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## STATE BOARD OF PSYCHOLOGY

- Prohibits, beginning September 29, 2014, an individual from practicing applied behavior analysis in Ohio or holding the individual's self out to be a certified Ohio behavior analyst without a certificate from the State Board of Psychology.
- Subjects an individual who violates the prohibition to a fine of not less than \$100 nor more than \$500, imprisonment for not less than six months nor more than one year, or both.
- Defines the practice of applied behavior analysis.
- Lists the requirements an applicant must satisfy to receive a certificate.
- Makes a certificate valid for two years and lists renewal requirements, including a renewal fee of \$150 and continuing education requirements.
- Lists the disciplinary actions and the reasons for which the Board may impose discipline.

### **Certified Ohio behavior analysts**

(R.C. 109.572, 4732.06, 4732.07, 4732.08, 4776.01, 4783.01 to 4783.05, 4783.09 to 4783.13, and 4783.99; Sections 747.30 and 812.10)

#### **Certification requirement**

(R.C. 4783.02, 4783.01, and 4783.99; Section 812.10)

The act defines the term "practice of applied behavior analysis" as the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the following:

- The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis;
- Interventions based on scientific research and the direct observation and measurement of behavior and the environment;
- Utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people



develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

The practice of applied behavior analysis does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

The act, beginning September 29, 2014, prohibits any person from doing either of the following:

(1) Engaging in the practice of applied behavior analysis in Ohio without holding a certificate issued by the State Board of Psychology;

(2) Holding the person's self out to be a certified Ohio behavior analyst unless the person holds a certificate issued by the Board.

Under the act, whoever violates these prohibitions is to be fined not less than \$100 nor more than \$500, imprisoned for not less than six months nor more than one year, or both. Each violation is a separate offense.

### **Exceptions to certification requirement**

(R.C. 4783.02(B) and (C))

The requirement to obtain a certificate to practice applied behavior analysis does not apply to any of the following:

(1) An individual licensed under the Psychologist Law to practice psychology, if the practice of applied behavior analysis engaged in by the licensed psychologist is within the licensed psychologist's education, training, and experience;

(2) An individual licensed under the Counselors, Social Workers, and Marriage and Family Therapists Law to practice counseling, social work, or marriage and family therapy, if the practice of applied behavior analysis engaged in by the licensed professional counselor, licensed professional clinical counselor, licensed social worker, or licensed marriage and family therapist is within the licensee's education, training, and experience;

(3) An individual acting under the authority and direction of a person licensed as described in (1) or (2) above, if the licensed person signs an attestation stating that the licensed person is responsible for the care provided by the individual;



(4) An individual practicing applied behavior analysis who is supervised by a certified Ohio behavior analyst and acting under the authority and direction of that behavior analyst, if the behavior analyst signs an attestation stating that the behavior analyst is responsible for the care provided by the individual;

(5) The delivery of interventions by a direct care provider or family member to implement components of an applied behavior analysis treatment plan;

(6) A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including applied animal behaviorists and practitioners of organizational behavior management;

(7) A licensed professional authorized to practice in Ohio who, in the offering or rendering of services, does not represent oneself in any printed materials or verbally by incorporating the term "applied behavior analyst," if the services of the licensed professional are within the scope of practice of the licensing law governing the licensed professional and the services performed are commensurate with the licensed professional's education, training, and experience;

(8) A matriculated graduate student or postdoctoral trainee whose activities are part of a defined program of study or professional training;

(9) An individual employed by the Department of Developmental Disabilities, a county board of developmental disabilities, or a council of government consisting of county boards of developmental disabilities, when the individual is acting in the scope of that employment;

(10) A professional employed in a school or other setting that falls under the regulation of the State Board of Education when the professional is acting within the scope of that employment.

### **Requirements to obtain a certificate**

(R.C. 109.572(A)(9), 4732.07, 4776.01, 4783.04, and 4783.01)

Under the act, an individual seeking a certificate to practice as a certified Ohio behavior analyst must file with the Board a written application on a form prescribed and supplied by the Board. To be eligible for a certificate, the individual must do all of the following:

(1) Demonstrate that the applicant is of good moral character and conducts the applicant's professional activities in accordance with accepted professional and ethical standards;



(2) Comply with the continuing law requirements to obtain a criminal records check through the Bureau of Criminal Identification and Investigation (the Board must adopt rules under the Administrative Procedure Act establishing administrative and procedural requirements for the criminal records checks);

(3) Demonstrate an understanding of the law regarding behavioral health practice;

(4) Demonstrate current certification as a Board Certified Behavior Analyst by the Behavior Analyst Certification Board (BACB) or its successor organization or demonstrate completion of equivalent requirements and passage of a psychometrically valid examination administered by a nationally accredited credentialing organization;

(5) Pay the fee established by the Board.

The Board must review all applications received and keep a register of applicants for a certificate. The act prohibits the Board from granting a certificate to an applicant for an initial certificate unless the applicant complies with the criminal records check requirement and the Board, in its discretion, decides that the results of the criminal records check do not make the applicant ineligible for a certificate. If the Board determines that an applicant satisfies the requirements for a certificate to practice as a certified Ohio behavior analyst, the Board must issue the applicant a certificate. A person who obtains a certificate is a "certified Ohio behavior analyst."

### **Grandfathering provision**

(Section 747.30)

Under the act, if an individual certified as a board certified behavior analyst by BACB or its successor organization can demonstrate active practice in a manner prescribed in rules adopted by the Board within one year after the effective date of those rules, the individual may apply for immediate certification as a certified Ohio behavior analyst without paying a fee or satisfying other requirements specified in the act or requirements prescribed by the Board. The Board, under the act, must provide Internet access to the study guide produced by the Board that summarizes the applicable laws and rules. An individual issued a certificate pursuant to the grandfathering provision is responsible for knowledge of Ohio law based on self-study of these documents.

Following initial certification under the grandfathering provision, a certified Ohio behavior analyst must comply with the act with respect to biennial registration, payment of fees, and continuing education requirements.



## **Certification renewal**

(R.C. 4783.05)

Except as otherwise provided below, a certificate issued under the act is valid for a period of two years. On or before August 31 of each even-numbered year, each certified Ohio behavior analyst must do both of the following:

(1) Register with the Board on a form prescribed by the Board, giving the behavior analyst's name, address, certificate number, the continuing education information required under the act, and any other reasonable information as the Board requires;

(2) Pay to the Board secretary a biennial registration fee of \$150.

If an individual is issued a certificate for the first time on or before August 31 of an even-numbered year, the individual is next required to register on or before August 31 of the next even-numbered year.

Every two years, a certified Ohio behavior analyst who wishes to renew the certified Ohio behavior analyst's certificate must produce proof of not less than 23 hours of continuing education, including not less than four hours in ethics, professional conduct, or cultural competency. Continuing education hours may be earned through providers of continuing education approved by the BACB or its successor organization or other organizations approved by the Board as providers of continuing education.

## **Discipline**

### **Disciplinary actions**

(R.C. 4732.06 and 4783.09(A) and (D))

The act allows the Board to empower any one or more of its members to conduct any proceeding, hearing, or investigation necessary to its purposes, including the administration and enforcement of the certification of certified Ohio behavior analysts. Under the act, the Board may refuse to issue a certificate to any applicant, may issue a reprimand, or may suspend or revoke the certificate of any certified Ohio behavior analyst, on any of the grounds discussed below. Generally, before the Board may discipline the holder of a certificate, written charges must be filed with the Board by the secretary and a hearing must be had thereon in accordance with the Administrative Procedure Act.



## Reasons for discipline

(R.C. 4783.09)

The Board may impose discipline against a certified Ohio behavior analyst for any of the following reasons:

(1) Conviction of a felony, or of any offense involving moral turpitude, in a court of Ohio or any other state or in a federal court;

(2) Using fraud or deceit in the procurement of the certificate to practice applied behavior analysis or knowingly assisting another in the procurement of that certificate through fraud or deceit;

(3) Accepting commissions or rebates or other forms of remuneration for referring persons to other professionals;

(4) Willful, unauthorized communication of information received in professional confidence;

(5) Being negligent in the practice of applied behavior analysis;

(6) Using any controlled substance or alcoholic beverage to an extent that such use impairs the person's ability to perform the work of a certified Ohio behavior analyst with safety to the public;

(7) Violating any rule of professional conduct promulgated by the Board;

(8) Practicing in an area of applied behavior analysis for which the person is clearly untrained or incompetent;

(9) An adjudication by a court that the person is incompetent for the purpose of holding the certificate (a person may have the person's certificate issued or restored only upon determination by a court that the person is competent for the purpose of holding the certificate and upon the decision by the Board that the certificate be issued or restored; the Board may require an examination prior to that issuance or restoration);

(10) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider;



(11) Advertising that the person will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay.

The act prohibits, for purposes of the reasons listed in (10) and (11) above, sanctions from being imposed against any certificate holder who waives deductibles and copayments in compliance with the health benefit plan that expressly allows such a practice (waiver of the deductibles or copays must be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator, and that consent must be made available to the Board upon request), or for professional services rendered to any other person holding a certificate as a certified Ohio behavior analyst to the extent allowed by the act and the Board's rules.

### **Summary suspensions**

(R.C. 4783.10)

On receipt of a complaint that any of the act's grounds for discipline exist, the Board may suspend the certificate of the certified Ohio behavior analyst prior to holding a hearing in accordance with the Administrative Procedure Act if it determines, based on the complaint, that an immediate threat to the public exists. After suspending a certificate pursuant to this provision, the Board must notify the certified Ohio behavior analyst of the suspension in accordance with the Administrative Procedure Act. (The notice must state the reasons for the Board's action, cite the law or rule directly involved, and state that the party will be afforded a hearing if the party requests it within 30 days of the time of mailing the notice.) If the individual whose certificate is suspended fails to make a timely request for an adjudication, the Board must enter a final order permanently revoking the individual's certificate.

### **Discipline for actions involving sexual conduct or contact**

(R.C. 4783.11)

If, at the conclusion of a hearing required by the act, the Board determines that a certified Ohio behavior analyst has engaged in sexual conduct or had sexual contact with the certified Ohio behavior analyst's patient or client in violation of any prohibition contained in Ohio law governing sex offenses, the Board must do one of the following:

- (1) Suspend the certified Ohio behavior analyst's certificate;
- (2) Permanently revoke the certified Ohio behavior analyst's certificate.



However, if the Board determines at the conclusion of the hearing that neither of the sanctions described above is appropriate, the Board must impose another sanction it considers appropriate and issue a written finding setting forth the reasons for the sanction imposed and the reason that neither of the sanctions described above is appropriate.

### **Child support orders**

(R.C. 4783.12, by reference to R.C. 3123.41 to 3123.50)

On receipt of a notice that a certified Ohio behavior analyst is in default under a child support order under the procedures established under continuing law, the act requires the Board to comply with the requirements of that law or rules adopted pursuant to it with respect to a certificate issued under the act.

### **Human trafficking**

(R.C. 4783.13, by reference to R.C. 4776.20)

On receipt of a notice that a certified Ohio behavior analyst has been convicted of, pleaded guilty to, or a judicial finding of guilt of or judicial finding of guilt resulting from a plea of no contest was made to the offense of trafficking in persons, the act requires the Board to immediately suspend the certified Ohio behavior analyst's certificate in accordance with continuing law requirements.

### **Administration**

(R.C. 4732.06, 4732.08, and 4783.03)

The Board must administer and enforce the act's provisions governing certified Ohio behavior analysts and may employ assistants and clerical help as necessary. The act requires the Board to adopt rules under the Administrative Procedure Act establishing all of the following:

- (1) Procedures and requirements for applying for a certificate;
- (2) Fees for issuance of a certificate;
- (3) Reductions of the required hours of continuing education for persons in their first certificate period.

The act permits the Board to adopt additional rules in accordance with the Administrative Procedure Act as the Board determines are necessary to implement and enforce the act's provisions governing certified Ohio behavior analysts.



Similar to continuing law regarding Board receipts, the act requires moneys collected with respect to certified Ohio behavior analysts to be deposited in the state treasury to the credit of the Occupational Licensing and Regulatory Fund.

