

PUBLIC HEALTH CODE (EXCERPT)

Act 368 of 1978

PART 182A

APPLIED BEHAVIOR ANALYSIS

333.18251 Definitions; principles of construction.

Sec. 18251. (1) As used in this part:

(a) "Applied behavior analysis services" means services provided to clients that are included in the practice of applied behavior analysis.

(b) "Assistant behavior analyst" means an individual who is licensed or otherwise authorized under this part to engage in practice as an assistant behavior analyst.

(c) "BACB" means the Behavior Analyst Certification Board, a nonprofit corporation that is exempt from taxation under section 501(c)(3) of the internal revenue code of 1986, 26 USC 501, or its successor, as determined by the board.

(d) "Behavior analyst" means an individual who is licensed or otherwise authorized under this part to engage in the practice of applied behavior analysis.

(e) "Behavior technician" means an individual who is not licensed or authorized to practice a profession under this part and who delivers applied behavior analysis services under the delegation and supervision of a behavior analyst and meets the requirements of section 18263.

(f) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.

(g) "Other certification board" means a nationally recognized behavior analysis certification board approved by the department by rule.

(h) "Practice as an assistant behavior analyst" means the practice of applied behavior analysis under the supervision of a behavior analyst.

(i) "Practice of applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. All of the following apply for purposes of this subdivision:

(i) Practice of applied behavior analysis includes all of the following:

(A) The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.

(B) Applied behavior analysis interventions that are based on scientific research and the direct observation and measurement of behavior and the environment.

(C) The utilization of contextual factors, motivating operations, antecedent stimuli, or positive reinforcement.

(D) The utilization of other consequences to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

(ii) The practice of applied behavior analysis does not include any of the following:

(A) The practice of medicine, the practice of osteopathic medicine and surgery, or medical diagnosis or treatment.

(B) The practice of speech-language pathology.

(C) The practice of physical therapy.

(D) The practice of occupational therapy.

(E) Psychological testing, including standardized testing for intelligence or personality.

(F) Diagnosis of a mental or physical impairment.

(G) The practice of neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, or counseling as treatment modalities.

(j) "Rules" means rules promulgated by the department in consultation with the board under this part.

(2) In addition to the definitions in this part, article 1 contains general definitions and principles of construction applicable to all articles in this code and part 161 contains definitions applicable to this part.

History: Add. 2016, Act 403, Eff. Apr. 3, 2017.

Popular name: Act 368

333.18253 Use of title or similar words or letters; practice of applied behavior analysis or assistant behavior analysis; licensure required; exceptions; issuance of license.

Sec. 18253. (1) Beginning 1 year after the effective date of the rules promulgated under sections 18257 and 18259 for licensure under this part, an individual shall not use the titles "licensed behavior analyst", "l.b.a.",

"licensed assistant behavior analyst", "l.a.b.a.", or similar words or letters that indicate that he or she is licensed as a behavior analyst or assistant behavior analyst unless the individual is licensed or otherwise authorized under this part. The department shall provide for a 4-year license cycle.

(2) Beginning 1 year after the effective date of the rules promulgated under sections 18257 and 18259 for licensure under this part, an individual shall not engage in the practice of applied behavior analysis or practice as an assistant behavior analyst unless licensed or otherwise authorized under this article.

(3) Subsection (2) does not prevent any of the following:

(a) Self-care by a patient or uncompensated care by a friend or family member who does not represent or hold himself or herself out to be a behavior analyst or assistant behavior analyst.

(b) A behavior technician from implementing a care plan under the delegation and supervision of a behavior analyst.

(c) A family member from providing a follow-up home program designed by a behavior analyst.

(d) A school-based paraprofessional from implementing an applied behavior analysis intervention under the delegation and supervision of a licensed professional described in subdivision (e) or an authorized professional described in subdivision (f).

(e) An individual authorized to practice psychology in the state under part 182 from providing services included in the practice of applied behavior analysis, if the behavior analysis services provided by that individual are within his or her education, training, and experience.

(f) An individual who holds a license, certificate, registration, or other authorization from this state that authorizes him or her to perform 1 or more of the services included in the practice of applied behavior analysis, so long as the individual does not do any of the following:

(i) Perform any services included in the practice of applied behavior analysis that are not within the scope of practice of his or her profession or occupation.

(ii) Perform any services included in the practice of applied behavior analysis that he or she is not qualified by his or her education, training, and experience to perform.

(iii) Represent that he or she is a behavior analyst or assistant behavior analyst.

(g) An individual who is a matriculated student at a nationally accredited university approved in rules or who is a postdoctoral fellow from performing activities that are considered under this part to be the practice of applied behavior analysis if the activities are part of a defined behavior analysis program of study or practicum approved in rules and if the student or fellow is directly supervised by an individual who is any of the following:

(i) Licensed as a behavior analyst under this part.

(ii) Appointed as the instructor of a course sequence approved by the BACB or other certification board.

(h) An individual who is not licensed under this part from pursuing experience in behavior analysis compatible with the BACB's experience requirements for an applied behavior analysis credential, if the experience is supervised by an individual who is licensed as a behavior analyst under this part.

(i) An individual from performing activities that are considered under this part to be the practice of applied behavior analysis if the activities are with nonhuman or nonpatient clients or consumers. Individuals described in this subdivision include, but are not limited to, applied animal behaviorists and practitioners of organizational behavior management.

(4) The department shall issue a license as a behavior analyst to an individual who on or before the effective date of this part had a credential as a board certified behavior analyst, or conferred for applied behavior analysis by the BACB, and who applies for licensure as a behavior analyst by 1 year after the effective date of the rules promulgated under section 18257.

(5) The department shall issue a license as an assistant behavior analyst to an individual who on or before the effective date of this part had a credential as a board certified assistant behavior analyst, conferred for applied behavior analysis by the BACB, who is under the supervision of a behavior analyst, and who applies for licensure as an assistant behavior analyst by 1 year after the effective date of the rules promulgated under section 18259.

History: Add. 2016, Act 403, Eff. Apr. 3, 2017.

Popular name: Act 368

333.18255 Michigan board of behavior analysts; creation; membership; terms.

Sec. 18255. (1) The Michigan board of behavior analysts is created in the department and consists of the following 9 voting members:

(a) Four behavior analysts. The 4 members appointed under this subdivision shall be behavior analysts who are licensed under this part, except that the first 4 members appointed to the board under this subdivision may be board-certified behavior analysts who are not licensed under this part. Members described in this

subdivision shall be appointed in a manner that ensures that 3 of the members serving on the board are engaged in providing clinical services and 1 is engaged in providing applied behavior analysis services to the Medicaid population in addition to providing clinical services. As used in this subdivision:

(i) "Medicaid" means that term as defined in section 2701.

(ii) "Medicaid population" means those individuals who reside in this state and who are eligible for Medicaid.

(b) One individual who is affiliated with a university in this state and provides instruction or conducts research in applied behavior analysis.

(c) One assistant behavior analyst.

(d) One physician who is licensed under part 170 or 175 and works with patients with autism spectrum disorders or brain injuries.

(e) Two public members.

(2) The terms of office of individual members of the board, except those appointed to fill vacancies, expire 4 years after the appointment on December 31 of the year in which the term expires. However, for the members first appointed to the board under subsection (1), 3 must serve for 2 years, 3 must serve for 3 years, and 3 must serve for 4 years.

History: Add. 2016, Act 404, Eff. Apr. 3, 2017.

Popular name: Act 368

333.18257 Rules; minimum standards for licensure as behavior analyst.

Sec. 18257. By 2 years after the effective date of this part, the department, in consultation with the board, shall promulgate rules that establish the minimum standards for licensure as a behavior analyst. For purposes of this section, the department may adopt in its rules the professional standards, in whole or in part, issued by the BACB or any other nationally recognized professional association as its standards under this section.

History: Add. 2016, Act 403, Eff. Apr. 3, 2017.

Popular name: Act 368

333.18259 Rules; minimum standards for licensure as assistant behavior analyst.

Sec. 18259. By 2 years after the effective date of this part, the department, in consultation with the board, shall promulgate rules that establish the minimum standards for licensure as an assistant behavior analyst. For purposes of this section, the department may adopt in its rules the professional standards, in whole or in part, issued by the BACB or any other nationally recognized professional association as its standards under this section.

History: Add. 2016, Act 403, Eff. Apr. 3, 2017.

Popular name: Act 368

333.18261 Rules; conviction of listed offense; denial or revocation of license; hearing.

Sec. 18261. (1) Notwithstanding sections 16221, 16226, and 16245, the department shall include in rules promulgated under sections 18257 and 18259 that an application for a license under this part will be denied if the applicant's criminal history check required by section 16174 reveals that he or she was convicted of a listed offense, and that a licensee's license will be permanently revoked if he or she is convicted of a listed offense while licensed under this part.

(2) The department shall provide an opportunity for a hearing under section 16232 to an individual whose application is denied or whose license is permanently revoked under the rules promulgated under subsection (1).

History: Add. 2016, Act 403, Eff. Apr. 3, 2017.

Popular name: Act 368

333.18263 Behavior technician; requirements; use of words, titles, or letters; "convicted" defined.

Sec. 18263. (1) An individual shall not act as a behavior technician in this state if any of the following apply:

(a) Sanctions have been imposed against the individual by a licensure, registration, specialty licensure, or specialty certification board of any other state, of the United States Military, of the federal government, or of any other country based on grounds that are substantially similar to this article or a rule promulgated under this article, and the sanctions are in force at the time the individual is to deliver applied behavior analysis services.

(b) Beginning April 3, 2020, he or she has not completed a training program that is based on the BACB's

registered behavior technician task list.

(c) He or she has been convicted of any of the following:

(i) A relevant crime described under 42 USC 1320a-7(a).

(ii) Any of the following felonies, an attempt or conspiracy to commit any of those felonies, or any other state or federal crime that is similar to the felonies described in this subparagraph, other than a felony for a relevant crime described under 42 USC 1320a-7(a), unless 15 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction before the date that he or she delivers applied behavior analysis services:

(A) A felony that involves the intent to cause death or serious impairment of a body function, that results in death or serious impairment of a body function, that involves the use of force or violence, or that involves the threat of the use of force or violence.

(B) A felony involving cruelty or torture.

(C) A felony under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(D) A felony involving criminal sexual conduct.

(E) A felony involving abuse or neglect.

(F) A felony involving the use of a firearm or dangerous weapon.

(G) A felony involving the diversion or adulteration of a prescription drug or other medications.

(iii) A felony or an attempt or conspiracy to commit a felony, other than a felony for a relevant crime described under 42 USC 1320a-7(a) or a felony described under subparagraph (ii), unless 10 years have lapsed since the individual completed all of the terms and conditions of his or her sentencing, parole, and probation for that conviction before the date that he or she delivers applied behavior analysis services.

(iv) Any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subparagraph, within the 10 years immediately preceding the date that he or she delivers applied behavior analysis services:

(A) A misdemeanor involving the use of a firearm or dangerous weapon with the intent to injure, the use of a firearm or dangerous weapon that results in a personal injury, or a misdemeanor involving the use of force or violence or the threat of the use of force or violence.

(B) A misdemeanor under chapter XXA of the Michigan penal code, 1931 PA 328, MCL 750.145m to 750.145r.

(C) A misdemeanor involving criminal sexual conduct.

(D) A misdemeanor involving cruelty or torture unless otherwise provided under subparagraph (v).

(E) A misdemeanor involving abuse or neglect.

(v) Any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subparagraph, within the 5 years immediately preceding the date that he or she delivers applied behavior analysis services:

(A) A misdemeanor involving cruelty if committed by an individual who is less than 16 years of age.

(B) A misdemeanor involving home invasion.

(C) A misdemeanor involving embezzlement.

(D) A misdemeanor involving negligent homicide or a violation of section 601d(1) of the Michigan vehicle code, 1949 PA 300, MCL 257.601d.

(E) A misdemeanor involving larceny unless otherwise provided under subparagraph (vii).

(F) A misdemeanor of retail fraud in the second degree unless otherwise provided under subparagraph (vii).

(G) Any other misdemeanor involving assault, fraud, theft, or the possession or delivery of a controlled substance unless otherwise provided under subparagraphs (iv), (vi), or (vii).

(vi) Any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subparagraph, within the 3 years immediately preceding the date that he or she delivers applied behavior analysis services:

(A) A misdemeanor for assault if there was no use of a firearm or dangerous weapon and no intent to commit murder or inflict great bodily injury.

(B) A misdemeanor of retail fraud in the third degree unless otherwise provided under subparagraph (vii).

(C) A misdemeanor under part 74 unless otherwise provided under subparagraph (vii).

(vii) Any of the following misdemeanors, other than a misdemeanor for a relevant crime described under 42 USC 1320a-7(a), or a state or federal crime that is substantially similar to the misdemeanors described in this subparagraph, within the year immediately preceding the date that he or she delivers applied behavior

analysis services:

(A) A misdemeanor under part 74 if the individual, at the time of conviction, is under the age of 18.

(B) A misdemeanor for larceny or retail fraud in the second or third degree if the individual, at the time of conviction, is under the age of 16.

(d) He or she is the subject of an order or disposition under section 16b of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.16b.

(e) He or she engages in conduct that becomes the subject of a substantiated finding of neglect, abuse, or misappropriation of property by a state or federal agency under an investigation conducted in accordance with 42 USC 1395i-3 or 1396r.

(2) A behavior technician shall not use words, titles, or letters that indicate that he or she is a behavior analyst or an assistant behavior analyst or that he or she is engaging in the practice of applied behavior analysis or practice as an assistant behavior analyst.

(3) As used in this section, "convicted" means either of the following:

(a) For a crime that is not a relevant crime described under 42 USC 1320a-7(a), a final conviction, the payment of a fine, a plea of guilty or nolo contendere if accepted by the court, or a finding of guilt for a criminal law violation or a juvenile adjudication or disposition by the juvenile division of probate court or family division of circuit court for a violation that if committed by an adult would be a crime.

(b) For a relevant crime described under 42 USC 1320a-7(a), that term as defined in 42 USC 1320a-7.

History: Add. 2016, Act 403, Eff. Apr. 3, 2017;—Am. 2020, Act 19, Imd. Eff. Jan. 27, 2020.

Popular name: Act 368

333.18265 Rules; license renewal; requirements.

Sec. 18265. In addition to the requirements of part 161, the department, in consultation with the board, may promulgate rules to require a licensee seeking renewal to do 1 of the following:

(a) For a licensee seeking renewal of his or her behavior analyst license, furnish evidence that, during the licensing period immediately preceding the application for renewal, he or she is current on his or her certification by the Behavior Analyst Certification Board or other certification board as a board certified behavior analyst.

(b) For a licensee seeking renewal of his or her assistant behavior analyst license, furnish evidence that, during the licensing period immediately preceding the application for renewal, he or she is current on his or her certification by the BACB or other certification board as a board certified assistant behavior analyst and that he or she is practicing under the supervision of a licensed behavior analyst.

History: Add. 2016, Act 403, Eff. Apr. 3, 2017.

Popular name: Act 368

333.18267 Third party reimbursement or mandated worker's compensation benefits.

Sec. 18267. This part does not require new or additional third party reimbursement or mandated worker's compensation benefits for services rendered by an individual licensed as a behavior analyst or an assistant behavior analyst under this part.

History: Add. 2016, Act 403, Eff. Apr. 3, 2017.

Popular name: Act 368