

**APPLIED BEHAVIORAL ANALYSIS LICENSING COMMITTEE
MEETING MINUTES**

DATE: August 24, 2015

TIME: 9:00 A.M.

LOCATION: Health Related Boards Conference Center
Poplar Room, 665 Mainstream Drive
Nashville, TN 37243

COMMITTEE MEMBERS

PRESENT:

Mary Annette Little, Ph.D., BCBA-D, Chair
Melissa Switzer, Ph.D., BCBA-D
Michael S. Tonos, M.S., BCBA
Tammy Davis, BCABA

STAFF

PRESENT:

Tammy Turner, Board Administrator
Teddy Wilkins, Unit Director
Francine Baca-Chavez, Assistant General Counsel

Dr. Little called the meeting to order at 9:04 a.m. A roll call vote was conducted and a quorum was present.

Legislation

Mr. Ben Simpson, Legislative Liaison for the Department of Health, reviewed the legislative process with the Committee stating the laws are created to protect, promote and improve the health and welfare of all Tennesseans.

Mr. Simpson said the Committee is creating the Behavioral Analyst license rule package which will go to the Executive Branch for review, to the Attorney General for review of legality and constitutionality and then to the Government Operations Committee (GOC).

Mr. Simpson said the GOC has the ability to promulgate rules pursuant by law, stay a rule up to seventy-five (75) days, remove a rule if not codified within a year of being promulgated; and, remove a board or committee's rulemaking authority.

Mr. Simpson said the Legislature wants all Boards/Committees to be self-sufficient and not taxing other Boards/Committees or their licensees.

Minutes

Upon review of the May 18, 2015 minutes, Mr. Tonos made a motion, seconded by Dr. Switzer, to approve the minutes as amended. The motion carried.

Office of General Counsel

Ms. Baca-Chavez stated there is no pending legislation or matters of litigation before the Committee as there are no licensees.

Ms. Baca-Chavez stated she contacted the Attorney General's Office regarding emergency rules and was informed that the statutory authority which created the Committee did not include a deadline to have the rules in place and, therefore, there is no emergency.

Ms. Baca-Chavez said Ms. Hampton amended the rules as requested by the Committee, at the last meeting, and submitted the rules to the Chief Deputy of OGC. Ms. Baca-Chavez said the rules will be reviewed by the General Counsel in their office, the Commissioner of the Department of Health and the Governor's Office. Upon review, Ms. Hampton will file a rulemaking notice with the Secretary of State, at least fifty (50) days prior to the rulemaking hearing. Upon conclusion of the rulemaking hearing, the rules will be sent to the Attorney General's Office for review of legality and then to the Secretary Of State where they will remain for ninety (90) days, after which they will become effective.

Ms. Baca-Chavez said her office discussed a fee reduction with Ms. Tittle who recommended that the original suggested fees remain in place, as being a startup Committee there will be more expenses than revenue initially.

Ms. Baca-Chavez stated that the changes her staff made to the rules were to make sure the statutory authority was clear and concise and would like to have the Committee approve the rules for presentation to the Psychology Board at their next meeting.

Administrative Report

Ms. Turner stated there is no Administrative Report as there are no licensees. Ms. Turner said she has been receiving calls regarding applications and the licensure process.

Ms. Wilkins stated that she and Dr. Little attended the Sunrise Hearing of the Government Operations Committee last month to present the progress of the Committee. Ms. Wilkins said GOC was impressed with the Committee's progress and gave the Committee good reviews.

Ms. Baca-Chavez said she received guidance from the AG's office who stated the Committee must license applicants even though there are no rules in place and recommended that the administrative staff and Committee members use the draft rules and T.C.A. §63-1-101 as a guide to prepare the application form and use the fees proposed in the draft.

Dr. Switzer asked if that would create unnecessary disciplinary action without rules in place?

Ms. Baca-Chavez said the Committee has disciplinary guidance in the statute which should not create unnecessary disciplinary action.

Discuss continuing education

Mr. Tonos said the continuing education requirements for licensee's under the DIDD approved Behavior Analyst credential is not yet BACB certified. Mr. Tonos stated that licensees must accrue Type II continuing education hours from BACB approved continuing education organizations, must be commensurate with their level of licensing (LBA, LABA), and the number of hours per year will follow the BACB standards. Mr. Tonos said the annual continuing education hours will be determined on a pro-rata schedule and must be verified by the ACE organization issuing the hours. He also suggested that the Board add continuing education requirements for those that are DIDD approved Behavior Analyst.

Ms. Wilkins stated that the Committee's rules do not specify any type of continuing education and suggested it be spelled out because licensees would not know what constitutes Type II continuing education. Ms. Wilkins said the Psychology Board's rules pertaining to continuing education are very complex.

Mr. Tonos stated he was reluctant to put in the number of hours each licensee must obtain each year as the BACB may change their requirements.

Ms. Baca-Chavez suggested including the number of continuing education hours in a policy statement rather than having to amend the rules, which is a lengthy process.

Ms. Wilkins asked if anyone had any idea of how many licensees that could be from DIDD.

Beth Urbanczyk said when Dr. Bruce Davis, who is over behavior services for DIDD, did a survey in 2013 there were sixty (60) people that were DIDD certified so the number is small.

Mr. Tonos said if the entity providing the continuing education is an ACE organization then the credits are appropriate. Mr. Tonos if it's available on line, or in person, that is upheld through ACE's obligation to the BACB.

Ms. Wilkins said in rural areas it's very difficult for licensees to obtain continuing education through seminars and suggested allowing some online courses.

Ms. Turner stated that the Psychology Board has a certain number of continuing education hours licensees can obtain online. Ms. Turner said the on-line hours must be a certain type and the certificates must state they are APA approved. Ms. Turner said she would e-mail a copy of the Psychology Board rules pertaining to continuing education to Mr. Tonos and Ms. Davis, as requested.

Ms. Baca-Chavez said staff can send e-mails to the Committee members; however, they cannot discuss any materials that are sent out, or other Committee business, outside the meetings. Ms. Baca-Chavez stated the Committee can make amendments at the rulemaking hearing to be incorporated in the formal rules.

Dr. Little stated it is the responsibility of every licensee to maintain national certification and comply with all continuing education requirements or credentialing entity; however, they will not have a BACB to monitor continuing education and it will have to be done in-house.

Ms. Wilkins stated all boards have a continuing education policy for those who fail to obtain the required continuing education and suggested preparing a policy statement for the DIDD licensees which is binding rather than put them in the rules.

Ms. Turner said random audits are conducted requiring the audited licensee to provide proof of continuing education for the years specified. Ms. Turner said if they fail to provide the information there are issued an agreed citation and fined.

Ms. Baca-Chavez said the Committee can make it clear to include those that are exempt under the DIDD and, if needed, further elaboration can be done through a policy.

Ms. Baca-Chavez stated if a committee member had any suggestion for wording in Rule 1180-05-.12(1) she would be happy to incorporation that in that section.

Ms. Davis suggested adding additional language to state that a similar standard applies for DIDD approved providers.

Upon discussion, the Committee amended the rule to read that licensees not Board certified must accrue continuing education hours commensurate with their levels of licensing in line with the standards set by the BABC certification.

Ms. Turner asked the Committee members to e-mail her with suggestions for a policy statement for discussion at the next meeting.

Correspondence

The Board reviewed the letter from the Tennessee Psychological Association (TPA) regarding their comments and suggestions for the proposed rules.

Ms. Baca-Chavez stated even though the letter was not addressed to the Committee she will send them a letter responding to the concerns noted in their letter.

Mr. Tonos said these are open meetings and the TPA and Psychology Board members are welcomed to attend.

Ms. Turner said the letter from TPA will be presented to the Psychology Board at the November meeting and Dr. Little will address any concerns the Board may have.

Dr. Little said the TPA wants clarity that we are a Committee under the Psychology Board, which has been done in the rules.

Upon review of definitions, Mr. Tonos and Dr. Switzer agreed that the committee's scope is not limited to those demonstrating an autism spectrum disorder or other neurodevelopmental disorders.

Dr. Little said Behavior Analysts addresses behaviors and not labels in their field.

Mr. Tonos stated the law does not exclude persons that have behavior analyst in their scope of practice and that a licensed psychologist that has behavior analyst in the scope of practice is not encumbered whatsoever.

Ms. Baca-Chavez reviewed T.C.A. §63-11-306 which states this part shall not be construed as prohibiting or restricting the practice of any of the following: 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.

Dr. Little said it appears TPA is trying to define, very specifically, psychological testing and psychotherapy. Dr. Little stated if the Board of Psychology wants to define that in their rules they can but didn't think it needed to be defined in the Committee's rules.

Dr. Little said a licensed Behavioral Analyst Assistant must be supervised by a certified Behavior Analyst even if they are being supervised by a Psychologist or Senior Psychological Examiner.

Dr. Little said the terms of licensure and continuing education is specified by the BACB and the Committee will provide TPA that information.

Mr. Tonos stated the Committee did not establish any sanctions as indicated in T.C.A. §63-11-209 and, therefore, approval by the Psychology Board is unnecessary.

Ms. Turner said if the Committee determined sanctions are necessary they can be put in the form of a Policy Statement.

Ms. Baca-Chavez and the Committee discussed civil penalties and assessments which must be approved by the Committee and Psychology Board.

Discuss and take action if needed regarding rulemaking, hearings, rule amendments and policies

Under Rule 1180-05-.01 Definitions, Ms. Wilkins suggested deleting section (2) definition of applicant and section (8) department. The Committee agreed.

Under Rule 1180-05-.02 Scope of Practice, Ms. Baca-Chavez said Ms. Hampton added section two (2) to inintegrate what is in the statute.

Ms. Baca-Chavez said she will remind the Psychology Board that they cannot take away what the Commission is authorized by statute to do.

Under Rule 1180-05-.03 Necessity of Licensure, Ms. Turner asked if a licensed Behavior Analyst must be board certified before supervising an Assistant Behavior Analyst. The Committee said yes, they must practice applied behavior analysis under supervision.

Under Rule 1180-05-.05 Licensure by Criteria, Ms. Wilkins suggested deleting the language “within the prior six months” under section (h) pertaining to criminal background checks as all background check must be current. The Committee agreed.

Under Rule 1180-05-.05 Licensure by Criteria, the Committee amended section (n)2., to include at the end of section “or DIDD provider status.”

Under Rule 1180-05.05 Licensure by Criteria, the Committee deleted 3.(b)(3) pertaining to reciprocity requirements, but to leave the remaining section in the rules.

Under Rule 1180-05-.07 Application Review, Approval, Denial and Interviews, the Committee amended (7)(b)(1) pertaining to methods of renewal as licensees must submit proof they hold a current national certification by BACB each renewal period.

Upon review of the remaining rules, the Committee had no additional language to amend or delete.

Dr. Switzer made a motion, seconded by Mr. Tonos, to approve the rules as amended, and send the rules to rulemaking hearing.

With no other committee business to conduct, Mr. Tonos made a motion, seconded by Dr. Switzer, to adjourn at 12:02 p.m. The motion carried.