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# Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

<b>Agency/Board/Commission:</b>	Applied Behavior Analyst Licensing Committee
<b>Division:</b>	Department of Health
<b>Contact Person:</b>	Paetria Morgan
<b>Address:</b>	665 Mainstream Drive, Nashville, TN
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Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

<b>ADA Contact:</b>	ADA Coordinator
<b>Address:</b>	710 James Robertson Parkway, Andrew Johnson Building, 5th Floor, Nashville, Tennessee 37243
<b>Phone:</b>	(615) 741-6350
<b>Email:</b>	Tina.M.Harris2@tn.gov

**Hearing Location(s)** (for additional locations, copy and paste table)

Address 1:	Metro Center
Address 2:	665 Mainstream Drive, Poplar Conference Room
City:	Nashville, Tennessee
Zip:	37228
Hearing Date :	01/25/16
Hearing Time:	9:00 A.M. <input checked="" type="checkbox"/> CST/CDT <input type="checkbox"/> EST/EDT

**Additional Hearing Information:**

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**Revision Type (check all that apply):**

- Amendment
- New
- Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1180-05	General Rules Governing the Practice of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts
Rule Number	Rule Title
1180-05-.01	Definitions
1180-05-.02	Scope of Practice

1180-05-.03	Necessity of Licensure
1180-05-.04	Qualifications of Licensure
1180-05-.05	Procedures for Licensure
1180-05-.06	Fees
1180-05-.07	Application Review, Approval, Denial and Interviews
1180-05-.08	Renewal of License
1180-05-.09	Retirement and Reactivation
1180-05-.10	Client Records
1180-05-.11	Mandatory Release of Client Records
1180-05-.12	Continuing Education
1180-05-.13	Professional Ethics
1180-05-.14	Actions, Civil Penalties and Settlements
1180-05-.15	Display and Replacement of License
1180-05-.16	Change of Address and/or Name
1180-05-.17	Committee Meetings, Officers, Consultants, Records, Declaratory Orders, and Screening Panels
1180-05-.18	Advertising and Other Public Statements

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

## Chapter 1180-05

### General Rules Governing the Practice of Licensed Behavioral Analysts and Licensed Assistant Behavior Analysts

#### New Chapter

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1180-05-.18	Advertising and Other Public Statements

1180-05-.01 Definitions. As used in these rules, the following terms and acronyms shall have the following meaning ascribed to them:

- (1) Advertising - Informational communication to the public in any manner to attract public attention to the practice of Behavior Analysts. Such communication includes, but is not limited to, business solicitation, with or without limiting qualifications, in a card, sign or device issued to a person; in a sign or marking in or on any building; or, in any newspaper, magazine, directory or other printed matter. Advertising also includes business solicitations communicated by individuals or radio, video or television broadcasting, or other means designed to secure public attention.
- (2) Applicant - Any individual seeking licensure by the Committee who has submitted an official application and paid the application fee.
- (3) Applied Behavior Analysis - The design, implementation, and evaluation of environmental modifications by a behavior analyst to produce socially significant improvements in human behavior. It includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis.
- (4) B.A.C.B - Behavior Analyst Certification Board.
- (5) BCABA - Board Certified Assistant Behavior Analyst.
- (6) BCBA - Board Certified Behavior Analyst.
- (7) BCBA-D - Board Certified Behavior Analyst-Doctoral.
- (8) Board - Tennessee Board of Examiners in Psychology.
- (9) Certifying entity - Nationally accredited behavior analyst certification board or its successor.
- (10) Commissioner - The Commissioner of the Department of Health or his/her designee.

- (11) Committee - The Applied Behavior Analyst Licensing Committee.
- (12) Committee Administrative Office - The office of the administrator assigned to the Committee located at 665 Mainstream Drive, Nashville, TN 37243.
- (13) Committee Designee/Consultant - Any person who has received a delegation of authority from the Committee to perform Committee functions subject to review and ratification by the Committee and Board where provided by these rules.
- (14) Department - Tennessee Department of Health.
- (15) Division - Division of Health Related Boards, Tennessee Department of Health, from which the Committee receives administrative support.
- (16) Fee - Money, gifts, services or anything of value offered or received as compensation in return for rendering services; this also includes the required application fees.
- (17) Good Moral Character - The quality of being well regarded in professional ethics.
- (18) Health Related Boards ("HRB") - The Division of Health Related Boards, Tennessee Department of Health, from which the Board receives administrative support.
- (19) He/she, him/her - When "he" appears in the text of these rules, the word represents both the feminine and masculine genders.
- (20) LBA and LABA - Licensed Behavior Analyst and Licensed Assistant Behavior Analyst.
- (21) License - The document issued by the Committee to an applicant who has successfully completed the licensure process.
- (22) Licensee - Any person, who holds a current, lawfully issued license to practice as a Licensed Assistant Behavior Analyst or Licensed Behavior Analyst.
- (23) Retirement - Voluntary deactivation of the Committee-issued license.

1180-05-.02 Scope of Practice.

- (1) A person who holds a license in accordance with T.C.A. § 63-11-305 may provide applied behavior analysis as defined in T.C.A. § 63-11-302(9).
- (2) The practice of applied behavior analysis expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.
- (3) Nothing in this chapter shall be construed as permitting an individual licensed as a Behavior Analyst or Assistant Behavior Analyst to administer, dispense, or prescribe drugs or in any manner engage in the practice of medicine as defined by Tennessee law.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-303, 63-11-304, 63-11-305, 63-11-307, 63-11-311, 63-11-212, and Public Acts of 2001, Chapter 123.

1180-05-.03 Necessity of Licensure.

- (1) Prior to the engagement of the practice as a licensed behavior analyst or licensed assistant behavior analyst in Tennessee, a person must hold a current Tennessee license unless exempted from licensure pursuant to T.C.A. § 63-11-306.
- (2) It is unlawful for any person who is not licensed in the manner prescribed in T.C.A. §§ 63-11-301, *et seq.* to represent himself as a licensed behavior analyst or licensed assistant behavior analyst or to hold himself out to the public as being licensed by means of using a title on signs, mailboxes, address plates,

stationery, announcements, telephone listings, calling cards, or other instruments of professional identification.

- (3) Use of Titles - Any person who possesses a valid, unsuspended and unrevoked behavior analyst license issued by the Committee has the right to use the title "Licensed Behavior Analyst" and to practice applied behavior analysis, as defined in T.C.A. § 63-11-302. Any person who possesses a valid, unsuspended and unrevoked assistant behavior analyst license issued by the Committee has the right to use the title "Licensed Assistant Behavior Analyst" as applicable, and to practice applied behavior analysis under supervision, as defined in T.C.A. § 63-11-302.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-1-145, 63-1-146, 63-11-303, 63-11-304, 63-11-307, 63-11-310, and 63-11-215.

1180-05-.04 Qualifications for Licensure.

- (1) Pursuant to T.C.A. § 63-11-304 and T.C.A. § 63-11-307, the Committee and the Board shall license no person as a behavior analyst unless at the time of application:
  - (a) The applicant is a board certified behavior analyst (BCBA) or a board certified behavior analyst-doctoral (BCBA-D) who is credentialed through the nationally accredited behavior analyst certification entity; and
  - (b) The applicant is not the subject of any disciplinary actions by the certifying entity at the time of application; or
  - (c) The applicant is qualified by the department of intellectual and developmental disabilities (DIDD) to provide behavior analysis services prior to July 12, 2012 and the requirements of T.C.A. § 63-11-307(c) are met.
- (2) Pursuant to T.C.A. § 63-11-304, the Committee and the Board shall license no person as an assistant behavior analyst unless:
  - (a) The applicant is a board certified assistant behavior analyst (BCABA) who is credentialed through the nationally accredited behavior analyst certification entity; and
  - (b) The applicant is not the subject of any disciplinary actions by the certifying entity at the time of application; and
  - (c) The applicant provides proof of ongoing supervision by a licensed behavior analyst (LBA) who is certified as a BCBA or BCBA-D under the certifying entity's requirements for supervision; or
  - (d) The applicant is qualified by the department of intellectual and developmental disabilities (DIDD) to provide behavior analysis services prior to July 12, 2012 and the requirements listed in T.C.A. § 63-11-307(c) are met.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-301, 63-11-304, and 63-11-307.

1180-05-.05 Procedures for Licensure. To become a licensed behavior analyst or licensed assistant behavior analyst in Tennessee, a person must comply with the following procedures and requirements:

- (1) Behavior Analyst - Licensure by Criteria
  - (a) An application packet shall be requested from the Committee's administrative office or downloaded from the Committee's website.
  - (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The completed application form and all fees required by the form and these rules shall be submitted to the Committee's administrative office.
  - (c) An applicant shall submit with the application a passport style photograph taken within the preceding twelve (12) months.

- (d) An applicant shall submit a certified copy of his birth certificate which indicates that the applicant is at least twenty-one (21) years of age at the time of application.
- (e) An applicant shall request that proof of certification be submitted directly from the certifying entity to the Committee's administrative office. The information received must confirm that the applicant is in good standing and is board certified by the national certifying entity as a BCBA or BCBA-D.
- (f) An applicant shall submit evidence of good moral character. Such evidence shall consist of two (2) recent original letters from applied behavior analyst professionals or professionals in a related field attesting to the applicant's personal character and professional ethics on the signatory's letterhead and dated within the preceding twelve (12) months.
- (g) An applicant shall disclose the circumstances surrounding any of the following:
  1. Conviction of any criminal violation of any country, state or municipality, except minor traffic violations.
  2. The denial of licensure application by any other state or the discipline of licensure by any state or any licensing or certifying entity.
  3. Revocation or restriction of licensure or certification by any licensing or certifying entity.
  4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under the country's or state's statutory, common or case law.
- (h) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's application materials, the result of a criminal background check.
- (i) An applicant who holds or has ever held a license or certificate to practice applied behavior analysis in another state, regardless of the type or level of licensure or certification, shall cause to be submitted a verification of license from the authorizing regulatory agency which indicates the applicant holds or held an active license or certificate and whether it is in good standing presently or was at the time it became inactive.
- (j) When necessary, all required documents shall be translated into English and the translation and original document certified as to authenticity by the issuing source. Both versions must be submitted to the Committee's administrative office.
- (k) An applicant shall submit the application fee as provided in rule 1180-05-.06.
- (l) Application review and licensure decisions shall be governed by rule 1180-05-.07.
- (m) All documents submitted for qualification of licensure become the property of the State of Tennessee and will not be returned.
- (n) The application is not acceptable if any portion has been executed and dated prior to one (1) year before filing with the Committee. As used in this part, application means the application form approved by the Committee and shall include, as appropriate:
  1. A passport style photograph taken within the preceding twelve (12) months;
  2. Proof of certification from certifying entity confirming applicant is in good standing or proof of DIDD provider status;
  3. Two (2) original letters of professional recommendation;
  4. Certification/licensure from other state boards.

(o) All applications shall be sworn to and signed by the applicant and notarized.

(2) Assistant Behavior Analyst - Licensure by Criteria

- (a) An application packet shall be requested from the Committee's administrative office or downloaded from the Committee's website.
- (b) An applicant shall respond truthfully and completely to every question or request for information contained in the application form. The completed application form and all fees required by the form and these rules shall be submitted to the Committee's administrative office.
- (c) An applicant shall submit with the application a passport style photograph taken within the preceding twelve (12) months.
- (d) An applicant shall submit a certified copy of his birth certificate which indicates that the applicant is at least twenty-one (21) years of age at the time of application.
- (e) An applicant shall request that proof of certification be submitted directly from the certifying entity to the Committee's administrative office. The information received must confirm that the applicant is in good standing and is board certified by the national certifying entity as a BCABA.
- (f) Proof of ongoing supervision by a licensed behavior analyst who is currently certified as a BCBA or BCBA-D.
- (g) An applicant shall submit evidence of good moral character. Such evidence shall consist of two (2) recent original letters from applied behavior analyst professionals or professionals in a related field attesting to the applicant's personal character and professional ethics on the signatory's letterhead and dated within the preceding twelve (12) months.
- (h) An applicant shall disclose the circumstances surrounding any of the following:
  - 1. Conviction of any criminal violation of any country, state or municipality, except minor traffic violations.
  - 2. The denial of licensure application by any other state or the discipline of licensure by any state or licensing or certifying entity.
  - 3. Revocation or restriction of licensure or certification by any licensing or certifying entity.
  - 4. Any civil suit judgment or civil suit settlement in which the applicant was a party defendant including, without limitation, actions involving malpractice, breach of contract, antitrust activity, or any other civil action remedy recognized under the country's or state's statutory, common or case law.
- (i) An applicant shall cause to be submitted to the Committee's administrative office directly from the vendor identified in the Committee's application materials, the result of a criminal background check.
- (j) If an applicant holds or has ever held a license or certificate to practice behavior analysis in another state, regardless of the type or level of licensure or certification, the applicant shall cause to be submitted a verification of license from the authorizing regulatory agency which indicates the applicant holds or held an active license or certificate and whether it is in good standing presently or was at the time it became inactive.
- (k) When necessary, all required documents shall be translated into English and the translation and original document certified as to authenticity by the issuing source. Both versions must be submitted to the Committee's administrative office.
- (l) An applicant shall submit the Application Fee as provided in rule 1180-05-.06.

- (m) Application review and licensure decisions shall be governed by rule 1180-05-.07.
- (n) All documents submitted for qualification of licensure become the property of the State of Tennessee and will not be returned.
- (o) The application is not acceptable if any portion has been executed and dated prior to one (1) year before filing with the Committee. As used in this part, application means the application form approved by the Committee and shall include, as appropriate:
  - 1. A passport style photograph taken within the preceding twelve (12) months;
  - 2. Proof of certification from certifying entity confirming applicant is in good standing or proof of DIDD provider status;
  - 3. Two (2) original letters of professional recommendation;
  - 4. Certification/licensure from other state boards;
  - 5. Proof of ongoing supervision by a licensed behavior analyst who is certified as BCBA or BCBA-D.
- (p) All applications shall be sworn to and signed by the applicant and notarized.
- (3) Reciprocity- An applicant must comply with the procedures and requirements set forth in rule 1180-05-.05, with the exception of 1180-05-.05(1)(f) and 1180-05-.05(2)(g).

Authority: T.C.A §§ 63-11-304, 63-11-307, 63-11-308, and 63-11-311.

1180-05-.06 Fees.

(1)	Fee Schedule: Licensed Behavior Analysts:	Amount
	(a) Application	\$250.00
	(b) License	\$100.00
	(c) License Renewal (biennial)	\$300.00
	(d) Late Renewal	\$100.00
	(e) Reinstatement fee	\$100.00
	(f) Replacement License	\$ 25.00
	(g) State Regulatory Fee	\$ 10.00
(2)	Fee Schedule: Licensed Assistant Behavior Analysts:	Amount
	(a) Application	\$150.00
	(b) License	\$100.00
	(c) License Renewal (biennial)	\$200.00
	(d) Late Renewal	\$100.00
	(e) Reinstatement fee	\$100.00
	(f) Replacement License	\$ 25.00

(g) State Regulatory Fee \$ 10.00

- (3) The fees set by the Committee for obtaining and maintaining licensure are defined as follows:
- (a) Application Fee - A fee paid by all applicants for licensure including those seeking licensure by reciprocity.
  - (b) License Fee - A fee to be paid at the time of application prior to the issuance of the initial license.
  - (c) Biennial License Renewal Fee - A non-refundable fee to be paid biennially by all license holders to maintain the license. This fee also applies to individuals who reactivate a license that has been retired.
  - (d) Late Renewal Fee - A non-refundable fee to be paid when an individual fails to timely renew a license.
  - (e) Replacement License or Certificate Fee - A non-refundable fee to be paid when an individual requests a replacement for a lost or destroyed license or certificate.
  - (f) Reinstatement Fee - A non-refundable fee to be paid by all individuals each time a reinstatement application is filed.
  - (g) State Regulatory Fee - A fee to be paid by all individuals at the time of application and with all renewal applications.
- (4) Fees must be paid by money order or certified, personal, or corporate check and must be submitted to the Committee's administrative office and made payable to the Applied Behavior Analysts Licensing Committee.
- (5) A license fee may be refunded upon withdrawal of an application. Requests for refunds must be made in writing to the Committee's administrator and accompanied by a copy of the cancelled check or other documentation of payment. The application fee shall not be refunded.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-301, and 63-11-303.

1180-05-.07 Application Review, Approval, Denial and Interviews.

- (1) Review of all submitted applications to determine application file completeness may be delegated to the Committee's designee, provided that approval of all applications is made and ratified by the Committee and the Board.
- (2) If an applicant has requested one level of licensure and subsequent to Committee review, wishes to change that application to a different level of licensure, a new application and fee must be submitted. An applicant may not simultaneously have an active application file for two (2) different levels of licensure. If, subsequent to the initial application, an applicant initiates a new application for a different level of licensure, the original application file will be closed.
- (3) A temporary authorization to practice, pursuant to T.C.A. § 63-1-142, may be issued to an applicant following an initial determination by a Committee designee that the completed file evidences that the applicant has met all of the requirements for licensure, renewal or reinstatement. The temporary authorization is valid until the Committee and the Board review and make a final decision on the application, and is effective for a period of no more than six months.
- (4) If a completed application has been denied by the Committee, the action shall become final and a notification of the denial shall be sent by the Committee's administrative office by certified mail, return receipt requested. Specific reasons for denial will be stated, including the specific statutory or rule authorities for the denial.

- (5) The Committee or its designee may delay a decision on licensure for any applicant from whom the Committee wishes additional information for the purpose of clarifying information previously submitted. The applicant's response must be made and received at the Committee's administrative office within sixty (60) days from the date of receipt of the notice by the applicant or the application will be closed.
- (6) If a license has been issued in error, the Committee will give written notice by certified mail of its intent to revoke the license or certificate. The notice will allow the applicant the opportunity to meet the requirements of licensure within thirty (30) days from the date of receipt of the notification.
- (7) Abandonment of application.
  - (a) An application shall be deemed abandoned and closed if it has not been completed by the applicant within sixty (60) days after it was initially submitted and reviewed or if the applicant does not submit the additional requested information within sixty (60) days from the date of receipt of the notice from the Committee's administrative office.
  - (b) Once a file has been closed, no further Committee action will take place until a new application is submitted. Failure to complete all forms, provide requested information, submit all fees, take or retake required examinations within the specified time frame will be just cause for the application file to be closed. This action may be made by the Committee's administrative office.
  - (c) An application submitted subsequent to abandonment and closure of a prior application shall be treated as a new application.

Authority: T.C.A §§ 4-5-202, 4-5-204, 63-11-301, *et seq.*

#### 1180-05-.08 Renewal of License.

- (1) Renewal application.
  - (a) The due date for license renewal is the expiration date indicated on the licensee's initial license.
  - (b) Method of Renewal - License holders will have a renewal application form mailed to them at the last address provided by them to the Committee. Failure to receive such notification does not relieve the individual of the responsibility of timely meeting all requirements for renewal.
  - (c) A license issued pursuant to these rules is renewable by the expiration date. To be eligible for renewal the licensee must submit the following to the Division on or before the expiration date of the license:
    - 1. A completed and signed renewal application form;
    - 2. The renewal fee and state regulatory fee as provided in rule 1180-05-.06; and
    - 3. Proof of current national certification by B.A.C.B.
  - (d) Licensees who fail to comply with the requirements of this rule shall have their licenses processed pursuant to rule 1200-10-1-.10.
- (2) Reinstatement of an Expired License.
  - (a) Licenses that have expired may be reinstated upon meeting the following conditions:
    - 1. Payment of all past due renewal fees, not to exceed the amount assessed for two (2) renewal cycles;
    - 2. Payment of the late renewal, reinstatement, and state regulatory fees as provided in rule 1180-05-.06; and
    - 3. Proof of current national certification by B.A.C.B.

- (b) Renewal application decisions pursuant to this rule may be made administratively, upon review by the Committee Administrator.
- (c) Anyone submitting a signed renewal form or letter which is found to be false may be subjected to disciplinary action as provided in T.C.A. § 63-11-303 and rule 1180-01-.14.

Authority: T.C.A §§ 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.09 Retirement and Reactivation of License.

- (1) A person who holds a current license and does not intend to practice as a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst may apply to convert an active license to retired status. An individual who holds a retired license is not required to pay the renewal fee.
- (2) A licensee may apply for retired status by filing a completed affidavit of retirement form and any required documentation with the Committee's administrative office.
- (3) A person whose license has been retired and who has not been out of clinical practice or an educational setting an excess of two (2) years, or a person whose Tennessee license has been retired and who has been licensed in good standing and in continuous practice in another state, may re-enter active status provided they currently hold B.A.C.B. national certification, and there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Committee's administrative office a reinstatement application for licensure reactivation and the license renewal fee.
- (4) A person whose license has been retired and who has not practiced in a clinical or educational setting for over two (2) years may re-enter active status provided they currently hold B.A.C.B. national certification, and there are no criminal or practice act violations which would prohibit initial licensure, by submitting to the Committee's administrative office a reinstatement application for licensure reactivation, the license renewal fee, and by obtaining six (6) months of clinical supervision by a licensed behavior analyst who has a BACB or BACB-D certification.

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.10 Client Records.

- (1) Purposes – The purposes of these rules are:
  - (a) To recognize that client records are an integral part of the practice of applied behavior analysis as defined in T.C.A. § 63-11-310 and the respective certifying entity's Ethical Code.
  - (b) To give licensed behavioral analysts and licensed assistant behavioral analysts, their professional and non-professional staff, and the public direction about the content, transfer, retention, and destruction of those records.
- (2) Client Records –
  - (a) Duty to Create and Maintain Client Records – As a component of the standard of care and of minimal competency a licensed behavioral analyst and licensed assistant behavior analyst must cause to be created and cause to be maintained a record for every client for whom he or she, and/or any of his or her professionally certified supervisees, performs services or provides professional consultation.
  - (b) Content – All client records, or summaries thereof, produced in the course of the practice of applied behavior analysis for all clients shall include information that is necessary to ensure that a subsequent reviewing or treating licensed behavior analyst or licensed assistant behavior analyst can both ascertain the assessment and analysis and provide continuity of care for the client.
  - (c) Transfer -
    - 1. Records of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts Upon Death or Retirement - When a licensed behavior analyst or licensed assistant behavior

analyst retires or dies while in practice, clients seen during the immediately preceding eighteen (18) months shall be notified by the licensee's authorized representative and be informed that upon authorization, copies of the records will be transferred to the new provider chosen by the client. This notification requirement shall not apply to a client when there have been fewer than two (2) client encounters within the immediately preceding eighteen (18) months.

2. Records of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts upon Departure from a Group - The responsibility for notifying clients of a licensed behavior analyst or licensed assistant behavior analyst who leaves a group practice whether by death, retirement or departure shall be governed by the employment contract of the licensed behavior analyst or licensed assistant behavior analyst.

(i) The individual who is responsible for the employment contract must notify clients seen by the licensed behavior analyst or licensed assistant behavior analyst during the immediately preceding eighteen (18) months of his/her departure, except that this notification requirement shall not apply to a client when there have been fewer than two (2) client encounters within the immediately preceding eighteen (18) months.

(ii) Except where otherwise governed by provisions of the employment contract, those clients shall also be notified of the practitioner's new address and offered the opportunity to have copies of their records forwarded to the departing licensed behavior analyst or licensed assistant behavior analyst at his or her new practice. Provided however, a group shall not withhold the records of any client who has authorized their transfer to the departing licensed behavior analyst or licensed assistant behavior analyst or any other practitioner.

(iii) The choice of practitioner in every case should be left to the client, and the client should be informed that upon authorization his/her records will be sent to the licensed behavior analyst or licensed assistant behavior analyst of the client's choice.

3. Sale of an Applied Behavior Analyst Practice - A licensed behavior analyst or licensed assistant behavior analyst or the estate of a deceased licensed behavior analyst or licensed assistant behavior analyst may sell the elements that comprise his/her practice, one of which is its goodwill, i.e., the opportunity to take over the clients of the seller by purchasing the client records. Therefore, the transfer of records of clients is subject to the following:

(i) The licensed behavior analyst or licensed assistant behavior analyst (or the estate) must ensure that all client records are transferred to a licensed behavior analyst or licensed assistant behavior analyst.

(ii) Clients seen by the licensed behavior analyst or licensed assistant behavior analyst during the immediately preceding eighteen (18) months shall be notified that the licensed behavior analyst or licensed assistant behavior analyst (or the estate) is transferring the practice to another practitioner or entity who will retain custody of their records and that at their written request the copies of their records will be sent to another practitioner or entity of their choice. This notification requirement shall not apply to a client when there have been fewer than two (2) client encounters within the immediately preceding eighteen (18) months.

4. Abandonment of Records – For purposes of this section of the rules, death of a licensed behavior analyst or licensed assistant behavior analyst shall not be considered as abandonment. It shall be a prima facie violation of T.C.A. § 63-11-310(2)(D) for a licensed behavior analyst or licensed assistant behavior analyst to abandon his practice without making provision for the maintenance, security, and access to client records.

(d) Retention of Client Records – Client records shall be retained for a period of not less than seven

(7) years from the last clinical contact between the client and the licensed behavior analyst or licensed assistant behavior analyst, except for the following:

1. Records for incompetent clients shall be retained indefinitely.
2. Records of minors shall be retained for a period of not less than one (1) year after the minor reaches the age of majority or seven (7) years from the date of the last clinical contact with the client, whichever is longer.
3. Notwithstanding the foregoing, no client record involving services which are currently under dispute shall be destroyed until the dispute is resolved.

(e) Destruction of Client Records -

1. No client record shall be singled out for destruction other than in accordance with established office operating procedures.
2. Records shall be destroyed only in the ordinary course of business according to established office operating procedures that are consistent with these rules.
3. Records may be destroyed by burning, shredding, or other effective methods in keeping with the confidential nature of the records.
4. When records are destroyed, the time, date and circumstances of the destruction shall be recorded and maintained for future reference.

(5) Violations – Violation of any provision of these rules is grounds for disciplinary action pursuant to T.C.A. § 63-11-310(2)(D).

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.11 Mandatory Release of Client Records.

- (1) Within ten (10) working days of receipt of a written request from a client or the client's authorized representative, an individual licensed by this Committee shall provide a complete copy of the client's records, or summary of such records which were maintained by the provider.
- (2) A licensee shall be entitled to charge reasonable costs not to exceed ten dollars (\$10.00) for reports twenty (20) pages or less in length and twenty-five cents (25¢) per page for each page copied after the first twenty (20) pages for copying and mailing client records.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-101, 63-2-102, and 63-11-104.

1180-05-.12 Continuing Education.

- (1) It is the responsibility of every licensee to maintain his or her national certification and comply with all continuing education requirements of the credentialing entity, regardless of whether he or she receives direct reminders to do so. Licensees who are not certified through the B.A.C.B. must accrue continuing education hours commensurate with their level of licensing in alignment with the standards set by B.A.C.B. certification. No deadlines or fees related to late renewals or reinstatement will be waived based upon failure to receive reminders, ignorance of the requirements to maintain certification, or failure to keep track of important dates.

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.13 Professional Ethics.

- (1) The Committee adopts, as if fully set out herein and to the extent that it does not conflict with state law, rules or Committee Position Statements, as its ethical standards the B.A.C.B.'s Ethical Code.
- (2) In the case of a conflict, the state law rules or position statements shall govern. Violation of the

Committee's Ethical Code shall be grounds for disciplinary action pursuant to T.C.A. § 63-11-310(a).

- (3) A copy of B.A.C.B.'s Ethical Code may be obtained from the B.A.C.B at 8051 Shaffer Parkway Littleton, CO 80127 or by phone at (720) 438-4321, or on the B.A.C.B website.

Authority: 4-5-202, 4-5-204, and 63-11-301, *et seq.*

1180-05-.14 Actions, Civil Penalties and Settlements.

- (1) Upon a finding by the Committee and the Board that a licensed behavior analyst or licensed assistant behavior analyst has violated any provision of the Applied Behavior Analyst Practice Act (T.C.A. §§ 63-11-301, *et seq.*) or the rules promulgated pursuant thereto, the Committee and the Board may take any of the following actions separately or in any combination which is deemed appropriate to the offense:
- (a) Formal Censure or Reprimand. This is a written action issued for a single occurrence and less severe violations. It is a formal disciplinary action.
  - (b) Probation. This is a formal disciplinary action which places a licensed behavior analyst or licensed assistant behavior analyst on close scrutiny for a fixed period of time. This action may be combined with conditions which must be met before probation will be lifted and/or which restrict the individual's activities during the probationary period.
  - (c) Suspension. This is a formal disciplinary action which suspends the right to practice for a fixed period of time. It contemplates re-entry into practice under the license previously issued.
  - (d) Revocation. This is the most severe form of disciplinary action which removes an individual from the practice of the profession and terminates the license previously issued. No new application for licensure from a person whose license or certificate was revoked shall be considered prior to the expiration of at least one (1) year from the date of entry of the order unless otherwise stated in the Committee's revocation order.
  - (e) Conditions. Any action deemed appropriate by the Committee and the Board to be required of a disciplined licensee in any of the following circumstances:
    - 1. During any period of probation or suspension; or
    - 2. Prior to new application following any revocation order; or
    - 3. As a prerequisite to the lifting of probation or suspension; or
    - 4. As a stand-alone requirement(s) in any disciplinary order.
  - (f) Civil Penalty. A monetary disciplinary action assessed by the Committee and the Board pursuant to paragraph six (6) of this rule.
  - (g) Assessment of costs in disciplinary hearings shall be set forth in T.C.A. §§ 63-1-144 and 63-11-303.
  - (h) Once ordered, probation, suspension, assessment of a civil penalty, or any other condition of any type of disciplinary action may not be lifted unless and until the licensee petitions, pursuant to paragraph four (4) of this rule, and appears before the Committee after the period of initial probation, suspension, or other conditioning has run and all conditions placed on the probation, suspension, have been met, and after any civil penalties and costs assessed have been paid.
- (2) Order of Compliance. This procedure is a necessary adjunct to previously issued disciplinary orders and is available only when a petitioner has completely complied with the provisions of a previously issued disciplinary order, including an unlicensed practice civil penalty order, and wishes or is required to obtain an order reflecting that compliance.
- (a) The Committee and the Board will entertain petitions for an Order of Compliance as a supplement

to a previously issued order upon strict compliance with the procedures set forth in subparagraph (b) in only the following two (2) circumstances:

1. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued reflecting that compliance; or
2. When the petitioner can prove compliance with all the terms of the previously issued order and is seeking to have an order issued lifting a previously ordered suspension or probation.

(b) Procedures

1. The petitioner shall submit a Petition for Order of Compliance, as contained in subparagraph (c), to the Disciplinary Coordinator that shall contain all of the following:
  - (i) A copy of the previously issued order; and
  - (ii) A statement of which provision of subparagraph (a) the petitioner is relying upon as a basis for the requested order; and
  - (iii) A copy of all documents that prove compliance with all the terms or conditions of the previously issued order. If proof of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed statements from every individual the petitioner intends to rely upon attesting, under oath, to the compliance. The Committee's consultant and legal staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on or a final order in response to, the petition.
2. The Committee authorizes its consultant and legal staff to make an initial determination on the petition and take one of the following actions:
  - (i) Certify compliance and have the matter scheduled for presentation to the Committee and the Board as an uncontested matter; or
  - (ii) Deny the petition, after consultation with legal staff, if compliance with all of the provisions of the previous order is not proven and notify the petitioner of what provisions remain to be fulfilled and/or what proof of compliance was either not sufficient or not submitted.
3. If the petition is presented to the Committee and the Board, the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
4. If the Committee and the Board finds that the petitioner has complied with all the terms of the previous order, an Order of Compliance shall be issued.
5. If the petition is denied either initially by staff or after presentation to the Committee or the Board and the petitioner believes compliance with the order has been sufficiently proven the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order of Compliance  
Applied Behavior Analyst Licensing Committee

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents, as substantiated by the attached documentation that all provisions of the attached disciplinary order have been complied with and I am respectfully requesting: (circle one)

1. An order issued reflecting that compliance; or
2. An order issued reflecting that compliance and lifting a previously ordered suspension or probation; or

Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show compliance is the testimony of any individual, including yourself, you must enclose signed statements from every individual you intend to rely upon attesting, under oath, to the compliance. The Committee's consultant, the Disciplinary Coordinator, and legal staff, in their discretion, may require such signed statements to be notarized. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

(3) Order Modifications. This procedure is not intended to allow anyone under a previously issued disciplinary order, including an unlicensed or uncertified practice civil penalty order, to modify any findings of fact, conclusions of law, or the reasons for the decision contained in the order. It is also not intended to allow a petition for a lesser disciplinary action, or civil penalty other than the one(s) previously ordered. All such provisions of Committee and Board orders were subject to reconsideration and appeal under the provisions of the Uniform Administrative Procedures Act (T.C.A. §§ 4-5-301, *et seq.*). This procedure is not available as a substitute for reconsideration and/or appeal and is only available after all reconsideration and appeal rights have been either exhausted or not timely pursued. It is also not available for those who have accepted and been issued a reprimand.

(a) The Committee and the Board will entertain petitions for modification of the disciplinary portion of previously issued orders upon strict compliance with the procedures set forth in subparagraph (b) only when the petitioner can prove that compliance with any one or more of the conditions or terms of the discipline previously ordered is impossible. For purposes of this rule the term "impossible" does not mean that compliance is inconvenient or impractical for personal, financial, scheduling or other reasons.

(b) Procedures

1. The petitioner shall submit a written and signed Petition for Order Modification on the form contained in subparagraph (c) to the Committee's legal staff that shall contain all of the following:
  - (i) A copy of the previously issued order; and
  - (ii) A statement of why the petitioner believes it is impossible to comply with the order as issued; and

- (iii) A copy of all documents that proves that compliance is impossible. If proof of impossibility of compliance requires testimony of an individual(s), including that of the petitioner, the petitioner must submit signed and notarized statements from every individual the petitioner intends to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on or a final order in response to, the petition.
2. The Committee authorizes its consultant and legal staff to make an initial determination on the petition and take one of the following actions:
    - (i) Certify impossibility of compliance and forward the petition to the Office of General Counsel for presentation to the Committee and the Board as an uncontested matter; or
    - (ii) Deny the petition, after consultation with legal staff, if impossibility of compliance with the provisions of the previous order is not proven and notify the petitioner of what proof of impossibility of compliance was either not sufficient or not submitted.
  3. If the petition is presented to the Committee and the Board, the petitioner may not submit any additional documentation or testimony other than that contained in the petition as originally submitted.
  4. If the petition is granted, a new order shall be issued reflecting the modifications authorized by the Committee and the Board that it deemed appropriate and necessary in relation to the violations found in the previous order.
  5. If the petition is denied either initially by staff or after presentation to the Committee or the Board and the petitioner believes impossibility of compliance with the order has been sufficiently proven, the petitioner may, as authorized by law, file a petition for a declaratory order pursuant to the provisions of T.C.A. § 4-5-223 and rule 1200-10-1-.11.

(c) Form Petition

Petition for Order Modification  
Applied Behavior Analyst Licensing Committee

Petitioner's Name: \_\_\_\_\_  
Petitioner's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Petitioner's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

Attorney for Petitioner: \_\_\_\_\_  
Attorney's Mailing Address: \_\_\_\_\_  
\_\_\_\_\_

Attorney's E-Mail Address: \_\_\_\_\_  
Telephone Number: \_\_\_\_\_

The petitioner respectfully represents that for the following reasons, as substantiated by the attached documentation, the identified provisions of the attached disciplinary order are impossible for me to comply with:

\_\_\_\_\_  
\_\_\_\_\_

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Note - You must enclose all documents necessary to prove your request including a copy of the original order. If any of the proof you are relying upon to show impossibility is the testimony of any individual, including yourself, you must enclose signed and notarized statements from every individual you intend to rely upon attesting, under oath, to the reasons why compliance is impossible. No documentation or testimony other than that submitted will be considered in making an initial determination on, or a final order in response to, this petition.

Respectfully submitted this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Petitioner's Signature

(4) Civil penalties.

(a) Purpose. The purpose of this paragraph is to set out a schedule designating the minimum and maximum civil penalties which may be assessed pursuant to T.C.A. § 63-1-134.

(b) Schedule of civil penalties.

1. A "Type A" civil penalty may be imposed whenever the Committee finds the person required to be licensed by the Committee is guilty of a willful and knowing violation of the Applied Behavior Analyst Practice Act or rules promulgated pursuant thereto, to such an extent that there is, or is likely to be, an imminent, substantial threat to the health, safety and welfare of an individual client or the public. For purposes of this paragraph, willfully and knowingly practicing as a licensed behavior analyst or licensed assistant behavior analyst without a license or other authorization from the Committee is one of the violations of the Applied Behavior Analyst Practice Act for which a "Type A" civil penalty is assessable.
2. A "Type B" civil penalty may be imposed whenever the Committee finds the person required to be licensed or authorized by the Committee is guilty of a violation of the Applied Behavior Analyst Practice Act or rules promulgated pursuant thereto in such a manner as to impact directly on the care of clients or the public.
3. A "Type C" civil penalty may be imposed whenever the Committee finds the person required to be licensed or authorized by the Committee is guilty of a violation of the Applied Behavior Analyst Practice Act or rules promulgated pursuant thereto, which are neither directly detrimental to the clients or the public, nor directly impact their care, but have only an indirect relationship to client care or the public.

(c) Amount of civil penalties.

1. "Type A" civil penalties shall be assessed in the amount of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1000).
2. "Type B" civil penalties may be assessed in the amount of not less than one hundred dollars (\$100) nor more than five hundred dollars (\$500).
3. "Type C" civil penalties may be assessed in the amount of not less than fifty dollars (\$50) nor more than one hundred dollars (\$100).

(d) Procedures for assessing civil penalties.

1. Civil penalties may be initiated and assessed by the Committee during consideration of any Notice of Charges. In addition, the Committee may, upon good cause shown, assess a type and amount of civil penalty which was not recommended by the Division.

2. In assessing the civil penalties pursuant to these rules, the Committee may consider the following factors:
  - (i) Whether the amount imposed will be a substantial economic deterrent to the violator;
  - (ii) The circumstances leading to the violation;
  - (iii) The severity of the violation and the risk of harm to the public;
  - (iv) The economic benefits gained by the violator as a result of non-compliance; and
  - (v) The interest of the public.
3. All proceedings for the assessment of civil penalties shall be governed by the Administrative Procedures Act, T.C.A. §§ 4-5-301, *et seq.*

Authority: T.C.A. §§ 4-5-105, 4-5-202, 4-5-204, 4-5-217, 4-5-223, 63-1-122, 63-1-134, 63-1-138, 63-11-104, 63-11-201, and 63-11-215 through 63-11-217, and 63-11-310.

1180-05-.15 Display and Replacement of License.

- (1) Display of License. Every person licensed by the Committee shall display the license or certificate in a conspicuous place in his or her office and, whenever required, exhibit such license to the Committee or its authorized representatives.
- (2) Replacement License. Requests for duplicate or replacement licenses must be made in writing to the Committee's administrative office and be accompanied by the fee provided in rule 1150-05-.06.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-1-109, 63-11-104, 63-11-201, and 63-11-212.

1180-05-.16 Change of Address and/or Name.

- (1) Change of address. Each person holding a license who has had a change of address or place of employment shall file in writing with the Committee his or her current address, giving both old and new addresses. Notifications shall be received in the Committee's administrative office no later than thirty (30) days after the change is effective and must reference the individual's name, profession and license or certificate number.
- (2) Change of name. An individual licensed by the Committee shall notify the Committee in writing within thirty (30) days of a name change and will provide both the old and new names. A notice of name change must also include a copy of the legal document which implements the name change and reference the individual's profession, Committee and license or certificate number.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-1-106, 63-1-108, 63-11-104, 63-11-201, and 63-11-310.

1180-05-.17 Committee Meetings, Officers, Consultants, Records and Declaratory Orders and Screening Panels.

- (1) The Committee shall at its first meeting after July 1 of each year elect from its members the following officers:
  - (a) Chairperson - who shall preside at all meetings of the Committee.
  - (b) The Chairperson of the Committee shall be an ex officio voting member of the Board of Examiners in Psychology.
- (2) The Committee has the authority to select a Committee consultant who shall serve as a consultant to the Division and who is vested with the authority to do the following acts:
  - (a) Review complaints with the Committee attorney and recommend whether and what type

disciplinary actions should be instituted as the result of complaints received or investigations conducted by the Division.

- (b) Recommend whether and upon what terms a complaint, case or disciplinary action might be settled. Any matter proposed for settlement must be subsequently reviewed, evaluated and ratified by the full Committee and the full Board of Examiners in Psychology before it becomes effective.
  - (c) Undertake any other matter authorized by a majority vote of the Committee or the Board of Examiners in Psychology.
- (3) Records and complaints.
- (a) All requests, applications, notices, other communications and correspondence shall be directed to the Committee's administrative office. Any requests or inquiries requiring a Committee decision or official Committee action, except documents relating to disciplinary actions or hearing requests, must be received fourteen (14) days prior to a scheduled meeting. Requests not timely received may be set over to the next Committee meeting.
  - (b) All records of the Committee, except those made confidential by law, are open for inspection and examination under the supervision of an employee of the Division at the Committee's administrative office during normal business hours.
  - (c) Copies of public records shall be provided to any person upon payment of reasonable costs as permitted under T.C.A. § 10-7-506(c).
  - (d) Minutes of the Committee meetings and all records, documents, applications and correspondence will be maintained in the Committee's administrative office.
  - (e) All complaints should be directed to the Office of Investigations of the Health Related Boards.
- (4) The Committee members or the consultant are individually vested with the authority to do the following acts:
- (a) Review and make determination on licensure, renewal and reactivation of licensure applications subject to the rules governing those respective applications and subject to the subsequent ratification by the Committee and the Board.
  - (b) Serve as consultant to the Division to decide the following:
    - 1. Whether and what type disciplinary actions should be instituted upon complaints received or investigations conducted by the Division.
    - 2. Whether and under what terms a complaint, case or disciplinary action might be settled. Any proposed settlement must be subsequently ratified by the Committee and the Board.
- (5) The Committee authorizes the member who chaired the Committee for a contested case to make the decisions authorized pursuant to rule 1360-05-01.18 regarding petitions for reconsiderations and stays in that case.
- (6) Requests for verification of licensure for licensed behavior analysts and licensed assistant behavior analysts desiring to practice in another state must be made in writing to the Committee's administrative office.
- (7) Declaratory orders - The Committee adopts, as if fully set out herein, rule 1200-10-1-.11, of the Division of Health Related Boards and as it may from time to time be amended, as its rule governing the declaratory order process. All declaratory order petitions involving statutes, rules or orders within the jurisdiction of the Committee shall be addressed by the Committee pursuant to that rule and not by the Division. Declaratory order petition forms can be obtained from the Committee's administrative office.
- (8) Screening panels- The Committee adopts, as if fully set out herein, rule 1200-10-01.13, of the Division of

Health Related Boards and as it may from time to time be amended, as its rule governing the screening panel process.

Authority: T.C.A. §§ 4-5-202, 4-5-204, 63-2-102, 63-11-101, 63-11-104, 63-11-215, 63-11-216, 63-11-303, and 63-11-310.

1180-05-.18 Advertising and Other Public Statements.

- (1) Definition of public statements. Public statements relate to professional services, products, or publications or to the field of applied behavior analysis. Public statements include but are not limited to paid or unpaid advertising, brochures, printed matter, directory listings, personal resumes or curricula vitae, interviews or comments for use in media, statements in legal proceedings, lectures and public oral presentations, and published materials.
- (2) Avoidance of false or deceptive statements. Licensees do not make public statements that are false, deceptive, misleading or fraudulent, either because of what they state, convey, or suggest or because of what they omit, concerning their research, practice or other work activities or those of persons or organizations with which they are affiliated. As examples (and not in limitation) of this standard, licensees do not make false or deceptive statements concerning (1) their training, experience, or competence; (2) their academic degrees; (3) their credentials; (4) their institutional or association affiliations; (5) their services; (6) the scientific or clinical basis for, or results or degrees of success of their services; (7) their fees; or (8) their publications or research findings.

Authority: T.C.A. § 63-11-215.

I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: November 23, 2015

Signature: Paetria Morgan

Name of Officer: Paetria Morgan

Assistant General Counsel

Title of Officer: Department of Health

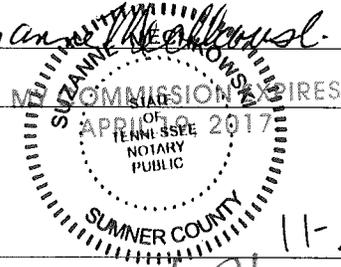
Subscribed and sworn to before me on: 11-23-15

Notary Public Signature: [Signature]

My commission expires on: \_\_\_\_\_

**Department of State Use Only**

Filed with the Department of State on: 11-23-15



[Signature]

Tre Hargett  
Secretary of State

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