

RULES AND REGULATIONS

Title 49—PROFESSIONAL AND VOCATIONAL STANDARDS

STATE BOARD OF MEDICINE [49 PA. CODE CHS. 16 AND 18] Behavior Specialist

The State Board of Medicine (Board) amends §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and adds §§ 18.521—18.527 (relating to behavior specialists) to read as set forth in Annex A.

Effective Date

The final-form rulemaking will be effective upon publication in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are authorized under sections 8 and 25 of the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.8 and 422.25) and under section 635.2(g) of The Insurance Company Law of 1921 (Insurance Law) (40 P.S. § 764h(g)).

Background and Purpose

Section 3 of the act of July 9, 2008 (P.L. 885, No. 62) (Act 62) amended the Insurance Law to provide for autism spectrum disorders coverage. In general, an insurer is required to provide covered individuals under 21 years of age coverage for the diagnostic assessment and treatment of autism spectrum disorders. An insurer shall contract with and accept as a participating provider any autism service provider that is licensed in this Commonwealth. Section 635.2(g)(1) of the Insurance Law requires the Board, in consultation with the Department of Public Welfare (Department), to promulgate regulations to provide for licensure or certification of behavior specialists. Section 635.2(f)(4) of the Insurance Law defines “behavior specialist” as “an individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavioral analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior.”

This final-form rulemaking implements licensure of behavior specialists under the Insurance Law.

Summary of Comments and Responses to Proposed Rulemaking

Notice of proposed rulemaking was published at 40 Pa.B. 884 (February 13, 2010). The Board received comments from the following: Senator Don White; NHS Human Services (NHS); Blue Cross of Northeastern Pennsylvania (Blue Cross); Felicia Hurewitz, Ph.D. and Mareile Koenig, Ph.D., who had previously served as cofacilitators of the Pennsylvania Autism Task Force Education/Certification subcommittee (Hurewitz/Koenig); Magellan Health Services (Magellan); Pennsylvania Health Law Project; Pennsylvania Counseling Association (PCA); National Association of Social Workers (NASW); Pennsylvania Association for Marriage and Family

Therapy (PAMFT); Scott Savett; The Insurance Federation of Pennsylvania, Inc.; the Department; and Highmark.

In addition, the Board received comments from the Independent Regulatory Review Commission (IRRC) and the House Professional Licensure Committee (HPLC) in response to their review of the regulations under the Regulatory Review Act (71 P.S. §§ 745.1—745.12). Responses to the comments have been grouped under general categories as follows.

Purpose

Several of the commentators suggested that the public would be better served if the Board required “licensure” as opposed to “certification” of behavior specialists. Although the proposed rulemaking spoke in terms of “certification,” the Board took into consideration the comments of NASW, PAMFT, Highmark, Blue Cross, Senator White, the Insurance Federation of Pennsylvania, Inc. and IRRC, all of whom preferred the term “licensure.” Among the varied reasons for this concern, the most compelling was the avoidance of the potential for a “two-tiered credentialing process” that might cause issues with contracting or payment of behavioral specialists by insurance companies. Section 635.2(g) of the Insurance Law directed the Board’s promulgation of regulations “providing for the licensure or certification of behavior specialists.” Given that section 635.2 of the Insurance Law articulates its purpose as providing insurance coverage for the treatment of autism spectrum disorders, and without taking a position as to whether “certification” or “licensure” of behavior specialist would connote a higher standard or classification, the Board has changed the relevant references from “certification” and “certificate” to “licensure” and “license.” In response to an inquiry from NHS, individuals who are already Board-certified behavior analysts still shall become licensed by the Board. This eligibility was advocated by Magellan and Hurewitz/Koenig in their comments. Note that under § 18.524(e) (relating to criteria for licensure as behavior specialist), completion of Behavior Analyst Certification Board (BACB) approved training and continuing education credits are acceptable for licensure as a behavior specialist.

In addition, NASW and PAMFT asked a question as to whether current licensed providers of behavior modification services for children with autism under their respective scopes of practice will be required to obtain additional licenses under this final-form rulemaking. Not all persons providing autism services will necessarily be required to comply with this final-form rulemaking. Various existing licensed professionals such as psychologists, social workers, clinical social workers and professional counselors currently provide treatment of autism spectrum disorders pursuant to a treatment plan. To the extent the scope of practice under a license includes diagnostic assessment or treatment of autism spectrum disorders, this final-form rulemaking is not intended to require dual licensure or otherwise impact that scope of practice or the licensee’s ability to qualify as a participating provider. The Board has confirmed with the Department that this final-form rulemaking would not affect the ability of already licensed professionals to qualify as providers for the purpose of reimbursement by the Medical Assistance Program.

Subsequent to the May 19, 2011, withdrawal of the final-form rulemaking, the Board received comments for

consideration related to the rulemaking in the form of a letter from former Representative Dennis M. O'Brien, who was the prime sponsor of Act 62, to Aaron Shenck, Deputy Secretary of Legislative Affairs, Office of the Governor. Representative O'Brien asked that the Board consider creating a voluntary behavior specialist certification for other licensed professionals who treat individuals with autism. Though the certification would not be required of professionals licensed by other boards and operating within those boards' scope of practice, it would allow these professionals to volunteer to go a step beyond the requirements for licensure and seek specialized certification by the Board as an autism behavior specialist. Representative O'Brien emphasized that this voluntary certification would give families an additional tool to determine who is best qualified to treat children with autism.

The Board considered this request and determined that, while the goal of providing families with information on the qualification of providers is a noble one that should be encouraged, an optional certification as proposed would be more appropriately developed and maintained by private professional organizations than by the Board for the following reasons:

State boards and commissions administered by the Bureau of Professional and Occupational Affairs are statutorily authorized to set the minimum competency requirements for individuals to practice a profession in this Commonwealth and to regulate these professionals to maintain a standard of proficiency that ensures the public health and safety. They do not currently certify experience in particular specialties or subspecialties of professional practice. There is not a precedent for the type of certification proposed.

Historically, certification has been deferred to private organizations of professionals, which consider evidence-based guidelines, National standards and best practices in development of certification standards. The level of expertise required to maintain these standards necessitates a significant commitment of time and resources beyond the Board's current ability.

The proposal would permit the Board to establish a regulatory authority over a specialty practice within the purview of other boards. The Board believes that this regulatory scheme creates administrative, enforcement and disciplinary problems and would be confusing for providers and consumers.

The Board believes that the requirements for an optional certification would differ depending on the experience of each type of licensed professional and the requirements in Act 62 may not be appropriate for every licensed professional. It is not altogether certain that the act would permit the Board to amend the minimum requirements for the behavior specialist certification/licensure, even if the certification were optional.

The final-form rulemaking provides that, although not required of already licensed professionals, the behavior specialist license would be optionally available for these professionals to obtain if they meet the minimum qualifications.

For these reasons, the Board chose not to make changes to the final-form rulemaking that would provide an optional behavior specialist certification from the Board. However, the Commonwealth will encourage private professional organizations to consider establishing a program to offer optional behavior specialist certifications.

Definitions

Autism has been described as "a group of developmental disorders that impair social interactions and often language development" (Saey, *Science News*, July 3, 2010, p. 12). The Insurance Law defines autism spectrum disorders by means of incorporation of the more detailed definition in the most recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*. IRRC expressed concern that § 18.522 (relating to definitions) cited the sections of the act followed by a verbatim recitation of the definition provided in the act. IRRC suggested either a clarifying definition, if necessary, or merely a cite to the act. IRRC also suggested adding the term "treatment plan," which was defined in the act but not the proposed rulemaking. The terms used and defined in the act are terms of art in the behavior science or autism community. The same may be said for some of the terms used to define those terms. The Board sought input from stakeholders in crafting the definitions as well as the definition of some of the words within those definitions, resulting in final-form § 18.522. The definition of "autism spectrum disorders" adds the descriptive "neurobehavioral." The Board also has added clarifying definitions for "behavior challenges," "consequence," "stimulus," "treatment plan" and "variables." Further, the Board refined the definition of "applied behavioral analysis" to include evidence-based principles suggested by Hurewitz/Koenig. The only definition left unchanged was for "behavior specialist," in which the citation to the act was deleted as suggested by IRRC. NHS questioned whether the definition of "diagnostic assessment of autism spectrum disorders" included those made by school psychologists and psychiatrists. Psychiatrists, being Board-licensed physicians, would be included within the "licensed physician" provision. Diagnostic assessments by licensed psychologists are included but those of school psychologists who are not licensed by the State Board of Psychology would not be included. In § 18.524(a), a major course of study in school psychology is a criterion for licensure as a behavior specialist.

Application for licensure

IRRC commented that § 18.523 (relating to application for licensure as behavior specialist) lacked specifics regarding the "necessary supporting documents" to be submitted, and in some instances updated, in support of an application for licensure. Section 41 of the act (63 P. S. § 422.41) authorizes the Board to refuse to issue a license or certificate for, among other reasons, criminal convictions or acting in a manner as to present an immediate and clear danger to the public health or safety. Magellan advocated adding criminal background checks and Act 33 clearances to the required documentation. The Board responded by adding a criminal history record information report, a child abuse history clearance and a Federal Bureau of Investigation (FBI) criminal justice information services (CJIS) criminal record as being among the documents that would indicate whether the applicant may reasonably be expected to treat or otherwise interact safely with patients under 21 years of age. The patients to whom these services are to be provided are members of a particularly unique and vulnerable segment of the population. These services will be provided often in environments less monitored or structured than, for example, a hospital or physician's office. These environments may not permit the physical or operational opportunity for a health care professional or other appropriate adult to maintain periodic visual interaction with the licensee during the treatment session. Requiring production of the referenced documentation from law enforcement agencies would minimize the likelihood, to the

degree possible, of inappropriate conduct by the licensee when in the presence of the patient.

Upon consideration of IRRC's request for a time frame within which it would license an applicant upon receiving the application and supporting documents, the Board submits that the process of requesting, submitting, supplementing and reviewing the documentation from various criminal information repositories renders articulation of a specific time frame speculative and impractical. The Board's goal is to assemble timely and complete information as promptly as possible and, once in possession of it, to reach its decision on licensure and notify the applicant without undue delay.

IRRC's comments sought clarification of the term "convicted" and the final-form rulemaking enumerates additional criteria under which it will deny an application in addition to a felony conviction. The regulation broadens the definition of the term "convicted" as it relates to crimes for which 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), known as Megan's Law, requires registration. The regulation also adds a "good moral character" prerequisite.

Criteria for licensure

In response to IRRC's comments, the Board included within § 18.524(a) the statutory criterion for good moral character. The required documentation to verify that criterion (a criminal history record information report, a child abuse history clearance and an FBI CJIS criminal record) is in § 18.523. IRRC, Hurewitz/Koenig, PCA, NHS and the HPLC commented on the use of the phrase "another related field" in § 18.524(a) in the description of the major course of study in which an applicant for licensure shall possess a master's or higher degree. Several examples are given, such as clinical or counseling psychology, special education, social work, speech therapy and occupational therapy. The list is not meant to be exhaustive, nor may it reasonably be made so. In response to comments, additional examples of a related field have been added to include nursing, professional counseling, developmental psychology and behavioral analysis. In response to comments from Blue Cross and Magellan, although licensees such as psychologists and social workers remain authorized to continue practice within the scope of their respective professions, their educational backgrounds also may fulfill a criterion for licensure as a behavior specialist.

Section 18.524(b) has been amended to address IRRC's request that the clinical experience requirement involve patients under 21 years of age, given that this is the specific group that will be served by the behavior specialists for which the Insurance Law authorizes licensure. NHS commented that the regulation needed to clarify the required number of hours involving functional behavior assessments as well as the clinical experience be specific to patients under 21 years of age. The Board retained the "patients under 21 years of age" requirement for functional behavior assessments in § 18.524(b), but not for the clinical experience in § 18.524(c), to maximize the pool of qualified professionals eligible for licensure. The Board retained the related field clinical experience option and notes that this would include services rendered in capacities of teacher in an autistic support class, job coach, residential program manager or director, or summer therapeutic activities program to children or adults with autism spectrum disorders. IRRC and the HPLC expressed concern that "direct" clinical experience should not include experience obtained in "passive approaches" such as viewing videos. In response, the Board has

dropped "direct" from the final-form rulemaking in favor of "in-person," which the Board intends to be interpreted as face-to-face contact. Hurewitz/Koenig suggested that the clinical experience be "supervised." The Board considered this comment; however, the act does not include a provision for supervised clinical experience as a condition of licensure—only that applicants have completed 1,000 hours experience with individuals with behavioral challenges or autism spectrum disorders. The Board believes adding a supervision component would be contrary to the legislative intent and exceed the Board's statutory authority.

IRRC questioned how the Board will verify that an applicant has obtained the requisite hours of clinical experience. Neither the actual conduct of functional behavior assessments nor the candidate's performance of the actual activities and tasks comprising the clinical experience need themselves be supervised. To the extent the applicant's experience was under supervision, the applicant's clinical supervisor or other person employing the applicant will corroborate the number of those hours in writing as part of the application process. To the extent that the applicant's experience was independent, the Board will otherwise verify the experience.

In commenting upon the final-form rulemaking, NASW for the first time questioned when a candidate could earn the 1,000 hours of experience. Because so many behavior specialists are new graduates, NASW suggested that the experience with individuals with behavioral challenges be acquired during or upon completion of the master's degree programs and that experience in a related field with individuals with autism spectrum disorders be acquired upon completion of the bachelor's programs. The Board did not previously specify a point because it did not intend to unnecessarily limit the candidate's ability to achieve the required qualifications. The Board agrees with NASW that experience during the master's degree program or otherwise subsequent to a bachelor's degree program would be acceptable.

IRRC's comments regarding § 18.524(d) seek clarification regarding "relevant training programs," the standards for determining relevance and the absence of the number of hours of qualifications of persons involved in providing the training. The Board's modifications recognize the qualifications of the BACB and the Department's Bureau of Autism Services as arbiters of an accredited university's course work (as opposed to training), the applicant's completion of which is a prerequisite for licensure. The revisions also specify how the 90 hours of course work or training in evidence-based practices is to be allocated among various subjects, as suggested by Hurewitz/Koenig. Referencing the IRRC comment regarding the clinical experience requirement in § 18.524(b) and (c), the Board's revisions also specify that the course work may include face-to-face instructor-led or online distance education, as well as other qualifying hours from specified sources.

Renewal of licensure

IRRC, Blue Cross, Senator White and the HPLC recommended adding continuing education requirements to the licensure renewal process in § 18.525 (relating to renewal of licensure as behavior specialist). However, neither the act nor the Insurance Law specifically requires or authorizes the Board to require behavior specialists to complete continuing education. As a governmental agency created by statute, the activities of the Board are limited to those authorized by statute. Without statutory authority, an attempt by the Board to promulgate regulations requiring

behavior specialists to complete continuing education would be a nullity. By way of further explanation, although it is not a requirement under the Insurance Law, many of the anticipated licensees may already be licensed by another professional board or certified by the Department of Education and are obligated to earn continuing education credits for renewal of those credentials. IRRC suggested that the Board specify in § 18.525(c) “the manner prescribed by the Board” in which the behavior specialist license will be renewed. The Board will permit licensees to renew either online or by submitting a paper renewal application. The language used in § 18.525 was chosen to be applicable to both methods.

Inactive status of licensure

IRRC, PCA and Blue Cross expressed concern with § 18.526 (relating to inactive status of licensure as behavior specialist) pertaining to the concept of “retroactive” reactivation of licensure. The specifics underlying IRRC’s concerns are well-taken, shared by the Board and on further review are not inconsistent with the goals of the act, which is the payment by insurance of services provided by behavior specialists to autism patients under 21 years of age. Accordingly, the Board has removed the provisions relating to “retroactive” reactivation, thereby eliminating that option for licensees. An inactive or expired license does not necessarily prevent a behavior specialist from providing these services, but only from receiving payment for that service in the manner provided by the Insurance Law. Proposed § 18.526(b), cited in the HPLC’s suggestion for substituting “lapsed” for “inactive,” has been deleted.

Disciplinary action

PCA commented on the need for behavior specialists to be licensed, as opposed to certified, to provide the public with recourse and the Board with authority to impose sanctions on them. The change of certification to licensure throughout the final-form rulemaking, including § 18.527 (relating to disciplinary action for licensed behavior specialist), is responsive to this concern.

Miscellaneous clarity

IRRC made several formatting suggestions to enhance the organization of §§ 16.11 and 16.13. These suggestions have been included in the final-form rulemaking.

The final rulemaking also renumbers and amends § 16.13(i) to set forth the fees associated with behavior specialist licensure to be charged by the Board. To recover the costs of processing those applications, the fee for initial application for licensure as behavior specialist and for reactivation of a previously-issued behavior specialist license each is \$75. To provide for an appropriate share of the general costs of operating the Board, the renewal fee for a behavior specialist also is \$75. NHS expressed concern that the fees could potentially cause hardships for agencies or staff, or both, thereby possibly decreasing the “number of employees agencies ‘certify’ as a behavior specialist.” Many of the concerns similarly expressed by NHS have been addressed and the Board does not perceive the remaining fee issue as an impediment to licensure, especially given the purpose of the act to create a significant additional source of payment for treatment rendered by behavior specialists.

Fiscal Impact and Paperwork Requirements

The final-form rulemaking will not have adverse fiscal impact on the Commonwealth or its political subdivisions. The final-form rulemaking will not impose additional paperwork requirements upon the Commonwealth, politi-

cal subdivisions or the private sector. Individuals who choose to pursue licensure as a behavior specialist will incur initial costs and paperwork requirements in applying for licensure and biennial renewal costs.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, a sunset date has not been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P. S. § 745.5(a)), on February 2, 2010, the Board submitted a copy of the notice of proposed rulemaking, published at 40 Pa.B. 884, to IRRC and the Chairpersons of the HPLC and the Senate Consumer Protection and Professional Licensure Committee (SCP/PLC) for review and comment.

Under section 5(c) of the Regulatory Review Act, IRRC, the HPLC and the SCP/PLC were provided with copies of the comments received during the public comment period, as well as other documents when requested. In preparing the final-form rulemaking, the Board has considered all comments from IRRC, the HPLC, the SCP/PLC and the public.

Under section 5.1(j.2) of the Regulatory Review Act (71 P. S. § 745.5a(j.2)), on April 4, 2012, the final-form rulemaking was deemed approved by the HPLC and the SCP/PLC. Under section 5.1(e) of the Regulatory Review Act, IRRC met on April 5, 2012, and approved the final-form rulemaking.

Contact Person

Interested persons may obtain information regarding the final-form rulemaking by contacting to Teresa Lazo, Board Counsel, State Board of Medicine, P. O. Box 2649, Harrisburg, PA 17105-2649, tlazo@pa.gov.

Findings

The Board finds that:

(1) Public notice of proposed rulemaking was given under sections 201 and 202 of the act of July 31, 1968 (P. L. 769, No. 240) (45 P. S. §§ 1201 and 1202) and the regulations promulgated thereunder, 1 Pa. Code §§ 7.1 and 7.2.

(2) A public comment period was provided as required by law and the comments were considered.

(3) The amendments to the final-form rulemaking do not enlarge the purpose of the proposed rulemaking published at 40 Pa.B. 884.

(4) This final-form rulemaking is necessary and appropriate for administration and enforcement of the authorizing acts identified in this preamble.

Order

The Board orders that:

(a) The regulations of the Board, 49 Pa. Code Chapters 16 and 18, are amended by amending §§ 16.11 and 16.13 and by adding §§ 18.521—18.527 to read as set forth in Annex A, with ellipses referring to the existing text of the regulations.

(b) The Board shall submit this order and Annex A to the Office of General Counsel and to the Office of Attorney General as required by law.

(c) The Board shall certify this order and Annex A and deposit them with the Legislative Reference Bureau as required by law.

(d) This order shall take effect upon publication in the *Pennsylvania Bulletin*.

JAMES W. FREEMAN, M.D.,
Chairperson

(Editor's Note: For the text of the order of the Independent Regulatory Review Commission relating to this document, see 42 Pa.B. 2253 (April 21, 2012).)

Fiscal Note: Fiscal Note 16A-4929 remains valid for the final adoption of the subject regulations.

Annex A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—GENERAL PROVISIONS

Subchapter B. GENERAL LICENSE, CERTIFICATION AND REGISTRATION PROVISIONS

§ 16.11. Licenses, certificates and registrations.

(a) The following medical doctor licenses are issued by the Board:

- (1) License without restriction.
- (2) Institutional license.
- (3) Extraterritorial license.
- (4) Graduate license.
- (5) Temporary license.
- (6) Interim limited license.

(b) The following nonmedical doctor licenses and certificates are issued by the Board:

- (1) Nurse-midwife license.
- (2) Nurse-midwife certificate of prescriptive authority.
- (3) Physician assistant license.
- (4) Acupuncturist license.
- (5) Practitioner of Oriental medicine license.
- (6) Behavior specialist license.

(c) The following registrations are issued by the Board:

- (1) Registration as a supervising physician of a physician assistant.
- (2) Biennial registration of a license without restriction.
- (3) Biennial registration of an extraterritorial license.
- (4) Biennial registration of a midwife license.
- (5) Biennial registration of a physician assistant license.
- (6) Biennial registration of a drugless therapist license.
- (7) Biennial registration of a limited license-permanent.
- (8) Biennial registration of an acupuncturist license.
- (9) Biennial registration of a practitioner of Oriental medicine license.
- (10) Biennial registration of a behavior specialist license.

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(i) *Behavior Specialist License:*

- Application for license as behavior specialist \$75
- Biennial renewal of behavior specialist license . . . \$75
- Application for reactivation of behavior specialist license \$75

(j) *Verification or Certification:*

- Verification of status \$15
- Certification of records \$25

(k) *Examination Fees:*

The Board has adopted Nationally recognized examinations in each licensing class. Fees are established by the National owners/providers of the examinations and are indicated in the examination applications.

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS OTHER THAN MEDICAL DOCTORS

Subchapter I. BEHAVIOR SPECIALISTS

Sec.	Purpose.
18.521.	Definitions.
18.522.	Application for licensure as behavior specialist.
18.523.	Criteria for licensure as behavior specialist.
18.524.	Renewal of licensure as behavior specialist.
18.525.	Inactive status of licensure as behavior specialist.
18.526.	Disciplinary action for licensed behavior specialist.

§ 18.521. Purpose.

This subchapter implements section 635.2(g) of The Insurance Company Law of 1921 (40 P. S. § 764h(g)) to provide for the licensure of behavior specialists. To the extent that an individual holds a professional license whose scope of practice includes the diagnostic assessment or treatment of autism spectrum disorders, this subchapter is not intended to require dual licensure, impact the licensee's scope of practice or impact the licensee's ability to qualify as a participating provider.

§ 18.522. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Applied behavioral analysis—The design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, which includes:

- (i) The use of direct observation, measurement and functional analysis of the relations between environment and behavior.
- (ii) The attempt to solve behavior challenges using evidence-based principles and practices of learning and behavior.
- (iii) The analysis of the relationship between a stimulus, consequence or other variable as defined in this section. The changes of stimuli, consequences or other variables may occur individually, as a combination or in relationship with each other. The change of stimuli, consequences or other variables may be external or internal to the person whose behavior is being analyzed.

Autism spectrum disorders—Any of the pervasive developmental neurobehavioral disorders defined by the most

recent edition of the *Diagnostic and Statistical Manual of Mental Disorders*, or its successor, including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.

BACB—The Behavior Analyst Certification Board.

BAS—The Bureau of Autism Services of the Department of Public Welfare.

Behavior challenges—Symptoms that include impairment in reciprocal social interaction, qualitative impairment in communication, the presence of internalizing or externalizing behaviors such as suicidal ideation, self-injurious behaviors, aggression, destructive or disruptive behaviors, isolation and social withdrawal, ritualistic repetitive and stereotypic patterns of behaviors, or extreme difficulty in adapting to change and transition.

Behavior specialist—An individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavioral analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior.

Consequence—A resulting directly measurable change of a person's behavior produced by a change in a stimulus or stimuli.

Diagnostic assessment of autism spectrum disorders—Medically necessary assessments, evaluations or tests performed by a licensed physician, licensed physician assistant, licensed psychologist or certified registered nurse practitioner to diagnose whether an individual has an autism spectrum disorder.

Stimulus—An event, circumstance or condition that can be changed or does change based upon the behavior specialist's manipulation.

Treatment plan—A plan for the treatment of autism spectrum disorders developed by a licensed physician or psychologist pursuant to a comprehensive evaluation or reevaluation performed in a manner consistent with the most recent clinical report or recommendations of the American Academy of Pediatrics.

Variables—An observed or manipulable condition which can be changed or does change and a directly measurable change of a person's behavior produced by the change.

§ 18.523. Application for licensure as behavior specialist.

(a) An applicant for licensure as a behavior specialist shall submit, on forms made available by the Board, a completed application, including all necessary supporting documents, for licensure as a behavior specialist and pay the fee in § 16.13(i) (relating to licensure, certification, examination and registration fees) for application for licensure as a behavior specialist.

(1) Among the supporting documents, the applicant shall submit to the Board:

(i) A criminal history record information report completed by the Pennsylvania State Police or the state police for each state in which the applicant currently resides or works and has resided or worked during the previous 10 years completed no more than 90 days prior to the date the application is received in the Board office.

(ii) A child abuse history clearance completed by the Department of Public Welfare or equivalent agency for each state in which the applicant currently resides or works and has resided or worked during the previous 10

years completed no more than 90 days prior to the date the application is received in the Board office.

(iii) A Federal Bureau of Investigation criminal justice information services criminal record completed no more than 90 days prior to the date the application is received in the Board office.

(2) The applicant shall provide updates to documents in possession of the Board for more than 6 months while the application remains pending.

(b) Except as otherwise provided in subsections (c) and (d), the Board will license as a behavior specialist an applicant who demonstrates that the applicant satisfies the requirements of section 635.2(g)(2) of The Insurance Company Act of 1921 (40 P. S. § 764h(g)(2)) for registration as a behavior specialist, as provided in § 18.524 (relating to criteria for licensure as behavior specialist), and otherwise complies with this subchapter.

(c) The Board may deny an application for licensure as a behavior specialist upon the grounds for disciplinary action in § 18.527 (relating to disciplinary action for licensed behavior specialist).

(d) The Board will not grant an application for licensure as a behavior specialist of an applicant who:

(1) Has been convicted of a felony offense as provided in section 635.2(g)(3) of The Insurance Company Act of 1921 unless at least 10 years have elapsed from the date of conviction and the applicant has satisfactorily demonstrated to the Board that the applicant has made significant progress in personal rehabilitation since the conviction that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of the applicant's patients or the public or a substantial risk of further criminal violations.

(2) Has been convicted of, entered a plea of guilty to or adjudicated delinquent of a crime for which the applicant has been required to register under 42 Pa.C.S. Chapter 97, Subchapter H (relating to registration of sexual offenders), known as Megan's Law, without regard to the time elapsed since the date of the conviction, plea or adjudication or the length of the registration required under Megan's Law. As used in this paragraph, "convicted" includes a judgment, an admission of guilt or plea of nolo contendere.

(3) Has failed to satisfy the Board that the applicant is of good moral character.

§ 18.524. Criteria for licensure as behavior specialist.

(a) An applicant for licensure as a behavior specialist shall satisfy the Board that the applicant is of good moral character and has received a master's or higher degree from a Board-approved, accredited college or university, including a major course of study in at least one of the following:

(1) School, clinical, developmental or counseling psychology.

(2) Special education.

(3) Social work.

(4) Speech therapy.

(5) Occupational therapy.

(6) Professional counseling.

(7) Behavioral analysis.

(8) Nursing.

(9) Another related field.

(b) An applicant for licensure as a behavior specialist shall have at least 1 year of experience involving functional behavior assessments of individuals under 21 years of age, including the development and implementation of behavioral supports or treatment plans.

(c) An applicant for licensure as a behavior specialist shall have completed at least 1,000 hours of in-person clinical experience with individuals with behavioral challenges or at least 1,000 hours of experience in a related field with individuals with autism spectrum disorders.

(d) An applicant for licensure as a behavior specialist shall have completed 90 hours of course work in evidence-based practices from an accredited college or university or training approved by the BACB or the BAS as follows:

- (1) Three hours of professional ethics approved by the BAS.
- (2) Eighteen hours of autism-specific coursework or training.
- (3) Sixteen hours of assessments coursework or training.
- (4) Sixteen hours of instructional strategies and best practices.
- (5) Eight hours of crisis intervention.
- (6) Eight hours of comorbidity and medications.
- (7) Five hours of family collaboration.
- (8) Sixteen hours of addressing specific skill deficits training.

(e) Coursework under this section may be attended face-to-face instructor-led or online distance education and include:

- (1) Hours completed during a master's degree, post-master's certificate or higher program as noted in a course syllabus.
- (2) BACB continuing education credits.
- (3) BAS-approved training with associated tests and corresponding course evaluations.

§ 18.525. Renewal of licensure as behavior specialist.

(a) A license issued under this subchapter expires on December 31 of the even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last address on file with the Board.

(c) To retain licensure as a behavior specialist, the licensee shall renew the license in the manner prescribed by the Board and pay the required biennial renewal fee specified in § 16.13(i) (relating to licensure, certification, examination and registration fees) prior to the expiration of the current biennium.

(d) To renew licensure as a behavior specialist, the licensee shall apply on forms made available by the Board, fully answer all questions and pay the current renewal fee specified in § 16.13(i).

§ 18.526. Inactive status of licensure as behavior specialist.

(a) Licensure as a behavior specialist will become inactive upon either of the following:

- (1) The licensee in writing affirmatively requests the Board to place the license on inactive status. Written confirmation of inactive status will be forwarded to the licensee.
- (2) The licensee fails to renew the license by the expiration of the renewal period.

(b) To reactivate an inactive license, the licensee shall apply on forms made available by the Board, answer all questions fully and pay the current renewal fee, if not previously paid, and the reactivation application fee specified in § 16.13(i) (relating to licensure, certification, examination and registration fees).

§ 18.527. Disciplinary action for licensed behavior specialist.

Under section 635.2(g)(1) of The Insurance Company Law of 1921 (40 P. S. § 764h(g)(1)), a licensed behavior specialist is subject to the disciplinary provisions applicable to medical doctors as set forth in the act. Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with 2 Pa.C.S. (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 42 of the act (63 P. S. § 422.42) upon a licensed behavior specialist who commits any act for which the Board would be authorized to take disciplinary action against a medical doctor under section 41 of the act (63 P. S. § 422.41), including unprofessional or immoral conduct as defined in § 16.61 (relating to unprofessional and immoral conduct).

[Pa.B. Doc. No. 12-973. Filed for public inspection May 25, 2012, 9:00 a.m.]