

Regulatory Analysis Form

(Completed by Promulgating Agency)



IRRC

Independent Regulatory Review Commission

SECTION I: PROFILE

(1) Agency:

Department of State, Bureau of Professional and Occupational Affairs, State Board of Medicine

(2) Agency Number: **16A**

Identification Number: **4929**

IRRC Number: **2820**

INDEPENDENT REGULATORY
REVIEW COMMISSION

2010 FEB -2 AM 10:45

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(3) Short Title:

Behavior specialist

(4) PA Code Cite:

49 Pa. Code §§ 16.11, 16.13, 18.521-18.527

(5) Agency Contacts (List Telephone Number, Address, Fax Number and Email Address):

Primary Contact: **Thomas A. Blackburn, Regulatory unit counsel, Department of State;**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; tblackburn@state.pa.us

Secondary Contact: **Joyce McKeever, Deputy Chief Counsel, Department of State**
(717)783-7200; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-0251; jmckeever@state.pa.us

(6) Primary Contact for Public Comments (List Telephone Number, Address, Fax Number and Email Address) – Complete if different from #5: **State Board of Medicine**

(717)783-1400; P.O. Box 2649, Harrisburg, PA 17105-2649; (717)787-7769; st-medicine@state.pa.us

(All Comments will appear on IRRC'S website)

(7) Type of Rulemaking (check applicable box):

- Proposed Regulation
- Final Regulation
- Final Omitted Regulation
- Emergency Certification Regulation;
 - Certification by the Governor
 - Certification by the Attorney General

Regulatory Analysis Form

(8) Briefly explain the regulation in clear and nontechnical language. (100 words or less)

Section 3 of the act of July 9, 2008 (P.L. 885, No. 62) (Act 62) added section 635.2 of the Insurance Company Act of 1921 (insurance law) (40 P.S. § 764h) to require, in general, that insurance companies cover diagnostic assessment and treatment of autism spectrum disorders for those under age 21 when provided by someone licensed or certified in this Commonwealth. Section 635.2(g) of the insurance law requires the State Board of Medicine (Board), in consultation with the Department of Public Welfare, to promulgate regulations to provide for the licensure or certification of behavior specialists. This proposed rulemaking would implement certification of behavior specialists, as required by the Act 62 amendments to the insurance law.

(9) Include a schedule for review of the regulation including:

- | | |
|---|-------------------------|
| A. The date by which the agency must receive public comments: | 30 days after publ. |
| B. The date or dates on which public meetings or hearings will be held: | N/A |
| C. The expected date of promulgation of the proposed regulation as a final-form regulation: | within 2 years of publ. |
| D. The expected effective date of the final-form regulation: | final promulgation |
| E. The date by which compliance with the final-form regulation will be required: | effective date |
| F. The date by which required permits, licenses or other approvals must be obtained: | effective date |

(10) Provide the schedule for continual review of the regulation.

The Board continually reviews the efficacy of its regulations, as part of its annual review process under Executive Order 1996-1. The Board reviews its regulatory proposals at regularly scheduled public meetings, generally the fourth Tuesday of each month. More information can be found on the Board's website (www.dos.state.pa.us/med).

Regulatory Analysis Form

SECTION II: STATEMENT OF NEED

(11) State the statutory authority for the regulation. Include specific statutory citation.

This rulemaking is authorized by sections 8 and 25 of the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.8 and 422.25) and by section 635.2(g) of the insurance law (40 P.S. § 764(g)).

(12) Is the regulation mandated by any federal or state law or court order, or federal regulation? Are there any relevant state or federal court decisions? If yes, cite the specific law, case or regulation as well as, any deadlines for action.

Yes, as explained in the response to question (8). The rulemaking is not mandated by any other federal or state law or court order or federal regulation.

(13) State why the regulation is needed. Explain the compelling public interest that justifies the regulation. Describe who will benefit from the regulation. Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The proposed rulemaking is necessary to implement certification of behavior specialists, as required by the Act 62 amendments to the insurance law. The General Assembly recognized the benefits of behavior specialist certification in amending the insurance law.

(14) If scientific data, studies, references are used to justify this regulation, please submit material with the regulatory package. Please provide full citation and/or links to internet source.

This rulemaking is not based upon any scientific data, studies, or references.

(15) Describe who and how many will be adversely affected by the regulation. How are they affected?

The Board does not foresee any groups being adversely affected by the rulemaking.

(16) List the persons, groups or entities that will be required to comply with the regulation. Approximate the number of people who will be required to comply.

In addition to the approximately 300 persons in Pennsylvania certified by the Behavior Analyst Certification Board, the Board estimates that perhaps another few hundred persons will apply for certification. Because certification is not required, not all persons practicing as behavior specialist will be required to comply with the rulemaking. For example, licensed psychologists and licensed social workers who may provide these types of services and bill for those services under the licensee's license number need not become certified.

Regulatory Analysis Form

SECTION III: COST AND IMPACT ANALYSIS

(17) Provide a specific estimate of the costs and/or savings to the **regulated community** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

Persons currently providing services as a behavior specialist who wish to become certified will experience an increase in costs due to becoming certified. The Board estimates that approximately 300 persons will apply for certification during each biennial renewal cycle. Additionally, the Board estimates that during each renewal cycle beginning January 1, 2011, approximately 300 certificate holders will renew their certifications and 10 persons will apply to reactivate an expired certification. The amount of these fees to be paid to the Board are identified in the response to question 19. Persons seeking certification will first apply in the first half of fiscal year 2010-11, which is the last quarter of the 2010-11 biennial renewal period, and they will be required to renew for the 2012-13 biennial renewal period. The Board also assumes an equal distribution of applications throughout each time period other than the initial startup, except that all persons who renew without having to reactivate the certificate will do so at the beginning of the period.

Based upon these assumptions and estimates and the fees discussed below, the Board anticipates certificate costs to certificate holders as shown in the table in response to question 20.

Initial license application fees of \$21,175 [$\$70 \times (\frac{1}{2} 300)$] in each fiscal year beginning with 2010-11. Renewal fees of \$21,937.50 [$\$75 \times (300 - 10 + \frac{1}{4} 10)$] in fiscal year 2010-11, \$375 [$\$75 \times \frac{1}{2} 10$] in 2012-13, \$21,375 [$\$75 \times (300)$] in fiscal year 2013-14 and repeating in two-year cycles. Reactivation application fees of \$175 [$\$70 \times \frac{1}{4} 10$] in fiscal year 2010-11, and \$350 [$\$70 \times \frac{1}{2} 10$] in each subsequent fiscal year.

The Act 62 amendments to the insurance law require the Board to implement certification of behavior specialists. The Board has drafted the proposed rulemaking to minimize the costs of certification. Other than application fees to be charged by the Board, the Board cannot estimate the legal, accounting, consulting procedures or other costs associated with certification.

There are no other costs or savings to the regulated community associated with compliance with the rulemaking.

(18) Provide a specific estimate of the costs and/or savings to **local governments** associated with compliance, including any legal, accounting or consulting procedures which may be required. Explain how the dollar estimates were derived.

There are no costs or savings to local governments associated with compliance with the rulemaking.

Regulatory Analysis Form

(19) Provide a specific estimate of the costs and/or savings to **state government** associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required. Explain how the dollar estimates were derived.

The Board will charge a fee of \$70 to review an initial application for licensure and a fee of \$70 to reactivate an inactive license. These fees have been calculated to recover the cost of the providing the service. Additionally, the Board will charge a renewal fee of \$75, which has been calculated to recover the proportionate cost of operating the Board. Because these fees will recover the cost of Board operations, there should be no net cost or savings to the Board associated with the implementation of the proposed rulemaking. There are no other costs or savings to state government associated with compliance with the rulemaking.

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

	Current FY Year	FY +1 Year	FY +2 Year	FY +3 Year	FY +4 Year	FY +5 Year
SAVINGS:	2008-09	2009-10	2010-11	2011-12	2012-13	2013-14
Regulated Community						
Local Government						
State Government						
Total Savings	NA	NA	NA	NA	NA	NA
COSTS:						
Regulated Community	N/A	N/A	\$32,612	\$11,575	\$32,225	\$11,225
Local Government	N/A	N/A	N/A	N/A	N/A	N/A
State Government	N/A	N/A	N/A	N/A	N/A	N/A
Total Costs	NA	NA	\$32,612	\$11,575	\$32,225	\$11,225
REVENUE LOSSES:						
Regulated Community						
Local Government						
State Government						
Total Revenue Losses	NA	NA	NA	NA	NA	NA

Regulatory Analysis Form

(20a) Provide the past three year expenditure history for programs affected by the regulation.

Program	FY -3 (FY 06-07) actual	FY -2 (FY 07-08) projected	FY -1 (FY 08-09) budgeted	Current FY (FY 09-10) budgeted
Pa. State Board of Medicine	\$6,332,084	\$5,834,202	\$8,409,000	\$9,717,000

(21) Explain how the benefits of the regulation outweigh any cost and adverse effects.

No adverse effects or costs have been associated with compliance with the rulemaking. Therefore, the above-identified benefits outweigh any costs.

(22) Describe the communications with and input from the public and any advisory council/group in the development and drafting of the regulation. List the specific persons and/or groups who were involved.

The Board's health-related professions committee discussed this proposed rulemaking at a series of public meetings, during which representatives from the Department of Public Welfare, organizations of persons practicing similar to behavior specialists, and other interested parties attended and participated in the discussions. Additionally, the Board discussed the proposed rulemaking at public meetings of the Board, which are routinely attended by members of the regulated community and their professional associations.

(23) Include a description of any alternative regulatory provisions which have been considered and rejected and a statement that the least burdensome acceptable alternative has been selected.

No alternative regulatory schemes were considered.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulations.

This proposed rulemaking would not be more stringent and would not overlap or conflict with any federal requirements.

(25) How does this regulation compare with those of other states? How will this affect Pennsylvania's ability to compete with other states?

Although this proposed rulemaking permits persons to become licensed as behavior specialists, it does not prohibit any person not certified from providing services. The rulemaking would not put Pennsylvania at a competitive disadvantage.

Regulatory Analysis Form

(26) Will the regulation affect any other regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

This proposed rulemaking would not affect other regulations of the Board or other state agencies.

(27) Submit a statement of legal, accounting or consulting procedures and additional reporting, recordkeeping or other paperwork, including copies of forms or reports, which will be required for implementation of the regulation and an explanation of measures which have been taken to minimize these requirements.

Because this rulemaking implements certification for behavior specialists, persons seeking certification by the Board will have to go through the application process described above. This proposed rulemaking would not require any legal, accounting or consulting procedures or any additional recordkeeping or other paperwork.

(28) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

The Board has determined that there are no special needs of any subset of its applicants or licensees for whom special accommodations should be made.

FEE REPORT FORM

Agency: State - BPOA

Date: 4/23/2009

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections: **\$70.00**

Application Fee – Behavior Specialist:

Estimated Initial Application Revenue: \$21,000.00 (300 applications x \$70.00)

Fee Description:

The fee will be charged to every applicant who applies for licensure as a Behavior Specialist.

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Medicine to review and process an application for a Behavior Specialist and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Staff time (ECE) - review and process application	(1.00 hr)	\$37.01
Administrative Overhead:		30.05
	Total Estimated Cost:	\$67.06
	Proposed Fee:	\$70.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$70.00 be established to evaluate the application for Behavior Specialist.

Behavior Specialist Application Fee

Board Staff (ECE): Reviews application for completeness, verifies that supporting documents are attached, contacts candidate to request any missing information. After review of all qualifications, board staff will issue approval through computer or prepare letter of rejection.

FEE REPORT FORM

Agency: State - BPOA Date: 5/29/2009
Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs
Phone No. 783-7192

Fee Title, Rate and Estimated Collections:

License Reactivation Fee: Behavior Specialist \$75.00
Estimated Biennial Revenue: \$ 750.00 (10 applications x \$75.00)

Fee Description:

The fee will be charged to each applicant who requests reactivation of an expired license. **This fee is charged in addition to the appropriate biennial renewal fee.**

Fee Objective:

The fee should (1) offset the identifiable costs incurred by the State Board of Medicine to review and process an application for reactivation of an inactive license and (2) defray a portion of the Board's administrative overhead.

Fee-Related Activities and Costs:

Board Staff (ECE) - review and process application:	(1.17/hr)	43.18
Administrative Overhead:		30.05
	Total Estimated Cost:	\$73.23
	Proposed Fee:	\$75.00

Analysis, Comment, and Recommendation:

It is recommended that a fee of \$75.00 be established to process an application for reactivation of an inactive license. **This fee is charged in addition to the appropriate biennial renewal fee**

Staff receives application, reviews for completeness, contacts applicant to request any missing information, researches computer and/or microfilm files to retrieve pertinent information and verifies period of non-practice to ensure compliance with the Act and Regulations, issues registration for current cycle through computer.

FEE REPORT FORM

Agency: State - BPOA

Date: 4/23/2009

Contact: Basil Merenda
Commissioner, Bureau of Professional & Occupational Affairs

Phone No. 783-7192

Fee Title, Rate and Estimated Collections: **\$75.00**

Biennial Renewal Fee – Behavior Specialist

Estimated Biennial Revenue: \$22,500.00 (300 applications x \$75.00)

Fee Description:

The fee will be charged biennially to every Behavior Specialist applicant for license renewal.

Fee Objective:

The fee should defray a portion of the State Board of Medicine's administrative overhead.

Analysis, Comment, and Recommendation:

It is recommended that a renewal fee of \$75.00 be established for Behavior Specialist licensees, thereby causing those licensees to contribute to the operational costs of the State Board of Medicine.

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INDEPENDENT REGULATORY
REVIEW COMMISSION

DO NOT WRITE IN THIS SPACE

FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU

(Pursuant to Commonwealth Documents Law)

Copy below is hereby approved as to
form and legality. Attorney General

Copy below is hereby certified to be a true and correct
copy of a document issued, prescribed or promulgated by:

Copy below is approved as to
form and legality.
Executive or Independent
Agencies.

BY: [Signature]
(DEPUTY ATTORNEY GENERAL)

State Board of Medicine

(AGENCY)

BY: [Signature]

Andrew C. Clark

DEC 23 2009

DATE OF APPROVAL

DOCUMENT/FISCAL NOTE NO. 16A-4929

JAN 22 2010

DATE OF APPROVAL

DATE OF ADOPTION:

(Deputy General Counsel
~~Chief Counsel,~~
Independent Agency
~~(Strike inapplicable title)~~)

BY: [Signature]
Ollie Bates, Jr., MD

[] Check if applicable
Copy not approved.
Objections attached.

TITLE: Chairman
(EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

[] Check if applicable.
No Attorney General approval
or objection within 30 day
after submission.

PROPOSED RULEMAKING

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MEDICINE

49 Pa. Code §§ 16.11, 16.13, 18.521-18.527
BEHAVIOR SPECIALIST

The State Board of Medicine (Board) proposes to amend §§ 16.11 and 16.13 (relating to licenses, certificates and registrations; and licensure, certification, examination and registration fees) and to add §§ 18.521-18.527 (relating to behavior specialists), to read as set forth in Annex A.

Effective date

The amendments will be effective upon publication of the final-form rulemaking in the *Pennsylvania Bulletin*.

Statutory Authority

The amendments are authorized under sections 8 and 25 of the Medical Practice Act of 1985 (act) (63 P.S. §§ 422.8 and 422.25) and under section 635.2(g) of The Insurance Company Law of 1921 (insurance law) (40 P.S. § 764h(g)).

Background and Need for the Amendment

Section 3 of the act of July 9, 2008 (P.L. 885, No. 62) amended the insurance law to provide for autism spectrum disorders coverage. In general, an insurer is required to provide covered individuals under age 21 years of age coverage for the diagnostic assessment and treatment of autism spectrum disorders. An insurer must contract with and accept as a participating provider any autism service provider that is licensed or certified in this Commonwealth. Section 635.2(g)(1) of the insurance law (40 P.S. § 764h(g)(1)) requires the Board, in consultation with the Department of Public Welfare, to promulgate regulations to provide for licensure or certification of behavior specialists. Section 635.2(f)(4) of the insurance law (40 P.S. § 764h(f)(4)) defines “behavior specialist” as “an individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavior analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior.” This proposed rulemaking would implement certification of behavior specialists under the insurance law as amended.

Description of the Proposed Amendments

The Board’s regulations at § 16.11(b) identify those non-medical doctor licenses and certificates that the Board issues, and at § 16.11(c) identify those registrations that the Board issues. The proposed rulemaking would first add to § 16.11(b) certification as behavior specialist and add to § 16.11(c) biennial registration of behavior specialist certification. The proposed rulemaking would also add § 16.13(k) to set forth the fees associated with behavior specialist certification to be charged by the Board. In order to recover the costs of processing those applications, the fee for initial application for certification as behavior specialist and for reactivation of a previously-issued behavior specialist certification would each be \$70. In order to provide for an appropriate share of the general costs of operating the Board, the renewal fee for a behavior specialist would be \$75.

The proposed rulemaking would add subchapter I (relating to behavior specialists). Proposed

§ 18.521 (relating to purpose) would identify the purpose of the subchapter as providing for the certification of behavior specialists. Proposed § 18.522 (relating to definitions) would provide the statutory definitions of “applied behavioral analysis,” “autism spectrum disorders,” “behavior specialist,” and “diagnostic assessment of autism spectrum disorders” as are used in the subchapter.

Proposed § 18.523 (relating to application for certification as behavior specialist) would address the application for certification as behavior specialist. Under proposed § 18.523(a), an applicant must submit a completed application form, including any necessary supporting documents, and pay the required application fee. Section 635.2(g)(2) of the insurance law (40 P.S. § 764h(g)(2)) sets five criteria for certification as a behavior specialist, and as discussed below, these are identified in proposed § 18.524 (relating to criteria for certification as behavior specialist). Accordingly, proposed § 18.523(b) provides that the Board will certify as a behavior specialist an applicant who demonstrates that the applicant satisfies the requirements of section 635.2(g)(2) of the insurance law for certification as a behavior specialist as set forth in § 18.524. Because as discussed below the Board is also setting forth in its proposed rulemaking grounds for disciplinary action in proposed § 18.527 (relating to disciplinary action for behavior specialist), proposed § 18.523(c) provides that the Board may, in its discretion, deny an application for certification as behavior specialist upon those grounds for disciplinary action. Also, section 635.2(g)(3) of the insurance law (40 P.S. § 764h(g)(3)) prohibits the Board from certifying an applicant who been convicted of a drug felony unless it has been at least 10 years, the applicant has demonstrated significant progress in personal rehabilitation since the conviction such that certification should not be expected to create a substantial risk of harm to the health and safety of patients or the public or a substantial risk of further criminal violations, and the applicant otherwise satisfies the requirements for certification. Accordingly, proposed § 18.523(d) provides that the Board will not grant certification unless these requirements have been met.

The five criteria for certification as a behavior specialist set forth in section 635.2(g)(2) of the insurance law are: good moral character; receipt of a master’s or higher degree in school, clinical or counseling psychology, special education, social work, speech therapy, occupational therapy or another related field; at least 1 year of experience involving functional behavior assessments, including development and implementation of behavioral supports or treatment plans; at least 1,000 hours in direct clinical experience with individuals with behavioral challenges or at least 1,000 hours experience in a related field with individuals with autism spectrum disorders; and completion of relevant training programs , including professional ethics, autism-specific training, assessments training, instructional strategies and best practices, crisis intervention, comorbidity and medications, family collaboration and addressing specific skill deficits training. Accordingly, proposed § 18.524 recites these criteria (other than good moral character) in subsections (a) through (d).

Because all licenses and certifications issued by the Board within the Bureau of Professional and Occupational Affairs expire after 2 years and must be renewed biennially, proposed § 18.525 (relating to renewal of certification as behavior specialist) addresses renewal of certification as behavior specialist. Proposed § 18.525(a) provides that all behavior specialist certifications expire December 31 of each even-numbered year, the expiration date for all other licenses and certifications issued by the Board. Proposed § 18.525(b) provides that the Board will forward to the certificate holder’s last known address on file with the Board those biennial renewal forms and other forms and

literature that are to be distributed to certificate holders. In addition to paper applications for renewal, the Board now permits on-line renewal for its existing board-regulated practitioners. Under proposed § 18.525(c), a certificate holder must renew the certification in the manner provided by the Board, that is either on-line or by paper application, and pay the required renewal fee by the expiration date in order to renew the certification. As part of that renewal process, proposed § 18.525(d) requires the certificate holder to fully answer all questions and pay the required fee.

Proposed § 18.526 (relating to inactive status of certification as behavior specialist) addresses inactive status of behavior specialist certification. Proposed § 18.526(a) provides that certification may become inactive either by the certificate holder's request or by expiration at the end of the biennial renewal period. In order to minimize the opportunity or consequence of a certificate being incorrectly placed on inactive status at what appears to be the request of the certificate holder, proposed § 18.526(a)(1) provides that the Board will provide written notice to the certificate holder. Proposed § 18.526(c) provides the general requirement for reactivation of an inactive certification as behavior specialist that the certificate holder must apply on forms supplied by the Board, answer all questions fully, and pay the required fee. Throughout the Bureau of Professional and Occupational Affairs, whenever a license has expired and has not yet been reactivated, the holder may not continue to practice until the license is reactivated prospectively. This rulemaking breaks with that practice for behavior specialists. The purpose of amending the insurance law to provide for behavior specialists was to increase the availability of diagnostic assessment and treatment of autism spectrum disorders by providing that insurance companies must pay for those services when provided by licensed or certified persons. The insurance law has no prohibition on practice as a behavior specialist by one not certified by the Board. Accordingly, proposed § 18.526(b) provides only that a behavior specialist whose certificate is inactive is not considered to be a certificate holder unless the certificate has been reactivated retroactively. The obvious consequence is that an insurance company need not reimburse the behavior specialist for services provided during the period that the certificate was inactive. However, because the purpose is to increase the availability of services by allowing behavior specialists to be paid by insurance companies, the Board proposes to permit a behavior specialist to retroactively reactivate certification as provided in proposed § 18.526(d). Under that proposed section, in addition to the requirements of subsection (c), the behavior specialist must pay the renewal fee for past renewal periods and a late fee of \$5 per month. This late fee is the standard late renewal fee of section 225 of the Bureau of Professional and Occupational Affairs Fee Act (63 P.S. § 1401-225).

Finally, proposed § 18.527 (relating to disciplinary action for certified behavior specialist) addresses disciplinary action. Section 635.2(g)(1) of the insurance law (40 P.S. § 764h(g)(1)) provides that a certified behavior specialist is subject to all disciplinary provisions applicable to medical doctors under the act. Section 41 of the act (63 P.S. § 422.41) authorizes the Board to take disciplinary action against a medical doctor based upon any of a list of grounds, including unprofessional conduct. In § 16.61 (relating to unprofessional conduct), the Board has previously set forth examples of "unprofessional conduct" for which disciplinary action may be taken against a medical doctor. Accordingly, proposed § 18.527 provides that the Board may impose any corrective action of section 42 of the act (63 P.S. § 422.42) upon a certified behavior specialist who has committed any act for which the Board would be authorized to take disciplinary action against a medical doctor under section 41 of the act.

Fiscal Impact and Paperwork Requirements

The proposed amendments will have no adverse fiscal impact on the Commonwealth or its political subdivisions. The amendments will impose no additional paperwork requirements upon the Commonwealth, political subdivisions or the private sector.

Sunset Date

The Board continuously monitors the effectiveness of its regulations. Therefore, no sunset date has been assigned.

Regulatory Review

Under section 5(a) of the Regulatory Review Act (71 P.S. § 745.5(a)), on February 2, 2010, the Board submitted a copy of this proposed rulemaking and a copy of a Regulatory Analysis Form to the Independent Regulatory Review Commission (IRRC) and to the Chairpersons of the Senate Consumer Protection and Professional Licensure Committee and the House Professional Licensure Committee. A copy of this material is available to the public upon request.

Under section 5(g) of the Regulatory Review Act, IRRC may convey comments, recommendations or objections to the proposed rulemaking within 30 days of the close of the public comment period. The comments, recommendations or objections shall specify the regulatory review criteria which have not been met. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the rulemaking, by the Board, the General Assembly and the Governor of comments, recommendations or objections raised.

Public Comment

Interested persons are invited to submit written comments, suggestions or objections regarding this proposed rulemaking to Regulatory Unit Counsel, Department of State, by mail at P.O. Box 2649, Harrisburg, PA 17105-2649, or by email at st-medicine@state.pa.us, within 30 days following publication of this proposed rulemaking in the *Pennsylvania Bulletin*. Please reference No. 16A-4929 (behavior specialist), when submitting comments.

Ollice Bates, Jr., MD
Chairman

ANNEX A

TITLE 49. PROFESSIONAL AND VOCATIONAL STANDARDS

PART I. DEPARTMENT OF STATE

Subpart A. PROFESSIONAL AND OCCUPATIONAL AFFAIRS

CHAPTER 16. STATE BOARD OF MEDICINE—

GENERAL PROVISIONS

* * * * *

Subchapter B. GENERAL LICENSE, CERTIFICATION AND

REGISTRATION PROVISIONS

* * * * *

§ 16.11. Licenses, certificates and registrations.

* * * * *

(b) The following non-medical doctor licenses and certificates are issued by the Board:

* * * * *

(5) Certification as behavior specialist.

* * * * *

(c) The following registrations are issued by the Board:

* * * * *

(12) Biennial registration of a behavior specialist certification.

* * * * *

§ 16.13. Licensure, certification, examination and registration fees.

* * * * *

(k) Behavior specialist certification:

Application for certification as behavior specialist\$ 70

Biennial renewal of behavior specialist certification\$ 75

Application for reactivation of behavior specialist certification\$ 70

* * * * *

CHAPTER 18. STATE BOARD OF MEDICINE—PRACTITIONERS

OTHER THAN MEDICAL DOCTORS

* * * * *

Subchapter I. BEHAVIOR SPECIALISTS

§ 18.521. Purpose.

This subchapter implements section 635.2(g) of the act of May 17, 1921 (P.L. 682, No. 284) known as The Insurance Company Law of 1921 (40 P.S. § 764h(g)), as amended by section 3 of the act of July 9, 2008 (P.L. 885, No. 62) to provide for the certification of behavior specialists.

§ 18.522. Definitions.

The following words and terms, when used in this subchapter, have the following meanings, unless the context clearly indicates otherwise:

Applied behavioral analysis – As defined in section 635.2(f)(1) of the Insurance Company Law of 1921 (40 P.S. § 764h(f)(1)), the design, implementation and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior or to prevent loss of attained skill or function, including the use of direct observation, measurement and functional analysis of the relations between environment and behavior.

Autism spectrum disorders – As defined in section 635.2(f)(3) of the Insurance Company Law of 1921 (40 P.S. § 764h(f)(3)), any of the pervasive developmental disorders defined by the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM), or its successor, including autistic disorder, Asperger’s disorder and pervasive developmental disorder not otherwise specified.

Behavior specialist – As defined in section 635.2(f)(4) of the Insurance Company Law of 1921 (40 P.S. § 764h(f)(4)), an individual who designs, implements or evaluates a behavior modification intervention component of a treatment plan, including those based on applied behavioral analysis, to produce socially significant improvements in human behavior or to prevent loss of attained skill or function, through skill acquisition and the reduction of problematic behavior.

Diagnostic assessment of autism spectrum disorders – As defined in section 635.2(f)(5) of the Insurance Company Law of 1921 (40 P.S. § 764h(f)(5)), medically necessary assessments, evaluations or tests performed by a licensed physician, licensed physician assistant, licensed psychologist or certified registered nurse practitioner to diagnose whether an individual has an autism spectrum disorder.

§ 18.523. Application for certification as behavior specialist.

(a) An applicant for certification as a behavior specialist shall submit, on forms supplied by the Board, a completed application, including all necessary supporting documents, for certification as a behavior specialist and pay the fee of § 16.13(k) (relating to licensure, certification, examination and registration fees) for application for certification as behavior specialist.

(b) Except as otherwise provided in subsections (c) and (d), the Board will certify as

a behavior specialist an applicant who demonstrates that the applicant satisfies the requirements of section 635.2(g)(2) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(2)) for registration as a behavior specialist, as provided in § 18.524 (relating to criteria for certification as behavior specialist), and otherwise complies with this subchapter.

(c) In its discretion, the Board may deny an application for certification as a behavior specialist upon the grounds for disciplinary action set forth in § 18.527 (relating to disciplinary action for certified behavior specialist).

(d) The Board will not grant an application for certification as a behavior specialist of an applicant who has been convicted of a felony offense as provided in section 635.2(g)(3) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(3)), unless at least 10 years have elapsed from the date of conviction and the applicant has satisfactorily demonstrated to the Board that the applicant has made significant progress in personal rehabilitation since the conviction such that licensure of the applicant should not be expected to create a substantial risk of harm to the health and safety of the applicant's patients or the public or a substantial risk of further criminal violations.

§ 18.524. Criteria for certification as behavior specialist.

(a) As required by section 635.2(g)(2)(ii) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(2)(ii)), an applicant for certification as a behavior specialist shall have received a master's or higher degree from a board-approved, accredited college or university, including a major course of study in school, clinical or counseling psychology, special education, social work, speech therapy, occupational therapy or another related field.

(b) As required by section 635.2(g)(2)(iii) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(2)(iii)), an applicant for certification as a behavior specialist shall have at least 1

year of experience involving functional behavior assessments, including the development and implementation of behavioral supports or treatment plans.

(c) As required by section 635.2(g)(2)(iv) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(2)(iv)), an applicant for certification as a behavior specialist shall have completed at least 1,000 hours in direct clinical experience with individuals with behavioral challenges or at least 1,000 hours of experience in a related field with individuals with autism spectrum disorders.

(d) As required by section 635.2(g)(2)(v) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(2)(v)), an applicant for certification as a behavior specialist shall have completed relevant training programs, including professional ethics, autism-specific training, assessments training, instructional strategies and best practices, crisis intervention, comorbidity and medications, family collaboration, and addressing specific skill deficits training.

§ 18.525. Renewal of certification as behavior specialist.

(a) A certification issued under this subchapter expires on December 31 of the even-numbered year unless renewed for the next biennium.

(b) Biennial renewal forms and other forms and literature to be distributed by the Board will be forwarded to the last address on file with the Board.

(c) To retain certification as a behavior specialist, the certificate holder shall renew certification in the manner prescribed by the Board and pay the required biennial renewal fee specified in § 16.13(k) (relating to licensure, certification, examination and registration fees) prior to the expiration of the current biennium.

(d) In order to renew certification as a behavior specialist, the certificate holder shall apply on forms supplied by the Board, fully answer all questions, and pay the current renewal fee specified in § 16.13(k).

§ 18.526. Inactive status of certification as behavior specialist.

(a) Certification as a behavior specialist will become inactive upon either of the following:

(1) The certificate holder in writing affirmatively requests the Board to place certification on inactive status. Written confirmation of inactive status will be forwarded to the certificate holder.

(2) The certificate holder fails to renew the certificate by the expiration of the renewal period.

(b) Unless reactivated retroactively as provided for in this section, a person previously certified as a behavior specialist is not considered to be a certificate holder during any period when the certification was inactive.

(c) In order to reactivate an inactive certification, the certificate holder shall apply on forms supplied by the Board, answer all questions fully, and pay the current renewal fee, if not previously paid, and the reactivation application fee specified in § 16.13(k) (relating to licensure, certification, examination and registration fees).

(d) A certificate holder may reactivate an expired certification retroactive to the beginning of the current or a previous biennial renewal period by complying with subsection (c) and paying the renewal fee for each previous biennial renewal period and a late fee of \$5 per month for each month or part of month that the certificate was expired subsequent to the retroactive effective date of reactivation.

§ 18.527. Disciplinary action for certified behavior specialist.

In accordance with section 635.2(g)(1) of the Insurance Company Act of 1921 (40 P.S. § 764h(g)(1)), a certificate holder is subject to all disciplinary provisions applicable to medical

doctors as set forth in the act. Following a final determination subject to the right of notice, hearing and adjudication and the right of appeal therefrom in accordance with Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure), the Board may impose any of the corrective actions of section 42 of the act (63 P.S. § 422.42) upon a certified behavior specialist who commits any act for which the Board would be authorized to take disciplinary action against a medical doctor under section 41 of the act (63 P.S. § 422.41), including unprofessional or immoral conduct as defined in § 16.61 (relating to unprofessional and immoral conduct).



COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF STATE
BUREAU OF PROFESSIONAL AND OCCUPATIONAL AFFAIRS
STATE BOARD OF MEDICINE
Post Office Box 2649
Harrisburg, Pennsylvania 17105-2649
(717) 783-1400

February 2, 2010

The Honorable Arthur Coccodrilli, Chairman
INDEPENDENT REGULATORY REVIEW COMMISSION
14th Floor, Harristown 2, 333 Market Street
Harrisburg, Pennsylvania 17101

Re: Proposed Regulation
State Board of Medicine
16A-4929: BEHAVIOR SPECIALIST

Dear Chairman Coccodrilli:

Enclosed is a copy of a proposed rulemaking package of the State Board of Medicine pertaining to Behavior Specialist.

The Board will be pleased to provide whatever information the Commission may require during the course of its review of the rulemaking.

Sincerely,

A handwritten signature in black ink, appearing to read "Ollice Bates, Jr., MD".

Ollice Bates, Jr., MD, Chairperson
State Board of Medicine

OB/TAB:rs

Enclosure

cc: Basil L. Merenda, Commissioner
Bureau of Professional and Occupational Affairs
Steven V. Turner, Chief Counsel
Department of State
Joyce McKeever, Deputy Chief Counsel
Department of State
Cynthia Montgomery, Regulatory Counsel & Senior Counsel in Charge
Department of State
Thomas A. Blackburn, Counsel
State Board of Medicine
State Board of Medicine

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

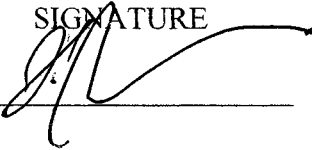
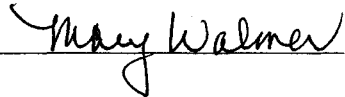

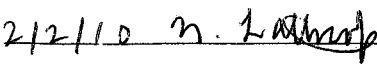
I.D. NUMBER: 16A-4929
 SUBJECT: BEHAVIOR SPECIALIST
 AGENCY: DEPARTMENT OF STATE
 STATE BOARD OF MEDICINE

TYPE OF REGULATION

- Proposed Regulation
- Final Regulation
- Final Regulation with Notice of Proposed Rulemaking Omitted
- 120-day Emergency Certification of the Attorney General
- 120-day Emergency Certification of the Governor
- Delivery of Tolled Regulation
 - a. With Revisions
 - b. Without Revisions

RECEIVED
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 INDEPENDENT REGULATORY
 REVIEW COMMISSION

FILING OF REGULATION

DATE	SIGNATURE	DESIGNATION
2/2/10		HOUSE COMMITTEE ON PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Michael P. McGeehan</u>
2/2/10		SENATE COMMITTEE ON CONSUMER PROTECTION & PROFESSIONAL LICENSURE MAJORITY CHAIRMAN <u>Robt. M. Tomlinson</u>
2/2/10		INDEPENDENT REGULATORY REVIEW COMMISSION ATTORNEY GENERAL (for Final Omitted only)
2/2/10		LEGISLATIVE REFERENCE BUREAU (for Proposed only)

January 22, 2010