

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

In the matter of the amendment of) NOTICE OF PUBLIC HEARING ON
ARM 24.189.301, 24.189.401,) PROPOSED AMENDMENT AND
24.189.601, 24.189.633, and) ADOPTION
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 25, 2017, at 9:00 a.m., a public hearing will be held in the basement conference room #B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Psychologists (board) no later than 5:00 p.m., on August 18, 2017, to advise us of the nature of the accommodation that you need. Please contact L'Joy Griebenow, Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; or dlibspsy@mt.gov (board's e-mail).

3. GENERAL STATEMENT OF REASONABLE NECESSITY: The 2017 Montana Legislature enacted Chapter 425, Laws of 2017 (Senate Bill 193), an act creating licensure and regulation for certain behavior analysts, providing definitions and exceptions to licensure, establishing autonomy for behavior analysts and supervision of assistant behavior analysts, and providing rulemaking authority for the board to implement the bill. The bill was signed by the Governor on May 22, 2017, and will become effective on October 1, 2017.

Therefore, the board is amending the rules throughout to update processes and correct terminology in compliance with the 2017 statutory changes and to further implement the legislation. Where additional specific bases for a proposed action exist, the board will identify those reasons immediately following that rule.

4. The rules proposed to be amended are as follows, stricken matter interlined, new matter underlined:

24.189.301 DEFINITIONS (1) "APA" means the American Psychological Association.

(2) "BACB" means the Behavior Analyst Certification Board, a nonprofit corporation whose credentialing programs for behavior analysts and assistant behavior analysts are accredited by the National Commission for Certifying Agencies.

(3) "Behavior technician" means a supervisee primarily responsible for the direct implementation of behavior analytic services. The behavior technician does not design intervention or assessment plans.

(1) remains the same but is renumbered (4).

(5) "NCCA" means the National Commission for Certifying Agencies.

(2) and (3) remain the same but are renumbered (6) and (7).

AUTH: 37-1-131, 37-17-202, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-17-101, 37-17-302, Chap. 425, section 3, L. of 2017, Chap. 425, section 4, L. of 2017, Chap. 425, section 5, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

24.189.401 FEE SCHEDULE (1) The department will collect the following fees, none of which are refundable:

(a) <u>Psychologist</u> application fee	\$175
(b) <u>Psychologist</u> active license renewal fee	600
(c) remains the same.	
(d) <u>Psychologist</u> supervision proposal approval	25
(e) <u>Psychologist</u> temporary permit application fee	100
(f) <u>Behavior analyst</u> application fee	600
<u>(g) Behavior analyst initial supervision fee, per behavior technician, student intern, or assistant behavior analyst supervised</u>	<u>50</u>
(h) <u>Assistant behavior analyst</u> application fee	250
(i) <u>Behavior analyst</u> active license renewal fee	600
<u>(j) Behavior analyst renewal supervision fee, per behavior technician, student intern, or assistant behavior analyst supervised</u>	<u>25</u>
(k) <u>Assistant behavior analyst</u> active license renewal fee	200
(2) remains the same.	

AUTH: 37-1-134, 37-17-202, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-134, 37-1-141, 37-17-302, Chap. 425, section 4, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

REASON: The board determined it is reasonably necessary to amend this rule and set fees to further implement Senate Bill 193. The bill requires the board to set license fees for behavior analysts and assistant behavior analysts that adequately fund the costs of implementing the new statutory provisions. The legislation requires the board to license and regulate behavior analysts and assistant behavior analysts and the proposed fees will enable the board to meet this mandate.

The board is setting application/licensing fees for each type of licensure contemplated by the legislation to cover the expenses for the initial license processing of an estimated 17 applicants. The annual renewal fees will be charged beginning in fiscal year 2019. It is estimated that the new fees will affect

approximately 22 individuals and result in approximately \$10,000 of board revenue for fiscal year 2018 and approximately \$12,200 in annual revenue thereafter.

24.189.601 PSYCHOLOGIST APPLICATION PROCEDURES

(1) Applications for licensure of a psychologist, when properly filled out by the applicant, must provide the board with that information necessary to ascertain whether or not the applicant meets the requirements of the law as to education and experience. Completed application forms must reflect satisfactorily the requirements of Montana law.

(a) and (b) remain the same.

(c) Applicants will be notified ~~in writing~~ of any deficiencies in their applications. ~~If the requested information is not received by the board to remedy such deficiencies within six months of the date of the written notice, the application shall be deemed to have been withdrawn.~~

(d) and (e) remain the same.

(2) A completed psychologist application file consists of the following:

(a) through (f) remain the same.

(g) if applicable, the ~~Association of State and Provincial Psychology Boards~~ board-approved evaluator's recommendation as to whether the applicant's course of studies meets minimum standards specified in ARM 24.189.604.

(3) through (6) remain the same.

AUTH: 37-1-131, 37-17-202, MCA

IMP: 37-1-131, 37-17-302, MCA

REASON: With the passage of Senate Bill 193, the board is proposing new rules in this notice regarding application procedures, temporary permits, and continuing education that apply to behavior analysts and assistant behavior analysts. The board is amending ARM 24.189.601, 24.189.633, and 24.189.2104 to clarify that these existing rules apply to psychologist licensees, not the new licensure types. Authority and implementation citations are being amended to accurately reflect all statutes implemented through the rules and provide the complete sources of the board's rulemaking authority.

24.189.633 TEMPORARY PERMIT (1) ~~An~~ A psychologist applicant requesting a temporary permit must submit to the board:

(a) through (d) remain the same.

(2) ~~An~~ A psychologist applicant for licensure may be issued a temporary permit if the applicant:

(a) through (11) remain the same.

AUTH: 37-1-131, 37-1-319, ~~37-17-202~~, MCA

IMP: 37-1-131, 37-1-305, MCA

24.189.2104 CONTINUING EDUCATION PROGRAM OPTIONS

(1) Acceptable continuing education for psychologists may be chosen from (a) through (e). No more than 30 of the total continuing education units required can be met by (b) and up to 15 continuing education units can be met by (c).

(a) through (e) remain the same.

AUTH: 37-1-319, 37-17-202, MCA

IMP: 37-1-306, 37-17-202, MCA

5. The proposed new rules are as follows:

NEW RULE I BEHAVIOR ANALYST APPLICATION PROCEDURES

(1) Applications for licensure of a behavior analyst, when properly filled out by the applicant, must provide the board with that information necessary to ascertain whether the applicant meets the requirements of the law as to education and experience. Completed application forms must reflect satisfactorily the requirements of Montana law.

(a) Applicants will be notified of any deficiencies in their applications.

(b) An application must be completed for final board review no more than 12 months after the board receives it or it will expire and a new application and fee will be required.

(2) An applicant for a behavior analyst license must submit:

(a) a completed application on a form prescribed by the department;

(b) the application fee(s) specified in ARM 24.189.401;

(c) verification of all professional licenses currently or previously held in another state on a form prescribed by the department;

(d) a completed criminal background check;

(e) proof of current certification as a behavior analyst by the BACB; and

(f) a minimum of three completed reference forms from individuals familiar with the quality of the applicant's education and work experience and attesting to the applicant's good moral character as follows:

(i) two from licensed behavior analysts; and

(ii) one from a licensed psychologist.

(3) The agency fee for processing the criminal background check will be provided directly to that agency. The results of the criminal background check are to be provided directly from the agency to the board.

(4) The board will consider the acceptability of the professional experience presented by the applicant for consideration in keeping with [NEW RULE IV].

AUTH: 37-1-131, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, Chap. 425, section 4, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE II MILITARY TRAINING OR EXPERIENCE (1) Pursuant to 37-1-145, MCA, the board shall accept relevant military training, service, or education toward the requirements for licensure as a behavior analyst or assistant behavior analyst.

(2) Relevant military training, service, or education must be completed by an

applicant while a member of:

- (a) United States Armed Forces;
- (b) United States Reserves;
- (c) state national guard; or
- (d) military reserves.

(3) An applicant must submit satisfactory evidence of receiving military training, service, or education that is equivalent to relevant licensure requirements as a behavior analyst or assistant behavior analyst corresponding to the licensure type for which applicant is applying. Satisfactory evidence includes:

- (a) a copy of the applicant's military discharge document (DD 214 or other discharge documentation);
- (b) a document that clearly shows all relevant training, certification, service, or education the applicant received while in the military, including dates of training and completion or graduation; and
- (c) any other documentation as required by the board.

(4) The board shall consider all documentation received to determine whether an applicant's military training, service, or education is equivalent to relevant licensure requirements.

AUTH: 37-1-145, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-145, Chap. 425, section 7, L. of 2017, MCA

REASON: The 2013 Montana Legislature enacted House Bill 259 and Senate Bill 183, acts requiring the professional and occupational licensing boards and programs to accept satisfactory evidence of relevant military education, training, or service to satisfy licensing or certification requirements. The statutory changes became effective on April 26, 2013, and are codified at 37-1-145, MCA. Senate Bill 193 provided the board with rulemaking authority to recognize commensurate military experience as a qualification in licensure. It is reasonably necessary for the board to adopt NEW RULE II to further implement 37-1-145, MCA, and Senate Bill 193 regarding behavior analysts and assistant behavior analysts.

NEW RULE III ASSISTANT BEHAVIOR ANALYST APPLICATION

PROCEDURES (1) Applications for licensure of an assistant behavior analyst, when properly filled out by the applicant, must provide the board with that information necessary to ascertain whether the applicant meets the requirements of the law as to education and experience. Completed application forms must reflect satisfactorily the requirements of Montana law.

(a) Applicants will be notified of any deficiencies in their applications.

(b) An application must be completed for final board review no more than 12 months after the board receives it or it will expire and a new application and fee will be required.

(2) An applicant for an assistant behavior analyst license must submit:

(a) a completed application on a form prescribed by the department;

(b) the application fee(s) specified in ARM 24.189.401;

(c) verification of all professional licenses currently or previously held in another state on a form prescribed by the department;

- (d) a completed criminal background check;
- (e) proof of current certification as an assistant behavior analyst by the BACB;
- (f) proof of current supervision by a licensed behavior analyst; and
- (g) a minimum of three completed reference forms from individuals familiar with the quality of the applicant's education and work experience and attesting to the applicant's good moral character as follows:
 - (i) two from licensed behavior analysts; and
 - (ii) one from a licensed psychologist.

AUTH: 37-1-131, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, Chap. 425, section 4, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE IV BEHAVIOR ANALYST EXPERIENCE AND SUPERVISION

- (1) Upon licensure application, behavior analyst applicants shall provide proof, together with the form prescribed by the department, reflecting 100 hours of supervised experience beyond those hours required by the BACB.
- (2) Each behavior analyst applicant certified by the BACB on or before December 31, 2017, shall be granted one year in which to provide proof to the board demonstrating the applicant has met the experience requirements of this rule.
- (3) A behavior analyst may not supervise:
 - (a) more than one student intern if the analyst is also supervising a behavior technician or an assistant behavior analyst; or
 - (b) more than three 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 business days of commencement of supervision of each student intern, behavior technician, or assistant behavior analyst.
- (5) A supervising behavior analyst may provide the following types of supervision to a student intern, behavior technician, or assistant behavior analyst:
 - (a) direct supervision;
 - (b) on-site supervision; or
 - (c) general or remote supervision.
- (6) The supervising behavior analyst shall consider the location, nature, and setting of the practice and the experience of the student intern, behavior technician, or assistant behavior analyst when entering into a new supervision agreement to ensure the safety and quality of behavior analysis services.
- (7) The supervising behavior analyst shall meet face-to-face with each student intern, behavior technician, and assistant behavior analyst supervised a minimum of once a month for the purposes of discussion, education, and training, to include but not be limited to practice issues and client care.
- (8) Supervising behavior analysts shall provide appropriate and real-time means of communication or backup supervision for their supervisees.

(9) Supervising behavior analysts shall determine the appropriate level supervision (direct, on-site, or general) based on the supervisee's education, training, and experience.

(10) Each supervising behavior analyst assumes professional and legal responsibility for all student interns, behavior technicians, and assistant behavior analysts under the supervising behavior analyst's supervision regardless of the varying types of supervision.

(11) A supervising behavior analyst shall enter into a written supervision agreement with each student intern, behavior technician, or assistant behavior analyst to be supervised to ensure the safety and quality of behavior analysis services, considering the location, nature, and setting of the practice and the experience of the supervisee, and shall provide for:

- (a) an appropriate type or combination of types of supervision identified in (5), including specific supervising behavior analyst response and availability times;
- (b) an appropriate scope of delegation of practice authority and appropriate limitations upon the practice authority of the particular supervisee; and
- (c) appropriate frequency and duration of face-to-face meetings.

(12) The supervision agreement may provide for periodic changes in the type of supervision, scope of delegation, practice limitations, frequency, and duration of face-to-face meetings, and percentage of case files reviewed, based upon the duration and nature of experience gained by the supervisee, the supervising behavior analyst's written assessment and evaluation of the supervisee's experience and judgment, and other factors relevant to the nature and degree of supervision appropriate to ensure the safety and quality of behavior analysis services.

(13) The supervision agreement must be kept by the supervising behavior analyst for seven years. A legible copy of the signed supervision agreement must be submitted, if requested, to the board or its designee.

AUTH: Chap. 425, section 7, L. of 2017, MCA

IMP: Chap. 425, section 4, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE V CONTINUING EDUCATION REQUIREMENTS (1) In accordance with 37-17-202, MCA, the board establishes requirements for the continuing education of licensed behavior analysts and assistant behavior analysts.

(2) The board/staff will not preapprove continuing education programs or sponsors. Qualifying criteria for continuing education are specified in these rules. It is the responsibility of the licensee to select quality programs that contribute to the licensee's knowledge and competence and that meet these criteria.

(3) A continuing education activity must meet the following criteria:

- (a) The activity must:
 - (i) have significant intellectual or practical content;
 - (ii) deal primarily with substantive behavior analysis issues, skills, laws, rules, or ethical standards related to one's role as a behavior analyst or assistant behavior analyst; and
 - (iii) be conducted by an individual or group qualified by practical or academic experience.

(b) The board may accept continuing education activities from other professional groups or academic disciplines if the licensee demonstrates that the activity is substantially related to the licensee's role as a behavior analyst or assistant behavior analyst.

(4) All approved formal continuing education courses must issue a program or certificate of completion containing the following information:

- (a) full name and qualifications of the presenter;
- (b) title of the presentation attended;
- (c) number of hours and date of each presentation attended;
- (d) description of the presentation format; and
- (e) name of licensee.

(5) It is the responsibility of the licensee to establish and maintain detailed records of continuing education compliance for a period of three years following submission of a continuing education report.

AUTH: 37-1-319, 37-17-202, Chap. 425, section 7, L. of 2017, MCA
IMP: 37-1-306, Chap. 425, section 7, L. of 2017, MCA

NEW RULE VI CONTINUING EDUCATION IMPLEMENTATION (1) One continuing education credit will be granted for each hour of participation in the continuing education activity.

(2) A licensed behavior analyst or assistant behavior analyst must earn at least ten continuing education credits, of which one hour must be ethics, during each consecutive calendar year. Continuing education credit shall be reported as follows:

(a) No continuing education is required for licensees licensed less than one full calendar year on their first reporting date.

(b) All licensed behavior analysts and licensed assistant behavior analysts must submit affirmation of compliance to the board on each year's license renewal that they understand their duty to comply with the continuing education requirements established by this subchapter for maintaining their license. The board may randomly audit up to 50 percent of the licensees attesting to continuing education. Certificates of completion or programs for continuing education credits reported must be submitted upon request of the board. Notices of continuing education audit will be considered properly mailed when addressed to the last known address on file in the board office. No continuing education programs used to complete delinquent continuing education plan requirements for licensure can be used to meet the continuing education requirements for the next continuing education reporting period. Any continuing education noncompliance determined by the audit may be handled by the board as a disciplinary matter.

(c) If a licensee is unable to acquire sufficient continuing education credits to meet the requirements, the licensee may request an exemption. All requests for exemptions will be considered by the board and evaluated on an individual basis.

AUTH: 37-1-319, 37-17-202, Chap. 425, section 7, L. of 2017, MCA
IMP: 37-1-306, Chap. 425, section 7, L. of 2017, MCA

NEW RULE VII CONTINUING EDUCATION PROGRAM OPTIONS

- (1) Acceptable continuing education may be chosen from (a) through (d).
- (a) Acceptable continuing education includes the following:
 - (i) any APA-approved or BACB-approved continuing education activity or program for behavior analysts that meets the criteria specified in [NEW RULE V];
 - (ii) credit may be given for workshops and other educational activities offered at professional conferences and conventions sponsored by the APA and its affiliates or the BACB if the content of such presentations meets the criteria specified in [NEW RULE V]. General business meetings do not qualify;
 - (iii) any other specific activities, i.e., audio tapes or conference/workshops, meeting the criteria specified in [NEW RULE V];
 - (iv) formally organized classes, with preassigned credit and attendance verifiable by transcript, offered under the auspices of regionally accredited institutions of higher education that meet criteria specified in [NEW RULE V].
- (b) The following professional activities that meet criteria specified in [NEW RULE V] may be submitted in fulfillment of no more than five continuing education units:
 - (i) initial presentation of a meeting paper or workshop in the field of behavior analysis based on thorough review of the literature, and including theoretical ideas, with application to clinical work. One hour of continuing education will be credited for each hour of presentation. In addition, one hour of continuing education will be credited for preparation for each hour of presentation;
 - (ii) publication of a review paper or a formal theoretical paper in a refereed journal in the field of behavior analysis;
 - (iii) carrying out a research project reported in publishable form;
 - (iv) teaching a formally organized class in behavior analysis or related subjects that meets the criteria specified in [NEW RULE V].
- (c) No more than four continuing education units may be granted for courses relative to the management of a professional practice.
- (d) Behavior analyst board members may receive continuing education credit of up to eight hours per calendar year for their attendance of board meetings.

AUTH: 37-1-319, 37-17-202, Chap. 425, section 7, L. of 2017, MCA
IMP: 37-1-306, Chap. 425, section 7, L. of 2017, MCA

NEW RULE VIII REPRESENTATION OF SELF AND SERVICES (1) In representation of self or services, a licensee:

- (a) shall display the behavior analyst's or assistant behavior analyst's current license to practice behavior analysis on the premises of the professional office;
- (b) shall not represent oneself as a behavior analyst or assistant behavior analyst while the practitioner's license is currently suspended, revoked, or not renewed;
- (c) shall not use fraud, misrepresentation, or deception in obtaining a behavior analyst or assistant behavior analyst license, in passing a behavior analyst or assistant behavior analyst licensing examination, in assisting another to obtain a behavior analyst or assistant behavior analyst license, or to pass a behavior analyst or assistant behavior analyst licensing examination;
- (d) shall not aid or abet an unlicensed person in misrepresenting the person's

professional credentials or in practicing when a license is required, or otherwise illegally engaging in the practice of behavior analysis;

(e) shall not promote the use of behavior analysis assessment techniques by unqualified persons;

(f) shall not use fraud, misrepresentation, or deception in billing clients or third-party payers, in providing behavior analysis or assistant behavior analysis services, in reporting the results of behavior analyst or assistant behavior analyst services, or in conducting any other activity related to the practice of behavior analysis.

(2) Regarding advertising, a licensee or license applicant:

(a) shall not engage in advertising that is false, fraudulent, or misleading;

(b) shall identify paid advertisements as such, unless it is already apparent from the context;

(c) shall not solicit testimonials from current clients, patients, or other persons who, because of their particular circumstances, are vulnerable to undue influence;

(d) shall not induce a client to solicit business on behalf of the behavior analyst or assistant behavior analyst;

(e) shall take professional responsibility when engaging others to create or place public statements that promote their professional practice, products, or activities.

(3) Regarding representation in the public arena, a licensee or license applicant:

(a) shall make reasonable efforts to prevent others whom they do not control (such as employers, publishers, sponsors, organizational clients, and representatives of the print or broadcast media) from making deceptive statements concerning behavior analyst or assistant behavior analyst practice or professional or scientific activities;

(b) shall make reasonable efforts to correct deceptive statements about their work or misuse of their work made by others;

(c) shall not compensate the press (radio, television, or other communication media), or their employees or supervisees, in return for publicity or a news item;

(d) shall not make public statements that are false, deceptive, misleading, or fraudulent (either by omission or commission) concerning licensee's research or practice, or concerning other work activities or those of persons or organizations with which they are affiliated;

(i) As examples (and not in limitation) of this rule, behavior analysts or assistant behavior analysts shall not make false or deceptive statements concerning their:

(A) training, experience, or competence;

(B) academic degrees;

(C) credentials;

(D) institutional or association affiliations;

(E) services;

(F) the scientific or clinical basis for, or results or degree of, success of their services;

(G) fees; or

(H) publications or research findings;

(e) shall, when providing advice or comment when a defined professional relationship does not exist, take reasonable precautions to ensure that the statements are based on appropriate behavior analysis literature and practice. Furthermore, the behavior analyst or assistant behavior analyst shall take reasonable precautions to ensure that the recipient of such information does not infer that a defined professional relationship has been established with the behavior analyst or assistant behavior analyst personally;

(f) shall not engage, directly or through agents, in uninvited in-person solicitation of business from actual or potential clients or other persons who, because of their particular circumstances, are vulnerable to undue influence. However, this does not preclude attempting to implement appropriate collateral contacts with significant others for the purpose of benefiting an already engaged client;

(g) shall not associate with, or permit the behavior analyst's or assistant behavior analyst's name to be used in connection with, any services or products in such a way as to misrepresent the services or products, the degree of the licensee's responsibility for the services or products, or the nature of the licensee's association with the services or products.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE IX PRACTICE OF BEHAVIOR ANALYSIS (1) In regard to conduct in the integrity of the profession, a licensee:

(a) shall not create an unreasonable risk of physical or mental harm or serious financial loss to the client, such as malpractice or an act or acts below the standard of care concerning behavior analysts or assistant behavior analysts, whether actual physical or mental injury or harm was suffered by the client;

(b) shall not provide any services in the practice of behavior analysis except those services within the scope of the licensee's education, training, supervised experience, or appropriate professional experience;

(c) shall not participate in activities in which it appears likely that the licensee's skills or data will be misused by others, unless corrective mechanisms are available.

(2) Regarding disclosure and obligation to report, a licensee:

(a) shall disclose fees and confidentiality prior to initiating the defined professional relationship with clients, except in the case of a clinical emergency. Upon initiating the defined professional relationship there must be a discussion of the nature and anticipated course of contracted services, limitations of confidentiality and modalities of communication by which treatment is provided, and mandated reporting situations. When services rendered involve more than one interested party, the behavior analyst or assistant behavior analyst shall clarify the dimensions of confidentiality and professional responsibility to all participating parties;

(b) who has substantial reason to believe that there has been a violation of the statutes or rules of the board, shall so inform the board in writing. However, when the information regarding such violation is obtained in a defined professional

relationship with a client, the behavior analyst or assistant behavior analyst shall report it only with the written permission of the client;

(c) shall, when initiating conjoint services to several persons who have a relationship (e.g., familial, communal, or business), attempt to clarify which of the individuals are clients and the relationship the licensee will have with each person. This clarification includes the role of the licensee and the probable uses of the services provided or the information obtained;

(d) shall keep the client fully informed as to the purpose and nature of any evaluation, treatment, or other procedures, and of the client's right to freedom of choice regarding services provided;

(e) shall not undertake research on human subjects without a study of the potential effects of the research on the subjects, and shall not undertake research on human subjects without full disclosure of risks to the subjects.

(3) In regard to judicial or disciplinary situations:

(a) a licensee or license applicant shall cooperate with an investigation by:

(i) furnishing any papers or documents in the possession and under the control of the licensee, as per the appropriate health care records act;

(ii) furnishing in writing a full and complete explanation covering the matter contained in the complaint; and

(iii) responding to subpoenas issued by the board or the department, whether or not the recipient of the subpoena is the respondent in the proceedings;

(b) a behavior analyst or assistant behavior analyst shall not offer, undertake, or agree to cure or treat disease or affliction by a secret method, procedure, or treatment; nor shall the licensee treat, operate, or prescribe for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand from the board.

(4) Licensees may only operate within their areas of competence and shall seek appropriate supervision when necessary.

(5) A behavior analyst or assistant behavior analyst must understand the construction/administration/interpretation of the test procedures the licensee employs.

(6) Licensees must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.

(7) The behavior analyst or assistant behavior analyst shall be aware of personal and societal biases and engage in nondiscriminatory practice. The behavior analyst or assistant behavior analyst shall be aware of how biases such as age, gender, race, ethnicity, national origin, religion, sexual orientation, gender identity, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.

(8) Behavior analysts or assistant behavior analysts shall maintain current knowledge of legal standards regarding parenting plans, divorce, and laws regarding abuse, neglect, and family violence. Licensees shall also understand the civil rights of parties in legal proceedings in which they participate, and manage their professional conduct in a manner that does not diminish or threaten those rights.

(9) Behavior analysts or assistant behavior analysts shall recognize and state any limitations of their assessments and reports.

(10) Behavior analysts or assistant behavior analysts shall not render diagnoses or form an expert opinion about any party not personally evaluated.

(11) Behavior analysts or assistant behavior analysts shall avoid dual relationships and other situations which might produce a conflict of interest.

(12) Behavior analysts or assistant behavior analysts shall inform all participants, including clients, as to the limits of confidentiality which can be expected with regard to any information they may provide to the licensee over the course of the evaluation. This includes the limits of confidentiality applicable to the general practice of behavior analysis, such as a duty to warn in instances of possible imminent danger to a participant or to others, or legal obligations to report suspected child or elder abuse.

(13) Licensees shall not commit an act of sexual abuse, sexual misconduct, or sexual exploitation, whether or not related to the licensee's practice of behavior analysis.

(14) Each licensee shall not fail to report to the board any student interns, behavior technicians, or assistant behavior analysts whom the licensee supervises.

(15) Licensees shall follow the BACB's Professional and Ethical Compliance Code for Behavior Analysts unless it directly conflicts with Montana statutes or rules.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 4, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE X PROFESSIONAL RESPONSIBILITY (1) Regarding client welfare, a licensee:

(a) shall attempt to terminate a clinical or consulting relationship when it is reasonably clear to the licensee that the client is not benefiting from it or is being harmed by continued service;

(b) shall not use relationships with clients to promote commercial enterprises of any kind for personal gain or the profit of an agency;

(c) shall not bill for services not directly performed for a client, unless there is an explicit agreement that permits this type of billing;

(d) shall take reasonable steps to avoid harming the licensee's clients with whom there is a defined professional relationship, and to minimize harm where it is foreseeable and unavoidable;

(e) shall make reasonable efforts to plan for facilitating care in the event that behavior analysis services are interrupted by factors such as the licensee's illness, death, unavailability, or relocation, or by the client's relocation or financial limitations;

(f) shall, when entering into employment or contractual relationships, provide for orderly and appropriate resolution of responsibility for client care in the event the employment or contractual relationship ends, with paramount consideration given to the welfare of the client;

(g) shall make an appropriate referral of the client to another professional when requested to do so by the client;

(h) shall continue the defined professional relationship with the client until a relationship is established with the professional person to whom the client is referred or until the relationship has been terminated by mutual agreement. In situations where referral, consultation, or other changes in the conditions of the treatment are indicated, and the client refuses referral, the licensee shall carefully weigh the possible harm to the client, the licensee, and the licensee's profession that might ensue from continuing the relationship.

(2) Regarding respect for others, a licensee:

(a) shall not exploit persons over whom they have supervisory, evaluative, or other authority such as students, supervisees, employees, research participants, or clients;

(b) who performs interventions or administers, scores, interprets, or uses assessment techniques shall be familiar with the reliability, validation, and related standardization or outcome studies of, and proper applications and uses of, the techniques they use:

(i) shall recognize limits to the certainty with which diagnoses, judgments, or predictions can be made about individuals;

(ii) shall attempt to identify situations in which particular interventions or assessment techniques or norms may not be applicable or may require adjustment in administration or interpretation, because of factors such as individuals' gender, age, race, ethnicity, national origin, religion, sexual orientation, disability, language, or socioeconomic status;

(iii) shall, when offering assessment or scoring procedures to other professionals, accurately describe the purpose, norms, validity, reliability, and applications of the procedures and any special qualifications applicable to their use;

(iv) shall ensure, unless the nature of the relationship is clearly explained to the person being assessed in advance and precludes provision of an explanation of results, 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;

(v) shall, regardless of whether the scoring and interpretation are done by a behavior analyst, by assistants, by behavior technicians, by student interns, or by automated or other outside services, take reasonable steps to ensure that appropriate explanations of results are given and adequate provisions are made for referring and counseling individuals when needed;

(c) when interpreting assessment results, including automated interpretations, shall take into account the various test factors and characteristics of the person being assessed that might affect licensees' judgments or reduce the accuracy of their interpretations and indicate any significant reservations they have about the accuracy or limitations of their interpretations.

(3) In regard to conflict of interest, a licensee shall be concerned primarily with the welfare of any client involved and only secondarily with the interest of the licensee's own professional group, when there is a conflict among professional workers.

(4) Regarding the therapeutic relationship, a licensee:

(a) shall provide behavior analysis services for the purpose of diagnosis, assessment, or treatment only in the context of a defined professional relationship.

However, nothing in these rules precludes the provision of behavior analysis services for crisis management or intervention, even in the absence of a defined professional relationship;

(b) shall not prepare personnel reports and recommendations based on test data secured solely by mail, unless such appraisals are an integral part of a continuing client relationship with a company;

(i) the reports shall not be embellished with detailed analyses of the subject's personality traits, as would be appropriate only after intensive interviews with the subject;

(ii) the reports shall not make specific recommendations as to the employment or placement of the subject, which go beyond the licensee's knowledge of the job requirements of the company; and

(iii) the reports shall not purport to eliminate the company's need to carry on other regular employment or personnel practices such as appraisal of the work history, checking of references, or past performance in the company;

(c) shall not undertake or continue a defined professional relationship with a client when the behavior analyst or assistant behavior analyst is or could reasonably be expected to be impaired due to mental, emotional, physiologic, pharmacologic, or substance abuse conditions. If such a condition develops after a defined professional relationship has been initiated, the licensee shall terminate the relationship in an appropriate manner, shall notify the client in writing of the termination, and shall assist the client in obtaining services from another professional;

(d) shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client;

(e) shall make assessments, recommendations, reports, and diagnostic or evaluative statements based on information and techniques (including personal interviews of the individual when appropriate) sufficient to provide appropriate substantiation for their findings; and

(f) shall refrain from releasing raw test results or raw data to persons, other than to clients as appropriate, who are not qualified to use such information.

(5) Regarding education, a licensee:

(a) shall present behavior analysis information accurately and with a reasonable degree of objectivity, when engaged in teaching or training;

(b) shall not teach the use of techniques or procedures that require specialized training, licensure, or expertise, to individuals who lack the prerequisite training, legal scope of practice, or expertise;

(c) shall establish an appropriate process for providing feedback to students and supervisees in academic and supervisory relationships; and

(d) shall evaluate students and supervisees on the basis of their actual performance on relevant and established program requirements.

(6) Regarding supervision, a licensee:

(a) shall adequately supervise auxiliary staff to ensure that a client's mental or physical health or safety is not at risk;

(b) shall clearly identify any behavior technician for clients, third-party payers, and other entities when supervising a behavior technician;

(c) shall delegate to their employees, supervisees, and research assistants

only those responsibilities that such persons can reasonably be expected to perform competently on the basis of their education, training, or experience, either independently or with the level of supervision being provided;

(d) shall not commence supervision of a person practicing psychology;

(e) shall, upon board approval of the supervision, reasonably and adequately supervise persons practicing behavior analysis, so as to ensure the client's mental and physical health and safety are not at risk and that each supervisee complies with all applicable standards, rules, and statutes; and

(f) shall strictly comply with the rules governing supervision.

(7) Regarding forensic activities, a licensee shall not render a formal professional opinion about an individual without direct and substantial professional contact with or a formal assessment of that person.

(8) The violation of any statute, rule, or standard applicable to the licensee in relation to the licensee's practice of behavior analysis is unprofessional conduct.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 6, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE XI RELATIONSHIPS (1) Regarding multiple relationships, a licensee:

(a) shall not undertake or continue a defined professional relationship with a client when the objectivity of the licensee is impaired because of present or previous familial, social, sexual, emotional, financial, supervisory, political, administrative, or legal relationships with the client or a relevant person directly associated with or related to the client.

(2) Regarding sexual relationships, a licensee:

(a) shall not accept as clients persons with whom they have engaged in sexual intimacies;

(b) shall not engage in sexual intimacies with current clients;

(c) shall not engage in sexual intimacies with a former client for at least two years after termination of professional services. The licensee who engages in such activity after the two years following termination of professional services bears the burden of demonstrating that there has been no exploitation, in light of all relevant factors, including:

(i) the amount of time that has passed since professional services terminated;

(ii) the nature and duration of the professional services;

(iii) the circumstances of termination;

(iv) the client's personal history;

(v) the client's current mental status;

(vi) the likelihood of adverse impact on the client; and

(vii) any statements or actions made by the licensee during the defined professional relationship suggesting or inviting the possibility of post termination sexual or romantic relationship with the client.

(3) Regarding bartering, the licensee:

(a) shall not participate in bartering if the relationship is clinically

contraindicated or exploitative;

(b) shall not engage in bartering unless fair market value is used for goods or services bartered.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

NEW RULE XII PRIVILEGED INFORMATION AND RECORDS

(1) Regarding privileged information and records, the licensee:

(a) shall not reproduce or describe behavior analysis tests or assessment procedures in popular publications, lectures, or public presentations in ways that might invalidate them;

(b) shall, in rendering professional services to an individual client, or services billed to a third-party payer, maintain professional records that include:

(i) the presenting problem(s) or purpose of diagnosis;

(ii) the fee arrangement;

(iii) the date and substance of each billed contact or service;

(iv) any test results or other evaluative results obtained and any basic test data from which they were derived;

(v) notation and results of formal consults with other providers; and

(vi) a copy of all test or other evaluative reports prepared as part of the defined professional relationship;

(c) shall administer, store, and dispose of written, electronic, and other records in such a manner as to ensure their confidentiality;

(d) shall not withhold records under their control that are requested and imminently needed for a client's treatment solely because payment has not been received, except as otherwise provided by law;

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

(2) Licensees shall maintain and not destroy client records:

(a) for a period of seven years after the client reaches the age of 18, for clients who are minors; and

(b) for a period of seven years after the last professional client contact, including a release of records, for clients who are adults.

AUTH: 37-1-131, 37-1-319, Chap. 425, section 7, L. of 2017, MCA

IMP: 37-1-131, 37-1-316, Chap. 425, section 3, L. of 2017, Chap. 425, section 7, L. of 2017, MCA

6. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or e-mail to dlibspsy@mt.gov, and must be received no later than 5:00 p.m., September 1, 2017.

7. An electronic copy of this notice of public hearing is available at www.psy.mt.gov (department and board's web site). Although the department strives to keep its web sites accessible at all times, concerned persons should be aware that web sites may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing a web site do not excuse late submission of comments.

8. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies that the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibspsy@mt.gov; or made by completing a request form at any rules hearing held by the agency.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on June 8, 2017, by telephone.

10. Regarding the requirements of 2-4-111, MCA, the board has determined that the amendment of ARM 24.189.301, 24.189.401, 24.189.601, 24.189.633, and 24.189.2104 will not significantly and directly impact small businesses.

Regarding the requirements of 2-4-111, MCA, the board has determined that the adoption of NEW RULES I through XII will not significantly and directly impact small businesses.

Documentation of the board's above-stated determinations is available upon request to the Board of Psychologists, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2258; facsimile (406) 841-2305; or to dlibspsy@mt.gov.

11. L'Joy Griebenow, Executive Officer, has been designated to preside over and conduct this hearing.

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

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

/s/ PAM BUCY
Pam Bucy, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State July 24, 2017.