

MARYLAND REGISTER

Proposed Action on Regulations

Transmittal Sheet PROPOSED OR REPROPOSED Actions on Regulations	Date Filed with AELR Committee	TO BE COMPLETED BY DSD
	12/06/2016	Date Filed with Division of State Documents
		Document Number
		Date of Publication in MD Register

1. Desired date of publication in Maryland Register: 1/20/2017

2. COMAR Codification

Title Subtitle Chapter Regulation

10 58 16 01-.18

3. Name of Promulgating Authority

Department of Health and Mental Hygiene

4. Name of Regulations Coordinator

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6. Check applicable items:

New Regulations

Amendments to Existing Regulations

Subtitle 58 BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS
10.58.16 Behavior Analyst Advisory Committee

Authority: Health Occupations Article, Title 7, Subtitle 6A, Annotated Code of Maryland

Notice of Proposed Action

□

The Secretary of Health and Mental Hygiene proposes to adopt new Regulations .01—.18 under new chapter COMAR 10.58.16 Behavior Analyst Advisory Committee.

This action was considered at a public meeting on April 15, 2016, notice of which was given by publication on the Board's website at <http://dhmh.maryland.gov/bopc/Pages/index.aspx> pursuant to General Provisions Article, §3-302(c), Annotated Code of Maryland.

Statement of Purpose

The purpose of this action is to adopt regulations governing the practice of behavior analysis and establishing the Behavior Analyst Advisory Committee under the Board of Professional Counselors and Therapists.

Comparison to Federal Standards

There is no corresponding federal standard to this proposed action.

Estimate of Economic Impact

The proposed action has no economic impact.

Economic Impact on Small Businesses

The proposed action has minimal or no economic impact on small businesses.

Impact on Individuals with Disabilities

The proposed action has no impact on individuals with disabilities.

Opportunity for Public Comment

Comments may be sent to Michele Phinney, Director, Office of Regulation and Policy Coordination, Department of Health and Mental Hygiene, 201 West Preston Street, Room 512, Baltimore, MD 21201, or call 410-767-6499; TTY:800-735-2258, or email to dhmh.regs@maryland.gov, or fax to 410-767-6483. Comments will be accepted through February 21, 2017. A public hearing has not been scheduled.

Economic Impact Statement Part C

- A. Fiscal Year in which regulations will become effective: FY 2017
- B. Does the budget for the fiscal year in which regulations become effective contain funds to implement the regulations?
- C. If 'yes', state whether general, special (exact name), or federal funds will be used:
- D. If 'no', identify the source(s) of funds necessary for implementation of these regulations:
- E. If these regulations have no economic impact under Part A, indicate reason briefly: This proposal codifies the statutory requirements for behavior analysts and for the Behavior Analyst Advisory Committee into regulation. There would be an economic impact to the extent that an individual is found in violation of the statute or the regulations and a fine is imposed.
- F. If these regulations have minimal or no economic impact on small businesses under Part B, indicate the reason and attach small business worksheet. It is incumbent upon individuals to become licensed as a behavior analyst in order to practice behavior analysis in the State, not upon a small business.
- G. Small Business Worksheet:

Attached Document:

Title 10

DEPARTMENT OF HEALTH AND MENTAL HYGIENE

Subtitle 58 BOARD OF PROFESSIONAL COUNSELORS AND THERAPISTS

10.58.16 Behavior Analyst Advisory Committee

Authority: *Health Occupations Article, Title 7, Subtitle 6A, Annotated Code of Maryland*

.01 Scope.

This chapter governs the practice of behavior analysis.

.02 Definitions.

A. In this chapter, the following terms have the meanings indicated.

B. Terms Defined.

(1) "Board" means the Board of Professional Counselors and Therapists.

(2) "Board-certified assistant behavior analyst" means an individual who:

(a) Is credentialed by the Behavior Analyst Certification Board or a successor organization; and

(b) Practices under the supervision of a licensed behavior analyst in accordance with the Behavior Analyst

Certification Board's description of the role and functions of a board-certified assistant behavior analyst and supervision requirements.

- (3) "Board-certified behavior analyst" means an individual credentialed by the Behavior Analyst Certification Board or a successor organization.
- (4) "Committee" means the Behavior Analyst Advisory Committee.
- (5) "License" means a license issued by the Board to practice behavior analysis.
- (6) "Licensed behavior analyst" means a behavior analyst licensed by the Board to practice behavior analysis.
- (7) "Paraprofessional" means an individual who:
- Practices behavior analysis under the supervision of a licensed behavior analyst in accordance with requirements set by the Behavior Analyst Certification Board; and
 - Is not a board-certified assistant behavior analyst; and
 - May be a registered behavior technician.
- (8) Practice behavior analysis.
- "Practice behavior analysis" means to design, implement, and evaluate systematic instructional and environmental modifications to produce socially significant improvements in human behavior.
 - "Practice behavior analysis" includes:
 - The empirical identification of functional relations between behavior and environmental factors, also known as functional assessment and analysis; and
 - Interventions based on scientific research and the direct observation and measurement of behavior and environment.
 - "Practice behavior analysis" does not include:
 - Psychological testing;
 - Diagnosis of a mental or physical disorder;
 - Neuropsychology;
 - Psychotherapy;
 - Cognitive therapy;
 - Sex therapy;
 - Psychoanalysis or hypnotherapy; or
 - Counseling.
- (9) "Registered behavior technician" means an individual who:
- Is credentialed as a registered behavior technician by the Behavior Analyst Certification Board or a successor organization; and
 - Practices behavior analysis under the close, ongoing supervision of a licensed behavior analyst in accordance with requirements set by the Behavior Analyst Certification Board.
- (10) "Supervisee" means an individual who implements behavior analytic assessment or intervention procedures under the supervision of a licensed behavior analyst. Supervisees include, but are not limited to:
- Board-Certified Assistant Behavior Analysts;
 - Paraprofessionals;
 - Matriculated undergraduate or graduate students engaging in behavior analytic activities to fulfill requirements for coursework, practica, internships, theses, dissertations, graduate assistantships, or independent study.
 - Non-students who are completing the supervised experiential training eligibility requirement for certification by the Behavior Analyst Certification Board.
- (11) "Supervision" means the ongoing monitoring of implementation quality, the frequency of which should be based on the supervisee's training, competence, and experience and the nature of the assessment or intervention procedures delegated to the supervisee.
- (12) "Supervisor" means a licensed behavior analyst who provides supervision to a supervisee.

.03 Behavior Analyst Advisory Committee.

A. The Board shall appoint members of the committee as follows:

- On or before December 31, 2014, four behavior analysts who:
 - Are credentialed by the Behavior Analyst Certification Board as board-certified behavior analysts or designated as board-certified behavior analysts-doctoral; and
 - Have a minimum of 5 years of clinical experience; and
- On or after January 1, 2015, four licensed behavior analysts who:
 - Are credentialed by the Behavior Analyst Certification Board; and
 - Have a minimum of 5 years of clinical experience; and
- One consumer member who:
 - Is a member of the general public;
 - Is receiving or has received applied behavior analysis services, or has a family member who is receiving or has received applied behavior analysis services and
 - May not:
 - Be or ever have been a behavior analyst or in training to become a behavior analyst;
 - Have a household member who is a behavior analyst or in training to become a behavior analyst;

(iii) Participate or ever have participated in a commercial or professional field related to behavior analysis;

(iv) Have a household member who participates in a commercial or professional field related to behavior analysis; and

(v) Have had within 2 years before appointment a substantial financial interest in a person regulated by the Board.

B. Terms.

(1) The term of a member is 4 years.

(2) The terms of members are staggered.

(3) At the end of a term, a member continues to serve until a successor is appointed and qualifies.

(4) An individual may be reappointed for a second 4-year term, but the individual may not serve more than two consecutive 4-year terms.

C. Vacancy.

(1) If a vacancy occurs, the Board shall appoint a new member to serve.

(2) The successor member shall only serve for the remainder of the term, unless reappointed.

D. Officers. From among its members, the Committee shall elect a Chair and a Vice Chair, annually.

E. Quorum.

(1) A majority of the members then serving on the Committee is a quorum.

(2) Business may not be conducted at a Committee meeting unless there is a quorum.

F. The Committee shall:

(1) Develop and make recommendations to the Board in the following areas:

(a) Regulations governing the practice of behavior analysis;

(b) Code of ethics requirements for the practice of behavior analysis;

(c) Requirements for licensure as a behavior analyst, including:

(i) Criteria for educational and clinical training of licensed behavior analysts; and

(ii) Criteria for a professional competency examination and testing of applicants for licensure to practice behavior analysis; and

(d) Continuing education requirements for license renewal;

(2) Investigate allegations of violations of this chapter and these regulations and make recommendations to the Board regarding disposition of such allegations;

(3) Report to the Board as required; and

(4) Keep a record of its proceedings.

.04 Qualifications.

A. To qualify for licensure as a licensed behavior analyst, an individual shall:

(1) Be of good moral character;

(2) Be at least 18 years of age;

(3) Have a current certification as a board-certified behavior analyst or board-certified behavior analyst - doctoral verified by the Board with the Behavior Analyst Certification Board or its successor organization;

(4) Have received a master's degree or higher from a behavior analysis educational course sequence that is approved by the Behavior Analyst Certification Board or a successor organization; and

(5) Demonstrate oral and written competency in English as required by the Board.

B. The Board shall waive the educational requirements in §A(4) of this regulation if an individual was certified by the Behavior Analyst Certification Board on or before December 31, 2014 and is in good standing.

.05 Application Procedure.

To apply for a license, an individual shall submit:

A. A completed application form to the Board on a form that the Board requires and that is provided by the Committee;

B. To a criminal history records check in accordance with Health Occupations Article, §17-501.1, Annotated Code of Maryland; and

C. The following documentation:

(1) An official transcript, demonstrating that the applicant has met the minimum degree requirement of the Behavior Analyst Certification Board, or its successor, at the time of certification; and

(2) A copy of the applicant's Behavior Analyst Certification Board certificate, demonstrating that the applicant is currently certified in good standing as a board-certified behavior analyst by the Behavior Analyst Certification Board, or its successor.

.06 Renewal.

A. An individual who has been licensed by the Board as a behavior analyst may renew the license every 2 years on the date specified by the Board by:

(1) Completing a renewal application on a form supplied by the Board;

(2) Submitting evidence of a current certification with the Behavior Analyst Certification Board;

- (3) *Having current certification verified with the Behavior Analyst Certification Board;*
 - (4) *Submitting to a criminal history records check in accordance with Health Occupations Article, §17-501.1, Annotated Code of Maryland; and*
 - (5) *Submitting satisfactory evidence of compliance with any continuing education requirements established by the Board under Health Occupations Article, §17-6A-15(d), Annotated Code of Maryland.*
- B. A licensed behavior analyst who has not renewed his or her license or whose license has not been placed on inactive status by the Board may not practice behavior analysis.*

.07 Continuing Education.

- A. A licensed behavior analyst shall complete continuing education units in accordance with the requirements of the Behavior Analyst Certification Board or its successor organization.*
- B. A licensed behavior analyst shall document completion of continuing education requirements and retain this documentation for the succeeding 4 years for possible inspection by the Board.*

.08 Inactive Status.

- A. The Board shall place a license on inactive status for not more than 4 years if the licensed behavior analyst submits to the Board a completed application on a form required by the Board and provided by the Committee.*
- B. A licensed behavior analyst whose license is inactive may not practice behavior analysis until the license has been reactivated in accordance with Regulation .09 of this chapter.*
- C. A licensed behavior analyst whose license is inactive shall renew the inactive status every year before it expires by completing the form required by the Board and provided by the Committee.*

.09 Reactivation.

- A. A license on inactive status may be reactivated by the Board by:*
 - (1) Complying with the requirements for renewal that exist at the time the license changes from inactive to active status;*
 - (2) Meeting any continuing education requirements established by the Board; and*
 - (3) Verifying active and current certification with the Behavior Analyst Certification Board.*
- B. The Board may reject an application for reactivation if the licensed behavior analyst is found to have violated any provision of Health Occupations Article, Title 17, Subtitle 6A, Annotated Code of Maryland or this chapter.*

.10 Reinstatement.

- A. The Board shall reinstate the license of a behavior analyst who has not been put on inactive status and who has failed to renew the license for any reason if the behavior analyst:*
 - (1) Meets the requirements set forth in Regulation .09 of this chapter; and*
 - (2) Applies to the Board for reinstatement of the license within 5 years after the license expires.*
- B. The Board may not reinstate the license of a behavior analyst who fails to apply for reinstatement of the license within 5 years after the license expires.*
- C. Notwithstanding the provisions of §B of this regulation, a behavior analyst may become licensed by meeting the current requirements for obtaining a new license under this chapter.*

.11 Practice Responsibilities.

- A. Except where there is a consultative agreement, the licensed behavior analyst is ultimately responsible for the design and implementation of behavior analytic services that are in the best interest of the client, under the licensed behavior analyst's supervision.*
- B. Behavior analysis involves the design, implementation, and evaluation of systematic instructional and environmental modifications to produce socially significant improvements in human behavior.*
- C. The responsibilities of a licensed behavior analyst are as follows:*
 - (1) Objective measurement and description of specific levels of client behavior at baseline and throughout treatment;*
 - (2) An emphasis on understanding the current function or functions and future importance of behaviors targeted for treatment;*
 - (3) Efforts to design, establish, and manage treatment environments in order to minimize problem behaviors and maximize progress on treatment targets;*
 - (4) Use of a carefully constructed, individualized, and detailed behavior analytic treatment plan that:*
 - (a) Utilizes reinforcement and other scientifically validated behavior analytic procedures as opposed to procedures that lack scientific evidence of effectiveness;*
 - (b) Is designed to establish small units of behavior and build toward larger, clinically important changes in behavior that result in improved client health and functioning;*
 - (c) Includes ongoing, frequent, direct observation and objective measurement of treatment targets and analysis of the resulting data in order to adjust treatment procedures to maximize client progress; and*
 - (d) Is implemented repeatedly, frequently, and consistently across multiple environments by the licensed behavior analysts' supervisees, and the client's caregivers who are trained and supervised by the licensed behavior analyst to implement specified components of the treatment plan; and*

(5) Determination and supervision of tasks to be performed by a supervisee based on the supervisee's training, experience, and competence, in accordance with the responsibilities for supervision described in Regulation .13 of this chapter.

.12 Delivery of Service Model.

A. The provision of behavior analytic services may take one of three forms:

- (1) A tiered-service delivery model;
- (2) A direct service model; or
- (3) A consultative model.

B. Unless a consultation agreement described in §E of this regulation exists, a licensed behavior analyst shall be ultimately responsible for the design and implementation of behavior analytic services that are in the best interest of the client, under the licensed behavior analyst's supervision.

C. Tiered Service Delivery Model.

(1) A licensed behavior analyst may utilize the services of supervisees to deliver behavior analysis services to clients, provided the licensed behavior analyst does so in accordance with this regulation and requirements set by the Behavior Analyst Certification Board.

(2) Under a tiered delivery service model:

(a) A licensed behavior analyst and a supervisee shall comply with the supervision responsibilities specified in Regulation .13 of this chapter and requirements set by the Behavior Analyst Certification Board;

(b) A licensed behavior analyst shall be responsible for all aspects of clinical direction, supervision, and case management, including activities of supervisees;

(c) A supervisee shall deliver assessment and treatment protocols as directed by and under the close and ongoing supervision of a licensed behavior analyst; and

(d) The licensed behavior analyst may delegate responsibilities to supervisees only if, in the judgment of the licensed behavior analyst:

(i) The task or procedures can be properly and safely performed by the supervisee;

(ii) Delegation does not jeopardize the health or safety of the client; and

(iii) The delegation is in accordance with the current supervision requirements of the Behavior Analyst Certification Board or successor organization.

D. Direct Delivery Service Model. Under a direct service delivery model, a licensed behavior analyst shall be responsible for all aspects of case management and implementation of assessment and treatment protocols.

E. Consultation Agreement. Under a consultation agreement, a licensed behavior analyst:

(1) Shall enter into a contract with the individual or entity for whom the licensed behavior analyst will be consulting that defines:

(a) The frequency of the consultation;

(b) The location of the consultation; and

(c) The expectations of both parties to the contract;

(2) Shall act principally in the best interest of the individual or entity for which the licensed behavior analyst will be consulting, with appropriate consent, subject to other relevant considerations, including applicable law and contractual obligations;

(3) When indicated and professionally appropriate, shall cooperate with other professionals in a manner that is consistent with the philosophical assumptions and principles of behavior analysis, to effectively and appropriately serve their clients; and

(4) May be held responsible for the treatment of a client for whom a behavior analytic treatment plan was recommended.

.13 Supervision.

A. A licensee shall:

(1) Comply with the Behavior Analyst Certification Board requirements regarding supervision of supervisees; and

(2) Use appropriate clinical judgment in determining when and how often to conduct supervision.

B. Supervision Process.

(1) The supervision shall occur for the duration of clinical service provision (e.g., beginning with assessment and through case closure).

(2) Supervision activities may involve direct contact with the client or activities related to case management, at the discretion of the licensed behavior analyst providing the supervision and as in accordance with the requirements set by the Behavior Analyst Certification Board.

(3) The licensed behavior analyst shall be ultimately responsible and accountable for the design and implementation of behavior analytic services that are in the best interest of the client and outcomes under her or his clinical supervision.

C. Unless a consultation agreement exists, a licensed behavior analyst shall be ultimately responsible for the design and implementation of behavior analytic services that are in the best interest of the client, under the licensed behavior analyst's supervision.

- D. Delegation shall only be made if, in the judgment of the licensed behavior analyst:*
- (1) The task or procedures can be properly and safely performed by an appropriately trained supervisee; and*
 - (2) The delegation does not jeopardize the health or safety of the client.*
- E. Supervision activities by the licensed behavior analyst may include, but not be limited to:*
- (1) Direct training of supervisees in implementation of behavior analytic assessment or intervention procedures;*
 - (2) Conducting real-time, live, and person-to-person observation of the supervisee implementing behavior analytic assessment and intervention procedures with clients in natural environments or training others to implement them, with feedback from the supervisor;*
 - (3) Conducting one-to-one real-time, live, and person-to-person interactions between supervisor and supervisee to review and discuss:*
 - (a) Assessment and treatment plans and procedures;*
 - (b) Client assessment and progress data and reports;*
 - (c) Published research;*
 - (d) Ethical and professional standards and guidelines;*
 - (e) Professional development needs and opportunities; and*
 - (f) Relevant laws, regulations, and policies; or*
 - (4) Conducting real-time, live, and person-to-person interactions between a supervisor and a group of supervisees to review and discuss:*
 - (a) Assessment and treatment plans and procedures;*
 - (b) Client assessment and progress data and reports;*
 - (c) Published research;*
 - (d) Ethical and professional standards and guidelines;*
 - (e) Professional development needs and opportunities; and*
 - (f) Relevant laws, regulations, and policies.*
- F. The frequency and nature of supervision interactions are determined by the individualized assessment or treatment plans of the clients served by the licensed behavior analyst and the supervisees.*

.14 Code of Ethics.

A. A licensed behavior analyst shall comply with the current professional disciplinary and ethical code established by the Behavior Analyst Certification Board or its successor organization.

B. Familiarity with revisions to the Behavior Analyst Certification Board's professional disciplinary and ethical code is the responsibility of the licensed behavior analyst.

.15 Prohibited Conduct.

Subject to the hearing provisions of Health Occupations Article, §17-6A-21, Annotated Code of Maryland, the Board may deny a license to any applicant, reprimand any licensed behavior analyst, place any licensed behavior analyst on probation, or suspend or revoke a license if the applicant or licensed behavior analyst:

- A. Fraudulently or deceptively obtains or attempts to obtain a license for the applicant or licensed behavior analyst or for another;*
- B. Fraudulently or deceptively uses a license;*
- C. Is convicted of or pleads guilty or nolo contendere to a felony or a crime involving moral turpitude, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;*
- D. Aids or abets an unauthorized person in practicing behavior analysis or representing oneself to be a behavior analyst;*
- E. Practices behavior analysis fraudulently or deceitfully;*
- F. Violates the code of ethics adopted by the Board under Health Occupations Article, §17-6A-03, Annotated Code of Maryland;*
- G. Willfully fails to file or record any report as required under law, willfully impedes or obstructs the filing or recording of the report, or induces another to fail to file or record the report;*
- H. Submits a false statement to collect a fee;*
- I. Willfully makes or files a false report or record in the practice of behavior analysis;*
- J. Is disciplined by a licensing or disciplinary authority of any state or country or convicted or disciplined by a court of any state or country or disciplined by any branch of the United States uniformed services or the United States Veterans Administration for an act that would be grounds for disciplinary action under the Board's disciplinary statutes;*
- K. Violates any provision of:*
 - (1) Health Occupations Article, Title 17, Subtitle 6A, Annotated Code of Maryland; or*
 - (2) This chapter;*
- L. Uses or promotes or causes the use of any misleading, deceiving, or untruthful advertising matter, promotional literature, or testimonial;*
- M. Is professionally, physically, or mentally incompetent;*
- N. Promotes the sale of devices, appliances, or goods to a patient so as to exploit the patient for financial gain;*
- O. Behaves immorally in the practice of behavior analysis;*

- P. Commits an act of unprofessional conduct in the practice of behavior analysis;*
- Q. Refuses, withholds from, denies, or discriminates against an individual with regard to the provision of professional services for which the licensed behavior analyst is licensed and qualified to render because the individual is HIV positive;*
- R. Fails to cooperate with a lawful investigation conducted by the Board;*
- S. Commits an act that is inconsistent with generally accepted professional standards in the practice of behavior analysis;*
- T. Fails to submit to a criminal history records check in accordance with Health Occupations Article, 17–501.1, Annotated Code of Maryland;*
- U. Habitually is intoxicated;*
- V. Provides professional services while under the influence of alcohol or while using any narcotic or controlled dangerous substance, as defined in Criminal Law Article, §5–101, Annotated Code of Maryland, or other drug that is in excess of therapeutic amounts or without valid medical indication; or*
- W. Knowingly fails to report suspected child abuse in violation of Family Law Article, §5–704, Annotated Code of Maryland.*

.16 Investigations, Hearings, and Appeals.

- A. Complaints alleging prohibited conduct shall be referred to the Committee to be investigated and reported to the Board according to the Board’s procedures.*
- B. A hearing on charges issued under Regulation .17 of this chapter or Health Occupations Article, §17–6A–19, Annotated Code of Maryland, shall be held in accordance with the hearing provisions of Health Occupations Article, §§17–511 and 17–6A–21, Annotated Code of Maryland.*
- C. The Committee shall follow the hearing procedures in accordance with the hearing provisions of Health Occupations Article, §§ 17–511 and 17–6A–21, Annotated Code of Maryland.*
- D. Appeals from a final Board decision shall be taken in accordance with Health Occupations Article, §17–6A–22, Annotated Code of Maryland.*

.17 Fines and Penalties.

- A. An individual who violates any provision of Health Occupations Article, Title 17, Subtitle 6A, Annotated Code of Maryland, is guilty of a misdemeanor and on conviction is subject to a fine not exceeding \$10,000, or imprisonment not exceeding 1 year, or both.*
- B. The Board may impose a civil fine of not more than \$50,000 on an individual who violates any provision of Health Occupations Article, §17–6A–27, Annotated Code of Maryland.*
- C. The Board shall deposit a penalty collected under §B of this regulation into the State General Fund.*

.18 Sanctioning Guidelines.

- A. If, after a hearing or an opportunity for a hearing under Health Occupations Article, §17–511, Annotated Code of Maryland, the Board finds that there are grounds for discipline under Health Occupations Article, §17–6A–19, Annotated Code of Maryland, the Board may place any licensee or certificate holder on probation, reprimand any licensee or certificate holder, or suspend or revoke a license or certificate.*
- B. In addition to placing the licensee or certificate holder on probation, reprimanding the licensee or certificate holder, or suspending or revoking the license or certificate, the Board may impose a penalty as set forth in this regulation.*
- C. General Application of Sanctioning Guidelines. Except as provided in §J of this regulation, for violations of the Maryland Behavior Analysts Act listed in the sanctioning guidelines, the Board shall impose a sanction not less severe than the minimum listed in the sanctioning guidelines or more severe than the maximum listed in the guidelines for each offense.*
- D. Ranking of Sanctions.*
 - (1) For the purposes of this regulation, the severity of sanctions is ranked as follows, from the least severe to the most severe:*
 - (a) Reprimand;*
 - (b) Probation;*
 - (c) Suspension; and*
 - (d) Revocation.*
 - (2) A stayed suspension in which the stay is conditioned on the completion of certain requirements is ranked as probation.*
 - (3) A stayed suspension not meeting the criteria of §D(2) of this regulation is ranked as a reprimand.*
 - (4) A penalty listed in the sanctioning guidelines may be imposed in addition to but not as a substitute for a sanction.*
 - (5) The addition of a penalty does not change the ranking of the severity of the sanction.*
- E. The Board may impose more than one sanction provided that the most severe sanction neither exceeds the maximum nor is less than the minimum sanction permitted.*

F. Any sanction may be accompanied by conditions reasonably related to the offense or to the rehabilitation of the offender. The inclusion of conditions does not change the ranking of the sanction.

G. If a licensee is found in violation of more than one ground for discipline as enumerated in this regulation, the sanction with the highest severity ranking shall be used to determine which ground will be used in developing a sanction and the Board may impose concurrent sanctions based on other grounds violated.

H. Notwithstanding the guidelines set forth in this regulation, in order to resolve a pending disciplinary action, the Board and licensee may agree to a surrender of license or to a consent order with terms, sanction, and penalty agreed to by the Board and the licensee.

I. If the Board imposes a sanction that departs from the sanctioning guidelines set forth in this regulation, the Board shall state its reasons for doing so in its final decision and order.

J. Aggravating and Mitigating Factors.

(1) Depending on the facts and circumstances of each case, and to the extent that the facts and circumstances apply, the Board may consider mitigating and aggravating factors in determining whether the sanction in a particular case should fall outside the range of sanctions established by the guidelines.

(2) Nothing in this regulation requires the Board or an Administrative Law Judge to make findings of fact with respect to any of these factors.

(3) A departure from the guidelines set forth in this chapter is not a ground for any hearing or appeal of a Board action.

(4) The existence of one or more of these factors does not impose on the Board or an Administrative Law Judge any requirement to articulate its reasoning for not exercising its discretion to impose a sanction outside of the range of sanctions set forth in this chapter:

(a) The absence of a prior disciplinary record;

(b) The offender self-reported the violation to the Board;

(c) The offender's full and voluntary admissions of misconduct to the Board and cooperation during Board proceedings;

(d) The offender implemented remedial measures to correct or mitigate the harm arising from the misconduct;

(e) The offender made timely good-faith efforts to make restitution or to rectify the consequences of the misconduct;

(f) The offender has been rehabilitated or exhibits rehabilitative potential;

(g) The absence of premeditation to commit the misconduct;

(h) The absence of potential harm to patients or the public or other adverse impact; or

(i) The offender's conduct was an isolated incident and is not likely to recur.

(5) Aggravating factors may include, but are not limited to, the following:

(a) The offender has a previous criminal or administrative disciplinary history;

(b) The violation was committed deliberately or with gross negligence or recklessness;

(c) The violation had the potential for, or caused, serious patient or public harm;

(d) The violation was part of a pattern of detrimental conduct;

(e) The offender was motivated to perform the violation for financial gain;

(f) The vulnerability of the clients;

(g) The offender lacked insight into the wrongfulness of the conduct;

(h) The offender committed the violation under the guise of treatment;

(i) The offender attempted to hide the error or misconduct from patients or others;

(j) The offender did not cooperate with the investigation; or

(k) Previous attempts at rehabilitation of the offender were unsuccessful.

K. Payment of a Penalty.

(1) A licensee shall pay to the Board a penalty imposed under this chapter as of the date the Board's order is issued, unless the Board's order specifies otherwise.

(2) Filing an appeal under State Government Article, §10-222, Annotated Code of Maryland, or Health Occupations Article, §17-512, Annotated Code of Maryland, does not automatically stay payment of a penalty imposed by the Board under this regulation.

(3) If a licensee fails to pay, in whole or in part, a penalty imposed by the Board under this regulation, the Board may not restore, reinstate, or renew a license until the penalty has been paid in full.

(4) In its discretion, the Board may refer all cases of delinquent payment to the Central Collection Unit of the Department of Budget and Management to institute and maintain proceedings to ensure prompt payment.

(5) The Board shall pay all monies collected under this regulation into the State's General Fund.

VAN T. MITCHELL

Secretary of Health and Mental Hygiene

