

## Burgos, Alexander N

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**Subject:** FW: [External] NCBALB - Change to rulemaking coordinator  
**Attachments:** 21 NCAC 05 .0603 (V2).docx; 21 NCAC 05 .0102 (V2).docx; 21 NCAC 05 .0201 EXTENSION EDITION (V2).docx; 21 NCAC 05 .0202 EXTENSION EDITION (V2).docx; 21 NCAC 05 .0203 EXTENSION EDITION (V2).docx; 21 NCAC 05 .0401 EXTENSION EDITION (V2).docx; 21 NCAC 05 .0402 EXTENSION EDITION (V2).docx; 21 NCAC 05 .0501 EXTENSION EDITION (V2).docx; 21 NCAC 05 .0601 EXTENSION EDITION (V2).docx; 21 NCAC 05 .0602 EXTENSION EDITION (V2).docx

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**From:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Sent:** Friday, January 13, 2023 3:23 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Good Afternoon Brian,

Please see all of the most up to date versions of the rules.

Regarding your request to include the URLs to specific handbooks or references, we are hesitant to put the specific URLs due to the handbooks being updating on a regular basis and the potential for URLs to change on a website we have no control over. We did, however, include more specific language so it is clear which reference materials/handbooks should be used for the specific rules.

If anything additional is needed, please let us know.

Have a good weekend,  
Caitlin  
Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. CHAPTER 132 and may be disclosed to third parties

orized state official.

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1 21 NCAC 05 .0102 is adopted as published in 37:03 NCR 231-235:  
2

3 **SECTION .0100 – GENERAL**  
4

5 **21 NCAC 05 .0102      BOARD ADDRESS AND WEBSITE**

6 (a) Unless otherwise directed, all correspondence shall be mailed to the following address:

7        701 Exposition Place

8        Suite 206

9        Raleigh, NC 27615

10 (b) The Board website shall be [www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org).

11  
12 *History Note:*    *Authority G.S. 90-734;*

13                    *Eff. ~~December 1, 2022~~ February 1, 2023*

1 21 NCAC 05 .0201 is adopted with changes as published in 37:03 NCR 231-235 as follows:  
2

3 **SECTION .0200 – APPLICATIONS**  
4

5 **21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND**  
6 **LICENSED ASSISTANT BEHAVIOR ANALYST**

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

- 8 ~~(1) Completed application developed and provided by the Board;~~  
9 ~~(2) Official documentation of the education degree required for license;~~  
10 (3) (1) Documentation of all previous professional human services licenses held by the applicant;  
11 (4) (2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
12 for Behavior Analysts published by the certifying entity;  
13 (5) (3) Documentation of all work experience in the field of behavior analysis, including internships,  
14 practicum, and other field experience completed as part of an educational course of study;  
15 (6) (4) Documentation of all certifications of behavior analysis currently or previously granted by national  
16 or other state certification ~~bodies; bodies as described in Rule .0203 of this Chapter.~~  
17 (7) (5) Payment of all required fees; ~~and~~  
18 (8) (6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
19 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
20 provided to a local law enforcement ~~office; office; and~~  
21 (7) Two letters of reference as described in Rule .0202 of this Chapter.

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

- 23 ~~(1) Completed application developed and provided by the Board;~~  
24 ~~(2) Official documentation of the education degree required for license;~~  
25 (3) (1) Documentation of all previous professional human services licenses held by the applicant;  
26 (4) (2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
27 for Behavior Analysts published by the certifying entity;  
28 (5) (3) Documentation of all work experience in the field of behavior analysis, including internships,  
29 practicum, and other field experience completed as part of an educational course of study;  
30 (6) (4) Documentation of all certifications of behavioral analysis currently or previously granted by  
31 national or other state certification ~~bodies; bodies as described in Rule .0203 of this Chapter.~~  
32 (7) (5) Payment of all required fees; ~~and~~  
33 (8) (6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
34 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
35 provided to a local law enforcement ~~office; office; and~~  
36 (7) Two letters of reference as described in Rule .0202 of this Chapter.  
37  
38

1 *History Note:* Authority ~~G.S. 90-736-738;~~ G.S. 90-734; 90-736; 90-737; 90-738;  
2 *Eff.* ~~December 1, 2022~~ February 1, 2023.  
3

1 21 NCAC 05 .0202 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **21 NCAC 05 .0202 REFERENCES**

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

- 7 (1) Name name of reference and applicant;
- 8 (2) Period period of time the reference has known the applicant;
- 9 (3) Nature nature of professional relationship; and
- 10 (4) Knowledge knowledge of the applicant's training, experience, professional skills, and adherence to  
11 legal and ethical standards.

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

13

14 *History Note:* Authority G.S. 90-737.2; 90-737.3; 90-734; 90-736;

15 Eff. December 1, 2022 February 1, 2023.

16

1 21 NCAC 05 .0203 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **21 NCAC 05 .0203 CERTIFICATION**

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

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

8 ~~(e) (b)~~ The Board shall accept electronic submissions of the Behavior Analyst certification electronically submitted to  
9 the Board on behalf of the applicant.

10

11 *History Note:* Authority G.S. 90-737.2; 90-737.3; 90-734; 90-736; 90-737; 90-738;

12 *Eff.* December 1, 2022 February 1, 2023.

13

1 21 NCAC 05 .0401 is adopted with changes as published in 37:03 NCR 231-235:

2  
3 **SECTION .0400 – SUPERVISION ~~AND TELEHEALTH~~**  
4

5 **21 NCAC 05 .0401 SUPERVISION OF ASSISTANT BEHAVIOR ANALYST**

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

8 (b) Applicants for licensure as an assistant behavior analyst shall maintain a copy of the signed supervisory agreement  
9 and any supervisory documentation, evaluations or supervision logs, while supervised. The supervisor of the licensed  
10 assistant behavior analyst shall maintain a copy of the signed supervisor agreement, supervision logs, and evaluations  
11 and supervisory documentation for at least seven years following the termination of the supervisory relationship. This  
12 documentation shall be made available to the Board upon request.

13 ~~(c) Delegation shall be made if, in the judgment of the licensed behavior analyst, the task The licensed behavior~~  
14 ~~analyst may delegate tasks or procedures can be properly and safely performed by an appropriately trained to an~~  
15 ~~assistant behavior analyst or other person, and the delegation does not jeopardize the health or safety of the client.~~  
16 ~~analyst in accordance with the supervisory agreement.~~

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

- 18 (1) Direct observation of the supervisee implementing behavior analytic assessment and intervention  
19 procedures with clients in natural environments and/or and or training others to implement them,  
20 with feedback from the supervisor. The observation may be done in-person, on-site, or using  
21 asynchronous or synchronous formats.
- 22 (2) One-to-one, live, person-to-person, or synchronous virtual interactions between supervisor and  
23 supervisee to review and discuss assessment and treatment plans and procedures, client assessment  
24 and progress data and reports, published research, ethical and professional standards and guidelines,  
25 professional development needs and opportunities, and relevant laws, regulations, and policies.
- 26 (3) Live, person-to-person, or synchronous virtual interactions between a supervisor and a group of  
27 supervisees to review and discuss assessment and treatment plans and procedures, client assessment  
28 and progress data and reports, published research, ethical and professional standards and guidelines,  
29 professional development needs and opportunities, and relevant laws, regulations, and policies.
- 30 (4) Informal interactions between supervisors and supervisees via telephone, electronic mail, and other  
31 written communication are encouraged but shall not be considered formal supervision for the  
32 purposes of this Chapter. The frequency and nature of supervision interactions shall be consistent  
33 with the supervisory requirements set forth by the certifying entity in the Board Certified Assistant  
34 Behavior Analyst (BCaBA) handbook, as defined in G.S. 90-732, which is hereby incorporated by  
35 reference, including subsequent amendments and editions, and may be found at  
36 <https://www.bacb.com/> at no cost.

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



1

2 *History Note:* Authority G.S. 90-734; 90-738; 90-732; 90-739

3 *Eff.* December 1, 2022 February 1, 2023.

1 21 NCAC 05 .0402 is adopted with changes as published in 37:03 NCR 231-235 as follows:  
2

3 **21 NCAC 05 .0402 SUPERVISION OF BEHAVIOR TECHNICIANS**

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

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

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

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

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

21 (1) ~~Non non~~-client-related tasks, ~~including but not limited to clerical clerical tasks, clerical, and~~  
22 maintenance activities, and the preparation of the work area and equipment; ~~and~~

23 (2) ~~Certain routine client related Client client-related~~ tasks that, in the opinion of and under the  
24 supervision of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential  
25 to adversely impact the client or the client's treatment plan and do not constitute the practice of  
26 behavior analysis, ~~and The behavior technician shall not design assessment or intervention plans or~~  
27 ~~procedures.~~

28 ~~(3) The behavior technician shall not design assessment or intervention plans or procedures. procedures.~~

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

32  
33 *History Note:* Authority G.S. ~~90-734; 90-732; 90-745;~~  
34 Eff. ~~December 1, 2022 February 1, 2023.~~  
35

1 21 NCAC 05 .0501 is adopted with changes as published in 37:03 NCR 231-235:

2  
3 **SECTION .0500 - ETHICS**  
4

5 **21 NCAC 05 .0501 ETHICS**

6 The Board shall use The Ethics Code for Behavior Analysts, which is hereby incorporated by reference, including  
7 subsequent amendments and editions, and may be found at <https://www.bacb.com/> at no cost, these policies,  
8 publications, guidelines, and casebooks developed by the certifying entity in determining whether ethical violations  
9 of the Ethics Code for Behavior Analysts have occurred. In addition, publications, guidelines, policies, and  
10 statements provided by the certifying entity and bodies may shall also be used in interpreting the Ethics Code for  
11 Behavior Analysts.

12  
13 *History Note:* Authority G.S. 90-731; 90-734; 90-743;-90-742;

14 Eff. December 1, 2022 February 1, 2023.  
15

1 21 NCAC 05 .0601 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **SECTION .0600 – DISCIPLINARY INVESTIGATION**  
4

5 **21 NCAC 05 .0601 COMPLAINT PROCEDURES**

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

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

- 12 (1) the name, address, and telephone number of the complainant;  
13 (2) the name and address of the person against whom the complaint is made; made (“respondent”); and  
14 (3) a statement of the facts that describes describe the allegations against the person.

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

16 (d) Following an Upon completion of the investigation of the complaint, the ethics committee shall try to reach a  
17 settlement through informal procedures pursuant to G.S. 150B-22. Upon completion of the investigation, the ethics  
18 committee shall take action as set out in Rule .0602(e) of this Chapter.

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

- 22 (1) state the section(s) sections of the Code of Conduct, other rules of the Board, this Subchapter, or  
23 G.S. 90, Article 43 which that the complaint alleges has been violated;  
24 (2) direct that the respondent reply to the Board in writing and by certified mail within 15 days of receipt  
25 of this notice; and  
26 (3) inform the respondent that failure to respond in writing within 15 days may result in revocation of  
27 credential. a license.

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

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

35 (h) If notice cannot be given either by regular postage mail, personal service, or by certified mail, a notice that a  
36 complaint has been brought against the respondent shall then be given by publication. A party that cannot with due  
37 diligence be served by personal delivery or certified mail may be given notice to respond to a complaint by publication.

38 Service of notice by publication shall consist of publishing a notice by publication once a week for three successive

1 weeks in a newspaper that is qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and  
2 circulated in the area where the ~~party to be served respondent~~ is believed ~~by the serving party to be located,~~ or if there  
3 ~~is no reliable information concerning the location of the party then in a newspaper circulated in the county of~~  
4 ~~respondent's last address provided to the Board by the respondent. to be located. There shall be mailed to the party at~~  
5 ~~or prior to the first publication a copy of the notice to respond by publication to the respondent's last known address.~~  
6 ~~Upon completion of service there shall be filed with the Board by the ethics committee chairperson an affidavit~~  
7 ~~showing the publication and mailing substantially in accordance with the requirement of G.S. 1-75.10(2), the~~  
8 ~~circumstances warranting the use of service by publication, and information, if any, regarding the location of the party~~  
9 ~~served.~~ The notice shall include a statement by the Board that a complaint has been made against the respondent that  
10 is scheduled to be heard by the Board within 90 days. The notice shall inform respondent that respondent shall be  
11 given 30 days from the date of the last date of publication in which to respond to the service by publication for the  
12 purpose of notifying the Board of respondent's whereabouts. Response shall be made in writing to the Board at the  
13 address provided by the Board in its notice. If respondent provides the Board with information whereby ~~respondent~~  
14 ~~he or she~~ can be served by the deadline ~~specific specified~~ in the notice, the Board shall provide notice either personally  
15 or by certified mail as provided in Paragraph (g) of this Rule. Failure of respondent notified by publication of a  
16 complaint brought by the Board shall be treated as a failure of respondent to reply to the charges.

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

19  
20 *History Note:* Authority G.S. ~~90-731-737; 90-731;90-734; 90-742; 90-744; 90-746; 90-747;~~  
21 *Eff.* ~~December 1, 2022 February 1, 2023.~~  
22

1 21 NCAC 05 .0602 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **21 NCAC 05 .0602 INVESTIGATION OF COMPLAINT**

4 (a) The ~~Ethics Committee~~ ethics committee shall consist of a member of the Board as chairperson, in consultation  
5 with the Board administrator administrative director, or their designee designee, and the Board's legal counsel. ~~The~~  
6 ethics committee shall investigate the allegations in the complaint. The chairperson may appoint any person(s) another  
7 Board member or name a subcommittee of the Board to serve as on the ~~investigating entity~~ ethics committee, if they  
8 determine there is a conflict of interest or that the complaint is outside of their investigatory skillset, to prepare an  
9 investigative report.

10 (b) The ~~investigating entity~~ ethics committee may contact the complainant and person against whom the complaint is  
11 made.

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

14 (1) the person against whom the complaint is made is not a licensee or applicant of the Board, and does  
15 not qualify for an exemption pursuant to G.S. 90-745. The ethics committee shall cease disciplinary  
16 action and the chairperson shall refer the matter for prosecution pursuant to G.S. 90-746.

17 ~~(1)~~ (2) the complaint is without merit. The ethics committee shall dismiss the complaint. The chairperson  
18 shall notify ~~the complainant that the complaint is dismissed and shall notify the respondent both~~  
19 parties of the dismissal; and

20 ~~(2)~~ (3) upon completion of an investigation wherein the complaint is found to have merit and or is not  
21 dismissed, the ~~Ethics Committee~~ ethics committee chairperson may:

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

23 (B) schedule a meeting with the respondent;

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

25 ~~(D)~~ (C) schedule notice a formal hearing before the Board; or

26 ~~(E)~~ (D) the chairperson may take a voluntary dismissal of the case where the respondent  
27 relinquishes their credential license for an agreed upon period of time. time through a  
28 consent order.

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

31 (1) dismiss the complaint;

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

34 (3) make a written offer of informal resolution;

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

37 (5) schedule a disciplinary hearing, in accordance with G.S. 150B, Article 3A, before the Board.  
38

1 *History Note:* Authority G.S. 90-731-737; 90-734; 90-742; 150B-22; 150B-38; 150B-39; 150B-40; 150B-41;  
2 150B-42;  
3 *Eff.* December 1, 2022 February 1, 2023.  
4

1 21 NCAC 05 .0603 is adopted with changes as published in 37:03 NCR 231-235:

2

3 **21 NCAC 05 .0603 METHOD OF DISCIPLINE**

4 (a) In the course of the disciplinary Following an investigation or hearing the Board may:

5 (1) deny a credential; license:

6 (2) revoke a credential; license:

7 (3) suspend a credential license until further order of the Board or for a specified period of time;

8 (4) reprimand the Respondent; or

9 (5) take other actions not to be considered a disciplinary action, including a letter of caution or letter of  
10 warning without the consent of the Respondent.

11 (b) Disciplinary or other actions by the Board with the Respondent's consent may be stayed while the Respondent  
12 satisfies all of the conditions of the consent order.

13

14 *History Note:* Authority G.S. 90-734 90-731-737; 90-742:

15 Eff. December 1, 2022 February 1, 2023.

16



## Burgos, Alexander N

---

**Subject:** FW: [External] NCBALB - Change to rulemaking coordinator  
**Attachments:** 0400 Forms for 21 NCAC 05 Rules COMBINED and UPDATED.pdf

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**From:** NCBALB Office <admin@ncbehavioranalystboard.org>  
**Sent:** Monday, January 9, 2023 9:16 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Ward, Alexander <award@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

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Good Morning Brian,

Please see the revised forms. Please let me know if any additional forms or any additional corrects need to be made to these forms.

We will review the language and requested revisions sent in this email and send updated or clarifying information.

We appreciate your assistance and feedback.

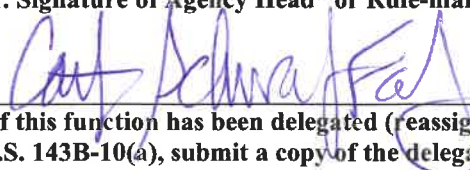
Caitlin  
Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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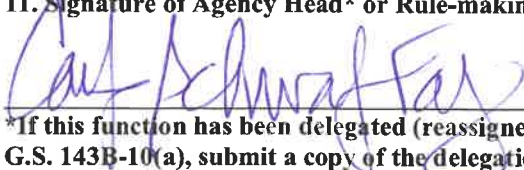
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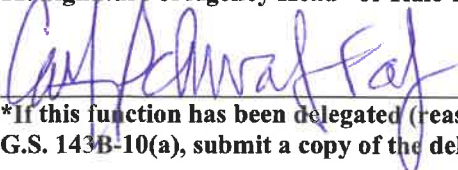
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0102 BOARD ADDRESS AND WEBSITE</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTION</b> <input type="checkbox"/> <b>REPEAL through READOPTION</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: <b>August 1, 2022</b> Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: <b>August 23, 2022</b> Adoption by Agency on: <b>October 18, 2022</b> <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b> <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> Cite Session Law: <b>S.L. 2021-2022</b> <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  <b>Phone: 919-443-0093</b> <b>E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a></b>  <b>Additional agency contact, if any: Alex Ward</b> <b>Phone: 919-716-6839</b> <b>E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a></b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b> <div style="text-align: center; margin-top: 10px;">   <hr style="width: 80%; margin: 0 auto;"/> </div> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name: Caitlin Schwab-Falzone</b> <b>Title: Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

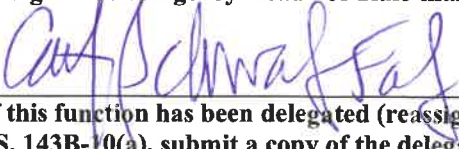
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND LICENSED ASSISTANT BEHAVIOR ANALYST	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> n <input type="checkbox"/> <b>REPEAL through READOPTIO</b> n	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: <b>August 1, 2022</b> Link to Agency notice: <b>www.ncbehavioranalystboard.org</b> Hearing on: <b>August 23, 2022</b> Adoption by Agency on: <b>October 18, 2022</b> <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority:  <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b>  <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <div style="display: flex; justify-content: space-between;"> <div style="width: 45%;"> <input checked="" type="checkbox"/> <b>Agency</b>  <input type="checkbox"/> <b>Court order / cite:</b>  <input type="checkbox"/> <b>Federal statute / cite:</b>  <input type="checkbox"/> <b>Federal regulation / cite:</b> </div> <div style="width: 45%;"> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b>            Cite Session Law: <b>SL 2021-2022</b>  <input type="checkbox"/> <b>Petition for rule-making</b>  <input type="checkbox"/> <b>Other:</b> </div> </div>	
<b>9B. Explain: Agency made changes after publication in response to public comment</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  <b>Phone:</b> 919-443-0093 <b>E-Mail:</b> admin@ncbehavioranalystboard.org  <b>Additional agency contact, if any:</b> Alex Ward <b>Phone:</b> 919-716-6839 <b>E-Mail:</b> award@ncdoj.gov	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr style="border: none; border-top: 1px solid black;"/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name:</b> Caitlin Schwab-Falzone <b>Title:</b> Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

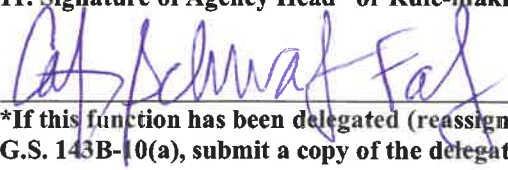
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0202 REFERENCES</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> <b>Notice of Text published on: August 1, 2022</b> <b>Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a></b> <b>Hearing on: August 23, 2022</b> <b>Adoption by Agency on: October 18, 2022</b> <input type="checkbox"/> <b>Notice not required under G.S.:</b> <b>Adoption by Agency on:</b>	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b>  <input type="checkbox"/> <b>Yes</b> <b>Agency submitted request for consultation on:</b> <b>Consultation not required. Cite authority:</b>  <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b>  <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b>  <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> <b>Cite Session Law: SL 2021-2022</b> <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  <b>Phone: 919-443-0093</b> <b>E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a></b>  <b>Additional agency contact, if any: Alex Ward</b> <b>Phone: 919-716-6839</b> <b>E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a></b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name: Caitlin Schwab-Falzone</b> <b>Title: Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> <b>RRC extended period of review:</b> <input type="checkbox"/> <b>RRC determined substantial changes:</b> <input type="checkbox"/> <b>Withdrawn by agency</b> <input type="checkbox"/> <b>Subject to Legislative Review</b> <input type="checkbox"/> <b>Other:</b>	

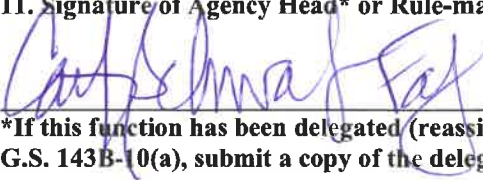
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0203 CERTIFICATION</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTION</b> <input type="checkbox"/> <b>REPEAL through READOPTION</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> <b>Notice of Text published on: August 1, 2022</b> <b>Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a></b> <b>Hearing on: August 23, 2022</b> <b>Adoption by Agency on: October 18, 2022</b> <input type="checkbox"/> <b>Notice not required under G.S.:</b> <b>Adoption by Agency on:</b>	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> <b>Yes</b> <b>Agency submitted request for consultation on:</b> <b>Consultation not required. Cite authority:</b>  <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b>  <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> <b>Cite Session Law: SL 2021-2022</b> <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  <b>Phone: 919-443-0093</b> <b>E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a></b>  <b>Additional agency contact, if any: Alex Ward</b> <b>Phone: 919-716-6839</b> <b>E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a></b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b> <div style="text-align: center; margin-top: 10px;">   <hr style="width: 80%; margin: 0 auto;"/> </div> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name: Caitlin Schwab-Falzone</b> <b>Title: Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> <b>RRC extended period of review:</b> <input type="checkbox"/> <b>RRC determined substantial changes:</b> <input type="checkbox"/> <b>Withdrawn by agency</b> <input type="checkbox"/> <b>Subject to Legislative Review</b> <input type="checkbox"/> <b>Other:</b>	

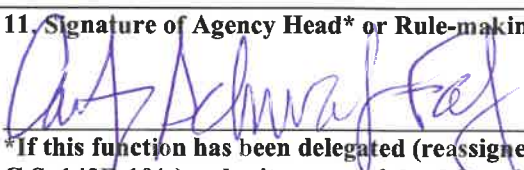
# SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: NC Behavior Analyst Licensure Board	
2. Rule citation & name (name not required for repeal): 21 NCAC 05 .0301 FEES	
3. Action: <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1)  <input checked="" type="checkbox"/> Yes Agency submitted request for consultation on: July 7, 2022 Consultation not required. Cite authority:  <input type="checkbox"/> No	8. Fiscal impact. Check all that apply.  <input type="checkbox"/> This Rule was part of a combined analysis.  <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact ( $\geq$ \$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain:	
10. Rulemaking Coordinator: Caitlin Schwab-Falzone  Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>  Additional agency contact, if any: Alex Ward Phone: 919-716-6839 E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a>	11. Signature of Agency Head* or Rule-making Coordinator:   <hr style="border: 0.5px solid black;"/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Caitlin Schwab-Falzone Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
Action taken:  <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE

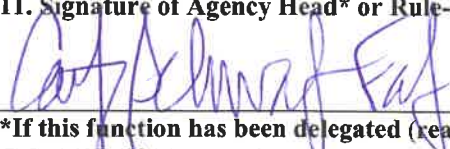
<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0401 SUPERVISION OF ASSISTANT BEHAVIOR ANALYST</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> N <input type="checkbox"/> <b>REPEAL through READOPTIO</b> N	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>  Additional agency contact, if any: Alex Ward Phone: 919-716-6839 E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Caitlin Schwab-Falzone Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE

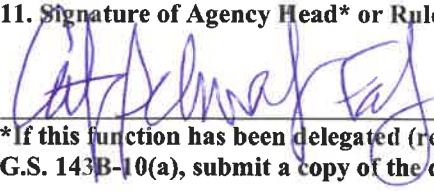
<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0402 SUPERVISION OF BEHAVIOR TECHNICIANS</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTION</b> <input type="checkbox"/> <b>REPEAL through READOPTION</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: <b>August 1, 2022</b> Link to Agency notice: <b>www.ncbehavioranalystboard.org</b> Hearing on: <b>August 23, 2022</b> Adoption by Agency on: <b>October 18, 2022</b> <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: <b>July 7, 2022</b> Consultation not required. Cite authority: <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b> <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> Cite Session Law: <b>SL 2021-2022</b> <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain: Agency made changes after publication in response to public comments</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  <b>Phone: 919-443-0093</b> <b>E-Mail: admin@ncbehavioranalystboard.org</b>  <b>Additional agency contact, if any: Alex Ward</b> <b>Phone: 919-716-6839</b> <b>E-Mail: award@ncdoj.gov</b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  <b>Typed Name: Caitlin Schwab-Falzone</b> <b>Title: Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> <b>RRC extended period of review:</b> <input type="checkbox"/> <b>RRC determined substantial changes:</b> <input type="checkbox"/> <b>Withdrawn by agency</b> <input type="checkbox"/> <b>Subject to Legislative Review</b> <input type="checkbox"/> <b>Other:</b>	



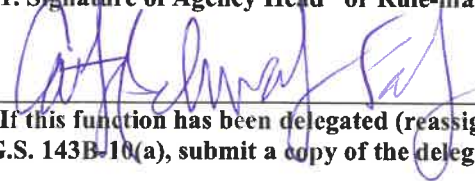
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0601 COMPLAINT PROCEDURES</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority:  <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b>  <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> Cite Session Law: SL 2021-2022 <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  <b>Phone: 919-443-0093</b> <b>E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a></b>  <b>Additional agency contact, if any: Alex Ward</b> <b>Phone: 919-716-6839</b> <b>E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a></b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name: Caitlin Schwab-Falzone</b> <b>Title: Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> <b>RRC extended period of review:</b> <input type="checkbox"/> <b>RRC determined substantial changes:</b> <input type="checkbox"/> <b>Withdrawn by agency</b> <input type="checkbox"/> <b>Subject to Legislative Review</b> <input type="checkbox"/> <b>Other:</b>	

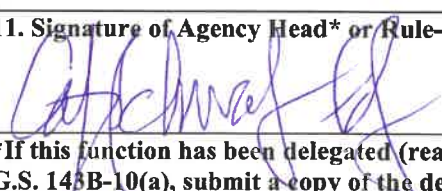
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0601 COMPLAINT PROCEDURES</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>  Additional agency contact, if any: Alex Ward Phone: 919-716-6839 E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Caitlin Schwab-Falzone Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> NC Behavior Analyst Licensure Board	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0602 INVESTIGATION OF COMPLAINT	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> N <input type="checkbox"/> <b>REPEAL through READOPTIO</b> N	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> <b>Notice of Text published on:</b> August 1, 2022 <b>Link to Agency notice:</b> <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> <b>Hearing on:</b> August 23, 2022 <b>Adoption by Agency on:</b> October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> <b>Adoption by Agency on:</b>	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes <b>Agency submitted request for consultation on:</b> <b>Consultation not required. Cite authority:</b> <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <b>Cite Session Law:</b> SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator:</b> Caitlin Schwab-Falzone  <b>Phone:</b> 919-443-0093 <b>E-Mail:</b> <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>  <b>Additional agency contact, if any:</b> Alex Ward <b>Phone:</b> 919-716-6839 <b>E-Mail:</b> <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name:</b> Caitlin Schwab-Falzone <b>Title:</b> Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0603 METHOD OF DISCIPLINE</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input checked="" type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority:  <input type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b>  <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> Cite Session Law: SL 2021-2022 <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Caitlin Schwab-Falzone</b>  <b>Phone: 919-443-0093</b> <b>E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a></b>  <b>Additional agency contact, if any: Alex Ward</b> <b>Phone: 919-716-6839</b> <b>E-Mail: <a href="mailto:award@ncdoj.gov">award@ncdoj.gov</a></b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name: Catlin Schwab-Falzone</b> <b>Title: Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> <b>RRC extended period of review:</b> <input type="checkbox"/> <b>RRC determined substantial changes:</b> <input type="checkbox"/> <b>Withdrawn by agency</b> <input type="checkbox"/> <b>Subject to Legislative Review</b> <input type="checkbox"/> <b>Other:</b>	

## Burgos, Alexander N

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**Subject:** FW: [External] NCBALB - Change to rulemaking coordinator

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Friday, January 6, 2023 6:48 PM

**To:** NCBALB Office <admin@ncbehavioranalystboard.org>

**Cc:** Ward, Alexander <award@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

Hi Caitlin,

After reviewing these Rules, I have a few more suggestions. Please see below.

Forms:

Did the Board submit revised forms? I had asked you to make some clarifying changes and resubmit them. Even if you submitted them earlier, can you resend them, so we're all clear on what is going before the Commission? Thanks!

All rules:

In your History Notes, I think you need a reference to G.S. 90-734, where it hasn't already been included, as that gives you general rulemaking authority.

Please highlight any changes made post-publication in the NC Register.

.0401

Copied from my earlier back-and-forth with Mr. Culbreth (my original request in italics, Mr. Culbreth's response in bold, my reply in red), as it doesn't appear that these have been addressed:

*In (a), where is your statutory authority to require a signed agreement? G.S. 90-738 refers to an "ongoing arrangement for supervision" that is "in a manner consistent with the certifying entity's requirements for supervision..." Is this in the certifying entity's requirements? If so please incorporate by reference pursuant to G.S. 150B-21.6. **Fixed.***

*OK, the change you're referring to is the change from "signed by" to "between", right? If so, I think this works, as 90-738 does say that the applicant shall provide "evidence" of an "arrangement" between he/she and the behavior analyst. The new problem is that you deleted 90-738 from the History Note. I think you need to restore it.*

*In (a), line 6, to whom shall the applicant "provide" the agreement? **Clarified, to the Board.***

*OK, but I would suggest revising to avoid the split infinitive. Suggest "... shall provide to the Board a supervisory agreement..."*

In (c)(4), line 35, thanks for adding the incorporation by reference to the BACB's website. I followed the link and I saw further links for handbooks for three different levels of licensure. I think it'd be helpful to clarify which one by including that URL in the Rule.

.0402

In (e)(1), lines 21-22, revise this into a list:

Non-client-related tasks, **including but not limited to clerical clerical tasks, clerical,** and maintenance activities and the preparation of the work area and equipment;

I did the formatting here, so you can see how you don't have to put post-publication additions that you're now deleting in brackets, but you do have to highlight all post-publication changes.

In (e)(1), line 22, add "and" after the final semi colon.

Please put the first word of both (e)(1) and (e)(2) into lower case.

.0501

On line 7, thanks for adding the incorporation by reference to the BACB's website. I followed the link and I saw further links for handbooks for three different levels of licensure. I think it'd be helpful to clarify which one by including that URL in the Rule.

.0601

Copied from earlier correspondence, as it doesn't appear to have been addressed.

*In (a), line 6, when you say "person" do you mean that the Board has jurisdiction over those who are not licensed? Does this conflict with the reference to a "behavior analyst professional" on line 7? Depending on your answer here, please also see (b)(3), line 13.*

***It is true that the Board may not have jurisdiction, and in that event it can refer out. We don't want to give the perception there is a limit on who the public can file a complaint. The Board can refer out to appropriate authorities in the event of unlicensed practice.***

*You can't accept complaints against people over whom you have no jurisdiction. You have to narrow the language to conform to your statutory authority.*

I understand what you're trying to do here, and I don't think there's anything barring you from referring those who are practicing without a license for prosecution, as G.S. 90-746 clearly makes that a crime. However, looking at G.S. 90-742, I simply don't see anything that allows you to discipline someone who isn't licensed, or submitting themselves to your jurisdiction by applying for licensure. My concern with stating that the Board will accept an "Ethics Complaint Form" against "any person" who has violated the Code of Conduct, these Rules, or Article 43, is that the rest of this Rule makes clear that upon receipt of this Form, the Board "shall investigate" under R. 0602, and then take action, which you can't legally do. I would suggest revising here, in R. 0602, or in both, to make it clear that where the Board becomes aware that the subject of the complaint isn't licensed or an applicant, the Board will cease disciplinary action and refer the matter for prosecution pursuant to G.S. 90-746.

Copied from earlier correspondence, as it doesn't appear to have been addressed.

*In (h), line 33, is there a reason that regular postage mail has been omitted? Also, if "official correspondence" includes the notice and response, should "e-mail" be included here? **It was not included because it has already been tried in (f).***

*That's my point – you list 3 things in (f), regular mail, certified mail, and personal service. In (h), you say the Board can shift to notice by publication "if notice cannot be given by either personal service or certified mail..." omitting "regular mail". Why?*

.0602

In (a), line 4, to be clear, the "chairperson" is the chair of the committee, or the chair of the Board? Please clarify and revise.

In (a), lines 7-8, I'm still unclear on the process here. The chair can replace themselves, but not the AD or the legal counsel? Please clarify and revise.

Copied from earlier correspondence, as it doesn't appear to have been addressed.

*Also, in (c)(1), lines 10-11, the Rule assumes that if the complaint is without merit, it is dismissed. I think you should be explicit and state who makes the decision to dismiss, as it is not clear whether the Committee makes that call, or if it is up to the chair and the investigating entity. See new changes to address this.*

Reading the revised language, I still don't see who actually takes the action to dismiss the complaint. The Board? The Committee? Does the Committee recommend to the Board that the complaint should be dismissed? Or does the Committee just dismiss on its own motion? 90-742 states that the Board "may adopt rules to interpret and implement the provisions of this section" so I think it is within your authority to make that call, but it does need to be affirmatively stated.

Thanks, and have a great weekend!

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

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**From:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Sent:** Friday, January 6, 2023 4:16 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Hello Brian,

I wanted to send you the most up to versions of the Board's rules to be reviewed. Please let us know if you have any requested revisions to the attached revised rules.

Also, the Board would like to withdraw proposed rule 21 NCAC 05 .0403. Please let us know if there is anything additional required to withdraw this proposed rule.

Thank you and have a good weekend.

Caitlin

Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. CHAPTER 132 and may be disclosed to third parties



1 21 NCAC 05 .0201 is adopted with changes as published in 37:03 NCR 231-235 as follows:  
2

3 **SECTION .0200 – APPLICATIONS**  
4

5 **21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND**  
6 **LICENSED ASSISTANT BEHAVIOR ANALYST**

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

- 8 ~~(1) Completed application developed and provided by the Board;~~  
9 ~~(2) Official documentation of the education degree required for license;~~  
10 ~~(3)~~ (1) Documentation of all previous professional human services licenses held by the applicant;  
11 ~~(4)~~ (2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
12 for Behavior Analysts published by the certifying entity;  
13 ~~(5)~~ (3) Documentation of all work experience in the field of behavior analysis, including internships,  
14 practicum, and other field experience completed as part of an educational course of study;  
15 ~~(6)~~ (4) Documentation of all certifications of behavior analysis currently or previously granted by national  
16 or other state certification ~~bodies;~~ bodies as described in Rule .0203 of this Chapter.  
17 ~~(7)~~ (5) Payment of all required fees; ~~and~~  
18 ~~(8)~~ (6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
19 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
20 provided to a local law enforcement ~~office;~~ office; ~~and~~  
21 (7) Two letters of reference as described in Rule .0202 of this Chapter.

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

- 23 ~~(1) Completed application developed and provided by the Board;~~  
24 ~~(2) Official documentation of the education degree required for license;~~  
25 ~~(3)~~ (1) Documentation of all previous professional human services licenses held by the applicant;  
26 ~~(4)~~ (2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
27 for Behavior Analysts published by the certifying entity;  
28 ~~(5)~~ (3) Documentation of all work experience in the field of behavior analysis, including internships,  
29 practicum, and other field experience completed as part of an educational course of study;  
30 ~~(6)~~ (4) Documentation of all certifications of behavioral analysis currently or previously granted by  
31 national or other state certification ~~bodies;~~ bodies as described in Rule .0203 of this Chapter.  
32 ~~(7)~~ (5) Payment of all required fees; ~~and~~  
33 ~~(8)~~ (6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
34 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
35 provided to a local law enforcement ~~office;~~ office; ~~and~~  
36 (7) Two letters of reference as described in Rule .0202 of this Chapter.  
37  
38

- 1 *History Note:* *Authority ~~G.S. 90-736-738;~~ G.S. 90-736; 90-737; 90-738;*
- 2 *Eff. February 1, 2023.*

1 21 NCAC 05 .0202 is adopted with changes as published in 37:03 NCR 231-235:

2

3 **21 NCAC 05 .0202 REFERENCES**

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

7 (1) ~~Name~~ name of reference and applicant;

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

9 (3) ~~Nature~~ nature of professional relationship; and

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

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

13

14 *History Note: Authority G.S. ~~90-737.2; 90-737.3; 90-734; 90-736;~~*

15 *Eff. February 1, 2023.*

1 21 NCAC 05 .0203 is adopted with changes as published in 37:03 NCR 231-235:

2

3 **21 NCAC 05 .0203 CERTIFICATION**

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

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

8 ~~(c) (b) The Board shall accept electronic submissions of the Behavior Analyst certification ~~electronically submitted to  
9 the Board on behalf of the applicant.~~~~

10

11 *History Note: Authority G.S. ~~90-737.2; 90-737.3; 90-736; 90-737; 90-738;~~*

12 *Eff. February 1, 2023.*

1 21 NCAC 05 .0401 is adopted with changes as published in 37:03 NCR 231-235:

2  
3 **SECTION .0400 – SUPERVISION AND TELEHEALTH**  
4

5 **21 NCAC 05 .0401 SUPERVISION OF ASSISTANT BEHAVIOR ANALYST**

6 (a) Applicants for licensure as an assistant behavior analyst shall provide a supervisory agreement ~~signed by~~ between  
7 the licensed behavior analyst and the licensed assistant behavior analyst to the Board.

8 (b) Applicants for licensure as an assistant behavior analyst shall maintain a copy of the ~~signed~~ supervisory agreement  
9 while supervised and any supervisory documentation, evaluations or supervision logs. The supervisor of the licensed  
10 assistant behavior analyst shall maintain a copy of the signed supervisor agreement, supervision logs, and evaluations  
11 ~~and supervisory documentation~~ for at least seven years following the termination of the supervisory relationship. This  
12 documentation shall be made available to the Board upon request.

13 ~~(c) Delegation shall be made if, in the judgment of the licensed behavior analyst, the task The licensed behavior~~  
14 ~~analyst may delegate tasks or procedures can be properly and safely performed by an appropriately trained to an~~  
15 ~~assistant behavior analyst or other person, and the delegation does not jeopardize the health or safety of the client.~~  
16 ~~analyst in accordance with the supervisory agreement.~~

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

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

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

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

30 (4) ~~Informal interactions between supervisors and supervisees via telephone, electronic mail, and other~~  
31 ~~written communication are encouraged but shall not be considered formal supervision for the~~  
32 ~~purposes of this Chapter. The frequency and nature of supervision interactions shall be consistent~~  
33 ~~with the supervisory requirements set forth by the certifying entity, as defined in G.S. 90-732.~~  
34 ~~which are hereby incorporated by reference, including subsequent amendments and editions, and~~  
35 ~~may be found at <https://www.bacb.com/> at no cost.~~

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

- 1 *History Note:* *Authority G.S. ~~90-738~~; 90-732; 90-739*
- 2 *Eff. February 1, 2023.*

1 21 NCAC 05 .0402 is adopted with changes as published in 37:03 NCR 231-235 as follows:  
2

3 **21 NCAC 05 .0402 SUPERVISION OF BEHAVIOR TECHNICIANS**

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

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

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

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

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

21 (1) Non-client-related ~~tasks, including but not limited to clerical or clerical tasks~~ tasks, clerical, and  
22 maintenance activities and the preparation of the work area and equipment;

23 (2) ~~Certain routine client related~~ Client-related tasks that, in the opinion of and under the supervision  
24 of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely  
25 impact the client or the client's treatment plan and do not constitute the practice of behavior analysis,  
26 ~~and~~ The behavior technician shall not design assessment or intervention plans or procedures.

27 (3) ~~The behavior technician shall not design assessment or intervention plans or procedures.~~ procedures.

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

31  
32 *History Note: Authority G.S. ~~90-745; 90-732; 90-745;~~*

33 *Eff. February 1, 2023.*

1 21 NCAC 05 .0501 is adopted with changes as published in 37:03 NCR 231-235:

2  
3 **SECTION .0500 - ETHICS**  
4

5 **21 NCAC 05 .0501 ETHICS**

6 The Board shall use The Ethics Code for Behavior Analysts, which is hereby incorporated by reference, including  
7 subsequent amendments and editions, and may be found at <https://www.bacb.com/> at no cost, ~~those policies,~~  
8 ~~publications, guidelines, and casebooks developed by the certifying entity~~ in determining whether ethical violations  
9 ~~of the Ethics Code for Behavior Analysts have occurred. In addition, publications, guidelines, policies, and~~  
10 ~~statements provided by the certifying entity and bodies may shall also be used in interpreting the Ethics Code for~~  
11 **Behavior Analysts.**

12  
13 *History Note: Authority G.S. 90-731; 90-734; ~~90-743;~~ 90-742;*  
14 *Eff. February 1, 2023.*



1 21 NCAC 05 .0601 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **SECTION .0600 – DISCIPLINARY INVESTIGATION**  
4

5 **21 NCAC 05 .0601 COMPLAINT PROCEDURES**

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

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

- 12 (1) the name, address, and telephone number of the complainant;  
13 (2) the name and address of the person against whom the complaint is ~~made;~~ made (“respondent”); and  
14 (3) a statement of the facts that ~~describes~~ describe the allegations against the person.

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

16 (d) ~~Following an~~ Upon completion of the investigation of the complaint, the ethics committee shall ~~try to reach a~~  
17 ~~settlement through informal procedures pursuant to G.S. 150B-22. Upon completion of the investigation, the ethics~~  
18 ~~committee shall take action as set out in Rule .0602(e) of this Chapter.~~

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

- 22 (1) ~~state the section(s)~~ sections of the Code of Conduct, other rules of ~~the Board, this Subchapter,~~ or  
23 G.S. 90, Article 43 ~~which~~ that the complaint alleges has been violated;  
24 (2) direct that the respondent reply to the Board in writing and by certified mail within 15 days of receipt  
25 of this notice; and  
26 (3) inform the respondent that failure to respond in writing within 15 days may result in revocation of  
27 ~~credential.~~ a license.

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

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

35 (h) If notice cannot be given either by personal service or by certified mail, a notice that a complaint has been brought  
36 against the respondent shall then be given by publication. ~~A party that cannot with due diligence be served by personal~~  
37 ~~delivery or certified mail may be given notice to respond to a complaint by publication.~~ Service of notice by publication  
38 shall consist of ~~publishing a notice~~ by publication once a week for three successive weeks in a newspaper that is

1 qualified for legal advertising in accordance with G.S. 1-597 and G.S. 1-598 and circulated in the area where the party  
2 ~~to be served~~ respondent is believed by the serving party to be located, or if there is no reliable information concerning  
3 the location of the party then in a newspaper circulated in the county of respondent's last address provided to the Board  
4 by the respondent. ~~to be located.~~ There shall be mailed to the party at or prior to the first publication a copy of the  
5 notice to respond by publication to the respondent's last known address. Upon completion of service there shall be  
6 filed with the Board by the ethics committee chairperson an affidavit showing the publication and mailing substantially  
7 in accordance with the requirement of G.S. 1-75.10(2), the circumstances warranting the use of service by publication,  
8 and information, if any, regarding the location of the party served. The notice shall include a statement by the Board  
9 that a complaint has been made against the respondent that is scheduled to be heard by the Board within 90 days. The  
10 notice shall inform respondent that respondent shall be given 30 days from the date of the last date of publication in  
11 which to respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts.  
12 Response shall be made in writing to the Board at the address provided by the Board in its notice. If respondent  
13 provides the Board with information whereby ~~respondent~~ he or she can be served by the deadline ~~specific~~ specified in  
14 the notice, the Board shall provide notice either personally or by certified mail as provided in Paragraph (g) of this  
15 Rule. Failure of respondent notified by publication of a complaint brought by the Board shall be treated as a failure of  
16 respondent to reply to the charges.

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

19  
20 *History Note:* Authority ~~G.S. 90-731-737; 90-731; 90-742; 90-744; 90-746; 90-747;~~  
21 *Eff. February 1, 2023.*

1 21 NCAC 05 .0602 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **21 NCAC 05 .0602 INVESTIGATION OF COMPLAINT**

4 (a) The ~~Ethics Committee~~ ethics committee shall consist of a chairperson, ~~in consultation with~~ the administrative  
5 director, ~~or their designee~~ designee, and the Board's legal counsel. The ethics committee shall investigate the  
6 allegations in the complaint. The chairperson may appoint ~~any person(s)~~ another Board member or name a  
7 subcommittee of the Board to serve as on the investigating entity ethics committee, if they determine there is a conflict  
8 of interest or that the complaint is outside of their investigatory skillset. ~~to prepare an investigative report.~~

9 (b) The ~~investigating entity~~ ethics committee may contact the complainant and person against whom the complaint is  
10 made.

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

- 13 (1) the complaint is without merit. The chairperson shall notify ~~the complainant that the complaint is~~  
14 ~~dismissed and shall notify the respondent~~ both parties of the dismissal; and  
15 (2) upon completion of an investigation wherein the complaint is found to have merit and or is not  
16 dismissed, the ~~Ethics Committee~~ ethics committee chairperson may:  
17 (A) offer an ~~informal~~ settlement resolution pursuant to G.S. 150B-22;  
18 (B) schedule a meeting with the respondent;  
19 (C) ~~refer the report to the ethics committee or its hearing panel;~~  
20 (D) ~~(C)~~ schedule notice a formal hearing before the Board; or  
21 (E) ~~(D)~~ the chairperson may take a voluntary dismissal of the case where the respondent  
22 relinquishes their credential license for an agreed upon period of ~~time~~. time through a  
23 consent order.

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

- 26 (1) ~~dismiss the complaint;~~  
27 (2) ~~remand the matter to the investigating entity in order to obtain additional evidence sufficient upon~~  
28 ~~which to base a decision;~~  
29 (3) ~~make a written offer of informal resolution;~~  
30 (4) ~~schedule a meeting with the respondent whereby the dispute may be settled through informal~~  
31 ~~procedures; or~~  
32 (5) ~~schedule a disciplinary hearing, in accordance with G.S. 150B, Article 3A, before the Board.~~

33  
34 *History Note:* Authority G.S. 90-731-737; 90-742; 150B-22; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42;  
35 Eff. February 1, 2023.  
36

## Burgos, Alexander N

---

**From:** Liebman, Brian R  
**Sent:** Wednesday, December 14, 2022 12:18 PM  
**To:** Burgos, Alexander N  
**Subject:** FW: [External] 21 NCAC 05 - Behavior Analyst rules  
**Attachments:** 21 NCAC 05 .0201 EXTENTION EDITION.docx; 21 NCAC 05 .0202 EXTENTION EDITION.docx; 21 NCAC 05 .0203 EXTENTION EDITION.docx; 21 NCAC 05 .0401 EXTENTION EDITION.docx

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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---

**From:** Barden Culbreth <barden@recanc.com>  
**Sent:** Wednesday, November 30, 2022 9:48 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** NCBALB Office <admin@ncbehavioranalystboard.org>; Selene Johnson <Selene.Johnson@ncbehavioranalystboard.org>; Ward, Alexander <award@ncdoj.gov>  
**Subject:** [External] 21 NCAC 05 - Behavior Analyst rules

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Brian,

I hope you had a good Thanksgiving.

I wanted to run a few proposed changes to the Rules for the Behavior Analyst Licensure Board.

I have made changes to Rule .0201, .0202, .0203, and .0401, which I believe will address the concerns leading to your objections to those rules.

My only concern is with 21 NCAC 05 .0401 (c)(4), dealing with the supervision standards set forth by the certifying entity. I am not sure how to reference something that is not in statute or administrative code. Would you be satisfied with simply a URL? In this case, the certifying body is a national certification organization and is subject to regular review and revision. For example, I am familiar that the NC Social Work Board follows the ethical standards of the National Association of Social Workers. Similarly, the NC Psychology Board follows a similar standard.

I've attached these revised rules for your review. I realize I need to change the effective dates too, but I want to get your all clear before I proceed further.

My best,

**Barden Culbreth**  
Randolph Cloud and Associates



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1 21 NCAC 05 .0201 is adopted with changes as published in 37:03 NCR 231-235 as follows:  
2

3 **SECTION .0200 – APPLICATIONS**  
4

5 **21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND**  
6 **LICENSED ASSISTANT BEHAVIOR ANALYST**

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

- 8 (1) ~~Completed application developed and provided by the Board;~~  
9 (2) ~~Official documentation of the education degree required for license;~~  
10 (3) (1) Documentation of all previous professional human services licenses held by the applicant;  
11 (4) (2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
12 for Behavior Analysts published by the certifying entity;  
13 (5) (3) Documentation of all work experience in the field of behavior analysis, including internships,  
14 practicum, and other field experience completed as part of an educational course of study;  
15 (6) (4) Documentation of all certifications of behavior analysis currently or previously granted by national  
16 or other state certification ~~bodies;~~ bodies as described in Rule .0203 of this Chapter.  
17 (7) (5) Payment of all required fees; ~~and~~  
18 (8) (6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
19 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
20 provided to a local law enforcement ~~office.~~ office; and  
21 (7) Two letters of reference as described in Rule .0202 of this Chapter.

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

- 23 (1) ~~Completed application developed and provided by the Board;~~  
24 (2) ~~Official documentation of the education degree required for license;~~  
25 (3) (1) Documentation of all previous professional human services licenses held by the applicant;  
26 (4) (2) Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
27 for Behavior Analysts published by the certifying entity;  
28 (5) (3) Documentation of all work experience in the field of behavior analysis, including internships,  
29 practicum, and other field experience completed as part of an educational course of study;  
30 (6) (4) Documentation of all certifications of behavioral analysis currently or previously granted by  
31 national or other state certification ~~bodies;~~ bodies as described in Rule .0203 of this Chapter.  
32 (7) (5) Payment of all required fees; ~~and~~  
33 (8) (6) Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
34 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
35 provided to a local law enforcement ~~office.~~ office; and  
36 (7) Two letters of reference as described in Rule .0202 of this Chapter.  
37

38 *History Note:* Authority G.S. 90-736-738; G.S. 90-736; 90-737; 90-738;



21 NCAC 05 .0202 is adopted with changes 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 applicant initiates the request for each letter of reference by entering the name and email address of the intended reference into the appropriate section of the application software. The intended reference will receive a secure email allowing him or her to provide a reference to the Board. The two letters of references shall include:

- (1) ~~Name~~ name of reference and applicant;
- (2) ~~Period~~ period of time the reference has known the applicant;
- (3) ~~Nature~~ nature of professional relationship; and
- (4) ~~Knowledge~~ 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; 90-734; 90-736;~~  
Eff. December 1, 2022.*



1 21 NCAC 05 .0203 is adopted with changes as published in 37:03 NCR 231-235:

2

3 **21 NCAC 05 .0203 CERTIFICATION**

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

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

8 (e) ~~(b)~~ The Board shall accept the Behavior Analyst certification electronically submitted to the ~~Board on behalf the  
9 applicant. Board.~~

10

11 *History Note: Authority G.S. ~~90-737.2; 90-737.3; 90-736; 90-737; 90-738;~~*

12 *Eff. December 1, 2022.*

21 NCAC 05 .0401 is adopted with changes 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~~ between the licensed behavior analyst and the licensed assistant behavior ~~analyst.~~ analyst to the Board.

(b) Applicants for licensure as an assistant behavior analyst shall maintain a copy of the ~~signed~~ supervisory agreement and any supervisory ~~documentation.~~ evaluations or supervision logs. ~~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.

~~(e) 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)~~ (c) 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~~ and 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. The frequency and nature of supervision interactions shall be consistent with the supervisory requirements set forth by the standards of the certifying entity.~~

~~(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; 90-732; 90-739  
Eff. December 1, 2022.*

## Burgos, Alexander N

---

**From:** Liebman, Brian R  
**Sent:** Wednesday, December 14, 2022 12:18 PM  
**To:** Burgos, Alexander N  
**Subject:** FW: [External] NCBALB - Change to rulemaking coordinator

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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**From:** NCBALB Office <admin@ncbehavioranalystboard.org>  
**Sent:** Thursday, December 1, 2022 10:14 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Ward, Alexander <award@ncdoj.gov>  
**Subject:** [External] NCBALB - Change to rulemaking coordinator

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Good Morning Mr. Liebman,

I wanted to make you aware of a change to the rulemaking coordinator for the NC Behavior Analyst License Board (NCBALB) that is effective immediately.

Previous – Barden Culbreth

New – Caitlin Schwab-Falzone  
Email: [admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)  
Phone: 919-443-0093

I know you had been corresponding with Mr. Culbreth regarding submission of revised rules to be review, and suggested the deadline of December 1, 2022. The Board's attorney and I are working to make these changes and hope to be able to send you some if not all of the revised rules later today.

I wanted to see if you could confirm if the December 1, 2022 deadline was for an interim review so additional changes, if needed, can be made or if this is the final deadline for submission for review at the December 2022 RRC meeting?

Any assistance you can provide would be greatly appreciated, and do not hesitate to let me know if you have any questions for me.

Thank you,  
Caitlin

Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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---

**From:** Liebman, Brian R  
**Sent:** Thursday, December 1, 2022 11:46 AM  
**To:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Cc:** Ward, Alexander  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

Good morning, Ms. Schwab-Falcone,

Thanks for letting me know about the change in rulemaking coordinators. I've forwarded that information on to the Codifier, who maintains the list of rulemaking coordinators. She'll contact you if she needs any further information.

As for the Rules, I did several revised rules from Mr. Culbreth yesterday. Are you planning to file further revisions? Please let me know.

The 12/1/22 deadline that I set is preliminary, so we can make sure that there aren't any further changes that would need to be made. To be honest, I have been and will continue to be swamped for the next few days, so if you need extra time, that's more than fine. Our next meeting is 12/15, and so it would be best if we can have everything wrapped up by the Friday prior to the meeting, 12/9. If you want to send me your revised rules by Tuesday, 12/6, I think that would be fine, as long as you can confirm that if I return to you with additional requests, you would be able to respond to those by 12/9.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**Sent:** Thursday, December 1, 2022 10:14 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
**Subject:** [External] NCBALB - Change to rulemaking coordinator

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Phone: 919-443-0093

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Thank you,  
Caitlin

Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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## Burgos, Alexander N

---

**From:** Liebman, Brian R  
**Sent:** Wednesday, December 14, 2022 12:19 PM  
**To:** Burgos, Alexander N  
**Subject:** FW: [External] NCBALB - Change to rulemaking coordinator

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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---

**From:** NCBALB Office <admin@ncbehavioranalystboard.org>  
**Sent:** Thursday, December 1, 2022 3:42 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Ward, Alexander <award@ncdoj.gov>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

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Hello Brian,

Thank you for this additional information.

Due to the recent unanticipated change of rulemaking coordinator for this Board, do you have the deadlines for the January 2023 meeting. It may be more feasible to look to January as an option, just in case we are unable to meet the December meeting deadlines you described in your email below?

Our main goal is to ensure that the new revised submission meets the standards, and no further revisions are needed.

Thank you,  
Caitlin

Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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**Sent:** Thursday, December 1, 2022 11:46 AM  
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**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

Good morning, Ms. Schwab-Falcone,

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As for the Rules, I did several revised rules from Mr. Culbreth yesterday. Are you planning to file further revisions? Please let me know.

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Brian

Brian Liebman  
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[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Sent:** Thursday, December 1, 2022 10:14 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
**Subject:** [External] NCBALB - Change to rulemaking coordinator

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Good Morning Mr. Liebman,

I wanted to make you aware of a change to the rulemaking coordinator for the NC Behavior Analyst License Board (NCBALB) that is effective immediately.



Previous – Barden Culbreth

New – Caitlin Schwab-Falzone

Email: [admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)

Phone: 919-443-0093

I know you had been corresponding with Mr. Culbreth regarding submission of revised rules to be review, and suggested the deadline of December 1, 2022. The Board's attorney and I are working to make these changes and hope to be able to send you some if not all of the revised rules later today.

I wanted to see if you could confirm if the December 1, 2022 deadline was for an interim review so additional changes, if needed, can be made or if this is the final deadline for submission for review at the December 2022 RRC meeting?

Any assistance you can provide would be greatly appreciated, and do not hesitate to let me know if you have any questions for me.

Thank you,  
Caitlin

Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
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## Burgos, Alexander N

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Brian Liebman  
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---

**From:** Liebman, Brian R  
**Sent:** Thursday, December 1, 2022 4:07 PM  
**To:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

Sure. The January meeting is 1/19, I believe (don't have the 2023 schedule in front of me, but it's always the 3<sup>rd</sup> Thursday of the month). If you want to have your responses to me by 1/9, I think that would work.

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
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**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

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Hello Brian,

Thank you for this additional information.

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Our main goal is to ensure that the new revised submission meets the standards, and no further revisions are needed.

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Caitlin

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**Sent:** Thursday, December 1, 2022 11:46 AM  
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**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

Good morning, Ms. Schwab-Falzone,

Thanks for letting me know about the change in rulemaking coordinators. I've forwarded that information on to the Codifier, who maintains the list of rulemaking coordinators. She'll contact you if she needs any further information.

As for the Rules, I did several revised rules from Mr. Culbreth yesterday. Are you planning to file further revisions? Please let me know.

The 12/1/22 deadline that I set is preliminary, so we can make sure that there aren't any further changes that would need to be made. To be honest, I have been and will continue to be swamped for the next few days, so if you need extra time, that's more than fine. Our next meeting is 12/15, and so it would be best if we can have everything wrapped up by the Friday prior to the meeting, 12/9. If you want to send me your revised rules by Tuesday, 12/6, I think that would be fine, as long as you can confirm that if I return to you with additional requests, you would be able to respond to those by 12/9.

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Brian

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**Sent:** Thursday, December 1, 2022 10:14 AM  
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**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
**Subject:** [External] NCBALB - Change to rulemaking coordinator

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Previous – Barden Culbreth

New – Caitlin Schwab-Falzone  
Email: [admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)  
Phone: 919-443-0093

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Caitlin

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## Burgos, Alexander N

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**From:** NCBALB Office <admin@ncbehavioranalystboard.org>  
**Sent:** Thursday, December 1, 2022 4:17 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Ward, Alexander <award@ncdoj.gov>  
**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

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Hi Brian,

Yes, January 19 is the third Thursday of January for 2023, thank you for that information.

Caitlin  
Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
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**Subject:** RE: [External] NCBALB - Change to rulemaking coordinator

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**Sent:** Thursday, December 1, 2022 10:14 AM  
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**Cc:** Ward, Alexander <[award@ncdoj.gov](mailto:award@ncdoj.gov)>  
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New – Caitlin Schwab-Falzone



Email: [admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)

Phone: 919-443-0093

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: NC Behavior Analysts Extension Letter

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Monday, November 21, 2022 10:21 AM  
**To:** barden <barden@recanc.com>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: NC Behavior Analysts Extension Letter

Sounds good. Preliminarily, because December is going to be a big month for us, let's shoot for December 1 for getting any changes back to me for the December meeting, so there's plenty of time for further review.

Thanks, and have a great Thanksgiving too!  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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---

**From:** Barden Culbreth <[barden@recanc.com](mailto:barden@recanc.com)>  
**Sent:** Monday, November 21, 2022 9:32 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** [External] RE: NC Behavior Analysts Extension Letter

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Good morning,

Thank you Brian. I'm going to work with the agency to get the requested changes made and to get some direction how they would like to proceed on the .0403 Telehealth rule.

Hope you have a pleasant Thanksgiving!

**Barden Culbreth**  
[Randolph Cloud and Associates](#)



## **Burgos, Alexander N**

---

**From:** Liebman, Brian R  
**Sent:** Friday, November 18, 2022 9:59 AM  
**To:** barden  
**Cc:** Burgos, Alexander N  
**Subject:** NC Behavior Analysts Extension Letter  
**Attachments:** 11.2022 Behavior Analysts Extension Letter.pdf

Good morning,

Attached, please find a letter regarding the extension granted by RRC at yesterday's meeting.

Please let me know if you're intending to come back for the December or January meeting, and I'll give you a new deadline for responding to the outstanding requests for changes.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Wednesday, November 16, 2022 11:44 AM  
**To:** NCBALB Office <admin@ncbehavioranalystboard.org>; barden <barden@recanc.com>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hi Caitlin,

Thanks for letting me know, and I will include Rule .0403 in with the other 11/10 submissions. If you haven't already, let us know the emails for the board members who will be attending, and Alex will send y'all out Webex invitations.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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**Sent:** Wednesday, November 16, 2022 11:31 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; barden <[barden@recanc.com](mailto:barden@recanc.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

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Hello Brian,

I wanted to respond to the question about the November 10 submission being the final rules. I reviewed what was submitted on November 10 and those were the most recently submitted revised rules. I have also attached a rule that was submitted in a separate email to ensure you have all of the information.

I do hope that the extension request that I recently submitted can be considered.

Caitlin  
Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)

701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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## **Burgos, Alexander N**

---

**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Brian,

I was out of the office yesterday and did not see this email until this morning. I submitted the request for an extension to a separate email about two minutes ago.

Please let me know what additional information if any is needed.

Caitlin  
Caitlin Schwab-Falzone  
Board Administrator  
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Hello Brian,

Attached is the request for an extension. Please let me know what additional information if any is needed for this matter.

I and several Board members will be in attending virtually tomorrow for the meeting.

Caitlin  
Caitlin Schwab-Falzone  
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**To:** NCBALB Office <admin@ncbehavioranalystboard.org>; barden <barden@recanc.com>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Good morning,

Thank you for the response. While you certainly may request an extension, at this point I have drafted and released staff opinions recommending objection to most of your rules. Normally, I would tell you that I have no problem recommending to the Commission that they approve the extension, but in this case, where the extension request is coming after I have already made my recommendations to my client, I don't think I will be able to do that.

That said, if you still want to ask for the extension, you can submit the request today and argue it in front of the Commission tomorrow.

Otherwise, I think whoever will be in attendance should be prepared to respond to the objections and any questions the Commission might have for the Board. In particular, because I am recommending approval of three rules, and objection to the others, the Commission will want to know if there are interconnectivity concerns with allowing 3 rules to go into effect if the others do not. As I said earlier, if the Commission does indeed object to some and approve others, you can request that the approved rules have a later effective date so that if and when the objections are satisfied, all rules become effective at the same time.

Please confirm that the versions of the Rules and Forms sent to me on November 10 are the final versions, and I will forward them to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov) and to Alex to be considered as the final rules.

Also, please confirm who from the Board will be appearing at tomorrow's meeting, and whether they will be appearing in person or via Webex.

Thank you,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

---

**From:** NCBALB Office <admin@ncbehavioranalystboard.org>  
**Sent:** Wednesday, November 16, 2022 8:39 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; barden <barden@recanc.com>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Brian,

Thank you for letting me know, I will get this request for an extension to you today.

Caitlin  
Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Tuesday, November 15, 2022 9:37 AM  
**To:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>; barden <[barden@recanc.com](mailto:barden@recanc.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hi Caitlin,

You can request an extension just by emailing me saying you want an extension. We'll put it up on the website for the Commission to see, and they'll vote on it at this Thursday's meeting. They could, but I have not known them to ever refuse a request for an extension.

Thanks,  
Brian

Brian Liebman



Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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---

**From:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Sent:** Tuesday, November 15, 2022 9:03 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; barden <[barden@recanc.com](mailto:barden@recanc.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

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Hello Brian,

I wanted to see if there is any specific information that needs to be submitted to request an extension? Can we orally make this request at the November 17 RRC meeting or should we submit something in writing?

Any guidance would be greatly appreciated.

Thank you,  
Caitlin  
Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Monday, November 14, 2022 7:41 PM  
**To:** barden <[barden@recanc.com](mailto:barden@recanc.com)>  
**Cc:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hey Barden,

I've gone through and responded to your responses... maybe replied would have been a better word. Anyway, I think we've made improvements but there are still some significant issues here. In particular, I am thinking you may have a statutory authority problem on R. 0403 with respect to telehealth, and there are a bunch of places where the language

remains unclear/ambiguous and would merit an objection. I think most of these issues can be fixed, given some time, so I want to remind you that you may request an extension, which would give you another 2 months in which to respond and rework the language.

I'm available tomorrow to discuss anytime except between 12 and 2.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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---

**From:** Barden Culbreth <[barden@recanc.com](mailto:barden@recanc.com)>  
**Sent:** Friday, November 11, 2022 12:48 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** [admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org); Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

## Burgos, Alexander N

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**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC  
**Attachments:** 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0602.doc; 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0601.doc; 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0501.doc; 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0402.doc; 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0401.doc; 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0203.doc; 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0201.doc; 11.2022 - Behavior Analyst Licensure Board 21 NCAC 05 .0202.doc

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Wednesday, November 16, 2022 12:55 AM  
**To:** barden <barden@recanc.com>; NCBALB Office <admin@ncbehavioranalystboard.org>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Good evening,

Attached, please find staff opinions recommending objection to Rules .0201, .0202, .0203, .0401, .0402, .0501, .0601, and .0602.

Please feel free to reach out with any questions or concerns.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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---

**From:** Liebman, Brian R  
**Sent:** Tuesday, November 15, 2022 6:46 PM  
**To:** Barden Culbreth <[barden@recanc.com](mailto:barden@recanc.com)>; NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Good evening,

Attached, please find a copy of staff's opinion recommending objection to Rule .0403.

Please note that I anticipate drafting and releasing further staff opinions recommending objection to Rules .0201, .0202, .0203, .0401, .0402, .0501, .0601, and .0602. I will recommend approval of Rule .0102, .0301, and .0603.

If you would, let me know whether there are any interconnectivity concerns with allowing those rules to go into the code alone if the Commission indeed objects to the other rules. In that event, we can arrange a delayed effective date for all of your rules.

Please submit the final version of your Rules, regardless of whether I have recommended objection or approval, and the Forms for each to [oah.rules@oah.nc.gov](mailto:oah.rules@oah.nc.gov), copying me and Alex Burgos before 5 pm tomorrow.

Thank you,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** Liebman, Brian R  
**Sent:** Tuesday, November 15, 2022 4:26 PM  
**To:** Barden Culbreth <[barden@recanc.com](mailto:barden@recanc.com)>; NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Good afternoon all,

I'm following up to see if you have decided whether to request an extension.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

## **Burgos, Alexander N**

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**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Tuesday, November 15, 2022 1:36 PM

**To:** barden <barden@recanc.com>; NCBALB Office <admin@ncbehavioranalystboard.org>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Barden,

Thanks for letting me know. I am not telling you what to do here, but please be aware in deciding whether to ask for an extension that I don't think we're going to be able to settle these issues before the November meeting, especially if you are going to be out. If you proceed with the current language, I am going to have to recommend objection to several of the rules in this package. Thus, I think an extension is the best route here.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

---

**From:** Barden Culbreth <barden@recanc.com>

**Sent:** Tuesday, November 15, 2022 1:27 PM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; NCBALB Office <admin@ncbehavioranalystboard.org>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

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Brian,

I'll defer to the Board on the extension. I agree with you that the issues can be addressed, given time. However I am going to be out of pocket for the next day and a half taking care of a parent.

I can still appear on Thursday at the RRC to at least show that we are serious about getting this done, and appreciate the RRC's time and authority.

Thanks,

**Barden Culbreth**  
[Randolph Cloud and Associates](#)



orized state official.

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Tuesday, November 15, 2022 9:37 AM  
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**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hi Caitlin,

You can request an extension just by emailing me saying you want an extension. We'll put it up on the website for the Commission to see, and they'll vote on it at this Thursday's meeting. They could, but I have not known them to ever refuse a request for an extension.

Thanks,  
Brian

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**Sent:** Tuesday, November 15, 2022 9:03 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; barden <[barden@recanc.com](mailto:barden@recanc.com)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

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Hello Brian,

I wanted to see if there is any specific information that needs to be submitted to request an extension? Can we orally make this request at the November 17 RRC meeting or should we submit something in writing?

Any guidance would be greatly appreciated.

Thank you,  
Caitlin

Caitlin Schwab-Falzone  
Board Administrator  
NC Behavior Analyst Licensure Board (NCBALB)  
701 Exposition Place, Ste 206  
Raleigh, NC 27615  
Phone: 919-443-0093  
[www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org)

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**Sent:** Monday, November 14, 2022 7:41 PM  
**To:** barden <[barden@recanc.com](mailto:barden@recanc.com)>  
**Cc:** NCBALB Office <[admin@ncbehavioranalystboard.org](mailto:admin@ncbehavioranalystboard.org)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hey Barden,

I've gone through and responded to your responses... maybe replied would have been a better word. Anyway, I think we've made improvements but there are still some significant issues here. In particular, I am thinking you may have a statutory authority problem on R. 0403 with respect to telehealth, and there are a bunch of places where the language remains unclear/ambiguous and would merit an objection. I think most of these issues can be fixed, given some time, so I want to remind you that you may request an extension, which would give you another 2 months in which to respond and rework the language.

I'm available tomorrow to discuss anytime except between 12 and 2.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
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[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC  
**Attachments:** 11.2022 - 21 NCAC 05 Requests for Changes BLC - BL responses.docx

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Monday, November 14, 2022 7:41 PM  
**To:** barden <barden@recanc.com>  
**Cc:** admin@ncbehavioranalystboard.org; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

I forgot to attach the file. Sorry. See the attached for my replies.

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hey Barden,

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I'm available tomorrow to discuss anytime except between 12 and 2.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: All Submission for Permanent Rule Forms

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In each form, regardless of whether the Rule deals with a fee or not, you've checked "Yes" in Box 7 indicating that the Rule establishes or increases a fee. Please amend your forms so that "Yes" is checked only in the Rules that actually require the payment of a fee.*

*In Box 9A, under "Reason for Action" you've checked both "Agency" and "Legislation enacted by the General Assembly". However, instead of citing to a session law, you cite to a range of statutes in Chapter 90. If there is a session law amending these statutes, please cite to the session law, rather than the codified statutes.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: All Rules

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In many of these Rules, rather than citing to specific statutes in Chapter 90, you cite to a range – i.e. “G.S. 90-731-737.” While it’s fine to cite to more than one statute, in some rules, many of the statutes within that range were not applicable, and missed statutes outside the range that were applicable. Additionally, if you are going to cite to multiple statutes, you need to cite them individually—i.e. “G.S. 90-731, 90-732, 90-733” and so on.*

*Please review all such instances, ensure that the statutes you’re citing to are relevant to the subject matter of the Rule, and cite each statute independently.*

*Throughout these Rules, I noticed inconsistencies in the capitalization of “Ethics Committee.” Please choose capitalization or lower case and be consistent throughout.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0201

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a)(1), line 8, what are the contents of the completed application? Are they stated in these Rules? **The application items are the list of (a)(2) – (a)(7)***

*OK, knowing that, I think this is confusing. I suggest for clarity that you revise the text of (a) to say “The Behavior Analyst License applicant shall submit a completed application developed and provided by the Board. A completed application shall contain the following: (1) Documentation....” Same format for (b).*

*In (a)(3), lines 11-12, is the Ethics Code incorporated by reference anywhere else in these Rules? **It is found in NCGS 90-742 and the Certifying Body is defined in relevant statute as well.***

*I'm not sure about this. Your Rule says the Ethics Code for Behavior Analysts is published by the certifying entity, but then you're telling me the Ethics Code is found in a statute. 90-742 refers to a "Code of Conduct" not an Ethics Code (not trying to quibble, but this is different), and I don't think the statute was published by the certifying entity. Whatever you're holding your licensees to, you need to specify it, and then incorporate it by reference. If you want to do that in R. 501, that's fine, but it needs to be done.*

*In your History Note, please cite to each statute individually. **Done***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0202

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Why is this not part of Rule .0201, or at least mentioned in Rule .0201 as part of the requirements for licensure? **This was really just a stylistic choice. From the agency's perspective this rule refers to elements that are completed by someone other than the applicant.***

*But the Rule says that the "application... shall include" these references. So ultimately the responsibility is on the applicant, regardless of who actually submits the letters. I think you need to add this as an item to (a) and (b) in R. .0201.*

*At the same time, if you're telling me that the person writing the letter has to submit them via the portal, rather than the applicant, you need to say that explicitly here.*

*Please put the first word of each item in the list from (1)-(4) in lower case. **Done.***

*Is (b) necessary? You've already said in (a) that letters shall be submitted via the software portal. **We have removed it.***

*In your History Note, you cite to G.S. 90-737.2 and 737.3, which do not appear in the General Statutes. I looked for a Session Law adding them to the G.S. but could not find one. Please explain and correct your citations accordingly. **This reference is changed.***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0203

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Why is this not part of Rule .0201, or at least mentioned in Rule .0201 as part of the requirements for licensure? This is another stylistic choice. The .0200 rules do refer to the entirety of the application but this specific rule refers to something furnished by the Certifying Entity, therefore it has its own Rule.*

*OK, but same problem with .0202. I think this is actually addressed in R. 0201(a)(5) and (b)(5), but I think you need a cross reference at these two places in R. 0201 to clarify that the certification mentioned there is the same one as mentioned here.*

*Is (b) not just repetition of (a)? Please clarify. This is corrected now.*

*What does (c) mean? If the applicant must submit the official copy to the Board, why is the Board accepting it "on behalf the applicant [sic]"? This was worded such in case there is a future change in the processes of the Certifying Entity and we didn't want to need a rule changed.*

*Again, same problem as .0202. Who is submitting this certification? R. 0201 says that the applicant shall submit "documentation of all certifications..." and even .0203(a) says that the "applicant... shall submit" the certification, but here in (b) you're saying that some unspecified entity will submit the certification "on behalf of the applicant." This is a contradiction. If the Behavior Analyst Certification Board, Inc submits the certification directly to the NC Board upon a request to do so from the applicant, then that's fine, just say that, and make it clear in all of your rules what the applicant has to do.*

*In (c), line 8, add an "of" between "behalf" and "the". Corrected.*

*In your History Note, you cite to G.S. 90-737.2 and 737.3, which do not appear in the General Statutes. I looked for a Session Law adding them to the G.S. but could not find one. Please explain and correct your citations accordingly. Corrected.*

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: November 1, 2022



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0401

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), where is your statutory authority to require a signed agreement? G.S. 90-738 refers to an “ongoing arrangement for supervision” that is “in a manner consistent with the certifying entity’s requirements for supervision...” Is this in the certifying entity’s requirements? If so please incorporate by reference pursuant to G.S. 150B-21.6. **Fixed.** OK, the change you’re referring to is the change from “signed by” to “between”, right? If so, I think this works, as 90-738 does say that the applicant shall provide “evidence” of an “arrangement” between he/she and the behavior analyst. The new problem is that you deleted 90-738 from the History Note. I think you need to restore it.*

*In (a), line 6, to whom shall the applicant “provide” the agreement? **Clarified, to the Board.***

*OK, but I would suggest revising to avoid the split infinitive. Suggest “... shall provide to the Board a supervisory agreement...”*

*In (b), line 9, what is “supervisory documentation”? Please specify what documents or document types you’re requiring. **Clarified in the rule.***

*In (b), line 9, is it correct that the applicant for licensure as an assistant AND the supervisor should both maintain the supervisory documentation? If the supervisor must maintain the documentation and the agreement for 7 years, is the applicant also bound by this limit? **True the rule is vague but the intention is both the supervisor and supervisee would ensure that documentation is maintained.***

*The rule can’t be vague. That’s one of the grounds for objection under the APA. We have to clean this up, or else I will have to recommend objection for lack of clarity/ambiguity. G.S. 150B-21.9(2). In my mind, there are several questions to answer:*

- 1. Who is keeping what documentation? Under the revised language, you’re requiring the applicant to maintain evaluations and logs, which seem like documents that the supervisor, rather than the supervisee, would have.*
- 2. What is “supervisory documentation”? The term is still used on line 10.*

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3. *How long does each party have to keep the records specified here? You say the supervisor has to keep them for 7 years, but don't specify the same for the applicant.*

*In (b), line 10, please delete "at least", as rules already set a minimum. Done.*

*In (c), line 12, who may make the delegation? Because the sentence is written in the passive tense, it is unclear who is authorized to delegate. The sentence has been reconstructed for clarity.*

*In (c), line 13, please define or delete "properly", "safely", and "appropriately." Element was removed in reconstruction.*

*In (c), line 13, please define "other person." Are you saying the licensed behavior analyst may delegate a task or a procedure to anyone? This was fixed in rewrite.*

*Where is your statutory authority for delegation? G.S. 90-738 speaks only to licensure of an assistant behavior analyst. Fixed reference.*

*I don't know that this is a fix. 90-738 says that the applicant must have an arrangement for supervision by a licensed behavior analyst, indicating that the behavior analyst is the one doing the supervising. The only way the delegation is possible is either (a) there's some other statutory authority outside of 90-738 that I don't see, or (b), this is something "consistent with the certifying entity's requirements for supervision." If indeed the answer is (b), I think you need to incorporate these requirements by reference.*

*In (d), line 15, the term "include" connotes an open-ended requirement. What other activities fall within "supervision activities?" The list in (d)(1)-(d)(4) is meant to specify this.*

*OK, then I think we need to change the word "include" on line 17 to something like "are" that makes clear that there are no other acceptable activities.*

*In (d)(1), line 17, delete "and/or" and replace with "and" or "or" as appropriate. Done.*

*In (d)(4), are these "informal interactions" part of the "supervisory documentation"? This has been removed.*

*In (e), are these requirements set out someplace? Please incorporate by reference, pursuant to G.S. 150B-21.6. Done and made as the new (d)(4).*

*90-732 defines "certifying entity", but it doesn't define what the supervisory requirements set forth by the certifying entity are. The requirements are what I'm asking about. Where can someone find them, so they know what they're being required to do? They need to be incorporated by reference.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: November 1, 2022

Brian Liebman  
Commission Counsel  
Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0402

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (c), line 9, delete “and/or” and replace with “and” or “or” as appropriate. Done.*

*In (c), line 11, why are “analyst’s” in the possessive? Please delete the ‘s in both instances. Done.*

*In (d), line 14, please define or delete “sufficient.” Done.*

*In (d), line 15, please delete “but is not limited to.” Done.*

*In (d), line 15, the term “include” connotes an open-ended requirement. Are there other documents that you are requiring the licensed behavior analyst or licensed assistant to maintain? No. This can be changed to “shall be” if necessary.*

*Yes, I think it’s necessary. I think if you’re only requiring supervision logs, and are omitting notes, contracts, etc, you can just delete the sentence, and make the preceding sentence read:*

*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 supervision logs demonstrating their adherence to this Rule.*

*In (e)(1), line 20, please delete “but is not limited to.” Done.*

*In (e)(1), line 20, the term “include” connotes an open-ended requirement. Are there other tasks that are specifically non-client related? Fixed. This language refers to general tasks to ensure the welfare of the services provided: working lights, clean pens, stocked toiletries, properly stored files, etc. This can be a very long list, but the purpose here is they have access to the client and identifying client information but are not providing BA services.*

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*In (e)(2), line 22, please delete or define “certain” and “routine.”* **Done.**

*In (e)(2), line 24, is the “practice of behavior analysis” defined? How would one know whether the task does or does not constitute the practice of behavior analysis?* **Defined in 90-732 (8).**

*In (e)(3), line 26, please delete “such”.* **Done.**

*In (e)(3), line 26-27, is this responsibility the same as defined in (b)?* **Due to the issues of practice creep in this area of healthcare, the agency feels it necessary to clearly state this rule, for the regulated public and general public alike.**

*OK, that’s fine. What I would suggest then is to change (3) into its own subparagraph (f), and then make current (f) into (g), because it doesn’t work grammatically. (e) should read as a coherent sentence through (1)-(3), and (3) is basically its own sentence. Omit 1 and 2 and it reads “Behavior technicians shall be utilized to perform only The behavior technician shall not design assessment or intervention plans or procedures.” See what I mean?*

*Also, please put the first word of (1) and (2) into lower case.*

*In (f), line 28, what training are you requiring? The rule speaks to supervision, but does not specify what level of training is necessary to avoid disciplinary action. We removed the “training” language, the agency meant general guidance provided through supervision.*

**I would add to your History Note a reference to 90-734 for general rulemaking authority.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0403

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Where is your statutory authority for authorizing telehealth? G.S. 90-738 deals with licensure of assistants, and is silent on telehealth. **We have changed the reference. The agency feels this is an emerging field and the rule is necessary and that the agency has general authority.***

*I can't say I agree. I did a quick search of Ch. 90 and I see statutory references to telehealth for other occupations (e.g. G.S. 90-1.1(5)(f) for medical doctors, 90-30.2 for dentists, 90-186 for veterinarians). I don't see one for Behavior Analysts. It would appear to me that the General Assembly could have included telehealth and chose not to. Is there another statute out there that applies? In the absence of something besides what you've cited here, I will have to recommend objection for lack of statutory authority.*

*Throughout, please make sure the first word of each item in the lists under (a)(1), (a)(2), and (a)(2)(E), are in lowercase. **Done.***

*Throughout, please capitalize "state" if referring only to the State of North Carolina. **Done.***

*In (a)(1)(A), line 7, delete or define "adequately". **Done.***

*In (C), line 11, delete or define "appropriate." **Done.***

*In (C), line 12, delete or define "readily." **Done.***

*In (a)(2)(A), please define "reasonable attempts" or delete "reasonable." **Done.***

*In (B), line 21, and (C), line 22, when you say "other than electronically," does this include the phone? Does this mean in person or regular mail? **Yes, includes phone, in-person, and even mail.***

Brian Liebman  
Commission Counsel

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*In (D), lines 23-24, what does this mean? Does this mean technological literacy, or something else? Behavior analysis deals primarily with the treatment of patients with autism, therefore this language refers to both technological literacy but also the functional competency to participate in telehealth services.*

*In (E), is the licensee to inform the client in writing and get informed written consent during, before, or after the telehealth encounter? At initial or prior to meeting. Language added for this.*

*In (b)(1) and (2), p.2, line 5 and 7, capitalized "board." Done.*

*In (b)(2), lines 7-8, what are you requiring with the language "...and may be subject... received by the client"? Are you saying the licensee must get licensed in the other state if licensure is available? Otherwise, when would the licensee not be subject to licensure requirements in the other state? We used "may be subject" because some states may have an open door policy for telehealth, may be under a jurisdictional compact, or may be subject to changes from the Certifying entity. This language directs the regulated public to check with local jurisdictions for their policy.*

*This makes sense, but isn't explicit from the text of the Rule. I suggest saying something along the lines of "...licensed by the Board and depending on the law of the state where services are received by the client, may be subject to licensure requirements in that state."*

*In (c)(1), line 10, is "false, misleading, or deceptive" defined? No, but agency feels this is clear to the public. It will be up to the Board or courts to determine if advertising meets these criteria but agency needs this rule to protect the public.*

*In (c)(1), line 11, please replace "their" with "his or her", as the licensee is a singular person. Done.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0501

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Are the "policies, publications, guidelines, and casebooks" referenced here in existence, or are they pending development? If they exist, please incorporate them by reference pursuant to G.S. 150B-21.6. **These exist and are developed, and continually updated, by the Certifying Entity that is defined in our statute.***

*Those that are extant need to be incorporated by reference here, and be added to as more are published.*

*On line 8, when "may" these "publications, guidelines, policies, and statements" be used to interpret the Ethics Code, and when may they be dispensed with? **Changed to "shall"***

*In your History Note, is the reference to G.S. 90-743 correct? I believe it should be 90-742. **Done.***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0601

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

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In reviewing this Rule, the staff recommends the following changes be made:

*Throughout, you refer to the “rules of the Board.” Does this refer to this subchapter, or does the term include other rules? If the former, please refer instead to the “rules of this Subchapter.” **Done.***

*In (a), line 6, when you say “person” do you mean that the Board has jurisdiction over those who are not licensed? Does this conflict with the reference to a “behavior analyst professional” on line 7? Depending on your answer here, please also see (b)(3), line 13. **It is true that the Board may not have jurisdiction, and in that event it can refer out. We don’t want to give the perception there is a limit on who the public can file a complaint. The Board can refer out to appropriate authorities in the event of unlicensed practice.***

*You can’t accept complaints against people over whom you have no jurisdiction. You have to narrow the language to conform to your statutory authority.*

*In (a), line 7, what is a “behavior analyst professional”? Does it include technicians, or just licensees and licensed assistants? **Yes.***

*Then you need to make this clear, either here or in your Definitions rule.*

*In (a), line 8, please replace “through” with “using.” **Done.***

*In (a), line 8, are the contents of the Form described in a Rule or statute? If not, the Form itself is subject to rulemaking. See G.S. 150B-2(8a). **See (b), line 9-13 for the contents.***

*In (b), line 9, does “written” mean “handwritten”? **Yes, I have clarified that in text.***

*In (b), line 10, in what form do you want the attestation? Are you asking for a signature, or an affidavit, or a notarization? Please specify. **This has been changed to simply “signed.”***

Brian Liebman  
Commission Counsel

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*In (b)(3), line 13, please make “describes” singular. **Done.***

*In (d), lines 15-176, you say that the ethics committee “shall” try to reach a settlement, but in R. 602(c), this is one of 6 options available to the committee. Please settle this inconsistency. **I don’t see this as inconsistent. The committee shall first try to reach a settlement first, the settlement, but then will move through the other options of R 602(c).***

*That would be fine, but .0602 says that the Committee shall dismiss complaints for which there is no merit, and then if they determine there is merit, they “may” take one of 4 steps, one of which includes offering settlement. Thus, the Committee may, under R. 0602, investigate and then go straight to a hearing. This Rule says that they “shall” offer settlement, full stop, once the complaint has been investigated, merit found or not, hearing scheduled or not. To be honest, I don’t even know why (d) is necessary here given the language of Rule .0602.*

*In (e), line 18, you use the term “respondent” for the first time. Does this refer to “the person against whom the complaint is made”? If so, please include a parenthetical indicating that hereinafter this person is to be referred to as the respondent. I.e. “... person against whom the complaint is made (“respondent”).” **Done.***

*In (e)(1), line 20, delete “state.” **Done.***

*I think after reading this again, you really need to delete “include the following” from line 19, and restore “state” here. That way the sentence flows from (e) down through (1)-(3) grammatically.*

*In (e)(1), line 20, delete “(s)” and just make it “sections.” **Done.***

*In (e)(2), line 22, to whom is the reply to be directed? The Board? The complainant? Both? **Fixed.***

*In (e)(3), line 25, I believe you need an article before “credential.” Also, what is a credential? Do you mean the license? **Yes, but fixed.***

*In (f), please rephrase in the active tense. I know (e) says the committee chairperson is to give notice, but (f) itself is silent as to whom is required to give the notice, or who deems the notice given on a particular date. **See rewrite.***

*In (g), line 29, please define “official correspondence.” Does this include notice and the response thereto? **Removed official.***

*In (g), line 29, what does it mean to “further the investigation”? **fixed.***

*In (g), line 31, please insert “the” before “Private Protective Services Board.” **Done.***

*In (h), line 33, is there a reason that regular postage mail has been omitted? Also, if “official correspondence” includes the notice and response, should “e-mail” be included here? **It was not included because it has already been tried in (f).***

*That’s my point – you list 3 things in (f), regular mail, certified mail, and personal service. In (h), you say the Board can shift to notice by publication “if notice cannot be given by either personal service or certified mail...” omitting “regular mail”. Why?*

*In (h), is the second sentence largely duplicative of the first? If not, please articulate the difference. **Yes, it has been removed.***

*In (h), line 35, is “personal delivery” different than “personal service”? **removed.***

*Can (h) be broken up into smaller paragraphs? **See overall rewrite of this section.***

*In (h), line 36, is “publishing a notice by publication” not redundant? **Yes, fixed.***

*In (h), line 37-38, is the “party to be served” not the “respondent”? **Yes, fixed for consistency.***

*In (h), p.2, line 1, insert “the” before “respondent’s”. **Done.***

*Also on line 1, delete “respondent’s” as it is redundant. **Done.***

*In (h), line 2, the sentence beginning with “There shall be mailed....” is passive. Please rephrase in the active tense. Who shall mail the copy of the notice? **Fixed, does it still need rephrasing?***

*Also on line 2, what does “... a copy of the notice to respond by publication to the respondent’s last known address” mean? **See changes.***

*In (h), line 3, the sentence beginning with “Upon completion of service...” is passive. Please rephrase in the active tense. Who shall file the affidavit? **All of these with (h) should be redressed now. Let me know if more changes are needed.***

*In (h), line 8, could the second instance of “respondent” be replaced with “he or she”?*

*In (h), lines 9-10, the sentence beginning “Response shall be made....” is passive. Please rephrase in the active tense. Who shall respond?*

*In (h), line 11, is “whereby” necessary?*

*In (h), line 11, is “specific” supposed to be “specified”?*

*In (i), line 15, when “may” the failure to reply not be considered an admission? **This is more of a legal question that I don’t know. I can change to shall if needed, I just felt that there could be some unforeseen circumstance that arises at a hearing where the Board would consider failure to respond as not an***

*admission of the facts. The Board simply didn't want to be bound to this finding. Could someone "plead the 5<sup>th</sup>?"*

*OK, looking back, I think this is fine. I don't think the Rules should constrain the Board's ability to make findings and conclusions based on the evidence before it.*

*In your History Note, beyond fixing the range of statutes, should you have a reference to 90-742? **Corrected.***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0602

DEADLINE FOR RECEIPT: Thursday, November 10, 2022.

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In reviewing this Rule, the staff recommends the following changes be made:

*Generally to the Rule, the term “investigating entity” is used without definition. Please define. Does the second sentence of (a) not define the term?*

*It uses the term, but the definition of the term isn't clear to me, given the first sentence. Sentence 1 says the chair, the AD or his or her designee (btw, please change “their” on line 4 to “his or her”) and the board’s legal counsel shall investigate allegations. Sentence 2 says the chair can appoint another board member or name a subcommittee to be the investigating entity. So, when the chair doesn’t make a delegation under sentence 2, is the chair, the AD, and the legal counsel the “investigating entity”? I’m not trying to be picky, but it’s just not clear whether there’s a distinction here. See below for more on this, I think you can fix this.*

*Where is your statutory authority to delegate disciplinary action to the Ethics Committee? G.S. 90-742 states that the Board shall implement disciplinary action. This rule only speaks to the investigation of the complaint and the resolution of the complaint via settlement. If the respondent agrees to a disciplinary action, can they do that through settlement agreement?*

*In (a), line 4, please add a comma following “designee.” Done.*

*Also on lines 4-5, is the “legal counsel” the counsel to the chair or to the administrative director (“AD”) or their designee? Added language to clarify.*

*In (a) generally, the first sentence says that the chairperson, the AD or designee, and legal counsel shall investigate the allegations. In the second sentence, it says that the chair may appoint someone else or name a subcommittee to serve as the investigating entity. I don't think it can be both. If the ethics chair has a conflict or feels complaint is outside of their investigatory skillset, they should be able to appoint another board member on their behalf.*

*This is fine, but this is not what the Rule says. If you read the text of (a), it only says that the chair can appoint another board member (not in someone’s stead, just another*

Brian Liebman  
Commission Counsel

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board member), or name a subcommittee (doesn't say whether that subcommittee includes the AD or the Board counsel).

What I think you need to do here is restructure (a) completely. You need to say who the investigating entity is, and when and how the members of that entity may be replaced, and by whom. For instance, and this is just an idea, as I don't really understand what the Board is trying to do here, so I don't know if this language changes the Board's intent. Change as necessary.

(a) The investigating entity shall investigate the allegations in the complaint. Unless the chair otherwise determines, the chair, the AD/designee, and the Board's counsel shall constitute the investigating entity. If the chair determines that any member of the investigating entity has a conflict or is unable to investigate the complaint for any reason, the chair shall appoint another Board member to serve in his or her stead or name a subcommittee of the Board to serve as the investigating entity.

In (a), line 5, please delete (s) and make it "persons." **Done.**

In (a), line 5, please clarify "any person". Can the chair appoint the respondent to investigate the complaint? **Haha, point taken. See correction.**



In (c), is not the chair part of the investigating entity? See (a). **See new language for clarification.**

In (c)(1), lines 10-11, please consider rephrasing the sentence: "The chairperson shall notify both parties that the complaint is dismissed; and"

Also, in (c)(1), lines 10-11, the Rule assumes that if the complaint is without merit, it is dismissed. I think you should be explicit and state who makes the decision to dismiss, as it is not clear whether the Committee makes that call, or if it is up to the chair and the investigating entity. **See new changes to address this.**

In (c)(2), line 12, I believe for sentence structure you may need to add "the complaint has merit." **See new language.**

In (c)(2)(A), please note the inconsistency with R. 601 noted therein. **See new language.**

In (c)(2)(C), line 16, where does the reference to the hearing panel come from? Who appoints the hearing panel? Who decides whether to refer to the committee or to the panel? Is it one of the "subcommittees" referenced in (d), line 20? **See new language and stricken language.**

In (c)(2)(E), line 18-19, who is agreeing on the term of relinquishment? Is this a consent order as referenced in G.S. 90-742(c)? **Yes, See new language.**

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Also, in (c)(2)(E), line 19 does “relinquish” mean “suspend” or “revoke”, which are the terms used in G.S. 90-742? **No because this is non-disciplinary.**

Again, in (c)(2)(E), line 19, what is a “credential”? **Fixed.**

In (d)(2), line 23, delete or define “sufficient.” **All of (d) has been removed because it is just duplicative.**

*Good, you’re right. I should have caught that. 😊*

In (d)(3), line 25, please define “informal resolution.”

In (d)(4), please define “informal procedures.” What is a “settlement” in this context?

In your *History Note*, please cite to G.S. 90-742. **Done.**

In your *History Note*, please cite to the relevant portions of G.S. 150B. **Done.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0603

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 4, what do you mean "in the course of" and investigation? How can the Board take action against a licensee without a completed investigation?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.



## Burgos, Alexander N

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**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC  
**Attachments:** 11.2022 - 21 NCAC 05 Requests for Changes BLC.docx; 21 NCAC 05 .0403.docx

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**From:** Barden Culbreth <barden@recanc.com>  
**Sent:** Friday, November 11, 2022 12:48 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** admin@ncbehavioranalystboard.org; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Brian,

I have attached the responses for corrections, incorporated into the document.

I've also included .0403 and I'm sorry it was not in the original submission.

**Barden Culbreth**  
[Randolph Cloud and Associates](#)



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: All Submission for Permanent Rule Forms

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In each form, regardless of whether the Rule deals with a fee or not, you've checked "Yes" in Box 7 indicating that the Rule establishes or increases a fee. Please amend your forms so that "Yes" is checked only in the Rules that actually require the payment of a fee.*

*In Box 9A, under "Reason for Action" you've checked both "Agency" and "Legislation enacted by the General Assembly". However, instead of citing to a session law, you cite to a range of statutes in Chapter 90. If there is a session law amending these statutes, please cite to the session law, rather than the codified statutes.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: All Rules

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In many of these Rules, rather than citing to specific statutes in Chapter 90, you cite to a range – i.e. “G.S. 90-731-737.” While it’s fine to cite to more than one statute, in some rules, many of the statutes within that range were not applicable, and missed statutes outside the range that were applicable. Additionally, if you are going to cite to multiple statutes, you need to cite them individually—i.e. “G.S. 90-731, 90-732, 90-733” and so on.*

*Please review all such instances, ensure that the statutes you’re citing to are relevant to the subject matter of the Rule, and cite each statute independently.*

*Throughout these Rules, I noticed inconsistencies in the capitalization of “Ethics Committee.” Please choose capitalization or lower case and be consistent throughout.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0201

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a)(1), line 8, what are the contents of the completed application? Are they stated in these Rules? **The application items are the list of (a)(2) – (a)(7)***

*In (a)(3), lines 11-12, is the Ethics Code incorporated by reference anywhere else in these Rules? **It is found in NCGS 90-742 and the Certifying Body is defined in relevant statute as well.***

*In your History Note, please cite to each statute individually. **Done***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0202

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Why is this not part of Rule .0201, or at least mentioned in Rule .0201 as part of the requirements for licensure? This was really just a stylistic choice. From the agency's perspective this rule refers to elements that are completed by someone other than the applicant.*

*Please put the first word of each item in the list from (1)-(4) in lower case. Done.*

*Is (b) necessary? You've already said in (a) that letters shall be submitted via the software portal. We have removed it.*

*In your History Note, you cite to G.S. 90-737.2 and 737.3, which do not appear in the General Statutes. I looked for a Session Law adding them to the G.S. but could not find one. Please explain and correct your citations accordingly. This reference is changed.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0203

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Why is this not part of Rule .0201, or at least mentioned in Rule .0201 as part of the requirements for licensure? This is another stylistic choice. The .0200 rules do refer to the entirety of the application but this specific rule refers to something furnished by the Certifying Entity, therefore it has its own Rule.*

*Is (b) not just repetition of (a)? Please clarify. This is corrected now.*

*What does (c) mean? If the applicant must submit the official copy to the Board, why is the Board accepting it "on behalf the applicant [sic]"? This was worded such in case there is a future change in the processes of the Certifying Entity and we didn't want to need a rule changed.*

*In (c), line 8, add an "of" between "behalf" and "the". Corrected.*

*In your History Note, you cite to G.S. 90-737.2 and 737.3, which do not appear in the General Statutes. I looked for a Session Law adding them to the G.S. but could not find one. Please explain and correct your citations accordingly. Corrected.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman  
Commission Counsel  
Date submitted to agency: November 1, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0401

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), where is your statutory authority to require a signed agreement? G.S. 90-738 refers to an “ongoing arrangement for supervision” that is “in a manner consistent with the certifying entity’s requirements for supervision...” Is this in the certifying entity’s requirements? If so please incorporate by reference pursuant to G.S. 150B-21.6. **Fixed.***

*In (a), line 6, to whom shall the applicant “provide” the agreement? **Clarified, to the Board.***

*In (b), line 9, what is “supervisory documentation”? Please specify what documents or document types you’re requiring. **Clarified in the rule.***

*In (b), line 9, is it correct that the applicant for licensure as an assistant AND the supervisor should both maintain the supervisory documentation? If the supervisor must maintain the documentation and the agreement for 7 years, is the applicant also bound by this limit? **True the rule is vague but the intention is both the supervisor and supervisee would ensure that documentation is maintained.***

*In (b), line 10, please delete “at least”, as rules already set a minimum. **Done.***

*In (c), line 12, who may make the delegation? Because the sentence is written in the passive tense, it is unclear who is authorized to delegate. **The sentence has been reconstructed for clarity.***

*In (c), line 13, please define or delete “properly”, “safely”, and “appropriately.” **Element was removed in reconstruction.***

*In (c), line 13, please define “other person.” Are you saying the licensed behavior analyst may delegate a task or a procedure to anyone? **This was fixed in rewrite.***

*Where is your statutory authority for delegation? G.S. 90-738 speaks only to licensure of an assistant behavior analyst. **Fixed reference.***

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

*In (d), line 15, the term “include” connotes an open-ended requirement. What other activities fall within “supervision activities?”* **The list in (d)(1)-(d)(4) is meant to specify this.**

*In (d)(1), line 17, delete “and/or” and replace with “and” or “or” as appropriate.* **Done.**

*In (d)(4), are these “informal interactions” part of the “supervisory documentation”?* **This has been removed.**

*In (e), are these requirements set out someplace? Please incorporate by reference, pursuant to G.S. 150B-21.6.* **Done and made as the new (d)(4).**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0402

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (c), line 9, delete “and/or” and replace with “and” or “or” as appropriate. Done.*

*In (c), line 11, why are “analyst’s” in the possessive? Please delete the ‘s in both instances. Done.*

*In (d), line 14, please define or delete “sufficient.” Done.*

*In (d), line 15, please delete “but is not limited to.” Done.*

*In (d), line 15, the term “include” connotes an open-ended requirement. Are there other documents that you are requiring the licensed behavior analyst or licensed assistant to maintain? No. This can be changed to “shall be” if necessary.*

*In (e)(1), line 20, please delete “but is not limited to.” Done.*

*In (e)(1), line 20, the term “include” connotes an open-ended requirement. Are there other tasks that are specifically non-client related? Fixed. This language refers to general tasks to ensure the welfare of the services provided: working lights, clean pens, stocked toiletries, properly stored files, etc. This can be a very long list, but the purpose here is they have access to the client and identifying client information but are not providing BA services.*

*In (e)(2), line 22, please delete or define “certain” and “routine.” Done.*

*In (e)(2), line 24, is the “practice of behavior analysis” defined? How would one know whether the task does or does not constitute the practice of behavior analysis? Defined in 90-732 (8).*

*In (e)(3), line 26, please delete “such”. Done.*

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

*In (e)(3), line 26-27, is this responsibility the same as defined in (b)?* **Due to the issues of practice creep in this area of healthcare, the agency feels it necessary to clearly state this rule, for the regulated public and general public alike.**

*In (f), line 28, what training are you requiring? The rule speaks to supervision, but does not specify what level of training is necessary to avoid disciplinary action.* **We removed the “training” language, the agency meant general guidance provided through supervision.**

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0403

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Where is your statutory authority for authorizing telehealth? G.S. 90-738 deals with licensure of assistants, and is silent on telehealth. **We have changed the reference. The agency feels this is an emerging field and the rule is necessary and that the agency has general authority.***

*Throughout, please make sure the first word of each item in the lists under (a)(1), (a)(2), and (a)(2)(E), are in lowercase. **Done.***

*Throughout, please capitalize "state" if referring only to the State of North Carolina. **Done.***

*In (a)(1)(A), line 7, delete or define "adequately". **Done.***

*In (C), line 11, delete or define "appropriate." **Done.***

*In (C), line 12, delete or define "readily." **Done.***

*In (a)(2)(A), please define "reasonable attempts" or delete "reasonable." **Done.***

*In (B), line 21, and (C), line 22, when you say "other than electronically," does this include the phone? Does this mean in person or regular mail? **Yes, includes phone, in-person, and even mail.***

*In (D), lines 23-24, what does this mean? Does this mean technological literacy, or something else? **Behavior analysis deals primarily with the treatment of patients with autism, therefore this language refers to both technological literacy but also the functional competency to participate in telehealth services.***

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

*In (E), is the licensee to inform the client in writing and get informed written consent during, before, or after the telehealth encounter? At initial or prior to meeting. Language added for this.*

*In (b)(1) and (2), p.2, line 5 and 7, capitalized "board." Done.*

*In (b)(2), lines 7-8, what are you requiring with the language "...and may be subject... received by the client"? Are you saying the licensee must get licensed in the other state if licensure is available? Otherwise, when would the licensee not be subject to licensure requirements in the other state? We used "may be subject" because some states may have an open door policy for telehealth, may be under a jurisdictional compact, or may be subject to changes from the Certifying entity. This language directs the regulated public to check with local jurisdictions for their policy.*

*In (c)(1), line 10, is "false, misleading, or deceptive" defined? No, but agency feels this is clear to the public. It will be up to the Board or courts to determine if advertising meets these criteria but agency needs this rule to protect the public.*

*In (c)(1), line 11, please replace "their" with "his or her", as the licensee is a singular person. Done.*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0501

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Are the "policies, publications, guidelines, and casebooks" referenced here in existence, or are they pending development? If they exist, please incorporate them by reference pursuant to G.S. 150B-21.6. **These exist and are developed, and continually updated, by the Certifying Entity that is defined in our statute.***

*On line 8, when "may" these "publications, guidelines, policies, and statements" be used to interpret the Ethics Code, and when may they be dispensed with? **Changed to "shall"***

*In your History Note, is the reference to G.S. 90-743 correct? I believe it should be 90-742. **Done.***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0601

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Throughout, you refer to the “rules of the Board.” Does this refer to this subchapter, or does the term include other rules? If the former, please refer instead to the “rules of this Subchapter.” **Done.***

*In (a), line 6, when you say “person” do you mean that the Board has jurisdiction over those who are not licensed? Does this conflict with the reference to a “behavior analyst professional” on line 7? Depending on your answer here, please also see (b)(3), line 13. **It is true that the Board may not have jurisdiction, and in that event it can refer out. We don’t want to give the perception there is a limit on who the public can file a complaint. The Board can refer out to appropriate authorities in the event of unlicensed practice.***

*In (a), line 7, what is a “behavior analyst professional”? Does it include technicians, or just licensees and licensed assistants? **Yes.***

*In (a), line 8, please replace “through” with “using.” **Done.***

*In (a), line 8, are the contents of the Form described in a Rule or statute? If not, the Form itself is subject to rulemaking. See G.S. 150B-2(8a). **See (b), line 9-13 for the contents.***

*In (b), line 9, does “written” mean “handwritten”? **Yes, I have clarified that in text.***

*In (b), line 10, in what form do you want the attestation? Are you asking for a signature, or an affidavit, or a notarization? Please specify. **This has been changed to simply “signed.”***

*In (b)(3), line 13, please make “describes” singular. **Done.***

*In (d), lines 15-176, you say that the ethics committee “shall” try to reach a settlement, but in R. 602(c), this is one of 6 options available to the committee. Please settle this*

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

*inconsistency. I don't see this as inconsistent. The committee shall first try to reach a settlement first, the settlement, but then will move through the other options of R 602(c).*

*In (e), line 18, you use the term "respondent" for the first time. Does this refer to "the person against whom the complaint is made"? If so, please include a parenthetical indicating that hereinafter this person is to be referred to as the respondent. I.e. "... person against whom the complaint is made ("respondent")." **Done.***

*In (e)(1), line 20, delete "state." **Done.***

*In (e)(1), line 20, delete "(s)" and just make it "sections." **Done.***

*In (e)(2), line 22, to whom is the reply to be directed? The Board? The complainant? Both? **Fixed.***

*In (e)(3), line 25, I believe you need an article before "credential." Also, what is a credential? Do you mean the license? **Yes, but fixed.***

*In (f), please rephrase in the active tense. I know (e) says the committee chairperson is to give notice, but (f) itself is silent as to whom is required to give the notice, or who deems the notice given on a particular date. **See rewrite.***

*In (g), line 29, please define "official correspondence." Does this include notice and the response thereto? **Removed official.***

*In (g), line 29, what does it mean to "further the investigation"? **fixed.***

*In (g), line 31, please insert "the" before "Private Protective Services Board." **Done.***

*In (h), line 33, is there a reason that regular postage mail has been omitted? Also, if "official correspondence" includes the notice and response, should "e-mail" be included here? **It was not included because it has already been tried in (f).***

*In (h), is the second sentence largely duplicative of the first? If not, please articulate the difference. **Yes, it has been removed.***

*In (h), line 35, is "personal delivery" different than "personal service"? **removed.***

*Can (h) be broken up into smaller paragraphs? **See overall rewrite of this section.***

*In (h), line 36, is "publishing a notice by publication" not redundant? **Yes, fixed.***

*In (h), line 37-38, is the "party to be served" not the "respondent"? **Yes, fixed for consistency.***

*In (h), p.2, line 1, insert "the" before "respondent's". **Done.***

*Also on line 1, delete "respondent's" as it is redundant. **Done.***

*In (h), line 2, the sentence beginning with “There shall be mailed...” is passive. Please rephrase in the active tense. Who shall mail the copy of the notice? **Fixed, does it still need rephrasing?***

*Also on line 2, what does “... a copy of the notice to respond by publication to the respondent’s last known address” mean? **See changes.***

*In (h), line 3, the sentence beginning with “Upon completion of service...” is passive. Please rephrase in the active tense. Who shall file the affidavit? **All of these with (h) should be redressed now. Let me know if more changes are needed.***

*In (h), line 8, could the second instance of “respondent” be replaced with “he or she”?*

*In (h), lines 9-10, the sentence beginning “Response shall be made....” is passive. Please rephrase in the active tense. Who shall respond?*

*In (h), line 11, is “whereby” necessary?*

*In (h), line 11, is “specific” supposed to be “specified”?*

*In (i), line 15, when “may” the failure to reply not be considered an admission? **This is more of a legal question that I don’t know. I can change to shall if needed, I just felt that there could be some unforeseen circumstance that arises at a hearing where the Board would consider failure to respond as not an admission of the facts. The Board simply didn’t want to be bound to this finding. Could someone “plead the 5<sup>th</sup>?”***

*In your History Note, beyond fixing the range of statutes, should you have a reference to 90-742? **Corrected.***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.



REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0602

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Generally to the Rule, the term “investigating entity” is used without definition. Please define. **Does the second sentence of (a) not define the term?***

*Where is your statutory authority to delegate disciplinary action to the Ethics Committee? G.S. 90-742 states that the Board shall implement disciplinary action. **This rule only speaks to the investigation of the complaint and the resolution of the complaint via settlement. If the respondent agrees to a disciplinary action, can they do that through settlement agreement?***

*In (a), line 4, please add a comma following “designee.” **Done.***

*Also on lines 4-5, is the “legal counsel” the counsel to the chair or to the administrative director (“AD”) or their designee? **Added language to clarify.***

*In (a) generally, the first sentence says that the chairperson, the AD or designee, and legal counsel **shall** investigate the allegations. In the second sentence, it says that the chair **may** appoint someone else or name a subcommittee to serve as the investigating entity. I don't think it can be both. **If the ethics chair has a conflict or feels complaint is outside of their investigatory skillset, they should be able to appoint another board member on their behalf.***

*In (a), line 5, please delete (s) and make it “persons.” **Done.***

*In (a), line 5, please clarify “any person”. Can the chair appoint the respondent to investigate the complaint? **Haha, point taken. See correction.***

*In (c), is not the chair part of the investigating entity? See (a). **See new language for clarification.***

*In (c)(1), lines 10-11, please consider rephrasing the sentence: “The chairperson shall notify both parties that the complaint is dismissed; and”*

Brian Liebman  
Commission Counsel

Date submitted to agency: November 1, 2022

*Also, in (c)(1), lines 10-11, the Rule assumes that if the complaint is without merit, it is dismissed. I think you should be explicit and state who makes the decision to dismiss, as it is not clear whether the Committee makes that call, or if it is up to the chair and the investigating entity. **See new changes to address this.***

*In (c)(2), line 12, I believe for sentence structure you may need to add “the complaint has merit.” **See new language.***

*In (c)(2)(A), please note the inconsistency with R. 601 noted therein. **See new language.***

*In (c)(2)(C), line 16, where does the reference to the hearing panel come from? Who appoints the hearing panel? Who decides whether to refer to the committee or to the panel? Is it one of the “subcommittees” referenced in (d), line 20? **See new language and stricken language.***

*In (c)(2)(E), line 18-19, who is agreeing on the term of relinquishment? Is this a consent order as referenced in G.S. 90-742(c)? **Yes, See new language.***

*Also, in (c)(2)(E), line 19 does “relinquish” mean “suspend” or “revoke”, which are the terms used in G.S. 90-742? **No because this is non-disciplinary.***

*Again, in (c)(2)(E), line 19, what is a “credential”? **Fixed.***

*In (d)(2), line 23, delete or define “sufficient.” **All of (d) has been removed because it is just duplicative***

*In (d)(3), line 25, please define “informal resolution.”*

*In (d)(4), please define “informal procedures.” What is a “settlement” in this context?*

*In your History Note, please cite to G.S. 90-742. **Done.***

*In your History Note, please cite to the relevant portions of G.S. 150B. **Done.***

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: North Carolina Behavior Analyst Licensure Board

RULE CITATION: 21 NCAC 05 .0603

**DEADLINE FOR RECEIPT: Thursday, November 10, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 4, what do you mean "in the course of" and investigation? How can the Board take action against a licensee without a completed investigation?*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

1 21 NCAC 05 .0403 is adopted with changes as published in 37:03 NCR 231-235 as follows:  
2

3 **21 NCAC 05 .0403 TELEHEALTH AND TELEPRACTICE**

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

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

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

18 (2) If applied behavior analysis services commence via telehealth, the licensee shall, at the initial  
19 ~~meeting~~ meeting, or prior to the initial meeting, with the client:

- 20 (A) ~~Make~~ make ~~reasonable~~ attempts to verify the identity of the client;
- 21 (B) ~~Obtain~~ obtain alternative means of contacting the client other than electronically;
- 22 (C) ~~Provide~~ provide to the client alternative means of contacting the licensee other than  
23 electronically;
- 24 (D) ~~Document~~ document if the client has the necessary knowledge and skills to benefit from  
25 the type of telehealth to be provided by the licensee; and
- 26 (E) ~~Inform~~ inform the client in writing about and obtain the client's informed written consent  
27 regarding:
- 28 (i) ~~The~~ the limitations of using technology in the provision of applied behavior  
29 analytic services;
- 30 (ii) ~~Potential~~ potential risks to confidentiality of information due to technology in the  
31 provision of applied behavior analytic services;
- 32 (iii) ~~Potential~~ potential risks of disruption in the use of telehealth technology;
- 33 (iv) ~~When~~ when and how the licensee will respond to routine electronic messages;
- 34 (v) ~~In~~ in what circumstances the licensee will use alternative communications for  
35 emergency purposes;
- 36 (vi) ~~Who~~ who else may have access to client communications with the licensee;
- 37 (vii) ~~How~~ how communications can be directed to a specific licensee;
- 38 (viii) ~~How~~ how the licensee stores electronic communications from the client; and

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

3 (b) Jurisdictional Considerations

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

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

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

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

11 (2) ~~Split fees.~~ Divide or share his or her fee with another licensee.

12

13 *History Note:* Authority G.S. 90-738; 90-731; 90-732; 90-734;

14 Eff. December 1, 2022.

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Friday, November 11, 2022 12:33 AM

**To:** barden <barden@recanc.com>

**Cc:** admin@ncbehavioranalystboard.org; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hi Barden,

Thanks for submitting these. Unfortunately, I have a few major issues remaining. First, I do not have a revised Rule .0403. I don't know if that's because you decided not to make any suggested changes, or if it's an oversight. Second, for many of these rules, there is no response to my change request. I've done my best to isolate those below, but I would encourage you to go through the change requests, and ensure that each has been responded to. I find the best way to do that is to include an answer under each request in the change request document itself. That way, we both know that all requests have been addressed.

Second, I need you to highlight all changes that you've made to the rules after publication in the NC Register, be those changes you made on your own or changes you made in response to my change requests. Please see the templates on the OAH website.

I would emphasize that I haven't had the opportunity yet to review any language you have changed, largely because it's difficult to tell what's been changed.

### Rule .0201

In (a)(1), line 8, what are the contents of the completed application? Are they stated in these Rules?

In (a)(3), lines 11-12, is the Ethics Code incorporated by reference anywhere else in these Rules?

### Rule .0202

Why is this not part of Rule .0201, or at least mentioned in Rule .0201 as part of the requirements for licensure?

### Rule .0203

Why is this not part of Rule .0201, or at least mentioned in Rule .0201 as part of the requirements for licensure?

What does (c) (now (b)) mean? If the applicant must submit the official copy to the Board, why is the Board accepting it "on behalf the applicant [sic]"?

### Rule .0401

In (a), where is your statutory authority to require a signed agreement? G.S. 90-738 refers to an "ongoing arrangement for supervision" that is "in a manner consistent with the certifying entity's requirements for supervision..." Is this in the certifying entity's requirements? If so please incorporate by reference pursuant to G.S. 150B-21.6.

Where is your statutory authority for delegation? G.S. 90-738 speaks only to licensure of an assistant behavior analyst.

In (d), line 15, the term "include" connotes an open-ended requirement. What other activities fall within "supervision activities?"

Rule .0402

In (d), line 15, the term “include” connotes an open-ended requirement. Are there other documents that you are requiring the licensed behavior analyst or licensed assistant to maintain?

In (e)(2), line 24, is the “practice of behavior analysis” defined? How would one know whether the task does or does not constitute the practice of behavior analysis?

In (e)(3), line 26-27, is this responsibility the same as defined in (b)?

Rule .0403

No responses received. Please revisit this.

Rule .0501

Are the “policies, publications, guidelines, and casebooks” referenced here in existence, or are they pending development? If they exist, please incorporate them by reference pursuant to G.S. 150B-21.6.

Rule .0601

In (a), line 6, when you say “person” do you mean that the Board has jurisdiction over those who are not licensed? Does this conflict with the reference to a “behavior analyst professional” on line 7? Depending on your answer here, please also see (b)(3), line 13.

In (a), line 7, what is a “behavior analyst professional”? Does it include technicians, or just licensees and licensed assistants?

In (a), line 8, are the contents of the Form described in a Rule or statute? If not, the Form itself is subject to rulemaking. See G.S. 150B-2(8a).

In (d), lines 15-16, you say that the ethics committee “shall” try to reach a settlement, but in R. 602(c), this is one of 6 options available to the committee. Please settle this inconsistency.

Rule .0602

Generally to the Rule, the term “investigating entity” is used without definition. Please define.

Where is your statutory authority to delegate disciplinary action to the Ethics Committee? G.S. 90-742 states that the Board shall implement disciplinary action.

In (a) generally, the first sentence says that the chairperson, the AD or designee, and legal counsel shall investigate the allegations. In the second sentence, it says that the chair may appoint someone else or name a subcommittee to serve as the investigating entity. I don’t think it can be both.

Also, in (c)(1), lines 10-11, the Rule assumes that if the complaint is without merit, it is dismissed. I think you should be explicit and state who makes the decision to dismiss, as it is not clear whether the Committee makes that call, or if it is up to the chair and the investigating entity.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948

[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.



## Burgos, Alexander N

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**Subject:** FW: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC  
**Attachments:** 21 NCAC 05 .0401.docx; 21 NCAC 05 .0402.docx; 21 NCAC 05 .0501.docx; 21 NCAC 05 .0601.docx; 21 NCAC 05 .0602.docx; 21 NCAC 05 .0603.docx; 0400 Forms for 21 NCAC 05 Rules COMBINED.pdf; 21 NCAC 05 .0102.docx; 21 NCAC 05 .0201.docx; 21 NCAC 05 .0202.docx; 21 NCAC 05 .0203.docx; 21 NCAC 05 .0301.docx

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**From:** Barden Culbreth <barden@recanc.com>  
**Sent:** Thursday, November 10, 2022 12:08 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** admin@ncbehavioranalystboard.org; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Brian,

Please find attached updated versions of the proposed Rules.

I believe I have addressed most, if not all, of your questions about the rules. Also, the forms have been updated to accurately reflect the fee information.

Please let me know if you have any questions.

**Barden Culbreth**  
[Randolph Cloud and Associates](#)



1 21 NCAC 05 .0102 is adopted as published in 37:03 NCR 231-235:  
2

3 **SECTION .0100 – GENERAL**  
4

5 **21 NCAC 05 .0102      BOARD ADDRESS AND WEBSITE**

6 (a) Unless otherwise directed, all correspondence shall be mailed to the following address:

7        701 Exposition Place

8        Suite 206

9        Raleigh, NC 27615

10 (b) The Board website shall be [www.ncbehavioranalystboard.org](http://www.ncbehavioranalystboard.org).

11  
12 *History Note:      Authority G.S. 90-734;*

13                    *Eff. December 1, 2022.*

1 21 NCAC 05 .0201 is adopted with changes as published in 37:03 NCR 231-235 as follows:  
2

3 **SECTION .0200 – APPLICATIONS**  
4

5 **21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND**  
6 **LICENSED ASSISTANT BEHAVIOR ANALYST**

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

- 8 (1) Completed application developed and provided by the Board;  
9 ~~(2) Official documentation of the education degree required for license;~~  
10 ~~(3) (2)~~ Documentation of all previous professional human services licenses held by the applicant;  
11 ~~(4) (3)~~ Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
12 for Behavior Analysts published by the certifying entity;  
13 ~~(5) (4)~~ Documentation of all work experience in the field of behavior analysis, including internships,  
14 practicum, and other field experience completed as part of an educational course of study;  
15 ~~(6) (5)~~ Documentation of all certifications of behavior analysis currently or previously granted by national  
16 or other state certification bodies;  
17 ~~(7) (6)~~ Payment of all required fees; and  
18 ~~(8) (7)~~ Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
19 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
20 provided to a local law enforcement office.

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

- 22 (1) Completed application developed and provided by the Board;  
23 ~~(2) Official documentation of the education degree required for license;~~  
24 ~~(3) (2)~~ Documentation of all previous professional human services licenses held by the applicant;  
25 ~~(4) (3)~~ Attestation that the applicant has read and agrees to adhere to the current version of the Ethics Code  
26 for Behavior Analysts published by the certifying entity;  
27 ~~(5) (4)~~ Documentation of all work experience in the field of behavior analysis, including internships,  
28 practicum, and other field experience completed as part of an educational course of study;  
29 ~~(6) (5)~~ Documentation of all certifications of behavioral analysis currently or previously granted by  
30 national or other state certification bodies;  
31 ~~(7) (6)~~ Payment of all required fees; and  
32 ~~(8) (7)~~ Signed consent form provided by the State Bureau of Investigation or NC Department of Justice  
33 authorizing the completion of a certified criminal records check based on the applicant's fingerprints  
34 provided to a local law enforcement office.  
35

36 *History Note: Authority ~~G.S. 90-736-738~~; G.S. 90-736; 90-737; 90-738;*  
37 *Eff. December 1, 2022.*

1 21 NCAC 05 .0202 is adopted with changes as published in 37:03 NCR 231-235:

2

3 **21 NCAC 05 .0202        REFERENCES**

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

7        (1)     ~~Name~~ name of reference and applicant;

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

9        (3)     ~~Nature~~ nature of professional relationship; and

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

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

13

14 *History Note:*     *Authority G.S. ~~90-737.2; 90-737.3; 90-734; 90-736;~~*

15                        *Eff. December 1, 2022.*

1 21 NCAC 05 .0203 is adopted with changes as published in 37:03 NCR 231-235:

2

3 **21 NCAC 05 .0203 CERTIFICATION**

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

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

8 ~~(b)~~ (b) The Board shall accept the Behavior Analyst certification electronically submitted to the Board on behalf of  
9 the applicant.

10

11 *History Note: Authority G.S. ~~90-737.2; 90-737.3; 90-736; 90-737; 90-738;~~*

12 *Eff. December 1, 2022.*

1 21 NCAC 05 .0301 is adopted as published in 37:03 NCR 231-235:

2  
3 **SECTION .0300 - FEES**  
4

5 **21 NCAC 05 .0301 FEES**

6 (a) The fees to obtain a Behavior Analyst License shall be:

- 7 (1) Application Fee – Two hundred fifty dollars (\$250.00);  
8 (2) Renewal Fee – Two hundred dollars (\$200.00);  
9 (3) Late Renewal Fee – Fifty dollars (\$50.00);  
10 (4) Reciprocity Fee – Two hundred fifty dollars (\$250.00); and  
11 (5) Temporary License Fee – One hundred dollars (\$100.00).

12 (b) The fees to obtain an Assistant Behavior Analyst License shall be:

- 13 (1) Application Fee – Two hundred dollars (\$200.00);  
14 (2) License renewal Fee – One hundred fifty dollars (\$150.00);  
15 (3) Late renewal Fee – Fifty dollars (\$50.00);  
16 (4) Reciprocal license application Fee – Two hundred dollars (\$200.00); and  
17 (5) Temporary license application Fee – One hundred dollars (\$100.00).

18 (c) The Board may amend any fee imposed on an applicant or licensee in accordance with G.S. 93B-15.

19  
20 History Note: Authority G.S. 90-743;  
21 Eff. December 1, 2022.

1 21 NCAC 05 .0401 is adopted with changes as published in 37:03 NCR 231-235:

2  
3 **SECTION .0400 – SUPERVISION AND TELEHEALTH**  
4

5 **21 NCAC 05 .0401 SUPERVISION OF ASSISTANT BEHAVIOR ANALYST**

6 (a) Applicants for licensure as an assistant behavior analyst shall provide a supervisory agreement ~~signed by~~ between  
7 the licensed behavior analyst and the licensed assistant behavior ~~analyst.~~ analyst to the Board.

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

13 (c) ~~Delegation shall be made if, in the judgment of the licensed behavior analyst, the task~~ The licensed behavior  
14 analyst may delegate tasks or procedures can be properly and safely performed by an appropriately trained to an  
15 assistant behavior analyst or other person, and the delegation does not jeopardize the health or safety of the client.  
16 analyst in accordance with the supervisory agreement.

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

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

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

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

30 (4) ~~Informal interactions between supervisors and supervisees via telephone, electronic mail, and other~~  
31 ~~written communication are encouraged but shall not be considered formal supervision for the~~  
32 ~~purposes of this Chapter.~~ The frequency and nature of supervision interactions shall be consistent  
33 with the supervisory requirements set forth by the certifying entity, as defined in G.S. 90-732.

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

36  
37 *History Note: Authority G.S. ~~90-738; 90-732; 90-739~~*

38 *Eff. December 1, 2022.*

1 21 NCAC 05 .0402 is adopted with changes as published in 37:03 NCR 231-235 as follows:

2  
3 **21 NCAC 05 .0402 SUPERVISION OF BEHAVIOR TECHNICIANS**

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

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

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

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

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

21 (1) Non-client-related ~~tasks, including but not limited to clerical~~ tasks, clerical, and maintenance  
22 activities and the preparation of the work area and equipment;

23 (2) ~~Certain routine client related~~ Client-related tasks that, in the opinion of and under the supervision  
24 of a licensed behavior analyst or a licensed assistant behavior analyst, have no potential to adversely  
25 impact the client or the client's treatment plan and do not constitute the practice of behavior analysis;  
26 and

27 (3) The behavior technician shall not design assessment or intervention plans or ~~procedures.~~ procedures.

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

31  
32 *History Note:* Authority G.S. ~~90-745; 90-732; 90-745;~~

33 *Eff. December 1, 2022.*



1 21 NCAC 05 .0501 is adopted with changes as published in 37:03 NCR 231-235:

2

3

**SECTION .0500 - ETHICS**

4

5 **21 NCAC 05 .0501 ETHICS**

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

10

11 *History Note: Authority G.S. 90-731; 90-734; ~~90-743~~; 90-742;*

12 *Eff. December 1, 2022.*

1 21 NCAC 05 .0601 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **SECTION .0600 – DISCIPLINARY INVESTIGATION**  
4

5 **21 NCAC 05 .0601 COMPLAINT PROCEDURES**

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

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

- 11 (1) the name, address, and telephone number of the complainant;  
12 (2) the name and address of the person against whom the complaint is ~~made;~~ made (“respondent”); and  
13 (3) a statement of the facts that ~~describes~~ describe the allegations against the person.

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

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

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

- 20 (1) ~~state the section(s)~~ sections of the Code of Conduct, other rules of ~~the Board, this Subchapter,~~ or  
21 G.S. 90, Article 43 which the complaint alleges has been violated;  
22 (2) direct that the respondent reply to the Board in writing and by certified mail within 15 days of receipt  
23 of this notice; and  
24 (3) inform the respondent that failure to respond in writing within 15 days may result in revocation of  
25 ~~credential.~~ a license.

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

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

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

1 ~~the location of the party then in a newspaper circulated in the county of respondent's last address provided to the Board~~  
2 ~~by the respondent. to be located. There shall be mailed to the party at or prior to the first publication a copy of the~~  
3 ~~notice to respond by publication to the respondent's last known address. Upon completion of service there shall be~~  
4 ~~filed with the Board by the ethics committee chairperson an affidavit showing the publication and mailing substantially~~  
5 ~~in accordance with the requirement of G.S. 1-75.10(2), the circumstances warranting the use of service by publication,~~  
6 ~~and information, if any, regarding the location of the party served. The notice shall include a statement by the Board~~  
7 ~~that a complaint has been made against the respondent that is scheduled to be heard by the Board within 90 days. The~~  
8 ~~notice shall inform respondent that respondent shall be given 30 days from the date of the last date of publication in~~  
9 ~~which to respond to the service by publication for the purpose of notifying the Board of respondent's whereabouts.~~  
10 ~~Response shall be made in writing to the Board at the address provided by the Board in its notice. If respondent~~  
11 ~~provides the Board with information whereby ~~respondent~~ he or she can be served by the deadline ~~specific~~ specified in~~  
12 ~~the notice, the Board shall provide notice either personally or by certified mail as provided in Paragraph (g) of this~~  
13 ~~Rule. Failure of respondent notified by publication of a complaint brought by the Board shall be treated as a failure of~~  
14 ~~respondent to reply to the 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; 90-731; 90-742; 90-744; 90-746; 90-747;~~*

19 *Eff. December 1, 2022.*

1 21 NCAC 05 .0602 is adopted with changes as published in 37:03 NCR 231-235:  
2

3 **21 NCAC 05 .0602 INVESTIGATION OF COMPLAINT**

4 (a) The ~~Ethics Committee~~ ethics committee chairperson, in consultation with the administrative director or their  
5 ~~designee~~ designee, and the Board's legal counsel, shall investigate the allegations in the complaint. The chairperson  
6 may appoint ~~any person(s)~~ another Board member or name a subcommittee of the Board to serve as the investigating  
7 entity to prepare an investigative report.

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

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

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

13 (2) upon completion of an investigation wherein the complaint is found to have merit and is not  
14 dismissed, the ~~Ethics Committee~~ ethics committee chairperson may:

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

16 (B) schedule a meeting with the respondent;

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

18 ~~(D) (C) schedule notice~~ a formal hearing before the Board; or

19 ~~(E) (D)~~ the chairperson may take a voluntary dismissal of the case where the respondent  
20 relinquishes their credential license for an agreed upon period of ~~time~~: time through a  
21 consent order.

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

24 ~~(1) dismiss the complaint;~~

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

27 ~~(3) make a written offer of informal resolution;~~

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

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

31  
32 *History Note:* Authority G.S. 90-731-737; 90-742; 150B-22; 150B-38; 150B-39; 150B-40; 150B-41; 150B-42;  
33 Eff. December 1, 2022.  
34

1 21 NCAC 05 .0603 is adopted with changes as published in 37:03 NCR 231-235:

2

3 **21 NCAC 05 .0603 METHOD OF DISCIPLINE**

4 (a) ~~In the course of the disciplinary~~ Following an investigation or hearing the Board may:

5 (1) deny a ~~credential;~~ license;

6 (2) revoke a ~~credential;~~ license;

7 (3) suspend a ~~credential~~ license until further order of the Board or for a specified period of time;

8 (4) reprimand the Respondent; or

9 (5) take other actions not to be considered a disciplinary action, including a letter of caution or letter of  
10 warning without the consent of the Respondent.


11 (b) Disciplinary or other actions by the Board with the Respondent's consent may be stayed while the Respondent  
12 satisfies all of the conditions of the consent order.

13

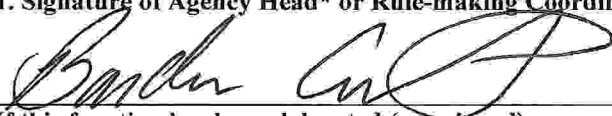
14 History Note: Authority G.S. 90-731-737; 90-742;

15 Eff. December 1, 2022.


# SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: <b>NC Behavior Analyst Licensure Board</b>	
2. Rule citation & name (name not required for repeal): <b>21 NCAC 05 .0102 BOARD ADDRESS AND WEBSITE</b>	
3. Action: <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: <b>August 1, 2022</b> Link to Agency notice: <b>www.ncbehavioranalystboard.org</b> Hearing on: <b>August 23, 2022</b> Adoption by Agency on: <b>October 18, 2022</b> <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
9A. What prompted this action? Check all that apply: <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: <b>S.L. 2021-2022</b> <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain:	
10. Rulemaking Coordinator: <b>Barden Culbreth</b>  Phone: <b>919-821-1004</b> E-Mail: <b>barden@recanc.com</b>  Additional agency contact, if any: <b>Caitlin Schwab-Falzone</b> Phone: <b>919-443-0093</b> E-Mail: <b>admin@ncbehavioranalystboard.org</b>	11. Signature of Agency Head* or Rule-making Coordinator:  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: <b>Barden Culbreth</b> Title: <b>Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
Action taken:  <input type="checkbox"/> RRC extended period of review; <input type="checkbox"/> RRC determined substantial changes; <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE

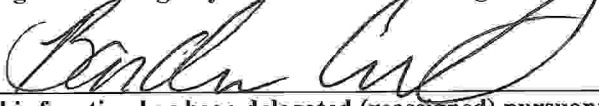
<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0201 APPLICATION FOR LICENSURE OF LICENSED BEHAVIOR ANALYST AND LICENSED ASSISTANT BEHAVIOR ANALYST	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain: Agency made changes after publication in response to public comment</b>	
<b>10. Rulemaking Coordinator: Barden Culbreth</b>  Phone: 919-821-1004 E-Mail: <a href="mailto:barden@recanc.com">barden@recanc.com</a>  Additional agency contact, if any: Caitlin Schwab-Falzone Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Barden Culbreth Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE


<b>1. Rule-Making Agency:</b> NC Behavior Analyst Licensure Board	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0202 REFERENCES	
<b>3. Action:</b> <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact ( $\geq$ \$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
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<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator:</b> Barden Culbreth  <b>Phone:</b> 919-821-1004 <b>E-Mail:</b> <a href="mailto:barden@recanc.com">barden@recanc.com</a>  <b>Additional agency contact, if any:</b> Caitlin Schwab-Falzone <b>Phone:</b> 919-443-0093 <b>E-Mail:</b> <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name:</b> Barden Culbreth <b>Title:</b> Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	



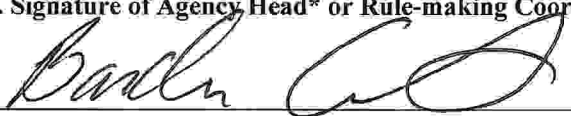
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> NC Behavior Analyst Licensure Board	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0203 CERTIFICATION	
<b>3. Action:</b> <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
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<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

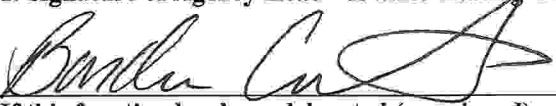
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0301 FEES</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input checked="" type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: July 7, 2022 Consultation not required. Cite authority: <input type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Barden Culbreth</b>  Phone: 919-821-1004 E-Mail: <a href="mailto:barden@recanc.com">barden@recanc.com</a>  Additional agency contact, if any: Caitlin Schwab-Falzone Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Barden Culbreth Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

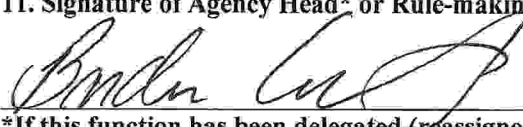
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0401 SUPERVISION OF ASSISTANT BEHAVIOR ANALYST</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: <b>August 1, 2022</b> Link to Agency notice: <b>www.ncbehavioranalystboard.org</b> Hearing on: <b>August 23, 2022</b> Adoption by Agency on: <b>October 18, 2022</b> <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b> <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> Cite Session Law: <b>SL 2021-2022</b> <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Barden Culbreth</b>  Phone: <b>919-821-1004</b> E-Mail: <b>barden@recanc.com</b>  Additional agency contact, if any: <b>Caitlin Schwab-Falzone</b> Phone: <b>919-443-0093</b> E-Mail: <b>admin@ncbehavioranalystboard.org</b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: <b>Barden Culbreth</b> Title: <b>Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> <b>RRC extended period of review:</b> <input type="checkbox"/> <b>RRC determined substantial changes:</b> <input type="checkbox"/> <b>Withdrawn by agency</b> <input type="checkbox"/> <b>Subject to Legislative Review</b> <input type="checkbox"/> <b>Other:</b>	

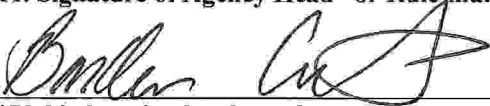
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> NC Behavior Analyst Licensure Board	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0402 SUPERVISION OF BEHAVIOR TECHNICIANS	
<b>3. Action:</b> <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
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<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain: Agency made changes after publication in response to public comments</b>	
<b>10. Rulemaking Coordinator:</b> Barden Culbreth  <b>Phone:</b> 919-821-1004 <b>E-Mail:</b> <a href="mailto:barden@recanc.com">barden@recanc.com</a>  <b>Additional agency contact, if any:</b> Caitlin Schwab-Falzone <b>Phone:</b> 919-443-0093 <b>E-Mail:</b> <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> <b>*If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.</b>  <b>Typed Name:</b> Barden Culbreth <b>Title:</b> Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

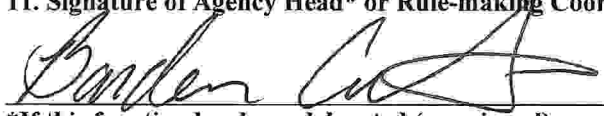
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> NC Behavior Analyst Licensure Board	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0403 TELEHEALTH AND TELEPRACTICE	
<b>3. Action:</b> <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> Notice Required Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact ( $\geq$ \$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator:</b> Barden Culbreth  Phone: 919-821-1004 E-Mail: <a href="mailto:barden@recanc.com">barden@recanc.com</a>  Additional agency contact, if any: Caitlin Schwab-Falzone Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Barden Culbreth Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

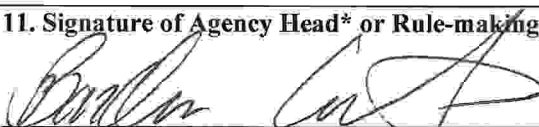
# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0501 ETHICS</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: July 7, 2022 Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact ( $\geq$ \$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Barden Culbreth</b>  Phone: 919-821-1004 E-Mail: <a href="mailto:barden@recanc.com">barden@recanc.com</a>  Additional agency contact, if any: Caitlin Schwab-Falzone Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Barden Culbreth Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE


<b>1. Rule-Making Agency:</b> NC Behavior Analyst Licensure Board	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0501 ETHICS	
<b>3. Action:</b> <input checked="" type="checkbox"/> ADOPTION <input type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
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<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator:</b> Barden Culbreth  Phone: 919-821-1004 E-Mail: <a href="mailto:barden@recanc.com">barden@recanc.com</a>  Additional agency contact, if any: Caitlin Schwab-Falzone Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Barden Culbreth Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE

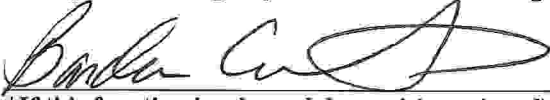
<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0601 COMPLAINT PROCEDURES</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> <b>Yes. Cite authority:</b> <input checked="" type="checkbox"/> <b>No</b>
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> <b>This Rule was part of a combined analysis.</b> <input type="checkbox"/> <b>State funds affected</b> <input type="checkbox"/> <b>Local funds affected</b> <input type="checkbox"/> <b>Substantial economic impact (≥\$1,000,000)</b> <input type="checkbox"/> <b>Approved by OSBM</b> <input checked="" type="checkbox"/> <b>No fiscal note required</b>
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> <b>Agency</b> <input type="checkbox"/> <b>Court order / cite:</b> <input type="checkbox"/> <b>Federal statute / cite:</b> <input type="checkbox"/> <b>Federal regulation / cite:</b> <input checked="" type="checkbox"/> <b>Legislation enacted by the General Assembly</b> Cite Session Law: SL 2021-2022 <input type="checkbox"/> <b>Petition for rule-making</b> <input type="checkbox"/> <b>Other:</b>	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Barden Culbreth</b>  <b>Phone: 919-821-1004</b> <b>E-Mail: barden@recanc.com</b>  <b>Additional agency contact, if any: Caitlin Schwab-Falzone</b> <b>Phone: 919-443-0093</b> <b>E-Mail: admin@ncbehavioranalystboard.org</b>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  <b>Typed Name: Barden Culbreth</b> <b>Title: Rule-Making Coordinator</b>
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> <b>RRC extended period of review:</b> <input type="checkbox"/> <b>RRC determined substantial changes:</b> <input type="checkbox"/> <b>Withdrawn by agency</b> <input type="checkbox"/> <b>Subject to Legislative Review</b> <input type="checkbox"/> <b>Other:</b>	



# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency:</b> NC Behavior Analyst Licensure Board	
<b>2. Rule citation &amp; name (name not required for repeal):</b> 21 NCAC 05 .0602 INVESTIGATION OF COMPLAINT	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator:</b> Barden Culbreth  Phone: 919-821-1004 E-Mail: <a href="mailto:barden@recanc.com">barden@recanc.com</a>  Additional agency contact, if any: Caitlin Schwab-Falzone Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Barden Culbreth Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b> <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

# SUBMISSION FOR PERMANENT RULE

<b>1. Rule-Making Agency: NC Behavior Analyst Licensure Board</b>	
<b>2. Rule citation &amp; name (name not required for repeal): 21 NCAC 05 .0603 METHOD OF DISCIPLINE</b>	
<b>3. Action:</b> <input checked="" type="checkbox"/> <b>ADOPTION</b> <input type="checkbox"/> <b>AMENDMENT</b> <input type="checkbox"/> <b>REPEAL</b> <input type="checkbox"/> <b>READOPTIO</b> <input type="checkbox"/> <b>REPEAL through READOPTIO</b>	
<b>4. Rule exempt from RRC review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	<b>5. Rule automatically subject to legislative review?</b> <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
<b>6. Notice for Proposed Rule:</b> <input checked="" type="checkbox"/> <b>Notice Required</b> Notice of Text published on: August 1, 2022 Link to Agency notice: <a href="http://www.ncbehavioranalystboard.org">www.ncbehavioranalystboard.org</a> Hearing on: August 23, 2022 Adoption by Agency on: October 18, 2022 <input type="checkbox"/> <b>Notice not required under G.S.:</b> Adoption by Agency on:	
<b>7. Rule establishes or increases a fee? (See G.S. 12-3.1)</b> <input checked="" type="checkbox"/> <b>Yes</b> Agency submitted request for consultation on: Consultation not required. Cite authority:  <input type="checkbox"/> <b>No</b>	<b>8. Fiscal impact. Check all that apply.</b> <input type="checkbox"/> This Rule was part of a combined analysis.  <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
<b>9. REASON FOR ACTION</b>	
<b>9A. What prompted this action? Check all that apply:</b> <input checked="" type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SL 2021-2022 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
<b>9B. Explain:</b>	
<b>10. Rulemaking Coordinator: Barden Culbreth</b>  Phone: 919-821-1004 E-Mail: <a href="mailto:barden@recanc.com">barden@recanc.com</a>  Additional agency contact, if any: Caitlin Schwab-Falzone Phone: 919-443-0093 E-Mail: <a href="mailto:admin@ncbehavioranalystboard.org">admin@ncbehavioranalystboard.org</a>	<b>11. Signature of Agency Head* or Rule-making Coordinator:</b>  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form.  Typed Name: Barden Culbreth Title: Rule-Making Coordinator
<b>RRC AND OAH USE ONLY</b>	
<b>Action taken:</b>  <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

Send Attach Encrypt Discard ...

To Bcc

Cc

Fw: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

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**From:** Barden Culbreth <barden@recanc.com>  
**Sent:** Thursday, November 3, 2022 5:43 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** admin@ncbehavioranalystboard.org <admin@ncbehavioranalystboard.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Brian,

I don't know. But I believe the Board saw the same thing. We believe the 730's numbers to be correct....

Barden

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

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Send Attach Encrypt Discard ...

To Bcc

Cc

Fw: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Wednesday, November 2, 2022 6:51 AM  
**To:** barden <barden@recanc.com>  
**Cc:** admin@ncbehavioranalystboard.org <admin@ncbehavioranalystboard.org>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 21 NCAC 05 Requests for Changes - November 2022 RRC

Hi Barden,

All you need is the SL 2021-22. I don't need the House or Senate Bill number.

As an aside, when I was looking into whether there was a SL involved here, I did come across SL 2021-22, but I noticed that the section numbers in the SL were different than what is in the G.S. So for instance, in SL 2021 the new statutes start with 90-726.1, and run with decimals (726.2, 726.3, etc), while in the G.S., it's G.S. 90-731, and runs 732, 733, etc. That threw me for a loop. Do you know what is going on here, or what other changes were made between the SL and what actually ended up in the G.S.?

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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**From:** Barden Culbreth <barden@recanc.com>  
**Sent:** Wednesday, November 2, 2022 12:07 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>

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Send Discard ... Draft saved at 7:04 AM