

Health Occupations

Title 17. Professional Counselors and Therapists

SUBTITLE 6A. BEHAVIOR ANALYSTS.

§ 17-6A-01. Definitions.

- (a) **In general.** -- In this subtitle the following words have the meanings indicated.
- (b) **Committee.** -- "Committee" means the Behavior Analyst Advisory Committee established under § 17-6A-05 of this subtitle.
- (c) **License.** -- "License" means a license issued by the Board to practice behavior analysis.
- (d) **Licensed behavior analyst.** -- "Licensed behavior analyst" means an individual who is licensed by the Board to practice behavior analysis.
- (e) **Licensee.** -- "Licensee" means a licensed behavior analyst.
- (f) **Practice of behavior analysis.** --
 - (1) "Practice of behavior analysis" means the design, implementation, and evaluation of systematic instructional and environmental modifications to produce socially significant improvements in human behavior.
 - (2) "Practice of behavior analysis" includes:
 - (i) The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis; and
 - (ii) Interventions based on scientific research and the direct observation and measurement of behavior and environment.
 - (3) "Practice of behavior analysis" does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, counseling, or any subsdiscipline of psychology as treatment modalities.

§ 17-6A-02. Subtitle not limiting use of terminology or other health occupation practices.

- (a) **Subtitle not limiting use of terminology.** -- This subtitle does not limit the use of the terms "behavior analysis" or "behavioral analysis" by an individual authorized to practice under this article who is practicing within the individual's scope of practice.

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(b) Subtitle not limiting use of other health occupation practices. -- This subtitle does not limit the right of an individual to practice a health occupation that the individual is licensed, certified, or otherwise authorized to practice under this article.

§ 17-6A-03. Regulations; code of ethics.

The Board shall adopt:

- (1) Regulations for the licensure and practice of behavior analysis; and
- (2) A code of ethics for the practice of behavior analysis.

§ 17-6A-04. Fees.

(a) Setting fees. --

- (1) The Board shall set reasonable fees for the issuance and renewal of licenses and the other services it provides to behavior analysts.
- (2) The fees charged shall be set so as to produce funds to approximate the cost of maintaining the licensure program and the other services provided to behavior analysts.

(b) Payment and distribution of fees. --

- (1) The Board shall pay all fees collected under the provisions of this subtitle to the Comptroller.
- (2) The Comptroller shall distribute all fees to the Board.

(c) Use of fees. -- The fees shall be used to cover the actual documented direct and indirect costs of fulfilling the statutory and regulatory duties of the Board as provided by the provisions of this subtitle.

§ 17-6A-05. Behavior Analyst Advisory Committee -- Established.

There is a Behavior Analyst Advisory Committee within the Board.

§ 17-6A-06. Behavior Analyst Advisory Committee -- Membership.

(a) Composition. -- The Committee consists of five members appointed by the Board as follows:

- (1) (i) On or before December 31, 2014, four behavior analysts who:
 1. Are certified by the Behavior Analyst Certification Board; and
 2. Have a minimum of 5 years of clinical experience; and

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- (ii) On or after January 1, 2015, four licensed behavior analysts who:
 - 1. Are certified by the Behavior Analyst Certification Board; and
 - 2. Have a minimum of 5 years of clinical experience; and
 - (2) One consumer member who is receiving services, has received services, or has a child who is receiving services for a behavioral disorder, including an autism spectrum disorder.
- (b) **Consumer member requirements.** -- The consumer member of the Committee:
 - (1) Shall be a member of the general public;
 - (2) May not be or ever have been a behavior analyst or in training to become a behavior analyst;
 - (3) May not have a household member who is a behavior analyst or in training to become a behavior analyst;
 - (4) May not participate or ever have participated in a commercial or professional field related to behavior analysis;
 - (5) May not have a household member who participates in a commercial or professional field related to behavior analysis; and
 - (6) May not have had within 2 years before appointment a substantial financial interest in a person regulated by the Board.
- (c) **Term.** --
 - (1) The term of a member is 4 years.
 - (2) The terms of members are staggered as required by the terms provided for members of the Committee on October 1, 2014.
 - (3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.
 - (4) A member who is appointed after a term has begun serves only for the rest of the term and until a successor is appointed and qualifies.
 - (5) A member may not serve more than 2 consecutive full terms.
- (d) **Removal.** -- The Board may remove a member for incompetence or misconduct.

§ 17-6A-07. Behavior Analyst Advisory Committee -- Chair and vice chair.

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(a) In general. -- From among its members, the Committee annually shall elect a chair and a vice chair.

(b) Manner of election and duties. -- The Committee shall determine:

- (1) The manner of election of officers; and
- (2) The duties of each officer.

§ 17-6A-08. Behavior Analyst Advisory Committee -- Meetings.

(a) Quorum. -- A majority of the members then serving on the Committee is a quorum.

(b) In general. --

(1) The Committee shall meet at least once a year, at the times and places that it determines.

(2) The Committee may hold special meetings if:

(i) Requested by the Board; or

(ii) The chair or a majority of the members then serving on the Committee consider a meeting to be necessary or advisable.

(3) Reasonable notice of all Committee meetings shall be given in the manner determined by the Committee.

(c) Compensation; reimbursement for expenses. -- A member of the Committee:

(1) May not receive compensation as a member of the Committee; but

(2) Is entitled to reimbursement for expenses under the Standard State Travel Regulations, as provided in the State budget.

§ 17-6A-09. Behavior Analyst Advisory Committee -- Powers and duties.

In addition to the powers and duties set forth elsewhere in this subtitle, the Committee shall:

(1) Develop and recommend to the Board regulations to carry out this subtitle;

(2) Develop and recommend to the Board a code of ethics for the practice of behavior analysis;

(3) Develop and recommend to the Board the requirements for licensure as a behavior analyst, including:

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- (i) Criteria for the educational and clinical training of licensed behavior analysts;
and
- (ii) Criteria for a professional competency examination and testing of applicants for a license to practice behavior analysis;
- (4) Develop and recommend to the Board continuing education requirements for license renewal;
- (5) Provide the Board with recommendations concerning the practice of behavior analysis;
- (6) Keep a record of its proceedings; and
- (7) Report to the Board as required in regulations adopted by the Board.

§ 17-6A-10. License required; exception.

- (a) **Required.** -- Except as otherwise provided in this subtitle, beginning January 1, 2015, an individual shall be licensed by the Board before the individual may practice behavior analysis in the State.
- (b) **Exception.** -- This section does not apply to a student enrolled in an educational program that meets the criteria of § 17-6A-11(c)(2) of this subtitle while engaged in an unpaid, clinical educational experience of behavior analysis.

§ 17-6A-11. Qualifications.

- (a) **In general.** -- To qualify for a license, an applicant shall be an individual who meets the requirements of this section.
- (b) **Moral character; age.** -- The applicant shall:
 - (1) Be of good moral character; and
 - (2) Be at least 18 years old.
- (c) **Certification; education and language requirements.** -- The applicant shall:
 - (1) Have a current certification by the Behavior Analyst Certification Board or its successor organization;
 - (2) Have received a master's degree or higher from a behavior analysis educational program that is accredited by the Behavior Analyst Certification Board or its successor organization;

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(3) Demonstrate oral and written competency in English as required by the Board; and

(4) Meet any other requirements established by the Board.

(d) Waiver of education requirements. -- The Board shall waive the education requirements under subsection (c)(2) of this section if an individual was certified by the Behavior Analyst Certification Board on or before December 31, 2014, and is currently in good standing.

§ 17-6A-12. Application.

To apply for a license, an applicant shall:

(1) Submit an application to the Board on the form that the Board requires;

(2) Pay to the Board the application fee set by the Board; and

(3) Submit to a criminal history records check in accordance with § 17-501.1 of this title.

§ 17-6A-13. Issuance; contents; criminal history record information.

(a) In general. -- The Board shall issue a license to any applicant who meets the requirements of this subtitle.

(b) Contents. -- The Board shall include on each license that the Board issues:

(1) The full name of the licensed behavior analyst;

(2) The dates of issuance and expiration;

(3) A serial number;

(4) The signatures of the chair and the vice chair of the Board; and

(5) The seal of the Board.

(c) Criminal history record information. --

(1) On receipt of the criminal history record information of an applicant for licensure forwarded to the Board in accordance with § 17-501.1 of this title, in determining whether to grant a license, the Board shall consider:

(i) The age at which the crime was committed;

(ii) The circumstances surrounding the crime;

(iii) The length of time that has passed since the crime;

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- (iv) Subsequent work history;
- (v) Employment and character references; and
- (vi) Other evidence that demonstrates whether the applicant poses a threat to the public health or safety.

(2) The Board may not issue a license if the criminal history record information required under § 17-501.1 of this title has not been received.

§ 17-6A-14. Authority conferred.

A behavior analyst license authorizes the licensee to practice behavior analysis while the license is effective.

§ 17-6A-15. Expiration and renewal.

(a) **In general.** -- A license expires on a date set by the Board unless the license is renewed for an additional term as provided in this section.

(b) **Renewal notice.** -- At least 1 month before a license expires, the Board shall send to the licensee, by first-class mail or electronic mail to the last known address of the licensee, a renewal notice that states:

- (1) The date on which the current license expires;
- (2) The date by which the renewal application must be received by the Board for the renewal to be issued and mailed before the license expires; and
- (3) The amount of the renewal fee.

(c) **Renewal.** -- Before a license expires, the licensee periodically may renew the license for an additional term if the licensee:

- (1) Otherwise is entitled to be licensed;
- (2) Pays to the Board a renewal fee set by the Board; and
- (3) Submits to the Board:
 - (i) A renewal application on the form that the Board requires; and
 - (ii) Satisfactory evidence of compliance with any continuing education requirements established by the Board under subsection (d) of this section.

(d) **Continuing education requirements.** -- The Board may establish continuing education requirements as a condition of the renewal of licenses under this section.

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(e) Renewal required. -- The Board shall renew the license of each licensee who meets the requirements of this section.

§ 17-6A-16. Inactive status; reinstatement.

(a) Inactive status. --

(1) The Board shall place a licensee on inactive status if the licensee submits to the Board:

- (i) An application for inactive status on the form required by the Board; and
- (ii) The inactive status fee set by the Board.

(2) (i) The Board shall license an individual on inactive status who applies for a license if the individual:

- 1. Complies with the renewal requirements that exist at the time the individual changes from inactive status to active status; and
- 2. Meets any continuing education requirements established by the Board.

(ii) The Board may not require payment of a late fee by an individual as a condition to licensing under this paragraph.

(b) Reinstatement on failure to renew license. -- The Board shall reinstate the license of a behavior analyst who has not been put on inactive status and who has failed to renew the license for any reason if the behavior analyst:

- (1) Meets the renewal requirements of § 17-6A-15 of this subtitle;
- (2) Pays to the Board a reinstatement fee set by the Board; and
- (3) Applies to the Board for reinstatement of the license within 5 years after the license expires.

(c) When reinstatement prohibited; licensure on meeting current requirements. --

- (1) The Board may not reinstate the license of a behavior analyst who fails to apply for reinstatement of the license within 5 years after the license expires.
- (2) Notwithstanding the provisions of paragraph (1) of this subsection, a behavior analyst may become licensed by meeting the current requirements for obtaining a new license under this subtitle.

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§ 17-6A-17. Notice of change of name or address.

(a) In general. -- A licensee shall notify the Board in writing of a change in name or address within 60 days after the change.

(b) Penalty. -- A licensee who fails to comply with subsection (a) of this section is subject to an administrative penalty of \$ 100.

§ 17-6A-18. Surrender or lapse of license.

Unless the Board accepts the surrender of a license, the license may not lapse by operation of law while the licensee is under investigation or while charges are pending against the licensee.

§ 17-6A-19. Denials, suspension or revocation of license; reprimands, probation.

Subject to the hearing provisions of § 17-6A-21 of this subtitle, the Board, on the affirmative vote of a majority of its members then serving, may deny a license to any applicant, reprimand any licensee, place any licensee on probation, or suspend or revoke a license of any licensee if the applicant or licensee:

- (1) Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensee or for another;
- (2) Fraudulently or deceptively uses a license;
- (3) Is convicted of or pleads guilty or nolo contendere to a felony or a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- (4) Aids or abets an unauthorized person in practicing behavior analysis or representing oneself to be a behavior analyst;
- (5) Practices behavior analysis fraudulently or deceitfully;
- (6) Violates the code of ethics adopted by the Board under § 17-6A-03 of this subtitle;
- (7) Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;
- (8) Submits a false statement to collect a fee;

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- (9)** Willfully makes or files a false report or record in the practice of behavior analysis;
- (10)** Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the United States Veterans Administration for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;
- (11)** Violates any provision of this subtitle or any regulation adopted by the Board;
- (12)** Uses or promotes or causes the use of any misleading, deceiving, or untruthful advertising matter, promotional literature, or testimonial;
- (13)** Is professionally, physically, or mentally incompetent;
- (14)** Promotes the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain;
- (15)** Behaves immorally in the practice of behavior analysis;
- (16)** Commits an act of unprofessional conduct in the practice of behavior analysis;
- (17)** Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensee is licensed and qualified to render because the individual is HIV positive;
- (18)** Fails to cooperate with a lawful investigation conducted by the Board;
- (19)** Commits an act that is inconsistent with generally accepted professional standards in the practice of behavior analysis;
- (20)** Fails to submit to a criminal history records check in accordance with § 17-501.1 of this title;
- (21)** Habitually is intoxicated;
- (22)** Provides professional services while under the influence of alcohol or while using any narcotic or controlled dangerous substance, as defined in § 5-101 of the Criminal Law Article, or other drug that is in excess of therapeutic amounts or without valid medical indication; or

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(23) Knowingly fails to report suspected child abuse in violation of § 5-704 of the Family Law Article.

§ 17-6A-20. Penalties.

(a) **Monetary penalty.** -- If, after a hearing under § 17-6A-21 of this subtitle, the Board finds that there are grounds under § 17-6A-19 of this subtitle to suspend or revoke a license or to reprimand a licensee, the Board may impose a monetary penalty not exceeding \$ 10,000:

- (1) Instead of suspending the license; or
- (2) In addition to suspending or revoking the license.

(b) **Regulations.** -- The Board shall adopt regulations to set standards for the imposition of monetary penalties under this section.

(c) **Payment of penalty to General Fund.** -- The Board shall pay any penalty collected under this section into the General Fund of the State.

§ 17-6A-21. Hearing.

(a) **In general.** -- Except as otherwise provided in the Administrative Procedure Act, before the Board takes any action under § 17-6A-19 of this subtitle, it shall give the individual against whom the action is contemplated an opportunity for a hearing before the Board.

(b) **Notice; nature of hearing.** -- The Board shall give notice and hold the hearing in accordance with the Administrative Procedure Act.

(c) **Service of notice.** -- The hearing notice to be given to the individual shall be served personally or by certified mail, return receipt requested, bearing a postmark from the United States Postal Service, to the last known address of the individual at least 30 days before the hearing.

(d) **Counsel.** -- The individual may be represented at the hearing by counsel.

(e) **Subpoenas; oaths.** --

- (1) Over the signature of an officer or the administrator of the Board, the Board may issue subpoenas and administer oaths in connection with any investigation under this subtitle and any hearings or proceedings before the Board.

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(2) The Board shall issue subpoenas on behalf of the individual if the individual:

(i) Requests that the Board do so; and

(ii) States under oath that the testimony or evidence sought is necessary to the individual's defense.

(3) If, without lawful excuse, an individual disobeys a subpoena from the Board or an order by the Board to take an oath, testify, or answer a question, on petition of the Board, a court of competent jurisdiction may compel compliance with the subpoena.

(f) Effect of failure to appear. -- If, after due notice, the individual against whom the action is contemplated fails or refuses to appear, nevertheless the Board may hear and determine the matter.

(g) Charges not stayed or challenged for procedural defects. -- The hearing of charges may not be stayed or challenged by any procedural defects alleged to have occurred before the filing of charges.

§ 17-6A-22. Appeals.

(a) In general. -- Except as provided in this section for an action under § 17-6A-19 of this subtitle, any person aggrieved by a final decision of the Board in a contested case, as defined in the Administrative Procedure Act, may petition for judicial review as allowed by the Administrative Procedure Act.

(b) Judicial appeals. -- Any person aggrieved by a final decision of the Board under § 17-6A-19 of this subtitle may not appeal to the Secretary but may take a direct judicial appeal as provided by the Administrative Procedure Act.

(c) Decision not stayed pending judicial review. -- A decision of the Board to deny a license, enforce a suspension of a license for more than 1 year, or revoke a license may not be stayed pending judicial review.

§ 17-6A-23. Reinstatement of license, reduction of suspension period, or withdrawal of reprimand.

For reasons the Board considers sufficient, and on the affirmative vote of a majority of its members then serving, the Board may:

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- (1) Reinstate a license that has been revoked;
- (2) Reduce the period of a suspension; or
- (3) Withdraw a reprimand.

§ 17-6A-24. Cease and desist orders.

The Board may issue a cease and desist order for a violation of this subtitle.

§ 17-6A-25. Injunction.

(a) In general. -- An action may be maintained in the name of the State or the Board to enjoin:

- (1) The unauthorized practice of behavior analysis; or
- (2) Conduct that is a ground for disciplinary action under § 17-6A-19 of this subtitle.

(b) Who may bring action. -- An action under this section may be brought by:

- (1) The Board, in its own name;
- (2) The Attorney General, in the name of the State; or
- (3) A State's Attorney, in the name of the State.

(c) Venue. -- An action under this section shall be brought in the county where the defendant:

- (1) Resides; or
- (2) Engages in the acts sought to be enjoined.

(d) Proof of actual damage not required. -- Proof of actual damage or that any person will sustain any damage if an injunction is not granted is not required for an action under this section.

(e) Action is additional to criminal prosecution or disciplinary action. -- An action under this section is in addition to and not instead of criminal prosecution for the unauthorized practice of behavior analysis under § 17-6A-27 of this subtitle or disciplinary action under § 17-6A-19 of this subtitle.

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§ 17-6A-26. Behavior analyst rehabilitation subcommittee.

(a) "Behavior analyst rehabilitation subcommittee" defined. -- In this section, "behavior analyst rehabilitation subcommittee" means a subcommittee that:

- (1) Is defined in subsection (b) of this section; and
- (2) Performs any of the functions listed in subsection (d) of this section.

(b) In general. -- For purposes of this section, a behavior analyst rehabilitation subcommittee is a subcommittee of the Committee that:

- (1) Is recognized by the Board; and
- (2) Includes but is not limited to behavior analysts.

(c) Functionality. -- A rehabilitation subcommittee of the Committee or recognized by the Committee may function:

- (1) Solely for the Committee; or
- (2) Jointly with a rehabilitation committee representing another board or boards.

(d) Purpose. -- For purposes of this section, a behavior analyst rehabilitation subcommittee evaluates and provides assistance to any behavior analyst in need of treatment and rehabilitation for alcoholism, drug abuse, chemical dependency, or other physical, emotional, or mental condition.

(e) Confidentiality of proceedings, records, and files; exceptions. --

(1) Except as otherwise provided in this subsection, the proceedings, records, and files of the behavior analyst rehabilitation subcommittee are not discoverable and are not admissible in evidence in any civil action arising out of the matters that are being or have been reviewed and evaluated by the behavior analyst rehabilitation subcommittee.

(2) Paragraph (1) of this subsection does not apply to any record or document that is considered by the behavior analyst rehabilitation subcommittee and that otherwise would be subject to discovery or introduction into evidence in a civil action.

(3) For purposes of this subsection, civil action does not include a proceeding before the Board or judicial review of a proceeding before the Board.

(f) Immunity from civil liability. -- A person who acts in good faith and within the scope of jurisdiction of the behavior analyst rehabilitation subcommittee is not civilly

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liable for any action as a member of the behavior analyst rehabilitation subcommittee or for giving information to, participating in, or contributing to the function of the behavior analyst rehabilitation subcommittee.

§ 17-6A-27. License required.

(a) In general. -- Except as otherwise provided in this subtitle, a person may not practice, attempt to practice, or offer to practice behavior analysis in this State unless licensed by the Board.

(b) Violations as separate offenses. -- Each violation of this section is a separate offense.

§ 17-6A-28. Misrepresentation as authorized practitioner.

Unless authorized to practice behavior analysis under this subtitle, a person may not:

- (1) Represent to the public that the person is a licensed behavior analyst; or
- (2) Use any title, abbreviation, sign, card, or other representation that the person is a licensed behavior analyst.

§ 17-6A-29. Penalties; civil fines.

(a) Violations. -- A person who violates any provision of this subtitle is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$ 10,000 or imprisonment not exceeding 1 year or both.

(b) Civil fines. -- A person who violates § 17-6A-27 of this subtitle is subject to a civil fine of not more than \$ 50,000 to be assessed by the Board in accordance with regulations adopted by the Board.

§ 17-6A-30. Short title.

This subtitle may be cited as the Maryland Behavior Analysts Act.

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§ 17-6A-31. Termination of subtitle.

Subject to the evaluation and reestablishment provisions of the Program Evaluation Act, this subtitle and all rules and regulations adopted under this subtitle shall terminate and be of no effect after July 1, 2024.