

Commonwealth of Virginia



REGULATIONS

GOVERNING THE PRACTICE OF BEHAVIOR ANALYSIS

VIRGINIA BOARD OF MEDICINE

Title of Regulations: 18VAC85-150-10 et seq.

**Statutory Authority: § 54.1-2400 and Chapter 29
of Title 54.1 of the *Code of Virginia***

Effective Date: March 5, 2020

9960 Mayland Drive, Suite 300
Henrico, VA 23233-1463

(804) 367-4600 (TEL)
(804) 527-4426 (FAX)
email: medbd@dhp.virginia.gov

TABLE OF CONTENTS

Part I	3
General Provisions	3
18VAC85-150-10. Definitions.....	3
18VAC85-150-20. Public participation.	3
18VAC85-150-30. Current name and address.	3
18VAC85-150-40. Fees.	3
Part II.....	4
Requirements for Licensure as a Behavior Analyst or an Assistant Behavior Analyst	4
18VAC85-150-50. Application requirements.	4
18VAC85-150-60. Licensure requirement.....	4
Part III Renewal and Reinstatement.....	5
18VAC85-150-70. Renewal of licensure.	5
18VAC85-150-80. Inactive licensure.....	5
18VAC85-150-90. Reactivation or reinstatement.	5
18VAC85-150-100. Continuing education requirements.	6
Part IV Scope of Practice	7
18VAC85-150-110. Scope of practice.	7
18VAC85-150-120. Supervisory responsibilities.	7
18VAC85-150-130. Supervision of unlicensed personnel.....	8
Part V Standards of Professional Conduct	8
18VAC85-150-140. Confidentiality.....	8
18VAC85-150-150. Client records.	8
18VAC85-150-160. Practitioner-client communication; termination of relationship.	9
18VAC85-150-170. Practitioner responsibility.	10
18VAC85-150-180. Solicitation or remuneration in exchange for referral.	10
18VAC85-150-190. Sexual contact.	11
18VAC85-150-200. Refusal to provide information.	11

Part I General Provisions

18VAC85-150-10. Definitions.

A. The following words and terms when used in this chapter shall have the meanings ascribed to them in § 54.1-2900 of the Code of Virginia:

Board

Practice of behavior analysis

B. The following words and terms when used in this chapter shall have the following meanings unless the context clearly indicates otherwise:

"BACB" means the Behavior Analyst Certification Board, Inc.

"BCBA®" means a Board Certified Behavior Analyst®.

"BCaBA®" means a Board Certified Assistant Behavior Analyst®.

18VAC85-150-20. Public participation.

A separate board regulation, [18VAC85-11](#), entitled Public Participation Guidelines, provides for involvement of the public in the development of all regulations of the Virginia Board of Medicine.

18VAC85-150-30. Current name and address.

Each licensee shall furnish the board his current name and address of record. All notices required by law or by this chapter to be given by the board to any such licensee shall be validly given when sent to the latest address of record provided or served to the licensee. Any change of name or change in the address of record or public address, if different from the address of record, shall be furnished to the board within 30 days of such change.

18VAC85-150-40. Fees.

A. The following fees have been established by the board:

1. The initial fee for the behavior analyst license shall be \$130; for the assistant behavior analyst license, it shall be \$70.
2. The fee for reinstatement of the behavior analyst license that has been lapsed for two years or more shall be \$180; for the assistant behavior analyst license, it shall be \$90.
3. The fee for active license renewal for a behavior analyst shall be \$135; for any assistant behavior analyst, it shall be \$70. The fees for inactive license renewal shall be \$70 for a

behavior analyst and \$35 for an assistant behavior analyst. Renewals shall be due in the birth month of the licensee in each odd-numbered year. For 2021, the renewal of an active license as a behavior analyst shall be \$108, and the renewal fee for an inactive license shall be \$54; the renewal fee for an active license as an assistant behavior analyst shall be \$54, and the renewal fee for an inactive license shall be \$28.

4. The additional fee for processing a late renewal application within one renewal cycle shall be \$50 for a behavior analyst and \$30 for an assistant behavior analyst.

5. The fee for a letter of good standing or verification to another state for a license shall be \$10.

6. The fee for reinstatement of licensure pursuant to § 54.1-2408.2 of the Code of Virginia shall be \$2,000.

7. The handling fee for a returned check or a dishonored credit card or debit card shall be \$50.

8. The fee for a duplicate license shall be \$5.00, and the fee for a duplicate wall certificate shall be \$15.

B. Unless otherwise provided, fees established by the board shall not be refundable.

Part II

Requirements for Licensure as a Behavior Analyst or an Assistant Behavior Analyst

18VAC85-150-50. Application requirements.

An applicant for licensure shall submit the following on forms provided by the board:

1. A completed application and a fee as prescribed in 18VAC85-150-40.
2. Verification of certification as required in 18VAC85-150-60.
3. Verification of practice as required on the application form.
4. If licensed or certified in any other jurisdiction, verification that there has been no disciplinary action taken or pending in that jurisdiction.
5. Verification from the BACB on disciplinary action taken or pending by that body.

18VAC85-150-60. Licensure requirement.

An applicant for a license to practice as a behavior analyst or an assistant behavior analyst shall hold current certification as a BCBA® or a BCaBA® obtained by meeting qualifications and passage of the examination required for certification as a BCBA® or a BCaBA® by the BACB.

Part III

Renewal and Reinstatement

18VAC85-150-70. Renewal of licensure.

A. Every behavior analyst or assistant behavior analyst who intends to maintain an active license shall biennially renew his license each odd-numbered year during his birth month and shall:

1. Submit the prescribed renewal fee; and
2. Attest to having met the continuing education requirements of 18VAC85-150-100.

B. The license of a behavior analyst or assistant behavior analyst that has not been renewed by the first day of the month following the month in which renewal is required is lapsed. Practice with a lapsed license may be grounds for disciplinary action. A license that is lapsed for two years or less may be renewed by payment of the renewal fee, a late fee as prescribed in 18VAC85-150-40, and documentation of compliance with continuing education requirements.

18VAC85-150-80. Inactive licensure.

A behavior analyst or assistant behavior analyst who holds a current, unrestricted license in Virginia shall, upon a request on the renewal application and submission of the required fee, be issued an inactive license. The holder of an inactive license shall not be entitled to perform any act requiring a license to practice as a behavior analyst or assistant behavior analyst in Virginia.

18VAC85-150-90. Reactivation or reinstatement.

A. To reactivate an inactive license or to reinstate a license that has been lapsed for more than two years, a behavior analyst or assistant behavior analyst shall submit evidence of competency to return to active practice to include one of the following:

1. Information on continued practice in another jurisdiction as a licensed behavior analyst or a licensed assistant behavior analyst or with certification as a BCBA® or BCaBA® during the period in which the license has been inactive or lapsed;
2. Sixteen hours of continuing education for each year in which the license as a behavior analyst or 10 hours for each year in which the license as an assistant behavior analyst has been inactive or lapsed, not to exceed three years; or
3. Recertification by passage of the BCBA® or the BCaBA® certification examination from the BACB.

B. To reactivate an inactive license, a behavior analyst or assistant behavior analyst shall pay a fee equal to the difference between the current renewal fee for inactive licensure and the renewal fee for active licensure.

C. To reinstate a license that has been lapsed for more than two years, a behavior analyst or assistant behavior analyst shall file an application for reinstatement and pay the fee for reinstatement of his license as prescribed in 18VAC85-150-40. The board may specify additional requirements for reinstatement of a license so lapsed to include education, experience, or reexamination.

D. A behavior analyst or assistant behavior analyst whose licensure has been revoked by the board and who wishes to be reinstated shall make a new application to the board, fulfill additional requirements as specified in the order from the board, and make payment of the fee for reinstatement of his licensure as prescribed in 18VAC85-150-40 pursuant to § 54.1-2408.2 of the Code of Virginia.

E. The board reserves the right to deny a request for reactivation or reinstatement to any licensee who has been determined to have committed an act in violation of § 54.1-2915 of the Code of Virginia or any provisions of this chapter.

18VAC85-150-100. Continuing education requirements.

A. In order to renew an active license, a behavior analyst shall attest to having completed 32 hours of continuing education and an assistant behavior analyst shall attest to having completed 20 hours of continuing education as approved and documented by a sponsor recognized by the BACB within the last biennium. Four of the required hours shall be related to ethics in the practice of behavior analysis. Up to two continuing education hours may be satisfied through delivery of behavioral analysis services, without compensation, to low-income individuals receiving services through a local health department or a free clinic organized in whole or primarily for the delivery of health services. One hour of continuing education may be credited for three hours of providing such volunteer services. For the purpose of continuing education credit for voluntary service, the hours shall be approved and documented by the health department or free clinic.

B. A practitioner shall be exempt from the continuing education requirements for the first biennial renewal following the date of initial licensure in Virginia.

C. The practitioner shall retain in his records the completed form with all supporting documentation for a period of four years following the renewal of an active license.

D. The board shall periodically conduct a random audit of its active licensees to determine compliance. The practitioners selected for the audit shall provide all supporting documentation within 30 days of receiving notification of the audit.

E. Failure to comply with these requirements may subject the licensee to disciplinary action by the board.

F. The board may grant an extension of the deadline for continuing education requirements, for up to one year, for good cause shown upon a written request from the licensee prior to the renewal date.

G. The board may grant an exemption from all or part of the requirements for circumstances beyond the control of the licensee, such as temporary disability, mandatory military service, or officially declared disasters.

Part IV

Scope of Practice

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.

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.

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.

Part V
Standards of Professional Conduct

18VAC85-150-140. Confidentiality.

A practitioner shall not willfully or negligently breach the confidentiality between a practitioner and a client. A breach of confidentiality that is required or permitted by applicable law or beyond the control of the practitioner shall not be considered negligent or willful.

18VAC85-150-150. Client records.

A. Practitioners shall comply with the provisions of § 32.1-127.1:03 of the Code of Virginia related to the confidentiality and disclosure of client records.

B. Practitioners shall provide client records to another practitioner or to the client or his personal representative in a timely manner in accordance with provisions of § 32.1-127.1:03 of the Code of Virginia.

C. Practitioners shall properly manage and keep timely, accurate, legible, and complete client records.

D. Practitioners who are employed by a health care institution, educational institution, school system, or other entity in which the individual practitioner does not own or maintain his own records shall maintain client records in accordance with the policies and procedures of the employing entity.

E. Practitioners who are self-employed or employed by an entity in which the individual practitioner owns and is responsible for client records shall:

1. Maintain a client record for a minimum of six years following the last client encounter with the following exceptions:

a. Records of a minor child shall be maintained until the child reaches the age of 18 years or becomes emancipated, with a minimum time for record retention of six years from the last client encounter regardless of the age of the child;

b. Records that have previously been transferred to another practitioner or health care provider or provided to the client or his legally authorized representative; or

c. Records that are required by contractual obligation or federal law may need to be maintained for a longer period of time.

2. Post information or in some manner inform all clients concerning the time frame for record retention and destruction. Client records shall only be destroyed in a manner that protects client confidentiality, such as by incineration or shredding.

3. When closing, selling, or relocating his practice, meet the requirements of § 54.1-2405 of the Code of Virginia for giving notice that copies of records can be sent to any like-regulated provider of the client's choice or provided to the client or legally authorized representative.

18VAC85-150-160. Practitioner-client communication; termination of relationship.

A. Communication with clients.

1. Except as provided in § 32.1-127.1:03 F of the Code of Virginia, a practitioner shall accurately present information to a client or his legally authorized representative in understandable terms and encourage participation in decisions regarding the client's care.

2. A practitioner shall not deliberately make a false or misleading statement regarding the practitioner's skill or the efficacy or value of a treatment or procedure provided or directed by the practitioner.

3. Before an initial assessment or intervention is performed, informed consent shall be obtained from the client or his legally authorized representative. Practitioners shall inform clients or their legally authorized representative of the risks, benefits, and alternatives of the recommended procedure that a reasonably prudent practitioner would tell a client.

a. Informed consent shall also be obtained if there is a significant change to a therapeutic procedure or intervention performed on a client that is not part of routine, general care and that is more restrictive on the continuum of care.

b. In the instance of a minor or a client who is incapable of making an informed decision on his own behalf or is incapable of communicating such a decision due to a physical or mental disorder, the legally authorized person available to give consent shall be informed and the consent documented.

c. An exception to the requirement for consent prior to performance of a procedure or intervention may be made in an emergency situation when a delay in obtaining consent would likely result in imminent harm to the client.

4. Practitioners shall adhere to requirements of § 32.1-162.18 of the Code of Virginia for obtaining informed consent from clients prior to involving them as subjects in human research with the exception of retrospective chart reviews.

B. Termination of the practitioner-client relationship.

1. The practitioner or the client may terminate the relationship. In either case, the practitioner shall make the client record available, except in situations where denial of access is allowed by law.

2. A practitioner shall not terminate the relationship or make his services unavailable without documented notice to the client that allows for a reasonable time to obtain the services of another practitioner.

18VAC85-150-170. Practitioner responsibility.

A. A practitioner shall not:

1. Perform procedures or techniques that are outside the scope of his practice or for which he is not trained and individually competent;

2. Knowingly allow a subordinate to jeopardize client safety or provide client care outside of the subordinate's scope of practice or area of responsibility. Practitioners shall delegate client care only to subordinates who are properly trained and supervised;

3. Engage in an egregious pattern of disruptive behavior or interaction in a health care setting that interferes with client care or could reasonably be expected to adversely impact the quality of care rendered to a client; or

4. Exploit the practitioner-client relationship for personal gain.

B. Advocating for client safety or improvement in client care within a health care entity shall not constitute disruptive behavior provided the practitioner does not engage in behavior prohibited in subdivision A 3 of this section.

18VAC85-150-180. Solicitation or remuneration in exchange for referral.

A practitioner shall not knowingly and willfully solicit or receive any remuneration, directly or indirectly, in return for referring an individual to a facility or institution as defined in § 37.2-100 of the Code of Virginia or hospital as defined in § 32.1-123 of the Code of Virginia.

Remuneration shall be defined as compensation, received in cash or in kind, but shall not include any payments, business arrangements, or payment practices allowed by 42 USC § 1320 a-7b(b), as amended, or any regulations promulgated thereto.

18VAC85-150-190. Sexual contact.

A. For purposes of § 54.1-2915 A 12 and A 19 of the Code of Virginia and this section, sexual contact includes, but is not limited to, sexual behavior or verbal or physical behavior that:

1. May reasonably be interpreted as intended for the sexual arousal or gratification of the practitioner, the client, or both; or
2. May reasonably be interpreted as romantic involvement with a client regardless of whether such involvement occurs in the professional setting or outside of it.

B. Sexual contact with a client.

1. The determination of when a person is a client for purposes of § 54.1-2915 A 19 of the Code of Virginia is made on a case-by-case basis with consideration given to the nature, extent, and context of the professional relationship between the practitioner and the person. The fact that a person is not actively receiving treatment or professional services from a practitioner is not determinative of this issue. A person is presumed to remain a client until the practitioner-client relationship is terminated.
2. The consent to, initiation of, or participation in sexual behavior or involvement with a practitioner by a client does not change the nature of the conduct nor negate the statutory prohibition.

C. Sexual contact between a practitioner and a former client after termination of the practitioner-client relationship may still constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence of emotions derived from the professional relationship.

D. Sexual contact between a practitioner and a key third party shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care. For purposes of this section, key third party of a client means spouse or partner, parent or child, guardian, or legal representative of the client.

E. Sexual contact between a supervisor and a trainee shall constitute unprofessional conduct if the sexual contact is a result of the exploitation of trust, knowledge, or influence derived from the professional relationship or if the contact has had or is likely to have an adverse effect on client care.

18VAC85-150-200. Refusal to provide information.

A practitioner shall not willfully refuse to provide information or records as requested or required by the board or its representative pursuant to an investigation or to the enforcement of a statute or regulation.