

**LAWS AND REGULATIONS RELATING TO THE  
KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD**



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## **DISCLAIMER**

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For the official copies of the statutes and regulations pertaining to this profession, please visit <http://lrc.ky.gov>.

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# TABLE OF CONTENTS

## KENTUCKY REVISED STATUTES

KRS 319C.010	Definitions for chapter.....	2
KRS 319C.020	Use of titles “licensed behavior analyst” or “licensed assistant behavior analyst” – Performance of services by person not licensed – Person not subject to chapter.....	3
KRS 319C.030	Kentucky Applied Behavior Analysis Licensing Board – Members – Terms – Reimbursement – Limitation of liability.....	3
KRS 319C.040	Meetings of board – Quorum – Employees – Executive secretary to give bond and manage moneys.....	4
KRS 319C.050	Powers and duties of board.....	5
KRS 319C.060	Board’s powers to regulate practice of applied behavior analysis – Administrative regulations – Fees.....	6
KRS 319C.070	Probation, suspension, limitation, restriction, revocation, or nonissuance of license by board – Reasons for.....	6
KRS 319C.080	Application for license as licensed behavior analyst or licensed assistant behavior analyst – Temporary license – Duties of certification board.....	7
KRS 319C.090	Persons credentialed in other jurisdictions.....	8
KRS 319C.100	Duty to report felony conviction or suspicion of fraud or deceit.....	8
KRS 319C.110	Sanctions against licensee or applicant after opportunity for administrative hearing – Causes for disciplinary action – Private admonishment not subject to disclosure.....	9
KRS 319C.120	Reinstatement of lapsed, suspended, or revoked license – Appeal to Franklin Circuit Court.....	10
KRS 319C.130	Disposition of fees collected and penalties assessed – Board’s power to employ personnel and purchase materials and supplies.....	10
KRS 319C.140	Patient’s informed consent -- Confidentiality of medical information -- Administrative regulations governing telehealth services.....	10
KRS 319C.990	Fine for violation of KRS 319C.020(1).....	11

## KENTUCKY ADMINISTRATIVE REGULATIONS

201 KAR 43:010	Application procedures for license.....	12
201 KAR 43:020	Application procedures for temporary licensure.....	13
201 KAR 43:030	Fees.....	14
201 KAR 43:040	Code of ethical standards and standards of practice.....	15
201 KAR 43:050	Requirements for Supervision.....	19
201 KAR 43:060	Complaint and Disciplinary Procedures.....	26
201 KAR 43:070	Qualifications for Supervisees.....	28
201 KAR 43:080	Renewals.....	28
201 KAR 43:100	Telehealth and Telepractice.....	29

# KENTUCKY REVISED STATUTES

## 319C.010 Definitions for chapter.

As used in this chapter, unless the context requires otherwise:

- (1) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications, using behavioral stimuli and consequences, to produce socially significant improvement in human behavior, including the use of direct observation, measurement, and functional analysis of the relationship between environment and behavior;
- (2) "Applied behavior analysis interventions" means interventions that are based on scientific research and the direct observation and measurement of behavior and environment which utilize contextual factors, establishing operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and elicit behaviors under specific environmental conditions;
- (3) "Board" means the Kentucky Applied Behavior Analysis Licensing Board;
- (4) "Certification board" means the Behavior Analyst Certification Board® or its successor;
- (5) "Certified" means a practitioner who has met the certification criteria of the certification board;
- (6) "Licensed behavior analyst" means an individual who is licensed by the board and meets the requirements of KRS 319C.080;
- (7) "Licensed assistant behavior analyst" means an individual who:
  - (a) Is licensed by the board as an assistant behavior analyst and meets the requirements of KRS 319C.080; and
  - (b) Works under the supervision of a certified behavior analyst;
- (8) "Practice of applied behavior analysis" means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including but not limited to applications of those principles, methods, and procedures to:
  - (a) Design, implement, evaluate, and modify treatment programs to change the behavior of individuals diagnosed with an autism spectrum disorder;
  - (b) Design, implement, evaluate, and modify treatment programs to change the behavior of individuals;
  - (c) Design, implement, evaluate, and modify treatment programs to change the behavior of groups; and
  - (d) Consult with individuals and organizations.The practice of applied behavior analysis shall not include diagnosis, counseling, psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, or hypnotherapy as treatment modalities;
- (9) "Supervised experience" means services rendered as a part of the certification requirements of a behavior analyst or assistant behavior analyst under the supervision of a licensed behavior analyst;

- (10) "Supervisee" means a person who is not licensed but acts under the extended authority and direction of a licensed behavior analyst or a licensed assistant behavior analyst to provide applied behavior analysis services; and
- (11) "Temporary licensee" means a person who is obtaining supervised experience and has obtained a temporary license.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 1, effective July 15, 2010.

**319C.020 Use of titles "licensed behavior analyst" or "licensed assistant behavior analyst" -- Performance of services by person not licensed -- Persons not subject to chapter.**

- (1) No person shall:
  - (a) Engage in the practice of applied behavior analysis, assist in the practice of applied behavior analysis, render services designated as applied behavior analysis, or hold himself or herself out as a practitioner of applied behavior analysis in this state, unless licensed under the provisions of this chapter; or
  - (b) Use the title "licensed behavior analyst" or "licensed assistant behavior analyst" or any title which is substantially the same unless licensed by the board.  
Any person who violates this subsection shall be subject to the penalties contained in KRS 319C.990.
- (2) The provisions of this chapter shall not apply to any person who is:
  - (a) Providing applied behavior analysis services to an individual in a public school setting;
  - (b) Implementing applied behavior analysis intervention services to an immediate family member or as a supervisee;
  - (c) Licensed, certified, or registered as a health or allied health professional under any other provisions of the Kentucky Revised Statutes, including but not limited to physicians, psychologists, social workers, nurses, counselors, therapists, including occupational therapists, physical therapists and speech therapists, or students within accredited training programs of these professions. Nothing in this chapter shall be construed to limit, interfere with, or restrict the practice, descriptions of services, or manner in which the health or allied health professional listed in this subsection hold themselves out to the public; or
  - (d) Providing applicable Medicaid waiver services.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 2, effective July 15, 2010.

**319C.030 Kentucky Applied Behavior Analysis Licensing Board -- Members -- Terms -- Reimbursement -- Limitation of liability.**

- (1) (a) There is hereby created the Kentucky Applied Behavior Analysis Licensing Board. The board shall consist of seven (7) members appointed by the Governor.
- (b) The initial board members shall be appointed as follows:
  - 1. Four (4) members shall be credentialed behavior analysts nominated by a credentialed behavior analyst practicing in the state;
  - 2. One (1) member shall be a psychologist licensed in the state, the majority of whose practice is related to the treatment of behavior disorders, including but not

- limited to autism spectrum disorders. The psychologist member shall be nominated by a credentialed behavior analyst practicing in the state; and
3. Two (2) members shall be the parent of a child diagnosed with and treated for a behavior disorder, including but not limited to an autism spectrum disorder, selected from the state at large.
- (c) Subsequent board members shall be appointed by the Governor as follows:
1. Four (4) members shall be licensed behavior analysts nominated by a licensed behavior analyst practicing in the state;
  2. One (1) member shall be a psychologist licensed in the state, the majority of whose practice is related to the treatment of behavior disorders, including but not limited to autism spectrum disorders. The psychologist member shall be nominated by a licensed behavior analyst practicing in the state; and
  3. Two (2) members shall be the parent of a child diagnosed with and treated for a behavior disorder, including but not limited to an autism spectrum disorder, selected from the state at large.
- (2) The terms of the board members shall be as follows:
- (a) The initial board members shall be appointed as determined by the Governor for the following terms:
    1. Two (2) behavior analysts shall serve for one (1) year;
    2. Two (2) behavior analysts shall serve for three (3) years;
    3. A psychologist shall serve for two (2) years;
    4. One (1) parent shall serve for one (1) year; and
    5. One (1) parent shall serve for two (2) years;
  - (b) The terms of subsequent board members shall be for three (3) years; and
  - (c) A vacancy of any board member shall be filled in the manner of the original appointment for the unexpired portion of the term only or as provided by KRS 12.070. The Governor, after notice and opportunity for a hearing, may remove any member of the board for malfeasance, neglect of duty, incompetency, or revocation or suspension of a license.
- (3) Members of the board shall not receive a salary but shall be allowed the usual mileage, subsistence, and per diem as provided for members of state boards, commissions, and committees. No member shall serve more than two (2) consecutive terms.
- (4) The board may request the removal of a board member by the Governor.
- (5) The board shall annually elect a chair, vice chair, and secretary.
- (6) There shall be no liability on the part of, and no action for damages against, any current or former board member, representative, agent, or employee of the board, when the person is functioning within the scope of board duties, acting without malice and with the reasonable belief that the actions taken by him or her are warranted by law.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 3, effective July 15, 2010.

**319C.040 Meetings of board -- Quorum -- Employees -- Executive secretary to give bond and manage moneys.**

- (1) The board shall meet at least twice annually and may meet at such other times as necessary to complete the business required. A majority of the members of the board shall constitute a quorum for the transaction of business.
- (2) The board may employ an executive secretary and such clerical or other assistants as are necessary for the performance of its work and may make expenditures of its funds for any

purpose which in the opinion of the board is necessary for proper performance of its duties, including compensation of the executive secretary and the premium on his or her bond.

- (3) The executive secretary or any other person so designated by the board shall give bond to the state in such sum as determined by the board, to be approved by the State Treasurer for the faithful performance of his or her duties. The executive secretary shall receive and account for all moneys derived under this chapter and shall pay such moneys to the State Treasurer who shall maintain them in the manner provided for other such agencies and boards of the Commonwealth.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 4, effective July 15, 2010.

### **319C.050 Powers and duties of board.**

- (1) It shall be the duty of the board to establish requirements for licensure to practice applied behavior analysis in the state in accordance with KRS 319C.060, to receive applications for licensure from persons desiring to become a behavior analyst, an assistant behavior analyst, or a temporary licensee from persons seeking to obtain supervised experience in the state, and to determine whether those applicants meet the qualifications and standards required by this chapter of all behavior analysts, assistant behavior analysts, or temporary licensees.
- (2) The board is an agency of state government with the power to institute criminal proceedings in the name of the Commonwealth against violators of this chapter, and to institute civil proceedings to enjoin any violation of this chapter. The board shall investigate every alleged violation of this chapter brought to the board's notice and shall take action as it may deem appropriate. It shall be the duty of the Attorney General, the Commonwealth's attorneys, and the county attorneys to assist the board in prosecuting all violations of this chapter.
- (3) All meetings shall be held at the call of the chair or at a call of a majority of members upon not less than ten (10) days' written notice, unless notice shall be waived. The presence of any member at any meeting of the board shall constitute a waiver of notice thereof by the member.
- (4) The board may conduct investigations and schedule and conduct administrative hearings in accordance with KRS Chapter 13B to enforce the provisions of this chapter or administrative regulations promulgated pursuant to this chapter. The board shall have the authority to administer oaths, receive evidence, interview persons, issue subpoenas, and require the production of books, papers, documents, or other evidence. In case of disobedience to a subpoena, the board may invoke the aid of the Franklin Circuit Court. Any order or subpoena of the court requiring the attendance or testimony of witnesses or the production of documentary evidence may be enforced and shall be valid anywhere in the Commonwealth.
- (5) The board shall keep a minute book containing a record of all meetings of the board.
- (6) The board shall maintain a register of all persons licensed under this chapter. This register shall show the name of every licensee in this state, his or her current business and residence address and telephone numbers, and the date and number of his or her license. A licensee shall notify the board of a change of name, address, or telephone number, within thirty (30) days of the change.
- (7) The board's records shall be updated annually.
- (8) The board shall publish annually and make available a current directory of all licensed behavior analysts, licensed assistant behavior analysts, and temporary licensees obtaining supervised experience.
- (9) The board shall adopt a seal which shall be affixed to every license and certificate granted by it.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 5, effective July 15, 2010.

**319C.060 Board's powers to regulate practice of applied behavior analysis -- Administrative regulations -- Fees.**

- (1) The board shall have the right to regulate the practice of applied behavior analysis in the state including behavior analysts, assistant behavior analysts, and temporary licensees, including licensure, limitations of activities, supervision, and educational qualifications and continuing education requirements for behavior analysts, assistant behavior analysts, temporary licensees and supervisees. The board shall administer and enforce the provisions of this chapter and shall have the responsibility of evaluating the qualifications of applicants for licensure.
- (2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A relating to the licensure and regulation of behavior analysts, assistant behavior analysts, and temporary licensees including:
  - (a) Establishing standards for licensure, temporary licensure, limitations of activities, supervision, and compliance with the educational qualifications as required by KRS 319C.080 for behavior analysts, assistant behavior analysts, and temporary licensees;
  - (b) Establishing the number of persons a licensed behavior analyst may supervise at one (1) time, including temporary licensees and supervisees;
  - (c) Adopting a code of ethical standards and standards of practice for all licensed behavior analysts, assistant behavior analysts, and temporary licensees;
  - (d) Establishing a measure of continued competency as a condition of license renewal and standards for suspension, revocation, or refusal to issue or renew a license of a behavior analyst, assistant behavior analyst, or temporary licensee;
  - (e) Governing the physical and mental examination of behavior analysts, assistant behavior analysts, and temporary licensees who may be impaired by reason of a mental, physical, or other condition that impedes their ability to practice competently. For purposes of enforcing this section, the board shall have the power to order an immediate temporary suspension in accordance with KRS 13B.125 if there is a reasonable cause to believe that a behavior analyst, assistant behavior analyst, temporary licensee, or applicant may be impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently; and
  - (f) Establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 6, effective July 15, 2010.

**319C.070 Probation, suspension, limitation, restriction, revocation, or nonissuance of license by board -- Reasons for.**

The board may deny an application or reregistration for a license, place a licensee on probation for a period not to exceed five (5) years, suspend a license for a period not to exceed five (5) years, limit or restrict a license for an indefinite period, or revoke any license issued by the board, upon proof that the licensee has:

- (1) Knowingly made or presented, or caused to be made or presented, any false, fraudulent, or forged statement, writing, certificate, diploma, or other thing, in connection with an application for a license or permit;
- (2) Practiced, or aided or abetted in the practice of, fraud, forgery, deception, collusion, or conspiracy in connection with an examination for a license;



- (3) Entered a guilty or nolo contendere plea, or been convicted, by any court within or without the Commonwealth of Kentucky, of committing an act which is, or would be, a felony under the laws of the Commonwealth of Kentucky or of the United States, or of any crime involving moral turpitude which is a misdemeanor under the laws of this or another state;
- (4) Been convicted of a misdemeanor offense under KRS Chapter 510 involving a patient, or a felony offense under KRS Chapter 510, or KRS 530.064(1)(a) or 531.310, or been found by the board to have had sexual contact as defined in KRS 510.010(7) with a patient while the patient was under the care of the licensee;
- (5) Become addicted to a controlled substance;
- (6) Become a chronic or persistent alcoholic;
- (7) Been unable or is unable to practice applied behavior analysis according to acceptable and prevailing standards of care by reason of mental or physical illness or other condition, including but not limited to physical deterioration that adversely affects cognitive, motor, or perceptive skills, or by reason of an extended absence from the active practice of applied behavior analysis;
- (8) Engaged in dishonorable, unethical, or unprofessional conduct of a character likely to deceive, defraud, or harm the public or any member thereof; or
- (9) Knowingly made, or caused to be made, or aided or abetted in the making of, a false statement in any document executed in connection with the practice of his profession.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 7, effective July 15, 2010.

**319C.080 Application for license as licensed behavior analyst or licensed assistant behavior analyst -- Temporary license -- Duties of certification board.**

- (1) A person applying for a license as a licensed behavior analyst shall apply to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence to the board that such person:
  - (a) Has met the education requirements of the Board Certified Behavior Analyst (BCBA)® standards, has passed the Board Certified Behavior Analyst (BCBA)® examination, and is credentialed as a behavior analyst by the certification board;
  - (b) Maintains active status and fulfills all requirements for renewal and recertification with the certification board as a Board Certified Behavior Analyst (BCBA)®;
  - (c) Conducts his or her professional activities in accordance with accepted standards as required by administrative regulations promulgated by the board in accordance with KRS 319C.050(1); and
  - (d) Complies with all applicable administrative regulations promulgated by the board.
- (2) A person applying for a license as a licensed assistant behavior analyst shall make application to the board upon such form and in such manner as the board shall prescribe by administrative regulation and shall furnish evidence to the board that such person:
  - (a) Has met the education requirements of the Board Certified Assistant Behavior Analyst (BCaBA)® standards, has passed the BCaBA® examination, and is credentialed as an assistant behavior analyst by the certification board;
  - (b) Maintains active status and fulfills all requirements for renewal and recertification with the certification board as a Board Certified Assistant Behavior Analyst®;
  - (c) Conducts his or her professional activities in accordance with accepted standards as required by administrative regulations promulgated by the board in accordance with KRS 319C.050(1);
  - (d) Complies with all applicable administrative regulations promulgated by the board; and

- (e) Is supervised by a certified behavior analyst in a manner consistent with the certification board requirements for supervision of Board Certified Assistant Behavior Analysts®.
- (3) A person applying for a temporary license to complete his or her experience requirement shall make application to the board upon such form and in such manner as the board shall prescribe by administrative regulation and shall furnish evidence to the board that he or she:
  - (a) Has met the coursework requirements for a Board Certified Behavior Analyst® or Board Certified Assistant Behavior Analyst® and will begin accumulating experience as required by the certification board; and
  - (b) Will comply with the provisions of this chapter and the requirements of the certification board during the period of temporary licensure.
- (4) If the certification board ceases certification of practitioners of applied behavior analysis, the board shall:
  - (a) Approve a successor entity to the certification board; or
  - (b) Establish a certification process by administrative regulation and approve an examination for behavior analysts and assistant behavior analysts and establish standards for acceptable performance.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 8, effective July 15, 2010.

### **319C.090 Persons credentialed in other jurisdictions.**

The board shall issue a license to a person who holds a valid license or certificate from another state, who meets the requirements specified in KRS 319C.080, any licensing requirements contained in administrative regulation promulgated by the board, and who has no imposed or pending disciplinary actions.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 9, effective July 15, 2010.

### **319C.100 Duty to report felony conviction or suspicion of fraud or deceit.**

Any licensee or employer of a licensee having actual or direct knowledge of facts shall report to the board a behavior analyst or assistant behavior analyst who:

- (1) Has been convicted of a felony that involved any act that bears directly on the qualifications or ability of the applicant or licensee to practice behavior analysis;
- (2) Is suspected of fraud or deceit in procuring or attempting to procure a license to practice behavior analysis or of negligently performing actions that justify action against a behavior analyst's or assistant behavior analyst's license as identified in KRS 319C.110(2);
- (3) Has had a license to practice as a behavior analyst or assistant behavior analyst denied, limited, suspended, probated, or revoked in another jurisdiction on grounds sufficient to cause a license or certificate to be denied, limited, suspended, probated, or revoked in this Commonwealth; or
- (4) Is practicing behavior analysis without a current active license issued by the board.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 10, effective July 15, 2010.

**319C.110 Sanctions against licensee or applicant after opportunity for administrative hearing -- Causes for disciplinary action -- Private admonishment not subject to disclosure.**

- (1) The board, after due notice and an opportunity for an administrative hearing conducted in accordance with KRS Chapter 13B, may take any one (1) or a combination of the following actions against any applied behavior analyst or applied assistant behavior analyst licensee or applicant:
  - (a) Refuse to license or certify any applicant;
  - (b) Refuse to renew the license or certificate of any person;
  - (c) Suspend or revoke or place on probation the license or certificate of any person;
  - (d) Impose restrictions on the scope of practice of any person;
  - (e) Issue an administrative reprimand to any person;
  - (f) Issue a private admonishment to any person; and
  - (g) Impose fines for violations of this chapter, not to exceed two thousand five hundred dollars (\$2,500).
- (2) The following acts by a licensee may be considered cause for disciplinary action:
  - (a) Indulgence in excessive use of alcoholic beverages or abusive use of controlled substances that impairs the licensee's ability to practice applied behavior analysis;
  - (b) Engaging in, permitting, or attempting to engage in or permit the performance of substandard patient care by himself or herself or by persons working under his or her supervision due to a deliberate or negligent act or failure to act, regardless of whether actual injury to the patient is established;
  - (c) Having engaged in or attempted to engage in a course of lewd or immoral conduct with any person while that person is a patient or client of the behavior analyst or assistant behavior analyst;
  - (d) Having sexual contact, as defined by KRS 510.010(7), without the consent of both parties, with an employee or coworker of the licensee;
  - (e) Sexually harassing an employee or coworker of the licensee;
  - (f) Conviction of a felony or misdemeanor in the courts of this state or any other state, territory, or country which affects his or her ability to continue to practice competently and safely on the public. "Conviction," as used in this paragraph, shall include a finding or verdict of guilt, an admission of guilt, or a plea of nolo contendere;
  - (g) Obtaining or attempting to obtain a license by fraud or material misrepresentation or making any other false statement to the board;
  - (h) Engaging in fraud or material deception in the delivery of professional services, including reimbursement, or in advertising services in a false or misleading manner;
  - (i) Evidence of gross negligence or gross incompetence in his or her practice of behavior analysis;
  - (j) Documentation of being declared mentally disabled by a court of competent jurisdiction and not thereafter having had his or her rights restored;
  - (k) Failing or refusing to obey any lawful order or administrative regulation of the board;
  - (l) Promoting for personal gain an unnecessary device, treatment, procedure, or service, or directing or requiring a patient to purchase a device, treatment, procedure, or service from a facility or business in which he or she has a financial interest; and
  - (m) Being impaired by reason of a mental, physical, or other condition that impedes his or her ability to practice competently.
- (3) A private admonishment shall not be subject to disclosure to the public under KRS 61.878(1)(1). A private admonishment shall not constitute disciplinary action but may be used by the board for statistical purposes or in subsequent disciplinary action against the same licensee or applicant.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 11, effective July 15, 2010.

**319C.120 Reinstatement of lapsed, suspended, or revoked license -- Appeal to Franklin Circuit Court.**

- (1) The board may, within three (3) years, reinstate a license which has lapsed, upon payment of the prescribed renewal fee and, in addition, the payment of a reinstatement fee to be established by the board by administrative regulation.
- (2) The board may reinstate a license which has been lapsed for more than three (3) years, upon showing that the applicant is certified and upon payment of a reinstatement fee.
- (3) The board may reinstate a license which has been suspended or revoked under KRS 319C.110 if, after a hearing conducted in accordance with KRS Chapter 13B, the board determines that the applicant is able to practice his or her profession with reasonable competency and is able to maintain the ethical code and standards of practice promulgated by administrative regulation. As a condition of reinstatement, the board may impose reasonable restrictions under which the licensee shall practice.
- (4) Any person aggrieved by a final order of the board denying, suspending, or revoking his or her license may appeal to the Franklin Circuit Court in accordance with KRS Chapter 13B.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 12, effective July 15, 2010.

**319C.130 Disposition of fees collected and penalties assessed -- Board's power to employ personnel and purchase materials and supplies.**

- (1) All fees received by the board and collected under KRS 319C.060 and 319C.090, the administrative regulations promulgated in accordance with KRS 319C.080, and all penalties assessed in accordance with KRS 319C.110 or 319C.990 shall be deposited in the State Treasury and credited to a trust and agency fund to be used by the board in defraying the costs and expenses of the board's administration of this chapter. Notwithstanding KRS 45.229, no part of this fund shall revert to the general fund of the Commonwealth.
- (2) The board may employ personnel and may purchase such materials and supplies as it may deem necessary for the proper discharge of its duties.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 13, effective July 15, 2010.

**319C.140 Patient's informed consent -- Confidentiality of medical information -- Administrative regulations governing telehealth services.**

- (1) A treating behavior analyst or assistant behavior analyst who provides or facilitates the use of telehealth, shall ensure:
  - (a) That the informed consent of the patient, or another appropriate person with authority to make the health-care treatment decision for the patient, is obtained before services are provided through telehealth; and
  - (b) That the confidentiality of the patient's medical information is maintained as required by this chapter and other applicable law. At a minimum, confidentiality shall be maintained

through appropriate processes, practices, and technology as designated by the board and that conform to applicable federal law.

- (2) The board shall promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section and as necessary to:
  - (a) Prevent abuse and fraud through the use of telehealth services;
  - (b) Prevent fee-splitting through the use of telehealth services; and
  - (c) Utilize telehealth in the provision of applied behavior analysis and in the provision of continuing education.
- (3) For purposes of this section, "telehealth" means the use of interactive audio, video, or other electronic media to deliver health care. It includes the use of electronic media for diagnosis, consultation, treatment, transfer of health or medical data, and continuing education.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 14, effective July 15, 2010.

### **319C.990 Fine for violation of KRS 319C.020(1).**

Any person who violates KRS 319C.020(1) shall be fined not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each violation.

**Effective:** July 15, 2010

**History:** Created 2010 Ky. Acts ch. 150, sec. 15, effective July 15, 2010.

# KENTUCKY ADMINISTRATIVE REGULATIONS

## 201 KAR 43:010. Application procedures for licensure.

RELATES TO: KRS 319C.070, 319C.080(1), (2)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for licensure.

### Section 1. Application Procedures.

(1) An Application for Licensure as a behavior analyst or assistant behavior analyst may be submitted after the requirements established in KRS 319C.080(1) and (2) are met.

(2) The application required by subsection (1) of this section shall be made by submitting a completed Form ABA-001, Application for Licensure, to the board. The application shall include:

(a) A certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief; and

2. Applicant is aware that the board shall take disciplinary action in accordance with KRS 319C.070 if the application contains a misrepresentation or falsification; and

(b) An official transcript for all levels of education required for licensure.

Section 2. Licensure of Behavior Analysts. The applicant for licensure as a behavior analyst shall submit:

(1) A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;

(2) Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(1); and

(3) Proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect prevention;

(b) Child abuse, neglect, and dependency prevention; or

(c) A combination of paragraphs (a) and (b) of this subsection.

Section 3. Licensure of Assistant Behavior Analysts. The applicant for licensure as an assistant behavior analyst shall submit:

(1) A check or money order payable to the Kentucky State Treasurer for the application review fee and the licensure fee as required by 201 KAR 43:030;

(2) Proof of compliance with the educational, examination, and credentialing requirements established in KRS 319C.080(2); and

(3) Proof of completion of at least five (5) hours of training in:

(a) Adult abuse and neglect prevention;

(b) Child abuse, neglect, and dependency prevention; or

(c) A combination of paragraphs (a) and (b) of this subsection.

Section 4. Incorporation by Reference.

(1) Form ABA-001, "Application for Licensure", October 2015, is incorporated by reference.

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 911 Leawood Drive, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m. (37 Ky.R. 3031; 38 Ky.R. 899; eff. 12-2-11; 40 Ky.R. 122; 541; eff. 10-4-2013; 42 Ky.R. 847; 1481; eff. 12-4-2015.)

**201 KAR 43:020. Application procedures for temporary licensure.**

RELATES TO: KRS 319C.080(3)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate administrative regulations establishing the requirements for an applicant for temporary licensure as a behavior analyst or assistant behavior analyst. This administrative regulation establishes the requirements for applicants for temporary licensure.

Section 1. Application procedures.

(1) An application for a temporary license as a behavior analyst or assistant behavior analyst may be submitted after the requirements established in KRS 319C.080(3) are met.

(2) The application required by subsection (1) of this section shall be made by submitting to the board a completed Form ABA-001, Application for Licensure, as incorporated by reference in 201 KAR 43:010.

(a) The application shall include a certification by the applicant that the:

1. Information in the application is true, correct, and complete to the best of his or her knowledge and belief;
2. Applicant is aware that the board may take disciplinary action in accordance with KRS 319C.070 if the application contains a misrepresentation or falsification; and
3. Applicant is aware that the temporary license shall expire two (2) years from the issuance date and shall not be renewed.

(b) If the applicant has completed the coursework through a BACB-approved program, the application shall include an original, certified post-secondary transcript.

(c) If the applicant has completed coursework from a non-BACB-approved program, the application shall include an official post-secondary transcript and course syllabi for all behavior-analytic coursework showing that the applicant has met the coursework requirements for a Board Certified Behavior Analyst<sup>®</sup> or Board Certified Assistant Behavior Analyst<sup>®</sup>.

Section 2. Temporary Licensure of Behavior Analysts. The applicant for temporary licensure as a behavior analyst shall:

(1) Submit a check or money order payable to the Kentucky State Treasurer for the application review fee and the temporary licensure fee as required by 201 KAR 43:030;

(2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and

(3) Submit proof of completion of at least five (5) hours of training in:

- (a) Adult abuse and neglect prevention; and
- (b) Child abuse, neglect, and dependency prevention.

Section 3. Temporary Licensure of Assistant Behavior Analysts. The applicant for temporary licensure as an assistant behavior analyst shall:

(1) Submit a check or money order payable to the Kentucky State Treasurer for the application review fee and the temporary licensure fee as required by 201 KAR 43:030;

- (2) Submit proof of compliance with the requirements established in KRS 319C.080(3); and
- (3) Submit proof of completion of at least five (5) hours of training in:
  - (a) Adult abuse and neglect prevention; and
  - (b) Child abuse, neglect, and dependency prevention. (37 Ky.R. 3032; 38 Ky.R. 900; eff. 12-2-2011; 42 Ky.R. 848; 1481; eff. 12-4-2015.)

**201 KAR 43:030. Fees.**

RELATES TO: KRS 319C.060(2)(f), 319C.080(1), (2), (3)

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

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(f) requires the board to promulgate administrative regulations establishing reasonable fees for the licensure and license renewal of behavior analysts, assistant behavior analysts, and temporary licensees. This administrative regulation establishes those fees.

Section 1. Application and licensure fees for licensed behavior analysts.

- (1) An applicant for licensure as a licensed behavior analyst shall pay the following:
  - (a) A \$100 nonrefundable application review fee; and
  - (b) A \$300 licensure fee for the first two (2) year licensure period.
- (2) The licensure renewal fee for each subsequent, two (2) year licensure period shall be \$300.

Section 2. Application and Licensure Fees for Licensed Assistant Behavior Analysts.

- (1) An applicant for licensure as a licensed assistant behavior analyst shall pay the following:
  - (a) A \$100 nonrefundable application review fee; and
  - (b) A \$200 licensure fee for the first two (2) year licensure period.
- (1) (2)The licensure renewal fee for each subsequent, two (2) year licensure period shall be \$200.

Section 3. Application and Temporary Licensure Fees.

- (1) An applicant for a temporary license as a behavior analyst shall pay the following:
  - (a) A \$100 nonrefundable application review fee; and
  - (b) A \$200 temporary licensure fee for the two (2) year temporary licensure period.
- (2) An applicant for a temporary license as an assistant behavior analyst shall pay the following:
  - (a) A \$100 nonrefundable application review fee; and
  - (b) A \$100 temporary licensure fee for the two (2) year temporary licensure period.

Section 4. Fees for Late Renewal or Reinstatement of a Licensed Behavior Analyst and Licensed Assistant Behavior Analyst.

- (1) A licensed behavior analyst or a licensed assistant behavior analyst who files to renew his or her license after its renewal date but within thirty (30) days of that renewal date shall pay a late fee of fifty (50) dollars in addition to the fee set forth in Section 1 or 2 of this administrative regulation.
- (2) A licensed behavior analyst or a licensed assistant behavior analyst who files to reinstate his or her license more than thirty (30) days after its renewal date but within three (3) years of that renewal date shall pay a reinstatement fee of \$250 in addition to the fee set forth in Section 1 or 2 of this administrative regulation. (37 Ky.R. 3034; 38 Ky.R. 900; eff. 12-2-11; 39 Ky.R. 1943; eff. 5-31-2013.)

**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) "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.
- (2) "Client" means a person who meets the requirements established in Section 2 of this administrative regulation.
- (3) "Confidential information" means information revealed by a client or clients or otherwise obtained by a behavior analyst in a professional relationship.
- (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.
- (5) "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.
- (6) "Professional service" means all actions of the behavior analyst in the context of a professional relationship with a client.
- (7) "Supervisee" means a person who functions under the extended authority of the behavior analyst to provide behavioral services.

#### Section 2. 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. (37 Ky.R. 3035; 38 Ky.R. 901; eff. 12-2-11.)

**201 KAR 43:050. Requirements for supervision.**

RELATES TO: KRS 319C.050(1) and 319C.060(2)(a)-(d)

STATUTORY AUTHORITY: KRS 319C.060(2)(a)-(d)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2)(a) requires the board to promulgate an administrative regulation governing the supervision of a licensed assistant behavior analyst, temporarily licensed behavior analyst, and temporarily licensed assistant behavior analyst. This administrative regulation establishes the requirements for supervision.

Section 1. Definitions.

- (1) "Direct supervision" means in-person interactions between the supervisor and the licensee under his or her supervision which includes direct observation of actual service provision to individuals.
- (2) "General supervision" means interactions between the supervisor and the licensee under his or her supervision involving real time visual and auditory contact, conducted in-person or via electronic means.

Section 2. In order to provide supervision to a licensed assistant behavior analyst, a temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, a licensed behavior analyst shall be currently certified by the Behavior Analyst Certification Board as a:

- (1) Board Certified Behavior Analyst, BCBA; or
- (2) Board Certified Behavior Analyst - Doctoral, BCBA-D.

Section 3. Supervisor Responsibilities.

(1) Except as provided in Section 16 of this administrative regulation, a supervisory arrangement shall be submitted to the board using the Application for Licensure Form, as incorporated by reference in 201 KAR 43:010, with the supervisor and the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst petitioning the board in writing.

(2) The supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst shall submit to the board the description of the supervisory arrangement or a change in the supervisory arrangement by submitting an updated Annual Supervisory Plan no later than thirty (30) days after a change in the effective date of the arrangement or change.

Section 4.

(1) The supervisor shall assure that the practice of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst is in compliance with this administrative regulation. The supervisor shall include in the Annual Supervisory Plan and keep in the record as required by subsection (6) of this section review, discussions, and recommendations and shall focus on:

- (a) Case background information;
- (b) Planned behavioral assessment procedures;
- (c) Assessment outcomes;
- (d) data collection procedures;
- (e) Intervention procedures and materials;
- (f) Intervention outcome data;
- (g) Modifications of intervention procedures;
- (h) Ethical issues associated with behavior change services or employment; and
- (i) Professional development needs and opportunities.

(2) The supervisor shall report to the board an apparent violation of KRS Chapter 319C on the part of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

(3) The supervisor shall inform the board immediately of a change in the ability to supervise, or in the ability of a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to function in the practice as a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst in a competent manner.

(4) The supervisor shall control, direct, or limit the behavior analytic duties performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor to ensure that these duties are competently performed.

(5)(a) The supervisor of record shall be responsible for the behavior analytic duties of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor.

(b) If the board initiates an investigation concerning a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant

behavior analyst practicing under the direction of the supervisor, the investigation shall include the supervisor of record.

(6)(a) For each person supervised, the supervisor shall maintain a record of each supervisory session that shall include the type, place, and general content of the session.

(b) This record shall be maintained for a period of not fewer than six (6) years after the last date of supervision.

Section 5. (1) In calculating the amount of time spent in full-time practice while under supervision, 1,500 hours of satisfactory supervised practice shall be equivalent to one (1) year of experience.

(2) The board may require additional supervised practice if recommended by the supervisor on a licensee's Annual Supervisory Plan or Annual Report of Supervision.

(3)(a) The supervisor shall provide reports to the board of the supervision of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor as follows:

1. A licensed assistant behavior analyst with five (5) or more years of full-time practice, or its equivalent, shall submit a report every two (2) years on the anniversary of the date of licensure as a licensed assistant behavior analyst.

2. A licensed assistant behavior analyst with fewer than five (5) years of full-time practice, or its equivalent, shall submit a report annually on the anniversary of the date of licensure as a licensed assistant behavior analyst.

3. A temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst shall submit a report annually on the anniversary of the date of licensure as a temporarily licensed behavior analyst or temporarily licensed assistant behavior analyst.

(b) The report shall be submitted on the Annual Report of Supervision which shall include:

1. A description of the frequency, format, and duration of supervision;

2. An assessment of the functioning of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, including the strengths and weaknesses; and

3. Any other information which the supervisor deems relevant to an adequate assessment of the practice of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst.

#### Section 6.

(1) If a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst has more than one (1) board-approved supervisor, the supervisors shall be in direct contact with each other at least once every six (6) months, and they shall provide supervisory plans and reports to the board and copies to each other.

(2) A request to have more than two (2) supervisors at one (1) time shall be subject to board approval and shall be submitted by new applicants on the licensure application and the Annual Supervisory Plan and by existing licensees on the Annual Supervisory Plan, which shall include detailed information as to how the supervisors shall communicate and coordinate with each other in providing the required supervision.

Section 7. If a licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor is a behavior analyst with less than five (5) years of full-time, post-certification practice, or its equivalent, or a licensure candidate with temporary permission to practice, the supervisor of record shall:

- (1) Read and countersign all assessments;
- (2) Review treatment plans, notes and correspondence on an as-needed basis to assess the competency of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to render applied behavior analytic services;
- (3) Jointly establish a supervisory plan with the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:
  - (a) Be updated or revised and submitted to the board with the regular report of supervision;
  - (b) Include intended format, and goals to be accomplished through the supervisory process; and
  - (c) Include methods that the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;
- (4) Have general supervision of the work performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor at least twice per month;
- (5) Have direct supervision of the work performed by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor at least once every three (3) months;
- (6) Have direct knowledge of the size and complexity of the caseload for each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor;
- (7) Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor;
- (8) Have knowledge of the techniques being used by the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst; and
- (9) Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

Section 8. If the licensed assistant behavior analyst or temporarily licensed behavior analyst is a behavior analyst with more than five (5) years of full-time, post-certification practice, or its equivalent, the supervisor of record shall:

- (1) Review and countersign assessments as needed or appropriate;
- (2) Review treatment plans, notes, and correspondence as needed or appropriate;
- (3) Jointly establish a supervisory plan with each licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor, which shall be submitted to the board at the beginning of the supervisory relationship using the Annual Supervisory Plan. The plan shall:
  - (a) Be updated or revised and submitted to the board with the regular report of supervision;
  - (b) Include intended format, and goals to be accomplished through the supervisory process; and
  - (c) Include methods that the supervisor and licensed assistant behavior analyst, or temporarily licensed behavior analyst practicing under the direction of the supervisor shall employ to evaluate the supervisory process;



- (4) Have general supervision of the work performed by each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor at least once per month;
- (5) Have direct supervision of the work performed by each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor at least twice a year;
- (6) Have direct knowledge of the size and complexity of the caseloads for each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor;
- (7) Limit and control the caseload as appropriate to the level of competence of each licensed assistant behavior analyst or temporarily licensed behavior analyst;
- (8) Have knowledge of the techniques being used by each licensed assistant behavior analyst or temporarily licensed behavior analyst; and
- (9) Have knowledge of the physical and emotional well-being of each licensed assistant behavior analyst or temporarily licensed behavior analyst practicing under the direction of the supervisor when it has a direct bearing on his or her competence to practice.

#### Section 9. Supervision Requirements.

- (1)(a) A licensed assistant behavior analyst shall meet these supervision requirements, even if he or she is not currently providing behavior analytic services.
  - (b) If the licensed assistant behavior analyst is not currently providing behavior analytic services, supervision may focus on guiding the development and maintenance of the licensed assistant behavior analyst's professional knowledge and skills and remaining current with the professional literature in the field.
- (2) Upon resumption of practice, the licensed assistant behavior analyst shall document compliance with continuing education requirements and shall report on his or her activities and employment related to behavior analysis during the period in which the analyst did not practice.

Section 10. Supervision for Part-Time Practice. Supervision requirements for part-time practice may be modified by the board upon approval of the submitted plan. Additional modifications of the format, frequency, or duration of supervision may be submitted for approval by the board.

#### Section 11. Supervisory Changes.

- (1) Upon a change of supervisor, an updated Annual Supervisory Plan shall be submitted by the supervisor and licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst to the board for approval. This plan may require additional supervision than was previously approved by the board.
- (2) Upon termination of the supervisory relationship, the final Annual Report of Supervision shall be submitted to the board within thirty (30) days of the termination.

Section 12. Responsibilities of the licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst. The licensed assistant behavior analyst, temporarily licensed behavior analyst, or temporarily licensed assistant behavior analyst shall:

- (1) Keep the supervisor adequately informed at all times of his or her activities and ability to function;
- (2) Seek supervision as needed in addition to a regularly scheduled supervisory session;
- (3) Participate with the supervisor in establishing supervisory goals and in completing the regular supervisory reports;
- (4) Be jointly responsible with the supervisor for ensuring that a supervisory report or plan has been sent to the board in accordance with the reporting schedule established in Section 5 of this administrative regulation; and
- (5) Report to the board any apparent violation of KRS Chapter 319C on the part of the supervisor.

Section 13. Identification of Provider in Billing. The actual deliverer of a service shall be identified to the client. A billing for a rendered service shall identify which service was performed by the assistant behavior analyst, temporarily licensed behavior analyst, trainee, or other provider and supervised by the licensed behavior analyst.

Section 14. Disciplinary Procedures and Supervision of a Disciplined License Holder.

- (1) The board shall appoint an approved supervisor to supervise a disciplined license holder for the period of time defined by the final order or settlement agreement conferring the discipline.
- (2) When specified by the final order or settlement agreement, the disciplined license holder shall be responsible for paying the costs of supervision.
- (3) The supervisor shall:
  - (a) Review the originating complaint, agreed order, or findings of the disciplinary hearing;
  - (b) Meet with the disciplined license holder and the board liaison to:
    1. Summarize the actions and concerns of the board;
    2. Review the goals and expected outcomes of supervision submitted by the board liaison;
    3. Develop a specific plan of supervision; and
    4. Review the reporting requirements that shall be met during the period of supervision;
  - (c) Meet with the disciplined license holder at least weekly, on an individual face-to-face basis for a minimum of one (1) hour unless modified by the board;
  - (d) Submit a quarterly report to the board which reflects progress, problems, and other information relevant to the need for board-mandated supervision;
  - (e) Ensure that the disciplined license holder's practice is in compliance with KRS Chapter 319C and 201 KAR Chapter 43;
  - (f) Report to the board any apparent violation of KRS Chapter 319C on the part of the disciplined license holder;
  - (g) Immediately report to the board, in writing, a change in the ability to supervise, or in the ability of the disciplined license holder to function in the practice of a licensed behavior analyst in a competent manner;
  - (h) Review and countersign assessments as needed or appropriate;
  - (i) Review treatment plans, notes, and correspondence as needed or appropriate;
  - (j) Have direct observation of the disciplined license holder's work on an as-needed basis;
  - (k) Have direct knowledge of the size and complexity of the disciplined license holder's caseload;
  - (l) Have knowledge of the therapeutic modalities and techniques being used by the disciplined license holder; and
  - (m) Have knowledge of the disciplined license holder's physical and emotional well-being when it has direct bearing on the disciplined license holder's competence to practice.
- (4) The supervisor shall control, direct, or limit the disciplined license holder's practice to ensure that the disciplined license holder's practice is competent.
- (5) The supervisor shall contact the board liaison with any concern or problem with the disciplined license holder, his or her practice, or the supervision process.
- (6)(a) A final meeting shall be scheduled within thirty (30) days of the end of the established supervision period to summarize the supervision.
  - (b) The meeting shall include the supervisor, disciplined license holder, and board liaison.
  - (c) A written summary of the supervision shall be submitted by the supervisor to the board two (2) weeks following this meeting with a copy to the board liaison.

Section 15. Board Liaison for Disciplined License Holder. The board shall appoint a board member to serve as a liaison between the board and the approved supervisor. The board liaison shall:

- (1) Recruit the supervising licensed behavior analyst from a list provided by the board;

- (2) Provide the supervising licensed behavior analyst with the originating complaint, agreed order or findings of the hearing and supply other material relating to the disciplinary action;
- (3) Ensure that the supervising licensed behavior analyst is provided with the necessary documentation for liability purposes to clarify that he or she is acting as an agent of the board and has immunity commensurate with that of a board member;
- (4) Provide the supervising licensed behavior analyst with a written description of the responsibilities of the supervisor and a copy of the responsibilities of the liaison;
- (5) Ensure that the board has sent a written notification letter to the disciplined license holder. The notification letter shall:
  - (a) State the name of the supervising licensed behavior analyst; and
  - (b) Specify that the disciplined license holder shall meet with the supervising licensed behavior analyst and the liaison within thirty (30) days of the date of the notification letter;
- (6) Meet with the supervising licensed behavior analyst and disciplined license holder within thirty (30) days of the date of the notification letter to summarize the actions of the board, review the applicable statutes and administrative regulations regarding supervision requirements for a disciplined license holder, and assist with the development of a plan of supervision. The plan of supervision shall be written at the first meeting;
- (7) Submit the report of supervision to the board for approval.
  - (a) The liaison shall place the report of supervision on the agenda for review and approval at the next regularly scheduled board meeting.
  - (b) In the interim, the supervising licensed behavior analyst and disciplined license holder shall continue to meet;
- (8) Remain available to the supervising licensed behavior analyst to provide assistance and information as needed;
- (9) Report any problem or concern to the board regarding the supervision and communicate a directive of the board to the supervising licensed behavior analyst;
- (10) Review the quarterly report of supervision and forward to the supervision committee of the board for approval; and
- (11) Meet with the supervising licensed behavior analyst and the disciplined license holder at the end of the term of supervision to summarize the supervision.

Section 16. Graduate Training. Applied behavior analysis graduate students. Graduate-level applied behavior analysis students who are providing services in mental health care settings including independent practice settings shall:

- (1) Be supervised by a behavior analyst licensed by the board in the state in which the training program exists, or by a licensed mental health professional approved by the training program who is affiliated with either the university training program or the practice setting;
- (2) Be registered for credit in his or her course of study;
- (3) Clearly identify his or her status as unlicensed trainees to all clients and payors;
- (4) Give to all clients and payors the name of the licensed behavior analyst responsible for his or her work; and
- (5) Not accept employment or placement to perform the same or similar activities following the completion of his or her university-sanctioned placement, regardless of the job title given, unless the student holds a license from the board.

Section 17. Incorporation by Reference.

- (1) The following material is incorporated by reference:
  - (a) ABA-003, "Annual Report of Supervision", July 2015; and
  - (b) ABA-002, "Annual Supervisory Plan", July 2015.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Division of Occupations and Professions, 911 Leewood Drive, Frankfort, Kentucky 40602, (502)

564-3296, Monday through Friday, 8 a.m. to 4:30 p.m. (39 Ky.R. 1079; 1681; eff. 3-8-2013; 42 Ky.R. 850, 1482; eff. 12-4-2015.)

## **201 KAR 43:060. Complaint and Disciplinary Process.**

RELATES TO: KRS 319C.050(4), 319C.060(2), 319C.070, 319C.110

STATUTORY AUTHORITY: KRS 319C.060(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060(2) requires the board to promulgate an administrative regulation governing the regulation of licensees. KRS 319C.070, 319C.050(4), and 319C.110 require the board to investigate and take disciplinary action against licensees who violate KRS Chapter 319C and the associated administrative regulations. This administrative regulation details the process by which the board completes those investigations and takes that action.

### Section 1. Definitions.

- (1) "Act" means KRS Chapter 319C.
- (2) "Board" is defined by KRS 319C.010(3).
- (3) "Charge" means a specific allegation contained in a document issued by the board or hearing panel alleging a violation of a specified provision of KRS Chapter 319C or 201 KAR Chapter 43.
- (4) "Complaint Committee" means the committee appointed pursuant to Section 2 of this administrative regulation.
- (5) "Formal complaint" means a formal administrative pleading or notice of administrative hearing authorized by the board that sets forth charges against a licensee or applicant and commences a formal disciplinary proceeding in accordance with KRS Chapter 13B.
- (6) "Initiating complaint" means an allegation alleging misconduct by a licensee or applicant or alleging that an unlicensed person is engaging in unlicensed practice or using a title without holding a license.
- (7) "Order" means the whole or a part of a final disposition of a hearing.
- (8) "Presiding officer" means the person appointed by the board to preside at a hearing held pursuant to KRS Chapter 13B, and shall include a hearing officer, a member or members of the hearing panel, or both.
- (9) "Respondent" means the person against whom an initiating or a formal complaint has been made.

### Section 2. Initiating Complaint.

- (1) Source of initiating complaint. An initiating complaint may be initiated by the board, by the public, or by a governmental agency. A certified copy of a court record for a misdemeanor or felony conviction shall be considered a valid initiating complaint.
- (2) Form of initiating complaint. Initiating complaints shall:
  - (a) Be in writing;
  - (b) Clearly identify the person against whom the initiating complaint is being made;
  - (c) Contain the date;
  - (d) Identify by signature the person making the initiating complaint; and
  - (e) Contain a clear and concise statement of the facts giving rise to the initiating complaint.
- (3) Receipt of initiating complaint. An initiating complaint shall be submitted to the Board Office at the Office of Occupations and Professions.
- (4) Response. A copy of the initiating complaint shall be mailed to the respondent. The respondent shall file with the board a written response to the initiating complaint:
  - (a) Within fifteen (15) days of the date on which the initiating complaint was mailed; or
  - (b) Within a specified period of time if an extension is requested in writing by the respondent and granted by the board. In order to be granted an extension, the respondent shall provide proof of good cause justifying the extension.
- (5) Complaint Committee.

- (a) The complaint committee shall consist of no more than two (2) board members appointed by the chair of the board to:
  - 1. Review initiating complaints, responses, and investigative reports;
  - 2. Participate in informal proceedings to resolve formal complaints; and
  - 3. Make recommendations for disposition of initiating complaints and formal complaints to the full board.
- (b) The complaint committee may be assisted by the board staff and counsel to the board.
- (6) Consideration of initiating complaint. At the next regularly-scheduled meeting of the board or as soon thereafter as practicable, the board or the complaint committee shall review the initiating complaint and response. The board, upon recommendation of the complaint committee, shall determine if an investigation is warranted, and if so, the board shall appoint an agent or representative of the board to conduct an investigation of the initiating complaint.
- (7) Investigation.
  - (a) If the board directs that an investigation be completed, the respondent shall be interviewed as a part of that investigation. With the consent of the respondent, a meeting may be scheduled at which time the respondent may respond further to the allegations of the initiating complaint. The board and the respondent shall have the right to be represented at the meeting by legal counsel. The respondent's failure to submit to an interview or cooperate with an investigation shall not deprive the board of the authority to take action pursuant to paragraph (c) of this subsection.
  - (b) Report of investigation. Upon the completion of the investigation, the person or persons making that investigation shall submit a written report to the board containing a succinct statement of the facts disclosed by the investigation.
  - (c) Consideration of complaint and investigative report. Based on consideration of the complaint; the investigative report, if any; and the psychological or physical examination, if any, the board shall determine if there has been a prima facie violation of the Act.
    - 1. If it is determined that the facts alleged in the initiating complaint or investigative report do not constitute a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall notify the person or entity making the initiating complaint and the respondent that no further action shall be taken at the present time.
- (1) 2.a. If it is determined that there is a prima facie violation of KRS Chapter 319C or 201 KAR Chapter 43, the board shall issue a formal complaint against the licensee or applicant.
  - a. In the case of a prima facie violation of KRS 319C.020(1) and the respondent is not a licensee or an applicant, the board shall take one (1) or all of the following actions:
    - (i) Issue a cease and desist order;
    - (ii) File suit to enjoin the violator pursuant to KRS 319C.050(2); or
    - (iii) Seek criminal prosecution pursuant to KRS 319C.050(2).
  - (d) If a board member participates in the review of a matter, either as a member of the complaint committee or as the investigator, that person shall not vote according to the process outlined in paragraph (c) of this subsection. However, that person may be counted as a present member for the purposes of establishing and maintaining a quorum of the board.

Section 3. Formal Complaint. If the board votes to file a formal complaint, a notice of administrative hearing shall be filed as required by KRS 13B.050.

Section 4. Formal Response.

- (1) Within twenty (20) days of service of the notice of administrative hearing, the respondent shall file with the board a written response to the specific allegations set forth in the notice of administrative hearing.

- (2) Allegations not properly responded to shall be deemed admitted.
- (3) The board may, if there is good cause, permit the late filing of a response.

Section 5. Composition of the Hearing Panel.

Disciplinary actions shall be heard by a hearing officer and:

- (1) The full board or a quorum of the board;
- (2) A hearing panel consisting of at least one (1) board member appointed by the board; or
- (3) The hearing officer alone in accordance with KRS 13B.030(1).

Section 6. Notification of Complainant. Upon final resolution of a complaint submitted pursuant to this process, the board shall notify the person or entity making the initiating complaint of the outcome of the action in writing. (39 Ky.R. 1965; eff. 5-31-2013.)

**201 KAR 43:070. Supervisees.**

RELATES TO: KRS 319C.060(1)

STATUTORY AUTHORITY: KRS 319C.060(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish qualifications and requirements for supervisees of a behavior analyst. This administrative regulation establishes the requirements for supervisees.

Section 1. Supervisee Qualifications.

- (1) A supervisee shall:
  - (a) Be at least eighteen (18) years of age;
  - (b) Hold a high school diploma or GED;
  - (c) Complete thirty (30) hours of training related to applied behavior analysis; and
  - (d) Be a citizen of the United States or otherwise be entitled to lawfully remain and work in the United States.
- (2) A supervisee shall not have been convicted of a felony.

Section 2. Supervisor Duties.

- (1) A behavior analyst or assistant behavior analyst shall ensure that a supervisee meets the requirements of Section 1 of this administrative regulation. Required diligence includes performing a criminal background check of supervisees prior to commencement of employment.
- (2) A behavior analyst or assistant behavior analyst shall exercise direct and continuing oversight of a supervisee and shall take appropriate remedial action and discipline against a supervisee when necessary to ensure that the supervisee prospectively provides adequate and professional services. (39 Ky.R. 1967; 2166; eff. 5-31-2013.)

**201 KAR 43:080. Renewals.**

RELATES TO: KRS 319C.050, 319C.060

STATUTORY AUTHORITY: KRS 319C.050, 319C.060(2), 319C.120

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.060 authorizes the board to promulgate administrative regulations required to establish conditions for the renewal and reinstatement of licenses. This administrative regulation establishes procedures for the renewal of licenses.

Section 1. Renewal. A behavior analyst or assistant behavior analyst shall biennially, on or before the last day of the calendar month during which the license was issued:

- (1) File a completed Application for Licensure Renewal; and
- (2) Pay to the board the renewal fee established by 201 KAR 43:030.

Section 2. Late Renewal. A behavior analyst or assistant behavior analyst who fails to renew his or her license on or before the last day of the calendar month during which the license was issued may submit his or her application on or before the last day of the calendar month following the month in which the license was issued if accompanied by the appropriate late fee as required by 201 KAR 43:030.

Section 3. Expiration of License.

- (1) A license that is not renewed before the last day of the calendar month following the calendar month during which the license was issued shall be expired and lapsed for failure to renew.
- (2) Upon expiration of the license for failure to renew, a behavior analyst or assistant behavior analyst shall not practice in the Commonwealth of Kentucky.

Section 4. Reinstatement. After the last day of the calendar month following the month in which the license was issued, a person whose license has expired for failure to renew shall submit, in order to have his or her license reinstatement request considered by the Board:

- (1) Payment of the reinstatement fee established by 201 KAR 43:030;
- (2) Completion of the Application for Licensure Renewal; and
- (3) Documentation of employment from the time of expiration of employment until the present.

Section 5. Incorporation by Reference.

- (1) Form ABA-004, "Application for Licensure Renewal", July 2015, is incorporated by reference.
- (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Applied Behavior Analysis Licensing Board, 911 Leawood Drive, Frankfort, Kentucky 40601, (502) 564-3296, Monday through Friday, 8 a.m. to 4:30 p.m. (39 Ky.R. 2166; eff. 5-31-2013; 42 Ky.R. 854; 1485; eff. 12-4-2015.)

### **201 KAR 43:100. Telehealth and telepractice.**

RELATES TO: KRS 319C.140(2)

STATUTORY AUTHORITY: KRS 319C.140(2)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 319C.140(2) requires the board to promulgate administrative regulations related to utilization of telehealth as a means of healthcare delivery. This administrative regulation establishes the requirements for telehealth and telepractice in applied behavior analysis.

Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth.

- (1) A licensee who provides applied behavior analytic services via telehealth shall:
  - (a) Maintain competence with the technologies utilized, including understanding and adequately addressing the actual and potential impact of those technologies on clients, supervisees, or other professionals;
  - (b) Maintain compliance with KRS Chapter 319C, 201 KAR Chapter 43, and all other applicable federal, state, and local laws;
  - (c) At the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the client so that those contacts shall be readily accessible in the event of an emergency;
  - (d) Protect and maintain the confidentiality of data and information in accordance with all applicable federal, state, and local laws; and
  - (e) Dispose of data and information only in accordance with federal, state, and local law and in a manner that protects the data and information from unauthorized access.
- (3) Applied behavior analysis with a client shall not commence via telehealth.

- (a) An initial, in-person meeting for the licensee and client who prospectively utilize telehealth shall occur.
- (b) The licensee shall, at the initial, in-person meeting with the client:
  - 1. Make reasonable attempts to verify the identity of the client;
  - 2. Obtain alternative means of contacting the client other than electronically;
  - 3. Provide to the client alternative means of contacting the licensee other than electronically;
  - 4. Document if the client has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and
  - 5. Inform the client in writing about and obtain the client's informed written consent regarding:
    - a. The limitations of using technology in the provision of applied behavior analytic services;
    - b. Potential risks to confidentiality of information due to technology in the provision of applied behavior analytic services;
    - c. Potential risks of disruption in the use of telehealth technology;
    - d. When and how the licensee will respond to routine electronic messages;
    - e. In what circumstances the licensee will use alternative communications for emergency purposes;
    - f. Who else may have access to client communications with the licensee;
    - g. How communications can be directed to a specific licensee;
    - h. How the licensee stores electronic communications from the client; and
    - i. That the licensee or client may elect to discontinue the provision of services through telehealth at any time.

Section 2. Jurisdictional Considerations.

- (1) A person providing applied behavior analytic services via telehealth to a person physically located in Kentucky while services are provided shall be licensed by the board.
- (2) A person providing applied behavior analytic services via telehealth from a physical location in Kentucky shall be licensed by the board and may be subject to licensure requirements in other states where the services are received by the client.

Section 3. Representation of Services and Code of Conduct. A licensee using telehealth to deliver services shall not:

- (1) Engage in false, misleading, or deceptive advertising; and
- (2) Split fees. (40 Ky.R. 2649; 41 Ky.R. 35; eff. 8-1-2014.)