



Privacy & Confidentiality in ABA

Privacy

Behaviour analysts have an obligation to protect their clients' rights. Privacy refers to a person's right to decide what personal information they wish to share, who they wish to share it with, and if they are comfortable with why they are being asked to share it. Behaviour analysts uphold the right to privacy by only collecting personal information that is necessary to provide services and only using the information for the purpose(s) it was collected.

Confidentiality

Behaviour analysts protect their clients' privacy by committing to keep their personal information confidential under normal circumstances. Keeping client information confidential is both an ethical and legal obligation. Failure to uphold this obligation poses a risk of harm to their clients and could result in serious consequences for the behaviour analyst.

Disclosures

Behaviour analysts are required to obtain their clients' consent to release information unless one or more of the limits of confidentiality listed below are present. Having a clearly documented process for obtaining valid consent to access or release information is an important step in protecting privacy.

Limits of Confidentiality

Behaviour analysts are bound by limits with respect to maintaining their clients' confidentiality in specific situations. In other words, there are particular circumstances in which they may disclose client information without their client's permission. As early as possible in the consent process for services, behaviour analysts must inform their clients of these limits and the consequences of sharing certain pieces of sensitive information.

The following are some examples of limits of confidentiality that apply to behaviour analysts in Ontario.

- **Mandatory reporting of suspected or witnessed abuse or neglect under various laws.** These laws include but are not limited to: the Child, Youth, and Family Services Act (2017), the Long Term Care Homes Act (2007), the Retirement Homes Act (2010), and the Quality Assurance Measures (O. Reg. 299/10, 2008).
- **Exercising a “duty to warn” (PHIPA, 2004) in an attempt to prevent imminent risk to the safety of the client or others.** Duty to warn is not mandatory, but it is permitted under the law. Failure to execute a duty to warn could potentially pose a higher risk to the client than the resulting privacy breach.
- **Responding to court order or subpoena to give testimony and/or provide part or all of the clinical record.** Failure to appear or provide documents could result in fines or imprisonment.
- **Complying with file audits or investigations.** These may be conducted by external sources such as funding sources (e.g., insurance companies, government funders) or credentialing bodies (e.g., BACB®) or an Ontario Regulatory College in the case where the behaviour analyst is a member of a regulated profession or being supervised by one (e.g., Nurse, Speech Language Pathologist, Psychologist). Failure to comply could result in a loss of client funding or sanctions by credentialing or regulatory body.

Privacy Breaches

Behaviour analysts are required to safeguard their clients’ private information. A privacy breach refers to disclosure of personal information without a client’s consent. Most privacy breaches fall into two categories, accidental breaches or intentional breaches. Examples of accidental breaches include losing documents or mailing/emailing information to the wrong person. Examples of intentional breaches include access to records by unauthorized personnel, unauthorized use of data by personnel, theft of data, or cyber-attack.

Reporting Privacy Breaches

Behaviour analysts must comply with reporting requirements for privacy breaches. The requirements may differ slightly and fall under different legislation for different areas of practice or depending on the nature of the information in the clinical record. For example, a behaviour analyst working in a school board or regional day care provider would likely have to comply with reporting requirements from the Municipal Freedom of Information and Privacy Protection Act (1990). A behaviour analyst working in a hospital, or having personal health information in their clinical records, would have to comply with the Personal Health Information Act (2004). Privacy breaches must be reported to the Information and Privacy Commissioner of Ontario.

Summary

It is important for behaviour analysts to have proactive processes in place to protect their clients’ right to privacy and to keep their clients’ private information confidential. If you are unsure of how to get started and which laws apply to your practice, seek legal advice, as well as advice, consultation, or supervision from a behaviour analyst with expertise in your areas of practice. You can find more information about privacy and confidentiality on the Information and Privacy Commissioner’s Website www.ipc.on.ca.

More information about Professional Practice in ABA can be found at www.ontaba.org.