



KENTUCKY APPLIED BEHAVIOR ANALYST LICENSING BOARD

Andy Beshear
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Kerry B. Harvey
Cabinet Secretary

MEMORANDUM FOR IMMEDIATE RELEASE

TO: All Licensees and Applicants for Licensure
FROM: Kentucky Applied Behavior Analyst Licensing Board
RE: Executive Order 2020-243
DATE: March 25, 2020

On March 6, 2020, Governor Andy Beshear declared by Executive Order 2020-215 that a State of Emergency of the public health exists in the Commonwealth of Kentucky. On March 18, 2020, Governor Andy Beshear issued Executive Order 2020-243. This Executive Order encourages all citizens of the Commonwealth to take all feasible measures to engage in appropriate social distancing to prevent the spread of COVID-19, in accordance with guidance from the Center for Disease Control and Prevention and the Kentucky Department of Public Health. EO 2020-243 orders all boards to take actions necessary to ensure appropriate social distancing and states that any state statute or regulation that conflicts with the provisions of EO 2020-243 is suspended. These executive orders have a direct implication on the ABA Board's regulation on telehealth services, 201 KAR 43:100, Section 1(2). Please note that these changes are only in place during the State of Emergency announced in EO 2020-215 and will expire when EO 2020-215 is rescinded.

Pursuant to EO 2020-215 and EO 2020-243, the Board is clarifying that the following provisions are suspended, pursuant to Executive Order 2020-243, during the State of Emergency contained in Executive Order 2020-215 as related to COVID-19:

1. 201 KAR 43:100, Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth: Under Section 1(2), the provision that applied behavior analysis with a client shall not commence via telehealth is suspended. During the State of Emergency contained in Executive Order 2020-215, applied behavior analysis **may** commence via telehealth. No initial in-person consultation is required.
2. 201 KAR 43:100, Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth: Sections 1(2)(a) and (b), which require an initial in-person meeting for the licensee and client who plan to utilize telehealth services is suspended. During the State of Emergency contained Executive Order 2020-215, an initial in-person meeting for the licensee and client who prospectively utilize telehealth **is not required**.
3. 201 KAR 43:100, Section 1. Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth: Section 1(2)(b)5, which requires that at the initial meeting with the client, the licensee shall obtain the client's written consent, is suspended. During the State of Emergency contained Executive Order 2020-215, consent may be obtained in writing or another electronic format.
4. 201 KAR 43:100, Section 2. Jurisdictional Considerations: Subsection (1), which requires that 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, is suspended. During the State of Emergency contained in Executive Order 2020-215, the person providing services may be licensed by the board of another state.
5. 201 KAR 43:100, Section 2. Jurisdictional Considerations: Subsection (2), which requires that 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, is suspended.

During the State of Emergency contained in Executive Order 2020-215, the person providing services may be licensed by the board of another state.

Licenses engaging in telehealth or telepractice should be aware that they must: “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.” 201 KAR 43:100, Section 1(a).

The board has also received questions from providers about whether front-line workers (e.g., Registered Behavior Technicians, Behavior Technicians, Tutors) providing behavior analytic services under the supervision of a licensee are allowed to practice applied behavior analysis via telehealth. Under KRS 319C.010(10) and KRS 319C.060(1), supervisees (e.g., Registered Behavior Technicians, Behavior Technicians, Tutors) are permitted to practice or assist in the practice of applied behavior analysis as long as they meet the requirements of 201 KAR 32:070. This administrative regulation sets forth the requirements to become a supervisee and the supervisor’s duties when providing oversight. There is currently no prohibition preventing qualified supervisees from providing applied behavior analytic services via telehealth as long as they are properly supervised by a licensee. Regardless of service setting, licensees are reminded that they must “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.” 201 KAR 43:070, Section 2(2). Additionally, when providing supervision, licensees must operate in accordance with the BACB’s Professional and Ethical Compliance Code for Behavior Analysts (https://www.bacb.com/wp-content/uploads/BACB-Compliance-Code-english_190318.pdf) whether or not services are provided face-to-face or via telehealth.

Should you have any questions please contact the Board Administrator, Jamar Carter, at

ABA@ky.gov.

Sincerely,

Jonathan Keefe, M.Ed., BCBA, LBA

Jonathan Keefe
Board Chair

Dated: March 25, 2020