



HAWAII REVISED STATUTES

CHAPTER 465-D

BEHAVIOR ANALYSTS

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CHAPTER 465D
BEHAVIOR ANALYSTS

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Note

Subject to evaluation, this chapter is repealed effective June 30, 2021. See §26H-4.

Section 26H-6 shall not apply to this chapter. L 2015, c 199, §4.

Department of education; implementation plan to seek reimbursement of medicaid billable applied behavior analysis; quarterly reports. L 2018, c 205, §6.

[\$465D-1] Findings and declaration of necessity.

It is the intent of the legislature to establish standards for the licensing of behavior analysts to address the present and critical need for ensuring that those in the community requiring diagnosis and treatment for autism receive the care needed along with other healthcare needs. The special state

interest for creating this chapter is recognized, notwithstanding the requirements of section 26H-6. [L 2015, c 199, pt of §2]

§465D-2 Definitions. For the purposes of this chapter:

"Applied behavior analysis" means interventions that are based on scientific research and the direct observation and measurement of behavior and the environment.

"Behavior Analyst Certification Board" means the international accredited Behavior Analyst Certification Board or its successor.

"Department" means the department of commerce and consumer affairs.

"Director" means the director of commerce and consumer affairs.

"Licensed behavior analyst" means a person:

- (1) Who engages in the practice of applied behavior analysis and uses the title of licensed behavior analyst;
- (2) Who has been issued a license under this chapter; and
- (3) Whose license is in effect and not revoked, suspended, or encumbered.

"Practice of applied behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. Practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Practice of applied behavior analysis also includes the use of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. Practice of applied behavior analysis expressly

excludes psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities. [L 2015, c 199, pt of §2; am L 2018, c 205, §4]

[§465D-3] Behavior analyst program; established; personnel. (a) Notwithstanding any other law, there is established a behavior analyst program within the department to be administered by the director.

(b) The department may employ necessary personnel without regard to chapter 76 to assist with the implementation and continuing functions of this chapter. [L 2015, c 199, pt of §2]

§465D-4 License required. (a) Beginning on January 1, 2016, except as specifically provided in this chapter, no person shall engage in the practice of applied behavior analysis or use the title "licensed behavior analyst" or "behavior analyst" without a valid license issued pursuant to this chapter.

(b) Any person who violates this section shall be subject to a fine of not more than \$1,000 for each separate offense. Each day of each violation shall constitute a separate offense. [L 2015, c 199, pt of §2; am L 2018, c 205, §4]

§465D-5 Powers and duties of the director. In addition to any other powers and duties authorized by law, the director shall have the powers and duties to:

- (1) Grant, deny, renew, refuse to renew, restore, terminate, reinstate, condition, restrict, suspend, or revoke a license issued pursuant to this chapter;

- (2) Grant permission to a person to engage in the practice of applied behavior analysis and to use the title of "licensed behavior analyst" or a description indicating that the person is a licensed behavior analyst in this State;
- (3) Adopt, amend, or repeal rules pursuant to chapter 91 as the director finds necessary to carry out this chapter;
- (4) Administer, coordinate, and enforce this chapter;
- (5) Discipline a licensed behavior analyst on grounds specified by this chapter or chapter 436B or for any violation of rules adopted by the director pursuant to this chapter; and
- (6) Refuse to license a person for failure to meet the licensing requirements in this chapter or for any reason specified by this chapter as grounds to discipline a behavior analyst including but not limited to violations of the Behavior Analyst Certification Board's ethical guidelines for responsible conduct. [L 2015, c 199, pt of §2; am L 2018, c 205, §4]

§465D-6 Fees; disposition. (a) Upon issuance of a new license and at each license renewal period, each behavior analyst shall pay, in addition to a license fee or renewal fee, a surcharge of \$50, which shall be maintained in a separate account within the compliance resolution fund established pursuant to section 26-9(o). At the end of each quarter, the moneys contained in the separate account established pursuant to this section shall be transferred to the compliance resolution fund until such time that the total transferred amounts equal the amount appropriated in section 5 of Act 199, Session Laws of Hawaii 2015. Thereafter, no surcharge shall be assessed, and any funds in excess of the amount

appropriated in section 5 of Act 199, Session Laws of Hawaii 2015, shall be deposited into the compliance resolution fund.

(b) Application fees paid pursuant to this chapter shall not be refundable. Pursuant to section 26-9(1), the director shall establish examination, reexamination, license, renewal, restoration, enforcement, and other fees relating to the administration of this chapter by rule.

(c) Fees assessed pursuant to this chapter shall be used to defray costs incurred by the department in implementing this chapter. [L 2015, c 199, pt of §2; am L 2016, c 123, §2]

§465D-7 Exemptions. (a) This chapter is not intended to restrict the practice of other licensed or credentialed practitioners practicing within their own recognized scopes of practice and shall not apply to:

- (1) A licensed psychologist and any supervisee of the licensed psychologist; provided that applied behavior analysis services performed are within the boundaries of the licensed psychologist's education, training, and competence; provided further that neither the licensed psychologist nor any supervisee of the licensed psychologist purports to be a licensed behavior analyst; and provided further that master's level practitioners and postdoctoral fellows may provide training and supervision to direct support workers, paraprofessionals, caregivers, parents and guardians in a manner and to the extent determined by the supervising licensed psychologist.

For purposes of this paragraph, "supervisee" means a master's level practitioner, postdoctoral fellow, direct support worker, paraprofessional, caregiver, parent or guardian who provides applied behavior analysis services;

- (2) A licensed classroom teacher or an individual who is working as a classroom teacher and is enrolled in a teacher preparation program working towards licensure who implements but does not design applied behavior analysis services in a school setting in direct collaboration with a licensed behavior analyst or a licensed psychologist on or before July 1, 2019;
- (3) An individual who implements or designs applied behavior analysis services and possesses board certification as an assistant behavior analyst by the Behavior Analyst Certification Board and who practices in accordance with the most recent supervisory and ethical requirements adopted by the Behavior Analyst Certification Board under the direction of a licensed behavior analyst;
- (4) An individual who directly implements applied behavior analysis services and:
 - (A) Is credentialed as a registered behavior technician by the Behavior Analyst Certification Board, and is under the direction of a licensed behavior analyst; or
 - (B) Is a direct support worker who directly implements an applied behavior analysis program under the supervision of a licensed behavior analyst or licensed psychologist on or before January 1, 2020;

provided that for purposes of this paragraph, "direct support worker" means a paraprofessional who directly implements intervention or assessment plans under supervision and does not design intervention or assessment plans;

- (5) A family member, legal guardian, or caregiver implementing an applied behavior analysis plan and who acts under the direction of a licensed behavior analyst or Hawaii-licensed psychologist; provided that

for the purposes of this paragraph, "caregiver" means an individual who provides habilitative services in an adult foster home, developmental disabilities domiciliary home, adult residential care home, expanded adult residential care home, special treatment facility, or therapeutic living program pursuant to the medicaid home and community-based services waiver program authorized by section 1915(c) of the Social Security Act;

- (6) An individual who designs or implements applied behavior analysis services to participants in the medicaid home and community-based service waiver program pursuant to section 1915(c) of the Social Security Act on or before January 1, 2024;
- (7) An individual who engages in the practice of applied behavior analysis with nonhuman or nonpatient clients or consumers including but not limited to applied animal behaviorists and practitioners of organizational behavior management;
- (8) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined applied behavior analysis program of study, practicum, or intensive practicum; provided that the student's or fellow's activities or practice is directly supervised by a licensed behavior analyst, licensed psychologist, or an instructor from a nationally recognized training organization or in a Behavior Analyst Certification Board-approved course sequence; or
- (9) An individual pursuing experience in applied behavior analysis consistent with the Behavior Analyst Certification Board's experience requirements; provided that the experience is supervised by a licensed behavior analyst.

(b) Nothing in this chapter shall be construed to prevent any licensed psychologist from engaging in the practice of applied behavior analysis in this State as long as the licensed psychologist is not in any manner held out to the public as a "licensed behavior analyst" or "behavior analyst" and the behavior analysis services provided by the licensed psychologist are within the licensed psychologist's recognized scope of practice. [L 2015, c 199, pt of §2; am L 2016, c 107, §2 and c 123, §3; am L 2018, c 205, §3]

[\$465D-8] Application for licensure. The department shall issue a license under this chapter to an applicant for behavior analyst if the applicant provides satisfactory evidence to the department that the applicant meets the requirements for licensure contained in this chapter and rules adopted by the director and if the applicant for behavior analyst:

- (1) Successfully passed the Board Certified Behavior Analyst examination;
- (2) Maintains active status with the Behavior Analyst Certification Board as a board certified behavior analyst or board certified behavior analyst-doctoral; and
- (3) Pays all fees for licensure established by the director. [L 2015, c 199, pt of §2]

[\$465D-9] Licensure by endorsement. The director may issue a license by endorsement to an applicant who holds a current and unencumbered license as a behavior analyst in another state; provided that the requirements for a license in that state are deemed by the director to be equivalent to or higher than the current requirements for licensure in this State. [L 2015, c 199, pt of §2]

[\$465D-10] Renewal of license. Licenses issued pursuant to this chapter shall be valid for two years and shall be renewed upon the payment of a renewal fee within sixty days before the expiration of the license. Failure to renew a license shall result in forfeiture of that license. Licenses that have been forfeited may be restored within one year of the forfeiture date upon payment of renewal and restoration fees. Failure to restore a forfeited license within one year shall result in the automatic termination of the license. A person whose license has been terminated pursuant to this section shall be required to reapply for a new license as a new applicant. [L 2015, c 199, pt of §2]

§465D-11 Grounds for refusal to renew, reinstate, or restore a license and for denial, revocation, suspension, or condition of a license.

(a) In addition to any other acts or conditions provided by law, the director may refuse to renew, reinstate, or restore and may deny, revoke, suspend, or condition in any manner any license for any one or more of the following acts or conditions on the part of a licensee or license applicant:

- (1) Failure to meet or to maintain the conditions and requirements necessary to qualify for the granting of a license;
- (2) Engaging in false, fraudulent, or deceptive advertising, or making untruthful or improbable statements in advertising;
- (3) Engaging in the practice of applied behavior analysis while impaired by alcohol, drugs, physical disability, or mental instability;
- (4) Procuring through fraud, misrepresentation, or deceit a license to engage in the practice of applied behavior analysis;
- (5) Aiding and abetting an unlicensed person to directly or indirectly perform activities

- requiring a license for the practice of applied behavior analysis;
- (6) Engaging in professional misconduct, incompetence, gross negligence, or manifest incapacity in the practice of applied behavior analysis;
 - (7) Engaging in conduct or a practice contrary to recognized standards of the most recent ethical guidelines for the practice of applied behavior analysis as adopted by the Behavior Analyst Certification Board;
 - (8) Violating any condition or limitation imposed by the director on a license to practice applied behavior analysis;
 - (9) Engaging in the practice of applied behavior analysis in a manner that causes injury to one or more members of the public;
 - (10) Failing to comply with, observe, or adhere to any law in a manner that causes the director to determine that the applicant or holder is unfit to hold a license;
 - (11) Having a license revoked or suspended or other disciplinary action by any state or federal agency for any reason that is provided by the applicable licensing laws or by this section;
 - (12) Having been convicted or pleaded nolo contendere to a crime directly related to the qualifications, functions, or duties of the practice of applied behavior analysis;
 - (13) Failing to report in writing to the director any disciplinary decision issued against the licensee or applicant in another jurisdiction within thirty days of the disciplinary decision;
 - (14) Failing to report in writing to the director the Behavior Analyst Certification Board's revocation of the certification of a licensee or applicant within fifteen days of the revocation;
 - (15) Employing, whether gratuitously or for pay, any person not licensed pursuant to this

chapter to perform the functions or duties of the practice of applied behavior analysis; or

(16) Violating this chapter, chapter 436B, or any rule or order of the director.

(b) Any licensee or applicant who violates this section may also be fined not more than \$1,000 per violation. [L 2015, c 199, pt of §2; am L 2018, c 205, §§4, 5]