Health Licensing Office
Behavior Analysis Regulatory Board

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Aug. 19, 2016
700 Summer St. NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT
Wendy Machalicek - chair
Maria Gilmour – vice chair – via phone
Brenna Legaard – via phone
Carol Markovics
Michele Raddish (joined at 9:03 a.m.)
Amy Loukus
Keith Cheng
Candice Pogge

STAFF PRESENT
Sylvie Donaldson, interim director and fiscal services and licensing manager
Anne Thompson, policy analyst
Maria Gutierrez, board specialist

GUESTS PRESENT
Alice Austin – Oregon Association of Behavior Analysis (ORABA)
Katherine (Kathi) Calouri – Declarant
Paul Terdal
Melissa Gard
Jami Cartwright
Maria Lynn Kessler
Jenny Fischer

Call to order
Wendy Machalicek called the Behavior Analysis Regulatory Board to order at 9 a.m. on Aug. 19, 2016. Roll was taken.

Items for board action

- **Approval of agenda**

Amy Loukus made a motion, with a second by Carol Markovics, to approve the agenda. The motion passed unanimously.

- **Approval of minutes**

Keith Cheng made a motion, with a second by Candice Pogge, to approve the minutes from May 20, 2016. The motion passed unanimously.

Public/interested parties' feedback
Alice Austin of ORABA told the Board that she had submitted comparisons of professional certifications, and definitions for psychometrically valid examination and accrediting entity and urged the Board that when it came to grandfathering providers into licensure, that they adopt legally defensible

criteria.

Katherine Calouri told the Board that she was a declarant along with five or six others. She said the declarants for grandfathering are not seeking to be a Board Certified Behavior Analyst (BCBA), they were seeking to be eligible for insurance reimbursement. She said she was a member of the rules advisory committee (RAC), and the group was tasked with creating an alternate path to licensure, but the effort "was fruitless." The RAC went with Behavior Analysis Certification Board requirements. Calouri said the declarants are prepared to participate in background checks and pay fees for licensure, but if the declarants, who are all small-business owners, cannot meet the requirements for grandfathering set by the Board, that they would all go out of business. Brenna Legaard and Loukus asked her to describe the work she does with clients. Calouri said she utilizes parent training, school consultations and job preparation. Loukus asked her for more information on what principles of behavior analysis she was using. Calouri said that her work was more fluid than discreet trial. Carol Markovics said that she and Calouri had psychology backgrounds and that allows them to use approaches that were beyond applied behavior analysis (ABA).

Paul Terdal gave the Board background on Senate Bill 696, the bill that created the current Board makeup and licensing requirements. He said the previous bill, Senate 365, didn't work as it was intended. The previous Board didn't consult with a RAC, did not consult with other licensing boards, and wanted other professionals to meet the requirements of the BCBAs. Terdal said that Sen. Alan Bates was "extremely unhappy" with feedback from a number of sources, and drove through SB 696. The Board's responsibility was scaled back, gave stronger oversight to the HLO, and Board members were removed and had to reapply. Terdal said that Bates wanted to add to the bill a specific clause "specifically reading them the riot act, basically declaring that the legislature finds the Board's conduct to be inappropriate. We talked him out of that, told him that he didn't need to go there, but he was that angry." Terdal told the Board that when they were redoing the statute, they realized that there were people who were out there who were providing services but never got their BCBA or psychology license because they didn't need it. So they put in the grandfathering clause. Terdal said he showed Bates a current draft of the rules around the grandfathering, and Bates said that was not what was intended. Terdal said Bates thought that 40 to 60 hours of supervision was fine to make sure they knew what they were doing, and if you've got people who have been practicing for decades that we are going to bring them in without this national certification. He left that meeting with instructions to his staff to prepare a letter to this Board expressing that, "but unfortunately, as you know, he passed before that could happen." Terdal said that there is a statutory requirement for grandfathering and that the Board has considerably flexibility when it comes to requirements, but the Board needs to listen to the declarants and develop a reasonable path.

Jenny Fischer said she was a licensed behavior analyst from Bend and owns a company. She said she supports Austin's comments; the people who are seeking to be grandfathered into licensure should have a legitimate credential that comes from coursework, supervised training and a legitimate exam. She said that while there is a broader definition of ABA in Oregon, the reason insurance covers ABA is because there is evidence that ABA is an effective treatment for autism. She said this is not the "autism treatment board," it's the behavior analysis board, and some declarants are certified in treatments that are not behavior analytic in nature. Fischer addressed Terdal's comments, saying that the previous board reached out to different professions and that information was taken into account with SB 696. She said that Terdal's characterization of what happened at the legislative level "is not accurate." Markovics said

that if there wasn't a problem with the former board that the current board wouldn't exist. She said that the legislature wanted a board that understood that "we are not just recreating the national organization requirements for licensure."

Melissa Gard said that she had a PhD in behavioral psychology and practices in Oregon. She said to Terdal's point, that there was a period in which everyone who practiced behavior analysis was lumped together (in SB 365) and that the decision to separate other professions and take them out from under the BARB's authority was a collaborative agreement. She said that specific interventions mentioned by declarants have more of a psychology approach than ABA.

Maria Lynn Kessler said that she supports the statement from ORABA and Fischer's statement about the legislative process. She said the change to the board was more about the legal issues surrounding the Board's oversight of other licensed professionals than a change due to a lack of cooperation. She said she is not a BCBA. She said it's important to understand grandfathering and what it means. Kessler said that other statutes include it and that there is always the intent that those folks who have been practicing can keep practicing as the standards change, as long as you stay current. She said that these professionals was been vetted at some level. She said that the BARB's declarants who want to be grandfathered into licensure have never been credentialed at all. She gave a history of the BACB, and said that over time, the organization's standards have become more rigorous. She said that the BACB had grandfathering for a time if applicants met requirements, but that you had to take their exam. "From the beginning," she said, "you had an exam."

Michele Raddish clarified that the BACB had grandfathering options in the past for professionals who sought certification.

Reports

♦ Director's report

Sylvie Donaldson, interim director and fiscal services and licensing manager, told the Board that the HLO has gotten approval to get electronic fingerprints from the Oregon State Police and that will speed up the process for applicants.

♦ Licensing and fiscal

Donaldson used graphics to show the Board the number of licenses and registrations, as well as how they break down by age and gender. She said that authorization holders are younger and predominantly female.

Donaldson said that the Board, which was in the red since the beginning because of the start-up costs associated with the process, is projected to end the 2015-17 biennium about $2,500 in the black.

♦ Policy

Anne Thompson presented the reports from the rules advisory committee meetings (RACs) that were held on July 28 and Aug. 3. She told the Board that the meeting on July 28 did not cover any rule language beyond the grandfathering piece. Donaldson decided to add another RAC on Aug. 3 to try to get the group to cover the rest of the materials. RAC participants Paul Terdal and Brandon Barnett also submitted written comments.

The Board took a break at 10:35 a.m.

The Board resumed work at 10:51 a.m.

Because some of the Board members had to leave the meeting before its conclusion, Machalicek opened the discussion on the rule language with Division 36 – grandfathering.

(Gilmour left meeting at 1:11 p.m.)
After extensive discussion, the Board decided on requiring at least a master's degree in three areas of study, proof of 10 years of ABA experience, three letters of recommendation, 270 hours of coursework and 1,500 hours of supervised experience in ABA or 75 hours of direct supervision with a BCBA who signs off on their competency to practice.

Michelle Raddish moved, with a second by Brenna Legaard, to accept Division 36 as amended. Motion passed unanimously.

(Raddish left the meeting at 1:33 p.m. Loukus joined on the phone at 1:45 p.m.)

The Board made some changes to Division 40 – Registered Behavior Analysis Interventionist Training and Supervision.

Areas that required forms also allowed for business owners and supervisors to use their own forms, provided the same information was on them.

Interventionist supervision was reduced to 5 percent of the service hours, direct supervision was changed to once per calendar month in months in which services are provided and evaluations were changed to once a year. If an interventionist changes supervisors, they would have 10 business days to notify HLO in the new rules.

In Division 60, the Board chose to adopt sections 1-9 of the 2014 BACB Professional and Ethical Compliance Code for Behavior Analysts.

Donaldson told the Board about a proposed change to the behavior analysis interventionist foundational knowledge form that came from the July 28 RAC.

Calouri said she was eager to take the proposed rules to the declarants/

Public/interested parties' feedback II
Austin asked about the interventionist requirement of a high school diploma, saying that it can be hard to acquire that in the summer or in rural areas.

Fischer said that 2(c) in the interventionist training and supervision restricted the use of fill-in interventionists for clients and limited service delivery. The Board agreed and struck that from the rule language.

Items for board action

Keith Cheng made a motion, with a second from Candice Pogge, to adopt the proposed rules as amended. The motion passes unanimously.

(Legaard left the meeting at about 2:25 p.m.)

Keith Cheng made a motion, with a second from Carol Markovics, to change the interventionist task list form, as it asked for more knowledge in one area than an interventionist would reasonable know.

Other board business

Machalicek asked that a discussion on how the declarants will move through the licensing process and how they will represent themselves to the public be on the agenda for the next meeting.

The meeting adjourned at 2:40 p.m.

Minutes prepared by Anne Thompson, policy analyst