



# 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. The term “ethics requirements” is used to encompass the Professional and Ethical Compliance Code for Behavior Analysts and the RBT Code of Ethics. 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 certificants and applicants who have violated any of the ethics requirements.

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

## SECTION B. 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 C. Intake and Routing of a Notice

**1. 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.

### 2. Intake of a Notice

- a) *Evaluating a Notice:* Upon receipt of a Notice the BACB evaluates the Notice to ensure that it:
  - i. is submitted against an individual over whom the BACB has jurisdiction;
  - 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 clearly identified 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 no action is taken and the BACB informs the Notifier.
  - i. For Notices Against an RBT: When the alleged violation does not relate to one of the following 3 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 of the Notice until a final determination has been issued by the investigatory agency. In such a case, the BACB informs the Notifier and requests that the Notifier 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.

**3. 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.

**4. 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 with the individual’s name. During the period of suspension, individuals may not represent themselves as certified by the BACB and may not practice or bill under a BACB certification. Failure to respond to the BACB during the suspension period may result in revocation. The subject may be reinstated during the suspension period if the Subject:

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

*Note:* Reinstatement, if approved, does not occur until after the disciplinary process has concluded.

## SECTION D. Code-Enforcement Systems

Accepted Notices result in routing 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 if 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 that are 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 thirty 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 E. 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 and 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:* 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:* 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 drinking-and-driving that question the individual's competency to practice.

d) *Paper or Product Submission*: 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 until the sanction requirements are completed.

a) *Revocation*: Subject's certification is terminated.

b) *Invalidated Certification*: Subject's certification is invalidated because the eligibility requirements had not been met. The individual whose certification is invalidated was, in effect, never legitimately certified.

c) *Certification Suspension*: 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 then-existing standards for certification.

d) *Eligibility Suspension*: Subject is not eligible to apply for BACB certification for a specified period of time.

e) *Restriction*: Subject's ability to practice behavior analysis using BACB certification is limited (e.g., mandatory supervision, practice limitation).

## SECTION F. 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 Appeal is heard by the Disciplinary Appeal Committee, consisting of a minimum of three current or former members of the BACB Board of Directors. 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.

**1. Cases with Published Consequences (i.e., Sanctions):** 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.

**2. Cases with Non-Published Consequences (i.e., Corrective Actions):** In cases that only include Corrective Actions the Subject may submit a written appeal. 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 fifteen (15) days of the appeal meeting. Additional documentation submitted by the Subject after the conclusion of the appeal proceeding will not be considered. The BACB will inform the Notifier of the Appeal Determination.

## SECTION G. Amendment to Procedures

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

This document should be referenced as follows:

Behavior Analyst Certification Board. (2018). *US employment demand for behavior analysts: 2010-2017*. Littleton, CO: Author.