

Ethics

for Behavior Analysts

by Jon S. Bailey
Mary R. Burch



Ethics for Behavior Analysts

This fully updated fourth edition of Jon S. Bailey and Mary R. Burch's bestselling *Ethics for Behavior Analysts* is an invaluable guide to understanding and implementing the newly revised Behavior Analyst Certification Board® (BACB) Ethics Code for Behavior Analysts.

Featured in this new edition are explanations of each code standard along with case studies drawn from questions submitted to Bailey's ABA Ethics Hotline (with permission of the writers of the cases) along with edited responses. New chapters include significant changes in this code, an elaboration of the core ethical principles, and the distinction between a client and stakeholder. Further new features include a chapter on ethical decision-making, including flowcharts demonstrating how to arrive at ethical decisions. Additional new chapters focus on finding an ethical place to work, an updated code of ethics for organizations, and how to file a Notice of Alleged Violation.

This text is the go-to ethics resource for behavior analysts in training and in practice.

Jon S. Bailey, PhD, BCBA-D, is Emeritus Professor of Psychology at Florida State University, where he has taught for over 50 years. Currently, he teaches ethics and other graduate courses for behavior analysts. He was a founding director of the Behavior Analyst Certification Board® and is past president of the Florida Association for Behavior Analysis.

Mary R. Burch, PhD, BCBA-D, is a Board Certified Behavior Analyst®. She has more than 25 years' experience in developmental disabilities. She has been a behavior specialist, QMRP, unit director, and consulting behavior analyst in developmental disabilities, mental health, and preschool settings.

“This book is an essential resource for behavior analytic ethics courses. The way that the fourth edition highlights the changes made in the 2022 version of the Behavior Analyst Certification Board® Ethics Code is invaluable and so helpful for anyone who uses the text. The presentation of considerations and a decision-making flowchart provides such a pragmatic way to solve ethical dilemmas.”

**Adel C. Najdowski, PhD, BCBA-D, Associate Professor,
Pepperdine University**

“The 4th edition of *Ethics for Behavior Analysts* is a must read for all behavior analysts. Professors, students, and practitioners have relied on Drs. Bailey and Burch as well-established experts in the areas of ethics and professional behavior in the field of ABA for years and will be well-served continuing to do so with the latest edition to this textbook.”

**Stephanie Kuhn, PhD, LP, LBA, BCBA-D, Associate Professor;
Program Coordinator, Applied Behavior Analysis Program,
Western Connecticut State University**

Praise for the previous edition:

“*Ethics for Behavior Analysts, 3rd Edition* by Bailey and Burch is another winner. It covers all the essential elements of ethics in an accessible and comprehensive manner. With valuable new chapters, the most up-to-date information, and numerous case examples that facilitate a problem-solving approach to ethical issues, this book is an invaluable resource. Students and professionals in behavior analysis should keep it close at hand.”

**Raymond G. Miltenberger, PhD, BCBA-D,
Professor, University of South Florida**

“This book is the ‘go-to’ ethics book for our field of applied behavior analysis. Bailey and Burch handle the universe of ethics with a perfect touch. Ranging from formal presentation of ethical requirements, to real-life examples that all readers will relate to, this book will raise the awareness of ethics and ethical conduct, which in turn will increase the chances that the clients who we serve will be treated humanely and safely.”

**Thomas Zane, PhD, BCBA-D, Institute
for Behavioral Studies, Endicott College**

“Bailey and Burch bring clarity to the BACB Professional and Ethical Compliance Code through cogent discussion of each element and thoughtful consideration of the myriad issues facing practicing behavior analysts. Practitioners of all levels will find valuable insight from numerous examples of real-life ethical dilemmas.”

**Dorothea C. Lerman, PhD, BCBA-D,
University of Houston, Clear Lake**

Ethics for Behavior Analysts

Fourth Edition

Jon S. Bailey and Mary R. Burch



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This 4th edition of our *Ethics for Behavior Analysts* book is dedicated to the memory of my dear friend and colleague, Gerald L. “Jerry” Shook, PhD, BCBA-D (1948–2011). You had a vision of a profession of behavior analysis and created the Behavior Analyst Certification Board as an instrument to bring it to life. You advocated for a code of ethics from the very beginning and encouraged me to promote it. You changed my life.

—*Jon Bailey, BCBA-D*



Photo of Jerry Shook



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Preface to the Third Edition

My first experience in ethics came when I was a graduate student in psychology in the late 1960s. I was working with a profoundly developmentally disabled young man who was confined to a heavy metal crib in the small ward of a private institution in Phoenix, Arizona. Blind, deaf, non-ambulatory, and not toilet trained, my “subject” engaged in self-injurious behavior virtually all day long. His head-banging behavior against the metal bars could be heard 25 yards away and greeted me each time I entered his depressing, malodorous living unit. Day after day, I sat by his crib taking notes on a possible thesis concerning how one might try to reduce his chronic self-injurious behavior or SIB (we called it self-destructive behavior in those days). After a few informal observation sessions, and reading through his medical chart, I had some ideas. I set up a meeting with one of my committee members, Dr. Lee Meyerson, who was supervising the research at the facility. “I’m observing a subject who engages in self-destructive behavior,” I began. “He hits his head 10 to 15 times per minute throughout the day. I’ve taken informal data at different times

of the day, and I don't see any consistent pattern," I offered. Dr. Meyerson let me go on for about 10 minutes, nodding and occasionally taking a puff on his pipe (smoking was allowed everywhere in those days). Then he stopped me abruptly and, gesturing with his pipe, began to ask me questions that I had never thought about. Did I know my "subject's" name? Did I have permission to observe and report on this individual? Who gave me permission to look at this medical record? Had I discussed this case with any of my graduate student colleagues or shown the data in class? I had no good answers to any of Dr. Meyerson's questions. I wasn't thinking of my "subject" as a person, only as a source of data for my thesis. It never dawned on me that "Billy" had rights to privacy and confidentiality and that he needed to be treated with dignity and respect, not as just another "subject" to help me complete a degree requirement. As it turns out, Dr. Meyerson was ahead of his time in grilling me with ethical questions that would not be addressed in legal circles for another ten years (see Chapter 1). Dr. Meyerson's questions helped sensitize me to looking at what I was doing from an extra-experimental perspective. How would I like to be treated if I was a subject in someone's experiment? Or how would I want my mother or sister to be treated? "With kindness, compassion and respect" is no doubt the quick response that most of us would offer. And so it is that ethics in psychology, and particularly in behavior analysis, can be easily personalized and made tangible if we will just stop and think about what we are doing.

Students today have a great advantage over my generation. We had no code of ethics to guide us; we had one foot in the animal lab and one in the world of academia, and we were trying to figure out how to transform powerful operant conditioning principles into effective treatments. It didn't dawn on us at the time that ethics was involved at all, until, of course, we encountered Dr. Meyerson. Today, graduate students in behavior analysis have nearly 50 years of applied research and practice to fall back on (and to learn from and be held accountable for knowing). In addition, they have a wealth of resources on ethics, including

case law and precedent-setting legal findings. Finally, students today have a perfectly legitimate, thoroughly researched, and well-vetted ethics code specifically designed for our field. The current version of this document is the BACB Ethics Code for Behavior Analysts. In teaching the graduate course “Professional and Ethical Issues in Behavior Analysis” for the past 15 years, I have learned a great deal about the ethical issues that appear to be unique to our field and have been developing lectures and trying to discover ways of making ethics interesting, informative, and engaging for students who do not quite see the relevance or appreciate our cautious approach. One thing I’ve discovered is that although we now have an excellent ethics code, it is somewhat dry and by itself, it does not convey the urgency and relevance that it should. Reading the Code is something like reading instructions for computer software: it’s clearly important, but you would rather just start using it.

Years ago, I was scheduled to give a half-day workshop at Penn State on ethics at the urging of Dr. Jerry Shook. In the process of preparing my materials, I wondered what kind of ethical questions the participants might have. Dr. Shook arranged in advance to have each participant write and submit to us two questions or “scenarios” that they had confronted in the work setting. When I got the questions, I realized that reading the scenarios suddenly made the ethical issues jump right off the page. I began trying to look up the correct responses (according to what was then called the BACB Guidelines), and this turned out to be quite difficult. Something was missing. An index of some sort would help, but none was available that I could find. Several all-nighters later, I had developed one. By the time Dr. Shook and I traveled to the conference, I had a new approach to teaching ethics. It involved presenting scenarios, having the students look up the relevant sections in the Guidelines for Responsible Conduct, and then having them present their proposed ethical actions. This approach teaches students that sometimes broad, ethical considerations always come down to some specific code items. My experience in using this

method over the past several years is that it brings the topic to life and generates excellent discussions of very relevant issues.

One troubling problem I encountered in teaching the “Ethics for Behavior Analysis” course was that specific code items were often very much out of context or written in such stilted legal-ese that students did not understand why they were necessary or how they were relevant. I found myself often “translating” specific items into plain English. This process, along with providing some historic context and background about how and why certain items were important in our field, seemed to increase the level of understanding for the students.

This book, then, is the culmination of this attempt to present a practical, student-centered approach to teaching ethics in behavior analysis. All of the cases are based on real examples but edited so as to avoid embarrassment or legal hassles, and the authors of the cases gave permission for their use (those in quotation marks are direct quotes from submitted cases). In addition, for each case, there is a commentary at the end of each chapter.

A final word about using this volume: this text is intended to be a practical handbook, and we specifically attempted to avoid making this an academic or theoretical work. Many people teaching ethics courses will routinely have students read the US Constitution, view *One Flew Over the Cuckoo’s Nest*, and research their state laws on limits of treatment, requirements for keeping documents, maintaining confidentiality, and other relevant issues. My experience is that it takes some creative digging to find relevant readings. Exposing students to a variety of sources, from Skinner and Sidman to Association for Behavior Analysis International (ABA) position statements, is useful in preparing them to tackle the world of ethical issues they will confront. We have tried to summarize what we consider the most important and pressing issues for new Board Certified Behavior Analysts (BCBAs) in Chapter 15, “A Dozen Practical Tips for Ethical Conduct on Your First Job.” We hope you enjoy using this book and welcome input and dialogue on effective ways of teaching this most important topic.

Preface to the Fourth Edition

Much has happened in the world of behavior analysts in the last five years. The profession has nearly doubled in size, and the demand for services has totally outstripped our ability to provide qualified therapists, supervisors, and administrators. Economic pressures have come into play, as government agencies and insurance companies are tightening the purse strings, making it harder and harder to get reimbursement for services, while more and more families are desperate to receive the Association for Behavior Analysis International (ABA) gold standard treatment for their loved one. There is a concern in many agencies that new behavior analysts are not being trained as thoroughly as they have been in the past in part due to the pressure to rush them out the door. This demand may have come at the cost of thorough hands-on training at practicum sites. There is an equal fear that new graduates are not receiving intensive enough training in the ethics of service delivery and even the basic principles and worldview of behavior analysis. Others are pointing out that trainees in ABA are not being properly schooled in cultural responsiveness and are

not prepared to deal with diversity issues with their clients and colleagues. This new code deals extensively with these concerns plus additional questions of exploitative relationships, and a long-standing and pervasive problem of dual relationships. All these topics and more are presented in preview format in Chapter 2. As in the previous edition, we rely heavily on case examples based on questions submitted to the ABA Ethics Hotline to illustrate the ethical problems that behavior analysts can expect to encounter on a weekly basis. It is hoped by studying actual practice and ethical dilemmas that new Board Certified Behavior Analysts (BCBAs) will be better prepared to take on a complex world of behavior analysis service delivery.

HOW TO USE THIS FOURTH EDITION

Each year, I teach a semester-long graduate course called “Ethics and Professional Issues for Behavior Analysts.” I use *Ethics for Behavior Analysts* for the first half of the semester, and for the second half I use *25 Essential Skills for the Successful Behavior Analyst* (Bailey & Burch, 2022). By covering ethics first, I find the students become sensitized to the new way of thinking about how they should conduct themselves; then I introduce them to all the other professional skills they will need to be successful in following through with the intent of the new ethics code.

We hope that this fourth edition of *Ethics for Behavior Analysts* will be useful as you learn about and teach others about ethics.

—Jon S. Bailey

Acknowledgments

To paraphrase an African proverb, “It takes a village to write a book.” I arrived at this conclusion about one month into gathering notes, quotes, references, questions, case examples, and nuggets of wisdom from many people that I know, have just met, and deeply respect. I would first like to thank those members of the Ethics Hotline Advisory Committee who contributed directly to this work. Thomas Zane, Yulema Cruz, Mary Jane Weiss, Noor Syed, Devon Sundberg, Rosemary Condillac, and Michele Silcox always responded immediately to my pleas and gave good honest advice. Tom wrote the chapter on research, Yulema tracked down supervision ethics questions, and the rest wrote responses to those questions or reviewed draft pages and offered their expertise graciously on every occasion that I made a request. I would also like to thank Zack Stevens, a former student who now has his own ABA agency in Tennessee and who provided sample documents that could be used to illustrate specific aspects of the new ethics code. Other former students who reviewed pages of writing were Loren Eighme and Hope McNally. Their experience in the field as Registered Behavior Technicians (RBTs) and Board Certified Behavior Analysts (BCBAs) added an extra dimension

of authenticity to the book. Robert Wallander and Ken Wagner helped me sort through the OBM side of the ethics equation. Lauren Beaulieu educated me about cultural competence. Noor Syed and Nasiah Cirincione-Ulezi shared their expertise on cultural humility, which is far more complicated than it sounds. Elizabeth Zeppernick reviewed drafts of my commentaries on using testimonials from current and former clients in advertising and non-advertising campaigns. Two additional former students, Nikki Dickens and Kolton Sellers, gave me a better understanding of the ins and outs of social media. This book would not have been possible without all of you—Thank You.

Disclaimer

This book does not represent an official statement by the Behavior Analyst Certification Board, the Association for Behavior Analysis International, the Florida Association for Behavior Analysis, or any other behavior analysis organization of which the authors are members. This text cannot be relied on as the only interpretation of the meaning of the Ethics Code for Behavior Analysts or the application of this code to specific situations. Each Board Certified Behavior Analyst, supervisor, or relevant agency must interpret and apply the code as they believe proper, given all the circumstances.

The cases used in this book are based on the authors' combined 75 years of experience in behavior analysis. In all cases, we have disguised the situations and used pseudonyms to protect the privacy of the parties and organizations involved. At the end of some of the chapters, we offer "Responses to Cases" as examples of real solutions to the ethical problems posed by the case. We do not hold these to be the only ethical solutions, but rather, each response is an example of one ethical solution. We encourage instructors who use the text to create alternate solutions based on their own

experiences. Finally, we hope that the responses offered here will stimulate discussion, debate, and thoughtful consideration about ways of handling what are by definition very delicate matters with possible life-changing consequences.

Unit

One

Background for Ethics in Behavior Analysis



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How We Got Here

There is nothing more shocking and horrific than the abuse and maltreatment of innocent people who are unable to protect and defend themselves. Atrocious incidents of physical and emotional abuse toward animals, children, women, and elderly people occur every single day in our culture, and they are often reduced to a few lines in the local news of the daily paper.

Individuals with developmental disabilities can also be the victims of abuse. The reprehensible mistreatment of children and adults with disabilities is especially disturbing when the abuses come at the hands of your chosen profession. But this is exactly what happened in Florida in the early 1970s. These abuses changed the course of history for behavior analysis and the treatment of people with disabilities.

The story of the evolution of our Ethics Code for Behavior Analysts began in the late 1960s, when “behavior modification” was all the rage. Having started only in the mid-1960s (Krasner & Ullmann, 1965; Neuringer & Michael, 1970; Ullmann & Krasner, 1965), some of behavior modification’s early

Aversive consequences were used with abandon in informal reactions to self-injurious, destructive, and inappropriate behaviors.

promoters promised dramatic changes in behavior that were quick and easy to produce and could be carried out by almost anyone with an attendance certificate from a daylong “behavior mod” workshop. People calling themselves “behavior modifiers” offered rented-hotel-ballroom training sessions in abundance. There were no prerequisites for registering, and no questions were asked about the speaker’s qualifications. The basic pitch was this:

You don’t have to know why a behavior occurs (it was assumed to be learned—an “operant behavior”); you need to know only how to manipulate consequences. Food is a primary reinforcer for almost everybody; just make it contingent on the behavior you want. For inappropriate or dangerous behavior, use consequences (punishers) to “decelerate” the behavior.

There was no consideration given to the notion of “causes” of behavior or that there might be a connection between a likely cause and an effective treatment. Further, no thought was given to possible side effects of using food (e.g., food allergies, weight gain) or how the food, often candy, might be handled. Indeed, Cheerios, M&Ms, pretzels, and other bite-sized snacks and treats were loaded in the pockets of the “behavior specialist” in the morning and used throughout the day as needed (a hungry behavior specialist might even have a few from time to time). Likewise, aversive consequences were used with abandon in informal, impromptu, and spontaneous reactions to self-injurious, destructive, and inappropriate behaviors. Some staff members were urged to “be creative” in coming up with consequences. As a result, hot pepper sauces such as Tabasco and undiluted lemon juice might be seen in the jacket pockets of staff members who were on their way to work on “the behavior unit.”

In the early 1970s, “the unit” was frequently a residential facility for individuals with developmental disabilities who had moderate to severe mental retardation, some physical disabilities, and troublesome behaviors. It was most likely a former veterans’ or tuberculosis hospital, which might house 300 to 1,500 “patients.”

Custodial care was the norm until “behavior mod” came along and offered dramatic treatment for severe behavior problems. With no code of ethics and essentially no restrictions, this “treatment” quickly drifted into flat-out abuse.

THE SUNLAND MIAMI SCANDAL

The Sunland Training Center in Miami became ground zero for an abuse investigation that rocked the state of Florida in 1972. The center had been plagued by high turnover rates since it opened in 1965, resulting in frequent understaffing and low-quality training. Surprisingly, the majority of staff serving as “cottage parents” were college students. In 1969, the superintendent resigned under pressure from an investigation into “allegations of resident abuse.” It seems that he confined two residents in a “cell improvised from a large trailer” (McAllister, 1972, p. 2). Then, in April 1971, the Florida Division of Mental Retardation and the Dade County Attorney’s office began an intensive investigation of resident abuse and concluded after a 6-month inquiry regarding allegations of “infrequent and isolated cases of abuse” (p. 2) that the superintendent had dealt with the employees involved and taken appropriate disciplinary action. One of those professional employees, Dr. E., challenged his reassignment, and a grievance committee then uncovered what it considered to be a “highly explosive situation” involving resident abuse with the apparent knowledge and approval of top administrators. As a result, seven individuals were immediately suspended, including the superintendent, the director of cottage life, the staff psychologist, three cottage supervisors, and a cottage parent. Each was charged with “misfeasance, malfeasance, negligence, and contributing to the abuse of residents” (p. 4). Subsequently, Jack McAllister, the director of the State Health and Rehabilitative Services (HRS) Division of Retardation, formed a nine-member blue-ribbon panel, the “Resident Abuse Investigating Committee,” composed of experts in retardation as well as an attorney, a social worker, a client advocate, and

two behavior analysts (Dr. Jack May Jr. and Dr. Todd Risley). Interviews were set up with more than 70 individuals, including current staff members, former employees, residents, and relatives of residents (including one whose son died at Sunland Miami), with some interviews lasting 10 hours. The committee also examined original logs, internal memoranda, a personal diary, and personnel records.

It seems that Dr. E., a psychologist who had joined the staff in 1971 and who had presented himself as an *expert* in behavior modification, had set up a truly ironically named program called the “Achievement Division” in three cottages, allegedly to study “some rather esoteric questions of statistical models for economic analysis” (McAllister, 1972, p. 15). Dr. E., over the next year, established a “treatment” program that consisted of, or evolved into, abusive incidents including the following: forced public masturbation (for residents caught masturbating); forced public homosexual acts (again for those caught in the act); forced washing of the mouth with soap (as punishment for lying, abusive language, or simply speaking at all); beatings with a wooden paddle (ten “licks” for running away); and excessive use of restraints, including one resident who was restrained for more than 24 hours and another who was forced to sit in a bathtub for 2 days. Restraints were routinely used as punishment rather than an emergency method of preventing self-injury. As if this were not enough, the list of horrific, systematic abuses goes on: a male client required to wear women’s underpants; excessive use of lengthy (e.g., four-hour) seclusions in barren and unpadded rooms with no permission to leave to use

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the bathroom; public shaming by forcing a resident to wear a sign that said “The Thief”; food or sleep withheld as a form of punishment; another resident forced to hold feces-stained underwear under his nose for 10 minutes as punishment for incontinence; and another resident forced to lie on urine-soaked sheets for repeated incontinence (pp. 10–11).

The “milieu” of the Achievement Division consisted of an utter lack of programmed activities, which resulted in “profound boredom and deterioration, unattractive surroundings, complete lack of privacy, public humiliation, nakedness . . . and lack of any means of residents to express their grievances” (McAllister, 1972, p. 13). One resident died from dehydration, and another drowned in a nearby canal in his futile attempt to escape his cottage at Sunland Miami.

At first glance it might appear that such abuses would certainly have to be the work of a few frustrated, angry, poorly trained employees bent on sadistic acts. However, the investigation revealed the contrary: these revolting acts of abuse were the result of an attempt by Dr. E. to create a “superb behavior modification program” (McAllister, 1972, p. 14) using routine “behavior shaping devices” (p. 15). The committee’s explanation was that this program “degenerated . . . into a bizarre, abusive, and ineffective system of punishment” (p. 17). In the Achievement Division, these procedures were systematically applied, condoned by supervisors and professional staff, and recorded in daily living unit logs. The procedures not only were used openly but also were, at least initially, well researched. Dr. James Lent, a well-respected expert in behavioral treatment, for example, modeled a token program after one first developed in Parsons, Kansas. One key ingredient was left out of this and other aspects of the Achievement Division: monitoring of individual resident behavior. Rather, the

These revolting acts of abuse were the result of an attempt by Dr. E. to create a “superb behavior modification program.”

emphasis was on guidelines for treatment that gave the otherwise poorly trained employees a great deal of latitude in their reactions. The three guidelines were as follows: (1) emphasize “natural consequences of behavior”; (2) devise your own immediate response to problem behaviors that might crop up where no other instructions apply; and (3) do not threaten; if you verbalize a consequence to a resident, “follow through on every contingency.”

The investigating committee was adamant in its observation that none of the cruel and abusive procedures employed in the Achievement Division had any basis in the behavior modification literature or “any other modern therapeutic or educational methodology.” They went on to suggest that because the cottage where the abuses took place was totally isolated from outside monitoring, it was entirely possible for “well-meaning but poorly trained personnel” to try some mild form of these procedures and then gradually escalate to the bizarre applications that were ultimately achieved. Each instance was, as noted previously, in a daily log-book, and, given no corrective action or response, a cottage parent would naturally assume tacit approval and then perhaps employ a “slightly more extreme form” of the procedure.

In this way, quite extreme procedures evolved in gradual steps from spontaneous initiation of less extreme procedures by the cottage staff, until . . . a pattern had been established of dealing with recurrent problems by escalating the intensity of whatever procedures happened to be in use for a particular resident.

(McAllister, 1972, pp. 17–18)

This natural tendency toward “behavior drift” on the part of the staff is certainly not uncommon in residential treatment facilities. In the case of Sunland Miami, it was facilitated by a nearly total lack of monitoring by upper-level management. The written policies at Sunland Miami clearly prohibited abusive practices, but there was no evidence that these were “forcefully communicated” to employees, and, as was previously mentioned, the facility

suffered from chronic turnover of staff, so ongoing staff training was superficial at best.

Another concern of the investigating committee had to do with the training and credentials of Dr. E. As it turns out, he had recently graduated with his doctoral degree from the University of Florida and then had completed some postdoctoral work at Johns Hopkins University. He claimed to have worked with some of the biggest names in the field. However, when the committee contacted them, these eminent researchers “vaguely remembered a brash young man who visited their laboratories on several occasions,” but none would claim him as his student (McAllister, 1972, p. 19). It must be remembered that Dr. E. was trained in the late 1960s when the field was in its infancy, and it appeared that the sky was the limit as far as behavior modification was concerned. The *Journal of Applied Behavior Analysis*, the professional journal of behavior analysis, had first been published only in 1968, so there was very little research on the application of behavior principles, and there was no code of ethics for behavioral researchers or practitioners.

RECOMMENDATIONS OF THE BLUE-RIBBON COMMITTEE

The investigating committee took on itself the additional responsibility of making recommendations to hopefully prevent any future systematic abuses in the name of behavior modification in the state of Florida. These included strong support for a statewide advocacy program in which staff members would be allowed to make unannounced visits to residential institutions and to collect information from key personnel as well as residents, parents, staff, and concerned citizens. In addition, the committee recommended professional peer review of all behavior programs to ensure that treatment was derived from the literature and that no procedures would be used that were considered “experimental.” Experimental programs would come under standard review

for human experimentation in the HRS Division of Retardation. Other recommendations of the committee included (1) the prohibition of certain bizarre examples of punishment and (2) abandoning seclusion in favor of “positive and appropriate ‘time out’ techniques” (McAllister, 1972, p. 31).

FOLLOW-UP

In most cases, a report such as that produced by the blue-ribbon committee would simply find its way to the shelves of state bureaucrats and languish with no lasting effect. Such was not the case in Florida. The Florida Association for Retarded Children (now the Arc of Florida) took up the cause of humane treatment and ultimately endorsed the notion of supporting data-based behavioral treatment, using strict guidelines, under close supervision by properly trained professionals.

The Division of Retardation, under the guidance of Charles Cox, instituted reforms including setting up both statewide and local peer review committees for behavior modification programming in facilities throughout Florida.

The Statewide Peer Review Committee for Behavior Modification (PRC) then established a set of guidelines for the use of behavioral procedures, which were subsequently adopted by the National Association for Retarded Citizens and by the Florida Division of Retardation in the Health and Rehabilitative Services Manual (HRSM) 160–4 (May et al., 1976). The state-funded PRC proceeded to make visits to institutions around the state over the next several years, educating staff members about the guidelines and making recommendations for more ethical treatment. By 1980, the PRC reached a consensus that it was time to encourage

Charles Cox instituted reforms including setting up both statewide and local peer review committees for behavior modification programming in facilities throughout Florida.

all the institutions, group homes, and smaller residential facilities to begin networking with one another and to begin to bring some sense of professionalism to behavior analysis in Florida. The “First Florida Work Session on Behavior Analysis in Retardation” was held in September 1980 and drew nearly 300 administrators, treatment specialists, behavior analysts, and direct care staff to the two-day conference, held in Orlando. At this historic conference, a meeting was held to organize an official state association. The first annual conference of the Florida Association for Behavior Analysis (FABA) was held in 1981, again in Orlando. None other than B. F. Skinner was the keynote speaker. The formation of FABA marked a turning point in behavior analysis, not only in Florida but also in the rest of the country. It was now possible to set high expectations for behavioral treatment because leaders in the field were routinely being brought to state conferences to present their latest applied behavioral research, and practitioners had an opportunity to see firsthand what others were doing in other parts of the country to solve some of the most intractable behavior problems of the day. Administrators from state government and private facilities were able to see that behavior analysis was not just some local phenomenon but rather was an approach to treatment that was legitimate, effective, and humane. The PRC, in conjunction with FABA, began the process of certifying behavior analysts via a testing program sponsored by the Division of Retardation. In 1988, FABA membership adopted the FABA Code of Ethics, the first state association to do so.

THE SUNLAND MIAMI LEGACY

In retrospect, the horrific abuses at Sunland Miami in the early 1970s were probably necessary for half-baked, unregulated behavior modification to evolve into professional, respected, behavior analysis. Without the abuses, there would have been no blue-ribbon committee formed to think seriously about how to protect individuals with developmental disabilities from systematic abuse

of behavioral procedures. The headlines resulted in the intense scrutiny of a treatment mode that was in its infancy and that needed guidelines and oversight. The pain and suffering of the individuals with developmental disabilities involved in the abuses amplified the need to think clearly about the ethics of treatment. Although it would have been easier to prohibit behavior modification altogether, the blue-ribbon committee was convinced by its two behavioral advocates, Dr. May and Dr. Risley, that a better alternative was to establish strict guidelines for treatment and to set up an infrastructure for oversight involving community citizens who would bring their values, common sense, and good judgment to evaluate behavioral treatment strategies on an ongoing basis. The notion of oversight by both human rights and peer review committees gave teeth to the public appraisal of behavior analysis. These actions, plus the development of a state-endorsed mechanism of certification, the evolution of a strong state professional organization, and its promotion of a code of ethics for behavior analysts, put in place all the necessary elements of control and management to prevent future abuses. And ethics, after all, is concerned primarily with the edict to “do no harm.” In the Florida case, we saw how great harm could be done by well-meaning people, and that abuse was prevented when appropriate, comprehensive strategies were adopted. Although ethics is usually seen as an individual professional engaging in responsible behavior of his or her own volition, the Florida case suggests that responsible conduct can be encouraged by other means as well. It is certainly painful and embarrassing for a profession to undergo such public scrutiny and scorn, but it was clearly warranted in this case. Indeed, it is hard to imagine such powerful procedures as

The pain and suffering of the individuals with developmental disabilities involved in the abuses amplified the need to think clearly about the ethics of treatment.

behavioral treatments being used consistently across the board in the absence of such obvious forms of oversight and control.

It is also clear that, even given these mechanisms, the behavior analyst faces numerous questions every day about the appropriateness of treatment decisions. What is fair? What is right? Am I qualified to administer this treatment? Can I do no harm? Am I taking enough data? Am I interpreting it correctly? Would my client be better off with no treatment? It is the purpose of this volume to try to elucidate the current Behavior Analyst Certification Board (BACB) Ethics Code for Behavior Analysts to assist the behavior analyst in making right choices on a daily basis.

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Changes to the 2022 Ethics Code

IF YOU ARE NEW TO THE BACB ETHICS FOR BEHAVIOR ANALYSTS 2022

If you are a new BCBA who will be starting in our field in 2022 or after, the changes to the previous code will probably not be of much relevance to you. You may want to proceed directly to Chapter 3.

Prior to 2022, the name of the ethics code for behavior analysts was the Professional and Ethical Compliance Code for Behavior Analysts (2014). The name of the code has changed. While in our field we often refer to “the code” or the “ethics code,” the official name of the code that will go into effect in 2022 is the Ethics Code for Behavior Analysts.

ADDITIONS TO THE 2022 ETHICS CODE FOR BEHAVIOR ANALYSTS

There were some significant modifications to the 2022 ethics code and some minor ones as well. In addition to a major reorganization and reduction of the code categories from ten to six, there were 20 additions¹ and 17 deletions or “moved” changes. Some of the changes will affect practitioners daily, and others (such as diversity) represent larger social movements in our culture that may be difficult to operationally define, measure, and enforce. We’ll talk more about this later.

In the 2022 code, there is one clarification about romantic and sexual relationships that is much needed but is still left vague. We have provided some discussion about this topic at the end of this chapter.

In this chapter, the additions to the 2022 code as written by the BACB are listed first. Immediately after each addition is a summary statement by the authors. The section on additions to the code is followed by the deletions or “moved” items, and finally, one clarification concludes the chapter.

We intend the term *supervisees* to include trainees, students and RBTs. When we say *clients*, this includes stakeholders of all sorts including parents, and when we refer to a *company*, we mean for this to include agencies, clinics, businesses, and organizations both for profit and non-profit.

1.07 Cultural Responsiveness and Diversity

Behavior analysts actively engage in professional development activities to acquire knowledge and skills related to cultural responsiveness and diversity. They evaluate their own biases and ability to address the needs of individuals with diverse needs/backgrounds (e.g., age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status). Behavior analysts also evaluate biases of their supervisees and trainees, as well as their supervisees' and trainees' ability to address the needs of individuals with diverse needs/backgrounds.

Summary: This new code requires that behavior analysts “acquire knowledge and skills related to cultural responsiveness and diversity” and that they “evaluate their own biases” as well as those of their supervisees and their ability to meet the needs of clients with “diverse needs/backgrounds.” [See Chapter 6 for details.]

1.10 Awareness of Personal Biases and Challenges

Behavior analysts maintain awareness that their personal biases or challenges (e.g., mental or physical health

conditions; legal, financial, marital/relationship challenges) may interfere with the effectiveness of their professional work. Behavior analysts take appropriate steps to resolve interference, ensure that their professional work is not compromised, and document all actions taken in this circumstance and the eventual outcomes.

Summary: This new code is related to 1.07 and additionally requires one to “maintain awareness” of their personal biases and certain health and other conditions that might affect their work. Behavior analysts are advised to “take appropriate steps” to resolve any issues so that their work is not compromised. [See Chapter 6.]

1.11 Multiple Relationships

Because multiple relationships may result in a conflict of interest that might harm one or more parties, behavior analysts avoid entering into or creating multiple relationships, including professional, personal, and familial relationships with clients and colleagues. Behavior analysts communicate the risks of multiple relationships to relevant individuals and continually monitor for the development of multiple relationships. If multiple relationships arise, behavior analysts take appropriate steps to resolve them. When immediately resolving a multiple relationship is not possible, behavior analysts develop appropriate safeguards to identify and avoid conflicts of interest in compliance with the Code and develop a plan to eventually resolve the multiple relationship. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

Summary: While mention of multiple relationships is not new, what is changed here is that a description of conflict of interest has been moved to the Glossary. This standard does say that a multiple relationship may cause a conflict of interest, and it goes on to say that if either of these occurs, the situation needs to be “resolved.” [See Chapter 6.]

1.12 Giving and Receiving Gifts

Because the exchange of gifts can invite conflicts of interest and multiple relationships, behavior analysts do not give gifts to or accept gifts from clients, stakeholders, supervisees, or trainees with a monetary value of more than \$10 US dollars (or the equivalent purchasing power in another currency). Behavior analysts make clients and stakeholders aware of this requirement at the onset of the professional relationship. A gift is acceptable if it functions as an infrequent expression of gratitude and does not result in financial benefit to the recipient. Instances of giving or accepting ongoing or cumulative gifts may rise to the level of a violation of this standard if the gifts become a regularly expected source of income or value to the recipient.

Summary: Gifts of “gratitude” up to \$10 are now allowed on an “infrequent” basis and ongoing or cumulative gifts may be a violation. We interpret “infrequent” to mean *annually*, such as at annual traditional gift giving holidays like Christmas, Hanukkah, or Chinese New Year. [See Chapter 6.]

1.15 Responding to Requests

Behavior analysts make appropriate efforts to respond to requests for information from and comply with deadlines of relevant individuals (e.g., clients, stakeholders, supervisees, trainees) and entities (e.g., BACB, licensure boards, funders). They also comply with practice requirements (e.g., attestations, criminal background checks) imposed by the BACB, employers, or governmental entities.

Summary: Behavior analysts respond to requests for information from clients when given deadlines and from employers, the BACB, or government agencies for practice requirements. The nature of information to be shared should be delineated in the service agreement. [See Chapter 6.]

2.02 Timeliness

Behavior analysts deliver services and carry out necessary service-related administrative responsibilities in a timely manner.

Summary: This code item is self-explanatory. The idea is that not only should clinical sessions and supervision be carried out in a timely manner, but administrative responsibilities such as filing reports and staying current with billing are also important. [See Chapter 7.]

2.17 Collecting and Using Data

Behavior analysts implement fee practices and share fee information in compliance with applicable laws and regulations. They do not misrepresent their fees. In situations where behavior analysts are not directly responsible for fees, they must communicate these requirements to the responsible party and take steps to resolve any inaccuracy or conflict. They document all actions taken in this circumstance and the eventual outcomes.

Summary: Behavior analysts use appropriate data collection procedures, and they graphically display, summarize, and use the data to make decisions about continuing, modifying, or terminating services. [See Chapter 7.]

3.02 Identifying Stakeholders

Behavior analysts identify stakeholders when providing services. When multiple stakeholders (e.g., parent or legally authorized representative, teacher, principal) are involved, the behavior analyst identifies their relative obligations to each stakeholder. They document and communicate those obligations to stakeholders at the outset of the professional relationship.

Summary: Behavior analysts identify stakeholders and their obligations to each; these obligations are documented when services begin. [See Chapter 8.]

3.15 Appropriately Discontinuing Services

Behavior analysts include the circumstances for discontinuing services in their service agreement. They consider discontinuing services when: (1) the client has met all behavior-change

goals, (2) the client is not benefiting from the service, (3) the behavior analyst and/or their supervisees or trainees are exposed to potentially harmful conditions that cannot be reasonably resolved, (4) the client and/or relevant stakeholder requests discontinuation, (5) the relevant stakeholders are not complying with the behavior-change intervention despite appropriate efforts to address barriers, or (6) services are no longer funded. Behavior analysts provide the client and/or relevant stakeholders with a written plan for discontinuing services, document acknowledgment of the plan, review the plan throughout the discharge process, and document all steps taken.

Summary: This section now includes a fifth reason for discontinuation, when “relevant stakeholders are not complying with the behavior-change intervention.” This is a significant addition to the ethics code. [See Chapter 8.] These contingencies should be spelled out at the onset of services in the written service agreement.

3.16 Appropriately Transitioning Services

Behavior analysts include in their service agreement the circumstances for transitioning the client to another behavior analyst within or outside of their organization. They make appropriate efforts to effectively manage transitions; provide a written plan that includes target dates, transition activities, and responsible parties; and review the plan throughout the transition. When relevant, they take appropriate steps to minimize disruptions to services during the transition by collaborating with relevant service providers.

Summary: This includes the circumstances for transitioning the client to another behavior analyst, including providing a written plan and transition activities; behavior analysts take steps to minimize disruptions during the transition. [See Chapter 8.] This appears to replace the previous statement about not *abandoning* clients.

4.05 Maintaining Supervision Documentation

Behavior analysts create, update, store, and dispose of documentation related to their supervisees or trainees by following all applicable requirements (e.g., BACB rules, licensure requirements, funder and organization policies), including those relating to confidentiality. They ensure that their documentation, and the documentation of their supervisees or trainees, is accurate and complete. They maintain documentation in a manner that allows for the effective transition of supervisory oversight if necessary. They retain their supervision documentation for at least seven years and as otherwise required by law and other relevant parties and instruct their supervisees or trainees to do the same.

Summary: Behavior analysts are responsible for all documentation related to their supervisees. Documentation must be accurate and complete, must allow for transition, and must be kept for seven years. Supervisees must do the same. [See Chapter 9.]

4.07 Incorporating and Addressing Diversity

During supervision and training, behavior analysts actively incorporate and address topics related to diversity (e.g., age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status).

Summary: It is necessary to include a wide variety of diversity topics in supervision and training. In the new code, many categories are listed, but the “topics” to be discussed are left up to supervisors. [See Chapter 9.]

4.11 Facilitating Continuity of Supervision

Behavior analysts minimize interruption or disruption of supervision and make appropriate and timely efforts to facilitate the continuation of supervision in the event of planned interruptions (e.g., temporary leave) or unplanned interruptions (e.g., illness, emergencies). When an interruption or disruption

occurs, they communicate to all relevant parties the steps being taken to facilitate continuity of supervision.

Summary: BCBAs minimize interruption of supervision and make appropriate efforts to facilitate the continuation of supervision in the event of interruptions. If interruptions occur, steps should be taken to facilitate the continuity of supervision, and these steps are shared with relevant parties. [See Chapter 9.]

4.12 Appropriately Terminating Supervision

When behavior analysts determine, for any reason, to terminate supervision or other services that include supervision, they work with all relevant parties to develop a plan for terminating supervision that minimizes negative impacts to the supervisee or trainee. They document all actions taken in this circumstance and the eventual outcomes.

Summary: When supervision is terminated, behavior analysts work with all parties on a plan that minimizes negative impacts to the supervisee; all of these steps need to be documented. [See Chapter 9.]

5.01 Protecting Clients, Stakeholders

Behavior analysts take appropriate steps to protect the rights of their clients, stakeholders, supervisees, and trainees in all public statements. Behavior analysts prioritize the rights of their clients in all public statements.

Summary: Behavior analysts protect the rights of their clients and supervisees in public statements; the rights of their clients are given priority in these statements. [See Chapter 10.]

5.06 Advertising Nonbehavioral Services

Behavior analysts do not advertise nonbehavioral services as behavioral services. If behavior analysts provide nonbehavioral services, those services must be clearly distinguished from their behavioral services and BACB certification with the following

disclaimer: “These interventions are not behavioral in nature and are not covered by my BACB certification.” This disclaimer is placed alongside the names and descriptions of all nonbehavioral interventions. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Summary: Behavior analysts do not advertise non-behavioral services as ABA. If they provide non-behavioral services, they must be clearly distinguished from ABA services and certification and must use a disclaimer to this effect. If your company does not make this distinction, you need to try and remediate the situation and document everything. [See Chapter 10.]

5.08 Using Testimonials From Former Clients for Advertising

When soliciting testimonials from former clients or stakeholders for use in advertisements designed to obtain new clients, behavior analysts consider the possibility that former clients may re-enter services. These testimonials must be identified as solicited or unsolicited, include an accurate statement of the relationship between the behavior analyst and the testimonial author, and comply with all applicable privacy and confidentiality laws. When soliciting testimonials from former clients or stakeholders, behavior analysts provide them with clear and thorough descriptions about where and how the testimonial will appear, make them aware of any risks associated with the disclosure of their private information, and inform them that they can rescind the testimonial at any time. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Summary: When asking former clients for statements to use in advertisements to attract new clients, it is necessary to consider that they may re-enter services at a later time and that a disclaimer

is required. It is also necessary to tell them how the testimonial will be used and let them know of the dangers associated with the disclosure of their private information. If your company violates this code, you need to try and remediate the situation and then document everything. [See Chapter 10.]

5.09 Using Testimonials for Non-advertising Purposes

Behavior analysts may use testimonials from former or current clients and stakeholders for nonadvertising purposes (e.g., fundraising, grant applications, dissemination of information about ABA) in accordance with applicable laws. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Summary: Behavior analysts may use testimonials from former or current clients for non-advertising purposes. If your company violates this code, you should do your best to remediate the situation, and document everything along the way. [See Chapter 10.]

5.10 Social Media Channels and Websites

Behavior analysts are knowledgeable about the risks to privacy and confidentiality associated with the use of social media channels and websites and they use their respective professional and personal accounts accordingly. They do not publish information and/or digital content of clients on their personal social media accounts and websites. When publishing information and/or digital content of clients on their professional social media accounts and websites, behavior analysts ensure that for each publication they (1) obtain informed consent before publishing, (2) include a disclaimer that informed consent was obtained and that the information should not be captured and reused without express permission, (3) publish on social media channels in a manner that reduces the potential for sharing, and (4) make appropriate efforts to prevent and correct misuse of the shared information, documenting

all actions taken and the eventual outcomes. Behavior analysts frequently monitor their social media accounts and websites to ensure the accuracy and appropriateness of shared information.

Summary: You need to be aware of the risks to privacy and confidentiality when using *social media* such as Facebook and Twitter. Do not publish client information on your *personal* social media; when putting client information on your *professional* social media, make sure that you have their *informed* consent. Check your social media accounts often, making sure of their accuracy. [See Chapter 10.]

5.11 Using Digital Content in Public Statements

Before publicly sharing information about clients using digital content, behavior analysts ensure confidentiality, obtain informed consent before sharing, and only use the content for the intended purpose and audience. They ensure that all shared media is accompanied by a disclaimer indicating that informed consent was obtained. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Summary: Before sharing client information using digital content, make sure to obtain *informed* consent and ensure that all shared media is has a disclaimer indicating informed consent was obtained. If your company violates this code, try to remediate the situation and document everything. [See Chapter 10.]



DELETIONS FROM THE 2016 PROFESSIONAL AND ETHICAL COMPLIANCE CODE FOR BEHAVIOR ANALYSTS

1.0 Responsible Conduct of Behavior Analysts. This has been moved the Introduction.

2.15 Interrupting or Discontinuing Services. Section (e) “Behavior analysts do not *abandon* clients and supervisees” has been deleted and replaced by Code 3.15. A new section (5) has been added that states if the stakeholders are not cooperating with the behavior program services may be discontinued.

3.01 Behavior-Analytic Assessment. “When behavior analysts are developing a behavior-reduction program, they must first conduct a functional assessment” has been dropped and replaced by Codes 2.13 and 2.14, which do not mention behavior reduction.

5.05 Communication of Supervision Conditions. This has been dropped; it is now considered a certification requirement.

6.0 Behavior Analysts’ Ethical Responsibility to the Profession of Behavior Analysis. This has been moved to the introduction.

6.01 Affirming Principles. This has been dropped as not enforceable. Code 6.01(a) said: “Above all other professional training, behavior analysts uphold and advance the values, ethics, and principles of the profession of behavior analysis.” This seems to be a major loss.

6.02 Disseminating Behavior Analysis. This has also been moved to the Introduction.

7.0 Behavior Analysts’ Ethical Responsibility to Colleagues. Another item moved to the Introduction.

7.01 Promoting an Ethical Culture. Also moved to the Introduction.

8.0 Public Statements. Also moved to the Introduction.

8.06 In-Person Solicitation. This has been deleted because it was confusing to people who did not know what *solicitation* meant.

9.0 Behavior Analysts and Research. Moved to the Introduction.

9.04 Using Confidential Information for Didactic or Instructional Purposes. This is now covered by 6.05 Confidentiality in Research.

9.05 Debriefing. This has been dropped, covered by other standards.

10.02 Timely Responding, Reporting, and Updating of Information Provided to the BACB. Now covered by Codes 1.15 and 1.16.

10.04 Examination Honesty and Irregularities. This has been removed, now covered by Code 1.01 Being Truthful and the certification requirements.

10.07 Discouraging Misrepresentation by Non-certified Individuals. This has been moved to the Introduction and covered by 1.01 Being Truthful.

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STILL NEEDS CLARIFICATION

New Code 1.14 Romantic and Sexual Relationships. This code item still does not clarify the question about *social* relationships with *former* clients. Our understanding is that in the absence of some restriction, once a client is a *former* client, it is acceptable for behavior analysts to have normal social relationships (friendship) with them. However, one cannot discuss their behavioral services or the behavior analyst's current clients.

SUMMARY

There were both significant and minor modifications to the 2022 Ethics Code for Behavior Analysts. In addition to a major reorganization and reduction of the code categories from ten to six, there were 20 additions² and 17 deletions or “moved” changes. In the new Code, for the first time, attention is drawn to cultural responsiveness and diversity. Behavior analysts are encouraged to be aware of their personal biases and to avoid entering into multiple relationships. Gifts of “gratitude” with a value up to \$10 are not permitted, and clients and stakeholders should be made aware of this limitation at the beginning of the professional relationship. Behavior analysts should be timely in their work and administrative duties, and they should respond in a timely fashion to requests for information. With regard to programming, the new code addresses and further delineates requirements for data collection, discontinuing and transitioning services, and supervision. Finally, testimonials,

advertising, and social media should be handled with care to protect the reputation of individual behavior analysts and our field.

NOTES

1. The BACB lists only nine.
2. The BACB lists only nine.

3

Everyday Ethical Challenges for Average Citizens and Behavior Analysts

As they travel down the bumpy, pothole-riddled road to adulthood, children absorb the rules of their families, communities, religions, and cultures. Over a surprisingly short time, parents, relatives, teachers, and the occasional coach or scoutmaster pave the way for future ethical conduct. These unsuspecting adults may not realize that every day they are playing a key role in clarifying unwritten rules, giving sage advice, serving as role models, and delivering the consequences that will determine future adult behavior.

From the time people are young children, we can safely say that there is no consistent set of rules of ethical conduct for all citizens. If a junior high school student cheats on a test, gets an “A,” and does not get caught, he may come to believe that cheating is okay regardless of what his parent or religious leader says. A pattern can develop where “Don’t get caught” becomes the rule rather than “Don’t cheat.” A child who routinely fails to do her after-school chores, makes excuses, and is forgiven may grow up to be an adult who learns to make up

When students decide to enter a graduate program in behavior analysis, they are entering a world where suddenly the rules are different.

elaborate stories about why she was late to work or why her quarterly report was inaccurate and turned in 3 days past the deadline. Over time, the cumulative result of these childhood-through-adulthood experiences produces individuals with loosely formed rules, referred to as *personal ethics*. Cheating on one's spouse, lying about why you can't visit your elderly parents, and illegally using someone else's internet connection are all examples related to personal ethics. These personal ethics are often referred to as moral principles. Personal ethics can be contrasted with *professional ethics*. When students decide to enter a graduate program in behavior analysis, they are entering a world where suddenly the rules are different—and explicit. To understand the possible conflicts that budding professional behavior analysts face, consider the following comparisons.

FAVORS

Friends and relatives often ask each other for favors. A favor might range from sharing a Netflix password, watching a friend's house while she is on vacation, to borrowing a lawn mower for a day or a truck for a weekend. The longer the friendship, the more intimate or complex the favors can become. "Could you tell me the name of a good counselor? My partner and I are having some personal problems," or "If my wife asks, could you tell her I went bowling with you on Thursday night?" If a citizen who is accustomed to asking for and returning favors then begins receiving in-home services from a behavior analyst three times a week, it would not be unexpected to also ask the behavior analyst for favors. "Could you run the therapy session for Jason in the car today? I have to take my older son to soccer practice." This example might sound made up, but this happened to one of the first author's master's students. Falling back on her own history of personal ethics—*people do favors for each other*—the student agreed to ride along and try to do language training in the back seat of the cluttered family minivan. Soon it became an everyday routine. Of course, the

language training was totally ineffective while weaving through five o'clock traffic in the distracting backseat microenvironment.

GOSSIP

If you pause briefly at the checkout counter of any grocery store, you will find yourself encountering gossip—and not just any gossip, but juicy gossip, complete with in-depth, full-color, Photoshop-enhanced snapshots.

Between magazines at the checkout counter and ubiquitous reality television shows, not only is gossip one of the recognized coins of the pop culture and commercial realm, but average citizens have come to accept it as normal. The general thinking seems to be that gossip is fun and entertaining, so what is the harm? This attitude is so pervasive that a person refusing to participate may be seen as peculiar.

The general thinking seems to be that gossip is fun and entertaining, so what is the harm?

In the professional setting, behavior analysts encounter daily temptations. Consultants frequently report that parents will ask about someone else's child. "How is Maggie doing? I heard she was ASD and having some problems," a parent of another child will ask, without realizing that we cannot talk about clients or their families or reveal confidential information. To the person who wants to inquire about a client, the request seems harmless. Rather than consider the information "confidential," the person wanting to get the scoop on someone else's child views the question as just a part of the daily harvesting of bite-sized nuggets of tasty information. Talking about other people like this is gossip.

"WHITE LIES"

To avoid conflict or censure, it has become common in our culture for people to cover up their mistakes, motives, or personal

shortcomings with “white lies.” Rather than tell a friend she doesn’t want to join her for coffee because she is gossipy, the sensitive person who wants to avoid conflict will offer up, “I’m so sorry, but I’ve got to go shopping for my niece’s birthday party.” And, of course, she will get caught. “Oh, that sounds like fun; can I join you?” Now the little-white-lying culprit will have to make additional, perhaps even more dramatic, excuses. “Well, actually, I have a lot of boxes in my car, since I have to drop off Sam’s invites at Easy Mail before I go shopping.” “Oh, I can help you with that,” replies the doesn’t-take-a-hint friend. “We can take my new SUV; it has lots of room for boxes, and I can help you unload them.” One theory says that because people so commonly use evasive tactics rather than telling the truth, they are always suspicious of other people’s explanations. At the other extreme, there are also plenty of people who can’t read your subtle signals and will try to help you overcome every lying excuse you can offer. Behavior analysts cannot traffic in any of this deception. Following Code 1.01, they should always be truthful. Rather than responding with, “Oh, he’s doing fine, Mr. Aslam,” the truthful answer might be, “We are looking closely at the data from Daleel’s behavior assessment, and we have some possible goals for him. Is there a time that we could sit and discuss those?”

APPRECIATION

Although there might be some variation from one part of the country to the other, it appears that there is a universal tendency for consumers, especially in-home clients, to give gifts to their favorite loveable, friendly, polite, kind, and gentle behavior analyst. After all, considering the behavior analyst is the lifesaver who has transformed

Exchanging gifts creates a dual-role relationship. With gift giving, the client and the behavior analyst now become friends, and the BCBA could be expected to return the favor at the right time.

the child and given the parents hope, it seems only reasonable to give this valued person some tangible form of appreciation. This might range from homemade cookies to leftover spaghetti (“It’s my secret family recipe”) or an invitation to go with the family to the beach for a weekend (“It will be fun; you can have fun with Damon and see what he is like when he sits and plays in the sand”). In the civilian world, people give gifts regularly, including cash for the doorman, hairdresser, and newspaper delivery person at Christmas or a bottle of wine for a friend who is having an open house. Wily clients have been known to do their own research to find out when their BCBA’s birthday is and surprise the consultant with a gift that is sure to please. New York Yankees ball caps, Atlanta Braves baseball tickets, books, expensive wine, baby gifts, and \$50 eGift cards are all reported presents given to behavior analysts by some of those who have attended our workshops (none of which is allowed under Code 1.12 since they exceed the \$10 limit). Although permissible, even exchanging small gifts creates a dual relationship. The client, stakeholder, and the behavior analyst now become friends, and the BCBA could be expected to return the favor at the right time.

ADVICE

Citizens ask for and give advice to one another freely. They will recommend a movie, restaurant, babysitter, and maybe even a doctor without blinking. Their advice is often based on personal experience, unspecified biases, and undisclosed relationships. “There is a new flooring outlet on West Broadway; I got a really good deal there.” Full disclosure might reveal that the brother-in-law of the person who made the recommendation owns the store. Just as they will ask a friend or neighbor to recommend a school or a realtor, many people will ask their behavior analyst what he or she thinks is the best way to handle a smart-aleck teen or a lazy spouse.

Prior to their professional training, behavior analysts were once citizens who most likely asked for and gave advice on a variety of

topics from what psychology course to take or where to apply for graduate school. However, once one becomes a Board Certified Behavior Analyst, the rules change considerably. As a professional, with a whole host of professional ethics to absorb and live by, the BCBA must be careful about how and what is said to others when it comes to giving advice.

A teacher has gotten to know the behavior analyst who visits her classroom twice a week to check on Janie's progress. In the middle of a conversation about Janie's data, the teacher says, "What do you think I should do with Nunzio? You've seen him act out. I think he's got a behavior disorder or a mental problem. What do you think?" Having one's behavior guided by a professional code of ethics is a whole new experience for many behavior analysts. While there may be a tendency to give a quick and clever retort or to toss off one-liners, the correct response is, "I'm sorry; I can't comment. He's not my client and discussing his behavior would be a violation of privacy and confidentiality in any event" (BACB Code 2.03).

RESPONSIBILITY

Passing the buck when something goes wrong, staging cover-ups to avoid embarrassment, and concealing evidence of incompetence have become national pastimes among our political leaders, movie stars, and sports personalities. The average person gets desensitized, and unethical behavior seeps into the general population to the point that admitting error and confessing to it have become a lost art. The parents who do not take responsibility for their child's school vandalism often deny their failure to supervise effectively. Some parents go so far as to provide an alibi or excuse for the child's behavior ("He couldn't help it. He has been so sick, and his father had a drinking problem."). Such actions teach children an interesting set of rules: if negative consequences are prevented, both parties are reinforced for tactics to avoid responsibility. Behavior analysts must be aware of the possibility that there

are indeed clients who have histories like this and take the necessary steps to ensure that agreements with parents are followed through. This is especially the case with parent-administered consequences in the home (e.g., good-behavior plans) where the child is earning points or privileges for reinforcers.

SUMMARY

When it comes to ethics, behavior analysts must make the difficult but important transition from “private citizen” to behavior analysis professional. If standards from one’s pre-ABA life are at cross-purposes with what is expected of a BCBA, they must be abandoned and replaced with our field’s rather strict Ethics Code for Behavior Analysts. Furthermore, almost daily, the BCBA will contact clients, trainees, and other professionals from other specialties who will engage in “unethical” behaviors, possibly tempting them or even mocking them for their strait-laced approach.

The potential conflict of a history of personal ethics versus newly learned professional ethics and our ethics code is a worthy challenge for our field and one that is worth engaging in for the benefits and integrity that it will bring to our profession.



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Unit

Two

**Understanding the
Ethics Code for
Behavior Analysts**



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4

Core Principles and Distinction of Client Versus Stakeholder

CORE PRINCIPLES

Four foundational principles, which all behavior analysts should strive to embody, serve as the framework for the Ethics Code for Behavior Analysts. Behavior analysts should use these principles to interpret and apply the standards in the code. The four core principles that should guide behavior analysts are to benefit others; treat others with compassion, dignity, and respect; behave with integrity; and ensure their own competence.

(1) ***Benefit Others.*** *Behavior analysts work to maximize benefits and do no harm by:*

- (a) *Protecting the welfare and rights of clients above all others.* The best way to maximize benefits to clients is to understand what their needs are and then to formulate an effective plan to meet these needs. Since we are behavior analysts, our focus would generally be on the behavioral needs of clients (i.e., what behaviors are standing in the way of optimizing the reinforcers available in the client's environment). This might include inappropriate social behaviors which are off-putting to others, such as dwelling on unusual or unpleasant topics. Other inappropriate social behaviors include frequent references to obscure factoids (e.g., "Did you know that

dinosaurs were cold blooded?”) or focusing conversations on themselves and not asking about others in the group. As behavior analysts, we also must be sensitive to the environment in which the clients reside. In some cases, to protect the welfare of the client, this may mean contacting a social welfare agency on their behalf or filing a report with Child Protective Services if the client is at risk of harm.

- (b) *Protecting the welfare and rights of other individuals with whom they interact in a professional capacity.* These “other individuals” might include employees, colleagues, students, supervisees, or trainees you encounter on a regular basis at work. We are often so focused on clients that we miss cues that other people around us are in pain. A graduate student trainee may appear unusually upset during supervision, for example. A soft inquiry such as, “Are you okay? Can I help you with anything?” might reveal that an ex-boyfriend is now stalking her. With your experience and connections, you may be able to direct her to an officer at the sheriff’s department that can provide some assistance. Another less serious example might be a new BCBA fresh out of graduate school who needs mentoring on how to negotiate the bureaucracy for getting permission to go to a conference or to be reimbursed for travel.
- (c) *Focusing on the short- and long-term effects of their professional activities.* There may be a tendency in our field to focus on short-term changes in behavior. While short-term changes are beneficial, if we focus solely on short-term changes, we may miss the big picture of important long-term outcomes for our clients. By only paying attention to teaching an elderly resident to participate in social activities that are offered in the dining room, we are likely to miss the meaningful long-term goal of teaching her to use an iPad to connect with her grandchildren via Zoom. The long-term goal might result in grandchildren visiting more often and a quality of life improvement.

- (d) *Actively identifying and addressing the potential negative impacts of their own physical and mental health on their professional activities.* For some behavior analysts, the stress of managing a large caseload or running the business as both BCBA and CEO are just too much. These overworked and overstressed professionals might seek relief in the form of alcohol or drugs or both. Addictions usually begin with minor habit changes undetectable to them or to their colleagues. Over time, addictions can build to the point where there is actual potential harm to others, including clients. Mental health issues such as mood, depressive, or eating disorders have a similar arc, where they creep up over time and then lead to an inability to function. For the person who is struggling with an addiction, contacting a professional who can help may be too difficult. Help from colleagues is often necessary for the person to seek help.
- (e) *Actively identifying potential and actual conflicts of interest and working to resolve them in a manner that avoids or minimizes harm.*

A conflict of interest in our field could involve a behavior analyst pressuring a client to begin services with a provider who is a relative. Another example would be the behavior analyst getting into a situation where he or she has a concealed commercial interest. Recent examples of such a conflict involve an agency that decided to offer diagnostic assessments for children “for free.” Then, when a diagnosis of autism spectrum disorder (ASD) was made, there was an immediate offer for the family to receive services at the same agency. Another conflict of interest involved an ABA faculty member who opened a private off-campus clinic. The faculty member then persuaded their university to send the students to work at the clinic for their supervision hours. The students were charged \$85 per hour for supervision. The students complained that they had no choice of where to earn their hours and pointed

out the new BMW convertible the “professor” was parking in a designated spot in front of the clinic.

- (f) *Actively identifying and addressing factors (e.g., personal, financial, institutional, political, religious, cultural) that might lead to conflicts of interest, misuse of their position, or negative impacts on their professional activities.*

The professor in the above example justified his new business model as appropriate since the university did not pay well, and the president did not seem to appreciate the work involved in creating an ABA master’s program. He felt totally justified in reaping some reward for his efforts, especially when he learned that the starting salaries of graduates of “his” program were 20% higher than his 9-month salary. The professor was incapable of identifying any of his actions as improper.

- (g) *Effectively and respectfully collaborating with others in the best interest of those with whom they work and always placing clients’ interests first.*

There is increasing interest in our field in reaching out to adjoining colleagues who may have treatments to offer our clients that are necessary for their success. For example, speech and language pathologists (SLPs) may have a great deal to offer in terms of treating articulation and phonological disorders. These problems are beyond the scope of competence of a behavior analyst who takes a strict operant verbal behavior approach. SLPs use evidence-based procedures, which are compatible with our need to approach problems from a scientific point of view. We need to remain skeptical of professionals who have fundamentally different approaches of a pseudoscientific nature.

(2) *Treat Others with Compassion, Dignity, and Respect.*

Behavior analysts behave toward others with compassion, dignity, and respect by:

- (a) *Treating others equitably, regardless of factors such as age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion,*

sexual orientation, socioeconomic status, or any other basis proscribed by law.

“Equitable” means treating everyone fairly and impartially regardless of age, disability, ethnicity, and so forth. This would mean that regardless of their gender expression or immigration status, clients receive their fair share of therapist time and expertise. The marital or relationship status of a client should not result in lesser quality services or being assigned to therapists with less expertise. This burden of fairness and equitable services falls primarily on the clinical director who assigns behavioral staff to incoming clients. However, BCAs need to be sensitive to the way in which assignments are made so they can provide counter-control if they feel there is any inequity. Examples of inequity would be if Black or Brown clients were routinely assigned to inexperienced BCAs, or gay families received fewer hours per week for their child. Meeting the high standard of this ethical principle requires constant vigilance on the part of all behavioral staff.

- (b) *Respecting others’ privacy and confidentiality.* Violations of client privacy regarding medical records and personal health information is now covered by federal law via the Health Insurance Portability and Accountability Act of 1996 (HIPAA). As behavior analysts, we are required to follow the law and educate all behavioral staff about the requirements as well as the consequences for violating this law. In addition, stakeholders, behavioral staff, and other employees have a right to privacy and confidentiality of their personal information. A new RBT who confided to the HR director that they were transgender was appalled when this was mentioned to their BCBA supervisor who then brought it up at a staff meeting. “So, Taylor, I guess you would probably want to be assigned to our gay families, is that right?”
- (c) *Respecting and actively promoting clients’ self-determination to the best of their abilities, particularly when providing services to vulnerable populations.* “Self-determination” is another

term for autonomy. Self-determination means that to the extent possible, vulnerable clients (who are otherwise largely defenseless) are still given every opportunity to acquire skills that allow them to manipulate their environment and deliver their own reinforcers. Mobility devices and language-assistive equipment are useful tools along with teaching clients to operate this technology so they can travel where they wish and communicate their needs. This core principle should always guide the development of goals and objectives for our clients. One good example of this is teaching older clients how to assemble products that can be sold commercially. This would provide a source of income that clients can spend as they wish.

- (d) *Acknowledging that personal choice in service delivery is important by providing clients and stakeholders with needed information to make informed choices about services.* Up until recently, clients had little choice in the mode of service delivery. Once clients were signed up for services, they were given a schedule and were expected to drop off their child at the appointed time. However, there are currently other options available for how clients can receive services; some of these include in-home ABA and remote or tele-health service delivery systems. Technology may soon present additional options via artificial intelligence, which could deliver a virtual therapist right to a client on demand. This would be similar to the way in which Alexa can instantly deliver requested news, music, mood lighting, and weather forecasts. Clients and stakeholders should be able to choose to receive information and documentation about behavior programming status and progress verbally, through instant messaging, email, or by other means.

- (3) ***Behave With Integrity.*** *Behavior analysts fulfill responsibilities to their scientific and professional communities, to society in general, and to the communities they serve by:*

- (a) *Behaving in an honest and trustworthy manner.* A good test of an honest and trustworthy person is that you can reveal a secret to them and know that it will never pass their lips. Another test: Would you trust this person to watch after your children or take care of your elderly parents? This is the standard that we hold for our behavior analysts. We expect them to be honest and trustworthy in assessing their clients' needs and abilities, in taking reliable data, in preparing accurate reports, and ultimately in discontinuing services in an honorable fashion when goals are met.
- (b) *Not misrepresenting themselves, misrepresenting their work or others' work, or engaging in fraud.* To misrepresent is to make a false claim about one's background, training, or qualifications. Another form of misrepresentation involves taking credit for someone else's work or padding an hour's sheet to increase one's income without doing any additional work. This is fraudulent billing. RBTs will often complain that their BCBA supervisor has them writing behavior programs for which the BCBA takes credit. RBTs have also reported that they have been assigned to walk the BCBA's dog or trek to the deli and bring them lunch (both billed as RBT time). These examples of misrepresentation show that the BCBA has no integrity and probably is not to be trusted.
- (c) *Following through on obligations.* Almost the entire daily calendar of a BCBA consists of obligations from meeting with potential clients, assessing and training RBTs, preparing progress and discharge reports, and more—much more. An obligation is an agreement. In some cases, it is a moral requirement that must be fulfilled. In therapy settings, obligations are usually written into a contract that a behavior analyst signs and agrees to perform certain activities. These contracts are usually legally binding. In agreeing to watch out for their clients' best interest, a BCBA has an obligation to provide seamless service delivery, including not suddenly leaving the job with no notice.

- (d) *Holding themselves accountable for their work and the work of their supervisees and trainees, and correcting errors in a timely manner.* A person with integrity takes responsibility for their work and accepts the consequences, both positive and negative, for doing so. In the case of BCBA supervisors, they take full responsibility for the professional activities of their supervisees. This includes the way that supervisees or trainees treat clients, keep track of their hours, maintain their data, conduct themselves with caregivers and stakeholders, and communicate publicly on websites. This is a huge responsibility. If errors come out of any of these activities, they must be corrected quickly.
- (e) *Being knowledgeable about and upholding BACB and other regulatory requirements.* BCBAs must be familiar with all Board regulations involving certification, continuing education, recertification, and more. They must also be familiar with any regulations pertaining to service delivery related to Medicaid, Tricare, or insurance companies and the billing codes that are relevant. Ignorance is no excuse when it comes to regulations.
- (f) *Actively working to create professional environments that uphold the core principles and standards of the code.* All behavior analysts should model professional ethical conduct in the workplace and prompt and reinforce others for doing the same. Creating an ethical environment works to promote high standards and best practices so that everyone can be trusted and there are no “ethical slackers.”
- (g) *Respectfully educating others about the ethics requirements of behavior analysts and the mechanisms for addressing professional misconduct.* The “others” here would include client families, stakeholders, and teachers as well as non-behavioral colleagues. Helping others understand our strict ethics standards and the reasoning behind them can increase the acceptance of behavior analysis as a profession.

(4) **Ensure Their Competence.** Behavior analysts ensure their competence by:

- (a) *Remaining within the profession's scope of practice.* A “competent” professional is one who can perform complex behavioral tasks consistently and efficiently with positive outcomes. Stepping beyond the boundaries of our behavior-analysis scope of practice (i.e., beyond the Task List) is a certain prescription for less than competent professional performance. Performing outside of the boundaries of competence puts clients at risk of harm.
- (b) *Remaining current and increasing their knowledge of best practices and advances in ABA and participating in professional development activities.* The best way to remain current is to read each issue of the Journal of Applied Behavior Analysis (*JABA*) as soon as it arrives in the mail. In *JABA*, you will find cutting-edge methodology produced by some of the finest researchers in our field. New areas of application are constantly emerging and important findings are being discovered almost on a monthly basis. In addition, attending state and national conferences are a must for remaining in touch with new developments and discovering experts in areas that you may wish to explore to expand your professional competence.
- (c) *Remaining knowledgeable and current about interventions (including pseudoscience) that may exist in their practice areas and pose a risk of harm to clients.* Many professionals stopped learning when they finished their graduate degree. When professionals stop learning and fail to stay current, it leads to stagnation and a loss of creativity and imagination. This does not bode well for what lies ahead. Staying on top of the multitude of pseudoscientific, pop psychology, and mystical treatments that constantly arise can seem overwhelming, but it is necessary if you want to be able to

answer questions from consumers who have limited knowledge about treatments.

- (d) *Being aware of, working within, and continually evaluating the boundaries of their competence.* The best ways to remain aware of your areas of competence is to seek feedback from peers in your professional practice on a regular basis and to interact with experts in your area of competence via conference presentations, workshops, interactive videos, and webinars. Visiting clinics that specialize in your area of competence and observing and interacting with the professionals at the clinics is a great way to build your proficiency and expand your knowledge.
- (e) *Working to continually increase their knowledge and skills related to cultural responsiveness and service delivery to diverse groups.* Cultural responsiveness is “the ability to learn from and relate respectfully with people of your own culture as well as those from other cultures.”¹ This may mean making “cultural adaptations” of our evidence-based treatments for diverse populations, including understanding how norms are established, goals are set, contingencies are understood, and effective reinforcers are determined and delivered in each culture that the behavior analyst encounters. How the client family is approached may vary from culture to culture, and the behavior analyst needs to be prepared to adapt to their preferences starting with the first meeting.²

DISTINCTION OF CLIENT VERSUS STAKEHOLDER³

In the 2022 Ethics Code for Behavior Analysts, two terms occur with great frequency. These terms involve distinctions that are important to acknowledge: client and “stakeholder.” In the general culture, the latter term is a metaphor for someone who has a *stake* in a game of chance: they have money on the line and an interest in the outcome of each hand that is played. Heretofore, the focus of most behavior analysts has been directly on the client’s needs

and the interests of the proximal caregiver who would be involved in treatment decisions and/or actual delivery of the treatment itself. With this shift to an emphasis on a wider circle of individuals who may have some “stake” in the behavior-change enterprise, the importance of involving the other players comes into focus. A grandparent or sibling might be a stakeholder or possibly a neighbor who babysits for the family when the children arrive home from school. Some of the stakeholders may have a more peripheral interest, such as a funding agency that is paying for services. Here are the definitions of client and stakeholder as they relate to behavior analysis:

“Client: The direct recipient of the behavior analyst’s services.

At various times during service provision, one or more stakeholders may simultaneously meet the definition of client (e.g., the point at which they receive direct training or consultation). In some contexts, the client might be a group of individuals (e.g., with organizational behavior management services). ”

“Stakeholder: An individual, other than the client, who is impacted by and invested in the behavior analyst’s services (e.g., parent, caregiver, relative, legally authorized representative, collaborator, employer, agency or institutional representative, licensure board, funder, third-party contractor for services). ”

NOTES

1. www.latinoliteracy.com/mean-culturally-responsive/
2. <https://blog.difflearn.com/2019/11/14/cultural-competency-in-aba-practice/>
3. www.bacb.com/wp-content/uploads/2020/11/Ethics-Code-for-Behavior-Analysts-2102010.pdf, p. 3.



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5

Ethical Decision-Making

Simple Ethical Questions Versus Complex Ethical Dilemmas

Professional behavior analysts must be proficient on all the many skills on the task lists related to the profession. Ethics is an area for which Board Certified Behavior Analysts (BCBAs), Board Certified Assistant Behavior Analysts (BCaBAs), and Registered Behavior Technicians (RBTs) have ongoing questions long after their initial certification training. The assortment of the ethics problems in daily practice spans a wide range of situations. Just when you think you've heard it all, a behavior analyst is confronted with a completely new variation of related to an ethical issue. On a regular basis, supervisors, advisors, faculty members, and Ethics Hotline experts address ethics problems that range from simple to complex ethical dilemmas.

SIMPLE ETHICAL QUESTIONS

Some ethical situations encountered by behavior analysts involve relatively simple ethical questions. For many of these questions, a straightforward yes or no answer is sufficient.

- “Is it ethical for a BCBA to take data on my child at school without my permission?”

- “Should my supervisor get credit for observing me when she never looked up once from her iPad during my discrete trial training session?”
- “The BCBA supervisor for my in-home consultation immediately put a punishment procedure in place. He never even considered other less restrictive options. Is this acceptable?”
- “My cousin is an RBT. She knows Aaron well and they really get along. Can she be assigned to Aaron’s case?”
- “My daughter, Sophia, has a diagnosed eating disorder. The behavior therapist is working on this problem, but it is clear she does not know what she is doing. Sophia is gagging and coughing during the whole session. Should the behavior analyst be working on this?”
- “I just saw a photo on Facebook of my RBT. In the photo, she and my son were both grinning ear to ear. I never gave permission for this. Is a program allowed to post photos of clients?”
- “I just noticed last month’s invoice for my child’s behavioral services. I was billed for 3 days of ABA treatment when we were not even in town! I then went and checked invoices from other months, and this is not the first time this has happened. Should I report this?”

It does not take a complex algorithm to answer questions such as these. Our code is clear regarding the answers to these simple questions, and it is just a matter of bringing the specific standard to the attention of someone in charge. Usually, no one needs to be reported to the Board and most often, a solution only requires one meeting with the right person. Figure 5.1 illustrates the decision-making flowchart for these types of simple, straightforward ethics questions.

Some tips for conducting the meeting: Bring a notepad so you can take notes. Be calm, introduce yourself and hand over your business card. Have all your documentation in hand and don’t just complain, but suggest a solution in a straightforward

FLOWCHART FOR SIMPLE ETHICS QUESTIONS

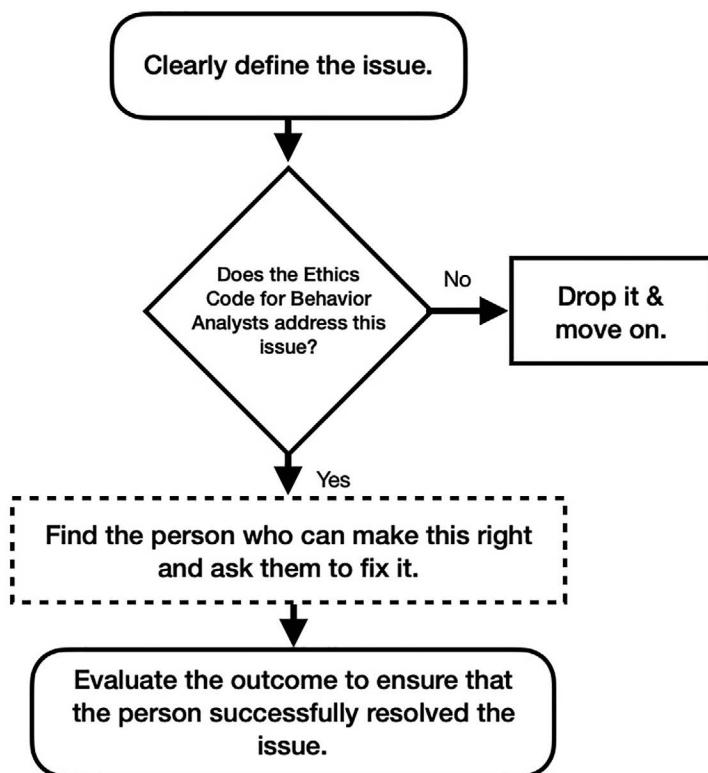


Figure 5.1 Flowchart for resolving simple ethics questions.

manner. Then, making good eye contact, ask for a response: “What do you think? Can we do this . . . ?” Verbally summarize the meeting at the end; if the person agrees with your solution, ask for a date of completion. Before you leave, ask for a business card. When you get home, send the person an email with bullet points that were covered and a summary statement at the end of what you believe was accomplished (this is the *paper trail* that you are creating around this problem and the solution). Include the expected date of completion in the email. Thank the person for listening and helping you solve this problem. If the problem

is in fact solved by the date agreed upon, find out who the person's boss/supervisor is and contact them and let them know how much you appreciate the help of this person, indicate that they are lucky to have such a smart, competent, honest, ethical person on board, and so forth.

COMPLEX ETHICAL DILEMMAS

Some of the problems that confront clients, stakeholders, and others are far more complex. They may evolve over time from a minor irritation into a full-blown war of words. There might be a victim and an oppressor, and the client or supervisee wants a hefty consequence for the alleged instigator. Here is an example of a complex case:¹

A BCBA started providing services, without an agreement, for our special-needs daughter. The services were arranged by my husband and the BCBA. Our daughter is on the autism spectrum, and she has received ABA therapy through a legitimate agency for three years. Soon after the BCBA reached out to my husband to advise him regarding our daughter's individualized education plan (IEP) and other therapists' evaluations, my husband and the BCBA began having an affair. My husband and I are now getting divorced. The BCBA is still very involved in reviewing my daughter's evaluations from her special needs providers. The BCBA is encouraging my soon-to-be-ex-husband to oppose me (I am this child's mother!) and build a case to reduce my daughter's special needs therapies. It's almost as if she used her background with special needs children to seduce him. I don't know if this is a breach of the code of ethics or not.

The 11-step flowchart for complex ethical dilemmas shown in Figure 5.2 can be used for complex ethics questions such as this one.

By going through the steps of the flowchart, you can see information you would need and the decisions you would have to

11 STEPS FOR ETHICAL DECISION-MAKING (Complex Dilemma)

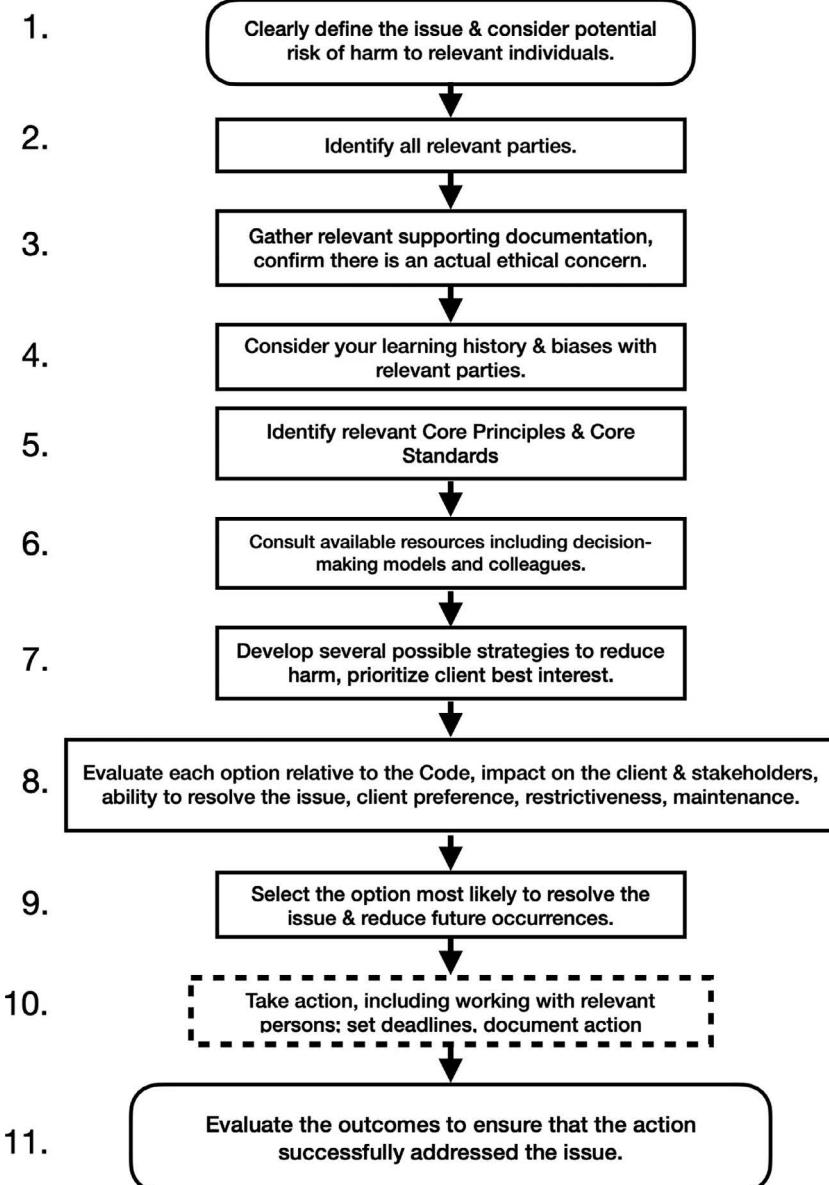


Figure 5.2 Flowchart for ethical decision-making after BACB Ethics Code for Behavior Analysts pp. 5–6.

make if you were the mother in the case above. The mother has (1) clearly defined the issue (2) and identified the relevant parties. She has (3) firsthand knowledge of the affair and has no doubt (4) come to grips with her biases against the BCBA. So, starting with (5), what are the Core Principles and relevant Code Standards that apply here?

For the remainder of the questions, describe the best way to proceed.

THE SEVEN-STEP MODEL FOR ANALYZING COMPLEX CASES

Complex ethics cases require special consideration by behavior analysts. When complex cases arise, a close and thorough analysis is needed so that clients are not harmed and the behavior analyst does not suffer in the process. The real-life case here, submitted by a BCaBA, represents a situation that falls into the moderately complex category.

"I'm a BCaBA behavior therapist with 1 1/2 years' experience. I work at a small private, for-profit school that provides educational services to children with developmental disabilities. This situation involves several of the children ages 5 to 7 years old. I am assigned to do 1:1 therapy with children on the autism spectrum. One day, an additional child was brought to me since one of the other therapists was out sick. I was not given a curriculum sheet or any instructions about the child. I was told, 'This is just for today, make it work,' which I did. But as a result, my primary student and I got nothing accomplished since it was all I could do to manage the second child. The next day I was told the same thing, 'Make it work, this is just temporary.' Again, I got very little accomplished. This went on for the rest of the week. Essentially, I was just babysitting these two children. The parents of the primary child stopped me on Friday when they picked him up and reported that their child seemed restless and less verbal all week. They wanted to know

if I knew of any problems. I lied and said that sometimes it goes like that, ups and downs, good weeks, and bad weeks; they accepted my word and left. I felt horrible after this. I then went to the owner (who is a BCBA) and said I didn't feel comfortable with this situation. I probably shouldn't have asked, but I said, 'Are we still billing as though the children are getting one-to-one?' The owner said, 'That's a business matter, just stick to the therapy, it will work out okay.' 'What about the parents? Do they know?' I asked. The owner just stared at me and then walked away. I have the strong suspicion that the school is billing for one-on-one therapy for each child and that they have not told the parents or the insurance company of the new arrangement. What should I do? Go to the business manager? Tell the parents? Two very good BCBA's that I liked and trusted left this school 6 months earlier. One was the clinical director, and a very ethical person. I asked the owner why he left and was told, 'It's just a professional difference of opinion. Now I think I know why they left.'"

It seems that cases like this are cropping up across the country as agencies scramble with long waiting lists, too few qualified staff, and too much revenue at stake. Seemingly invisible decisions, such as doubling up on clients but billing for one-on-one therapy, reap great benefits and go unnoticed by nearly everyone except for the sensitive and ethical behavior analyst.

1. Is the Incident Covered by the Ethics Code?

Before you dive too deeply into the solution to a possible ethics problem, it is best to begin by making sure the problem is covered by the code. This can be done by going to www.BACB.com and clicking on "Ethics" on the top navigation bar. The Ethics Code for Behavior Analysts has a convenient one-page table of contents where you can skim the titles and look for key words related to your dilemma. You can also scan the index at the back of this book.

For this case, two Core Principles and several standards of the code are relevant. Being Truthful (1.01) on the part of the BCBA/owner is a good place to start; additionally, Responsibility in Practice Codes 2.01, 2.06, 2.07, 2.08, and 2.09 may have been violated. Having established that there are serious violations of the code involved and that you have a basis for moving forward, the next step is to understand the people with whom you will be dealing (i.e., the stakeholders).

Do you have the strength to take on the organization, the skill to deal with the other individuals involved, and the motivation to do the right thing?

2. *The Stakeholders: (A) the BCBA (or BCaBA or RBT); (B) the Client; (C) the Supervisor; (D) the Agency Head; and (E) Other Organizations*

Chief among the stakeholders is you, the person who will be organizing this effort to decide and take steps to correct a situation that has been deemed unethical based on information obtained in Step 1. It is appropriate to do a quick check to see if you are ready for this uncomfortable situation. Do you have the strength to take on the organization, the skill to deal with the other individuals involved, and the motivation to do the right thing? If you have dealt successfully with several moderately difficult ethics cases, then you may be ready to handle this case. If you aren't ready, if they are not involved in the current circumstance, you can seek the counsel of trusted colleagues or your supervisor.

The next person to consider is the client. Making decisions regarding clients requires careful thinking on the part of the behavior analyst. The client is often a vulnerable individual who needs protection and would benefit the most from the correction of the situation (see Glossary for the broader definition of *client*).

In this example, the most immediate client was the original child who was on the autism spectrum. There was at least one more client in this case, and that was the second child. The second child was only receiving “babysitting” services rather than language and social skills training, which the school contracted to provide. Another stakeholder in this case was the family of the original child. The family believed the child was receiving one-on-one language and social skills training. In a broader sense, the insurance company that was largely paying for this therapeutic treatment could be considered a stakeholder as well. Finally, from the perspective of the owner, the private school that hired the BCaBA was also technically considered a client in this scenario. While most of the stakeholders (including the behavior analyst, the first child, the second child, the parents, and the insurance company) were aligned in their interests, the owner had conflicting interests, such as keeping costs down and maintaining or increasing margins.

The BCaBA did not refer to a supervisor in the case, so we assume that this person was either absent (e.g., the BCBA/owner did the supervising) or unresponsive. In most cases, behavior analysts will take cases such as this directly to their supervisors. Supervisors in behavioral settings should have the welfare of clients in mind and should be allies in solving the ethical problem.

The BCBA/owner in this case was a *stakeholder* in the sense that the behavior analyst had to deal with her to solve the ethics problem. In this case, it sounded as though the owner had not planned for emergencies or unforeseen circumstances, such as a therapist being out due to illness. Further, the owner was not prepared to be upstanding on the billing with either the parents or the insurance company. She was a cunning adversary whose behavior might be difficult to change. Unfortunately, there are behavior analysis/business owners in other companies who engage in similar practices.

The final stakeholder in this scenario was the insurance company. The insurance company was an outside agency that was

unknowingly taking a hit regarding billing. In cases such as this one, insurance companies should be interested in rectifying the situation, although such reports may be seen as “small potatoes” to them. Nonetheless, it would be unethical not to inform them of the breach of contract that exists with the families and the private school.

A contingency plan is a thoughtful and strategic analysis of what to do in the event that your first action was unsuccessful.

3. Contingency Plans for Ethics: Plan A, Plan B, Plan C

The concept behind this step is the possibility that your first attempt to deal with an ethics dilemma in your job may not prove successful. In this case, for example, the BCaBA spoke first directly with the owner and did not really have a plan in mind. She probably thought the owner would say, “Oh, my, has it been that long? I need to get right on that, thank you for bringing this to my attention. I’m going to talk to the parents right now.” Of course, that didn’t happen, and for that very reason, in complex situations such as this, we recommend having a contingency plan in place from the beginning. *A contingency plan* is a thoughtful and strategic analysis of what to do in the event that your first action was unsuccessful. In the case above, when Plan A (talking to the owner) failed, the BCaBA did not have a backup strategy.

A possible Plan B would have been to explain the situation directly to the parents, who had already expressed concern about their child’s treatment. An option such as this is always risky to the behavior analyst since it goes directly against what she was told, which was essentially to babysit two clients and keep quiet. If the BCaBA talked to the parents, she could have been fired immediately for insubordination. This is not uncommon when dealing with ethics; doing the right thing can have negative consequences for the ethics-minded person. It is possible if the BCaBA had

told the parents what was happening, they would have expressed support for the behavior analyst and advocated for her with the owner. However, this is a big unknown. Sometimes parents have a special relationship with the owner and are unwilling to stand up for the right thing. In some situations, there are other contingencies, such as both parents have jobs and don't want an interruption in services because they would then have no childcare in place. In other instances, the parents' desire to do whatever it takes to support their child takes precedence. Whatever parents decide, when an ethical problem is called to their attention, they need to make some ethical decisions themselves. For example, they need to weigh being seen as troublesome parents versus leaving the school and enrolling their child somewhere else.

Obviously, for every ethics dilemma, the contingency plans will be different. The contingency plans should reflect the unique circumstances of the case. There should be a method to proceed from the least to most intrusive interventions. Another factor that needs to be considered is the problem-solving repertoire of the behavior analyst and the "clout" that the person has to make things happen in the organization.

To have a robust, responsible, and respectable profession, we must be aware of the conduct of other behavior analysts and be prepared to stand up for our clients' right to effective treatment.

4. The Skills and Clout

Most behavior analysts entered this profession because of a strong desire to help people. For the most part, they were unaware that taking on responsibility for monitoring and maintaining ethical standards was a part of the package. But it is clear from the code this expectation is real. To have a robust, responsible, and respectable profession, we must be aware of the conduct of other behavior

analysts and be prepared to stand up for our clients' right to effective treatment (2.01) and all other rights.

The skills referred to in this step are described in *25 Essential Skills for the Successful Behavior Analyst: From grad school to the C-suite* (Bailey & Burch, 2022). The skills that are most relevant for this step include:

- Assertiveness
- Interpersonal communications
- Leadership
- Client advocate
- Critical thinking
- “Think function”
- Using shaping effectively
- Handling difficult people
- Performance management.

Other skills that are not included but are very important in dealing with ethics cases are a basic understanding of (1) the law and (2) how business and government agencies function.

The “clout” factor in Step 4 refers to the influence of position, power, and authority to make things happen. In this case, the BCaBA probably had little *clout* because of her short tenure with the school and her status as an assistant behavior analyst. If she were connected somehow (e.g., one of her parents or a relative worked at the Department of Insurance Regulation or for a major insurance carrier), she would have some *borrowed clout* that could make a difference for an ethics case like this one.

The “clout” factor refers to the influence of position, power, and authority to make things happen.

Plan A Skills and Clout. Recall that the “plan” was to persuade the owner to inform parents about the situation, tell the truth about the status of their child’s educational plan, beg for their understanding, and remedy the situation quickly. The BCaBA in this case operated on the spur of the moment and was not prepared

to be persuasive. Some recommended skills for her Plan A include assertiveness, good interpersonal communications, leadership, and handling difficult people. Showing leadership, presenting a strong case, and being prepared for pushback from the owner might have made a difference.

Plan B Skills and Clout. Plan B is to consider going directly to the parents. This would also involve good interpersonal communications skills, showing leadership, and assertiveness. In addition, in a case such as the sample case, the behavior analyst should consider “Think Function” when addressing the parents (i.e., understanding where they are coming from in terms of the treatment of their child). Despite the breakdown in services, the parents may not have other options, may not want to offend the owner, or may come on too strong when approaching the owner.

Plan C Skills and Clout. If the parents are not interested in dealing with the owner when told the child is not receiving services and there may have been inappropriate billing, the behavior analyst will have to operate like an advocate and decide if pushing the matter further is a good course of action. One option is for the behavior analyst to simply resign from the job and move on. Currently, there are many jobs for behavior analysts, and there is surely one that is more pro-ethics in its dealing with clients and their families (see Chapter 14 for what to look for when selecting a job). Another option is to report the fraud by the owner to the insurance company or the state insurance commissioner. This ups the ante quite a bit, and it will take some digging to understand how to do this, who to talk to, and what types of documentation are required. To proceed with this option, the behavior analyst may need to brush up on the law and do some research on insurance fraud.

5. The Risk: (A) to the Client, (B) to Stakeholders, (C) to the Behavior Analyst

The risk to the client, which includes the ASD child and his family, under Plan B is that the school may terminate them as “troublemakers.” Depending on where they live, it might be difficult to

find another placement. Or, if they do find one, the location might be inconvenient.

In the example (which was a real case submitted by a BCABA), the behavior analyst was not fired for bringing up the issue to the owner. However, if she pushed Plan B, she could have found herself without a job for being insubordinate. This behavior analyst was a clear risk to the owner and the school, since she could have spread the word that the owner was engaging in unethical conduct.

6. The Implementation

Plan A (which was to talk to the owner) in this case basically failed. The next step would be for the behavior analyst to think carefully about Plan B (which was going directly to the parents). In your own job, if you find yourself in a situation where you must decide if you should contact the parents of a client, there are some things to think about, including the time and place to meet with the parents and how to best present your case. It might not be best, for obvious reasons, to meet the parents in the lobby where they pick up their child each afternoon. You would not want to risk a dramatic scene if the owner saw you. Further, if the parents were in a rush at that time of day, you would not be able to deliver your message effectively. If

you decide that contacting the child's parents is the way you need to proceed, ask the parents if there is a good time to meet for a few minutes. The parents will likely want to know what this is about, and the best advice is to simply say something like, "I have something to discuss that is fairly important to me." The idea is to not tip

In any contentious arena, there is always the possibility that someone will decide to take legal action. If you are the target and you find yourself being sued, you should be prepared with detailed notes on what you did and when you did it.

your hand until you get to the meeting. Meeting away from the school in a quiet place is the best idea. Without being emotional, start with a statement of concern about the child and the lack of progress. Then describe clearly what transpired and the owner's response, and simply wait for the parents' response. After that, just be supportive. Request the parents to leave your name out of this if they decide to act.

7. The Evaluation

As with any task that one does only occasionally, it is a good idea to keep track of what was done and how the incident turned out. This is especially important in the case of our efforts to monitor and maintain the ethical standards of our field. In any contentious arena, there is always the possibility that someone will decide to take legal action. If you are the target and you find yourself being sued, you should be prepared with detailed notes on what you did and when you did it. Having contemporaneous records of meetings, phone calls, memos, and email will show an attorney, judge, or jury that you were operating in good faith to protect others from harm and are prepared to defend your actions.

Keeping detailed notes on each ethics case you confront will also help you determine what to do the next time an issue comes up. It is neither safe nor smart to count on your memory for reporting what happened a year ago when you were asked to falsify a record or when you, as a mandated reporter, had to report a childcare worker for abuse or neglect.

As a behavior analyst, you can expect to encounter somewhat complex ethical issues at least a few times per year.

SUMMARY

As a behavior analyst, you can expect to encounter somewhat complex ethical issues at least a few times per year. Having a

systematic process to follow guarantees that you operate systematically and effectively on behalf of your client, yourself, and the profession. Following these seven steps will result in a deeper understanding of the factors that go into the human behavior of unethical conduct and will ensure that you always protect yourself and your clients from harm.

NOTE

1. This appears again as Case 1.11 in Chapter 6.

REFERENCE

Bailey, J. S., & Burch, M. R. (2022). *25 essential skills for the successful behavior analyst: From grad school to the C-suite*. New York: Routledge.

Unit

Three

Ethics Standards



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6

Section 1: Responsibility as a Professional

Compared to other helping professions, behavior analysis has evolved in a unique way. Our field has a relatively short history, going back only to the mid-1960s, and our roots are firmly planted in the experimental analysis of behavior. The original behavior analysts were often experimental psychologists who recognized how procedures originally developed in the animal lab could be applied to help the human condition. The earliest applications with humans were almost direct replications of experimental (animal laboratory) methods. These procedures were used with populations that were abandoned by the other service professionals at the time. The 1960s was also a time in which questions about the ethics of treatment were not raised. Well-trained, responsible, experimental psychologists used their own conscience, common sense, and respect for human values to create new treatments. With learning theory as a foundation, it was believed that these treatments might work to relieve suffering or dramatically improve the quality of life for institutionalized individuals who were not receiving any other forms of effective treatment.

suffering or dramatically improve the quality of life for institutionalized individuals who were not receiving any other forms of effective treatment. There was no Ethics Code for Behavior Analysts, and there was no oversight of the PhD researchers turned cutting-edge therapists. Their work was done in the public eye with the full knowledge of parents or guardians, and a review of the work today would find little to fault in terms of ethical conduct. It was only much later that some poorly prepared and insensitive behavior analysts with serious ethics deficiencies would create the scandals described in Chapter 1.

Relative to other professions, behavior analysis is the new kid on the block. Physical therapy is said to have begun as a profession in Sweden in 1813, occupational therapy in 1921, and speech pathology in 1926. Our history as a field of applied research can be dated to 1959 with the seminal research of Dr. Ted Ayylon and Dr. Jack Michael’s “The Psychiatric Nurse as a Behavioral Engineer” (Ayylon & Michael, 1959). This work, carried out in Saskatchewan, Canada, was the beginning of our field. We received our current moniker, “applied behavior analysis” (“behavior analysis,” for short) in 1968 with the publication of Don Baer, Mont Wolf, and Todd Risley’s foundational paper, “Some Current Dimensions of Applied Behavior Analysis” (Baer, Wolf, & Risley, 1968). Thirty years later, in 1999, we coalesced as a profession when the Behavior Analyst Certification Board was formed by Jerry Shook and Michael Hemingway. The first code of ethics for behavior analysts was the Professional and Ethical Compliance Code for Behavior Analysts; this groundbreaking work was published in August 2014. Over the years there have been updates to the code, including a new name (Ethics Code for Behavior Analysts).

The current set of ethics standards follows the routine established by the BACB for there to be a review of the ethics code every five years. This review includes input from the profession. In 2020–2021, Dr. Tyra Sellers and a committee of behavior analysts updated the code, and the result was that the BACB Ethics Code for Behavior Analysts was reorganized into six sections (from the previous ten).

Overall, the new code is prescriptive in nature. Rather than focus on violations (i.e., what *not* to do), the code now describes the best ethical practices suited for a changing society. The code reflects positive aspirations and high expectations for professionals who are quite young (50% of our BCBA_s have been in the field five years or less) but who represent the future of this dynamic and rapidly expanding discipline. This code is designed to educate young behavior analysts about their ethical responsibilities by spelling out in detail what it is to be a professional in the human services in the 21st century. Our great strength as a field is our unwavering commitment to the science of behavior as envisioned by B. F. Skinner in his landmark work, *Science and Human Behavior* (Skinner, 1953), and to the exploding technology of effective and ethical behavior change methodology. This methodology is featured in the *Journal of Applied Behavior Analysis*.

The six sections of the Ethics Code for Behavior Analysts are:

1. Responsibility as a Professional
2. Responsibility in Practice
3. Responsibility to Clients and Stakeholders
4. Responsibility to Supervisees and Trainees
5. Responsibility in Public Statements
6. Responsibility in Research.

This code is designed to educate young behavior analysts about their ethical responsibilities by spelling out in detail what it is to be a professional in the human services in the 21st century.

PREVIEW TO RESPONSIBILITY AS A PROFESSIONAL

This chapter covers the first standard, *Section 1: Responsibility as a Professional*. This standard has 16 elements. Some of these are new (see Chapter 2 for details on this), and others were held over

and updated from the 2016 Professional and Ethical Compliance Code for Behavior Analysts.

Being Truthful is a given for any behavior analyst. We could not exist as an evidence-based profession without this building block of trust in our word. Further, we are obligated to promote this intrinsic value with colleagues and students. *Conforming with Legal and Professional Requirements* is another given for any field that expects to have the trust of consumers and funding agencies. The code also has an emphasis on *Accountability* for our actions and keeping commitments to employers as well as clients and stakeholders. As a profession matures, the boundaries become increasingly clear. *Practicing within a Defined Role* and *within their Scope of Competence* is essential for behavior analysts to be able to be fully responsible for the implementation of behavioral technology. The ability to deliver behavior change reliably and effectively over time requires *Maintaining Competence*, which does not come automatically but requires time, study, and effort to acquire those skills necessary to perform at the highest levels. Although not new to other professions, there is a new emphasis in the code on engaging in *Cultural Responsiveness and Diversity*. This is an essential requirement to serve our varied populations, and it ties in closely with a mandate promoting *Nondiscrimination* against clients, stakeholders, supervisees, and colleagues. All of these come to our field with different needs and backgrounds. Some of these individuals may hold biases which could prevent them from fully respecting any differences in ethnicity, race, religion, or sexual orientation of clients or colleagues. The code now addresses this issue head-on in requiring an *Awareness of Personal Biases and Challenges*. Provocation (i.e., engaging in behavior that is harassing or hostile toward others) is not allowed under any circumstance. *Nonharassment* is a clear policy for behavior analysts. It is all too easy to become friends with clients or supervisees, and the new code explains this challenge out by clearly discouraging *Multiple Relationships*. Multiple relationships can lead to conflicts of interest that could instill distrust in our profession.

This version of the code allows modest gifts on an infrequent (no more than annual) basis from consumers who might feel slighted if they were refused. Also addressed is the potential for *Coercive and Exploitative* behavior that can arise given the power dynamic in delivery systems where there are entry-level behavior technicians working under master's and PhD level behavior analysts. The power dynamic occurs because typically, behavior analysts at those levels are supervisors, company administrators, and executives. Equally disallowed are any *Romantic and Sexual Relationships*, which can easily affect the professional judgment of behavior analysts toward their clients and supervisees. Finally, the new code lays out a requirement for quickly *Responding to Requests* for information from clients, stakeholders, and others, as well as complying with requests for background checks and other practice requirements. The code sets a standard for *Self-Reporting of Critical Information* regarding violations of the code or arrests, investigations, and similar incidents to the BACB.

A CLOSER LOOK AT RESPONSIBILITY AS A PROFESSIONAL

1.01 *Being Truthful*

Behavior analysts are truthful and arrange the professional environment to promote truthful behavior in others. They do not create professional situations that result in others engaging in behavior that is fraudulent or illegal or that violates the Code. They also provide truthful and accurate information to all required entities (e.g., BACB, licensure boards, funders) and individuals (e.g., clients, stakeholders, supervisees, trainees), and they correct instances of untruthful or inaccurate submissions as soon as they become aware of them.

Being truthful is a value all behavior analysts should deliberately display in both their professional and personal lives.

Being truthful is one element of integrity. Being truthful is a value all behavior analysts should deliberately display in both their professional and personal lives. It would seem that being truthful would not be difficult considering that we work with a science-based treatments, we take data, and we use data to make our decisions in providing behavioral services. The problem comes when there is pressure to shade the truth to avoid an embarrassing or painful confrontation with a client, supervisor, or administrator. Sometimes this pressure is self-caused, such as when you slept late, got caught in traffic, and arrived at the client's house 30 minutes past the appointed time. An apology is in order since there has been an inconvenience to the client, and here is where the truth hurts. You have to explain that you failed to set your alarm (the truth). This exposes you to criticism, so a lie about a power outage in your neighborhood gives you cover. There is always the risk that this lie could be found out later and result in even greater criticism. Responding with a lie also opens the door to another possible untruthful response. For example, when you fill out your billing form, you might be tempted to indicate the assigned time to hide the truth of your lateness from your supervisor. This moves into the far more serious category of fraudulent billing. Fraudulent billing is a crime and will be found out through an audit conducted by the insurance company.

Pressure to engage in dishonest behavior can also come from the client who may want you not to report something you observed in the home. Examples that clients frequently do not want reported include abuse, neglect, or drug usage by a parent or relative. Some clients (including the parents) may want the behavior analyst to misreport the number of hours of service to lower their co-pay. There is also occasional pressure from one's supervisor or the administration to misrepresent a situation to the client. A common example of misrepresenting a situation occurs when the behavior analyst is told to inform a family that they need to increase their hours of service to 20 hours per week. When the administrator tells the behavior analyst, "Since this is a new

policy of the insurance provider, if the family doesn't increase their hours, they will be dropped," it puts the behavior analyst in a very uncomfortable spot. This is a true test of one's integrity to pushback and say, "I'm sorry, I cannot do that. It is just not true."

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CASE 1.01 PERILS OF TELLING THE TRUTH

"I am concerned that my previous supervising BCBA broke Ethics Code 1.01 which is Being Truthful. I was pulled into a meeting with two BCBA's within my company. They asked me about the company morale and why everyone seemed to be unhappy. I asked them if I would be retaliated against if I was honest or if what I said would reflect negatively on me. They both assured me this would not reflect negatively on me. I told them things that were wrong within the company and how many of the therapists felt about their workload and supervision. I was happy that they were promoting an honest environment, but I kept asking them if I was going to be in trouble for what I said. Every time I asked, they said no. Two days later, I was called to a meeting with the supervising BCBA and fired for what I said. I was very confused as I thought they wanted me to be honest and explain what was wrong. The supervising BCBA did not explain much to me but said I was fired due to the conversation between myself and the other two BCBA's. I am not sure if they broke the ethics code by firing me, so I would like some clarification on this if possible."

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1.02 Conforming with Legal and Professional Requirements

Behavior analysts follow the law and the requirements of their professional community (e.g., BACB, licensure board).

This standard relates to professional integrity. It is also an example of personal integrity. Because behavior analysts work with vulnerable populations, our consumers put a great deal of trust in our basic respect for the law and our standing in the professional community. To “follow the law” basically means to be a law-abiding citizen in addition to upholding one’s professional standards. Following the law means not racking up speeding tickets or getting arrested for driving under the influence (DUI). Following the law means paying child support on time, and following the law means you do not violate the rights of your neighbors. To become a behavior analyst, one has to pass a criminal background check. Any misdemeanor or felony convictions as an adult will be revealed, along with arrests prior to prosecution, and possibly some that did not lead to a conviction. The length of time relating to how far back a background check goes varies from state to state. Some providers may administer pre-employment checks, which will include the aforementioned criminal checks as well as verification of education, previous employment history, and any professional licenses that have been granted or rescinded.



CASE 1.02 ARRESTED FOR DRUGS, NOW WHAT?

“I recently discovered that a BCBA in my geographic area was arrested in May for illegal drugs and paraphernalia. He and I do not work in the same company, nor do we have any mutual clients, so anything that happens to him will not affect my clients. However, I thought I read that we, as BCBAAs, have a duty to report them to the BACB if we know about a felony arrest or something that would violate the ethics code. It would lead me to think that that kind of behavior puts his clients at risk and thus we’d have a duty to report. Please guide me in whether I have an ethical obligation to report him to the

Board as I do not want to be responsible for any ethical violations either.”

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1.03 Accountability

Behavior analysts are accountable for their actions and professional services and follow through on work commitments.

When errors occur or commitments cannot be met, behavior analysts take all appropriate actions to directly address them, first in the best interest of clients, and then in the best interest of relevant parties.

To be accountable for one’s actions means first understanding the mission of the organization and what the goals are for each professional or group of professionals. Once that is established, a good behavioral organization will design a set of contingencies to support the behaviors that meet those goals and support the mission. Taking responsibility includes implementing consequences which are likely to be negative for not meeting goals and not following company protocols. As behavior analysts, we seem to take on multiple responsibilities simultaneously. All of these may be important to the organization and the lives of our clients. Failure to complete an assessment in a timely fashion means that a client may have to wait another month for services to begin. Failure to properly train and supervise an RBT could mean a client’s progress is stalled, and failure to file the necessary paperwork for insurance reimbursement means that the company will start to go in arrears and put livelihoods in jeopardy.

Perhaps the most frequent and disturbing lack of basic accountability is when behavior analysts quit their job with little notice to the

The standard accepted practice in our field is for professionals to give at least 30 days' notice of their intent to leave the organization.

organization. This is often seen as abandonment of clients, which is a serious violation of basic ethical principles. The standard accepted practice in our field is for professionals to give at least 30 days' notice of their intent to leave the organization. This could be a longer period if this is discussed upon hiring and included in the person's contract. The dire effects of a sudden departure on the welfare of the client should be emphasized when the behavior analyst is first hired. The prevention of sudden resignations can be prevented by regular meetings with management to make sure that the behavior analyst is happy with the work environment and has no plans to leave.

Accountability, which involves contingencies to support desired behaviors, needs to be in place for all levels of professional practice from the CEO on down. If the CEO or owner is not a BCBA, this presents ethical problems involving enforcement of our Code. With an organization that provides behavioral services, consequences, both positive and negative, must be applied fairly and consistently. If the mission and company goals are made clear to all and the contingencies are applied fairly, the organization should run smoothly and ethically, with happy employees and satisfied clients.

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CASE 1.03 ACCOUNTABILITY FOR WHOM?

"We have a clinical support team assigned to train, monitor, audit, and support our whole agency. In a recent clinical audit, our team discovered three potential ethical violations involving a newer BCBA consultant. These included the lack of a proper assessment prior to rolling out a behavior plan, no parent signature on an intensive behavior plan, and serious shortcomings in communications regarding a medically fragile client. The director at this site should have been monitoring this but obviously was not. We are now in the remediation phase and have

confidence in our corrective action including additional training, more frequent audits, and a coach for the new BCBA. However, given that these three problems popped up in such quick succession, we are debating the level of disciplinary action and for whom . . .? Meaning, we feel there was a bit of lax oversight on the part of the BCBA director at the site. Would there be a clear way to differentiate if the warning should be given to the director versus the newer BCBA?"

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1.04 Practicing Within a Defined Role

Behavior analysts provide services only after defining and documenting their professional role with relevant parties in writing.

A professional role in ABA involves all of the functions that the behavior analyst fulfills. These include conducting behavioral assessments, developing and writing treatment plans, training and supervising team members, implementing interventions, evaluating client progress, keeping therapy notes, communicating and consulting with families and administrators, advocating for clients, educating clients as to their rights and their involvement in the treatment process, and social worker-like functions involving client safety and well-being (e.g., being a mandated reporter) and more, depending on the agency involved.

This standard specifies that the behavior analyst provides to the client(s), in writing, a list of the roles they will play in the service delivery system with each client. We believe that this is done most directly and efficiently using a "Declaration of Professional Practices and Procedures for Behavior Analysts," described in some detail in Chapter 13. Sections 1 and 2 of the Declaration spell out the behavior analyst's area of expertise and the nature of their practice as well as how they approach their work with the

client. A document similar to this should be generated for each client since the defined role may change from one client to the next. The Declaration should be presented and discussed, and questions answered and signed by all parties before any actual treatment plans are initiated.

One frequent question regarding BCBA's who work for an insurance company or other funding source is, "What is the role of the insurance company and who do they represent?" It would appear that one function of the insurance company contact person is to save money for their company, and since they have virtually no contact with the actual client, they cannot represent the client's interests. Denying services that have been determined "medically necessary" by the client's physician and endorsed by the BCBA who has conducted an assessment and knows the client's needs directly would appear to represent an ethical issue that is yet to be resolved.

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CASE 1.04 CONFLICTING ROLES

"I am currently functioning under two separate roles at my current place of employment. I do psychological evaluations, and I also provide ABA services to different clients as a BCBA. Is it ethical for me to evaluate and diagnose a client as a registered psychology associate and then, following the conclusion of the evaluation, begin to treat that same client as an LBA [Licensed Behavior Analyst]? It seems like this would constitute a dual relationship or possibly a self-serving way to solicit new ABA clients. The reason I am asking is because a client I tested may be interested in and could benefit from ABA treatment. I suggested to the client's mother that she contact other BCBA's in our area, but she has recently e-mailed me to ask ABA-related questions. She sent me a video of her daughter engaging in stereotypic behavior and asked how to reduce the behavior. Although I think the answer is no,

I would like to know if I can offer my services to her child as a behavior analyst since it seems like she trusts me, and we have a good rapport? It has been approximately four months since I last saw the client for an evaluation.”

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1.05 Practicing Within Scope of Competence

Behavior analysts practice only within their identified scope of competence. They engage in professional activities in new areas (e.g., populations, procedures) only after accessing and documenting appropriate study, training, supervised experience, consultation, and/or co-treatment from professionals competent in the new area. Otherwise, they refer or transition services to an appropriate professional.

Scope of competence in behavior analysis is defined in detail in the Task List for each category of professional behavior.¹ Should a professional desire to expand their scope of competence, Code 1.05 requires that they engage in “appropriate” training and supervised experience, and they must document the nature of that training and experience. Since “appropriate” is not defined, we recommend that behavior analysts, wherever possible, obtain a valid certification document to support their new skills. This document should include the name of the person conducting the training or supervision, where the training took place, the dates of the experience, and the name of the agency that is certifying the experience. In addition, there should be a complete description of skills acquired matching the format used in the Task List for BCBAs. A behavior analyst who performs tasks outside their scope of competence risks disciplinary action by their agency and possibly by their licensing board as well as the BACB.

The concern about practicing outside one’s area of training and experience is that some harm could come to the client as a result. One area that requires actual specific training, for example, has to do with feeding disorders. An example of the expertise

required to treat this problem can be seen in the exemplary article by Peterson, Piazza, & Volkert (2016).² The problem presented had to do with food selectivity, which is just one of several types of feeding disorders. In this detailed study that was published in JABA, the authors compared a modified sequential oral sensory approach (which is often used by occupational therapists) to an applied behavior-analytic approach. A careful reading of this research clearly shows that the very specific way that the behavior-analytic approach was used requires extraordinary training and experience. In this study, attention to detail played a critical role in order to protect the safety of the children. A BCBA who works in a suburban clinic with behavior problems such as noncompliance, mild aggression and sleep disorders should not accept a walk-in referral of a child with a feeding disorder. This would be a case of a BCBA operating outside their scope of practice/competence. Additional areas where specialization is required include SIB, sexual behaviors, phobias, Tourette syndrome, or sexual deviance.

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CASE 1.05 SCOPE MISMATCH

"A fairly new BCBA colleague recently joined a new company and was assigned a high-functioning ASD teen with a comorbid mental health diagnosis. The BCBA let the clinical director know that he had not worked with a case like this before and felt that it was out of his scope of competence. He was sure he would need more training and supervision, so he took some CEUs on ACT, anxiety disorders, and OCD. After the CEU training, he shared with me that he felt overwhelmed since the clinical director did not have time for any intensive supervision and could only include him in group meetings with the other BCBAAs. He asked me if I thought he should quit but I suggested he request to be taken off the case. I said he

should request to be assigned another client more aligned with his training and experience which was young ASD children with mild behavior problems. Could you give me an independent opinion on this situation?”

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1.06 Maintaining Competence

Behavior analysts actively engage in professional development activities to maintain and further their professional competence. Professional development activities include reading relevant literature; attending conferences and conventions; participating in workshops and other training opportunities; obtaining additional coursework; receiving coaching, consultation, supervision, or mentorship; and obtaining and maintaining appropriate professional credentials.

BCBAs should stay on top of the rapid acceleration in applied research findings that are being published every month.

For BCBAs, maintaining their competence is structured by the CEU requirements from the Board. This standard specifies the way in which that this can be done but it does not set any additional requirements and it does not define “competence.” The intent of this standard is to urge behavior analysts not to be complacent with the knowledge they have gained in the past or skills they acquired in their master’s program and practicum training. Instead, BCBAs should stay on top of the rapid acceleration in applied research findings that are being published every month. For example, the *Journal of Applied Behavior Analysis* (vol. 53, 2020) published nearly 2,500 pages of peer-reviewed, applied behavior-analytic research directly related to the profession. Certainly, focused reading of the articles relevant to one’s specialty in this volume would be required to “maintain competence.” In addition, there are half a dozen major conferences in

behavior analysis that meet each year and probably another 20 local and state ABA associations that convene in one- to three-day conferences where national experts are invited as speakers and local practitioners present their latest work. Maintaining competence in this rapidly expanding field is at least a part-time job.

This standard appears to be primarily aspirational in nature. It is intended as a reminder to BCBAs that they essentially have an obligation to stay current with the literature, attend conferences, and hopefully present their work for comment and critique by others.

1.07 New—Cultural Responsiveness and Diversity

Behavior analysts actively engage in professional development activities to acquire knowledge and skills related to cultural responsiveness and diversity. They evaluate their own biases and ability to address the needs of individuals with diverse needs/backgrounds (e.g., age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status). Behavior analysts also evaluate biases of their supervisees and trainees, as well as their supervisees' and trainees' ability to address the needs of individuals with diverse needs/backgrounds.

Skinner (1971) addressed the topic of culture in *Beyond Freedom and Dignity*, and it seems appropriate to bring his analysis to bear:

"A child is born a member of the human species, with a genetic endowment showing many idiosyncratic features, and he begins at once to acquire a repertoire of behavior under the contingencies of reinforcement to which he is exposed as an individual. Most of these contingencies are arranged by other people. They are, in fact, what is called a culture, although the term is usually defined in other ways. Two eminent anthropologists have said, for example that 'the essential core of culture consists of traditional (i.e., historically derived and selected) ideas and especially their attached values.' But those who observe cultures do not see ideas or values. They see how

people live, how they raise their children, how they gather or cultivate food, what kinds of dwellings they live in, what they wear, what games they play, how they treat each other, how they govern themselves, and so on. These are the customs, the customary behaviors, of a people.”

(Skinner, 1971, p. 127)

Skinner's emphasis on observing behavior and the contingencies that produce it are relevant to developing “cultural responsiveness,” since as behavior analysts, that is our strength. Although Skinner's writing related to cultural responsiveness is written in scientific terms, and “cultural responsiveness” is not a behavioral term, behavior analysts should adopt cultural responsiveness as a value and they should have a very humane and empathetic approach to cultural responsiveness. Cultural responsiveness basically means that behavior analysts should be able to learn from people of every background, and that they should respect people from other cultures. This includes clients, client families, colleagues, staff, other professionals, and so on. In dealing with others, when it comes to language, cultural traditions, and life experiences, behavior analysts should acknowledge, recognize, appreciate, and validate and even celebrate, the differences of others.

For clients, the treatment process should start with client-centric, not expert-driven, goals. Next, there should be an evaluation of individualized reinforcers and current contingencies in play and a functional behavior analysis should be conducted. This will help behavior analysts understand why clients are engaging in certain behaviors. This process should end with a behavior plan offered to the client and stakeholders with the goal of, hopefully, buy-in by all parties. Cultural responsiveness is all about *bespoke* behavior analysis based on observable behavior and contingencies of reinforcement.

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reinforcement. Bespoke in the behavior analysis sense means that a product or service is specifically designed for a particular client. Behavioral programs should be custom designed, as opposed to cookie cutter programs.

The term *cultural humility* is often used to describe the “attitude” that the behavior analyst should take when working and interacting with clients and others. Cultural humility is related to cultural responsiveness. While cultural responsiveness involves learning about and respecting the cultures of others, cultural humility has to do with examining one’s own beliefs and cultural identities. As with cultural responsiveness, cultural humility is not a behavioral term either. In behavioral terms, we would say it is necessary to assume that the contingencies which produced the behavior are genuine, shared by family members, and that these contingencies need to be considered when conceptualizing a behavior plan that will fit comfortably in the family’s environment. If we approach our clients and stakeholders with an understanding of the contingencies that give rise to *their* patterns of responding, we will certainly be more effective therapists. This approach will allow us to respond more effectively to client and stakeholder questions and concerns. Designing behavior plans based on client/stakeholder goals using methods that they approve of is the very definition of social validity (Wolf, 1978).

The second major thrust of this new standard (1.07

Cultural Responsiveness and Diversity) is that behavior analysts should evaluate their own biases and skill set to make sure that they can meet the needs of a diverse population of clients. There are two assumptions here: (1) that behavior analysts have biases that somehow might affect how they approach their clients, which

If we approach our clients and stakeholders with an understanding of the contingencies that give rise to their patterns of responding, we will certainly be more effective therapists.

they probably do, and (2) that by “evaluating” their biases, these biases will somehow be modified. It is important to note here that we are a behavioral field and to date, there is no effective behavioral technology for observing and measuring “biased” *behavior*.³ There is also a similar absence of an evidence-based treatment for a bias that meets our research standards although there are several discussion articles worth reading (Fong, Catagnus, Brodhead, Quigley, & Field, 2016; Miller, 2019; Leland, & Stockwell, 2019; Wright, 2019).

In consultation with experts in this area,⁴ some suggestions for evaluating biases follow.

SUGGESTIONS FOR EVALUATING BIASES

- a. One aspect of this ethics standard involves the suggestion that behavior analysts should evaluate their own biases and the biases of their supervisees and trainees (Fong, Catagnus, Brodhead, Quigley, & Field, 2016; Fong, 2020). Since this is not yet an area that is behavior-analytic, we must rely on the guidance from other professionals. The American Academy of Family Physicians recommends several tactics that may be appropriate for behavior analysts to consider:⁵ (1) explore and identify your own prejudices through conversation and analysis with peers; (2) consider experiences from the point of view of the person being stereotyped; (3) before interacting with people from certain groups, pause and reflect to reduce reflexive behaviors; (4) evaluate people based on their individual characteristics rather than relying on stereotypes; (5) use statements that welcome multiculturalism; and (6) support a culture of diversity and inclusion at the organization level.
- b. Prior to the first visit to a client/family, there should be some discussion about the linguistic needs of the family and whether a translator might be needed. In addition, it may be helpful to have some basic demographic information about

the family and their culture (e.g., religious practices, family routines, mealtimes, food preferences, and house rules, such as leaving shoes at the door). It may be necessary to do some homework on the client's culture if this is new to you so you can determine specifics. For example, what is culturally appropriate eye contact, and what the preferred method of conversation? Paying attention to the client's preferred conversational unit can also make for a better interaction. Some people speak in shorter units and make it obvious that they have completed a thought and are ready for a response. Others are accustomed to longer segments of speech before being ready for a "turn" to let the other person speak.⁶ Consideration should be given as to the appropriate dress for those involved in the home visit. A client from a traditional background with regard to dress may be offended by a behavior analyst who is dressed too casually for the occasion.

- c. At the very first contact with the new client, perhaps on intake, the emphasis should be on effective dialogue that is client-centric. The purpose of this initial conversation is to learn about the client's family culture, daily schedule of activities, preferences, and priorities so that the behavioral treatment endeavor is a collaborative effort. Some questions to get the conversation started follow. "Can you tell me a little about your daily routine?" "When do you think would be the best time for a therapist to come to your home?" and "We depend on the use of rewards to strengthen behaviors. Do you have any thoughts on this?"
- d. It is essential that active listening and healthy questioning in a compassionate manner is utilized. "What do you think?" "How do you feel about this?" "What would you prefer?" and "I wonder what would happen if . . ." are recommended starting points for a discussion centered around the client's needs and feelings about interaction patterns going forward. Note that you will clearly have to pay close attention to the

responses to react accordingly. If the client says, “I’m glad you asked. I don’t feel comfortable with an outsider bossing my child around. Is that what this is about?”, you can tell that you must carefully describe what the therapy will look like in order to ease their worries.

- e. The whole nature of this first conversation with the client should emphasize engagement in person-centered planning, which is where their preferences and priorities should be discussed. There should be a discussion about their receiving behavioral treatment, what that will consist of, and their role in this enterprise. “So, based on what we have discussed, what would you say is your top preference for behavior change?” Try to determine the context of the behavior and if there is any cultural significance involved. For example, “Will this help your son fit in better with other kids in the neighborhood?” may be a relevant question for the family.

As behavior analysts, we need to not lose track of the fundamental concept of culture. As Skinner wrote, “A culture is a set of practices”;⁷ these are *behaviors* that a group of people hold dear and want to perpetuate. Our job as professional behavior analysts is to respect those practices to the extent that they do not put our clients at risk for harm.

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CASE 1.07 DO NO HARM

“I have a question regarding a 10-year-old client who was born male. Since beginning services nearly seven years ago, the client has always chosen to be female characters during pretend play, female avatars during online play, and when working on safety skills related to dressing for weather, asked to shop in the girls’ section. Mom and dad have been uncomfortable with this in the past, but

because it is not related to his diagnosis, we have allowed him during ABA treatment time to be whatever character he chooses during games. Recently, mom brought up that she would like us to be contingent with him switching to male characters when he plays online games with friends, and dad's idea was to remove access to the computer if our client chooses to play as a female avatar. In this situation, because the client is 10 and a minor, we don't want to cause any harm to the client psychologically. What is the best course of action? I have recommended to the family that they have the client speak to a professional who is better equipped to help navigate gender-related issues. What is my ethical obligation as his supervisor as far as supporting their contingencies if there is potential that it's harmful to him psychologically? I have reached out to others at my organization for help, and we all agreed that getting outside input would be helpful."

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1.08 Nondiscrimination

Behavior analysts do not discriminate against others. They behave toward others in an equitable and inclusive manner regardless of age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status, or any other basis proscribed by law.

It seems contrary to the values of behavior analysts that they should engage in any form of discrimination against a client, staff, or other behavior analyst in their organization. Unfortunately, this is sometimes an issue. There are three ways that this might happen.

First, a BCBA might wrongly discriminate against a client based on race, ethnicity, skin color or disability by not providing the same quality of service that they do with other clients of

a different race, ethnicity, skin color or disability (or any other category listed in 1.08). This could include not valuing the client's input into goals and objectives, not monitoring closely to ensure that RBTs are maintaining independent variable (IV) integrity in the treatments, determining that goals have been met and beginning the discontinuation paperwork when the client is not ready, or not managing the treatment process so that adjustments in procedures are implemented in a timely fashion. Other more subtle forms of discrimination may appear as "microaggressions," including "brief and commonplace daily verbal, behavioral, or environmental indignities" (Sue et al., 2007, p. 271), which are certainly worth addressing.

Second, a BCBA could discriminate against supervisees in several ways based on their age, gender expression, marital status, or socioeconomic status (or any other category listed in 1.08) by not giving them enough hours of work, frequently canceling supervision sessions, giving inadequate feedback that does not improve performance, giving them unfair assignments (e.g., driving long distances to client locations), assigning them to clients where they have no experience with the behavior challenges, sending them on in-home assignments where it is dangerous or unsafe, talking down to them one-on-one or in meetings, or refusing to sign their supervision paperwork without justification. The power differential between BCBA supervisors and their supervisees increases the likelihood that a behavior analyst could use racial slurs or make offensive comments about a supervisee's race or color, or they could engage in sexual harassment by making inappropriate sexual advances or requesting sexual favors. A supervisee may be of a different religion than their BCBA supervisor, and there could be discrimination in the form of making joking or offensive remarks about the supervisee's religion, failing to recognize their religious holidays in making work assignments, not allowing them to flex their schedules to accommodate these holidays, or commenting negatively or sarcastically on their clothing or grooming practices.

The third way that a BCBA might engage in discrimination is if they are in an administrative position as a director, owner, clinical director, or other powerful position, and they treat the behavior analysts beneath them unfairly based on age, marital status, or national origin status (or any other category listed in 1.08) in terms of denying company benefits such as disability, maternity leave, failure to consider them for promotions within the company, or by issuing unfair discipline. A BCBA administrator who consistently hires people of the same race, gender, or age or who discriminates on any of the categories listed in this standard could be accused of discrimination.

There are endless ways that a behavior analyst could discriminate against a client, supervisee, or colleague, and they must be ever vigilant to guard against this possibility. If another BCBA sees any sign of any of these or other sorts of unfair treatment in the workplace or with clients, they are obligated to document this and bring it to the attention of the person (see *Application of the Code*, p. 3).

It should be noted that discrimination or harassment in the workplace is a violation of Title VII of the 1964 Civil Rights Act.⁸

There are endless ways that a behavior analyst could discriminate against a client, supervisee, or colleague, and they must be ever vigilant to guard against this possibility.



CASE 1.08 DISCRIMINATION AT WORK

“A BCBA declined my services on their team as a BCaBA because of ‘opposing viewpoints.’ They didn’t specify what exactly those were. My guess is that it was either because I’m in a same-sex relationship or maybe that my Facebook profile photo says, ‘Black Lives Matter’ in the tagline. Regardless of the exact reasons behind the refusal of my services, what ethical guidelines are at play and

how can my company uphold their values of diversity while also handling this situation ethically?”

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1.09 Nonharassment

Behavior analysts do not engage in behavior that is harassing or hostile toward others.

“Harassment is a form of employment discrimination that violates Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, (ADEA), and the Americans with Disabilities Act of 1990, (ADA).”⁹

Harassment is any form of behavior directed toward a person that is unwelcome or offensive. Harassment creates a work environment that is intimidating, hostile, or offensive to reasonable people. Harassment is illegal if the *victim* considers the conduct to be “intimidating, hostile, or abusive.” This includes “offensive jokes, slurs, epithets or name calling, physical assaults or threats, intimidation, ridicule or mockery, insults or put-downs, offensive objects or pictures, and interference with work performance.”¹⁰ The harasser might be a co-worker, supervisor, or someone who works for the employer and could even be a client. The company where the harasser works is “automatically liable for harassment” if it produces “termination, failure to promote or hire, and loss of wages.”¹¹

Harassment is illegal if the victim considers the conduct to be “intimidating, hostile, or abusive”.

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CASE 1.09 WHO IS DOING THE HARASSING NOW?

“One of my therapists has been sexually harassed by the client’s father. We removed the therapist from the case immediately and set expectations for staying at the client’s house to provide therapy. Now all the therapists are

reporting that they have been verbally harassed by the dad on a daily basis and all have requested to be removed from this case. Am I able to terminate services immediately for the hostile work environment he has created? Do I need to give the family an additional warning and behavior improvement plan for the father?"

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1.10 New—Awareness of Personal Biases and Challenges

Behavior analysts maintain awareness that their personal biases or challenges (e.g., mental or physical health conditions; legal, financial, marital/relationship challenges) may interfere with the effectiveness of their professional work. Behavior analysts take appropriate steps to resolve interference, ensure that their professional work is not compromised, and document all actions taken in this circumstance and the eventual outcomes.

This is a new standard for behavior analysts to add to their repertoire. This standard has a heavy cognitive loading given the “awareness” factor that is required. The reference to “personal biases” that may interfere with professional work assumes that (1) behavior analysts have biases and biased behavior and (2) this biased behavior will be displayed in public and interfere with their work. The dictionary definition of “bias” includes “an inclination of temperament or outlook, especially a personal and sometimes unreasoned judgment: prejudice.”¹² We recognize these as non-behavioral terms and suggest that behavior analysts do their best to engage in self-monitoring their *behavior* when making decisions about others including clients, supervisees, and colleagues. You might also consider asking a close friend or associate if they believe that you are bringing any personal *biases* into your professional work and then take steps to remediate those behaviors so as to treat others fairly in all circumstances.

There is a considerable amount of online material related to “bias in the workplace.” Some examples include:

- *Affinity bias*—a tendency to gravitate toward people like you
- *Ageism*—discrimination against people based on their age
- *Confirmation bias*—a tendency to look for information that confirms currently held beliefs
- *Gender bias*—assuming that one gender is better than another for certain jobs
- *Weight bias*—judging a person negatively because of they are heavier than average.

These are just a few there are many other types of biases as well.¹³

The second part of Code 1.10 refers to personal *challenges*. The intent here is for behavior analysts to monitor their own performance and make sure that any addictions such as alcohol, drug, gambling, or video-game related habits do not become an impediment to their work. With easy access to illegal drugs and the wholesale encouragement of the use of alcohol as a social lubricant, some in the professions succumb to these temptations, and their work as a behavior analyst subsequently suffers. Professionals should engage in self-monitoring, anticipate any lapses that might occur, and make other arrangements to have their work covered by other qualified professionals when necessary. Behavior analysts should also arrange to have their work covered whenever stress, a change in a life situation (e.g., break-ups, divorce, death in family), or other conflicts negatively affect their professional performances.

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CASE 1.10A IS IT A BIAS?

"I am a BCBA overseeing a supervisee who is working on her BCBA hours. Recently, she has asked to be removed from a specific case because it reminds her too much of her own personal family history of trauma. She has stated that she feels it is getting too difficult to remain unbiased towards the family given her own personal history. I have also noticed in recent conversations with her regarding

the family some of this bias coming up in a negative way towards the client's parent, which is a concern to me. It sounds like a legitimate reason to be removed from the case to me, but my boss wanted me to reach out to the Ethics Hotline to make sure we shouldn't try to help her work through her personal bias before removing her from this case."

CASE 1.10B QUITE A CHALLENGE

"If someone is using language that indicates they are having thoughts of harming themselves, what kind of documentation should/could be requested to prove, indicate or demonstrate they are in the right state of mind to return to work? Do you request ongoing documentation or updates to indicate that they are attending or regularly accessing services to keep them safe after they have shared that they are having these thoughts?"

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1.11 Multiple Relationships

Because multiple relationships may result in a conflict of interest that might harm one or more parties, behavior analysts avoid entering into or creating multiple relationships, including professional, personal, and familial relationships with clients and colleagues. Behavior analysts communicate the risks of multiple relationships to relevant individuals and continually monitor for the development of multiple relationships. If multiple relationships arise, behavior analysts take appropriate steps to resolve them. When immediately resolving a multiple relationship is not possible, behavior analysts develop appropriate safeguards to identify and avoid conflicts of interest in compliance with the Code and develop a plan to eventually resolve the multiple relationship. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

Multiple relationships, are more often referred to as *dual relationships* since these are much more common, are one of the most prevalent and sticky issues in our profession today. While they may occasionally lead to a conflict of interest, this is not the biggest concern. Two of the most common situations related to multiple relationships are (1) an RBT or BCBA working with a family finds that they have developed a friendship such that the family begins to treat them like a close relative rather than a highly qualified independent professional; and (2) A BCBA or RBT who works closely with another professional begins to develop more than just a working relationship, i.e., the relationship moves toward a friendship and then to a romantic situation. In either case, the concern is that the professional judgment of the behavior analyst becomes compromised to the detriment of the client(s).

This standard advises behavior analysts to “resolve” these dual relationships, which means to cease the relationship through some means, such as transferring an RBT or BCBA to a different family. This is often the best solution, since getting a family to change their tactics and stop inviting the behavior analyst to stay for dinner, cease giving them gifts, and no longer invite them to social events is just too much to ask. A “plan” to resolve the dual relationship usually consists of allowing it to exist for a short period while a replacement staff member is sought.

Code 1.11 refers to “conflict of interest” as though it is equivalent to a dual relationship; however, this is incorrect. A conflict of interest involves two parties that have different “interests.” In behavioral terms, we would call these reinforcers. “A conflict of interest arises when what is in one person’s best interest is not in the best interest of another person or organization to which that individual owes loyalty.”¹⁴ A BCBA may, for example, recommend that a child receive more hours of service in order to increase their billable hours; scheduling additional hours may be a burden on the family and unnecessary for the child to improve her language skills, this is a clear conflict of interest. Or, when asked by a client for the behavior analyst to recommend another professional

(e.g., physical therapist [PT], occupational therapist [OT] or speech and language pathologist [SLP]), the behavior analyst recommends a friend or relative who will show appreciation in the form of a fee, a “kickback” for the referral at some later time. “A conflict of interest can also exist when a person must answer to two different individuals or groups whose needs are at odds with each other. In this case, serving one individual or group will injure the other.”¹⁵ An example of this exists when a behavior analyst/clinical director admits additional clients to their clinic to make their numbers look good to their board of directors, but which puts a burden on an already overworked staff who are showing the strain of excessive caseloads. Ethically, new potential clients should simply be put on a wait list or referred to other agencies in the area. A final example of a conflict of interest is an admissions officer who arranges for an assessment of a client but then puts them on the wait list where they are essentially trapped, since the assessment funds are now depleted, and the client cannot move to another provider.

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CASE 1.11A CONFLICT OF INTEREST GOES TO SCHOOL

“The public school system my children attend has employed a BCBA they have labeled as a ‘consultant.’ He does little to nothing for the children in the school system from what I can tell, yet he is recommending to parents in a ‘round-about way’ that their children need clinical services. He says he will suggest an appropriate place and then points out a local agency the children could attend—his private practice! Some of the students who allegedly need the services are pulled out of the school system for up to half of the school day and are then seen at his clinic (of course, the parents foot the bill). This just seems wrong to me, and this must be some sort of ethical violation. Can I file a complaint with the BACB?”

CASE 1.11B AN EXTREME MULTIPLE RELATIONSHIP

“A BCBA started providing services (without an agreement) to my husband for our special needs daughter. My daughter, who is on the autism spectrum, has received ABA therapy through a legitimate agency for three years. The BCBA’s reaching out to my husband to advise him regarding our daughter’s IEP and other therapists’ evaluations turned into an affair with my husband. The father and I are now getting divorced, and she is still very involved reviewing my daughter’s evaluations from her special needs providers. The BCBA is encouraging my husband to oppose me, the child’s mother, and build a case to limit or reduce my daughter’s special needs therapies. It’s almost as if she used her background with special needs children to seduce him. I don’t know if this is a breach of the code of ethics or not.”

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1.12 New—*Giving and Receiving Gifts*

Because the exchange of gifts can invite conflicts of interest and multiple relationships, behavior analysts do not give gifts to or accept gifts from clients, *stakeholders*, *supervisees*, or *trainees* with a monetary value of more than \$10 U.S. dollars (or the equivalent purchasing power in another currency). Behavior analysts make clients and stakeholders aware of this requirement at the onset of the professional relationship. A gift is acceptable if it functions as an infrequent expression of gratitude and does not result in financial benefit to the recipient. Instances of giving or accepting ongoing or cumulative gifts may rise to the level of a violation of this standard if the gifts become a regularly expected source of income or value to the recipient.

This standard represents a significant policy change from the previous ethics code which specified no gifts of any value were

allowed due to the potential for creating a dual relationship (see Code 1.11 for the downside of dual relationships). Many families have a strong tradition, sometimes tied to cultural values, of showing their appreciation for an act of kindness or even as a welcoming gesture for visitors to their home, by offering them food or drink. Having a professional come into the home not just once but repeatedly and for hours at a time for months on end creates a very unusual situation where families often feel compelled to show their gratitude with something tangible. In a family's conversations with the behavior analyst, they may determine that the person lives alone, eats primarily fast food and would surely enjoy a home-cooked meal. One thing leads to another, and soon the behavior analyst is being invited to stay for dinner, attend a birthday party, or join them on a trip to the beach with the family, all expenses paid. These offers may be hard to resist, but this sets up an unspoken understanding of the need to respond in kind at some point in the future.

*No matter what culture one comes from, giving is almost never a truly selfless act, since reciprocity of some kind is expected. “We’re human beings and we’re calculating people and we never do anything without some sort of eye toward the future,” says Dr. Laver. The French sociologist Marcel Mauss, in his seminal study of gift giving, *The Gift*, explained that social bonds are reinforced by the mutual exchange of gifts. He noted, “In theory, such gifts are voluntary but in fact they are given and repaid under obligation.”¹⁶*

The new standard in the code related to gifts seems to disregard this larger, historic cultural obligation and assumes that the gift-giving will be a one-way street from the client to the behavior analyst. The code does caution that at some point it is possible for gift giving to become a violation. It could be difficult to determine when gift giving has crossed the line and even more difficult to enforce. For example, companies would need to set up an honor system of self-reporting-of-gifts for behavior analysts so

as to determine whether they have become “a regularly expected source of income.” Next, monetary amount and frequency will have to be specified. “Is it \$40 a month over 2 months? Is that *regularly* expected? Or do we need to set that at 6 months?” And of course, if the client is doling out gift cards valued at \$10 each, it is quite clear that this *is* a financial benefit contrary to Code 1.12.

Our advice is for agencies and organizations to decide for themselves how they want to handle the troublesome question of gifting and determine if adopting a policy of “No Gifting Allowed” might still be the best policy. If this is their position it needs to be included in the service agreement (aka the Declaration of Professional Practices and Procedures; see Chapter 13) and explained to families in advance, with frequent reminders, so that they will not think the behavior analyst is rude or have hurt feelings of being rejected. Behavior analysts also need to make clear that their biggest reinforcer is the improvement in behavior of the client so there is no need for any additional reward.

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CASE 1.12A SO MANY QUESTIONS

“I have a general question about Ethics Code 1.12. In terms of receiving a gift, how is ‘infrequent’ defined? Does that mean you can accept once a month, a year, at each session? How many times, if there is a limit, and what would that be? Also, can an organization or group receive a gift that has a value larger than \$10, meaning if you worked at a school and a parent brought a gift card, could you accept on behalf of the school and allow the school as a whole to utilize the card?”

CASE 1.12B SPLITTING HAIRS ON GIFTING

“My colleagues and I have been discussing the new Ethics Code for Behavior Analysts and some of the changes that will take effect in 2022. Obviously, the ‘giving and receiving

gifts' section stirred up a lot of discussion. We were wondering if a client delivers a gift to the clinic to be shared across all team members, does the gift still need to be less than \$10? For example, a \$50 bouquet of flowers for a team of six people who work with that particular client?"

CASE 1.12C DON'T BE RUDE

"I am currently the supervisor on a case providing in-home services for a family from Morocco. A couple of weeks ago, this family cooked all morning and prepared lunch for their behavior therapist and wanted her to try dishes from their country. We have learned that not accepting food when offered is considered rude in the family's culture, so we have adopted a new policy for RBTs and BCBAAs that now allows this practice so as not to cause offense. I was just wondering with the change in the ethics code how we would determine the value of such a meal so as to stay under \$10. And this new standard requires gift giving to be 'infrequent,' but I'm not sure what that means, is it once a week or month? If such meals started occurring once a month would that meet the requirement of a 'regularly expected source of . . . value' to the behavior analyst? Is this something that should be reported to the Board?"

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1.13 New—Coercive and Exploitative Relationships

Behavior analysts do not abuse their power or authority by coercing or exploiting persons over whom they have authority (e.g., evaluative, supervisory).

Coercive control refers to a pattern of controlling behaviors that create an unequal power dynamic in a relationship.

“Coercive control refers to a pattern of controlling behaviors that create an unequal power dynamic in a relationship. These behaviors give the perpetrator power over their partner, co-worker, etc., making it difficult for them to leave.”¹⁷ This could easily happen in our field since there is already an unequal power dynamic between RBTs and BCBAAs and between BCBAAs and the administration of their company. There have been reports of BCBAAs coercing their trainees and supervisees to work outside of their Task List requirements by running functional behavior analyses (FBAs), interpreting data, and writing behavior plans.¹⁸ The out-of-balance power dynamic is such that RBTs can even be coerced to falsify client data to make it look like a program is working when it isn’t. RBTs have also been coerced into padding supervision sheets indicating that they were supervised when they were not, and many have been coerced into reporting billable hours that were not delivered. Many RBTs are sufficiently intimidated by their supervisors that they are unlikely to report this to the Board.

Exploitation is similar to coercion. Exploitation involves “taking advantage of another person or situation usually, but not always, for personal gain.”¹⁹ In order for this to happen, there needs to be the unequal power dynamic as in coercion which can occur in behavior analysis organizations. From a behavioral perspective, the problem is that the exploiter comes into contact with reinforcement (aka *personal gain*) for their actions. This may be in the form of gaining credit for work done by others, receiving compensation for work done by supervisees, or gaining time by multitasking. One of the most insidious examples of exploitation involves a company policy of requiring supervisees to work for some period (often two years) in return for receiving supervision hours for their RBT or BCBA credentials.

From a behavioral perspective, the problem is that the exploiter comes into contact with reinforcement, aka personal gain, for their actions.



CASE 1.13A COERCION VIA ADDENDUM

"I am currently receiving supervision through my company and have been for the last few months. A few days ago, my supervising BCBA reached out via email to myself and his other supervisees notifying us that we were being required by the company to sign an addendum to our supervision contracts. This addendum states that as supervisees, we are now required to do home services at least once a week in order to continue receiving supervision.

To give some background, we are a center-based ABA facility that does offer home services and also some tele-health. Due to the pandemic, there are a limited number of staff willing to go into clients' homes for services. To remedy this staff shortage, the company's solution was to mandate this addendum to the supervision contracts. To this point, conducting these services was voluntary and at no time was the receipt of supervision contingent on conducting these services. My supervision contract has no official end date and states that my supervision could only be terminated if I was making insufficient progress, was no longer a full-time employee, was consistently late to supervision meetings, if I violated the BACB Code of Ethics, or if I was written up for unethical practice. My own interpretation of Code 1.13 is that these new terms should have been laid out in my original contract and now I am within my rights to decline any additional addendums to the contract.

My question for the Ethics Hotline is: Can my company compel me to sign an addendum to my contract or otherwise discontinue my mentoring?"

CASE 1.13B EXPLOITATION VIA SUPERVISION CHARGES

"I am in the process of accruing my experience standards hours to be able to sit for the BCBA exam. I signed a

supervision contract with my employer, an ABA company. The contract states that they would charge supervision at \$50 an hour, and I want to terminate my employment for a better opportunity. I believed they would charge for the meetings I had with supervisors discussing my cases since they could not bill the insurance for these hours. However, they charged every single time they supervised me with a client, even though the nature of the supervision did not focus on me furthering my career. Would it be ethical for them to charge me for these hours even though the company and supervisor also billed the insurance companies for supervision? I feel like this is charging me to work for them since they are charging me more per hour than what I make. I am also an RBT and am essentially paying for the 5% of hours I would have to be supervised to follow the RBT ethics code.”

• • • • •

1.14 Romantic and Sexual Relationships

Behavior analysts do not engage in romantic or sexual relationships with current clients, stakeholders, trainees, or supervisees because such relationships pose a substantial risk of conflicts of interest and impaired judgment. Behavior analysts do not engage in romantic or sexual relationships with former clients or stakeholders for a minimum of two years from the date the professional relationship ended. Behavior analysts do not engage in romantic or sexual relationships with former supervisees or trainees until the parties can document that the professional relationship has ended (i.e., completion of all professional duties). Behavior analysts do not accept as supervisees or trainees, individuals with whom they have had a past romantic or sexual relationship until at least six months after the relationship has ended.

This expanded explanation of the rationale for banning sexual relationships between the parties in our field seems warranted by the situations that have arisen in ABA in the recent years as

well as in the larger culture. Although the language is clear as to the intent of the standard, the consequences other than the obvious entanglements and evident impact on professional judgment, are not. Sexual relations with clients or trainees can have severe consequences for the victims that reach beyond those described by the terms “conflict of interest” and “impaired judgment.” A supervisee who has been stalked by a BCBA supervisor, groomed for exploitation, and used for their own cruel purposes may be damaged for years. A trainee who trusts their professor and finds themselves caught in a web of social interactions that become more and more personal may not be able to see a way out and some trainees have reported dropping out of graduate school as a result. The #MeToo Movement has given all victims authority to do more than escape and avoid these offenders or simply file a Notice with the Board. They are also urged to file civil and criminal charges against the perpetrators. We should be able to discern certain behavioral patterns and set clear limits from the onset of professional relationships. Our field should be a model for all professions; we are the experts in human behavior, and we should be able to clean up our house and live up to these expectations.

Not related to a romantic or sexual relationship, it is allowable to have normal social relationships with *former* clients. You can talk on the phone, do Zoom calls, or be friends on social media. You are not allowed to give behavioral advice or feedback on their current behavioral programming or discuss your clients, colleagues, or anything to do with your current company.



CASE 1.14 SHOCKED BY SEXUAL ADVANCES

“I wanted your opinion on a situation that came up at a company where I was recently working. Over the first couple months I was there, it became apparent that one of the owners/supervisors gave me more attention because she liked me romantically. She would stare at

me in a sort of longing way, be touchy-feely, and she was always very happy to be around me. I was flattered since she was my boss, and she was very smart and successful. I had a boyfriend at the time and so did she. Her boyfriend was another employee. I started to avoid her and not reciprocate her eye contact unless I absolutely had to. She became upset and wouldn't speak to me or look at me unless she had to in a meeting. This was disconcerting as I enjoyed the rapport and I tried to be more friendly. She responded to this by starting to say flirty things to me about me having her babies and even went on a rant about the BACB's absurd rule of not dating supervisees until two years past the end of the relationship.

During my competency assessment, she came up behind me and whispered that she could not take me out because we could not have a sexual relationship. I freaked out and went home early that day, I did not come to work the next day for the same reason. When I came back, my supervisor was angry and looked scared as though she made a mistake. I was exceptionally angry as I felt she was playing with my emotions and seemed to find it amusing.

My coworkers were jealous because I was ultimately promoted. I really believed it was earned as I worked so hard and was always complimented on my intervention and interaction with my clients.

I felt traumatized and needed therapy after all of this as I kept having flashbacks of all my negative interactions with these people. I tried to leave multiple times, but they always convinced me to stay. Even in the end, one boss asked me to stay. The one who liked me initially clearly wanted me to leave at that point. From your perspective, what should I have done besides leaving sooner?"



1.15 New—Responding to Requests

Behavior analysts make appropriate efforts to respond to requests for information from and comply with deadlines of relevant individuals (e.g., clients, stakeholders, supervisees, trainees) and entities (e.g., BACB, licensure boards, funders). They also comply with practice requirements (e.g., attestations, criminal background checks) imposed by the BACB, employers, or governmental entities.

This new standard appears to be in response to problems that some clients have had with their provider not giving them needed information when they transfer to a different agency. In some cases, those requests might have been for the case notes that therapists and supervisors often make for their own use, and this information is not always shared. Here are some examples of what needs to be provided for the stakeholders, clients, and trainees listed below:

1. Parent/caregiver: Progress reports for the family to share with the school or physician, information surrounding daily health habits or associated symptoms they may be tracking (foods eaten, toileting details, when a bruise appeared), details surrounding a problematic behavioral incident.
2. Supervisees: Assignment requirements, supervision forms, or feedback related to performance and assignments.
3. Trainees: Assignment requirements, supervision forms, or feedback related to performance and assignments.
4. BACB: Recertification deadlines, clarifications or responses to complaints filed against them, requests to participate as subject matter experts.
5. Licensure boards: Recertification deadlines, clarifications or responses to complaints filed against them.
6. Funders (insurers): Clarifications surrounding treatment plans, appeals and responses, or phone calls for peer-to-peer reviews defending medical necessity, audit requests for treatment notes, data and dates of service, assessments, and so forth.

7. Funders (schools): Clarifications surrounding treatment plans, behavior intervention plans, direction on treatment and interpretation of data, requests for meetings, guidance on parent concerns, training for aides and teachers.

1.16 Self-Reporting Critical Information

Behavior analysts remain knowledgeable about and comply with all self-reporting requirements of relevant entities (e.g., BACB, licensure boards, funders).

Self-reporting is a key element in our code of ethics. The Board has spelled out three reasons for a person to self-report to the BACB Ethics Department.²⁰

1. You are the subject of an ethics requirement violation, a disciplinary investigation, action or sanction, filing of charges, conviction or plea of guilty or no contest by a governmental agency, health care organization, third-party payer, or educational institution;
2. You are named on any public health- and safety-related fines or tickets; or
3. You have a physical or mental condition that would impair your ability to competently practice.

To help you decide if you need to self-report to the Ethics Department, the BACB has provided a series of questions for you to answer. Each one requires a “Yes” or “No” answer, and if you answer “Yes” to any question, then you must self-report. A portion of this form is shown in Figure 6.1.

Any changes to your name, address, or email does not go to the ethics committee but rather to your BACB account.

The BACB now has a handy “Ethics Self-Reporting Form” on their website: www.bacb.com/ethics-information/reporting-to-ethics-department/self-reporting/. A portion of the form is shown in Figure 6.2.

Related Ethics Requirement Element	Question to consider	Yes	No
RBT Ethics Code Preamble Professional and Ethical Compliance Code for Behavior Analysts 10.0(a)	Have you violated an ethics requirement?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Have you been the subject of any criminal legal actions, including filing of criminal charges, arrest, plea of guilty or no contest, presentencing agreements, diversion agreements, convictions, and any period of custody in a jail, prison, or community corrections setting such as a "halfway house"?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Have you been the subject of any civil legal actions, including filing of lawsuits, or any legal actions in which you have been named or identified (even if not a direct party to the suit)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Have you been the subject of any regulatory actions, including investigations, consent agreements, administrative law proceedings, mediation, arbitration, etc.?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Have you been the subject of any healthcare agency and employer actions, including investigations and sanctions for incompetent or neglectful service delivery?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Figure 6.1 A sample of the form to help answer the question “Should I self-report?”

Ethics Self-Reporting Form

Your Contact Information

Full Name: *

Certification Type/Applicant: *

RBT
 ▼

Email Address: *

Self-Report Information

Figure 6.2 The Ethics Self-Reporting form.

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CASE 1.16A SELF-REPORT A MENTAL HEALTH CONDITION?

"I am in a graduate program in ABA and work at a small agency with a single supervising BCBA/owner/executive director. The company has 20 staff and a long history of

interpersonal conflicts and challenges with this BCBA, who tends to be highly emotionally reactive, tyrannical, psychologically manipulative, and likely has a personality disorder or some other mental health challenges.

A colleague and I work closely with the owner/BCBA and receive the brunt of his psychological abuse and manipulation. I spoke to him last week about his drug use during work hours and the ways it is interfering with our therapy with clients. He accused me of being hateful, judgmental, and discriminatory since he practices alternative medicine. He wants staff to be unconditionally loving and accepting of him and says he is autistic. I believe he has more mental health challenges than autism, although he may be on the spectrum.

He is growing more and more irrational and emotionally unstable, yelling, and screaming at me and others, insulting staff in meetings, and generally escalating in his reactivity and rage. He has also acted extremely unstable and abusive with clients. In one episode, he pinned my client's arms, stood over him while my client was seated, and screamed in his face loudly and with intense rage. I am afraid to cross him and lose any severance compensation.

I feel that he should self-report his condition to the Board but am not sure that he will.”

CASE 1.16B SELF-REPORT A DUI?

“Does a BCBA need to self-report a DUI? This took place a month ago. The BCBA will be on probation for 6 months to a year and there was no fine. It did not take place while working or involve any clients. What are the consequences?”



RESPONSES TO CASES

CASE 1.01 PERILS OF TELLING THE TRUTH

You did the right thing by asking if there would be any retaliation for telling the truth, but in a case like this, it is advisable to get the response in writing for your own protection. Basically, you were lied to by the BCBA, and this is a clear violation of code 1.01. This is reportable to the Board if you have the documentation to back it up. You could also file a complaint with the HR department of your former company. Finally, yours may have been a wrongful termination, and it may be against the law in your state. Check with an attorney to see if you have a case. Here is a link about how to do that: employment.find-law.com/losing-a-job/wrongful-termination-claims.html. We are so sorry that this has happened to you and hope that it does not dampen your basic tendency to tell the truth even if it is uncomfortable.

CASE 1.02 ARRESTED FOR DRUGS, NOW WHAT?

This can be reported anonymously to the BACB via Publicly Documented Alleged Violation, but there is no obligation to do so. If you decide to proceed, go to BACB.com and type this into the search box.

FOLLOW-UP 1 MONTH LATER

“I did not report the individual.”

CASE 1.03 ACCOUNTABILITY FOR WHOM?

The new BCBA needs a warning, a yellow flag, that they are not yet ready for prime time. They need to be coached to ask more questions, get a review of their work by their supervisor before it is made official, and perhaps some shadowing of a senior BCBA. The BCBA most likely got a serious dose of reality when he/she heard about what could have happened if that had not been caught—sleepless

nights, self-doubt, and so on. A warning plus the coaching intervention should do the job here.

The supervisor needs to understand that taking on a rookie BCBA is not an easy task and that they are held accountable for this person's actions, so a warning to them is also appropriate.

CASE 1.04 CONFLICTING ROLES

No, you cannot evaluate a client and then later serve as their therapist. This could easily be seen as a conflict of interest, since diagnosing a person and then accepting them as a client could obviously appear as self-dealing. The proper thing to do is to complete the diagnosis and then provide the client with a list of providers in the area. You could list your company last, but do not indicate that you are associated with the company. This way, you give the person the choice of where they would like to go for treatment, and you are free of the appearance of a conflict of interest. Even though the mother trusts you, the right thing to do is give her the list of providers and let her make the choice.

CASE 1.05 SCOPE MISMATCH

My advice is for the new BCBA colleague to request in writing to the owner to be taken off the case. He should provide reasons stressing operating in the client's best interest and the concern that this exceeds the colleague's scope of competence.

CASE 1.07 DO NO HARM

This is a very difficult situation, since your job as the behavior analyst is to primarily watch out for the best interest of your client. In this case, this is diametrically opposed to what the parents are asking. As is often the case, it is time for some persuasion. Our advice to the parents is to not use contingencies to try and shape this child into accepting a non-preferred gender role. This is not

likely to work and could cause harm to the child psychologically. Then, we strongly support our idea of bringing in a professional who is an expert on gender-related topics to provide guidance to the family.

CASE 1.08 DISCRIMINATION AT WORK

This sort of discrimination in the workplace is totally unacceptable as well as illegal. You need to meet immediately with HR and with the owner to discuss remediation.

CASE 1.09 WHO IS DOING THE HARASSING NOW?

If you have previously given a written warning to the family about the inappropriate harassment, you can terminate immediately.

FOLLOW-UP

We showed the family the previous correspondence with the dad verbally harassing the therapists and the examples of the current “harassment.” Mom ended up terminating immediately because they thought that the trust was not there after the initial sexual harassment.

CASE 1.10A IS IT A BIAS?

This does not appear to be a case of a bias against the family. From the BCBA’s perspective, her personal trauma obviously affected her deeply so that matching her with this family is not in her or their best interest right now. So that there is no harm done to the family, the BCBA’s supervisor should be carefully removed from the case. And, if there is a way for her to receive some counseling to help her work through the trauma, that would be a kindness and service one would want to extend to a valued employee. Even if counseling was accepted, this will not be an overnight recovery; it could take weeks

or months to accomplish. There can be a fine line between a person's bias and a conditioning history that has produced a traumatic reaction. Behavior analysts and supervisors need to be prepared to sort these out and make the right call.

CASE 1.10B QUITE A CHALLENGE

One of the most complex layers of mental health challenges is that insight and judgment may be impaired. Hence, someone may lack the capacity to recognize that their issues are impacting their ability to perform their work duties, or that their problems are reducing the quality of their work products. So, while the idea of inclusion in the code is terrific, and while it aligns with what other professions also say, it may not lead to self-identification of the need to modify work obligations/protect clients. It falls to supervisors and administrators to be on the lookout for and to react appropriately to these circumstances.

This is a situation in which coordination with HR is imperative. HR needs to take the lead on how such issues are managed within the company. Employee rights to privacy and to protection given any disability are paramount. In general, the assessment of competence and capacity to resume work would be best left in the hands of those fully trained to make such assessments. Behavior analysts or even HR personnel are not fully skilled in these areas. This is a specialized skill set, often within psychology. HR may consider such evaluations by qualified professionals as part of continuance of employment.

If someone is walking around voicing thoughts of suicide, it is a potential crisis. This person needs help. Begin with HR, both to guide modifications to work requirements/leave of absence and to access services and supports. If ineligibility to resume is determined, the supervising BCBA should remove the person from the list of RBTs for which they are responsible. HR could work with the person to self-report or might report them, depending on circumstances.

CASE 1.11A CONFLICT OF INTEREST GOES TO SCHOOL

This is a clear conflict of interest and a violation of Code 1.11. It would be a good idea to start by trying to address this informally. You need to find out who this person's supervisor and arrange a meeting to discuss your concerns. Be sure to follow this up in a memo that begins, "As per our meeting this morning, here were the concerns that I expressed." If it turns out that the school is not concerned about this conflict of interest, it would be appropriate to report this person to the BACB via Notice of Alleged Violation. In addition to your firsthand information, they will require some documentation to be able to take any action.

CASE 1.11B AN EXTREME MULTIPLE RELATIONSHIP

This is an outrageous example of a violation of Code 1.11. We strongly recommend that you file a Notice of Alleged Violation with the BACB.

FOLLOW-UP

The mom did file a Notice with the Board. She also got custody of her children in the divorce and in an ironic twist, the BCBA and her "boyfriend" recently broke up.

CASE 1.12A SO MANY QUESTIONS

First, by "infrequent expression" we interpret the code to culturally appropriate events such as Christmas or Chinese New Year where, for some families, it is their custom to give out small gifts of appreciation and where refusing a gift would harm the relationship between the behavior analyst and the family. Behavior analysts must now be aware of their client's culture and the context in which a gift might be offered. Not all holidays involve giving gifts,

for example. So, the question of “How often?” boils down to something simple, like once per year. Anything more often could create a dual relationship, which is not allowed. It is advised that each company develop a policy for their employees clearly describes the gifting policy. The policy might range from “No gifts under any circumstances, so please nicely inform all of your clients ahead of time about this” to “Our policy is that if refusing a gift less than \$10 would cause a problem with the family, then it can be accepted as long as it is no more often than once per year.” Each company will have to develop their own policy and take responsibility for the education of employees and enforcement of the policy. Our interpretation is that it would be unethical under this code for behavior analysts to accept food or a \$10 gift card on a regular or even intermittent basis from a family.

Second, if a family wants to give a gift of any size to a school or agency, this should be handled through some internal office independent of the behavioral services team (e.g., the finance or business office) so that the gift to the team is essentially from an “anonymous” donor. This way, the size of the donation/gift doesn’t matter. A parent would not be allowed to bring lunch or snacks to every IEP meeting, and this would need to be covered in the company policy.

CASE 1.12B SPLITTING HAIRS ON GIFTING

This rule is likely to cause a lot of discussion. You would probably not be reported to the Board if, after doing the math, you determined that the gift bouquet came out to \$10.25 per person. As discussed in the previous case, each company, clinic, agency, and organization will now need to develop policies and procedures to accommodate this change.

CASE 1.12C DON’T BE RUDE

It is probably not possible to determine the value of these meals, so we would not worry about trying to stay under the \$10 limit.

Once a week seems excessive, but if the family prepared their special dishes once a year, that is probably acceptable. One meal does not need to be reported to the Board, but your company needs to be made aware of this. The larger concern has to do with the development of a dual relationship with the family (see Code 1.11 Multiple Relationships), which is certainly possible since dining with others is one of the primary ways that personal bonding occurs in our culture. You may want to consider having your company develop a policy and procedure around situations like this including a definition of “infrequent.” Then, if at some point this practice was disputed, at least the company can say they attempted to identify possible risks associated with dual relationships, including potentially damaging the therapeutic relationship with a client.

CASE 1.13A COERCION VIA ADDENDUM

The immediate answer to your question is No, you do not need to sign this addendum to your contract. The terms you described are coercive in nature and they are sometimes called adhesion contracts which do not benefit both parties. You should start with your supervisor and be prepared to get an opinion from an attorney if necessary.

FOLLOW-UP

“After receiving the advice from the Hotline, I went back to my mentor and pointed out the violations in the code that this would involve. He discussed this with the clinical director who apparently then also wrote to the Hotline and received the same reply that I did. The company at that point dropped the requirement to sign the addendum.”

CASE 1.13B EXPLOITATION VIA SUPERVISION CHARGES

If the supervisors were already compensated for the time that they provided you with supervision, then it would be considered double-

dipping, which is unethical and most likely fraudulent behavior. This sounds like exploitation, which is very concerning, and highly unethical. It sounds like you have a lot to consider.

FOLLOW-UP

"I set up a meeting with the HR representative and compiled a list of the codes that their contract violated (namely, the ones about billing) and explained how charging me is considered double billing since the supervisors were already compensated for their time when they billed the insurance company. During the meeting, the HR rep told me that if I didn't agree with the contract, I shouldn't have signed it. However, I had no other way for accruing supervisory hours for the BCBA certification since a contract is required. She reduced the bill to only include 5% of the hours. I contacted an employment lawyer to fight the at-will contract I signed at the beginning of my employment. I believe she ended up speaking with the owner of the company, a BCBA-D. Later, I received a phone call stating that I didn't have to pay as a 'thank you for being a great employee of three years.' I am now at a new company with ethical practices and am happy in my profession. Thank you so much for your guidance."

CASE 1.14 SHOCKED BY SEXUAL ADVANCES

This case required several email and phone exchanges to sort out. Since the incident occurred more than 6 months prior, it fell outside the window for reporting. In addition, there was no documentation since all the problematic attention was in person and there were no witnesses.

CASE 1.16A SELF-REPORT A MENTAL HEALTH CONDITION?

This seems like a frightening situation. This BCBA/owner is clearly out of touch with reality; no one has the right to treat people this way. The BCBA is clearly in violation of Code 1.16 and should report this

mental condition that impairs his ability to practice. If he does not self-report, you, or someone else there with firsthand knowledge should file a Notice with the Board. The abuse of clients that you witnessed should have been reported immediately to the families, in writing.

FOLLOW-UP

“Several staff have decided to stay on at the company for now to transition clients and set themselves up for their next employment. The remainder of us are all in the process of actively transitioning to new jobs. At least two soon-to-be former employees have mentioned contacting the BACB, and I am crystal clear that I will be doing that as well after my final day and having any severance agreement finalized. We all fear retaliation and several staff have consulted with attorneys.”

CASE 1.16B SELF-REPORT A DUI?

This infraction needs to be reported to the Board since there was an arrest, even though there was no fine and the BCBA was put on probation. Incidents like this are handled on a case-by-case basis, so it is difficult to tell what the consequences might be. See Considerations for Self-Reporting at BACB.com for more information.

NOTES

1. See BACB.com for details.
2. Peterson, K. M., Piazza, C. C., & Volkert, V. M. (2016). A comparison of a modified sequential oral sensory approach to an applied behavior-analytic approach in the treatment of food selectivity in children with autism spectrum disorder. *Journal of Applied Behavior Analysis*, 49, 485–511. <https://doi.org/10.1002/jaba.332>
3. In other literature, this is referred to as implicit bias that may produce “microaggressions,” which involve small, insensitive slights that can be harmful to people. See <https://en.wikipedia.org/wiki/Microaggression> for a complete explanation.

4. We would like to thank Lauren Beaulieu, PhD, Noor Syed, PhD, and Dr. Nasiah Cirincione-Ulezi, EdD, for their input on this issue.
5. www.aafp.org/journals/fpm/blogs/inpractice/entry/implicit_bias.html
6. https://en.wikipedia.org/wiki/Turn_construction_unit
7. Skinner, B. F. (1971). *Beyond freedom and dignity*. Indianapolis, IN: Hackett, p. 131.
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7

Section 2: Responsibility in Practice

A BRIEF HISTORY OF THE PRACTICE OF BEHAVIOR ANALYSIS

In the early days, our field consisted of experimental psychologists applying the principles of behavior to “subjects” they encountered in the residential units of state institutions. These pioneer behavior analysts most often had no training in clinical psychology. They believed that behavior could be changed using procedures derived from learning theory. There was no question about where the responsibility was; it was clearly with the employer. The “client” (although that term was not used initially) was the employer. The client/employer was often a superintendent or administrator of the facility. In some cases, the parents of a child were the “clients.”

It was not until 1974 that the concept of a client’s “right to treatment” surfaced. “Right to treatment” emerged from the landmark *Wyatt v. Stickney* (1971) case in Alabama. In this case, it was argued that institutionalized mental patients had a right to receive individual treatment or be discharged to the community. Although the case really did not have anything directly to do with

Wyatt v. Stickney (1971) put behavior analysts on notice that a paradigm shift had occurred.

treatment per se (e.g., it dictated increases in professional staff, improvements in the physical plant, and how many showers a patient should receive per week), it blasted the term *right to treatment* into the legal arena. *Wyatt v. Stickney* put all psychologists, including behavior analysts, on notice that a paradigm shift had occurred. In behavior analysis, we immediately became sensitive to the possibility that our “client” might be harmed by our procedures, and in a short period of time, “clients’ rights” were the new watchwords. The original trial judge, Frank M. Johnson Jr., set forth what later became known as the *Wyatt* Standards. This case set a precedent and put all mental health and retardation professionals on notice that their services had to be delivered in humane environments where there were sufficient qualified staff members and individualized treatment plans, and the treatment had to be delivered in the *least restrictive* environment.

Following the *Wyatt* decision, it was clear that you had a responsibility to the person on the receiving end of treatment.

Following the *Wyatt* decision, if you were assigned to work with a client in a residential facility, it was clear that you had not only an obligation to the facility to do your best work but also a responsibility to the person on the receiving end of the treatment to make sure he or she was not harmed. There was concern in the beginning that “behavior specialists” (they were not yet called behavior analysts) would manipulate “client” behavior just for the convenience of the staff, such as punishing clients who were incontinent so that staff members would not have to change their diapers. Over time it became evident that, ethically speaking, it was only right to consider the needs of the actual client along with anyone else who might be affected by the procedures (e.g., staff, parents, guardian, or other stakeholders). This immediately made the behavior specialist job far more difficult. By the end of the 1970s, behavior analysis

was becoming more prevalent and visible, and behavior analysts found themselves working with other professionals on “habilitation teams” to determine the right treatment for clients. Thus, the beginning of issues concerning consultation and cooperation with other professionals arose. In addition, there began to be differentiation of the roles of the entities, and concerns developed about “third-party” involvement. If a client (first party) hires a behavior analyst (second party), presumably there is no conflict of interest, and the client can fire the behavior analyst if he or she is not satisfied with the services. Likewise, the behavior analyst will do his or her best to satisfy the client’s needs so that the behavior analyst will be paid for his or her services. This arrangement has built-in checks and balances. But if the behavior analyst is hired by a third party (e.g., a facility) to treat the behavior of one of its residents (first party), there is a presumption that the behavior analyst will work to satisfy the needs of the third party to keep his or her job.

By the 1980s, behavior analysis was much more visible in mental retardation treatment circles and was accepted by many as a viable strategy for habilitation. It was around this time that the further trappings of service delivery had to be accommodated. It was clear that clients had rights (both under the US Constitution and the *Wyatt Standards*), and that everyone, including the behavior analyst, had to respect them and certainly to be informed of them prior to treatment. Furthermore, with behavior analysis approaching the mainstream of accepted approaches, other protections had to be put in place. Clients had a right to privacy, and arrangements had to be made to protect their privacy and confidentiality (this was pre-HIPAA). Records had to be stored and transferred in a way that maintained these rights, and behavior analysts had the same

In the late 1980s, the ABA convened a blue-ribbon panel of experts to reach consensus on right to treatment.

obligation as other professionals to obtain consent to disclose the information.

By the late 1980s, the time had come for behavior analysts to speak out on the issue of right to treatment, and the Association for Behavior Analysis (ABA) convened a blue-ribbon panel of experts to reach some consensus on the topic. A consensus was reached and ultimately approved by the governing body of the ABA that essentially stated that clients had a right to a “therapeutic environment” where their personal welfare would be of paramount importance and where they had a right to treatment by a “competent behavior analyst” who would conduct a behavioral assessment, teach functional skills, and evaluate the treatments. The ABA panel finally concluded that clients had a right to “*the most effective treatments available*” (Van Houten et al., 1988). This reference to *effective* treatments set the stage for behavior analysts to redouble their efforts to make a direct connection between the published research and the application of empirically tested interventions.

Section 2—Responsibility in Practice provides a clear and detailed list of the obligations of behavior analysts who treat clients using behavioral procedures. By accepting these responsibilities and taking them seriously, we can guarantee that our clients will receive the first-class treatment they deserve and that, as a profession, we will have demonstrated our respect for their rights as we provide state-of-the-art behavioral interventions.

As behavior analysts, we are charged with using only conceptually consistent, evidence-based methods.

Preview to Responsibility in Practice

Providing Effective Treatment starts with prioritizing clients’ rights as well as their needs for treatment. As behavior analysts, we are charged with using only conceptually consistent, evidence-based

methods. These services need to be delivered in a *Timely* fashion along with related paperwork responsibilities without *Disclosing Confidential Information* while *Protecting Their Documents*. When services are rendered, there must be *Accuracy in Billing and Reporting* and the *Fees* need to be fair and duly represented to clients. *Communicating About Services* needs to be done in the language of the client and without jargon; this includes explanations of assessment and behavior-change procedures *before* they are implemented, and results explained in the same understandable format; showing the clients your credentials at the onset of services is also required. *Involving Clients and Stakeholders* in the selection of goals, assessments, and behavior-change interventions is also required, along with progress monitoring and reporting. *Collaborating with Colleagues* and compromising on treatments, when possible, when it is in the best interest of your client is advised. A very important step to keep in mind when assessing clients and developing their programs is to *Obtain Informed Consent* (be sure to check the Glossary for the key elements) from the client and stakeholders ahead of time. Behavior analysts always *Consider Medical Needs* when doing an assessment and seek a medical referral if there is any reasonable likelihood that there are medical or biological factors present. Being conceptually consistent in the *Selection, Design, and Implementation of Assessments and Behavior-Change Interventions* is of course a central theme of behavior analysis. We always *Describe our Behavior-Change Interventions Before They Are Implemented* and *Minimize Risk with These Interventions*. *Collecting and Using Data* for making decisions about continuing or modifying treatments and *Continually Evaluating Our Interventions* is a must for our field. And finally, although this is probably best done early in the chain of events, we need to *Address the Conditions* that could *Interfere with Service Delivery*, which includes the behavior of others including parents and stakeholders. Neutralizing or removing those barriers may be necessary, and calling in other professionals may also be necessary. Documenting everything is essential.

A Closer Look at Responsibility in Practice

2.01 Providing Effective Treatment

Behavior analysts prioritize clients' rights and needs in service delivery. They provide services that are conceptually consistent with behavioral principles, based on scientific evidence, and designed to maximize desired outcomes for and protect all clients, stakeholders, supervisees, trainees, and research participants from harm. Behavior analysts implement non-behavioral services with clients only if they have the required education, formal training, and professional credentials to deliver such services.

There is a lot to consider in this standard which includes our requirement that we (a) remain aware of clients' rights, (b) only use conceptually consistent behavioral methods (c) based on science (d) that will maximize outcomes. The last sentence in 2.01 regarding “nonbehavioral” services is a conundrum and appears to conflict with (a)–(d). To begin, we need to understand what “clients’ rights” include. Here is a short list derived from a variety of sources including the Constitution, the Bill of Rights, and the Supreme Court:¹

- (a) Clients have a right to . . .
 - Privacy
 - Self-determination
 - Training to maximize their potential to lead independent and productive lives
 - Minimal use of restraint and seclusion and least restrictive conditions
 - Individual dignity, personal liberty, pursuit of happiness, and humane care
 - Religious freedom
 - Social interaction and community activities
 - Physical exercise and recreational opportunities
 - Be free from harm, isolation, excessive medication, abuse, and neglect

- Consent to or refuse treatment
- Vote in public elections
- Unrestricted communications
- Possession and use of their own clothing
- Medication only by order of a physician, and it may not be used as punishment or convenience of staff and not substitute for a behavior analysis plan
- An exam by a physician to eliminate organic causes before a treatment plan to eliminate problem behavior is implemented.

This daunting list is just a starting point since each state may have some additional rights as established by their legislature.

(b and c) After identifying the rights of clients, the next item to be considered is conceptually consistent, science-based behavioral methodology. This requirement is simple, since the primary concept of ABA is that we deal with learned, aka *operant* behaviors, and we manipulate the social and physical environment to effect change. Behavior analysts do not allude to mysterious, theoretical causes of behavior inside the body or recognize their related therapies such as Reiki, energy healing, or guided meditation. Other pseudoscience “therapies” include biomedical treatments like chelation, Lupron therapy,² and hyperbaric oxygen therapy.³ One additional group of non-evidence-based approaches includes treatments such as horseback riding, dolphin-assisted therapy, facilitated communication (FC), rapid prompting method, zones of regulation, essential oils, and spelling to communicate.⁴ Conceptually consistent methodology, on the other hand, conforms to the seven dimensions of ABA outlined by Baer, Wolf, and Risley in 1968.⁵ These include that

The primary concept of ABA is that we deal with learned, aka *operant* behaviors, and we manipulate the social and physical environment to effect change.

an intervention must be (1) *applied*, (2) *behavioral*, (3) *analytic*, (4) *technological*, (5) relate to *operant principles*, (6) be *effective*, and (7) and *generalize over time* and to other behaviors and other settings. One more dimension can be added: (8) an intervention must be *ethically applied*. A complete description of the scientific universe in which we work can be found in Dr Jack Michael's classic, *Concepts and Principles of Behavior Analysis* (Michael, 2004).

(d) Maximizing outcomes for a client is an enormous order that requires well-trained therapists, proper budgeting of resources, full cooperation by teachers or caregivers, and masterful coordination of services by a fully committed BCBA.

The final sentence of Code 2.01 seems out of place since it appears to give behavior analysts permission to implement non-evidence-based treatments if they have the credentials to do so. However, if they are following the requirements of 2.01(a)–(d), they probably would not even consider taking up the practice of any of the pseudoscientific methods described above. But, if a behavior analyst does use non-evidence based treatments, the maxim is *No Comingling of Treatments*. If BCBA^s choose to perform hot yoga therapy with clients, they need to separate the yoga and behavior analysis, so the public is not confused. “ABA Hot Yoga” would not be allowed, since that is the comingling mentioned earlier. The behavior analyst could offer “ABA Treatment by J. Jones, BCBA” on one website and “Hot Yoga by Yogi J. Jones” on another website as a solution.



CASE 2.01 GUT CHECK

“During a recent intake session, the child’s mother mentioned she is giving her child ‘chlorine dioxide’ as a daily supplement. I did not think much of it and thought it was like any other normal vitamin. She said it was to ‘clean her son’s gut,’ as she believes that gut health is imperative to reducing autism symptoms.

"I did more research on this after the intake and discovered that this is a popular but very dangerous non-evidence-based treatment that some parents of ASD children are adopting. The chemical is often marketed as 'Miracle Mineral Supplement.' Considering this new information, as a BCBA, I really don't know how to move forward or what I should do. Do we tell the mom about this? What would we tell her? Would we have to tell her to stop giving her child the solution before starting intervention? I just don't know. I am looking forward to your response."

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2.02 New—Timeliness

Behavior analysts deliver services and carry out necessary service-related administrative responsibilities in a timely manner.

This element of the code is intended to let consumers know that they should not have to wait for excessive periods of time for behavior services to commence once they have been through the admissions process. Since there is no definition in this code item of "timely," this means that agencies will have to specify what these durations are, in writing, and inform their potential consumers. Then it will be up to the consumers to provide feedback and even possible enforcement. Hopefully, this addition to the code will end the practice that some companies adopted of setting up assessments for all potential clients that come along and then making them wait endlessly for services to begin. These clients were trapped by this practice and could not move to another company since the assessment funds had now been depleted. In addition to behavioral services that should be delivered punctually, the administrative duties that should be carried out in a timely manner include any reports that should be completed, completing hours documentation for insurance companies, scheduling future appointments, and so on.



CASE 2.02 WAITING AND WAITING

"I work for a very large ABA company. We are currently very short-staffed due to more than one RBT staff member quitting unexpectedly. In the last 2 months, two clients were assessed for services; the second one began receiving services first. Now the first client's family is threatening a lawsuit because we are still unable to initiate due to a shortage of techs. When I asked why the second client began receiving services prior to the first, my supervisors stated it was a 'miscommunication.'

Additionally, it has come to my attention that another client jumped the wait list due to a new BCBA's special request to the clinical director. We just conducted this client's initial assessment last week.

Is this unethical according to the code? I can see how it could go against 2.02 Timeliness."



2.03 Protecting Confidential Information

Behavior analysts take appropriate steps to protect the confidentiality of clients, stakeholders, supervisees, trainees, and research participants; prevent the accidental or inadvertent sharing of confidential information; and comply with applicable confidentiality requirements (e.g., laws, regulations, organization policies). The scope of confidentiality includes service delivery (e.g., live, teleservices, recorded sessions); documentation and data; and verbal, written, or electronic communication.

It might not be immediately obvious what “appropriate steps” you might need to take to protect confidentiality, but our field could borrow the following tips from attorneys who handle confidential information for their clients.⁶ (a) Be careful with what you know. Don’t talk about your clients when you are out in the community, discourage

clients from sending you emails or text messages that could be read by others in your home or office, don't share information on clients with friends or family, make sure that all client files are kept in a secure location, don't talk on the phone with clients if someone else is in the room, and finally, don't brag about your clients or mention them on social media. (b) Use secure, HIPAA-approved software when transmitting documents or data. (c) If other people in your organization have access to or process your data or your communications, make sure that they have been properly screened including background checks, drug tests and credit checks. (Why credit checks? A person who is deeply in debt may take risks with your information if they see an opportunity to profit from sharing it.)

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CASE 2.03 ACCIDENTAL EXPOSURE

"I am a BCBA. I emailed a payment invoice to a parent in error. It was actually for my other client. The invoice includes the child's first and last name, my rate of pay, the date and hours of service, description of the payment (e.g., behavior consultation), and so forth. I emailed the parent to notify him that it was an error and asked him to delete the email permanently. Also, I asked him not to disseminate, distribute, copy, or take any action.

"My email footer also states as follow:

"This email and any files transmitted with it are confidential and intended solely for the use of the individual or entity to whom they are addressed. If you have received this email in error, please notify the system manager. This message contains confidential information and is intended only for the individual named. If you are not the named addressee you should not disseminate, distribute, or copy this e-mail. Please notify the sender immediately by e-mail if you have received this e-mail by mistake and delete this e-mail from your system. If you are not the

intended recipient you are notified that disclosing, copying, distributing, or taking any action in reliance on the contents of this information is strictly prohibited.

“Did I take a right action? Is there anything else I need to do?”

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2.04 Disclosing Confidential Information

Behavior analysts only share confidential information about clients, stakeholders, supervisees, trainees, or research participants: (1) when informed consent is obtained; (2) when attempting to protect the client or others from harm; (3) when attempting to resolve contractual issues; (4) when attempting to prevent a crime that is reasonably likely to cause physical, mental, or financial harm to another; or (5) when compelled to do so by law or court order. When behavior analysts are authorized to discuss confidential information with a third party, they only share information critical to the purpose of the communication.

The circumstances under which you might need to release confidential information on a client are rare and those are spelled out in this standard. However, some additional clarification might help. (a) Disclosing confidential information when informed consent is obtained means that you may disclose confidential information if your client has given you permission to do so. The client must sign a consent form to allow this to happen. For example, if a relative is moving into the residence to assist with childcare during a stressful time, the client might want the relative to know what is going on with their child’s behavior plan so that they can interact with the RBT staff during their in-home sessions. (b) Confidential information may be disclosed when attempting to protect the client or others from harm. This standard is relevant in a situation where the client has done something to attract the attention of law enforcement while you are out in the community. To keep your client from being treated like a criminal, you might

need to inform the deputy that he is autistic, he is under your care, occasionally has outbursts, and that he is no danger to others. You would explain he is simply having an episode because the burger they gave him at McDonald's had three pickles on it and they are "touching!" (c) The need to disclose confidential information when attempting to resolve contractual issues is highly unlikely since contractual issues arise in a slow and methodological manner. There will be plenty of time to have the relevant parties discuss the release of confidential information. (d) Confidential information may be disclosed when attempting to prevent a crime that is reasonably likely to cause physical, mental, or financial harm to another. This situation might come up in the community as well. If you are out with your client and can see that he is about to touch someone inappropriately, and you make a quick decision to use a blocking response, you might also say something like, "I'm so sorry. If she sees someone that has a purse like hers, she thinks they have stolen it from her. Terry is language-delayed and instead of using her words, she will try to grab the person's bag. Again, I'm sorry and hope that this has not caused you any distress. I am a behavior analyst, and we are treating this problem. Here is a card with my name and my supervisor's name, please feel to call her if you have any question." (e) Confidential information may be disclosed when you are compelled to do so by law or court order. This is self-explanatory; if you find yourself in court for some issue in connection with a client (e.g., a custody case), the judge may require you to release certain information. In a situation such as this, it is acceptable to release the information.

2.05 Documentation Protection and Retention

Behavior analysts are knowledgeable about and comply with all applicable requirements (e.g., BACB rules, laws, regulations, contracts, funder and organization requirements) for storing, transporting, retaining, and destroying physical and electronic documentation related to their professional activities. They destroy physical documentation after making electronic copies or summaries of data (e.g., reports and graphs)

only when allowed by applicable requirements. When a behavior analyst leaves an organization, these responsibilities remain with the organization.

There has been considerable confusion about the status of documents that result from behavior-analytic programming. This standard clarifies this issue. Once a behavior analyst moves from one organization to another, they are no longer responsible for documents from the organization they left. They are not required to take copies with them, and once they leave, they are not responsible for securing documents. Securing the documents becomes the responsibility of the organization. While a behavior analyst is still working for an agency or clinic, they are responsible for making sure that all client documents are safe and secure. Transferring hard copies to digital format is allowed under certain circumstances, but you must check on company policies, and the company must remain in compliance with funding agencies.

2.06 Accuracy in Service Billing and Reporting

Behavior analysts identify their services accurately and include all required information on reports, bills, invoices, requests for reimbursement, and receipts. They do not implement or bill nonbehavioral services under an authorization or contract for behavioral services. If inaccuracies in reporting or billing are discovered, they inform all relevant parties (e.g., organizations, licensure boards, funders), correct the inaccuracy in a timely manner, and document all actions taken in this circumstance and the eventual outcomes.

Billing is most often handled by the business office at the company where the behavior analyst is employed, so this standard will not be much of a burden. There is one exception, however, and that is reporting on time spent with a client. This is the infamous *billable hour*. Billable hours must be honest and accurate. Otherwise, the billing is considered fraud.

Since ethical behavior analysts will probably not be involved in delivering nonbehavioral services, there should not be a problem

related to billing for nonbehavioral services under an authorization for behavioral services. One of the most frequent questions sent to the Ethics Hotline is where the BCBA is also a licensed speech therapist or counselor. These double-credentialed professionals do have to take care to keep their two different therapies separated for billing purposes. For example, if a BCBA/SLP has a two-hour session with a client where they use behavior-analytic procedures to make the speech session run more smoothly, they will have to determine which treatment plan and authorization services are being rendered. They are not allowed to bill for both. Care should be taken to record the exact start and stop times for services. This should be coupled with session notes that support the services rendered according to the intent of the billing code used. Since this sort of billing is complicated, it is a good idea for the double-credentialed professional to consult with an expert on billing and insurance to establish the rules that apply in these situations.



CASE 2.06 TWO SC OWNERS GET PRISON FOR THEIR ROLES IN \$13 MILLION FEDERAL AUTISM HEALTH FRAUD⁷

Two South Carolina women were ordered to federal prison for their roles in a federal health care fraud in a long-running illegal scheme where a company falsely billed government health insurance programs for some \$13 million for supposed care for autistic children. Victims in the case included taxpayers, people who are forced to pay higher health care premiums because of fraud, and autistic children who lost out on treatment when the perpetrators submitted bills for care the children did not receive. Their former company, the SC Early Autism Project, is one of the largest childhood autism providers in South Carolina. The defendants made illegal profits out of filing false claims for non-existent treatment of autistic

children covered by Medicaid and Tricare, according to evidence in the case. At the time of the illegal scheme, from about 2009 to 2016, the “culture and the climate of the Early Autism Project was such that everyone who worked there knew the billing practices were fraudulent.” As part of the fraud, employees forged parents’ signatures saying they had received the therapy for which the company was billing the government.

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2.07 Fees

Behavior analysts implement fee practices and share fee information in compliance with applicable laws and regulations. They do not misrepresent their fees. In situations where behavior analysts are not directly responsible for fees, they must communicate these requirements to the responsible party and take steps to resolve any inaccuracy or conflict. They document all actions taken in this circumstance and the eventual outcomes.

Because most behavior analysts work for a for-profit company or non-profit organization, there will be little need for them to worry about sharing fee information. This will be handled by the business office. A related factor is that fees are often limited by what private insurance or government agencies will allow. If a behavior analyst is in private practice, this standard will apply to them. The goal is to be honest and up-front with clients so that there are no hidden charges that would make clients feel like they are being cheated or manipulated.

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CASE 2.07 HIDDEN FEES

“I am a parent and I have a question regarding ethics when it comes to charging fees. My wife and I recently

reached out to a behavior analyst for our son who has been diagnosed with mild autism. The therapist sent us her fee schedule and we scheduled a phone-intake interview. We knew we were being charged for this interview, but I should make it clear that we have never signed anything saying that we understand how her fees work. She then proceeded, with our permission, to observe our son at school. We knew we would be charged for this as well. She also consulted with numerous other people on our son's team (teachers, speech therapist, etc.). Her fee schedule mentioned that she charges for any consultation time above 15 minutes. Before contacting these people, she never reminded us of this, nor did she ask how long we would give her permission to be on the phone at our expense. We were not present for these phone calls, so we had no control, and she did not make the people being consulted aware of the charges.

"She has now charged us a very large sum for these calls as well as her calls to us beyond the initial phone interview. Basically, she has charged us for consultations that went beyond what we would have given her permission for had we been informed properly of this charge and she is charging us for getting information on our child."

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2.08 Communicating About Services

Behavior analysts use understandable language in, and ensure comprehension of, all communications with clients, stakeholders, supervisees, trainees, and research participants. Before providing services, they clearly describe the scope of services and specify the conditions under which services will end. They explain all assessment and behavior-change intervention procedures before implementing them and explain assessment and intervention results when they are available. They provide an accurate and current set of their credentials and a description of their area of competence upon request.

As with some of the other standards in the code, this one includes several items rolled together. Basically, with regard to communicating about services, this standard says behavior analysts should (1) provide a copy of their credentials at the outset; (2) provide a description of their areas of competence; (3) use understandable language (e.g., no jargon or technical terms when talking to clients); (4) before providing services, describe the extent of those services; (5) specify when services will end; (6) explain assessment procedures before implementing them; (7) explain behavior-change plans before implementing them; (8) explain assessment results as soon as you have them; and (9) explain intervention results when they are ready to share.

Note that 2.08 says “use,” “describe,” “explain,” and “provide,” but it does not say “*Must* use . . .” or “*Always* describe . . .” This seems to be a key omission that might allow a behavior analyst to try and reach a parent by phone, perhaps leaving a message, and then proceed with the assessment and intervention without the parent ever knowing anything about it. This can cause a backlash where our clients do not trust our intentions. We believe the ethical behavior analyst will put the “*Must* . . .” back into 2.08 and *always* keep the consumer or stakeholder informed at every step of the way *and* gain parental/stakeholder written informed consent at each step as well.

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CASE 2.08 MORE THAN A TRANSLATOR IS NEEDED

“I am a BCBA working in a clinic setting in the Midwest. I recently was given a new case that involves two brothers, both diagnosed with ASD. One brother is 15, and the other is 11. This family is from Asia, and mom does not speak any English. Dad continuously travels for work and is not available. Mom requires a translator for communication purposes. Mom is experiencing significant mental health concerns (e.g., has commented on wanting to end

her life). Mom also does not receive any help at home, as dad is not actively involved, and the translator is only there when meetings occur. The 15-year-old engages in severe negative behaviors at home, which include eloping and physical aggression towards mom. This stems from the removal of an online video game to which he appears addicted. The 11-year-old does not have any functional communication skills and has within the last 8 months stopped eating independently. I have recommended that mom seek help for her mental health distress. My concerns are the following: parent coaching needs to occur because most of the problematic behaviors only occur in mom's presence. My fear is that the translator will not be able to translate correctly to mom what I am saying, especially because some of our technical terms do not translate well. I want to help support this family, but I am not sure what the best approach is or where to start. Any advice would be helpful.”

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2.09 Involving Clients and Stakeholders

Behavior analysts make appropriate efforts to involve clients and relevant stakeholders throughout the service relationship, including selecting goals, selecting and designing assessments and behavior-change interventions, and conducting continual progress monitoring.

The clear intent of this standard is to have the behavior analyst seek consent from the parents *before* conducting an assessment (i.e., taking data on the child), developing an intervention, or putting a behavior-change plan in place. It is not clear what “make appropriate efforts” means. If a BCBA is working in a school district and needs to get consent for an evaluation, can the school just mail a consent form to the parents? Would a “blanket consent form” signed at the beginning of the school year by the parents be enough approval? We believe that ethical behavior analysts will go

to great lengths to contact the parent/client/stakeholder directly, explain what is being proposed for an assessment or intervention and gain their written approval using an informed-consent protocol (see Code 2.11). This should provide the client with the trust and confidence they need to cooperate with the behavior analyst as they move through the treatment process.



CASE 2.09 TREAT FIRST AND ASK QUESTIONS LATER

“A child with ASD is showing problem behaviors in the classroom and a behavior analyst is called by the school to ‘support’ this child. The behavior analyst observes the student, determines the function of behavior, and suggests an intervention strategy to the teacher and parents. The parents disagree with the intervention strategy suggested by the BA and suggests withholding afternoon snacks from the child if they engage in the problem behavior. The teacher agrees to try this.”



2.10 Collaborating with Colleagues

Behavior analysts collaborate with colleagues from their own and other professions in the best interest of clients and stakeholders. Behavior analysts address conflicts by compromising, when possible, but always prioritizing the best interest of the client. Behavior analysts document all actions taken in these circumstances and their eventual outcomes.

Collaboration with colleagues should be an easy requirement, assuming that colleagues support behavior-analytic assessment and treatment. The difficulty comes when their approach is so antithetical to ABA that the behavior analyst is forced to choose between cooperating and giving in to an entirely different theory and methodology. A parent may have convinced another therapist

working with their child to use FC (a thoroughly discredited approach) and now wants the behavior analyst to use it as well. Compromising under these circumstances is clearly unacceptable, and it would also be unacceptable for any of the long list of “treatments” that are unproven or dangerous.

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CASE 2.10 TRANSDISCIPLINARY COLLABORATION

“I work for a company that is transdisciplinary. There are occupational therapists, speech therapists, psychologists, and more. We have regular meetings, where someone from any discipline may bring up a case that they are struggling with and they can ask for input from other team members. I never have engaged in these conversations but want to be part of the collaborative transdisciplinary team without overstepping ethical guidelines.

I understand that we do not give behavioral advice without first conducting a functional assessment, and so my advice has always been, ‘Consult with a behavior analyst first, then take some data, and we may be able to help.’

Is there a part of the code that forbids us from giving ‘general advice’? Is there a part of the code that forbids us from making behavior-change recommendations for clients that are not our own?”

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2.11 Obtaining Informed Consent

Behavior analysts are responsible for knowing about and complying with all conditions under which they are required to obtain informed consent from clients, stakeholders, and research participants (e.g., before initial implementation of assessments or behavior-change interventions, when making substantial changes to interventions, when exchanging or releasing confidential information or records). They are

responsible for explaining, obtaining, reobtaining, and documenting required informed consent. They are responsible for obtaining assent from clients when applicable.

Informed consent is a process required by APA for researchers when setting up experiments that involve human participants and by hospitals before a patient undergoes surgery.⁸ Informed consent involves describing the purpose of the research, the procedures, how long it will go on; it should indicate that participants can withdraw at any time, inform them of the potential risks involved in participation as well as incentives for participation, and they also need to be informed of possible research benefits. In addition, this type of consent may also need to include information about the limits of confidentiality when the research is published and who they can contact if they have questions. While *informed consent* is often associated with research, the term has become widely used in clinical and therapy settings.

So, what is the difference between *consent* and *informed consent*? Consent (aka *effective consent* or *general consent*) means that the behavior analyst is required to explain to the client/stakeholder, in plain language, basically what the assessment or treatment involves. Consent can be oral or written but having a signed document on file is stronger confirmation and therefore is preferred under almost all circumstances. From the description above of *informed consent*, some of these steps can be omitted (i.e., incentives for participation and research benefits). *Informed consent*, then, should include (1) the purpose of the assessment or treatment; (2) the length of time the intervention may last; (3) details on what the procedures may involve (this is essential if they include restrictive, aversive, or punishing procedures); (4) any risks or side effects, plus of course the benefits that are involved; (5) that the client can withdraw at any time; (6) a discussion of confidentiality of the information and data that is obtained during the process of

assessment and treatment; and (7) who they may contact if they wish to withdraw and if they have questions. An official-looking, printed individualized consent form is preferred for record-keeping purposes, but other formats may be accepted depending on the preferences of the organization.

So, what is the difference between *consent* and *assent*? “*Consent* may only be given by individuals who have reached the legal age of consent (in the United States, this is typically 18 years old). *Assent* is the agreement of someone not able to give legal consent to participate in the activity. Work with children or adults not capable of giving consent requires the consent of the parent or legal guardian and the assent of the subject.”⁹

Bottom line: Behavior analysts will need to have a thorough understanding of their company’s (agency’s, organization’s) policy on consent versus informed consent and be aware of the requirement for assent for those under 18 years old. The goal of this requirement is that the client/stakeholder be fully informed of what is about to happen to them or their child. This should be done in such a way that there are no surprises involved that would cause the behavior analyst to lose the client/stakeholder’s trust and therefore full cooperation.

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CASE 2.11 ASSENT APPLICABLE?

“I have a question regarding obtaining assent from children (non-vocal/verbal or vocal/verbal) with ASD regarding the services they are receiving. At our organization, we have means of obtaining consent from parents, but we don’t currently have a means of obtaining assent from the direct service recipients. I am doing an ethics course right now, and the need for obtaining assent from clients is being discussed.”

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2.12 Considering Medical Needs

Behavior analysts ensure, to the best of their ability, that medical needs are assessed and addressed if there is any reasonable likelihood that a referred behavior is influenced by medical or biological variables. They document referrals made to a medical professional and follow up with the client after making the referral.

This standard about considering the medical needs of clients is modified slightly from the previous Code. Now the behavior analyst is to *ensure* that if there is possible medical or biological involvement, there will be proper referrals made and followed up on with the client. This gives BCBAs a little more clout in their requests to caregivers and stakeholders to seek medical assessment and, if necessary, to request the proper treatment for behaviors that are not operant in nature. The first question that arises is, “When do I need to request a referral to a physician?” This depends on the nature of how the problem presents itself. In some cases, an experienced behavior analyst might realize during the intake process that there is something off about the referral. Examples would be an onset of the behavior when there were no changes in the environment; a report of an injury that is played down by the parents coincidental with the appearance of the behavior; a change in medication or a new medication under similar circumstances; a report of concomitant signs of bruising, rashes, or loss of appetite; or a sudden escalation of a behavior that had been at a low level for a long time. Any of these and more symptoms suggest that something medical/biological is going on with this client. The medical/biological signs should be explored or ruled out so that you can begin behavior-analytic treatment with a clear conscience. A complication in this logical approach to ethical treatment involves the caregivers. What if they are informed of the behavior analysts concerns but fail to make the appointments, or make them and then cancel at the last minute? Can you as the behavior-analyst start treatment anyway? The answer is No. To

do so would not be in the client's best interest. If there is a failure to follow through, your obligation is to consult with your clinical director to determine the best path forward to meet the larger objective of putting your client's needs first. This may mean bringing in other professional resources to assist the family.

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CASE 2.12A BARRIER TO BEHAVIORAL TREATMENT

“I am a BCBA, and I have a student who is self-injurious. The parents are not taking care of the medical end of things (gastrointestinal problems, sleep issues, migraines and temperature regulation issues). I want to write an IEP goal to decrease the self-injurious behavior to 40% of the day (current 50%) however, the parents want 20% across the whole day. Is it even ethical for me to work on a behavior reduction plan when the medical needs are not being met? What can I say to parents? Is it ethical to work on the behavior only when I know that medical is not an issue?”

CASE 2.12B LEGAL PRESSURE TO TREAT

“I am a BCBA in a school setting. I have a non-vocal teenage student with tetraplegic cerebral palsy, seizures, and who presents with a startle reflex and jaw tremors. The student does have an eye-gaze device. He has had four incidents in the school setting and one incident in the bus with teeth clenching in which he is locking his jaw with/without biting on his tongue or lip. These have occurred in the past with medical intervention if it lasts longer than 30 minutes and if breathing has been compromised. An ambulance was called after one incident. His case has been primarily seen as a medical issue except

for this year when an attorney wanted an FBA and my district supported this, so I have been collecting A-B-C data on him. I been trying to reach my student's MD, who is only available four times each month. I sent a letter to the doctor describing the incidents as there is no common antecedent. This child is taken care of by paid staff due to his only parent passing away this summer. The attorney asked if the behaviors were due to anxiety, but I told her I could not determine that but will look at observable and measurable events. I know I have to rule out medical/biological events, however, there is pressure from the attorney to add goals and supports. Should I proceed with a QABF (Questions About Behavior Function assessment)¹⁰ or wait until the MD has ruled out medical issues? If the doctor doesn't rule out medical causes, what should I do?"

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2.13 Selecting, Designing, and Implementing Assessments

Before selecting or designing behavior-change interventions behavior analysts select and design assessments that are conceptually consistent with behavioral principles; that are based on scientific evidence; and that best meet the diverse needs, context, and resources of the client and stakeholders. They select, design, and implement assessments with a focus on maximizing benefits and minimizing risk of harm to the client and stakeholders. They summarize the procedures and results in writing.

This standard related to selecting and implementing assessments combines several previous code items and adds new guidelines. This standard covers a lot of behavioral territory and it may be easier to follow if we enumerate the individual parts: (a) find assessments that are behaviorally based (and of course "scientific"). This eliminates many popular educational and developmental

assessments, (b) that best meet the needs of the client, and then (c) implement the assessment to benefit the client and minimize harm. (d) Produce a report which describes the procedures and the results and present them to the client and relevant stakeholders. This sounds clear-cut, but a closer examination reveals that there are many assumptions that are made here, and a lot of information is left out. It is assumed that the behavior analyst has had one or more courses on behavioral assessment, and that this knowledge has been “reinforced” by hands-on, supervised experience in a setting with a variety of clients and presenting behaviors. Behavioral assessment is an enormous field that covers the full range of problematic behaviors from simple classroom off-task, out-of-seat behaviors, and preference assessments to more complex adaptive, language, social and pre-vocational skills assessments for a wide range of children and adults. At the even more complicated end of the scale are the assessments for serious aggression, destruction, and SIB, as well as feeding disorders, clients with severe disabilities, those with tics, phobias, attention deficit hyperactivity disorder (ADHD), pica, and medical complications including the evaluation of a client’s medications. A behavior analyst must also stay up to date on advances in research on brief functional assessments, FBA, and interview-informed synthesized contingency analysis (IISCA) as well as being aware of the limitations of each of these methods of assessment in terms of reliability and validity. A subscription to *JABA* is the essential tool for any behavior analyst wanting to meet the requirements of Code 2.13. There are hundreds of articles on behavioral assessment to analyze and digest in those 50+ volumes of our flagship journal.

We also recommend:

Luiselli, J. K. (2011). *Teaching and Behavior Support for Children and Adults with Autism Spectrum Disorder: A Practitioner’s Guide*. Oxford: Oxford University Press.

Glasberg, B. A., & LaRue, R. H. (2015). *Functional Behavior Assessment for People with Autism: Making sense of seemingly senseless behavior*. Bethesda, MD: Woodbine House.

Peterson, S. M., & Neef, N.A. (2020). Functional behavior assessment. In J. O. Cooper, T.E. Heron & W. L. Heward (Eds.), *Applied behavior analysis* (3rd ed., pp. 628–653). Pearson Education, Inc.

Since most assessment data that will need to be collected by either family members or other stakeholders, you will have to consider the possibility that they may not meet your standards for dependent variable (DV) integrity or be accurate or consistent in their data collection. They may also introduce their own bias. For example, some stakeholders might skew the data so that they may receive more services, while others, wanting to please the therapist, may show that a treatment is effective when it is not. Since assessment data are used to determine the most appropriate behavioral treatment, it is extremely important that the data are recent, relevant, accurate, and beneficial for understanding the client's baseline status for any setting. It is also important that assessment data will allow for a determination of the effectiveness of one or more interventions over time.

2.14 Selecting, Designing, and Implementing Behavior-Change Interventions

Behavior analysts select, design, and implement behavior-change interventions that: (1) are conceptually consistent with behavioral principles; (2) are based on scientific evidence; (3) are based on assessment results; (4) prioritize positive reinforcement procedures; and (5) best meet the diverse needs, context, and resources of the client and stakeholders. Behavior analysts also consider relevant factors (e.g., risks, benefits, and side effects; client and stakeholder preference; implementation efficiency; cost effectiveness) and design and implement behavior-change interventions to produce

outcomes likely to maintain under naturalistic conditions. They summarize the behavior-change intervention procedures in writing (e.g., a behavior plan).

This code lays out the sequence of events that behavior analysts follow in developing their interventions. It seems unnecessary but needs to be repeated that we always start with methods that are “conceptually consistent” with basic behavioral principles. This means we work with operant (i.e., learned) behaviors that are observable and measurable and procedures that are evidence based. Our scientific evidence comes primarily from our flagship journal, the *Journal of Applied Behavior Analysis*, plus several other journals that publish similar research based on behavior principles and methodology. As per Code 2.13, behavior analytic interventions are based on the appropriate behavioral assessment that points us toward the controlling variables for the behavior of interest. As a field, we have an overarching interest in the powerful use of reinforcers to change behavior and generally discourage the use of aversive control (see Code 2.15).

Every behavior analyst wanting to meet these objectives faces a very difficult task: translating basic principles or findings from a published study into a workable, practical, socially acceptable, contextually relevant intervention with few risks and minimal or no side effects that nonetheless quickly produces socially significant effects that are welcomed by the parents/caregivers and any stakeholders that may be involved. If all of this comes together, the question of whether any positive changes will “maintain under naturalistic conditions” is completely dependent on whether the reinforcement system as designed stays intact. It also depends on if the natural environment is such that it will provide the amount and type of reinforcement of behavior necessary for maintenance. Changes in these settings is almost always out of the realm of control of the behavior analyst, so an evaluation of the intervention should not be based on the expectation that once the behavior-change is achieved, it will somehow magically last forever.



CASE 2.14 PUNISHMENT PREVAILS

"I am writing regarding my former place of employment. There were several BCBA's there in supervisory positions, but they consistently used punishment procedures without formal behavior plans, without exhausting all forms of reinforcement, and with no consent from parents. One student engaged in the smearing of feces. They allowed this student, who was showing signs of trauma due to a punishment procedure, to run around in his own fecal matter for hours. Aren't they required to follow Code 2.14?"



2.15 Minimizing Risk of Behavior-Change Interventions

Behavior analysts select, design, and implement behavior-change interventions (including the selection and use of consequences) with a focus on minimizing risk of harm to the client and stakeholders. They recommend and implement restrictive or punishment-based procedures only after demonstrating that desired results have not been obtained using less intrusive means, or when it is determined by an existing intervention team that the risk of harm to the client outweighs the risk associated with the behavior-change intervention. When recommending and implementing restrictive or punishment-based procedures, behavior analysts comply with any required review processes (e.g., a human rights review committee). Behavior analysts must continually evaluate and document the effectiveness of restrictive or punishment-based procedures and modify or discontinue the behavior-change intervention in a timely manner if it is ineffective.

The safety of the client is upmost in the mind of the behavior analyst and this standard related to minimizing risk of

behavior-change interventions discusses two aspects of that concern: (a) behavior analysts always minimize the risk of harm, and (b) when using restrictive or punishment-based procedures, they first have demonstrated that less restrictive and aversive techniques have not worked.

While we do not always discuss it, whenever consequences are used to change behavior there always some risks involved. With positive reinforcers, there is a risk if they are not carefully chosen, edible reinforcers can produce allergic responses, cause clients to gain weight, and affect food preferences. If not used carefully, a therapist can accidentally reinforce the wrong behavior or cause an extinction burst.

Generally, we do not use restrictive methods or punishing contingencies because of the wide-ranging side effects and the limited direct effects (i.e., narrow stimulus control). If the use of punishment/aversive control is under serious consideration, an appropriate human rights committee should be consulted. This should be a committee independent of the agency putting the proposal forward. If approved, there needs to be intensive training for those involved and very close monitoring of the intervention to ensure that there is no misapplication. Punishment/aversive contingencies often work quickly or not at all, so the intervention team needs to be prepared to make changes or stop the procedure depending on the outcome.

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CASE 2.15 PUNISHMENT NOT APPROVED

"On Friday, one of my staff contacted me to discuss an issue with an intervention recommended by my clinical director. The clinical director apparently felt the progress was too slow on an eating-behavior program and added a requirement that the client must stand until he swallowed a bite of food. This continued for 4 days, and I just found out the 6-year-old, overweight client was standing for approximately three hours per day with food in his

mouth. Consent for this punishment procedure was not given by the caregiver or even discussed with them and is not based on published, peer-reviewed research as far as I can tell. The director/BCBA does not have a lot of experience with food-related behaviors and made this decision without consulting me. I find this procedure disgusting and abusive.

“My question is, do you believe this is sufficient justification for firing this person? (She was also training RBTs to follow this protocol.) I have written her up and do not trust her judgment. I feel as though this goes against our ethical code, my biggest concern is that our fundamental standard of ‘Do No Harm’ was not followed and further, that she did not see any problem with this abusive protocol.”

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2.16 Describing Behavior-Change Interventions Before Implementation

Before implementation, behavior analysts describe in writing the objectives and procedures of the behavior-change intervention, any projected timelines, and the schedule of ongoing review. They provide this information and explain the environmental conditions necessary for effective implementation of the behavior-change intervention to the stakeholders and client (when appropriate). They also provide explanations when modifying existing or introducing new behavior-change interventions and obtain informed consent when appropriate.

Assuming all the previous steps have been completed properly, this standard related to describing behavior-change interventions before implementation requires that the behavior analyst describe in writing what they are proposing to do. Specifically, they have to prepare a Behavior Intervention Plan (BIP), which describes what the behavior analyst is trying to accomplish, how that will be done, and some idea of how long it might take (this will involve

a lot of guesswork) and how often it will be reviewed (hopefully weekly, but this could be monthly). The next part of 2.16 is extremely important, as it requires the inclusion of a statement of what is required for the treatment to be effective. Unstated is that this includes *full cooperation of all parties* plus certain resources that will have to be available such as space for training, sufficient time per week for therapy to take place, and a supply of appropriate reinforcers. A final note includes what you need to do if there are modifications to the intervention(s). If they are minor, then these can be made within the existing BIP, but if there is some major change, the ethical thing to do is go back to the parents/caregivers, explain the changes, and ask again for consent. Use a modified form for this, including the rationale for the change, what the change will entail, if the parents/stakeholders must be involved, and how this will be evaluated.

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CASE 2.16 FEELING ISOLATED AND DISAPPOINTED IN ABA

"I have a 2-year-old and 4-year-old receiving ABA. We are told we can't communicate with the BCBA and RBT directly and must go through the owner. We have not received parent training. I got no input or feedback on the assessment done with the 2-year-old 2 months ago. I have received no reports on how things are going and what is being worked on, and I am being told that our 4-year-old, who is very high functioning, needs to be homeschooled with them. They say they don't think he can be in a school environment ever, despite having no negative behavior. I cannot get any feedback backed by data; it is just what the owner tells me, who is a BCBA.

"When I ask, she gets defensive and tells me to just trust her and that my asking will negatively affect my children's therapy. She basically blames the lack of

communication on everyone except the company that's not communicating with us. I work in the field of medicine and know that this behavior would be considered absolutely unethical, to force a treatment plan on a child without an explanation to their parent so I can provide informed consent. I am at a loss but have now decided that I need to switch agencies, but also wanted to say that this is unacceptable behavior in the world of ABA where children without the ability to express their needs and experiences are left in the hands of companies like this."

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2.17 New—Collecting and Using Data

Behavior analysts actively ensure the appropriate selection and correct implementation of data collection procedures. They graphically display, summarize, and use the data to make decisions about continuing, modifying, or terminating services.

Regular, routine, quality data collection is the standard operating procedure for behavior analysts. It is what we are known for and should not be difficult to accomplish, however, in a high percentage of cases, data collection is a problem. We assume that data is collected *each day* that an intervention is in place. Following the rule from applied researchers, this data is *graphed each day* and evaluated to determine how the treatment is going. In keeping with current business lingo, there needs to be an effective “*supply chain*” in place for this to happen. It begins with the therapist, usually an RBT, who has been given a set of precise topographical or functional definitions by their BCBA supervisor. The RBT is trained on those definitions until they are reliable. Next the RBT is provided with a data-collection procedure including recording forms or a computer-assisted device of some sort. To make sure that the data received is not biased by the observer/RBT, the BCBA needs to do occasional Interobserver Agreement (IOA)

checks while they are conducting their direct-observation supervision sessions to make sure that the data are valid.

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CASE 2.17 MANDATED IMPRECISION

"I'm an RBT and I have a question about client data. We run 1-hour discrete trial training with clients throughout the day. My BCBA supervisor has instructed us to use the last 15 minutes of each session for data collection. I've talked with the other techs about how they do this, and they have said that they just make their best attempt to estimate what just occurred. We are supposed to indicate how much prompting was needed for each stimulus, but my 'data' are not very precise."

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2.18 Continual Evaluation of the Behavior-Change Intervention

Behavior analysts engage in continual monitoring and evaluation of behavior-change interventions. If data indicate that desired outcomes are not being realized, they actively assess the situation and take appropriate corrective action. When a behavior analyst is concerned that services concurrently delivered by another professional are negatively impacting the behavior-change intervention, the behavior analyst takes appropriate steps to review and address the issue with the other professional.

In this standard that relates to the continual evaluation of the behavior-change intervention, there are two separate issues to be delineated: (a) continual monitoring, assessment, and action taken in the evaluation of interventions; and (b) what to do if another professional's interventions are affecting the ongoing behavior-change strategy.

As described in this standard, the next step in the process involves the BCaBA or BCBA evaluating the data to determine if

the data are trending in the right direction (showing improvement) or not. This analysis should be done weekly, and the data shared with relevant parties including the parents/caregivers, teacher, and clinical director who would ideally input the data into their dashboard for a big-picture analysis of organization effectiveness. The “corrective action” that might be taken could vary from modifying the schedule of reinforcement, changing the reinforcer, modifying the task analysis, changing the rate of stimulus fading, conducting a new FBA, or in some cases conducting an overall review to determine if the whole strategy is wrong and a new analysis is needed.

The second issue addressed in 2.18 has to do with interference by another person with a different treatment approach. This could be a parent or teacher who is insisting that the behavior analyst start using their favorite new treatment such as the rapid prompting method or supported typing, or even a dangerous product like Miracle Mineral Solution, which is chlorine dioxide, an industrial bleach. Parents often seek support from multiple professionals, some of whom may be promoting approaches which are antithetical to behavior analysis such as weighted vests, brushing, or special diets. It is as though these parents believe “more is better.” If the intervention is benign, an alternative is to propose to the other party that you take data to determine if it is effective. If you are taking and analyzing your data as described above and you see that there is a decrease in performance coincident with the onset of one of these treatments, it is time to have a serious discussion with the appropriate person or professional. This may result in your pausing or even discontinuing treatment until the other party has completed their intervention.



CASE 2.18 IS FC A DEAL BREAKER?

“If a client is receiving outside FC training, what are the ethical guidelines for continuing ABA therapy, which does not include the FC? Assuming we have shared our

*concerns with the parent, and they are unwilling to dis-
continue this outside treatment, what do we do?"*

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2.19 Addressing Conditions Interfering With Service Delivery

Behavior analysts actively identify and address environmental conditions (e.g., the behavior of others, hazards to the client or staff, disruptions) that may interfere with or prevent service delivery. In such situations, behavior analysts remove or minimize the conditions, identify effective modifications to the intervention, and/or consider obtaining or recommending assistance from other professionals. Behavior analysts document the conditions, all actions taken, and the eventual outcomes.

At the outset we should note that “addressing” an issue does not mean that there is an obligation to solve it. Addressing an issue only means that it is acknowledged, documented, and appropriate steps are taken which may mean delaying treatment until there is some sort of resolution.

The two main categories of interference with service delivery are (a) people, usually caregivers, but sometimes other stakeholders; and (b) environmental issues. The “people problems” we encounter include parents or caregivers who are passive or indifferent as to their role in the implementation of our service delivery strategies, or in some cases, they are antagonistic.

A fundamental precept in ABA is that we behavior analysts have the job of discovering controlling variables for behavior, designing effective interventions which we can implement effectively (given cooperation), and then our task is to hand off the behavior plan to the parent, teacher, or other caregiver. This should be made clear at the intake phase before the client is accepted for treatment. We recommend using a Declaration of Professional Practices and Procedures for Behavior Analysts to codify this process. The parents or caregivers should sign this document after it is reviewed by

their behavior analyst, and they will receive a copy for their future reference. This important document is discussed in more detail in Chapter 13. Note that not all caregivers will agree to the terms of this “contract,” and behavior analysts need to be prepared to see them walk away before the first reinforcer is ever delivered.

It is common now for contracted behavioral services to include a required (by the funding agency) *parent training* component. There is some stigma associated with this terminology, so an alternative might be sought. We recommend *behavior coaching*, which takes the sting out of an expression that suggests that parents are inadequate and need to be trained to be parents. Behavior coaching can be applied to anyone who might need to be involved in implementing the behavior plan including relatives, siblings, nannies, or the teacher or classroom aides at school. One sad and difficult-to-discuss barrier to treatment might be the condition of the child clients themselves. Often, they are unwell, malnourished, mistreated, or abused. If, because of their condition, they are not ready for behavioral treatments, the goal of the behavior analyst becomes finding professionals that can be brought in to provide appropriate assistance.

Environmental issues that can interfere with successful implementation include inadequate resources (not enough staff, not enough money, not enough allotted time, inappropriate environment for treatment), disruption in the environment (noise level, too hot, too cold, too many people, too much “stuff” due to someone with hoarding disorder), and a dangerous living area (e.g., drugs, weapons, unsanitary conditions, and insect/rodent infestations). In situations such as this one, a workaround that is often employed is to bring the child to the clinic for treatment until the home situation can be improved.

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CASE 2.19 PUSHED TOO FAR

“We have an ABA patient who has been seen for several years at our clinic. Recently the parents have been going through marital difficulties and mom has repeatedly

overstepped her boundaries with oversharing information about personal issues. This takes away from the information to be shared by the BCBA about the treatment plan and carryover to home, both in parent training and direct treatment sessions. This has been discussed with her several times as well as our expectations moving forward. The mom continued to take over sessions with discussions unrelated to the patient and has been disrespectful with the staff and fails to follow office policies. She does not follow through with recommendations by the BCBA. Her erratic behaviors of crying, pacing, and speaking incoherently have caused us to call the police department for a welfare check as well as report to DCF.

“Due to these repeated difficulties and after multiple meetings, including a written warning, the family was recently given a letter stating that services will discontinue in 30 days due to failure to comply with office policy and failure to comply with provider guidance.

“We are now in the first week of our 30 days and she is targeting the BCBA and questioning her directly about ABA services as the BCBA is walking into work. The mom is bashing the BCBA to the RBTs as well. The BCBA does not feel comfortable carrying out parent meetings or training with mom.

“I would like to discharge them ASAP (prior to the 30 days), as this is not a positive and productive relationship that will benefit the child receiving services. Is it unethical to discharge them at this point without giving the family the full 30 days to locate other services?”

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RESPONSES TO CASES

CASE 2.01 GUT CHECK

You should know that in August 2019, the Food and Drug Administration repeated a 2010 warning against using chlorine

dioxide, describing it as “the same as drinking bleach.” This deadly chemical has been around for years under several different names. If you admitted this client, then you have an obligation under Code 2.01 to “protect him from harm” and should describe to the parent exactly what you have learned. After talking to the parent, send the information in a memo to her so you are on the record in case there is an investigation later. The mother must be keeping this a secret from her pediatrician, since surely a medical professional would stop her from administering this possibly deadly poison to her child.

FOLLOW-UP

Thankfully, the mother was receptive to our concerns and agreed to completely stop the administration of the “supplement.” We followed up our conversation with a detailed memo, which she signed.

CASE 2.02 WAITING AND WAITING

There could be some good reasons for some clients to be bumped up in their place on the wait list (e.g., how long it takes the insurance company to process the paperwork), but it sounds as if your company is not explaining this to their clients. If clients are jumping ahead in the wait list because of their insurance type, reimbursement schedule, or if they are being discriminated against based on race, ethnicity, etc., that would be very unethical.

CASE 2.03 ACCIDENTAL EXPOSURE

You made an innocent mistake and corrected it immediately so you can rest easy. If you work for a company, be sure to let them know what happened, describe your quick response, and make sure everything is documented.

CASE 2.06 TWO SC OWNERS GET PRISON FOR THEIR ROLES IN \$13 MILLION FEDERAL AUTISM HEALTH FRAUD¹¹

This case garnered national attention to the problem of billing fraud in behavior analysis services. Following this, there were several arrests in Florida and other states for similar billing fraud cases.

CASE 2.07 HIDDEN FEES

In this sad situation, the BCBA should have presented you with a printed proposed contract in which all the fees were spelled out to your satisfaction. It appears from your description that there were “hidden” fees that were not explained. You can file a Notice of Alleged Violation with the BACB; to do so, go to BACB.com and search for the Notice form and file as instructed.

FOLLOW-UP

“We will not be continuing with this therapist as her hidden expectations have put a bad taste in our mouths.”

CASE 2.08 MORE THAN A TRANSLATOR IS NEEDED

The mental health issues that the mother is presenting should be a red flag to your company that they need to send in someone with mental health training (e.g., a clinical social worker). This person should be someone who speaks the mother’s language. It also looks like you might need to see if you have someone on staff who is competent in feeding disorders. This is a complicated case with some danger points to consider: the mother’s mental health, the 15-year-old who elopes and aggresses, the 11-year-old who won’t feed himself, and that they are non-English speaking. You will have a hard time effectively communicating if you can’t

speak their language. The first contact should be someone to deal with the mother's mental health issues. Then, triage the rest of the issues. This sounds like 30+ hours per week in-home intervention might be needed.

CASE 2.09 TREAT FIRST AND ASK QUESTIONS LATER

The behavior analyst should have sought informed consent from the parents before conducting observations in the classroom (aka an "assessment") and certainly before running a functional analysis and arriving at an intervention. It was good that the parents intervened to prevent an intervention with which they did not agree.

CASE 2.10 TRANSDISCIPLINARY COLLABORATION

This is a good model if all of the professionals involved are committed to using evidence-based procedures. You could offer to show them how it is done or even help them assuming there are proper consents from the parents/caregivers. Code 2.10 encourages collaboration with colleagues from other fields. You would want to know whether they understand the controlling variables before you go too far with sharing ideas. If they do, you could make some general recommendations, such as what you would find in an ABA textbook. You could use as a model what you would find in Miltenberger's book, Behavior Modification, or Cooper, Heron, and Heward's Applied Behavior Analysis. In both texts, the authors lay out general strategies for changing behavior assuming a function is known.

The concern is that you suggest something specific, your colleagues try it (at least their version of trying it) and it doesn't work, or worse backfires, then they blame you and your "stupid behavior analysis!" Things that don't usually backfire are positive-reinforcement based methods of reducing behavior like differential reinforcement of incompatible behavior (DRI) or differential reinforcement of other behavior (DRO). Sometimes a good starting

point is helping colleagues understand that some behavior is a communication attempt.

With regard to recognizing a client's behavior might be a communication attempt, a behavior analyst contacted the Ethics Hotline to inquire about a case. The behavior analyst was working with a family and child with ASD. When the child wanted something out of the refrigerator, he would fall to the floor and have a small tantrum. The parents responded by pulling food and drink items out of the refrigerator and giving them to the child until the tantrum stopped. Clearly, a behavior like this could be shaped into pointing or some verbal approximation to what the "mand" is all about. The behavior analyst might be able to work examples like this into situations where functional communication is operating.

CASE 2.11 ASSENT APPLICABLE?

The notion of assent is essential. Assent is required in research and is considered good practice in clinical settings. Assent is not a legal requirement in health care. Assent is about explaining procedures to clients and getting a sense of their understanding. It is a good idea to include this anytime you are proposing a behavioral procedure. Some behavior analysts offer choices to clients and accept their choosing as giving assent. Other clinicians accept a lack of resistance as assent. A concern is that sometimes resistance to routines and tasks is the precise reason for service, so resistance might be the target behavior. Your organization should review the other resources available at <https://training.ontaba.org>, and seek consultation from a mentor or supervisor on how to best incorporate the principles of assent in your workplace.

CASE 2.12A BARRIER TO BEHAVIORAL TREATMENT

For this case, there are numerous questions that should be asked: Do you have a background and training in SIB? How serious is the

SIB? How frequent? Is the client going to the hospital or seeing a physician to treat the injuries? Is there any reason why the parents are not taking care of the medical issues? If they are neglecting the client, Child Protective Services should be called. These symptoms are serious and possibly beyond a family physician.

Step one is to follow the guidance of Code 2.12 and make sure that the SIB is not just a result of the symptoms that you are describing above. Once that is resolved, then you need to do an FBA that will get to the bottom of the causes of the SIB. Next you can write a behavior plan based on your experience and the extensive evidence base that exists on SIB.

It is not ethical for you to work on a behavior reduction plan when the medical needs are not being met.

FOLLOW-UP 6 WEEKS LATER

The parents were convinced to finally get medical treatment. After 10 days in medical treatment, the child was taken off all medications and multiple tests were run. He was diagnosed with bleeding ulcers. Medications were changed. We were able to move forward with FBA/BIP after one month post hospital.

CASE 2.12B LEGAL PRESSURE TO TREAT

This is a complex situation as there is much to consider medically. Paramount to this case are Codes 1.05, ensuring we practice within our boundary of competence, and 2.12, seeking medical consultation when necessary. As a BCBA, if you have limited knowledge in cerebral palsy and so on, you may need to pass this case to someone with a better working knowledge as well as strongly recommend consultation with a medical professional. If your client's MD has limited availability, it is extremely important to make clear to all relevant stakeholders how this effects your ability to accurately determine function as medical conditions must be ruled out first (parsimony). This should be followed with potential solutions

(seeking an additional doctor, scheduling to meet with the doctor when he is in during the month, etc.).

Since this is a low frequency behavior, a QABF may be helpful in forming a hypothesis and gathering more information. The following are some references that discuss strategies for analysis of low-rate behaviors. While not exact matches, they might be helpful. Again, behavior analysts must first rule out medical or biological conditions.

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David, B. J. Kahng, S.W., Schmidt, J, Bowman, L.G., & Boelter, E.W. (2012). Alterations to functional analysis methodology to clarify the functions of low rate, high problem behavior. *Behavior Analysis in Practice* 5 (1), 27–39.

Kurtz, P. F., Chin, M.D., Robinson, A.N., O'Connor, J. T., & Hagopian, L. P. (2015). Functional analysis and treatment of problem behavior exhibited by children with fragile X syndrome. *Research in Developmental Disabilities* 43–44, 150–166.

FOLLOW-UP 2 MONTHS LATER

To follow up, the doctor was able to conclude the issue was medical, not behavioral, and was related to the child's diagnosis. Unfortunately, 2 weeks ago, the child passed away. Hopefully, the information gained in this case will be able to help future and current behavior analysts.

CASE 2.14 PUNISHMENT PREVAILS

These are serious violations of the code of ethics and should be reported to the Board using their Notice of Alleged Violation form. Here are the details. The incidents must have occurred in the last 6 months. You must have firsthand knowledge of the violations, and you must have some sort of documentation to support the

allegations. If you can do all of this, you should report the BCBAAs that are involved, as they give our field a bad name. Worse than that, the clients are not being respected and well treated.

CASE 2.15 PUNISHMENT NOT APPROVED

Your clinical director/BCBA has clearly violated several elements of this ethics code. Less intrusive means have not been exhausted, there is obvious risk of harm to the client, there was no review process, and the parents/caregiver did not give consent. Because she was your employee, you would be justified in terminating her employment. Don't forget to provide extensive training for the RBTs who were encouraged to use this abusive method.

CASE 2.16 FEELING ISOLATED AND DISAPPOINTED IN ABA

This is certainly NOT best practice in our field and is opposite of what our code of ethics requires. A copy of the code is attached so you can see for yourself how you should be included in all the decision-making. Code 2.16 particularly pertains to your situation. When you get ready to switch to another agency, look for agencies that are accredited. They must meet high standards for customer satisfaction (See Chapter 16 for details).

CASE 2.17 MANDATED IMPRECISION

This method of estimating behavior does not meet the requirements of Code 2.17 for correct implementation of data collection procedures. There are ways of setting up a data sheet ahead of each session (your supervisor should do this for you) so that you can briefly pause and mark the type of response that the child gave. Your supervisor should be observing you regularly and doing interobserver agreement checks to make sure that your data are accurate.

CASE 2.18 IS FC A DEAL BREAKER?

In this case, a behavior analyst could continue working with that client/family. You, as the behavior analyst, have an obligation to try and educate the parent about the lack of scientific evidence behind—and the harm of FC. Do that the best you can. Also, we are obligated to inform the parent of behaviorally based procedures to build the skills for which the parents are using FC. If you have done all of this, and the parent continues to use FC, and the use of FC does not negatively impact or “take away from” the effectiveness of your services, then there is not much else you can do.

However, if the FC interferes with the gains you are trying to make via behavior analysis, then you are obligated to discuss that concern with the parent. To be more blunt with you, if the FC is taking up time that could be used to implement behavior analysis, and as a result you do not have enough opportunities to do behavioral therapy in a sufficient dosage to make progress, then you are obligated to change that situation by convincing the parent to use FC less and/or to give more opportunities to you to provide behavior analytic services. As a last resort, you could consider terminating services according to Code 3.15.

CASE 2.19 PUSHED TOO FAR

This situation sounds chaotic. You have done a good job navigating an impossible situation. Could the sessions be clinic based for the 30 days? This would protect staff in this situation and might change the extent of her behavior. It would also provide the time for the transition. Because there is volatility here, DCF and welfare checks are important. Have you referred her for crisis counseling and a crisis evaluation? Does your clinic provide those services? If not, can you refer to them? Be sure to document everything. Be sure to offer transition services and provide a final treatment summary. If no other option is available, termination prior to 30 days would be professionally defensible and would be in line with Code 3.15(5).

FOLLOW-UP

We are in a clinic and all services with this family have been clinic based. We have had to ask her to wait outside of the waiting room while waiting with her child because she doesn't supervise her child and/or will interfere in other parent/therapist conversations, even after several discussions addressing this. We suspect she is also discussing her current situation with other parents with a negative tone. The clinic-based services have not seemed to impact her behaviors positively, unfortunately. I feel like we have gone to great lengths to provide great services for the child throughout this and assist in supporting the family in any way possible within our scope of practice. To this day, she continues to disregard our policies. I feel it is important to protect the staff at this point too. The local police department has been contacted, and reports have been made to DCF on multiple occasions. Our BCBA is writing a comprehensive discharge plan that will explain steps taken, reason for discharge, resources given, and recommendations moving forward.

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Section 3: Responsibility to Clients and Stakeholders

PREVIEW TO RESPONSIBILITY TO CLIENTS AND STAKEHOLDERS

The primary responsibility that behavior analysts have to their clients and stakeholders is to operate in their best interests and to do no harm. In doing so, it is important to recognize that others around the client may need to be included in the discussion. Depending on the circumstances, this might be a sibling, grandmother, a teacher, or a social worker in addition to the primary caregivers. Anyone who can provide support should be included as a “stakeholder.” One problem that can surface is when behavior analysts realize they do not have the resources to treat the client effectively after they have already accepted the client for services. This can be prevented by a very objective analysis of client problems from the beginning and referring them to another provider who is more suited to their needs. BCBA caseloads must be considered when accepting clients.

One of the most important procedures to preventing misunderstandings in the treatment process is the use of a service agreement (see Chapter 13), which details all aspects of both client and behavior analyst responsibilities to the goal of helping the client achieve their goals. This document should spell out the billing

practices and the circumstances under which it might be necessary to consult with other providers and third-party contractors. If consultation with other providers is necessary, clients must be informed and provide informed consent for these services. In the events that unusual circumstances should arise, also included in the services agreement should be a statement regarding confidentiality and the limitations of confidentiality. Behavior analysts are by nature data takers. Extending this practice to documenting their work so that it can be easily used by another provider is essential to producing a seamless delivery of services when a transition to another provider is required.

Advocating and educating clients is another aspect of behavioral treatment. We want clients to receive the highest quality evidence-based services possible, and we do everything possible to obtain the appropriate amount and level of treatment. To avoid service disruption, we always plan for possible emergencies and have staff on hand to fill in, in case an RBT or BCBA needs to be absent from work.

Discontinuing services for a client can be cause for celebration if they have met all their goals. However, other contingencies may require a different approach. For example, in some cases, a client may reach a plateau and is no longer benefiting from behavioral treatment, so a referral to another provider may be necessary. Occasionally the client or stakeholder decides to drop the services or are non-compliant with an agreed-upon behavior plan, in which case discontinuation is in order. There may be circumstances where the behavioral staff do not feel safe working in the home or with clients who present dangerous or threatening behaviors in which case discontinuing services may be in order. Finally, changes in funding sometimes requires the discontinuation of services. Regardless of the reason, when discontinuation of services is necessary, behavior analysts leave clients with a behavior plan that can be shared with another provider if the client wishes to do so.

A CLOSER LOOK AT RESPONSIBILITY TO CLIENTS AND STAKEHOLDERS

3.01 Responsibility to Clients (See 1.03, 2.01)

Behavior analysts *act in the best interest* of clients, *taking appropriate steps to support* clients' rights, *maximize benefits*, and *do no harm*. They are also *knowledgeable about* and *comply with applicable laws and regulations related to mandated reporting requirements*.

This is an important, fundamental standard that should be the highest priority for all behavior analysts in human services. The nature of the business is that there are so many other contingencies in play that we often forget why we are here—for the *client*. Contingencies such as keeping a client on the roster so that RBTs can be employed, or to contribute to the bottom line, or to just make a parent/caregiver stakeholder happy can be powerful motivators that have nothing to do with the *best interest* of the client. We have discussed clients' rights in Chapter 7 under Code 2.01 and urge everyone to review those often. A discussion of clients' rights should be included in company meetings with supervisees and trainees. When we are respecting a client's rights and pushing for those rights to be a part of the discussion of client goals, we are operating in the client's best interest. Unfortunately, most clients are not necessarily aware that they even *have* certain rights.

The last part of this standard refers to behavior analysts being mandated reporters. The law establishing mandatory reporting varies from state to state, so review the law from your state to best understand your obligations. Mandated reporters include day-care workers, staff in doctor's offices, police officers, social workers, teachers and teacher aides, and just about anyone employed in the human services, which of course includes behavior analysts. Behavior analysts include not just BCBAAs but also RBTs and BCaBAs. It is important to know that you do not need permission from anyone to call the Abuse Hotline or Child Protective

Services (CPS) if you suspect abuse. Some companies tell their RBTs that they must first check with their supervisor before making the call since the company feels like they will lose a client (the concern about the bottom line again) if the family finds out that someone from their behavior analysis agency reported them. The laws written by the states allow anonymous reporting and do not punish people if they make a good faith effort to report the abuse of a child even if it turns out not to be so. Falsely reporting abuse just to cause someone trouble could be considered a crime of malice and will get the reporter in trouble.

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CASE 3.01 DRUG PICS ON IPAD

"I have a client that receives services in my clinic and utilizes an AAC (augmentative and alternative communication) device to communicate. The device is owned by the parents. Our tech was updating images on the device and saw photos of drug use, and screenshots of how to make methamphetamine from home, and brought it to my attention. I checked the photos and it appeared that the iPad was connected to the father's internet account and the device is downloading photos from his cell phone. I was concerned this was a case of abuse/neglect and contacted CPS and sent copies of the concerning images and videos over to them with a formal report."

"I feel that I was within my ethical bounds, by prioritizing the health and safety of my client, as well as my responsibilities as a mandated reporter. However, because I did go into the client's personal device and look at photos that I knew to be personal and owned by the client's father and sent them to myself, I want to make sure this was not an ethical breach. If this should be considered a breach of my ethics, I intend to contact the BACB to inform them of the situation."

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3.02 New—Identifying Stakeholders

Behavior analysts identify stakeholders when providing services. When multiple stakeholders (e.g., parent or legally authorized representative, teacher, principal) are involved, the behavior analyst identifies their relative obligations to each stakeholder. They document and communicate those obligations to stakeholders at the outset of the professional relationship.

“Stakeholder” is a strange word. It sounds old fashioned, and it is.

“Stakeholder” is a strange word. It sounds old fashioned, and it is. The origin is in the 18th century and had to do with someone who had a “stake” in a wager or bet.¹ If you put money on the table in a card game or on a horse race, you were a *stakeholder*. There has been some evolution of the term over time, and now it refers to “people inside and outside an organization who have a vested interest in a problem and its solution.”² The term has currency in the business arena, where determining stakeholders and dealing with them in various ways so that a new project can move forward is a required part of a successful “product launch” strategy. In this venue, stakeholders can be “active backers” or “active blockers” depending on their attitude, their interest, and their power. In behavior analysis, the term “stakeholder” appears to be a little more benign, and the general meaning is, “Who needs to have a say and be kept informed?” Consider the case of a child with an elopement problem, and then imagine how each of these stakeholders might react to an RBT running down the hall after a child, out the back door, across the playground, and headed toward an intersection. Some of this is obvious. If you are working with a child in a public school, the teacher is a clear stakeholder, since they must be involved in the implementation of any classroom intervention. But what about the principal? That person has

to know what is going on in case some problem arises. And what about the sheriff's deputy who is the on-duty security officer? How about the special education director, the school psychologist, and the school nurse? How much involvement would they want? And how much say is there in the treatment plan itself? This new standard raises many questions for behavior analysts particularly with regard to the "obligations" for each stakeholder's involvement. Consider one more scenario where you are working in the home with a child who has aggression against two siblings, the parents, and the family pet, their Beagle "Molly." As an exercise, try to imagine how you would involve each of them in the development of a BIP (behavior intervention plan). Who else might be a stakeholder?



CASE 3.02 PERILS OF CONTRACTING WITH A SCHOOL DISTRICT

"I was hired by a school district as an independent contractor to complete an FBA for a student. I have provided the report to the district. The district is required to provide the report to the family 2 days prior to the meeting. The family of the student is now requesting the report from me directly. Our typical policy is that we provide any documents requested by a client within 24 hours of the request. The district has told me I am not to provide the report directly to the student's family. Any advice would be much appreciated. Thank you for your assistance."



3.03 Accepting Clients (See 1.05, 1.06)

Behavior analysts only accept clients whose requested services are within their identified scope of competence and available resources (e.g., time and capacity for case supervision, staffing). When behavior analysts are directed to accept clients

outside of their identified scope of competence and available resources, they take appropriate steps to discuss and resolve the concern with relevant parties. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

In practice, a BCBA may not be the one involved in accepting clients for treatment. In most cases, someone in the organization (perhaps a social worker or admissions officer) “accepts” a client by simply putting them on a waiting list with minimal screening. When the client’s number comes up (perhaps months later), an actual screening takes place. It may be determined at that time that the client is not a good fit for the agency given the nature of the behavior presented and available resources. Another admissions model involves no screening until the agency is approved to bill for an intake assessment or even a full assessment, at which point the agency decides that the case is outside their scope of competence.

A more ethical model for screening and accepting new clients involves the agency conducting a serious screening before placing them on a wait list. This means the client knows they will be accepted for treatment once their number comes up, since the agency has determined that the clients fall within their scope of competency. If a potential client does not match the agency’s scope, they are told quickly so they can begin to look for a match with another agency.

Given the financial contingencies, there is a strong incentive to take new clients even if the agency does not have anyone on staff who can handle a particular type of case. This means it falls to the BCBA to notify the appropriate parties of their unwillingness to work outside their scope of competence. This *pushback* can be very uncomfortable because it makes the BCBA seem not to be

Pushback can be very uncomfortable since it makes the BCBA seem not to be a team player.

a team player, but this is the most ethical resolution keeping the client's best interest in mind. Putting one's concerns in writing to management is essential if the BCBA's decision is contested.



CASE 3.03 HOW MUCH IS TOO MUCH?

"I wanted to reach out regarding caseloads and effective supervision. Currently, our company has been unable to replace BCBA's due to the demand and limited BCBA's available. Instead, to avoid discharging clients, BCBA's are required to pick up the work of the resigned staff."

"In my state, we use a three-tier model. However, this effectively results in 30–35 cases per BCBA. As clinical director, I've been creating quality control measures, but my CEO wants me to take on an additional 48 client hours and push quality control aside."

"I've used the ethics code to cite the need for effective supervision and said I am not comfortable with the request. However, I do not have any hard evidence about why I consider this too much besides the number of hours I work (currently about 50 per week)."

"Do you have any suggestions on how to approach this?"



3.04 Service Agreement (See 1.04)

Before implementing services, behavior analysts ensure that there is a signed service agreement with the client and/or relevant stakeholders outlining the responsibilities of all parties, the scope of behavioral services to be provided, the behavior analyst's obligations under the Code, and procedures for submitting complaints about a behavior analyst's professional practices to relevant entities (e.g., BACB, service organization, licensure board, funder). They update service agreements as

needed or as required by relevant parties (e.g., service organizations, licensure boards, funders). Updated service agreements must be reviewed with and signed by the client and/or relevant stakeholders.

This standard lays out the requirements for the “service agreement” that you will develop for each client and *relevant* stakeholders. Many stakeholders are bystanders who just need to be aware that the client is receiving treatment and they are neither “blockers” or “backers.” This is very similar to what we refer to as a Declaration of Professional Services and Practices, which is described in detail in Chapter 13. The service agreement described here includes:

1. Responsibilities of all parties—this includes an obligation on the part of the client family and related stakeholders to treat all treatment staff with dignity and respect at all times. Also included should be a statement that RBTs are to be considered as professionals and not a part of the family to avoid them getting involved in multiple relationships with any of the stakeholders. Additionally, mention should be made of the requirement that one adult must be in the home at all times when the therapist is present. There should also be a description of how potential missed appointments will be handled.
2. The scope of behavioral services being offered—in this section, there should be a description of the kind and frequency of behavioral services. There should be a statement that these services are delivered according to a behavior plan that will be presented to the client for approval. The agreement says that the client cannot make frequent changes to the plan, and that such requests need to be handled by the BCBA (not the RBT) on site.
3. The behavior analyst’s obligations to the code of ethics—here the BCBA needs to hand the client a copy of the code highlighted to show relevant items for the client’s case. The BCBA

should provide a description in plain language of what each item means to the client as a consumer.

4. How to submit a Notice of Alleged Violation to the Board and other organizations involved in the service delivery endeavor. Most importantly, the client needs to know who to contact at the insurance company or other government agency if they suspect billing fraud or other abuses. The written agreement is signed by all relevant parties, and each one receives a copy.

Omitted from 3.04 are two additional and important items that occur later in the code:

5. As per Code 3.15, the service agreement must also include “circumstances for discontinuing services.” This should be sufficiently detailed so that if this clause needs to be activated, it will not come as a surprise to the client and related stakeholders.
6. As per Code 3.16, “Behavior analysts include in their service agreement the circumstances for transitioning the client to another behavior analyst” should the need arise. It is expected that this will be carried out seamlessly so that the client does not suffer any backsliding in their behavior repertoire.

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CASE 3.04 MANAGING MOM

“I am looking for advice on how to manage a parent who constantly discusses her personal life and her other child. She cries and spends 90% of my ABA time talking about things other than my actual client. None of my passive or subtle (and not so subtle) cues have helped. She is a professional in a related field, and I feel as though she is treating me as her sounding board/friend/coparent rather than a BCBA working with her daughter. I do not interact and do not respond to the inappropriate topics. I

am feeling uncomfortable and believe that my time is not used appropriately by this client. I'd love some advice on how to get her to be more professional and appropriate to avoid her trying to create a dual relationship."

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3.05 Financial Agreements (See 1.04, 2.07)

Before beginning services, behavior analysts document agreed-upon compensation and billing practices with their clients, relevant stakeholders, and/or funders. When funding circumstances change, they must be revisited with these parties. Pro bono and bartered services are only provided under a specific service agreement and in compliance with the Code.

Most behavior analysts now are employees of an ABA company or non-profit organization. Very few behavior analysts are solo providers. If you are employed by a company that is under contract for reimbursed for services, it is their responsibility to set up financial agreements. All insurance companies require a lengthy credentialing and contracting process for a provider group to be able to bill for services. Once the group has completed that process, they can then individually credential each behavior analyst so they are recognized as “in-network” providers. Every *in network* BCBA is then under the contract signed by the provider group.

If you are a solo provider, you will have to go through the credentialing process with each insurance company.

If you are a solo provider, you will have to go through the credentialing process with each insurance company, at which time the rate of reimbursement will be established. At that point you will be able to determine your rate per hour based on an analysis of overhead expenses and other fees that you will have to pay to open your own shop. This is a complicated process, and if you are not experienced in business practices, it would be wise to hire a consultant to walk

you through the process. If something comes up and the funding is cut or just runs out, you should let your clients know as much in advance as possible and provide them guidance as to other providers they can contact for services (see Code 3.15(6) for details).

Pro bono (free) services require a written contract spelling out the scope of work to be done, the “deliverables” (what you will produce), how long the free service will last, what the value of the service would be if the client paid, and other details as appropriate for the work.³ You should present this as a proposal to your potential client (even though the work is not charged, the person you are working for is still considered a client), discuss it in detail, and then make sure that each of you received a signed, dated contract. Bartering requires the same sort of paperwork and record keeping in the event of a dispute in the future.⁴

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CASE 3.05 IN THE DARK

“I am contracted in to provide supervision for ABA services at a clinic where I am the only BCBA. This morning, I was made aware that all my clients have had 3 weeks of service up to this point, and they have no idea that they were paying per hour.

“The clinic is now announcing a high fee schedule. As an example, they will charge \$80 per hour not including supervision fees. Other companies in the area charge around \$50 an hour including the BCBA supervision. Some clients have government funding, and others pay out of pocket. There are other companies that provide ABA services in the area for a lesser rate. The owners do the invoicing and fees (HR, accounting, business maintenance). I was told previously by them that all fees were sorted out and that they talked directly to clients about this. As of this morning, I know this is not the case. What are my obligations to the clients in this situation?”

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3.06 Consulting with Other Providers (See 1.05, 2.04, 2.10, 2.11, 2.12)

Behavior analysts arrange for appropriate consultation with and referrals to other providers in the best interests of their clients, with appropriate informed consent, and in compliance with applicable requirements (e.g., laws, regulations, contracts, organization and funder policies).

Let's look at the situation where once behavioral services have begun, a new behavior that was not described at intake and did not show up on initial baselines is now in need of treatment. This might include a feeding disorder, language problem, SIB, or something similar. If this is out of the scope of practice or competence of the BCBA, then the appropriate response is to contact the parents/caregivers and ask for consent (informed) to contact other professionals who have the expertise to consult on this matter. The behavior analyst should be clear with the parents/caregivers that they have no ties to this person and that the referral has no strings attached (i.e., no referral fee). Before reaching out to these consultants, you should always check with your organization to see if there are any complications as to rules, regulations, and policies related to consulting with other providers.

The task of preparing service contracts does not fall on the BCBA clinician, but rather it is usually the job of the CEO, owner, or head of business services.

3.07 Third-Party Contracts for Services (See 1.04, 1.11, 2.04, 2.07)

When behavior analysts enter into a signed contract to provide services to a client at the request of a third party (e.g., school district, governmental entity), they clarify the nature of the relationship with each party and assess any potential

conflicts before services begin. They ensure that the contract outlines (1) the responsibilities of all parties, (2) the scope of behavioral services to be provided, (3) the likely use of the information obtained, (4) the behavior analysts' obligations under the Code, and (5) any limits about maintaining confidentiality. Behavior analysts are responsible for amending contracts as needed and reviewing them with the relevant parties at that time.

We first need to point out that the task of preparing service contracts does not fall on the BCBA clinician, but rather it is usually the job of the CEO, owner, or head of business services.

Just so we are clear on the legal language, here are some definitions: A “party” can be a person such as a client, parent/caregiver or a stakeholder, or it can be an organization (such as a school) or an insurance company. To have a “third party,” there has to be a “first” party and a “second” party. Here’s an example: a family sends their child to school (the family is the *first* party; the school is the *second* party). The principal says that she wants an outside evaluation of the child and contacts a behavior-analysis firm that does assessments. This outside firm is now defined as the *third* party. In this case, the firm needs to gain consent from the parents/caregivers to conduct the assessment. If the recommendations from the firm include treatments with which the school-based behavior analyst does not agree, the behavior analyst is obligated to operate in such a way that will protect the child’s (client’s, student’s) “care and welfare.”

Another example might be a child client (the first party) receiving 20 hours of treatment per week at a behavior-analytic clinic (second party) that is paid for by the family’s insurance. At some point, the insurance company (the third party) reviews the case and makes a determination that the child only needs 10 hours of treatment per week. In this example, the behavior analyst, following Code 3.08, is expected to push back, represent the best interest of the client, and make the case to the insurance company that the medical necessity of the client requires a full 20 hours per week.

In Code 3.07, the student (first party) attends a school (second party). The school district or possibly a judge (third party) requires the services of an *outside* behavior analyst (not the school BCBA) who is now working at the behest of that organization. Specifically, the outside BCBA's client is the third party. This outside behavior analyst is now required to make sure that the contract for services meets these five detailed specifications. This could present some complications because the contract was likely prepared by someone else who is not a behavior analyst and is totally unaware of Code 3.07. The outside BCBA then must review the proposed contract, mark it up for revision, and send it back to the third party for modification. Once it meets the requirements of 3.07, the outside BCBA can sign the contract and presumably present it to the family and the school for review and approval. Once all three parties agree to the terms of the contract, then the work by the outside behavior analyst can begin.

An example of each of the five elements that a contract must contain are:

1. The responsibilities of all parties: The behavior analyst would ensure that each party is aware of their role in the provision of behavior analytic services. For example, the behavior analyst's role is to deliver services, the third party's role is to make services available to clients, and the client or client's representative's role is to provide consent for treatment. Stating this within the services agreement or contract ensures there are no questions later about the role of each party.
2. The scope of the behavioral services to be provided: The behavior analyst should operationally define and list each specific service that will be delivered under the contract. When contracting with a school, a behavior analyst might conduct a behavior assessment, develop a treatment plan, train teachers and paraprofessionals, and report data and progress to the IEP team. The behavior analyst would define each of these activities and include examples of how each

service is delivered. The more specific the definition of the service, the better; this will ensure that the third party knows what is being agreed to within this contract.

3. The likely use of the information obtained: The behavior analyst should ensure that the parties involved in the contract are aware of how information will be used. For example, the behavior analyst may conduct an assessment on a behavior which requires one or more caregivers to be present due to safety concerns. The behavior analyst should explain that the results of this assessment will be reviewed with the parties of the contract to ensure they are aware of the need for extra supervision. It is easy to outline this within a contract by saying something to the effect of, "The information obtained through the assessment process will be used to identify safety measures to be taken to prevent injuries."
4. The behavior analysts' obligations under the code: In every behavior analytic contract or service agreement, it should be stated that the behavior analyst is obligated to follow the Ethics Code for Behavior Analysts. By making this statement up front, it allows for the behavior analyst to make decisions later that may result in termination of the contract. For example, if a third party is asking a behavior analyst to perform a task that is outside of the defined scope of services defined in Section 2 above, the behavior analyst may cite the ethics code as a reason that they are not able to complete that task and may need to make other arrangements for the client to receive services from someone else. This can also save the behavior analyst from getting into unethical situations that may arise in the delivery of services.
5. Any limits about maintaining confidentiality: The behavior analyst should describe efforts to maintain confidentiality and list any limits to maintaining confidentiality. The best practice would be to obtain training in HIPAA, as this

often is the gold standard of confidentiality and protecting the health information of clients. Another good practice is to adhere to the confidentiality practices of the party with whom the behavior analyst will be contracting. The behavior analyst may need to learn about the third party's confidentiality practices prior to describing this in detail within the contract.

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CASE 3.07 WHO IS YOUR CLIENT?

“Our company is contracted with a residential provider agency (i.e., group homes) who is contracted with an insurance company to provide a specific service. It is the residential agency’s responsibility to ensure that behavior analysts oversee the program in order for them to be able to provide that service (and get reimbursed for it). Therefore, a contract is drawn up between us and the residential provider as an additional component of the contract with the insurance company. In this case, the insurance company isn’t our client. The residential agency (and the clients they support) is our client. However, we need to follow the guidelines of the insurance company’s contract with the residential agency as part of our contract in order for the residential agency to fulfill their obligations to the insurance company.”

“In our contract, we have outlined the services we will provide to the individuals (e.g., assessment, treatment planning, staff training, progress reporting, monitoring), and we outline caveats such as, ‘The outside agency will provide such services in alignment with the requirements of Insurance Company.’ This way, we state that we are responsible for our services with respect to the client, as well as the requirements of the insurance company’s provider regulations manual.”



3.08 Responsibility to the Client with Third-Party Contracts for Services (See 1.05, 1.11, 2.01)

Behavior analysts place the client's care and welfare above all others. If the third party requests services from the behavior analyst that are incompatible with the behavior analyst's recommendations, that are outside of the behavior analyst's scope of competence, or that could result in a multiple relationship, behavior analysts resolve such conflicts in the best interest of the client. If a conflict cannot be resolved, the behavior analyst may obtain additional training or consultation, discontinue services following appropriate transition measures, or refer the client to another behavior analyst. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

This code closely follows the prior Code 3.07 in terms of the language used to describe the parties involved (please review 3.07 if you have not already done so). The circumstance described here would represent the position of the BCBA working with and representing the best interest of a client, when they have been requested by an external organization such an insurance company to reduce the number of hours of service. If the BCBA stands by their recommendation, they are required to resolve the issue and they cannot simply concede. In this case, this would mean persuading the insurance company to not reduce the hours of service by showing data that demonstrate a strong need for the time necessary for the treatment. This will involve some negotiation skills and possibly some pushback. If it involves skills that the BCBA does not have, then the person may need to ask for a specialized consultant to be brought in or request additional training. The worst-case scenario here is that the BCBA will tell the third party that they cannot provide the service and that the third party will need to seek someone else. The BCBA should document all these transactions and the outcome.

3.09 Communicating with Stakeholders About Third-Party Contracted Services (See 2.04, 2.08, 209, 2.11)

When providing services at the request of a third party to a minor or individual who does not have the legal right to make personal decisions, behavior analysts ensure that the parent or legally authorized representative is informed of the rationale for and scope of services to be provided, as well as their right to receive copies of all service documentation and data. Behavior analysts are knowledgeable about and comply with all requirements related to informed consent, regardless of who requested the services.

This code item is the last part of the “third-party” trilogy. In this case we are looking at a situation where a BCBA works for a third party (e.g., Medicaid, an insurance company, or a family court). The rules are simple. As a behavior analyst working for this third party, you are required to inform the legal representative for the first party of the behavioral services to be provided including their rationale and scope. Let the first party know they have a right to receive copies of any of the reports and data that might be generated by the third-party behavior analyst. A minor is someone who has a guardian or who is under conservatorship.

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CASE 3.09 THREAT ASSESSMENT

“I have been requested by a judge to complete a behavior assessment of a district school student due to a lawsuit between the family and the school district. They are contesting the district’s assertion that their child is a threat to the other students, and they want an FBA completed by an experienced behavior analyst. Do I need to get consent from the family to perform the assessment and do I need to explain the scope of the services to be provided?”

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3.10 Limitations of Confidentiality (see 1.02, 2.03, 2.04)

Behavior analysts inform clients and stakeholders of the limitations of confidentiality at the outset of the professional relationship and when information disclosures are required.

The legal definitions of confidentiality and limits to confidentiality are established by each state legislature, so you will need to research this for your locale. Confidentiality can be a matter of significant importance to clients, parents, caregivers, and stakeholders, and it is critical that client information be carefully guarded against breaches that could in some way cause harm.⁵ Client records left in the open or in unlocked file cabinets could be obtained by someone who could cause harm to the status of the person. Parents and stakeholders, for example, may not want their child's autism diagnosis exposed to neighbors who, by virtue of knowing this, might tell their children not to play with the client or spread rumors around the neighborhood. Similarly, parents of a student who is being evaluated by the school psychologist may not want that person to know the child was previously diagnosed with ADHD since this might bias their results. However, there are some circumstances in which confidential information can be exposed. Examples are provided below, but remember the exact laws are established by each state legislature. In Chapter 13, we provide an example of a Declaration of Professional Practices and Procedures for Behavior Analysts. If you look at Section 5, you will see one way to communicate these limitations to your clients.

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5. CONFIDENTIALITY

Here is a way to communicate confidentiality limitations to your clients:

In [insert your state], clients and their therapists have a confidential and privileged relationship. I do not disclose

anything that is observed, discussed, or related to clients. In addition, I limit the information that is recorded in your file to protect your privacy. I need you to be aware that the confidentiality has limitations as stipulated by law including the following:

- I have your written consent to release information.
- I determine that you are a danger to yourself or others.
- I have reasonable grounds to suspect abuse or neglect of a child, disabled adult, or an elder adult.
- I am ordered by a judge to disclose information.

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In your presentation to your clients, you may want to use a description like this:

- If there was some confidential information you wanted me to convey to someone, I would need to have a Consent to Release Information Form filled out and signed by you.
- If a behavior analyst believes that you are likely to harm yourself and/or another person, they may do whatever is necessary to protect you or others by contacting law enforcement officers or medical personnel.
- If a behavior analyst has cause to believe that a child has been or may be abused or neglected, the behavior analyst is required as a mandated reporter to make a report to the appropriate state agency.
- If a behavior analyst believes that an elderly or disabled person has been abused, neglected, or subjected to financial exploitation, the behavior analyst must make a report to the appropriate state agency.
- If a behavior analyst is requested by subpoena or court order to provide documents, they must comply.

3.11 Documenting Professional Activity (See 1.04, 2.03, 2.05, 2.06, 2.10)

Throughout the service relationship, behavior analysts create and maintain detailed and high-quality documentation of their professional activities to facilitate provision of services by them or by other professionals, to ensure accountability, and to meet applicable requirements (e.g., laws, regulations, funder and organization policies). Documentation must be created and maintained in a manner that allows for timely communication and transition of services, should the need arise.

When it comes to authenticating their work, behavior analysts should be the exemplars for quality documentation. Our standard is that we take data on what we do and most often, we graph that data so that it can be shown to others. This code item reminds us that detailed intake interviews, phone conversations, and notes from client meetings need to always be documented for later use. Given the litigious nature of our current culture, it is probably wise to create a paper trail for every client so that another behavior analyst, if there was a need for a transition, could pick up the case, know exactly what you did and how you did it, and continue treatment in a seamless manner. If you begin by thinking of the material you would like to receive if someone transferred a client to you, the need for this standard will become easy to understand. Then, of course, there are a multitude of rules and regulations as well as company policies on documentation needed for accountability purposes. One additional note is relevant here. It is a common practice of RBTs and BCBA_s alike to take informal notes during therapy that are used to serve as a prompt or jog the memory of the next therapist as to tasks to complete. These are working documents that are not shared with clients.

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CASE 3.11 DOCUMENT BY THE BOOK

"The clinic I work at provides 1:1 ABA therapy to children between the ages of 2 and 13 with an ASD diagnosis.

Our behavior technicians provide about 2 to 2 1/2 hours of therapy to a client at a time.

We write billing notes for the last 10–15 minutes of our session while the client is sitting. Is it ethical to be writing billing notes in session, or is this work that should be done outside of scheduled therapy time?

Along the same lines, we are required to chart all data for programs in session with our client for the last 30–45 minutes of the day during which children are often playing alone or watching an electronic device. We attend to their needs and may run one quick program here and there during this time. Is it ethical to be charting in session, or should that also be done outside of scheduled therapy time?

In the middle of the day, there are certain behavior technicians (BTs) who are responsible to providing seven 30-minute sessions to seven different clients to cover other technicians' lunches. Because billing takes 10 minutes, what this often means is that BTs are receiving a client, running a few programs, and then spending 10 of the 30 minutes on their computer billing while paying little attention to the client.

I'm feeling like the amount of therapy I can provide in 20 minutes is not very much and not ethical."

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3.12 Advocating for Appropriate Services (1.04, 1.05, 2.01, 2.08)

Behavior analysts advocate for and educate clients and stakeholders about evidence-based assessment and behavior-change intervention procedures. They also advocate for the appropriate amount and level of behavioral service provision and oversight required to meet defined client goals.

As behavior analysts, we have an obligation to try and educate our clients and stakeholders about the wide range of behavior-analytic procedures that are available to them. In order to do this,

we all need to stay up on the research literature which means subscribing to several behavioral journals, setting up journal-reading groups at work, attending state and national conferences, and signing up for workshops. There will be times when we also have to actively promote those procedures in the best interest of our clients who may have some concerns about their possible complexity, side effects, or even their actual effectiveness. Admittedly, we do not have a well-worked-out science of determining the precise amount and level of treatment that is correct for every behavior and every client; however, we do have a rich research literature that provides guidance plus experienced colleagues we can call on for their expertise in making these determinations.

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CASE 3.12 BILL THE MAXIMUM HOURS

“The policy of my company is to first see how many hours the client’s insurance will pay for and bill the maximum amount of time for that client, regardless of the client’s needs. For example, clients who presented with minimal skills deficits, for whom it is clinically appropriate to recommend only a few hours a week of therapy, would always receive the maximum number of hours allotted by the insurance company (sometimes 20 hours per week), despite clinical recommendations. When I questioned this system, I was told, ‘It doesn’t matter. Insurance is paying for it.’ I observed one session with a client, a 5-year-old boy with a diagnosis of Asperger syndrome. He was receiving ‘feeding therapy’ at the clinic from a BCABA. When I inquired as to what goals she was working on, she stated that the client had met all his feeding goals, but since insurance pays for this therapy, the company asked her to continue to see him regularly.”

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3.13 Referrals (See 1.05, 1.11, 2.01, 2.04, 2.10)

Behavior analysts make referrals based on the needs of the client and/or relevant stakeholders and include multiple providers when available. Behavior analysts disclose to the client and relevant stakeholders any relationships they have with potential providers, and fees or incentives they may receive for the referrals. They document any referrals made, including relevant relationships and fees or incentives received, and make appropriate efforts to follow up with the client and/or relevant stakeholders.

In order to remain within the scope of practice of behavior analysis and the boundaries of competence of the individual behavior analyst, it may be occasionally necessary to refer a client to a specialist in some other discipline. Depending on the circumstances of course, a family might need the services of a case worker, substance abuse counselor, social worker, crisis support worker, clinical psychologist, physical therapist, or speech and language pathologist. To make sure the client feels comfortable with the specialist, furnish them with a list of providers in your area, and then let them choose their specialist. We strongly discourage behavior analysts from recommending someone with whom they have a personal relationship. It is considered bad form and unethical for a behavior analyst to make a referral to a friend or colleague in exchange for a fee (known as a “kickback”). If you should engage in such a practice, it must be revealed to the client and documented in their file. Following up with the client to determine if they followed through is always a good practice, and this should be documented as well.

3.14 Facilitating Continuity of Services (1.03, 2.02, 2.05, 2.08, 2.10)

Behavior analysts act in the best interests of the client to avoid interruption or disruption of services. They make appropriate and timely efforts to facilitate the continuation of behavioral services in the event of planned interruptions

(e.g., relocation, temporary leave of absence) and unplanned interruptions (e.g., illness, funding disruption, parent request, emergencies). They ensure that service agreements or contracts include a general plan of action for service interruptions. When a service interruption occurs, they communicate to all relevant parties the steps being taken to facilitate continuity of services. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

There are many reasons for a behavior analyst employee of an ABA agency or company to decide to resign from their position or for an agency to determine that immediate separation is necessary. Concerns over ethical violations by upper management, colleagues, or even supervisees or trainees may cause the behavior analyst to separate from the company as quickly as possible. Likewise, the company may feel that a behavior analyst employee has gone too far on a policy dispute or engaged in billing fraud and must be terminated immediately. This code item puts pressure on the individual behavior analyst as well as the company to think in terms of how this will affect client services. If by firing an employee immediately, ten clients might suddenly be without a BCBA supervisor, and even more RBTs would be unable to provide therapy. This would cause serious client treatment interruptions. If that same behavior analyst quit with virtually no notice, the same thing would happen. There would be a serious disruption to services. Both scenarios require the company to have enough BCBAs on staff to cover such unplanned interruptions. There are also planned interruptions such as employees moving on short notice, people dealing with emergencies, paternity leaves, and so forth. Service agreements (aka contracts), should include clear instructions to all employees as to the proper method of leaving the agency. Most common is a required 30-day notice period, which should give the company enough time to find a replacement. The company has an obligation to the client to keep them informed of any

potential disruption and to describe the steps taken to mitigate the discontinuation by any means possible.

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CASE 3.14 RIPPLE EFFECT

“Recently, one of our RBTs had a job interview with another company. I informed one of the families that it is possible that this RBT might take a job with another company so they could get their name on provider wait lists. I do know of another provider who is able to take them on as soon as they are ready, but I don’t know if this family wants to transition to this new provider. I do have two other company names to share with them. The family emailed me and said that they expect me to continue providing services until they find another provider that they find suitable. That would lead to an undefined agreement, as I do not know at what point they will find a provider that meets their criteria. I am quite sure that I should not be agreeing to that. I’m wondering if telling them that I can only guarantee that service will be available for the next 30 days is sufficient notice.

“Is there anything else I need to do to ensure that I am not engaging in client abandonment?”

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3.15 Appropriately Discontinuing Services (See 1.03, 2.02, 2.05, 2.10, 2.19)

Behavior analysts include the circumstances for discontinuing services in their service agreement. They consider discontinuing services when: (1) the client has met all behavior-change goals, (2) the client is not benefiting from the service, (3) the behavior analyst and/or their supervisees or trainees are exposed to potentially harmful conditions that cannot be reasonably resolved, (4) the client and/or relevant stakeholder requests

discontinuation, (5) the relevant stakeholders are not complying with the behavior-change intervention despite appropriate efforts to address barriers, or (6) services are no longer funded. Behavior analysts provide the client and/or relevant stakeholders with a written plan for discontinuing services, document acknowledgment of the plan, review the plan throughout the discharge process, and document all steps taken.

Discontinuing behavior analysis services can be a happy event if everyone involved is thrilled with the results: (1) difficult goals were met on time, the behaviors changed are now generalizing to new settings and maintaining because they have contacted naturally occurring reinforcers, and the family/caregivers are relieved of the burden of supporting behaviors that the client can now engage in independently.

Sadly, this joyous outcome does not occur 100% of the time. It may happen, that despite their best efforts, a client (2) either plateaus or may regress (even though a variety of strategies have been tried) and the conclusion is reached by all parties that there is no further benefit to be had from continuing treatment.

For reasons of inadequate screening on the front end, it may also happen that when RBTs (or supervisees or trainees) attempt to engage with the client, they are (3) met with social or environmental variables that make it impossible for them to continue. This almost always occurs with in-home services and the hindrance can consist of one or both of the following: (a) the home is not suitable for training for reasons of parental hoarding, lack of proper sanitation, infestation of insects, or the presence of illegal drugs, chemicals, or dangerous weapons; or (b) for some reason there is someone in the household who feels they can verbally attack the therapists using foul language, calling them names related to their heritage, their skin color or gender identification, or in some other manner make them feel so uncomfortable that they refuse to return to the home. Depending on company policy, the parent/caregiver may be given a written warning on the

first occurrence of any of these instances with the consequences of continuation spelled out in writing. All of this should be well documented in the event that the parent/caregiver decides to contest the discontinuation.

For a variety of reasons, (4) the parent/caregiver or even a stakeholder, such as an insurance company, may request the discontinuation of services. This could be due to a change in financial circumstances of the family, disagreements or dissatisfaction with the behavior analyst or their company, internal turmoil within the family where a separation or divorce is impending, or some cases where they have simply become disenchanted with behavior analysis as an approach to treatment.

A not uncommon circumstance in recent years is the need for discontinuation (initiated by the behavior analyst) due to noncompliance by the parent/caregiver with the previously agreed-upon behavior plan.

A not uncommon circumstance in recent years is the need for (5) discontinuation (initiated by the behavior analyst) due to noncompliance by the parent/caregiver with the previously agreed-upon behavior plan. This can happen for a variety of reasons, which include parents not prepared to put in the time required to learn and administer the treatment routine, improper training by the behavior analyst of the parent/caregiver so the tasks were too difficult to acquire, too little reinforcement for this task acquisition, or scheduling difficulties so that caregivers were not able to meet with the behavior analyst often enough for training. Another common situation involving the need for discontinuation of services is when the parent/caregiver becomes aware that behavior analysis is not a free babysitting service. Once they realize they are expected to become the in-home therapists for their child, noncompliance becomes an out for some parents.

One final possible reason for discontinuing services is that (6) for whatever reason, the funding for the service is about to be discontinued. Behavior analysts are often torn under these circumstances since they may have seen great progress in the client and hate to see them go. Nonetheless, an agency is not expected to carry clients once the funding is terminated. The agency is expected to give copies of the relevant files to the client/parent/caregiver so they can resume services at some later date if funding can be secured. The agency must maintain all records for seven years (see Code 4.05) in the event that the parents/caregivers do obtain funding but misplace their copies.

These six items should be included in the service agreement, and for this we recommend using the Declaration of Professional Practices and Procedures for Behavior Analysts (or a similar document) as described in some detail in Chapter 13. For (3) and (5) above, we strongly recommend that these be described in detail, including the consequences for violating these sections of the agreement.

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CASE 3.15 WHEN PARENTS REFUSE TO PAY

"The family has refused to pay intermittently for months now, or they have reduced hours of service abruptly, which has affected our ability to adhere to previously established treatment goals. Deadlines for fees would be missed, leading us to believe parent is no longer interested in services. We no longer feel we are providing adequate behavioral services to this family, which can also be seen in the lack of progress being made by the learner. We also cannot continue to provide services that are not being paid for according to the agreed-upon fee structure in our contract with the family. We would continue to work with the family for another month and support

their transition to another service provider given they pay for our services.

Is non-payment for services a justified reason to terminate services?"

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3.16 Appropriately Transitioning Services (See 1.03, 2.02, 2.05, 2.10)

Behavior analysts include in their service agreement the circumstances for transitioning the client to another behavior analyst within or outside of their organization. They make appropriate efforts to effectively manage transitions; provide a written plan that includes target dates, transition activities, and responsible parties; and review the plan throughout the transition. When relevant, they take appropriate steps to minimize disruptions to services during the transition by collaborating with relevant service providers.

The need to transition a client from one behavior analyst to another may arise if the behavior analyst quits the company, is fired, goes on an extended leave, there is a determination that the company does not have the resources to provide adequate treatment, or if the company goes out of business. In the first three instances, the transition is likely to be internal and should be smooth, assuming the company has adequate staff on board to cover the BCBA who is leaving. In a small agency with only one or two behavior analysts, when one of them departs, it can put such a burden on a company that transition to an outside organization is essential. Of course, if the agency is shutting down, transition plans for all clients will have to be prepared. The transition paperwork needs to include a written plan including (a) target dates and (b) what the transition will look like in terms of which staff will carry out each function (phoning the receiving agency to coordinate the transfer, contacting the parents/caregivers and informing them of the transition [this should be

done in person], training the replacement behavior analyst, and preparing all the transition paperwork and delivering it to the new agency).

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EXAMPLE OF A TRANSITION NOTICE

Under certain circumstances, it may be necessary to transition client(s) to another service provider or to discontinue services with ABC Inc. If continued services are deemed clinically necessary by the treatment team, ABC will assist locating an appropriate replacement service provider. ABC will work with the new service provider of your choice to ensure no gaps in services occur and will work closely with the treatment team to ensure that the transition occurs in a way that eliminates any negative impact to the client or caregivers.

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RESPONSES TO CASES

CASE 3.01 DRUG PICS ON IPAD

You were operating in good faith under unusual circumstances. You were watching out for your client's best interest and had no malicious intent. Before you contact the Board, you should meet with your attorney and explain the situation and see if you have any exposure here. Inasmuch as you were operating in good faith and that you reported this to the appropriate agency, CPS, it seems that you operated ethically. An attorney could advise you about the legal angle.

FOLLOW-UP

From the BCBA: "As far as I know, the family is not aware of who filed the report. I do know that CPS went out to investigate. They

determined we did not incur any repercussions to our agency. After receiving your advice, I agreed I was acting within my ethical bounds and did not report anything to the Board.”

CASE 3.02 PERILS OF CONTRACTING WITH A SCHOOL DISTRICT

Following the district's guidance does not seem to be in the client's best interest. The ethics code requires that we consider the client's (the family in this case) interest paramount. It appears that the school district's policy is to give the family the least amount of time possible to analyze the report and prepare a response to present at the meeting. The most ethical action in this case would be for you to quickly provide the report to the family so they have adequate time to prepare their response and possibly seek legal counsel in this important matter. Behavior analysts always support the rights of clients and relevant stakeholders and operate in their best interests. They are not hired guns available to the highest bidder. Be aware that if you do provide the family with the report, you will likely be terminated by the school district and receive no further work from them, so be ready for this righteous consequence. As a first step, you could show this relevant code item to your district contact to make your request stronger.

CASE 3.03 HOW MUCH IS TOO MUCH?

This is clearly over the recommended caseload as per the BACB Guidelines.⁶ The CEO (probably not a BCBA) may want this, but his motivation should be questioned. The main variable here is most likely profit rather than quality care. The caseload you are describing would put you in violation of the code and you would need to self-report your violations. Please look at page 31 of the BACB Guidelines, and you'll see that the maximum

recommended is 24, assuming the BCBA has a BCaBA assisting with the cases. Constant pressure for quantity calls for equally constant *pushback*. Best of luck in your quest for a humane working environment.

FOLLOW-UP

“Thank you so much for your response. I really needed some confidence in being able to push back. This is beyond helpful! I appreciate it so much. I had a phone call with my CEO and already got an agreement that I do not have to take on the additional hours.”

CASE 3.04 MANAGING MOM

One suggestion is to modify the Declaration of Professional Practices and Procedures (Chapter 13, add appropriate text under number 2) to describe how you are not permitted to discuss the mother's personal life with her because it is a violation of Code 1.11. The next time you are there, start with, “We need to discuss an issue that has been bothering me for a while. Can we sit down . . . ?” Then, present her with the Declaration and go through it section by section. When you get to the part on no more personal conversations (however you want to word it, including consequences if she persists, e.g., you will terminate the case), make sure the mother confirms that she knows what this means. There should not just be a head nod, but actual words from her. Then, finish the review of the document. Both you and the mother should sign two copies, and you will each keep a copy. Then say, “Okay, so I need to go work with David. I know he's antsy to get started. . . .” The real test is for the next visit where you come in, say hello, and go straight to the client. If the mother tries to get into conversation, use some body language that says, “Stop” and remind her about the written agreement.

CASE 3.05 IN THE DARK

If you are the only BCBA at this agency, then it falls on you to abide by Code 3.05 and inform your clients of their rights and responsibilities.

FOLLOW-UP

From the BCBA: “I was under the impression there was an agreement. Now the owners of the clinic have decided to change it. The two owners are arguing about what to charge (one wants to charge the rate most clinics in the area charge, and the other is saying that the government can pay any fee they choose and wants to make more money.”

CASE 3.07 WHO IS YOUR CLIENT?

This example of a third-party contract came from a colleague who owns a small ABA agency and was in response to a question from the first author about how these relationships are sorted out so that the behavior analyst can determine who their client is.

CASE 3.09 THREAT ASSESSMENT

“Yes, you certainly do need informed consent from the parents to conduct this sort of assessment. This should not be difficult since they are requesting the assessment. This does not seem to be the sort of thing that behavior analysts normally do, so you will need to include your qualifications in your consent form. The judge will also want to make sure that you are qualified for this rather unusual task.

CASE 3.11 DOCUMENT BY THE BOOK

1. The codes used for billing require face-to-face time with the client. The category I codes are “bundled,” which means

that the reimbursement rate needs to cover pre- and post-activities, which include session note writing.

2. Taking data is an acceptable practice “as you go” during session. It’s part of the one-to-one treatment sessions.
3. This is a tough one. There are certainly variations of this practice that do seem questionable. To bill during lunch, there needs to be treatment either 1:1 or group based on medical necessity, and authorization approval. It cannot be based on the intent of wanting to bill for every hour that a child is in the center.⁷

In many cases, if the parents knew how little therapy their child was receiving, they would request transfer to another provider.

CASE 3.12 BILL THE MAXIMUM HOURS

Undoubtedly, this practice is unethical, but it is also illegal and fraudulent. The behavior analyst protested the practice of billing the maximum hours whether they were needed both verbally and in writing to the company. She also reported the company to the insurance company and, following that, immediately resigned from her position.

CASE 3.14 RIPPLE EFFECT

It sounds like this is not to be a termination but rather a transfer of services to some other agency. It is not reasonable for them to expect you to keep providing services until they find another provider. You need to provide the family with a list of available providers and prepare the paperwork for a seamless transfer of therapy to the agency that they select. Giving them 30 days’ notice should be sufficient.

CASE 3.15 WHEN PARENTS REFUSE TO PAY

Under Code 3.15, you may terminate services for non-payment if you can demonstrate that you have tried to work with the family

to make the fee schedule suitable to them and to meet your fiscal needs. You will need to provide them a list of other providers in the area and prepare the transition paperwork.

NOTES

1. <https://gamestorming.com/stakeholder-analysis/>
2. www.ipma-usa.org/chgagent/where-did-the-term-stakeholder-come-from/
3. <http://givehalf.co/worksheet/pro-bono-agreements/>
4. www.rocketlawyer.com/sem/barter-agreement.rl?id=2056&partnerid=103&cid=1795580607&adgid=72188619352&loc_int=&loc_phys=9011582&mt=p&ntwk=g&dv=c&adid=346363145440&kw=barter%20agreement&adpos=&plc=&trgt=&trgtid=kwd-321814405638&gclid=EAIaIQobChMI3Prwg6i78AIVM2tvBB3I2witEAAVASAAEgLTg_D_BwE#/
5. <https://cmhc.utexas.edu/confidentiality.html>
6. Applied Behavior Analysis Treatment of Autism Spectrum Disorder: Practice Guidelines for Healthcare Funders and Managers.
7. This technical answer provided by Michele Silcox, the Ethics Hotline expert on insurance and billing.



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Section 4: Responsibility to Supervisees and Trainees

PREVIEW TO RESPONSIBILITY TO SUPERVISEES AND TRAINEES

Providing high-quality, hands-on supervision is the most critical aspect of developing new professionals in any field. Supervision has taken on enhanced importance since the BACB updated the required eight hours of training that must follow the very complete Supervisor Training Curriculum Outline (2.0) (BACB, 2018).

The BACB also established a requirement for three hours of continuing education (CEU) related to supervision per certification cycle. The three-hour CEU requirement is for behavior analysts who provide supervision. This completely revised standard requires that behavior analysts in supervisory roles must “comply with all supervisory requirements.” Before training others, they must first make sure that the training is within their scope of competence. In addition, they must determine how many supervisees or trainees they can take on and still provide effective supervision. The number of supervisees or trainees should be reported to their employer to prevent them from being overburdened. When supervisors have too many supervisees, they are likely to be ineffective since they are accountable for their own supervision practices as well as the professional activities of those that they supervise.

Once they have a reasonable caseload of trainees, supervisors must provide training and supervision following the necessary requirements and using evidence-based procedures. Topics related to diversity must be included in the training. The actual supervision consists of performance monitoring, praise and feedback, and the use of improvement plans when problems with trainees arise. Behavior analyst supervisors only delegate tasks to supervisees that they are certain they can perform and actively evaluate their supervisory practices.

If it appears that there needs to be a change of supervisors, this is done to reduce any negative impact on the supervisee. If a trainee must be terminated, the supervisor should carefully plan this action to reduce the negative impact as much as possible. Under this new standard, supervisees should expect to receive frequent direct observation and be given precise and timely feedback in such a way that it actually *improves* their performance.

A CLOSER LOOK AT RESPONSIBILITY TO SUPERVISEES AND TRAINEES

4.01 Compliance with Supervision Requirements *(See 1.02)*

Behavior analysts are knowledgeable about and comply with all applicable supervisory requirements (e.g., BACB rules, licensure requirements, funder and organization policies), including those related to supervision modalities and structure (e.g., in person, video conference, individual, group).

The amount of information that supervisors are required to have at their fingertips is daunting. Just keeping track of all the BACB forms requires an extraordinary ability to search for and rapidly retrieve the information, organize it, enter it into spreadsheets, and then provide it at just the right time. For a quick review of what is required go to BACB.com and type “Supervision” in the search box. Here you will find a pre-experience checklist, supervision meeting forms, newsletters with recent updates to requirements,

lists of fieldwork requirements, Monthly and Final Experience Verification Forms, a Contested Experience form, experience standards, RBT audit forms, consulting supervisor requirements, the Supervisor Training Curriculum Outline, and more. Assuming you are supervising RBTs, you will need to have read the RBT and BCaBA Handbooks. In addition, if you are practicing in a state that has licensure, you will need to review and have on file those requirements as well. Most behavior-analytic services are now funded by government agencies or insurance companies and supervisors are required to know and keep track of all their requirements in addition to making themselves aware of the policy and procedure manual of their places of employment.

The most strongly recommended form of supervision is by live, direct observation, whether it is in a classroom, clinic, or home or community setting. Live observation is preferred since you can see and hear everything that is going on and if necessary, provide immediate feedback to the trainee. This is likely to be the most effective means of performance improvement. Many supervisors, for a variety of reasons, are adopting a second-best option of live *video* monitoring where they can see and hear the client and therapist. However, using this modality will miss any contextual variables such as sibling or parent activity that might occur in the vicinity. To make this modality even reasonably effective, the therapist should be equipped with a bug-in-the-ear device where the supervisor can provide prompts and feedback to encourage the therapist or suggest online changes in strategy. (See Case 4.04 for an unacceptable version of this approach). A third method, which is not recommended, is where the therapist makes a video recording of a session with a client and then sends it to their supervisor. The delays in feedback can make this method nearly nonfunctional since by the time it is received, the therapist has no doubt moved on to other tasks. Finally, there are individual or group meetings where issues of behavior-analytic treatment or research topics are discussed and debated. While this may count as supervision, there is no research literature showing that this

modality actually improves therapy techniques or behavioral interventions. These meetings may be essential for giving trainees the verbal repertoires necessary to process a complex case and formulate intervention strategies.



CASE 4.01 WHO IS QUALIFIED TO SUPERVISE?

"As a BCBA, I have been supervising students for their fieldwork experience while the local university has offered them supervision alongside me. I'm not sure they are following the BACB experience criteria, as the BCBA-D from the university has instructed a student to ask me to 'sign off on her BCBA hours' retroactively. She was under the impression that the BCBA-D was supervising her fieldwork at the time. I think he was under the impression that I was supervising her. The BCBA-D was made aware that I was not supervising the client and had no contact with the student whatsoever. The student worked as a home ABA therapist for a family from my organization, but the program was overseen by a BCBA who works for me, who has not completed the eight-hour supervision and does not supervise BCBA candidates directly. The student was told by the BCBA-D at the university that this does count as supervision, as there was a BCBA overseeing the program who just needed to sign the monthly forms. This does not sit well with me, and it is not the first time I have been asked to do this (indirectly through students). The reason I believe the BCBA-D is not meeting the BACB criteria correctly is because when I have taken over students who are halfway through their experience hours they have never come across the tracker, unique data collection system or even know what the criteria is they must meet (percentage rules, number of contacts, etc.) I have had so many complaints from students"

who graduate there and just don't know how to respond to them as it is so unfair. They have invested so much money into university fees with little to no appropriate supervision or experience. I take my qualifications and supervisory position very seriously, which I don't believe the university is doing at all."

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4.02 Supervisory Competence (See 1.05, 1.06)

Behavior analysts supervise and train others only within their identified scope of competence. They provide supervision only after obtaining knowledge and skills in effective supervisory practices, and they continually evaluate and improve their supervisory repertoires through professional development.

This code item includes two separate concepts: (1) remaining within their scope of practice for supervision and (2) keeping up with professional development in the area of supervision (*aka* acquiring supervision CEUs).

1. For this standard, the distinction between *scope of practice* and *scope of competence* is important. “The term *scope of practice* is used to refer to the activities of the profession and is determined by external oversight organizations, whereas the term *scope of competence* is used to refer to the activities of a specific individual and is determined by the individual practitioner.”¹ To identify the scope of practice for BCBAAs, in our field we look to the BCBA Task List.² While there are generic descriptions of skills in Behavior Assessment for “problem behavior” and Behavior-Change Procedures for general methods such as “use conditioned reinforcers” and “use shaping,” there is no mention of specific client behaviors that might be involved. For “Selecting and Implementing Interventions,” again there are generic skill sets listed. “Make data-based decisions about the need for ongoing services,” and “state intervention goals in observable and measurable terms.” This section implies that a

person can only supervise in those skill areas on which they received their graduate training. This could be a narrow range of common presenting behaviors such as lack of language and social skills, some minor disruptive and non-compliant behaviors, off-task and perhaps some low-intensity aggression, and with a rather select population, very likely limited to young children with ASD diagnoses. A supervisor with this training would not be competent to supervise RBTs on cases involving any of the more difficult behaviors such as severe SIB, dangerous disruption and aggression, frequent elopement, persistent pica of non-food items, eating disorders, or hypersexual and paraphilic behaviors. Gaining competence in one of these or other areas so that one can supervise those types of cases is a fairly lengthy process involving a series of steps, as outlined in LeBlanc, Heinicke, & Baker (2012).³ The process starts with reading the current literature and ABA research, contacting the professional group for this category of client/behavior, and then pursuing intensive training and supervision from an expert in this area and receiving the appropriate credential as documentation of this new area of competence. Supervisors should also review this document from the BCBA on “Respecializing in a New Practice Area.”⁴

2. The second part of this standard requires BCBA_s to complete the eight-hour Supervisor Training based on the Supervisor Training Curriculum Outline (2.0). In addition, they need to complete three CEUs on topics related to supervision in each of their recertification cycles. For the CEU to count, the content must be behavior-analytic in nature (presumably meeting the requirements of Baer, Wolf, & Risley, 1968). Although much is written on effective supervisor repertoires, there is very little experimental work in this area so we are left with metaphoric extensions of work in other areas and hopeful generalizations from basic principles. There is also reference in this standard to “continually evaluating . . . their supervisory repertoires.” Please see Code 4.10 for more on this.

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CASE 4.02 COMPETENT IN WHAT?

"I have an issue with my site supervisor who constantly violates contractual boundaries with me. I am a marriage and family therapy graduate student and am completing my practicum at my work. My employment/site supervisor (not my clinical supervisor) is not qualified as a BCBA. On dozens of occasions, she has interfered with my schedule and attempted to organize my internship even though she specifically is contracted solely as my employment supervisor. She also has made several attempts to direct my role as an intern which is the duty of my clinical supervisor alone. I have reminded her of this on several occasions and I have reported this to HR with no outcome. Any feedback is appreciated."

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4.03 Supervisory Volume (See 1.02, 1.05, 2.01)

Behavior analysts take on only the number of supervisees or trainees that allows them to provide effective supervision and training. They are knowledgeable about and comply with any relevant requirements (e.g., BACB rules, licensure requirements, funder and organization policies). They consider relevant factors (e.g., their current client demands, their current supervisee or trainee caseload, time and logistical resources) on an ongoing basis and when deciding to add a supervisee or trainee. When behavior analysts determine that they have met their threshold volume for providing effective supervision, they document this self-assessment and communicate the results to their employer or other relevant parties.

BCBA supervisors are reminded repeatedly in this code of ethics that they are to give top priority to “operate in the best interest of clients” (Codes 1.03, 2.10, 3.01, and 3.08). When it comes to the volume of cases to be supervised, this sometimes puts

them in direct conflict with the financial incentives of their company.

Supervisory volume is one of the most critical problems in our field at the present time. Because of the financial contingencies involved (the more clients admitted, the more billable hours, the better the bottom line), supervisors are being required by their employers to take on more and more cases. They are also being required to take on additional associated RBTs, supervisees, and trainees with little regard for the expertise of these individuals or how much time it takes with each one to guarantee quality control of behavioral services rendered. This standard is explicit that “*effective supervision*” is the line in the sand that must be drawn by supervisors. When supervisors feel they are no longer delivering quality supervision, it is their responsibility, your responsibility, to take the necessary steps with their company. Some indications that a supervisor is not being effective include not able to meet the 5% supervision requirement, failure to return trainee email and phone calls in a timely fashion, complaints from clients about the trainee or supervisee, apparent RBT burnout for lack of support, and questions from supervisees about their client and you have only a foggy idea of what they are talking about.

Supervisors wanting to remain ethical and in compliance with Code 4.02 must engage in a new and somewhat unfamiliar skill of *pushing back* against their clinical director, company CEO, or owner when they have reached their limit of cases. This standard gives them authorization to do this and a method of self-assessment for some degree of counter-control against their administration.

A self-assessment to quantify time spent in supervision may consist of a *time and motion study*⁵ conducted for a representative sample of time such as a week. It starts with categorizing the type of behaviors that are relevant, such as direct and indirect time with supervisees, preparation of training materials for trainees, analysis of their client data, reports of their performance, and so

on. Next, you will need to prepare a data sheet and set up small time bins of 10–20 minutes, in which to record your activity and have some means to keep this with you throughout the day. You should also have a timer to prompt you to make the recording. At the end of each day, you will tabulate the total amount of time spent in each activity as well as the total for all categories. Use this information to prepare an easy-to-read histogram. Do this each day, and at the end of the week, you should have a good picture of your current workload overall and by subcategory. Attach a summary statement about what this shows and assuming it proves your point about being overloaded already with supervision, you are ready to make your case to your superiors.

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CASE 4.03 NO LIMIT TO CASELOADS?

I am a BCBA along with one other, and we work for a company that provides ABA therapy to children with autism. Our clinic just opened within the last year, and there has been a big push to grow as quickly as possible to become financially sustainable. About 2 1/2 months ago, we were asked to complete a burst of initial assessments, with the promise that a third BCBA would be hired within 6 weeks to take these additional clients. It has been 2 months now, and that BCBA hasn't been hired. In a meeting with my direct supervisor (not a BCBA), I asked if a cap was going to be put on our current caseloads until another BCBA is on board. I was told that there is no limit to our current caseloads and that we will be continuing to take on all the clients in our pipeline going forward. I asked if we would be assigned more billable hours per week, to cover this increase and she said that could happen since a BCBA at another location already has a caseload of 75 billable hours per week. I asked if there were any ethical concerns regarding assigning such

large caseloads to our BCAs, and she responded that she didn't know and would bring it up to other leaders in the company. She then ended the conversation.

"If all of the clients that I have assessed up to this point actually begin services, I will have a caseload of 40 billable hours per week, and that doesn't account for time needed for non-billable treatment activities, or billable parent consultation hours. I feel like I need to protest but I suspect my job may be on the line when I do, as I've already been told that my salary could potentially be cut if I do not bill enough.

"I have significant reservations about stating in my assessment reports for these clients that a particular number of behavior consultation hours are medically necessary and then having such a large caseload that it is impossible to follow through on actually providing all of those hours."

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4.04 Accountability in Supervision (See 1.03)

Behavior analysts are accountable for their supervisory practices. They are also accountable for the professional activities (e.g., client services, supervision, training, research activity, public statements) of their supervisees or trainees that occur as part of the supervisory relationship.

Accountability usually means there are consequences for failure to carry out a responsibility and there are also rewards for a job well done. This code item includes two separate accountable tasks: a supervisor is (1) accountable for their supervisory practices and (2) responsible for the conduct of their supervisees and trainees when they are on the job. We will deal with each separately.

Being accountable for supervisory *practices* means that a supervisor is providing oversight for RBTs and BCABAs who are

providing behavior-analytic services and trainees who are accruing experience hours. In addition, you may be called on to train RBTs and assess their competence, provide a written contract with each supervisee and trainee, observe and meet with them regularly as required to meet the 5% minimum supervision requirement, and make sure that they are completing all their assigned billable hours accurately recorded each month.

Being held accountable for the *professional conduct* of trainees and supervisees is quite another matter since this can be very open-ended. With a 5% supervisory requirement, this means that trainees and supervisees are *un-supervised* 95% of the time. This can be a frightening prospect especially if they are working with a child in an unstructured home environment where there may not even be an adult present. If something happens and the child reports that their therapist “touched my private parts,” the supervisor can be held accountable. If a parent notices an unusual bruise or scratch, or the child says, “Mae hit me on my backside just because I spilled my juice,” the supervisor is held accountable. If a nonverbal client exhibits unusual behaviors, such as crying when the therapist shows up or flinching when the RBT reaches for the child’s hand, the supervisor can be held to account. This may ultimately mean that you will have to report the RBT for violating the RBT Ethics Code if your investigation shows that they were responsible for abuse of a client. Your organization may also hold you accountable for the actions of the RBT that you supervise.

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CASE 4.04 NO ACCOUNTABILITY

“Is it ethical for a BCBA supervisor to ‘observe’ via tele-health without having their microphone or camera on and providing no feedback during or after the session? No purpose is ever given for the supervision from the BCBA, I am just notified to bring my computer to my session so that the BCBA can conduct a telehealth observation.

Sometimes these sessions are to four or five hours long. Is it considered ethical for a BCBA to bill insurance for consulting as a supervisor if they do not provide any type of feedback and never show their face on camera or speak on the microphone during the session?"

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4.05 New—Maintaining Supervision Documentation

(See 1.01, 1.02, 1.04, 2.03, 2.05, 3.11)

Behavior analysts create, update, store, and dispose of documentation related to their supervisees or trainees by following all applicable requirements (e.g., BACB rules, licensure requirements, funder and organization policies), including those relating to confidentiality. They ensure that their documentation, and the documentation of their supervisees or trainees, is accurate and complete. They maintain documentation in a manner that allows for the effective transition of supervisory oversight if necessary. They retain their supervision documentation for at least 7 years and as otherwise required by law and other relevant parties and instruct their supervisees or trainees to do the same.

Supervision paperwork and more paperwork, it probably seems never ending! Where do you safely keep it and what do you do when the trainee has moved on? The answer to the first question is that you will need to be very organized and make sure that you have a filing system set up, either digital or paper, for each trainee/supervisee. In your filing system, separate sub-folders for each type of documentation the BACB requires as well as any documentation needed to meet the demands of state licensure (if you have this in your state). Include anything required by the insurance company or government funding agency, and finally, also include any special requirements of your company. The types of documentation required will likely include the application form and resume of the trainee or supervisee, the Initial Competency Assessment and Renewal Competency Assessment, any work products produced

by the trainee/supervisee, observation data from your supervision sessions, the verification log and tracker, as well as feedback to the trainee/supervisee. You will also need a copy of your signed Monthly and Final Evaluation Forms, copies of any training that you conducted with the trainee/supervisee such as CPR, restraint or HIPAA guidelines. This is just a sample of what you will need to keep filed away for seven years. If you move from one agency to another, you will need to take all this with you. A supervisee/trainee may contact you later and ask for a copy of an assessment or confirmation that they have been trained on some particular task and you will need to be able to produce that documentation for them.

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CASE 4.05 DUBIOUS ARRANGEMENT

“I need to receive some information about a trainee who I supervised for only 5 months. By mutual agreement, we terminated the contract due to his wanting to receive fewer hours in a less intensive manner. He sent me his monthly documents and final documents and accidentally signed in the ‘supervisor’ spot. I let him know of the error and he sent the forms back, but this time they were blank. I signed in my spot as the supervisor, and returned them, then he says he signed the forms. When I asked for scanned copies, he said that was not possible. I told him I was required to have a copy and asked if he could just mail them to me. He said he would mail them when he could, but it might be a couple of months. My concern is his lack of responsiveness in returning the forms that I need for my records. He says that he has contacted the BACB to ask for assistance on his end because he doesn’t want to mail them to me. Is there something I should do in this situation? Is there a way to make sure that I am following all the steps correctly with my documentation?”

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4.06 Providing Supervision and Training (See 1.02, 1.13, 2.01)

Behavior analysts deliver supervision and training in compliance with applicable requirements (e.g., BACB rules, licensure requirements, funder and organization policies). They design and implement supervision and training procedures that are evidence based, focus on positive reinforcement, and are individualized for each supervisee or trainee and their circumstances.

To meet this requirement, the supervisor should start by reviewing the relevant rules and regulations for supervision. These should have been covered in the eight-hour training and can be seen in the Supervisor Training Curriculum Outline (2.0), available at BACB.com. In addition, the BCBA Handbook is also essential reading to understand what is required to become a BCBA Supervisor which includes the following roles: (1) *Supervisor*, who manages RBTs and BCaBAs as well as trainees who are accruing experience hours; (2) *Assessor*, who conducts or evaluates students who are pursuing or trying to maintain their RBT status; this includes the Initial Competency Assessment as well as the Renewal Competency Assessment; and (3) *Trainer*, who develops a 40-hour RBT training or perhaps who supervises those who are providing the 40-hour training.

When supervising RBTs, “you are responsible for the actions of all RBTs under your supervision” (BCBA Handbook, p. 44). This includes handling any ethics violations of which the RBT has been accused. This might include handling the incident internally as per your company’s policies or by filing a Notice of Alleged Violation with the Board if it is a severe case involving client abuse or fraudulent billing.

Once an RBT has completed the 40-hour training, this does not mean that their training is complete. It is actually just the beginning. Since RBTs are in many respects the face of ABA to the public, they require training in all aspects of dealing with clients as

well as parents/caregivers and stakeholders. One misstep in a conversation or the handling of a touchy question can set off a ripple effect that could turn the stakeholders against the treatment that they are receiving or against ABA in general. The same holds for their implementation of behavioral procedures on a day-to-day basis. One accidental reinforcer could destroy a month's worth of work in reducing an inappropriate behavior, or even set the stage for the beginning of noncompliance, destruction, aggression, or SIB. Obviously, the oversight and training that an RBT receives every day and every week counts toward a successful outcome and a positive impression on parents/caregivers and stakeholders. The model of training of RBTs is supposed to resemble that used by other professionals such as dentists, doctors, architects, and construction subcontractors.

The first author witnessed the following incident recently during a home renovation. The journeyman electrician said to an apprentice, "Check that circuit to make sure it is not hot." Apprentice: "Got it." A few minutes later the electrician went to the junction box to rewire a switch, grabbed a wire with his pliers and BAM! A spark flew, he jumped back, and yelled, "Hey, I thought you checked that!!??" "Oops, sorry boss, I did check it, I'm really sorry." This situation was a perfect metaphor for *our* field. On any given day that a supervisee or trainee is not being observed by a BCBA supervisor, they could make a mistake with a tragic outcome. Leaving a child client alone for just a few minutes while they run to the restroom could result in a quick elopement out of the house, or a child finding Clorox under the sink, or swallowing a small toy.

Supervision-in-name-only is a dangerous practice. It is easy to simply ask the supervisee, "How's it going?" and carry on a conversation about the weather. However, this is not genuine supervision which involves direct observation, feedback, practice, and more feedback until a behavior is changed sufficiently to meet the standard for that task. Supervision is a non-behavioral term. The behavioral equivalent is *shaping* (i.e., behavior shaping

using behavioral skills training [BST]). This can only be done by direct, in-person interaction between supervisee/trainee and their supervisor. Code 4.06 is one of the most important codes for RBTs, BCaBAs, and their supervisors to know and adopt. Use evidence-based procedures, primarily involving positive reinforcement and *individualized* for each supervisee/trainee to match each situation.

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CASE 4.06 LITTLE SUPERVISION, NO TRAINING

"I am a Registered Behavior Technician working on finishing my hours to sit for the BCBA exam. Soon after joining this company, I found that my new BCBA supervisor was unavailable, unprofessional, and demeaning. He spoke to clients' parents in a condescending way, using terminology he knew they would not understand. He used the same reports for my client that he had used with previous clients. In our client's reports, there were other children's names, inaccurate information about my client as well as fabricated data. He did not attend many of my scheduled supervision visits and when he did (via telehealth), he was present for only a small amount of the session. He would leave for 15–20 minutes several times throughout the sessions. I was never shown how to do any ABA-related procedures including discrete trial training, behavioral training, mand training, etc. After 6 months of this and several complaints to the company by our client's mother, my BCBA supervisor resigned. According to many other RBTs at the company, this had been going on with most of his clients and supervisees for years. Our supervisors were supposed to be giving us assignments and teaching us using a specific curriculum designed for this program, and my supervisor did none of that."

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**4.07 New—Incorporating and Addressing Diversity (See
1.05, 1.06, 1.07, 1.10)**

During supervision and training, behavior analysts actively incorporate, and address topics related to diversity (e.g., age, disability, ethnicity, gender expression/identity, immigration status, marital/relationship status, national origin, race, religion, sexual orientation, socioeconomic status).

Including topics related to diversity in supervision and training represents an additional requirement with true practical application. In their daily work, supervisees and trainees will no doubt encounter individuals who are different from them. They will interact with people with different ideas about behavior and ways of changing it. Rather than immediately reject someone's opinions or suggestions, behavior analysts should be prepared to listen and try to understand where a person is coming from regardless of their race, age, sexual orientation, and so forth. Supervisors need to provide background information for their trainees so that they are prepared to work cooperatively with others of different backgrounds, showing no prejudice or bias but rather mutual respect. Unconscious bias is another topic that supervisors will want to explore with their trainees as a way of accepting all individuals without allowing possible stereotypes creep into their interactions. Perhaps most importantly, from a practical standpoint, supervisors will need to provide prompting and feedback to their trainees and supervisees on any conduct they observe that exhibits bias, insensitivity, or intolerance toward others in the workplace or with their clinical cases.

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CASE 4.07 OVERHEARD IN THE BREAK ROOM

"I was sitting at a corner table in the break room reviewing case notes when two RBTs walked in and continued a conversation they had begun in the hall about some new trainees our company recently hired. 'That was such

a simple task graphing some data, I could have done it in an hour,' said one. 'Those people are just so lazy, it really irritates me,' said the other. 'I don't know why they brought them on in the first place. It's part of the diversity plan I guess.' They didn't see me, and I didn't say anything. What do I do now?"

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4.08 Performance Monitoring and Feedback (See 2.02, 2.05, 2.17, 2.18)

Behavior analysts engage in and document ongoing, evidence-based data collection and performance monitoring (e.g., observations, structured evaluations) of supervisees or trainees. They provide timely informal and formal praise and feedback designed to improve performance and document formal feedback delivered. When performance problems arise, behavior analysts develop, communicate, implement, and evaluate an improvement plan with clearly identified procedures for addressing the problem.

This standard overlaps considerably with 4.06 in essentially calling for behavior shaping of supervisees and trainees and the documentation of the training. This code describes briefly the nature of that process. It says to use "formal praise and feedback." This means the feedback is not "informal" as in "You're doing fine, Tiffany; keep up the good work." The term "formal" generally means written down, shared with the individual, and kept in a file for future reference.

One additional element is included in this code item which is the deployment of an "improvement plan" for the supervisee/trainee. Improvement plans are often used in business settings to improve employee performance and they may include some of the following elements: clear goals for the person, interaction/discussion with the supervisee/trainee on those goals so they are clearly understood, a possible analysis of functional variables, i.e.,

why the trainee/supervisee might be having this performance problem, provision of supplemental support or training, clear consequences for a failure to meet the specified goal, and regular feedback on how the person is doing followed by some recognition of the person of meeting the goal.

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CASE 4.08A PERFORMANCE INDIFFERENCE

"I have come across some grave ethical concerns about my place of employment. A situation arose where due to lack of supervision an RBT coworker refused a client food multiple times even though there was nothing in his behavior intervention plan that would allow withholding food. My organization wrote to employees that we are not to withhold food after I brought it to their attention, but they have no plan to inform the client's parents of what happened and are attempting to handle the affair 100% internally despite the acknowledgment of it being an ethical violation. Besides the ethical concerns, the company is currently not meeting supervision standards, RBTs are not getting 5% of their hours supervised, and as a result there are major concerns with treatment fidelity, use of aversives, maladaptive behavior support and lack of training resulting in RBTs straying far from intervention plans.

"I worry about retaliation if I were to contact the parents of the client. I've already approached my immediate supervisor who has advised that they are glad that I came to them instead of the parents finding out about the situation—implying that they have no intention to tell them. I am unsure what in all of this should be reported and through what means. I don't know what documentation I'd have available to me as an RBT that I'd be able to provide. Any guidance would be incredibly helpful."

CASE 4.08B SUBJECTIVE EVALUATION

“I am working towards acquiring the supervision hours needed to be able to sit for my BCBA exam. I am in the process of switching ABA companies. I’m trying to get my final verification form signed by my current supervisor stating I have acquired so many hours at my current company. She has refused to sign my form, stating that I am ‘unethical.’ When I ask why, she is unable to provide me with substantial written documentation. Additionally, I am currently a Licensed Assistant Behavior Analyst; she signed off on all of these hours in order for me to get that credential. If she signed off on these hours to get my state credential, does she have justification for why these hours would not count towards my BCBA? Do you have any suggestions for how I should proceed moving forward?”

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4.09 Delegation of Tasks (See 1.03)

Behavior analysts delegate tasks to their supervisees or trainees only after confirming that they can competently perform the tasks and that the delegation complies with applicable requirements (e.g., BACB rules, licensure requirements, funder and organization policies).

Delegation of tasks to an assistant is a time-honored way of lightening a supervisor's workload and giving the apprentice some firsthand experience. Anyone who has had a home renovation has probably noticed that carpenters, electricians, plumbers, and painters almost always have a "second" who is learning the trade. In a home renovation that spanned several months, the authors noticed that these trainees receive 100% supervision. In these cases, the "master" carpenter is constantly showing the apprentice how to approach tasks, what tools they will need, tips to make a job go more smoothly and, of course, how to remain safe and cautious in the case of coming across electrical wiring.

In behavior analysis, supervisees and trainees work in a similar capacity, except that they only receive 5% supervision. Although 5% this is the official *minimum*, it has become the de facto *maximum*. In the case of tradespersons, they will have so much daily contact with their assistant that they can easily tell if they are ready to tackle a task on their own, and since they are nearly always providing direct observation, they can provide immediate corrective feedback if necessary. In behavior analysis, determining whether a supervisee or trainee is ready to take on a delegated task is much more difficult. The supervisee may have seen a short video on how a token economy works (RBT Skill Acquisition C-12)⁶ and may have read an article on it, but the question, “Are you ready to implement the token economy for Ms. Stephens class?” is more complex than it seems. The supervisee is under pressure to say “Yes,” but that does not mean they are equipped for this rather complex task. It is almost certain that the BCBA supervisor has not directly trained them to do this and thus has no knowledge of their skill set in this area. If they had trained this skill and observed the RBT setting up and running two or three token economies, then the supervisor would be in a position to “confirm” that the apprentice is ready. Much needs to be done to successfully execute Code 4.09 for all the tasks that a supervisee or trainee must do on a daily basis.

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CASE 4.09 READY, AIM, DELEGATE

“I recently left an ABA company after a very short period due to personally feeling they were providing unethical ABA services. My major concern was that they primarily hire RBT’s who are graduate students since they are allowed to ‘case manage’ clients. Each RBT has three clients to manage. A BCBA meets with the RBT/grad students once a month, directly observes for about an hour, and provides consultation on programing. No assessments were conducted on any of these clients. The RBTs

would just choose goals they felt would help the client, and the goals were rarely updated because no extra time was given to the RBTs for this task. One client eloped from the building into an extremely busy street, and no BCBA was in the building during this time. Only three people were on site that were certified in the company's crisis prevention program and they were providing direct care with their clients. This deliberately put clients in danger. Is there a way to report a company?"

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4.10 Evaluating Effects of Supervision and Training (See 1.03, 2.17, 2.18)

Behavior analysts actively engage in continual evaluation of their own supervisory practices using feedback from others and client and supervisee or trainee outcomes. Behavior analysts document those self-evaluations and make timely adjustments to their supervisory and training practices as indicated.

We take “continual evaluation” to mean at least weekly or monthly measures of supervision effectiveness, where “effectiveness” is measured by the progress of their supervisees toward some standard of excellence. This would require constant monitoring of quantifiable supervisee performance and the implementation of BST, or at least feedback, and some demonstration of improvement in key variables over time. The supervisor would essentially be conducting an A, B, C, D experimental design, where each condition might be a different form of intervention to improve the supervisee’s performance. Presumably, each trainee would have their own individualized DVs based on an assessment at the beginning of the supervisory experience and further, these would be described in the supervision contract. This is no mean feat given that supervisors may have 10 to 20 supervisees (Code 4.03 for recommended supervisory volume).

Another approach to evaluate the effects of supervision would be to measure the improvement in the repertoires of the clients

with whom the trainees work. This would follow a similar pattern as above except that each client that each supervisee worked with would have half a dozen or so DVs to monitor. To be practical, the trainee would track and graph this data and present it to their supervisor. There could be some pressure on the supervisee to always show progress with their clients so there would need to be occasional IOA checks to keep everyone honest.

These two types of evaluation meet the standard of being behavior-analytic and evidence-based procedures. It can be quite difficult to keep track of the skills of all the supervisees and trainees that a BCBA might have, to know which ones need remedial training and those that just need occasional reinforcers to maintain their high-quality work. For this, we recommend a behavior-analytic dashboard shown in Figure 9.1, such as those that are used in project management.⁷



One final approach to the self-evaluation of supervisors is for the supervisor to call on a peer or one of their supervisors to observe them directly, or review the above-described data collection process and provide feedback, to which they would respond in some meaningful way.

4.11 New—Facilitating Continuity of Supervision (See 1.03, 2.02, 3.14)

Behavior analysts minimize interruption or disruption of supervision and make appropriate and timely efforts to facilitate the continuation of supervision in the event of planned interruptions (e.g., temporary leave) or unplanned disruptions (e.g., illness, emergencies). When an interruption or disruption occurs, they communicate to all relevant parties the steps being taken to facilitate continuity of supervision.

This is another important addition to the ethics code for behavior analyst supervisors. The concern here is that if there is an interruption or disruption of supervision (e.g., supervisor quits,

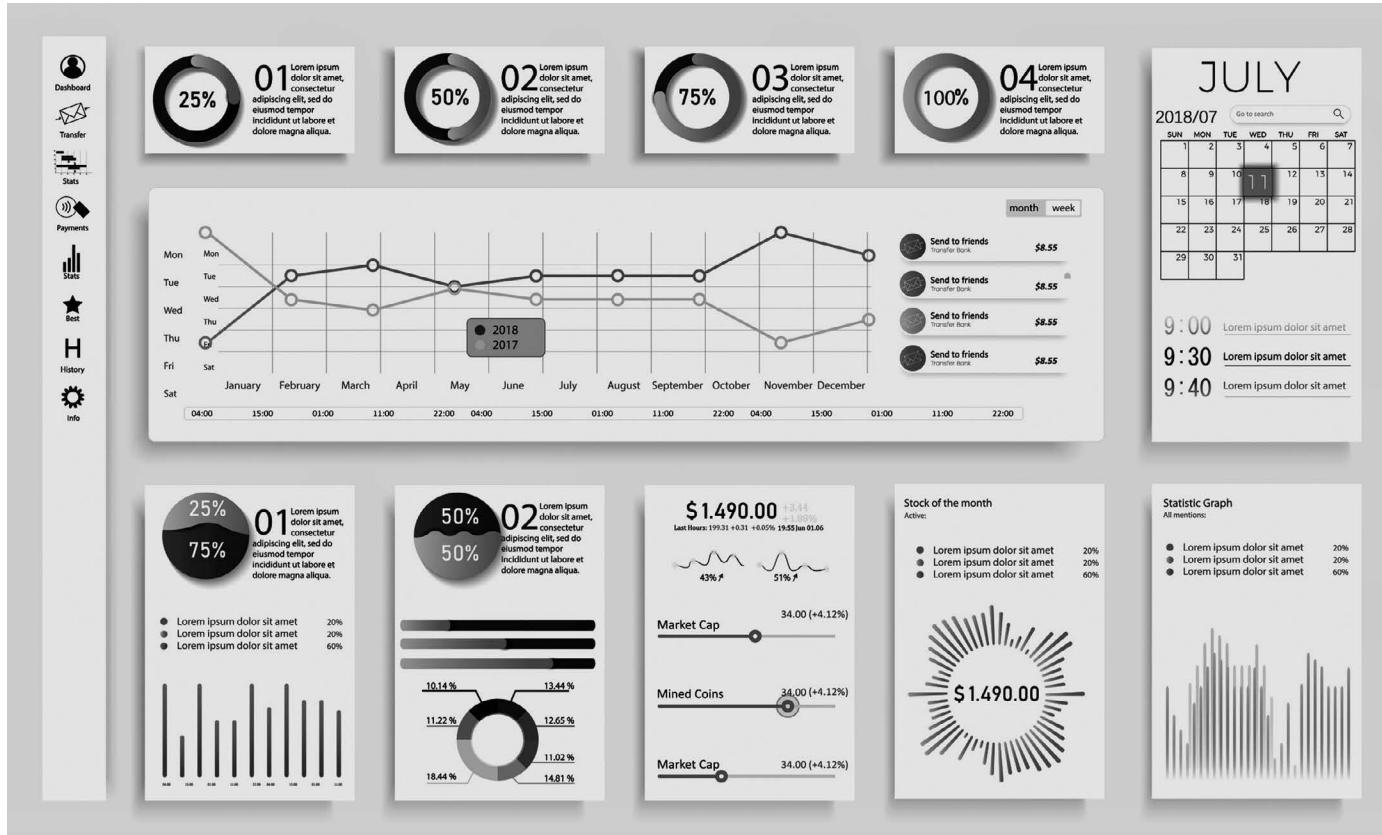


Figure 9.1 This model dashboard could be adapted for supervisors to keep track of the progress of supervisees.

is transferred, or is on leave for some period), clients could be adversely affected by the lack of services. If there is no supervisor, there are no RBTs, and that means there is no behavior programming. Individual behavior-analyst supervisors are thus cautioned to be fully aware of any situations coming up that might cause such an interruption and report this immediately to their clinical director. In fact, this new standard would appear to be most appropriate as a prompt for those BCBA_s who are clinical directors to stay in very close touch with all of their supervisors so that they receive sufficient warning of any impending disruptions of the smooth running of their operation.

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CASE 4.11 CONTINUITY LOST

"Here is my situation at my company. One BCBA will be leaving on Friday. She had already given her three-week notice. Other than informing families that she would be leaving, we have been taking things a day at a time regarding the discharge of our remaining ten clients as we didn't know if or when they would hire someone else in time to properly and ethically transfer the cases. This obviously creates a lapse in supervisor coverage, and the RBTs that remain at the clinic cannot practice alone. The assistant director threatened my current supervisor, saying she needed to extend her notice 2 additional weeks to allow for the transition of clients to the new BCABA. Since a BCABA cannot stand on their own for 2 weeks, waiting for the new BCBA this makes no sense. She also threatened that she would report her to the BACB for client abandonment, among other things if she did not extend her time. This company has a history of high turnover and ethically questionable practices, which is why we are both leaving. I understand that best practice is to give 30 days' notice, but does this requirement make sense with a company that has a history of high turnover"

and ethically questionable practices? I believe the code is to protect our clients, not companies. At this point, we believe that the clients will face a discontinuation of services either way. If we discharge them, there might be a waiting period to start with another company. If not, we would have to place services on hold for possibly a month. They have asked me to step in and bridge the gap; however, as the clinical director, I do not have a contract with the company for direct work, and this is not part of my job description. This solution would only put a band-aid on an already questionable situation, as I am resigning.

“As we are down to the wire, would giving families the choice of either (1) staying with a pause in services (although I do not trust the company will do the right thing regarding following BACB Code of Conduct after I leave), or (2) would letting them leave with a completed discharge report so that they can start fresh somewhere else be the better course of action?”

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4.12 New—Appropriately Terminating Supervision (1.03, 2.02, 3.15)

When behavior analysts determine, for any reason, to terminate supervision or other services that include supervision, they work with all relevant parties to develop a plan for terminating supervision that minimizes negative impacts to the supervisee or trainee. They document all actions taken in this circumstance and the eventual outcomes.

This new standard describes the steps that BCBAs need to take when they have determined that they need to terminate the supervision of an RBT, supervisee, or trainee. The first step in this process is for the supervisor to review the contract they created for the supervisee and examine the conditions under which

the contract can be terminated. This can be problematic if the behavior analyst failed to include any language regarding conditions for termination. Since there are a wide variety of reasons for cessation, it is hard to anticipate them all, so there may be loopholes in the written document. In this case, the supervisor is left with a very uncomfortable decision, which is to keep the trainee in place and create a plan of correction with the problem behavior, or let the person go and risk being reported. In some cases, the nature of the conduct of the supervisee may be so egregious (e.g., client abuse, billing fraud, harassment of colleagues) that the person needs to be dismissed immediately following a determination of guilt and proper documentation of the offenses.

Another frequent circumstance has to do with erratic supervisee behavior, where the supervisee skips supervision sessions, fails to make performance corrections despite repeated feedback, or displays disrespectful behavior toward their supervisor and then suddenly disappears without notice. Months later the supervisee contacts the supervisor asking for signatures on a Monthly or Final Experience form, which the supervisor is reluctant to provide given the circumstances of the departure.

In some organizations, supervisees and trainees are required to sign a contract specifying that they will receive “free” supervision on condition that they will stay with the organization for two years once they pass the BCBA exam. Often in the fine print is a clause stating that the trainee will be required to pay a fee amounting to thousands of dollars for all of the hours of supervision they have received should they decide to quit before taking the exam or change their mind about working for the company based on the poor quality of “supervision” that they received. This negative impact inflicted by the organization on the naive supervisee will make it very difficult for the supervisor to meet the requirements of this standard, to wit, “develop a plan for terminating supervision that minimizes negative impacts to the supervisee or trainee.”



CASE 4.12A UNETHICAL TERMINATION

"I worked for a small ABA company as a BCaBA. The owner, a BCBA, was to supervise me on independent cases I was assigned. She provided zero supervision over a period of a year. When I pointed this out and suggested that as a result I was probably working outside my scope of practice, I was laid off. I told her it was an unethical termination. She ended up assigning my work to an RBT. Is this something I need to report?"

CASE 4.12B SHORT NOTICE

"I began supervising a BCBA candidate 4 weeks ago. In the 3 weeks I have been supervising, this individual has berated a member of the support staff and refused to follow the behavior plan on an escalated student on multiple occasions. My classroom staff have reported to both me and the building administration unprofessional conduct on several occasions. The contract I have with her states there needs to be 30 days' notice before the termination of the contract. Are there any ethical grounds for immediate termination even if it is not explicitly stated in the contract? The contract does state reasons why I would not sign off on hours which includes, 'Jeopardizing the well-being of clients or team members.' I feel like this has happened. Do I have grounds to immediately terminate the contract?"



RESPONSES TO CASES

CASE 4.01 WHO IS QUALIFIED TO SUPERVISE?

It does seem as though the university "supervisor" has dropped the ball. You should reach out to the BCBA-D and voice your concerns

in an effort to resolve the issue informally. Be sure to document every attempt, and phone conversations with a follow-up email to the effect of “recapping our earlier meeting, below are the areas discussed.” If that proves unsuccessful, you may find yourself in the uncomfortable position of having to report them to the university and the BACB, provided that you have firsthand documentation. Otherwise, the students who most likely have firsthand documentation would need to report the ethical violations to the university and the BACB.

CASE 4.02 COMPETENT IN WHAT?

Violating contractual boundaries is a violation of code 1.05. Your site supervisor may be practicing outside of the boundaries of her contractual duties as well as outside of her scope of competence. It may help to meet with the site supervisor and your clinical supervisor at the same time to discuss the code items referenced above and see if this can be handled informally. Please note that you would need to have firsthand knowledge as well as documentation that the site supervisor has engaged in unethical practices. She would be informed of who submitted the Notice of Alleged Violation.

CASE 4.03 NO LIMIT TO CASELOADS?

The caseload you are being asked to take on is unethical and would not allow you to engage in ethical practice. How in the world does another BCBA have a caseload of 75 hours per week?! If the BCBA is working 7 days per week, they would be working 10–11 hours per day, not counting driving, treatment planning, and so forth. This clearly seems suspicious. Such a caseload would violate Codes 1.01 integrity, 2.01 treatment/intervention efficacy, and particularly 4.03, supervisory volume. To understand an ethical caseload for yourself, you might want to consider outlining your day through a time sample study in which you document how much time is spent in supervision, meeting the standards set by insurance and

the BACB, necessary treatment planning, travel, and so forth. Your supervisor might not be aware of our code of ethics, guidelines on ethical caseloads, and the ramifications of having too many clients. Even though you are most likely worried about your job and salary, know that BCBAAs hold the advantage in their working relationship because there are so few BCBAAs. Even fewer can provide supervision this gives you some considerable leverage. Having such difficult conversations are not easy, but it is a skill we must develop as BCBAAs work to protect themselves and to advocate for our clients' needs.

FOLLOW-UP

This ethical BCBA pushed back hard on this, as well as another issue related to noncompliance with CDC guidelines for COVID-19. She put in her resignation and was terminated the next day. She reports that she has found a much more ethical place to work where the caseloads are reasonable, and the staff listen to health and safety guidelines.

CASE 4.04 NO ACCOUNTABILITY

No, this does not sound ethical and is a clear violation of Codes 4.04, 4.06, and 4.08. In fact, beyond unethical, it should be considered fraud. If you have already brought this to the BCBA's attention in an effort to resolve the issue informally to no avail, you should report this BCBA to the BACB, the licensure board (if there is one in your state), and the insurance companies (funders), as you don't want to be associated with fraudulent activities.

CASE 4.05 DUBIOUS ARRANGEMENT

This is totally irresponsible on the part of this supervisee. It seems that you have gone above and beyond to work with this person. There are multiple violations of the RBT Ethics Code here including 1.03,

1.04, 1.09, and especially 1.10, since it appears that he has made “false, deceptive, and misleading” statements.

CASE 4.06 LITTLE SUPERVISION, NO TRAINING

Clearly, this BCBA supervisor totally violated Code 4.06. He should be reported to the Board lest he move to another company and repeat this obscene and reckless abuse of power. If you have access to documents to support a violation, you could do so at any time within the next 6 months.

FOLLOW-UP

“I wanted to let you know that I have resigned from that company and joined another company at which I am much happier. I am just a few hours away from being able to apply for my exam. About a week after I reached out to the Hotline, I received an ‘official termination’ letter from the company, which stated I would have to pay them \$5,812.50 within 90 days. It has been 107 days, and I did not pay them and have not heard anything further from them. I know that two of the BCBA’s at my former company were issued formal warnings from the BACB. No disciplinary actions were taken, but they did mention that they would be investigating the business. I also know the insurance companies opened investigations with the company as well.”

CASE 4.07 OVERHEARD IN THE BREAK ROOM

It is obvious that the diversity training your company implemented did not stick with these RBTs. This does not mean that you cannot start including some of those same topics in your training (you did not indicate if the RBTs were your supervisees) and supervision. Work with the HR department to determine the best course of action.

CASE 4.08A PERFORMANCE INDIFFERENCE

The incident involving a RBT withholding food from a client on multiple occasions should be documented as to time, place, and those present. If you can determine who the person was who wanted to keep the information from the parents (who have a right to know what is going on with their child), present your case for informing the parents immediately. Document this meeting and keep a copy in a safe place. The supervisor who allowed this to happen is in total violation of several sections of 4.0 including 4.08 and is violating clients' rights under 3.0.

CASE 4.08B SUBJECTIVE EVALUATION

A subjective statement without documentation to support your supervisor's allegations is not a valid reason for refusing to sign off on the final experience verification form (EVF). What does your supervision contract state about something like this? Find your contract and read it closely. Would your supervisor be amenable to discussing which terms of the contract you breached and how? If not, she is engaging in unethical behavior herself, including breach of contract.

If she signed off on the hours for your state credential, then she would have no reason not to count those hours. Ask her to show you documentation of your unethical behavior, and whether she has recommendations for an action/remediation plan that you can take with you. Ask her under what Codes you should self-report. If none of this works, you may need to fill out a contested experience form provided that you have all of your monthly EVFs signed/completed.

Here's the link: www.bacb.com/contested-experience-fieldwork-form/

CASE 4.09 READY, AIM, DELEGATE

Your concern about RBT graduate students being involved in case management is justified. This is a little more complex than it might

first appear. If you go to BACB.com and search for BCBA/BCaBA Experience Standards and then search for “trainee,” you will find a list of tasks they are allowed to engage in that regular RBTs cannot. This includes “behavioral case conceptualization, problem-solving, and decision-making repertoires” as well as developing written material including “behavior programs, data sheets, and reports.”⁸ However, these trainees must work under the close supervision of a BCBA supervisor, and meeting with them once per month does not meet the requirements. The failure of these trainees to conduct assessments and update client goals is unethical and could be reported if you have documentation to support the allegations. There is no way to report a company since the jurisdiction of the BACB extends only to behavior analysts. If the CEO was a BCBA, then that person could be reported if there is documentation to back up the claims of unethical conduct.

CASE 4.11 CONTINUITY LOST

This is just about the most complex and difficult case encountered by the Hotline. The company is having a meltdown and the welfare of the clients is totally disregarded as BCBAs fight to see who will leave first. It appears no one wants to be the last to leave. You are correct that our ethics code is intended to protect clients from unethical practices, not protect the company that allows this to happen. Your idea of giving the parents a choice of the two options you mention is a good one.

CASE 4.12A UNETHICAL TERMINATION

If you received zero supervision, you may be subject to immediate termination. Please see the information below taken from Standards for Supervision of BCaBAs⁹ regarding frequency of supervision and the outcome of a failure to be properly supervised. This may also require that you self-report that you were working without supervision.

Frequency

The BCaBA and supervisor must meet at least one time per month in which the BCaBA provides behavior-analytic services. In addition, the BCaBA's supervisor must be available for consultation between supervisory interactions. *Note:* BCaBAs who do not provide behavior-analytic services during a given month do not need supervision during that time.

Failure to Be Properly Supervised

Any BCaBA found to be substantially noncompliant with the supervision requirement will be subject to immediate termination of their credential. The BACB will, however, permit the terminated BCaBA to qualify for the exam via past certification. If requalified, the BCaBA will be subjected to enhanced auditing of their supervision requirements.

Also, did you sign a supervision contract with this BCBA? If so, that may be grounds for reporting as she did not provide you with the supervision that she contractually agreed to provide. Take a look at Core Principle 3, “following through with obligations.” Does the BCBA have documentation to support that you practiced outside of your area of expertise? If not, code item 1.01 “Being Truthful” would be relevant.

CASE 4.12B SHORT NOTICE

If you have documentation that she is causing harm to the clients and can ensure that the clients will not experience a lapse in services, then yes, you may terminate immediately. Otherwise, if you have not done so already, prepare a remediation plan and attach it to her transition/dismissal documents so that the student behavior analyst is fully aware (in writing) of the skills on which she needs to work.

FOLLOW-UP

“One more question. Do I have an ethical obligation to let the BACB know about this individual’s conduct?”

Hotline Response: If you have tried to resolve the ethical violations informally and unsuccessfully, and the person continues to engage in the violations, then yes, you do have an obligation to let the BACB know about your concerns and recommendations (the remediation plan).

NOTES

1. www.ncbi.nlm.nih.gov/pmc/articles/PMC6269378/
2. www.bacb.com/wp-content/uploads/2020/08/BCBA-task-list-5th-ed-210202.pdf
3. www.ncbi.nlm.nih.gov/pmc/articles/PMC3546640/
4. www.bacb.com/wp-content/uploads/2020/06/Respecialization-Guidance_20200611.pdf
5. www.wikihow.com/Conduct-a-Time-and-Motion-Study
6. www.bacb.com/wp-content/uploads/2020/05/RBT-2nd-Edition-Task-List_181214.pdf
7. Google Image search for: Dashboard for project management to see numerous examples.
8. www.bacb.com/wp-content/uploads/BACB_Experience-Standards_200501.pdf
9. BACB Board Certified Assistant Behavior Analyst® Handbook. pp. 39–40.

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Section 5: Responsibility in Public Statements

PREVIEW TO RESPONSIBILITY IN PUBLIC STATEMENTS

This standard introduces the requirements for behavior analysts when they are making public statements about their clients. This might be in conference presentations or in webinars, or on a private or corporate website or a publication. A client's personal information also includes documentation related to behavioral assessment or treatment. Under this code item, the stakeholders related to the client also have a right to privacy as do trainees and supervisees with whom the behavior analyst is working. This right to privacy is also extended to confidential information that a BCBA might have been privy to in conversations with clients or stakeholders or overheard while they were nearby. This is similar to the attorney-client privilege concept that is extended to include behavior analysts. In conference presentations, behavior analysts are advised to keep their accounts of clinical and research findings truthful and to not embellish the outcomes. They must also remember not to recommend treatments for someone when they are in a public forum. Behavior analysts are responsible for those who speak for them and promote their work, they must comply with intellectual property (IP) laws including copyright and trademarks. If a behavior analyst were to become involved with non-behavioral services, they must keep this separate from their behavioral work so as not to confuse the public. Those BCBA

involved in efforts to increase their customer base may not solicit testimonials from current clients. Unsolicited reviews are exempt from this. If behavior analysts seek endorsements from former clients, they must use a disclaimer about the limiting conditions of the testimonial. In some cases, supportive statements are intended to educate the public or they are used for fundraising, in which case they are allowed with some restrictions. When using “social media channels” or websites behavior analysts must be careful not to violate client confidentiality and privacy. They should make every effort to ensure on professional sites that they have obtained informed consent and that they have used appropriate settings to reduce the probability that someone else can reproduce the information. In public statements, such as in conference presentations, webinars, podcasts and even videos, behavior analysts have an obligation to protect client confidentiality including monitoring their employing organization to make sure they do the same.

A CLOSER LOOK AT RESPONSIBILITY IN PUBLIC STATEMENTS

5.01 New—Protecting the Rights of Clients, Stakeholders, Supervisees, and Trainees (See 1.03, 3.01)

Behavior analysts *take appropriate steps to protect the rights of their clients, stakeholders, supervisees, and trainees in all public statements. Behavior analysts prioritize the rights of their clients in all public statements.*

This new standard requires behavior analysts “protect the rights” of their clients in “public statements.” We need to define these rights to understand our obligations under this new code item. As discussed in some

Clients rights include a basic right to privacy, which means that their “personal information is protected from public scrutiny.”

detail in Code 2.01, clients rights include a *basic right to privacy* which means that their “personal information is protected from public scrutiny.”¹ This is established and supported in the Health Information Portability and Accountability Act (HIPAA) as well as by the Federal Trade Commission (FTC). Personal information includes a client’s name, photograph, address, diagnosis, status, behavioral data, and all other documentation related to behavioral assessment or treatment. Under this code item, the stakeholders related to the client also have a right to privacy, as do the behavior analyst’s trainees and supervisees.

Public statements are those that are meant to be received by “the public body” as opposed to comments, opinions, or observations made in private, in closed meetings, or within “the confines of a company.”² Such public statements might include those made in print, in public presentations such as talks at conferences, classroom lectures, published materials, and of course on social media. Social media is where most violations of this code will likely occur since it is so readily accessible and is a place that people like to share what they are doing. It is in this vein that they may carelessly drop the name of a client or possibly stakeholders that they are working with, or post a photo with their arm around a favorite client, or a family photo including a client taken at a picnic or birthday party or another celebration or event.

In summary, behavior analysts are put on notice that they have an obligation to protect the rights of clients, stakeholders, trainees, and supervisees including their right to privacy in all public statements. If a behavior analyst does not do this, they are in violation of our code of ethics.

5.02 Confidentiality in Public Statements (See 2.3, 2.04, 3.10)

In all public statements, behavior analysts protect the confidentiality of their clients, supervisees, and trainees, except when allowed. They make appropriate efforts to prevent accidental or inadvertent sharing of confidential or identifying information.

We discussed the importance of respecting privacy in Code 5.01. Code 5.02 now raises the question of *confidentiality*, so what is the difference? As described previously, “privacy” is a *right* protected by law, whereas confidentiality is a matter of ethics.³ A common expression for this is “doctor-patient confidentiality” or “attorney-client privilege,” and in this code, there is a corresponding “behavior analyst-client privilege.” In the ordinary course of working with clients, they may divulge certain information that they certainly do not want shared (“Don’t tell anyone, but I’m getting a divorce”), or a trainee/supervisee may reveal that they need time off since they are having a medical procedure of a very personal nature. Behavior analysts working with in-home clients will undoubtedly overhear conversations or someone talking on their cell phone. It has to be totally clear, this is ***confidential***, not to be discussed with anyone unless you have consent or are required to by court order. The damage to the person that could occur as a result of divulging this information is incalculable and if you were responsible, you could be liable. The best way to prevent sharing of this information is basically to *never discuss it* with anyone. We understand this is totally against the tsunami of gossip, rumors, and scandalmongering that passes for entertainment in our culture, but as a professional, participating in this is clearly wrong in addition to being a violation of our code of ethics.

5.03 Public Statements by Behavior Analysts (See 1.01, 1.02)

When providing public statements about their professional activities, or those of others with whom they are affiliated, behavior analysts take reasonable precautions to ensure that the statements are truthful and do not mislead or exaggerate either because of what they state, convey, suggest, or omit; and are based on existing research and a behavioral conceptualization. Behavior analysts do not provide specific advice related to a client’s needs in public forums.

We have provided a definition of “public statements” in Code 5.01, and that applies to this code as well. In this code item,

behavior analysts are warned to be careful in how they describe what they do as a professional, making sure they do not exaggerate their skills or expertise or mislead the public as to their status or their therapy outcomes. The most significant problem we have in this area involves behavior analysts hinting or claiming that their interventions can “cure” autism. This gives parents, caregivers, and stakeholders false hope and almost certainly sets them up for a significant disappointment and quite possibly disenchantment with our field. The claim of a cure is without a doubt an exaggeration, since the best applied research available suggests that many symptoms can be reduced and effective replacement skills taught, but there is no ABA research showing a cure.

Another frequent issue is misrepresentation of a person’s credential status. An RBT who has completed all the coursework and all of the supervision hours but has not yet taken the BCBA test is still an RBT and cannot tell clients, “I’m a soon-to-be BCBA” or “nearly BCBA” or “For all practical purposes, I’ll be your BCBA on this case.” The BACB has a helpful job aid to help understand this problem (Figure 10.1).

One final common violation of this code item includes a situation where a behavior analyst is conducting a call-in radio show, webinar, or webcast, taking questions from the audience and trying to give behavioral advice. “I’m just at my wits end with my 5-year-old,” says Sandy from Toledo. “He eats anything he finds on the floor and I’ve even caught him digging around the kitchen garbage can. We have scolded him, sent him to his room, and even spanked him, nothing works. Can you please give me some advice?” The ethical BCBA should not respond by describing how mom can treat pica at home, but rather provide some general advice such as, “The first thing to do, Sandy, is to have your son seen by your pediatrician. This sounds like it could be a medical issue. If he is cleared with no medical indications, I would say the next thing would be to contact a Board Certified Behavior Analyst who can visit you at your home and try and determine what the environmental cause might be.”

AVOID SAYING:	REASON	ALTERNATIVE
BCBA Pending BCaBA Pending BCBA Pending Examination BCaBA Pending Examination	There is no such thing as BCBA/BCaBA Pending. You either are certified or you are not certified. There is no interim credential.	Working towards national certification. (Do not mention the BACB, BCBA or BCaBA)
BCBA Candidate BCaBA Candidate	Again, the BACB does not have a "Candidate" status. Even if you have been approved to sit for the test, you still may not misrepresent this as a BACB certification status.	Working towards national certification. (Do not mention the BACB, BCBA or BCaBA)
ABA Certification Pending or Candidate	The same issues as above apply when making an effort to misrepresent BACB certification by using confusingly similar titles	None – you should never make up your own certification category
BACB, BCBA or BCABA misrepresentations relating to claiming compliance with some of the BACB requirements (e.g., BCBA compliant coursework, or BCaBA Experience Completed, BCBA eligible, will be sitting for the exam on XXX date)	Until you have been certified, you may not represent partial completion of the requirements as an achievement towards certification.	List out the actual coursework or experience you have completed without mentioning the BACB, BCBA or BCaBA.

Figure 10.1 What to say instead of “BCBA pending” or “BCBA candidate,” etc.⁴

Another example of adhering to this standard is for the behavior analyst to make general comments relating back to the treatment literature on possible treatment options. Say, for example, the neighbor of a behavior analyst starts a conversation at a cocktail party about their child and her sleeping problem. Instead of asking specific questions about the situation in order to provide specific advice, the behavior analyst could talk about resources that

the parent could go to regarding a behavioral approach for sleep problems, such as Dr. Pat Friman's *Good Night, Sweet Dreams, I Love You: Now Get Into Bed and Go to Sleep*.⁵ For more general behavior problems, we recommend *Changing Children's Behavior by Changing People, Places and Activities in Their Lives*.⁶

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CASE 5.03 MISREPRESENTING

"I believe one of the staff at my workplace was in violation of the BACB ethical code by representing themselves as a supervisor when they had not even obtained BCBA certification. They were in fact just an RBT. They introduced themselves at a meeting where parents were present as a supervisor, when in my workplace that title is only allowed to be held by BCBAs. The supervising BCBA did not correct this statement and allowed the impression to stand. Is this something I should report to the Board?"

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5.04 Public Statements by Others (See 1.03)

Behavior analysts are responsible for public statements that promote their professional activities or products, regardless of who creates or publishes the statements. Behavior analysts make reasonable efforts to prevent others (e.g., employers, marketers, clients, stakeholders) from making deceptive statements concerning their professional activities or products. If behavior analysts learn of such statements, they make reasonable efforts to correct them. Behavior analysts document all actions taken in this circumstance and the eventual outcomes.

This standard applies in a situation where the behavior analyst is working for an organization that has hired a marketing firm to promote the business. Their work almost always involves inflating reality, making it glossy, and leaving out the details about how behavior analysis is implemented. Just as HGTV home renovation

shows suggest that the process is easy, fun, and can be done in one hour, marketing folks want to draw in new customers/clients with promises of quick behavioral makeovers. So, what's an ethical behavior analyst to do? According to this code, you need to try and put the brakes on and at least try to play the role of reality referee. You can request to look at drafts of promotional materials and do your best to provide alternate language that more correctly describes behavior analysis services. It is important to provide your feedback in writing and to maintain these documents if problems arise in the future. You may not succeed, but if you try, you will get credit for standing by our code of ethics.

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CASE 5.04 PREMATURE PROCLAMATION

"I teach at a small college that has both undergrad and grad programs in ABA. One of our departments recently proposed a new specialty degree involving ABA and plans to begin marketing the new major on the website within a month, before the ABA courses have been developed or approved as part of a Verified Course Sequence. I have read Code 5.04 and feel that these marketing promotions should wait until the VCS is approved and the courses are ready for delivery. Am I right to try and prevent the roll-out of this new degree? I feel that suggesting to potential students that this is an option for them is deceptive. There is going to be a faculty vote on approval of the major very soon, so I would appreciate your advice."

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5.05 Use of Intellectual Property (See 1.01, 1.02, 1.03)

Behavior analysts are knowledgeable about and comply with intellectual property laws, including obtaining permission to use materials that have been trademarked or copyrighted or can otherwise be claimed as another's intellectual property as defined by law. Appropriate use of such materials includes

providing citations, attributions, and/or trademark or copyright symbols. Behavior analysts do not unlawfully obtain or disclose proprietary information, regardless of how it became known to them.

As it turns out, intellectual property laws are a little complicated so remaining in compliance with them can be a challenge. These laws encompass everything from copyrights to patents and trademarks to trade secrets and there are rules and laws for each category.⁷ The purpose of intellectual property and the laws that go with it is to encourage people to create “intellectual goods” and gives them an incentive to do so for the benefit of themselves, society, and the business sector. If there was no protection for their ideas, the incentive to be creative would disappear and our culture would likely stagnate. Goldstein and Reese have summed it up this way: “Balancing rights so that they are strong enough to encourage the creation of intellectual goods but not so strong that they prevent the goods’ wide use is the primary focus of modern intellectual property law.”⁸ The two types of laws that you need to be especially knowledgeable of are *copyright* and *trademark*.

Copyright ©

In general, copyrights protect various kinds and types of written and other artistic works.⁹ They give you legal rights to anything you create that expresses an idea. With a copyright, you have exclusive rights “to copy, distribute, reproduce, display, and license the work.”¹⁰ If you discover the © symbol on an article or book, that means that you need to request permission from the holder of the copyright before you make copies. The penalties for infringing on someone’s copyright can be severe with fines ranging from \$200 to \$150,000 plus the cost of attorney fees and court costs. The “infringer” can actually go to jail under some circumstances.¹¹ What if you find some copyrighted material and want

to use it? This is where it gets complicated. The best thing to do is to contact the owner of the copyright and ask for permission to make copies. Be sure to do this in writing and get their permission in writing. Under some circumstances, you may not need permission. For example, if the material is in the public domain (be sure to read up on this, as there are details involved) or if it has been designated by the author as Creative Commons (look this up too before you copy anything), permission may not be needed. One final thing to know is that under some circumstances, you may be able to make limited copies for use in a presentation or a blog post under a category called fair use (again, do your research on this before proceeding).¹²

Trademark™

In general, trademarks protect a name or symbol that specifies where products or services originate.¹³ Words, symbols, colors, or even sounds can be trademarked. If you see the ™ symbol, it means that this work has been trademarked and you may not use it in any of your promotional material. The owner of a trademark can protect their rights by having their attorney send a cease and desist letter to the violator and if that does not stop the infringement, they can file a lawsuit with penalties up to \$150,000 plus court costs and attorney fees plus prison time in some circumstances.¹⁴

This code also mentions “proprietary” information, which is another way of saying *confidential information*. This might include financial data such as billing, payroll or expenses or, marketing plans or materials, as well as any unique assessments or treatment documents or protocols that an ABA company might have developed and do not want shared with other agencies.¹⁵ It would not be unusual for a company to ask new employees to sign a non-disclosure agreement (NDA) when they are hired that covers any of this proprietary information.

5.06 New—Advertising Nonbehavioral Services

(See 1.01, 1.02, 2.01)

Behavior analysts do not advertise nonbehavioral services as behavioral services. If behavior analysts provide nonbehavioral services, those services must be clearly distinguished from their behavioral services and BACB certification with the following disclaimer: “These interventions are not behavioral in nature and are not covered by my BACB certification.” This disclaimer is placed alongside the names and descriptions of all nonbehavioral interventions. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Some behavior analysts may see a contradiction in this standard. On one hand, we are able to “provide services that are conceptually consistent with behavioral principles” (Code 2.01). Later, we learn that behavior analysts *can* “implement nonbehavioral services” (Code 2.01), even though this would involve violating Core Principle 4, “Remaining within the profession’s scope of practice.” In Code 5.06, we learn that behavior analysts *are allowed* to advertise these nonbehavioral services if they distinguish them from regular, behavioral, evidence-based procedures. The disclaimer is quite clear, but there is still a good chance that consumers will be confused. Thus, this code item obligates us to clearly disseminate this information in a way to minimize confusion on the part of the consumer. Finally, if a behavior analyst works at a company that advertises the availability of nonbehavioral interventions on their website, they need to go on the record as trying to correct this misdeed (e.g., the agency did not include the disclaimer and the ethical BCBA pushes to have it added to the website).

Staying with the intent of Core Principle 4 and “remaining within the profession’s scope of practice”; that is, using only evidence-based behavioral procedures is best practice. This

approach is consistent with a behavior analyst's behavioral training, supervision, and worldview. Specifically, we believe that behavior is influenced by the environment, or as Dr. Pat Friman would say, "The Circumstances View" (Friman, 2021), and not by some mystical universal energy.

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CASE 5.06 BCBA BELIEVES IN REIKI

"I just discovered a website describing a new business run by a BCBA that is advertising that they use ABA, ACT, and 'Reiki healing.' Reiki is a 'Japanese form of alternative medicine called energy healing' where 'universal energy' is said to be transferred through the palms of the person's hands to encourage emotional or physical healing.¹⁶ This seems well out of the scope of practice as described in our code of ethics and there is no disclaimer. Is this something that should be reported to the Board?"

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5.07 New—Soliciting Testimonials From Current Clients for Advertising (See 1.11, 1.13, 2.11, 3.01, 3.10)

Because of the possibility of undue influence and implicit coercion, behavior analysts do not solicit testimonials from current clients or stakeholders for use in advertisements designed to obtain new clients. This does not include unsolicited reviews on websites where behavior analysts cannot control content, but such content should not be used or shared by the behavior analyst. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

"Solicit" seems like such a strong term. It suggests "calling attention to one's wants or desires by public announcement,"¹⁷ and it may conjure up unseemly images when other terms such as urge,

request, or ask are available. Basically, what this standard is trying to establish is that you should not even *ask* current clients (or stakeholders) for a testimonial that is designed to lure in new clients because of the implicit coercion. Current clients might feel they could lose services, receive poorer quality services, if they choose not to give the testimonial. Alternately, on the incentive side, clients giving testimonials may believe they stand a chance of receiving additional hours, being assigned a more senior therapist, or even receiving additional resources in exchange for their “complimentary” testimonial.

If someone including a current client, former client, or stakeholder posts a testimonial on your website, this means your website is not set up to exclude public comments. Your professional website should be set up to exclude public comments. This is something you can push for with your administration since a public comment constitutes a testimonial even if received unsolicited. This constitutes a violation of the code of ethics if the website is managed by a behavior analyst. If your organization asks current clients for testimonials, you need to put your concerns in writing to management stating that you disagree with this tactic and that it is a violation of your code of ethics. See Figure 10.2 for the dos and don’ts of testimonials.

Four final comments about testimonials seem to be warranted here. First, while testimonials have face validity to the average consumer, it is clear they are often used by organizations offering alternative treatments. Practitioners touting non-evidence-based treatments do this since they do not have hard data on the effectiveness of their approach. When a behavior-analytic company begins posting testimonials, it makes us appear to be just like these other agencies, perhaps even equivalent to them in the eyes of the consumer. Going testimonial-less makes it clear that we are different. Second, to the discriminating consumer, the question arises, “Who actually wrote this? It sounds like something a marketing person would write,” which is certainly legitimate since there is no way to verify if the testimonial is accurate, exaggerated, or

Testimonials for Advertising

(to attract new clients)

	Solicited	Not Solicited
Current Client	No, don't do it Try to stop it & document effort Code 5.07	Unsolicited reviews on websites okay BCBAs cannot use this content. Code 5.07
Former Client	Okay But, must identify as requested, describe relationship to author, and comply with applicable laws, tell how and where testimonial will appear, make aware of RISKS of giving out private information. They can withdraw it at any time. If organization violates this to stop it & document effort, try to remediate & document efforts Code 5.08	Okay But, must identify as unrequested, describe relationship to author, and comply with applicable laws Code 5.08

Figure 10.2 A grid for testimonials for advertising, Codes 5.07 and 5.08. BACB.com.¹⁸

even created out of whole cloth. Third, if a company did send out a request for testimonials, would they publish all of them including those from dissatisfied clients or stakeholders? Probably not, and if that is the case, then there would be a clear misrepresentation of customer satisfaction involved in this process. In addition, if testimonials are used for advertising purposes, they must comply with FTC truth-in-advertising guidelines, including the following question, “Are letters from satisfied customers sufficient

to substantiate a claim? No. Statements from satisfied customers usually are not sufficient to support a health or safety claim or any other claim that requires objective evaluation.”¹⁹

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CASE 5.07 GOOGLE REVIEWS

“I had a question regarding the acceptability of Google reviews. I wanted to know if Google reviews violate our code of ethics. If clients were to write a Google review about the company and the service they provide, without the company/ owner (BCBA) being aware, would that be a violation? Can the company ask for Google reviews, or would that be considered solicitation?”

“In addition, for the ABA companies that have Google reviews posted, would they have to remove those reviews, and how can they prevent new reviews in the future if they are a violation?”

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5.08 New—Using Testimonials From Former Clients for Advertising (See 2.03, 2.04, 2.11, 3.01, 3.10)

When soliciting testimonials from former clients or stakeholders for use in advertisements designed to obtain new clients, behavior analysts consider the possibility that former clients may re-enter services. These testimonials must be identified as solicited or unsolicited, include an accurate statement of the relationship between the behavior analyst and the testimonial author, and comply with all applicable privacy and confidentiality laws. When soliciting testimonials from former clients or stakeholders, behavior analysts provide them with clear and thorough descriptions about where and how the testimonial will appear, make them aware of any risks associated with the disclosure of their private information, and inform them that they can rescind the testimonial at any time. If a behavior analyst is employed by an organization that violates this Code standard, the

behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

If you or your organization wants to ask former clients to provide you with a testimonial designed to lure in new clients, the rules are a little different. As shown in Figure 10.2, you need to put a disclaimer next to the testimonial indicating whether it was requested or not and including your relationship to the author as well as complying with all privacy laws or confidential agreements. Then you need to tell them where the testimonial will appear and most importantly, let them know about the risks of putting their private information out in the public domain (e.g., identity theft, ransom threats, home invasion, exposure to the *dark web*). Be sure to let them know that they can withdraw their testimonial at any time (not easy if the testimonial is in print, delays if it is on a website).



CASE 5.08 STEERING IN AN ETHICAL DIRECTION

"I'm a BCBA and work for a small private school for children with disabilities. The school is going through the process of revising its website and PR materials. They would like to use testimonials from previous clients (testimonials would entail academic growth as well as behaviors that are more typically targeted in ABA settings like functional life skills, communication, and decrease of behaviors of concern). I am torn because the school itself is not affiliated with the Board, but I am, so I want to ensure that I am steering us in an ethical direction.

"Is it unethical for a school to post these written testimonials from previous families if the testimonials speak to the school as a whole versus ABA in general?"



5.09 New—Using Testimonials for Nonadvertising Purposes (See 1.02, 2.03, 2.04, 2.11, 3.01, 3.10)

Behavior analysts may use testimonials from former or current clients and stakeholders for nonadvertising purposes (e.g., fundraising, grant applications, dissemination of information about ABA) in accordance with applicable laws. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

This new standard makes a distinction between using testimonials for “advertising” purposes versus “non-advertising” purposes. Although it would appear that this is a distinction worth making, in reality, using testimonials on a company’s web page is not much different from posting videos on the site of a recent fundraising activity. Mission creep is definitely possible here. Including testimonials in grant applications or in brochures promoting ABA seems questionable as well (see comments on this in Code 5.07 above) although allowable under 5.09.

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CASE 5.09 TESTIMONIALS FOR A WORTHY CAUSE

“I work for a small, rural university that houses a fairly new behavior analysis program. Recently, we have been selected to be the beneficiaries of a fundraising event hosted by the university. The main feature of the event is to showcase the important work our behavior analysis students do and the ways in which our center provides much-needed services to families and local agencies within such a remote region. The donations made through this event will go to support the families we provide services to and the students who help provide those services. The fundraising team has spoken about the desire to have families, and

our students speak about their experiences. We have discussed with them the difficulties in doing so given our ethical code, however we would like additional clarification about this unique situation. Testimonials from currently clients is explicitly mentioned in the ethics code. Since we are such a fledgling program, we do not have families who are former clients. In what ways can they help in this event? Additionally, in what capacity can our current students provide support to a cause they care about?"

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5.10 New—Social Media Channels and Websites (See 1.02, 2.03, 2.04, 2.11, 3.01, 3.10)

Behavior analysts are knowledgeable about the risks to privacy and confidentiality associated with the use of social media channels and websites and they use their respective professional and personal accounts accordingly. They do not publish information and/or digital content of clients on their personal social media accounts and websites. When publishing information and/or digital content of clients on their professional social media accounts and websites, behavior analysts ensure that for each publication they (1) obtain informed consent before publishing, (2) include a disclaimer that informed consent was obtained and that the information should not be captured and reused without express permission, (3) publish on social media channels in a manner that reduces the potential for sharing, and (4) make appropriate efforts to prevent and correct misuse of the shared information, documenting all actions taken and the eventual outcomes. Behavior analysts frequently monitor their social media accounts and websites to ensure the accuracy and appropriateness of shared information.

We have discussed the risks to privacy and confidentiality in Code 5.01. If you have not seen this yet, please review it because it is central to this new standard. The risk of accidentally exposed or

intentionally leaked client information can be reduced by having social media rules for all employees, behavior analysts included.²⁰ One of these rules would be, “No posting of *client* information on your *personal account* or website.” Notice that there are no exceptions, so we take this to mean no photos, no names, and no identifying information that would allow an outsider to guess who the identity of the clients. Another social media rule would have to do with putting client information on a *professional account* or website. This means the company social media or web page or, if a behavior analyst is a consultant, it would include the organization’s page.

For a professional/company account, the four requirements of 5.10 are strong and clear:

1. Obtain informed consent (be sure to review the eight steps that are required for this; see p. 7 of the code).
2. Include a disclaimer that informed consent was achieved and an instruction to readers that forbids capturing and using the information is included.
3. Do your posting on social media in such a way that it “reduces the potential for sharing,” which means looking for settings that can be used to reducing the ability of the viewer to copy and send around on the internet.
4. Try to prevent viewers from misusing the information. Make corrections if this happens, and document everything.

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CASE 5.10 CLOWNING AROUND WITH CONFIDENTIALITY

“I know that the current code addresses social media channels and websites (5.10). My tech-savvy BCBA friends use a variety of social networks including Pinterest, StumbleUpon (Mix), Facebook, Twitter, Google+, Tumblr, LinkedIn, Blogger, Pocket, Weebly, and more.

"I recently saw that one of them published a photo of one of our young ASD clients at a party with a clown. While the BCBA did not reveal the client's name, she did name the event and the school. Further, this client has a very distinctive look, making him easily recognizable to other professionals and parents who have been involved with the school. Is this a violation of the code? It was a party where other people were also taking photos, but this was posted on the BCBA's Instagram site (I am attaching a link so you can see it).

"Another related question is, would this be okay if the child's parent gave consent?"

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5.11 New—Using Digital Content in Public Statements

(See 1.02, 1.03, 2.03, 2.04, 2.11, 3.01, 3.10)

Before publicly sharing information about clients using digital content, behavior analysts ensure confidentiality, obtain informed consent before sharing, and only use the content for the intended purpose and audience. They ensure that all shared media is accompanied by a disclaimer indicating that informed consent was obtained. If a behavior analyst is employed by an organization that violates this Code standard, the behavior analyst makes reasonable efforts to remediate the situation, documenting all actions taken and the eventual outcomes.

Since almost all content these days is digital, this standard basically applies to all public statements regarding clients or stakeholders that an agency might publish in any format or medium. As established in 5.01, this includes the client's name, photograph, address, diagnosis, status, behavioral data, and all other documentation related to assessment or treatment. When *informed consent* is presented to the client, we also presume that the *risks* involved (item 4 of informed consent, p. 7)²¹ in allowing their information to go public are clearly presented. Some of these

risks include identity theft, phishing, catfishing, cyberbullying, discrimination, hacking, and fraud.²² It should also be pointed out that the benefits to the client are quite limited. A disclaimer with wording something like, “This client freely allowed us access to their information, gave us permission to share it in [document] and was fully apprised of the risks involved via our informed consent process.” It is now standard practice that the behavior analyst is required to inform their company if there is a violation, try to remedy it, and document all of their attempts to do so.

RESPONSES TO CASES

CASE 5.03 MISREPRESENTING

It sounds like it might be hard to go back and gather the necessary documentation to prove a violation of misrepresentation (Code 1.01) in this case. In keeping with the guidance on page 5 of the Ethics Code, you should take this up with the RBT who committed this infraction.

Behavior analysts should address concerns about the professional misconduct of others directly with them when, after assessing the situation, it seems possible that doing so will resolve the issue and not place the behavior analyst or others at undue risk” (Page 5, Ethics Code for Behavior Analysts).

If you chalk this up to a learning experience so that the next time something like this happens you begin collecting the data necessary to file a Notice in real time, you can count this as a small win.

CASE 5.04 PREMATURE PROCLAMATION

The marketing of this program should wait until the VCS is approved, and your attempt to prevent the rollout of this new degree is in keeping with Code 5.04. It is deceptive to suggest to students that this program is an available option. At many universities, starting a master’s program can take 6 months and endless

meetings at different levels in the university. You have no guarantee that the BACB will rubber-stamp the proposed program. There could be some back-and-forth negotiating on titles and content of individual courses. It is not ethical to recruit students for a program that is not yet accredited, and if your university is accredited, the review committee might not take kindly to this approach. It is a big deal for students to sign up for coursework and then have the program fail to materialize. When this happens, disappointed parents get involved and lawsuits ensue.

CASE 5.06 BCBA BELIEVES IN REIKI

This seems to be a clear case of advertising nonbehavioral services provided by a behavior analyst. On the site, it does appear that there is a comingling of behavioral and nonbehavioral services. This could easily confuse the public into thinking that Reiki is somehow supported by behavior analysis or that it is evidence based. Your first step is to contact the person and see if you can persuade them to clear up this confusion by possibly creating a separate Reiki website where they do not mention that they are a BCBA. Then, if that is not successful, since there is no disclaimer attached this to this site, it would seem appropriate to report this BCBA to the Board.

CASE 5.07 GOOGLE REVIEWS

Since Google reviews are unsolicited, they are allowed under Code 5.07. Asking clients to write such reviews would be considered a form of solicitation and is not allowed. For companies that have Google reviews on their site, they are probably allowed assuming they were not solicited.

CASE 5.08 STEERING IN AN ETHICAL DIRECTION

Under Code 5.08 you are allowed to use testimonials from former clients for advertising purposes if you have the person

indicate whether they were solicited or not. Since they would be describing their experience with the school in general as opposed to their specific experience with ABA, you don't need to have any additional disclaimer information included. It would still be good to let the testimonial authors know how their observations will be used. Urge them not to disclose any private information and tell them they can ask for their testimonials to be removed at any time.

CASE 5.09 TESTIMONIALS FOR A WORTHY CAUSE

Congratulations on joining the band of behavior analysts committed to training the next generation. Since this is a fundraiser and not for advertising purposes, using testimonials from current clients is allowed. Just remember it is still necessary to comply with Code 2.03, Protecting Confidential Information of clients. Students can help with this event by writing out statements as to progress they have made (they should not use the real name of the client) and then have various current graduate students read these statements. You will need to edit them for accuracy to prevent any exaggerations as per Code 5.03.

CASE 5.10 CLOWNING AROUND WITH CONFIDENTIALITY

It appears that this BCBA posted a photo of a client on their private site in contradiction of Code 5.10. This photo could be considered confidential information since the client would be easy to identify, so this would be a violation. In keeping with the guidance on page 5 of the Ethics Code, "Behavior analysts should address concerns about the professional misconduct of others directly with them when, after assessing the situation, it seems possible that doing so will resolve the issue and not place the behavior analyst or others at undue risk." You should take this up with the BCBA who committed this infraction.

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11

Section 6: Responsibility in Research

by Dr. Tom Zane, University of Kansas

PREVIEW TO RESPONSIBILITY IN RESEARCH

Most of the standards in the ethics code pertain to providing direct services to clients. However, there are a few additional topics covered in the code, and *Responsibility in Research* is one of those topics.

Even though they may be working primarily as consultants or behavioral assistants, there will be times when practicing behavior analysts may find themselves in graduate programs or courses where they will be involved in the design and carrying out of a research project (Bailey & Burch, 2018). Ethical considerations are of utmost importance when conducting research, and, in most cases, the ethical issues will be overseen by institutional review boards (IRBs) that are in place to approve, monitor, and review research. The primary role of IRBs is to protect the welfare of human research participants, and this ethics code provides an additional level of specificity regarding ethics.

The standards included in this chapter explain that first of all, research must be conducted according to local laws and regulations and only after formal approval by an IRB. Some behavior analysts may be conducting research on service-delivery systems, and in these cases, they must follow ethics requirements

for both that service and the IRB. Behavior analyst researchers always obtain informed consent from participants and a second informed consent to publish the data, making sure that the release of the information will not affect the services. Protecting the confidentiality of research participants is a high priority, as is preventing any accidental sharing of their information. It is important that behavior analysts are well prepared before they undertake an independent research venture, including having completed a thesis or dissertation or some other supervised research project. Those who undertake such projects should know that they are responsible for any ethical problems that might arise due to their assistants. Researchers have a particular responsibility to disclose any conflicts of interest (whether financial or service related) that they might have and must disclose any publication conflicts that they might have. At some point, when the research is completed, and authorship is to be determined, behavior analyst researchers exhibit integrity by giving appropriate credit to all contributors, acknowledging the contributions of each individual. Also related to publication of findings researchers do not copy and use someone else's work and present it as their own. Once a piece of research is completed and the data published, researchers follow the required standards for storing and destroying raw data and other documents. Retention of digital copies may be permitted under some circumstances. Finally, behavior analyst researchers always truthfully report their results as well as their methodology in such a way that it can be replicated by other labs. When presenting the data in talks or journal articles they include all the data. If for some reason some findings must be excluded, this must be explained and the rationale given.

A CLOSER LOOK AT RESPONSIBILITY IN RESEARCH

6.01 Conforming with Laws and Regulations in Research

Behavior analysts plan and conduct research in a manner consistent with all applicable laws and regulations, as well

as requirements by organizations and institutions governing research activity.

Research is extremely important to our field. Since the beginning, behavior analysis has produced well-designed research studies, whose findings (both in the experimental and applied camps) have dramatically expanded what we know about human behavior. This knowledge has been put to good use to improve many aspects of the human condition in diverse fields of application (e.g., sports, mental health, behavioral medicine, education, special education, and animal training). Thus, research activity is in the DNA of our field.

Behavior analysts who conduct research in their particular areas of interest have many obligations to fulfill to do their research in a legally appropriate way. Primarily, they must be aware of and be sure to meet all requirements for conducting research that might be established by their agency, state, federal, and other regulatory bodies. These layers of oversight could be many. For example, the agency where the behavior analyst researcher works may have its own particular policies for doing research at that agency. It is common for human service agencies to have a *human rights committee* (HRC) or something similar that is authorized to review any application for research to be conducted at that agency. The HRC exists to protect the human rights and dignity of the individuals being served at the agency, and to ensure that any research activity involving participants at that agency does not conflict with the clinical outcomes for the individuals. Thus, the behavior analyst typically will propose their research study to the HRC for its approval. If approved, that would mean the committee views the research proposal as sufficiently protecting the rights of the potential participants, that the research question is reasonable for the mission of the agency, and that the individual is likely to benefit in some way from participating in the research.

In addition, most (if not all) states will have some regulatory body that sets standards for conducting research within the state

boundaries. For example, states may have a board that governs the licensing of behavior analysts. Such an organization may have specific research legal and ethical standards to which the behavior analyst must attend. Finally, at the federal level, there are often standards published for pursuing research and maintain legal boundaries. For example, Health and Human Services (HHS) has an Office for Human Research Protections (OHRP).¹ This office has important resources for the behavioral researcher, including legal standards (particularly 45 CFR 46),² training on research standards, and ethics.

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CASE 6.01 CEASE AND DESIST

A BCBA worked at a local agency serving children with autism spectrum disorders. He was working there to defray tuition costs at the local university, where he was enrolled in a doctoral program in behavior analysis. This BCBA planned on doing his PhD research at this agency and submitted an application to the university's IRB for its review of his proposal. After a few weeks, the IRB notified the BCBA that his research application was accepted. Elated, he then began distributing recruitment letters and flyers to every family who had a child attending that particular agency. However, the day after the first letters went out to families, he received a phone call from the agency's HRC, ordering him to cease advertising his research until it was reviewed by the HRC.

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6.02 Research Review (See 1.02, 1.04, 3.01)

Behavior analysts conduct research, whether independent of or in the context of service delivery, only after approval by a formal research review committee.

Before a behavior analyst can begin a research study, they must submit their proposed study for a review of its quality by a

committee that is independent of the researcher. This external review typically comes in the form of an IRB. IRBs are usually associated with universities. Another external review body is an HRC, which is often part of human-service agencies.

The purpose of these external review committees is to ensure the basic human rights of participants who served as subjects in the research. The review committee is obligated to carefully review the research application to look for protection of the physical and psychological welfare of individuals who are participants in such studies. Sadly, the necessity of these committees came about due to gross violation of basic human rights in research that has been carried out over the decades. A well-known example is the Tuskegee Syphilis Study,³ in which African American males were recruited for a study to observe the effects of untreated syphilis. The researchers told the participants that they were receiving free health care from the federal government when, in fact, no such health care was given. The participants were told that their involvement would last 6 months; however, it was extended to 40 years. The lack of ethical standards was blatant and terrifying. The eventual exposure of this travesty led to the establishment of the OHRP, which sets standards for examining the extent to which researchers maintain protection of their subjects.

The research review committees focus on two primary protections: protection from physical harm and protection from psychological harm. The researcher must demonstrate, through their methods and procedures, that the participants are engaging in activities that are safe, humane, and ethical, and that the research activities do not put them in potential physical danger. Researchers must also be considerate of potential psychological suffering, such as deceptive practices and undue pressure in any form. The potential for harm can sometimes be quite subtle. For example, let's say a BCBA is recruiting potential subjects for a research study focusing on classroom management. Part of the intervention methodology consists of contingency management, which, in this proposal, is manifested by the researcher publicly

reprimanding a student who engages in inappropriate behavior during individual seatwork time. The research review committee may question this practice, since it is conceivable that by publicly reprimanding this behavior, the student in question might be embarrassed in front of his classmates, which could easily upset him. The research review committee would likely question the researcher as to why this particular contingency needs to be put in place, and the potential danger to the student for humiliation.

These review committees review the proposed research study. If the committee concludes that the research activities will not put the subject at unusual harm, approval is given to conduct the research. If the committee foresees the potential for physical or psychological harm to the subjects, the committee will require the researcher to modify the procedures to remove the potential, or to outright decline to approve the project.

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CASE 6.02 IRB PROTECTION

A behavior analyst worked in a community mental health program in a large Midwestern city. She was also attending a local college, where she was earning a second master's degree in mental health counseling. This BCBA had a particular interest in applying behavior analytic thinking (and training) to the issue of children of divorced parents. Many of these children display adjustment problems, and behavioral strategies (e.g., reinforcement, self-management, and prompting) have been shown to be beneficial in promoting healthy behavior. This BCBA has developed a research proposal for studying this very topic. Part of her proposal is to interview grown children of divorced parents, to gain insight and information regarding how they themselves reacted to their parents divorcing. The BCBA hoped to gather from these interviews, specific situational contexts and potential intervention strategies that could be used in her subsequent

behavioral programming. The BCBA submitted it to her college's IRB for review. After 2 weeks of deliberation, the IRB contacted the BCBA and asked her to appear in front of the IRB, because it had discovered that potential subjects would be exposed to potential psychological harm. The BCBA couldn't conceive of any potential harm to which she exposed her participants, so she eagerly agreed to the meeting.

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6.03 Research in Service Delivery (See 1.02, 1.04, 2.01, 3.01)

Behavior analysts conducting research in the context of service delivery must arrange research activities such that client services and client welfare are prioritized. In these situations, behavior analysts must comply with all ethics requirements for both service delivery and research within the Code. When professional services are offered as an incentive for research participation, behavior analysts clarify the nature of the services, and any potential risks, obligations, and limitations for all parties.

Behavior analysts often conduct research involving clinical populations in clinical settings, focusing on issues of clinical importance, such as learning outcomes and behavior problems that may interfere with learning. In such situations, the behavior analyst must fulfill both obligations of ethical and legal research and must also comply with ethical requirements regarding clinical practice. One of the first questions to address is, will the research question contribute to the client welfare? This relates to two levels. First, will participation in the research directly result in the specific client improving in some way that is important to the client? The second level relates to a wider impact, say, to the field at large, to children more generally, and to other populations. The aims of the research project must, whenever possible, relate positively to the populations who will be used as participants.

When doing research in the context of service delivery, behavior analysts must be aware of the extent to which research activities might compete and interfere with clinical services and the accomplishment of client goals. A simple example consists of whether the activity in the research protocol might detract from the number of hours the client receives therapy. If, say, the research protocol requires a child to be in the research activities one hour a day, that is five hours a week that the child will not be receiving clinical services. Will this loss of services have a negative impact on goal attainment? The behavioral researcher needs to be aware of this and either avoid reducing clinical hours or be able to offer a strong justification for impacting on the clinical services.

On some occasions, a behavior analyst might propose conducting research in a clinical setting, and offers to provide specific clinical services as a “thank you” for the agency permitting the research to take place at that location. For example, if a particular research study focused on some aspect of functional analysis (FA), then the researcher might propose that after the study is completed, the behavior analyst would conduct some clinical (FAs) for the agency for a limited time under limited conditions. Our code permits this quid pro quo, but only when the conditions for such professional services are clearly laid out for all to understand. In the example above, the researcher would need to specify the conditions under which functional analyses would be conducted as part of this incentive program. Questions such as these would need to be addressed: How many students would receive FAs? How many weeks and months would the researcher provide such a service? How many people would the researcher make available to the agency to conduct these assessments? Is there a set of criteria for selecting a child to obtain an FA? Setting up such incentive contracts are helpful and can lead to more research being conducted, but the difficulty and care that must occur to completely delineate such services can be complex.



CASE 6.03 TIME IS OF THE ESSENCE

A behavior analyst approached the director of a local agency to ask permission to conduct a research study in the agency. This particular agency served children with autism and other severe intellectual and developmental disabilities. The director approved the project to be done there, since the focus of the research could have direct benefit to the clients served. The researcher had a team of research assistants who recruited five children in the school to serve as participants (the agency's HRC approved the project). Each day, all five of the participants were scheduled to work with a research assistant, on research activities, for 45 minutes. The research continued for 3 months. Two of the five children had their annual meetings to review their academic progress for the year. During the meeting, the director of the agency reviewed the research activity being conducted within the agency. A parent of one of the children involved in the study was quite interested in the work and asked how much time his daughter participated in the research activities. The director mentioned that each child participated 45 minutes per day. The parent was surprised, and somewhat incredulous, that his child spent almost four hours each week not working on the academic and clinical goals agreed upon by last year's IEP. Is there a problem here? Is there anything to do?



6.04 Informed Consent in Research (See 1.04, 2.08, 2.11)

Behavior analysts are responsible for obtaining informed consent (and assent when relevant) from potential research participants under the conditions required by the research review committee. When behavior analysts become aware

that data obtained from past or current clients, stakeholders, supervisees, and/or trainees during typical service delivery might be disseminated to the scientific community, they obtain informed consent for use of the data before dissemination, specify that services will not be impacted by providing or withholding consent, and make available the right to withdraw consent at any time without penalty.

The importance of informed consent cannot be overstated. Researchers have a legal and moral obligation to fully inform potential subjects about what they are getting into before they agree to participate. There are several concepts involved in informed consent. First, consent must be obtained prior to the commencement of participation in the study procedures. That is, the researcher cannot start any procedures that are part of the study, no matter how benign or insignificant they are. For example, researchers cannot distribute surveys, questionnaires, or meet with potential participants about anything related to the actual research. Nor can researchers schedule future meetings to begin discussing the details of participation until consent is obtained. There needs to be a wall between getting consent and starting any aspect or phase of the formal research project.

Another question that must be addressed when it comes to informed consent is, what does it mean to give *informed* consent? There is more to it than simply discussing the purpose and details of a study with a potential subject, and having that person agree to participate. Generally, three criteria must be met: *information*, *capacity*, and *voluntariness*. In terms of providing information to the potential subjects, the researcher is obligated to ensure the following are communicated: (1) the person (potential subject) has the right to refuse to give consent without penalty; (2) the person may withdraw consent at any time without penalty, even if they initially agreed to participate and have started participating in the research; (3) the person knows the exact details of the procedures, the expected benefits, and any potential risks; (4) the person knows the risks and benefits of alternative approaches; (5)

the limits to confidentiality are explained; (6) incentives or participation are discussed; (7) who can be contacted if they have questions; and (8) they are given the opportunity to ask questions. Thus, the researcher must provide full information to the potential subject, explaining the required information that informs the person of basic components of participating, and their rights for withdrawing from that participation.

Another criterion is that of *capacity*, which refers to the person who is contemplating giving consent. This person must have reached the age of maturity (usually 18 years). Furthermore, this person must be considered competent to make such decisions. What this means is that the researcher must be aware of the age and competency of whom they are asking to participate. Not everyone has the competence to make informed decisions. Some judgment must be made by the researcher as to this qualification of the potential subject. If there is reason to believe that this person may not be fully understanding the details of participation as described by the researcher, then the researcher must stop recruiting this person. Finally, the researcher must ensure that the potential subject can freely volunteer without any whiff of coercion or duress. That is, there cannot be any pressure brought to bear to influence the recruit from agreeing to participate. This pressure could be formal or informal. For example, suppose that the director of a clinic asks parents of children served by the clinic for their consent to have their children participate in a research study to be conducted at the clinic. Some parents might feel compelled to give that consent, thinking that if they did not consent, there would be negative repercussions on their child in terms of service delivery (e.g., reducing hours or intensity of service) or quality (e.g., having less-trained staff be scheduled to work with their child). In cases like this, the director must put in place safeguards and procedures that remove, as much as possible, any hint of coercion.

Another term possibly unfamiliar to behavior analysts is *assent*. Generally speaking, it refers to the researcher obtaining some type of overt agreement from the potential participant that indicates

the participant is willing to participate.⁴ This differs from gaining informed *consent*, which is usually confirmed by signing a consent form. Note that assent means more than an absence of objection to participating; assent requires some sort of overt response indicating willingness. Furthermore, researchers usually focus efforts for gaining assent from individuals who are not of a legal age or status to provide informed consent. The clearest example of this would be research focusing on underaged children, or individuals with developmental disabilities. Members of both of these populations are likely to not have the age or the cognitive capacity to give fully informed consent (note the reference to *capacity, above*). Thus, researchers are obligated to obtain assent from the participants themselves. The researcher must approach the potential subject using language that they can understand, and present the proposed study in a form that increases chances of understanding.

Finally, informed consent also applies to the balance between research and clinical activity. A researcher doing applied research must take care to not detract from the time the individual is receiving services, so that the research can be conducted. Research cannot negatively impact the delivery of clinical services. Finally, if the researcher is planning on disseminating information obtained by the research project in professional venues (e.g., professional journals, professional conferences), that intention must be made clear as part of the process of obtaining consent.

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CASE 6.04 INCOMPLETE CONSENT

A researcher approached a colleague who was the director of a day program for children with autism spectrum disorder. The researcher proposed a research study and requested that the director allow him to conduct the research at her school. The director agreed that the focus of the research fit perfectly with the population served at the school, and the findings could potentially benefit

both the children and their families. The director gave approval. The researcher developed an informed consent form and sent it home to the families. Many parents signed the consent form, agreeing to have their children participate. The researcher obtained assent from the children selected to participate. The entire research study went off extremely well, with the results quite outstanding. The researcher, excited by the findings, wrote a draft of a potential manuscript to be submitted to a professional journal. When the researcher gave the manuscript to the director of the school for her review, the director immediately contacted the researcher and informed him that the consent form that he had written and used to gain consent made no mention of possible dissemination of results outside of the school. The director claimed that the researcher had no consent to try to publish or present these findings. On the other hand, the researcher was convinced that the wording of the consent form implied dissemination to professional venues.

What should happen here? How should this be resolved? Who is correct?

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6.05 Confidentiality in Research (See 2.03, 2.04, 2.05)

Behavior analysts prioritize the confidentiality of their research participants except under conditions where it may not be possible. They make appropriate efforts to prevent accidental or inadvertent sharing of confidential or identifying information while conducting research and in any dissemination activity related to the research (e.g., disguising or removing confidential or identifying information).

The default assumption of this code item is that confidentiality rules. Researchers have the obligation to make sure that the identity of the research participants remain private. No names, addresses, pictures, or other potentially identifying information can be used

by the researcher during or after the research is completed, such as when presenting the research in a public forum. The researcher has the responsibility of disguising or deleting any information that could lead to the identification of an individual research participant. This is demanded both during the research study, and then after, when the results of the study are disseminated in some fashion.

The issue of confidentiality has grown more sophisticated over recent years. In particular, the concern has deepened to focus on more than the obvious information that pertains to identification, such as name, picture, and address. Now the behavior analyst must consider any and all possible ways that participants could be identified. This wider net could include name of school or city, general information about the immediate geographical information, or even particular behavioral or learning traits that are so uncommon that, if described in some public forum, someone could identify a participant. Ultimately, it is the responsibility of the researcher to protect the anonymity of the participants. If a participant is identified publicly, then no matter how extensive the efforts were on the part of the researcher to protect that identity, the researcher will be held responsible.



CASE 6.05 IMPERFECT CONFIDENTIALITY

A behavior analyst and her research team conducted a particularly complex study on social reciprocity at a local private school that served children with autism. The 3-month study, when completed, showed such powerful results that the experimental procedures were destined to become standard practice in this area of development. The researchers, who had written permission to disseminate this information, prepared to orally present the research at an upcoming conference on the social development of children with autism. As part of that presentation, the researchers formally stated that they had received permission from their university's IRB to conduct the study,

and that all participants gave informed consent for both participating and for allowing their data to be used in public dissemination. During their oral presentation, the researchers mentioned that the research was conducted in Omaha, Nebraska, at a private agency serving young children with autism, and that a unique feature of that school was that it served an inordinate number of children of families who were stationed at a large military base right outside Omaha. The researchers went on to explain some of the social deficits exhibited by their participants, including a little girl, aged 5, who consistently kept her eyes closed during the school day to avoid social interactions. During this 2-day conference, the local newspaper sent reporters to cover some of the featured talks, and a review of this particular talk was published in the local Omaha newspaper as a “human interest” story. Two weeks after the conference, the researcher was contacted by a lawyer representing the parents of one of the children involved in the research. The lawyer accused the researcher of breaking the confidentiality requirement. It seems that a neighbor of these parents read the newspaper article, including the description of the one participant who kept her eyes closed. This neighbor recognized the girl (from seeing her in her local community and living on the same street). That neighbor had mentioned to the parents that she had seen the article and asked questions about what it was like to be in that research study.

What did the researcher do wrong? How could the researcher have better ensured complete confidentiality?



6.06 Competence in Conducting Research (See 1.04, 1.05, 1.06, 3.01)

Behavior analysts only conduct research independently after they have successfully conducted research under a supervisor

in a defined relationship (e.g., thesis, dissertation, mentored research project). Behavior analysts and their assistants are permitted to perform only those research activities for which they are appropriately trained and prepared. Before engaging in research activities for which a behavior analyst has not received training, they seek the appropriate training and become demonstrably competent or they collaborate with other professionals who have the required competence. Behavior analysts are responsible for the ethical conduct of all personnel assigned to the research project.

Throughout the ethical code, we see that behavior analysts only conduct work for which they have received training and can be argued to be competent in doing. The same is true with research activities: a behavior analyst who conducts research must be trained in all aspects of research and must document that they have maintained the skills to conduct research. For those of us who have conducted research, we understand the complexity of planning and doing competent and ethical experimentation, ranging in topics from research design, measurement, reliability, and fidelity. In addition, there are ethical standards pertaining exclusively to research activities, that the researcher must understand and abide by, such as protection of human rights and particular ethical requirements promulgated by the researcher's university IRB or HRC.

To put this another way, a behavior analyst who assisted a research project—say, for example, performed as a research assistant for one experiment while in graduate school—is likely to not meet this requirement of competence and training. This level of experience typically does not expose the research assistant to all aspects of planning and executing a research study, nor does such a position in a research study permit the level of depth of experience regarding the conducting of research. Thus, this particular ethical code item mandates that anyone who is considering conducting research obtain the necessary training and experience to be considered adequately prepared to plan and implement a

research study. Common examples of sufficient proof of experience and competence could include graduate school experience in supporting research activities, experience in all aspects of planning and conducting research, courses on research design and data analysis, and conducting one's own research (e.g., for a master's thesis or doctoral dissertation).

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CASE 6.06 RESEARCH INEPTNESS

A behavior analyst finished her master's degree program and was working in her dream job, that of being a supervisor in a school district, responsible for supporting teachers who work with students with challenging behaviors. After several months on the job, she noticed that few teachers were using any sort of classroom-wide behavior management system. Knowing that implementing such a program would be very helpful in managing behavior and increasing motivation, she planned a research study concerning the development and application of such a group system. She started taking data in three different classrooms on the frequency of problem behaviors, and developed a protocol for teachers to use to implement class-wide reinforcement and contingency contracts. Due to particularities within each classroom, the behavior analyst varied the behavioral definitions and had different types of data systems in place to collect different measurements from the different teachers (e.g., frequency counts in one classroom, partial-interval data in a second classroom, and time sampling in the third room). About one month into the data collection, she was discussing her research in the teacher lounge with a colleague who worked at the school. When the BCBA mentioned some of the particulars of the research study, her colleague began questioning her about the extent to which parents were informed of the study and possible

risks and benefits. The BCBA admitted that she had not gone through a formal informed consent process, since the students were in the school already and the teacher had the opportunity and power to implement programs that they wished to try. Upon further questioning, the BCBA revealed that she didn't bother to present her proposal to the district's HRC. Quite concerned now, the colleague asked whether the BCBA had ever been involved in research activities in her past training. The BCBA confirmed that she had taken (and passed with an "A") a research methods course, and a course on statistics.

Is the BCBA behaving ethically?

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6.07 Conflict of Interest in Research and Publication (See 1.01, 1.11, 1.13)

When conducting research, behavior analysts identify, disclose, and address conflicts of interest (e.g., personal, financial, organization related, service related). They also identify, disclose, and address conflicts of interest in their publication and editorial activities.

Conflicts of interest refer to a perception—or in some cases, the reality—of two or more competing interests on the part of the researcher. For example, a researcher might desire to conduct research, not only because of the search for knowledge on some topic but also because that research will be an important factor when the researcher goes up for tenure or full-time status at her university. Another potential conflict of interest includes a researcher having a grant from a particular organization that might benefit from any positive findings the research found. For example, a behavior analyst might work for a pharmaceutical company that markets a medication for individuals with ADHD. The job of this behavior analyst could be to conduct research on strategies and tactics to support these individuals with a packaged intervention consisting of medication and behavioral contracting.

In any research study, the behavior analyst would be obliged to recognize his connection with the pharmaceutical company, because there is a possible (if not real) conflict of interest. In particular, the drug company could possibly benefit from any research on strategies for behavioral improvements.

Most professional journals now require authors of research studies to publicly list potential conflict of interests, or to state that they have none, within the body of the publication. Conflicts of interest do not arise simply due to financial reasons. This particular code item requires the behavior analyst to publicly declare any possible factor that could potentially positively impact the behavior analyst when doing the research.

It is not the case that conflicts of interest are necessarily bad or will, for certain, taint the research project or results. Often there are potential conflict of interests. In this particular code item, the behavior analyst is required to identify potential conflicts of interest, and then readers and consumers of this research can decide for themselves whether or not those factors would influence their perception of the quality of the results and implications/conclusions gleaned from the research.

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CASE 6.07 UNDISCLOSED

A private, for-profit company was developing a new technology to teach joint attention in young children with autism. If this technology were to successfully teach this skill, there would be a huge market for selling this product. The company hired a BCBA-D, well known in autism treatment, to work on the project and provide expert advice on components of the technology that might involve educational principles (e.g., shaping, fading, prompting, and reinforcement). Part of the consulting included conducting research on this new technology to determine if it could do what it was claimed to do. The BCBA-D contacted several agencies serving young

children with autism, broaching the subject of possibly doing research on joint attention with the new technology. Several of the agencies were excited about the new technology and volunteered their agencies as research sites. The BCBA-D did not mention her connection with the for-profit company.

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6.08 Appropriate Credit (See 1.01, 1.11, 1.13)

Behavior analysts give appropriate credit (e.g., authorship, author-note acknowledgment) to research contributors in all dissemination activities. Authorship and other publication acknowledgments accurately reflect the relative scientific or professional contributions of the individuals involved, regardless of their professional status (e.g., professor, student).

This issue involves integrity. Behavior analysts must be truthful about the degree to which they, as well as others, contributed to a research project. This truthfulness is displayed by public acknowledgment of the level of contribution of each coauthor (or co-presenter). The list of authors in a research paper or presentation that involves three or more authors reflects the level of contribution. The person listed first is considered to be the main contributor, the person listed second will be considered as having the second-most contribution to the work, and so on. Regardless of whether the contributor was a professor, clinician, or student, the researcher is obligated to assign credit based upon the amount of work each did on the entire project.

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CASE 6.08 PULLING RANK

A professor at a well-known university was considered to be the primary authority on a behavioral analysis of human behavior in organizations (i.e., OBM). Every year he had several doctoral students working under him, and

a high percentage of the doctoral research dissertations run were published in highly respected journals. A grad student just starting her doctoral research was talking with one of her lab mates about the process, and the student informed her that this professor had a rule that if any doctoral student failed to publish their dissertation within 6 months of graduating, then that professor published it himself and put himself as the first and only author. This doctoral student, hearing this for the first time, thought this was highly inappropriate. Is there a problem here?

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6.09 Plagiarism (See 1.01)

Behavior analysts do not present portions or elements of another's work or data as their own. Behavior analysts only republish their previously published data or text when accompanied by proper disclosure.

There are two issues in this code item. First, behavior analysts produce research procedures and results that they (and their co-researchers, if any) did and they do not use other people's data or procedures. Researchers develop their own research protocols and do not use the procedures published or developed by others, without the consent or acknowledgment of the other researchers. For example, a replication of a previously published study can be a worthy experiment, but the researcher who is replicating the work is required to acknowledge that the replication procedures were developed by the original authors. The researcher cannot "pass off" procedures as their own when, in fact, they obtained them elsewhere, from someone else. The same rule applies to data published by a researcher. Those data must be original to that researcher. Using previously published data from someone else is considered plagiarism and is not allowed.

The second issue regards a behavior analyst using their own data previously published. That is acceptable, under the conditions

of full disclosure of that fact by that behavior analyst. It is not permitted to present previously published data as if it is new and never presented before.

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CASE 6.09 A LONG TIME AGO . . .

When considering a potential topic for his master's thesis, a behavior analyst stumbled on an article published in 1947 in the Journal of Psychiatric and Psychosocial Studies. The study involved a researcher who went into a residential psychiatric facility and obtained permission from the director to select one of the patients and to shape the behavior of turning circles randomly throughout the day, using an elaborate system of continuous and intermittent reinforcement. Once this behavior was established, the researcher invited traditional psychoanalysts to observe the patient and to offer explanations for this behavior, as it appeared to be very strange and coming out of nowhere. The researcher did not explain the conditioning part of the experiment.

The behavior analyst thought this would be an excellent research study and put in place steps to replicate this work. He sought access to a local residential facility and obtained permission to condition the same behavior in one of the residents. The behavior analyst committed to work with the resident to not only stop this behavior but to teach that person positive and independent life skills as replacement behaviors, once the experiment was concluded. Since the original study was done almost 80 years ago, and was buried in an obscure professional journal, the behavior analyst felt no need to acknowledge the original researcher or the procedures used in that study.

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6.10 Documentation and Data Retention in Research (See 2.03, 2.05, 3.11, 4.05)

Behavior analysts must be knowledgeable about and comply with all applicable standards (e.g., BACB rules, laws, research review committee requirements) for storing, transporting, retaining, and destroying physical and electronic documentation related to research. They retain identifying documentation and data for the longest required duration. Behavior analysts destroy physical documentation after making de-identified digital copies or summaries of data (e.g., reports and graphs) when permitted by relevant entities.

When conducting research, there usually exists clear expectations about how to safely store the data and records while conducting the research, and how to deal with all of the records accumulated during the research once the research study is completed. A researcher does, in fact, have all of the identifying information of each participant (name, address, etc.). How does the researcher protect this information from people who are not authorized to see this information? How does the researcher disconnect the identifying information of the participant from the participant's code number or fictitious identity? These are the questions that researchers must consider and act to ethically answer. For example, researchers are required to protect the identity of the participants by giving them fictitious names or code numbers. However, research review committees usually have regulations about how to safely store these data and for how long. For example, there is a basic expectation that the researcher will lock away such private information and be the only one with the key or lock combination to look at it. Currently, such information is kept on a computer hard drive, and the researcher is obligated to keep that computer information private, only accessible by those who the research review committee has permitted to see, often by using complicated pass codes.

There are also rules for how long the raw data and other records should be kept by the researcher. A common rule is to keep these

records for seven years. Note the ethical requirement here: the behavior analyst is obligated to keep the records for the longest possible duration permitted by the controlling regulation. The behavior analyst, then, must consider exactly how to store and protect this material. This is another layer in the complex requirements for behavior analysts conducting research.

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CASE 6.10 STORAGE STRUGGLES

A behavior analyst focused her work on animal training; specifically, she was interested in improving the behavior of shelter dogs so that there was a higher frequency of adoption. She conducted an elaborate and extremely compelling study, showing that by setting up conditions that would trigger the dogs to play happily with toys in the presence of prospective adopters, there were more adoptions and happier dogs. Her study took 3 months to complete. As per ethical requirements, the behavior analyst kept all of her data private, safely secured, and confidential. Her data were published in a respected animal training journal. Once the study was published (it took about four months to go through the editorial process), the behavior analyst, thinking that publication of her study defined the end of that period of work, deleted the raw data and all of her videos of the training sessions. About two years later, a famous animal trainer in Europe wrote the behavior analyst, expressing admiration of her work in that particular study, her desire to replicate that research, and asked to see some of the raw data. The behavior analyst wrote back, saying that she had deleted those data and had nothing to share.

Is there a violation of ethics here?

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6.11 Accuracy and Use of Data (See 1.01, 2.17, 5.03)

Behavior analysts do not fabricate data or falsify results in their research, publications, and presentations. They plan and carry out their research and describe their procedures and findings to minimize the possibility that their research and results will be misleading or misinterpreted. If they discover errors in their published data they take steps to correct them by following publisher policy. Data from research projects are presented to the public and scientific community in their entirety whenever possible. When that is not possible, behavior analysts take caution and explain the exclusion of data (whether single data points, or partial or whole data sets) from presentations or manuscripts submitted for publication by providing a rationale and description of what was excluded.

Integrity, mentioned throughout the code, is on display in this particular item. Behavior analysts report full and complete research results. They thoroughly and honestly describe the methodology used and the results. The results must be complete results, not just the “best-looking” data, to allow readers to have a complete understanding of these research findings.

Emphasis is on two points here: honesty and completeness. Behavior analysts do not fake data. One does not make up results, or “massage” numbers in a way that makes the data any different than it really is. In addition, behavior analysts provide all of the data that are collected when conducting an experiment. “Cherry-picking” data that makes the final results more compelling is not allowed. All data must be presented in the final analysis. However, if a researcher wants to exclude some data from being reported, the researcher is obligated to discuss that in the research description, explain what data were excluded and provide a strong argument for excluding those data. This, then, is published as well, and the scientific community has the opportunity to read what was excluded and why, and make their own decisions about the appropriateness or inappropriateness of such actions.

This particular code item, similar to many of the preceding ones, relies on the fundamental traits required by all behavior analysts: honesty and integrity. Behavior analysts are truthful and in all that they do, behave in ways that provide transparent, open, and full disclosure and behavior.



CASE 6.11 DATA GONE

A behavior analyst was conducting a research study on the effects of behavioral contracts on improving safety in a warehouse that delivered supplies for mobile homes. This particular business historically had high rates of injuries among the employees—falling off ladders, strained backs from lifting, and broken bones from occasionally dropping heavy boxes on their feet. After receiving proper consent and approval from an IRB, the behavior analyst implemented her study, utilizing contracts among the employees. The basic contingency was, if the number of injuries per week fell to a particular level, the employees on that shift would earn a monetary reward (e.g., gift cards). The study had been in place for 2 months, and the data showed that injuries were significantly decreased. Over the past 2 weeks, injuries dropped to zero per day. The behavior analyst decided to have 2 more days of data and then terminate the research. On the last 2 days of data collection, injuries rose by 5% and 7%, respectively. However, since the preceding 14 consecutive days had no injuries, the researcher thought (a) she had proven her point that the contingency worked and (b) the final 2 days must have been aberrations, so she removed those two data points from her analysis when she wrote the results.

Assuming that the contingency was causally related to the decrease in injuries, does it matter if the last two data points were excluded from the data analysis? Why or why not?



RESPONSES TO CASES

CASE 6.01 CEASE AND DESIST

Unfortunately, the BCBA failed to gain all of the approvals needed. The BCBA should have been aware of not only the existence of the agency's HRC but also the requirement that it review his research application. The BCBA certainly met the required review by his university's IRB, and by doing so, the BCBA was complying with federal and state regulatory requirements. However, it is the researcher's (and in this case, the BCBA's) responsibility to be completely familiar with the agencies to which he must apply for research activity.

CASE 6.02 IRB PROTECTION

The IRB had legitimate concerns about potential psychological harm to which the participants might be exposed. It correctly reasoned that when conducting the interviews with grown children of divorced families, reliving these experiences might trigger emotional trauma, sadness, anger, bitterness, or other feelings that could be harmful to the interviewees or at least make them extremely uncomfortable. The IRB didn't outright reject the research proposal but asked the researcher to consider how to minimize such risk. After some deliberation, the BCBA proposed that the participants be treated this way: (1) upon informing the potential participant of the details of the study, the researcher would mention the interviews that she wished to conduct; (2) the researcher would directly address the issue of potential emotional discomfort that could result during the interviews, since the participants are being asked to relive a potentially unpleasant part of their past; and (3) the researcher arranged for free counseling services for any participant who felt the need to get support that way. The researcher planned on giving each research participant the contact information for a local mental health counselor and arranged for the BCBA to pay the cost of any counseling sessions for any participant who became

upset during the interviews. In this way, the researcher minimized the potential psychological harm and planned for a way to treat it should it occur. The IRB reviewed the revised research application, found the added strategies as minimizing potential discomfort, and approved the project.

CASE 6.03 TIME IS OF THE ESSENCE

There should have been a careful analysis as to what specific clinical/school activities were being missed by children participating in the research. When planning on conducting research in a clinical setting, the researcher is obligated to maintain minimal negative impact (if any at all) on the participants in the study. The researcher must be completely transparent about the time requirements that are necessary to adequately participate in research, and the clinical team should be the driving force as to determining what hours of school could be devoted to research activities with minimal impact on the clinical impact.

CASE 6.04 INCOMPLETE CONSENT

Hopefully, the wording of the consent form would have clearly stated (in words) the plan the researcher had to use the results of any study outside of the confines of where the study was conducted. So, in this case, it should be a simple matter of checking for such wording. However, in this particular consent form, the explicit wording was not there. It was implied that the findings would be used to further clinical and educational efforts, but exactly how was not mentioned. The director was acting conservatively to protect the participants and the families.

How was this resolved? The researcher was in a tough spot: a lot of hard work went into the study, with great findings that could be of interest to many other researchers and consumers. The researcher suggested several strategies to gain such consent, such as writing another consent form explicitly describing the dissemination that

he wanted to do, and asking for that consent. The director turned down this suggestion. In fact, the director eventually said that the manuscript could not be submitted since, in her opinion, explicit informed consent was not given. The researcher, to his credit, accepted this decision and buried the manuscript and data, to maintain compliance with research ethics of consent.

CASE 6.05 IMPERFECT CONFIDENTIALITY

The researcher knew about the issue of confidentiality and apparently thought she was meeting this basic requirement by removing personal identifying information. However, there was other information presented in the conference presentation that provided information that led to the identification of the girl and parents. The naming of the city in which the research took place, the reference to a unique aspect of the school (the connection with a military base), and a description of unique behavioral characteristics, when all put together, allowed for the identification of the child and, thus, a breach of confidentiality. The researcher should have disguised any and all information that could possibly had led to identification of any participant.

CASE 6.06 RESEARCH INEPTNESS

The BCBA was acting unethically. Not only was she violating basic research protocol in failing to get approval from a research review committee (the school district's HRC, in this case), but she failed to provide full information to parents of potential subjects in order to get informed consent. More fundamentally, when examining the way she defined behaviors (conflicting operational definitions) and the erratic way of collecting data (using different measurement systems across the classrooms), there was no confidence that the BCBA had competence in planning or conducting research. By her own admission, she had never been involved in helping run a research study, and has had no other "firsthand" experience conducting

one. If critically reviewed, she would have no argument or evidence to support she was, in the words of this code item, demonstrably competent.

CASE 6.07 UNDISCLOSED

The BCBA-D violated the ethical code by failing to disclose her connection with the for-profit company. It could be reasonably implied that the behavior analyst has a financial stake in this company. If the technology is proven to be successful in establishing joint attention, it could be reasonably assumed that the behavior analyst will benefit financially. This connection should have been disclosed upon entering into conversation with each agency about the possibility of conducting research at their agencies. It may not have made a difference to the agency, and they may have still agreed to allow the research to take place at their location, but the ethical code obligates us to publicly admit any potential conflict of interest.

CASE 6.08 PULLING RANK

The behavior of this professor is highly unethical. Doctoral students do most of the research on their doctoral dissertations. The advising faculty person certainly assists of course, but it is customary that the doctoral student is first author when the research is finally published. To have the professor set a time limit for publication is inappropriate, as is his threat to become first and only author.

CASE 6.09 A LONG TIME AGO . . .

The behavior analyst is violating this particular code item of plagiarism. This is a clear case of it. There is no statute of limitations for acknowledging other's work. There is no rule under which a behavior analyst can ethically not acknowledge work that someone else did. This BCBA clearly violated this section of the code.

CASE 6.10 STORAGE STRUGGLES

The behavior analyst violated the code by not maintain records “for the longest required duration.” Typical storage is for seven years. Furthermore, the behavior analyst failed to keep digitized copies of her raw data, as is required by this particular code item.

CASE 6.11 DATA GONE

The code is very clear: all data collected in a research study are to be reported. So, it seems that the behavior analyst is in violation of the code. As this particular code item notes, if data are excluded, there must be an explanation and justification as to why. Here again, the behavior analyst seemed to totally disregard the data without taking the opportunity, in her research findings, to explain that data were removed, what data were exactly excluded, and any defense of that removal.

NOTES

1. www.hhs.gov/ohrp/
2. www.hhs.gov/ohrp/regulations-and-policy/guidance/reviewing-unanticipated-problems/index.html
3. Gray, F. D. (1998). *The Tuskegee syphilis study: The real story and beyond*. Montgomery, AL: NewSouth Books.
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- Bailey, J. S., & Burch, M. R. (2018). *Research methods in applied behavior analysis*, 2nd Edition. New York: Routledge, Inc.
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Unit

Four

Professional Skills for Ethical Behavior Analysts



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12

Delivering the Ethics Message Effectively

Behavior analysts are becoming increasingly sophisticated when it comes to knowing and understanding the content of the Ethics Code for Behavior Analysts, which is often referred to as “the code” or “the ethics code.” In-service training, written materials, continuing education opportunities, and conferences throughout the country are providing behavior analysts with high-quality professional training related to the code. However, while they may know the code items, many behavior analysts have a difficult time with knowing what to say to another person or exactly how to handle a situation when an ethics problem has been identified. Telling others “No” or giving direct, honest feedback that what they are doing is not appropriate fall into the range of awkward and uncomfortable for many people, behavior analysts included. Knowing exactly what to say and what to do when faced with an ethics issue is often far more difficult than identifying the actual issue and specific code item.

What behavior analysts are having a hard time with is what to say to another person or exactly how to handle a situation when an ethics problem has been identified.

THE IMPORTANCE OF COMMUNICATIONS SKILLS

Topping off the list of skills for the behavior analyst who wants to make a difference is the ability to be a good communicator. In *25 Essential Skills for the Successful Behavior Analyst: From grad school to the C-suite* (2022), there are three chapters on interpersonal communications with colleagues, supervisors, and direct reports. The book also describes how effective communication (or a lack of communication skills) affects one's ability to persuade and influence others. When it comes to delivering a message about ethics, you will need to be as much a communicator as you are a behavior analyst.

There will be times when you will need to address an ethics question immediately. This means thinking on your feet and knowing the ethics code. You might need to refer to the code for the exact section number and wording, but it is the responsibility of every behavior analyst to know and understand the content that is covered in the code.

KNOW THE ETHICS CODE

Immediate Response Required

A BCBA was working with Ami, a 5-year-old girl whose parents were divorced. The child's father was a wealthy businessman who owned a nationally recognized chain of electronics stores. Because he traveled constantly, he saw his little girl only periodically. Ami was basically mute, but, over a short period of time, the behavior analyst had her saying words and short phrases. Shortly after Ami began speaking in three-word sentences, the dad, on one of his infrequent visits home, observed a session. Tears rolled down his cheeks, and as he was leaving, he said, "You have done such wonderful things for Ami . . . I know you are just getting started, and money is probably tight. I would like to give you a little token of appreciation. Maybe you and your roommates could use a new 75-inch, flat-screen QLED 8K TV and a year's subscription to

Netflix. Does that sound good?" The behavior analyst had to respond immediately, or a delivery truck would be dropping off a \$5,000 high-definition TV to her apartment. Because she attended an ethics workshop at her state association meeting, she knew behavior analysts should not accept gifts of this size and that the limit was \$10! Even though she could not cite the code number, she had the perfect instant response: "Thank you so much for appreciating the work I've done with your daughter. Behavior analysts have an ethics code, and I am not allowed to accept gifts. I am delighted you are so pleased with Ami's progress; just seeing her learn is my biggest reward."

Buy Some Time

Unlike the situation where you need to respond immediately, there will be other times when confronted with an ethical issue that you need to buy some time by saying, "Let me get back to you on that. I will call you later this afternoon," or "I need to check on this; I'll have an answer for you at Tuesday's meeting." Buying time is a good strategy if the ethical issue seems to be in a gray area and you feel the need to review the ethics code, talk to your supervisor, or consult with a trusted colleague.

Wondering About Weekends

A behavior analyst who was enrolled in a master's degree program was consulting in the homes of several children. At one visit, a mother said, "You know, there are times when we are busy during the week, and it is hard to fit in these therapy sessions. You don't have classes on the weekends, so I was thinking maybe we could change some of our sessions to Saturday mornings. What do you think?" This was a gray area for the young behavior analyst. She needed to recuperate on the weekends, meet with her study group, and prepare for exams. Something about this request just didn't feel right. The behavior analyst was acquainted with the code and was certain there was not a code item that said, "It is unethical for you to give up your weekends." "I'll have to check with

my supervisor and get back to you,” was the perfect response. Later that day, the supervisor took her call and said a request like this was a mixed professional/ethical issue. The firm had a policy that therapy sessions are run when supervisors are available to handle emergencies (i.e., no weekends).

On the ethical side, the parent agreed at the onset of treatment to certain conditions for the therapy: weekdays only. If the parent was now acting as though she could move sessions around

depending on her changing mood or social opportunities, there was a good chance the child’s verbal behavior training was not a high priority. The feedback to the mother was straightforward: “I checked with my supervisor about changing our sessions to Saturdays. She says this is against our company policy, which permits us to work only during hours that supervisors are available to handle emergencies. I’m sorry, but we’ll have to stick with our regular weekday schedule. If you really want to switch to another day, my supervisor said to just give her a call. Do you need her number?”

There may be times when feedback about an ethical issue needs to be given to a client, parent, stakeholder, another behavior analyst, a nonbehavioral professional, a supervisor, or a supervisee. In each case, the behavior analyst should think about whether delivering the message is enough. Does a supervisor need to be contacted? Do staff members need to be informed about something a client did? Should an agency be notified about something that has been witnessed?

Buying time is a good strategy if the ethical issue seems to be in a gray area.

DELIVERING THE ETHICS MESSAGE TO A CLIENT

The ethics code identifies the *client* as the “direct recipient of the behavior analyst’s services” (BACB Ethics Code for Behavior Analysts, 2020, p. 7).

In the following case, we are referring to the client as the individual with the target behaviors. In most cases, clients are children, and they won't be involved with ethical misconduct. However, there are situations where behavior analysts work with high-functioning adult clients, and they can present some ethical challenges.

Shari was a BCaBA who was assigned to work to a group home for high-functioning male clients. When Dan, one of the clients, started flirting with her, she put his inappropriate comments on extinction. Then he asked, "Shari, why don't you and I go out on Friday night? You can come and pick me up, and we can go to a movie and out to eat." Clients in the group home had many opportunities for community outings, and this was clearly a request for a "date." Shari knew instantly that dating a client would be a violation of the ethics code. What should she say?

Here are some things she should *not* say:

"Well, okay, Dan, I guess we could work on your social skills."

"Let me think about it."

"I'm busy on Friday night."

"Umm, no, Dan, I've got a boyfriend."

"Sorry, I'm just not that into you."

These excuses imply that if she was not busy and did not have a boyfriend, Shari would be open to going out with Dan. Accepting the invitation with a plan of training social skills along the way will send a mixed message to Dan. He will think he's just landed a date. Remember the fundamentals of good communication: don't send

Remember the fundamentals of good communication: don't send mixed messages, and don't lie.

Table 12.1 Breakdown of Shari's Initial Response to the Date Request

What You Do	What You Say
Use of an autoclitic	"Dan, I like you as a friend . . ."
State the facts/situation	"But I work here, and it is not appropriate for someone who works here to go out with a client."
Refer to the code	"I have something called a code of ethics."
Tell what the code says	"It says I can't go out with clients."
Summarize	"It would not be appropriate."

mixed messages, and don't lie. Shari could say, "Dan, I like you as a friend, but I work here, and it is not appropriate for me to go out with a client. Staff members go on outings with the group and some take clients out for training, but we can't go on dates with clients. In my job, I have something called an ethics code—it is a set of rules that says I cannot go out with clients. It just would not be appropriate."

When Shari was telling us her story, we knew what was coming before she said it. She did a good job giving Dan the message as previously presented, and then he said, "I'm getting my very own place in a few weeks. I won't be a client anymore, and I have a job lined up at Goodwill. Then can we go out?"

When clients and family members transition to the status of "no longer a client," it brings up a special ethical dilemma. Is there any likelihood that they will come back into the system? Does your company have a policy about dating former clients (or their parents)? Shari replied with, "Dan, I like you as a friend, but I'm sorry, I'm not interested." Table 12.1 provides some guidelines for knowing what to say when someone asks you to do something unethical.

DELIVERING THE ETHICS MESSAGE TO PARENTS AND STAKEHOLDERS

As much as parents love their children, family members, and some stakeholders and want to help them, it is astounding how

many ethical challenges they can present for behavior analysts. Not taking data, making up stories, not carrying out the program, and crossing the line so their attempts of discipline constitute abuse are just some of the issues reported by behavior analysts.

Erica M. was the mother of Cooper, a 10-year-old boy who was diagnosed with autism. Cooper had very basic expressive language (one- to two-word sentences such as “Want milk” and “Go outside”). He had frequent tantrums that were set off by noises and not getting what he wanted. He also had a self-stimulatory behavior of licking the area under his bottom lip frequently enough to cause calloused skin the full length of his lower lip. There were two other children in the busy home. The BCBA, Melvin, was becoming increasingly frustrated because Cooper’s behaviors were getting worse both at school and home, Mrs. M. was not taking the data needed, and the other children revealed that when Cooper was having a tantrum, she gave him a cookie “to get him to calm down.”

Melvin went to the home and met with Mrs. M. He told her how the data were important “so we can help Cooper’s behavior get better.” It seemed as though the heart-to-heart talk worked like magic, and Mrs. M. had the data sheets ready when Melvin arrived for the next few visits. Before long, Melvin began to notice that something was strange about the data. One day’s data was scored for a time period when Melvin knew Cooper was attending an after-school event. Further, the data showed that Cooper was engaging in no self-stimulatory face licking, yet his face was so inflamed there was bleeding at the edges of the calluses. Melvin knew that Mrs. M. was busy making up the data as he pulled into the driveway.

Here’s what Melvin should *not* do or say: he should not storm into the house and say,

“Mrs. M., you have been making up the data. I have been truthful with you, and if you are going to lie to me, I quit. I know when the data are not real.”

Here's what Melvin *should* say: he found a better way to handle this situation so he could get the necessary data. He talked to Mrs. M. at the beginning of the next session:

"Hi, Mrs. M. I noticed your new rose bushes. They look so nice. My mom always had a rose garden when I was growing up." (Mrs. M. talked about her gardening.) Without asking for the data sheet, Melvin said, "Let's talk about Cooper. So, how has it been going?" (Mrs. M. simply said, "Okay.") "Would you say he was having more tantrums or less or about the same?" (Mrs. M. said that some days were worse than others). Melvin said, "This has got to be tough for you. You really have your hands full, and I know a 10-year-old with tantrums can be a real challenge." At this point Mrs. M. began to talk about how she was tired and some days she wasn't sure she could do it all. "You're a great mom," he said. "I know your kids mean the world to you. Can we take a look at the data for the last few days?" He reviewed the data sheet and asked, "With all you've got going, how are you feeling about taking data?" Mrs. M. said, "Okay." Then Melvin told her, "You know, these data don't make sense. When I look at the boxes you've checked off—see here and here—it looks like Cooper is never having a tantrum or licking his face. But his lips are dried and chapped. Can you talk to me about that?" Mrs. M. said she had noticed Cooper licking his lips when he watched television and worked on the computer at night. This was the "screen time" he earned as a reinforcer, and data weren't collected then. This made sense, and Melvin was able to modify the data collection procedure. Melvin then asked about the data for tantrums. Mrs. M. admitted she was too busy to fill out the forms. She usually did it right before Melvin arrived, and sometimes she forgot what happened a few days earlier. Melvin felt that he'd simply caught Mrs. M. making up data, so he said, "I really need your help getting the data taken properly. In my field, we have a code of ethics, and it actually says I am required to have accurate data to provide behavioral treatment for Cooper. If I believed the data were not accurate and we couldn't get it right, I would not be able to work with him anymore and

Table 12.2 Breakdown of Melvin's Response to Mrs. M. Regarding Falsifying Data

What You Do	What You Say
Establish rapport	"Hi, Mrs. M. I noticed your roses."
Ask questions/listen	"How has it been going?"
Be respectful/understanding of others	"How are you feeling about taking the data?"
State the facts/situation	"This has gotta be tough for you."
Refer to the ethics code	"This data doesn't make sense."
Summarize; describe what could happen if the ethics code is not followed	"In my field, we have a code of ethics."
	"Cooper could lose his behavioral services."

Cooper could lose his behavioral services. I really believe I can help him so anytime you have questions, just let me know."

Table 12.2 summarizes what Melvin should do and say in this situation.

DELIVERING THE ETHICS MESSAGE TO AGENCIES, SUPERVISORS, OR ADMINISTRATORS

Unfortunately, we've had a number of behavior analysts in our ethics workshops describing situations where an administrator has asked the behavior analyst to do something unethical. Asking the behavior analyst to make up data or assessment results or to say that services for a client were needed when they were not (or vice versa) or asking the consultant to work with a friend's child who was not an official client are some of the administrator-related ethics issues our workshop participants have encountered.

In some cases, the behavior analyst ends the story with, "And so I no longer work there. I could not sleep at night. I found another job." In other cases, the behavior analyst said, "I didn't know what to do. I love the clients, and I love the actual job. I was afraid if I told anyone or refused to do what was asked, I would get fired. I need my job. I've got two mouths to feed and a mortgage to pay."

Wendy was the new BCBA at a residential facility. She had the job of her dreams in her favorite city. After she had been

on the job a few months, the administrator called her into the office. “Rumor has it that we are having a review team visit sometime toward the end of the week. I need your help with some behavior programs.” She went on to explain that the review team would be checking for assessments and data that were missing for several clients from the last review. She then slid a list across the desk to Wendy. The administrator was asking Wendy to make up assessment results for four clients who had not yet been seen by any one in behavioral services.

Here's what Wendy should *not* say (we always urge restraint in dealing with supervisors; think before you speak; there is often a lot on the line):

Don't ever say,

“Are you kidding me?” or “Are you out of your mind? No way am I lying for you,” or “Wait until the Board hears this!”

Here's what Wendy *should* say:

“So, what is it you want me to do?” The administrator tells her, “Just fill in the forms” (i.e., essentially make up the assessment results). In a respectful tone, Wendy tells the administrator, “I know you really want the facility to pass the review, but I haven't even seen these clients, this wouldn't be right.” The administrator's jaw is getting tense. She reminds Wendy that the facility could be in trouble with the state or even lose funding. “Ms. Schultz, I really love working here. I love the program, and I appreciate how much you care about the clients. But I am a Board Certified Behavior Analyst, and I have a code of ethics to uphold. You know I cannot fabricate assessment results. We could get in a lot more trouble for making up data than for not having it. How about this? I will schedule assessment dates for the clients and document those. I can do an initial visit with each client, and I will have notes on my visits when the assessment team comes. How would you feel about this?” Table 12.3 shows the analysis of Wendy's response.

Table 12.3 Breakdown of Wendy's Response to Administrator Request

What You Do	What You Say
Ask questions	"So, what is it you want me to do?"
Be respectful and understanding of others	"I know you want the facility to do well on the review."
Present your point of view	"But I have never assessed the clients, and this would not be right."
Reinforce what others are doing right	"I really love working here, I love the program."
Refer to the ethics code	"And I appreciate how much you care about the clients."
Present a solution	"But I have a code of ethics to uphold, and I can't fabricate assessment results."
	"How about this? I can schedule assessment dates."

DELIVERING THE MESSAGE TO NONBEHAVIORAL PROFESSIONALS

One of the most frequently asked ethical questions is, What do I say when other professionals aren't following the ethics code? The problem is that other professionals do not have to adhere to *our* Code. They can spend their professional days making judgments without data, recommending alternative fad treatments that are not scientifically validated and not worrying about measurable outcomes. The problem comes when a behavior analyst and these professionals overlap on a case and are treating the same client.

Ian was the BCaBA on a treatment team for Cassie, a kindergarten client with autism. The child was ambulatory, but she had motor problems that resulted in an unusual gait, tripping easily, and dropping things. Although she was approaching 6 years of age, Cassie's expressive language was very limited, with only a few words to identify objects. When upset, the little girl would shriek, drop to the floor, curl into a ball, and refuse to get up. The OT, Debbie, believed that sensory integration therapy was the best course of treatment. "She needs a day full of sensory activities so she can learn to make sense of her environment," the OT said at the treatment team meeting. "You can see she gets on the floor in the fetal position because we

are not properly challenging her senses. Rolling on the exercise ball, playing with toys, and jumping on the mini-trampoline are all exercises that will help Cassie's brain develop and her behavior improve."

Here's what Ian *should not* say at the treatment team meeting (in meetings, we also urge restraint and firmly believe the advice "Think before you speak" applies here too):

Ian should *not* say,

"And just exactly how would this help her brain improve?" or "Are you a big expert on brain functioning now?" or "No offense, but your field is not scientifically validated."

Here's what *should* be said to the nonbehavioral professional. Ian has completed his assessment of the child and felt, as a behavior analyst, he needed to address the tantrums and refusal to work. He also wanted to get Cassie moving along with language, and his plan was to talk to the speech therapist about DTT. Ian understood that embarrassing other professionals in front of their colleagues is not a good way to win friends. Ideally, Ian would have seen what was coming and been able to meet with the OT before the meeting. He didn't, so the conversation in the treatment team went like this:

After Debbie, the OT, gave her spiel, Ian said in a calm, friendly voice,

"I agree with Debbie that Cassie has some motor problems. She does fall down, and Debbie is right—it looks like she does not have good trunk control. I agree that Cassie could benefit from some exercise to strengthen her core and improve her balance. But I want to talk about the behavioral issues. When Cassie screams and drops to the floor, she is having a tantrum. I don't know what sets this off yet, but I would like to have tantrums added to the plan as a target behavior."

The OT said, "If Cassie doesn't have to sit at the table like she is in college and she gets the exercise and play she needs,

Table 12.4 Breakdown of Ian's Response to the Nonbehavioral Professional

What You Do	What You Say
Listen to others	Ian was polite while Debbie (OT) gave her report.
Be respectful of others	"I agree with Debbie that Cassie has motor problems," etc.
Present your point of view	"I want to talk about the behavioral issues."
State what you would like to happen	"I would like to have tantrums on the plan as a target behavior."
Refer to the ethics code	"I'm bound by a code of ethics that says the next step is a functional analysis."
Present a solution	"We need to put the FA and behavior program with data collection on her plan."

I am sure she'll be fine." Maintaining a calm and friendly demeanor, Ian told the team, "Tantrums are a behavioral issue. In Cassie's case, we do not know what sets off the tantrums. As a behavior analyst, I'm bound by a code of ethics that says the next step is to do a functional analysis. This will involve taking data throughout the school day. If I am going to work with Cassie, we need to put the FA and behavior program with data collection on her plan."

Table 12.4 shows the analysis of Ian's verbal reply to the nonbehavioral professional.

DELIVERING THE MESSAGE TO ANOTHER BEHAVIOR ANALYST

In some ways, dealing with another behavior analyst who is violating the ethics code is easier than dealing with others, because the behavior analyst should know the code. In other ways, it can be more difficult and awkward to give feedback to a behavioral colleague, especially if that colleague is working for a competing program or consulting firm.

Matt was a BCBA whose students (BCaBAs) told him about another behavior analyst (Dr. X) who was billing for clients she never saw. It seems the BA would talk to staff, then would write a program or send a data sheet and would bill for the

services. Matt felt very uneasy about this, but he decided he should intervene. He called Dr. X and asked if she had a few minutes to talk. Matt began the conversation like this: “We’ve known each other for a long time, and we’re both professional behavior analysts. I’ve been hearing about a situation that I wanted to ask you about. Is there any chance you bill for services for a client after just talking to staff?”

Matt’s response is shown in the breakdown of Table 12.5.

If Dr. X had said no, this was a misunderstanding; she did this only once when she was sick but immediately got out to see the client when he was well, the conversation could have ended.

Unfortunately, Dr. X said that business was booming and that she was just trying to cover all the bases. When she knows the staff members are reliable, she will use the information they report to her; she can help more clients and meet the demand and improve her cash flow. “I’ve got boat payments too, you know,” was her parting shot. Matt’s response was, “I know you care about people, and you have always been a responsible professional. I don’t want to see you get in trouble or your reputation get trashed. Have you looked at the code lately? You could hire BCBAs to work for you; then they would sign the assessments and be responsible. My reading of the code is that you can’t sign an assessment for a client based on what someone else has told you. I just wanted to let you know I’m concerned as a fellow professional.”

Table 12.5 Breakdown of Matt’s Response to the Virtual Behavior Analyst

What You Do	What You Say
Be respectful of others	“I know you care about people.”
Ask questions	“Is there any chance you bill based on what staff tell you about the clients?”
Present your point of view	“I don’t want to see you get in trouble.”
Refer to the ethics code	“Have you looked at the ethics code lately?”
Present a solution	“You could hire BCBAs to work for you.”

SUMMARY

Knowing the ethics code backward and forward does not guarantee that behavior analysts will always be effective in helping others understand the code. In most situations, there are several opportunities each week to educate someone and indicate why the code is important for those who strive to deliver effective treatment.

The first part of being effective is recognizing when something that is not quite right. The second part is knowing what to say and how to say it when witnessing an ethical problem. This can be difficult, especially for new, younger BCBA_s who may have to bring the ethics message to someone who is older and has a lot more experience. All BCBA_s should know and should follow the ethics code, but it is easy to slip into bad habits. Being ethical every day is hard work, and people, even good people, will sometimes respond to increased response cost with an unethical, knee-jerk reaction. If no one says anything and nothing bad happens, the behavior is likely to occur again. Supervisors can become so overwhelmed with responsibilities that they don't always remember the code. Parents are often so consumed with trying everything and anything that might work for their child they don't have to the time to ask whether there is research to back up a claim. Being ethical is a colossal responsibility. It is hard work, but if being ethical were easy, everyone would be ethical. Behavior analysts should be strong, always stay on the right side of ethics, and deliver the ethics message whenever possible.

Knowing the ethics code backward and forward does not guarantee that behavior analysts will always be effective in helping others understand the code.

If being ethical were easy, everyone would be ethical.

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13

Using a Declaration of Professional Practices and Procedures for Behavior Analysts

When it comes to ethics, prevention is a far better strategy than having to solve the awkward or difficult problems that arise because someone didn't know the difference between right and wrong, acceptable and unacceptable. Ethical challenges confront the BCBA almost on a daily basis. Most are not a full-blown crisis but rather are more like the daily meteor showers that our Earth experiences from outer space. Tiny pings on the radar of decision-making can irritate, confuse, and confound the behavior analyst who is trying to do the right thing. These small challenges can sneak up on you just when you least expect them. They are camouflaged in normal conversations in the form of requests for small favors or offerings of juicy gossip. Wouldn't it be great if everyone would just follow the rules? Or, in our terms, why can't we bring some stimulus control to this aggravating situation? Well, there is good news. It is possible to put up something similar to a video gamer's *deflector shield*. To prevent many ethics problems from occurring in the first place, the solution we are proposing is the use of a Declaration of Professional

Tiny pings on the radar of decision-making can irritate, confuse, and confound the behavior analyst who is trying to do the right thing.

Practices and Procedures for Behavior Analysts. First suggested in one of our ethics workshops by Kathy Chovanec, a BCBA from Louisiana, this document is widely used in other professions to clarify rules and boundaries with clients at the initiation of services, before the meteor shower of ethical issues comes raining down.

Ethical challenges confront the BCBA almost on a daily basis.

**Declaration of
Professional Practices and Procedures
for Behavior Analysts**

[YOUR NAME, Degree]
Board Certified Behavior Analyst

[Your cell number & email]

For My Prospective Client & Stakeholders

This document is designed to inform you about my background and ensure that you understand our professional relationship.

1. AREAS OF EXPERTISE

(In this section you explain your area of expertise. This can be as long or as short as you want as long as the client is fully informed of your area(s) of competence.)

I have been practicing as a behavior analyst for _____ years. I obtained my degree in [field of study] in [year]. My specialty is _____ (e.g., working with preschool children, parent training, etc.).

2. PROFESSIONAL RELATIONSHIP, LIMITATIONS AND RISKS

What I Do

Behavior analysis is a unique method of treatment based on two ideas: (1) that most important human behavior is learned over time and that, (2) most behavior is currently maintained by consequences in the environment. My job as a behavior analyst is to work with behavior you would like to see changed. With your input, I can help you discover what is maintaining a behavior, discover more appropriate replacement behaviors, and then set up a plan to teach those skills. I can also develop a plan to help the client acquire a new behavior or improve their skill level. Some of the time I will be treating you directly and at other times I may be training stakeholders as well.

How I Work

As a behavior analyst I do not make judgments about a person's behavior. I try to understand their conduct as an adaptive response (a way of coping) and suggest ways of adjusting and modifying behaviors to reduce pain and suffering and increase personal happiness and effectiveness.

Figure 13.1 Declaration of Professional Practices and Procedures for Behavior Analysts.

You will be consulted at each step in the process. I will ask you about your goals, I will explain my assessment and the results of my assessment in plain English. I will describe my plan for intervention or treatment and ask for your approval of that plan. If at any point you want to terminate our relationship, I will cooperate fully.

Please know that it is impossible to guarantee any specific results regarding your goals. However, together we will work to achieve the best possible results. If I believe that my consultation has become non-productive, I will discuss terminating it and/or providing referral information as needed.

Behavior analysts are mandated reporters, if we see anything that appears to be abuse or neglect, we are required to report this directly to the Abuse Hotline.

3. CLIENT RESPONSIBILITIES

I can only work with clients who fully inform me of any and all of their concerns. I will need your full cooperation as I try to understand the various behaviors that are problematic for you. I will be asking a lot of questions and making a few suggestions and I need your total honesty with me at all times. I will be showing you data as part of my ongoing evaluation of treatment and expect that you will attend to the data and give me your true appraisal of conditions.

One of the most unique aspects of behavior analysis as a form of treatment is that decisions are made based on objective data that are collected on a regular basis. I will need to take Baseline data to first determine the nature and extent of the behavior problem that we are dealing with; then I will devise an intervention or treatment with your consent and continue to take data to determine if it is effective. I will show you this data and will make changes in treatment based on this data.

I expect that you will treat me and my staff including my RBTs with dignity and respect. To do otherwise including verbal threats, accusations, cursing, making defamatory, sexually or racially charged comments may result in immediate discontinuation of services.

Under my code of ethical conduct, I am not allowed to work with you in any other capacity except as your behavior therapist or consultant. If I or one of my RBTs is working in your home with your child, it is not appropriate for you to leave the premises at any time, you will need to be present to observe the treatment and to learn to apply it when we are not present. We are not allowed to provide to provide transportation for your child at any time.

I will need a list of any prescribed or over-the-counter medications and/or supplements in addition to any medical or mental health conditions; this is considered private information is kept strictly confidential.

I expect that if you need to cancel or reschedule your appointment that you call as soon as you are aware of the change. If I do not receive 24-hour notification of your cancellation or you fail to show for an appointment, then you may be charged for the appointment.

4. ETHICS CODE FOR BEHAVIOR ANALYSTS

I assure that my services will be rendered in a professional and ethical manner consistent with accepted ethical standards. I am required to adhere to the *Ethics Code for Behavior Analysts* issued by the Behavior Analyst Certification Board, for a copy go to BACB.com.

Although our relationship involves very personal interactions and discussions, I need you to realize that we have a professional relationship rather than a social one. According to my professional code of ethics, it is not appropriate for me to accept gifts or meals nor is it appropriate for me to be involved with your personal activities such as birthday parties, or family outings. Please do not be offended if I say, "I'm sorry I am not allowed to accept this, but I very much appreciate the gesture." [Modify this to suit your situation.]

If at any time and for any reason you are dissatisfied with our professional services, please let me know. If I am not able to resolve your concerns, you may report them to my Board using a *Notice of Alleged Violation* Form which can be found at BACB.com.

Figure 13.1 (continued)

Behavior Analyst Certification Board
8051 Shaffer Parkway
Littleton, CO 80127
BACB.com
(720) 438-4321

5. CONFIDENTIALITY

In [insert your state], clients and their therapists have a confidential and privileged relationship. I do not disclose anything that is observed, discussed or related to clients. In addition, I limit the information that is recorded in your file to protect your privacy. I need you to be aware that the confidentiality has limitations as stipulated by law including the following:

- I have your written consent to release information.
- I determine that you are a danger to yourself or others.
- I have reasonable grounds to suspect abuse or neglect of a child, disabled adult, or an elder adult.
- I am ordered by a judge to disclose information.

6. APPOINTMENTS, FEES AND EMERGENCIES

[In this section you will describe how appointments are set and how fees are charged. It may also be necessary to indicate who to contact in case of emergencies.]

Billing will be handled by our business office, please contact them if you have questions.

A copy of this document will be provided for your records. Please sign below indicating that you have read and understand the information in this Declaration.

CLIENT Signature

WITNESS/STAKEHOLDER

Date

Date

BCBA Signature

Date

Figure 13.1 (continued)

Figure 13.1 shows a version of the full document that you can adapt to suit your particular situation. You might want to have more than one version for different types of clients. For example, a declaration for in-home services will vary considerably from a clinic or a residential group home.

1. AREAS OF EXPERTISE/SCOPE OF COMPETENCE

The declaration starts by informing your client—or better yet your prospective client—about who you are and your credentials.

The client should know some basic academic information about you, where you got your degree, the field in which you earned the degree, and the specific degree (e.g., BA, MA, PhD). Some consultants might be uncomfortable about providing this information, particularly if the degree is in experimental psychology or pastoral counseling or was earned through a series of online courses from an unaccredited college. In any event, clients have a right to know about the education and training of their consultants. They should also know how many years you have been practicing and, most importantly, what you consider your specialty. Disclosing your specialty area is very important, because clients have a right to know up front if you are practicing within the boundaries of your training and expertise. In a recent case, for example, a BCBA with two years' experience in autism and developmental disabilities was asked by a parent to help with a suicidal and possibly homicidal teen on the autism spectrum. When she reminded the frantic mom that this was not her area of expertise, she was scolded for not being sensitive to the mother's needs: "I'm desperate here, can't you see that? I'm afraid he's going to hurt himself or someone else, and I don't know who else to turn to. You've got to help me." When the BCBA told the mother that a referral to a suicide counselor was needed, the mother replied, "I don't want anyone else to know about this; I've got enough trouble as it is. Please don't tell anyone. Just tell me what to do."

Clients have a right to know up front if you are practicing within the boundaries of your training and expertise.

Because behavior analysts have an obligation to keep current with new developments, this section of your declaration should be updated every year. If you lose clients because they do not feel comfortable with your expertise, consider this a blessing in disguise. Surely you do not want to find yourself partway down the therapy road, have something go terribly wrong, and then have it revealed that you were not qualified to take the case.

2. PROFESSIONAL RELATIONSHIP, LIMITATIONS, AND RISKS

What I Do

This section begins the dialogue in which you explain the basis for behavior analysis services. This can be a challenge to explain in plain English, or Spanish, or Hmong, but it is here that you express your understanding of human behavior. In the sample Declaration (“What I Do”), we say that behavior analysis is “a unique method of treatment based on two ideas: (1) that most important human behavior is learned over time and that (2) most behavior is currently maintained by consequences in the environment.” It is critical to put this philosophy on the table to make sure your client understands your position. We also stress the notion that, as behavior analysts, we work with input from clients and that we develop a plan to acquire new behaviors. It is also important to let clients know that you work with significant others, so family members will play a key role in the therapy if this is part of the treatment design.

How I Work

It is important to spell out for clients that we do not make judgments about behavior and that it is part of our belief system that “psychological” pain and suffering come from behaviors that do not adapt well to the current environment. We do consult with parents, teachers, and other individuals significant in the life of our client (with permission). This should be clearly spelled out at the initial meeting where the declaration is presented. This concept is not likely to be something parents or family members might understand otherwise. Most people would expect you to come in and work only with the individual child or adult, much like the individual session a psychiatrist would have.

It is a strong selling point of behavior analysis that we are not interested in changing only behavior per se, but rather we work toward achieving important life goals for the client. We refer to this as “increasing personal happiness and effectiveness,” but you can explain this in your own terms in the declarations you develop.

Behavior analysts work toward achieving important life goals for the client.

Finally, in the last part of this section, we urge BCBA_s to make clear to clients that we are not in the “cure” business, and that we do not guarantee results. If clients don’t understand from the beginning that results aren’t guaranteed, they will surely become disenchanted when expected outcomes are not forthcoming.

3. CLIENT RESPONSIBILITIES

Up to this point, the declaration has been a clarification of your qualifications and how you operate. In this section of the declaration, you’ll cover the possibly touchy subject of what your expectations are for clients. We need and expect their full cooperation and their total honesty in dealing with us. In a recent case, it was discovered that the mother-in-law did not approve of applied behavior analysis services for the child. In most circumstances this might not matter, but in this matriarchal family, it did. Her position was that the tantrums, aggression, and noncompliance of the 7-year-old client were the result of poor discipline, and she blamed her son for not using his belt often enough. “He’s just spoiled; he does not need psychologists poking around in his life. My son is to blame for treating a 7-year-old like a baby.” The mother-in-law managed to cause so much trouble that the case was terminated, following standard protocols and necessary referrals.

If you can accomplish buy-in to the behavior analysis approach, you will probably be asking parents or family members to take

data. The success of the treatment depends on those who take the data being absolutely honest about it. There may be considerable pressure to make the behavior analyst happy by presenting data that show the problem is solved. Fake data are a behavior analyst's worst nightmare. Essentially what the mediators/stakeholders (whether parents, teachers, or night shift supervisors) are saying is that they do not value data collection; it means nothing to them. The importance of accurate data should be brought up not only prior to the onset of services but also occasionally during the entire treatment process.

Behavior analysts need to know more about the client than what the data related to the target behavior show. Many people are surprised that we are interested in medications that the client might be taking. Of course, it is critical to know about drugs and medications because they could affect the client's behavior. A particular concern these days is the contamination of our evidence-based methodology with popular but confounding and potentially dangerous treatments, or "cures," as they are sometimes called. It is best to find out when services begin if there are any procedures or substances in use such as strange or exotic vitamins, diets, or even "natural" products such as bee pollen as treatments. Data from the National Science Foundation biennial report (Shermer, 2002) shows what we're up against when it comes to dealing with non-scientists. The Shermer report (2002, p. 1) states that "30 percent of adult Americans believe that UFOs are space vehicles from other civilizations, 60 percent believe in ESP, 40 percent think astrology is scientific, 70 percent accept magnetic therapy as scientific, and 92 percent of college grads accept alternative medicine." In a broader sense, there is a more fundamental problem, which is that "70 percent of Americans still do not understand

A total of 40% of adult Americans think astrology is scientific and 92% of college graduates accept alternative medicine.

the scientific process, defined in the study as comprehending probability, the experimental method and hypothesis testing” (Shermer, 2002, p. 1).

Finally, to prevent annoying requests for last-minute schedule changes, it is a good idea to include your personal (or your company’s official) policy on appointments. Note that we indicate a 24-hour notification policy, but your company may prefer some other time frame. If your policy is that missed weekday appointments cannot be moved to weekend days, this should be stated in the declaration.

4. ETHICS CODE FOR BEHAVIOR ANALYSTS

Behavior analysts should be proud of their strict code of ethics and should make sure that all clients are aware of these standards. We recommend making a copy of the code and presenting it to new clients, possibly with key sections highlighted. As a behavior analyst, you should also inform clients that if they have any questions about your conduct, they may contact the BACB directly at the address listed on the Declaration.

One very important element we always recommend including in the Declaration is a clear statement on gifts and invitations to dinners, parties, and celebrations. These small tokens of appreciation can start the unwary behavior analyst down the slippery slope to compromise of professional judgment and create dual relationships.

5. CONFIDENTIALITY

Breaches of confidentiality are among the most frequently occurring problems for BCBAs. Consultants are often asked to give out information that is confidential. Professionals who should know better also sometimes reveal confidential information. We recommend telling clients directly that you will keep any information given to you as strictly confidential and that you cannot

give out information about any other clients. It is also wise to inform clients of the limits to confidentiality; that is, if you feel that the individual is a danger to himself or herself or others, you can share this information (Koocher & Keith-Spiegel, 1998, p. 121).

Be sure to check your local laws regarding reporting of abuse or neglect, and include this information in your declaration. At our ethics workshops, we've had at least two cases reported to us in the past year where a BCBA saw abuse or evidence of abuse, reported it, and then was quickly fired by the family. Abuse notification is supposed to be confidential, but often there are leaks or the family makes a good guess about who reported the incident. Avoiding possible loss of revenue from a dropped case is no reason to look the other way when it comes to abuse and neglect; to do so is not only unethical but is also a violation of the law.

6. APPOINTMENTS, FEES, AND EMERGENCIES

In this final section of the declaration, you'll need to spell out the details of how appointments are made, your fees and how billing is handled (if you work for an agency the business department will handle this), and the method for dealing with emergencies. At a recent conference on ethics for itinerant teachers who work in the homes of DD clients, there was considerable discussion as to whether clients should be given the cell phone numbers of their therapists. Most of the teachers who gave out their cell numbers regretted the decision. However, after giving some thought about the implications in your particular situation, you should specify the rule for phone calls from your clients; you can't just be on call 24/7. As a final item in this section, billing is a topic that most behavior analysts would not discuss with clients; this is handled by the business office. At a minimum, you must describe how this is done and who should be contacted if there are complications. Other than turning in their hours, under normal circumstances, BCBA's are not involved directly in billing.

DISCUSSION, AGREEMENT, SIGNATURES, DATE AND DISTRIBUTE

At the end of the declaration information session, which could take 30 minutes or so, the client and the behavior analyst should sign the declaration. A witness probably one of the stakeholders should also be present to ensure that signatures are authentic. Date the document, provide a copy to the family, and keep one for your files.

REFERENCES

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14

Finding an Ethical Place to Work

WARM-UP

The following is a question that came to the ABA Ethics Hotline from a BCBA who clearly made a mistake when she accepted a job working at this company.

“One of my close friends and coworkers reached out to the hotline a month or so ago concerning ethical violations within a company for which she and I worked. I am no longer employed, and my friend has given her notice to resign. I’ve had quite a few major legal and ethical issues from this, and I don’t know where to go from here. I understand this is an Ethics Hotline, but perhaps you could provide some feedback.

“The company we worked for has grown very quickly and has put profit over any and all client needs. We have been denied adequate supervision, adequate training for RBTs, and have been subjected to a very hostile work environment, among many other ethical violations.

“Three months ago, I discovered that our ‘quality assurance’ BCBA was altering my signed treatment plans to decrease my recommended treatment hours (for supervision and parent training) and deleting my clinical recommendation paragraphs. When I brought this major illegal behavior to the BCBA’s attention, it was brushed off by her and the entire company. I was told I had to agree to the new plans and

there was no room to negotiate. After some investigation, I later discovered that the BCBA had changed nearly ALL of my treatment plans after I had signed them. One of the treatment plans that my coworker took over was significantly different from my original plan. One code (for billing) was dropped to 10% from 20% and the parent training code was reduced as well. My signature was removed from the document or was altered in some way, but the family and clinicians knew I wrote and billed for the plan. When I brought up the ethical issues of denying us ability to use our clinically recommended hours and mentioned legal concerns, I was told I was being unethical for refusing to sign the documents.

Last month I was terminated for reasons that I can prove are false. I suspect and can prove I was terminated for whistleblowing (a threat of filing a Notice with the BACB if changes weren't made) along with regular indications of what appeared to me to be illegal activity. I believe that altering medical documents is a felony. I am mostly concerned about the illegal and unethical conduct that is affecting the clients. Parents have begun raising concerns too.

I spoke to another employee who was terminated after she discovered illegally altered behavior intervention plans and other medical files that were tampered with on DocuSign after the BCBA signed them. When this previous employee confronted the VP of operations (who is an investor) she was told, 'Be nicer to corporate.' This employee was then demoted, her access to all company files was stripped, and she was terminated weeks later for 'Using too many big words.'

"I don't know what to do about this. I want justice for my unlawful termination, but I also want to report the illegal and fraudulent behavior of the company as I cannot turn a blind eye to this. I just don't know who I am supposed to contact to start a complaint or investigation into insurance fraud.

"Who is the right agency to handle this? I just keep reading 'Contact authorities' or 'the Board,' but the BACB deals with ethical issues. I don't know what 'authorities' to contact or what sort of attorney would handle this.

"This company is owned by an investment firm and the head of operations is the main investor and is an MBA, not a BCBA. I didn't realize this at the time I was hired." (See 6-month follow-up at the end of this chapter.)

DO YOUR HOMEWORK

Before you agree to any interviews with ABA companies, we strongly advise you to find out as much as you can about the company's history and current operation. Internet searches often yield information that you won't find on their website or in the interview. There are sites where employees leave comments related to ABA companies, and you might find these useful. You can also determine if the agency/company/organization is accredited, which could be important. Accreditation usually tells you something about the work environment and if the company is required to meet high standards. One red flag is if the company has been bought out by private equity partners. If not, and it is in the hands of behavior analysts who come under the code of ethics, that is usually a good sign. Many company websites also give some background on their behavior analysis staff, so check on this to learn more about who your potential future colleagues. There are two more things to watch out for. First, if you are considering a position at an agency where you will be the only behavior analyst, be sure to ask questions about how behavior program decisions are made. Second, if you are applying to work for a school district, be sure to take a copy of the code of ethics with you to the interview. Be prepared to ask questions about procedures for consent for behavior assessments and programs.

HOW TO PRESENT YOURSELF

Armed with as much information as you can gather about each company where you are applying, make sure that when you arrive at the interview that you give a professional appearance. Business casual is the standard dress code, and the ideal demeanor is "professional"

but not uptight.” You need to be relaxed, alert, and ready to have a good conversation. You should pitch yourself according to the ethics code. Be honest about your qualifications, don’t exaggerate your skill set, and be prepared to discuss your scope of competence. You will want to read and think about Code 1.10 regarding any personal biases you might have. Be sensitive to questions along that line when it comes to the types of clients you might be working with and colleagues from different backgrounds. Also, depending on whether this is a first, second, or third interview with a company, you may be meeting with the corporate recruiter, the clinical director or the CEO. You will need to pick and choose which questions are appropriate from those listed below.

QUESTIONS TO CONSIDER ASKING IN YOUR INTERVIEW

Caseload

1. How is caseload determined?

Good answer: We follow the guidelines suggested by the BACB.

Dubious: Well, that depends on how many clients we are admitting. This could vary from time to time.

Poor answer: That’s a decision made using our own formula based on BCBA billable hours. This is proprietary information, so I can’t tell you more until you sign our contract.

2. What would my supervision caseload be? Would I also be assigned individual clients as well?

Good answer: Five to ten cases that are handled by RBTs that you supervise, and this depends on the severity of the cases.

Dubious: It’s hard to say, we would have to wait and see . . .

Poor answer: We have one BCBA who has 30 clients and 15 trainees and RBTs; it just depends on how hard you want to work.

3. How does the company decide which client goes to which BCBA?

Good answer: We match the clients to the expertise of the BCBA; we don’t want to go beyond the boundaries of competence for anyone.

Dubious: It depends on whichever BCBA has an opening. Our staff can handle most any kind of case.

Poor answer: There are no special cases; it's all behavior, right?

4. Would the company support the BCBA if they stated they felt unable to take on more cases or a specific case?

Good answer: Absolutely. Our clinical director is in very close touch with our BCBAs; she meets with them once a week to discuss their cases, do some troubleshooting, and decide if we need to change any assignments.

Dubious: I think the BCBA shouldn't really need support. BCBAs are here to support the organization and their RBT staff.

Poor answer: Well, we would have to talk about that. We want team players who will do what is necessary to make the company a success.

In-Service and Support

5. Who would I contact if I run into a problem behavior I've never addressed?

Good answer: Our clinical director is a BCBA-D and an expert in many clinical areas, plus we have a budget for bringing in behavioral consultants on a wide variety of special cases. And of course, we have a pretty good library of books and a subscription for the Wiley website so that you can search for articles on any topic in *JABA*. We believe that *JABA* is often the best source of information.

Dubious: We expect our BCBAs to be resourceful problem solvers. I guess you could ask one of the other behavior analysts; we have a meeting once a month where problems are discussed.

Poor answer: Google has the answers to almost everything; you just have to know how to formulate the question.

6. Is the company an Approved Continuing Education (ACE) provider, and do you offer continuing education opportunities and/or other means for clinical support and guidance (to both BCBAs and students/RBTs)?

Good answer: We pay all expenses for you to go to one national conference and one state conference per year, and

we encourage our behavior analysts to present when they have good material. We also bring in one of our expert consultants each year for a half-day dedicated workshop, and the rest of the day is individual consultation with staff.

Dubious: I think you are required to get CEUs each year, right? So, you can request unpaid time off to go to a conference. We pay mileage, but the BCBAAs pay the rest.

Poor answer: I've seen people fall asleep at these conferences and still get CEU credit, so we urge our BCBAAs to get their CEUs online. Also, everyone knows there is a lot of partying that goes on at these conferences, and we aren't paying for that.

7. Does the company offer administrative time or some other specifically allotted time for supervisors to meet/train line therapists (outside of insurance billable hours)?

Good answer: Sure. All you have to do is work that out with our clinical director. Just let her know what you need, and she will arrange all the details. This is unbillable, so we consider this part of our overhead. We see this cost as necessary to maintain high-quality behavioral services. We've found that this also reduces turnover among our RBTs, since they feel like they are all continuing to learn, and of course, it lets them know how much we appreciate them. That counts for a lot.

Dubious: Well, really that should be part of supervision. It is part of the 5% that RBTs and trainees get each month. I don't see any reason to add more hours that would be unbillable.

Poor answer: My understanding is that RBTs get 40 hours of training on the front end. That should be enough for them, plus they should be reading journal articles and looking on social media for tips on training.

Supervision

8. What are your procedures for supervision? How do you know if your supervisors are following the ethics code and maintaining high-quality shaping of their staff?

Good answer: Our company utilizes a hierarchy training

system with all of our BCBA_s, especially our new BCBA_s. Our senior level staff receives monthly supervision from our clinical director, and those senior BCBA_s will provide supervision and check-ins for all of our middle-level and new-level BCBA_s. You will have a monthly meeting with your peer supervisor.

Dubious: Well, since we work in a clinic, it's easy to observe all of the BCBA_s and their supervision. We all just observe each other and make sure everyone is following the guidelines for supervision.

Poor Answer: You've passed the exam already and had two years of master's level education. You shouldn't need supervision unless you are doing something wrong.

9. How do your supervisors meet Code 4.08 and 4.10 for evaluating their supervision of trainees and RBTs and evaluating their supervision practices?

Good answer: We bought a dashboard software platform just for this purpose. The supervisors enter their data weekly on their RBTs and supervisees as well as client progress. The dashboard automatically calculates the data and gives real-time graphics showing exactly where everyone is relative to their goals. Anyone in the red zone immediately is flagged, and the supervisor meets with them to review the data and then conducts in-person observations and begins the shaping process using BST. Most supervisees are in the green zone the majority of the time; occasionally one will slip into the yellow zone, and they will receive an automatic text message that says, "Please meet with me at your earliest convenience."

Dubious: The clinical director sent out a memo to all the BCBA supervisors and reminded them about those two code items. I think they also had a meeting to discuss how to meet that standard.

Poor answer: I'm not familiar with the BACB Ethics Code. Can you remind me what those two code items are about?

10. Who would be *my* supervisor? I would like to meet that person if possible.

Good answer: For the first year that you are here with us, you will have a senior BCBA as your mentor and supervisor. Of course, we know that you are fully trained, but there is so much to know. From our experience, we know you'll have questions.

Dubious: Your supervisor will be the clinical director. He has been with us a long time; he was originally an OT and worked at a rehab clinic in town. Everyone loves him.

Poor answer: Wait, I thought that BCBAs didn't need any supervision.

11. "May I observe a supervision session?"

Good answer: That can be arranged, but it will take a little doing since we will have to get some forms signed by parents. Also, these will be here at the clinic. I don't think I could get you into one of the in-home sessions. Our supervisors love what they do and would be delighted to meet you.

Dubious: Sure, no problem, we don't normally do this but for you . . . What was it that you would be looking for?

Poor answer: I'm not sure about this. Asking to observe a session before you are hired is an unusual request. We don't usually allow strangers into the clinic itself, you know . . . because of privacy requirements.

Ethics

12. Do you have an ethics committee? Who is the chair of the committee?

Good answer: Yes, I was going to bring that up, so thanks for asking. We are totally committed to the BACB Code of Ethics for Behavior Analysts. We have an ethics committee headed by our senior BCBA-D; ethics issues go to her, and she meets with people individually. This is all on a confidential basis, and it seems to work very well.

Dubious: We tried having a committee, but no one volunteered to chair it, so the idea sort of fizzled. I guess if you

came on board, we could look into reviving the idea if that's something that you might be interested in doing.

Poor answer: Hmm, I don't think I've heard of that before . . .

13. How often is in-service ethics training conducted by the company?

Good answer: We have a monthly ethics in-service where we go over certain code items and have discussions about scenarios that are based on our current cases. This session is conducted by our clinical director who trained under some professor who wrote the book on ethics. I can't remember his name.

Dubious: We conduct in-service training on an as-needed basis. I don't know that the topic of ethics comes up much, though. Basically, we just have our policy and procedure manual to fall back on if someone messes up. One of our trainees got caught padding his hours sheets, which is unethical, and we had to let him go.

Poor answer: Well, my reading of the handbook and the ethics code for RBTs is that they don't need CEUs. For my BCBAs, we just let them pick up ethics CEUs when they go to a conference.

14. What are the procedures for reporting someone in the organization for an ethics violation?

Good answer: This is a delicate matter that needs to be handled by the book. First, any violation is reported to the chair of the ethics committee, who will look into the matter and see if it was in fact a violation or just a misunderstanding or miscommunication. If it is a violation, we try to determine if it can be handled informally or not. If not, then the person who reported it and who has firsthand knowledge files a Notice of Alleged Violation with the BACB. We help with the documentation on that.

Dubious: As far as I know, we have very few ethical violations at our agency, so we don't really have a process to speak of.

Poor answer: Our owner takes care of any ethics problems, and normally he just fires people on the spot. This works very

well for us. It makes people scared to violate the ethics code.

15. Does your organization fully support the BACB Code of Ethics?

Good answer: Yes, absolutely.

Dubious: Well, yes for the most part, but as you know there are a lot of gray areas in the code. There are different opinions about some of the so-called standards.

Poor answer: Now when you say “fully,” exactly what do you mean?

Evaluating Employee Performance

16. What is the turnover among RBTs and BCBAAs at your company?

Good answer: We have very little turnover, I would say no more than three or four per year at the RBT level and maybe one per year at the BCBA, and most of those were because the person got a job or assignment in another state. We do anonymous satisfaction surveys quarterly to take the pulse of our employees. When something shows up on the survey that could help us improve working conditions, we jump right on it.

Dubious: To tell you the truth, turnover among RBTs is fairly high and we had three BCBAAs all quit at once last month. I don’t know what this is about, but that’s why we are interested in having you fill one of those slots.

Poor answer: Do you mean people who quit or those that are fired or both?

17. What systems are in place to assess and analyze employee performance? If an employee is said to have “poor performance,” how is this handled?

Good answer: We have definitions of each level of performance from 1 to 5, where 5 is excellent. The BCBAAs rate all their RBTs and trainees on a regular basis based on objective measures. A 1 or 2 gets looked at right away, and we employ a BST model for

improvement. Sometimes the performance is due to something else, and for that they are sent to HR for counseling.

Dubious: HR handles all the annual performance ratings. I'm not sure how that works though.

Poor answer: Working in human services is a very subjective business. Our owner has an MBA, and she makes all the promotion and raise decisions.

Owner/Management Involvement

18. Is the owner of this company a BCBA?

Good answer: Yes, she's a BCBA-D, she got her training at one of the leading behavior analysis programs in the United States, and she is routinely asked to give presentations on the supervision management system she has developed here.

Dubious: Well, yes and no. He was a BCBA but then let his certification lapse. He said he didn't have time to travel to conferences to get his CEUs, but he is a behavior analyst through and through.

Poor answer: Originally, the company was started by three BCBAs, but just recently a private equity company bought them out and we are going through some changes.

19. How involved in day-to-day operations are the owners (directors, managers) of the company?

Good answer: We have a board of directors, but they are definitely hands-off in terms of the day-to-day running of the company. They set policy, but our CEO is our manager.

Dubious: Well, to be honest, some of the board members are parents, and they do come around asking questions. They sort of intimidate our staff, and some want special treatment for their child.

Poor answer: I guess a board member has a right to get involved in day-to-day operations, such as how we provide treatment and so on. After all, they founded the company and want it to be run according to their vision.

Company Policies and Contracts

20. Do you have an HR department to deal with personnel issues in the company?

Good answer: Yes, we have a small HR department that handles complaints within the company and manages our insurance claims and employee benefits. If there was an issue such as employee harassment, it would go to HR to investigate and make recommendations.

Dubious: I guess you could call it a department. It is just one part-time person who handles insurance claims. I don't know about personnel issues; that's probably handled by the CEO.

Poor answer: We had a full time HR person, but she quit and hasn't been replaced. Do you know of anyone who needs a job? The hours are flexible.

21. Is there a company policy against dual relationships and conflicts of interest that might come up with clients or with staff?

Good answer: Yes, we have this in our policy and procedure manual and our CEO is vigilant in watching out for dual and multiple relationships. If he feels any of our behavior analysts, including RBTs and supervisees, are getting too close to the clients, the CEO will rotate them to other clients. Our office manager asked recently if his son could enroll here for behavioral services. The CEO said no but then helped him find a good agency not far from here.

Dubious: I would have to look into that for you. I know that there was some discussion about one of the RBTs being assigned to work in the home of a relative (of the RBTs), but I'm not sure how that went.

Poor answer: What exactly do you mean by "dual relationship"?

22. Is there a strong no-nepotism policy?

Good answer: Same answer here. Our CEO has two adult children who are BCBAAs and who wanted to work here with their dad. He was firm and said, "No, that's not a good idea. It will do nothing but cause morale problems with my staff."

Dubious: We certainly have a policy on that, but I'm not sure it is fully enforced to be honest. Good staff are hard to find, you know, and we can't always be picky.

Poor answer: My understanding is that if you hire a relative to work for you that they are more motivated than your average employee; they want to prove to mom or dad that they can do the work.

23. Is a non-compete clause included in your contracts?

Good answer: No, we don't believe in non-competes, and besides, we are following the lead of BHCOE,¹ which has come out firmly against non-competes.² Of course, we are accredited by BHCOE. We are one of only two agencies in this state to be accredited. I'm surprised you didn't ask about that earlier.

Dubious: Well, it depends. Our RBTs don't actually sign contracts, so of course they don't have to sign a non-compete. Some of our BCBA_s are required to sign non-competes because we're worried that they will leave here and set up their own competing company.

Poor answer: Our board of directors is insistent that everyone sign a non-compete. The document says that employees cannot work in the ABA industry for the next five years anywhere in this state. We've taken a couple of people to court on this and have won. We haven't had anyone challenge it since then.

24. Would I have to sign a non-disclosure agreement if I signed on with your company?

Good answer: No of course not.

Dubious: You might, if the clinical director thinks that you might try to compete with us if you left. Is this a problem for you?

Poor answer: I would say, "Yes," you would have to sign a non-compete since based on your history, we wouldn't want to compete with you in this space.

25. I would like to take the contract with me and spend some time reviewing it with my attorney. Would that be okay?

Good answer: Sure, that's fine. Let us know if you have any questions. We would like an answer on our offer within 72 hours though.

Dubious: Well, that's interesting, I don't think that question has come up before. I'll have to get back with you on that. Is there a number where I can reach you?

Poor answer: No, I'm sorry we couldn't allow that. The contract stays here. We would like to think we have a relationship based on trust.

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Follow-Up 6 Months Later

I hired an employment attorney who advised me to file Notices against the two BCBA. The matter was settled out of court. As of today, both BCBA are still practicing at the same location. I have found a new position as a mentor. I love my new position; I feel like I'm helping BCBA realize they're not alone and someone has their back and is on top of the administrative staff. Thankfully it's been 6 months and things have been running smoothly at my new company. I do wish there were different results for the BCBA I filed against, though. I wanted to make a difference and bring the company down, but I felt like I was fighting the battle alone.

NOTES

1. Behavioral Health Center of Excellence.
2. <https://bhcoe.org/project/non-compete-agreements-with-applied-behavior-analysis-workers/>

15

Practical Tips for Ethical Conduct on Your First Job

If you are a student, at this point in your professional development thoughts about ethical problems in your chosen career probably seem far, far away and much more theoretical than practical. However, in the not-too-distant future, perhaps just a few months from now, you will be starting your first job. You will almost immediately begin to confront very real ethical dilemmas, some of which could affect the rest of your professional life. The purpose of this chapter is to outline some common issues that are likely to be encountered and to provide you with practical tips for handling these issues.

CHOOSING A SETTING OR COMPANY

The first big decision will involve choosing your first professional position. New consultants tend to think that the primary considerations for deciding on a job involve salary, location, potential for advancement, and matching professional interests and behavioral skills. All of these are clearly important factors, but one additional choice involves consideration of the ethics and values of the company or organization itself. Currently, behavior analysts are a hot commodity in many cities across the country. For some agencies, hiring a BCBA is essential for funding, insurance reimbursement,

or to get relief from a federal lawsuit. In such cases, the agency may offer very high starting salaries and extensive benefit packages just to get you on board. Be wary and ask a lot of questions about these positions. Remember the old saying, “When something appears too good to be true, it is probably too good to be true” (see Chapter 14 for questions to ask). There is some chance that you will encounter situations where you are asked to sign off on programs that you have not written, approve procedures with which you are not familiar, or to support agency strategies that are more public relations smoke and mirrors than behavioral methodology. It is entirely appropriate to ask about the history of the agency, company, or organization. Who founded it? What is the primary mission of the company? What is their vision going forward? What are the values of the organization? And how does behavior analysis fit into this framework? You will also want to consider if there are any problematic issues associated with the organization. For example, is this company currently under investigation by state or federal officials? Are there any “citations” from a recent state or federal survey? Other questions to ask include the following: How many other behavior analysts are currently employed there? What is the company’s turnover rate for behavior analysts? What is the funding stream? Who are the clients? Who will you be primarily supervising? Will your supervisees be RBTs and BCaBAs or trainees wanting to get their supervision hours? What other responsibilities will you have such as chairing committees? Will you be expected to attract and hire additional BCBAAs?

You should be able to discern from the answers and the way the interviewer handles your questions whether there might be some ethical problems with the way that the company operates. A recent case, for example, involved a small private school for children with autism that was started by parents. The school, initially headed by a BCBA-D, came under scrutiny by some parents and former employees when it was learned that the BCBA-D quit abruptly and was not replaced by another equally qualified professional. Furthermore, two of the BCaBAs also left the organization and were not replaced. The school originally attracted parents

with its claim of a behavioral approach led by a certified person. Despite the recent vacancies in behavioral positions, it still advertised itself as “behaviorally based” and still charged top dollar. Clearly, since this organization had gone more than 2 years without any behavior analysts, this could be a very challenging situation for a new hire. To have any chance of success as a behavior analysts in this school, a keen awareness of ethical problems and an ability to resolve them would be required. In another case, a rehabilitation facility that was part of a national chain billed itself as behavioral but hired a non-behavioral administrator. This is quite common, but in this case the individual was subtly *anti-behavioral* in her manner in dealing with the BCBAAs and in her mode of operation. BCBAAs were told that functional assessments did not need to be done on every client because the problem was quite obvious in most cases. The administrator also said that data did not need to be taken—it took up too much time—and that she “trusted her staff’s impressions” of client progress. Sadly, in this case, the BCBA did not ask enough questions in the initial interview, she did not actually meet the administrator who held these views, and she was just a little too eager to start bringing home a paycheck.

Your supervisor sets the tone for your work: “Just get it done; I don’t care how,” is far different from “Be thorough; get it right; we want what is best for the clients.”

WORKING WITH YOUR SUPERVISOR

In your job interview with the company or organization, it is a good idea to ask to meet your supervisor. While is rarely offered, an ethical agency will comply if you make the request. Usually, you will meet with the administrator, go on a brief tour, perhaps have lunch with some of the professional staff members, and then sit down with someone from the personnel office

to negotiate your salary and benefits. However, meeting with the actual person by whom you will be supervised is essential if you want to start your first job on a strong ethical foundation. There are many things you can learn from potential new supervisors, including their style: Are they a reinforcing kind of person or somewhat negative or aloof? Are they interested in working with you, or do they want you do to their work? Is there any chance they are somewhat jealous of you because you might have a degree from a prestigious graduate school, and you might be somewhat threatening? You should feel certain that you will not be asked to do anything unethical. This translates into (1) you will be able to do your work responsibly; (2) you will have the time and resources to do a great, ethical job; and (3) your supervisor, most likely the clinical director, will be there to guide you through troubled waters should the occasion arise. Your supervisor sets the tone for your work: “Just get it done; I don’t care how,” is far different from “Be thorough; get it right; we want what is best for the clients.” So, in meeting with new supervisors, you might ask about their philosophy of management and about the most difficult ethical issue they have encountered in the last year and how they handled it. Or you might ask about any ethical issues you might encounter in your work. An open-ended question here can get the conversation going, and you can carry it from there with follow-up questions.

When you’re finished with this interview, you should have a secure, optimistic feeling about working for this person. If you feel apprehensive, think twice about taking the position, even if it is more money than you ever thought you’d see in a first job.

In your first 3 months on any job, you have a grace period where you can ask questions without appearing to be slow to catch on.

LEARN JOB EXPECTATIONS UP FRONT

If you have followed our suggestions up to this point, you will be happy and excited about your new position as a professional behavior analyst, making a good living, and helping people. Before you get too carried away, it would be a good idea to clarify exactly what you are supposed to do on a day-to-day basis. In your first 3 months on any job, you have a grace period where you can ask questions without appearing to be slow to catch on. If you are going to be analyzing behavior, doing functional assessments, writing programs, and training staff, you should be well prepared from your graduate work. However, each agency and organization has its own method for doing each of these tasks. Your first assignment is to find out how administrators want it done. So, ask for copies of “exemplary” intake interviews, case workups, functional assessments, and behavioral programs. You can avoid embarrassing and potentially ethically challenging situations if you know how your new agency routinely handles complaints from consumers, inquiries from review committees, and issues with state agencies. You can make sure that your ethical standards match the other professionals if you review minutes of IEP or case-management team meetings and take a look at behavior programs written by previous behavior analysts. You might also want to know in advance if you are expected to chair the weekly case review meetings or to simply attend and whether, in these meetings, there is open discussion of ethical issues. One of the most important job-related ethical issues involves whether you will be working within your scope of competence or whether you will be asked to take on cases or tasks for which you are not fully qualified.

One freshly graduated BCBA joined some others in a mental health facility, where she was assigned to the Developmental Disabilities Defendant Program for which she was highly qualified. After a few weeks, she was asked to do some IQ testing on some mental health patients. This proposed assignment was

on short notice and under the pressure of a short deadline. She avoided taking intelligence-testing classes in graduate school and pointed this out to her supervisor, along with a question about why this requirement was not mentioned in the job interview. Then she pointed out how the BACB Code discourages behavior analysts from working outside of their area of expertise. In some cases, this “attitude” can brand a person “not a team player,” but really it is an ethical issue. Even if she did do the testing, it would not be valid, and what if someone made a decision based on the test scores? This would surely be unethical. So, to avoid situations like this one, make sure that you ask plenty of questions early on. In the job interview and once you’ve started work, ask about what is expected, and establish the ethical boundaries necessary to protect yourself from engaging in unethical behavior.

Most people just starting out on their first job are excited to be doing what they’ve dreamed about for years, which is practicing behavior analysis as a professional and making a difference in people’s lives.

DON’T GET IN OVER YOUR HEAD

Most people just starting out on their first job are excited to be doing what they’ve dreamed about for years, which is practicing behavior analysis as a professional and making a difference in people’s lives. Early on, you are likely to be so grateful to have a job that you will do nearly anything to please your supervisor and upper-level management. Your enthusiasm could actually cause some harm. If it turns out that you accept more clients than you can manage or take on cases without recognizing they are out of your scope of competence, there clearly could be damage in some form to a client. Your most important goal is to do a first-class

job on every case that you are assigned. If you put your heart and soul into your work, watch out for conflicts of interest, and “do no harm,” you will be fine. But if you take on too many cases, then it is almost certain that clients or stakeholders will start complaining, your supervisor will notice that your reports are incomplete, or the peer review committee will begin making negative comments about your programs. In behavior analysis, doing more is not always associated with doing better. Quality counts. This is especially the case because you are affecting the life of a person with your work. You owe it to your clients as well as yourself to closely follow Code 4.03, Supervisory Volume, and take only the number of cases that you can do well and hand the rest back to the clinical director. You will probably have to work on your autoclitics in the process: “I’m sorry, Ms. Rodriguez, but I have to give this case back to you. I would love to work with a client like that, but I am at my maximum right now.” Be sure to document this interaction by taking contemporaneous notes, which are filed away for easy reference.

This same philosophy holds for taking on cases for which you have no expertise (see Code 3.03 Accepting Clients). In your training, you may not have worked at all with clients who are sex offenders, who have a comorbid diagnosis of mental illness, or who are profoundly physically disabled. You are not doing yourself or the client any favors by taking these cases. You will no doubt be under a lot of pressure to do so from parents, teachers, or program administrators, but if you realize the harm that could be done by taking a case and then handling it badly, you will think twice about this decision. The easiest and most ethical stance to take is to always work within your range of competence. If you want to broaden your scope of competence (see Code 1.05), the proper approach is to find another professional to serve as your mentor, someone who can give you proper training and supervision. You may also want to consider taking additional graduate coursework in a specialty

area in addition to doing a practicum with supervision from an expert in that area.

USING DATA FOR DECISION-MAKING

One of the distinguishing characteristics of the profession of behavior analysis is the reliance on data collection and data analysis. The FABA has a motto: “Got data?” This logo is available on T-shirts, coffee mugs, and key chains as a spinoff on the California “Got milk?” campaign of a few years ago. If there is anything that distinguishes us from other human services professionals, it is that we have a strong ethic in favor of objective data (not anecdotal, not self-report, not survey, not questionnaire) on *individual* behavior and the use of these data to evaluate the effects of treatments we devise and implement (see Codes 2.17 and 4.08). It is unethical to continue a treatment without taking additional data to see if it was effective. Most behavior analysts agree to this, and, although it is procedural, it is written into our code of ethics (Code 2.18). So, as long as you are taking data and using them to evaluate a procedure, you are ethically in the clear, right? Well, not exactly. It is actually a little more complicated than this. First of all, as you know, there are data, and then there are *data*. The latter is reliable, meaning interobserver agreement (IOA) checks that are carried out under specified conditions with a second, independent observer and reach a certain standard) and socially validated (meaning that standards of social validity have been met, again under specified conditions). It can be argued that a practicing behavior analyst not only has to take data to be ethical but that the data have to meet an IOA standard and be valid. After all, there is a lot riding on the data including treatment decisions, medication decisions, and retain, transfer, or discharge decisions. As an ethical behavior analyst, you would not want to use data that were tainted by observer bias or that had an IOA of, for example, 50%. Furthermore, you wouldn’t want to make treatment decisions if you thought the

data had no social validity.¹ So, what do you do as an ethical behavior analyst? You carry a burden to not only be data based in your decision-making but also to assure the client, stakeholders, and your peers that you have quality data. Remember that quality data is not self-report, it is not anecdotal, and it is not a questionnaire.

There is one final issue about the use of data in decision-making. This has to do with whether your treatment was in fact responsible for any behavior change. Again, to be ethical, it would appear that it is your responsibility to know in a functional sense that it was your treatment that worked and not some outside or coincidental variable. This suggests that as a practical, ethical matter, you should be looking for ways of demonstrating experimental control either with a multi-element or multiple baseline across behaviors or settings design. If you put in a treatment and the behavior changes, you cannot in all honesty say it was your intervention, because you don't really know this for sure. Right about the time you instituted your treatment plan, the physician could have made a medication change, or the client may have developed an illness or gotten some bad news, or perhaps someone else put in an intervention about the same time without your knowledge (e.g., the dietician cut back the person's calories, the client's roommate kept him up most of the night). In summary, as an ethical behavior analyst, you are obligated to be data based in your decision-making and to develop a high-quality data collection system that allows you to address issues of reliability, validity, and demonstrations of experimental control. You will find that professionals in many areas don't take all of these issues into consideration, and you should be proud to be part of a profession that takes data so seriously.

TRAINING AND SUPERVISING OTHERS

As a behavior analyst, you are probably already aware that others do much of the actual treatment. These "others" are usually

paraprofessionals who are trained by you. Your job as the behavior analyst is to take the referral, qualify the client to make sure they match your expertise and resources, and make sure this falls into the behavioral problem area that your agency/company serves (as opposed to being a nursing problem or education issue, for example), and then perform an appropriate functional assessment to determine likely causes of the behavior. Once this is determined, you will develop a behavior program based on evidence-based, published interventions and then train someone to carry out the interventions. The people you train to carry out interventions might be parents or other caregivers or stakeholders. The ethical burden here is that you must not only do the functional assessment according to accepted protocols, but you also have to effectively train the parents, teachers, residential staff, aides, and others. You are ultimately responsible for the program's effectiveness. This means that the program is carried out to your specifications. We know from the research literature that some methods of training work and that some do not. The most reliable form of training is not to simply give the parent a written program and then ask, "Are there any questions?" It is also not acceptable to explain the program and then leave a written copy. It is far more effective, and ethical, if you demonstrate the procedure, then have the parents practice the procedure. Next, you will provide feedback, have them try again, and so on until they execute the procedure according to plan. This is how BST should work. Parents should be given a written copy of the procedures, and for complex procedures, a videotape might be helpful. The next step is for you to make a spot check a few days later to observe the parents to ensure they are being consistent in the application of the procedures. If not, you will need to do some correction, additional role play, additional feedback, and then another visit a few days later. This is effective, ethical training. Anything less is unethical.

Probably within 6 months of taking your first job, you will be supervising others. In some positions, your role as a supervisor

might start immediately. As a behavior analyst, there is a high standard to meet in terms of the quality of your supervision. Because there is such an extensive literature on ways of changing behavior in the workplace (in fact, there is a whole subspecialty called performance management; see Daniels and Bailey, 2014, for details), you now have an ethical obligation to be an effective supervisor. Becoming an effective supervisor is not difficult for a person steeped in basic behavior analysis procedures.

First, make sure you use the most effective antecedents. Don't lecture; demonstrate. After the demonstration, ask your supervisees to show you what they've learned. Then give immediate positive feedback. If you are training someone on how to use written materials (e.g., how to prepare a behavior program), show your trainee a sample of the best program that you can find. If necessary, break the task into smaller "bites" of material, and consider using backward chaining if necessary. Practice giving positive reinforcement for work you see and receive every day, many times a day. You will soon discover that your supervisees and trainees seek you out for advice and assistance. They will want to show you their work and get your approval. If you are working in a large organization, you could easily become the most reinforcing person without even trying hard.

The time will come when you do have to give negative feedback or show disapproval. If you've worked hard to give out contingent reinforcers, the person who receives this punisher will initially be somewhat shocked. He or she might have gotten the initial impression that you were just a "goody two-shoes." Remember, the purpose of this correction is to change behavior, not punish the person, so you will also want to keep reinforcing the appropriate behavior. And don't forget your autoclitics (Skinner, 1957, chap. 12). These comments that soften the blow mean so much when you need to give someone negative feedback. "You know that I value what you do and that your work here has been excellent. I just want to point out something that is not quite right in this behavior program." One of the best books that can be used as a basic primer

for business and professional skills is Dale Carnegie's (1981) *How to Win Friends and Influence People*. You should review this little gem as a supplement to what you have learned about behavioral supervision.

TIME KEEPING FOR BILLING

An essential part of professional ethics is accountability. One of the most important aspects of accountability is that you keep track of how you spend your time. Time is your primary commodity. For your first position, you may find that you are working on a "billable-hour" model of compensation. In this system, the agency or consulting firm you are working for has contracted for your services at a certain rate per hour, and every documented hour that you work can be billed. You then receive a biweekly or monthly check based on your total number of billable hours. Although it may seem like a small matter, keep consistent, precise records of each and every billable unit—usually by the quarter hour. Do not rely on your memory at the end of the day to reconstruct your activities, and do not average them out over a week. You will probably be able to find an app for your phone that will allow you to keep track of the date, time, and duration of contact as well as a brief note of your activity. At the end of the billing cycle, all you will need to do is perform a few simple calculations to determine your billing to the agency or consulting firm. It is extremely important that you understand how critical it is to your firm that you actually match your hours of service to the contracted hours. If your agency or consulting firm has contracted with a facility for you to spend 20 hours per week onsite, it is inappropriate for you to provide only 16 hours of service. First, the determination was made by the facility and your consulting firm that 20 hours was needed. The facility has set aside a certain amount of money for your services, and they have mutually agreed that they need 20 hours of consulting or therapy. For you to decide on your own to take a day off without

the appropriate approval in advance is inappropriate and constitutes a violation of Code 1.01 Being Truthful. This is not in keeping with Core Principle 3, Behave with Integrity.

Needless to say, accurate and honest time accountability is essential to protect you from any allegation that you have been overbilling or that you have attempted to defraud a client or the government. As an example of what can happen when billing is fraudulent, physicians are being prosecuted at a high rate because they have billed for clients they did not see or for services that were never rendered. It is imperative that billing for behavior analysis services be accurate and honest and that all paperwork is completed correctly and on time.

BE ALERT FOR DUAL RELATIONSHIPS AND CONFLICTS OF INTEREST

One of the most frequent problems we have in behavior analysis service delivery is the development of dual relationships between clients and their therapists or behavior analysts. It is easy to see how this might happen, since behavior analysts usually have excellent social skills and they come across as friendly and eager to please. These are likeable traits, and clients may instantly warm up to their therapist and the BCBA supervisor. Before long, a behavior analyst can find themselves being treated like family, asked to stay for dinner or to attend an upcoming birthday party or some other special family holiday or celebration. Allowing this to happen means the therapist or behavior analyst has crossed the line from professional to “friend” status, and this is where there is an opportunity for an impairment of the behavior analyst’s objectivity. When this happens, the therapist is in a bind, because they need to turn down the offer in such a way that the client’s feelings are not hurt. This might then affect the full cooperation needed to make treatment a success. The solution, of course, is to let clients know in advance that participating in such activities is not allowed due to the rules set by our code of

ethics. Chapter 13, the Declaration of Professional Practices and Procedures for Behavior Analysts, presents suggestions for handling such situations.

In behavior analysis, other relationships could be problematic that appear to be unique to our field. Behavior analysts are not restricted to the role of therapist. They are also supervisors, consultants, teachers, and researchers. Behavior analysts may sit on local or statewide human rights or peer-review committees. They may own a consulting firm or be an elected member of a professional association. Serving on a peer-review committee where you are supposed to render an impartial judgment about the quality of a treatment program could present an objectivity problem if a friend or former student prepared the case being reviewed. An owner of a consulting firm has a built-in conflict of interest when evaluating a new client. The potential income from the case may cloud the judgment of the owner from determining that it would be in the client's best interest to refer to another agency with more expertise with a special behavior problem. Of course, the same conflict exists at the individual therapist level when he or she must decide to take a client who has been referred. Decisions in all these cases revolve around the question of what is in the client's best interest (Codes 1.03, 2.10, and 3.08). Code 3.01 is explicit on this: "*Behavior analysts act in the best interest of clients*" rather than what would benefit the therapist, the BCBA, or the agency.

FIND A TRUSTED COLLEAGUE RIGHT AWAY

It is difficult to make ethical decisions in isolation. Without a sounding board, what appears to be an easy call may in fact be quite a complex dilemma. It is not always easy to determine whether some harm might come from a particular intervention. The effects could be delayed or subtle, and someone else with more experience than you could be a big help in making such a decision. Over time, you will feel more confident about your behavioral decisions, but in the beginning, to help build your confidence, we strongly recommend

that you find a “trusted colleague” as soon as possible. Ideally, this would be another behavior analyst who is easily accessible and who is not your supervisor or your employer. For political and other reasons, the colleague probably should not work for “the competition” in your geographical area. Your trusted colleague is someone that you will trust with questions such as, “Am I really prepared to take this case?” or “My supervisor is telling me do to X, but it seems unethical to me. What should I do?” or, even more importantly, “I think I’ve made a big mistake, what do I do now?” With luck, you won’t encounter any of these dilemmas in your first 3 months on the job, and you can use this time to try to find a person who is knowledgeable and whom you can trust. In your off-hours, your first 3 months on the job should be spent interacting with other professionals from your workplace and in your general locale. It’s a good idea to get to know social workers, nurses, physicians, case managers, psychologists, and client advocates as well as any other behavior analysts in your area. This networking will serve other purposes also, such as making referrals. During the process of getting to know your colleagues, you should make the acquaintance of someone who can be more than a casual business associate and become a confidant. You will want to size up this person’s approach to ethics and make sure that his or her approach to dealing with complex issues appears to be sound, thoughtful, and deliberate, as opposed to glib or cavalier. A BCBA with 5 or more years of experience who is careful in what he or she does, has a good solid reputation, and who seems friendly and approachable would be a good candidate. You want to find your trusted colleague well before anything big “hits the fan,” because you will want to have a well-established rapport with the person and feel confident that you can in fact trust him or her with your urgent ethical situation.

TOUCHING PEOPLE

Unlike ordinary office-based psychotherapy, behavior analysis often involves getting up close and personal with your clients.

Especially for those behavior analysts working with those who have developmental or physical disabilities or behavior disorders, our treatments may involve touching or holding the person. Innocuous procedures such as graduated guidance involve putting your hands on the client to teach them how to feed or dress themselves. Toilet training can involve helping the person remove his or her clothes, and tooth brushing requires the behavior analyst to stand behind the client and help manipulate the brush. Many behavior analysts routinely give “hugs” or brief shoulder massages as reinforcers without thinking of the possible adverse consequences. In all of these cases, even the most benign and well-intentioned action on your part could be misconstrued or misinterpreted as “inappropriate touching.” This accusation could come from the client, the client’s parents, a nearby caregiver, or a visitor who just happened to be on the scene. Other more intrusive behavioral procedures are even more problematic. Time-out almost always involves holding the client while taking them to the time-out room. Manual restraint, or even attempting to apply mechanical restraints, can also present issues of potential misinterpretation or misperception (from “You hurt me” to “You hurt him deliberately” to “Were you groping her? I think you were, I’m going to call the police!”).

The ethical behavior analyst will always abide by the dictum “Do no harm” and will avoid, at all costs, doing anything to physically or emotionally harm a client in any way. But the cautious, ethical behavior analyst will also make sure that he or she is never the target of a mistaken or malicious accusation of physically inappropriate behavior toward a client. To this end, we make the following recommendations:

1. To avoid a false client allegation of inappropriate touching, always make sure to have another person (often called a “witness”) present.
2. Make sure the witness knows what you are doing and why you are doing it.

3. If you are involved in any sort of physical restraint use, make sure that you have been properly trained and certified to do so.
4. If you know of a client who has a history of false reports of inappropriate touching, be wary of close contact with that person unless you have the witness present and that the witness understands what you are doing.
5. Avoid cross-sex therapeutic interactions (e.g., male therapist and female client) unless there is absolutely no alternative. You should still follow the rules about having the witness present and explain to the witness exactly what you are doing.

The purpose of these recommendations is not to encourage you to become cold and impersonal in your interactions with clients, but rather to make you aware of how affectionate behavior could be misinterpreted and backfire on you.

DEALING WITH NONBEHAVIORAL COLLEAGUES

A lot of your professional time will be spent with colleagues who are not behavior analysts. Depending on the setting and the history of the agency or organization, this could present you with some serious ethical dilemmas. For example, if as part of a habilitation team you find that the consensus of the group is that your client should receive “counseling,” you have an ethical obligation to propose a behavioral alternative, Codes 2.01 and 3.12, and to raise questions about whether there are any data on treatment efficacy for counseling (Code 2.01). Code 2.10 recommends collaborating with colleagues from other professions and compromising regarding treatment approaches when it is in the best interest of the client.

You may soon discover that the other professionals with whom you work are not very aware of the ethics code for their field or pay it little heed. Or worse, you may discover that their code of ethics is not very clear on issues regarding client’s rights, the use of empirically based procedures, or the evaluation of treatments using data. New students working in the field for the first time are

often shocked at the manner in which meetings are conducted and decisions are made regarding clients. It is not unusual for one person to dominate the meetings, with a clear motive of getting it over with as soon as possible. Often no data are presented, and weak or specious rationales are given for pushing certain treatment approaches. Convenience, a “just go along” attitude, and a disregard for ethics in general are often the mode for some meetings that appear to be held more for show than for function. Over time, as you gain experience, you may be asked to chair these meetings and will be able to show how they should be run efficiently and ethically in the best interest of your clients.

Initially, as a new and probably junior member of the treatment team, you will probably want to sit quietly and observe. Try to determine who is in charge and what the custom is for handling decision-making. You may need to consult with your supervisor about how to best handle these situations and to consult the code for key foundation points. Before you accuse anyone in public of engaging in unethical conduct, it would be wise to check again with your supervisor and then meet with the person in question outside of the meetings to discuss your concerns. You could start the conversation with, “Can you help me understand what happened in that meeting?” This may also be a time for you to consult with your trusted colleague. In extreme cases, where you and your supervisor feel that you have done everything possible to have some impact but have been unsuccessful, it may be necessary to conclude your involvement.

To end on a positive note, it is important to point out that the vast majority of nonbehavioral colleagues are kind and caring, mean well, and will accept you if you accept them. Most have never heard of behavior analysis, so you will have a chance to be an ambassador for the field and to educate them about current

Be a good listener and a positive supportive person, and you will grow immeasurably as a professional yourself.

developments and how we are, in the utmost sense, concerned about the ethical, effective, and humane treatment of clients. Be patient and give them a chance to educate you about their field. Be a good listener and a positive supportive person, and you will grow immeasurably as a professional yourself. Remain open to other points and view and be honest about your own shortcomings (e.g., you may know very little about medications and their effects on behavior). Over time, you will gain insight on how others view behavior, and you will be able to help other professionals understand and accept a behavioral perspective.

SEXUAL HARASSMENT

Sexual harassment is one of those awkward, ugly topics that few people want to discuss unless pressed to do so. Despite years of education, legal rulings, and company fines, sexual harassment still exists (US EEOC, 2004). As a behavior analyst, you might think that you will never be subject to this kind of treatment by others. Although you would never intentionally treat another person in this degrading way, nonetheless, a few behavioral aspects of sexual harassment should be discussed for the new behavior analyst.

First, we need to address unwanted sexual advances. If you have some special work circumstances, you might be more likely to encounter this problem. BCBA_s who work in the client's home may find that there are occasions when they are alone with a single parent of the opposite sex. While both males and females can be the victims of sexual harassment, young female therapists seem most vulnerable if there is a divorced or single male in the house. The problem can start innocently enough, with the person acting very interested in your work, perhaps sitting close, making strong eye contact, or smiling a lot. You might take this as just a very interested person who thinks that you and your work are fascinating. An extra-warm greeting, a hug that lasts just a little too long, or a touch to the arm or shoulder are the first clues that there may be something else afoot. Behavior analysts are trained to be

superb observers of behavior, and this is the skill that you want to bring to bear at this time. Behavior analysts also know how to use DRO, punish behaviors, put them on extinction, or bring them under stimulus control to reduce their rate of occurrence. If you detect the early stages of unusually “familiar” behaviors, it is time to swing into action. You might use DRO by reinforcing the person for sitting a little farther away from you. For any uncomfortable eye-contact responses, look at the floor or at your paperwork, appear distracted, or abruptly conclude the meeting. Inappropriate touching (e.g., of a less serious nature such as the person patting your hand) can be handled with a “cold hard stare,” with no smiling and possibly a no-nonsense “that’s really not appropriate, Mr. Robinson.” If you catch this in the early stages and punish these tentative behaviors, your problem may be solved. Even in the minor stages, you should discuss this with your supervisor. If it has gone further than this and the person is very inappropriate (e.g., calling you at home, leaving personal email messages, or making any clear attempt to touch you inappropriately), discuss this immediately with your supervisor to determine if it is appropriate to inform authorities. If you believe you are being stalked, contact the authorities immediately; your safety is of utmost importance.

The second major concern regarding sexual harassment is the possibility that someone else will accuse you of this behavior. We specifically train behavior analysts to be effective interpersonally, and this includes using head nodding, smiling, warm handshakes, and strong, effective verbal reinforcers. We encourage new consultants to “become a reinforcer” for those around you if you want to be effective. Different reinforcing behaviors are appropriate in different settings. In business and organizational settings, smiling, handshakes, and positive comments are all appropriate. But you need to be careful that those you are reinforcing don’t get the wrong idea and think that you are attracted to them. You might be working with a withdrawn child, for example, and trying to get her to stay on

task or complete an assignment. At the first sign of success, you break into a smile and give “high fives.” Over time, this will probably work to increase the on-task behavior. However, you may begin to also increase your rate of hugs. The next thing you know you get called into the principal’s office, and she says, “I’ve just gotten off the phone with Lucy’s mother. Lucy has complained that you touched her in her private areas. Is this true?”

The best advice to new behavior analysts is to be courteous, polite, and friendly, but in all cases be professional. Do not let your enthusiasm for the progress of your client meeting a goal cause you to get overly emotional with the client. Watch what you do with your hands at all times. As a check on your performance, ask yourself, “What if Channel Six Eyewitness News was here taping this? Would I still engage in this behavior?” If the answer is “No,” then you need to modify your own behavior to prevent any misunderstanding or false accusations.

The world would surely be a better place if everyone adopted the behavior analyst’s ethical principles and put them to practical use every day.

NOTE

1. Bailey, J. S., & Burch, M. R. (2018). *Research methods in applied behavior analysis* (2nd ed.). New York: Routledge.

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A Code of Ethics for Professional Organizations

A BRIEF HISTORY

The foundation for the first organization to create a code of ethics for behavioral organizations was established in 2005. It was then that the first author began receiving ethics questions from former students, participants in ethics workshops, and from individuals using the ABA International Hotline. In case after case, it appeared that professional behavior analysts who were sincerely attempting to adhere to the Guidelines for Responsible Conduct (now the 2022 BACB Ethics Code for Behavior Analysts) were being hindered by their own companies. Obstacles to ethical conduct were thrown at these behavior analysts from every direction. There were too many cases to manage, cost-cutting procedures such as pre-packaged “cut-and-paste” behavior programs, restrictions on the use of functional analysis prior to treatment, and even pressure to bill for more hours than actually worked. It seemed impossible for these honest, hardworking professionals to meet both their employment requirements and their ethics code obligations. And then a solution appeared in the form of a new idea. Why not create a code of ethics for behavioral organizations, one that would require administrators, CEOs, and boards of directors to commit in writing to support the BACB Guidelines? The first author met with a member of the audience who came up after a presentation on this proposal at the FABA annual meeting and

said he wanted to talk more about the proposed code for organizations. It was clear that this young man was thinking along the same lines. His name was Adam Ventura, and he had both a strong interest in ethics at the organizational level and the ability to implement change. Adam offered to develop the concept into an actual working model.

COEBO

COEBO is an acronym from a paper, “The Code of Ethics for Behavioral Organizations,”¹ which began as a seven-item proposal that organizations providing behavior analytic services would sign and agree to uphold within their respective companies. The original concept was that COEBO would be analogous to a national Better Business Bureau specifically tailored for ethics for organizations delivering behavior analysis services. An ethical organization would supplement the BACB Code and “wrap around” the behavior analysts that work there to eliminate any subtle forces to act unethically.

Through many discussions with behavior analysts and providers in the community, it became clear that the code needed to be expanded. In approximately one year of vetting by over 50 representative agencies from around the world who strongly support ethics, that confirmation grew into an all-inclusive code of ethics with ten comprehensive categories (Bailey & Burch, 2016, chap. 20). The COEBO began as an idea to improve organizational behavior and grew into an assembly of behavior analysts, business owners, academics, and consumers of behavior analytic services collaborating to advance their shared goal of improving the ethical conduct of organizations that provide behavior analytic services into one succinct set of guidelines. Over time, our work together on this very vital matter became affectionately known as the “COEBO Movement.” Adam worked on the COEBO project for over a year, at which point he realized that to bring the code to scale so that enough organizations recognized it and there was critical mass to

really make a movement was going to require office staff, office space, and salaries. As a demonstration of his level of commitment to this project, Adam worked tirelessly without pay during this entire time. He arranged for someone to field questions and try to provide support, but there was not a financial structure to support COEBO adequately. This was an idea that was well ahead of its time, and as a result, COEBO went into hibernation.

Around the same time, unbeknownst to the first author and Adam Ventura, the state of California was experiencing numerous challenges measuring the quality of care of ABA organizations. In 2009, a large ABA organization became insolvent and left hundreds of families without services. As a response to this insolvency, the California Department of Development Disabilities formed a transparency committee aimed to identify and measure quality organizations providing ABA within the state. This pilot project launched and continued for 5 years. The project was led by Dr. David Pyles and Sara Gershfeld Litvak. In 2010, Dr. Pyles stepped down from the project, and Litvak continued the state's efforts until 2014. By 2014, the team had evaluated dozens of ABA organizations across the state, and with the onset of the autism mandate, the state decided to defund the project. Subsequently, Litvak requested permission from the state to continue this important work despite the project being defunded. In 2015, Litvak and a group of scientific advisors, including the first author,² came together to formalize the Behavioral Health Center of Excellence (BHCOE) as an international accrediting body and began globally discussing and shaping organizational standards and the BHCOE Accreditation Program.

BHCOE started by drafting standards with a subject matter group that started modestly, with four sections focused on staff qualifications and training, treatment program and planning, collaboration and coordination of care, and ethical marketing. The accreditation process also required a staff and patient satisfaction survey. After piloting the standards with eight organizations, 50 additional organizations sought accreditation in 2016. BHCOE

quickly became a fast-growing movement, and it became evident that quality organizations wanted to be recognized for their good work, and staff and patients needed a way to differentiate between quality organizations and “bad actors.”

When BHCOE learned of the work that Bailey and Ventura had done, Sara Litvak (now CEO of BHCOE) approached the first author and asked for an introduction to Ventura and wanted to know if she could integrate the work that they had done into her new accreditation organization. In addition to the desire to add an ethics component to her already extensive organizational accreditation process, the group felt strongly that the field needed to have a united voice, so the collaboration seemed like a natural fit to all parties. COEBO had a new home and a somewhat different format; it became a more robust evaluation tool that included the original checklist, attestations, survey questions to verify items, now reflecting a rigorous multimodal evaluation.

Today, BHCOE is accredited by the American National Standards Institute (ANSI). A BHCOE commission of members that represent a variety of stakeholders work together to develop and evaluate BHCOE’s standards via a transparent, consensus-based process that allows for participation and comment by all stakeholders. BHCOE commission members include representation from patients or their parents/guardians, ABA providers of varying sizes, private and public insurance, trade associations, local state ABA chapters, and academics with specializations in ABA. This consensus-driven approach is considered best practice for standard development and has contributed to the ethics checklist found below.

In reflecting on the role that it has played in the ABA community, the organization grew from evaluating just eight organizations for accreditation in 2015 to over 600 organizations to date. The total number of ABA organizations evaluated during BHCOE’s first 5 years represents more than 25,000 professionals providing services to over 42,000 people with autism and related developmental disabilities. BHCOE continues to help professionals like those

reading today by setting quality standards for organizations that are committed to transparency and commitment to ethics and other best practices. BHCOE also offers those who may be concerned about the quality of an organization to file a compliance concern that the organization will investigate and work to coach the organization into compliance, or in some cases to suspend or revoke accreditation. The BHCOE accreditation badge can help clinicians assess a prospective or current employer's commitment to their professional development and help them deliver the best care possible. To find an accredited organization or learn more about the standards of excellence, visit www.bhcoe.org. (Notes in brackets below were added by the first author.)

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BEHAVIORAL HEALTH CENTER OF EXCELLENCE (BHCOE) STANDARDS OF EXCELLENCE FOR APPLIED BEHAVIOR ANALYSIS SECTION A.0 ETHICS

A. Ethics, Integrity & Professionalism

A.01 The organization acts in the best interest of the patients they serve at all times.

[Acting in the best interests of clients is a major theme of the 2022 BACB Ethics Code for Behavior Analysts.]

A.02 The organization, and its subsidiaries are in compliance with all applicable healthcare regulatory and licensing laws.

A.03 The organization, subsidiary, or any of its owners, officers, and directors are not currently and have not been convicted of, charged, or under an investigation or subject to any enforcement action or legal proceeding by any governmental authority arising out of or relating to any healthcare regulatory law within the past year.

A.04 The organization acts honestly and responsibly to promote ethical practices of its employees and supports certified employees in complying with ethical and professional

requirements of their credentialing and/or licensing body. The organization never directs employees to act in violation of those requirements and resolves any conflicts between the company policy and those requirements.

[This means that all behavior analysts in BHCOE companies are supported by management in upholding the 2022 BACB Ethics Code for Behavior Analysts and that in addition will support the resolution of any conflicts that might arise from adhering to that code.]

A.05 The organization is dedicated to ethical and fair competition and will not improperly coordinate to sabotage, speak ill of, or undermine other ABA service organizations.

A.06 The organization ensures employees avoid dual relationships that might impair the ability to make objective and fair decisions.

[Avoiding dual relationships/multiple relationships, which can cause conflict and affect morale, is a key point in the 2022 BACB Ethics Code for Behavior Analysts.]

A.07 The organization protects the privacy of its workers.

A.08 The organization does not offer incentives or remuneration to current patients in exchange for attendance or recruitment of other patients. Remuneration refers to cash, cash-equivalents, or anything of value.

[This is not mentioned in the 2022 BACB Ethics Code for Behavior Analysts but is a significant and valuable addition to the BHCOE code.]

A.09 The organization provides employees, patients and volunteers a confidential means to report suspected impropriety or misuse of organizational resources. The organization has a policy prohibiting retaliation against persons reporting improprieties.

[This is not mentioned in the 2022 BACB Ethics Code for Behavior Analysts but is a significant and valuable addition.]

A.10 The organization has a designated ethics officer and/or ethics committee to address ethical issues such as

patient programming, the organization, employee, and/or patient concerns.

[This has been a recommendation of the ABA Ethics Hotline for several years.]

NOTES

1. Originally drafted by Jon S. Bailey, PhD, BCBA-D.
2. Full disclosure: the first author was a volunteer member of the Board of Directors of BHCOE.

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Reporting a Behavior Analyst via Notice of Alleged Violation

FILING A NOTICE OF ALLEGED VIOLATION IS A SERIOUS STEP

Whenever a BACB applicant or certificant, RBT applicant or certificant, or approved ACE provider is concerned that they or someone else has violated the BACB's ethics requirements, the violation can be reported to the BACB's Ethics Department. The two ways that the BACB receives reports about potential ethics violations are by (1) self-reporting by a certificant and (2) Someone reporting an alleged violation by a certificant.

Filing a Notice of Alleged Violation against a professional is a very serious step that is not to be taken lightly. The filing of a Notice of Alleged Violation can have serious repercussions for the individual, their clients, colleagues, company, and possibly the person filing the Notice. A reputation can be damaged or ruined, and there could be repercussions for current and future employment. On a personal level, the accused may feel

Every other means of correcting a wrong or modifying the behavior of a person you feel has violated the code should be explored before taking the step of filing a Notice of Alleged Violation.

deeply persecuted and wronged in a way that is hard to imagine. What follows is a description of the process by which a Notice is filed. We absolutely do not support the reporting of serious allegations against a behavior analyst out of spite or whim or recrimination. Every other means of correcting a wrong or modifying the behavior of a person you feel has violated the code should be explored before taking the step of filing a Notice of Alleged Violation.

WHY FILE A NOTICE OF ALLEGED VIOLATION WITH THE BACB?

Sometimes clients, supervisees, or even colleagues make the difficult decision to take the significant step to file an official complaint against a behavior analyst. This decision is often made of frustration with the services or supervision that the client or supervisee is receiving or not receiving. Taking this step is usually preceded by other attempts at bringing an issue to the attention of the therapist or supervisor. A polite question by the client presented at the front door as the therapist is leaving may not leave an impression on the RBT who is rushing off to see the next client. Likewise, a phone call to the supervisor may not seem to be urgent or pressing in the small mountain of calamities they are dealing with that day. Clients or supervisees may fear that if they appear to be angry or too aggressive in pushing for an answer, there could be retribution by the BCBA. There is also a factor that involves a person not wanting to offend someone important in their child's life. The technician is someone the parents depend on every day to provide assistance, so some will hold back and say nothing . . . for a while. They quietly hope that the concern will somehow resolve itself without their having to get involved. Expressed in a mild fashion as a question, initially, a serious concern may be dismissed as, "They were having a bad day" or "They just needed to let off steam."

Unfortunately, when these questions and milder attempts for changes are not responded to in a meaningful fashion, there can be an escalation in anger and resentment on the part of the client or supervisee for not being taken seriously over what is considered an important matter. When a parent says, “I’m not seeing any improvement in Angelica’s behavior. Is there anything else we can do?,” the behavior analyst might think, “Ms. Lopez just doesn’t understand that progress takes time.” In fact, what Ms. Lopez really meant to say was, “I want a meeting to change Angelica’s goals.” All of this can be categorized under the label of “miscommunication,” which is endemic in our society. Clients don’t know the code words that will catch the attention of their behavior analysts, and behavior analysts are predisposed to assume that their clients “just don’t understand.”

To prevent clients and supervisees from reaching the point where they feel the need to file a Notice of Alleged Violation, behavior analysts need to become better listeners and also more ethical practitioners. They also need to be prepared to respond sympathetically to what they learn, not to take it personally, and act in a timely fashion. Being proactive in asking the client how they are feeling about the therapy they are receiving would be a good first step to head off the filing of a Notice.

Behavior analysts
need to become better
listeners and also more
ethical practitioners.

It is necessary to have
some sort of documentation
to support an allegation.

WHO CAN FILE A NOTICE OF ALLEGED VIOLATION?

Anyone who has direct knowledge of a violation of the BACB Ethics Code for Behavior Analysts may file a Notice with the Board. This includes clients, parents, and stakeholders, other

professionals outside of ABA, and of course, RBTs, BCaBAs, and BCBAs. An RBT can file a Notice against their supervisor for failing to meet the requirements of Code 4.01–4.12. A supervisor may choose to file a Notice against an RBT or supervisee or trainee for any number of RBT Ethics Code violations. Some of these violations include engaging in a multiple relationship (1.11), harassing clients or staff (1.09), or operating outside of their scope of competence (1.05).

A parent or stakeholder may wish to file a Notice against their RBT therapist for abusing their child or against the BCBA supervisor for revealing confidential information (Codes 2.03, 2.04). In addition to direct knowledge, as opposed to rumor (“I heard from a friend that . . .”), it is necessary to have some sort of documentation to support an allegation. This is often not easy to acquire. A family who observes the therapist chatting on the phone with someone instead of working with their child may not feel comfortable saying anything to the therapist. When the parents bring this to the attention of the supervisor, it might be dismissed as “it must have been a misunderstanding.” The parents may conclude that, since the apparent off-task behavior of the therapist happens often, there could be insurance fraud involved, but all they have are their observations and assumptions. The parents don’t actually know who the therapist is talking to; it could even be their supervisor, and there is no paper trail. In this case, they should ask for a meeting with the supervisor to clarify everything before filing a Notice of Alleged Violation or calling the insurance company fraud division.

A supervisee may become frustrated with their supervisor because their meetings are repeatedly canceled or the supervisor is a no-show. How is *this* documented? It is difficult to quantify something that doesn’t happen. Another example is when, time after time, the supervisor shows up but is on her iPad the whole time and never looks up to observe the RBT. At the end of the sessions, the supervisor simply says something like, “You’re doing a great job Missy, keep up the good work,” as she rushes off to a

meeting. In this case, the supervisee was led to believe from the ethics course she took that supervision meant she would receive the undivided attention of a BCBA who would observe and take detailed notes during the session and then meet with her afterward for at least 30 minutes to debrief. Missy also thought that following the observation, she would be given notes on what she needed to do to improve her skills; it is easy to see how Missy would feel the urge to file a Notice against this supervisor if this pattern continued for several weeks or months.

INFORMING CLIENTS AND SUPERVISEES ABOUT THEIR RIGHT TO LODGE A COMPLAINT

One of the most frequently overlooked standards in the 2016 code was 2.05(d). This standard required that “clients and supervisees *must* be informed of their rights and about procedures to lodge complaints about professional practices of behavior analysts with the employer, appropriate authorities, and the BACB” (italics added). In the 2022 code, it has become the following:

3.04 Service Agreement.

Before implementing services, behavior analysts ensure that there is a signed service agreement with the client and/or relevant stakeholders outlining . . . procedures for submitting complaints about a behavior analyst’s professional practices to relevant entities (e.g., BACB, service organization, licensure board, funder).

Note that “must” has become “ensure,” which means “makes happen.” This is nearly as strong as “must.” Behavior analysts have an obligation to inform their clients about their right to file a complaint, and BCBA supervisors have the same requirement to advise their supervisees of this obligation. The “signed agreement” would be equivalent to the Declaration of Professional Practices and Procedures for Behavior Analysts, described in Chapter 13. For supervisees, a statement to this effect should be in the supervision contract.

SEVEN STEPS TO FILING A NOTICE OF ALLEGED VIOLATION

The BACB describes the process for deciding to file a Notice of Alleged Violation, which is illustrated in a flowchart on their website (type “Notice of Alleged Violation” in the search box and click on “Reporting to the Ethics Department”), as shown in Figure 17.1.

Once a decision has been made to file a notice the next step is to fill out the Notice of Alleged Violation form. To find this form, go to the search box and type “Reporting Alleged Violations by BCaBAs/BCBAs.” The top part of this form is shown in Figure 17.2.

Since the flowchart is greatly reduced and the fonts with the decision-making instructions are so small, we will paraphrase the instructions here.

Step One: Informal Resolution

Consumers or supervisees are advised to attempt to address the concern directly with the behavior analyst if possible. This should be done in a neutral fashion by starting with simple questions about the incident that the person has observed directly. It is not acceptable to work from rumor or secondhand information. A good way to start is with something like, “Could you help me understand . . . ?” where you fill in an objective description of what you have witnessed. There is a good chance that the person will have a satisfactory answer for you, and that you will not have to proceed to Step Two.

Step Two: Confirm Certification Status

If you still feel after the conversation described above that there has been a violation, you now must make sure that the person is actually covered by the BACB. In some cases, you may discover that they are not certified with the board. For example, they might

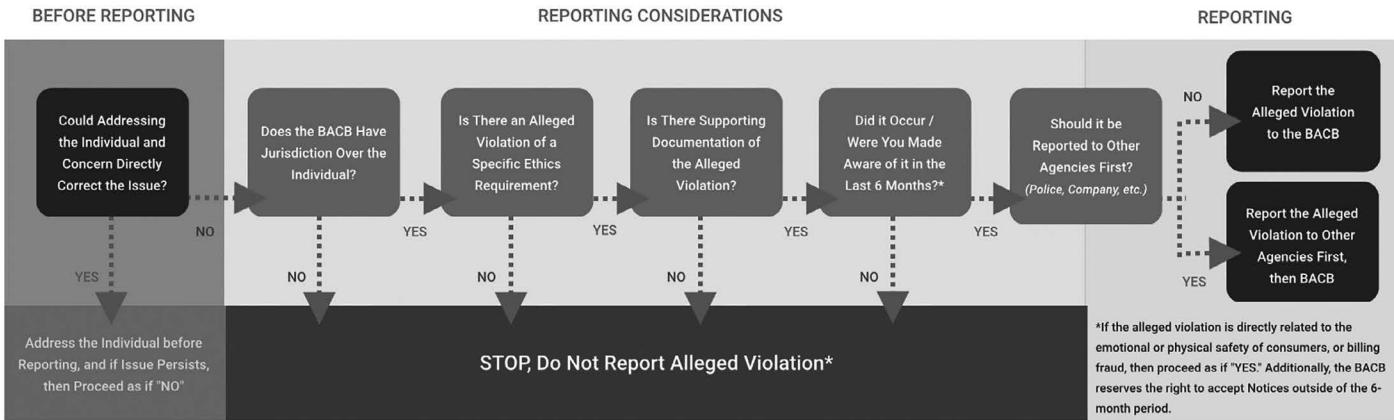


Figure 17.1 BACB flowchart describing the process of filing a Notice of Alleged Violation.

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BCaBA, BCBA, or BCBA-D Notice of Alleged Violation Form

Have you attempted to resolve the matter directly with the Subject? *

Yes
 No

Does the Subject live, or did the incident occur, in one of the indicated states below? *

Yes
 No

If the Subject of the alleged violation lives in one of the following states, then you must also report to the relevant state licensure agency or board.

Figure 17.2 Top section of the BCaBA, BCBA, or BCBA-D Notice of Alleged Violation form.

be in a management position, or are they some other professional such as a PT or OT. In a recent query to the Hotline, an irate mother of a client wanted to file a “grievance” against her BCBA for abruptly cutting off services and abandoning her child. A rapid back and forth via email ensued, and it turned out that it was the CEO of the small ABA company who discontinued the services, not the BCBA. The mother was not happy to learn that there was no way to file a “Notice” against the CEO. To make sure that the person you wish to report comes under the jurisdiction of the board, you can always check with the Certificant Registry at www.BACB.com.

Step Three: Find a Specific Code Violation

To correctly file a Notice of Alleged Violation, it is necessary to cite the specific code number that you believe is involved. If you feel that your BCBA made changes to your child’s behavior plan without checking with you, for example, you will need to look through the code to find the relevant citation.¹ In this case, it would be Code 2.11 Obtaining Informed Consent. In some cases, you may feel that there are several violations, so you will need to look up each one to make sure there is a match between your concern and the specific code standard.

Step Four: Producing Documentation

This step is critical to go forward with a complaint, since it involves producing some sort of documentation to support your allegation. Generally, this means a hard copy of a behavior program, data sheet, email exchange, or perhaps an audio or video tape. Another form of documentation is an affidavit from a second eyewitness to the event in question. Whatever the format, you will need to be prepared to attach a copy of the document to the Notice form, and it needs to match what is alleged.

Step Five: Time Frame

It might have saved you some time and effort if this were Step Two, since if the event in question is over 6 months old, you are not allowed to file a Notice.² But if it happened within that time frame, you may proceed to Step Six.

Step Six: Report to Other Agencies First?

The nature of some alleged violations is that they really should be reported to some other agency first. If the allegation was that the BCBA struck your child and you have it on video, it may be more appropriate to report the person to the police or sheriff's department or to Child Protective Services. If the complaint is not of an urgent nature, and you live in a state that has licensing for behavior analysts, the BACB prefers that you report the person to the licensing board before you report them to the BACB. The purpose of a licensing board is like that of the BACB (i.e., to prevent harm to the general public by setting minimum standards of education and training, and to provide a mechanism for clients, stakeholders, and other behavior analysts to file complaints). These boards are empowered to take disciplinary action against behavior analysts who do not meet the standards of competency or who violate the code of ethics. The boards have the resources to investigate claims of ethics violations; they have hearings that

are often open to the public, and they can apply appropriate consequences for violations.

Step Seven: Report the Violation to the BACB

If you file a complaint with your state board and there is a determination of an ethics violation, this information can then be sent to the BACB for proper disposition.

ANONYMOUS REPORTING VIA PUBLICLY DOCUMENTED ALLEGED VIOLATION FORM³

If you have seen information in the press about a BCBA or have acquired information of a public nature (e.g., a court ruling or information from an insurance company, government agency, or other public source), it is possible to bring this to the attention of the Board for action without having your name revealed. There are several steps involved in this process, which are illustrated in Figure 17.3. These steps include (1) determining if the violation is worth reporting, (2) collecting the necessary documentation whether public or private, (3) completing the form (see Figure 17.4), and (4) submitting the form to the BACB via their website at www.BACB.com.

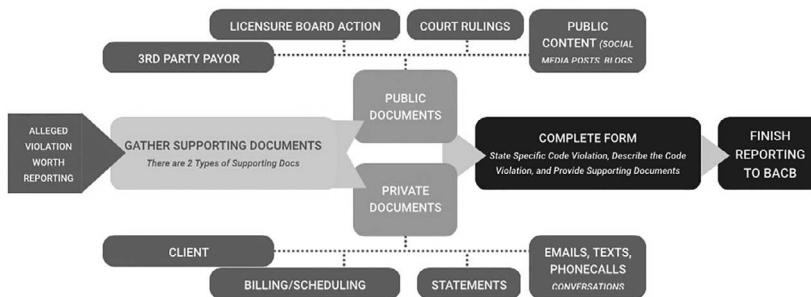


Figure 17.3 Reporting alleged violations based on publicly available documentation.

Publicly-Documented Alleged Violation Form

Subject's Name *

First Last

Subject's Certification Number *

You can find the Subject's certification number through the [Certificant Registry](#).

Identify the sections of the Professional and Ethical Compliance Code for Behavior Analysts or RBT Code of Ethics you believe have been violated *

Figure 17.4 Top portion of publicly documented alleged violation form.⁴

THE LIFE OF AN ETHICS CASE

Once a Notice is filed, it goes to the Ethics Department at the BACB and goes through a series of steps, which are shown in Figure 17.5. Once the Notice is received, it is routed to one of two review committees: the Disciplinary Review Committee or the Educational Review Committee. Within each one of these, there are a series of steps that may be taken.⁵ Only the most serious, egregious charges warrant disciplinary review, where there may be certain corrective actions and/or sanctions. Most cases are handled by the educational review committee, where a less harsh approach is taken to prevent future ethical violations.

THE PURPOSE OF AN ETHICS CODE FOR BEHAVIOR ANALYSTS

The primary purpose of a code of ethics for behavior analysts is to establish rules and guidelines for the practice of behavior analysis that will inform and protect the public from harm. A secondary purpose is to protect the professionals in our field by making clear to the public what we can and cannot do, what is expected, and what the boundaries of our practice are. If professional behavior analysts follow the rules and stay within our ABA scope of practice

**Figure 17.5** The life of an ethics case.

and their own scope of competence, they should be free from criticism and accusation as long as they have educated their clients and stakeholders of these limitations. In our decade-long engagement with the public and ABA professionals via the Ethics Hotline, it has become clear that we are not doing enough to educate the public about our role and our capabilities. Unfortunately, there are some who will cut corners, succumb to economic or political pressure, or act without thinking of the consequences. These behavior analysts are likely to have allegations of unethical conduct filed against them and possibly find themselves facing the BACB ethics committee. Following the rules should not be difficult, but the pressures of time, economic benefits, and business contingencies are real and must be recognized for the threat that they pose. As we have said many times publicly, “If ethics were easy, everyone would be ethical.”

If ethics were easy,
everyone would be ethical.

A FINAL NOTE

It is hoped that this book will help you think about ethics not in a theoretical or purely moral sense, but rather in the practical sense of doing the right thing; doing no harm; being just, truthful, fair, and responsible; affording dignity to your clients; promoting their independence; and in general treating others the way that you would like to be treated. The world would surely be a better place if everyone adopted the behavior analyst’s ethical principles and put them to practical use every day.

NOTES

1. The code can be found at www.BACB.com.
2. There may be some circumstances under which the Board will consider a violation more than 6 months old.
3. For precise details on the steps involved, go to www.bacb.com/ethics-information/reporting-to-ethics-department/reporting-alleged-violations-based-on-publicly-available-documentation/

4. To see the entire form, go to www.bacb.com/ethics-information/reporting-to-ethics-department/reporting-alleged-violations-based-on-publicly-available-documentation/
5. For details, go to <https://infogram.com/1p5eqr2qmmvxp0fpey0zel9pgea3yw63n3e?live>

Appendix A: Glossary

BEHAVIOR ANALYST

An individual who holds BCBA or BCaBA certification or who has submitted a complete application for BCBA or BCaBA certification.

BEHAVIOR-CHANGE INTERVENTION

The full set of behavioral procedures designed to improve the client's well-being.

BEHAVIORAL SERVICES

Services that are explicitly based on the principles and procedures of behavior analysis and are designed to change behavior in meaningful ways. These services include, but are not limited to, assessment, behavior-change interventions, training, consultation, managing and supervising others, and delivering continuing education.

CLIENT

The direct recipient of the behavior analyst's services. At various times during service provision, one or more stakeholders may

simultaneously meet the definition of client (e.g., the point at which they receive direct training or consultation). In some contexts, the client might be a group of individuals (e.g., with organizational behavior management services).

CLIENTS' RIGHTS

Human rights, legal rights, rights codified within behavior analysis, and organization rules designed to benefit the client.

CONFLICT OF INTEREST

An incompatibility between a behavior analysts' private and professional interests resulting in risk or potential risk to services provided to, or the professional relationship with, a client, stakeholder, supervisee, trainee, or research participant. Conflicts may result in a situation in which personal, financial, or professional considerations have the potential to influence or compromise professional judgment in the delivery of behavioral services, research, consultation, supervision, training, or any other professional activity.

DIGITAL CONTENT

Information that is made available for online consumption, downloading, or distribution through an electronic medium (e.g., television, radio, e-book, website, social media, videogame, application, computer, smart device). Common digital content includes documents, pictures, videos, and audio files.

INFORMED CONSENT

The permission given by an individual with the legal right to consent before participating in services or research, or allowing their information to be used or shared.

Service/research: Providing the opportunity for an individual to give informed consent for services or research involves communicating about and taking appropriate steps to confirm understanding of (1) the purpose of the services or research; (2) the expected time commitment and procedures involved; (3) the right to decline to participate or withdraw at any time without adverse consequences; (4) potential benefits, risks, discomfort, or adverse effects; (5) any limits to confidentiality or privacy; (6) any incentives for research participation; (7) whom to contact for questions or concerns at any time; and (8) the opportunity to ask questions and receive answers.

Information use/sharing: Providing the opportunity for an individual to give informed consent to share or use their information involves communicating about (1) the purpose and intended use; (2) the audience; (3) the expected duration; (4) the right to decline or withdraw consent at any time; (5) potential risks or benefits; (6) any limitations to confidentiality or privacy; (7) whom to contact for questions or concerns at any time; and (8) the opportunity to ask questions and receive answers.

LEGALLY AUTHORIZED REPRESENTATIVE

Any individual authorized under law to provide consent on behalf of an individual who cannot provide consent to receive services or participate in research.

MULTIPLE RELATIONSHIP

A comingling of two or more of a behavior analyst's roles (e.g., behavioral and personal) with a client, stakeholder, supervisee, trainee, research participant, or someone closely associated with or related to the client.

PUBLIC STATEMENTS

Delivery of information (digital or otherwise) in a public forum for the purpose of either better informing that audience or providing

a call to action. This includes paid or unpaid advertising, brochures, printed material, directory listings, personal resumes or curriculum vitae, interviews, or comments for use in media (e.g., print, statements in legal proceedings, lectures and public presentations, social media, published materials).

RESEARCH

Any data-based activity, including analysis of preexisting data, designed to generate generalizable knowledge for the discipline. The use of an experimental design does not by itself constitute research.

RESEARCH PARTICIPANT

Any individual participating in a defined research study for whom informed consent has been obtained.

RESEARCH REVIEW COMMITTEE

A group of professionals whose stated purpose is to review research proposals to ensure the ethical treatment of human research participants. This committee might be an official entity of a government or university (e.g., IRB, research ethics board), an independent committee within a service organization, or an independent organization created for this purpose.

SCOPE OF COMPETENCE

The professional activities a behavior analyst can consistently perform with proficiency.

SOCIAL MEDIA CHANNEL

A digital platform, either found through a web browser or through an application, where users (individuals and/or businesses) can

consume, create, copy, download, share, or comment on posts or advertisements. Both posts and advertisements would be considered digital content.

STAKEHOLDER

An individual, other than the client, who is impacted by and invested in the behavior analyst's services (e.g., parent, caregiver, relative, legally authorized representative, collaborator, employer, agency or institutional representatives, licensure board, funder, or third-party contractor for services).

SUPERVISEE

Any individual whose behavioral service delivery is overseen by a behavior analyst within the context of a defined, agreed-upon relationship. Supervisees may include RBTs, BCaBAs, and BCBAs, as well as other professionals carrying out supervised behavioral services.

TESTIMONIAL

Any solicited or unsolicited recommendation in any form (from a client, stakeholder, supervisee, or trainee) affirming the benefits received from a behavior analyst's product or service. From the point at which a behavior analyst asks an individual for a recommendation, it is considered solicited.

THIRD PARTY

Any individual, group of individuals, or entity, other than the direct recipient of services, the primary caregiver, the legally authorized representative, or the behavior analyst, who requests and funds services on behalf of a client or group of clients. Some examples include a school district, governmental entity, and mental health agency.

TRAINEE

Any individual accruing fieldwork/experience toward fulfilling eligibility requirements for BCaBA or BCBA certification.

WEBSITE

A digital platform found through a web browser where an entity (individual and/or organization) produces and distributes digital content for the consumption of users online. Depending on the functionality, users can consume, create, copy, download, share, or comment on the provided digital content.

Note: Terms defined in the glossary are *italicized* the first time they appear in a standard in each section of the code.

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