



# Code-Enforcement Procedures

This document identifies the procedures that the Behavior Analyst Certification Board® (BACB®) will typically follow when there are alleged violations, or competence concerns regarding a certificant or applicant. Notifiers, certificants, and applicants are required to abide by these procedures unless otherwise approved in writing by the BACB. The Code-Enforcement Procedures will not result in awarding Notifiers monetary relief or damages as in a court of law. Additionally, these procedures are binding on applicants, certificants, and Notifiers, as stated in the Application Processing Agreement and the Signature and Attestation section of the Notice.

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## Preamble

The BACB is responsible for establishing and maintaining standards of professional conduct in the practice of behavior analysis. To protect the public from certificants or applicants who do not meet these standards, the BACB has adopted the [Ethics Code for Behavior Analysts](#) (Code) and the [RBT Ethics Code \(2.0\)](#) (RBT Code). In the Code-Enforcement Procedures document (CEP document), the *Notifier* is the individual who has submitted a Notice of Alleged Violation (Notice), and the *Subject* is the certificant or applicant alleged to have violated ethics standards. The BACB reserves the right to generate a Notice (i.e., be the Notifier) against a certificant or applicant.

The BACB provides due process to Subjects as identified in the CEP document. This includes giving them notice of the allegation(s) and an opportunity to respond, along with notice of the outcome, and an opportunity to appeal. The BACB will notify certificants and applicants of action being taken against their certification or eligibility using the email address that is on file in their BACB account. It is important that all contact information in a BACB account is accurate and up to date. Notices are reviewed and processed by Ethics Department staff trained in the Code-Enforcement Procedures. Typically, the BACB will not serve as an investigatory body, because it is expected that the Notifier will provide a complete and accurate Notice evidencing the alleged violation(s). The BACB does however reserve the right to gather additional information about any certificant, applicant, related party, or professional associate via a background check or third-party inquiry.

## Verification of Competence

At any point in the Code-Enforcement Procedures process (e.g., initial review, summary action, consequences) a Verification of Competence (VOC) may be required when evidence suggests (or when the Subject has disclosed) a condition that may impact their ability to practice or when documentation warrants verification of competence. Examples include, but are not limited to, reports of a mental health condition (or treatment for a condition) that prevents or significantly impacts work, physical injuries that prevent or impact work, and conditions or actions that may impede the safe delivery of behavior-analytic services and that raise questions about the Subject's safe and competent practice.

## Summary Actions

BACB staff (including staff outside of the Ethics Department) may determine that immediate summary action or interim action is warranted in certain instances when BACB requirements are violated or an imminent risk of harm is identified. These actions are referred to as summary actions. To the extent possible, the BACB will expedite the processing of summary-action matters. Summary actions do not prevent the BACB from taking further disciplinary or other actions. Summary actions may be appealed immediately following notice of the summary action.

Summary actions taken by departments other than the Ethics Department will include an opportunity for appeal during which the certificant or applicant may provide their response to the summary action notice. The appeal procedures provided in this document are applicable to summary actions taken by the Ethics Department and by other BACB departments.

**Documentation Audit or Review:** The BACB reserves the right to audit, reconsider, or decline any documentation submitted to the BACB by any individual should the BACB have reason to question the accuracy of the documentation or the accuracy of the person signing the document, no matter when the documentation was submitted. In particular, the following matters may warrant heightened scrutiny and/or denial of documentation submitted to the BACB, regardless of when the documentation was submitted or accepted:

- The documentation was signed by an individual convicted of or sanctioned by the BACB for fraudulent/dishonest actions.
- The documentation was signed by an individual who owns/owned or operates/operated an organization found to have engaged in fraudulent or unethical conduct, particularly, but not limited to, fraudulent or unethical conduct in the delivery, management, or billing of behavior-analytic services.

**Involuntary Inactivation:** The BACB reserves the right to apply inactive status to any certificant or applicant for whom the BACB has information indicating that the individual:

- is incarcerated,
- is undergoing inpatient treatment that would hinder their ability to competently deliver services,
- is unable to completely and competently provide client services, or
- poses an immediate risk of harm to a client or other relevant individual (e.g., trainee, supervisee).

*Note:* During a period of involuntary inactive status, an individual may not represent themselves as an active BACB certificant, practice or bill under a BACB certification, provide BACB-required supervision, sign off on RBT Competency Assessments, or carry out ACE-Provider/Coordinator activities.

The BACB will attempt to expedite the review and notice process in order to minimize the duration of the inactive status period.

**Summary Suspension of Eligibility or Certification for Failure to Respond:** The BACB reserves the right to summarily suspend a certificant or applicant for failure to (a) respond to requests from the BACB by the date indicated in the correspondence or (b) timely comply with required actions from the Ethics Department. An automatic suspension of certification, application eligibility, or other status with the BACB is published in the individual's Certificant Registry record (if certified) and/or on the Disciplinary Actions webpage of the BACB website. During the period of suspension, the individual may not represent themselves as an active BACB certificant, practice or bill under a BACB certification, provide BACB-required supervision, sign off on RBT Competency Assessments, or carry out Authorized Continuing Education (ACE) Provider/Coordinator activities. Unless otherwise indicated, any fieldwork experience hours accrued during the time of suspension will not be accepted towards any BACB exam application. An otherwise qualified individual may be reinstated during the suspension period if they:

1. request reinstatement in writing by identifying the reason for the nonresponse,
2. submit an action plan to ensure timely responding moving forward,
3. comply with all requirements communicated by the BACB.

*Note:* Summary suspensions and the correction thereof are subject to any Disciplinary or Appeal Determinations.

If the applicant or certificant is already suspended and fails to respond or comply with additional documentation or requirements the BACB may process the matter for consideration of whether eligibility/certification status should be revoked.

**Summary Invalidation or Ineligibility Based on Fraud or Deceit:** In the event the BACB finds that an individual, including but not limited to a certificant or applicant, submitted falsified, forged, or untrue information to the BACB or cheated on a BACB examination, the BACB reserves the right to: 1) cancel any authorization to test or otherwise bar any individual certificant or applicant from sitting for any BACB examination, or 2) invalidate any certification immediately making the certification null and void. The BACB reserves this right regardless of when the BACB becomes aware of the falsified, forged, or untrue information.

**Mandatory Revocation Based on Fraud or Deceit:** In the event of fraud or deceit by or on behalf of a certificant or applicant the BACB will: 1) revoke the individual's eligibility to apply to sit for any BACB examination for a *minimum* of 5 years, after which the individual must meet the requirements applicable at the time they reapply, and/or 2) invalidate the certification and revoke the individual's eligibility to apply to sit for any other BACB examination for a *minimum* of 5 years, and/or 3) otherwise address the allegations via Consent Agreement. Those sanctioned under this provision are not permitted to qualify for examination via past certification. Unless otherwise indicated, any fieldwork experience hours accrued during the time of revocation will not be accepted towards any BACB exam application. Unless otherwise indicated, any invalidation or revocation of eligibility will be published in the individual's [Certificant Registry](#) record on the BACB website for the maximum duration permitted by law.

## Alleged Trademark or Copyright Violations

In the event a certificant or applicant does not comply with or refutes a Cease-and-Desist notice about alleged trademark or copyright violations sent by the BACB, the matter will be transferred to the Ethics Department via a Notice and processed under the Code-Enforcement Procedures.

## Release of Case Information

Information about summary actions and any other actions taken by the Ethics Department will be shared with all current supervisors (e.g., application, ongoing, sanction imposed, mentors or consultants) on record in accordance with the BACB's [Privacy Policy](#) and [Application Processing Agreement](#). Other documentation may be shared with the current supervisor if determined, in the sole discretion of the BACB, to be necessary for consumer protection.

## Processing of a Notice by the Ethics Department

**Jurisdiction of a Notice:** The BACB does not have jurisdiction over noncertified individuals, trainees, or organizations/agencies. The BACB does have jurisdiction over any individual applying for certification or already certified as a, Board Certified Behavior Analyst® (BCBA®), Board Certified Assistant Behavior Analyst® (BCaBA®), Registered Behavior Technician® (RBT®), or designation as a Board Certified Behavior Analyst-Doctoral® (BCBA-D®). The Code-Enforcement Procedures also apply to prior applicants and certificants who are on inactive status or whose eligibility or certification has been suspended or revoked, and individuals whose certification expired during the course of the BACB's review. The BACB may, in its sole discretion prioritize the processing of cases based on level of risk to consumers.

### Intake and Routing of a Notice:

1. **Evaluating a Notice:** Upon receipt, the BACB evaluates each Notice to ensure that it:
  - is submitted against an individual over whom the BACB has jurisdiction;
  - is submitted within 6 months of the alleged violation(s) or of the Notifier becoming aware of the alleged violation(s) (BACB staff have the discretion to extend this deadline in exceptional circumstances);
  - is not submitted by the Subject of an active Notice (unless otherwise approved by the BACB) against those involved in the original submission (e.g., the Notifier) unless 60 days from the closure of the original Notice (e.g., Notice is formally declined, Consent Agreement is signed, Educational Memo is received, Disciplinary or Appeal Determination is received);
  - is not arising from an unresolved (litigation pending) commercial dispute;
  - is not against a regulator who was acting in their official capacity;
  - has a valid e-signature;
  - includes clear documentation supporting the allegation(s). Supporting documentation should not be speculative or composed of unsubstantiated suspicions;
  - is properly redacted (confidential identifying information removed or covered); and
  - does not exceed 20 pages.

If the Notice and/or the supporting documentation does not meet these requirements (e.g., is not properly redacted or exceeds the page limit) the BACB may decline the Notice or return it to the Notifier with a request to correct and resubmit.

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

2. **Declining a Notice:** When a Notice does not meet the criteria above, duplicates another Notice, or is otherwise not actionable as determined by the BACB, the BACB declines the Notice and informs the Notifier.

*Note:* The Notifier is expected to take appropriate actions (e.g., address the issue directly, address the issue with the appropriate RBT Requirements Coordinator or Supervisor) prior to filing a Notice. In many, but not all, instances the BACB would expect that alleged code violations indicated in Notices submitted against an RBT would have been resolved directly with their supervisor. In the discretion of the BACB, a Notice against an RBT may be processed under the Code-Enforcement Procedures depending on the allegation(s) (e.g., 1.03, 1.05, 2.01, 3.01, 3.02, 3.03, 3.04, 3.05) and/or whether the RBT has a supervisor of record.

3. **Deferring a Notice:** When a Notice is related to a complaint that has been submitted to an agency with investigative powers (e.g., law enforcement, licensure/regulatory board, third-party payer), the BACB may, but is not required to, postpone the processing of the Notice until a final determination has been issued by the investigatory agency. In such cases, the BACB informs the Notifier of the decision. In determining to defer a Notice the BACB may defer all or only part of the Notice submitted in the discretion of the BACB.
4. **Withdrawn Notices:** Notifiers may contact the BACB and request that the Notice they submitted be withdrawn. Such requests will only be granted if the BACB determines there is insufficient evidence of an alleged violation.
5. **Processing a Notice:** Once a Notice is accepted (except for certain summary actions), the Subject is provided with an opportunity to review the Notice and supporting documentation and submit a response. Inaccurate or misleading response(s) is/are grounds for additional allegations of Code violations whenever discovered. The Subject is also notified of any summary or interim actions. If the Subject is required to be supervised to practice (i.e., RBT, BCaBA, sanctioned certificants) or is required to have a consulting supervisor or mentor, the supervisor, consultant, or mentor on record with the BACB will receive a copy of the Notice and supporting documentation. Upon expiration of the response timeline, the Notice and response (if received) may be declined, deferred, or processed as an educational memorandum, consent agreement, or disciplinary review.

**Educational Memorandum:** The Educational Memorandum focuses on providing the Subject with guidance and support related to the alleged violation(s) when it is determined that the allegations are best addressed through nondisciplinary actions (e.g., feedback, professional-development tasks), and in inconclusive cases. A future Notice alleging the same or substantially similar facts may take into consideration prior Educational Memoranda.

**Consent Agreement:** The Consent Agreement is an agreement with the BACB that allows certain Subjects to bypass the lengthy disciplinary review and appeal processes and immediately begin completing assigned activities intended to address the alleged violation(s). The consequences identified in the Agreement are selected to help the Subject avoid future ethics violations. In some instances, the disciplinary review may result in a proposed Consent Agreement.

**Disciplinary Review:** Disciplinary Review focuses on determining whether the submitted documentation substantiates the alleged violation(s) and, if so, what consequences should be assigned to the Subject. Subjects may be represented by counsel at any stage in the Disciplinary Review process. The BACB takes disciplinary action against a Subject when a preponderance of the documentation supports the alleged violation(s). In other words, the documentation must support a finding that it is more likely than not that the violation(s) occurred. In the sole discretion of the BACB there are three possible outcomes of a Disciplinary Review: 1) no further action; 2) initiation of a Consent Agreement; or 3) prescribed consequences. The reviewer(s) consider(s) the submitted documentation for a case, make(s) a decision regarding the alleged violation(s), and, if applicable, issues one or more consequences.

Typically, within 30 days of the review decision, BACB staff notify the Subject of the outcome of the review. If the review identified additional code standards not previously identified in the Opportunity to Respond the Subject may address the additional code standards in their appeal, if any. The Subject has 30 days to notify the BACB Ethics Department that they accept the Disciplinary Determination (i.e., intend to comply with the indicated consequences) or to request an appeal. If the Subject 1) accepts the Disciplinary Determination, 2) fails to accept the Disciplinary Determination, or 3) fails to request an appeal within 30 days, the BACB informs the Notifier, current supervisor, current consultant, or current mentor, and relevant licensure/regulatory board(s) of the Disciplinary Determination.

## Possible Disciplinary Consequences

There are two categories of consequences that may be applied in a Disciplinary Determination: corrective actions and sanctions. Corrective actions include steps the Subject must take to address the violation(s) and reduce the likelihood that future issues occur. Sanctions include actions that place a restriction on 1) a certificant's ability to practice under their certification, or 2) an applicant's eligibility.

**Corrective Actions:** The following consequences are not published on the BACB's website. This list is not exhaustive, as other relevant non-published actions (e.g., verification of competence, supervisor feedback, retraining) may be determined during the Disciplinary Review or Consent Agreement process:

- **Professional Development:** The Subject must engage in relevant professional-development activities (e.g., earn continuing education credits or university course credits on a topic relevant to the violation[s], obtain additional training).
- **Mentorship:** The Subject is required to receive mentorship from a qualified individual during the mentorship period to address professional development related to the specific violation(s) and any other areas identified.
- **Other Required Action:** Other Required Action may include a combination or variety of actions intended to correct ethical deviations.

**Sanctions:** Sanctions are consequences that are published in the individual's Certificant Registry record (if certified) and/or on the Disciplinary Actions Page of the BACB website. The following are the most common reportable sanctions:

- **Certification or Eligibility Invalidation:** The Subject's certification or eligibility is invalidated because the eligibility requirements were not met or falsified information was provided to the BACB. The Subject whose certification is invalidated was, in effect, never legitimately certified.
- **Certification or Eligibility Revocation:** The Subject's certification or eligibility is terminated. After the duration of the revocation period, the Subject must apply for post-revocation reentry. Such Subjects are not permitted to qualify for examination via past certification. Unless otherwise indicated, any fieldwork experience hours accrued during the time of revocation will not be accepted towards any BACB exam application. In instances of extreme risk, an individual's eligibility or certification may be revoked indefinitely. In such instances, the individual is permitted to submit a request for reconsideration of the revocation every 10 years. Unless otherwise specified, permanent revocations related to examination theft or cheating may only be reconsidered after a minimum of 20 years and submission of a request for reentry under the then-current standards.
- **Certification or Eligibility Suspension (including summary suspension):** The Subject's certification may not be used for a specified period of time or the Subject is not eligible to apply for a period of time. Unless otherwise indicated, any fieldwork experience hours accrued during the time of suspension will not be accepted towards any BACB exam application.
- **Practice Restriction:** In the case of a practice restriction the Determination or Consent Agreement limits the Subject's ability to practice behavior analysis under their BACB certification, and/or with certain populations.
- **Mandatory Disciplinary Supervision:** The Subject is required to receive supervision from a qualified individual for a period of time to address concerns related to the specific violation(s) and any other areas identified.

*Note:* If an applicant or certificant appears to be establishing a pattern of reluctant compliance (e.g., missed deadlines, interference with witnesses, harassment of the Notifier and/or BACB staff, obtuse and disruptive questions, procedural deviations not otherwise addressed in the CEP document), the BACB may initiate or modify a Notice to include an alleged violation of standard 1.02 of the Ethics Code for Behavior Analysts or 1.01 of the RBT Ethics Code (2.0). Violating the terms of a consequence issued in a Consent Agreement, Disciplinary or Appeal Determination will result in immediate suspension of certification or eligibility, or revocation when already suspended. Subsequent violations of consequences may be appealed.

Unless otherwise specified (e.g., in the Consent Agreement or Disciplinary Determination), sanctions remain published until certain requirements are completed, or in the case of revocation and invalidation, for the maximum duration permitted by law. Individuals with published sanctions who change their name will be listed under the former and current name.

## Appeal Process

**Appeal:** Consent Agreements and Educational Memoranda may not be appealed. If the Subject is issued any consequence, published or not, as a part of a Disciplinary Review or summary action, they have 30 days to submit a written request for an appeal. They will then be provided with an additional 30-day period to submit their appeal documentation. All documentation must be submitted during this period unless additional documentation has been requested by the Disciplinary Appeal Committee. The Notifier does not have the right to request an appeal. In accordance with the BACB bylaws, the Disciplinary Appeal Committee determines the outcome of the appeal.

**Cases with Corrective Actions (i.e., Nonpublished Consequences):** In cases that only include corrective actions, the Subject may only submit a written appeal document. The Subject may include additional documentation in support of their appeal, statements from witnesses, and appeal documents prepared by an attorney.

**Cases with Sanctions (i.e., Published Consequences):** In addition to submitting the required appeal documentation, the Subject has the option to be present during the appeal via video conference. The Subject may submit written documentation and/or verbal content in support of their appeal, may choose to be represented by counsel, and may have witnesses present during the video conference. The Subject, however, may not cross-examine the Notifier or their witnesses, as the appeal is not a formal legal proceeding. The Subject is welcome to draw into question the veracity of information provided by the Notifier if the Subject submits documented evidence that contradicts the Notifier's evidence. The Subject must submit all additional documentation and a list of all individuals who will be present at the meeting to the BACB Ethics Department by the required date.

**Disciplinary Appeal Committee Decision:** The Committee may issue one of three outcomes in the Appeal Determination in part or in whole: uphold, modify (but not in a manner more adverse to the Subject), or overturn.

**Notification of Outcome:** BACB staff typically send the Subject the Appeal Determination within 15 days of the Committee's decision. Any additional documentation the Subject submits after the conclusion of the appeal will not be considered unless requested by the Appeal Committee. The BACB also sends the Appeal Determination to the Notifier, current supervisor, current consultant, or current mentor of record and in the BACB's sole discretion, applicable licensure/regulatory authorities (e.g., state licensing boards).

## Release of Documentation

Actions taken under the Code-Enforcement Procedures do not constitute enforcement of the law. Upon formal request (e.g., subpoena, court order), official request on agency letterhead by a governmental agency or court of law, or at the discretion of the Chief Executive Officer, the BACB may release all documentation (e.g., Notice, documents relevant to the violation[s], Subject's response and related documents, relevant correspondence) to the requesting party. Relevant parties (e.g., licensing authorities, employers, supervisors) may also submit documentation to the BACB Ethics Department for verification of accuracy and completeness.

## Amendment to Procedures

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