

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS

DIRECTOR'S OFFICE

BEHAVIOR ANALYSTS - GENERAL RULES

Filed with the secretary of state on December 7, 2021

These rules take effect immediately upon filing with the secretary of state unless adopted under section 33, 44, or 45a(9) of the administrative procedures act of 1969, 1969 PA 306, MCL 24.233, 24.244, or 24.245a. Rules adopted under these sections become effective 7 days after filing with the secretary of state.

(By authority conferred on the director of the department of licensing and regulatory affairs by sections 16145, 16148, 18257, and 18259 of the public health code, 1978 PA 368, MCL 333.16145, 333.16148, 333.18257, and 333.18259, and Executive Reorganization Order Nos. 1991-9, 1996-2, 2003-1, and 2011-4, MCL 338.3501, 445.2001, 445.2011, and 445.2030)

R 338.1801, R 338.1821, R 338.1823, R 338.1825, R 338.1827, R 338.1831, R 338.1833, and R 338.1835 of the Michigan Administrative Code are amended, and R 338.1824 and R 338.1832 are added, as follows:

PART 1. GENERAL PROVISIONS

R 338.1801 Definitions.

Rule 801. (1) As used in these rules:

- (a) "BACB" means the Behavior Analyst Certification Board, or its successor.
 - (b) "Board" means the Michigan board of behavior analysts created under section 18255 of the code, MCL 333.18255.
 - (c) "Code" means the public health code, 1978 PA 368, MCL 333.1101 to 333.25211.
 - (d) "Department" means the department of licensing and regulatory affairs.
- (2) A term defined in the code has the same meaning when used in these rules.

PART 2. LICENSURE

R 338.1821 Training standards for identifying victims of human trafficking; requirements.

Rule 821. (1) Under section 16148 of the code, MCL 333.16148, an individual seeking licensure or registration or who is licensed or registered shall complete training in identifying victims of human trafficking that satisfies the following standards:

- (a) Training content shall cover all the following:

- (i) Understanding the types and venues of human trafficking in the United States.
- (ii) Identifying victims of human trafficking in health care settings.
- (iii) Identifying the warning signs of human trafficking in health care settings for adults and minors.
- (iv) Resources for reporting the suspected victims of human trafficking.
- (b) Acceptable providers or methods of training include any of the following:
 - (i) Training offered by a nationally recognized or state-recognized health-related organization.
 - (ii) Training offered by, or in conjunction with, a state or federal agency.
 - (iii) Training obtained in an educational program approved for initial licensure or registration, or by a college or university.
 - (iv) Reading an article related to the identification of victims of human trafficking that satisfies the requirements of subdivision (a) of this subrule and is published in a peer review journal, health care journal, or professional or scientific journal.
- (c) Acceptable modalities of training may include any of the following:
 - (i) Teleconference or webinar.
 - (ii) Online presentation.
 - (iii) Live presentation.
 - (iv) Printed or electronic media.
- (2) The department may select and audit a sample of individuals and request documentation of proof of completion of training. If audited by the department, an individual shall provide an acceptable proof of completion of training, including either of the following:
 - (a) Proof of completion certificate issued by the training provider that includes the date, provider name, name of training, and individual's name.
 - (b) A self-certification statement by an individual. The certification statement must include the individual's name and either of the following:
 - (i) For training completed under subrule (1)(b)(i) to (iii) of this rule, the date, training provider name, and name of training.
 - (ii) For training completed under subrule (1)(b)(iv) of this rule, the title of article, author, publication name of peer review journal, health care journal, or professional or scientific journal, and date, volume, and issue of publication, as applicable.
- (3) Under section 16148 of the code, MCL 333.16148, the requirements specified in subrule (1) of this rule apply for license renewals beginning with the 2023 renewal cycle and for initial licenses issued beginning January 7, 2024.

R 338.1823 Application for license; qualifications.

Rule 823. (1) In addition to satisfying the requirements of the code, the department shall issue a behavior analyst license to an applicant who satisfies all the following requirements:

- (a) Provides a completed application on a form provided by the department.
- (b) Pays the required fee to the department.
- (c) Has proof of current certification in good standing with the BACB.

(d) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(2) In addition to satisfying the requirements of the code, the department shall issue an assistant behavior analyst license to an applicant who satisfies all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Has proof of current certification in good standing with the BACB.

(d) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(e) Provides proof acceptable to the department that supervision will occur under a Michigan licensed behavior analyst in this state who is currently certified and in good standing with the BACB, and that the supervision satisfies current BACB supervision requirements.

(3) An applicant who is or has been licensed, registered, or certified in a health profession or specialty by any other state, the United States military, the federal government, or another country shall disclose that fact on the application form. The applicant shall satisfy the requirements of section 16174(2) of the code, MCL 333.16174, which includes verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application. If licensure is granted and it is determined that sanctions have been imposed, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

R 338.1824 Application for license by endorsement; qualifications.

Rule 824. (1) An applicant for a behavior analyst license by endorsement who satisfies the requirements of the code and this rule satisfies the requirements of section 16186 of the code, MCL 333.16186. The department shall issue a behavior analyst license to an applicant who satisfies all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Holds a current behavior analyst license in another state or in a province of Canada.

(d) Has proof of current certification in good standing with the BACB.

(e) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(2) An applicant for an assistant behavior analyst license by endorsement who satisfies the requirements of the code and this rule satisfies the requirements of section 16186 of the code, MCL 333.16186. The department shall issue an assistant behavior analyst license to an applicant who satisfies all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Holds a current assistant behavior analyst license in another state or in a province of Canada.

(d) Has proof of current certification in good standing with the BACB.

(e) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(f) Provides proof acceptable to the department that supervision will occur under a Michigan licensed behavior analyst in this state who is currently certified and in good standing with the BACB, and that the supervision satisfies current BACB supervision requirements.

(3) An applicant who is or has been licensed, registered, or certified in a health profession or specialty by any other state, the United States military, the federal government, or another country shall disclose that fact on the application form. The applicant shall satisfy the requirements of section 16174(2) of the code, MCL 333.16174, which includes verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application. If licensure is granted and it is determined that sanctions have been imposed, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

R 338.1825 Application for relicensure; qualifications.

Rule 825. (1) An applicant may be relicensed within 3 years after the expiration date of the license under section 16201(3) of the code, MCL 333.16201, if the applicant satisfies all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Has proof of current certification in good standing with the BACB.

(d) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(e) Establishes good moral character as defined under sections 1 to 7 of 1974 PA 381, MCL 338.41 to 338.47.

(f) If applying for relicensure as an assistant behavior analyst, provides proof acceptable to the department that supervision will occur under a Michigan licensed behavior analyst in this state who is currently certified and in good standing with the BACB, and that the supervision satisfies current BACB supervision requirements.

(2) An applicant may be relicensed more than 3 years after the expiration date of the license under section 16201(4) of the code, MCL 333.16201, if the applicant satisfies all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Has proof of current certification in good standing with the BACB.

(d) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(e) Establishes good moral character as defined under sections 1 to 7 of 1974 PA 381, MCL 338.41 to 338.47.

(f) Provides fingerprints as required under section 16174(3) of the code, MCL 333.16174.

(g) If applying for relicensure as an assistant behavior analyst, provides proof acceptable to the department that supervision will occur under a Michigan licensed behavior analyst in this state who is currently certified and in good standing with the BACB, and that the supervision satisfies current BACB supervision requirements.

(3) An applicant who is or has been licensed, registered, or certified in a health profession or specialty by any other state, the United States military, the federal government, or another country shall disclose that fact on the application form. The applicant shall satisfy the requirements of section 16174(2) of the code, MCL 333.16174, which includes verification from the issuing entity showing that disciplinary proceedings are not pending against the applicant and sanctions are not in force at the time of application. If licensure is granted and it is determined that sanctions have been imposed, the disciplinary subcommittee may impose appropriate sanctions under section 16174(5) of the code, MCL 333.16174.

R 338.1827 Application for renewal of license; qualifications.

Rule 827. (1) The department shall renew a behavior analyst license for a current licensee who satisfies all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Has proof of current certification in good standing with the BACB.

(d) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(2) The department shall renew an assistant behavior analyst license for a current licensee who satisfies all the following requirements:

(a) Provides a completed application on a form provided by the department.

(b) Pays the required fee to the department.

(c) Has proof of current certification in good standing with the BACB.

(d) Has not been convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722. An applicant may request a hearing under section 16232 of the code, MCL 333.16232, if denied under this subdivision.

(e) Provides proof acceptable to the department that supervision will occur under a Michigan licensed behavior analyst in this state who is currently certified and in good standing with the BACB, and that the supervision satisfies current BACB supervision requirements.

PART 3. STANDARDS OF PRACTICE

R 338.1831 Certification; requirement.

Rule 831. A licensee shall keep active status certification with the BACB throughout the duration of the license cycle.

R 338.1832 Telehealth.

Rule 832. (1) A licensee shall obtain consent for treatment before providing a telehealth service under section 16284 of the code, MCL 333.16284.

(2) A licensee shall keep proof of consent for telehealth treatment in the patient's up-to-date medical record and follow section 16213 of the code, MCL 333.16213.

(3) A licensee providing any telehealth service shall do both of the following:

(a) Act within the scope of the licensee's practice.

(b) Exercise the same standard of care applicable to a traditional, in-person health care service.

R 338.1833 Adoption of standards.

Rule 833. The professional standards of the BACB are adopted by reference, as specified in the publication entitled "Ethical Code for Behavior Analysts," effective January 1, 2022. The standards are available from the BACB's website <https://www.bacb.com/ethics-information/ethics-codes/> at no cost. Copies of the standards are available for inspection and distribution at the cost of 10 cents per page from the Board of Behavior Analysts, Bureau of Professional Licensing, Department of Licensing and Regulatory Affairs, 611 W. Ottawa Street, P.O. Box 30670, Lansing, Michigan 48909.

R 338.1835 Permanent revocation; grounds; hearing.

Rule 835. (1) Notwithstanding sections 16221, 16226, and 16245 of the code, MCL 333.16221, 333.16226, and 333.16245, a licensee's license shall be permanently revoked if convicted of a listed offense under section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722, while licensed under this part.

(2) A licensee may request a hearing under section 16232 of the code, MCL 333.16232, if revocation of the license occurs under subrule (1) of this rule.