



State of Tennessee

PUBLIC CHAPTER NO. 918

SENATE BILL NO. 1047

By Kelsey

Substituted for: House Bill No. 1279

By Mark White, Kevin Brooks, Odom, Eldridge, McManus, Durham, Fitzhugh, Casada, Jernigan, McDaniel, Sexton, Ryan Williams, Hardaway

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 4-29-237(a), is amended by adding the following language as a new, appropriately designated subdivision:

() Applied behavior analyst licensing committee of the board of examiners in psychology, created by § 63-11-303;

SECTION 2. Tennessee Code Annotated, Title 63, Chapter 11, is amended by adding the following language as a new part:

63-11-301.

(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) To assist the board of examiners in psychology in the performance of its duties, there is hereby established the applied behavior analyst licensing committee 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 in this state unless such person holds a valid license issued by the committee. The committee shall also regulate the practice of applied behavior analysis.

63-11-302. As used in this part:

(1) "Board" means the board of examiners in psychology, created by § 63-11-101;

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

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

(4) "Committee" means the applied behavior analyst licensing committee of the board of examiners in psychology, created by § 63-11-303;

(5) "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;

(6) "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;
- (J) Marital and family therapist or marital and family therapist candidate;
- (K) Licensed psychological examiner; or
- (L) Senior licensed psychological examiner.

(7) "Licensed assistant behavior analyst" or "LABA" means an individual who is certified 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;

(8) "Licensed behavior analyst" or "(LBA)" means an individual who is certified 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;

(9) "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;

(10) "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;

(11) "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

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

63-11-303.

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

(b) The committee 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 the part including, but not limited to, the setting of fees and the establishment of disciplinary actions. The committee shall maintain a list of all licensees that shall be provided to any interested party on written request.

(c)(1) The committee as created shall consist of:

(A) Three (3) persons licensed as board certified behavior analysts or board certified behavior analysts-doctoral;

(B) One (1) person certified 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 subdivisions (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 Association of Behavior Analysts.

(3) The governor shall consult with interested behavior analyst groups including, but not limited to, the Tennessee Association of Behavior Analysts, to determine qualified persons to fill the positions as provided in this subsection.

(4) Initial appointees to the committee shall serve staggered terms as follows:

(A) One (1) of the persons appointed pursuant to subdivision (c)(1)(A) shall serve an initial term of one (1) year;

(B) One (1) of the persons appointed pursuant to subdivision (c)(1)(A) and the person listed in subdivision (c)(1)(C) shall serve initial terms of two (2) years; and

(C) One (1) of the persons appointed pursuant to subdivision (c)(1)(A) and the person listed in subdivision (c)(1)(B) shall serve initial terms of three (3) years.

(5)(A)(i) Upon the expiration of the first full term of the member appointed pursuant to subdivision (c)(4)(A) on June 30, 2018, the governor shall appoint a licensed board certified behavior analyst to serve on the committee for a term of three (3) years.

(ii) Upon the expiration of the first full terms of the members appointed pursuant to subdivision (c)(4)(B) on June 30, 2019, the governor shall appoint a licensed board certified behavior analyst and a public member, who holds no credentials as a licensed board certified behavior analyst or as a licensed assistant behavior analyst, to serve on the committee for terms of three (3) years.

(iii) Upon the expiration of the first full terms of the members appointed pursuant to subdivision (c)(4)(C) on June 30, 2020, the governor shall appoint a licensed board certified behavior analyst and a licensed assistant behavior analyst to serve on the committee for terms of three (3) years.

(B) No member appointed pursuant to subdivision (c)(5)(A) or any member appointed subsequent to such members shall be eligible to serve more than one (1) consecutive three-year term.

(C) Members' terms shall begin on July 1 and expire on June 30.

(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 committee shall serve as such without compensation, but they shall be entitled to receive necessary travel and other appropriate expenses while engaged in the committee's work.

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

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

(g) The committee shall elect a chair from among its members appointed pursuant to § 63-11-303(c)(1)(A) at the first meeting held in each fiscal year. A committee meeting may be called upon reasonable notice in the discretion of the chair and shall be called at any time upon reasonable notice by a petition of three (3) committee members to the chair.

(h) Any actions taken in accordance with this part shall only be effective after adoption by majority vote of the members of the committee and after adoption by a majority vote of the members of the board at the next board meeting at which administrative matters are considered following the adoption by the committee.

63-11-304. Each person desiring to obtain a license shall submit an application and fee to the committee. The application shall include evidence that the applicant meets all of the following requirements for licensure:

(1) The applicant is at least twenty-one (21) years old;

(2) The applicant 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) The applicant 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 committee finds that the conduct has been corrected or that mitigating circumstances exist that prevent resolution;

(4) LBA applicants shall:

(A) Be certified as a BCBA or board certified behavior analyst-doctoral at the time of application; and

(B) Not be the subject of disciplinary actions by the certifying entity; and

(5) LABA applicants shall:

(A) Be certified as a board certified assistant behavior analyst at the time of application;

(B) Not be the subject of disciplinary actions by the certifying entity; and

(C) Provide proof of ongoing supervision by an LBA who is currently certified 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.

63-11-305.

(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 committee.

(b) No person shall practice applied behavior analysis unless that person is licensed by the committee as an LBA or an LABA or meets criteria for one (1) of the exemptions in § 63-11-306.

(c) Any person who violates this section 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.

63-11-306. This part 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 applied behavior analysis (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 LBAs 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 (1) of the credentials issued by the committee;

(5) Persons who provide general ABA services to organizations, so long as those services are for the benefit of 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 (1) of the credentials issued by the committee; 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.

63-11-307.

(a) Licenses for LBAs and LABAs shall be valid for two (2) years from the date of issuance.

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

(1) Evidence of current certification 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 and the committee, and has complied with all requirements of this part.

(c) The committee may grant provisional licenses for LBA and LABA to any person qualified by the Department of Intellectual and Developmental Disabilities (DIDD) to provide behavior analysis services prior to July 12, 2012, if such person:

(1) Provides a notarized statement and evidence that they are in good standing with the standards and the guidelines of DIDD for granting such qualification;

(2) Provides a photocopy of a valid photo identification;

(3) Submits a completed application form;

(4) Pays all applicable fees for licensure and licensure renewal for the required certification level; and

(5) Has received certification by the BACB and applied for and obtained a regular license under the terms of this section by July 1, 2019.

(d) The committee shall promulgate rules to establish reasonable and necessary fees for licensure and licensure renewal for both LBAs and LABAs so that, in the aggregate, such fees produce sufficient revenue to cover the cost of administering this part.

63-11-308.

(a) An LBA shall provide supervision of applied behavior analysis (ABA) services under the LBA's extended authority and direction to all designated persons as provided in this part.

(b) An LABA shall work under the supervision of an LBA.

(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; and

(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.

(d) 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.

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

63-11-309.

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

(b) An administrative staff person shall be appointed to serve under the direction of the committee to assist with investigations conducted in accordance with this section.

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

63-11-310.

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

(b) Any person licensed under this part who receives disciplinary sanctions from the person's certifying entity shall report such sanctions to the committee within five (5) business days after the disciplinary sanctions have been imposed. Such sanctions may include, but not be limited to, the 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 shall immediately forfeit their license issued by the committee 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 committee;

(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 a licensee's competent professional performance or that 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 that 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 a 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) Applicants and licensees shall notify the committee of the following within thirty (30) days of their occurrence:

- (1) A change of name, address, or other vital information;
- (2) The filing of any criminal charge or civil action 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; and
- (4) Any other change in information provided by the applicant or licensee to the committee.

63-11-311.

(a) The committee 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:

- (1) Is licensed or certified by a similar entity in another state whose standards, in the opinion of the committee, are not less stringent than those required by this part; and
- (2) Is able to satisfy the committee that to grant such person a license would be in the public interest.

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

- (1) Is licensed or certified in good standing with a similar entity of another state;
- (2) Is certified 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. Tennessee Code Annotated, Section 63-11-101(a), is amended by deleting the language "nine (9) members", and by substituting instead the language "ten (10) members".

SECTION 4. Tennessee Code Annotated, Section 63-11-101(b), is amended by adding the following language as a new subdivision:

(5) Beginning July 1, 2014, the chair of the applied behavior analyst licensing committee of the board of examiners in psychology shall serve as an ex officio voting member of the board.

SECTION 5. Tennessee Code Annotated, Section 63-11-104(e), is amended by deleting subdivision (2) in its entirety and by substituting instead the following:

(2)(A) Six (6) members of the board at all times constitute a quorum.

(B) Any action taken by the board shall require the approval of six (6) of its members.

SECTION 6. For the purpose of appointing members to the committee, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2014, the public welfare requiring it.

SENATE BILL NO. 1047

PASSED: April 16, 2014



RON RAMSEY
SPEAKER OF THE SENATE



BETH HARWELL, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of May 2014



BILL HASLAM, GOVERNOR