



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

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

WHO: Health Licensing Office
Behavior Analysis Regulatory Board

WHEN: 1:30 p.m. Aug. 13, 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., Aug. 13, 2015
700 Summer St. NE, Suite 320
Salem, Oregon

Call to order

1. Items for board action

- ◆ Approval of agenda
- ◆ Approval of the revised minutes for July 16, 2015
Gary Strange applied and was licensed as an assistant behavior analyst
- ◆ Approval of 2016 meeting dates
- ◆ Review of applications

2. Reports

- ◆ Director's report
Legislative update
- ◆ Licensing and fiscal report

3. Public/interested parties' feedback

4. Policy

- ◆ Rules advisory committee report
- ◆ Present proposed rules
- ◆ Board discussion on OARs:
824-010-0005
824-030-0040
824-035-0005
824-040-0010
824-050-0010.

5. Items for board action II

- ◆ Vote on moving proposed administrative rule language in OARs 824-030-0010 and 824-030-0020 into the rulemaking process.

6. 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



July 16, 2015
700 Summer St. NE, Suite 320
Salem, Oregon

MINUTES

MEMBERS PRESENT

Jenny Fischer, Chair
Harmony Miller
Wendy Machalicek
Amy Donaldson (via teleconference)
Michele Raddish (joined at 1:35 p.m.)
Alice Austin

STAFF PRESENT

Holly Mercer, Director
Sylvie Donaldson, Fiscal Services and Licensing Manager
Anne Thompson, Policy Analyst
Sarah Kelber, Communications Coordinator
Maria Gutierrez, Board Specialist

MEMBERS ABSENT

Kurt Freeman, Vice Chair

GUESTS PRESENT

Maria Lynn Kessler

Call to order

Chair Jenny Fischer called the Behavior Analysis Regulatory Board to order at 1:33 p.m. on July 16, 2015. Roll was taken.

Items for board action

◆ **Approval of agenda**

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

◆ **Approval of minutes**

Alice Austin made a motion, with a second by Wendy Machalicek, to approve the minutes for June 18, 2015. The motion passed unanimously.

Harmony Miller made a motion, with a second by Michele Raddish, to approve the minutes for April 16, 2015. The motion passed unanimously.

◆ **Applications**

The Health Licensing Office (HLO) received applications from:

- Amber Crane – Behavior Analysis Interventionist
- Amy Tondreau – Behavior Analysis Interventionist

- Brooke Vera – Behavior Analysis Interventionist

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

The Health Licensing Office (HLO) received applications from:

- Michael Carlip – Behavior Analyst
- Erin Clark – Behavior Analyst
- Lauren Gatten – Behavior Analyst
- Meghan Johns – Behavior Analyst
- Julia Linden – Behavior Analyst
- Gary Strange – Assistant Behavior Analyst

By consent agenda, Harmony Miller moved, with a second by Michele Raddish, to approve the behavior analyst applications. Motion passed.

Reports

◆ Director's report

Director Holly Mercer reported that Senate Bill 696 had been signed and that the rulemaking process was underway. Mercer explained that it will be done in two phases; the first will focus on the areas that need to be addressed prior to Nov. 1, 2015, and the second will be in the spring and will focus on grandfathering and other issues. Mercer indicated that the Senate confirmations for the new Board would be in mid-September and the governor's office needed interest forms from members wishing to continue to serve by early August.

Mercer gave the Board an overview of the Office's transition to the Public Health Division of the Oregon Health Authority and explained how the new electronic-minutes system would impact Board meetings beginning in the fall.

◆ Policy

Mercer said that on June 26, 2015, the Office sent out interest forms to the stakeholder groups chosen by the Board to be at the table for the rules advisory committee (RAC) meeting slated for Aug. 4, 2015. The representatives were:

1. Oregon Association for Behavior Analysis (2 representatives who practice behavior analysis)
2. Autism Speaks (1)
3. Oregon Insurance Division (1)
4. Insurance plan representative (1)
5. Autism Society of Oregon (1)
6. Consumer/parent of someone who uses ABA services (2)
7. Public member (1)
8. Faculty member from a 4-year accredited university with a program on behavior analysis (1)
9. Behavior Analysis Regulatory Board member (1)

On July 8, 2015, another interest form was sent out to stakeholders, adding these two additional RAC

positions:

- Behavior Analysis Interventionist – (1)
- An individual who was actively practicing applied behavior analysis on Aug. 14, 2013. (1)

Not all the groups got representatives; several applicants had more than one group, such as being a parent and a provider. Mercer said that in addition to hearing from RAC participants, anyone is welcome to come to the meeting and offer feedback during the public comment period. Written public comment also will be accepted.

The Board discussed the candidates and asked questions about the process. The Board chose:

1. Oregon Association for Behavior Analysis (2 representatives who practice behavior analysis) – Melissa Gard and Amy Loukus
2. Autism Speaks (1) – Paul Terdal
3. Oregon Insurance Division (1) – Tashia Sample
4. Insurance plan representative (1)
5. Autism Society of Oregon (1) – Barbara Avila
6. Consumer/parent of someone who uses ABA services (2) Tobi Rates
7. Public member (1)
8. Faculty member from a 4-year accredited university with a program on behavior analysis (1) – Maria Lynn Kessler
9. Behavior Analysis Regulatory Board member (1) – Jenny Fischer
10. Behavior Analysis Interventionist (1) – Emily Kearney
11. An individual who was actively practicing applied behavior analysis on Aug. 14, 2013. (1) – Richard Fulton

The lack of consumers and public members, and the desire to have that “voice” at the table spurred the Board to extend the application deadline for consumers to July 27.

Public/interested parties’ feedback

Maria Lynn Kessler said she was interested in seeing how the RAC conversation went and that she knew of a consumer who applied late for the RAC. Anne Thompson said that in light of the Board’s deadline extension, the applicant would be contacted.

Other board business

None.

The Board meeting was adjourned at 3:13 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

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

- Amanda Broughton – Behavior Analyst
- Karen Green – Behavior Analyst
- Natalie Helms – Behavior Analyst
- Megan Maixner – Behavior Analyst
- Whitney Smith – Behavior Analyst

2016 Meeting Dates



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

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

2016 meeting dates

BACKGROUND AND DISCUSSION

The Behavior Analysis Regulatory Board (Board) won't need to meet as much in 2016 as it did in 2015.

ISSUE

The Board must approve 2016 meeting times and dates. The Health Licensing Office proposes:

- 9 a.m. Thursday, Jan. 14
- 9 a.m. Thursday, March 24
- 9 a.m. Thursday, May 19
- 9 a.m. Thursday, Aug. 18
- 9 a.m. Thursday, Oct. 20

BOARD ACTION

The Board approves 2016 meeting times and dates:

Director's Report

Licensing and Fiscal Statistical Reports

Health Licensing Office Behavior Analysis Regulatory Board

*Licensing Division Statistics as of **June 30**, 2015 **

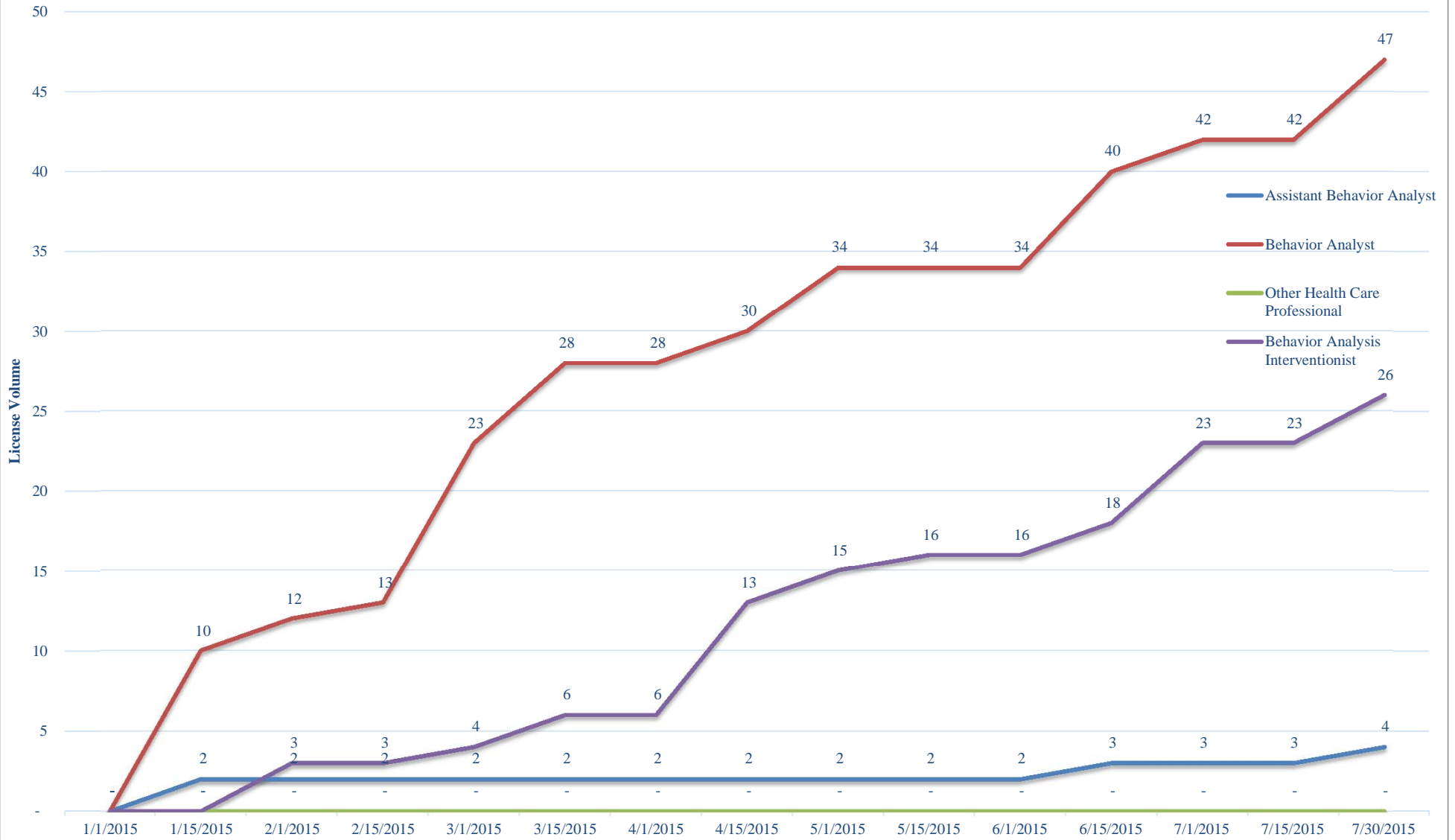
2013 - 2015 Biennium

Authorizations Issued						
Quarter	Behavior Analyst	Assistant Behavior Analyst	Other Health Care Professional	Behavior Analysis Interventionist	Total	
1st	-	-	-	-	-	
2nd	-	-	-	-	-	
3rd	-	-	-	-	-	
4th	-	-	-	-	-	
5th	-	-	-	-	-	
6th	-	-	-	-	-	
7th	28	2	-	6	36	
8th	14	1	-	17	32	
Total:	42	3	-	23	68	
Renewals Processed						
Quarter	Behavior Analyst	Assistant Behavior Analyst	Other Health Care Professional	Behavior Analysis Interventionist	Total	<i>% Renewed Online</i>
1st	-	-	-	-	-	
2nd	-	-	-	-	-	
3rd	-	-	-	-	-	
4th	-	-	-	-	-	
5th	-	-	-	-	-	
6th	-	-	-	-	-	
7th	-	-	-	-	-	0.00%
8th	-	-	-	-	-	0.00%
Total:	-	-	-	-	-	0.00%

** Note that this table reflects activities through June 30, 2015 only since it is based on the 2013-15 biennium, and the following charts and graphs in this report are more current, including four more weeks of activity on through July 30th. Licensing activities for the July timeframe will be included in the next update to this display once we shift to the 2015-17 biennium.*

Behavior Analysis Regulatory Board

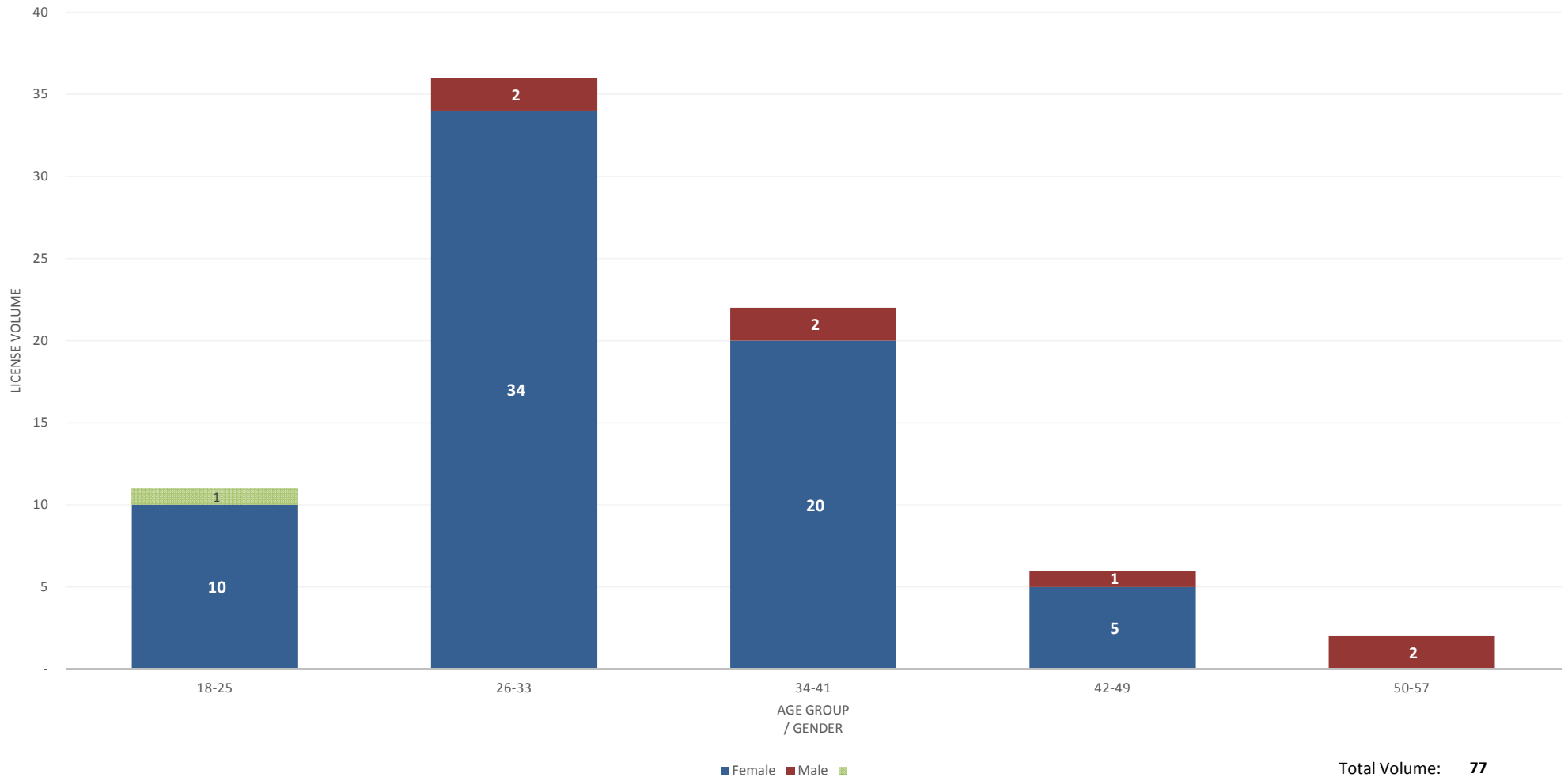
Active License Trends
January 1, 2015 - July 30, 2015



* Note that the bi-monthly updates in this report are temporary, and will shift to the HLO-standard quarterly updates later on this calendar year.

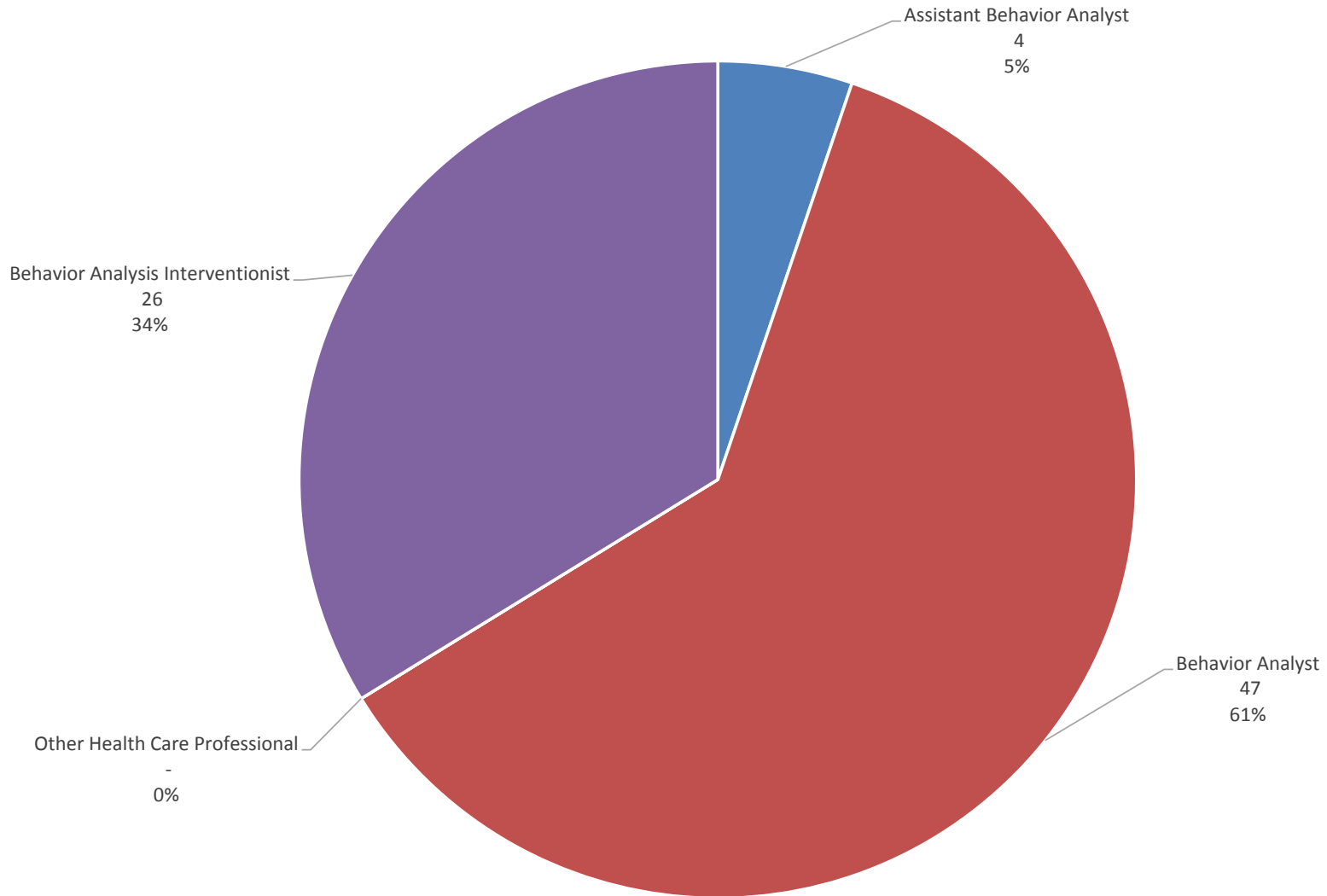
Behavior Analysis Regulatory Board

Active Licensee Volume
Statistics Grouped by Gender and Age Group as of July 30, 2015
2015-15 Biennium



Behavior Analysis Regulatory Board

License Volume by License Type as of July 30, 2015
2013 - 2015 Biennium



**HEALTH LICENSING OFFICE
Fund 7860 - BEHAVIOR ANALYSIS REGULATORY
STATEMENT OF CASH FLOW
FOR THE PERIOD 07/01/13 - 06/30/15**

CURRENT

13-15' Beginning Cash Balance	\$	-
Revenues	\$	23,100.00
Expenditures	\$	35,630.20
Less: Accrued Expenditures	\$	-
Less: Total Expenditures	\$	(35,630.20)
Subtotal: Resources Available	\$	(12,530.20)
Change in (Current Assets)/Liabilities	\$	-
Ending Cash Balance (Actual)	\$	(12,530.20)

Indirect Charges are calculated using the following rates:

*Based on Licensee Volume as of May 20, 2013

Shared Assessment %	0.00%
Examination %	0.00%
Small Board Qualification %	0.00%
Inspection %	0.00%

Indirect charges will be assessed to the BARB fund starting July 1, 2015

Policy Report



Rulemaking schedule

HEALTH LICENSING OFFICE
Behavior Analysis Regulatory Board

Date	Action	Time
July 6, 2015	SB 696 signed	
June 18, 2015	List RAC stakeholders	1:30 p.m.
June 19, 2015	Public communication with interest forms	1:30 p.m.
July 16, 2015	board meeting – administrative rules work and vote on RAC representatives	1:30 p.m.
Aug. 4, 2015	RAC meeting to discuss portions of draft rules	9 a.m. to noon
Aug. 10, 2015	Deadline for public comment on language	noon
Aug. 13, 2015	In-person board meeting – approve proposed rules and new application/declaration forms and materials	1:30 p.m.
Sept. 1, 2015	Proposed rules in the Oregon Bulletin	8 a.m.
Sept. 10, 2015	Board meeting	1:30 p.m.
Sept. 30, 2015	Public hearing for rules	9 a.m. 11 a.m.
Oct. 29, 2015	Board meeting – approve permanent rules	1:30 p.m.
Nov. 1, 2015	New rules take effect – start taking declarations	

Please send all public comment or questions to:

Anne Thompson, Policy Analyst

700 Summer St NE, Suite 320, Salem, OR 97301-1287

anne.p.thompson@state.or.us . Work: (503) 373-1917

All meetings are held at the Health Licensing Office, Rhoades Conference Room, 700 Summer St, Suite 320, Salem, OR 97301, unless otherwise specified. Members of the public are invited and encouraged to attend all board and committee meetings. However, audience members will not be allowed to participate.



DATE: Aug. 12, 2015

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

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

FROM: Anne Thompson, hearing officer

SUBJECT: Report on BARB rules advisory committee (RAC) meeting

Background

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. A RAC was held for the purpose of receiving comments regarding the set of administrative rules drafted by HLO staff. The RAC included stakeholders who had filed interest forms with HLO and represented the groups the Board and HLO felt needed to have a voice at the table.

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.

Comments

Invited RAC participants and the groups they represent:

1. Oregon Association for Behavior Analysis (Representatives who practice behavior analysis) – Melissa Gard and Amy Loukus
2. Autism Speaks – Paul Terdal
3. Oregon Insurance Division – Tashia Sample
4. Insurance plan representative (None)
5. Autism Society of Oregon – Barbara Avila
6. Consumer/parent of someone who uses ABA services – Tobi Rates, Laurie Stuebing, Brenna Legaard
7. Public member – Kelsie Davis
8. Faculty member from a 4-year accredited university with a program on behavior analysis – Maria Lynn Kessler

9. Behavior Analysis Regulatory Board member – Jenny Fischer
10. Behavior Analysis Interventionist – Emily Kearney
11. An individual who was actively practicing applied behavior analysis on Aug. 14, 2013. – Richard Fulton

Paul Terdal did not attend, but sent written comments. Laurie Stuebing and Maria Lynn Kessler attended via teleconference.

Staff members present:

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
Jennifer Lewis-Goff, Legislative Coordinator

Guest present: Shane Jackson of the Autism Society of Oregon

This list describes the sections that were discussed, along with the statutory rulemaking authority.

- 824-010-0005 – HLO
- 824-030-0010 – Board
- 824-030-0020 – Board
- 824-030-0040 – HLO
- 824-035-0005 – HLO
- 824-040-0010 – HLO
- 824-050-0010 – HLO

Oral comments

824-010-0005 – Definitions

Fischer said that “direct supervision” should include the possibility of remote supervision, saying that would help with access to services in rural areas and be less expensive for families to pay for the analyst to drive to them. Rates said that a remote presence with direct line of sight would help and it would be a lot cheaper to get remote help. Sample said that telemedicine may be an option. RAC members thought that by allowing for remote supervision, it would be cheaper for families and improve access to services.

Legaard thought that replacing the word “presence” with “participation” in the definition for direct supervision would help.

Sample asked about ORS Chapter 771 and its definition of autism spectrum disorder and how that will change with the new statutes. Tucker Davis said that will be checked.

824-030-0010 – Licensing of Behavior Analyst

RAC members had questions about the fingerprinting part of the rules, didn’t have suggestions or voice any concerns about the economic impact of this section on the public, licensees, small businesses or units of government.

824-030-0020– Licensing of Assistant Behavior Analyst

Donaldson said that the changes here mirror changes in the 0010 section and the other changes necessitated by the statute.

824-030-0040 – Registration of Behavior Analysis Interventionist

Kearney and Rates were happy with the new language around the required 40 hours of professional training in applied behavior analysis. Fulton said that the verification required in (6) might have a financial impact in that an applicant might have to pay someone to verify their training. Legaard said that getting fingerprinted would be an expense for applicants but that “it has to happen.” Sample said taking the GED test and getting a certificate would be an expense. Rates said a high school transcript also is in expense; Sample said that it’s \$7 for a transcript. Kearney said she didn’t think the fingerprint fees would be a problem.

824-035-0005 – Declaration requirements

Donaldson explained that this section is brand new and from Senate Bill 696. She said that the declaration is not a license and is a way to gather data on the group of people who are not licensed by any other board and who may use the grandfathering pathway the BARB will establish early in 2016.

Legaard voiced strong opposition to (2) and its subsections, which required the declarant to provide a de-identified client file. She said it can’t be redacted enough to protect the client’s privacy. Other RAC members agreed.

Tucker Davis asked RAC members what documentation declarants could provide to prove they were doing applied behavior analysis (ABA) on the date dictated in the statute.

Legaard said she represents the consumer-advocacy side, and said the goal with this legislation was to offer grandfathering to keep families who get help from certain providers to keep getting the help that works for them and stabilize the Oregon market. But the downside of offering grandfathering, she said, is that the professionals that fall in the area are not licensed by anyone or subject to discipline, and that people may come from other states to escape “their shady pasts.” She said the declaration should gather information on the clients they served, where, and if they supervised, but in broad terms.

Fulton said he supported what Legaard said, but that gathering the information in the draft rules would be burdensome. To get documentation of his work, he would have to get it from the school district where he worked, and the school would have to cooperate, his boss who supervised him would have to cooperate, and what if he retired? He said there would be a lot of layers to get through to get that documentation.

Stuebing said as a long-time consumer of ABA, she is concerned that people are saying they are practicing ABA when they are doing a watered-down version of it. She said having a teaching degree doesn’t mean they are practicing ABA and it’s a concern.

Gard said client records and work samples are a problem, and that direct observation was needed to evaluate the declarant.

Kessler suggested contracts for services with families might work for documentation, but Rates said the client would still be identified. Avila said contracts with counties might work, as long as it had the ABA verbiage in it, and Kessler said job descriptions would include ABA.

Fulton said school district contracts and job descriptions about classroom management are unlikely to include the term ABA as part of the teaching job description even though there are curriculums that are implemented based on ABA.

Loukus said she had students who have designed behavior support plans for classes and might be able to declare without even having a degree or any other certification. She said showing that someone has paid for your services would be important.

Legaard said the legislature wanted the Board to take all comers, make them fill out a form, collect names and information such as billing information. She told the RAC that any information gathered in this process would be subject to a public records request and that information would be used as the BARB works toward 2018, when these declarants may seek licensure through grandfathering.

Tucker Davis again asked RAC members about the list of things in the draft rules – if they work and alternatives.

Legaard said the Early Start Denver Model people told her that this list wouldn't work for them, but that they didn't give alternatives. Fischer said that the list is a small part of a big picture, and that this might be more appropriate later in the grandfathering process. This was a step toward 2018, when the provider crunch has been mitigated, BARB can make real decisions about managing the profession going forward.

Sample suggested making the declaration smaller and open things up and then maybe tighten things down later. Rates said a form would require declarants to say “yes, I did this” – they meet the statutory definition and that a signature on the form would be the proof under penalty of perjury. She also said that the requirement of a curriculum vitae (CV) would have lots of information about the declarant.

Rates said the declaration should ask if they have ever been disciplined. Tucker Davis said that would not be a basis for denial, but it could be a piece of information to gather.

Donaldson said that the declaration just means that they were actively practicing ABA. HLO and the Board will use this information to create a pathway to licensure.

No one voiced concerns about the economic impact of this section beyond the gathering of documentation.

824-040-0010 – Training and Supervision of Registered Behavior Analysis Interventionist
Legaard said a representative from the Center for Autism and Related Disorders (CARD) said the rules make it more challenging to operate in Oregon. The group discussed the requirement

that the interventionist needs to have two hours of direct supervision prior to independent service delivery. Legaard said that the duration could be left up to the therapist. Avila thought that only providing direct supervision with each client on the interventionist's caseload every three months was not enough and that two months would be better. Fischer and Rates said that that's the minimum, and the goal is to not make things restrictive for rural areas. Avila also said that evaluations every six months was too frequent; annual evaluations would be better.

Gard said using the interventionist forms as a template, but being able to modify them would be helpful. Kessler suggested forms that have parts that are standard and parts that can be modified. Kearney said that sounded good; Rates agreed. Legaard said having hyperlinks in rules is "weird." Rates said that retaining records for five years might be a financial burden on interventionists and that notifying HLO within three days if they are no longer being supervised was a little quick; five business days would be sufficient. Sample suggested that electronic recordkeeping may help ease the burden of record retention.

Kearney said that direct supervision should have "participation" instead of "presence" in the definitions and the BARB should look at Skype and other kinds of direct, visual, real-time observation. Gard said that new rules should include remote supervision as long as the remote supervision is visual.

824-050-0010 – Renewal of license and registration

Donaldson explained the process and said that licensees and registrants would get letters explaining the process of getting fingerprints for renewal, as the earlier statute did not require them.

Written comments

From Paul Terdal:

Concerns about proposed rules on the Declaration of Practice (proposed OAR 824-035-0005)

These rules were based on SB696 Section 11:

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

Sec. 4. (1) An individual actively practicing applied behavior analysis **as defined in section 1 of this 2015 Act on August 14, 2013**, may continue to claim reimbursement from a health benefit plan, the Public Employees' Benefit Board or the Oregon Educators Board for services provided without a license before **July 1, 2018**.

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

First, I'm concerned that the requirement for a "de-identified record from ... a client" (OAR 824-035-0005 section 2) is extremely specific, and may presume specific approaches to ABA that go beyond the statutory definition of ABA, which is:

(1)(a) “Applied behavior analysis” means the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce significant improvement in human social behavior, including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior.

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

For instance, the rule requires very specific approaches to documenting client records of treatment that may not be universal, to the point of requiring “page number and descriptive narrative where” the very specific items “are found in the records.”

The rule also uses language and terminology that don’t appear in the statutory definition of ABA (such as “functional behavior assessment,” “three-term contingency,” etc.), and may not be universally applicable to all models of statutory ABA. An ABA provider who practiced ABA – as statutorily defined – on August 14, 2013 but whose records used different terminology may be improperly denied their right to be grandfathered.

Second, I’m concerned that even providing a “de-identified” clinical record (with “names, dates of birth, social security numbers and any other unique identifiers ... redacted”) from a real client – as required by OAR 824-035-0005(2) would violate patient confidentiality. There are simply too many contextual elements which could identify clients in specific records even with names removed.

These declarations will probably be disclosable as public records under ORS 192.420 – and indeed they should be. Insurers and consumers should have access to these grandfathering declarations to assist them evaluating the qualifications of these unlicensed providers. As a result, these “de-identified” clinical records would effectively be released into the public domain. That’s not appropriate for confidential mental health records which could identify clients even with names removed.

Proposal:

Instead of requesting a de-identified but real client record, HLO should request a descriptive case study describing how ABA – as defined in SB696 – was used for a patient on or about August 14, 2013.

That case study should be based specifically on the language of the statutory definition of ABA, such as including these factors:

- Design, implementation and evaluation of environmental modifications
- Using behavioral stimuli and consequences

- To produce significant improvement in human social behavior,
- Including the use of direct observation, measurement and functional analysis of the relationship between environment and behavior.

The grandfathered provider's signature on the declaration can attest to the accuracy of the case study, under penalty of perjury for false statements.

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 ORS 674.XXX.**
- (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 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 ORS 674.XXX 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 ORS 674.XXX, 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, ORS 674.XXXX, 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 Health Licensing Office not later than April 30, 2016. The declaration form is available at [HLO website] and must be notarized.

(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 at [HLO 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 [HLO 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 at [HLO website].

(4) A Registered Behavior Analysis Interventionist must maintain a log of ongoing training and supervision on the form at [HLO 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) 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 of the Board must rely on the principles of behavior analysis in their practice and use research-based behavior analytic services.

(2) Licensees and registrants of the Board 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.



HEALTH LICENSING OFFICE
Behavior Analysis Regulatory Board

700 Summer St. NE, Suite 320, Salem, OR, 97301
 Phone: 503-378-8667 | Fax: 503-370-9004
www.oregon.gov/oha/hlo | Email: hlo.info@state.or.us

DECLARATION OF ACTIVE PRACTICE IN BEHAVIOR ANALYSIS

An individual may continue to claim reimbursement from a health benefit plan, the Public Employees' Benefit Board or the Oregon Educators Board for services provided without a license until July 1, 2018, if the individual submits a satisfactory declaration and additional documentation by April 30, 2016.

Please note: In order to complete this declaration form you must be able to accurately and truthfully check and initial every box in the Affirmation and Attestation of Active Practice Section as well as provide all of the other required information.

1. Individual's Information

NAME: LAST	FIRST	MIDDLE INITIAL
RESIDENTIAL PHYSICAL ADDRESS (REQUIRED)		
CITY	STATE	ZIP
MAILING ADDRESS (IF DIFFERENT FROM RESIDENTIAL ADDRESS)		
CITY	STATE	ZIP
PHONE: <input type="checkbox"/> HOME <input type="checkbox"/> CELL	BIRTHDATE	EMAIL

2. Affirmation and Attestation of Active Practice

I affirm and attest that on August 14, 2013, I actively practiced applied behavior analysis by performing all of the following services:

- I designed environmental modifications using behavioral stimuli and consequences. **Initial** _____
- I implemented environmental modifications using behavioral stimuli and consequences. **Initial** _____
- I evaluated environmental modifications using behavioral stimuli and consequences. **Initial** _____
- I produced significant improvement in human social behavior. **Initial** _____
- I used direct observation of the relationship between environment and behavior. **Initial** _____
- I used measurement of the relationship between environment and behavior. **Initial** _____
- I used functional analysis of the relationship between environment and behavior. **Initial** _____

IMPORTANT: You must submit a copy of a curriculum vitae with this document for review.

I have included a copy of a curriculum vitae for review.

By signing below, I affirm and attest that the information provided above is true, accurate and complete and that on August 14, 2013, I actively practiced applied behavior analysis.

Signature

Date

Notary:

Subscribed and sworn before me on this _____ day of _____, 20____

Notary Public _____

My Commission Expires _____

State of Oregon _____

County of _____

Notary

Seal

Public/Interested Parties' Feedback

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 grandfathers into licensure.

Recommendation

The Board must decide whether to move the proposed administrative rule language in OARs 824-030-0010 and 824-030-0020 into the rulemaking process. The Board also can discuss the proposed administrative rule language in OARs 824-010-0005, 824-030-0040, 824-035-0005, 824-040-0010 and 824-050-0010. These are under HLO's statutory rulemaking authority.



**Health Licensing Office
Behavior Analysis Regulatory Board
August 13, 2015**

****PLEASE PRINT****

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