

56 N.J.R. 782(a)

VOLUME 56, ISSUE 9, MAY 6, 2024

RULE ADOPTIONS

Reporter

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*NJ - New Jersey Register > 2024 > MAY > MAY 6, 2024 > RULE ADOPTIONS
> LAW AND PUBLIC SAFETY -- DIVISION OF CONSUMER AFFAIRS*

Agency

LAW AND PUBLIC SAFETY > DIVISION OF CONSUMER AFFAIRS > BOARD OF APPLIED
BEHAVIOR ANALYST EXAMINERS

Administrative Code Citation

Adopted New Rules: N.J.A.C. 13:42B

Text

Board of Applied Behavior Analyst Examiners Rules

Proposed: May 15, 2023, at 55 N.J.R. 989(a).

Adopted: November 28, 2023, by the Board of Applied Behavior Analyst
Examiners, Suzanne Buchanan, Psy.D., BCBA-D, Chair.

Filed: March 22, 2024, as R.2024 d.036, **with non-substantial changes**
not requiring additional public notice and comment (see N.J.A.C. 1:30-
6.3).

Authority: N.J.S.A. 45:8B-96.

Effective Date: May 6, 2024.

Expiration Date: May 6, 2031.

[page=783] **Summary** of Public Comments and Agency Responses:

The official comment period ended July 14, 2023. The comment period
was extended for an additional 30 days to allow for additional

publicity; the extended comment period ended November 24, 2023. The Board of Applied Behavior Analyst Examiners (Board) received comments from the following individuals:

1. Elise Pozensky, M.S., BCBA, District Behavior Specialist, Clinton Township School District
2. Sean D. Casey, PhD, BCBA, LBS, Heartland Pediatric Feeding Disorders Services
3. Lindsey Hughes, M.S. Assistant Executive Director, ODP QM Certified, Certified Investigator, Dalesio and Associates, Inc.
4. Catriona Francis, Ed.M., BCBA, Director, Douglass Developmental Disabilities Center Graduate School of Applied and Professional Psychology
5. Catherine Chin, Alliance for the Betterment of Citizens with Disabilities, Executive Director
6. Katrina Mendicino
7. Thomas Baffuto, Executive Director, The Arc of New Jersey
8. Jeff Jacobs, MA, BCBA
9. Barrett Consulting
10. Patrick R. Progar, Ph.D., BCBA-D, President, New Jersey Association for Behavior Analysis, Inc.
11. Melissa Connor-Santos
12. Salvador Moran, Executive Director, ArcMorris NJ
13. Rebecca Reed, MA, LPC, NADD-CC, ACS, Director of Clinical Services, The Arc of Atlantic County
14. Patricia Jones, Chief Operations Officer, The Arc of Atlantic County
15. Linda Wright, M.A., CCC-SLP/L, BCBA, Clinical Director, Lovaas Institute
16. Stacy Giardino
17. SungWoo Kahng, Ph.D., BCBA-D, Complex Behavior Solutions, LLC
18. Andrew Patterson
19. Hollie Benincosa, MAFP, Executive Director, QABA Credentialing Board

20. Yosef Toledano, MPS, BCBA, EMT

21. Delia Sequeira, M.S., BCBA

22. Ira Heilveil, Ph.D., BCBA-D, QBA, Licensed psychologist

23. Darsi Beauchamp, PLPC, BCBA, Ph.D.

1. COMMENT: Two commenters support the new rules and the establishment of licensing standards for applied behavior analysts and assistant applied behavior analysts.

RESPONSE: The Board thanks the commenters for their support.

2. COMMENT: A commenter contends that requiring licensure for any person providing behavior support services would not have positive outcomes. The commenter contends that a licensure requirement would exacerbate the shortage of individuals able to provide behavior support services. According to the commenter, reimbursement rates for behavior support services do not match the rate for Board Certified Behavior Analyst (BCBA) reimbursement. The commenter states that behavior support professionals develop, assess, and create behavior support plans with evidence-based interventions based on applied behavior analysis guidelines. The commenter contends that the public should be able to choose to receive applied behavior analysis services or to receive behavior support services. The commenter also contends that behavior support professionals do not claim to provide applied behavior analysis therapy or present themselves as BCBAs.

RESPONSE: The services the commenter identifies as those provided by behavior support professionals constitute the practice of applied behavior analysis as the term is defined at N.J.S.A. 45:8B-93. Pursuant to N.J.S.A. 45:8B-98, a person who practices applied behavior analysis must be licensed as an applied behavior analyst or assistant applied behavior analyst, regardless of whether the person claims to provide applied behavior analysis or how the person presents themselves.

3. COMMENT: A commenter asks who is on the Board and how a person may be appointed to the Board.

RESPONSE: N.J.S.A. 45:8B-94 establishes that the Board consists of seven members. Two of those members are public members, one is from a department of the Executive Branch of State Government, three are applied behavior analysts, and one is an assistant applied behavior analyst. All seven members are appointed by the Governor. A list of individual Board members is available on the Board's website.

4. COMMENT: A commenter asked for the Board to share its proposed budget.

RESPONSE: The Board's budget is a public document that is available to any individual who submits a request to the Board.

5. COMMENT: A commenter asks how feedback and comments will be shared with stakeholders.

RESPONSE: This notice of adoption includes a summary of all the comments the Board received on its notice of proposal and responses to those comments.

6. COMMENT: A commenter contends that there is low pay for applied behavior analysts and asks that such individuals be classified as able to teach student with disabilities classified pursuant to the P-3 teaching certificate.

RESPONSE: The Preschool-Third Grade (P-3) teaching certificate is issued by the Department of Education, which establishes the qualifications to obtain the certificate. Recommendations as to amendments to those qualifications should be addressed to the Department of Education.

7. COMMENT: A commenter supports efforts to promote diversity and representation in the applied behavior analysis profession.

RESPONSE: The Board thanks the commenter for highlighting the importance of diversity and representation for the applied behavior analysis profession and supports efforts to promote this goal.

8. COMMENT: A commenter asks why the Board did not mimic Behavior Analyst Certification Board (BACB) standards and instead created its own rules.

RESPONSE: The Board is tasked with adopting rules that are necessary to administer the provisions of the Applied Behavior Analysts Licensing Act, N.J.S.A. 45:8B-91 et seq. The BACB is a nonprofit organization that credentials professional practitioners of applied behavior analysis. Certification from the BACB satisfies some of the eligibility requirements for licensure pursuant to N.J.S.A. 45:8B-99, but BACB standards were not created to administer the provisions in the Act and are not a substitute for Board rules.

9. COMMENT: A commenter is concerned that any person who identifies themselves as a licensed applied behavior analyst will be required to follow licensure rules even if that person would qualify for an exemption to licensure requirements pursuant to N.J.A.C. 13:42B-1.1(b). The commenter recommends that N.J.A.C. 13:42B-1.1(b) be amended so that persons who represent themselves as licensed applied behavior analysts or licensed assistant applied behavior analysts will not be subject to the rules at N.J.A.C. 13:42B unless they represent

themselves as independently operating and are not affiliated with any of the roles identified at N.J.A.C. 13:42B-1.1.

RESPONSE: N.J.A.C. 13:42B-1.1(b) sets forth exemptions to licensure requirements established at N.J.S.A. 45:8B-103. Pursuant to this rulemaking and statute, a person who is working in a setting that is exempt from licensure requirements need not obtain a license in order to provide applied behavior analysis services, as long as the person does not represent themselves as possessing a license or by any professional title regulated by the Act, such as "licensed applied behavior analyst" or "licensed assistant applied behavior analyst." N.J.S.A. 45:8B-103 dictates that any person who represents themselves as possessing a license or who uses a regulated professional title is subject to Board rules.

10. COMMENT: A commenter contends that N.J.A.C. 13:42B-1.1(b)1 does not include a provision from N.J.S.A. 45:8B-103, which states that P.L. 2019, c. 337, does not apply to any other profession licensed in New Jersey. The commenter contends this omission would impact any licensed professional not included in the list of professions at N.J.A.C. 13:42B-1.1(b)1.

RESPONSE: N.J.A.C. 13:42B-1.1(b) sets forth groups that are not required to obtain licensure and comply with the rules at N.J.A.C. 13:42B. N.J.A.C. 13:42B-1.1(b)1 states that the rules do not apply to any "persons licensed to practice a profession in New Jersey . . . provided they are providing services within their professional scope of practice." The list of professions in this rulemaking provide examples of professions that are [page=784] exempt, it is not an exclusive list. Any licensed professional whose scope of practice includes the provision of applied behavior analysis services is exempt from Board rules.

11. COMMENT: A commenter is concerned that psychologists and other professionals would be permitted to provide applied behavior analysis without being licensed by the Board and asks how this would conflict with BCBAs.

RESPONSE: The commenter is correct, pursuant to N.J.S.A. 45:8B-103, psychologists and other professionals may provide applied behavior analysis without being licensed by the Board as long as the services provided by those licensed professionals are within the boundaries of their education, training, and competence. The Board is not aware of any conflicts this statutory exemption would create for BCBAs, who would need to be licensed by the Board as applied behavior analysts in order to provide applied behavior analysis in New Jersey.

12. COMMENT: N.J.A.C. 13:42B-1.1(b)9 recognizes that N.J.A.C. 13:42B does not apply to applied behavior analysts or assistant applied behavior analysts who work in New Jersey for no more than 10 consecutive business days, or no more than 15 intermittent business days, in any 90-day period. Such analysts must reside outside of New Jersey and the majority of their practice must be outside of New Jersey. A commenter asks if a license is required if an individual works for more than 15 days in a 90-day period. The commenter also asks if an employee who works for two to three days over a three-week period will qualify for the exemption to licensure established at N.J.A.C. 13:42B-1.1(b)9. Finally, the commenter asks if the number of days is person or case specific and if, when there is a new client, the 15-day period begins anew for the new client.

RESPONSE: If an individual works in New Jersey as an applied behavior analyst or assistant applied behavior analyst for more than 10 consecutive business days, or 15 intermittent business days, within a 90-day period, that individual must be licensed by the Board. An individual who works for two to three days over a three-week period would qualify for the exemption at N.J.A.C. 13:42B-1.1(b)9, as long as that individual worked for 10 or less consecutive business days or 15 or less intermittent business days within a 90-day period. The number of days at N.J.A.C. 13:42B-1.1(b)9 is the total number of days worked in New Jersey, it is not client specific, and the count of days does not restart for each new client.

13. COMMENT: A commenter contends that the new rules do not protect consumers in public schools. The commenter contends that children in public schools constitute the major portion of those receiving behavior analytic services and believes that excluding schools from licensing requirements will lead to inferior services being provided by unlicensed individuals.

RESPONSE: N.J.S.A. 45:8B-103 establishes that an individual is exempt from Board rules if that individual is an employee of a school district, charter school, education services commission, or private school, the individual is performing regular employment duties on behalf of the school employer, and remuneration for the provision of services is provided solely by the school employer. Such an individual cannot represent themselves as possessing a license or represent themselves by a professional title regulated by the Board. If an individual meets these requirements at N.J.S.A. 45:8B-103, they may provide applied behavior analysis services without obtaining a Board license and complying with Board rules.

14. COMMENT: A commenter is concerned that the rules will not apply to employees of school districts. The commenter points out that many BCBAs

work in schools and contends that some of these BCBAs may become licensed. The commenter is concerned that there could be issues if some BCBAs employed by schools are licensees who are required to comply with Board rules and other employees choose to not become licensed.

RESPONSE: As stated in the Response to Comment 13, N.J.S.A. 45:8B-103 establishes that an individual employed by a school district need not obtain a license from the Board in order to provide applied behavior analysis in that school district. Any individual who decides to obtain licensure from the Board is subject to Board rules regardless of where those services are provided.

15. COMMENT: A commenter recommends that behavior analysts working in State psychiatric hospitals be exempted from licensing requirements. The commenter believes such an exemption is appropriate as the Board already recognizes exemptions for Department of Human Services, Division of Developmental Disabilities, and Department of Health, New Jersey Early Intervention Program employees.

RESPONSE: N.J.S.A. 45:8B-103 establishes the settings that are exempt from Board rulemaking. The Board does not have the authority to create new exemptions as recommended by the commenter. The Board points out that the exemption for individuals working in the Department of Human Services, Division of Developmental Disabilities, setting will be effective until three years from the adoption of N.J.A.C. 13:42B and that the exemption for individuals working in the Department of Health, New Jersey Early Intervention Program, setting will be effective for five years from the adoption of N.J.A.C. 13:42B. Once these effective dates have passed, any individual working in these settings will be required to obtain Board licensure in order to provide applied behavior analysis.

16. COMMENT: A commenter is concerned that individuals acting as behaviorists in Division of Developmental Disabilities' facilities are not BCBAs and will not need to obtain a license to create behavior plans.

RESPONSE: As discussed in the Response to Comment 15, pursuant to N.J.S.A. 45:8B-103, individuals working in the Department of Human Services, Division of Developmental Disabilities' setting will not be required to obtain licensure from the Board to provide applied behavior analysis in that setting for three years from the effective date at N.J.A.C. 13:42B. Once that date has passed, individuals working in this setting will be required to obtain Board licensure.

17. COMMENT: A commenter recommends that the exemptions set forth at N.J.A.C. 13:42B-1.1(b) be amended to exempt employees of a public

college or university and programs run by such colleges or universities.

RESPONSE: N.J.S.A. 45:8B-103 establishes exemptions to licensure requirements. The Board does not have the authority to create new exemptions as the commenter recommends.

18. COMMENT: A commenter contends that the term "licensed facilities" is used throughout the rules at N.J.A.C. 13:42B. The commenter points out that there is no definition of "licensed facilities" at N.J.A.C. 13:42B-1.2 and asks if the Board will establish a process for ABA programs to qualify as "licensed facilities."

RESPONSE: The term "licensed facilities" is not used at N.J.A.C. 13:42B. The term "licensed facility" was used in the summary of the notice of proposal in reference to N.J.A.C. 13:42B-5.2(e). This rulemaking establishes standards for delegations to paraprofessional technicians. The rulemaking does not use the term "licensed facilities," it identifies standards for delegations in facilities licensed by the Department of Children and Families, Department of Health, or Department of Human Services. As the term "licensed facilities" is not used at N.J.A.C. 13:42B, it is not necessary to define this term at N.J.A.C. 13:42B-1.2 or for the Board to establish a process for programs to qualify as "licensed facilities."

19. COMMENT: A commenter contends that N.J.A.C. 13:42B-2.1 and 2.2 do not include the requirements at N.J.S.A. 45:8B-100 that an applicant be at least 21 year of age and of good moral character.

RESPONSE: The applications for licensure will require that an applicant indicate their age and provide proof of good moral character. As N.J.A.C. 13:42B-2.1 and 2.2 require applicants to submit completed applications for licensure, the requirements at N.J.S.A. 45:8B-100 referred to by the commenter are adequately addressed by the rulemaking.

20. COMMENT: A commenter recommends that the credentialing of BCBAs should continue to be based on the Visiting Nurse Association (VNA) model and in-home nursing organizations.

RESPONSE: The Board does not believe that credentialing requirements for BCBAs, which are set forth by the BACB, are based on the VNA model or in-home nursing organizations.

21. COMMENT: A commenter is concerned that the BACB examination is not recognized as an examination for licensure.

RESPONSE: N.J.A.C. 13:42B-2.1 and 2.2 require an applicant for licensure to submit proof that the applicant is certified by the BACB.

Passing the BACB examination is a requirement to obtain BACB certification.

[page=785] 22. COMMENT: A commenter contends that N.J.A.C. 13:42B-2.3 does not recognize that practitioners licensed in the District of Columbia can obtain a license in New Jersey.

RESPONSE: N.J.S.A. 45:1-7.5, which is the statutory authority for N.J.A.C. 13:42B-2.3, defines "state" as "a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any other territory or possession of the United States." This statutory definition governs the use of the term "state" at N.J.A.C. 13:42-2.3 and practitioners in the District of Columbia, or any other jurisdiction encompassed by the statutory definition of "state," will be able to obtain a license pursuant to the requirements at N.J.A.C. 13:42B-2.3.

23. COMMENT: Two commenters oppose the requirement at N.J.A.C. 13:42B-2.3 that an applicant for licensure through reciprocity practice for at least two years within the previous five years prior to applying for licensure. The commenters are concerned that this requirement would prevent individuals recently licensed in other states from obtaining a New Jersey license. One of the commenters is unaware of a precedent for this requirement.

RESPONSE: N.J.S.A. 45:1-7.5 requires an applicant for licensure through reciprocity to have "been practicing in the profession for which licensure in this State is sought, within the five years prior to the date of the application." The Board, as have many other professional licensing boards and committees within the Division of Consumer Affairs, deemed that requiring an applicant to have worked for all of the previous five years was unduly harsh for applicants for licensure through reciprocity. Requiring an applicant to work for at least two of the previous five years would ensure that the applicant had the requisite experience to qualify for licensure. The Board points out that an individual licensed in another state who has not worked for at least two years can apply for an initial license pursuant to N.J.A.C. 13:42B-2.1 or 2.2.

24. COMMENT: Two commenters support formal reciprocity agreements with other states, such as PSYPACT for psychologists. The commenters contend this would expedite licensure in New Jersey.

RESPONSE: The formal reciprocity agreements referred to by the commenters are interstate compacts. In order to enter into such a compact, a state needs to enact specific legislation that authorizes participation in the compact. The Board is unaware of any interstate compact addressing the practice of applied behavior analysis.

25. COMMENT: A commenter contends that aligning New Jersey licensure requirements with BACB requirements will help individuals who are from states that do not require licensure to more easily obtain a license in New Jersey.

RESPONSE: The Board is required to comply with the requirements of the Act and cannot base its licensure requirements on BACB requirements. The Board does recognize BACB certification as one of the qualifications to obtain licensure, but such certification is not the sole requirement.

26. COMMENT: Three commenters are concerned that the rules recognize only one entity for applied behavior analysis certification and contend there are multiple credentialing entities, one of which is the Qualified Applied Behavior Analysis Credentialing Board (QABA). The commenters recommend that the rules be amended to recognize QABA as a certification entity. One of the commenters contends that the QABA credential exceeds those of the BACB and that it is certified by ANSI, which is a higher standard than certification from the NCCA which certifies the BACB. Another commenter recommends that the rules be amended so that any reference to "BACB" be replaced with "accredited certifying entity by either the American National Standards Institute (ANSI) or the NCCA." The commenter also recommends that any reference to "BCBA" be replaced with "behavior analyst," any reference to "BCaBA" be replaced with "assistant behavior analyst," and any reference to "RBT" be replaced with "behavior technician."

RESPONSE: N.J.S.A. 45:8B-99 and 100 establish standards for the recognition of an entity that issues certifications related to applied behavior analysis. Such an entity must be "a nonprofit organization accredited by the National Commission for Certifying Agencies, the American National Standards Institute, or a substantial equivalent to credential professional practitioners of applied behavior analysis ...". The Board can recognize only those entities that meet these statutory requirements. The Board has been informed that QABA is a for-profit organization which is accredited by the American National Standards Institute. While QABA meets the accreditation requirement from the statute, it does not meet the nonprofit requirement and the Board cannot recognize QABA as the commenters request. As the Board will not recognize QABA, it is not necessary to replace the terms identified by the commenter.

27. COMMENT: A commenter asks if continuing education completed in order to satisfy BACB requirements will meet Board continuing education requirements.

RESPONSE: The Board does not require licensees to complete continuing education in order to renew licensure.

28. COMMENT: A commenter points out that N.J.A.C. 13:42B-4.1(a) refers to N.J.A.C. 13:42B-1.1(c) and that there is no subsection (c) at N.J.A.C. 13:42B-1.1.

RESPONSE: The reference to subsection (c) was a typographical error. The Board has changed N.J.A.C. 13:42B-4.1(a) to replace reference to N.J.A.C. 13:42B-1.1(c) with a reference to N.J.A.C. 13:42B-1.1(b).

29. COMMENT: N.J.S.A. 13:42B-4.4(a) requires a licensee to wear a name tag when providing in-person care with the licensee's name, the term "licensed applied behavior analyst" or "licensed assistant applied behavior analyst," the licensee's professional degree, and, if the licensee provides care in a hospital, a recent photograph. Several commenters are concerned with this requirement. Some of these commenters work in school districts and are required to wear identification tags by those districts. These commenters question if the identification tag they wear in school will satisfy the requirements at N.J.A.C. 13:42B-4.4. One of these commenters recommended that school employees be exempted from identification tag requirements. One commenter who works in a school district removes school-issued identification tags during crisis interventions. Other commenters contend that requiring identification tags could be stigmatizing for clients receiving services from licensees or could violate the confidentiality of clients. One of the commenters recommended that N.J.A.C. 13:42B-4.4 be amended so that licensees would be required to wear identification tags that are identical to those worn by other licensed professionals in an institution.

RESPONSE: N.J.S.A. 45:1-70 requires every licensed health care professional, including those licensed by the Board, to wear a name tag when providing in-person care and establishes the information that must be included on this name tag. There are no exemptions to this requirement and licensed applied behavior analysts and licensed assistant applied behavior analysts must comply with the requirements at N.J.S.A. 45:1-70 and N.J.A.C. 13:42B-4.4 whenever providing in-person care, regardless of the setting in which care is provided. As long as an identification tag worn in a school has all of the information required pursuant to N.J.S.A. 45:1-70 and N.J.A.C. 13:42B-4.4, it will satisfy the requirements of the statute and rules. As N.J.S.A. 45:1-70 requires all licensed health care professionals to wear the same name tag, it is not necessary to amend N.J.A.C. 13:42B-4.4 as the commenter recommends.

30. COMMENT: N.J.A.C. 13:42B-4.4(c) requires a licensee to post signage in any office where they provide services in an ambulatory setting which states that the licensee is a licensed applied behavior analyst or licensed assistant applied behavior analyst and which indicates the licensee's professional degree. A commenter who works in a school district asks if the signage must be in their office or in every building in which they provide services. Another commenter recommends that the rule be amended so that school employees would be exempt from signage requirements.

RESPONSE: N.J.S.A. 45:1-70 requires a licensed health care professional to post signage indicating the licensure status and professional degree of the professional in the office where the health care professional provides health care services to scheduled patients in an ambulatory setting. The Board does not have the authority to waive this statutory requirement. If a licensee provides services in their office, the signage requirements at N.J.S.A. 45:1-70 and N.J.A.C. 13:42B-4.4(c) will apply. Licensees may also be required to post this signage in individual schools, depending on whether the site at which services are being provided constitutes an office in which services have been scheduled. The Board points out that the term "patient" was used at N.J.A.C. 13:42B-4.4 to refer to the recipient of applied behavior analysis. This term was also used at N.J.A.C. 13:42B-6.7 and 7.8. The term used everywhere else in [page=786] the rulemaking is "client." The Board will change N.J.A.C. 13:42B-4.4, 6.7, and 7.8 to replace the term "patient" with "client."

31. COMMENT: Four commenters are concerned with N.J.A.C. 13:42B-5.1 and 5.2. The commenters point out that many agencies do not have BCBAs on staff and obtain services from consultant BCBAs. The commenters contend that the rules give a BCBA authority over an organization's operations as the rule prohibits delegation of the assessment of a client, development of a treatment plan, or development of interventions. The rule also allows a BCBA to identify the individual who will supervise paraprofessionals performing interventions and authority over staff employed by an organization.

RESPONSE: N.J.A.C. 13:42B-5.1 addresses the supervision of licensed assistant applied behavior analysts. N.J.A.C. 13:42B-5.2 addresses delegation to a paraprofessional, which is defined at N.J.A.C. 13:42B-1.2 as "an individual who provides applied behavior analysis services pursuant to a delegation from a licensee." As such, these rules apply only to the provision of applied behavior analysis services. The rules do not give a licensed applied behavior analyst authority over an organization's operations. The rules ensure that, when a licensed assistant applied behavior analyst or paraprofessional is providing services, the licensed assistant applied behavior analyst is being

supervised as required pursuant to N.J.S.A. 45:8B-93 and 100 and the paraprofessional is under the extended authority and direction of a licensed applied behavior analyst as required pursuant to N.J.S.A. 45:8B-103. N.J.A.C. 13:42B-5.2 prohibits a licensed applied behavior analyst from delegating the assessment of a client, development of a treatment plan, or development of interventions, as a licensed applied behavior analyst is the only person who has the education and experience to perform these tasks when it comes to the delivery of applied behavior analysis. N.J.A.C. 13:42B-5.2 requires a licensed applied behavior analyst to identify the individual who will supervise a paraprofessional performing delegated applied behavior analysis interventions in recognition that the licensed applied behavior analyst may not be on the staff of the facility. The rule ensures that the licensed applied behavior analyst is aware that there will be someone in that facility who is in charge of the paraprofessional.

32. COMMENT: Four commenters contend that there are individuals with intellectual and developmental disabilities who have behavioral challenges that do not require intervention from a BCBA. When administering applied behavior analysis therapy and developing a behavior modification plan, it is appropriate for a BCBA to perform the assessment and develop the plan, but not every person is an appropriate candidate for applied behavior analysis. The commenters contend that limiting assessment to BCBA's does not recognize other practitioners who can provide services. The commenters agree that when applied behavior analysis is appropriate, a BCBA should develop the plan, but believes that N.J.A.C. 13:42B-5.1 and 5.2 prohibit other clinicians from providing behavioral work that is outside the scope of applied behavior analysis.

RESPONSE: If an assessment is unrelated to applied behavior analysis, there is no requirement that a licensed applied behavior analyst perform that assessment. N.J.A.C. 13:42B-5.1 and 5.2 do not prohibit other clinicians from providing services; however, when such services constitute applied behavior analysis as defined pursuant to N.J.S.A. 45:8B-93 and N.J.A.C. 13:42B-1.2, those services can only be provided by an individual who is licensed by the Board, who is working pursuant to a delegation from an individual licensed by the Board, or who is exempt from licensure requirements pursuant to N.J.S.A. 45:8B-103 and N.J.A.C. 13:42B-1.1.

33. COMMENT: Two commenters contend that N.J.A.C. 13:42B-5.1 and 5.2 conflict with the Home and Community Based Settings Rule from the Centers for Medicare & Medicaid. This rule requires service planning to be developed through a person-centered process that addresses health and long-term services and support needs in a manner that reflects individual preferences and goals. The commenters contend that N.J.A.C.

13:42B-5.1 and 5.2 would require all clients in need of applied behavior analysis to be grouped together in order to comply with the Board's oversight and implementation mandates.

RESPONSE: N.J.A.C. 13:42B-5.1 and 5.2 do not require clients to be grouped together. These rules ensure that licensed assistant applied behavior analysts are properly supervised and that paraprofessionals, who are delivering behavior analysis services pursuant to the extended authority and direction of a licensee, are receiving the direction they need to deliver those services.

34. COMMENT: Two commenters point out that N.J.A.C. 13:42B-5.1 cites existing BACB standards for supervisor education. The commenters are concerned that updates or modifications to those standards would not be recognized by the rulemaking. One of the commenters recommends that the rule be amended to require supervisor education be "the supervision curriculum as consistent with the BACB's most-up-to-date published requirements."

RESPONSE: N.J.A.C. 13:42B-5.1(b) requires licensed applied behavior analysts who supervise licensed assistant applied behavior analysts to complete an eight-hour training course that covers the BACB Supervisor Training Curriculum Outline (Outline) as it is amended and supplemented. The language in the rulemaking referring to "amended and supplemented" indicates that any time the Outline is updated, the updated version is incorporated by reference in the rulemaking. It is not appropriate to amend the rules as the commenters recommend as the existing text already achieves their objective.

35. COMMENT: A commenter asks how a credentialed BCBA supervisor may provide proof of satisfactory supervision.

RESPONSE: A licensed applied behavior analyst is not required to provide proof that they have provided satisfactory supervision of licensed assistant applied behavior analysts. When applying for a license, an assistant applied behavior analyst will need to supply the identity of the licensed applied behavior analyst who will supervise them pursuant to N.J.S.A. 45:8B-100 and N.J.A.C. 13:42B-2.2.

36. COMMENT: Two commenters contend that the standards at N.J.A.C. 13:42B-6.3 on testimonial advertising do not conform to BACB Ethics Code requirements for testimonial advertising. The rule allows for any client to provide a testimonial. The Ethics Code does not allow current clients to provide testimonials. One commenter is concerned that the rule could put licensees at risk of violating codes of ethics. Another commenter recommends that N.J.A.C. 13:42B-6.3 be amended to conform to BACB Ethics Code requirements.

RESPONSE: A licensee who chooses to advertise a testimonial from a current client would not be in violation of Board rules and the Board would take no action against that licensee. A licensee is required to comply with Board rules, but a licensee also may choose to comply with standards of professional organizations, like the Ethics Code referred to by the commenter, which the Board is not authorized to enforce. The Board points out that the requirements at N.J.A.C. 13:42B-6.3 reflect the requirements that other professional licensing boards have regarding testimonial advertising.

37. COMMENT: A commenter is concerned that licensees who are school employees would find it difficult to follow both Board requirements and school requirements when it comes to recordkeeping.

RESPONSE: It is difficult to assess whether there is any conflict between Board rules and school requirements as the commenter did not identify any specific provisions or issues. The Board does not believe that licensees who work in schools will be incapable of complying with Board rules on recordkeeping. The standards imposed by the Board's rules are there to ensure that appropriate applied behavior analysis services are provided to clients and to protect the health, safety, and welfare of clients who receive such services.

38. COMMENT: N.J.A.C. 13:42B-6.5(c) requires records to be kept for seven years from the date of last entry or until a client turns 25 years old, whichever is longer. A commenter contends that this requirement does not conform to that imposed on other licensed professionals and contends that the American Psychological Association recommends that records be kept for seven years from the last date or service or until three years after a minor reaches the age of majority, whichever is later. The commenter recommends that N.J.A.C. 13:42B-6.5(c) be amended to require that records be kept for seven years or until a client's 21st birthday, whichever is longer.

RESPONSE: The commenter is incorrect about recordkeeping requirements for other licensed professionals in New Jersey, including psychologists. The Board of Psychological Examiners requires, at N.J.A.C. 13:42-8.1, that records for minors be kept for seven years from the date of the last entry or until the client turns 25 years old, whichever is longer. This standard is the same that is imposed pursuant to N.J.A.C. [page=787] 13:42B-6.5(c) and the Board will not change the rules as the commenter recommends.

39. COMMENT: A commenter recommends that the Board provide more explicit rules as to guidelines for computer-based versus paper-based recordkeeping.

RESPONSE: The Board believes that N.J.A.C. 13:42B-6.7 provides adequate standards for records kept solely on computer. This rulemaking is modeled on similar recordkeeping rules for other health care professional licensing boards within the Division of Consumer Affairs.

40. COMMENT: N.J.A.C. 13:42B-6.7 refers to client records maintained solely on a computer. A commenter asks for clarification as to the term "solely." The commenter posits a situation wherein data is recorded by hand or when licensees write informal written notes by hand. The commenter asks if these would be considered client records.

RESPONSE: The use of the term "solely" at N.J.A.C. 13:42B-6.7 refers to records that are kept only on computers and for which there are no physical records. The instances identified by the commenter could constitute information, specifically quantitative data collection and analysis or the summary of a session, which are required to be part of a client record pursuant to N.J.A.C. 13:42B-6.5.

41. COMMENT: A commenter is concerned that substantial licensing fees will disproportionately affect minority communities. The commenter recommends that the Board investigate alternative funding mechanisms, scholarship programs, or subsidies to alleviate financial burdens on those seeking licensure.

RESPONSE: N.J.S.A. 45:1-3.2 requires the Board to charge a fee for licensure necessary to defray expenses incurred by the Board in its performance of its duties. The Board does not have the ability to avail itself of alternative funding mechanisms. The Board does not believe that the licensing fees of \$ 200.00 for licensed applied behavior analysts and \$ 100.00 for licensed assistant applied behavior analysts constitute substantial fees.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the adopted new rules.

Full text of the adopted new rules follows (additions to the proposal indicated in boldface with asterisks ***thus***; deletions from the proposal indicated in brackets with asterisks *[thus]*):

CHAPTER 42B

BOARD OF APPLIED BEHAVIOR ANALYST EXAMINERS RULES

SUBCHAPTER 1. GENERAL PROVISIONS

13:42B-1.1 Purpose and scope

(a) The purpose of this chapter is to implement the provisions at P.L. 2019, c. 337 (N.J.S.A. 45:8B-91 et seq.), which created the Board of Applied Behavior Analyst Examiners.

(b) This chapter does not apply to any of the following persons, unless they represent themselves as licensed applied behavior analysts or licensed assistant applied behavior analysts or by any title set forth at N.J.A.C. 13:42B-4.1:

1. Persons licensed to practice a profession in New Jersey, including physicians, psychologists, psychoanalysts, marriage and family therapists, social workers, professional or rehabilitation counselors, or speech-language pathologists or audiologists, provided they are providing services within their professional scope of practice;

2. Family members of recipients of applied behavior analysis services who implement applied behavior analysis treatment plans with the recipients pursuant to the extended authority and direction of a licensee;

3. Paraprofessional technicians who deliver applied behavior analysis services pursuant to the extended authority and direction of a licensee, provided that such paraprofessional technicians use titles that indicate their nonprofessional status;

4. Applied behavior analysts who practice with nonhumans, and who may use the title "applied behavior analysts," including applied animal behaviorists and animal trainers;

5. Professionals who provide general applied behavior analysis services to organizations, and who may use the title "applied behavior analysts," if those services are for the benefit of the organizations and do not involve direct services to individuals;

6. Matriculated college or university students whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or post-doctoral fellowship, if the applied behavior analysis activities pursuant to this exemption are directly supervised by licensed applied behavior analysts, psychologists, or exempt professionals in this State, instructors in a course sequence approved by the Board, or another qualified faculty member, provided that such students use titles that indicate their nonprofessional status;

7. Unlicensed persons pursuing experience in applied behavior analysis consistent with the experience requirements of BACB, if the experience is supervised in accordance with the requirements of the BACB;

8. Persons who teach applied behavior analysis in institutes accredited by a regional accrediting body recognized by the United States Department of Education, Office of Postsecondary Education, or who conduct behavior analytic research, and who may use the title "applied behavior analysts," if the teaching or research does not involve the direct delivery of applied behavior analysis services to individuals or the supervision of individuals who provide applied behavior analysis to individuals;

9. Applied behavior analysts or applied assistant applied behavior analysts who work in New Jersey for no more than 10 consecutive business days, or no more than 15 intermittent business days, in any 90-day period, if the analysts reside outside, and the analysts' major practice is outside of, New Jersey, and the analysts give the Board a summary of qualifications and a minimum of 10 days written notice of the analysts' intention to practice in the State pursuant to this section, provided they:

i. Are certified or licensed in another state under substantially equivalent requirements as the Board's;

ii. Are certified by the BACB as BCBAs, BCBA-Ds, or BCaBAs; or

iii. Reside in a state that does not certify or license applied behavior analysts and the Board considers the analysts' professional qualifications to be substantially equivalent to the Board's requirements for licensure, as long as they have not been denied licensure by the Board;

10. Employees of a school district, charter school, education services commission, or private school in the performance of regular employment duties, if the provision of applied behavior analysis services is only on behalf of the school employer and remuneration for the provision of those services is provided solely by the school employer;

11. Persons working under the authority of, or under contract with, the Division of Developmental Disabilities, in the Department of Human Services, if the provision of applied behavior analysis services is only on behalf of, or under contract with, the Division of Developmental Disabilities and remuneration for the provision of those services is provided solely by the Division of Developmental Disabilities or one of its contracted providers. This provision shall be in effect until *[(three years from the effective date of this chapter)]* ***May 6, 2027***; and

12. Persons who are working under the authority of, and under contract with, the New Jersey Early Intervention Program, in the Department of Health, if the provision of applied behavior analysis services is only

on behalf of, or under contract with, the New Jersey Early Intervention Program or one of its contracted providers. This provision shall be in effect until *[(five years from the effective date of these rules)]*
***May 6, 2029*.**

13:42B-1.2 Definitions

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

"Applied behavior analysis" means the practice of designing, implementing, and evaluating instructional and environmental modifications to produce socially significant improvements in human behavior, including the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. Applied behavior analysts utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop [page=788] new behaviors, increase or decrease existing behaviors, and emit behaviors pursuant to specific environmental conditions. The practice of behavior analysis does not include psychological testing, diagnosis of mental, physical, or speech language, hearing, and other communication and swallowing disorders, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and counseling as treatment modalities.

"BACB" means the Behavior Analyst Certification Board.

"BCaBA" means a Board Certified Assistant Behavior Analyst from the BACB.

"BCBA" means a Board Certified Behavior Analyst from the BACB.

"BCBA-D" means as Board Certified Behavior Analyst-Doctoral from the BACB.

"Board" means the State Board of Applied Behavior Analyst Examiners.

"Licensed applied behavior analyst" means a person who holds a current, valid license to practice applied behavior analysis issued by the Board.

"Licensed assistant applied behavior analyst" means a person who holds a current, valid license to practice applied behavior analysis under the ongoing supervision of a licensed applied behavior analyst issued by the Board.

"Licensee" means an individual who is licensed as a licensed applied behavior analyst or as a licensed assistant applied behavior analyst.

"Paraprofessional technician" means an individual who provides applied behavior analysis services pursuant to a delegation from a licensee and who is not a licensed applied behavior analyst, licensed assistant applied behavior analyst, or who does not otherwise qualify for exemption to licensure requirements pursuant to N.J.S.A. 45:8B-103.b(2) or N.J.A.C. 13:42B-1.1. "Paraprofessional technician" includes a Registered Behavior Technician (RBT) certified by the BACB.

SUBCHAPTER 2. APPLICATION FOR LICENSURE

13:42B-2.1 Application for a license as an applied behavior analyst

(a) An applicant for a license as an applied behavior analyst shall submit to the Board:

1. A completed application for license on a form available from the Board;

2. Proof that the applicant holds a master's degree or doctoral degree from an institution accredited by a regional accrediting body recognized by the United States Department of Education, Office of Postsecondary Education;

3. Proof that the applicant holds current certification as a BCBA or BCBA-D; and

4. The application fee set forth at N.J.A.C. 13:42B-8.1.

(b) In addition to the requirements at (a) above, an applicant shall complete the jurisprudence online orientation.

13:42B-2.2 Application for a license as an assistant applied behavior analyst

(a) An applicant for a license as an assistant applied behavior analyst shall submit to the Board:

1. A completed application for license on a form available from the Board;

2. Proof that the applicant holds a bachelor's degree from an institution accredited by a regional accrediting body recognized by the United States Department of Education, Office of Postsecondary Education;

3. Proof that the applicant holds current certification as a BCaBA;

4. The identity of the licensed applied behavior analyst who will supervise the applicant; and

5. The application fee set forth at N.J.A.C. 13:42B-8.1.

(b) In addition to the requirements at (a) above, an applicant shall complete the jurisprudence online orientation.

13:42B-2.3 Licensure by reciprocity

(a) Upon receipt of a completed application and application fee, the Board shall issue a license to any person who documents that he or she holds a valid, current corresponding license in good standing issued by another state, if:

1. The Board determines that the state that issued the license has or had at the time of issuance, education, training, and examination requirements for licensure substantially equivalent to the current Board standards;

2. The applicant has been practicing as an applied behavior analyst or assistant applied behavior analyst for a period of at least two years within the five years prior to the date of application; and

3. The requirements at (b) below are satisfied.

(b) Prior to the issuance of the license, the Board shall have received:

1. Documentation that the applicant's license in the other state is in good standing; and

2. Designation of an agent in New Jersey for service of process if the applicant is not a New Jersey resident and does not have an office in New Jersey.

(c) For purposes of this section, "good standing" means that:

1. No action has been taken against the applicant's license by any licensing board;

2. No action adversely affecting the applicant's privileges to practice applied behavior analysis has been taken by any out-of-State institution, organization, or employer;

3. No disciplinary proceeding is pending that could affect the applicant's privileges to practice applied behavior analysis;

4. All fines levied by any out-of-State board have been paid; and

5. The applicant has not been convicted of, or engaged in acts constituting, a crime or offense that has a direct or substantial relationship to activities regulated by the Board or is of a nature such that issuing a license to the applicant would be inconsistent with the public's health, safety, or welfare.

(d) For purposes of this section, a "substantially equivalent" examination need not be identical to the current examination requirements of this State, but such examination shall be nationally recognized and of comparable scope and rigor.

(e) The Board, after the licensee has been given notice and an opportunity to be heard, may revoke any license based on a license issued by another state obtained through fraud, deception, or misrepresentation.

(f) An applicant shall complete the jurisprudence on-line orientation.

(g) The Board may grant a license without examination to an applicant seeking reciprocity who holds a corresponding license from another state who does not meet the good standing requirement at (a) above due to a pending action by a licensing board, a pending action by an out-of-State institution, organization, or employer affecting the applicant's privileges to practice, a pending disciplinary proceeding, or a pending criminal charge or arrest for a crime, provided the alleged conduct of the applicant that is the subject of the action, proceeding, charge, or arrest does not have a direct or substantial relationship to the practice of applied behavior analysis or is of a nature such that certification, registration, or licensure of the person would be inconsistent with the public's health, safety, or welfare.

13:42B-2.4 Abandonment of application for licensure

(a) An application for a license submitted to the Board will be deemed abandoned if:

1. The individual applying for the license has not submitted to the Board all of the information and documentation required to obtain a license pursuant to N.J.A.C. 13:42B-2.1, 2.2, or 2.3; and

2. One year has elapsed since the last notice to the applicant was sent by the Board informing the applicant that the Board had not received all of the information and documentation required for licensure.

(b) If an application for licensure is deemed abandoned pursuant to (a) above, the Board shall administratively close the application and shall dispose of any information or documentation submitted by the

applicant pursuant to the Division of Consumer Affairs' record retention plan.

(c) An individual whose application for licensure has been administratively closed by the Board pursuant to (a) above may reapply for licensure pursuant to N.J.A.C. 13:42B-2.1, 2.2, or 2.3.

SUBCHAPTER 3. RENEWAL OF LICENSURE

13:42B-3.1 Renewal of licensure

(a) The Board shall send a notice of renewal to each licensee at least 60 days prior to the expiration of the license. The notice of renewal shall explain inactive renewal and advise the licensee of the option to renew as [page=789] inactive. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew, provided that the license is renewed within 60 days from the date the notice is sent or within 30 days following the date of license expiration, whichever is later.

(b) A licensee shall renew the license for a period of two years from the last expiration date. The licensee shall submit to the Board, prior to the date of license expiration:

1. A renewal application;
2. Proof that the licensee is currently certified as a BCBA, BCBA-D, or BCaBA; and
3. The renewal fee set forth at N.J.A.C. 13:42B-8.1.

(c) A licensee may renew a license by choosing inactive status. A licensee electing to renew as inactive shall not engage in the practice of applied behavior analysis, or hold themselves out as eligible to engage in the practice of applied behavior analysis in New Jersey, while the licensee remains on inactive status.

(d) If a licensee does not renew the license prior to its expiration date, the licensee may renew the license within 30 days of its expiration by submitting a renewal application, a renewal fee, and a late fee as set forth at N.J.A.C. 13:42B-8.1. During this 30-day period, the license shall remain valid and the licensee shall not be deemed to be practicing without a license.

(e) The license of a licensee who fails to submit a renewal application within 30 days of license expiration shall be suspended without a hearing.

(f) A licensee who continues to engage in the practice of applied behavior analysis with a suspended license shall be deemed to be engaging in the unlicensed practice of applied behavior analysis and shall be subject to action consistent with N.J.S.A. 45:1-14 et seq., even if no notice of suspension has been received by the individual.

13:42B-3.2 License reactivation

(a) A licensee who holds an inactive license pursuant to N.J.A.C. 13:42B-3.1(c) may apply to the Board for reactivation of an inactive license. A licensee seeking reactivation of an inactive license shall submit:

1. A reactivation application;
2. A certification of employment listing each job held during the period the license was inactive that includes the names, addresses, and telephone number of each employer;
3. Proof that the licensee is currently certified as a BCBA, BCBA-D, or BCaBA; and
4. The renewal fee for the biennial period for which reactivation is sought as set forth at N.J.A.C. 13:42B-8.1.

(b) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reactivation, the Board may require the applicant to pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reactivation of the license. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant, as a condition of reactivation of licensure, to complete education or training, or to submit to supervision, monitoring, or limitations, as the Board determines necessary to ensure that the applicant practices with reasonable skill and safety. The Board may restore the license subject to the applicant's completion of training within a period of time prescribed by the Board following the restoration of the license. In determining whether there are practice deficiencies requiring remediation, the Board may consider the following:

1. Length of time license was inactive;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant's license by any professional or occupational board;

5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to the practice of applied behavior analysis or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;

6. Pending proceedings against a professional or occupational license issued to the licensee by a professional or occupational board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and

7. Civil litigation related to the practice of applied behavior analysis or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

13:42B-3.3 Reinstatement of suspended license

(a) A licensee who has had his or her license suspended pursuant to N.J.A.C. 13:42B-3.1(e) may apply to the Board for reinstatement. A licensee applying for reinstatement shall submit:

1. A reinstatement application;
2. A certification of employment listing each job held during the period of suspended license, which includes the names, addresses, and telephone number of each employer;
3. Proof that the licensee is currently certified as a BCBA, BCBA-D, or BCaBA;
4. The renewal fee set forth at N.J.A.C. 13:42B-8.1 for the biennial period for which reinstatement is sought;
5. The past due renewal fee for the biennial period immediately preceding the renewal period for which reinstatement is sought; and
6. The reinstatement fee set forth at N.J.A.C. 13:42B-8.1.

(b) If a Board review of an application establishes a basis for concluding that there may be practice deficiencies in need of remediation prior to reinstatement, the Board may require the applicant to pass an examination or an assessment of skills, a refresher course, or other requirements as determined by the Board prior to reinstatement of the license. If that examination or assessment identifies deficiencies or educational needs, the Board may require the applicant, as a condition of reinstatement of licensure, to complete education or training, or to submit to supervision, monitoring, or limitations, as the Board determines necessary to ensure that the applicant practices

with reasonable skill and safety. The Board may restore the license subject to the applicant's completion of training within a period of time prescribed by the Board following the restoration of the license. In determining whether there are practice deficiencies requiring remediation, the Board may consider the following:

1. Length of time license was suspended;
2. Employment history;
3. Professional history;
4. Disciplinary history and any action taken against the applicant's license by any professional or occupational board;
5. Actions affecting the applicant's privileges taken by any institution, organization, or employer related to the practice of applied behavior analysis or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction;
6. Pending proceedings against a professional or occupational license issued to the licensee by a professional or occupational board in New Jersey, any other state, the District of Columbia, or in any other jurisdiction; and
7. Civil litigation related to the practice of applied behavior analysis or other professional or occupational practice in New Jersey, any other state, the District of Columbia, or in any other jurisdiction.

SUBCHAPTER 4. PROFESSIONAL PRACTICE

13:42B-4.1 Prohibitions on unlicensed persons; designations for licensed persons

(a) Unless licensed as an applied behavior analyst or assistant applied behavior analyst or exempt pursuant to N.J.A.C. 13:42B-1.1*[(c)]** **(b)***, no person shall practice applied behavior analysis. Unless licensed as an applied behavior analyst or assistant applied behavior analyst, no person shall use any of the titles set forth at (b) or (c) below.

(b) A licensed applied behavior analyst may use the titles:

1. Licensed behavior analyst;
2. Licensed applied behavior analyst; and
3. LBA.

(c) A licensed assistant applied behavior analyst may use the titles:

1. Licensed assistant behavior analyst;
2. Licensed assistant applied behavior analyst; and
3. LaBA.

[page=790] 13:42B-4.2 Sexual misconduct

(a) The purpose of this section is to identify for licensees conduct that shall be deemed sexual misconduct.

(b) As used in this section, the following terms have the following meanings:

"Client" means any person who is the recipient of applied behavior analysis services.

"Client-licensee relationship" means a relationship between a licensee and a client in which the licensee owes a continuing duty to the client to render applied behavior analysis services consistent with the licensee's training and experience.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by the licensee's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the licensee's body upon a part of the client's body, sexual penetration, or the insertion or imposition of any object or any part of a licensee's or client's body into or near the genital, anal, or other opening of the other person's body. "Sexual contact" does not include the touching of a client's body that is necessary during the performance of a generally accepted and recognized applied behavior analysis encounter.

"Sexual harassment" means solicitation of any sexual act, physical advances, or verbal or non-verbal conduct that is sexual in nature, which occurs in connection with a licensee's activities or role as a licensee that is unwelcome or offensive to a reasonable person, or creates a hostile workplace environment or other clinical setting, and the licensee knows, should know, or is told. "Sexual harassment" may consist of a single extreme or severe act or multiple acts and may include, but is not limited to, conduct of a licensee with a client, co-worker, employee, student, or supervisee, whether or not such individual is in a subordinate position to the licensee.

(c) A licensee shall not engage in sexual contact with a client with whom the licensee has a client-licensee relationship. The client-licensee relationship is ongoing for purposes of this section, unless more than two years has elapsed since the last applied behavior analysis service was rendered and the relationship is actively terminated by way of written notice to the client and documentation in the client record; provided, however, the client-licensee relationship shall be considered ongoing for an indefinite period of time if the client, by reason of emotional or cognitive disorder, is vulnerable to the exploitative influence of the licensee.

(d) A licensee shall not engage in sexual contact with a family member or guardian of a client with whom the licensee has a client-licensee relationship. The client-licensee relationship is ongoing for purposes of this section, unless more than two years has elapsed since the last applied behavior analysis service was rendered and the relationship is actively terminated by way of written notice to the client and documentation in the client record.

(e) A licensee shall not seek or solicit sexual contact with a client with whom he or she has a client-licensee relationship and shall not seek or solicit sexual contact with any person in exchange for professional services.

(f) A licensee shall not engage in any discussion of an intimate sexual nature with a person with whom the licensee has a client-licensee relationship, unless that discussion is directly related to a proper applied behavior analysis purpose. A licensee shall not discuss inappropriate details of their sexual relationships with a client.

(g) A licensee shall provide privacy conditions that prevent the exposure of the unclothed body of the client. Appropriate draping measures shall be employed to protect client privacy.

(h) A licensee shall not engage in sexual harassment either within or outside of the professional setting.

(i) A licensee shall not engage in any other activity which would lead a reasonable person to believe that the activity serves the licensed applied behavior analyst's or licensed assistant applied behavior analyst's personal prurient interests, or which is for the sexual arousal, or sexual gratification, of the licensee or of a client or which constitutes an act of sexual abuse.

(j) Violation of any of the prohibitions or directives set forth at (c) through (i) above shall constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).

(k) It shall not be a defense to any action pursuant to this section that:

1. The client solicited or consented to sexual contact with the licensee; or
2. The licensee is in love with or held affection for the client.

13:42B-4.3 Change in address of record, name, or supervisor

(a) A licensee shall notify the Board, in writing, within 30 days of the changes to:

1. The licensee's address registered with the Board. Service to the address registered with the Board shall constitute effective notice pursuant to N.J.A.C. 13:45-3.2;
2. The licensed applied behavior analyst's or licensed assistant applied behavior analyst's legal name. Notification of a name change shall include a copy of the marriage license or a court order which authorized the legal name change; or
3. The licensed applied behavior analyst who supervises a licensed assistant applied behavior analyst.

13:42B-4.4 Identification tags; office signage

(a) Pursuant to P.L. 2020, c. 133, when providing in-person care, a licensee shall wear either a name tag, or identification embroidered on the outermost layer of clothing on the licensee's upper body that includes:

1. The licensee's full name or, if the licensee is providing care in a hospital, long-term care facility, or licensed ambulatory care facility or behavioral health care facility, and if authorized by facility administrators, the licensee's full first name and first letter of the last name;
2. The term "licensed applied behavior analyst" or "licensed assistant applied behavior analyst," as applicable, and the professional degree issued to the licensee. The name of the professional degree issued to the licensee may be abbreviated. If the name of the professional degree is identical to the name of the license, the professional degree may be omitted; and
3. If providing direct *[patient]* ***client*** care at a hospital, a recent photograph of the licensee.

(b) The provisions at (a)3 above will not apply if the hospital administrators decide that licensees working at that hospital do not

have to have a recent photograph on a name tag or embroidered identification.

(c) A licensee shall post signage in at least 12-point font size in a clear and conspicuous manner at any office where the licensee provides services to scheduled *[patients]* ***clients*** in an ambulatory setting that states that the licensee is a licensed applied behavior analyst or licensed assistant applied behavior analyst and the professional degree the licensee holds.

(d) The provisions at (c) above shall not apply to in-patient hospital or emergency department *[patient]* ***client*** care.

(e) The provisions at (a), (b), or (c) above shall not apply to services provided through telemedicine or telehealth pursuant to P.L. 2017, c. 117 and N.J.A.C. 13:42B-6.

13:42B-4.5 Reporting of misconduct; self-reporting

(a) A licensee shall report to the Board any incident or series of incidents that the licensee, in good faith, believes is in violation of the Applied Behavior Analyst Licensing Act, N.J.S.A. 45:8B-91 et seq., and 45:1-14 et seq., N.J.A.C. 13:45C, or this chapter.

(b) Pursuant to N.J.A.C. 13:45E-3.2, a licensee who is in possession of information that reasonably indicates that another licensee or other health care professional has demonstrated an impairment, gross incompetence, or unprofessional conduct that would present an imminent danger to an individual or to the public health, safety, or welfare shall file a report with the Division of Consumer Affairs, Health Care Professional Information Clearing House Coordinator and the Board.

(c) A licensee shall immediately notify the Board, if the licensee:

1. Is incapable, for medical or any other reason, of discharging the functions of a licensee in a manner consistent with the public's health, safety, and welfare;

2. Is indicted or convicted of a crime which has a direct or substantial relationship to the practice of applied behavior analysis;

[page=791] 3. Is named as a defendant or respondent in a civil or criminal investigation, complaint, or judgment involving alleged malpractice, negligence, or misconduct relating to the licensee's practice;

4. Is the subject of an administrative judgment involving malpractice, negligence, or misconduct relating to the licensee's practice;

5. Is the subject of any voluntary license or certification surrender or any disciplinary action or order by any state or Federal agency, board, or commission, including any order of limitation or preclusion; or

6. Fails to maintain or renew BACB certification which is required by law as a condition of practice or as a condition of license renewal.

13:42B-4.6 Informed consent

(a) A licensee shall fully disclose to the client and any applicable guardians any information as will enable the client or guardian to evaluate the nature of the treatment and of any attendant risks, which shall include the means by which services will be provided (such as in-person or through telemedicine).

(b) Before delivering services to a client, the licensee shall obtain informed consent from the client or guardian and shall document that informed consent. The licensee shall maintain that documentation in the client's records.

SUBCHAPTER 5. SUPERVISION AND DELEGATION

13:42B-5.1 Supervision of a licensed assistant applied behavior analyst

(a) A licensed assistant applied behavior analyst shall not provide applied behavior analysis services unless the licensed assistant applied behavior analyst is supervised by a licensed applied behavior analyst pursuant to (b) and (c) below.

(b) A licensed applied behavior analyst who supervises a licensed assistant applied behavior analyst shall complete an eight-hour training course that covers the BACB Supervisor Training Curriculum Outline (2.0), published by the BACB, 7950 Shaffer Parkway, Littleton, CO 80127, as amended and supplemented, incorporated herein by reference.

(c) A licensed assistant applied behavior analyst and the supervising licensed applied behavior analyst shall meet face-to-face to discuss services provided by the licensed assistant applied behavior analyst and issues or concerns that the licensed assistant applied behavior analyst has encountered while providing services:

1. If the licensed assistant applied behavior analyst has been licensed for less than one year, the licensed assistant applied behavior analyst and the supervising licensed applied behavior analyst shall meet for at least five percent of the total number of hours of services provided by the licensed assistant applied behavior analyst

during a week or for at least one hour every two weeks, whichever is more; and

2. If the licensed assistant applied behavior analyst has been licensed for one year or more, the licensed assistant applied behavior analyst and the supervising licensed applied behavior analyst shall meet for at least two percent of the total number of hours of services provided by the licensed assistant applied behavior analyst during a week, or at least one hour every month, whichever is more.

(d) A licensed assistant applied behavior analyst and supervising licensed applied behavior analyst shall meet more often than required at (c) above if either believes that additional supervision is necessary.

13:42B-5.2 Delegation to a paraprofessional technician

(a) A licensee may delegate the performance of interventions in a treatment plan to a paraprofessional technician.

(b) A licensee shall not delegate the assessment of a client, the development of a treatment plan, or the development of interventions to a paraprofessional technician.

(c) A licensee shall not delegate an intervention if, after assessing whether an intervention should be delegated, the licensee determines that such delegation would be inappropriate.

(d) A licensee is responsible for the care a client receives pursuant to the licensee's direction and the outcomes of care, even when a licensee has delegated to a paraprofessional technician.

(e) When delegating an intervention that will be performed by paraprofessional technicians employed by, or contracted to perform duties in, a facility licensed by the Department of Children and Families, Department of Health, or Department of Human Services, a licensee shall:

1. Assess the needs of the client;
2. Determine what interventions may be safely and appropriately delegated to paraprofessional technicians employed by, or contracted to perform duties in, the facility;
3. Identify the individual who will supervise the paraprofessional technicians performing delegated interventions;
4. Evaluate and delegate in accordance with facility policies and procedures that address the knowledge and skill of paraprofessional technicians to perform delegated interventions;

5. Communicate to the individual who will supervise paraprofessional technicians performing delegated interventions, the directions for delegated interventions, and expectations for those interventions;

6. Establish the methods by which the individual who will supervise paraprofessional technicians will communicate the delegated interventions and expectations to the paraprofessional technicians who will perform the delegated interventions;

7. Establish the methods by which the individual who will supervise paraprofessional technicians will communicate with the licensee and the instances that will require such an individual to communicate with the licensee; and

8. Document in facility records that the licensee has gone through the steps required at (e)1 through 7 above.

(f) When delegating an intervention in any setting that is not a facility licensed by the Department of Children and Families, Department of Health, or Department of Human Services, a licensee shall:

1. Assess the needs of the client;
2. Determine what interventions may be safely and appropriately delegated to a paraprofessional technician;
3. Identify the paraprofessional technician to whom the licensee will delegate performance of the interventions;
4. Evaluate the knowledge and skills of the paraprofessional technician selected to perform the interventions through direct observation;
5. Communicate to the paraprofessional technician the intervention that is being delegated, the directions for that intervention, and the expectations for that intervention;
6. Establish the methods by which the paraprofessional technician will communicate with the licensee and the instances that will require the paraprofessional to communicate with the licensee; and
7. Document in client records the paraprofessional technician to whom interventions were delegated and the interventions that have been delegated.

(g) The requirements of this section apply solely to delegation. These requirements are not applicable when a licensee assigns applied behavior analysis services to another licensee or to a licensed health care professional whose scope of practice includes the provision of

such services. For purposes of this subsection, "assign" means a decision-making process by which a licensee allocates work to another licensee or licensed healthcare practitioner whose scope of practice includes the provision of applied behavior analysis services.

13:42B-5.3 Supervision of a student

A licensed applied behavior analyst who supervises a student completing education or experience requirements for certification as a BCBA, BCBA-D, or BCaBA shall comply with the supervision requirements set forth in the BCBA 2022 Eligibility Requirements or the BCaBA 2022 Eligibility Requirements, published by the BACB, 7950 Shaffer Parkway, Littleton, CO 80127, as amended and supplemented, incorporated herein by reference.

SUBCHAPTER 6. BUSINESS PRACTICES

13:42B-6.1 Advertising and solicitation practices

(a) As used in this section, the following terms have the following meanings:

"Advertisement" means any communication or statement that is directly controlled or administered by a licensee or a licensee's office personnel, whether printed, electronic, or oral, that names the licensee in relation to the licensee's practice, profession, or institution in which the licensee is employed, volunteers, or otherwise provides services. This includes business cards, letterhead, patient brochures, email, Internet, audio and video, and any other communication or statement used in the [page=792] course of business or where the licensee is utilizing a professional degree or license to influence opinion or imply expertise in a health care topic. "Advertisement" does not include office building placards or exterior building signage.

"Electronic media" shall include radio, television, telephone, facsimile machine, or computer.

"Fee schedule" refers to the fees charged for services or goods offered by a licensee.

"Graphic representation" means the use of drawings, animations, clinical photographs, or dramatizations.

"Print media" shall refer to newspapers, magazines, periodicals, professional journals, telephone directories, circulars, handbills, fliers, or other publications, the content of which is disseminated by means of the printed or digital word.

"Routine professional service" refers to a service that a licensed applied behavior analyst, a licensed assistant applied behavior analyst, or a professional association routinely performs.

(b) Subject to the limitations at (c) and (e) below, a licensee may provide information to the public by advertising in print or electronic media.

(c) A licensee who engages in the use of advertising that contains any of the following shall be deemed to have engaged in professional misconduct:

1. Any statement, claim, or format including a graphic representation that is false, fraudulent, intentionally misleading, or deceptive;

2. Any misrepresentation of fact, including any affirmative communication or representation that misstates, falsely describes, holds out, or falsely details the licensee's skills, training, expertise, education, public or private board certification, or licensure;

3. The suppression, omission, or concealment of any material fact under circumstances that the licensee knows or should have known is improper or prevents a client from making a full and informed judgment on the basis of the information set forth in the advertisement;

4. Any promotion of professional service that the licensee knows, or should know, is beyond the licensee's ability to perform;

5. A technique or communication that appears to intimidate, exert undue pressure, or to unduly influence a client;

6. Any personal testimonial by a client attesting to the quality or competence of service or treatment by a licensee involving technical assessments that are beyond the client's competency to assess, or any testimonial not in compliance with N.J.A.C. 13:42B-6.3;

7. The communication of any fact, data, or information that may personally identify a client without the client's signed written permission obtained in advance;

8. An offer to pay, give, or accept a fee or other consideration to or from a third party for the referral of a client;

9. Any print, language, or format that directly or indirectly obscures a material fact; or

10. Any guarantee of results from any applied behavior analysis encounter.

(d) The Board may require a licensee to substantiate the truthfulness of any assertion or representation set forth in an advertisement.

(e) Any violations of (e)1, 2, or 3 below shall be deemed professional misconduct:

1. A licensee engaging, either directly or through the use of any agent, employee, or representative, in solicitation of a client. This paragraph shall not prohibit a licensee from offering services through materials provided to a community service organization that makes known the availability of all professional services listed; nor shall it prohibit the offering of services by a licensee to any bona fide representative of a client including, employers, labor union representatives, or insurance carriers.

2. Advertising making reference to or setting forth fees beyond a stated fee for specifically described routine professional services or goods offered by licensees.

i. A licensee who advertises a fee shall disclose all relevant and material variables and considerations that are ordinarily included in such a service so that the fee will be clearly understood by clients.

ii. In the absence of such disclosure referred to at (e)1 above, the stated fees shall be presumed to include all fees ordinarily required for such a service. No additional charges shall be made for an advertised service unless the advertisement specifically delineates the additional services contemplated and the fee to be charged.

3. Failure of a licensee to specify and honor the time period during which an advertised fee will remain in effect on the face of the advertisement; or in the absence of such disclosure, failure to honor the advertised price for at least 30 days from the date of the advertisement's final publication.

13:42B-6.2 Advertising free or discounted services; required disclosures

(a) An advertisement offering a fee reduction shall state the reduced fee and the licensee's usual fee for each service for which a reduction is advertised. The usual fee shall be the fee charged for the advertised service for a period of not less than 90 days prior to the publication of the advertised reduction.

(b) If the discount or free service does not apply to all services to be rendered, the advertisement shall specify any associated or reasonably anticipated services that are not included and a statement of the specific charges for all associated or reasonably anticipated services that are not included.

(c) Except for those services specifically excluded in the advertisement offering free services, the licensee shall not charge for any service rendered during a period of 72 hours from the time the free service was rendered.

13:42B-6.3 Testimonial advertising

(a) Testimonials involving a specific or identifiable applied behavior analysis service shall truthfully reflect the actual experience of the client.

(b) The licensee shall be able to substantiate any objective, verifiable statement of fact appearing in a testimonial. The failure to do so, if required by the Board, may be deemed professional misconduct.

(c) Where a licensee directly or indirectly provides compensation to a testimonial giver, the fact of such compensation shall be conspicuously disclosed in a clear, legible, and readable manner in any advertisement as follows: "Compensation has been provided for this testimonial."

13:42B-6.4 Minimum content

(a) Advertisements and professional representations (other than an office entry sign), including advertisements in a classified directory, business cards, and professional stationery shall include the following:

1. The name and license number of at least one licensee;
2. The term "licensed applied behavior analyst" or "licensed assistant applied behavior analyst," as applicable, and the professional degree issued to the licensee, except that the name of the professional degree issued to the licensee may be abbreviated and, if the name of the professional degree is identical to the name of the license, the professional degree may be omitted; and
3. The street address and telephone number of the practice.

(b) An offer for applied behavior analysis services can be made only by a licensee.

13:42B-6.5 Recordkeeping

(a) Licensees shall make contemporaneous, permanent entries into client records that shall accurately reflect the applied behavior analysis services rendered. Client records shall be maintained for a period of seven years from the date of the most recent entry. The client record shall contain, at a minimum:

1. Intake record;

2. The dates of each service;
3. Quantitative data collection and analysis;
4. Summary of each session;
5. The name, title, and license number of the licensee who provided services;
6. Safety level of the client, including instances of self-harm, aggression towards others, or contact with safety or health officials; and
7. Any referral to another healthcare professional.

(b) Corrections and/or additions to existing records may be made to a client record, provided that each change is clearly identified as such, dated, and initialed by the licensee making the change.

(c) Records for minors shall be kept for seven years from the date of the last entry or until the client turns 25 years old, whichever is longer.

(d) Licensees shall provide client records to the Board, upon request.

[page=793] 13:42B-6.6 Client access to records

(a) Licensees shall provide access to client records to a client or an authorized representative in accordance with the following:

1. No later than 30 days from receipt of a written request from a client or an authorized representative, the licensee shall provide a copy of the client record, and/or billing records, as may be requested;

2. The licensee may charge a fee for the reproduction of records, which shall be no greater than \$ 1.00 per page or \$ 100.00 for the entire record, whichever is less; and

3. If the client, a subsequent treating health care professional, or the Board is unable to read the client record, because it is illegible, the licensee, upon request, shall provide a typed transcription of the record. If the record is in a language other than English, the licensee shall also provide an English translation.

(b) Where the client has requested the release of all or a portion of a client record to a specified individual or entity, in order to protect the confidentiality of the records, the licensee shall:

1. Secure and maintain a current written authorization bearing the signature of the client or an authorized representative;

2. Ensure that the scope of the release is consistent with the request; and

3. Forward the records to the attention of the specific individual identified in the request.

(c) Notwithstanding (a) above, a licensee may withhold information in the client record from a client or the client's guardian if, in the professional judgment of the licensee, the release of such information would adversely affect the client's health, safety, or welfare.

(d) A licensee who withholds client records pursuant to (c) above shall provide the client record and an explanation of the reasons for withholding the record upon the request of and directly to:

1. The client's attorney;
2. Another licensed health care professional; or
3. The client's health insurance carrier.

13:42B-6.7 Use of a computer to prepare client records

(a) A licensee who prepares a client record maintained solely on a computer shall use a write-protected program which:

1. Contains an internal permanently activated date and time recordation for all entries;
2. Automatically prepares a back-up copy of the file; and
3. Is designed in such manner that, after the licensee "signs" by means of a confidential personal code (CPC), the entry cannot be changed in any manner.

(b) The licensee shall include in the client record at least two forms of identification; for example, name and record number of the client or any other specific identifying information.

(c) The licensee shall finalize or "sign" the entry, by means of a CPC. Where more than one individual is authorized to make entries into the computer file of any client record, each such person shall obtain a CPC and uses the program in the same manner.

(d) The licensee shall generate a hard copy of the complete client record, or a portion thereof, upon request, pursuant to N.J.A.C. 13:42B-6.6.

(e) A licensee who generates a hard copy of a *[patient]* ***client*** record pursuant to (d) above shall ensure that the hard copy is

paginated with each page being a specified number of the total number of pages in the record.

SUBCHAPTER 7. TELEMEDICINE AND TELEHEALTH

13:42B-7.1 Purpose and scope

(a) The purpose of this subchapter is to implement the provisions at P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.), which authorizes healthcare providers to engage in telemedicine and telehealth, as it related to the practice of applied behavior analysis.

(b) This subchapter shall apply to all persons who are licensed by the Board.

(c) Pursuant to N.J.S.A. 45:1-62, applied behavior analysts or assistant applied behavior analysts must hold a license issued by the Board if they:

1. Are located in New Jersey and provide applied behavior analysis services to any client located in or out of New Jersey by means of telemedicine or telehealth; or

2. Are located outside of New Jersey and provide applied behavior analysis services to any client located in New Jersey by means of telemedicine or telehealth.

(d) Notwithstanding N.J.S.A. 45:1-62 and (c) above, a healthcare provider located in another state who consults with a licensee in New Jersey through the use of information and communications technologies, but does not direct client care, will not be considered as providing applied behavior analysis services to a client in New Jersey consistent with N.J.S.A. 45:14B-1 et seq., and will not be required to obtain licensure in New Jersey in order to provide such consultation.

13:42B-7.2 Definitions

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

"Asynchronous store-and-forward" means the acquisition and transmission of images, diagnostics, data, and medical and/or mental health information, either to or from an originating site, or to or from the licensee at a distant site, which allows for the client to be evaluated without being physically present.

"Board" means the State Board of Applied Behavior Analyst Examiners.

"Cross-coverage service" means a licensee who engages in a remote evaluation of a client, without in-person contact, at the request of another licensee who has established a proper licensee-client relationship with the client.

"Distant site" means a site at which a licensee is located while providing services by means of telemedicine or telehealth.

"Licensee" means an individual licensed by the Board as a licensed applied behavior analyst or licensed assistant applied behavior analyst.

"On-call" means a licensee is available, where necessary, to physically attend to the urgent and follow-up needs of a client for whom the licensee has temporarily assumed responsibility, as designated by the client's primary care provider or other mental health care provider of record.

"Originating site" means a site at which a client is located at the time that services are provided to the client by means of telemedicine or telehealth.

"Telehealth" means the use of information and communications technologies, including telephones, remote client monitoring devices, or other electronic means, to support clinical health care, provider consultation, client and professional health-related education, public health, health administration, and other services in accordance with the provisions at P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.).

"Telemedicine" means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a licensee who is located at a distant site and a client who is located at an originating site, either with or without the assistance of an intervening licensee, and in accordance with the provisions at P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.). "Telemedicine" does not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

13:42B-7.3 Standard of care

(a) Prior to providing services through telemedicine or telehealth, a licensee shall determine whether providing those services through telemedicine or telehealth would be consistent with the standard of care applicable for those services when provided in-person.

(b) If a licensee determines, either before or during the provision of services, that services cannot be provided through telemedicine or telehealth in a manner that is consistent with in-person standards of

care, the licensee shall not provide services through telemedicine or telehealth.

(c) A licensee who determines that services cannot be provided through telemedicine or telehealth pursuant to (b) above shall advise the client to obtain services in-person.

(d) A licensee who provides a diagnosis, treatment, or consultation recommendation, including discussions regarding the risks and benefits of a client's treatment options, through telemedicine or telehealth shall be [page=794] held to the same standard of care or practice standards as are applicable to in-person settings.

13:42B-7.4 Licensee-client relationship

(a) Prior to providing services through telemedicine or telehealth, a licensee shall establish a licensee-client relationship by:

1. Identifying the client with, at a minimum, the client's name, date of birth, phone number, and address. A licensee may also use a client's assigned identification number, Social Security Number, photo, health insurance policy number, or other identifier associated directly with the client; and

2. Disclosing and validating the licensee's identity, license, title, and, if applicable, specialty and board certifications.

(b) Prior to an initial contact with a client for the purpose of providing services to the client using telemedicine or telehealth, a licensee shall review the client's history and any available records.

(c) Prior to initiating contact with a client for the purpose of providing services through telemedicine or telehealth, licensees shall determine whether they will be able to provide the same standard of care using telemedicine or telehealth as would be provided if the services were provided in-person. The licensee shall make this determination prior to each unique client encounter.

(d) Notwithstanding (a), (b), and (c) above, service may be provided through telemedicine or telehealth without a proper provider-client relationship if:

1. The provision of services is for informal consultation with another healthcare provider, performed by a licensee outside the context of a contractual relationship, or on an irregular or infrequent basis, without the expectation or exchange of direct or indirect compensation;

2. The provision of services is during episodic consultations by a medical and/or specialist located in another jurisdiction who provides consultation services, upon request, to a licensee in this State;

3. A licensee furnishes assistance in response to an emergency or disaster, provided that there is no charge for the assistance; or

4. A substitute licensee, who is acting on behalf of an absent licensee in the same specialty, provides services on an on-call or cross-coverage basis, provided that the absent licensee has designated the substitute licensee as an on-call licensee or cross-coverage service provider.

13:42B-7.5 Provision of services through telemedicine or telehealth

(a) As long as a licensee has satisfied the requirements at N.J.A.C. 13:42B-7.4, a licensee may provide services to a client through the use of telemedicine and may engage in telehealth to support and facilitate the provision of services to clients.

(b) Prior to providing services through telemedicine or telehealth, a licensee shall determine the client's originating site and record this information in the client's record.

(c) A licensee providing services through telemedicine shall use interactive, real-time, two-way communication technologies, which shall include, except as provided at (e) below, a video component which allows a licensee to see a client and the client to see the licensee during the provision of services.

(d) A licensee providing services through telemedicine or telehealth may use asynchronous store-and-forward technology to allow for the electronic transmission of:

1. Images;
2. Diagnostics, including test results and interpretation;
3. Data; and
4. Medical information.

(e) If, after accessing and reviewing the client's records, licensees determine that they are able to meet the standard of care for such services if they were being provided in-person without using the video component described at (c) above, the licensee may use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology, without a video component.

(f) During the provision of services through telemedicine or telehealth, and after the provision of services, a licensee, or another designated licensee, shall provide their name, professional credentials, and contact information to the client. Such contact information shall enable the client to contact the licensee for at least 72 hours following the provision of services, or for a longer period, if warranted by the client's circumstances and accepted standards of care.

(g) Prior to providing services through telemedicine or telehealth, a licensee shall review any history or records provided by a client, as follows:

1. For an initial encounter with a client, history and records provided by the client shall be reviewed prior to the provision of services through telemedicine or telehealth; and

2. For any subsequent interactions with a client, history and records provided by the client shall be reviewed either prior to the provision of services through telemedicine or telehealth or contemporaneously with the encounter with the client.

(h) After the provision of services through telemedicine or telehealth, a licensee shall provide the client, upon request, with his or her records created due to the services provided.

(i) A licensee shall provide, upon a client's written request, the client's information to the client's primary care provider or to other health care and/or mental health care providers.

(j) A licensee engaging in telemedicine or telehealth shall refer a client for follow-up care, when necessary.

13:42B-7.6 Records

A licensee who provides services through telemedicine or telehealth shall maintain a record of the care provide to a client. Such records shall comply with the requirements at N.J.A.C. 13:42B-6.5 and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a client's record.

13:42B-7.7 Prevention of fraud and abuse

(a) In order to establish that a licensee has made a good faith effort to prevent fraud and abuse when providing services through telemedicine or telehealth, a licensee must establish written protocols that address:

1. Identification of users;

2. Identification of the client during the initial intake pursuant to N.J.A.C. 13:42B-7.4(a)1;
3. Identification of the origin of information;
4. The prevention of unauthorized access to the system or information;
5. System security, including the integrity of information that is collected, program integrity, and system integrity;
6. Maintenance of documentation about system and information usage;
7. Information storage, maintenance, and transmission; and
8. Verification of client profile data.

13:42B-7.8 Privacy and notice to clients

(a) Licensees that communicate with clients by electronic communications other than telephone or facsimile shall establish written privacy practices that are consistent with Federal standards pursuant to 45 CFR 160 and 164, which are incorporated herein by reference, relating to privacy of individually identifiable health information.

(b) A licensee who becomes aware of a breach in confidentiality of *[patient]* ***client*** information, as defined at 45 CFR 164.402, shall comply with the reporting requirements at 45 CFR 164.

(c) Licensees, or their authorized representatives, shall provide a client or the client's guardian, prior to evaluation or treatment, with copies of written privacy practices and shall obtain the client's written acknowledgement of receipt of the notice.

(d) Licensees who provide services through telemedicine or telehealth, or their authorized representatives, shall, prior to providing services, give clients or clients' guardians notice regarding telemedicine and telehealth, including the risks and benefits of using technology to provide services and how to receive follow-up care or assistance in the event of an inability to communicate as a result of a technological or equipment failure. A licensee shall obtain a signed and dated statement indicating that the client or guardian received this notice.

(e) When telemedicine or telehealth is unable to provide all pertinent clinical information that a licensee exercising ordinary skill and care would deem reasonably necessary to provide care to a client, the licensee shall inform the client of this prior to the conclusion of the provision of care through telemedicine or telehealth and shall advise

the client regarding the need for the client to obtain additional in-person services reasonably able to meet the client's needs.

[page=795] SUBCHAPTER 8. FEES

13:42B-8.1 Fee schedule

(a) The following fees shall be charged by the Board:

1.	Application fee	\$100.00
2.	Initial license fee licensed applied behavior analyst:	
i.	If paid during the first year of a biennial renewal period	\$200.00
ii.	If paid during the second year of a biennial renewal period.....	\$100.00
3.	Initial license fee licensed assistant applied behavior analyst:	
i.	If paid during the first year of a biennial renewal period.....	\$100.00
ii.	If paid during the second year of a biennial renewal period.....	\$50.00
4.	Renewal of license licensed applied behavior analyst.....	\$200.00
5.	Renewal of license licensed assistant applied behavior analyst.....	\$100.00
6.	Late license renewal.....	\$75.00
7.	Reinstatement fee.....	\$200.00
8.	Inactive license fee	(to be determined by Director by regulation)
9.	Duplicate/replacement license.....	\$25.00
10.	Verification of license.....	\$25.00