

BEFORE THE BOARD OF PSYCHOLOGISTS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of) NOTICE OF AMENDMENT AND
ARM 24.189.301, 24.189.401,) ADOPTION
24.189.601, 24.189.633, and)
24.189.2104 and the adoption of)
NEW RULES I through XII pertaining)
to behavior analysts and assistant)
behavior analysts licensure,)
continuing education, and)
unprofessional conduct)

TO: All Concerned Persons

1. On August 4, 2017, the Board of Psychologists (board) published MAR Notice No. 24-189-37 regarding the public hearing on the proposed amendment and adoption of the above-stated rules, at page 1240 of the 2017 Montana Administrative Register, Issue No. 15.

2. On August 25, 2017, a public hearing was held on the proposed amendment and adoption of the above-stated rules in Helena. Several comments were received by the September 1, 2017, deadline.

3. The board has thoroughly considered the comments received. A summary of the comments and the board responses are as follows:

COMMENT 1: Numerous commenters objected to behavior analysts (BA) and assistant behavior analysts (ABA) working on the communication needs of their clients, and requested the board amend ARM 24.189.301 to specify this.

RESPONSE 1: The board notes that the legislature established the definition of the practice of applied behavior analysis for behavior analysts and assistant behavior analysts in Senate Bill 193 (SB193). The board invites the commenters to bring their concerns to their respective legislators for possible future legislative changes.

COMMENT 2: Several commenters stated the new fees being added to ARM 24.189.401 are too high and suggested reducing them to reflect that processing BA and ABA applications will involve less work. The commenters also requested the board eliminate the supervision fees as there are no similar fees for licensed psychologists.

RESPONSE 2: The board discussed fees with stakeholders very early in the legislative process for SB193, and specifically intended no adverse fiscal impact on the rest of the board's licensees. The board is statutorily required by section 7 of SB193 to set fees that adequately fund the costs of implementing the two new

license types. The board and department continually monitor the board's budget, including expenses, income, and licensee numbers, and will adjust fees in the future, as needed.

COMMENT 3: Many commenters objected to the BA licensure standards in NEW RULE I, stating they are unnecessary and redundant with requirements of the Behavior Analyst Certification Board (BACB), including examination, references attesting to moral character, etc.

RESPONSE 3: The board is a regulatory agency statutorily mandated to license and regulate its licensees for the protection of Montana's public. As such, the board does not defer to outside organizations, but must adopt and enforce administrative rules necessary to ensure the health, welfare, and safety of Montana citizens.

COMMENT 4: Several commenters were concerned about the requirement in NEW RULE I to obtain a moral character reference from a psychologist. The commenters suggested amending the rule to allow references from other licensed medical professionals such as psychologists, medical doctors, occupational therapists, or speech therapists.

RESPONSE 4: The board agrees the requirement may be overly restrictive and is amending the rule to allow one reference from a licensed psychologist, physician, or certified nurse practitioner.

COMMENT 5: Several commenters suggested that NEW RULE II be deleted as unnecessary in view of the requirements of the BACB.

RESPONSE 5: The board is required to adopt a rule to implement 37-1-145, MCA, and ensure consideration of relevant military experience or training for licensure. Additionally, section 7 of Senate Bill 193 specifies that the provisions of 37-1-145, MCA, apply to licensure of BAs and ABAs.

COMMENT 6: Several commenters objected to the ABA licensure standards in NEW RULE III, stating they are unnecessary and redundant with requirements of the Behavior Analyst Certification Board (BACB), including examination, references attesting to moral character, etc.

RESPONSE 6: See RESPONSE 3.

COMMENT 7: Several commenters were concerned about the requirement in NEW RULE III to obtain a moral character reference from a psychologist. The commenters suggested amending the rule to allow references from other licensed medical professionals such as psychologists, medical doctors, occupational therapists, or speech therapists.

RESPONSE 7: See RESPONSE 4.

Comments 8-12 relate to New Rule IV:

COMMENT 8: Several commenters objected to the 100 hours of additional supervision required for BA licensure because the requirement was not contained in SB193, and suggested the board strike (1) and (2).

RESPONSE 8: Senate Bill 193 allows the board to establish licensure requirements for both BAs and ABAs in addition to those in statute, as necessary to ensure qualified and competent licensees. The board determined this modest number of extra supervision hours will help ensure BA applicants are adequately prepared for private practice.

COMMENT 9: Several commenters were concerned that the limit of three supervisees per BA was unnecessary and too restrictive considering current business models, and suggested 10 supervisees as Missouri requires.

RESPONSE 9: While not primarily concerned with impact to current business models, the board does not want to unnecessarily hinder the practice of BAs and ABAs. Therefore, the board is amending this rule to increase the number of supervised student interns from three to seven, if the BA is not also supervising a behavior technician or ABA.

COMMENT 10: Several commenters objected to subsections (7) through (12) as unnecessarily duplicative and suggested the board revise them to align with current BACB standards.

RESPONSE 10: See RESPONSE 3.

COMMENT 11: Several commenters believed that requiring a change of supervision to be reported within three business days is too restrictive and recommended 30 days as more appropriate.

RESPONSE 11: Noting that licensees will eventually report these changes online and in real time, the board is further amending this rule to require supervision changes reported within five business days.

COMMENT 12: Several commenters were concerned regarding the three-business-day reporting requirement because student rosters are considered protected information.

RESPONSE 12: The board and department follow HIPAA requirements and do not provide this information to others. Further, the rule does not request student rosters, just the names of interns, behavior techs, and ABAs being supervised by a BA.

COMMENT 13: Several commenters suggested the board eliminate NEW RULES V, VI, and VII and instead require compliance with BACB continuing education

requirements because the new rules are unnecessarily duplicative and inconsistent with SB193.

RESPONSE 13: See RESPONSE 3.

COMMENT 14: Several commenters requested the board amend NEW RULES VIII through XII to be consistent with the BACB's *Professional and Ethical Compliance Code for Behavior Analysts* unless Montana's laws or regulations impose licensee conduct standards that are not covered in the BACB code.

RESPONSE 14: See RESPONSE 3.

4. The board has amended ARM 24.189.301, 24.189.401, 24.189.601, 24.189.633, and 24.189.2104 exactly as proposed.

5. The board has adopted New Rules II (24.189.904), V (24.189.913), VI (24.189.916), VII (24.189.919), VIII (24.189.922), IX (24.189.925), X (24.189.928), XI (24.189.931), and XII (24.189.934) exactly as proposed.

6. The board has adopted New Rules I (24.189.901), III (24.189.907), and IV (24.189.910) with the following changes, stricken matter interlined, new matter underlined:

NEW RULE I BEHAVIOR ANALYST APPLICATION PROCEDURES

(1) through (2)(f)(i) remain as proposed.

(ii) one from a licensed psychologist, physician, or certified nurse practitioner.

(3) and (4) remain as proposed.

NEW RULE III ASSISTANT BEHAVIOR ANALYST APPLICATION PROCEDURES (1) through (2)(g)(i) remain as proposed.

(ii) one from a licensed psychologist, physician, or certified nurse practitioner.

NEW RULE IV BEHAVIOR ANALYST EXPERIENCE AND SUPERVISION

(1) through (3)(a) remain as proposed.

(b) more than ~~three~~ seven student interns if the analyst is not also supervising a behavior technician or an assistant behavior analyst.

(4) A behavior analyst shall report to the board all student interns, behavior technicians, and assistant behavior analysts within ~~three~~ five business days of commencement of supervision of each student intern, behavior technician, or assistant behavior analyst.

(5) through (13) remain as proposed.

BOARD OF PSYCHOLOGISTS
JAMES MURPHEY, Ph.D., CHAIRPERSON

/s/ DARCEE L. MOE
Darcee L. Moe
Rule Reviewer

/s/ GALEN HOLLENBAUGH
Galen Hollenbaugh, Acting Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State September 11, 2017.