

**PROPOSED REGULATION OF THE
BOARD OF APPLIED BEHAVIOR ANALYSIS**

LCB File No. R045-19

December 30, 2019

EXPLANATION – Matter in *italics* is new; matter in brackets [~~omitted material~~] is material to be omitted.

AUTHORITY: §1, NRS 437.110; §§2 and 5, NRS 437.110 and 437.130; §3, NRS 437.110, 437.130 and 437.205; §4, NRS 437.110, 437.130, 437.205, 437.225 and 437.405; §6, NRS 437.110, 437.130, 437.225 and 437.505; §7, NRS 437.110 and 437.505; §8, NRS 437.110, 437.130 and 437.225; §9, NRS 437.110 and 437.405; §10, NRS 437.110, 437.130, 437.140, 437.200, 437.215, 437.220, 437.225 and 437.490.

A REGULATION relating to applied behavior analysis; prescribing certain requirements for the issuance or renewal of a license as a behavior analyst or assistant behavior analyst or registration as a registered behavior technician; providing for the issuance of a provisional license to certain applicants for licensure; prescribing certain requirements concerning disciplinary action against a behavior analyst, assistant behavior analyst or registered behavior technician; authorizing the placement of a license as a behavior analyst or assistant behavior analyst on inactive status; prescribing requirements governing the supervision of an assistant behavior analyst or registered behavior technician; prescribing certain fees; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law authorizes the Board of Applied Behavior Analysis to adopt regulations governing the licensure of applied behavior analysts and assistant behavior analysts, the registration of registered behavior technicians and the practice of applied behavior analysis. (NRS 437.110) Existing law also authorizes the Board to: (1) examine and pass upon the qualifications of applicants for licensure and registration; (2) license and register qualified applicants; (3) revoke or suspend licenses and registrations; and (4) delegate any of those tasks to the Aging and Disability Services Division of the Department of Health and Human Services. (NRS 437.130) **Section 2** of this regulation requires each applicant for licensure as a behavior analyst or assistant behavior analyst to pass an examination administered by the Division concerning laws and regulations governing the practice of applied behavior analysis. **Section 2**

prescribes the content and procedure for that examination and requires the Division to post a description of that content on the Internet.

Existing law prescribes certain requirements for the licensure of a behavior analyst or assistant behavior analyst and registration as a registered behavior technician. (NRS 437.200-437.210) **Section 3** of this regulation prescribes additional requirements for such licensure or registration. **Section 3** also authorizes the Division to issue a provisional license to an applicant for a license as a behavior analyst or assistant behavior analyst who meets the requirements for licensure other than passage of the examination. **Section 3** also requires the Division to issue to each licensee or registrant a wallet-sized card indicating that the person is licensed or registered, as applicable.

Existing law requires an applicant for licensure as a behavior analyst or assistant behavior analyst or registration as a registered behavior technician to be certified as a Board Certified Behavior Analyst, Board Certified Assistant Behavior Analyst or Registered Behavior Technician, as applicable, by the Behavior Analyst Certification Board, Inc. Existing law requires a license as a behavior analyst or assistant behavior analyst or registration as a registered behavior technician to be renewed biennially. (NRS 437.205, 437.225) **Section 4** of this regulation requires the Division to notify a licensee or registrant before the expiration of his or her license or registration. **Section 4** also: (1) requires a licensee as a behavior analyst or assistant behavior analyst to include in an application for renewal a signed form certifying that he or she has completed the required continuing education; and (2) provides that a licensee who misrepresents the completion of continuing education is subject to disciplinary action. **Section 6** of this regulation adopts by reference the standards for continuing education of a Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst prescribed by the Behavior Analyst Certification Board, Inc., and **section 8** of this regulation requires a behavior analyst or assistant behavior analyst to comply with the applicable requirements for continuing education prescribed by that organization. **Section 5** of this regulation authorizes a behavior analyst or assistant behavior analyst to have his or her license placed on inactive status for up to 3 years.

Existing law requires: (1) a licensed assistant behavior analyst to provide behavioral therapy only under the supervision of a psychologist or behavior analyst; and (2) a registered behavior technician to provide behavioral therapy only under the supervision of a psychologist, behavior analyst or assistant behavior analyst. (NRS 437.505) **Section 6** of this regulation adopts by regulation the standards prescribed by the Behavior Analyst Certification Board, Inc., for such supervision. **Section 7** of this regulation requires supervision of an assistant behavior analyst or registered behavior analyst to comply with the applicable standards prescribed by the Behavior Analyst Certification Board, Inc. **Section 7** also requires a person who provides such supervision to: (1) maintain documentation of the supervision for at least 7 years; and (2) provide that documentation to the Board or Division upon the request of the Board.

Existing law: (1) prescribes certain grounds for discipline against a behavior analyst, assistant behavior analyst or registered behavior technician; and (2) requires the Board to adopt

regulations that establish additional grounds for disciplinary action. (NRS 437.400, 437.405) **Section 9** of this regulation provides for disciplinary action against a behavior analyst, assistant behavior analyst or registered behavior technician who is convicted of certain crimes, employs a person who has been convicted of those crimes or, if he or she practices applied behavior analysis for a facility, hospital, agency, program or home that provides residential services to children, has a substantiated report of child abuse or neglect filed against him or her. **Section 9** also provides for the automatic suspension of the license or registration of a behavior analyst, assistant behavior analyst or registered behavior technician who is charged with a listed crime. **Section 9** requires the Division to hold a hearing concerning such a suspension within 14 days. **Section 9** additionally requires the notification of the Division concerning the filing of such charges. Finally, **section 9** authorizes the imposition of disciplinary action against a behavior analyst, assistant behavior analyst or registered behavior technician if the Board finds by a preponderance of the evidence that grounds for disciplinary action exist.

Existing law requires the Board to prescribe fees for the issuance, renewal or reinstatement of a license or registration and other services of the Division. (NRS 437.140) **Section 10** of this regulation prescribes those fees.

Section 1. Chapter 437 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 10, inclusive, of this regulation.

Sec. 2. 1. *Each applicant for a license as a behavior analyst or assistant behavior analyst must pass an examination administered by the Division which tests the applicant's knowledge of the laws and regulations governing the practice of applied behavior analysis in this State.*

2. *The Division shall post on its Internet website a description of the content of the examination.*

3. *To take the examination, the applicant must pay the fee prescribed by section 10 of this regulation. The fee must be paid each time the applicant takes the examination.*

4. *An applicant shall not:*

(a) *Remove any notes taken during the examination from the site of the examination;*

(b) Record the examination by electronic or other means; or

(c) Otherwise copy, disclose or disseminate any content of the examination.

5. Except as otherwise provided in subsection 6, an applicant who does not achieve a passing score may retake the examination.

6. Before an applicant may retake the examination two or more times, the applicant must obtain the approval of the Board by submitting to the Board a written request to retake the examination. Such a request must include, without limitation, a written plan of specific measures the applicant will take to prepare for the examination. The Board will approve such a request upon determining that the applicant is likely to receive a passing score on the examination if he or she follows the plan.

Sec. 3. 1. The Division shall issue a license as a behavior analyst or assistant behavior analyst or registration as a registered behavior technician to an applicant who:

(a) Complies with the requirements of subsection 2 and NRS 437.200, 437.205 and 437.210;

(b) Has not been convicted of a crime listed in NRS 437.400 or section 9 of this regulation;

(c) Has not had any disciplinary action taken against him or her by and does not have outstanding complaints or charges pending against him or her before:

(1) A licensing, certifying or registering authority of another jurisdiction; or

(2) The Behavior Analyst Certification Board, Inc., or any successor in interest to that organization;

(d) Has not previously been denied licensure or registration, as applicable, in this State, except if the denial was based only on administrative reasons; and

(e) Submits to the Division three letters of professional reference that attest, without reservation, to the applicant's professional competence, moral character and current fitness to practice as a behavior analyst, assistant behavior analyst or registered behavior technician, as applicable.

2. In addition to the requirements set forth in subsection 1 and passing the examination required by section 2 of this regulation, an applicant for a license as an assistant behavior analyst must submit to the Division evidence to be forwarded to the Board demonstrating that the applicant will be supervised by a psychologist or behavior analyst who is qualified as a supervisor by the Behavior Analyst Certification Board, Inc., or the successor in interest to that organization, in accordance with the current requirements prescribed by that organization for the supervision of Board Certified Assistant Behavior Analysts. Upon request, the applicant must submit such additional evidence as the Board requests.

3. In addition to the requirements set forth in subsection 1, an applicant for registration as a registered behavior technician must submit to the Division evidence to be forwarded to the Board demonstrating that the applicant will be supervised by a psychologist, behavior analyst or assistant behavior analyst who is qualified as a supervisor by the Behavior Analyst Certification Board, Inc., or the successor in interest to that organization, in accordance with the current requirements prescribed by that organization for the supervision of Registered Behavior Technicians. Upon request, the applicant must submit such additional evidence as the Board requests.

4. The Division may require any applicant for a license or registration to appear before the Board to demonstrate his or her:

(a) Moral character;

(b) Current fitness to practice as a behavior analyst, assistant behavior analyst or registered behavior technician, as applicable; or

(c) Intent to practice as a behavior analyst, assistant behavior analyst or registered behavior technician, as applicable, in a manner consistent with his or her education, training and experience.

5. The Division may issue a provisional license to an applicant for a license as a behavior analyst or assistant behavior analyst who meets the requirements for licensure other than achieving a passing score on the examination as required by section 2 of this regulation. A provisional license is valid for the period determined by the Division, which must not exceed 1 year, and may not be renewed.

6. The Division shall, in addition to issuing a license or registration to an applicant who meets the requirements of this section, issue to the applicant a card that is sized to fit in a wallet that indicates that the person is licensed or registered, as applicable.

Sec. 4. 1. *Before the expiration of a license or registration, the Division shall notify the licensee or registrant of the need to renew the license or registration.*

2. Each notification provided to a licensee as a behavior analyst or assistant behavior analyst must include, without limitation, a form to certify completion of the continuing education required by section 8 of this regulation, which must be signed and included with the application for renewal. The Division may require the licensee to provide evidence of completion of the continuing education described on the form.

3. A licensee who misrepresents information concerning the completion of continuing education is subject to disciplinary action, which may include, without limitation, suspension, revocation or nonrenewal of the license. A licensee whose license has been suspended or is not renewed must complete the continuing education required by section 8 of this regulation before the Board will consider reinstating his or her license.

4. If a licensee does not satisfy the continuing education requirements, his or her license will not be renewed and he or she will be subject to disciplinary action. The Board may grant a licensee an extension for 60 days if the licensee submits a written request to the Board, on or before December 1 immediately preceding the expiration of his or her license, which provides a compelling explanation for not completing the continuing education.

Sec. 5. 1. *A behavior analyst or assistant behavior analyst may have his or her license placed on inactive status for not more than 3 years by submitting a written request to the Division and paying the fee required by section 10 of this regulation.*

2. A person whose license is placed on inactive status shall not engage in the practice of applied behavior analysis while the license is inactive.

3. To renew a license that has been placed on inactive status and keep the license on inactive status, a person must submit to the Division:

(a) An application to renew the license; and

(b) The fee required by section 10 of this regulation for the biennial renewal of a license on inactive status.

4. A person whose license is placed on inactive status may apply to the Division to restore the license to active status. The Board may restore the license to active status upon the

completion of an investigation of the criminal history of the applicant in the manner prescribed in paragraph (b) of subsection 1 of NRS 437.200 which demonstrates that the applicant has not been convicted of a crime listed in NRS 437.400 or section 9 of this regulation and receipt of:

(a) The application;

(b) The fee required by section 10 of this regulation for the restoration to active status of a license on inactive status;

(c) Proof that the applicant is currently certified by the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization, as a Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst, as applicable;

(d) If the applicant has engaged in the practice of applied behavior analysis in another jurisdiction while his or her license was on inactive status, proof that the applicant is in good standing with no disciplinary proceedings pending against him or her in that jurisdiction or before the Behavior Analyst Certification Board, Inc., or any successor in interest to that organization;

(e) An investigation of the criminal history of the applicant in the manner prescribed in paragraph (b) of subsection 1 of NRS 437.200; and

(f) Any other proof the Board may require to determine whether the applicant is qualified and competent to engage in the practice of applied behavior analysis.

Sec. 6. 1. *The following publications are hereby adopted by reference as they existed on December 1, 2019, and any subsequent versions issued by the Behavior Analyst Certification*

Board, Inc., or any successor in interest to that organization, which have been approved by the Board for use in this State:

(a) The continuing education requirements prescribed by the Behavior Analyst Certification Board, Inc., for a Board Certified Behavior Analyst available at no cost from the Behavior Analyst Certification Board, Inc., on the Internet at <https://www.bacb.com/bcba/>, or, if that Internet website ceases to exist, from the Division.

(b) The continuing education requirements prescribed by the Behavior Analyst Certification Board, Inc., for a Board Certified Assistant Behavior Analyst available at no cost from the Behavior Analyst Certification Board, Inc., on the Internet at <https://www.bacb.com/bcaba/>, or, if that Internet website ceases to exist, from the Division.

(c) “Standards for Supervision of BCaBAs,” available at no cost from the Behavior Analyst Certification Board, Inc., on the Internet at https://www.bacb.com/wp-content/uploads/Standards-for-Supervision-of-BCaBAs_180924.pdf or, if that Internet website ceases to exist, from the Division.

(d) “RBT Supervision and Supervisor Requirements,” available at no cost from the Behavior Analyst Certification Board, Inc., on the Internet at https://www.bacb.com/wp-content/uploads/RBT-Supervision-and-Supervisor-Requirements_190529.pdf or, if that Internet website ceases to exist, from the Division.

2. Each new version of the publications described in subsection 1 shall be deemed approved by the Board unless the version is disapproved by the Board within 60 days after the date of publication by the Behavior Analyst Certification Board, Inc., or any successor in

interest to that organization. The Board will review each version issued after the version in existence on December 1, 2019, to ensure its suitability for this State.

Sec. 7. 1. Supervision of:

(a) An assistant behavior analyst pursuant to NRS 437.505 must comply with the publication adopted by reference in paragraph (c) of subsection 1 of section 6 of this regulation.

(b) A registered behavior technician pursuant to NRS 437.505 must comply with the publication adopted by reference in paragraph (d) of subsection 1 of section 6 of this regulation.

2. A person who supervises an assistant behavior analyst or a registered behavior technician pursuant to NRS 437.505 shall:

(a) Maintain documentation of such supervision for at least 7 years after the date on which the supervision occurred; and

(b) Provide that documentation to the Board or the Division upon the request of the Board.

Sec. 8. 1. A behavior analyst must complete, before each renewal of his or her license:

(a) The continuing education prescribed by the publication adopted by reference in paragraph (a) of subsection 1 of section 6 of this regulation; and

(b) At least 2 hours of instruction on evidence-based suicide prevention and awareness, which may be completed as part of the continuing education described in paragraph (a) if practicable.

2. An assistant behavior analyst must complete, before each renewal of his or her license:

(a) The continuing education prescribed by the publication adopted by reference in paragraph (b) of subsection 1 of section 6 of this regulation; and

(b) At least 2 hours of instruction on evidence-based suicide prevention and awareness, which may be completed as part of the continuing education described in paragraph (a) if practicable.

Sec. 9. 1. *In addition to the grounds specified in NRS 437.400 and section 4 of this regulation, the Board may take disciplinary action against a behavior analyst, assistant behavior analyst or registered behavior technician who:*

(a) Is convicted of:

(1) Murder, voluntary manslaughter or mayhem;

(2) Assault or battery with intent to kill or to commit sexual assault or mayhem;

(3) Sexual assault, statutory sexual seduction, incest or lewdness, indecent exposure, prostitution, solicitation for prostitution or any other sexually related crime;

(4) A crime involving domestic violence;

(5) Abuse or neglect of a child or contributory delinquency;

(6) A violation of any federal or state law regulating the possession, distribution or use of any controlled substance or any dangerous drug as defined in chapter 454 of NRS, within the immediately preceding 7 years;

(7) Abuse, neglect, exploitation, isolation or abandonment of an older person or vulnerable person, including, without limitation, a violation of any provision of NRS 200.5091 to 200.50995, inclusive, or a law of any other jurisdiction that prohibits the same or similar conduct;

(8) A violation of any provision of NRS 422.450 to 422.590, inclusive;

(9) Any offense involving fraud, theft, embezzlement, burglary, robbery, fraudulent conversion or misappropriation of property, within the immediately preceding 7 years;

(10) Any felony involving the use or threatened use of force or violence against the victim or the use of a firearm or other deadly weapon; or

(11) An attempt or conspiracy to commit any of the offenses listed in this paragraph.

(b) Employs in a business related to applied behavior analysis any person who has been convicted of a crime listed in paragraph (a).

(c) Has a substantiated report of child abuse or neglect filed against him or her and practices applied behavior analysis for a facility, hospital, agency, program or home, as defined in NRS 449.119, that provides residential services to children.

2. The license of a behavior analyst or assistant behavior analyst or registration of a registered behavior technician who is charged with a crime listed in paragraph (a) of subsection 1 is automatically suspended pending a hearing to be held by the Board not later than 14 days after the suspension. At the hearing, the Board may determine to continue the suspension until final resolution of the criminal charges if it finds by a preponderance of the evidence that the behavior analyst, assistant behavior analyst or registered behavior technician committed the crime with which he or she is charged.

3. A behavior analyst, assistant behavior analyst or registered behavior technician shall provide written notice to the Division within 24 hours after being charged with a crime listed in paragraph (a) of subsection 1.

4. *The Board may impose disciplinary action upon finding by a preponderance of the evidence that any of the grounds for disciplinary action listed in this section or NRS 437.400 exist.*

5. *As used in this section, “preponderance of the evidence” has the meaning ascribed to it in NRS 233B.0375.*

Sec. 10. *The Division shall charge and collect the following fees:*

1. *Application for licensure as a behavior analyst or assistant behavior analyst\$100*
2. *Examination administered pursuant to section 2 of this regulation Actual cost to the Division plus \$100*
3. *Issuance of an initial license as a behavior analyst or assistant behavior analyst.....25*
4. *Biennial renewal or reinstatement of a license as a licensed behavior analyst.....400*
5. *Biennial renewal or reinstatement of a license as a licensed assistant behavior analyst.....275*
6. *Biennial renewal of a registration as a registered behavior technician 70*
7. *Placement of a license on inactive status.....100*
8. *Biennial review of a license on inactive status100*

9. *Restoration to active status of a license as a licensed behavior analyst on inactive status if the restoration occurs during the first year of the biennium in which the license was issued or renewed.....300*

10. *Restoration to active status of a license as a licensed behavior analyst on inactive status if the restoration occurs during the second year of the biennium in which the license was issued or renewed100*

11. *Restoration to active status of a license as a licensed assistant behavior analyst on inactive status if the restoration occurs during the first year of the biennium in which the license was issued or renewed175*

12. *Restoration to active status of a license as a licensed assistant behavior analyst on inactive status if the restoration occurs during the second year of the biennium in which the license was issued or renewed.....40*

13. *Reproduction and mailing of material for an application25*

14. *A dishonored check.....35*

15. *A change of name on a license or registration25*

16. *A duplicate license or registration.....25*

17. *Copies of the provisions of NRS relating to the practice of applied behavior analysis and the rules and regulations adopted by the Board.....25*

18. *Letter of good standing.....15*

19. *Review and approval of a course or program of continuing education.....25*