

BOARDS AND COMMISSIONS
Kentucky Applied Behavior Analysis Licensing Board
(Amended After Comments)

201 KAR 43:040. Code of ethical standards and standards of practice.

RELATES TO: KRS 319C.060(1), (2)(c)

STATUTORY AUTHORITY: KRS 319C.060(2)(c)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

Section 1. Definitions.

(1) "BACB Code" means the Behavior Analyst Certification Board ("BACB") January 1, 2022 Ethics Code for Behavior Analysts.

(2) In addition to the definition set forth in the BACB Code, "Behavior analyst" means a person was licensed under KRS Chapter 319C as a licensed behavior analyst, a licensed assistant behavior analyst, or a temporary licensee.

(3) ~~{(2)}~~ In addition to the definition set forth in the BACB Code, "Client" means a person who receives behavior analytic assessment, intervention, consultation, treatment, or other professional services for the purpose of practicing applied behavior analysis. A corporate entity or other organization shall be considered the client if the professional contract is to provide a professional service of benefit to the corporate entity or organization. The ~~{A}~~ legal guardian of a minor or a legally incompetent adult shall be considered the client for a decision-making purpose. ~~{who meets the requirements established in Section 2 of this administrative regulation.}~~

(4) ~~{(3)}~~ "Confidential information" means information revealed by a client or clients or otherwise obtained by a behavior analyst in a professional relationship and includes all data, assessments, and recommended interventions as confidential.

(5) ~~{(4)}~~ "Court order" means the written or oral communication of a member of the judiciary, or other court magistrate or administrator, if the authority has been lawfully delegated to the magistrate or administrator.

(6) ~~{(5)}~~ "Kentucky Code" means the Code of Ethics set forth in this administrative regulation.

(7) "Professional relationship" means a mutually agreed upon relationship between a behavior analyst and a client for the purpose of the client obtaining the behavior analyst's professional expertise.

(8) ~~{(6)}~~ "Professional service" means all actions of the behavior analyst in the context of a professional relationship with a client.

(9) ~~{(7)}~~ "Technician~~{Supervisee}~~" means a person who functions under the extended authority of the behavior analyst to ~~{provide}~~ implement behavioral services.

(10) ~~{(8)}~~ In addition to the definition set forth in the BACB Code, "Trainee" means a person who is acquiring experience in applied behavior analysis toward an eligibility requirement for either a **Board Certified Behavior Analyst (BCBA) or Board Certified Assistant Behavior Analyst (BCaBA)** ~~{BCBA or BCaBA}~~ certification credential.

Section 2. Administration and Enforcement of the Code of Ethics.

(1) Notwithstanding the requirements of the BACB Code, the changes established in the Kentucky Code shall be mandatory and shall supersede any conflicting provisions of the BACB Code.

(2) Except as superseded by the provisions of this administrative regulation and the Kentucky Code, the BACB Code shall be the mandatory ethics code for Kentucky Applied Behavior Analysts.

Section 3. Additional Requirements for Kentucky Licensees.

(1) Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.

(2) Disclosure without informed written consent. The behavior analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270. [Client Requirements. (1) Identification of a client. A client shall be a person who receives:]

~~[(a)] [An evaluation, assessment, or professional services;]~~

~~[(b)] [Other professional services for the purpose of practicing applied behavior analysis or applied behavior analysis interventions; or]~~

~~[(c)] [Consultation regarding applied behavior analysis or applied behavior analysis interventions in the context of a professional relationship.]~~

~~[(2)] [A corporate entity or other organization shall be considered the client if the professional contract is to provide a professional service of benefit to the corporate entity or organization.]~~

~~[(3)] [A legal guardian of a minor or legally incompetent adult shall be considered the client for a decision-making purpose.]~~

~~[(4)] [A person identified as a client pursuant to subsections (1) to (3) of this section shall be deemed to continue to be a client for a period of two (2) years following the last date of service rendered to the person.]~~

~~[Section 3.] [Competence.]~~

~~[(1)] [Limits on practice. The behavior analyst shall limit practice and supervision to the areas of competence in which proficiency has been gained through education, training, and experience.]~~

~~[(2)] [Maintaining competency. The behavior analyst shall maintain current competency in the areas in which he or she practices, through continuing education, consultation, or other procedures, in conformance with current standards of scientific and professional knowledge.]~~

~~[(3)] [Adding new services and techniques. The behavior analyst, if developing competency in a service or technique that is new either to the behavior analyst or new to the profession, shall engage in ongoing consultation with other behavior analysts or relevant professionals and shall obtain appropriate education and training. The behavior analyst shall inform a client of the innovative nature and the known risks associated with the service, so that the client can exercise freedom of choice concerning the service.]~~

~~[(4)] [Referral. The behavior analyst shall make or recommend a referral to other professional, technical, or administrative resources if a referral is clearly in the best interests of the client.]~~

~~[(5)] [Sufficient professional information. A behavior analyst rendering a formal professional opinion in a report, letter, or testimony about a person shall not do so without direct and substantial professional contact with or a formal assessment of that person.]~~

~~[(6)] [Maintenance and retention of records.]~~

~~[(a)] [The behavior analyst rendering professional services to an individual client, or services billed to a third party payor, shall maintain professional records that include:]~~

~~[1.] [The presenting problem, purpose, or diagnosis from another mental health professional;]~~

- ~~{2.} [The fee arrangement;]~~
- ~~{3.} [The date and substance of each professional contact or service;]~~
- ~~{4.} [Test results or other evaluative results obtained and the basic test data from which the results were derived;]~~
- ~~{5.} [Notation and results of a formal consult with another provider; and]~~
- ~~{6.} [A copy of all test or other evaluative reports prepared as part of the professional relationship.]~~

~~{(b)} [The behavior analyst shall ensure that all records are maintained for a period of not less than six (6) years after the last date that services were rendered.]~~

~~{(c)} [The behavior analyst shall store and dispose of written, electronic and other records in a manner which shall ensure their confidentiality.]~~

~~{(d)} [For each person supervised pursuant to KRS Chapter 319C, the behavior analyst shall maintain for a period of not less than six (6) years after the last date of supervision a record of each supervisory session that shall include the type, place, date, and general content of the session.]~~

~~{(7)} [Continuity of care. The behavior analyst shall make arrangements for another appropriate professional or professionals to provide for an emergency need of a client, as appropriate, during a period of his or her foreseeable absence from professional availability.]~~

~~{Section 4.} [Impaired Objectivity, and Dual Relationships.]~~

~~{(1)} [Impaired behavior analyst.]~~

~~{(a)} [The behavior analyst shall not undertake or continue a professional relationship with a client if the objectivity or competency of the behavior analyst is impaired due to a mental, emotional, physiologic, pharmacologic, or substance abuse condition.]~~

~~{(b)} [If an impairment develops after a professional relationship has been initiated, the behavior analyst shall:]~~

~~{1.} [Terminate the relationship in an appropriate manner;]~~

~~{2.} [Notify the client in writing of the termination; and]~~

~~{3.} [Assist the client in obtaining services from another professional.]~~

~~{(2)} [Prohibited dual relationships.]~~

~~{(a)} [The behavior analyst shall not undertake or continue a professional relationship with a client, or the client's parent or legal guardian, if the objectivity or competency of the behavior analyst is impaired because of the behavior analyst's present or previous familial, social, sexual, emotional, financial, supervisory, administrative, or legal relationship with the client or a relevant person associated with or related to the client.]~~

~~{(b)} [The behavior analyst, in interacting with a client, or the client's parent or legal guardian, shall not:]~~

~~{1.} [Engage in verbal or physical behavior toward the client, or the client's parent or legal guardian, which is sexually seductive, demeaning, or harassing;]~~

~~{2.} [Engage in sexual intercourse or other physical intimacy with the client or the client's parent or legal guardian; or]~~

~~{3.} [Enter into a potentially exploitative relationship with the client, or the client's parent or legal guardian.]~~

~~{(c)} [The prohibitions established in paragraph (b) of this subsection shall extend indefinitely if the client is clearly vulnerable, by reason of emotional or cognitive disorder, to exploitative influence by the behavior analyst.]~~

~~{Section 5.} [Client Welfare.]~~

~~{(1)} [Providing explanation of procedures. The behavior analyst shall give a truthful, understandable, and appropriate account of the client's condition to the client or to those responsible for the care of the client. The behavior analyst shall keep the client fully~~

informed as to the purpose and nature of an evaluation, treatment, or other procedure, and of the client's right to freedom of choice regarding services provided.]

~~[(2)] [Termination of services.]~~

~~[(a)] [If professional services are terminated, the behavior analyst shall offer to assist the client in obtaining services from another professional.]~~

~~[(b)] [The behavior analyst shall:]~~

~~[1.] [Terminate a professional relationship if the client is not benefiting from the services; and]~~

~~[2.] [Prepare the client appropriately for the termination.]~~

~~[(3)] [Stereotyping. The behavior analyst shall not impose on the client a stereotype of behavior, values, or roles related to age, gender, religion, race, disability, nationality, sexual preference, or diagnosis, which would interfere with the objective provision of professional services to the client.]~~

~~[(4)] [Solicitation of business by clients. The behavior analyst providing services to an individual client shall not induce that client, or the client's parent or legal guardian, to solicit business on behalf of the behavior analyst.]~~

~~[(5)] [Referrals on request. The behavior analyst providing services to a client shall make an appropriate referral of the client to another professional if requested to do so by the client.]~~

~~[Section 6.] [Welfare of Supervisees, and Research Subjects.]~~

~~[(1)] [Welfare of supervisees. The behavior analyst shall not exploit a supervisee.]~~

~~[(2)] [Welfare of research subjects. The behavior analyst shall respect the dignity and protect the welfare of his or her research subjects, and shall comply with all relevant statutes and administrative regulations concerning treatment of research subjects.]~~

~~[Section 7.] [Protecting the Confidentiality of Clients.]~~

~~[(1)] [General. The behavior analyst shall safeguard the confidential information obtained in the course of practice, teaching, research, or other professional services. Except as provided in this section, the behavior analyst shall obtain the informed written consent of the client prior to disclosing confidential information.]~~

~~[(2)] [Disclosure without informed written consent. The behavior analyst shall disclose confidential information without the informed consent of the client if the behavior analyst has a duty to warn an intended victim of the client's threat of violence pursuant to KRS 202A.400 or 645.270.]~~

~~[(3)] [Disclosure if the client is a corporation or other organization. If the client is a corporation or other organization, the requirements for confidentiality established in this section shall:]~~

~~[(a)] [Apply to information that pertains to:]~~

~~[1.] [The corporation or organization; or]~~

~~[2.] [An individual, including personal information, if the information is obtained in the proper course of the contract; and]~~

~~[(b)] [Not apply to personal information concerning an individual if the individual had a reasonable expectation that the information was:]~~

~~[1.] [Obtained in a separate professional relationship between the behavior analyst and the individual; and]~~

~~[2.] [Subject to the confidentiality requirements established in this section.]~~

~~[(4)] [Services involving more than one (1) interested party. If more than one (1) party has an appropriate interest in the professional services rendered by the behavior analyst to a client or clients, the behavior analyst shall clarify to all parties prior to rendering the services the dimensions of confidentiality and professional responsibility that shall pertain in the rendering of services.]~~

~~[(5)] [Multiple clients. If service is rendered to more than one (1) client during a joint session, the behavior analyst shall, at the beginning of the professional relationship, clarify to all parties the manner in which confidentiality shall be handled.]~~

~~[(6)] [Legally dependent clients. At the beginning of a professional relationship, the behavior analyst shall inform a client who is below the age of majority or who has a legal guardian of the limit the law imposes on the right of confidentiality with respect to his or her communications with the behavior analyst.]~~

~~[(7)] [Limited access to client records. The behavior analyst shall limit access to client records to preserve their confidentiality and shall ensure that all persons working under the behavior analyst's authority comply with the requirements for confidentiality of client material.]~~

~~[(8)] [Release of confidential information. The behavior analyst shall release confidential information upon court order or to conform with state law, including KRS 422.317, or federal law or regulation.]~~

~~[(9)] [Reporting of abuse of children and vulnerable adults. The behavior analyst shall be familiar with the relevant law concerning the reporting of abuse of children and vulnerable adults, and shall comply with those laws, including KRS 620.030.]~~

~~[(10)] [Discussion of client information among professionals. If rendering professional services as part of a team or if interacting with other appropriate professionals concerning the welfare of the client, the behavior analyst may share confidential information about the client if the behavior analyst takes reasonable steps to ensure that all persons receiving the information are informed about the confidential nature of the information and abide by the rules of confidentiality.]~~

~~[(11)] [Disguising confidential information. If case reports or other confidential information is used as the basis of teaching, research, or other published reports, the behavior analyst shall exercise reasonable care to ensure that the reported material is appropriately disguised to prevent client identification.]~~

~~[(12)] [Observation and electronic recording. The behavior analyst shall ensure that diagnostic interviews or therapeutic sessions with a client are observed or electronically recorded only with the informed written consent of the client.]~~

~~[(13)] [Confidentiality after termination of professional relationship. The behavior analyst shall continue to treat as confidential information regarding a client after the professional relationship between the behavior analyst and the client has ceased.]~~

~~[Section 8.] [Representation of Services.]~~

~~[(1)] [Display of credentials. The behavior analyst shall display his or her current credential to practice on the premises of his or her professional office.]~~

~~[(2)] [Misrepresentation of qualifications. The behavior analyst shall not misrepresent directly or by implication his or her professional qualifications such as education, experience, or areas of competence.]~~

~~[(3)] [Misrepresentation of affiliations. The behavior analyst shall not misrepresent directly or by implication his or her affiliations, or the purposes or characteristics of institutions and organizations with which the behavior analyst is associated.]~~

~~[(4)] [False or misleading information. The behavior analyst shall not include false or misleading information in a public statement concerning professional services offered.]~~

~~[(5)] [Misrepresentation of services or products. The behavior analyst shall not associate with or permit his or her name to be used in connection with a service or product in a way which misrepresents:]~~

~~[(a)] [The service or product;]~~

~~[(b)] [The degree of his or her responsibility for the service or product; or]~~

~~[(c)] [The nature of his or her association with the service or product.]~~

~~[(6)] [Correction of misrepresentation by others. The behavior analyst shall correct others who misrepresent the behavior analyst's professional qualifications or affiliations.]~~

~~[Section 9.] [Disclosure of Cost of Services. The behavior analyst shall not mislead or withhold from a client, prospective client, or third party payor, information about the cost of his or her professional services.]~~

~~[Section 10.] [Assessment Procedures.]~~

~~[(1)] [Confidential information. The behavior analyst shall treat as confidential assessment results or interpretations regarding an individual.]~~

~~[(2)] [Protection of integrity of assessment procedures. The behavior analyst shall not disseminate a test in a way that may invalidate it.]~~

~~[(3)] [Information for professional users. The behavior analyst offering an assessment procedure or automated interpretation service to another professional shall:]~~

~~[(a)] [Accompany this offering by a manual or other printed material which describes the development of the assessment procedure or service, the rationale, evidence of validity and reliability, and characteristics of the normative population;]~~

~~[(b)] [State the purpose and application for which the procedure is recommended and identify special qualifications required to administer and interpret it properly; and]~~

~~[(c)] [Ensure that advertisements for the assessment procedure or interpretive service are factual.]~~

~~[Section 11.] [Delegating professional responsibility. The behavior analyst shall not delegate professional responsibilities to a person not appropriately credentialed or otherwise appropriately qualified to provide professional services.]~~

DR. ERICK DUBUQUE, Board Chair

APPROVED BY AGENCY: March 15, 2022

FILED WITH LRC: March 15, 2022 at 9:00 a.m.

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REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does:

KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

(b) The necessity of this administrative regulation:

This administrative regulation is required by KRS 319C.060(2)(c).

(c) How this administrative regulation conforms to the content of the authorizing statutes:

KRS 319C.060(2)(c) requires the board to adopt a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes the code of ethical standards and standards of practice for licensees.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

This regulation assists in the effective administration of KRS Chapter 319C by carrying out the legislative mandate for the board to establish regulations for the practice of behavior analysis.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation:

The amendment updates the Code of Ethics to incorporate the Behavior Analyst Certification Board Ethics Code for Behavioral Analysts. The changes in the Amended After Comments version clarify when a legal guardian is considered a client for decision-making purposes, and spell out the references to Board Certified Behavior Analyst and Board Certified Assistant Behavior Analyst the first time the acronyms for those credentials are used.

(b) The necessity of the amendment to this administrative regulation:

See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes:

See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes:

See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation:

This regulation will affect 17 licensed assistant behavior analysts, 531 licensed behavior analysts, 10 temporary behavior analysts, and 6 temporary registered telehealth healthcare providers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment:

This regulation will provide an update Code of Ethics with which licensees will be required to follow.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3):

None

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3):

This regulation will allow licensees to have an updated understanding of their ethical requirements.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially:

This administrative regulation does not create a cost for the administrative body.

(b) On a continuing basis:

This administrative regulation does not create a cost for the administrative body.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation:

The Kentucky Applied Behavior Analysis Licensing Board is self-funded through the fees paid by licensees. No additional funding is necessary for the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment:

No increases in fees or funding is necessary to implement the amendment to this administrative regulation.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees:

No.

(9) TIERING: Is tiering applied?

Tiering is not applied because similarly situated licensees are treated similarly under this administrative regulation.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation?

This regulation impacts the Kentucky Applied Behavior Analysis Licensing Board.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation.

KRS 319C.060(2)(c).

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year?

None

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years?

None.

(c) How much will it cost to administer this program for the first year?

There are no additional costs.

(d) How much will it cost to administer this program for subsequent years?

None

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: