



## HEALTH LICENSING OFFICE

Kate Brown, Governor

Oregon  
**Health**  
Authority

700 Summer St NE, Suite 320  
Salem, OR 97301-1287  
Phone: (503)378-8667  
Fax: (503)585-9114

**WHO:** Health Licensing Office  
Behavior Analysis Regulatory Board <http://www.oregon.gov/OHLA/Pages/index.aspx>

**WHEN:** 1:30 p.m. Oct. 29, 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 Agenda**



Health Licensing Office  
Behavior Analysis Regulatory Board



1:30 p.m., Oct. 29, 2015  
700 Summer St. NE, Suite 320  
Salem, Oregon

**Call to order**

**1. Items for board action**

- ◆ Approval of agenda
- ◆ Approval of the minutes for Sept. 10, 2015.
- ◆ Review of applications

**2. Reports**

- ◆ Director's report

**3. Public/interested parties' feedback**

**4. Policy**

- ◆ Administrative rule hearing report

**5. Item for board action II**

- ◆ Vote on adopting administrative rule language in OARs 824-030-0010 and 824-030-0020.

**6. Other board business**

Agenda is subject to change.  
For the most up to date information visit [www.oregon.gov/OHLA](http://www.oregon.gov/OHLA)

# **Approval of Minutes**



Health Licensing Office  
Behavior Analysis Regulatory Board

◆ ◆ ◆  
Sept. 10, 2015

700 Summer St. NE, Suite 320  
Salem, Oregon

---

**MINUTES**

---

**\*Meeting was a teleconference**

**MEMBERS PRESENT**

Jenny Fischer, Chair  
Kurt Freeman, Vice Chair  
Wendy Machalicek  
Amy Donaldson  
Alice Austin

**STAFF PRESENT**

Sylvie Donaldson, Interim Director and 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  
Michele Raddish

**Call to order**

Chair Jenny Fischer called the Behavior Analysis Regulatory Board to order at 1:30 p.m. on Sept. 10, 2015. Roll was taken.

**Items for board action**

◆ **Approval of agenda**

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

◆ **Approval of minutes**

Alice Austin made a motion, with a second by Kurt Freeman, to approve the revised minutes for July 16, 2015. The motion passed unanimously.

Kurt Freeman made a motion, with a second by Alice Austin, to approve the minutes for Aug. 13, 2015. The motion passed unanimously.

◆ **Applications**

The Health Licensing Office (HLO) received applications from:

- Erica Heuer – Behavior Analysis Interventionist
- Candace Kostianis – Behavior Analysis Interventionist
- Alicia Lynn Luis-Guerra – Behavior Analysis Interventionist
- Jaime Ta – Behavior Analysis Interventionist

Alice Austin made a motion, with a second by Kurt Freeman, to approve the behavior analysis interventionist applications. Motion passed.

The Health Licensing Office (HLO) received an application from:

- Juan Mesa – Behavior Analyst

By consent agenda, Kurt Freeman moved, with a second Wendy Machalicek, to approve the behavior analyst application. Motion passed.

### **Reports**

#### ◆ Director's report

Interim Director and Fiscal Services and Licensing Manager Sylvie Donaldson told the Board about Director Holly Mercer's departure and explained that she would be serving as interim director.

She explained that the new Board would be confirmed by the senate in late September and was asked by the board to list the people nominated by the governor's office. They were:

Keith Cheng (filling licensed psychiatrist spot)

Carol Markovics (filling licensed psychologist spot)

Michele Raddish (filling developmental pediatrician spot, reappointment)

Brenna Legaard (filling parent/family member of person diagnosed with autism spot)

Amy Loukus (filling one of four board-licensed spots)

Candice Pogge (filling one of four board-licensed spots)

Maria Gilmour (filling one of four board-licensed spots)

Wendy Machalicek (filling one of four board-licensed spots, reappointment)

S. Donaldson also said the new program for digital minutes, Granicus, was being tested during the meeting, but that paper minutes would still be prepared by staff.

Chair Jenny Fischer had questions about when the new board would begin serving; S. Donaldson said she had an upcoming meeting with the governor's office and would let members know when their terms would be over.

### **Public/interested parties' feedback**

None.

### **Other board business**

The Board meeting was adjourned at 1:51 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 has received applications from:

- Hannah Gandsey – Behavior Analysis Interventionist
- Chelsea Ramesa Moreno – Behavior Analysis Interventionist
- Natalie Perkins – Behavior Analysis Interventionist
- Ashley Roelofs – Behavior Analysis Interventionist
- Nicole Santoro – Behavior Analysis Interventionist

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

- Molly Dwyer – Behavior Analyst
- Nicole McEwen – Assistant Behavior Analyst

**Items Redacted  
Available via Public  
Records Request**

# **Director's Report**

# **Public/Interested Parties' Feedback**

# **Policy**

# DRAFT

Behavior Analysis Regulatory Board  
Oregon Administrative Rules, Chapter 824, Divisions 010-060  
Effective date of permanent rules: Nov. 1, 2015

## DIVISION 10

### GENERAL ADMINISTRATION

**824-010-0005**

#### Definitions

- (1) "Accredited college or university" means a college or university as listed in the Council on Higher Education database, or evaluated through the National Association of Credential Evaluations Services or World Education Services for equivalency.
- (2) "Affidavit of Licensure" **has the meaning set forth in OAR 331-030-0040.**
- (3) "Applied behavior analysis" **has the definition set forth in Senate Bill 696 (2015).**
- (4) "Authorization" **has the definition set forth in ORS 676.580.**
- (5) "Autism spectrum disorder" has the definition set forth in ORS Chapter 771 Section 2(1)(B)(b).
- (6) "BACB" means the Behavior Analyst Certification Board.
- (7) "BCBA" means a Board Certified Behavior Analyst.
- (8) "BCaBA" means a Board Certified Assistant Behavior Analyst.
- (9) "Board" means the Behavior Analysis Regulatory Board.
- (10) "Direct **supervision**" means the training or the observation of an interventionist providing client services and at a minimum requires the **participation of the supervisor, the interventionist and client. Participation can include remote supervision through technology, as long as it is synchronous audio and visual, and in real time.**
- (11) "Indirect **supervision**" means supervisory functions including: training the interventionist without the client present, consulting with families or caregivers regarding interventionist service delivery, or completing evaluations or assessments of interventionists without the client present.
- (12) "Interventionist" means a Behavior Analysis Interventionist.

**(13) “Licensed health care professional” has the definition set forth in Senate Bill 696 Section 1 (2)(a-h).**

(14) “Office” means the Health Licensing Office.

(15) “Official transcript” means an original document certified by an accredited college or university indicating hours and types of course work, examinations and scores that the student has completed. The accredited college or university must submit the transcript by mail or courier directly to the Office in a sealed envelope.

(16) “Ongoing **supervision and training**” means a supervisor is monitoring the service delivery of an interventionist by direct and indirect means.

## **DIVISION 20**

### **FEES**

#### **824-020-0040**

##### **Authorization fees**

(1) Fees established by the Board are:

(a) Applications:

(A) Behavior Analyst – \$150.

(B) Assistant Behavior Analyst – \$125.

(C) Behavior Analysis Interventionist – \$75.

(b) Original license or registration – valid for one year:

(A) Behavior Analyst – \$200.

(B) Assistant Behavior Analyst – \$175.

(C) Behavior Analysis Interventionist – \$100.

(c) Renewal of license or registration – valid for one year:

(A) Behavior Analyst – \$200.

(B) Assistant Behavior Analyst – \$175.

(C) Behavior Analysis Interventionist – \$100.

(d) Other administrative fees:

- (A) Late renewal of license or registration – \$50.
- (B) Replacement license or registration, including name change – \$25.
- (C) Affidavit of Licensure – \$50.
- (D) Administrative processing fee – \$25.

**DIVISION 30**  
**QUALIFICATIONS**

**824-030-0010**

**Licensing of Behavior Analyst**

An individual applying for licensure as a Behavior Analyst must:

- (1) Submit a completed application form, which must contain the information listed in OAR **331-030-0000** and be accompanied by payment of the required application fees.
- (2) Submit proof of current certification by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Behavior Analyst;
- (3) **Pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004.**
- (4) If applicable, submit an affidavit of licensure from any state where the individual holds or has held a license as a behavior analyst whether the license is active or inactive.
- (5) Submit required license fees.
- (6) **Authorizations issued prior to Nov. 1, 2015, for Behavior Analysts remain valid after Nov. 1, 2015, and are subject to the requirements and regulations in the current rules and statutes.**

**824-030-0020**

**Licensing of Assistant Behavior Analyst**

An individual applying for licensure as an Assistant Behavior Analyst must:

- (1) Submit a completed application form, which must contain the information listed in OAR **331-030-0000** and be accompanied by payment of the required application fees.
- (2) Submit proof of current certification by the Behavior Analyst Certification Board, Incorporated, as a Board Certified Assistant Behavior Analyst;

**(3) Pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004.**

(4) Be supervised by a **behavior analyst** who is licensed by the Board.

(5) If applicable, submit an affidavit of licensure from any state where the individual holds or has held a license as an assistant behavior analyst whether the license is active or inactive.

(6) Submit required license fees.

**(7) Authorizations issued prior to Nov. 1, 2015, for Assistant Behavior Analysts remain valid after Nov. 1, 2015, and are subject to the requirements and regulations in the current rules and statutes.**

**824-030-0040**

### **Registration of a Behavior Analysis Interventionist**

An individual applying for registration as a Behavior Analysis Interventionist must:

(1) Submit a completed application form, which must contain the information listed in OAR **331-030-0000** and be accompanied by payment of the required application fees;

(2) Submit required registration fees.

**(3) Submit proof of being at least 18 years old;**

(4) Submit documentation of a high school diploma or **General Educational Development (GED) certificate**;

**(5) Pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004; and**

**(6) Submit documentation of 40 hours of professional training in applied behavior analysis on a form prescribed by the Office in the following knowledge and skill areas, as verified by an individual listed in Senate Bill 696, Section 1(2)(a-h) or licensed by the Board:**

(a) Professional and ethical issues;

(b) Foundational knowledge of behavioral change principles;

(c) Assessment;

(d) Implementation of prescribed intervention plans;

(e) Data collection and documentation.

**(7) Authorizations issued prior to Nov. 1, 2015, for Behavior Analyst Interventionists remain valid after Nov. 1, 2015, and are subject to the requirements and regulations in the current rules and statutes.**

## **DIVISION 35**

### **DECLARATION OF PRACTICE**

**824-035-0005**

#### **Declaration requirements**

**(1) Under Section 11, Senate Bill 696, an individual was actively practicing applied behavior analysis on Aug. 14, 2013, may continue to claim reimbursement from a health benefit plan, the Public Employees Benefit Board or the Oregon Educators Board only if the individual submits a satisfactory declaration and other required documentation to the Office not later than April 30, 2016. The declaration form is available on the Office's website**

**(2) The declaration must be accompanied by a curriculum vitae that includes a description of the individual's education, professional experience, training, scholarship, publications, presentations at conferences and any other professional activities.**

## **DIVISION 40**

### **REGISTERED BEHAVIOR ANALYSIS INTERVENTIONIST TRAINING AND SUPERVISION**

**824-040-0010**

#### **Training and Supervision**

**(1) Prior to independent service delivery, a Registered Behavior Analysis Interventionist must:**

**(a) Enter into an agreement with a supervisor using the form available on the Office's website. A copy of the agreement must be submitted to the Office and given to the client's parent or guardian.**

**(b) Complete the competency assessment with a supervisor on the form at the Office's website. A copy of the competency assessment must be retained in the interventionist's file.**

**(2) After beginning independent client service delivery, a Registered Behavior Analysis Interventionist must receive ongoing training and supervision by a licensed behavior analyst, licensed assistant behavior analyst or by a licensed health care professional, consisting of:**

**(a) Direct supervision from the supervisor for a minimum of two hours prior to independent service delivery with any new client. This requirement can be met through training;**

**(b) Direct and indirect supervision for at least 10 percent of the interventionist's direct service hours, of which at least 5 percent must be direct supervision;**

**(c) Direct supervision at least once a month or 60 direct service hours, whichever comes first; and**

**(d) Direct supervision with each client on the interventionist's caseload at least once every three months.**

**(3) A Registered Behavior Analysis Interventionist must be evaluated by the supervisor at least every six months after initial competency assessment on the form available on the Office's website.**

**(4) A Registered Behavior Analysis Interventionist must maintain a log of ongoing training and supervision on the form available on the Office's website.**

**(5) A Registered Behavior Analysis Interventionist must notify the Office in writing within five business days if they are no longer being supervised or have a change in supervision.**

**(6) A Registered Behavior Analysis Interventionist must maintain all training and supervision records for a minimum of five years after the last day of training and supervision. Upon request, such records must be made available for inspection by the Office.**

## **DIVISION 50**

### **RENEWAL**

**824-050-0010**

## Renewal of license and registration

- (1) An authorization is subject to the provisions of OAR 331-030-0000 regarding the renewal of an authorization, and provisions regarding the use of the title, identification and requirements for issuance of a duplicate authorization.**
- (2) Authorization renewal under this rule is valid for one year.**
- (3) Authorization holders must pass a state criminal background check pursuant to OAR 331-030-0004;**
- (4) To avoid late fees, an authorization renewal must be made prior to the authorization entering inactive status. The authorization holder must submit the following:**
  - (a) Renewal application form;**
  - (b) Payment of renewal fee pursuant to OAR 824-020-0040;**
- (5) Inactive authorization renewal: An authorization holder in inactive status cannot use the title. An authorization may be inactive for up to three years. When renewing, the inactive authorization holder must submit:**
  - (a) Renewal application form;**
  - (b) Payment of late and renewal fees pursuant to OAR 824-020-0040;**
- (6) An authorization that has been inactive for more than three years is expired and the authorization holder must reapply for authorization and meet the requirements listed in OAR 824-030-0010, 824-030-0020 or 824-030-0040.**
- (7) If an individual was issued a license or registration prior to Nov. 1, 2015, the authorization remains valid and is subject to the current rules.**
- (8) If an individual was licensed by the Board prior to Nov. 1, 2015, they must pass a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-0004 to renew the license.**

## DIVISION 60

### STANDARDS OF PRACTICE, PROFESSIONAL METHODS AND PROCEDURES

#### 824-060-0010

(1) Licensees and registrants must rely on the principles of behavior analysis in their practice and use research-based behavior analytic services.

(2) Licensees and registrants must not:

(a) Exploit persons over whom they have supervisory, evaluative or other authority.

(b) Misuse assessment techniques, interventions, results and interpretations, including representing non-behavior analytic practices as behavior analysis.

(c) Promote or delegate the use of behavioral assessment and intervention techniques by unqualified persons.

(d) Engage in behaviors that are sexual in nature, harassing, exploitative or demeaning to clients, clients' family members, students or other supervisees.

(e) Use professional relationships to further personal, religious, political or economic interests outside of the service-provision relationship.

(f) Enter into or maintain a relationship that may impair the objectivity or interfere with the ability to effectively provide behavior analytic services.

(g) Terminate or disrupt services to a client without notifying the client, client's parent or guardian, and providing information related to the transfer or referral to another service provider.



DATE: Sept. 30, 2015

TO: Health Licensing Office (HLO), Behavior  
Analysis Regulatory Board (BARB)

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

FROM: Anne Thompson, hearing officer

SUBJECT: Public comment report for BARB rules

### **Background**

When Senate Bill 696 was signed by the governor, it changed the makeup of the BARB, its licensees and registrants, and put the BARB under the authority of the HLO. Administrative rule changes were necessary to align with the statute. A RAC was held for the purpose of receiving comments regarding the set of administrative rules drafted by HLO staff and the proposed rules went out for public comment.

### **Summary of proposed rules**

The rules align the licensure qualifications for behavior analysts and assistant behavior analysts and the registration qualifications for behavior analysis interventionists with the statute. They also add language around license and registration renewal and the declaration of professionals practicing behavior analysis as of Aug. 14, 2013 – the group that the statute grandfathers in.

### **Oral comments**

Pam Smith, a provider with Synergy Autism Center, voiced her support for the rules around the declaration. She also submitted written comments.

### **Written comments**

From Barbara Avila and Pam Smith:

Pam Smith and I would like to ensure our voices at the public hearing next week. We have each been practicing as behavior analysts for 17 and 22 years, respectfully. We will be applying to be grandfathered in as Licensed Behavior Analysts with the Oregon Health Licensing Office as soon as it is available to do so. We agree with the declarations of practice as they are currently written.

From Jenny Fischer, BCBA, Licensed Behavior Analyst  
Owner, Cascade Behavioral Intervention, LLC

As a BCBA/Licensed Behavior Analyst and the owner of Cascade Behavioral Intervention, LLC, I have operated under the existing rules throughout 2015. I am one of the few ABA providers serving rural areas of Oregon, and hope that my input from that perspective will be valuable. I am also a current member of the Behavior Analysis Regulatory Board (BARB) and Policy Chair for the Oregon Association for Behavior Analysis (ORABA), but my views presented here do not necessarily reflect those of the BARB or ORABA. I suggest the following revisions to address difficulties encountered by practitioners under the existing rules:

**Frequency of supervision:**

**Issue:** The current rules require supervision every 60 hours at minimum. Though intended to promote adequate supervision according to the amount of time an interventionist works directly with clients, this rule makes tracking supervision hours extremely difficult. Given that scheduling needs to happen well in advance, and schedules change frequently as a result of illness, cancellations, etc., it is extremely difficult to keep up with the “moving target” that the 60-hour supervision window represents. Additionally, for agencies with only one supervisor on staff, the 60-hour window may lead to disruptions in treatment in the event that the supervisor is ill or on vacation.

**Suggested solution:** Nationally accepted standards of supervision require a minimum of two points of contact with the supervisee per month. If this frequency presents a hardship when supervising part-time interventionists, then an alternative would be two points of contact per month minimum for those working more than 60 hours in a month, and one point of contact per month minimum for those working less than 60 hours.

**Amount of supervision:**

**Issue:** Though supervision of 10% of an interventionists’ time may be appropriate in many cases, this level of supervision may not be needed for all interventionists or clients. Because the 10% minimum differs from nationally accepted standards, it places a burden on professionals in Oregon compared with other states, the costs of which will inevitably be passed on to funding sources and consumers. While 10% may be appropriate or even lower than necessary for less experienced staff or for clients with significant needs, it may be excessive in other cases. Setting this high minimum standard means that resources may be diverted from cases that warrant additional supervision. Additionally, given the scarcity of ABA providers in the state, a standard that is higher than the national norm exacerbates the problem of access to services.

**Suggested solution:** The nationally accepted standard for supervision is 5% of the interventionist’s hours.

**Extenuating circumstances:**

**Issue:** When supervision is required on a monthly basis, there may be cases in which extenuating circumstances prevent an interventionist from receiving adequate supervision. For example, a supervision meeting may be scheduled near the end of the month and illness or client cancellation may prevent the interventionist from meeting the supervision requirement for the month. This may be particularly likely in small practices with only one supervisor.

**Suggested solution:** Provide a mechanism for reporting extenuating circumstances and creating a corrective action plan. In the example above, the interventionist could contact the Health Licensing Office and ask that supervision be scheduled as soon as possible in the subsequent month, with those hours counting toward the prior month. If interventionists were required to

report such circumstances to the office, it would be possible to monitor whether these instances were excessive.

**Record keeping:**

**Issue:** Under the proposed rules, interventionists are expected to keep records of supervision. Transferring record-keeping responsibilities to the interventionist is necessary given that the Health Licensing Office will not have jurisdiction over all potential supervisors. However, it is a concern that supervisors are not expected to maintain supervision records as well, given that supervisors are more likely to have an established system of record-keeping and are ultimately responsible for an Interventionist's actions.

**Suggested solution:** The supervisory agreement should continue to include an agreement on the part of the supervisor that records will be kept regarding supervision.

From Melissa Gard, PhD, BCBA  
President, ORABA

1. Amount of Supervision

For nationally accepted credentials for interventionists/technicians, the minimum amount of supervision time for an interventionist's direct service hours is 5%. This is a minimum standard, and it is expected that supervision is greater if interventionist competence or client needs warrant increased supervision. Setting Oregon's standard at 10% not only increases cost for Oregon providers and consumers, it decreases the availability of services, because a single supervisor can meet the needs of fewer clients.

2. Frequency of Supervision

Requiring supervision every 60 hours of direct service may make sense on paper, but in practice this requirement is extremely unwieldy. Because the requirement is highly specific, and because schedules change frequently (e.g., due to staff or client illness or vacation), it becomes extremely challenging for the supervisor to set a supervision schedule in advance and manage multiple cases. Rather than requiring supervision every 60 hours, require a minimum number of supervisory contacts per month. For interventionists who work more than 60 hours in a month, a minimum of 2 supervisory contacts could be required. For those who work less than 60 hours, a minimum of 1 supervisory contact could be required.

3. Supervision with New Clients:

Two hours of initial supervision prior to independent work with new clients may not always be warranted, and may result in delays in treatment or resources being allocated away from where they are most needed. Remove the supervision requirement for two hours of supervision prior to starting work with new clients, and instead elaborate on standards of practice related to supervision. For example, behavior analysts should not assign tasks to a supervisee unless that supervisee has demonstrated competence in completing the task.

4. Record Keeping:

While it is understood that supervisors will no longer be required to report to the Health Licensing Office (with the exception of Licensed Behavior Analysts and Assistant Behavior Analysts), it is a concern that the responsibility for record keeping will fall solely on the

interventionist. Even if not enforceable, there should be an expectation that supervisors will maintain a copy of supervision records.

Recommendation:

The supervision agreement should continue to list maintenance of supervision logs as an expectation of supervisors.

#### 5. Multiple Supervisors:

In the event that an interventionist works at an agency with multiple Licensed Behavior Analysts/Licensed Assistant Behavior Analysts, or works for more than one organization/agency, the interventionist may have more than one supervisor.

Recommendation:

Clarify in the rules and/or forms that an interventionist may have more than one supervisor, and provide direction on how forms should be filled out in the event of multiple supervisors.

#### **Grandfathered Provider Declaration:**

During the legislative session, ORABA expressed grave concerns about provisions that allow grandfathered providers to continue seeking reimbursement without a license or any recognized credentials in behavior analysis. The risk to consumers from treatment by unqualified providers cannot be overstated. However, we realize that the legislative mandate of SB 696 requires the Health Licensing Office to create a mechanism for these “grandfathered providers” to declare their intent to continue seeking reimbursement. We recommend that there be clear communication to declarants and consumers that submission of a declaration does NOT represent an endorsement by the BARB, nor does it represent an evaluation of competence to practice. Consumers should be clearly warned that unlike other providers, those who submit a declaration do not undergo the same criminal background check. Declarants and consumers should be strongly cautioned that practicing without adequate training and competence may result in harm to consumers, and that the BARB is in no way responsible for the actions of declarants.

From Julie Kornack, senior public analyst for the Center for Autism and Related Disorders (CARD):

824-030-0040 (6)

Behavior Analysis Interventionists are required to have training in assessments. Conducting assessments is a specialized area of knowledge and not all providers would involve an interventionist in assessments.

This requirement should be removed.

824-040-0010 - Behavior Analysis Interventionist – Training and supervision

The rules regarding documentation of the training and supervision of BAIs “are alarming.” The requirements are burdensome and do not reflect best practices or the standard of care in autism treatment. These burdensome rules will make it more challenging to do business in Oregon.

824-040-0010(1)(a) Supervision agreement – remove this requirement

824-040-0010(1)(b) Competency assessment – limit competency assessment to a one-time initial assessment.

824-040-0010(2)(a) Requires BAIs to “receive ongoing training and supervision by a licensed behavior analyst, licensed assistant behavior analyst or licensed health care professional, consisting of direct supervision from the supervisor for a minimum of two hours prior to independent service delivery with any new client.” This requirement is unnecessarily burdensome, does not accommodate how autism treatment is typically delivered, is not supported by treatment research and does not reflect best practices in autism treatment. CARD urges Oregon to avoid specificity in ongoing training and supervision requirement and place the responsibility on the licensed behavior analyst. 824-040-0010(2)(a) and (b) should be removed.

824-040-0010(5) – End of supervision or change in supervisor – must notify HLO within three days. – Change the word supervisor in that phrase to employment.

From Gina Green, PhD, BCBA-D  
Executive Director, Association of  
Professional Behavior Analysts

Lower the fees.

**Division 30:**

Recommended revisions include:

824-030-0010 (2) and 824-030-0020 (2) – Change to “Have current certification by the Behavior Analyst Certification Board, Incorporated (BACB) as a [Board Certified Behavior Analyst] [Board Certified Assistant Behavior Analyst] verified with the BACB by the Board.” That is much safer than having applicants submit their own “proof” of BACB certification.

824-030-0020 (4) – After Board, add “and meets BACB supervisor requirements.”

That is necessary given that LBAs and LABAs must comply with all BACB requirements in order to maintain their BACB certifications and therefore their OR licenses.

**Division 35: Declaration of Practice**

It appears that the only requirements proposed for the individuals covered by this provision are the ones in the draft rule. The facts that those requirements are very vague and these individuals will hold no professional certifications or licenses so will not be regulated by any professional entity will leave consumers, the BARB, and the HLO largely unprotected. Consumers will have no recourse should these individuals engage in incompetent or unethical practices except perhaps to complain to the health plans that reimburse them. Those companies are not likely to have the wherewithal to evaluate whether the services these individuals purport to deliver are consistent with the profession’s standards of care. And unless the rules are revised to require independent, objective verification that these individuals have bona fide knowledge and skills in the contemporary practice behavior analysis *and* are regulated by the BARB, it would seem that the BARB and HLO will have little protection should their decisions to allow (or not allow) these individuals to practice be challenged. Though far short of best practices in professional regulation and consumer protection, the following changes would improve Division 35:

- 824-035-005 (2) – Revise to read “The declaration must be accompanied by
- a. A curriculum vitae that describes the individual’s education, professional experience (including experience designing, delivering, and overseeing applied behavior analysis interventions for at least one client population), formal and experiential training, membership in behavior analysis professional organizations, and other professional activities in applied behavior analysis.
  - b. Certified transcripts showing satisfactory completion of the following graduate-level coursework in behavior analysis from an accredited university:
    - i. Ethical and professional conduct – at least 45 contact hours
    - ii. Concepts and principles of behavior analysis – at least 45 contact hours
    - iii. Measurement of behavior – at least 25 contact hours
    - iv. Behavior analytic research design – at least 20 contact hours
    - v. Fundamental elements of behavior change and specific behavior change procedures – at least 45 contact hours
    - vi. Identification of the problem and assessment – at least 30 contact hours
    - vii. Intervention and behavior change considerations – at least 10 contact hours
    - viii. Behavior change systems – at least 10 contact hours
    - ix. Implementation, management, and supervision – at least 10 contact hours
    - x. Other behavior analytic content – at least 30 contact hours
  - c. An affidavit from a behavior analyst licensed by the Board stating that the individual has had at least 1,500 hours of experience designing, delivering, and overseeing applied behavior analysis interventions that was mentored or supervised by a Licensed Behavior Analyst, Board Certified Behavior Analyst, or licensed psychologist with documented training and competence in applied behavior analysis.
  - d. Three ABA intervention plans written by the individual based on hypothetical client profiles and scenarios provided by the Board and judged acceptable by three Licensed Behavior Analyst members of the Board according to criteria developed by the Board.
  - e. Proof of passage of a fingerprint-based nationwide criminal records check pursuant to OAR 331-030-004.
  - f. A current certificate of professional liability insurance with coverage of at least \$1 million per occurrence and \$3 million aggregate.
- Add “(3) The individual must register with the Board annually using an application that is provided on the Office website and comply with the standards of practice, professional methods, and procedures specified in Division 60 of these rules.”

#### **Division 40: Registered Behavior Analysis Interventionist Training and Supervision**

I strongly recommend deleting all references to “independent service delivery” in this Division. There should be no implication that these paraprofessionals can practice independently.

824-040-0010 (1)(b) – Clarify if “file” refers to a file kept by the HLO.

824-040-0010 (3) – Clarify if the 6-month evaluation must be a repeat of the initial competency assessment, must be conducted by the same supervisor who did the initial assessment, and must be kept in the interventionist’s HLO file.

824-040-0010 (4) – Add “The log must not include any identifiable information about any clients or service recipients or their caregivers.”

#### **Division 50: Renewal**

Increase the renewal cycle to 2 or 3 years. That would reduce paperwork and costs for the BARB and reduce the total amount of fees required of licensees and registrants.

**Division 60: Standards of Practice, Professional Methods, and Procedures**

824-060-0010 (1) – Revise to read “Licensees and registrants of the Board must rely on the principles of behavior analysis in their practice and use behavior analytic procedures that have proved effective in scientific studies.”

Add (h) – “Licensees must comply with the Behavior Analyst Certification Board’s *Professional and Ethical Compliance Code for Behavior Analysts*.” That would strengthen this Division, at least with respect to LBAs and LABAs, and compliance with that code will be required for those individuals to maintain their BACB certifications (and therefore their licenses) starting January 1, 2016.

From Paul Terdal:

**OAR 824-035-0005 Declaration of Practice / Declaration Requirements**

I support the new rules proposed in this section, which call for a written declaration through a form and curriculum vitae that includes a description of the individual’s education, professional experience, training, scholarship, publications, presentations at conferences and any other professional activities.

**OAR 824-040-0010 REGISTERED BEHAVIOR ANALYSIS INTERVENTIONIST TRAINING AND SUPERVISION**

I have reviewed the comments submitted by Julie Kornack of the Center for Autism and Related Disorders (CARD). I support her feedback, and encourage you to adopt it.

# **Items for Board Action**

**Issue**

When Senate Bill 696 was signed by the governor, it changed the makeup of the BARB, its licensees and put BARB under the authority of the HLO. Administrative rule changes were necessary to align with the statute. The rules align the licensure qualifications for behavior analysts and assistant behavior analysts and the registration qualifications for behavior analysis interventionists with the statute. They also add language around license and registration renewal and the declaration of professionals practicing behavior analysis as of Aug. 14, 2013 – the group that the statute grandfathered into licensure.

**Recommendation**

The Board must vote whether to adopt the proposed administrative rule language in OARs 824-030-0010 and 824-030-0020.

# **Other Board Business**



Health Licensing Office  
Behavior Analysis Regulatory Board  
October 29, 2015

**\*\*PLEASE PRINT\*\***

Name (First, Last)	Representing	Request to Comment (Yes/no)