



# Code-Enforcement Procedures

## SECTION A. Preamble

The BACB is charged with promoting and maintaining standards of professional conduct in the practice of behavior analysis. To protect the public from practitioners who do not meet these standards, the Behavior Analyst Certification Board (BACB) has adopted the [Professional and Ethical Compliance Code for Behavior Analysts](#) (Code) and the [RBT Code of Ethics](#) (RBT Code). The BACB has designed and implemented enforcement procedures for addressing alleged violations of the Code and the RBT Code. The term “ethics requirements” is used to encompass the Code and the RBT Code. The BACB has designed and implemented enforcement procedures for addressing alleged violations of any ethics requirements. The purpose of the BACB’s Code-Enforcement System is to protect the public from applicants and certificants who have violated any ethics requirements.

The BACB provides due process procedures to applicants and certificants who have allegedly violated one or more ethics requirements. Due process includes the BACB giving the individual notice of the allegation(s) and an opportunity to respond, having the case decided by a neutral party, and providing an opportunity to appeal. BACB Ethics Department staff who are trained in code-enforcement review and process each Notice of Alleged Violation (Notice) received.

## SECTION B. Procedural Actions

- 1. Revocation of Eligibility or Invalidation of Certification:** The BACB reserves the right to bar any individual from sitting for any BACB examination, or to invalidate any certification (immediately making the certification null and void), in the event it finds that the individual submitted falsified, forged, or untrue information to the BACB. The BACB reserves this right regardless of when it becomes aware of the falsified, forged, or untrue information. The BACB will revoke an individual’s eligibility to apply to sit for any BACB examination for five years, after which time the individual must meet the requirements applicable at the time they reapply. For individuals already certified, the BACB will invalidate the certification and revoke the individual’s eligibility to apply to sit for any other BACB certification for five years. After those five years, the individual must recomplete all experience hours (as applicable), meet the requirements applicable at the time they reapply, complete appropriate additional coursework in ethics, and submit to a full audit of experience hours (as applicable) at the time of application. Any invalidation or revocation of eligibility will be published in the individual’s registry record on the BACB website. Any eligibility revocation or certification invalidation may be applied prior to additional future sanctions that may be imposed on the individual’s eligibility for BACB certification. An individual retains the right to appeal the hold or invalidation if they can submit evidence demonstrating that the information in question was submitted accurately and truthfully.
- 2. Procedural Inactivation:** The BACB reserves the right to apply a preliminary inactive status to any applicant or certificant for whom it has information indicating that the individual:
  - a) is incarcerated or in any form of inpatient care
  - b) is unable to completely and competently provide client services or
  - c) poses an immediate risk of harm to a client

**Note:** During a period of preliminary inactive status, the BACB will make every reasonable attempt to expedite the deadlines identified in the Code-Enforcement Procedures in order to minimize the duration of the preliminary inactive status period.

**3. Summary Suspension of Eligibility or Certification:** The BACB reserves the right to summarily suspend an applicant or certificant for failure to respond to requests from the BACB Ethics Department by the date indicated in the correspondence, or for failure to comply with the consequences in a Disciplinary or Appeal Determination. This is an automatic suspension of certification, application eligibility, or other status with the BACB that is published in the individual's registry record on the BACB website. During the period of suspension, the individual may not represent themselves as certified by the BACB and may not practice or bill under a BACB certification. Certificants may still include the relevant certification designation, but it must be followed by "(inactive)" (e.g., John Smith, BCBA (inactive)). Failure to respond to the BACB during the suspension period may result in revocation. The individual may be reinstated during the suspension period if they:

- a) request reinstatement in writing by identifying the reason for the nonresponse and the action plan to ensure timely response moving forward
- b) complete any recertification requirements (BCBA, BCaBA, RBT) or renewal requirements (ACE)
- c) comply with all requirements during the educational or disciplinary process, including response to the Notice, and
- d) demonstrate appropriate reporting to, and from, third parties and licensure board(s), if applicable.

**Note:** Reinstatement, if approved, does not occur until the individual meets the conditions outlined in subsections a-d, complies with any other indicated actions (e.g., consequences in a Disciplinary or Appeal Determination or some other required action, such as providing documentation or other information), and the Ethics Department makes the determination to clear the suspension.

## SECTION C. Basis for Action

An accepted Notice serves as the basis for routing through the Code-Enforcement System. The individual submitting the Notice is referred to as the Notifier, and the individual alleged to have violated ethics requirements is referred to as the Subject.

## SECTION D. Intake and Routing of a Notice

**Jurisdiction of a Notice:** The BACB has jurisdiction over any individual certified as a Board Certified Behavior Analyst-Doctoral (BCBA-D), Board Certified Behavior Analyst (BCBA), Board Certified Assistant Behavior Analyst (BCaBA), or Registered Behavior Technician (RBT), as well as those who have applied and paid the fees for examination. The BACB also has jurisdiction over those who have applied to be, or are, Authorized Continuing Education (ACE) providers.

### 1. Intake of a Notice

- a) *Evaluating a Notice:* The BACB evaluates each Notice upon receipt to ensure that it:
- i. is submitted against an individual over whom the BACB has jurisdiction (the BACB does not have jurisdiction over non-certified individuals, trainees, or organizations/agencies)
  - ii. is submitted within six months of the alleged violation (BACB staff have the discretion to extend this deadline in exceptional circumstances)
  - iii. has a valid signature and
  - iv. includes clear evidence supporting each alleged violation of a specific ethics requirement (i.e., a specific element in the Code or RBT Code). Supporting evidence should be conclusive, not speculation or unsubstantiated suspicions. All supporting evidence must be properly redacted (confidential identifying information removed or covered) and must not exceed 20 pages. If the supporting documentation is not properly redacted or exceeds the page-limit, the BACB returns it to the Notifier with a request to correct and resubmit.

**Note:** For Notices of Publicly-Documented Alleged Violations the documentation must be freely and currently available (i.e., not behind a paywall or login requirement) and must substantiate an alleged violation by an individual over whom the BACB has jurisdiction.

b) *Declining a Notice*: When a Notice does not meet the criteria above (or it is otherwise not actionable as determined by the BACB), then the BACB does not take action and informs the Notifier.

**Note:** For Notices against an RBT: When the alleged violation does not relate to one of the following requirements: 1) abuse/neglect of a client, 2) charged/convicted of violation of law, or 3) violation of obligations to BACB or 1.10, 1.11, 1.12, or 3.01 of the RBT Code, the Notice is declined and the Notifier is directed to take appropriate actions (e.g., address the issue directly, address the issue with the RBT Requirements Coordinator or Supervisor).

c) *Deferring a Notice*: When a Notice is related to a complaint that has been submitted to an agency with investigative powers (e.g., law enforcement, licensure board, third-party payer), the BACB may, but is not required to, postpone processing the Notice until a final determination has been issued by the investigatory agency. In such cases, the BACB informs the Notifier and requests that they contact the BACB with updated information once the matter is decided. In addition, BACB staff conduct scheduled check-ins with the Notifier. Once the Notifier provides a final determination on the matter, BACB staff move forward with reviewing and routing the Notice. If, after 12 months, the Notifier fails to provide a final determination on the case, BACB staff close the case (however, the BACB reserves the right to move forward with reviewing and routing the case).

d) *Accepting a Notice*: When the BACB accepts a Notice for processing, the BACB informs the Notifier. The BACB then informs the Subject of the Notice by sending 1) the Notice document, 2) the supporting documentation, and 3) a response form with instructions for submitting the form and any supporting documentation.

**2. Routing of a Notice:** At least two BACB staff collaborate to make an appropriate routing decision for each accepted Notice. The Notice may be routed to one of the follow systems: 1) Disciplinary Review or 2) Educational Review.

**3. Failure to Respond to a Notice:** Failure to respond to the BACB by the date indicated in the correspondence results in automatic suspension of certification, application eligibility, or other status with the BACB, which is published on the BACB website in the individual's registry record. See section B, subsection 3 of this document for more information about summary suspensions and the required steps for initiating reinstatement of certification, application eligibility, or other status with the BACB.

## SECTION E. Code-Enforcement Systems

Accepted Notices are routed to one of the following systems:

**1. Educational:** This system focuses on providing the Subject with guidance and support to reduce the likelihood that future violations will occur. Activities within this system may include sending an educational memorandum or notice of required action or offering voluntary coaching (an educational and professional development process) to the Subject.

**2. Disciplinary Review:** This system focuses on determining whether the submitted evidence substantiates the alleged violation and, if so, what consequences should be applied to the case. The BACB takes disciplinary action against an individual only when there is a preponderance of the evidence supporting a finding of a violation of the Code. In other words, the documentation must support a finding that it is more likely than not that the violation occurred. Neither the Subject nor the Notifier are allowed to be present at, or to participate in, the Disciplinary Review meeting. There are two possible outcomes of a Disciplinary Review outlined in the Disciplinary Determination: no further action or consequences.

a) *Disciplinary Review may occur in either of two systems:* Staff Disciplinary Review or Disciplinary Review Committee.

i. Staff Disciplinary Review (SDR): BACB staff review the submitted documentation for a case, make a decision regarding the alleged violation(s), and, if applicable, issue one or more consequences based on precedent. Staff may also reroute a case to the Disciplinary Review Committee.

- ii. Disciplinary Review Committee (DRC): The members of the DRC include at least one current or former member of the BACB Board of Directors and other certified behavior analysts. BACB staff prepare a comprehensive file (the Notice of Alleged Violation, supporting evidence, and the Subject's response) and provide it to the DRC members in advance of the meeting. At the meeting, BACB staff present a summary of the matter to the DRC. The DRC discusses and deliberates on the matter. The DRC makes a decision regarding the alleged violation(s) and, if applicable, issues one or more consequences based on precedent and professional judgement.
- b) *Disciplinary Determination*: Within 30 days of the SDR's or DRC's decision the BACB staff notifies the Subject of the Disciplinary Determination. The Subject has 30 days to notify the BACB Ethics Department whether they accept the Disciplinary Determination (i.e., intend to comply with the indicated consequences) or request an appeal.
- i. If the Subject declines an appeal, they may begin fulfilling the requirements of the Disciplinary Determination on that date. The BACB informs the Notifier of the Disciplinary Determination.
  - ii. The Disciplinary Determination becomes final and unappealable if the Subject fails to accept the Disciplinary Determination OR request an appeal within 30 days. The BACB informs the Notifier of the Disciplinary Determination.

## SECTION F. Possible Consequences

There are two categories of consequences that may be applied in a Disciplinary Determination: 1) corrective actions and 2) sanctions. Corrective actions include steps the Subject must take to address the violation and reduce the likelihood that future violations will occur. Sanctions include actions that place a restriction on the Subject, which are published on the BACB website until all requirements of the sanction are fulfilled. In addition to the common corrective actions and sanctions listed in this section, the BACB retains the right to assign additional consequences as deemed appropriate for a case.

1. **Corrective Actions:** These consequences are not published on the website. This list is not exhaustive, as other relevant actions may be determined during the Disciplinary Review process.
  - a) *Professional Development*: The Subject must fulfill certain conditions (e.g., earn continuing education credits or University course credits on a topic relevant to the violation) to avoid further consequences by the BACB.
  - b) *Advisory Warning*: The Subject is issued a warning, sometimes with recommendations to promote adherence to the Code.
  - c) *Verification of Competency*: This may be requested when the Subject has disclosed a condition that may impact their ability to practice or when evidence has been submitted which suggests this circumstance. Examples include, but are not limited to: reports of a mental health condition (or treatment for a condition) that prevents or significantly impacts work for a period of time, physical injuries that prevent work, or criminal offenses like repeated instances of drinking and driving that raise questions about the individual's competency to practice.
  - d) *Paper or Product Submission*: The Subject must read one or more relevant articles and submit a paper related to the relevant code violation, and or create and submit other related products (e.g., policies, procedures, tracking systems, handbooks).
2. **Sanctions:** These consequences are published on the BACB website in the individual's registry record until the sanction requirements are completed.
  - a) *Revocation*: The Subject's certification is terminated.
  - b) *Invalidated Certification*: The Subject's certification is invalidated because the eligibility requirements were not met. The individual whose certification is invalidated was, in effect, never legitimately certified.
  - c) *Certification Suspension*: The Subject's certification may not be used for a specified period of time, after which the individual may be required to apply for reinstatement, subject to compliance with the requirements and standards applicable at the time they reapply.

- d) *Eligibility Suspension*: The Subject is not eligible to apply for BACB certification for a specified period of time.
- e) *Restriction*: The Subject's ability to practice behavior analysis using BACB certification is limited (e.g., mandatory supervision, practice limitation).

**Note:** Violating the terms of a consequence issued in a Disciplinary or Appeal Determination will result in immediate certification or eligibility suspension. See section *B*, subsection 3 of this document for more information about summary suspensions and the required steps for initiating reinstatement of certification, application eligibility, or other status with the BACB.

## SECTION G. Appeal Process

Procedures for Appeal Process: If the Subject is issued consequences as a part of Disciplinary Review, the Subject has 30 days to submit a written request for appeal. The Notifier does not have the right to request an appeal. The Disciplinary Appeal Committee—consisting of a minimum of three current or former members of the BACB Board of Directors—hears the appeal. Members of the DRC that issued the Disciplinary Determination in the matter may not serve on the Appeal Committee for the same matter. Formal rules of evidence do not apply to BACB appeal processes. All individuals must submit all appeal documents to the BACB Ethics Department a minimum of two weeks before the scheduled appeal meeting date. Please see the "[Guidelines for Submitting an Appeal](#)" document for more information.

- 1. Cases with Published Consequences (i.e., Sanctions):** In addition to submitting the required appeal document, the Subject has the right to be present during the appeal, via video conference, only in cases wherein the consequences included a sanction (publishable on the BACB website). The Subject may present written or verbal evidence in support of their appeal, may choose to be represented by counsel, and may have witnesses present during the video conference. The Subject must submit all additional documentation and a list of all individuals who will be present at the meeting to the BACB Ethics Department at least two weeks prior to the meeting date.
- 2. Cases with Non-Published Consequences (i.e., Corrective Actions):** In cases that only include Corrective Actions, the Subject must submit a written appeal document and may not be present during the appeal meeting. The Subject can include additional documentation in support of their appeal, statements from witnesses, and appeal documents prepared by an attorney.
- 3. Disciplinary Appeal Committee Decision:** The Committee may issue one of three outcomes in the Appeal Determination: 1) uphold, 2) modify (but not in a manner more adverse to the Subject), or 3) overturn the Disciplinary Determination.
- 4. Notification of Outcome:** Typically, BACB staff notify the Subject of the outcome of the appeal by sending the Appeal Determination within 15 days of the appeal meeting. Any additional documentation the Subject submits after the conclusion of the appeal proceeding will not be considered. The BACB will inform the Notifier of the Appeal Determination.

## SECTION H. Release of Documentation

Upon formal request by a governmental agency or court of law (e.g., subpoena or court order), or at the discretion of the Chief Executive Officer, the BACB may release all documentation (i.e., Notice, documents relevant to violation, Subject's response and related documents, and relevant correspondence) to the requesting party.

## SECTION I. Amendment to Procedures

The BACB reserves the right to amend these procedures at any time.