

*Behavior Analyst Licensure:
A Review of Statutes and Rules Regulating the
Practice of Behavior Analysis in NC*

(with bonus material!)

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Historical Perspective

Understanding the Past
to Protect your Future





1968

- Baer, Wolf, and Risley publish “Seven Dimensions of ABA”

1970s

- ABA taught primarily in Psychology Depts. of universities such as Kansas, West Virginia, Florida, Florida State, Western Michigan, and notably in Rehabilitation Dept. at Southern Illinois

1967

- Psychology licensure started in 1967 in NC, but not adopted by all states until 1975.

Not all states recognized ABA as the practice of Psychology, and therefore ABA practitioners could not get licensed and work in jobs requiring a license



1990s

- ▶ NCABA began an active program to protect the ability of licensed practitioners to practice ABA

1994

- ▶ Joined NCPA and became representative to Coalition 2001 and DD Consortium
 - ▶ Mental health advocacy groups that worked with legislature
 - ▶ This gave us a seat at the table when insurance and licensure issues were being discussed later.

1995

- ▶ NCABA Public Relations Initiative (poster presentation IABA)

1996 -1999

- ▶ 4 presentations on licensure issues at NCABA .

1998

- ▶ BACB started – focus shifted to how BCBA's could practice legally in NC.



2000s Autism Treatment Insurance

In NC Bills introduced in 2009, 2011, 2013

2015

- ▶ State Employee's Health Plan offered coverage in
 - ▶ Bill approved in 2015 legislative session mandating private insurers to provide coverage

- ▶ Behavior Analysis
 - ▶ Defined as the Practice of Psychology in law
 - ▶ Clear that a Practice Act for Behavior Analysts was needed.
 - ▶ Supported by NCPA and all other mental health professional organizations in NC

- ▶ Given the choice of licensure under the Psychology Practice Act vs. independent board, NCABA membership decided that the Board should be independent.
 - ▶ Recognized that the legislature then, as now, was anti-regulation.

- ▶ Attempt to exempt BCBA's from Psychology Practice Act died in committee in 2011



The long road to licensure

- ▶ 2012 HB1157
- ▶ 2015 HB 714
- ▶ 2017 HB 307
- ▶ 2019 HB 671

... and Finally

Behavior Analysis Practice Act

Passed in 2021, effective Jan. 1, 2022

- ▶ Practice Act is law.
 - ▶ Statute can ONLY be changed only by general assembly.
- ▶ Rules
 - ▶ Mandates created by the Board to implement provisions of the law.
 - ▶ Rules are approved by a legislative oversight committee
 - ▶ Rules Review Committee
 - ▶ Rules CAN be changed by the Board
- ▶ Once the Practice Act was passed
 - ▶ Board was formed
 - ▶ Began to develop Rules → needed before licenses could be issued.
 - ▶ Rules must be reviewed for legality by a legislative committee before approval.
 - ▶ January 2023 the Rules were approved!

Lesson Learned

February 16, 2021

▶ S.B. 103

A BILL TO BE ENTITLED

▶ ***AN ACT TO REDUCE UNNECESSARY REGULATORY CONSTRAINTS
FOR APPLIED BEHAVIOR ANALYSIS***

The background features a complex network diagram with nodes of various colors (green, purple, brown, grey) and sizes, connected by thin grey lines. To the left, there is a star field of black dots of varying sizes on a light grey gradient. The right side is dominated by overlapping blue geometric shapes in various shades, creating a layered effect.

The Main Feature

GENERAL ASSEMBLY OF NORTH CAROLINA SESSION 2021 SESSION LAW 2021-22 SENATE BILL 103

AN ACT TO REDUCE UNNECESSARY REGULATORY CONSTRAINTS FOR APPLIED BEHAVIOR ANALYSIS.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Chapter 90 of the General Statutes is amended by adding a new Article to read:

"Article 43.

"Behavior Analyst Licensure.

"§ 90-726.1. Declaration of purpose.

The practice of behavior analysis in North Carolina affects the public health, safety, and welfare of citizens of North Carolina and shall be subject to regulation to protect the public from (i) the practice of behavior analysis by unqualified individuals and (ii) unprofessional, unethical, or harmful conduct by individuals licensed to practice behavior analysis.

"§ 90-726.4. Powers and duties of Board.

(a) The Board shall have the following powers and duties:

- (1) Administer, coordinate, and enforce the provisions of this Article.
- (2) Adopt, amend, or repeal rules to administer and enforce this Article.
- (3) Establish and determine qualification and fitness of applicants for licensure under this Article.
- (4) Issue, renew, deny, suspend, revoke, or refuse to issue or renew any license under this Article.
- (5) Establish fees for applications, initial and renewal licenses, and other services provided by the Board.
- (6) Discipline individuals licensed under this Article.

(b) The Board may empower any member to conduct any proceeding or investigation necessary to its purposes and may empower its agent or counsel to conduct any investigation necessary to its purposes, but any final action requires a quorum of the Board. The Board shall adopt an official seal, which shall be affixed to all licenses issued by it.

"§ 90-726.15. Exemptions from licensure.

An individual is exempt from the requirements of this Article if any of the following conditions are met:

- (1) The individual is a licensed psychologist or psychological associate in this State or provides ancillary services in accordance with G.S. 90-270.154.
- (2) The individual is a behavior technician delivering applied behavior analysis services under the extended authority and direction of a licensed behavior analyst, licensed assistant behavior analyst, or other professional licensed under this Chapter or Chapter 90B of the General Statutes, so long as the services of the licensed professional are within the scope of practice of the license possessed by that licensed professional, and the services performed are commensurate with the licensed professional's education, training, and experience. The behavior technician does not design assessment or intervention plans or procedures but delivers services as assigned by a supervisor who is responsible for the behavior technician's work.
- (3) The individual is a family member, guardian, or other caretaker implementing a behavior analysis treatment plan under the direction of a licensed behavior analyst or a licensed assistant behavior analyst.
- (4) The individual engages in the practice of behavior analysis with nonhuman subjects, including individuals who are animal behaviorists and animal trainers.
- (5) The individual provides general behavior analysis services to organizations, so long as the services are for the benefit of the organizations and do not involve direct services to individuals.

Exemptions continued

(6) The individual is a professional licensed under this Chapter or Chapter 90B of the General Statutes, so long as the licensed professional does not represent that the licensed professional is a licensed behavior analyst or licensed assistant behavior analyst and the services of the licensed professional are within the scope of practice of the license possessed by that licensed professional and the services performed are commensurate with the licensed professional's education, training, and experience.

(7) The activities are part of a defined college or university course program of study, practicum, or intensive practicum, so long as that individual is under direct supervision of (i) a licensed behavior analyst, (ii) an instructor in a course sequence approved by the certifying entity, or (iii) a qualified faculty member.

(8) The individual is pursuing experience in behavior analysis consistent with the certifying entity's experience requirements, so long as the individual's activities are supervised by a licensed behavior analyst.

"§ 90-726.6. License application.

(a). Each individual desiring to obtain a license under this Article shall apply to the Board in accordance with the procedure and rules prescribed by the Board. Each applicant shall furnish evidence satisfactory to the Board that the applicant meets all of the following criteria:

(1) The individual is of good moral character and conducts all professional activities in accordance with accepted professional and ethical standards.

(2) The individual has not engaged in any practice at any time that would be a ground for denial, revocation, or suspension of a license under G.S. 90-726.12.

(3) The individual has submitted the required criminal history record, as required by G.S. 90-726.14.

(4) The individual is qualified for licensure under the requirements of this Article.

(b). A license obtained through fraud or by any false representation is void.

"§ 90-726.7. Requirements for licensure as a behavior analyst.

Each applicant shall be issued a license by the Board to engage in the practice of behavior analysis as a licensed behavior analyst if the applicant meets the qualifications set forth by the Board in accordance with G.S. 90-726.4(a) and provides satisfactory evidence to the Board of all the following criteria:

(1) The applicant is at least 18 years of age.

(2) The applicant has passed the certifying entity's Board Certified Behavior Analyst examination.

(3) The applicant has an active status with the certifying entity as a Board Certified Behavior Analyst.

"§ 90-726.9. Renewal of license.

- (a) A license shall be granted under this Article for the period of two years.
- (a) The Board shall renew a license granted under this Article upon completion of the following:
 - (1) Proof of completion of any continuing education required by the certifying entity.
 - (2) Payment of the renewal fee.
 - (3) Evidence of active certification by the certifying entity.
 - (4) For licensed assistant behavior analysts, evidence of the ongoing arrangement for supervision by a licensed behavior analyst, as required by G.S. 90-726.8.

"§ 90-726.12. Denial, suspension, or revocation of licenses and other disciplinary and remedial actions for violations of the Code of Conduct; relinquishing of license.

- (a) Any applicant for licensure and any individual licensed under this Article shall comply with the ethical and professional standards specified in this Code of Conduct and in the rules of the Board. The Board may deny, suspend, or revoke licensure and may discipline, place on probation, limit practice, and require examination, remediation, and rehabilitation of any applicant or licensee, as provided for in subsection (b) of this section, for any violation listed in this subsection. The following are considered violations of the Code of Conduct:

Violations of Code of Conduct

(1) Conviction of a felony or entry of a plea of guilty or nolo contendere to any felony charge.

(2) Conviction of a felony or entry of a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice, or a misdemeanor charge reflecting the inability to practice behavior analysis relating to the health and safety of clients or patients.

(3) Using fraud or deceit in securing or attempting to secure or renew a license under this Article or willfully concealing from the Board material information in connection with application for a license or for renewal of a license under this Article.

(4) Using fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of behavior analysis, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of behavior analysis.

(5) Making fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of behavior analysis to the public, any individual, the Board, or any other jurisdiction.

(6) Revocation or suspension of a license for the practice of behavior analysis in any other jurisdiction or having been disciplined by the licensing board or certifying entity in any other jurisdiction for conduct which would subject the licensee to discipline under this Article.

(7) Violation of any provision of this Article or of the rules adopted by the Board.

(8) Aiding or abetting the unlawful practice of behavior analysis by any individual not licensed by the Board.

(9) Engaging in immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection, or the current ethics code of the certifying entity.

(10) Practicing behavior analysis in a manner that endangers the welfare of clients or patients.

(11) Demonstrating an inability to practice behavior analysis with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Practicing behavior analysis outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Failing to provide competent treatment, consultation, or supervision, in keeping with standards of usual and customary practice in this State.

(14) Failing to take all reasonable steps to ensure the competence of services.

(15) Failing to maintain a clear and accurate case record documenting the following for each patient or client:

- a. Presenting problems, diagnosis, or purpose of the evaluation, treatment, or other services provided.
- b. Fees, dates of services, and itemized charges.
- c. Summary content of each session of evaluation, treatment, or other services, except summary content that may cause significant harm to any individual if the information were released.
- d. Copies of all reports prepared.

(16) Failing to retain securely and confidentially the complete case record indefinitely if there are pending legal or ethical matters or if there is any other compelling circumstance, or failing to retain securely and confidentially the complete case record for at least seven years from the date of the last provision of services, except when under either circumstance, the behavior analyst was prevented from doing so by circumstances beyond the behavior analyst's control.

(17) Failing to cooperate with other behavior analysts or other professionals to the potential or actual detriment of clients, patients, or other recipients of service, or behaving in ways which substantially impede or impair other licensed behavior analysts, licensed assistant behavior analysts, or other professionals' abilities to perform professional duties.

(18) Exercising undue influence in a manner that exploits the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the licensed behavior analyst, licensed assistant behavior analyst, or a third party.

(19) Harassing or abusing, sexually or otherwise, a client, patient, student, supervisee, or trainee.

(20) Failing to cooperate with or to respond promptly, completely, and honestly to the Board, to credentialing committees, institutional review boards, professional standards review organizations, or ethics committees of professional behavior analyst associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

(21) Refusing to appear before the Board after having been ordered to do so in writing by the chair.

(b) Upon proof that an applicant or licensee under this Article has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial, suspension, or revocation, do all of the following:

- (1) Issue a formal reprimand or formally censure the applicant or licensee.
- (2) Place the applicant or licensee on probation with appropriate conditions as the Board may deem advisable.
- (3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense of which shall be paid by the applicant or licensee.
- (4) Require supervision for the services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense of which shall be paid by the applicant or licensee.
- (5) Limit or circumscribe the practice of behavior analysis provided by the applicant or licensee with respect to the extent, nature, or location of the services provided, as the Board deems advisable.
- (6) Impose conditions of probation or restrictions upon continued practice at the conclusion of a period of suspension or as requirements for the restoration of a revoked or suspended license.

(c) In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to the discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

(d) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(e) When considering whether an applicant or licensee is physically or mentally capable of practicing behavior analysis with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing behavior analysis with reasonable skill and safety with patients or clients.

- ▶ The psychologist or physician that conducts an evaluation of the applicant or licensee shall be designated by the court of competent jurisdiction.
- ▶ The Board shall be responsible for the expenses of evaluations ordered under this subsection.
- ▶ If the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant's or licensee's expense.
- ▶ If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(f) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions shall be in accordance with the provisions of Chapter 150B of the General Statutes.

The Board is required to provide the opportunity for a hearing under Chapter 150B of the General Statutes to any applicant whose license is denied or to whom licensure is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations or to any licensee before revoking, suspending, or restricting a license or imposing any other disciplinary action or remediation.

If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a hearing for failure to pass an examination.

(g) In any proceeding, record of hearing, complaint, notice of charges, or decision before the Board, the Board may withhold from public disclosure the identity of any clients or patients who have not consented to the public disclosure of behavior analysis services having been provided by the licensee or applicant.

The Board may close a hearing to the public and receive in executive session evidence involving or concerning the treatment of or delivery of behavior analysis services to a client or a patient who has not consented to the public disclosure of treatment or services as may be necessary for the protection and rights of the patient or client of the accused applicant or licensee and the full presentation of relevant evidence.

All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters, will not be considered public records as defined in G.S. 132-1.

However, any notice or statement of charges, notice of hearing, or decision against or to any licensee or applicant shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or hearing except that identifying information concerning the treatment or delivery of services to a patient or client who has not consented to the public disclosure of treatment or services shall be deleted.

If any record, paper, or other document containing information collected and compiled by or on behalf of the Board is received and admitted in evidence in any hearing before the Board, it shall be a public record, subject to any deletions of identifying information concerning the treatment or delivery of behavior analysis services to a patient or client who has not consented to the public disclosure of treatment or services.

(h) A license issued under this Article is suspended automatically by operation of law after failure to renew a license for a period of more than 60 days after the renewal date.

The Board may reinstate a license suspended under this subsection upon payment of a fee as specified in G.S. 90-726.13 and may require that the applicant file a new application, furnish references, update credentials, or submit to examination for reinstatement.

Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any individual whose license is suspended under this subsection, and, upon proof of any violation of this Article by any individual, the Board may take disciplinary action as authorized by this section.

(i) An individual whose license has been denied or revoked may reapply to the Board for licensure after the passage of one calendar year from the date of the denial or revocation.

(j) A licensee may voluntarily relinquish a license at any time with the consent of the Board. The Board may delay or refuse granting consent as necessary in order to investigate any pending complaint, allegation, or issue regarding violation of any provision of this Article by the licensee. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any individual whose license is relinquished under this subsection, and, upon proof of any violation of this Article by any individual, the Board may take disciplinary action as authorized by this section.

"§ 90-726.16. Prohibited acts and penalties.

- (a) Except as permitted in G.S. 90-726.15, it shall be a violation of this Article for any individual not licensed under this Article to practice behavior analysis or to hold oneself out to the public as an individual practicing behavior analysis.
- (b) Any individual not licensed in accordance with the provisions of this Article practicing behavior analysis or holding oneself out to the public as an individual practicing behavior analysis in violation of this Article is guilty of a Class 2 misdemeanor.

Each violation shall count as a separate offense.

Behavior Analyst Licensure Board Rules

- ▶ Applications
- ▶ References
- ▶ Certification
- ▶ Fees
- ▶ Supervision
 - ▶ Supervision of Assistant Behavior Analyst
 - ▶ Supervision of Behavior Technicians
- ▶ Ethics
- ▶ Disciplinary Investigation
 - ▶ Complaint Procedures
 - ▶ Investigation of Complaint
 - ▶ Method of Discipline

Applications

1. Documentation of all previous professional human services licenses held by the applicant;
2. Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code for Behavior Analysts published by the certifying entity;
3. Documentation of all work experience in the field of behavior analysis, including internships, practicum, and other field experience completed as part of an educational course of study;
4. Documentation of all certifications of behavior analysis currently or previously granted by national or other state certification bodies as described in Rule .0203 of this Section.
5. Payment of all required fees;
6. Signed consent form provided by the State Bureau of Investigation or NC Department of Justice authorizing the completion of a certified criminal records check based on the applicant's fingerprints provided to a local law enforcement office; and
7. Two letters of reference as described in Rule .0202 of this Section.

References

The application for Behavior Analyst License and Assistant Behavior Analyst shall include two letters of reference, to be submitted to the Board by the applicant. The two letters of references shall include:

1. name of reference and applicant;
2. period of time the reference has known the applicant;
3. nature of professional relationship; and
4. knowledge of the applicant's training, experience, professional skills, and adherence to legal and ethical standards

Certification

- a) The applicant for Behavior Analyst License or Assistant Behavior Analyst shall submit an official copy of the applicant's Behavior Analyst certification to the Board.
- a) The Board shall accept electronic submissions of the Behavior Analyst certification.

Fees - Licensed Behavior Analyst

1. Application Fee – Two hundred fifty dollars (\$250.00);
2. Renewal Fee – Two hundred dollars (\$200.00);
3. Late Renewal Fee – Fifty dollars (\$50.00);
4. Reciprocity Fee – Two hundred fifty dollars (\$250.00); and
5. Temporary License Fee – One hundred dollars (\$100.00).

The Board may amend any fee imposed on an applicant or licensee in accordance with G.S. 93B-15.

Fees - Licensed Assistant Behavior Analyst

1. Application Fee – Two hundred dollars (\$200.00);
2. License renewal Fee – One hundred fifty dollars (\$150.00);
3. Late renewal Fee – Fifty dollars (\$50.00);
4. Reciprocal license application Fee – Two hundred dollars (\$200.00); and
5. Temporary license application Fee – One hundred dollars (\$100.00).

The Board may amend any fee imposed on an applicant or licensee in accordance with G.S. 93B-15.

Supervision of Assistant Behavior Analysts

- a) Applicants for licensure as an assistant behavior analyst shall provide to the Board a supervisory agreement between the licensed behavior analyst and the licensed assistant behavior analyst.
- b) Applicants for licensure as an assistant behavior analyst shall maintain a copy of the supervisory agreement while supervised. The supervisor of the licensed assistant behavior analyst shall maintain a copy of the signed supervisor agreement, supervision logs, and evaluations for at least seven years following the termination of the supervisory relationship. This documentation shall be made available to the Board upon request.

Supervision of Assistant Behavior Analysts (cont'd)

(c) Supervision activities by the licensed behavior analyst include:

1. **Direct observation** of the supervisee implementing behavior analytic assessment and intervention procedures with clients in natural environments or training others to implement them, with feedback from the supervisor. The observation may be done in-person, on-site, or using asynchronous or synchronous formats.
2. **One-to-one, live, person-to-person, or synchronous virtual interactions between supervisor and supervisee** to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.
3. **Live, person-to-person, or synchronous virtual interactions between a supervisor and a group of supervisees** to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.
4. **The frequency and nature of supervision interactions shall be consistent with the supervisory requirements set forth by the certifying entity** in the Board Certified Assistant Behavior Analyst (BCaBA) handbook, which is hereby incorporated by reference, including subsequent amendments and editions, and may be found at <https://www.bacb.com/> at no cost.

Supervision of Behavior Technicians

- (a) Behavior technicians shall be supervised by a licensed behavior analyst or a licensed assistant behavior analyst.
- (b) Any licensed behavior analyst or licensed assistant behavior analyst employing or supervising behavior technicians who are implementing applied behavior analysis interventions designed by the licensed behavior analyst or licensed assistant behavior analyst shall maintain professional responsibility for the quality of the interventions rendered and for the effects of the interventions upon the client, patient, or other individuals.
- (c) The behavior analyst shall have face-to-face contact, including in-person or synchronous virtual interactions, during the course of services with all patients, clients, or other recipients of services delivered by behavior technicians as part of the interventions designed by the licensed behavior analysts or licensed assistant behavior analysts.

Supervision of Behavior Technicians (cont'd)

(d) Any licensed behavior analyst or licensed assistant behavior analyst employing or supervising behavior technicians who are implementing applied behavior analysis interventions designed by the licensed behavior analyst or licensed assistant behavior analyst shall maintain documentation to demonstrate their adherence to this Rule. This documentation shall be supervision contracts, supervision logs, and meeting notes. The licensed behavior analyst or licensed assistant behavior analyst shall maintain this documentation for at least seven years following the termination of applied behavior analysis services by the behavior technician.

(e) Behavior technicians shall be utilized to perform only:

1. non-client-related tasks, clerical tasks, maintenance activities, and the preparation of the work area and equipment; and
2. client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis. The behavior technician shall not design assessment or intervention plans or procedures.

(f) Failure of any licensed behavior analyst or licensed assistant behavior analyst to supervise behavior technicians shall subject that licensed behavior analyst or licensed assistant behavior analyst to disciplinary action pursuant to 21 NCAC 05 .0603.

Ethics

- ▶ The Board shall use **The Ethics Code for Behavior Analysts**, which is hereby incorporated by reference, including:
 - ▶ subsequent amendments and editions, and may be found at <https://www.bacb.com/> at no cost, in determining whether ethical violations have occurred

Complaint Procedures

- (a) **Initiation.** Any individual with personal knowledge that any person has violated the Code of Conduct, any other rules of this Chapter, or G.S. 90, Article 43, may file a complaint by submitting the Ethics Complaint Form found on the Board's website.
- (b) **Form.** The complaint shall be in typed or handwritten format stating the nature of the alleged offense and signed by the complainant. The complaint shall include:
 - (1) the name, address, and telephone number of the complainant;
 - (2) the name and address of the person against whom the complaint is made ("respondent"); and
 - (3) a statement of the facts that describe the allegations against the person.
- (c) The complaint shall be investigated as set out in Rule .0602 of this Section.
- (d) Upon completion of the investigation of the complaint, the ethics committee shall take action as set out in Rule .0602 of this Section.
- (e) If the ethics committee concludes there is a basis to schedule a disciplinary hearing before the Board, the committee chairperson shall notify the respondent. The notice to the respondent shall include the following:
 - (1) the sections of the Code of Conduct, other rules of this Chapter, or G.S. 90, Article 43 that the complaint alleges has been violated;
 - (2) direct that the respondent reply to the Board in writing and by certified mail within 15 days of receipt of this notice; and
 - (3) inform the respondent that failure to respond in writing within 15 days may result in revocation of a license.

Complaint Procedures (cont'd)

(f) The Board shall issue notice by regular postage mail, certified mail, or personal service at the last known address of the respondent. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt.

(g) The Board may receive correspondence in an ethics case through e-mail in order to conduct the investigation or when the subject of an investigation is unable to use or has been unresponsive to certified mail or other methods of delivery. The Board may use local law enforcement or a private investigator licensed by the Private Protective Services Board to personally serve a respondent.

(h) If notice cannot be given either by regular postage mail, personal service, or by certified mail, a notice that a complaint has been brought against the respondent shall then be given by publication. Service of notice by publication shall consist of publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the respondent is believed to be located. The notice shall include a statement by the Board that a complaint has been made against the respondent that is scheduled to be heard by the Board within 90 days. The notice shall inform respondent that respondent shall be given 30 days from the date of the last date of publication in which to respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts. Response shall be made in writing to the Board at the address provided by the Board in its notice. If respondent provides the Board with information whereby he or she can be served by the deadline specified in the notice, the Board shall provide notice either personally or by certified mail as provided in Paragraph (g) of this Rule. Failure of respondent notified by publication of a complaint brought by the Board shall be treated as a failure of respondent to reply to the charges.

(i) Failure of the respondent to reply to the charges, including each specific allegation, may be considered an admission of the facts contained in the allegation(s)

Investigation of Complaint

The ethics committee shall consist of a member of the Board as chairperson, the Board administrator and the Board's legal counsel. The ethics committee shall investigate the allegations in the complaint. The chairperson may appoint another Board member or name a subcommittee of the Board to serve on the ethics committee, if they determine there is a conflict of interest or that the complaint is outside of their investigatory skillset.

The ethics committee may contact the complainant and person against whom the complaint is made.

Upon completion of the investigation, the ethics committee may determine that:

1. the person against whom the complaint is made is not a licensee or applicant of the Board and does not qualify for an exemption pursuant to G.S. 90-745. The ethics committee shall cease disciplinary action and the chairperson shall refer the matter for prosecution pursuant to G.S. 90-746.
2. the complaint is without merit. The ethics committee shall dismiss the complaint. The chairperson shall notify both parties of the dismissal; and
3. upon completion of an investigation wherein the complaint is found to have merit or is not dismissed, the ethics code
 - a) offer a settlement resolution pursuant to G.S. 150B-22;
 - b) schedule a meeting with the respondent;
 - c) notice a formal hearing before the Board; or
 - d) take a voluntary dismissal of the case where the respondent relinquishes their license for an agreed upon period of time through a consent ordercommittee chairperson may:

Method of Discipline

- a) Following an investigation or hearing the Board may:
 - 1. deny a license;
 - 2. revoke a license;
 - 3. suspend a license until further order of the Board or for a specified period of time;
 - 4. reprimand the Respondent; or
 - 5. take other actions not to be considered a disciplinary action, including a letter of caution or letter of warning without the consent of the Respondent.

- b) Disciplinary or other actions by the Board with the Respondent's consent may be stayed while the Respondent satisfies all of the conditions of the consent order

Hearing

Semi-judicial process

- ▶ Opening statements
- ▶ Presentation of evidence
- ▶ Witness testimony (including expert witness)
- ▶ Board deliberation
- ▶ Notification of decision (guilty/not guilty)
- ▶ If found in violation: The Board may deny, suspend, or revoke licensure and may discipline, place on probation, limit practice, and require examination, remediation, and rehabilitation of any applicant or licensee. And costs.

Appeal

Do You Need a Lawyer?

ARE YOU KIDDING ME???

Look back at that last slide...

You Don't Know how to defend yourself no matter how many Judge Judy episodes you watched!

The Board has an attorney, and while they may be helpful to you in understanding the hearing process, their job is to convince the Board that you violated the Practice Act!

Do you want to risk losing your license and your job???

And don't get just any lawyer

Search for a NC Professional License Defense Attorney

TEMPORARY AUTHORIZATION OF BEHAVIOR ANALYSTS TO PRACTICE WITHOUT SUPERVISION SECTION 9K.3 (passed 07/11/2022)

(a) Notwithstanding G.S. 90-270.154 and 21 NCAC 54 .2801 through .2806, individuals who reside in this State and meet one of the following criteria may engage in the practice of behavior analysis, as defined in G.S. 90-732(8), without the supervision of a licensed psychologist:

(1) The individual is licensed or certified in another state or jurisdiction as a behavior analyst, assistant behavior analyst, or behavior technician, as defined in G.S. 90-732, respectively.

(2) The individual is nationally accredited by the Behavior Analyst Certification Board, or its successor, as a board-certified behavior analyst, board-certified assistant behavior analyst, or registered behavior technician.

(3) The individual is nationally accredited by the Qualified Applied Behavior Analysis Credentialing Board, or its successor, as a qualified behavior analyst, qualified autism services practitioner supervisor, or applied behavior analysis technician.

SECTION 9K.3.(b) Assistant behavior analysts, behavior technicians, or their nationally accredited equivalents authorized to practice under this section shall be supervised by a behavior analyst in accordance with Article 43 of Chapter 90 of the General Statutes.

SECTION 9K.3.(c) This section is effective when this act becomes law.

SECTION 9K.3.(d) This section expires 60 calendar days from the date the North Carolina Behavior Analysis Board accepts licensure applications for behavior analysts, assistant behavior analysts, and behavior technicians.

Telehealth/Service Delivery via Electronic Means

- ▶ There is no specific part of the licensure statute or rules specific to telehealth
- ▶ The board will publish an advisory statement on its website
- ▶ The advisory statement is currently in draft form

Advisory Statement (DRAFT) for Provision of Services via Electronic Means

- ▶ In response to inquiries from licensees and other interested parties, the Board has concluded it has no separate view per se regarding the provision of services via electronic means.
- ▶ At all relevant times, regardless of the delivery mode of services, licensees must abide by N.C.G.S. Chapter 90, Article 43; 21 NCAC 05; the Ethics Code for Behavior Analysts; and all applicable laws, rules, and regulations. Please see “Rules and Statues.” (Link) The most up-to-date version of the Ethics Code for Behavior Analysts can be found on the certifying entities’ website at: <https://www.bacb.com/ethics-information/ethics-codes/>.
- ▶ The Board considers that the practice of behavior analysis occurs both where the person who is providing services is located and where the individual who is receiving the services is located. An individual must be licensed by the Board or exempt pursuant to N.C.G.S. § 90-745 in both instances. It is recommended that the person providing services contact the licensing board in the state in which the client resides to determine if such practice is permitted in that jurisdiction.
- ▶ The specific mode of service delivery should be conducted in a manner that is beneficial to the client. Licensees must carefully consider and resolve challenges inherent in the specific mode of delivering services. Such challenges may include, but are not limited to, informed consent, competence, providing effective treatment, timeliness, confidentiality/security of privacy, compliance with supervisory and reporting requirements, and effective communication about services. Licensees must act in the best interest of clients, taking appropriate steps to support clients’ rights, maximize benefits, and do no harm.
- ▶ The best interests of the client should be the ultimate determinate in the service delivery format.


Bonus Bonus Material

Your Future The New Challenge A Simple Google Search



1. [Why ABA Therapy is Harmful to Autistic People](#)
2. [Is the most common therapy for autism harmful or helpful?](#)
3. [5 Important Reasons Even "New ABA" is Problematic](#)
4. [Long-term ABA Therapy Is Abusive: A Response to Gorycki, Ruppel, and Zane](#)

“ABA violates autonomy insofar as it coercively closes off certain paths of identity formation. It also violates autonomy by coercively modifying children's patterns of behaviors to be misaligned with their preferences, passions, and pursuits.”

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- ▶ Assure that ABA treatment is safe, effective and humane
 - ▶ Have a strong voice to counter misinformation and advocate for treatment that in many cases will go beyond the 21st birthday.
 - ▶ Insist this organization become involved in advocacy with groups that support people with disabilities in NC and in the legislature.



The Dustbin of History