START\_STATUTE32-2091.  Definitions

In this article, unless the context otherwise requires:

1.  "Active license" means a current license issued by the board to a person licensed pursuant to this article.

2.  "Adequate records" means records that contain, at a minimum, sufficient information to identify the client, the dates of service, the fee for service, the payments for service and the type of service given and copies of any reports that may have been made.

3.  "Behavior analysis" means the design, implementation and evaluation of systematic environmental modifications by a behavior analyst to produce socially significant improvements in human behavior based on the principles of behavior identified through the experimental analysis of behavior. Behavior analysis does not include cognitive therapies or psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling as treatment modalities.

4.  "Behavior analysis services" means the use of behavior analysis to assist a person to learn new behavior, increase existing behavior, reduce existing behavior and emit behavior under precise environmental conditions. Behavior analysis includes behavioral programming and behavioral programs.

5.  "Behavior analyst" means a person who is licensed pursuant to this article to practice behavior analysis.

6.  "Client" means:

(a)  A person or entity that receives behavior analysis services.

(b)  A corporate entity, a governmental entity or any other organization that has a professional contract to provide services or benefits primarily to an organization rather than to an individual.

(c)  An individual's legal guardian for decision making purposes, except that the individual is the client for issues that directly affect the individual's physical or emotional safety and issues that the legal guardian agrees to specifically reserve to the individual.

7.  "Exploit" means an action by a behavior analyst who takes undue advantage of the professional association with a client, student or supervisee for the advantage or profit of the behavior analyst.

8.  "Health care institution" means a facility that is licensed pursuant to title 36, chapter 4, article 1.

9.  "Incompetent as a behavior analyst" means that a person who is licensed pursuant to article 4 of this chapter lacks the knowledge or skills of a behavior analyst to a degree that is likely to endanger the health of a client.

10.  "Letter of concern" means an advisory letter to notify a licensee that while there is insufficient evidence to support disciplinary action the board believes the licensee should modify or eliminate certain practices and that continuation of the activities that led to the information being submitted to the board may result in action against the license.

11.  "Supervisee" means a person who acts under the extended authority of a behavior analyst to provide behavioral services and includes a person who is in training to provide these services.

12.  "Unprofessional conduct" includes the following activities, whether occurring in this state or elsewhere:

(a)  Obtaining a fee by fraud or misrepresentation.

(b)  Betraying professional confidences.

(c)  Making or using statements of a character tending to deceive or mislead.

(d)  Aiding or abetting a person who is not licensed pursuant to this article in representing that person as a behavior analyst.

(e)  Gross negligence in the practice of a behavior analyst.

(f)  Sexual intimacies or sexual intercourse with a current client or a supervisee or with a former client within two years after the cessation or termination of treatment. For the purposes of this subdivision, "sexual intercourse" has the same meaning prescribed in section 13-1401.

(g)  Engaging or offering to engage as a behavior analyst in activities that are not congruent with the behavior analyst's professional education, training and experience.

(h)  Failing or refusing to maintain and retain adequate business, financial or professional records pertaining to the behavior analysis services provided to a client.

(i)  Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.

(j)  Making a fraudulent or untrue statement to the board or its investigators, staff or consultants.

(k)  Violating any federal or state law that relates to the practice of behavior analysis or to obtain a license to practice behavior analysis.

(l)  Practicing behavior analysis while impaired or incapacitated to the extent and in a manner that jeopardizes the welfare of a client or renders the services provided ineffective.

(m)  Using fraud, misrepresentation or deception to obtain or attempt to obtain a behavior analysis license or to pass or attempt to pass a behavior analysis licensing examination or in assisting another person to do so.

(n)  Unprofessional conduct in another jurisdiction that resulted in censure, probation or a civil penalty or in the denial, suspension, restriction or revocation of a certificate or license to practice as a behavior analyst.

(o)  Providing services that are unnecessary or unsafe or otherwise engaging in activities as a behavior analyst that are unprofessional by current standards of practice.

(p)  Falsely or fraudulently claiming to have performed a professional service, charging for a service or representing a service as the licensee's own if the licensee has not rendered the service or assumed supervisory responsibility for the service.

(q)  Representing activities or services as being performed under the licensee's supervision if the behavior analyst has not assumed responsibility for them and has not exercised control, oversight and review.

(r)  Failing to obtain a client's informed and written consent to release personal or otherwise confidential information to another party unless the release is otherwise authorized by law.

(s)  Failing to make client records in the behavior analyst's possession promptly available to another behavior analyst on receipt of proper authorization to do so from the client, a minor client's parent, the client's legal guardian or the client's authorized representative or failing to comply with title 12, chapter 13, article 7.1.

(t)  Failing to take reasonable steps to inform or protect a client's intended victim and inform the proper law enforcement officials if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on another person.

(u)  Failing to take reasonable steps to protect a client if the behavior analyst becomes aware during the course of providing or supervising behavior analysis services that a client intends or plans to inflict serious bodily harm on self.

(v)  Abandoning or neglecting a client in need of immediate care without making suitable arrangements for continuation of the care.

(w)  Engaging in direct or indirect personal solicitation of clients through the use of coercion, duress, undue influence, compulsion or intimidation practices.

(x)  Engaging in false, deceptive or misleading advertising.

(y)  Exploiting a client, student or supervisee.

(z)  Failing to report information to the board regarding a possible act of unprofessional conduct committed by another behavior analyst who is licensed pursuant to this article unless this reporting violates the behavior analyst's confidential relationship with a client pursuant to this article. A behavior analyst who reports or provides information to the board in good faith is not subject to an action for civil damages.

(aa)  Violating a formal board order, consent agreement, term of probation or stipulated agreement issued under this article.

(bb)  Failing to furnish information in a timely manner to the board or its investigators or representatives if requested or subpoenaed by the board as prescribed by this article.

(cc)  Failing to make available to a client or to the client's designated representative, on written request, a copy of the client's record, excluding raw test data, psychometric testing materials and other information as provided by law.

(dd)  Violating an ethical standard adopted by the board.

(ee)  Representing oneself as a psychologist or permitting others to do so if the behavior analyst is not also licensed as a psychologist pursuant to this chapter.

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