

# STATE BOARD OF PSYCHOLOGY OF OHIO

APPROVED SPECIAL MEETING MINUTES

August 23, 2013

Medina County Human Services Building

246 Northland Drive

Medina, Ohio 44256

## **BOARD MEMBERS**

President\*: Suzanne S. LeSure, Ph.D., Licensee Member 2013

Secretary: Julie A. Harmon, Ph.D., Licensee Member 2014

Kathryn R. Shroder, Ph.D., Licensee Member 2013

Steven Keller, Consumer Advocate Member 2013

Victor McCarley, Psy.D., Licensee Member 2015

Alice Randolph, Ed.D., Licensee Member 2015

Kenneth Drude, Ph.D., Licensee Member, 2016

Kathleen Borkowski, Consumer Advocate Member, 2016

Vacant, Consumer Advocate Member, 2017

## **STAFF/BOARD LEGAL COUNSEL PRESENT**

Ronald R. Ross, Ph.D., Executive Director; Carolyn Knauss, Investigator; Roger F. Carroll, Board Counsel

## **VISITORS/STAKEHOLDERS PRESENT**

Michael Wasmer, DMV, Autism Speaks; Sandi Regula, Parent Advocate; Dawn Cortez-McKee, HEART (Parent support network for autism).

## **9:35 AM MEETING CALLED TO ORDER BY DR. LESURE**

### **DR. HARMON CALLED THE ROLL:**

|                |                       |
|----------------|-----------------------|
| Dr. Harmon     | Present               |
| Dr. Shroder    | Present               |
| Mrs. Borkowski | Present               |
| Dr. LeSure     | Present               |
| Mr. Keller     | Absent due to illness |
| Dr. McCarley   | Present               |
| Dr. Randolph   | Present               |
| Dr. Drude      | Present               |

Dr. LeSure made introductions of the Board members and visitors.

### **APPROVE MINUTES OF JULY 15, 2013 MEETING OF THE BOARD**

After attention was called to a typographical error that Dr. Ross fixed, Dr. McCarley made a motion to approve the minutes of the July 15, 2013 meeting of the Board as corrected; Dr. Drude second.

### **A vote was taken:\***

Aye: Dr. Drude; Dr. Shroder Dr. McCarley; Mrs. Borkowski; Dr. Harmon; Dr. Randolph

Nay: None

Abstain: None

**The motion carried.**

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Year Board Member term ends (terms expire October 5 or December 4 if not re-appointed or replaced)

\* President votes only to break a tie

Dr. LeSure provided an overview of the process that led to the Board meeting this day to review a set of rules drafted by a committee consisting of representatives of the Board and numerous stakeholders, including but not limited to: the Ohio Developmental Disabilities Department; the Office of the Governor; the Ohio Psychological Association; Autism Speaks; the Association of Behavior Analysts-Ohio Chapter; the Ohio Autism Society; the Ohio Center for Autism and Low Incidence; parents of children with Autism Spectrum Disorders; Board Certified Behavior Analysts; and, the Department of Medicaid.

Dr. LeSure offered great thanks and praise for the collaboration, collegiality, and effort put forth by individuals who attended rule workgroup meetings and provided feedback.

The Board had received in advance of the meeting a draft of the rules that will implement ORC 4783. The draft of rules had been written, edited and amended through workgroup discussions, and consensus was reached by the workgroup. There were no objections raised by any workgroup invitee that the rules should not be presented to the Psychology Board.

Overall, there was active discussion about the draft rules, largely focused on clarifications sought by members of the Board. Overall, there were a relatively small number of changes made to the draft, which follows, and has changes "marked up" so that the reader can see exactly how the draft changed during the course of the meeting. Throughout the live editing of the rules, as the Board moved from section to section, Dr. LeSure checked with the stakeholder members of the public present to make certain that there were no concerns.

Discussion began as Dr. Ross acknowledged erring by suggesting that all veterans of the U.S. Armed Forces be exempt from paying application and renewal fees. He emphasized that there is an executive order in place issued by Governor Kasich relative to streamlining the licensure process, but that full fee waivers at this stage seems premature. Dr. Harmon described a new initiative directed toward "newer" veterans with multiple deployments vs. all veterans from all eras. Goals are focused on the substantial disruption to the lives of more recent veterans and their families.

Dr. Randolph raised the issue of how long an application should be valid, stating that five years (parallel with psychologists) seems too long. Dr. McCarley concurred and there was consensus to reduce it to three years.

There was additional discussion about the need to clarify language relative to the application process and language was added by consensus. Questions about the biennial renewal cycle, continuing education reporting, and approved reporting entities were raised by members of the Board and addressed by Drs. LeSure and Ross. Dr. Randolph posed a question about the meaning of "direct assessment" in the definition of "treatment plan" in 3-01, and there was consensus to make a language change in that paragraph ("direct" was changed to "in-person").

Dr. Ross explained that the final approximately seven pages of Chapter 1 were required by law in relation to accessing and handling confidential personal information and the language taken from the psychology rules.

Dr. Randolph suggested that a sentence clause be clarified in the first paragraph of 4-02 and consensus was reached to do so.

Dr. LeSure then described the philosophy behind the structure and organization of the chapter of supervision rules in 4783-6, focusing on the important distinction between

"oversight of the treatment plan" and "oversight of supervisees." Dr. Wasmer of Autism Speaks pointed out a typographical error and became active in the discussion as a stakeholder who helped to shape the rule draft presented to the Board. Dr. Wasmer pointed out opportunities to clarify the supervision rules, and discussion followed. Consensus was reached to amend the draft at 4783-6-02 (A)(1) and (C)(1), and (C)(2)(d) was added. Based on a concern raised by Dr. Drude, paragraph (C)(8) was edited to clarify a requirement regarding informed consent.

Public comments about whether there are limits imposed on the number of supervisees were addressed by Dr. LeSure, who noted that there is no limit in the current draft. A list available to the Board upon request containing all persons involved in the treatment plan must be maintained by the certificate holder. Dr. Wasmer and several members of the Board expressed concern about not limiting the number of supervisees. Dr. LeSure reported that identifying a limit was considered but it seemed arbitrary at this stage because this is a novel process. Dr. Ross noted that the Board's office staff was recently capped at five employees and one position was eliminated, so resources to adequately process supervision registration are not available. Decisions about the number of supervisees will be up to the certificate holder and the process will remain parent-driven.

Dr. Wasmer raised a concern about 4783-6-02 (C)(10), and Dr. LeSure described the intent of the rule: "If in the professional judgment of the certified Ohio behavior analyst the individuals delivering the treatment plan are not competent or are unwilling to follow the treatment plan, the certified Ohio behavior analyst is responsible for retraining on the treatment plan, modifying the treatment plan, or if necessary, discontinuing the treatment plan." Discussion followed, and consensus was reached that the rule does not reflect a "supervisor responsibility," but relates more clearly to the oversight of the treatment plan. For this reason, the rule was moved and became 4783-6-02 (A)(1).

A stakeholder attendee asked whether there is a requirement to report to the Board potential serious violations committed by another certificate holder. Clarification was offered, in that this requirement is in the professional conduct rules.

There was consensus by the Board relative to the General Rules of Professional Conduct except for two content changes: First, Dr. Ross was directed to amend (L) to be consistent with the same rule in 4732-17-01. Dr. Shroder pointed out that this was important because the language places the supervision rules on the same level as the professional conduct rules, and 4783.09 (A)(7) prohibits violation of any of the rules of professional conduct. In addition, 4732-7-01 (F)(6) was edited to clarify the intended meaning, and there was consensus among the Board and the stakeholders present.

Aside from correcting typographical errors, there were no other comments heard from the Board or from the stakeholders present. The stakeholders expressed gratitude to the Board for the open forum and for considering and making changes that were suggested. In response to a stakeholder question about the next step procedurally, Dr. Ross explained that he will, following authorization to file the rules, place them into the required software format and complete the Governor's Common Sense Initiatives Office's Business Impact Analysis (CSIO). That provides for a period of public comment and feedback from the CSIO. Once that process is completed and a letter is received from CSIO, the rules may be filed with the Joint Committee on Agency Rule Review, which will have jurisdiction for sixty-five days. Filing the rules with CSIO in early October should provide for plenty of time to get the rules into effect in early January, 2014.

**Note: The marked-up rules as edited during the meeting follow, and the minutes of the meeting resume on page 42.**

## **OAC 4783 State Board of Psychology-Certified Ohio Behavior Analysts**

### **OAC 4783-1 General Provisions**

#### **4783-1-01 Application for Certification.**

(A) All applicants for certification as a certified Ohio behavior analyst shall file an application with the board, under oath and duly notarized, on a form prescribed by the board and accompanied by the appropriate fee.

(B) In accord with division (A) of section 4783.04 of the Revised Code, all applications for certification shall include:

(1) Written verification from the "Behavior Analyst Certification Board" or its successor organization that the person holds a current, valid certificate as a Board Certified Behavior Analyst or determination by the board that the applicant has met the equivalent requirements pursuant to criteria set forth in paragraph (1)(a) of rule 4783-4-01 of the Administrative Code.

(2) The grade transcript, bearing official seal, sent directly to the board office by each graduate university or college attended by the applicant;

(3) Notarized statements from those persons who have supervised the applicant's professional work experience in applied behavior analysis shall be submitted on a form prescribed by the board, incorporated herein by reference as form PSY COBA-SUP-1. Said statements shall set forth the supervisor's own qualifications, familiarity with the applicant, the extent of the supervision over such applicant, the inclusive dates and number of hours of work supervised, the number of individual and group supervision hours weekly, and an evaluation of the applicant's performance;

(4) A completed, notarized application on a form prescribed by the board, incorporated herein by reference as form PSY COBA-1.

(5) Not less than three letters of reference from individuals substantially familiar with the applicant's professional conduct, competencies, and personal character. The letters shall be sent directly to the board office and shall come from:

(a) A psychologist or a school psychologist licensed by this board; or

(b) A psychologist or a school psychologist licensed by another state, territory, the District of Columbia, or Canada when the supervised experience took/takes place in that other jurisdiction or the psychologist or the school psychologist is/was practicing legally in Ohio; or

(c) A board certified behavior analyst in good standing certified by the "Behavior Analyst Certification Board"; or

(d) A professional clinical counselor, independent social worker, or independent marriage and family therapist licensed under Chapter 4757 of the Revised Code; or

(e) A certified Ohio behavior analyst.

(C) The application for certification shall be deemed to lapse if the applicant has not successfully completed all requirements for certification within ~~five~~-three years after initial filing. Thereafter, a new application shall be necessary for a candidate to pursue certification.

(D) The entrance examiner appointed by the board pursuant to division (A) of section 4732.10 of the Revised Code shall determine whether an applicant meets the requirements of the applicable division (A) of section 4783.03 of the Revised Code. If the entrance examiner determines that an applicant does not meet the requirements, the examiner shall propose to deny the application.

~~(E) The board hereby waives the application fee for individuals who can demonstrate in a manner prescribed by the board that the person is an honorably discharged veteran of the armed forces of the United States.~~

#### **4783-1-02 Fees.**

Fees shall be established by the board pursuant to division (A)(2) of section 4783.03 of the Revised Code. Current fees on the effective date of this rule are subject to change by action of the board, the controlling board, and/or the general assembly. Information about fees may be obtained by writing or calling the board office or consulting the application instructions available at the board's website [www.psychology.ohio.gov](http://www.psychology.ohio.gov). Such fees, for which checks are made payable to "Treasurer, State of Ohio" but are mailed to the board at the board address, include:

(A) Application and initial certificate fee – one hundred twenty five dollars;

(B) Biennial registration (renewal) fee – one hundred fifty dollars.

(C) Certificate reinstatement request fee for reinstatement of an expired certificate – biennial registration fee as in paragraph (B) of this rule, plus a penalty fee of fifty dollars.

#### **4783-1-03 Biennial registration.**

(A) Each certified Ohio behavior analyst shall register on a biennial basis pursuant to division (A) of section 4783.05 of the Revised Code, including the continuing education (CE) information required by division (B) of section [4783.05](#) of the Revised Code and rule [4732-2-01](#)(CE requirements) of the Administrative Code. Registration shall be on a form provided by the board and shall include information deemed necessary by the board. Forms will be mailed to the last known address of each certificate holder. Failure to register and pay the biennial registration fee by the thirty-first day of August of each even-numbered year after the year of certification will result in automatic expiration of the certification unless the board has excused, in writing, a certificate holder from all or any part of the CE requirements pursuant to paragraph (C)(9) of rule [4783-2-01](#) of the Administrative Code.

(B) The board hereby waives the registration fee and CE requirements of a certified Ohio behavior analyst during such time as said certificate holder is on active duty in the armed

forces of the United States, provided the registration form is completed and exemption from the fee and CE requirements is requested and approved by the board.

~~\_(C) The board hereby waives the registration fees for individuals who can demonstrate in a manner prescribed by the board that the person is an honorably discharged veteran of the armed forces of the United States.~~

(D) Any certificate suspended pursuant to paragraph (A) of this rule may be reinstated by the board within five years after such expiration, on request of the certificate holder who failed to timely renew the certificate. Absent any grounds for denial as set forth in section 4783.09 of the Revised Code, such reinstatement:

(1) Shall be automatic if requested within one year, upon immediate payment of the biennial registration fee plus the penalty fee in effect at the time of the request and:

(a) Upon receipt in the board office of a report from the Behavior Analyst Certification Board, the Ohio Psychological Association or the Ohio School Psychologists Association of having completed the CE requirements that were in effect at the time of the most recent certificate renewal deadline; or

(b) Without such evidence if the fees and/or CE requirements are waived or excused, in writing, pursuant to paragraph (B) or paragraph (C) of this rule;; or

(2) After one year following such suspension shall require:

(a) Payment of the biennial registration fee in effect at the time of the request for reinstatement plus the penalty fee, unless the board waives the fees pursuant to paragraph (B) or paragraph (C) of this rule, with no part of these fees being refundable regardless of the outcome of the request for reinstatement; and

(b) Approval by the board of the expired certificate holder's notarized statement describing his/her professional activities after the date of expiration of the certificate; and

(c) Acceptance by the board of evidence of having completed, either during the previous two years or during the biennium, the CE requirements that were in effect for the biennium prior to the last regular certificate renewal anniversary unless the board excuses, in writing, the certificate holder from all or any part of the CE requirements.

#### **4783-1-04 Certified Ohio behavior analyst certificate and card.**

Each certified Ohio behavior analyst shall display his/her wall certificate and current certification card at his/her principle place of professional practice of applied behavior analysis.

#### **4783-1-05 Definitions.**

For the purposes of administrative rules promulgated in accordance with section 1347.15 of the Revised Code, the following definitions apply:

(A) "Access" as a noun means an instance of copying, viewing, or otherwise perceiving whereas "access" as a verb means to copy, view, or otherwise perceive.

(B) "Acquisition of a new computer system" means the purchase of a "computer system," as defined in this rule, that is not a computer system currently in place nor one for which the acquisition process has been initiated as of the effective date of the board rule addressing requirements in section 1347.15 of the Revised Code.

(C) "Computer system" means a "system," as defined by section 1347.01 of the Revised Code, that stores, maintains, or retrieves personal information using electronic data processing equipment.

(D) "Confidential personal information" (CPI) has the meaning as defined by division (A)(1) of section 1347.15 of the Revised Code and identified by rules promulgated by the board in accordance with division (B)(3) of section 1347.15 of the Revised Code that reference the federal or state statutes or administrative rules that make personal information maintained by the board confidential.

(E) "Board" means the state board of psychology.

(F) "Employee of the board" means each employee of the board, each member of the board appointed pursuant to section 4732.02 of the Revised code, and each member of the school psychology licensing committee appointed by the board pursuant to section 4732.11 of the Revised Code.

(G) "Incidental contact" means contact with the information that is secondary or tangential to the primary purpose of the activity that resulted in the contact.

(H) "Individual" means a natural person or the natural person's authorized representative, legal counsel, legal custodian, or legal guardian.

(I) "Information owner" means the individual appointed in accordance with division (A) of section 1347.05 of the Revised Code to be directly responsible for a system.

(J) "Person" means a natural person.

(K) "Personal information" has the same meaning as defined in division (E) of section 1347.01 of the Revised Code.

(L) "Personal information system" means a "system" that "maintains" "personal information" as those terms are defined in section 1347.01 of the Revised Code. "System" includes manual and computer systems.

(M) "Research" means a methodical investigation into a subject.

(N) "Routine" means commonplace, regular, habitual, or ordinary.

(O) "Routine information that is maintained for the purpose of internal office administration, the use of which would not adversely affect a person" as that phrase is used in division (F) of section 1347.01 of the Revised Code means personal information relating to employees and maintained by the board for internal administrative and human resource purposes.

(P) "System" has the same meaning as defined by division (F) of section 1347.01 of the Revised Code.

(Q) "Upgrade" means a substantial redesign of an existing computer system for the purpose of providing a substantial amount of new application functionality, or application modifications that would involve substantial administrative or fiscal resources to implement, but would not include maintenance, minor updates and patches, or modifications that entail a limited addition of functionality due to changes in business or legal requirements.

**4732-1-06 Procedures for accessing confidential personal information.**

For personal information systems, whether manual or computer systems, which contain confidential personal information, the board shall do the following:

(A) Criteria for accessing confidential personal information. Personal information systems of the board are managed on a "need-to-know" basis whereby the information owner determines the level of access required for an employee of the board to fulfill his/her job duties. The determination of access to confidential personal information shall be approved by the employee's supervisor and the information owner prior to providing the employee with access to confidential personal information within a personal information system. The agency shall establish procedures for determining a revision to an employee's access to confidential personal information upon a change to that employee's job duties including, but not limited to, transfer or termination. Whenever an employee's job duties no longer require access to confidential personal information in a personal information system, the employee's access to confidential personal information shall be removed.

(B) Individual's request for a list of confidential personal information. Upon the signed written request of any individual for a list of confidential personal information about the individual maintained by the board, the board shall do all of the following:

(1) Verify the identity of the individual by a method that provides safeguards commensurate with the risk associated with the confidential personal information;

(2) Provide to the individual the list of confidential personal information that does not relate to an investigation about the individual or is otherwise not excluded from the scope of Chapter 1347. of the Revised Code; and

(3) If all information relates to an investigation about that individual, inform the individual that the board has no confidential personal information about the individual that is responsive to the individual's request.

(C) Notice of invalid access.

(1) Upon discovery or notification that confidential personal information of a person has been accessed by an employee for an invalid reason, the board shall notify the person whose information was invalidly accessed as soon as practical and to the extent known at the time. However, the board shall delay notification for a period of time necessary to ensure that the notification would not delay or impede an investigation or jeopardize homeland or national security. Additionally, the board may delay the notification consistent with any measures necessary to determine the scope of the invalid access, including which individuals' confidential personal information invalidly was accessed, and to restore the reasonable integrity of the system. "Investigation" as used in this paragraph means the investigation of the circumstances and involvement of an employee surrounding the invalid access of the confidential personal information. Once the board determines that notification

would not delay or impede an investigation, the board shall disclose the access to confidential personal information made for an invalid reason to the person.

(2) Notification provided by the board shall inform the person of the type of confidential personal information accessed and the date(s) of the invalid access.

(3) Notification may be made by any method reasonably designed to accurately inform the person of the invalid access, including written, electronic, or telephone notice.

(D) Appointment of a data privacy point of contact. The board shall designate an employee of the board to serve as the data privacy point of contact. The data privacy point of contact shall work with the chief privacy officer within the office of information technology to assist the board with both the implementation of privacy protections for the confidential personal information that the board maintains and compliance with section 1347.15 of the Revised Code and the rules adopted pursuant to the authority provided by that chapter.

(E) Completion of a privacy impact assessment. The board shall designate an employee of the agency to serve as the data privacy point of contact who shall timely complete the privacy impact assessment form developed by the office of information technology.

**4783-1-07 Valid reasons for accessing confidential personal information.**

Pursuant to the requirements of division (B)(2) of section 1347.15 of the Revised Code, this rule contains a list of valid reasons, directly related to the board's exercise of its powers or duties, for which only employees of the board may access confidential personal information (CPI) regardless of whether the personal information system is a manual system or computer system:

(A) Performing the following functions constitute valid reasons for authorized employees of the board to access confidential personal information:

(1) Responding to a public records request;

(2) Responding to a request from an individual for the list of CPI the board maintains on that individual;

(3) Administering a constitutional provision or duty;

(4) Administering a statutory provision or duty;

(5) Administering an administrative rule provision or duty;

(6) Complying with any state or federal program requirements;

(7) Processing or payment of claims or otherwise administering a program with individual participants or beneficiaries;

(8) Auditing purposes;

(9) Licensure [or permit, eligibility, filing, etc.] processes;

- (10) Investigation or law enforcement purposes;
- (11) Administrative hearings;
- (12) Litigation, complying with an order of the court, or subpoena;
- (13) Human resource matters (e.g., hiring, promotion, demotion, discharge, salary/compensation issues, leave requests/issues, time card approvals/issues);
- (14) Complying with an executive order or policy;
- (15) Complying with a board policy or a state administrative policy issued by the department of administrative services, the office of budget and management or other similar state agency; or
- (16) Complying with a collective bargaining agreement provision.

(B) To the extent that the general processes described in paragraph (A) of this rule do not cover the following circumstances, for the purpose of carrying out specific duties of the board, authorized employees of the board would also have valid reasons for accessing CPI in these following circumstances:

- (1) Reporting administrative actions and disciplinary records pursuant to state or federal law or requirements of membership in the association of state and provincial psychology boards;
- (2) Monitoring compliance with board orders and consent agreements, including the review of internal and external reports and data used to facilitate the monitoring process; and
- (3) Records maintenance processes, including filing, photocopying, scanning, and reviewing records for retention and destruction.

**4783-1-08 Confidentiality statutes.**

The following federal statutes or regulations or state statutes and administrative rules make personal information maintained by the agency confidential and identify the confidential personal information within the scope of rules promulgated by this agency in accordance with section 1347.15 of the Revised Code:

- (A) Social security numbers: 5 U.S.C. 552a., unless the individual was told that the number would be disclosed.
- (B) "Bureau of Criminal Investigation and Information" criminal records check results: section 4776.04 of the Revised Code.
- (C) Medical records: health insurance portability and accountability act, 11 45, CFR 160, 42USC 1320.
- (D) College and university academic transcripts received by the board: family educational and privacy act 34 CFR part 99.

**4783-1-09 Restricting and logging access to confidential personal information in computerized personal information systems.**

For personal information systems that are computer systems and contain confidential personal information, the board shall do the following:

(A) Access restrictions. Access to confidential personal information that is kept electronically shall require a password or other authentication measure.

(B) Acquisition of a new computer system. When the board acquires a new computer system that stores, manages or contains confidential personal information, the board shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.

(C) Upgrading existing computer systems. When the board modifies an existing computer system that stores, manages or contains confidential personal information, the board shall make a determination whether the modification constitutes an upgrade. Any upgrades to a computer system shall include a mechanism for recording specific access by employees of the board to confidential personal information in the system.

(D) Logging requirements regarding confidential personal information in existing computer systems.

(1) The board shall require employees of the board who access confidential personal information within computer systems to maintain a log that records that access.

(2) Access to confidential information is not required to be entered into the log under the following circumstances:

(a) The employee of the board is accessing confidential personal information for official agency purposes, including research, and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(b) The employee of the board is accessing confidential personal information for routine office procedures and the access is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(c) The employee of the board comes into incidental contact with confidential personal information and the access of the information is not specifically directed toward a specifically named individual or a group of specifically named individuals.

(d) The employee of the board accesses confidential personal information about an individual based upon a request made under either of the following circumstances:

(i) The individual requests confidential personal information about himself/herself.

(ii) The individual makes a request that the board takes some action on that individual's behalf and accessing the confidential personal information is required in order to consider or process that request.

(3) For purposes of this paragraph, the board may choose the form or forms of logging, whether in electronic or paper formats.

(E) Log management. The board shall issue a policy that specifies the following:

- (1) Who shall maintain the log;
- (2) What information shall be captured in the log;
- (3) How the log is to be stored; and
- (4) How long information kept in the log is to be retained.

Nothing in this rule limits the agency from requiring logging in any circumstance that it deems necessary.

## **Chapter 4783-2 Continuing Education**

### **4783-2-01 Scope, responsibilities, and requirements for continuing education.**

(A) Scope. Every certified Ohio behavior analyst subject to continuing education (CE) requirements as set forth in division (B) of section 4783.05 of the Revised Code shall meet the requirements of that section.

(B) Responsibilities:

(1) In accordance with the requirements of sections 4783.05 of the Revised Code, it shall be the responsibility of each certified Ohio behavior analyst submitting a biennial registration of a certificate to certify to the board that the continuing education experience required for certificate renewal has been completed. Other than as provided for in paragraph (C)(8) of rule 4783-2-01 of the Administrative Code, each certificate holder shall complete biennially no fewer than twenty three hours of approved continuing education substantially relevant to the practice of applied behavior analysis, including no fewer than four hours in ethics and professional conduct and/or the role of culture and/or ethnic identity in the provision of applied behavior analysis services.

(2) CE may be applied to meet the requirements of paragraph (B)(1) of this rule if both of the following requirements are met:

(a) It is obtained through a program or course approved by the board, the "Behavior Analyst Certification Board," the "Ohio Psychological Association," the "Association of Black Psychologists," the "American Psychological Association," the "Ohio School Psychologists Association," or the "National Association of School Psychologists"; and

(b) Completion of the program or course is recorded with the "Behavior Analyst Certification Board," the "Ohio Psychological Association," or the "Ohio School Psychologists Association."

(3) The state board of psychology may disapprove any program or course that has been approved by the "Behavior Analyst Certification Board," the "Ohio Psychological Association," the "Association of Black Psychologists," the "American Psychological Association," the "Ohio School Psychologists Association," or the "National Association of School Psychologists. Such program or course may not be applied to meet the requirement of paragraph (1) of this rule.

(4) Each certificate holder shall personally maintain CE records for three years following the renewal deadline for which the credits were used to satisfy requirements for certificate renewal.

(5) Each certified Ohio behavior analyst shall be given a sufficient choice of continuing education acceptable to the board to ensure that each person has had a reasonable opportunity to participate in continuing education that is relevant to that person's practice in terms of subject matter and level. This requirement shall be judged to be met so long as a certified Ohio behavior analyst does not register a challenge and supply adequate documentation in writing to the board by March first of the year of required biennial registration. The board shall arrange for appropriate continuing education to be made available in case of a valid challenge. The validity of a challenge, as judged by the board, shall be binding.

(C) Requirements:

(1) Hours to be applied toward the CE requirements shall represent actual time spent in continuing education that meets the requirements set forth in this rule.

(2) Any certified Ohio behavior analyst shall be given credit, as defined in paragraph (K) of rule 4732-3-01 of the Administrative Code, for participation in any CE program or course that is not specifically disapproved by the board as provided for under paragraph (C)(5) of this rule and that is designated as acceptable by a relevant accrediting authority as specified in paragraph (A)(1) of rule 4783-2-02 as meeting the following criteria:

(a) The program or course is presented within an organizational structure that assures accountable administrative control, accurate record of course participation/attendance, and professional responsibility for course design and implementation;

(b) The specific program or course is relevant to the practice of behavior analysis in terms of subject matter and level;

(c) Completion of the program or course is registered with the "Behavior Analyst Certification Board," the "Ohio Psychological Association," or the "Ohio School Psychologists Association" according to policies and fee structures set by those organizations.

(3) Upon petition to the board by a certified Ohio behavior analyst requesting to acquire qualifying CE hours by pursuing specific relevant knowledge or skills through continuing education that would not qualify under paragraph (C)(2) of this rule, the board, at its discretion and on a case-by-case basis, may grant CE credit for such work if it is deemed significantly relevant to the certified Ohio behavior analyst's professional education.

(a) The petition, filed on a form prescribed by the board, shall contain documentation of the relevance of the CE requested.

(b) The number of hours of credit granted shall be determined by the board and need not match the number of hours of coursework undertaken.

(c) The board shall notify the petitioner in writing of its approval or disapproval and of the steps the petitioner shall take to demonstrate completion of the continuing education if the petition is approved. The board's determination shall be binding.

(4) The board may audit any activities submitted in satisfaction of the CE requirements and/or monitor any program approved by any authorized approving organization for CE credit, and may disallow such credit if the board determines that the offering is not in conformance with the standards of paragraph (C)(2) of this rule.

(a) The authorized approving organization shall be notified of any continuing education determined to be unacceptable by the board, as defined by written agreements with the Behavior Analyst Certification Board or contracts with the "Ohio School Psychologists Association" and/or with the "Ohio Psychological Association," and shall be required to notify all registered participants of that continuing education of its unacceptability.

(b) If the board determines after March first of a certificate renewal year that any continuing education approved by an authorized approving organization and already completed by any certificate holder is unacceptable, then each certified Ohio behavior analyst who has completed that continuing education and who proposes to use the hours to qualify for biennial registration shall be allowed until the end of the calendar year to complete the equivalent hours of qualifying continuing education credit. For such persons:

(i) The certificate shall not expire if all other requirements, including the remaining CE requirements are met by August thirty-first of a relevant renewal year and if any deficiency caused by the disqualification of the continuing education is corrected by the end of that calendar year.

(ii) Whatever hours are completed after August thirty-first of that year and are applied to correct such deficiency shall not count toward completion of CE requirements for the subsequent biennium.

(5) The board may, on its own initiative, approve continuing education. The board shall maintain a list of such approvals, which shall be available on the board website [www.psychology.ohio.gov](http://www.psychology.ohio.gov) or upon request (accompanied by a self-addressed envelope with first-class postage affixed) to the board office and shall be provided to the "Behavior Analyst Certification Board," the "Ohio Psychological Association," and the "Ohio School Psychologists Association," so that completion of such continuing education may be entered into the certificate holder's record of CE hours maintained by those organizations.

(6) It shall be the responsibility of the authorized approving organization to assure that all registered attendees are notified of any disapproval notice received from the board. Notwithstanding this responsibility of the authorized approving organization, it shall be the responsibility of each certified Ohio behavior analyst to complete the necessary number of approved hours of CE, whether or not the certified Ohio behavior analyst is correctly notified of the unacceptability of any disapproved continuing education.

(7) Failure to meet CE requirements or failure to have verification of the necessary CE hours sent to the board by August thirty-first of any relevant renewal year shall result in the automatic expiration of the certificate on September thirtieth of that year, except in a case described in paragraph (C)(4) or (C)(9) of this rule. If reinstatement is desired, such individual shall be required to submit a formal request for reinstatement of the certificate.

(8) If an applicant for certification is granted a certificate during the first year of the biennial renewal period, the certified Ohio behavior analyst is required to complete thirteen hours of continuing education for that biennial renewal period, including not less than four hours of continuing education in professional conduct and ethics, and/or the role of culture and/or ethnic identity in the provision of applied behavior analysis services. If an applicant is

certified during the first three months of the second year of the biennial renewal period, the certified Ohio behavior analyst is exempt from meeting the CE requirements for that biennial period. If an applicant is certified during the last nine months of the second year of the biennial renewal period and is, therefore, not subject to renewal that same year, he/she is required to complete twenty-three hours of CE to renew in the next renewal year.

(9) On written petition by a certificate holder setting forth convincing and compelling reason because of an unusual circumstance, emergency, or special hardship, the board may excuse all or any part of the petitioner's CE requirements, may set conditions for excusing such requirements, and may require the certificate holder to make up CE requirements. Board approval or disapproval of any such arrangement shall be made in writing, shall be communicated promptly to the petitioner, and shall be inserted into the petitioner's board record. Board determinations are binding. The deadline for requesting the board to excuse all or any part of CE requirements is August first of the relevant renewal year.

(10) Falsification of written evidence submitted to the "Behavior Analyst Certification Board," the "Ohio Psychological Association" and the "Ohio School Psychologists Association," or to the board, or failure to respond to an audit request regarding continuing education experience shall constitute fraud, misrepresentation, and deception, as defined in paragraph (A)(2) of rule 4783-7-03 of the Administrative Code, and shall be considered grounds for disciplinary action.

#### **4783-2-02 Procedures for recording, filing, and reporting continuing education.**

(A) Record of completion of continuing education.

(1) Each certified Ohio behavior analyst shall arrange with the "Behavior Analyst Certification Board," "Ohio Psychological Association" or the "Ohio School Psychologists Association," to record and maintain the record of all CE hours, and the CE experience in which the hours were accrued, that are to be submitted to the board in fulfillment of the CE requirements for certificate renewal. In accordance with the requirements of division (B) of section 4783.05 of the Revised Code, such record shall constitute the proof necessary to document completion of continuing education. The "Behavior Analyst Certification Board," the "Ohio Psychological Association" and the "Ohio School Psychologists Association," shall, pursuant to written agreements with the board, make determinations as to whether the CE program is substantially relevant to the practice of applied behavior analysis.

(2) All records maintained by the "Behavior Analyst Certification Board," "Ohio School Psychologists Association" and/or by the "Ohio Psychological Association" of CE credits that are to be submitted for qualification of certificate renewal of any psychologist or any school psychologist shall be available for board review, in accordance with procedures established by the board and the record-keeping entities. Records of continuing education not available for board review shall not count toward the CE requirements for certificate renewal.

(B) The "Behavior Analyst Certification Board," "Ohio Psychological Association" and the "Ohio School Psychologists Association" shall report to the board the continuing education status of each certificate holder seeking certificate renewal and registered with that organization, in accordance with the agreement signed each year by the board, approving the arrangements with the recording association.

#### **Chapter 4783-3 Definitions.**

#### 4783-3-01 Definitions

(A) As used in agency 4783 of the Administrative Code, the terms "certified Ohio behavior analyst," and "the practice of applied behavior analysis" " have the same meanings as set forth in section 4783.01 of the Revised Code.

(B) The "practice of applied behavior analysis," as distinct from the performance of behavior analysis procedures or tasks, includes but is not restricted to the use of the title "certified Ohio behavior analyst" or "applied behavior analyst."

(C) "Board" shall mean the state board of psychology.

(D) "Accredited or recognized by a regional or national accrediting agency" or "accredited educational institution" means that an educational institution meets prescribed standards that are necessary but not necessarily sufficient to qualify its graduates for consideration for certification based on a demonstration of meeting equivalent requirements pursuant to division (A)(4) of section 4783.04 of the Revised Code.

(F) "National or regional accrediting agencies" means one of the following agencies:

(1) "Middle States Association of Colleges and Schools - Commission on Higher Education"

(2) "New England Association of Schools and Colleges"

(3) "North Central Association of Colleges and Schools"

(4) "Northwest Association of Schools and Colleges"

(5) "Southern Association of Colleges and Schools"

(6) "Western Association of Schools and Colleges - Accrediting Commission for Senior Colleges"

(G) "Certificate holder" means a person with a valid, active "certified Ohio behavior analyst" certificate.

(H) "Applicant for certification" means any person who applies to the board for a certificate pursuant to section 4783.04 of the Revised Code.

(I) "He" or "she" and "his" or "her" shall be interpreted to mean or include the pronoun of the other gender where appropriate.

(J) "Client," as used in agency 4783 of the Administrative Code, means an individual receiving applied behavior analysis services and, if that person is a minor, that person's parents or legal guardians or any other receiver of applied behavior analysis services, including individuals, families, and groups.

(K) "Continuing education" (CE), as used in agency 4783 of the Administrative Code, is the process through which certified Ohio behavior analysts acquire new knowledge and skills relevant to their work, gain new competencies concerning applied behavior analysis

concepts and techniques, or improve current competencies and skills by completion of approved and documented educational experiences.

(L) "Authorized approving organization," as used in agency 4783 of the Administrative Code, means the board, the "Behavior Analyst Certification Board," the "Ohio Psychological Association," the "Association of Black Psychologists," the "American Psychological Association," the "Ohio School Psychologists Association," or the "National Association of School Psychologists," as these are set forth in paragraph (B)(2) of rule 4783-2-01 of the Administrative Code.

(M) "Hours of CE credits" means:

(1) The number of CE hours approved and recorded for each certificate holder by the "Behavior Analyst Certification Board," the "Ohio Psychological Association" or the "Ohio School Psychologists Association" and reported to the board by one of those associations; or

(2) The number of hours determined by the board in accordance with rules 4783-2-01 and /or 4783-2-02 of the Administrative Code.

(N) "Expired certificate" means a certificate that has not been renewed pursuant to requirements set forth in division (A)(1) of section 4783.05 of the Revised Code and paragraph (A) of rule 4783-1-03.

(O) "Functional behavior assessment" means the determination of the underlying function or purpose of a behavior in order to develop an effective treatment plan, and may include a variety of systematic information gathering techniques regarding factors influencing the occurrence of a behavior (e.g. antecedents, consequences, setting events and motivating operations) including interview, direct observation and experimental analysis, and systematic manipulation of environmental variables in an attempt to demonstrate a relationship between an environmental event and targeted behavior.

(P) "Treatment plan" means a written document describing the presenting behavior problem(s) and describing the behavioral goals and interventions selected to alter the behavior. The treatment plan shall be based on information gathered from ~~direct~~-in-person assessments, review of records from other professionals, direct observations, and clinical interview data, and includes the selected interventions, an estimate of the length of time and/or number of sessions anticipated to achieve the goals, and specific statements about the measurement of progress toward achieving the goals.

(Q) "Supervisee" means any individual practicing applied behavior analysis acting under the legal authority and direction of a certified Ohio behavior analyst.

(R) "Supervision plan" means a written document that includes a list of the names and agreed upon responsibilities of all individuals implementing a treatment plan, their relationship with the client and their responsibilities relative to the implementation of the treatment plan, and describes the training and support services provided by the certified Ohio behavior analyst to both supervisees and non-supervisees.

## **Chapter 4783-4 Requirements for Admission to Certification**

### **4783-4-01 Requirements for certification as a certified Ohio behavior analyst.**

The requirements for certification as a certified Ohio behavior analyst, which are generally set forth under division (A) of section 4783.04 include that the applicant shall be of good moral character and conduct one's professional activities in accordance with accepted professional and ethical standards. In addition, the applicant shall demonstrate current certification as a board certified behavior analyst by the "Behavior Analyst Certification Board" or its successor organization or demonstrate completion of equivalent requirements and passage of a psychometrically valid examination administered by a nationally accredited credentialing organization. With regard to such requirements, the board hereby further prescribes that:

(A) Immediate certification shall be granted as a certified Ohio behavior analyst to persons certified as board certified behavior analysts by the "Behavior Analyst Certification Board" who can demonstrate active practice as an applied behavior analyst and who make application within one year of the effective date of this rule without being required to comply with other requirements in section 4783.04 of the Revised Code so long as the following requirements are met:

(1) Written verification is received and verified by the board from the Behavior Analyst Certification Board (BACB) or its successor organization that the person holds a current, valid certificate as a Board Certified Behavior Analyst;

(2) Board approval of one or more letters, ~~as~~at the discretion of the board, from an employer, organization, health care professional or individual familiar with the applicant's recent work, establishing that the applicant is engaged in active practice of applied behavior analysis.

(3) Board approval of a written statement from the candidate that he/she has read and will comply with the requirements set forth in Chapter 4783 of the Revised Code and Chapter 4783 of the Administrative Code.

(B) Following one year after the effective date of this rule, the applicant shall evidence compliance with division (A) of section 4783.04 of the Revised Code, by demonstrating that the following requirements have been met:

(1) Written verification is received from the "Behavior Analyst Certification Board" or its successor organization that the person holds a current, valid certificate as a board certified behavior analyst or approval by the board that the applicant has demonstrated completion of equivalent requirements and passage of a psychometrically valid examination administered by a nationally accredited credentialing organization.

(a) In order for an applicant to demonstrate completion of requirements equivalent to holding a board certified behavior analyst certificate the individual shall comply with the following indicia of equivalence:

(i) Evidence on a grade transcript bearing official seal of an earned master's or doctoral degree conferred in behavior analysis or other natural science, education, psychology, counseling, social work, human services, or a field related to behavior analysis as judged by the board, from:

(a) A nationally or regionally accredited university in the United States;

(b) A Canadian institution of higher education that is a member of the Association of Universities and Colleges of Canada or the Association of Canadian Community Colleges; or

(c) An institution of higher education located outside the United States or Canada that, at the time the applicant was enrolled and at the time the applicant graduated, maintained a standard of training equivalent to the standards of training of those institutions accredited in the United States. In addition, the academic transcript underlying the relevant degree shall be translated into English (as applicable) and shall be evaluated by a member organization of the national association of credential evaluation service (NACES). The degree shall be judged by a NACES member organization to be equivalent to a minimum of a master's degree in behavior analysis or other natural science, education, psychology, counseling, social work, human services, or a field related to behavior analysis as judged by the board from a regionally accredited academic institution in the U.S. Candidates can find information about seeking professional credential reviews at [www.naces.org](http://www.naces.org) and at the board's website [www.psychology.ohio.gov](http://www.psychology.ohio.gov). The applicant shall be responsible for all fees associated with said credential review and any required translation deemed necessary by the board to conduct a review of the degree.

(d) The coursework shall include a minimum of 270 classroom hours as follows, either on the master's degree or doctoral degree transcript, or on academic transcripts reflecting coursework completed subsequent to the award of the degree:

(i) Forty-five hours in ethical and professional conduct taught in one or more freestanding courses devoted to ethical and professional conduct based on the behavior analyst certification board's professional disciplinary and ethical standards and guidelines for responsible conduct for behavior analysts;

(ii) Forty-five hours in concepts and principles of behavior analysis, based on the behavior analyst certification board's foundational knowledge list;

(iii) Research methods in behavior analysis based on the behavior analyst certification board's fourth edition task list, including twenty-five hours in measurement (including data analysis) and twenty hours in experimental design;

(iv) Applied behavior analysis based on the behavior analyst certification board's fourth edition task list, including: forty-five hours in fundamental elements of behavior change and specific behavior change procedures; thirty hours in identification of the problem and assessment; ten hours in intervention and behavior change considerations; ten hours in behavior change systems; ten hours in implementation management and Supervision; and, thirty discretionary hours related to applied behavior analysis.

(ii) Evidence of a passing score on a psychometrically valid written examination in the subject area of applied behavior analysis administered by a nationally accredited credentialing organization, recognition of which shall be made by the board on a case-by-case basis.

(iii) Completion of a minimum of fifteen hundred hours of relevant supervised experience in applied behavior analysis satisfactory to the board.

(2) Not less than three letters of reference from individuals substantially familiar with the applicant's professional conduct, competencies, and personal character as required in paragraph (B)(5) of rule 4783-1-01 of the Administrative Code.

(3) Compliance with board processes designed to expose the applicant to and measure understanding of the laws and rules governing the practice of applied behavior analysis in Ohio as evidenced by:

(a) Receipt in the Board office of a signed statement that the applicant has received and studied Chapter 4783 of the Revised Code, Chapter 4783 of the Administrative Code, and copies of any state and/or federal laws governing the practice and legal responsibilities of certified Ohio behavior analysts;

(b) Attendance at a jurisprudence workshop of no longer than four hours prepared and presented by the board;

(c) Earning a passing score on a post-workshop written examination covering the material presented in the workshop. Information about the workshop and passing score cut-offs shall be available on the board's website.

**4783-4-02 Exceptions to requiring verification of certification by the behavior analyst certification board; reciprocity.**

Upon application by an applied behavior analyst licensed or certified by the licensing department of another state, a territory, or the District of Columbia, who wishes to ~~remove to this state to practice~~practice in this state, the state board of psychology may issue a certificate to practice applied behavior analysis without requiring written verification from the "Behavior Analyst Certification Board" provided he/she also:

(A) Demonstrates compliance with the requirements in paragraphs (B)(2) and (B)(3) of rule 4783-1-01 of the Administrative Code and pays the required fee.

(B) Makes available to the board primary source verification of active licensure or certification as an applied behavior analyst by the appropriate licensing department of another state, a territory, or the District of Columbia.

**4783-4-03 Criminal records check.**

(A) In addition to the requirements established in rules 4783-9-01 and 4783-9-02 of the Administrative Code, all applicants for initial certification as a certified Ohio behavior analyst shall submit to a criminal records check completed by the bureau of criminal identification and investigation in accordance with section 4783.04 of the Revised Code.

(B) The board shall not grant a certificate to an applicant for an initial certificate to practice applied behavior analysis unless the applicant completes a criminal background check and the board, in its discretion, decides that the results do not make the applicant ineligible for a certificate.

(C) The applicant requesting a criminal records check shall submit with a request to the bureau of criminal identification and investigation: a completed copy of a form prescribed under division (C)(1) of section 109.572 of the Revised Code; a set of fingerprint impressions obtained as described in division (C)(2) of section 109.572 of the Revised Code; the applicant's name and address; the board's name and address; and, a request that the superintendent of the bureau of criminal identification and investigation obtain from the federal bureau of investigation any information it has pertaining to the applicant.

(D) The board shall only accept results of a criminal records check submitted to the board directly from the bureau of criminal identification and investigation.

(E) The applicant shall bear all costs associated with the criminal records check as determined by the bureau of criminal identification and investigation, the federal bureau of investigation, and by any agency with authority to charge a fee for fingerprint impressions.

**4783-5-01 Exemptions from certification requirements.**

(A) The scope of this rule concerns only those persons who do not hold a certificate to engage in the practice of applied behavior analysis granted by the state board of psychology.

(B) Exemptions from certification requirements include:

(1) An individual licensed under Chapter 4732. of the Revised Code to practice psychology, if the practice of applied behavior analysis engaged in by the licensed psychologist is within the licensed psychologist's education, training and experience;

(2) An individual licensed under Chapter 4757. of the Revised Code to practice counseling, social work, or marriage and family therapy, if the practice of applied behavior analysis engaged in by the licensed professional counselor, professional clinical counselor, licensed social worker, independent social worker, or licensed marriage and family therapist is within the license holder's education, training and experience;

(3) An individual acting under the authority and direction of an individual described in paragraph (1) or (2) of this rule;

(4) An individual practicing applied behavior who is supervised by a certified Ohio behavior analyst and acting under the authority and direction of that certified Ohio behavior analyst;

(5) The delivery of interventions by a direct care provider or family member to implement components of an applied behavior analysis treatment plan;

(6) A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including applied animal behaviorists and practitioners of organizational behavior management;

(7) A licensed professional authorized to practice in this state who, in the offering or rendering of services, does not represent oneself in any printed materials or verbally by incorporating the term "applied behavior analyst" if the services of the licensed professional are within the scope of practice of the licensing law governing the licensed professional and the services performed are commensurate with the licensed professional's education, training and experience;

(8) A matriculated graduate student or postdoctoral trainee whose activities are part of a defined program of study or professional training;

(9) An individual employed by the department of developmental disabilities, a county board of developmental disabilities, or a council of government consisting of county boards of developmental disabilities, when the individual is acting in the scope of that employment;

(10) A professional employed in a school or other setting that falls under the regulation of the state board of education when the professional is acting within the scope of that employment.

## **Chapter 4783-6 Supervision**

### **4783-6-01 Purposes of supervision**

(A) To protect ~~to the~~ welfare of clients receiving applied behavior analysis services under the direction of a certified Ohio behavior analyst.

(B) To structure the activities of the supervisee so that competent applied behavior analysis services delivered by a non-certified person can safely be made available to clients.

(C) To ensure that non-certified persons function within the limits of his/her competence.

### **~~4783-6-02 4783-6-02~~ Requirements pertaining to supervision**

~~(A) (A)~~ Oversight of the treatment plan. An applied behavior analysis treatment plan will typically be delivered through a tiered structure using the services of supervisees, such as behavioral technicians or assistants, acting under the authority and direction of a certified Ohio behavior analyst. Non-supervisees such as family members, community care workers, teachers, and direct care providers, might also, upon agreement by the client and based on the professional judgment of the certified Ohio behavior analyst, be included in various capacities in the treatment plan. The certified Ohio behavior analyst shall exercise and retain oversight of the implementation of the treatment plan by both supervisees and non-supervisees.

~~(1) (A)~~ If in the professional judgment of the certified Ohio behavior analyst the individuals delivering the treatment plan are not competent or are unwilling to follow the treatment plan, the certified Ohio behavior analyst is responsible for retraining on the treatment plan, modifying the treatment plan, or if necessary, discontinuing the treatment plan.

~~(1)(2)~~ The certified Ohio behavior analyst ~~may have~~has more specific responsibilities for supervisees working directly under the authority and direction of the certified Ohio behavior analyst, pursuant to paragraph (C) of this rule.

(B) Establishment of the supervision plan. The certified Ohio behavior analyst shall develop a supervision plan as a part of each client treatment plan for applied behavior analysis services.

(1) The supervision plan as defined in paragraph (R) of rule 4783-3-01 shall include the names of all supervisees and non-supervisees implementing the treatment plan, their relationship with the client and their responsibilities relative to the implementation of the treatment plan.

(2) The supervision plan shall specify the amount and type of individual and/or group training and supervision that will be provided to the individuals implementing the treatment plan.

(3) The supervision plan may incorporate any applicable professional training standards required for the supervisee to earn any national certification or state licensure or certification.

(C) Responsibilities of the supervisor

(1) The structure and process of supervision shall depend on the treatment goals, procedures and interventions, treatment setting, the training and experience of the supervisees and other providers, client caseload, treatment progress, and risk to the service recipient, either from the intervention or from the behavior(s) of concern.

(2) At a minimum, supervision shall include:

a. Consultation with the supervisee(s) prior to the initiation of the treatment plan.

b. Training regarding implementation of the treatment plan, data collection regarding effectiveness, and measurement of client progress.

~~(3)~~  
c. Consultation with the supervisee(s) prior to the modification of the treatment plan.

~~a.d.~~ Periodic direct observation of each supervisee implementing assessment and treatment procedures with clients, with performance evaluation and additional instruction as necessary.

~~(4)~~(3) The frequency and intensity of face-to-face supervision shall be determined by the certified Ohio behavior analyst based upon the supervisee's credentials, experience, familiarity with the treatment plan, and by the responsibilities delegated, as well as any applicable professional training standards required for the supervisee to earn any national certification or state licensure or certification.

~~(5)~~(4) The certified Ohio behavior analyst shall not delegate to any supervisee:

(a) The responsibility for completing the evaluation/assessment of the client, including direct observation. ~~Supervisees and direct care providers may contribute to the process by gathering data and reporting observations.~~

(b) The responsibility for the development of the treatment plan, including goals, interventions, frequency and duration of treatment.

(c) The responsibility for review of data supporting the efficacy or lack of efficacy of the treatment plan, and for subsequent modifications to the treatment plan.

(d) The responsibility for ensuring that all supervisees and additional care providers who will implement the treatment plan are trained on the correct implementation procedures and the collection of data.

(e) The responsibility to maintain and retain the client's record as required in paragraph (B)(6) of rule 4783-7-01 of the Administrative Code.

~~(6)~~(5) The certified Ohio behavior analyst shall be responsible for the outcome of the treatment plan and for providing the necessary supervision to protect the health and welfare of clients.

~~(7)~~(6) The certified Ohio behavior analyst shall retain responsibility for referrals of clients to other professionals.

~~(8)~~(7) A certified Ohio behavior analyst shall not assume supervisory responsibility for work that he/she is not personally competent to deliver.

~~(9)~~(8) Before initiating applied behavior analysis services, the certified Ohio behavior analyst shall ~~ensure that~~inform the client ~~understands of~~ the different roles and responsibilities of the supervisees, family members, community care workers, teachers, and direct care providers and others as to the implementation of the treatment plan.

(a) A supervisor has full responsibility to document in writing that each client is clearly informed of the roles and responsibilities of each supervisee and non-supervisee implementing the plan.

(b) The client shall be informed of the right to access the certified Ohio applied behavior analyst to discuss the treatment plan or review concerns.

~~(10)~~(9) A certified Ohio behavior analyst is responsible for determining the competencies of the individuals implementing the treatment plan and shall not assign tasks that these individuals are not competent to perform.

~~(2) — If in the professional judgment of the certified Ohio behavior analyst the individuals delivering the treatment plan are not competent or are unwilling to follow the treatment plan, the certified Ohio behavior analyst is responsible for retraining on the treatment plan, modifying the treatment plan, or if necessary, discontinuing the treatment plan.~~

~~(11)~~(10) A certified Ohio behavior analyst shall not provide supervision to any person with whom he/she has a relationship that might impair the objectivity, judgment, and/or competence of the certified Ohio behavior analyst.

(a) A certified Ohio behavior analyst shall not designate as a supervisee any person who has administrative or funding authority over him/her. It is understood that parents or legal guardians may be part of implementing a treatment plan that is supervised by a certified Ohio behavior analyst.

(b) There should be no direct family relationship between a certified Ohio behavior analyst and a supervisee.

~~(12)~~(11) A certified Ohio behavior analyst shall not supervise any person who he/she knows is illegally providing applied behavior analysis services to the public either within or outside of the supervisory relationship.

~~(13)~~(12) The certified Ohio behavior analyst, under whose authority and direction the supervisee is acting under paragraphs (B)(3) and (B)(4) of rule 4783-5-01 shall sign an attestation stating that the certified Ohio behavior analyst is responsible for the care provided by the individual. These attestations shall be retained as by the certified Ohio behavior analyst but should not be sent to the board unless requested.

~~(3)~~—A certified Ohio behavior analyst shall not supervise any person who he/she knows is illegally providing applied behavior analysis services to the public either within or outside of the supervisory relationship.

~~(14)~~(13) A certified Ohio behavior analyst shall keep records of supervision. These records shall include the signed attestation meeting requirements of paragraph (8) of this rule, supervision plans for each client treatment plan, dates of training on treatment plans, procedures, and interventions, and the supervision provided when treatment plans are reviewed or modified. These records shall be maintained for a period of five years following the termination of supervision and shall be made available to the board upon request.

~~(15)~~(14) A supervisor shall not engage in sexual intercourse or other sexual intimacies with any supervisee or engage in sexual harassment or any verbal or nonverbal conduct that is sexual in nature with a supervisee, family member, community care worker, teacher, or direct care provider implementing the treatment plan.

~~(16)~~(15) A supervisor shall not exploit a supervisee for financial gain or with excessive work demands.

~~(17)~~(16) The violation of any statute or rule of the board by a supervisee may result in an investigation of the adequacy of the supervision.

**Chapter 4783-7-01 General rules of professional conduct pursuant to section 4783.09 of the Revised Code**

(A) General considerations:

(1) Purpose. The rules of professional conduct constitute the standards against which the required professional conduct of a certified Ohio behavior analyst is measured.

(2) Scope. The rules of professional conduct shall apply to the conduct of all certified Ohio behavior analysts, including the applicant's conduct during the period of any education, training or employment that is required for certification. The term "certified Ohio behavior analyst" as used within these rules of professional conduct, shall be interpreted accordingly, whenever applied behavior analysis is being provided in any context.

(3) Violations. A violation of the rules of professional conduct constitutes unprofessional conduct and is sufficient reason for a reprimand, suspension or revocation of a certificate, or denial of either original certification or request for reinstatement of certification.

(4) Aids to interpretation. Ethics codes and standards for providers promulgated by the "Behavior Analyst Certification Board" the "American Psychological Association," and other relevant professional groups shall be used as aids in resolving ambiguities that may arise in the interpretation of the rules of professional conduct, except that these rules of professional conduct shall prevail whenever any conflict exists between these rules and any professional association or certification board standard.

(5) A certified Ohio behavior analyst, or an applicant for certification, shall provide a written response within a reasonable period of time not to exceed sixty days to any written inquiry, regarding compliance with law or rule, received from the board.

(B) Negligence:

(1) A certified Ohio behavior analyst shall be considered negligent if his/her behaviors toward his/her clients, supervisees, service recipients, employees, students, or any person with who there is a signed attestation required in paragraph (5) of rule 4783-6-02, in the judgment of the board, clearly fall below the standards for acceptable practice of applied behavior analysis.

(2) Misrepresentation of qualifications. The certified Ohio behavior analyst shall not misrepresent directly or by implication his/her professional qualifications.

(3) Misrepresentation of affiliations. The certified Ohio behavior analyst shall not misrepresent directly or by implication his/her affiliations or the purposes or characteristics of institutions and organizations with which the certified Ohio behavior analyst is associated.

(4) A certified Ohio behavior analyst shall not request or authorize any client to solicit business on behalf of the certified Ohio behavior analyst.

(5) A certified Ohio behavior analyst associated with the development, promotion, or sale of psychological devices, books, or other products shall ensure that such devices, books, or products are not misrepresented as to qualities, performance or results to be obtained from their use.

(6) Maintenance and retention of records.

(a) A certified Ohio behavior analyst providing applied behavior analysis services to a client, or services billed to a third-party payer, shall maintain a professional record that includes:

(i) The presenting problem, including any relevant diagnosis and any recommendation for applied behavior analysis services rendered by a licensed professional.

- (ii) The date(s) and purpose of each service contact.
- (iii) The fee arrangement.
- (iv) The treatment plan and the functional assessment on which the behavior plan is based.
- (v) The data collected to ascertain the efficacy of the applied behavior analysis and any subsequent modifications of the plan.
- (vi) Notation and results of formal contacts with other providers, and
- (vii) Authorizations, if any, by the client for release of records or information.

(b) To meet the requirements of these rules, but not necessarily for other legal purposes, the certified Ohio behavior analyst shall ensure that each dated entry in the professional record is maintained for a period of not less than five years after the last date of service rendered, or not less than the length of time required by other regulations if that is longer. The general record or a summary thereof shall be kept for period of not less than twelve years after the last date of service rendered.

(c) A certified Ohio behavior analyst shall store and dispose of written, electronic, and other records of clients in such a manner as to ensure their confidentiality.

(d) In the event a complaint has been filed, a certified Ohio behavior analyst shall provide the original or a full copy of the client file or other client-identifiable documents to the board upon request, provided that the request is accompanied by a copy of a release signed by the client.

(C) Welfare of the client:

(1) Identification of the client: The term client is broadly applicable to whomever the certified Ohio behavior analyst provides services whether an individual person (service recipient), parent or guardian of a service recipient, an institutional representative or a public or private agency, firm or corporation.

(a) When the service recipient is not the primary client, the certified Ohio behavior analyst retains responsibility for the welfare of the service recipient.

(b) When there is a conflict of interest between the service recipient, the client, the institution, agency firm or corporation, the certified Ohio behavior analyst shall clarify the nature and direction of his/her loyalties and responsibilities and keep all parties concerned informed of his/her commitments.

(2) Sufficient professional information. Certified Ohio behavior analysts rely on scientifically and professionally derived knowledge when engaging in the practice of applied behavior analysis.

(a) The certified Ohio behavior analyst conducts a functional assessment, as defined below, to provide the necessary data to develop an effective behavior change program for a client or service recipient.

(b) Functional assessment includes a variety of systematic information-gathering activities regarding factors influencing the occurrence of a behavior (e.g. antecedents, consequences, setting events, ~~or~~ motivating operations) including interview, direct observation and experimental analysis.

(3) Informed client. When certified Ohio behavior analysts provide assessment, evaluation, treatment, supervision, teaching, consultation, research, or other behavior analytic services to an individual, group, or an organization, they use language that is fully understandable to the recipient of those services and/or to those responsible for the care of the individual service recipient.

(a) Certified Ohio behavior analysts provide appropriate information prior to service delivery about the nature of such services and appropriate information about results and conclusions.

(b) The client must be provided on request an accurate, current set of the certified Ohio behavior analyst's credentials.

(c) Clients must be informed of their rights and about procedures to complain about professional practices of the certified Ohio behavior analyst.

(4) Informed choice: A certified Ohio behavior analyst shall afford each client informed choice and reasonable protection from physical or mental harm or danger.

(a) Clients have a right to effective treatment (i.e., based on the research literature and adapted to the individual client).

(b) Clients have the right to have the treatment plan explained clearly in terms appropriate to their understanding and to be informed about alternative treatments.

(c) The certified Ohio behavior analyst explains treatment plan modifications and the reasons for the modifications to the client and obtains and documents consent to implement the modifications.

(d) The certified Ohio behavior analyst informs each client of the environmental conditions that are necessary for the treatment plan to be effective.

(i) If environmental conditions preclude implementation of a treatment plan, the behavior analyst recommends that other professional assistance (i.e., assessment, consultation or therapeutic intervention by other professionals) be sought.

(ii) If environmental conditions hamper implementation of the treatment plan, the behavior analyst seeks to eliminate the environmental constraints, or identifies in writing the obstacles to doing so.

(e) The certified Ohio behavior analyst reviews and appraises the restrictiveness of alternative interventions and always recommends the least restrictive procedures likely to be effective in dealing with a behavior problem.

(f) The certified Ohio behavior analyst establishes understandable, objective, and measurable criteria for the termination of the treatment plan and describes them to the client or service recipient.

(g) The certified Ohio behavior analyst must obtain the client's approval of the treatment plan procedures in writing before implementing them.

(5) Stereotypes. A certified Ohio behavior analyst shall not impose on a client any stereotypes of behavior, values, or roles related to age, gender, religion, race, disability, nationality, or sexual orientation that would interfere with the objective provision of services to the client.

(6) Termination. A certified Ohio behavior analyst shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship and shall make referrals to other services when appropriate.

(7) Referral. A certified Ohio behavior analyst shall make an appropriate referral of a client to another professional when requested to do so by the client.

(8) Practicing while impaired. A certified Ohio behavior analyst shall not undertake or continue a professional role when the judgment, competence and/or objectivity of the certified Ohio behavior analyst is impaired due to mental, emotional, physiological, pharmacological or substance abuse conditions. If impaired judgment, competence and/or objectivity develops after a professional role has been initiated, the certified Ohio behavior analyst shall terminate the professional role in an appropriate manner, shall notify the client or other relevant parties of the termination in writing and shall assist the client, supervisee, or service recipient in obtaining appropriate services from another professional.

(9) Continuity of care.

(a) A certified Ohio behavior analyst shall make arrangements for another appropriate professional to deal with the emergency needs of his/her clients during periods of foreseeable absence from professional availability.

(b) A certified Ohio behavior analyst makes reasonable efforts to plan for continuity of care in the event that services are interrupted by factors such as the certificate holder's illness, unavailability, relocation, or death or the client's relocation or financial limitations.

(c) A certified Ohio behavior analyst entering into employment or contractual relationships shall make reasonable efforts to provide for orderly and appropriate resolution of responsibility for client care in the event that the employment or contractual relationship ends, with paramount consideration being given to the welfare of the client.

(D) Remuneration:

(1) Financial arrangements:

(a) All financial arrangements shall be provided in writing to each client in advance of billing, preferably within the initial session but no later than the end of the second contact.

(b) A certified Ohio behavior analyst shall not mislead or withhold from any client, prospective client or third-party payer, information about the cost of his/her professional services.

(c) A certified Ohio behavior analyst shall not exploit a client or responsible payer by charging a fee that is excessive for the services performed or by entering into an exploitative bartering arrangement in lieu of a fee.

(d) The primary obligation of a certified Ohio behavior analyst employed by an institution, agency, or school is to persons entitled to his/her services through the institution, agency or school. A certified Ohio behavior analyst shall not accept a private fee or any other form of remuneration from such persons unless the policies of a particular institution agency or school make explicit provision for private work with its clients by members of its staff. In such instances the client shall be fully apprised of available services and all policies affecting him/her, prior to entering into a private professional relationship with a certified Ohio behavior analyst.

(2) Improper financial arrangements:

(a) A certified Ohio behavior analyst shall neither derive nor solicit any form of monetary profit or personal gain as a result of his/her professional relationship with clients or immediate ex-clients, beyond the payment of fees for psychological services rendered. However, unsolicited token gifts from a client are permissible.

(b) A certified Ohio behavior analyst shall not use his/her professional relationship with clients or immediate ex-clients to derive personal gain, other than through fees for professional services, for himself/herself, or for any other person, or for any organization from the sale or promotion of a non-applied behavior analysis related product or service.

(c) A certified Ohio behavior analyst shall neither give nor receive any commission, rebate or other form of remuneration for referral of a client for professional services, without full disclosure in advance to the client of the terms of such an agreement.

(d) A certified Ohio behavior analyst shall not bill for services that are not rendered. However, he/she may bill for missed appointments that the client did not cancel in advance, if the client has previously received notice of this responsibility.

(E) Multiple relationships. A multiple relationship exists when a certified Ohio behavior analyst is in a professional role and is in another relationship with the same person or entity or with an individual closely associated with the person or entity. Depending on the timing and nature of one's interactions before or after then establishment of a professional role, multiple relationships can result in exploitation of others, impaired judgment by clients, supervises and service recipients and/or impaired judgment competence and objectivity of the certified Ohio behavior analyst. Certified Ohio behavior analysts actively identify and manage interpersonal boundaries to ensure that there is not exploitation of others and that professional judgment, competence and objectivity with one's professional role is not compromised.

(1) In some communities and situations, unavoidable interpersonal contacts can occur due to cultural, linguistic, or geographical considerations. For purposes of this rule, incidental contacts in the personal life of a certified Ohio behavior analyst are not relationships.

(2) Prohibited multiple relationships. The board prescribes that certain multiple relationships are expressly prohibited due to inherent risks of exploitation, impaired judgment by clients and persons closely associated with clients, and supervisees, and/or impaired judgment, competence or objectivity of the certified Ohio behavior analyst.

(a) A certified Ohio behavior analyst shall not:

(i) Undertake a professional relationship with persons with whom he/she has engaged in sexual intercourse or other sexual intimacies; or

(ii) Undertake a professional relationship with persons with whom he/she has had a familial, personal, social, supervisory, employment, or other relationship, and there is resulting: exploitation of the person; or, impaired judgment, competence, and/or objectivity in the performance of one's functions as a certified Ohio behavior analyst.

(b) A certified Ohio behavior analyst shall not:

(i) Engage in sexual intercourse or other sexual intimacies; or, verbal or nonverbal conduct that is sexual in nature with any current client, any person closely associated with a current client, or supervisee; or

(ii) Establish any personal, financial, employment, or other relationship with any current client, any person closely associated with a current client, or supervisee and there is resulting: exploitation of the person; or, impaired judgment, competence, and/or objectivity in the performance of one's functions as a certified Ohio behavior analyst.

(c) A certified Ohio behavior analyst shall not:

(i) Engage in sexual intercourse or other sexual intimacies; or, verbal or nonverbal conduct that is sexual in nature with any person with whom there has been a professional relationship at any time within the previous twenty-four months; or

(ii) Enter into any personal, financial, employment or other relationship (other than reestablishing a professional relationship) with any person with whom there has been a professional relationship at any time within the previous twenty-four months and there is resulting: exploitation of the person; or, impaired judgment, competence, and/or objectivity in the performance of one's functions as a certified Ohio behavior analyst.

(d) A certified Ohio behavior analyst shall not terminate or interrupt a professional role with any person for the purpose, expressed or implied, of entering into a sexual, personal, or financial relationship with that person or any individual closely associated with that person.

(e) The prohibitions established in paragraphs (E)(2)(b) and (E)(2)(c) of this rule extend indefinitely beyond twenty-four months after termination of the professional relationship if the person, secondary to emotional, mental, or cognitive impairment, remains vulnerable to exploitative influence.

(F) Assessment:

(1) Certified Ohio behavior analysts' assessments, recommendations, reports, and evaluative statements are based on information and techniques sufficient to provide appropriate substantiation for their findings.

(2) Certified Ohio behavior analysts refrain from misuse of assessment techniques, interventions, results, and interpretations and take reasonable steps to prevent others from misusing the information these techniques provide.

(3) Certified Ohio behavior analysts recognize limits to the certainty with which judgments or predictions can be made about individuals.

(4) Certified Ohio behavior analysts do not promote the use of behavioral assessment techniques by unqualified persons, i.e., those who are unsupervised by experienced professionals and have not demonstrated valid and reliable assessment skills.

(5) Certified Ohio behavior analyst must obtain the client's approval in writing of the behavior assessment procedures before implementing them.

(6) Certified Ohio behavior analysts conduct a functional assessment, as defined in paragraph (O) of Chapter 4783-3-01 of the Administrative Code, to provide the necessary data to develop an effective behavior change program/treatment plan. ~~Functional assessment includes a variety of systematic information-gathering activities regarding factors influencing the occurrence of a behavior (e.g., antecedents, consequences, setting events, or motivating operations) including interview, direct observation, and experimental analysis.~~

(7) Unless the nature of the relationship is clearly explained to the person being assessed in advance and precludes provision of an explanation of results (such as in some organizational consultation, some screenings, and forensic evaluations), certified Ohio behavior analysts ensure that an explanation of the results is provided using language that is reasonably understandable to the person assessed or to another legally authorized person on behalf of the client. Regardless of whether the interpretation is done by the certified Ohio behavior analyst, or by supervisees, ~~or others~~, behavior analysts take reasonable steps to ensure that appropriate explanations of results are given.

(G) Confidentiality:

(1) Confidential information is information revealed by an individual or individuals or otherwise obtained by a certified Ohio behavior analyst, when there is reasonable expectation that it was revealed or obtained as a result of the professional relationship between the individual(s) and the certified Ohio behavior analyst. Such information is not to be disclosed by certified Ohio behavior analyst without the informed consent of the individual(s).

(a) When rendering behavior analysis services as part of a team or when interacting with other appropriate professionals concerning the welfare of a client, a certified Ohio behavior analyst may share confidential information about the client provided that reasonable steps are taken to ensure that all persons receiving the information are informed about the confidential nature of the information being shared and agree to abide by the rules of confidentiality.

(b) When any case report or other confidential information is used as the basis of teaching, research, or other published reports, a certified Ohio behavior analyst shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client or subject identification.

(c) A certified Ohio behavior analyst shall ensure that no interview or therapeutic interventions with a client are observed or electronically recorded without first informing the client or the client's guardian and, where the sensitivity of the material requires it, obtaining written consent from same.

(d) A certified Ohio behavior analyst shall limit access to client records and shall ensure that all persons working under his/her authority comply with the requirements for confidentiality of client material.

(e) A certified Ohio behavior analyst shall continue to treat all information regarding a client as confidential after the professional relationship between the certified Ohio behavior analyst and the client has ceased.

(f) In a situation in which more than one party has an appropriate interest in the professional services rendered by a certified Ohio behavior analyst to a client, the certified Ohio behavior analyst shall, to the extent possible, clarify to all parties the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.

(i) Such clarification is specifically indicated, among other circumstances, when the client is an organization or when the client has been referred by a third party.

(ii) In accord with paragraphs (C)(3) and (F)(7) of this rule, a certified Ohio behavior analyst shall clarify with the individual receiving services because of a third-party referral whether, and under what conditions-including costs, information or feedback will be provided to the individual, or the individual(s) responsible for the care of the individual receiving those services.

(2) Protecting confidentiality of clients. In accordance with division (B) of section [4783.03](#) of the Revised Code, the confidential relations and communications between a certified Ohio behavior analyst and clients are placed under the same umbrella of a privilege as those between physician and patient under division (B) of section [2317.02](#) of the Revised Code. The privilege is intended to protect the interest of the client by encouraging free disclosure to the certified Ohio behavior analyst and by preventing such free disclosure to others. Thus, the client rather than the certified Ohio behavior analyst holds and may assert the privilege.

(a) A certified Ohio behavior analyst shall not testify concerning a communication made to him/her by a client. The certified Ohio behavior analyst may testify by express consent of the client or legal guardian or, if the client is deceased, by the express consent of the surviving spouse or the executor or administrator of the estate of such deceased client. If the client voluntarily testifies, certified Ohio behavior analysts may be compelled to testify on the same subject; or if the client, the executor or administrator files a claim against the certified Ohio behavior analyst, such filing shall constitute a waiver of this privilege with regard to the care and treatment of which complaint is made.

(b) Court decisions construing the scope of the physician-patient privilege, pursuant to section [2317.02](#) of the Revised Code, are applicable to this privilege between certified Ohio behavior analyst and the client.

(c) A certified Ohio behavior analyst may disclose confidential information without the informed written consent of a client when the certified Ohio behavior analyst judges that disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on himself/herself or on another person. In such case, the certified Ohio behavior analyst may disclose the confidential information only to appropriate public authorities, the potential victim, professional workers, and/or the family of the client.

(d) A certified Ohio behavior analyst shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional duties. With the exceptions as required or permitted by statute, a certified Ohio behavior analyst shall disclose confidential information to others only with the informed written consent of the client.

(e) At the beginning of a professional relationship a certified Ohio behavior analyst shall inform his/her client of the legal limits of confidentiality. To the extent that the client can understand, the certified Ohio behavior analyst shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality. When services are provided to more than one patient or client during a joint session (for example to a family or couple, or parent and child, or group), a certified Ohio behavior analyst shall, at the beginning of the professional relationship, clarify to all parties the limits of confidentiality.

(f) A certified Ohio behavior analyst may release confidential information upon court order or to conform to state or federal laws, rules, or regulations.

(g) A certified Ohio behavior analyst shall ~~be familiar~~ comply with any relevant law concerning the reporting of abuse of children or vulnerable adults.

(H) Competence:

(1) Limits on practice: A certified Ohio behavior analyst provides services only within the boundaries of his/her competence, based on ~~their~~ education, training and supervised experience. The practice of applied behavior analysis does not include psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

(2) Maintaining competence: A certified Ohio behavior analyst shall maintain current competency in the areas in which he/she practices, through continuing education, consultation and/or other training, in conformance with current standards of scientific and professional knowledge.

(3) Referrals. A certified Ohio behavior analyst shall make or recommend referral to other professional resources when such referral is in the best interests of the client.

(4) Interprofessional relations:

(a) A certified Ohio behavior analyst shall neither establish nor offer to establish a continuing professional relationship with a client receiving behavior analysis services from another professional, except with the knowledge of the other professional.

(b) A certified Ohio behavior analyst shall cooperate with other professionals in order to serve his/her clients.

(I) Violations of law:

(1) Violation of applicable statutes. A certified Ohio behavior analyst shall not violate any applicable statute or administrative rule regulating the practice of applied behavior analysis.

(2) Use of fraud, misrepresentation, or deception. A certified Ohio behavior analyst shall not use fraud, misrepresentation, or deception in obtaining a certified Ohio behavior analyst certificate, in engaging in any examination process required for certification, in assisting another to obtain a certified Ohio behavior analyst certificate, in billing clients or third-party payers, in providing applied behavior analysis services, in reporting the results of those services, or in conducting any other activity related to the practice of applied behavior analysis.

(J) Aiding illegal practice:

(1) Aiding unauthorized practice. A certified Ohio behavior analyst shall not aid or abet another person in misrepresenting his/her professional credentials or in illegally engaging in the practice of applied behavior analysis.

(2) Delegating professional responsibility. A certified Ohio behavior analyst shall not delegate professional responsibilities to a person not qualified and/or not appropriately credentialed to provide such services.

(3) Providing supervision. A certified Ohio behavior analyst shall exercise appropriate supervision over supervisees, as set forth in the rules of the board.

(4) Reporting of violations to board. A certified Ohio behavior analyst who has substantial reason to believe that another certified Ohio behavior analyst or supervisee has committed an apparent violation of the statutes or rules of the board that has substantially harmed or is likely to substantially harm a person or organization shall so inform the board in writing; however, when the information regarding such violation is obtained in a professional relationship with a client, the certified Ohio behavior analyst shall report it only with the written permission of the client. Under such circumstances certified Ohio behavior analyst shall advise the client of the name, address, and telephone number of the state board of psychology and of the client's right to file a complaint. The certified Ohio behavior analyst shall make reasonable efforts to guide and/or facilitate the client in the complaint process as needed or requested by the client. Nothing in this rule shall relieve a certified Ohio behavior analyst from the duty to file any report required by applicable statutes.

(K) Supervision rules. Consensus to insert the paragraph Consistent with Paragraph L of Rules of Professional Conduct of 4732-17-01

**4783-7-02 Certificate restoration**

At any time after the suspension or revocation of a certificate, the state board of psychology may restore the certificate upon the written finding by the board that circumstances so warrant. The board may require mental, physical, or professional examination of the applicant for restoration of the certificate before such restoration.

**4783-7-03 Bases and procedures for disciplinary actions.**

(A) In accordance with section 4783.09 of the Revised Code, after considering charges filed by the secretary and after providing a hearing in accordance with Chapter 119. of the Revised Code, the board may refuse to issue a certificate to any applicant, including any person whose certificate was previously expired or revoked or suspended, or may issue a reprimand, or suspend or revoke the certificate of any certified Ohio behavior analysts, on any of the following grounds:

(1) Conviction of a felony, or of any offense involving moral turpitude, in a court of this or any other state or in a federal court;

(2) Using fraud or deceit in the procurement of the certificate to practice applied behavior analysis or knowingly assisting another in the procurement of such certificate through fraud or deceit;

(3) Accepting commissions or rebates or other forms of remuneration for referring persons to other professionals without full disclosure in advance to the consumer of the terms of such an agreement;

(4) Willful unauthorized communication of information received in professional confidence;

(5) Being negligent in the practice of applied behavior analysis;

(6) Using any controlled substance or alcoholic beverage to an extent that such use impairs his/her ability to perform the work of a certified Ohio behavior analyst with safety to the public;

(7) Violating any rule of professional conduct promulgated by the board;

(8) Practicing in an area of applied behavior analysis for which the person is clearly untrained or incompetent;

(9) An adjudication by a court, as provided in section 5122.301 of the Revised Code, that the person is incompetent for the purpose of holding the certificate; Such person may have his/her certificate issued or restored only upon determination by a court that he/she is competent for the purpose of holding the certificate and upon the decision by the board that such certificate be issued or restored. The board may require examination on the laws and rules governing certified Ohio behavior analysts and/or mental or physical evaluations, at the cost of the prospective certificate holder, prior to such issuance or restoration.

(10) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider. However, no sanction will be imposed against any certificate holder who waives

deductibles and copayments in compliance with a health benefit plan that expressly allows such a practice.

(11) Advertising that he/she will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers psychological-applied behavioral analysis services, would otherwise be required to pay.

(B) Notice and hearing requirements incident to the revocation, suspension, or refusal to issue, reinstate, or renew a certified Ohio behavior analyst certificate, or incident to the reprimand of a certificate, as described in paragraph (A) of this rule, shall be in compliance with the provisions of Chapters 119. and 4732. of the Revised Code, including the following:

(1) Notice of opportunity. Notice shall be given to the certificate holder or applicant for certification by certified mail of the right to a hearing on the question of whether or not the certificate should be revoked, suspended, not reinstated, or denied, or whether, if a certificate holder, he/she should be reprimanded;

(2) Charges. The notice shall include the charges or other reasons for such proposed action, the law(s) and/or rule(s) directly involved, and a statement informing the certificate holder or applicant for certification that he/she is entitled to a hearing, if it is requested within thirty days after the date of mailing the notice.

(3) Representation. The notice shall also inform the certificate holder or applicant for certification that at the hearing he/she may appear in person, or be represented by his/her attorney, or may present his/her position, arguments, or contentions in writing and that at the hearing he/she may present evidence and examine witnesses appearing for and against him/her;

(4) Hearing date. Whenever a certificate holder or applicant for certification requests a hearing, the board shall immediately set the date, time, and place for such hearing and forthwith notify the certificate holder or applicant for licensure thereof. The date set for such hearing shall be within fifteen days, but not earlier than seven days, after the certificate holder or applicant for certification has requested a hearing, unless otherwise agreed to by both the board and the certificate holder or applicant for certification. However, the board may postpone or continue any adjudication hearing upon the application of any party or upon its own motion;

(5) Hearing. The board may empower any one or more of its members to conduct any proceeding, hearing, or investigation necessary to its purposes;

(6) Appeal. Any party adversely affected by any order of the board issued pursuant to an adjudication hearing may appeal from the order of the board to the court of common pleas of the county in which the place of business of the certificate holder or applicant for certification is located or the county in which the certificate holder or applicant for certification is a resident. If any such party is not a resident of and has no place of business in Ohio, he/she may appeal to the court of common pleas of Franklin county, Ohio. Any party desiring to appeal shall file a notice of appeal with the board setting forth the order appealed from and the grounds of the appeal. A copy of such notice of appeal shall also be filed by appellant with the court. Such notices of appeal shall be filed within fifteen days after the mailing of the notice of the board's order.

(C) If the board receives notice pursuant to section 2301.373 of the Revised Code, effective November 15, 1996, that an individual is in default under a child support order, the board will refuse to issue or renew a certificate for that individual and will suspend any current certificate of that individual as required by that section. The board need determine only that the individual named in the notice received pursuant to section 2301.373 of the Revised Code is the same individual applying for issuance or renewal of a certificate or holding a current certificate. The procedures applicable to refusal to issue or renew a certificate or suspend a certificate pursuant to section 2301.373 of the Revised Code shall be governed only by that section and, therefore, are not subject to the procedures set forth in Chapter 119. or section 4783.09 of the Revised Code, or paragraphs (A) and/or (B) of this rule.

(D) Pre-hearing procedures

(1) Exchange of documents and witness lists

(a) Any representative of record may serve upon the opposing representative of record a written request for a list of both the witnesses and the documents intended to be introduced at hearing. All lists requested under this rule shall be exchanged no later than seven days prior to the commencement of the administrative hearing.

(b) Failure without good cause to comply with paragraph (A) of this rule may result in exclusion from the hearing of such testimony or documents, upon motion of the representative to whom disclosure is refused.

(2) Pre-hearing conference

(a) At any time prior to hearing, the attorney hearing examiner or presiding board member may direct participation by the representatives of record in a prehearing conference. Such conference may be initiated by the attorney hearing examiner, by the board, or upon motion of either representative.

(b) Pre-hearing conferences may be held for the following purposes:

(i) Identification of issues;

(ii) Obtaining stipulations and admissions;

(iii) Agreements limiting the number of witnesses; Discussion of documents, exhibits, and witness lists;

(iv) Discussion of documents, exhibits, and witness lists;

(v) Estimating the time necessary for hearing;

(vi) Discussion of any other matters tending to expedite the proceedings.

(c) All representatives of record shall attend the prehearing conference fully prepared to discuss the items enumerated in paragraph (B) of this rule.

(d) Procedural orders may be issued by the attorney hearing examiner or presiding board member based upon information obtained at a prehearing conference.

(3) Requirements for pre-hearing exchange of information. The hearing examiner or presiding board member shall, upon written motion of any representative of a party, issue an order setting forth a schedule by which the parties shall exchange hearing exhibits, identify lay and expert witnesses and exchange written reports from expert witnesses. Any written report by an expert required to be exchanged shall set forth the opinions to which the expert will testify and the bases for such opinions. The failure of a party to produce a written report from an expert under the terms of the order shall result in the exclusion of that expert's testimony at hearing. The failure of a party to produce an exhibit under the terms of the order shall result in the exclusion of that exhibit from evidence. The failure of a party to identify a lay or expert witness under the terms of the order may result in the exclusion of that witness' testimony at hearing.

(4) Status conference. With or without written motion from the representative of any party, the attorney hearing examiner or presiding board member may convene a status conference with representatives of the parties to address any matter related to preparation for hearing or the conduct of a hearing. The hearing examiner may issue such orders related to preparation for hearing and the conduct of the hearing which in the judgment of the hearing examiner facilitate the just and efficient disposition of the subject of the hearing.

(5) Depositions and transcripts of prior testimony.

(a) Upon written motion of any representative of record, and upon service of that motion to all other representatives, the attorney hearing examiner or presiding board member may order that the testimony of a prospective witness be taken by deposition under such conditions and terms as specified in the order and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place if it appears probable that:

(i) The prospective witness will be unavailable to attend or will be prevented from attending a hearing; and

(ii) The testimony of the prospective witness is material; and

(iii) The testimony of the prospective witness is necessary in order to prevent a failure of justice. In the case of an expert witness, a showing of the unavailability of the expert shall not be necessary for consideration of the motion of a representative to take a deposition.

(b) The representatives shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the attorney hearing examiner or presiding board member shall set the time or fix the place of deposition. At a deposition taken pursuant to this rule, representatives shall have the right, as at hearing, to fully examine witnesses. The attorney hearing examiner has the discretion to be present at the deposition in lieu of testimony at hearing.

(c) A deposition taken under this rule shall be filed with the board not later than one day prior to hearing, and may be offered into evidence at hearing by either representative in lieu of the prospective witness' personal appearance. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony which is offered as evidence at the hearing shall be borne by the board. In the event of appeal, such costs shall be made a part of the cost of the hearing record. The expense of any video deposition shall be borne by the requestor.

(d) Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in paragraph (A) of this rule.

(e) A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations in the current case. Upon offering part of a transcript or exhibit from a prior proceeding, the offering representative may be required by the opposing representative to present any other part of the offered item which should in fairness be considered contemporaneously with it.

(6) Prior action by the board. The attorney hearing examiner or presiding board member shall admit evidence of any prior action entered by the state board of psychology against the respondent.

(7) Stipulation of facts. Representatives of record may, by stipulation, agree on any or all facts involved in proceedings before the attorney hearing examiner or presiding board member. Thereafter the attorney hearing examiner or presiding board member may require development of any fact deemed necessary for just adjudication.

(8) Witnesses.

(a) All witnesses shall testify under oath or affirmation.

(b) A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that witness' rights, and that legal counsel may neither examine nor cross-examine any witnesses.

(c) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.

(d) The presiding attorney hearing examiner or any board member, because of his/her duties, shall not be a competent witness nor subject to deposition in any adjudication proceeding. Unless the testimony of a board member or an attorney hearing examiner is material to the factual allegations set forth in the notice of opportunity for hearing, board members and attorney hearing examiners shall not be competent witnesses nor subject to deposition in any adjudication proceeding. Evidence from other persons relating to the mental processes of the presiding attorney hearing examiner or board members shall not be admissible.

(e) Any representative of record may move for a separation of witnesses, Expert witnesses shall not be separated.

(f) Each representative of record shall inform the attorney hearing examiner or presiding board member prior to the commencement of a hearing of the identity of each potential witness for his cause present in the hearing room. Failure to so identify potential witnesses at this time may be grounds for their later disqualification as witnesses.

(g) No witnesses shall be permitted to testify as to the nature, extent, or propriety of disciplinary action to be taken by the board. A witness may, in the discretion of the attorney hearing examiner or presiding board member, testify as to an ultimate issue of fact.

(9) Conviction of a crime. A certified copy of a plea of guilty to or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime.

(10) The "Ohio Rules of Evidence" may be taken into consideration by the board or its attorney hearing examiner in determining the admissibility of evidence, but shall not be controlling. The attorney hearing examiner or presiding board member may permit the use of electronic or photographic means for the presentation of evidence.

## **Chapter 4783-8 Unlawful practice**

### **4783-8-01 Unlawful practices may be enjoined**

Consistent with section 4783.02 of the Revised Code, on complaint by the state board of psychology, the unlawful practice of applied behavior analysis may be enjoined by the common pleas court in the county in which such practice is occurring.

### **4783-8-02 Disposition of fines**

All fines collected for violations of section 4783.99 of the Revised Code shall be distributed as follows:

(A) One half to the state board of psychology;

(B) One half to the municipal corporation in which the offense was committed or, if the offense was committed outside of a municipal corporation, to the county in which the offense was committed.

## **Chapter 4783-9 Enforcement and Discipline**

### **4783-9-01 Enforcement and discipline.**

Certified Ohio behavior analysts governed by Chapter 4783. of the Revised Code and by these rules shall be disciplined in accordance with Chapters 4783. and 119. of the Revised Code for violation of these rules.

## **Chapter 4783-10 Independent rules**

### **4783-10-01 Independent rules**

Each rule of rules 4783-1-01 to 4783-9-01 of the Administrative Code and every part of each rule is hereby declared to be an independent rule, and the holding of any rule or part thereof to be unconstitutional, void, or ineffective for any cause shall not affect the validity or constitutionality of any other rule or part thereof.

### **End of Rules.**

Dr. Randolph offered a motion to approve of the rules as amended and edited above and to authorize Dr. Ross to follow necessary procedures to file the rules and arrange for a public hearing before the Board; Dr. McCarley second.

**A vote was taken:**

Aye: Dr. Drude; Dr. Shroder Dr. McCarley; Mrs. Borkowski; Dr. Harmon; Dr. Randolph  
Nay: None  
Abstain: None

**The motion carried.**

Following the vote, Dr. McCarley stated that he wanted the record to reflect the excellence, persistence, and dedication to the rule-writing process demonstrated by Drs. LeSure and Ross.

**ADJOURN**

Dr. Randolph moved that the meeting be adjourned; Dr. McCarley second.

**A vote was taken:**

Aye: Dr. Drude; Dr. Shroder Dr. McCarley; Mrs. Borkowski; Dr. Harmon; Dr. Randolph  
Nay: None  
Abstain: None

**The motion carried. The meeting was adjourned at 11:30AM.**

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Ronald R. Ross, Ph.D.  
Executive Director

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Suzanne LeSure, Ph.D.  
President

Next scheduled business meeting:                      October 4, 2013    10:30AM, Riffe 31<sup>st</sup> floor