon.gov/OHLA/BARB/Pages/meetings.aspx> for current meeting information.

May the public attend the meeting?

Members of the public and interested parties are invited to attend all board/council meetings. All audience members are asked to sign in on the attendance roster before the meeting. Public and interested parties' feedback will be heard during that part of the meeting.

May the public attend a teleconference meeting?

Members of the public and interested parties may attend a teleconference board meeting **in person** at the Health Licensing Office at 700 Summer St. NE, Suite 320, Salem, OR. All audience members are asked to sign in on the attendance roster before the meeting. Public and interested parties' feedback will be heard during that part of the meeting.

What if the board/council enters into executive session?

Prior to entering into executive session the board/council chairperson will announce the nature of and the authority for holding executive session, at which time all audience members are asked to leave the room with the exception of news media and designated staff. Executive session would be held according to ORS 192.660.

No final actions or final decisions will be made in executive session. The board/council will return to open session before taking any final action or making any final decisions.

Who do I contact if I have questions or need special accommodations?

The meeting location is accessible to persons with disabilities. A request for accommodations for persons with disabilities should be made at least 48 hours before the meeting. For questions or requests contact a board specialist at (503) 373-2049.

Items for Board Action

Approval of the Agenda



Health Licensing Office
Behavior Analysis Regulatory Board



1:30 p.m., June 18, 2015
700 Summer St. NE, Suite 320
Salem, Oregon

***Meeting will be a teleconference**

Call to order

1. Items for board action

- ◆ Approval of agenda
- ◆ Approval of the minutes for April 16, 2015, and May 29, 2015
- ◆ Review of applications

2. Reports

- ◆ Director's report
Legislative update

3. Policy

- ◆ Rules advisory committee stakeholders discussion

4. Public/interested parties' feedback

5. Other board business

Agenda is subject to change.

For the most up to date information visit www.oregon.gov/OHLA

Approval of Minutes



Health Licensing Office
Behavior Analysis Regulatory Board

◆ ◆ ◆
April 16, 2015

700 Summer St. NE, Suite 320
Salem, Oregon

MINUTES

**MEMBERS PRESENT VIA
TELECONFERENCE**

Wendy Machalicek
Alice Austin
Michele Raddish
Harmony Miller

STAFF PRESENT

Holly Mercer, Director
Sylvie Donaldson, Fiscal Services and Licensing Manager
Joanna Tucker Davis, Assistant Attorney General, Oregon
Department of Justice
Anne Thompson, Policy Analyst
Maria Gutierrez, Board Specialist
Jennifer Lewis-Goff, Legislative Coordinator

MEMBERS ABSENT

Jenny Fischer, Chair
Kurt Freeman, Vice Chair
Amy Donaldson

Call to order

Health Licensing Director Holly Mercer called the Behavior Analysis Regulatory Board to order at 1:42 p.m. on April 16, 2015. Roll was taken.

Items for board action

◆ **Approval of agenda**

Harmony Miller made a motion, with a second by Michelle Raddish, to approve the agenda. The motion passed unanimously.

◆ **Approval of minutes**

Harmony Miller made a motion, with a second by Wendy Machalicek, to approve the minutes for March 31, 2015. The motion passed unanimously.

◆ **Applications**

The Health Licensing Office (HLO) received applications from:

- Toeknee Morales – Behavior Analysis Interventionist

The Board requested more information on this application.

- Jessica Chan – Behavior Analyst
- Chris Messina – Behavior Analyst

By consent agenda, Harmony Miller made a motion, with a second by Alice Austin, to approve the behavior analyst applications. Motion passed.

Reports

◆ Director's report

Director Holly Mercer told the Board that the Oregon Health Authority (OHA) is moving the Health Licensing Office (HLO) to the Division of Public Health by July 1, 2015.

Mercer told the Board that an amendment to Senate Bill 696 will be available soon. She said a work session was scheduled for Monday. Mercer gave a high-level overview of the concepts discussed in the proposed amendments, including that it would be a title act and that Board members would become Senate-confirmed positions.

Policy

Mercer outlined how a rules advisory committee (RAC) works, and said at the next meeting the Board would choose the types of stakeholders who would attend and the number of participants. She said the RAC was not a decision-making body; it is a way to gather ideas from people who are in the profession and those affected by it. She showed a time line prepared by staff that included potential dates for a RAC.

Austin said she has grave concerns about a RAC. She said that there are a few interested parties who are not behavior analysts who would guide the rules, that there are efforts in the legislative world to try to exclude behavior analysts. Austin said that while it was important to include some people who were not behavior analysts, the majority of the people on it should be people who practice behavior analysis.

Mercer said OHA policy is to have RACs gather a diversity of opinions and ideas in the rulemaking process. Mercer suggested that the Board members think about the groups they want to have included in the discussion and they can discuss it at the next meeting.

Raddish said that the Board hasn't heard much from consumers and that it would be helpful to have that voice at the RAC.

Public/interested parties' feedback

None.

Other board business

None.

The Board meeting was adjourned at 2:30 p.m.

Minutes prepared by Anne Thompson, Policy Analyst



Health Licensing Office
Behavior Analysis Regulatory Board

◆◆◆
May 29, 2015

700 Summer St. NE, Suite 320
Salem, Oregon

MINUTES

**MEMBERS PRESENT VIA
TELECONFERENCE**

Jenny Fischer, Chair
Kurt Freeman, Vice Chair (Joined at 2:20
p.m.)
Amy Donaldson
Wendy Machalicek
Alice Austin
Michele Raddish

STAFF PRESENT

Holly Mercer, Director
Sylvie Donaldson, Fiscal Services and Licensing Manager
Joanna Tucker Davis, Assistant Attorney General, Oregon
Department of Justice
Anne Thompson, Policy Analyst
Sarah Kelber, Communications Coordinator
Maria Gutierrez, Board Specialist

MEMBERS ABSENT

Harmony Miller

Call to order

Jenny Fischer called the Behavior Analysis Regulatory Board to order at 1:30 p.m. on May 29, 2015. Roll was taken.

Items for board action

◆ **Approval of agenda**

Michele Raddish made a motion, with a second by Alice Austin, to approve the agenda. The motion passed unanimously.

◆ **Approval of minutes**

Amy Donaldson and Jenny Fischer recused from the vote, as they did not attend the meeting. Without a quorum for the vote, approving the minutes for April 16, 2015, was postponed.

◆ **Applications**

The Health Licensing Office (HLO) received applications from:

- Elizabeth Johnson – Behavior Analysis Interventionist
- Toeknee Morales – Behavior Analysis Interventionist
- Samantha Masson – Behavior Analysis Interventionist

Alice Austin made a motion, with a second by Michele Raddish, to approve the behavior analyst interventionist applications. Motion passed.

The HLO received applications from:

- Jessica Beall – Behavior Analyst
- Molly Courtemanche – Behavior Analyst
- Katelyn Goboney – Behavior Analyst
- Amanda Melby – Behavior Analyst
- Desiree Saucedo – Behavior Analyst

By consent agenda, Alice Austin made a motion, with a second by Wendy Machalicek, to approve the behavior analyst applications. Motion passed.

The HLO received an application from:

- Robbin Sobotka-Soles – Assistant Behavior Analyst

By consent agenda, Alice Austin made a motion, with a second by Michele Raddish, to approve the assistant behavior analyst application. Motion passed.

Reports

◆ Director's report

Director Holly Mercer updated the Board on the transition to the Oregon Health Authority (OHA), the restructuring within OHA and HLO's move to the Public Health Division.

Mercer outlined the progress of Senate Bill 696, which would increase the number of Board members and change the types of groups represented on the Board. She said it still has to go to the Joint Committee on Ways and Means and then through the legislative process.

◆ Licensing and fiscal statistical reports

Sylvie Donaldson, Fiscal Services and Licensing Manager, gave the Board its licensing and fiscal report, showing the total number of licenses and registrations – 52 – and the Board's fiscal balance, which is about \$8,000 in the red. Mercer said that the cost allocation for the Board hasn't come from OHA yet, and that will have an impact on the Board's balance as well.

Policy

Mercer explained that while the Board opened rulemaking and was discussing a rules advisory committee (RAC), waiting to see what happened with the legislature was appropriate. She said that if SB 696 is signed, the Board will have a short time line to get new rules in place and the doors open on Nov. 1, 2015, the operative date on the bill. To meet this deadline, Mercer advised the Board to do rulemaking in two phases, taking on the issues that need to be settled to get the doors open, and then addressing the more "debatable" points in 2016.

The first set of issues would be around the "grandfather" group and insurance reimbursement. Things to address include:

- Development of the declaration that an individual was actively practicing applied behavior analysis as of Aug. 14, 2013;
- The registration of behavior analysis interventionists;

- Renewals and continuing education.

The phase of rulemaking, Mercer explained, would be around:

- Criteria for the grandfather group; these need to be in place by July 2018; and
- Professional methods and procedures.

Mercer said as there will be two rulemaking processes, there will be two RACs as well, and asked the Board to bring suggestions on the kinds of stakeholders who should be represented at the RAC to the meeting scheduled for July 16, 2015. The RAC for this set of rules is tentatively scheduled for the beginning of August.

(Kurt Freeman joined meeting at 2:20 p.m.)

Mercer also said that as proposed rules would be discussed, she urged the Board to meet in person in August.

Mercer, S. Donaldson and Joanna Tucker Davis, Assistant Attorney General, Oregon Department of Justice, addressed questions the Board members had about how SB 696 addressed reciprocity, how the title act would work and how complaints about the grandfathered group would be handled.

Freeman had questions about the Senate confirmation process that SB 696 requires for the Board. Mercer explained several health-care boards have this process.

Public/interested parties' feedback

None.

Other board business

None.

The Board meeting was adjourned at 2:47 p.m.

Minutes prepared by Anne Thompson, Policy Analyst

Application Review

Issue

The Behavior Analysis Regulatory Board must approve or deny licenses and registrations.

Recommendation

The Board moves to approve the applications from:

- Shelby Bruner – Behavior Analysis Interventionist
- Christ Cattel – Behavior Analysis Interventionist
- Laureen Cruz – Behavior Analysis Interventionist
- Natasha Harrison – Behavior Analysis Interventionist
- Taylor Keenen – Behavior Analysis Interventionist

By consent agenda, the Board moves to approve the applications from:

- Rachel Koontz – Behavior Analyst
- Dominique Randall – Behavior Analyst

**Items Redacted
Available via Public
Records Request**

Director's report

B-Engrossed
Senate Bill 696

Ordered by the Senate June 8
Including Senate Amendments dated April 27 and June 8

Sponsored by Senator BATES

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Increases membership of Behavior Analysis Regulatory Board. Directs board to adopt rules to license behavior analysts and assistant behavior analysts. Directs Health Licensing Office to establish rules for registration of behavior analysis interventionists. Directs office to provide administrative and regulatory oversight of board. Requires health benefit plan to provide coverage of treatment for autism spectrum disorder under specified circumstances. Permits certain individuals who actively practice applied behavior analysis to claim reimbursement for services until July 1, 2018, if individuals submit declaration to office by *[December 31, 2015]* **April 30, 2016**. Permits health benefit plan to establish credentialing requirements for provision of applied behavior analysis by certain providers.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to autism spectrum disorders; creating new provisions; amending ORS 676.160, 676.583,
3 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24, chapter 771,
4 Oregon Laws 2013; and declaring an emergency.

5 **Be It Enacted by the People of the State of Oregon:**

6 **SECTION 1. As used in this section and sections 3 to 5 of this 2015 Act and ORS 676.800:**

7 (1)(a) **"Applied behavior analysis" means the design, implementation and evaluation of**
8 **environmental modifications, using behavioral stimuli and consequences, to produce signif-**
9 **icant improvement in human social behavior, including the use of direct observation, meas-**
10 **urement and functional analysis of the relationship between environment and behavior.**

11 (b) **"Applied behavior analysis" does not mean psychological testing, neuropsychology,**
12 **psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy or long-term**
13 **counseling as treatment modalities.**

14 (2) **"Licensed health care professional" means an individual whose scope of practice in-**
15 **cludes applied behavior analysis and who is licensed by:**

16 (a) **The Occupational Therapy Licensing Board;**

17 (b) **The Oregon Board of Licensed Professional Counselors and Therapists;**

18 (c) **The Oregon Medical Board;**

19 (d) **The Oregon State Board of Nursing;**

20 (e) **The Physical Therapist Licensing Board;**

21 (f) **The State Board of Examiners for Speech-Language Pathology and Audiology;**

22 (g) **The State Board of Licensed Social Workers; or**

23 (h) **The State Board of Psychologist Examiners.**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **SECTION 2.** ORS 676.800, as amended by section 19, chapter 771, Oregon Laws 2013, is
2 amended to read:

3 676.800. (1) There is created, within the Health Licensing Office, the Behavior Analysis Regu-
4 latory Board consisting of [*seven*] **nine** members appointed by the Governor, including:

5 (a) [*Three*] **Four** members who are licensed by the board **under section 3 of this 2015 Act**;

6 (b) One member who is a licensed psychiatrist [*or developmental pediatrician*], with experience
7 or training in treating autism spectrum disorder;

8 (c) One member who is a licensed psychologist [*registered with the board*], **with experience or**
9 **training in treating autism spectrum disorder**;

10 [*(d) One member who is a licensed speech-language pathologist registered with the board; and*]

11 **(d) One member who is a licensed developmental pediatrician, with experience or training**
12 **in treating autism spectrum disorder**;

13 (e) One member of the general public who does not have a financial interest in the provision
14 of applied behavior analysis and does not have a ward or family member who has been diagnosed
15 with autism spectrum disorder[.]; **and**

16 **(f) One member who is a parent, guardian or family member of an individual who has**
17 **been diagnosed with autism spectrum disorder and has received some form of applied be-**
18 **havior analysis therapy.**

19 (2) Not more than one member of the [*Behavior Analysis Regulatory*] board may be an employee
20 of an insurer.

21 **(3) The appointments of the members of the board are subject to confirmation by the**
22 **Senate in the manner prescribed in ORS 171.562 and 171.565.**

23 [(3)] **(4)** The term of office of each member is four years, but a member serves at the pleasure
24 of the Governor. Before the expiration of the term of a member, the Governor shall appoint a suc-
25 cessor whose term begins on November 1 next following. A member is eligible for reappointment.
26 If there is a vacancy for any cause, the Governor shall make an appointment to become immediately
27 effective for the unexpired term.

28 [(4)] **(5)** A member of the [*Behavior Analysis Regulatory*] board is entitled to compensation and
29 expenses as provided in ORS 292.495.

30 [(5)] **(6)** The [*Behavior Analysis Regulatory*] board shall select one of its members as chairperson
31 and another as vice chairperson, for such terms and with duties and powers necessary for the per-
32 formance of the functions of such offices as the board determines.

33 [(6)] **(7)** A majority of the members of the [*Behavior Analysis Regulatory*] board constitutes a
34 quorum for the transaction of business.

35 [(7)] **(8)** The [*Behavior Analysis Regulatory*] board shall meet at least once every [*three months*
36 *at a place, day and hour*] **year as** determined by the [*board*] **office**. The board may also meet at
37 other times and places specified by the call of the chairperson or of a majority of the members of
38 the board.

39 [(8) *In accordance with ORS chapter 183, the Behavior Analysis Regulatory Board shall establish*
40 *by rule criteria for the:*]

41 [(a) *Licensing of:*]

42 [(A) *Behavior analysts; and*]

43 [(B) *Assistant behavior analysts; and*]

44 [(b) *Registration of:*]

45 [(A) *Licensed health care professionals; and*]

1 *[(B) Behavior analysis interventionists.]*

2 *[(9) The criteria for the licensing of a behavior analyst must include, but are not limited to, the*
3 *requirement that the applicant:]*

4 *[(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified*
5 *Behavior Analyst; and]*

6 *[(b) Have successfully completed a criminal records check.]*

7 *[(10) The criteria for the licensing of an assistant behavior analyst must include, but are not limited*
8 *to, the requirement that the applicant:]*

9 *[(a) Be certified by the Behavior Analyst Certification Board, Incorporated, as a Board Certified*
10 *Assistant Behavior Analyst;]*

11 *[(b) Be supervised by a behavior analyst who is licensed by the Behavior Analysis Regulatory*
12 *Board; and]*

13 *[(c) Have successfully completed a criminal records check.]*

14 *[(11) The criteria for the registration of a behavior analysis interventionist must include, but are*
15 *not limited to, the requirement that the applicant:]*

16 *[(a) Have completed coursework and training prescribed by the Behavior Analysis Regulatory*
17 *Board by rule;]*

18 *[(b) Receive ongoing oversight by a licensed behavior analyst or a licensed assistant behavior an-*
19 *alyst, or by another licensed health care professional approved by the board; and]*

20 *[(c) Have successfully completed a criminal records check.]*

21 *[(12) In accordance with applicable provisions of ORS chapter 183, the Behavior Analysis Regu-*
22 *latory Board shall adopt rules:]*

23 *[(a) Establishing standards and procedures for the licensing of behavior analysts and assistant*
24 *behavior analysts and for the registration of licensed health care professionals and behavior analysis*
25 *interventionists in accordance with this section;]*

26 *[(b) Establishing guidelines for the professional methods and procedures to be used by individuals*
27 *licensed and registered under this section;]*

28 *[(c) Governing the examination of applicants for licenses and registrations under this section and*
29 *the renewal, suspension and revocation of the licenses and registrations; and]*

30 *[(d) Establishing fees sufficient to cover the costs of administering the licensing and registration*
31 *procedures under this section.]*

32 *[(13) The Behavior Analysis Regulatory Board shall issue a license to an applicant who:]*

33 *[(a) Files an application in the form prescribed by the board;]*

34 *[(b) Pays fees established by the board; and]*

35 *[(c) Demonstrates to the satisfaction of the board that the applicant meets the criteria adopted under*
36 *this section.]*

37 *[(14) The Behavior Analysis Regulatory Board shall establish the procedures for the registration*
38 *of licensed health care professionals and behavior analysis interventionists.]*

39 *[(15) All moneys received by the Behavior Analysis Regulatory Board under subsection (13) of this*
40 *section shall be paid into the General Fund of the State Treasury and credited to the Health Licensing*
41 *Office Account.]*

42 **SECTION 3. (1) The Behavior Analysis Regulatory Board shall establish by rule criteria**
43 **and procedures for the licensing of:**

44 **(a) Behavior analysts; and**

45 **(b) Assistant behavior analysts.**

1 **(2) The criteria for the licensing of a behavior analyst:**

2 **(a) Must include the requirement that the applicant have successfully completed a state**
3 **and nationwide criminal records check that requires fingerprinting; and**

4 **(b) May include, but are not limited to, the requirement that the applicant:**

5 **(A) Be certified by the Behavior Analyst Certification Board, Incorporated, or its suc-**
6 **cessor agency, or another agency approved by the Behavior Analysis Regulatory Board, as**
7 **a board certified behavior analyst or equivalent; or**

8 **(B) Meet other requirements of the board that include the submission of a declaration**
9 **to the Health Licensing Office that satisfies the requirements of section 4, chapter 771,**
10 **Oregon Laws 2013.**

11 **(3) The criteria for the licensing of an assistant behavior analyst:**

12 **(a) Must include the requirement that the applicant have successfully completed a state**
13 **and nationwide criminal records check that requires fingerprinting; and**

14 **(b) May include, but are not limited to, the requirement that the applicant:**

15 **(A) Be certified by the Behavior Analyst Certification Board, Incorporated, or its suc-**
16 **cessor agency, or another agency approved by the Behavior Analysis Regulatory Board, as**
17 **a board certified assistant behavior analyst or equivalent; and**

18 **(B) Be supervised by a behavior analyst who is licensed by the board.**

19 **(4) The Behavior Analysis Regulatory Board shall adopt rules to establish guidelines for**
20 **the professional methods and procedures to be used by individuals licensed under this sec-**
21 **tion.**

22 **SECTION 4. The Health Licensing Office shall establish by rule criteria for the registra-**
23 **tion of behavior analysis interventionists. The criteria must include, but are not limited to,**
24 **the requirement that the applicant:**

25 **(1) Have a high school diploma or a General Educational Development (GED) certificate;**

26 **(2) Be at least 18 years of age;**

27 **(3) Have successfully completed a state and nationwide criminal records check that re-**
28 **quires fingerprinting;**

29 **(4) Have completed at least 40 hours of professional training in applied behavior analysis**
30 **approved by the office by rule; and**

31 **(5) Receive ongoing training and supervision by a licensed behavior analyst, by a licensed**
32 **assistant behavior analyst or by another licensed health care professional.**

33 **SECTION 5. (1) An individual licensed under section 3 of this 2015 Act or registered under**
34 **section 4 of this 2015 Act may practice applied behavior analysis.**

35 **(2) Only an individual who is licensed under section 3 of this 2015 Act or registered under**
36 **section 4 of this 2015 Act may use the title “licensed behavior analyst,” “licensed assistant**
37 **behavior analyst” or “registered behavior analysis interventionist.”**

38 **SECTION 6. Section 24, chapter 771, Oregon Laws 2013, is amended to read:**

39 **Sec. 24.** The amendments to [*section 3 of this 2013 Act by section 19 of this 2013 Act and the*
40 *amendments to*] ORS 743A.190 and 750.055 by sections 20 and 21, **chapter 771, Oregon Laws 2013,**
41 [*of this 2013 Act*] become operative January 2, 2022.

42 **SECTION 7. ORS 676.160 is amended to read:**

43 676.160. As used in ORS 676.165 to 676.180, “health professional regulatory board” means the:

44 (1) State Board of Examiners for Speech-Language Pathology and Audiology;

45 (2) State Board of Chiropractic Examiners;

- 1 (3) State Board of Licensed Social Workers;
- 2 (4) Oregon Board of Licensed Professional Counselors and Therapists;
- 3 (5) Oregon Board of Dentistry;
- 4 (6) Board of Licensed Dietitians;
- 5 (7) State Board of Massage Therapists;
- 6 (8) State Mortuary and Cemetery Board;
- 7 (9) Oregon Board of Naturopathic Medicine;
- 8 (10) Oregon State Board of Nursing;
- 9 (11) Nursing Home Administrators Board;
- 10 (12) Oregon Board of Optometry;
- 11 (13) State Board of Pharmacy;
- 12 (14) Oregon Medical Board;
- 13 (15) Occupational Therapy Licensing Board;
- 14 (16) Physical Therapist Licensing Board;
- 15 (17) State Board of Psychologist Examiners;
- 16 (18) Board of Medical Imaging;
- 17 (19) Oregon State Veterinary Medical Examining Board; *[and]*
- 18 (20) Oregon Health Authority, to the extent that the authority licenses emergency medical ser-
- 19 vices providers[.]; **and**

20 **(21) Behavior Analysis Regulatory Board.**

21 **SECTION 8.** ORS 676.583 is amended to read:

22 676.583. Pursuant to ORS 676.586, the Health Licensing Office shall provide administrative and
23 regulatory oversight and centralized service for the following boards and councils:

- 24 (1) Board of Athletic Trainers, as provided in ORS 688.701 to 688.734;
- 25 (2) Board of Cosmetology, as provided in ORS 690.005 to 690.225;
- 26 (3) State Board of Denture Technology, as provided in ORS 680.500 to 680.565;
- 27 (4) State Board of Direct Entry Midwifery, as provided in ORS 687.405 to 687.495;
- 28 (5) Respiratory Therapist and Polysomnographic Technologist Licensing Board, as provided in
29 ORS 688.800 to 688.840;
- 30 (6) Environmental Health Registration Board, as provided in ORS chapter 700;
- 31 (7) Board of Body Art Practitioners, as provided in ORS 690.350 to 690.410;
- 32 (8) Advisory Council on Hearing Aids, as provided in ORS 694.015 to 694.170;
- 33 (9) Sex Offender Treatment Board, as provided in ORS 675.360 to 675.410;
- 34 (10) Nursing Home Administrators Board, as provided in ORS 678.710 to 678.820; *[and]*
- 35 (11) Board of Licensed Dietitians, as provided in ORS 691.405 to 691.485[.]; **and**

36 **(12) Behavior Analysis Regulatory Board, as provided in ORS 676.800.**

37 **SECTION 9.** Section 2, chapter 771, Oregon Laws 2013, is amended to read:

38 **Sec. 2.** (1) As used in this section and *[sections 3 and 3a of this 2013 Act]* **section 3a, chapter**
39 **771, Oregon Laws 2013:**

40 (a)(A) “Applied behavior analysis” means the design, implementation and evaluation of environ-
41 mental modifications, using behavioral stimuli and consequences, to produce significant improvement
42 in human social behavior, including the use of direct observation, measurement and functional
43 analysis of the relationship between environment and behavior, **that is provided by:**

- 44 (i) **A licensed health care professional as defined in section 1 of this 2015 Act;**
- 45 (ii) **A behavior analyst or assistant behavior analyst licensed under section 3 of this 2015**

1 **Act; or**

2 **(iii) A behavior analysis interventionist registered under section 4 of this 2015 Act who**
3 **receives ongoing training and supervision by a licensed behavior analyst, by a licensed as-**
4 **stant behavior analyst or by a licensed health care professional.** [and that is provided by:]

5 [(i) A licensed health care professional registered under section 3 of this 2013 Act;]

6 [(ii) A behavior analyst or an assistant behavior analyst licensed under section 3 of this 2013 Act;
7 or]

8 [(iii) A behavior analysis interventionist registered under section 3 of this 2013 Act.]

9 (B) “Applied behavior analysis” [excludes] **does not mean** psychological testing,
10 neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and
11 long-term counseling as treatment modalities.

12 (b) “Autism spectrum disorder” has the meaning given that term in the fifth edition of the Di-
13 agnostic and Statistical Manual of Mental Disorders (DSM-5) published by the American Psychiatric
14 Association.

15 (c) “Diagnosis” means medically necessary assessment, evaluation or testing.

16 (d) “Health benefit plan” has the meaning given that term in ORS 743.730.

17 (e) “Medically necessary” means in accordance with the definition of medical necessity that is
18 specified in the policy or certificate for the health benefit plan and that applies to all covered ser-
19 vices under the plan.

20 (f) “Treatment for autism spectrum disorder” includes applied behavior analysis for up to 25
21 hours per week and any other mental health or medical services identified in the individualized
22 treatment plan, as described in subsection (6) of this section.

23 (2) A health benefit plan shall provide coverage of:

24 (a) The screening for and diagnosis of autism spectrum disorder by a licensed neurologist,
25 pediatric neurologist, developmental pediatrician, psychiatrist or psychologist, who has experience
26 or training in the diagnosis of autism spectrum disorder; and

27 (b) Medically necessary treatment for autism spectrum disorder and the management of care, for
28 an individual who begins treatment before nine years of age, subject to the requirements of this
29 section.

30 (3) This section does not require coverage for:

31 (a) Services provided by a family or household member;

32 (b) Services that are custodial in nature or that constitute marital, family, educational or
33 training services;

34 (c) Custodial or respite care, equine assisted therapy, creative arts therapy, wilderness or ad-
35 venture camps, social counseling, telemedicine, music therapy, neurofeedback, chelation or
36 hyperbaric chambers;

37 (d) Services provided under an individual education plan in accordance with the Individuals with
38 Disabilities Education Act, 20 U.S.C. 1400 et seq.;

39 (e) Services provided through community or social programs; or

40 (f) Services provided by the Department of Human Services or the Oregon Health Authority,
41 other than employee benefit plans offered by the department and the authority.

42 (4) An insurer may not terminate coverage or refuse to issue or renew coverage for an individ-
43 ual solely because the individual has received a diagnosis of autism spectrum disorder or has re-
44 ceived treatment for autism spectrum disorder.

45 (5) Coverage under this section may be subject to utilization controls that are reasonable in the

1 context of individual determinations of medical necessity. An insurer may require:

2 (a) An autism spectrum disorder diagnosis by a professional described in subsection (2)(a) of this
3 section if the original diagnosis was not made by a professional described in subsection (2)(a) of this
4 section.

5 (b) Prior authorization for coverage of a maximum of 25 hours per week of applied behavior
6 analysis recommended in an individualized treatment plan approved by a professional described in
7 subsection (2)(a) of this section for an individual with autism spectrum disorder, as long as the
8 insurer makes a prior authorization determination no later than 30 calendar days after receiving the
9 request for prior authorization.

10 (6) If an individual is receiving applied behavior analysis, an insurer may require submission of
11 an individualized treatment plan, which shall include all elements necessary for the insurer to ap-
12 propriately determine coverage under the health benefit plan. The individualized treatment plan
13 must be based on evidence-based screening criteria. An insurer may require an updated individual-
14 ized treatment plan, not more than once every six months, that includes observed progress as of the
15 date the updated plan was prepared, for the purpose of performing utilization review and medical
16 management. The insurer may require the individualized treatment plan to be approved by a pro-
17 fessional described in subsection (2)(a) of this section, and to include the:

18 (a) Diagnosis;

19 (b) Proposed treatment by type;

20 (c) Frequency and anticipated duration of treatment;

21 (d) Anticipated outcomes stated as goals, including specific cognitive, social, communicative,
22 self-care and behavioral goals that are clearly stated, directly observed and continually measured
23 and that address the characteristics of the autism spectrum disorder; and

24 (e) Signature of the treating provider.

25 (7)(a) Once coverage for applied behavior analysis has been approved, the coverage continues
26 as long as:

27 (A) The individual continues to make progress toward the majority of the goals of the individ-
28 ualized treatment plan; and

29 (B) Applied behavior analysis is medically necessary.

30 (b) An insurer may require periodic review of an individualized treatment plan, as described in
31 subsection (6) of this section, and modification of the individualized treatment plan if the review
32 shows that the individual receiving the treatment is not making substantial clinical progress toward
33 the goals of the individualized treatment plan.

34 (8) Coverage under this section may be subject to requirements and limitations no more re-
35 strictive than those imposed on coverage or reimbursement of expenses arising from the treatment
36 of other medical conditions under the policy or certificate, including but not limited to:

37 (a) Requirements and limitations regarding in-network providers; and

38 (b) Provisions relating to deductibles, copayments and coinsurance.

39 (9) This section applies to coverage for up to 25 hours per week of applied behavior analysis for
40 an individual if the coverage is first requested when the individual is under nine years of age. This
41 section does not limit coverage for any services that are otherwise available to an individual under
42 ORS 743A.168 or 743A.190, including but not limited to:

43 (a) Treatment for autism spectrum disorder other than applied behavior analysis or the services
44 described in subsection (3) of this section.

45 (b) Applied behavior analysis for more than 25 hours per week; or

1 (c) Applied behavior analysis for an individual if the coverage is first requested when the indi-
2 vidual is nine years of age or older.

3 (10) Coverage under this section includes treatment for autism spectrum disorder provided in the
4 individual's home or a licensed health care facility or, for treatment provided by a licensed health
5 care professional [*registered with the Behavior Analysis Regulatory Board*] **as defined in section 1**
6 **of this 2015 Act** or a behavior analyst or assistant behavior analyst licensed under [*section 3 of this*
7 *2013 Act*] **section 3 of this 2015 Act**, in a setting approved by the health care professional, behavior
8 analyst or assistant behavior analyst.

9 (11) An insurer that provides coverage of applied behavior analysis in accordance with a deci-
10 sion of an independent review organization that was made prior to January 1, 2016, shall continue
11 to provide coverage, subject to modifications made in accordance with subsection (7) of this section.

12 (12) ORS 743A.001 does not apply to this section.

13 **SECTION 10. (1) Notwithstanding the term of office specified in ORS 676.800 or any pro-**
14 **vision of section 3a, chapter 771, Oregon Laws 2013, of the board members added to the Be-**
15 **havior Analysis Regulatory Board by the amendments to ORS 676.800 by section 2 of this 2015**
16 **Act:**

17 (a) **One shall serve for a term ending October 31, 2018.**

18 (b) **One shall serve for a term ending October 31, 2019.**

19 (2) **The terms of office specified in subsection (1) of this section commence on November**
20 **1, 2015.**

21 (3) **A person who is a member of the board as of the effective date of this 2015 Act is**
22 **subject to confirmation by the Senate in the manner prescribed in ORS 171.562 and 171.565.**

23 **SECTION 11.** Section 4, chapter 771, Oregon Laws 2013, is amended to read:

24 **Sec. 4. (1) [Notwithstanding section 3 (16) of this 2013 Act,] An individual actively practicing**
25 **applied behavior analysis as defined in section 1 of this 2015 Act on [the effective date of this 2013**
26 **Act] August 14, 2013, may continue to claim reimbursement from a health benefit plan, the Public**
27 **Employees' Benefit Board or the Oregon Educators Board for services provided without a license**
28 **before [January 1, 2016] July 1, 2018.**

29 (2) **An individual may claim reimbursement under subsection (1) of this section only if**
30 **the individual submits a satisfactory declaration and other required documentation to the**
31 **Health Licensing Office not later than April 30, 2016.**

32 **SECTION 12.** ORS 676.610 is amended to read:

33 676.610. (1)(a) The Health Licensing Office is under the supervision and control of a director,
34 who is responsible for the performance of the duties, functions and powers and for the organization
35 of the office.

36 (b) The Director of the Oregon Health Authority shall establish the qualifications for and ap-
37 point the Director of the Health Licensing Office, who holds office at the pleasure of the Director
38 of the Oregon Health Authority.

39 (c) The Director of the Health Licensing Office shall receive a salary as provided by law or, if
40 not so provided, as prescribed by the Director of the Oregon Health Authority.

41 (d) The Director of the Health Licensing Office is in the unclassified service.

42 (2) The Director of the Health Licensing Office shall provide the boards and councils adminis-
43 tered by the office with such services and employees as the office requires to carry out the office's
44 duties. Subject to any applicable provisions of the State Personnel Relations Law, the Director of
45 the Health Licensing Office shall appoint all subordinate officers and employees of the office, pre-

1 scribe their duties and fix their compensation.

2 (3) The Director of the Health Licensing Office is responsible for carrying out the duties, func-
3 tions and powers under ORS 675.360 to 675.410, 676.575 to 676.625, [676.800,] 676.805, 676.992, 678.710
4 to 678.820, 680.500 to 680.565, 687.405 to 687.495, 687.895, 688.701 to 688.734, 688.800 to 688.840,
5 690.005 to 690.225, 690.350 to 690.410, 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700
6 **and sections 3 and 4 of this 2015 Act.**

7 (4) The enumeration of duties, functions and powers in subsection (3) of this section is not in-
8 tended to be exclusive or to limit the duties, functions and powers imposed on or vested in the office
9 by other statutes.

10 **SECTION 13.** ORS 676.613 is amended to read:

11 676.613. (1) In addition to all other remedies, when it appears to the Health Licensing Office that
12 a person is engaged in, has engaged in or is about to engage in any act, practice or transaction that
13 violates any provision of ORS 675.360 to 675.410, [676.800,] 678.710 to 678.820, 680.500 to 680.565,
14 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410,
15 691.405 to 691.485 or 694.015 to 694.170 or ORS chapter 700 **or section 3 or 4 of this 2015 Act**, the
16 office may, through the Attorney General or the district attorney of the county in which the act,
17 practice or transaction occurs or will occur, apply to the court for an injunction restraining the
18 person from the act, practice or transaction.

19 (2) A court may issue an injunction under this section without proof of actual damages. An in-
20 junction issued under this section does not relieve a person from any other prosecution or enforce-
21 ment action taken for violation of statutes listed in subsection (1) of this section.

22 **SECTION 14.** ORS 676.622 is amended to read:

23 676.622. (1) A transaction conducted through a state or local system or network that provides
24 electronic access to the Health Licensing Office information and services is exempt from any re-
25 quirement under ORS 675.360 to 675.410, 676.575 to 676.625, [676.800,] 676.992, 680.500 to 680.565,
26 687.405 to 687.495, 688.701 to 688.734, 688.800 to 688.840, 690.005 to 690.225, 690.350 to 690.410,
27 691.405 to 691.485 and 694.015 to 694.170 and ORS chapter 700 **and sections 3 and 4 of this 2015**
28 **Act**, and rules adopted thereunder, requiring an original signature or the submission of handwritten
29 materials.

30 (2) Electronic signatures subject to ORS 84.001 to 84.061 and facsimile signatures are acceptable
31 and have the same force as original signatures.

32 **SECTION 15.** ORS 676.805 is amended to read:

33 676.805. In the manner prescribed in ORS chapter 183 for contested cases, the Health Licensing
34 Office may impose a form of discipline listed in ORS 676.612 against any person licensed or regis-
35 tered under [ORS 676.800] **section 3 or 4 of this 2015 Act** for any of the prohibited acts listed in
36 ORS 676.612 and for any violation of a rule adopted under [ORS 676.800] **section 3 or 4 of this 2015**
37 **Act.**

38 **SECTION 16.** ORS 676.992 is amended to read:

39 676.992. (1) Except as provided in subsection (3) of this section, and in addition to any other
40 penalty or remedy provided by law, the Health Licensing Office may impose a civil penalty not to
41 exceed \$5,000 for each violation of the following statutes and any rule adopted thereunder:

- 42 (a) ORS 688.701 to 688.734 (athletic training);
- 43 (b) ORS 690.005 to 690.225 (cosmetology);
- 44 (c) ORS 680.500 to 680.565 (denture technology);
- 45 (d) Subject to ORS 676.616 and 687.445, ORS 687.405 to 687.495 (direct entry midwifery);

1 (e) ORS 690.350 to 690.410 (tattooing, electrolysis, body piercing, earlobe piercing, dermal im-
2 planting and scarification);

3 (f) ORS 694.015 to 694.170 (dealing in hearing aids);

4 (g) ORS 688.800 to 688.840 (respiratory therapy and polysomnography);

5 (h) ORS chapter 700 (environmental sanitation);

6 (i) ORS 675.360 to 675.410 (sex offender treatment);

7 (j) ORS 678.710 to 678.820 (nursing home administrators);

8 (k) ORS 691.405 to 691.485 (dietitians);

9 (L) ORS 676.612 (prohibited acts); and

10 (m) [ORS 676.800] **Sections 3 and 4 of this 2015 Act** (applied behavior analysis).

11 (2) The office may take any other disciplinary action that it finds proper, including but not
12 limited to assessment of costs of disciplinary proceedings, not to exceed \$5,000, for violation of any
13 statute listed in subsection (1) of this section or any rule adopted under any statute listed in sub-
14 section (1) of this section.

15 (3) Subsection (1) of this section does not limit the amount of the civil penalty resulting from a
16 violation of ORS 694.042.

17 (4) In imposing a civil penalty pursuant to this section, the office shall consider the following
18 factors:

19 (a) The immediacy and extent to which the violation threatens the public health or safety;

20 (b) Any prior violations of statutes, rules or orders;

21 (c) The history of the person incurring a penalty in taking all feasible steps to correct any vio-
22 lation; and

23 (d) Any other aggravating or mitigating factors.

24 (5) Civil penalties under this section shall be imposed as provided in ORS 183.745.

25 (6) The moneys received by the office from civil penalties under this section shall be deposited
26 in the Health Licensing Office Account and are continuously appropriated to the office for the ad-
27 ministration and enforcement of the laws the office is charged with administering and enforcing that
28 govern the person against whom the penalty was imposed.

29 **SECTION 17. A health benefit plan as defined in ORS 743.730 may establish credentialing**
30 **requirements for the provision of applied behavior analysis as defined in section 1 of this 2015**
31 **Act by licensed health care professionals as defined in section 1 of this 2015 Act, by behavior**
32 **analysts or assistant behavior analysts licensed by the Behavior Analysis Regulatory Board**
33 **or by behavior analysis interventionists registered by the Health Licensing Office.**

34 **SECTION 18. Sections 1 and 3 to 5 of this 2015 Act and the amendments to ORS 676.160,**
35 **676.583, 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24, chapter**
36 **771, Oregon Laws 2013, by sections 2, 6 to 9 and 11 to 16 of this 2015 Act apply to an individual**
37 **licensed as a behavior analyst or assistant behavior analyst by the Behavior Analysis Regu-**
38 **latory Board or registered as a behavior analysis interventionist by the Health Licensing**
39 **Office on or after the operative date specified in section 19 of this 2015 Act.**

40 **SECTION 19. (1) Sections 1, 3 to 5, 10 and 18 of this 2015 Act and the amendments to ORS**
41 **676.160, 676.583, 676.610, 676.613, 676.622, 676.800, 676.805 and 676.992 and sections 2, 4 and 24,**
42 **chapter 771, Oregon Laws 2013, by sections 2, 6 to 9 and 11 to 16 of this 2015 Act become**
43 **operative on November 1, 2015.**

44 **(2) The Behavior Analysis Regulatory Board, the Governor and the Health Licensing Of-**
45 **fice may take any action before the operative date specified in subsection (1) of this section**

1 that is necessary to enable the board, the Governor or the office to exercise, on or after the
2 operative date specified in subsection (1) of this section, all of the duties, functions and
3 powers conferred on the board, the Governor and the office by sections 1, 3 to 5, 10 and 18
4 of this 2015 Act and the amendments to ORS 676.160, 676.583, 676.610, 676.613, 676.622, 676.800,
5 676.805 and 676.992 and sections 2, 4 and 24, chapter 771, Oregon Laws 2013, by sections 2, 6
6 to 9 and 11 to 16 of this 2015 Act.

7 SECTION 20. This 2015 Act being necessary for the immediate preservation of the public
8 peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect
9 on its passage.

10

Policy Report



Health Licensing Office rules advisory committee

The Health Licensing Office will form a rules advisory committee (RAC) regarding SB 696 and related administrative rules. The RAC tentatively will meet the first week in August, and HLO is suggesting one member from these represented groups:

1. Oregon Association for Behavior Analysis
2. Autism Speaks
3. Oregon Insurance Division
4. Insurance plan representative
5. Autism Society of Oregon
6. Center for Autism and Related Disorders
7. Consumer/parent of someone who uses ABA services
8. Public member



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APPLICATION TO SERVE ON RULES ADVISORY COMMITTEE (RAC)

HLO Scheduling Information

Board/Council Name:

Subject Matter:

Applications accepted through:

HLO's proposed time(s) and date(s) of commitment to the RAC process are:

Hours Per For the period/dates of:

Applicant Information

Are you available for the time and date commitment indicated above: Yes No – **If no, what dates would you be available:**

Applicant Name:

Address:

City:

State:

Zip:

Phone: Home Cell **Business Phone:** **Email:**

Organization:

Title:

What perspective do you represent?

Describe your related experience and content expertise that would assist in this process.

Why are you interested in participating in this exercise?

Are you able to commit to reviewing materials resulting from committee meetings?

Yes No: Comments?

Describe other collaborative efforts you have been involved in and how you contributed.

Public/Interested Parties' Feedback

Other Board Business

