

HOUSE BILL 1279

By White M

AN ACT to amend Tennessee Code Annotated, Title 4 and Title 63, relative to the practice of behavior analysis.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-29-236(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Tennessee behavior and analyst licensing board, created by § 63-52-103;

SECTION 2. Tennessee Code Annotated, Title 63, is amended by adding the following language as a new chapter.

63-52-101.

(a) The practice of behavior analysis in the state of Tennessee is hereby declared to affect the public health, safety, and welfare of citizens of this state.

(b) There is hereby created a board to be known as the behavior analyst licensing board to protect the public from:

(1) The practice of applied behavior analysis by unqualified persons; and

(2) Unprofessional, unethical and harmful conduct by behavior analysis practitioners.

(c) No person shall represent to be or function as a behavior analyst or assistant behavior analyst under the provisions of this part unless such person holds a valid license issued by the board. The board shall also regulate the practice of applied behavior analysis.

63-52-102. As used in this part:

(1) "Board" means the Tennessee behavior analyst licensing board;

(2) "Certifying entity" means the nationally accredited behavior analyst certification board (BACB) or its successor;

(3) "Co-employed relationship" means the licensed behavior and licensed assistant behavior analyst are employed by the same employer;

(4) "Employee-employer relationship" means the licensed behavior analyst is the employer of the licensed assistant behavior analyst. This relationship may include contractual employment or consultant services;

(5) "Human services professional" means an individual licensed or certified in this state as a:

(A) Physical therapist or physical therapist assistant;

(B) Occupational therapist or occupational therapist assistant;

(C) Clinical social worker;

(D) Masters social worker;

(E) Social work associate;

(F) Psychologist or health service psychologist;

(G) Speech pathologist;

(H) Audiologist;

(I) Professional counselor or professional counselor candidate; or

(J) Marital and family therapist or marital and family therapist candidate;

(6) "Licensed assistant behavior analyst" or "LABA" means an individual who is certified by the certifying entity as a board certified assistant behavior analyst (BCABA) and is licensed in this state to practice applied behavior analysis under the extended authority and supervision of a licensed behavior analyst;

(7) "Licensed behavior analyst (LBA)" means an individual who is certified by the certifying entity as a board certified behavior analyst (BCBA) or board certified behavior analyst – doctoral (BCBA-D) and is licensed in this state to practice applied behavior analysis as an independent practitioner;

(8) "Practice of applied behavior analysis" means the design, implementation, and evaluation of environmental modifications by a behavior analyst to produce socially significant improvements in human behavior. It includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis (ABA) interventions are based on scientific research and the direct observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities;

(9) "Real-time supervision" means observation and provision of feedback to a supervisee's delivery of ABA services by an LBA or an LABA who is supervised by an LBA during interactions occurring in person or via technology that permits auditory and visual contact between supervisors and supervisees;

(10) "Supervisee" means a person who delivers ABA services under the extended authority and supervision of an LBA or an LABA who is supervised by an LBA; and

(11) "Supervision" means the direct observation and provision of feedback to a supervisee by an LBA or an LABA who is supervised by an LBA.
63-52-103.

(a) There is hereby created the Tennessee behavior analyst licensing board, which shall consist of five (5) members appointed by the governor.

(b) The board is authorized to issue licenses to individuals who meet the requirements specified in this part, and to promulgate rules and regulations for the implementation of part including, but not limited to, the setting of fees and the establishment of disciplinary actions. The board shall maintain a list of all licensees that shall be provided to any interested party on written request.

(c)

(1) The initial board shall consist of:

(A) At least three (3) individuals certified by the certifying entity as board certified behavior analysts or board certified behavior analysts-doctoral;

(B) At least one (1) individual certified by the certifying entity as a board certified assistant behavior analyst; and

(C) One (1) public member who is a consumer of applied behavior analysis services and holds neither certification.

(2) The members listed in subdivision (c)(1)(A) and (B) may be appointed by the governor from lists of qualified nominees submitted by interested behavior analyst groups including, but not limited to, the Tennessee Behavior Analyst Association.

(3) The governor shall consult with interested behavior analyst groups including, but not limited to, the Tennessee Behavior Analyst

Association, to determine qualified persons to fill the positions as provided in this subsection.

(4) Board members shall serve terms of three (3) years. Initial appointees to the board serve staggered terms as follows: one (1) member for one (1) year; two (2) members for two (2) years; and two (2) members for three (3) years.

(5) No later than July 1, 2019, the governor shall appoint a new board to consist of:

(A) At least three (3) licensed behavior analysts;

(B) At least one (1) LABA; and

(C) One (1) public member who holds neither credential, and is free from conflicts of interest in performing the duties of the board.

(d) All reimbursement for travel expenses shall be in accordance with the provisions of the comprehensive travel regulations as promulgated by the department of finance and administration and approved by the attorney general and reporter. All members of the board shall serve as such without compensation, but they shall be entitled to receive necessary travel and other appropriate expenses while engaged in the board's work.

(e) The board shall be provided administrative support by the division of health related boards in the department of health.

(f) The board shall meet at least once per quarter.

63-52-104.

(a) Each person desiring to obtain a license shall submit an application and fee to the board. The application shall include evidence that the applicant meets all of the following requirements for licensure:

(1) Is at least twenty-one (21) years old;

(2) Is of good moral character and conducts his or her professional activities in accordance with accepted professional and ethical standards, including the certifying entity's Professional Disciplinary and Ethical Standards and Guidelines for Responsible Conduct for Behavior Analysts;

(3) Has not had a professional credential refused, revoked, suspended, or restricted and does not have a complaint, allegation, or investigation pending in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct, unless the state of Tennessee finds that the conduct has been corrected or that mitigating circumstances exist that prevent resolution; and

(4) For an LBA applicant:

(A) Is currently certified by the certifying entity as a BCBA or board certified behavior analyst-doctoral; and

(B) Is not the subject of disciplinary actions by the certifying entity;

(5) For an LABA applicant:

(A) Is currently certified by the certifying entity as a board certified assistant behavior analyst;

(B) Is not the subject of disciplinary actions by the certifying entity; and

(C) Provides proof of ongoing supervision by an LBA who is currently certified by the certifying entity as a BCBA or board certified behavior analyst-doctoral in a manner consistent with the certifying entity's requirements for supervision of board certified assistant behavior analysts.

63-52-105.

(a) No person shall use the title "licensed behavior analyst" or "licensed assistant behavior analyst" unless that person holds the applicable license issued by the board.

(b) No person shall practice applied behavior analysis unless that person is licensed by the board as an LBA or an LABA or meets criteria for one of the exemptions in § 63-52-106.

(c) Any person who violates this section or § 63-52-106 commits a Class B misdemeanor, punishable by a fine only, the suspension or revocation of a license issued pursuant to this part, or both fine and loss of licensure.

63-52-106. This act shall not be construed as prohibiting or restricting the practice of any of the following:

(1) Other human services professionals who are licensed, registered, or certified by the state; provided, such individuals are working within the scope of practice of their professions and the scope of their training and competence;

(2) Unlicensed persons who deliver ABA services under the extended authority and direction of an LBA or an LABA who is supervised by an LBA. Such persons shall not represent themselves as professional behavior analysts;

(3) Family members of recipients of ABA services who implement certain ABA procedures with recipients under the extended authority and direction of

LBAAs or LABAs who are supervised by LBAs. Such persons shall not represent themselves as professional behavior analysts;

(4) Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such persons may use the title “behavior analyst” but may not represent themselves as LBAs or LABAs unless they hold one of those credentials issued by the state;

(5) Persons who provide general ABA services to organizations, so long as those services are for the benefit the organizations and do not involve direct services to individuals;

(6) Matriculated college or university students, interns, or postdoctoral fellows whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum; provided, that the practice under this exemption is directly supervised by an LBA in this state or an instructor in a BACB approved course sequence. Students, interns, and postdoctoral fellows shall not represent themselves as professional behavior analysts but shall use titles that clearly indicate their trainee status, such as “behavior analysis student,” “behavior analysis intern,” or “behavior analysis trainee”;

(7) Persons who teach behavior analysis or conduct behavior analytic research; provided, that such teaching or research does not involve the delivery of direct behavior analytic services. Such persons may use the title “behavior analyst” but may not represent themselves as LBAs or LABAs unless they hold one of those credentials issued by the state; and

(8) Unlicensed persons pursuing experiential training in behavior analysis consistent with the BACB's experience requirements, provided such experience is supervised by an LBA in this state who meets BACB supervisor requirements,

and that the supervised experience is conducted in accordance with other BACB standards and requirements.

63-52-107.

(a) Licenses for LBA's and LABA's are issued for two-year periods from the date of issuance.

(b) A person applying for initial or renewed licensure shall provide:

(1) Evidence of current certification by the certifying entity at the required certification level;

(2) A photocopy of valid photo identification;

(3) A completed application form; and

(4) A notarized statement indicating that the applicant is in good standing with the certifying entity, with the state of Tennessee and has complied with all requirements of this part;

(c) The board shall set appropriate fees for licensure and renewals for both LBA's and LABA's which will not be less than three hundred dollars (\$300) for LBA's and one hundred fifty dollars (\$150) for LABA's for each licensure period.

63-52-108.

(a) LBA's shall provide supervision of ABA services under their extended authority and direction to all designated persons as provided in this act.

(b) LABA's shall work under the supervision of LBAs.

(c) An LBA shall provide supervision to a maximum of six (6) LABAs concurrently, with the supervision to be conducted as follows:

(1) A minimum of two (2) hours for each forty (40) hours of services provided by a LABA;

(2) A minimum of one-half (1/2) of all supervision hours shall involve real time interactions;

(3) A minimum of one-half (1/2) of all supervision hours shall involve one-to-one interactions between supervisors and supervisees.

The remainder may be conducted in small group format;

(4) Acceptable supervision activities include:

(A) Direct observation of the LABA delivering ABA services to service recipients;

(B) Direct observation of the LABA training family members and staff to implement ABA assessment or intervention procedures;

(C) Demonstrating ABA assessment or intervention procedures;

(D) Coaching supervisees in implementing ABA assessment or intervention procedures;

(E) Reviewing and discussing treatment goals and procedures;

(F) Reviewing service recipient progress data; and

(G) Reviewing and discussing relevant research articles and other professional literature.

(c) A formal professional relationship shall exist between a supervising LBA and LABA in the form of:

(1) A co-employed relationship; or

(2) An employee-employer relationship.

(d) LABAs shall notify the board within ten (10) business days of any change in supervision status.

63-52-109.

(a) All complaints regarding the unprofessional conduct of licensees shall be submitted to the board in writing.

(b) An administrative staff person shall be appointed by the commissioner and serve under the direction of the board to assist with investigations made in accordance with this section.

(c) Sanctions for unprofessional conduct shall be established by the board.

63-52-110.

(a) All licensees shall comply with the certifying entity's Guidelines for Responsible Conduct and Professional Disciplinary and Ethical Standards.

(b) Any person licensed by the board shall report within five (5) business days any disciplinary sanction imposed by the certifying entity including, but not limited, to denial of initial or renewal certification, revocation, suspension, or any other limitation of certification or combination of sanctions. Any licensee who loses certification for any reason immediately forfeits the Tennessee license and shall stop providing ABA services in this state.

(c) Other grounds for forfeiture or non-renewal of a license issued in accordance with this part include:

(1) Obtaining or attempting to obtain a license by making a false or misleading statement, failing to make a required statement, or engaging in fraud or deceit in any communication to the board;

(2) Gross or repeated negligence, incompetence, misconduct, or malpractice in professional work including, but not limited to:

(A) Any physical or mental condition that currently impairs competent professional performance or poses a substantial risk to the recipient of behavior analysis services;

(B) Professional conduct that constitutes an extreme and unjustified deviation from the customary standard of practice accepted in the applied behavior analytic community and creates a serious risk of harm to or deception of service recipients;

(C) Abandonment of a service recipient resulting in the termination of imminently needed care without adequate notice or provision for transition;

(D) Professional record keeping or data collection that constitutes an extreme and unjustified deviation from the customary standard of practice for the field, or deceptively altering service recipient's records or data;

(E) Engaging in blatant fraud, deception, misrepresentation, false promise or pretense, intimidation in the practice of applied behavior analysis, or in solicitation of service recipients;

(F) The unauthorized material disclosure of confidential service recipient information;

(G) Limitation, sanction, revocation, or suspension by a health care organization, professional organization, or other private or governmental body, relating to behavior analysis

practice, public health or safety, or behavior analysis certification or licensure; or

(H) Any conviction of a felony or misdemeanor directly relating to behavior analysis practice or public health or safety.

(d) All applicants and licensees shall report the following to the board within thirty (30) days of occurrence:

(1) A change in name, address, or other vital information;

(2) The filing of any criminal or civil charges against the applicant or licensee;

(3) The initiation of any disciplinary charges, investigations, or findings or sanctions by a health care organization, federal or state agency, or other professional association against the licensee; or

(4) Any other change in information provided by the applicant or licensee to the board.

63-52-111.

(a) The board may, in its discretion, grant a license to any person residing or employed in this state who has not previously failed to attain a license as a behavior analyst or assistant behavior analyst and who, at the time of application, is licensed or certified by a similar board of another state whose standards, in the opinion of the board, are not less stringent than those required by this chapter, and is able to satisfy the board that to grant that person a license would be in the public interest.

(b) Notwithstanding subsection (a), the board shall grant a license to a person who at the time of application:

(1) Is licensed or certified in good standing with a similar board of another state;

(2) Is certified by the certifying entity as a BCBA, a BCBA-D or a BCABA; and

(3) Can show reasonable proof that the applicant has available employment in this state.

SECTION 3. This act shall take effect July 1, 2013, the public welfare requiring it.