



Ohio Administrative Code

Rule 4783-7-03 Bases and procedures for disciplinary action.

Effective: April 7, 2014

(A) In accordance with section 4783.09 of the Revised Code, after considering charges filed by the secretary and after providing a hearing in accordance with Chapter 119. of the Revised Code, the board may refuse to issue a certificate to any applicant, including any person whose certificate was previously expired or revoked or suspended, or may issue a reprimand, or suspend or revoke the certificate of any certified Ohio behavior analysts, on any of the following grounds:

- (1) Conviction of a felony, or of any offense involving moral turpitude, in a court of this or any other state or in a federal court;
- (2) Using fraud or deceit in the procurement of the certificate to practice applied behavior analysis or knowingly assisting another in the procurement of such certificate through fraud or deceit;
- (3) Accepting commissions or rebates or other forms of remuneration for referring persons to other professionals without full disclosure in advance to the consumer of the terms of such an agreement;
- (4) Willful unauthorized communication of information received in professional confidence;
- (5) Being negligent in the practice of applied behavior analysis;
- (6) Using any controlled substance or alcoholic beverage to an extent that such use impairs his/her ability to perform the work of a certified Ohio behavior analyst with safety to the public;
- (7) Violating any rule of professional conduct promulgated by the board;
- (8) Practicing in an area of applied behavior analysis for which the person is clearly untrained or incompetent;
- (9) An adjudication by a court, as provided in section 5122.301 of the Revised Code, that the person



is incompetent for the purpose of holding the certificate; Such person may have his/her certificate issued or restored only upon determination by a court that he/she is competent for the purpose of holding the certificate and upon the decision by the board that such certificate be issued or restored. The board may require examination on the laws and rules governing certified Ohio behavior analysts and/or mental or physical evaluations, at the cost of the prospective certificate holder, prior to such issuance or restoration.

(10) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavior analysis services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider. However, no sanction will be imposed against any certificate holder who waives deductibles and copayments in compliance with a health benefit plan that expressly allows such a practice.

(11) Advertising that he/she will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers applied behavioral analysis services, would otherwise be required to pay.

(B) Notice and hearing requirements incident to the revocation, suspension, or refusal to issue, reinstate, or renew a certified Ohio behavior analyst certificate, or incident to the reprimand of a certificate, as described in paragraph (A) of this rule, shall be in compliance with the provisions of Chapters 119. and 4732. of the Revised Code, including the following:

(1) Notice of opportunity. Notice shall be given to the certificate holder or applicant for certification by certified mail of the right to a hearing on the question of whether or not the certificate should be revoked, suspended, not reinstated, or denied, or whether, if a certificate holder, he/she should be reprimanded;

(2) Charges. The notice shall include the charges or other reasons for such proposed action, the law(s) and/or rule(s) directly involved, and a statement informing the certificate holder or applicant for certification that he/she is entitled to a hearing, if it is requested within thirty days after the date of mailing the notice.



(3) Representation. The notice shall also inform the certificate holder or applicant for certification that at the hearing he/she may appear in person, or be represented by his/her attorney, or may present his/her position, arguments, or contentions in writing and that at the hearing he/she may present evidence and examine witnesses appearing for and against him/her;

(4) Hearing date. Whenever a certificate holder or applicant for certification requests a hearing, the board shall immediately set the date, time, and place for such hearing and forthwith notify the certificate holder or applicant for licensure thereof. The date set for such hearing shall be within fifteen days, but not earlier than seven days, after the certificate holder or applicant for certification has requested a hearing, unless otherwise agreed to by both the board and the certificate holder or applicant for certification. However, the board may postpone or continue any adjudication hearing upon the application of any party or upon its own motion;

(5) Hearing. The board may empower any one or more of its members to conduct any proceeding, hearing, or investigation necessary to its purposes;

(6) Appeal. Any party adversely affected by any order of the board issued pursuant to an adjudication hearing may appeal from the order of the board to the court of common pleas of the county in which the place of business of the certificate holder or applicant for certification is located or the county in which the certificate holder or applicant for certification is a resident. If any such party is not a resident of and has no place of business in Ohio, he/she may appeal to the court of common pleas of Franklin county, Ohio. Any party desiring to appeal shall file a notice of appeal with the board setting forth the order appealed from and the grounds of the appeal. A copy of such notice of appeal shall also be filed by appellant with the court. Such notices of appeal shall be filed within fifteen days after the mailing of the notice of the board's order.

(C) If the board receives notice pursuant to section 2301.373 of the Revised Code, effective November 15, 1996, that an individual is in default under a child support order, the board will refuse to issue or renew a certificate for that individual and will suspend any current certificate of that individual as required by that section. The board need determine only that the individual named in the notice received pursuant to section 2301.373 of the Revised Code is the same individual applying for issuance or renewal of a certificate or holding a current certificate. The procedures applicable to refusal to issue or renew a certificate or suspend a certificate pursuant to section 2301.373 of the



Revised Code shall be governed only by that section and, therefore, are not subject to the procedures set forth in Chapter 119. or section 4783.09 of the Revised Code, or paragraphs (A) and/or (B) of this rule.

(D) Pre-hearing procedures

(1) Exchange of documents and witness lists

(a) Any representative of record may serve upon the opposing representative of record a written request for a list of both the witnesses and the documents intended to be introduced at hearing. All lists requested under this rule shall be exchanged no later than seven days prior to the commencement of the administrative hearing.

(b) Failure without good cause to comply with paragraph (A) of this rule may result in exclusion from the hearing of such testimony or documents, upon motion of the representative to whom disclosure is refused.

(2) Pre-hearing conference

(a) At any time prior to hearing, the attorney hearing examiner or presiding board member may direct participation by the representatives of record in a prehearing conference. Such conference may be initiated by the attorney hearing examiner, by the board, or upon motion of either representative.

(b) Pre-hearing conferences may be held for the following purposes:

(i) Identification of issues;

(ii) Obtaining stipulations and admissions;

(iii) Agreements limiting the number of witnesses; Discussion of documents, exhibits, and witness lists;

(iv) Discussion of documents, exhibits, and witness lists;



(v) Estimating the time necessary for hearing;

(vi) Discussion of any other matters tending to expedite the proceedings.

(c) All representatives of record shall attend the prehearing conference fully prepared to discuss the items enumerated in paragraph (B) of this rule.

(d) Procedural orders may be issued by the attorney hearing examiner or presiding board member based upon information obtained at a prehearing conference.

(3) Requirements for pre-hearing exchange of information. The hearing examiner or presiding board member shall, upon written motion of any representative of a party, issue an order setting forth a schedule by which the parties shall exchange hearing exhibits, identify lay and expert witnesses and exchange written reports from expert witnesses. Any written report by an expert required to be exchanged shall set forth the opinions to which the expert will testify and the bases for such opinions. The failure of a party to produce a written report from an expert under the terms of the order shall result in the exclusion of that expert's testimony at hearing. The failure of a party to produce an exhibit under the terms of the order shall result in the exclusion of that exhibit from evidence. The failure of a party to identify a lay or expert witness under the terms of the order may result in the exclusion of that witness' testimony at hearing.

(4) Status conference. With or without written motion from the representative of any party, the attorney hearing examiner or presiding board member may convene a status conference with representatives of the parties to address any matter related to preparation for hearing or the conduct of a hearing. The hearing examiner may issue such orders related to preparation for hearing and the conduct of the hearing which in the judgment of the hearing examiner facilitate the just and efficient disposition of the subject of the hearing.

(5) Depositions and transcripts of prior testimony.

(a) Upon written motion of any representative of record, and upon service of that motion to all other representatives, the attorney hearing examiner or presiding board member may order that the



testimony of a prospective witness be taken by deposition under such conditions and terms as specified in the order and that any designated books, papers, documents or tangible objects, not privileged, be produced at the same time and place if it appears probable that:

(i) The prospective witness will be unavailable to attend or will be prevented from attending a hearing; and

(ii) The testimony of the prospective witness is material; and

(iii) The testimony of the prospective witness is necessary in order to prevent a failure of justice. In the case of an expert witness, a showing of the unavailability of the expert shall not be necessary for consideration of the motion of a representative to take a deposition.

(b) The representatives shall agree to the time and place for taking the deposition in lieu of live testimony. Depositions shall be conducted in the same county in which the hearing is conducted unless otherwise agreed to by the representatives. If the representatives are unable to agree, the attorney hearing examiner or presiding board member shall set the time or fix the place of deposition. At a deposition taken pursuant to this rule, representatives shall have the right, as at hearing, to fully examine witnesses. The attorney hearing examiner has the discretion to be present at the deposition in lieu of testimony at hearing.

(c) A deposition taken under this rule shall be filed with the board not later than one day prior to hearing, and may be offered into evidence at hearing by either representative in lieu of the prospective witness' personal appearance. The cost of preparing a transcript of any testimony taken by deposition in lieu of live testimony which is offered as evidence at the hearing shall be borne by the board. In the event of appeal, such costs shall be made a part of the cost of the hearing record. The expense of any video deposition shall be borne by the requestor.

(d) Any deposition or transcript of prior testimony of a witness may be used for the purpose of refreshing the recollection, contradicting the testimony or impeaching the credibility of that witness. If only a part of a deposition is offered into evidence by a representative, the opposing representative may offer any other part. Nothing in this paragraph shall be construed to permit the taking of depositions for purposes other than those set forth in paragraph (A) of this rule.



(e) A transcript of testimony and exhibits from a prior proceeding may be introduced for any purpose if that prior proceeding forms the basis for the allegations in the current case. Upon offering part of a transcript or exhibit from a prior proceeding, the offering representative may be required by the opposing representative to present any other part of the offered item which should in fairness be considered contemporaneously with it.

(6) Prior action by the board. The attorney hearing examiner or presiding board member shall admit evidence of any prior action entered by the state board of psychology against the respondent.

(7) Stipulation of facts. Representatives of record may, by stipulation, agree on any or all facts involved in proceedings before the attorney hearing examiner or presiding board member. Thereafter the attorney hearing examiner or presiding board member may require development of any fact deemed necessary for just adjudication.

(8) Witnesses.

(a) All witnesses shall testify under oath or affirmation.

(b) A witness may be accompanied and advised by legal counsel. Participation by counsel for a witness other than the respondent is limited to protection of that witness' rights, and that legal counsel may neither examine nor cross-examine any witnesses.

(c) Should a witness refuse to answer a question ruled proper at a hearing or disobey a subpoena, the board may institute contempt proceedings pursuant to section 119.09 of the Revised Code.

(d) The presiding attorney hearing examiner or any board member, because of his/her duties, shall not be a competent witness nor subject to deposition in any adjudication proceeding. Unless the testimony of a board member or an attorney hearing examiner is material to the factual allegations set forth in the notice of opportunity for hearing, board members and attorney hearing examiners shall not be competent witnesses nor subject to deposition in any adjudication proceeding. Evidence from other persons relating to the mental processes of the presiding attorney hearing examiner or board members shall not be admissible.



(e) Any representative of record may move for a separation of witnesses, Expert witnesses shall not be separated.

(f) Each representative of record shall inform the attorney hearing examiner or presiding board member prior to the commencement of a hearing of the identity of each potential witness for his cause present in the hearing room. Failure to so identify potential witnesses at this time may be grounds for their later disqualification as witnesses.

(g) No witnesses shall be permitted to testify as to the nature, extent, or propriety of disciplinary action to be taken by the board. A witness may, in the discretion of the attorney hearing examiner or presiding board member, testify as to an ultimate issue of fact.

(9) Conviction of a crime. A certified copy of a plea of guilty to or a judicial finding of guilt of any crime in a court of competent jurisdiction is conclusive proof of the commission of all of the elements of that crime.

(10) The "Ohio Rules of Evidence" may be taken into consideration by the board or its attorney hearing examiner in determining the admissibility of evidence, but shall not be controlling. The attorney hearing examiner or presiding board member may permit the use of electronic or photographic means for the presentation of evidence.