

Frequently Asked Questions regarding the Licensing of Behavior Analysts

1. Why do Behavior Analysts need to be licensed?
 2. How does the law define behavior analysis?
 3. What does this mean for behavioral technicians, paraprofessionals, and aides?
 4. How does the license affect billing practices?
 5. What are the requirements for Licensed Assistant Behavior Analysis? Will their licenses allow them to practice independently?
 6. What about those who have another license (such as clinical psychology, occupational therapy, or speech and language pathology), do these regulations preclude them from practicing?
 7. What are some tips for a new BCBA or BCaBA in filling out the application for licensure?
 8. It takes a long time for the license paperwork to come through. Can I practice in the meantime with my board certification?
 9. What do I do if I received a letter with a Consent Order, stating that I already violated the law by practicing without a license?
 10. As an employer, how can I better craft my job descriptions so that my unlicensed employees aren't practicing (or perceived to be practicing) without a license?
 11. How should I designate my licensure after my name and on my CV?
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1. Why do Behavior Analysts need to be licensed?

In February of 2012, HB1106 was made law and § 54.1-2900 of the Code of Virginia was amended by adding in Article 4 of Chapter 29 of Title 54.1 sections numbered 54-1-2957.16 and 54.1-2957.17 to allow the Virginia Board of Medicine the powers to license Behavior Analysts and Assistant Behavior Analysts.

This law came about when Governor McDonnell added a clause to another law that amended § 38.2-4319 to ensure that Applied Behavior Analysis be covered by insurance companies for children ages 2 to 6 who are diagnosed with Autism Spectrum Disorder. The clause states (with emphasis added):

Treatment for autism spectrum disorder" shall be identified in a treatment plan and includes the following care prescribed or ordered for an individual diagnosed with autism spectrum disorder by a licensed physician or a licensed psychologist who determines the care to be medically necessary: (i) behavioral health treatment, (ii) pharmacy care, (iii) psychiatric care, (iv) psychological care, (v) therapeutic care, and (vi) ***applied behavior analysis when provided or supervised by a board certified behavior analyst who shall be licensed by the Board of Medicine***. The prescribing practitioner shall be independent of the provider of applied behavior analysis.

This made it necessary for **all** Behavior Analysts to become licensed whether or not they are reimbursed for services under the Autism Insurance Law cited above. Note that neither the ABA community, nor the Autism Community asked the Governor to add this clause.

2. How does the law define behavior analysis?

Currently, under the Emergency Regulations Governing the Practice of Behavior Analysis, the scope of practice is defined thusly:

18VAC85-150-110. Scope of practice.

The practice of a behavior analyst includes:

1. Design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis 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; and
2. Supervision of licensed assistant behavior analysts and unlicensed personnel.

3. What does this mean for behavioral technicians, paraprofessionals, and aides?

With regard to unlicensed personnel, regulations currently state:

18VAC85-150-130. Supervision of unlicensed personnel.

A. Unlicensed personnel may be supervised by a licensed behavior analyst or a licensed assistant behavior analyst.

B. Unlicensed personnel may be utilized to perform:

1. Nonclient-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and
2. Certain routine client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis.

The recommendation for Applied Behavior Analysis when used for persons with Autism Spectrum Disorder (as defined in the practice guidelines for ABA service delivery distributed by the BACB and found here, http://www.bacb.com/Downloadfiles/ABA_Guidelines_for_ASD.pdf) is for a tiered service delivery model. This includes a supervising BCBA or BCBA-D, a BCaBA (if available), and a Behavioral Technician. Behavioral Technicians are not currently certified or licensed. According to the regulations, a Behavioral Technician may NOT practice behavior analysis as defined in that section. However, s/he can still work one-on-one with a child, provided a Licensed Behavior Analyst is supervising. It is important that unlicensed personnel do not “practice ABA.”

4. How does the license affect billing practices?

The Emergency Regulations Governing the Practice of Behavior Analysis, like regulations of other professions, do not address billing for ABA services, but only deal with the requirements for obtaining and maintaining licensure and for practicing behavior analysis professionally. Billing requirements and practices are set out in statutes, regulations, rules, and internal policies governing third-party payers such as private and public health plans, not in professional licensure statutes and regulations.¹

The Autism Insurance Law that amended § 38.2-4319 does specify that ABA services can be billed “when provided or supervised by a board certified behavior analyst who shall be licensed by the Board of Medicine.”

5. What are the requirements for Licensed Assistant Behavior Analysis? Will their licenses allow them to practice independently?

As with the guidelines for BCaBA’s set forth by the BACB, LABA’s are not entitled to practice independently. The Regulations are very specific about supervision on LABA’s and, in some cases, differ from that of the BACB – specifically in that supervision must be “live and person-to-person.” Following are the supervisory responsibilities for LBAs according to the Regulations. Note the information on the written supervisory agreement, supervision activities, and the frequency and nature of supervision.

18VAC85-150-120. Supervisory responsibilities.

A. The licensed behavior analyst is ultimately responsible and accountable for client care and outcomes under his clinical supervision.

B. There shall be a written supervisory agreement between the licensed behavior analyst and the licensed assistant behavior analyst that shall address:

1. The domains of competency within which services may be provided by the licensed assistant behavior analyst; and
2. The nature and frequency of the supervision of the practice of the licensed assistant behavior analyst by the licensed behavior analyst.

A copy of the written supervisory agreement shall be maintained by the licensed behavior analyst and the licensed assistant behavior analyst and made available to the board upon request.

C. Delegation shall only be made if, in the judgment of the licensed behavior analyst, the task or procedures can be properly and safely performed by an appropriately trained assistant behavior analyst or other person, and the delegation does not jeopardize the health or safety of the client.

D. Supervision activities by the licensed behavior analyst include:

1. Direct, real-time observation of the supervisee implementing behavior analytic assessment and intervention procedures with clients in natural environments and/or training others to implement them, with feedback from the supervisor.
2. One-to-one real-time interactions between supervisor and supervisee to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.

3. Real-time interactions between a supervisor and a group of supervisees to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.

4. Informal interactions between supervisors and supervisees via telephone, electronic mail, and other written communication are encouraged but may not be considered formal supervision.

For the purposes of this subsection, “real-time” shall mean live and person-to-person.

E. The frequency and nature of supervision interactions are determined by the individualized assessment or treatment plans of the clients served by the licensed behavior analyst and the assistant behavior analyst, but shall occur not less than once every four weeks, with each supervision session lasting no less than one hour.

6. What about those who have another license (such as clinical psychology, occupational therapy, or speech and language pathology), do these regulations preclude them from practicing ABA?

Not at all. In fact, the amendment to the Code of Virginia allowing the VA Board of Medicine to license Behavior Analysts specifically states:

The provisions of § 54.1-2957.16 shall not be construed as prohibiting any professional licensed, certified, or registered by a health regulatory board from acting within the scope of his practice.

So any other licensed professionals *whose training, competence, and scope of practice includes Behavior Analysis* are covered under this law.

7. What are some tips for a new BCBA or BCaBA in filling out the application for licensure?

One of the questions in the license application asks for the applicant to list all professional practice *since* certification. The rest of the question give time periods that are only applicable if that amount of time has passed since certification. In most cases, new applicants for licensure have only had about 1 or 2 months go by while they were waiting for the results from the BACB. Therefore, the only information needed for that question will **only cover that time period**. In that time period, the applicant should not have been practicing independently, but should still be under the supervision of a licensed person.

8. It takes a long time for the license paperwork to come through. Can I practice in the meantime with my board certification?

No. Only currently licensed Behavior Analysts and Assistant Behavior Analysts may practice behavior analysis.

The Board of Medicine suggests that those who are sitting for the exam, **not** wait for the results to apply for licensure. That way when the BACB results come through, there is less time spent waiting for the license as most of the paperwork will have been processed. While the BACB explicitly states

that no one can hold themselves out to be “BCBA or BCaBA Eligible” or a “BCBA or BCaBA Candidate,” those who have taken or plan to take the exam are welcome to share that information with whomever they wish.

9. What do I do if I received a letter with a Consent Order, stating that I already violated the law by practicing without a license?

If you have been practicing without a license (i.e. performing the duties stated in the definition as it appears below), then it will be important to sign the letter. Consult a lawyer if you are unsure.

The practice of a behavior analyst includes:

1. Design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis 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; and
2. Supervision of licensed assistant behavior analysts and unlicensed personnel.

It is important to note that if you are just assisting in the duties listed above, and it is really an LBA who is performing those duties and responsible for the client, then you have not been practicing without a license. According to the section in the Regulations regarding supervision of unlicensed personnel,

B. Unlicensed personnel may be utilized to perform:

1. Non client-related tasks including, but not limited to, clerical and maintenance activities and the preparation of the work area and equipment; and
2. Certain routine client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis.

If you have not been practicing without a license, then it may be that the Board of Medicine misunderstood your duties based on your application and a job description that you may have sent them.

If this is the case, first, have your supervising LBA send a letter clarifying your duties as they apply to the law. If that is ineffective, you may need to attend a hearing to plead your case. You are also welcome to contact the BOM using the contact information on the letter. It may be helpful to send your experience verification forms to the BOM. You are also welcome to contact VABA's legislative representative, Christy Evanko, at christy@snowflakesaba.com or 804-310-1128 for guidance and help.

10. As an employer, how can I better craft my job descriptions so that my unlicensed employees aren't practicing (or perceived to be practicing) without a license?

Many job descriptions have list duties that are similar to the definition of the practice of behavior analysis in the Regulations (shown below) followed by a line such as "as supervised by a BCBA." This language could be confusing to the Board of Medicine and make it appear that the unlicensed person is actually performing that duty. It is more accurate to state that the unlicensed person is assisting the BCBA in performing the duties, as that is what is actually happening in most cases. If the unlicensed person is not assisting the BCBA, but actually performing those duties that constitute the practice of behavior analysis, then it will be important to change those responsibilities as soon as possible.

Many companies will employ persons who are working towards becoming a BCBA or BCaBA. In those cases, the duties performed are part of clinical work to obtain certification. The job description should explicitly state this as it is allowed under the law.

According to the Regulations:

The practice of a behavior analyst includes:

1. Design, implementation, and evaluation of environmental modifications using the principles and methods of behavior analysis 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; and
2. Supervision of licensed assistant behavior analysts and unlicensed personnel.

11. How should I designate my licensure after my name and on my CV?

You can use the LBA or LABA designation after your name and Licensed Behavior Analyst or Licensed Assistant Behavior Analyst on your CV. If you hold the BCBA-D, BCBA, or BCaBA credential, you may still use that designation (e.g., John Doe, MS, BCBA, LBA), but it should not be altered to reflect licensure (e.g., BCBA/L), which is a separate credential.

¹ Source: Dr. Gina Green, PhD, BCBA-D of the Association of Professional Behavior Analysts (APBA)