

**EMERGENCY REGULATION OF THE
AGING AND DISABILITY SERVICES DIVISION
OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES**

LCB FILE NO. E003-18A

**The following document is an emergency regulation submitted
by the agency on 12/17/2018**

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Agency:
Aging and Disability Services Division

FOREMERGENCY
REGULATIONS ONLY

Effective date January 1, 2019

Expiration date May 1, 2019 _____

Classification: TEMPORARY PERMANENT

EMERGENCY

Brief description of action: In the 2017 Legislative Session, SB286 was passed related to Aging and Disability Services Division taking on a role in the licensing of behavioral technicians. This group of professionals is essential to the treatment and management of circumstances associated with Autism Spectrum Disorder. Currently, their licensure is overseen by the Nevada Board of Psychological Examiners but as of January 1, 2019, an independent board is mandated by law. Unfortunately much like the daily need for behavioral therapies for individuals with autism, the work of these professionals does not pause while board members are appointed, by-laws are created, and eventually regulations for the receipt of licensing fees and the issuing of licenses in various circumstances. Regulations are essential on day one of the effective date of the statute and these: emergency regulations are proposed for your approval so that licensing may operate without interruption.

Authority citation other than 233B _____

Notice date: November 21, 2018
Hearing date: December 12, 2018

Date of Adoption by Agency: January 1, 2019

Emergency NAC Language for the Board of Applied Behavior Analysis

Fees. (NRS 437.105, 437.130, 437.140)

1. The Board will charge and collect the following fees:

For an application for licensure.....	\$100
For the state examination for licensure administered by the Division pursuant to NRS 437.130.....	Actual costs to the Div. plus \$100
For the issuance of an initial license.....	25
For the biennial renewal or reinstatement of a license as a licensed behavior analyst.....	400
For the biennial renewal or reinstatement of a license as a licensed assistant behavior analyst.....	275
For the biennial renewal of a registration of a certified registered behavioral technician.....	\$70
For the placement of a license on inactive status.....	100
For the biennial renewal of a license on inactive status.....	100
For the restoration to active status of a license as a licensed behavior analyst on inactive status if the restoration occurs during the first year of the biennium in which the license was issued or renewed.....	300
For the restoration to active status of a license as a licensed behavior analyst on inactive status if the restoration occurs during the second year of the biennium in which the license was issued or renewed.....	100
For the restoration to active status of a license as a licensed assistant behavior analyst on inactive status if the restoration occurs during the first year of the biennium in which the license was issued or renewed.....	175
For the restoration to active status of a license as a licensed assistant behavior analyst on inactive status if the restoration occurs during the second year of the biennium in which the license was issued or renewed	40
For reproduction and mailing of material for an application.....	25
For a dishonored check.....	35
For a change of name on a license.....	25
For a duplicate license.....	25
For copies of the provisions of NRS relating to the practice of applied behavior analysis and the rules and regulations adopted by the Board.....	25
For a letter of good standing.....	15
For the review and approval of a course or program of continuing education.....	25

State examination of applicants for licensure as licensed behavior analyst or licensed assistant behavior analyst: Content; reexamination; fee; prohibited acts. (NRS 437.130)

1. The Division will administer a state examination to each applicant for a license as a licensed behavior analyst or a licensed assistant behavior analyst.

2. The state examination will consist of questions addressing the practice of applied behavior analysis, including, without limitation, federal and state laws, ethical principles and codes of professional conduct relevant to the practice of applied behavior analysis in this State. At least 30 days before the state examination is administered, the Division will furnish a description of the content to be covered in the examination to each applicant.

3. An applicant who fails the state examination:

(a) Once or twice may retake the state examination.

(b) Three times may not retake the state examination unless the applicant requests permission and obtains approval from the Board to retake the state examination for a fourth time. The applicant must submit to the Board a written request to retake the state examination and a written plan explaining the steps the applicant will take to pass the state examination. The Board will approve the request to retake the state examination if the Board determines that the written plan submitted by the applicant is likely to result in the applicant passing the state examination.

(c) Four or more times may not retake the state examination except as otherwise provided in this paragraph. A person whose application is deemed denied pursuant to this paragraph may, not earlier than 18 months after the date on which he or she is notified by the Division, that he or she failed that state examination for the immediately preceding time, request permission in writing from the Board to reapply for licensure and retake the state examination. The Board will, if good cause is shown, approve the request.

4. The fee for the state examination must be paid before the examination is administered. A fee must be paid each time the applicant takes the state examination.

5. An applicant shall not:

(a) Remove any notes taken during the state examination;

(b) Record the state examination by electronic or other means; or

(c) Engage in any other conduct that results in the disclosure of the contents of the state examination.

Renewal of license (NRS 437.225)

1. To renew his or her license, a licensed behavior analyst or a licensed assistant behavior analyst must submit to the Division an application for renewal, the required fees and the form for the biennial report of continuing education. The licensee shall retain evidence of the completion of the continuing education required by NRS 437.225, for at least 5 years after the completion of that continuing education. Evidence of completion of continuing education includes, without limitation, a letter signed by the instructor of the course or program or the agent of the sponsoring agency or organization, and a certificate of completion approved by the Board. Upon the request of the Division, the licensee must provide evidence of completion of the continuing education.

2. The Division will mail to each licensee, before the expiration of his or her license, a form for the biennial report of continuing education. Each applicant for renewal must sign the form certifying that:

(a) He or she has completed the continuing education; and

(b) The evidence of completion of continuing education required pursuant to subsection 1 is true and accurate.

3. If a licensee misrepresents the completion of continuing education, he or she will be subject to disciplinary action, including, without limitation, suspension, revocation or nonrenewal of his or her

license. A licensee whose license has been suspended or not renewed must complete the continuing education required by NRS 437.225, as applicable, before the Board will consider whether to reinstate his or her license.

4. If a licensee does not satisfy the continuing education requirement, his or her license will not be renewed and he or she will be subject to disciplinary action. The Division may grant a licensee a 60-day extension if the licensee submits to the Board, on or before December 1 immediately preceding the expiration of his or her license, a written request for an extension which includes a compelling explanation for his or her inability to complete the continuing education requirement during the immediately preceding 2 years.

Placement of license on inactive status; renewal or restoration to active status. (NRS 437.130)

1. Upon written request to the Division and payment of the fee prescribed by the Division, a licensed behavior analyst or licensed assistant behavior analyst may have his or her license placed on inactive status.

2. A person whose license is placed on inactive status shall not engage in the practice of psychology or applied behavior analysis, as applicable, during the period in which the license is on inactive status.

3. A person who wishes to renew a license that is placed on inactive status must submit to the Board:

(a) An application for the renewal of the license; and

(b) The fee for the biennial renewal of a license on inactive status.

4. A person whose license is placed on inactive status may apply to the Division to have the license restored to active status. The Division will restore the license to active status upon:

(a) The submission of an application for the restoration of the license;

(b) The payment of the appropriate fee for the restoration to active status of a license on inactive status;

(c) The submission of proof of completion of the requirements for continuing education for the 2 years immediately preceding the date of the application;

(d) If the applicant has engaged in the practice of applied behavior analysis, as applicable, in another jurisdiction during the period his or her license was on inactive status, the submission of proof that he or she is in good standing and that there are no disciplinary proceedings pending against him or her in that jurisdiction;

(e) Submission of any other proof the Division may require to determine whether the applicant is qualified and competent to engage in the practice of psychology or applied behavior analysis, as applicable; and

(f) If the Division considers it necessary, the successful completion of the national examination or the state examination administered by the Division, as applicable.

Issuance of license to behavior analyst; provisional licenses. (NRS 437.130)

1. The Division will issue a license as a licensed behavior analyst to an applicant who:

(a) Has been certified as a behavior analyst by the Behavior Analyst Certification Board, Inc., or its successor organization;

(b) Has not been convicted of a felony;

(c) Has not been subject to disciplinary action as a behavior analyst in another jurisdiction;

(d) Does not have any outstanding complaints or charges pending against him or her as a behavior analyst in another jurisdiction;

(e) Has not previously been denied licensure by the Division;

(f) Has passed the state examination administered by the Division;

(g) Submits to the Division the appropriate application and fees and three letters of professional reference that attest without reservation to the professional competence, moral character and current fitness to practice of the applicant; and

(i) Complies by submitting:

(1) A complete set of the applicant's fingerprints to the Division with written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation; or

(2) Verification to the Division that the applicant's fingerprints were forwarded to the Central Repository by the law enforcement agency or other authorized entity taking the fingerprints.

2. The Division may require an applicant to appear before the Board to demonstrate the applicant's:

(a) Moral character;

(b) Current fitness to practice as a licensed behavior analyst; and

(c) Intent to practice as a licensed behavior analyst in a manner consistent with the applicant's education, training and experience.

3. The Division may issue a provisional license to an applicant who has completed all the requirements for licensure other than successful completion of the written examination. A provisional license is valid for not more than 1 year and may not be renewed.

4. The Division will, in addition to issuing a license to an applicant who meets the requirements of this section, issue to the applicant a copy of the license in the form of a card which is of a size to be carried in a wallet.

Issuance of license to assistant behavior analyst; provisional licenses. (NRS 437.130)

1. The Division will issue a license as a licensed assistant behavior analyst to an applicant who:

(a) Has been certified as an assistant behavior analyst by the Behavior Analyst Certification Board, Inc., or its successor organization;

(b) Has not been convicted of a felony;

(c) Has not been subject to disciplinary action as an assistant behavior analyst in another jurisdiction;

(d) Does not have any outstanding complaints or charges pending against him or her as an assistant behavior analyst in another jurisdiction;

(e) Has not previously been denied licensure by the Division;

(f) Has passed the state examination administered by the Division;

(g) Submits to the Division the appropriate application and fees and three letters of professional reference that attest without reservation to the professional competence, moral character and current fitness to practice of the applicant; and

(i) Complies by submitting:

(1) A complete set of the applicant's fingerprints to the Division with written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation; or

(2) Verification to the Division that the applicant's fingerprints were forwarded to the Central Repository by the law enforcement agency or other authorized entity taking the fingerprints.

2. The Division may require an applicant to appear before the Board to demonstrate the applicant's:

(a) Moral character;

(b) Current fitness to practice as a licensed assistant behavior analyst; and

(c) Intent to practice as a licensed assistant behavior analyst in a manner consistent with the applicant's education, training and experience.

3. The Division may issue a provisional license to an applicant who has completed all the requirements for licensure other than successful completion of the written examination. A provisional license is valid for not more than 1 year and may not be renewed.

4. The Division will, in addition to issuing a license to an applicant who meets the requirements of this section, issue to the applicant a copy of the license in the form of a card which is of a size to be carried in a wallet.

Registration of a Registered Behavior Technician (NRS 437.130)

1. The Division will register a registered behavior technician to an applicant who:
 - (a) Has passed the RBT competency assessment and is credentialed as a registered behavior technician by the Behavior Analyst Certification Board, Inc., or its successor organization;
 - (b) Has not been convicted of a felony;
 - (c) Has not been subject to disciplinary action as a registered behavior technician in another jurisdiction;
 - (d) Does not have any outstanding complaints or charges pending against him or her as a registered behavior technician in another jurisdiction;
 - (e) Has not previously been denied registration by the Division and:
 - (i) Complies by submitting:
 - (1) A complete set of the applicant's fingerprints to the Division with written permission authorizing the Board to forward the fingerprints to the Central Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation; or
 - (2) Verification to the Division that the applicant's fingerprints were forwarded to the Central Repository by the law enforcement agency or other authorized entity taking the fingerprints.
2. The Division may require an applicant to appear before the Board to demonstrate the applicant's:
 - (a) Moral character;
 - (b) Current fitness to practice as a registered behavior technician; and
 - (c) Intent to practice as a registered behavior technician in a manner consistent with the applicant's education, training and experience.
3. The Division will, in addition to registering an applicant who meets the requirements of this section, issue to the applicant a copy of the registration in the form of a card which is of a size to be carried in a wallet.

Educational requirements for behavior analysts and assistant behavior analysts: Submission of proof that unaccredited program is equivalent to accredited program. (NRS 437.130)

1. An applicant for licensure as a licensed behavior analyst or a licensed assistant behavior analyst who has completed a training program not accredited by the Division must establish to the satisfaction of the Division that the program is equivalent to a program accredited by the Association for Behavior Analysis International or its successor organization.
2. The applicant must present to the Division transcripts, a description of the training program, letters from the directors of the departments of the institution where the program is conducted or other documents deemed suitable by the Division showing that the program substantially complies with the standards of the Association for Behavior Analysis International or its successor organization, including, without limitation, proof that the program requires at least as many hours covering specific subjects as required for accreditation by the Association for Behavior Analysis International or its successor organization.

Supervision of licensed assistant behavior analysts and autism behavior interventionists. (NRS 437.130)

1. A licensed assistant behavior analyst must be supervised by a psychologist or a licensed behavior analyst during at least 5 percent of the hours he or she works each month.

2. A psychologist, a licensed behavior analyst or a licensed assistant behavior analyst who supervises an autism behavior interventionist must supervise the autism behavior interventionist during at least 10 percent of the hours the autism behavior interventionist works each month.

3. The supervision required by subsections 1 and 2 must include, without limitation:

(a) At least 1 hour each month of one-on-one supervision; and

(b) At least 4 hours each month of additional direct supervision, which may include, without limitation:

(1) Videoconferencing, except that this must not constitute more than one-half of the time supervised each month; and

(2) Group meetings of not more than 10 persons, including each licensed assistant behavior analyst or autism behavior interventionist who is being supervised by the supervisor.

Continuing education: Requirements for renewal of license as a licensed behavior analyst or licensed assistant behavior analyst; courses and programs. (NRS 437.225)

1. To renew his or her license, a licensed behavior analyst or licensed assistant behavior analyst must certify to the Board that during the 2 years immediately preceding the date he or she submits an application for renewal, the applicant has completed 30 hours of continuing education that is approved by the Division. At least 6 hours must include instruction in scientific and professional ethics and standards, and common areas of professional misconduct. At least 2 hours must include instruction in evidence-based suicide prevention and awareness. Not more than 15 hours may be obtained from an approved distance education course.

2. A licensed behavior analyst or licensed assistant behavior analyst may not receive continuing education credit for a workshop, seminar, class or course in which he or she is the instructor.

3. Except as otherwise provided in subsection 4, the continuing education required pursuant to this section may include, without limitation:

(a) A workshop, seminar, class or distance education course in psychology, applied behavior analysis or a closely related discipline which maintains an attendance roster, and which is:

(1) Conducted under the auspices of an accredited college or university offering undergraduate- or graduate-level instruction; or

(2) Certified or recognized by a state, regional, national or international accrediting agency, including, without limitation:

(I) The American Association for Marriage and Family Therapy;

(II) The American Counseling Association;

(III) The American Medical Association;

(IV) The American Psychiatric Association;

(V) The American Psychological Association;

(VI) The Association for Behavior Analysis International;

(VII) The Behavior Analyst Certification Board, Inc.;

(VIII) The International Congress of Psychology; and

(IX) The National Association of Social Workers; or

(b) A workshop, seminar, class or distance education course in psychology, applied behavior analysis or a closely related discipline which is approved by the Division.

4. Before a licensed behavior analyst or a licensed assistant behavior analyst may receive credit for continuing education for a course in scientific and professional ethics and standards, and common areas of professional misconduct or a course in evidence-based suicide prevention and awareness, he or she must submit information concerning the course to the Division for approval of the course, unless the

Division has previously approved the course. The Division will make available at its office a list of courses and programs that are currently approved by the Division.

Continuing education: Request for approval of course or program. (NRS 437.225)

1. The Division will evaluate a written request for the approval of a continuing education course or program which is submitted by the sponsoring organization or agency on a form provided by the Division at least 30 days before the first day of the course or program. If the Division does not approve a course or program, the sponsoring organization or agency may, within 30 days after it receives notice of the Division's disapproval, submit to the Division a written request for reconsideration. A request for reconsideration will be considered by the Division within 30 calendar days.

2. A written request for approval must include, without limitation:

- (a) The name, address and telephone number of the person submitting the application;
- (b) The name of the sponsoring organization or agency;
- (c) The title of the continuing education course or program;
- (d) The date, time and location of the course or program;
- (e) The number and type of persons expected to attend the course or program and the maximum enrollment, if any;
- (f) The number of hours of instruction, excluding breaks;
- (g) The subjects that the course or program will cover;
- (h) For each instructor:
 - (1) His or her name, address and daytime telephone number; and
 - (2) His or her professional affiliations, educational background and work history which is relevant to the course or program;
- (i) A description of:
 - (1) The goal or purpose of the course or program;
 - (2) The content of the course or program;
 - (3) The objectives of the course or program;
 - (4) The amount of time which will be allotted for each objective of the course or program;
 - (5) The instructor who will teach each objective of the course or program;
 - (6) The method of teaching each objective of the course or program; and
 - (7) The evaluation process which will be used to determine whether the participants achieved the objectives of the course or program;
- (j) A copy of the refund form for the course or program which includes a statement of the refund policy;
- (k) A copy of the certificate of completion for the course or program which must include space for:
 - (1) The name of the sponsoring organization;
 - (2) The name and signature of each instructor;
 - (3) The name of the person who completed the course or program and his or her license number;
 - (4) The title of the course or program;
 - (5) The number of hours of the course or program;
 - (6) The date and location of the course or program; and
 - (7) The signature of a person who represents the sponsoring organization; and
- (l) A copy of the brochure or advertising material, if any, for the course or program.

BRIAN SANDOVAL
Governor

RICHARD WHITLEY, MS

Director



DENA SCHMIDT
Administrator

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November 20, 2018

The Honorable Brian Sandoval
Governor of the State of Nevada
State Capitol Building
101 N. Carson Street
Carson City, NV 89701

Re: Statement in Support of Emergency Regulation

Dear Governor Sandoval,

This statement is required by NRS 233B (Nevada Administrative Procedure Act) and is meant to outline the emergent need for a set of regulations under NRS 233B.0613(1)¹.

Statement of Emergency: In the 2017 Legislative Session, Senate Bill 286 was passed related to Aging and Disability Services Division (ADSD) taking on a role in the licensing of behavior analysts, assistant behavior analysts, and registering registered behavior technicians. This group of professionals and paraprofessionals is essential to the treatment and management of circumstances associated with Autism Spectrum Disorder. Currently, their licensure is overseen by the Board of Psychological Examiners, but as of January 1, 2019, an independent board is mandated by law. Unfortunately, much like the daily need for behavioral therapies for individuals with autism, the work of these individuals does not pause while board members are appointed, come up with bylaws, and eventually regulations for the receipt of licensing fees and the issuing of licenses in various circumstances. Regulations are essential on day one of the effective date of the statute and these emergency regulations are proposed for your approval so that licensing may operate without interruption.

The proposed regulations are enclosed and your original signature on this document is requested in support before this letter and the proposed regulations may be posted to the ADSD website and filed with the Nevada Secretary of State's office and the Legislative Counsel Bureau.

¹ **NRS 233B.0613 Emergency regulations.**

1. If an agency determines that an emergency exists, it shall submit to the Governor a written statement of the emergency which sets forth the reasons for the determination. If the Governor endorses the statement of the emergency by written endorsement at the end of the full text of the statement of emergency on the original copy of a proposed regulation, the regulation may be adopted and become effective immediately upon its being filed in the Office of the Secretary of State pursuant to subsection 3 of NRS 233B.070. The statement of the emergency endorsed by the Governor must be included as a part of the regulation for all purposes.

Thank you for your time and consideration in this matter. If the enclosed regulations meet with your approval, please endorse this statement below.

DATED this 20th day of November, 2018.

_____/s/_____
Jennifer Frischmann
Quality Assurance

Manager

Encl.: Emergency Regulations under NRS 437.

Endorsement under NRS 233B.0613:

I, Governor Brian Sandoval, do hereby endorse the written statement of emergency above related to NRS 437 and the enclosed emergency regulations for the reasons set forth above as if fully incorporated herein and authorize provision of the original of this document to be filed with the Nevada Secretary of State's office and included as a part of the regulation per statute.

DATED this 21st day of November, 2018.

_____/s/_____
Hon. Brian Sandoval