



# Alabama Department of Examiners of Public Accounts

## *Report on the* **Behavior Analyst Licensing Board** **Montgomery, Alabama**

October 1, 2018 through September 30, 2022

AUDEMUS JURA NOSTRA DEFENDERE  
ALABAMA STATE HOUSE

*Rachel Laurie Riddle, Chief Examiner*





Rachel Laurie Riddle  
*Chief Examiner*

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**Examiners of Public Accounts**

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July 18, 2023

Senator Will Barfoot  
Chairman, Sunset Committee  
Alabama State House  
Montgomery, AL 36130

Dear Senator Barfoot:

This report was prepared to provide information for use by the Sunset Committee in conducting its review and evaluation of the operations of the Alabama Behavior Analyst Licensing Board in accordance with the *Code of Alabama 1975*, Section 41-20-9.

The report contains unaudited information obtained from the management, staff, and records of the Alabama Behavior Analyst Licensing Board, in addition to information obtained from other sources.

Please contact me if you have any questions concerning this report.

Sincerely,

Rachel Laurie Riddle  
Chief Examiner

Examiner  
Rodney Wagstaff



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# **PROFILE**

## **Purpose/Authority**

The Alabama Behavior Analyst Licensing Board was created by Act 2014-163, Acts of Alabama. The Board was established within the Department of Mental Health, Division of Developmental Disabilities, and exercises licensing and regulatory authority over the practice of behavior analysis. The Board operates under the authority of the *Code of Alabama 1975*, Section 34-5A-1 through 34-5A-8.

<b><u>Characteristics</u></b>	
<b>Members and Selection</b>	<p>Seven members appointed by the Governor upon recommendation submitted by the Board.</p> <p>Currently six members are serving. The public member position is vacant.</p> <p><i>Code of Alabama 1975</i>, Section 34-5A-3(a)(b)</p>
<b>Term</b>	<p>Members serve three-year staggered terms and serve until their successors are appointed and assume office. No member shall serve more than two successive terms.</p> <p><i>Code of Alabama 1975</i>, Section 34-5A-3(a)(d)(e)</p>
<b>Qualifications</b>	<ul style="list-style-type: none"><li>• Four members of the Board should be licensed behavior analysts.</li><li>• One member should be a licensed psychologist in the state.</li><li>• One member should be a parent or legal guardian of a person being treated for a behavior disorder, or a person who has received services from a licensed behavior analyst.</li><li>• One member should be a public member who is not and never was a member of any profession licensed or regulated under Title 34-5A or the spouse of such person, and a person who does not have and never has had a material interest in the practice of behavior analysis.</li></ul> <p><i>Code of Alabama 1975</i>, Section 34-5A-3(a)</p>

<p><b>Consumer Representation</b></p>	<p>One parent or guardian of a person being treated for a behavior disorder, or a person who has received services from a licensed behavior analyst.</p> <p>One public member who they or their spouse has never been a member of the behavior analyst profession nor had a material interest in the practice of behavior analysis.</p> <p>Currently, the public member position is vacant.</p> <p><i>Code of Alabama 1975</i>, Section 34-5A-3(a)</p>
<p><b>Racial Representation</b></p>	<p>No specific statutory requirement.</p> <p>One Hispanic member currently serving.</p>
<p><b>Geographical Representation</b></p>	<p>No statutory requirement.</p>
<p><b>Other Representation</b></p>	<p>The membership of the Board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state.</p> <p><i>Code of Alabama 1975</i>, Section 34-5A-3(a)</p>
<p><b>Compensation</b></p>	<p>Members shall be paid the same per diem as prescribed by law for state employees for each day of attendance of Board business.</p> <p><i>Code of Alabama 1975</i>, Section 34-5A-3(f)</p>
<p><b>Attended Board Member Training</b></p>	<p>Two prior Board members attended.</p> <p>All six current Board members attended.</p>

<b><u>Operations</u></b>	
<b>Administrator</b>	The Board does not have an administrator.  <i>See Prior Significant Issue 2019-03</i>
<b>Location</b>	Alabama Department of Mental Health Division of Developmental Disabilities 100 North Union Street Suite 536 Montgomery, AL 36130
<b>Employees</b>	The Board does not have employees.  <i>See Prior Significant Issue 2019-03</i>
<b>Legal Counsel</b>	Ashley Nichols, Assistant Attorney General, is an employee of the Department of Mental Health and serves as the Board's legal counsel.
<b>Subpoena Power</b>	The Board does not have subpoena power except as provided by the Administrative Procedures Act, <i>Code of Alabama 1975</i> , Section 41-22-12 for hearings and contested cases.
<b>Internet Presence</b>	<a href="http://www.mh.alabama.gov/alabama-behavior-analyst-licensure-board/">www.mh.alabama.gov/alabama-behavior-analyst-licensure-board/</a>
<b><u>Financial</u></b>	
<b>Source of Funds</b>	Licensing fees
<b>State Treasury</b>	Yes, Special Revenue Fund 1739.  <i>Code of Alabama 1975</i> , Section 34-5A-3(m)
<b>Required Distributions</b>	There are no required distributions.

<b><u>Licensure</u></b>							
<b>Licensees</b>	<p>Licensees as of February 28, 2023:</p> <table style="margin-left: auto; margin-right: auto;"> <tr> <td style="padding-right: 20px;">Behavior Analyst</td> <td style="text-align: right;">495</td> </tr> <tr> <td>Assistant Behavior Analyst</td> <td style="text-align: right; border-bottom: 1px solid black;">34</td> </tr> <tr> <td>Total</td> <td style="text-align: right; border-bottom: 3px double black;">529</td> </tr> </table> <p><i>Source:</i> Board Chairman</p>	Behavior Analyst	495	Assistant Behavior Analyst	34	Total	529
Behavior Analyst	495						
Assistant Behavior Analyst	34						
Total	529						
<b>Licensure Qualifications</b>	<p><b>Behavior Analysts Licensure qualifications:</b></p> <ul style="list-style-type: none"> <li>• Compliance with the professional and ethical compliance code for behavior analysts of the Behavior Analyst Certification Board (BACB).</li> <li>• Completion of a criminal background check.</li> <li>• Submit application and authorized fees to Board.</li> <li>• Maintain active status as a board-certified behavior analyst, as recognized by the BACB, following the passage of the board-certified behavior analyst examination.</li> </ul> <p><b>Assistant Behavior Analysts licensure qualifications:</b></p> <ul style="list-style-type: none"> <li>• Compliance with the professional and ethical compliance code for behavior analysts of the Behavior Analyst Certification Board (BACB).</li> <li>• Completion of a criminal background check.</li> <li>• Submit application and authorized fees to Board.</li> <li>• Maintain active status as a board-certified assistant behavior analyst, as recognized by the BACB, following the passage of the board-certified assistant behavior analyst examination.</li> <li>• Provide proof of ongoing supervision by a licensed behavior analyst who is a current board-certified behavior analyst in a manner consistent with the supervision requirements of the BACB.</li> </ul> <p><i>Code of Alabama 1975, Section 34-5A-4</i></p>						

<b>Examinations</b>	<p>Applicants must pass an exam to be certified by the nationally accredited Behavior Analyst Certification Board, Incorporated (BACB). Certification is a prerequisite for state licensure. Exams are available at authorized Pearson Vue test centers in Birmingham, Decatur, Dothan, Mobile, and Montgomery.</p> <p><b>Board Certified Behavior Analysts - CY 2019 – 2021*</b></p> <table border="1" data-bbox="548 426 1349 575"> <thead> <tr> <th></th> <th># Taken</th> <th># Passed</th> <th>% Passed</th> </tr> </thead> <tbody> <tr> <td>Auburn University</td> <td>14</td> <td>14</td> <td>100%</td> </tr> <tr> <td>Jacksonville State University</td> <td>8</td> <td>8</td> <td>100%</td> </tr> </tbody> </table> <p><b>Board Certified Assistant Behavior Analysts – CY 2019 – 2021*</b></p> <table border="1" data-bbox="548 646 1349 758"> <thead> <tr> <th></th> <th># Taken</th> <th># Passed</th> <th>% Passed</th> </tr> </thead> <tbody> <tr> <td>Troy University</td> <td>23</td> <td>8</td> <td>35%</td> </tr> </tbody> </table> <p>Data for 2022 was not available.</p> <p>*Data, in any given year, is not reported if there were less than 6 first-time applicants.</p> <p><b>Code of Alabama 1975</b>, Section 34-5A-4(2)(3)  <b>Source:</b> Board Chairman</p>		# Taken	# Passed	% Passed	Auburn University	14	14	100%	Jacksonville State University	8	8	100%		# Taken	# Passed	% Passed	Troy University	23	8	35%
	# Taken	# Passed	% Passed																		
Auburn University	14	14	100%																		
Jacksonville State University	8	8	100%																		
	# Taken	# Passed	% Passed																		
Troy University	23	8	35%																		
<b>Reciprocity</b>	<p>The Board shall issue a license to a person who is actively licensed as a behavior analyst in another state that currently imposes comparable licensure requirements as those imposed in this state and that offers reciprocity to individuals licensed under the <b>Code of Alabama 1975</b>, Section 34-5A.</p> <p>The Board does not have reciprocity agreements with other states.</p> <p><b>Code of Alabama 1975</b>, Section 34-5A-6</p>																				

<p><b>Renewals</b></p>	<p>Licenses are granted for a period of two years and expire on December 31<sup>st</sup> in the second year.</p> <p>Applications for renewal of active licenses shall be received between October 1<sup>st</sup> and November 30<sup>th</sup>.</p> <p>Any licensee who fails to renew the license by the November 30<sup>th</sup> deadline shall not perform any act for which a license is required as of January 1<sup>st</sup> of the year following expiration.</p> <p>Renewal applications received between December 1<sup>st</sup> prior to the expiration year and November 30<sup>th</sup>, two years following expiration shall be considered late.</p> <p>Applications for late renewal are required to pay an application review fee, licensure renewal fee, and late fee as well as submit proof of current certification.</p> <p>All applications for licensure renewal are processed online.</p> <p><i>Code of Alabama 1975</i>, Section 34-5A-7  <i>Administrative Rule</i> 580-5-30B-.07(4)(5)(6)</p>
<p><b>Licensee Demographics</b></p>	<p>Data is not collected by the Board.</p> <p><i>Source:</i> Board Chairman</p>
<p><b>Continuing Education</b></p>	<p>There is no specific statutory requirement related to continuing education.</p> <p>The BACB requires behavior analysts to obtain 32 continuing education units and assistant behavior analysts to obtain 20 continuing education units within each 2-year recertification cycle.</p>

## **SIGNIFICANT ISSUES**

**Significant Issue 2023-001:** A review of the Board's financial information revealed an unexplained discrepancy and instances of expenses incurred by the Board being paid from another department's treasury fund.

- In fiscal year 2018, licensing fees totaling \$37,095.00 were collected, deposited, and certified into the Department of Mental Health's treasury fund. The Department of Mental Health's fund paid \$1,609.26 of the Board's expenses incurred before the Board's fund was created in the Treasury. Subsequently in July 2019, a transfer of \$35,284.76 was made from the Department of Mental Health's fund into the newly formed Board of Behavior Analyst Fund. This resulted in a difference of \$200.98 between the amount collected and the amounts disbursed or transferred. An explanation for this discrepancy was not provided.
- After the creation of the Board's fund in the Treasury, expenses of \$294.54 in FY2019 and \$884.25 in FY2020 were paid from the Department of Mental Health's fund rather than from the Board's fund.

**Significant Issue 2023-002:** The Board did not comply with the Open Meetings Act and statutory requirements as it relates to conducting Board meetings. Nineteen Board meeting minutes were reviewed for the sunset review period. The following discrepancies were noted:

- Eight meeting minutes did not record the time the meeting was called to order and subsequently adjourned as required by the *Code of Alabama 1975*, Section 36-25A-4.
- Four meeting minutes were not signed by a Board officer. According to the State Records Commission's *Guidelines for Taking and Preserving Formal Meeting Minutes*, the presiding officer should sign the minutes after approval.
- Following the expiration of the Governor's emergency proclamation to address COVID-19, all six board members participated in three meetings, held on July 9, 2021, January 14, 2022 and April 8, 2022, via video conferencing, establishing a quorum in violation of the *Code of Alabama 1975*, Section 36-25A-5.1(a) which at the time these meetings were held stated, "Participation by such means shall constitute presence in person at the meeting for all purposes, *except for the establishment of a quorum.*"
- The minutes of two meetings, held January 14, 2022, and April 8, 2022, indicated Board members, attending the meeting via electronic communication, participated in executive session. The *Code of Alabama 1975*, Section 36-25A-5.1(e) at the time these meetings were held stated, "...*only those members who are physically present may participate in an executive session of the governmental body.*"
- According to the minutes of four Board meetings, required procedures when entering into executive session were not followed as required by the *Code of Alabama 1975*, Section 36-25A-7.
- The Board did not elect a Chair in calendar years 2019 or 2020 as required by the *Code of Alabama 1975*, Section 34-5A-3(l).

**Significant Issue 2023-003:** Subsequent to the passage of Act 2022-421, Acts of Alabama, effective July 1, 2022 and codified in the *Code of Alabama 1975*, Section 36-25A-5.1, the Board held meetings on August 26, 2022 and October 21, 2022. At each of these meetings, the Board established a quorum despite all six members participating via Zoom. According to the *Code of Alabama 1975*, Section 36-25A-5.1(a)(1), participation by these electronic means shall constitute presence in person at the meeting for all purposes; provided, that at least three members, or a majority of a quorum of members, whichever is less, are *physically present* at the *physical meeting location* required by subsection (b).” In addition, notices posted on the Secretary of State’s website for these two meetings did not publish the means of access to electronic communication as required by the *Code of Alabama 1975*, Section 36-25A-5.1(a)(2).

**Significant Issue 2023-004:** **The Board did not comply with the *Code of Alabama 1975*, Section 36-14-17(c)(1) as it relates to posting Board vacancy notices on the Secretary of State website.** The Board failed to post any notice for nine vacancies that occurred during the sunset review period. Furthermore, the Board did not post a notice for a tenth vacancy until nine days after the vacancy occurred. The *Code of Alabama 1975*, Section 36-14-17(c)(1) states, “The chair of an existing board shall notify the Secretary of State by electronic means of a vacancy as follows: For a vacancy scheduled to occur on the board as a result of the expiration of a term, at least 45 days before the vacancy occurs.”

**Significant Issue 2023-005:** **The Board’s system for handling complaints filed is inadequate.** The Board received twenty-one complaints during the sunset review period. Eighteen of these complaints remain open/pending. As of March 31, 2023, seventeen of the eighteen open/pending complaints have been open/pending for twelve to forty-two months. Detailed information for each of the open/pending complaints and the Board’s related actions can be found in Appendix II of this report.

## **STATUS OF PRIOR FINDINGS/SIGNIFICANT ISSUES**

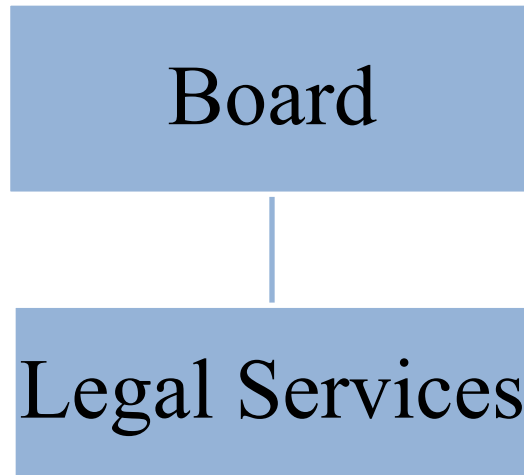
All prior findings/significant issues have been resolved, except for the following:

**Significant Issue 2019-003:** **All seven Board members responding to our survey stated that the Board is not adequately staffed.** The Board does not have an administrator or staff limiting the Board’s ability to carry out its duties. The Board’s page on the Department of Mental Health’s website directs licensees and the public to either email or leave a phone message with inquiries or requests. Board members monitor the emails and the phone system and will respond to requests within 2-3 business days. There is a limited amount of information available on the website for licensees and the public.

**Current Status:** Four of the five Board members responding to our survey stated the Board is not adequately staffed. Board members stated it was challenging to address the volume of new and renewing licensees and complaints received by the Board and that staff was needed to manage the paperwork and administrative workload.

According to the *Code of Alabama 1975*, Section 34-5A-3(a), the Board is established within the Department of Mental Health, the Division of Developmental Disabilities. The Board continues to operate without a dedicated administrator or staff to oversee the day-to-day operations. In addition, the Board’s page on the Department of Mental Health’s website directs licensees and the public to either email or leave a phone message with inquiries or requests. Board members monitor the emails and the phone system and will respond to requests within 2-3 business days.

**ORGANIZATION**



**PERFORMANCE CHARACTERISTICS**

**Number of Licensees for the Past Four Fiscal Years**

Type of Licenses	Fiscal Year			
	2019	2020	2021	2022
Behavior Analyst	259	318	416	490
Assistant Behavior Analyst	27	28	34	41
<b>Total</b>	<b>286</b>	<b>346</b>	<b>450</b>	<b>531</b>
<i>Source:</i> Board Chair				

**Operating Disbursements per Licensee (FY 2022) – \$1.70**

**Notification of Board decisions to Amend Administrative Rules**

The Board complied with notification procedures prescribed in the Administrative Procedure Act, which includes publication of proposed rules in the Administrative Monthly, and public hearings on proposed rules.

## **COMPLAINT HANDLING**

The Board's *Administrative Rule* 580-5-30B-.04 provides the procedures for the complaint and disciplinary process.

<b>Initial Contact/Documentation</b>	Complaints may be initiated by any person or by the Board. Complaints must be in writing and must be signed.
<b>Anonymous Complaints Accepted</b>	No.
<b>Investigative Process / Probable Cause Determination</b>	At the next regularly scheduled meeting of the Board, or as soon as practicable after receipt of the complaint, the Board shall determine whether the complaint warrants further investigation. If the Board determines that a complaint warrants further investigation, the Board will notify the licensee against whom the complaint has been made by certified mail. The respondent shall provide the Board, within thirty (30) days, a written response to the initiating complaint.
<b>Negotiated Settlements</b>	Yes.
<b>Notification of Resolution to the Complainant</b>	The Board notifies the complainant and respondent of the outcome of the Board's actions upon final resolution of the complaint.

*Source:* Board Chair

### **Complaint Data**

<b>Fiscal Year 2019 through 2022</b>					
<b>Year/Number of Complaints Received</b>	<b>Year/Number Resolved</b>				<b>Pending</b>
	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	
2019 / 2	1	0	0	0	1
2020 / 4		0	1	0	3
2021 / 10			1	0	9
2022 / 5				0	5

*Source:* Board Chair

**Average Time to Resolve Complaints** – 99 business days.

**Complaints Open for Over One Year** – As of March 31, 2023, 17 of the 18 open/pending complaints have been open/pending for twelve to forty-two months. Detailed information for each of the open/pending complaints and the Board's related actions can be found in Appendix II of this report. (See **Significant Issue 2023-005**)

### **Disposition of Resolved Complaints**

<b># of Complaints</b>	<b>Resolution</b>
1	No Jurisdiction
1	Not Enough Evidence
1	No Violation

### **REGULATION IN CONJUNCTION WITH OTHER ENTITIES**

There is no regulation in conjunction with other state or federal agencies.

### **FINANCIAL INFORMATION**

**Source of Funds** – Licensure fees, late fees, and fines are deposited into the Board’s Special Revenue Fund 1739 in the State Treasury.

#### **Schedule of Fees**

The Board is authorized to set fees by administrative rule. Fees are set in *Administrative Rule* 580-5-30B-.05.

<b>Fee Type/Purpose</b>	<b>Statutory Authority</b>	<b>Amount Authorized</b>	<b>Amount Collected</b>
Application Fee	34-5A-4	Set by Board	\$25.00
Behavior Analyst License & Renewal Fee	34-5A-4 34-5A-7(a)	Set by Board	\$150.00
Assistant Behavior Analyst License & Renewal Fee	34-5A-4 34-5A-7(a)	Set by Board	\$100.00
90-Day Temporary License	34-5A-3(h) 34-5A-5	Set by Board	\$100.00
Late Renewal Fee	34-5A-7(b)	Set by Board	\$50.00
Administrative Fine	34-5A-2(d)	≤ \$1,000.00	≤ \$1,000.00
Licensure Reinstatement Fee	34-5A-7(c)	Set by Board	\$100.00
Duplicate Copy of License/Certificate	34-5A-3(h)	Set by Board	\$15.00

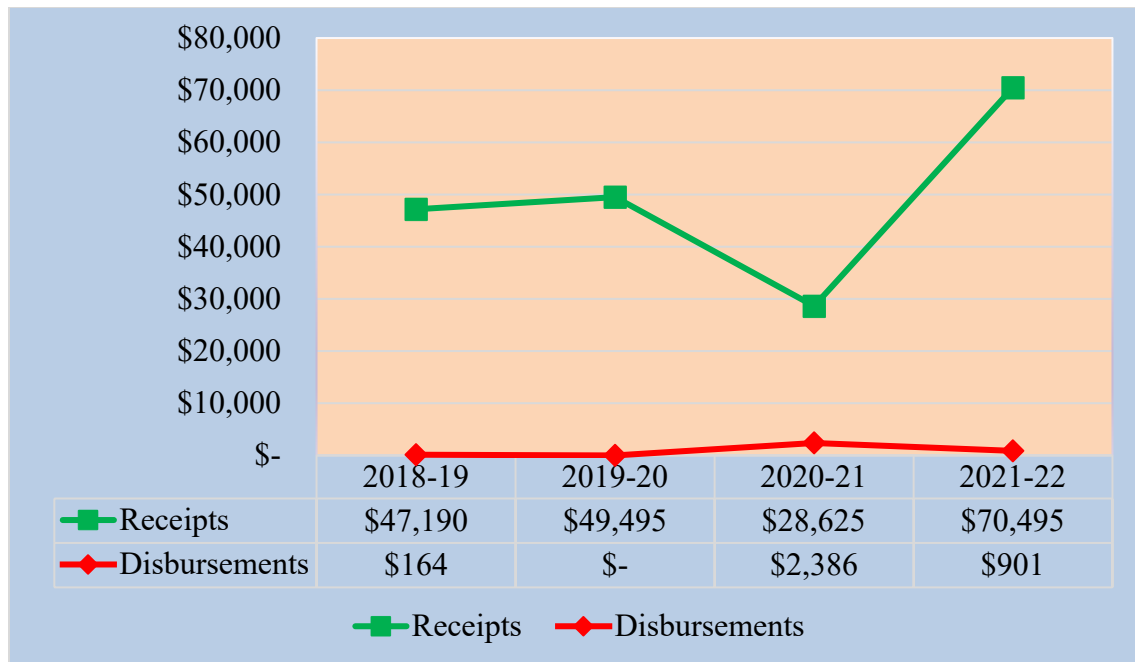
## Schedule of Receipts, Disbursements and Balances

October 1, 2018 through September 30, 2022

	<u>2021-2022</u>	<u>2020-2021</u>	<u>2019-2020</u>	<u>2018-2019</u>
<b><u>Receipts</u></b>				
License Fees	\$70,495.00	\$28,625.00	\$49,495.00	\$3,240.00
Transfers from Mental Health Fund 0661				43,949.76
Total	<u>70,495.00</u>	<u>28,625.00</u>	<u>49,495.00</u>	<u>47,189.76</u>
<b><u>Disbursements*</u></b>				
Travel, In-State				163.56
Supplies, Materials, & Operating Expenses	901.00	2,386.00		
Total	<u>901.00</u>	<u>2,386.00</u>		<u>163.56</u>
Excess of Receipts over Disbursements	69,594.00	26,239.00	49,495.00	47,026.20
Cash Balance at Beginning of Year	<u>122,760.20</u>	<u>96,521.20</u>	<u>47,026.20</u>	
Cash Balance at End of Year	192,354.20	122,760.20	96,521.20	47,026.20
Reserved for Year-End Obligations	<u>(8,800.00)</u>	<u>(3,800.00)</u>		<u>(1,600.00)</u>
Unobligated Cash Balance at End of Year	<u>\$183,554.20</u>	<u>\$118,960.20</u>	<u>\$96,521.20</u>	<u>\$45,426.20</u>

\*The Department of Mental Health paid the Board's expenses of \$294.54 in FY2019 and \$884.25 in FY2020.

### Operating Receipts vs. Operating Disbursements



# QUESTIONNAIRES

## Board Member Questionnaire

A letter was sent to all six current members of the Alabama Behavior Analyst Licensing Board requesting participation in our survey. Five participated in our survey. The percentages are based on the number who responded to the question.

### **1. What are the most significant issues currently facing the Alabama Behavior Analyst Licensing Board and how is the Board addressing these issues?**

**Board Member #1** – “None that I know of.”

**Board Member #2** – “The volume of new and renewing licensees and complaints with a volunteer board. The board is actively pursuing hiring a staff person to manage some of the paperwork and administrative workload.”

**Board Member #3** – “Responding to complaints in a timely manner. We need someone to work specifically on complaints.”

**Board Member #4** – “The most significant issue for our board is the need for additional support in the form of personnel. Our members are all volunteers, and it can be challenging to fulfill all of our obligations to employers and the licensing board. Having even part time personnel for routine activities would allow the board members to focus on the most important tasks.”

**Board Member #5** – “The licensure board was founded less than 10 years ago and has grown. The board is made up of volunteers. In order to address all incoming needs, such as new certifications, renewals, and complaints, an administrative assistant is needed.”

### **2. What, if any, changes to the Board’s laws are needed?**

**Board Member #1** – “None that I know of.”

**Board Member #2** – “I would like to see the word complaint replaced with alleged violation of governing status and codes. We receive a number of complaints that are related to business practices outside our jurisdiction.”

**Board Member #3** – “None”

**Board Member #4** – “I cannot think of any changes at this time.”

**Board Member #5** – “None to my knowledge.”

### **3. Is the Board adequately funded?**

Yes	5	100%
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**4. Is the Board adequately staffed?**

Yes	1	20%
No	4	80%

**5. Has the Board experienced any significant changes to its operations?**

No	5	100%
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**6. Does the Board plan any significant changes in its operations?**

Yes	1	20%
No	2	40%
Unknown	2	40%

**7. Do you have any other comments you would like to make?**

**Board Member #1** – “No.”

**Board Member #2** – “No.”

**Board Member #3** – “We need to hire someone to work part time or full time to help with admin responsibilities/duties”

**Board Member #4** – “I think our board has reached the point where we need to begin hiring personnel. This additional support for the board would allow board members to be more responsive to the needs of licenses and those they serve”

**Board Member #5** – “The board plays a relevant role in the state given the number of behavior analysts who are now practicing, and the continued growth of the field.”

## **Behavior Analyst Questionnaire**

A letter was sent to one hundred licensees requesting participation in our survey. Twenty-three participated in the survey. The percentages are based on the number who responded to the question.

### **1. What do you think is the most significant issue(s) currently facing your profession in Alabama?**

**Respondent #1** – “I am currently licensed in AL, but am not currently working in that state at this time.”

**Respondent #2** – “Employment opportunities”

**Respondent #3** – “The Department of Mental Health placing too many regulations that impede best practices of our profession.”

**Respondent #4** – “Payor Sources Demands”

**Respondent #5** – “Insurance understanding ABA treatment plans and low compensation for services”

**Respondent #6** – “Client access to services”

**Respondent #7** – “We do not have access to as many state sponsored/ funded options because we do not participate in the state lotteries and thus miss out on those funds. There is also a number of "fly-by-night" providers that are popping up but I am not sure how the license board is limiting these agencies if they have a figure head that has the appropriate qualifications.”

**Respondent #8** – “low Medicaid/private insurance reimbursement rates”

**Respondent #9** – “Insurance companies lowering the rates for RBTs”

**Respondent #10** – “Reimbursement rates limiting our ability to recruit and retain BCBA and RBT”

**Respondent #11** – “N/A”

**Respondent #12** – “Unethical practice going unchecked by regulatory committees”

**Respondent #13** – “Policy and guidelines”

**Respondent #14** – “There are not enough Board Certified credentialed professionals in Alabama to treat all the people who could benefit from their services.”

**Respondent #15** – “Insurance coverage and availability of service providers for those who cannot afford services”

**Respondent #16** – “Staffing”

**Respondent #17** – “Lack of understanding of ABA within the community at-large; Lack of qualified practitioners at RBT/BCaBA/BCBA certification levels.”

**Respondent #18** – “Trauma informed practices”

**Respondent #19** – “Low insurance reimbursement rates and long wait lists”

**Respondent #20** – “1. Health insurance companies should pay for unrestricted work performed by BCaBA and BCBA trainees as long as they work under a supervisor's license, just like they do for medicine and psychology trainees. 2. We need to advocate for increased education funding. Poor K-12 education in Alabama makes it challenging to develop home-grown RBTs, BCaBAs, and BCBAAs. 3. Our industry depends on educated, skilled labor. We need to support laws that attract the workers we need. Alabama's laws and culture directed at oppressing women, gay people, trans people, and people of color, coupled with poor public education and social services, makes it hard to attract RBT, BCaBAs, and BCBAAs.”

**Respondent #21** – “Lack of adequate funding, which can lead to understaffing and/or excessive caseloads”

**Respondent #22** – “As a BCBA that works in a public education school system, the number of referrals and the lack of time is my biggest issue.”

**Respondent #23** – “insurance dictating practice”

**2. Do you think regulation of your profession by the Alabama Behavior Analyst Licensing Board is necessary to protect the public welfare?**

<b>Yes</b>	<b>18</b>	<b>78%</b>
No	3	13%
No Opinion	2	9%

**3. Do you think any of the Board’s laws, rules, or policies are an unnecessary restriction on the practice of your profession?**

Yes	1	4%
<b>No</b>	<b>20</b>	<b>87%</b>
Unknown	2	9%

**4. Are you adequately informed by the Board of changes to and interpretations of the Board’s positions, policies, rules, and laws?**

<b>Yes</b>	<b>16</b>	<b>70%</b>
No	3	13%
Unknown	3	13%
No Opinion	1	4%

**5. Do you consider mandatory continuing education necessary for the competent practice of your profession?**

<b>Yes</b>	<b>23</b>	<b>100%</b>
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**6. Does the Board respond to your inquiries in a timely manner?**

<b>Yes</b>	<b>16</b>	<b>70%</b>
No	1	4%
Unknown	6	26%

**7. Has the Board performed your licensing and renewal in a timely manner?**

<b>Yes</b>	<b>23</b>	<b>100%</b>
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**8. Do you have any other comments you would like to make?**

**Respondent #1** – “The ease of renewing my license was amazing! I appreciate the speedy responses to emails as well!”

**Respondent #2** – “No”

**Respondent #3** – “No”

**Respondent #4** – “No”

**Respondent #5** – “Oversight of BCBA’s is very important but it must be done by individuals who understand the science and nature of the profession. Often times insurance audits done by practitioners outside of the field harms many kids who need services due to lack of understanding of the science and medical need for goals. It’d be nice to see a greater collaboration and compensation for services rendered”

**Respondent #6** – “None at this time.”

**Respondent #7** – “I feel that more information (i.e., quarterly updates) would be helpful. The explanation of when a renewal will occur was not as clear as it could be. I had to cross reference the Board’s list of those licensed in the state to clearly see when my renewal should occur.”

**Respondent #8** – “NA”

**Respondent #9** – “To be a BCBA we already have to pass several background checks and pay \$300 every other year. \$100 a year for another background check is unnecessary but understandable”

**Respondent #10** – “None”

**Respondent #11** – “N/A”

**Respondent #12** – “More attention needs to be given to reports of unethical behavior when made”

**Respondent #13** – “None”

**Respondent #14** – “The Alabama Behavior Analyst License Board is a critical part of providing services in the state.”

**Respondent #15** – “thank you”

**Respondent #16** – “Drug tests should be required”

**Respondent #17** – “None”

**Respondent #18** – “None”

**Respondent #19** – “n/a”

**Respondent #20** – “Alabama should move to become a national leader in applied behavior analysis regulation. License agencies (not just individuals), ban non-compete contracts, set a maximum number of RBTs a BCBA or BCaBA can supervise, increase pay transparency, etc.”

**Respondent #21** – “No”

**Respondent #22** – “Thanks for your support.”

**Respondent #23** – “no”

## **Assistant Behavior Analyst Questionnaire**

A letter was sent to thirty-four licensees requesting participation in our survey. Five participated in the survey. The percentages are based on the number who responded to the question.

### **1. What do you think is the most significant issue(s) currently facing your profession in Alabama?**

**Respondent #1** – “Currently the most significant issue facing my profession in Alabama is ethical practice amongst all behavior analysts throughout the state and companies practicing ABA. The biggest push back with ABA currently is that there are still practitioners practicing old school ABA that involves aversive, punishment procedures when they are not needed. This mindset needs to shift to a more ethical, client focused approach throughout ABA as a whole.”

**Respondent #2** – “Not enough RBTs and high RBT turnover. It seems like as soon as employees get trained and credentialed they leave the field leaving not enough people able to work with the clients. There is a huge need for ABA in the area of early intervention in clinical settings in rural areas of Alabama but not enough people to work with them. I have worked in 2 rural counties in vastly different ends of Alabama now and the problem remains the same. There is a high client load/ need for services but not enough people able to provide services.”

**Respondent #3** – “It seems that requirements and regulations for billing are not clear. It seems that organizations are unaware of the requirements of insurance companies for billing.”

**Respondent #4** – “Behavior Analysis is not widely known or supported, schools in state do not have opportunities or benefits for completing a Masters degree in the field.. While Medicaid now covers ABA services, the field is not prepared for accepting clients from a variety of socioeconomic fields as clients tend to be less informed or less committed to services.”

**Respondent #5** – “Low pay. Poor management of smaller/local companies.”

### **2. Do you think regulation of your profession by the Alabama Behavior Analyst Licensing Board is necessary to protect the public welfare?**

<b>Yes</b>	<b>4</b>	<b>80%</b>
No Opinion	1	20%

### **3. Do you think any of the Board’s laws, rules, or policies are an unnecessary restriction on the practice of your profession?**

<b>No</b>	<b>4</b>	<b>80%</b>
No Opinion	1	20%

**4. Are you adequately informed by the Board of changes to and interpretations of the Board’s positions, policies, rules, and laws?**

Yes	4	80%
No	1	20%

**5. Do you consider mandatory continuing education necessary for the competent practice of your profession?**

Yes	5	100%
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**6. Does the Board respond to your inquiries in a timely manner?**

Yes	2	40%
No	2	40%
Unknown	1	20%

**7. Has the Board performed your licensing and renewal in a timely manner?**

Yes	3	60%
No	1	20%
Unknown	1	20%

**8. Do you have any other comments you would like to make?**

**Respondent #1** – “I would say that the licensing board could move at a quicker pace for getting practitioners certified in the state. This could be by checking applications 2-3 times a week instead of just once a week to maintain quicker response rates and responding to emails 2-3 times a week as opposed to once a week or once every 2 weeks.”

**Respondent #2** – “The only problem I have with the Alabama Behavior Analysis Licensure Board is the timelines and organization of licensure. When I applied for my license just last year my license took months to come back. I had to email on several occasions to check the status over the couple of months I waited. I understand that this is a time consuming process but I know several others that were in the same position I was in and had to wait longer than I did.”

**Respondent #3** – “N/A”

**Respondent #4** – “ni”

**Respondent #5** – “There should be more accountability for BCBAs in Alabama. I have worked for two that have no mentorships or oversight and are violating codes consistently. Reports have been filed, but nothing has been done. The BCBAs own their companies and are able to dismiss anyone who comes up against them. It’s a dangerous system for children and people with disabilities.”

## **Complainant Questionnaire**

A letter was sent to three complainants requesting participation in our survey. None participated in the survey.

# **APPENDICES**

## **Appendix I - Applicable Statutes**

### **Section 34-5A-1 Definitions.**

For the purposes of this chapter, the following terms shall have the following meanings:

(1) APPLIED BEHAVIOR ANALYSIS DIRECT CONTACT TECHNICIAN. An individual who directly implements applied behavior analysis services.

(2) BOARD. The Alabama Behavior Analyst Licensing Board charged with overseeing the regulation of behavior analyst professionals.

(3) CERTIFYING ENTITY. The nationally accredited Behavior Analyst Certification Board, Incorporated.

(4) LICENSED ASSISTANT BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a board certified assistant behavior analyst and who satisfies the criteria identified in Section 34-5A-4.

(5) LICENSED BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a board certified behavior analyst and who satisfies the criteria identified in Section 34-5A-4.

(6) PRACTICE OF BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior.

a. The practice of behavior analysis includes all of the following:

1. The empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.

2. Interventions based on scientific research and the direct observation and measurement of behavior and environment, which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to help individuals develop new behaviors, increase or decrease existing behaviors, and elicit behaviors under specific environmental conditions.

b. The practice of behavior analysis does not include psychological testing, psychotherapy, cognitive therapy, sex therapy, psychoanalysis or hypnotherapy, or long-term counseling as treatment modalities.

c. The practice of behavior analysis does not include preventing or alleviating or curing of diseases or injuries.

d. Nothing in this chapter shall be construed as permitting or allowing a licensed behavior analyst to prescribe or administer any drug, make a medical diagnosis, provide medical treatment, or manage a medical condition. A licensed behavior analyst may not attempt to diagnose, prescribe for, treat, or advise a client with reference to any problem, complaint, or condition falling outside the boundaries of behavior analysis.

*(Act 2014-163, p. 465, §1.)*

### **Section 34-5A-2 License requirements.**

(a) The unlicensed practice of behavior analysis is prohibited in this state, unless exempted in subsection (c).

(b) No person shall hold himself or herself out to be a licensed behavior analyst or licensed assistant behavior analyst unless he or she satisfies the applicable requirements of this chapter.

(c) This chapter may not be construed as prohibiting or restricting the practice of any of the following:

(1) An individual authorized to practice psychology within the state.

(2) An applied behavior analysis direct contact technician, or family member implementing a behavior analysis plan within the home or other environment in which the person is located, who acts under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst.

(3) A behavior analyst who practices with nonhuman or nonpatient clients or consumers including, but not limited to, applied animal behaviorists and practitioners of organizational behavior management.

(4) A licensed physician who is practicing medicine.

(5) A licensed professional authorized to practice in the state who is not a behavior analyst, so long as the licensed professional does not represent that he or she is a behavior analyst, and so long as the services of the licensed professional are within the scope of practice of the licensing law governing the licensed professional and the services performed are commensurate with the education, training, and experience of the licensed professional.

(6) A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum, provided that the practice under this exemption is directly supervised by a licensed behavior analyst in this state or an instructor in a course sequence approved by the certifying entity.

(7) An unlicensed individual pursuing experience in behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised by a licensed behavior analyst in this state.

(d) A violation of this section shall be punishable by a fine of not more than one thousand dollars (\$1,000) or the suspension or revocation of a license issued pursuant to this chapter, or both fine and loss of licensure.

*(Act 2014-163, p. 465, §2.)*

**Section 34-5A-3 Composition of board; compensation; meetings; rules and fees; investigations; Alabama Behavior Analyst Licensing Board Fund.**

(a) The Alabama Behavior Analyst Licensing Board is established within the Department of Mental Health, Division of Developmental Disabilities. The board shall consist of seven members, including four licensed behavior analysts, one licensed psychologist in the state, one parent or legal guardian of a person being treated for a behavior disorder, or a person who has received services from a licensed behavior analyst, and one public member, who, except for the initial members, shall be appointed by the Governor, as provided in subsection (b). The membership of the board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of the state. Each member shall serve a three-year term, with initial terms being staggered so that one member serves an initial term of one year, three members serve initial terms of two years, and three members serve initial terms of three years, as provided by the Commissioner of the Department of Mental Health. The public member shall be a person who is not and never was a member of any profession licensed or regulated under this chapter, or the spouse of such person, and a person who does not have and never has had a material interest in the practice of behavior analysis.

- (b) The initial members of the board shall be board certified behavior analysts, as recognized by the certifying entity, and shall each become licensed as a behavior analyst or assistant behavior analyst, pursuant to this chapter, during his or her initial term serving on the board. These initial board members shall be appointed by the Commissioner of the Department of Mental Health upon recommendations submitted by the Alabama Association for Behavior Analysis, the Alabama Interagency Autism Coordinating Council, the Department of Mental Health, and any other group determined appropriate by the commissioner. Subsequent appointments shall be appointed by the Governor upon recommendations submitted by the board.
- (c) Any vacancy occurring other than by expiration of terms shall be filled for the remainder of the unexpired term by appointment by the Governor, upon recommendation of the board.
- (d) No member shall serve more than two successive three-year terms.
- (e) A member shall serve until a successor is appointed and assumes office.
- (f) Members shall be paid out of the funds of the board the same per diem as prescribed by law for state employees for each day of attendance of board business.
- (g) The board shall meet at least twice annually and may meet at such other times as necessary, at the call of the chair or by a majority of the members, to complete the business required.
- (h) The board shall promulgate and enforce rules and establish fees necessary to implement this chapter.
- (i) The board shall investigate all complaints relating to the practice of behavior analysis by any licensed behavior analyst, licensed assistant behavior analyst, or any person alleged to be practicing or providing supervision without a state license.
- (1) The board may fine, censure, revoke, or deny a license, place on probation, reprimand, or otherwise discipline a licensee on any of the following grounds:
- a. Conviction of a crime which the board determines to be of a nature as to render the person convicted unfit to practice as a behavior analyst.
  - b. Violation of the professional and ethical compliance code or the rules of the board.
  - c. Fraud or misrepresentation in obtaining a license.
- (2) The board may summarily suspend the license of a licensee who the board determines poses an imminent danger to the public. A hearing shall be held within 10 days after the suspension to determine whether the summary action was warranted.
- (3) No license may be denied, suspended, or revoked or a person otherwise disciplined without prior notice and opportunity for hearing, except that the board, without prior notice of hearing, may take action against any person convicted of a crime listed in paragraph a. of subdivision (1). No license may be denied, suspended, or revoked or a person otherwise disciplined pursuant to this section except by vote of a majority of the membership of the board.
- (4) Any person may file a complaint with the board seeking the denial, suspension, or revocation of a license issued or pending issuance by the board, or seeking to otherwise discipline a person for any violation of this chapter or rules adopted by the board. Complaints shall be in a form prescribed by the board. If the board determines that a complaint alleges facts which, if true, would require disciplinary action or denial, revocation, or suspension of a license, the board shall promptly institute a hearing. If the board determines that a complaint does not allege facts which warrant a hearing, the complaint may be dismissed by the board. The board, on its own motion, may institute a hearing for disciplinary action or for the denial, suspension, or revocation of a license.

(5) Any person whose license has been suspended or revoked may apply to the board for vacation of the suspension or reinstatement of his or her license.

(j) Upon finding that a person governed by this chapter has practiced as a behavior analyst, advertised that he or she performs as a behavior analyst, or utilized a title or description denoting that he or she is a behavior analyst without first having obtained a license, the board may do any of the following:

(1) Impose an administrative fine.

(2) Issue a cease and desist order.

(3) Petition the circuit court of the county where the act occurred to enforce the cease and desist order and collect the assessed fine.

(k) A majority of the membership of the board shall constitute a quorum.

(l) The board shall elect a chair from among its membership on an annual basis.

(m) There is established a separate special revenue fund in the State Treasury known as the Alabama Behavior Analyst Licensing Board Fund. All receipts collected by the board pursuant to this chapter shall be deposited into this fund and used to the credit of the board for its operation and to carry out this chapter. Receipts shall be disbursed only by warrant of the Comptroller drawn upon the State Treasury upon itemized vouchers approved by the chair.

*(Act 2014-163, p. 465, §3; Act 2016-400, §1.)*

#### **Section 34-5A-4 Application.**

Each person desiring to obtain a license shall submit an application and authorized fees to the board. The application shall include evidence demonstrating that the applicant satisfies all of the following requirements:

(1) Is of good moral character and conducts his or her professional activities in accordance with accepted professional and ethical standards, including:

a. Compliance with the professional and ethical compliance code for behavior analysts of the certifying entity.

b. Completion of a criminal background check pursuant to rule of the board. The cost of the criminal background check shall be paid by the applicant. An applicant shall submit to the board two complete sets of fingerprints and a form, sworn to by the applicant, containing his or her name, date of birth, and Social Security number for completion of the criminal background check. The board shall submit the fingerprints and form to the State Bureau of Investigations, or any entity contracted with for the purposes of furnishing criminal background checks, for a state criminal history record check. The board shall keep information received pursuant to this section confidential, except that any information received and relied upon in denying the issuance of a license in this state may be disclosed if necessary to support the denial.

(2) In addition to satisfying the requirements of subdivision (1), a licensed behavior analyst applicant shall also maintain active status as a board certified behavior analyst, as recognized by the certifying entity, following passage of the board certified behavior analyst examination.

(3) In addition to satisfying the requirements of subdivision (1), a licensed assistant behavior analyst applicant shall also do all of the following:

a. Maintain active status as a board certified assistant behavior analyst, as recognized by the certifying entity, following passage of the board certified assistant behavior analyst examination.

b. Provide proof of ongoing supervision by a licensed behavior analyst who is a current board certified behavior analyst in a manner consistent with the requirements of the certifying entity for supervision of board certified assistant behavior analysts.

*(Act 2014-163, p. 465, §4; Act 2016-400, §1.)*

**Section 34-5A-5 Temporary license.**

A licensed or unlicensed board certified behavior analyst or board certified assistant behavior analyst residing and practicing in another state who temporarily provides behavior analysis services in this state or to a resident of this state, or both, may apply for a temporary license to practice behavior analysis in this state. A temporary license is available only if the behavior analysis services are to be delivered during a limited and defined period, as defined by board rule. *(Act 2014-163, p. 465, §5.)*

**Section 34-5A-6 Reciprocity.**

The board shall issue a license to a person who is actively licensed as a behavior analyst in another state that currently imposes comparable licensure requirements as those imposed in this state and that offers reciprocity to individuals licensed under this chapter. An applicant for reciprocity shall submit proof of ethical compliance, including proof of current licensure and current certification by the certifying entity, along with any other eligibility requirements, such as satisfactory passage of a criminal background check.

*(Act 2014-163, p. 465, §6; Act 2016-400, §1.)*

**Section 34-5A-7 Expiration and renewal of license.**

(a) A license shall be granted for a period of two years and shall expire on December 31 in the second year. Before the expiration of a license, the license may be renewed upon submission of an application for renewal, including proof of continued certification by the certifying entity and payment of the renewal fee imposed by the board.

(b) All licenses issued pursuant to this chapter shall be subject to renewal and shall expire unless renewed in the manner prescribed by the rules of the board upon the payment of a renewal fee. The board may provide for a late renewal of a license upon payment of a late renewal fee if all conditions for renewal have been satisfied and upon payment of a late renewal fee. Any license which has not been renewed within two years following its expiration may not be renewed, restored, or reissued thereafter. The holder of an expired license may apply for and obtain a valid license only upon compliance with all relevant requirements for issuance of a new license.

(c) A suspended license is subject to expiration and may be renewed as provided in this section. Renewal of a suspended license does not entitle the applicant, while the license remains suspended and until it is reinstated, to engage in licensed activity or in other conduct or activity in violation of a license revoked on disciplinary grounds. Except as otherwise provided in this chapter, a licensed behavior analyst or licensed assistant behavior analyst who desires to return to the active practice of applied behavior analysis shall submit an application for reinstatement and shall pay the nonrefundable reinstatement fee, and any late fee or penalty fees that may be applicable. The amount of the reinstatement fee and penalty shall be established by the rule of the board. The applicant shall meet the same requirements as were necessary for initial licensure.

*(Act 2014-163, p. 465, §7; Act 2016-400, §1.)*

**Section 34-5A-8 Sunset provision.**

The board is subject to the Alabama Sunset Law of 1981, and is classified as an enumerated agency pursuant to Section 41-20-3. The board shall automatically terminate on October 1, 2016, and every four years thereafter, unless a bill is passed that the board be continued, modified, or reestablished.

*(Act 2014-163, p. 465, §8.)*

## **Appendix II - Complaints Open for Over One Year**

**FY2019** – One complaint remains open.

### **Complaint filed August 16, 2019.**

- Status of Complaint:
  - ◆ The last communication with respondent was March 12, 2020.
- Board action required:
  - ◆ Evidence is complete, the Board must determine if disciplinary action is warranted and if so what action(s) will be taken.

**FY2020** – Three complaints remain open.

### **Complaint filed February 19, 2020.**

- Status of Complaint:
  - ◆ The last communication with complainant only was on September 9, 2020 indicating evidence had been received and the Board would review on September 25, 2020 to determine if further information was needed.
- Board action required:
  - ◆ Supporting documentation related to claims is needed. The complainant has left employment of the provider where the documentation would be stored. The Board must determine if it wants to pursue the complaint, and/or request further information from the employer and/or close the case.

### **Complaint filed June 19, 2020.**

- Status of Complaint:
  - ◆ There was communication with the complainant on June 19, 2020 indicating the evidence had been received and the Board would determine if further information was needed.
  - ◆ An additional letter was sent to the complainant on June 7, 2021 requesting additional information. No response from the complainant.
- Board action required:
  - ◆ The Board briefly reviewed the case when respondent was licensed. The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant or respondent, and/or close the case.

### **Complaint filed August 12, 2020.**

- Status of Complaint:
  - ◆ There was communication with the complainant on August 25, 2020 indicating the evidence had been received and the Board would review on September 25, 2020.
  - ◆ An additional request for information was sent by certified mail June 9, 2022 and returned to sender as unclaimed.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the employer, and/or close the case.

**FY 2021** – Nine complaints remain open.

**Complaint filed February 2, 2021.**

- Status of Complaint:
  - ◆ Last communication with the complainant on June 7, 2021 to request additional information.
  - ◆ Complainant notified that if nothing further was heard by July 7, 2021 the complaint would be closed. No further communication from the complainant.
- Board action required:
  - ◆ Close the complaint.

**Complaint filed March 29, 2021.**

- Status of Complaint:
  - ◆ Complainant was contacted to request supporting evidence on June 7, 2021. The Board received no response.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed March 11, 2021.**

- Status of Complaint:
  - ◆ The last communication from the complainant was August 16, 2021 indicating that the court case is still pending.
  - ◆ Update letter was drafted on October 17, 2022.
- Board action required:
  - ◆ It is still waiting for the final court ruling. Board has determined that it wants to hold a hearing on the case but needs to decide on the disciplinary action it would recommend.

**Complaint filed March 29, 2021.**

- Status of Complaint:
  - ◆ The complainant was contacted on June 7, 2021 with a request for any evidence supporting the claim as well as the name respondent's husband. The Board did not receive a response to the request.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed May 20, 2021.**

- Status of Complaint:
  - ◆ Complainant was contacted on June 7, 2021 with the request to itemize the complaint by areas of the Code that had been violated. No response to the request was received.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed May 29, 2021.**

- Status of Complaint:
  - ◆ Complainant was not contacted regarding this complaint.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed May 29, 2021. (Second complaint – different respondent)**

- Status of Complaint:
  - ◆ Complainant was not contacted regarding this complaint.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed June 14, 2021.**

- Status of Complaint:
  - ◆ Complainant was last contacted on July 2, 2021, draft on September 28, 2022. No response was received from the request for additional information.
  - ◆ Complainant has moved out of state, did not provide an updated address.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed June 26, 2021.**

- Status of Complaint:
  - ◆ Complainant was last contacted July 30, 2021. Responded with some evidence but no client files or communication from the parent to verify the complaint.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**FY2022** – Four complaints open for over one year.

**Complaint filed October 7, 2021.**

- Status of Complaint:
  - ◆ Complainant last contacted October 24, 2021 with a request for more information, no response was received. Additional draft to complainant September 28, 2022.
  - ◆ The Board contacted the Department of Human Resources (DHR) about the complaint, but DHR did not respond to the request for information.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed November 30, 2021 and January 11, 2022:**

- Status of Complaint:
  - ◆ Evidence complete.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint or close the case.

**Complaint filed December 31, 2021.**

- Status of Complaint:
  - ◆ The last communication with the complainant only was on March 22, 2022 requesting additional information. No response from the complainant was received.
  - ◆ An additional request for more information was sent by certified mail on June 6, 2022 and returned to sender as unclaimed.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Complaint filed March 31, 2022**

- Status of Complaint:
  - ◆ Complainant contacted the Board by email to check on the progress of the complaint. No record of the Board responding.
- Board action required:
  - ◆ The Board must determine if it wants to pursue the complaint, and/or request further information from the complainant and/or respondent, and/or close the case.

**Source:** Board Chair

## Appendix III - Board Members



### Board Members

June 28, 2023

**Kenneth Atkins, M.S., LBA, BCBA**  
Auburn

Robin Hutcheson  
Examiners of Public Accounts  
Montgomery, AL

**Jessica Arévalo, M.S., CCC-SLP, LBA, BCBA**  
Hoover

**Doris Hill, Ph.D., LBA, BCBA-D**  
Auburn

**Karen Rader, M.S., LBA, BCBA**  
Madison

**Stephanie Stoll, Ph.D., LBA, BCBA-D**  
Vestavia

*Psychologist Member*

**Lisa Powell**  
Troy

*Family Member*

**Vacant**  
*Public Member*

Dear Ms Hutcheson,  
Below is the list of our board's current members:  
**Kenneth Atkins, MS, BCBA, LBA**  
Expiration of Term: December 31, 2025  
City: Auburn, AL

**Jessica Arevalo, MS, CCC-SLP, LBA, BCBA**  
Expiration of Term: December 31, 2024  
City: Hoover AL

**Doris Hill, Ph.D., LBA, BCBA-D**  
Expiration of Term: December 31, 2023  
City: Auburn, AL

**Stephanie Stoll, Ph.D., LBA, BCBA-D**  
Expiration of Term: December 31, 2023  
City: Vestavia Hills, AL

**Lisa Powell, Ph.D.**  
Expiration of Term: December 31, 2025  
City: Auburn, AL

**Karen Rader MS, LBA, BCBA**  
Expiration of Term: December 31, 2023  
City: Madison, AL

**Public Member (*Vacant*)**  
This membership became vacant at the end of last year, and we are looking for someone to fill this role.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kenneth Atkins".

Kenneth Atkins, M.S., LBA, BCBA  
Chairperson

## Appendix IV: Board's Response to Significant Issues/Prior Significant Issues



KAY IVEY  
GOVERNOR

STATE OF ALABAMA  
**DEPARTMENT OF MENTAL HEALTH**

RSA UNION BUILDING  
100 NORTH UNION STREET  
POST OFFICE BOX 301410  
MONTGOMERY, ALABAMA 36130-1410  
WWW.MH.ALABAMA.GOV



KIMBERLY G. BOSWELL  
COMMISSIONER

June 30, 2023

Mrs. Dixie Broadwater Thomas  
Director of Operational Audits  
Examiner of Public Accounts  
(via email)  
P.O. Box 302251  
Montgomery, AL 36130-2251

Dear Mrs. Thomas:

In response to your June 27, 2023 email request to provide responses to the significant issues noted by your office during the recent audit of the Alabama Behavior Analyst Licensing Board, please find the following:

Significant Issue 2023-001:

*A review of the Board's financial information revealed an unexplained discrepancy and instances of expenses incurred by the Board being paid from another department's treasury fund.*

- In fiscal year 2018, licensing fees totaling \$37,095.00 were collected, deposited, and certified into the Department of Mental Health's treasury fund. The Department of Mental Health's fund paid \$1,609.26 of the Board's expenses incurred before the Board's fund was created in the Treasury. Subsequently in July 2019, a transfer of \$35,284.76 was made from the Department of Mental Health's fund into the newly formed Board of Behavior Analyst Fund. This resulted in a difference of \$200.98 between the amount collected and the amounts disbursed or transferred. An explanation for this discrepancy was not provided.*
- After the creation of the Board's fund in the Treasury, expenses of \$294.54 in FY2019 and \$884.25 in FY2020 were paid from the Department of Mental Health's fund rather than from the Board's fund.*

Response:

In accordance with Act # 214-163 establishing the Alabama Behavior Analyst Licensing Board within the Division of Developmental Disabilities of the Alabama Department of Mental Health, the Alabama Department of Mental Health (ADMH) has sought to provide assistance to the Alabama Behavior Analyst Licensing Board. This has included the use of staff for administrative functions, office space (when needed), legal guidance, information technology (website) assistance, and financial management of funds.

The ADMH Finance Office has attempted to reconcile the matter but has been unable to locate the transaction(s) resulting in the discrepancy. Please provide evidence of these discrepancies to aid ADMH staff in their investigation and preparation of a response in the matter.

Significant Issue 2023-002:

*The Board did not comply with the Open Meetings Act and statutory requirements as it relates to conducting Board meetings. Nineteen Board meeting minutes were reviewed for the sunset review period. The following discrepancies were noted:*

- Eight meeting minutes did not record the time the meeting was called to order and subsequently adjourned as required by the Code of Alabama 1975, Section 36-25A-4.*
- Four meeting minutes were not signed by a Board officer. According to the State Records Commission's Guidelines for Taking and Preserving Formal Meeting Minutes, the presiding officer should sign the minutes after approval.*
- Following the expiration of the Governor's emergency proclamation to address COVID-19, all six board members participated in three meetings, held on July 9, 2021, January 14, 2022 and April 8, 2022, via video conferencing, establishing a quorum in violation of the Code of Alabama 1975, Section 36-25A-5.1(a) which at the time these meetings were held stated, "Participation by such means shall constitute presence in person at the meeting for all purposes, except for the establishment of a quorum."*
- The minutes of two meetings, held January 14, 2022, and April 8, 2022, indicated Board members, attending the meeting via electronic communication, participated in executive session. The Code of Alabama 1975, Section 36-25A-5.1(e) at the time these meetings were held stated, "...only those members who are physically present may participate in an executive session of the governmental body."*
- According to the minutes of four Board meetings, required procedures when entering into executive session were not followed as required by the Code of Alabama 1975, Section 36-25A-7.*

• *The Board did not elect a Chair in calendar years 2019 or 2020 as required by the Code of Alabama 1975, Section 34-5A-3(l).*

Response:

The Board acknowledges a lack of conformity with the meeting minutes requirements to include the times its meetings were called to order and adjourned and to have such minutes attested by a member. It is grateful for the guidance in this regard and will make all efforts to ensure that these requirements are met in the future.

The Board began conducting its required meetings via videoconference during the COVID-19 pandemic in 2020. Said meetings were arranged by ADMH (with a physical location for the public at the ADMH central office in Montgomery). Following the expiration of the Governor's Executive Order providing an exemption to the open meetings act requirements, the Board continued to follow the procedures for meeting by electronic means as established in Ala. Code §36-25A-5.1. The Board is appreciative of the guidance that electronic participation is no longer allowed to constitute a quorum or to hold executive sessions and will ensure that physical presence is established to constitute a quorum and to conduct executive sessions for future meetings.

Dr. Paige McKerchar served as Chair for the calendar years 2019 and 2020.

Significant Issue 2023-003:

*Subsequent to the passage of Act 2022-421, Acts of Alabama, effective July 1, 2022 and codified in the Code of Alabama 1975, Section 36-25A-5.1, the Board held meetings on August 26, 2022 and October 21, 2022. At each of these meetings, the Board established a quorum despite all six members participating via Zoom. According to the Code of Alabama 1975, Section 36-25A-5.1(a)(1), participation by these electronic means shall constitute presence in person at the meeting for all purposes; provided, that at least three members, or a majority of a quorum of members, whichever is less, are physically present at the physical meeting location required by subsection (b).” In addition, notices posted on the Secretary of State’s website for these two meetings did not publish the means of access to electronic communication as required by the Code of Alabama 1975, Section 36-25A-5.1(a)(2).*

Response:

See response to significant issue 2023-002.

Significant Issue 2023-004:

*The Board did not comply with the Code of Alabama 1975, Section 36-14-17(c)(1) as it relates to posting Board vacancy notices on the Secretary of State website. The Board failed to post any notice for nine vacancies that occurred during the sunset review period. Furthermore, the Board did not post a notice for a tenth vacancy until nine days after the vacancy occurred. The Code of Alabama 1975, Section 36-14-17(c)(1) states, "The chair of an existing board shall notify the Secretary of State by electronic means of a vacancy as follows: For a vacancy scheduled to occur on the board as a result of the expiration of a term, at least 45 days before the vacancy occurs."*

Response:

The Board was unaware that notices of vacancies had not been timely posted by the Secretary of State. Measures will be taken to ensure compliance with this requirement in the future.

Significant Issue 2023-005:

*The Board's system for handling complaints filed is inadequate. The Board received twenty-one complaints during the sunset review period. Eighteen of these complaints remain open/pending. As of March 31, 2023, seventeen of the eighteen open/pending complaints have been open/pending for twelve to forty-two months. Detailed information for each of the open/pending complaints and the Board's related actions can be found in Appendix II of this report.*

Response:

Appendix II was not provided to the Board for review and response. It is the contention of the Board that all complaints have been addressed in a timely manner to the extent possible. A majority of the complaints received required additional information that was not initially provided. In many cases, the additional information was never received.

Status of Prior Findings/Significant Issues

All prior findings/significant issues have been resolved, except for the following:

Significant Issue 2019-003:

*All seven Board members responding to our survey stated that the Board is not adequately staffed. The Board does not have an administrator or staff limiting the Board's ability to carry out its duties. The Board's page on the Department of Mental Health's website directs licensees and the public to either email or leave a phone message with inquiries or requests. Board members monitor the emails and the phone system and will respond to requests within 2-3 business days. There is a limited amount of information available on the website for licensees and the public.*

*Current Status: Four of the five Board members responding to our survey stated the Board is not*

*adequately staffed. Board members stated it was challenging to address the volume of new and renewing licensees and complaints received by the Board and that staff was needed to manage the paperwork and administrative workload.*

*According to the Code of Alabama 1975, Section 34-5A-3(a), the Board is established within the Department of Mental Health, the Division of Developmental Disabilities. The Board continues to operate without a dedicated administrator or staff to oversee the day-to-day operations. In addition, the Board's page on the Department of Mental Health's website directs licensees and the public to either email or leave a phone message with inquiries or requests. Board members monitor the emails and the phone system and will respond to requests within 2-3 business days.*

Response:

The outstanding issue is unclear from the above statement. The Board is comprised of non-state employees located in geographically diverse locations of the state. This includes the Board Chair Dr. Ken Atkins who serves as the administrator. The Board does not have additional dedicated administrative staff nor does it have a physical location for its operations. ADMH provides clerical and technical assistance as well as a physical location for storage of records.

It is my hope that these responses resolve a majority of the issues noted by your office.

Please let me know if you would like to schedule an in-person meeting to discuss further prior to the upcoming Sunset Review Committee Meeting in July.

Very truly,

*Ashley L. Nichols*

Ashley L. Nichols  
Assistant Attorney General  
Alabama Department of Mental Health

cc: Alabama Behavior Analyst Licensing Board