

21 NCAC 05 .0201 is adopted with changes as published in 37:03 NCR 231-235 as follows:

SECTION .0200 – APPLICATIONS

21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND LICENSED ASSISTANT BEHAVIOR ANALYST

(a) The Behavior Analyst License applicant shall submit the following to the Board:

- (1) Completed application developed and provided by the Board;
- ~~(2) Official documentation of the education degree required for license;~~
- ~~(3)~~ (2) Documentation of all previous professional human services licenses held by the applicant;
- ~~(4)~~ (3) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code for Behavior Analysts published by the certifying entity;
- ~~(5)~~ (4) Documentation of all work experience in the field of behavior analysis, including internships, practicum, and other field experience completed as part of an educational course of study;
- ~~(6)~~ (5) Documentation of all certifications of behavior analysis currently or previously granted by national or other state certification bodies;
- ~~(7)~~ (6) Payment of all required fees; and
- ~~(8)~~ (7) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice authorizing the completion of a certified criminal records check based on the applicant's fingerprints provided to a local law enforcement office.

(b) The Assistant Behavior Analyst License applicant shall submit the following to the Board:

- (1) Completed application developed and provided by the Board;
- ~~(2) Official documentation of the education degree required for license;~~
- ~~(3)~~ (2) Documentation of all previous professional human services licenses held by the applicant;
- ~~(4)~~ (3) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code for Behavior Analysts published by the certifying entity;
- ~~(5)~~ (4) Documentation of all work experience in the field of behavior analysis, including internships, practicum, and other field experience completed as part of an educational course of study;
- ~~(6)~~ (5) Documentation of all certifications of behavioral analysis currently or previously granted by national or other state certification bodies;
- ~~(7)~~ (6) Payment of all required fees; and
- ~~(8)~~ (7) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice authorizing the completion of a certified criminal records check based on the applicant's fingerprints provided to a local law enforcement office.

*History Note: Authority G.S. 90-736-738;
Eff. December 1, 2022.*

21 NCAC 05 .0202 is adopted as published in 37:03 NCR 231-235:

21 NCAC 05 .0202 REFERENCES

(a) The application for Behavior Analyst License and Assistant Behavior Analyst shall include two letters of reference, to be submitted to the Board using a portal in the application software. The two letters of references shall include:

(1) Name of reference and applicant;

(2) Period of time the reference has known the applicant;

(3) Nature of professional relationship; and

(4) Knowledge of the applicant's training, experience, professional skills, and adherence to legal and ethical standards.

(b) Letters of reference shall be submitted electronically to the Board.

History Note: Authority G.S. 90-737.2; 90-737.3;
Eff. December 1, 2022.

21 NCAC 05 .0203 is adopted as published in 37:03 NCR 231-235:

21 NCAC 05 .0203 CERTIFICATION

(a) The applicant for Behavior Analyst License and Assistant Behavior Analyst shall submit an official copy of the applicant's Behavior Analyst certification to the Board.

(b) The applicant for Assistant Behavior Analyst shall submit an official copy of the applicant's Behavior Analyst certification to the Board.

(c) The Board shall accept the Behavior Analyst certification electronically submitted to the Board on behalf the applicant.

History Note: Authority G.S. 90-737.2; 90-737.3;

Eff. December 1, 2022.

21 NCAC 05 .0401 is adopted as published in 37:03 NCR 231-235:

SECTION .0400 – SUPERVISION AND TELEHEALTH

21 NCAC 05 .0401 SUPERVISION OF ASSISTANT BEHAVIOR ANALYST

(a) Applicants for licensure as an assistant behavior analyst shall provide a supervisory agreement signed by the licensed behavior analyst and the licensed assistant behavior analyst.

(b) Applicants for licensure as an assistant behavior analyst shall maintain a copy of the signed supervisory agreement and any supervisory documentation. The supervisor of the licensed assistant behavior analyst shall maintain a copy of the signed supervisor agreement and supervisory documentation for at least seven years following the termination of the supervisory relationship. This documentation shall be made available to the Board upon request.

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

(d) Supervision activities by the licensed behavior analyst include:

(1) Direct observation of the supervisee implementing behavior analytic assessment and intervention procedures with clients in natural environments and/or training others to implement them, with feedback from the supervisor. The observation may be done in-person, on-site, or using asynchronous or synchronous formats.

(2) One-to-one, live, person-to-person, or synchronous virtual interactions between supervisor and supervisee to review and discuss assessment and treatment plans and procedures, client assessment and progress data and reports, published research, ethical and professional standards and guidelines, professional development needs and opportunities, and relevant laws, regulations, and policies.

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

(4) Informal interactions between supervisors and supervisees via telephone, electronic mail, and other written communication are encouraged but shall not be considered formal supervision for the purposes of this Chapter.

(e) The frequency and nature of supervision interactions shall be consistent with the supervisory requirements set forth by the certifying entity, as defined in G.S. 90-732.

History Note: Authority G.S. 90-738;

Eff. December 1, 2022.

21 NCAC 05 .0402 is adopted with changes as published in 37:03 NCR 231-235 as follows:

21 NCAC 05 .0402 SUPERVISION OF BEHAVIOR TECHNICIANS

(a) Behavior technicians shall be supervised by a licensed behavior analyst or a licensed assistant behavior analyst.

(b) Any licensed behavior analyst or licensed assistant behavior analyst employing or supervising behavior technicians who are implementing applied behavior analysis interventions designed by the licensed behavior analyst or licensed assistant behavior analyst shall maintain professional responsibility for the quality of the interventions rendered and for the effects of the interventions upon the client, patient, or other individuals.

(c) The behavior analyst shall have face-to-face contact, including in-person and/or synchronous virtual interactions, during the course of services with all patients, clients, or other recipients of services delivered by behavior technicians as part of the interventions designed by the licensed behavior analyst's or licensed assistant behavior analyst's.

(d) Any licensed behavior analyst or licensed assistant behavior analyst employing or supervising behavior technicians who are implementing applied behavior analysis interventions designed by the licensed behavior analyst or licensed assistant behavior analyst shall maintain sufficient documentation to demonstrate their adherence to this Rule. Such documentation may include but is not limited to supervision contracts, supervision logs, supervision notes, meeting notes. The licensed behavior analyst or licensed assistant behavior analyst shall maintain documentation of the employee's or supervisee's training for at least seven years following the termination of applied behavior analysis services by the behavior technician.

(e) Behavior technicians shall be utilized to perform only:

- (1) Non-client-related tasks, including but not limited to clerical and maintenance activities and the preparation of the work area and equipment;
- (2) Certain routine client-related tasks that, in the opinion of and under the supervision of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely impact the client or the client's treatment plan and do not constitute the practice of behavior analysis; and
- (3) The behavior technician shall not design assessment or intervention plans or ~~procedures~~ procedures but may deliver such services as assigned by a supervisor who is responsible for the behavior technician's work.

(f) Failure of any licensed behavior analyst or licensed assistant behavior analyst to train and supervise behavior technicians shall subject that licensed behavior analyst or licensed assistant behavior analyst to disciplinary action pursuant to 21 NCAC 05 .0603.

*History Note: Authority G.S. 90-745;
 Eff. December 1, 2022.*

21 NCAC 05 .0403 is adopted with changes as published in 37:03 NCR 231-235 as follows:

21 NCAC 05 .0403 TELEHEALTH AND TELEPRACTICE

(a) Requirements for Licensees Providing Applied Behavior Analytic Services via Telehealth

(1) A licensee who provides applied behavior analytic services via telehealth shall:

- (A) Maintain competence with the technologies utilized, including understanding and adequately addressing the actual and potential impact of those technologies on clients, supervisees, or other professionals;**
- (B) Maintain compliance with the NC Behavior Analyst Practice Act and the certifying body's ethics code, and all other applicable federal, state, and local laws;**
- (C) At the onset of the delivery of care via telehealth, identify appropriate emergency response contacts local to the client so that those contacts shall be readily accessible in the event of an emergency;**
- (D) Protect and maintain the confidentiality of data and information in accordance with all applicable federal, state, and local laws; and**
- (E) Dispose of data and information only in accordance with federal, state, and local law and in a manner that protects the data and information from unauthorized access.**

(2) If applied behavior analysis services commence via telehealth, the licensee shall, at the initial meeting with the client:

- (A) Make reasonable attempts to verify the identity of the client;**
- (B) Obtain alternative means of contacting the client other than electronically;**
- (C) Provide to the client alternative means of contacting the licensee other than electronically;**
- (D) Document if the client has the necessary knowledge and skills to benefit from the type of telehealth to be provided by the licensee; and**
- (E) Inform the client in writing about and obtain the client's informed written consent regarding:**
 - (i) The limitations of using technology in the provision of applied behavior analytic services;**
 - (ii) Potential risks to confidentiality of information due to technology in the provision of applied behavior analytic services;**
 - (iii) Potential risks of disruption in the use of telehealth technology;**
 - (iv) When and how the licensee will respond to routine electronic messages;**
 - (v) In what circumstances the licensee will use alternative communications for emergency purposes;**
 - (vi) Who else may have access to client communications with the licensee;**
 - (vii) How communications can be directed to a specific licensee;**
 - (viii) How the licensee stores electronic communications from the client; and**

(ix) That the licensee or client may elect to discontinue the provision of services through telehealth at any time.

(b) Jurisdictional Considerations

(1) A person providing applied behavior analytic services via telehealth to a person physically located in North Carolina while services are provided shall be licensed by the board.

(2) A person providing applied behavior analytic services via telehealth from a physical location in North Carolina shall be licensed by the board and may be subject to licensure requirements in other states where the services are received by the client.

(c) Representation of Services and Code of Conduct - A licensee using telehealth to deliver services shall not:

(1) Engage in false, misleading, or deceptive advertising; nor

(2) ~~Split fees.~~ Divide or share their fee with another licensee.

History Note: Authority G.S. 90-738;

Eff. December 1, 2022.

21 NCAC 05 .0501 is adopted as published in 37:03 NCR 231-235:

SECTION .0500 - ETHICS

21 NCAC 05 .0501 ETHICS

The Board shall use those policies, publications, guidelines, and casebooks developed by the certifying entity in determining whether violations of the Ethics Code for Behavior Analysts have occurred. In addition, publications, guidelines, policies, and statements provided by the certifying entity and bodies may be used in interpreting the Ethics Code for Behavior Analysts.

History Note: Authority G.S. 90-731; 90-734; 90-743;

Eff. December 1, 2022.

21 NCAC 05 .0601 is adopted as published in 37:03 NCR 231-235:

SECTION .0600 – DISCIPLINARY INVESTIGATION

21 NCAC 05 .0601 COMPLAINT PROCEDURES

(a) Initiation. Any individual with personal knowledge that any person has violated the Code of Conduct, any other rules of the Board, or G.S. 90, Article 43 may file a complaint against the behavior analyst professional by submitting a complaint through the Ethics Complaint Form found on the Board's website.

(b) Form. The complaint shall be in written or typed format stating the nature of the alleged offense and signed or attested to be true by the complainant. The complaint shall include:

(1) the name, address, and telephone number of the complainant;

(2) the name and address of the person against whom the complaint is made; and

(3) a statement of the facts that describes the allegations against the person.

(c) The complaint shall be investigated as set out in Rule .0602 of this Chapter.

(d) Following an investigation of the complaint, the ethics committee shall try to reach a settlement through informal procedures pursuant to G.S. 150B-22.

(e) Once the ethics committee concludes there is a basis to schedule a disciplinary hearing before the Board, the committee chairperson shall notify the person against whom the complaint is made. The notice to the respondent shall include the following:

(1) state the section(s) of the Code of Conduct, other rules of the Board, or G.S. 90, Article 43 which the complaint alleges has been violated;

(2) direct that the respondent reply in writing and by certified mail within 15 days of receipt of this notice; and

(3) inform the respondent that failure to respond in writing within 15 days may result in revocation of credential.

(f) Notice shall be given by regular postage mail, certified mail, or personal service at the last known address of the respondent. If given by certified mail, notice shall be deemed to have been given on the delivery date appearing on the return receipt.

(g) The Board may receive official correspondence in an ethics case through e-mail in order to further the investigation or when the subject of an investigation is unable to use or has been unresponsive to certified mail or other methods of delivery. The Board may use local law enforcement or a private investigator licensed by Private Protective Services Board to personally serve a respondent.

(h) If notice cannot be given either by personal service or by certified mail, a notice that a complaint has been brought against the respondent shall then be given by publication. A party that cannot with due diligence be served by personal delivery or certified mail may be given notice to respond to a complaint by publication. Service of notice by publication shall consist of publishing a notice by publication once a week for three successive weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party to be served is believed by the serving party to be located, or if there is no reliable information concerning the location

1 of the party then in a newspaper circulated in the county of respondent's last address provided to the Board by the
2 respondent. There shall be mailed to the party at or prior to the first publication a copy of the notice to respond by
3 publication to the respondent's last known address. Upon completion of service there shall be filed with the Board by
4 the ethics committee chairperson an affidavit showing the publication and mailing substantially in accordance with
5 the requirement of G.S. 1-75.10(2), the circumstances warranting the use of service by publication, and information,
6 if any, regarding the location of the party served. The notice shall include a statement by the Board that a complaint
7 has been made against the respondent that is scheduled to be heard by the Board within 90 days. The notice shall
8 inform respondent that respondent shall be given 30 days from the date of the last date of publication in which to
9 respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts. Response
10 shall be made in writing to the Board at the address provided by the Board in its notice. If respondent provides the
11 Board with information whereby respondent can be served by the deadline specific in the notice, the Board shall
12 provide notice either personally or by certified mail as provided in Paragraph (g) of this Rule. Failure of respondent
13 notified by publication of a complaint brought by the Board shall be treated as a failure of respondent to reply to the
14 charges.

15 (i) Failure of the respondent to reply to the charges, including each specific allegation, may be considered an
16 admission of the facts contained in the allegation(s).

17
18 *History Note: Authority G.S. 90-731-737;*

19 *Eff. December 1, 2022.*

21 NCAC 05 .0602 is adopted as published in 37:03 NCR 231-235:

21 NCAC 05 .0602 INVESTIGATION OF COMPLAINT

(a) The Ethics Committee chairperson, in consultation with the administrative director or their designee and legal counsel, shall investigate the allegations in the complaint. The chairperson may appoint any person(s) or name a subcommittee to serve as the investigating entity to prepare an investigative report.

(b) The investigating entity may contact the complainant and person against whom the complaint is made.

(c) Upon completion of the investigation, the ethics committee chairperson in consultation with the investigating entity may determine that:

(1) the complaint is without merit. The chairperson shall notify the complainant that the complaint is dismissed and shall notify the respondent of the dismissal; and

(2) upon completion of an investigation wherein the complaint is not dismissed, the Ethics Committee chairperson may:

(A) offer an informal resolution pursuant to G.S. 150B-22;

(B) schedule a meeting with the respondent;

(C) refer the report to the ethics committee or its hearing panel;

(D) schedule a hearing before the Board; or

(E) the chairperson may take a voluntary dismissal of the case where the respondent relinquishes their credential for an agreed upon period of time.

(d) The Ethics Committee members or its subcommittees shall review a report referred by the Ethics Committee chairperson and may take any of the following actions:

(1) dismiss the complaint;

(2) remand the matter to the investigating entity in order to obtain additional evidence sufficient upon which to base a decision;

(3) make a written offer of informal resolution;

(4) schedule a meeting with the respondent whereby the dispute may be settled through informal procedures; or

(5) schedule a disciplinary hearing, in accordance with G.S. 150B, Article 3A, before the Board.

History Note: Authority G.S. 90-731-737;

Eff. December 1, 2022.