

By Jon Bailey

One of the most frequently asked ethics questions pertains to the topic of independent contractors. The November issue of the Behavior Analysis Certification Board (BACB) newsletter is very specific about RBTs not qualifying as independent contractors by the IRS. From page 3 of the BACB November newsletter:



Jon Bailey, PhD

Behavior Technicians May Not Be Independent Contractors in the U.S.

The U.S. Internal Revenue Service (IRS) provides definitions of two primary worker classifications. A worker is an *employee* when the company controls what duties will be performed and how they will be performed. A worker is an *independent contractor* when he/she controls how the duties will be performed (e.g., which procedures are used). Behavior technicians – those who are certified (e.g., as an RBT) and those who are not – have increasingly advertised their availability to provide services as independent contractors. Because over 97% of RBTs reside in the U.S., we provide the following guidance.

The BACB defines an RBT as “a paraprofessional who practices under the close, ongoing supervision of a BCBA, BCaBA, or FL-CBA.”

Because an RBT is not an independent practitioner with control over how his/her duties are performed, in the U.S. an RBT would almost never qualify as an independent contractor as defined by the IRS.

Thus, any RBT who is working as an independent contractor and any business that hires RBTs as independent contractors should immediately consult a tax professional to confirm compliance with IRS regulations. The following resources might be helpful during this consultation:

- The July 20, 2017 IRS Interpretation of Employee vs. Independent Contractor (See FS-2017-09, U.S. Department of the Treasury, 2017).
- The California Association for Behavior Analysis (May 2018) interpretation of this issue.

In addition to this being a serious IRS matter, failure to

use the appropriate worker classification for behavior technicians may constitute a violation of the Professional and Ethical Compliance Code for Behavior Analysts (e.g., section 1.04). In the event that a Code violation is alleged against you for mischaracterization of RBT services, the BACB will request a copy of the written opinion of a tax professional to demonstrate that appropriate due diligence was exercised in making the classification.

We strongly encourage RBTs who are practicing outside the U.S. to consult with a tax professional in their country to determine compliance with applicable employment laws.

In This Issue

Behavior Technicians/RBTs.....	1
Legislative Update	2
Presidents Corner	3
FABA Election Results.....	4
CABA Update.....	5
Ethics Anyone?.....	6
New FABA Action Center.....	7

The Florida Elections: Impact on Behavior Analysis

By Eric Prutsman, Esq., FABA General Counsel & Lobbyist

If anyone was wondering about the impact of the recent election results on executive branch agencies and the Legislature as it relates to behavior analysis, the short answer is: status quo.

Governor-elect DeSantis is not expected to rock the boat on leadership or policies at any of the executive branch agencies that FABA works with in the short term. He will likely appoint his own choices as agency heads, but it is anticipated that he will keep more upper management staff than is usual in a gubernatorial transition. However, the Governor-elect's transition team is already vetting possible replacements at key agency positions. Leading the transition team are Speaker Richard Corcoran, Congressman Matt Gaetz, former U.S. Senator George LeMieux, and former Lt. Gov. Toni Jennings.

None of the legislative recounts appear to have changed the election-night results. The Legislature saw Democrats pick up one seat in the Florida Senate (23 R's to 17 D's) and pick up six seats in the House (73 R's to 47 D's). And there are lots of freshmen legislators: 8 new senators and 41 new house members. With more than a third of the House members, and nearly a quarter of the



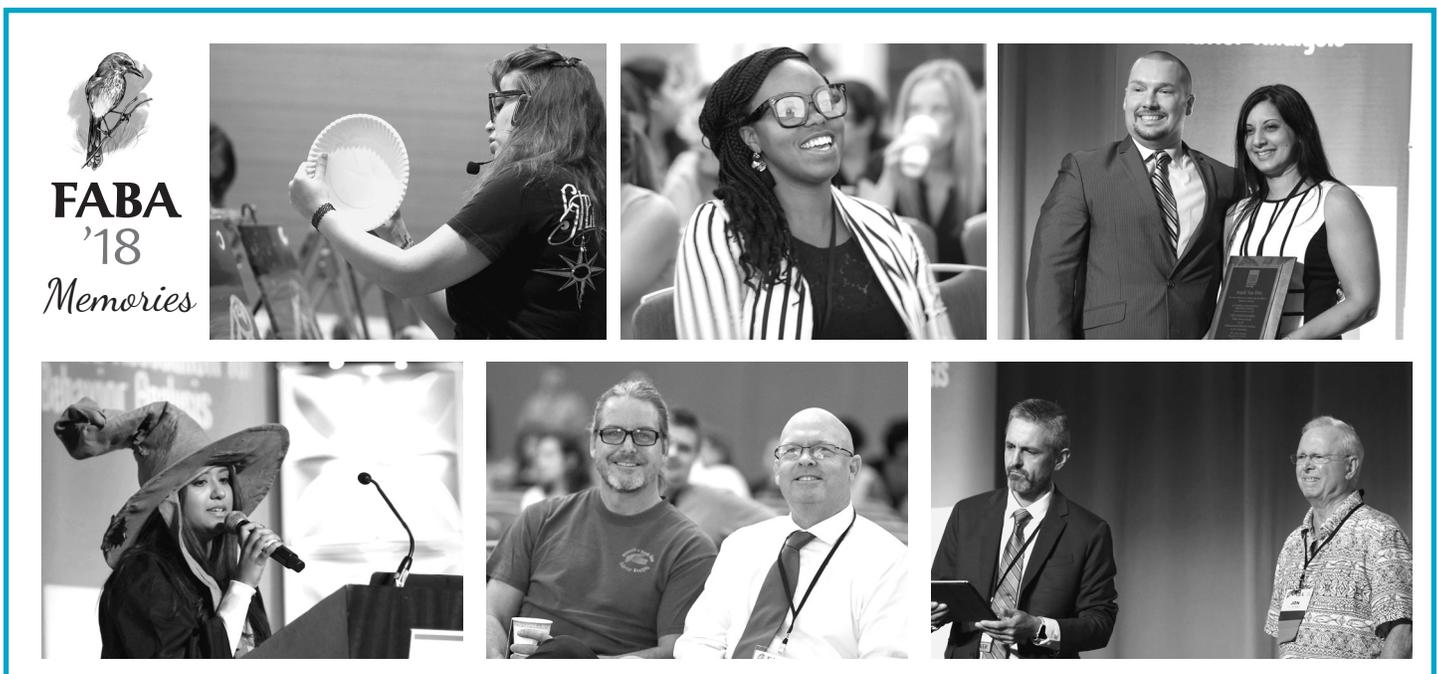
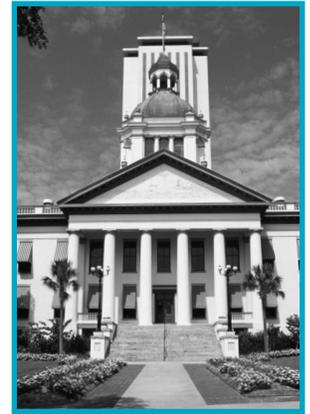
Eric Prutsman
FABA Lobbyist

senators as freshmen, there will be a great deal of education to do with legislators and their staff.

The Legislature convened an Organizational Session the Tuesday of Thanksgiving Week and will return for a committee week in December, before it starts meetings in January and February in advance of the March to May Session.

AHCA has recently announced that it will extend the moratorium on enrollment of new behavior analysis providers for an additional six months in Miami-Dade and Broward counties. AHCA continues to investigate and terminate behavior analysis providers in those two counties, and has indicated that it is making progress in addressing fraud in the moratorium counties and elsewhere in the State.

Also, as mentioned by President Houvouras in this edition's President's Corner: please check out the FABA Action Center under the Member tab – Action Center on fabaworld.org. This advocacy tool is a game-changer as we head into the 2019 Session and continue work with AHCA, APD and DOE on issues that are important to behavior analysts and the families you serve.




FABA
'18
Memories

Setting the Record Straight

By Andrew Houvouras, FABA President

Being a behavior analyst is all about being adaptable. Following the incredible FABA 2018 Conference, (sold out again!) I was ready to write, in great detail, a list of things to accomplish over the next year; an agenda I believed was bold and necessary. And then life, as it does, happened and part of our state and our FABA family had their lives altered by Hurricane Michael. After the immediate relief of minimal life lost was the realization of incredible devastation and disruption, experienced by many, including our past president, a friend to many, Nikki Dickens.

Nikki is all too familiar with handling crises as she was leading FABA through the struggles with Medicaid, AHCA and the frustrations of families, providers and consumers. No one knows better than her that life gets in the way of what we want to do sometimes. Her leadership last year taught us all valuable lessons of being strong and persevering in spite of colossal obstacles, lessons I'm sure will help her as her family and community work to achieve a normalcy we all take for granted.

As behavior analysts, we often help reduce human suffering. It motivates us. In the wake of the hurricane, I perseverated on wanting to do something for those affected. With the counsel of friends and FABA members, I ultimately came to the conclusion one of the most important roles the unaffected serve is to keep things normal. Our roles are to carry on with our missions; to continue making FABA the organization it has evolved into, one fighting the good fight for the science and practice of behavior analysis, which is one of the true, legitimate hopes the world has to improve.

In the spirit of forging ahead, I decided to go forth and to articulate some of my ideas:

FABA is never better than when it stands up for just causes. A few years ago, our push was for licensure, an act that would have likely spared practitioners and families the pains of the past year. Depending on the outcome of the next election, this could be something for membership to consider. We have to be prepared to possibly explore licensure, be vigilant about defending the rights to practice and effective treatment while dealing with our everyday challenges.

FABA serves as an agent for change. Last year, FABA members wrote letters, utilized social media, organized



Andrew
Houvouras

rallies and visited the capital to fight for families affected by the moratorium and interruption in services that affected providers, families and consumers alike. FABA has rolled out the FABA Action Center so members, families and consumers can contact political and agency representatives to address their concerns.

We can always do more. FABA's strength is its membership, a collection of approximately 1500 individuals who, together, can move mountains. As a young basketball player, I read about the "89% philosophy" which essentially said no one gives 100% and we should not delude ourselves into believing we have given our all. We can always do better. Our collective strength is formidable. Let our efforts match our strength.

Let us spend the next year serving FABA as well as FABA serves us. I, like many, owe so much to FABA. It has provided us forums to articulate our views, share our data, expand our businesses and practices, introduced us to friends and made us feel like the world is just a bit better because of our work as behavior analysts. Let's give back to our FABA family, our communities and our organization. Keep thinking of ways to improve your lives, your family's lives, your clients' lives and this state we call home; then act on them.



FABA '18 Memories



FABA Election Results

Corey L. Robertson, M.S., BCBA, Past-President

This year, we elected a Secretary as well as a President Elect and two Members-at-Large. This year's election had record participation, with 229 FABA members voting.

For the President Elect position, 15 eligible FABA members received nominations, but only members with more than one nomination (four in total) were contacted to determine if they would accept the nomination. This process resulted in two candidates: Yulema Cruz, who won the position with 127 votes and Baker Wright, who received 84 votes.

For the Secretary Position, we had nine eligible FABA members who were nominated, but only members with two or more nominations were contacted. In some cases, these nominees were also nominated for the member-at-large position, so they were given a choice of which position to accept the nomination for, if any. This resulted in three candidates: Evetter Beradi-Cox, who won the position with 95 votes, Kimberly Smith, who received 67 votes, and Marrie Kate Salade, who received 38 votes.



Corey L. Robertson

For the Member-at Large positions, we had 41 eligible FABA members nominated, and the cutoff was established at 2 nominations, which resulted in eight candidates for two positions. Kristen Myers-Kemp received 77 votes and won the first position, and William (Bill) Carlucci received 72 votes and won the second position. Carlos Zuluaga received 71 votes, Shane Spiker received 55 votes, Kara Wunderlich received 42 votes, Kelly Therrien received 33 votes, Michelle Treffinger received 29 votes, and Shaelyn Harris received 24 votes.

We thank all of our members who accepted their nominations and were willing to serve the profession in Florida by volunteering on the Executive Committee. We encourage them to run again in the future, especially since the elections were so close in some cases! We also thank all FABA members for participating in the nomination and election process. We hope that the new system made voting easier, and that we can sustain this level of participation in the future.



Capitol Association for Behavior Analysis

By Stephanie Cannon

The Capitol Association for Behavior Analysis has had a fun and eventful fall semester!

On September 5th, CABA held a CEU event at Florida State University. Shannon Biagi, M.S., BCBA, presented **A Brief Guide to Getting Started in OBM**. It was a great way to network with local behavior analysts in the community while learning about a different application of behavior analysis. The Olive Garden was a big hit too!

CABA intended to host an October event for ABA Awareness month. Unfortunately, many of our chapter members and executive officers evacuated for Hurricane Michael and have since been busy with other priorities in the aftermath of the hurricane. CABA has focused its efforts on collecting donations and participating in volunteer opportunities to help those affected by the hurricane.

Additionally, CABA participated in the Down Syndrome Association of Tallahassee's 13th Annual Buddy Walk on Saturday, November 3rd. We are excited to announce that we raised \$410 in donations! Our theme was **"Donut Miss Out On ABA"** and we provided a donut craft, toss-the-donut game, face painting, and free donuts! Everyone had a **HOLE** lot of fun!

In December, we plan to host a Winter Wonderland event for the families in our community. We also plan to collect toys and clothes for families in need and to ring the bell with the Salvation Army again this year!

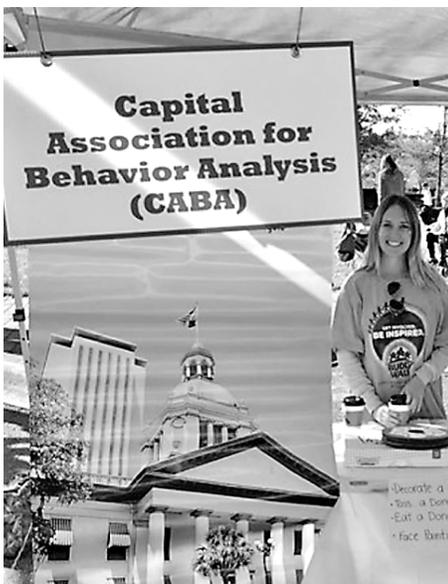
For more information about CABA events, follow us on Facebook at 'Capitol Association for Behavior Analysis' and on Instagram at "caba_tally". Those interested in joining CABA may contact us at caba.tallahassee@gmail.com. We look forward to ending 2018 on a great note.

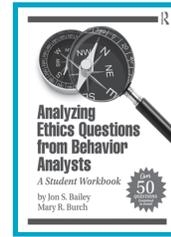
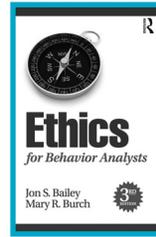


Shannon Biagi presenting



The Buddy Walk





Jon Bailey, PhD



Mary Burch, PhD

A RBT by Any Other Name is Still a RBT

NOTE TO READERS: This is the 37th in a series of articles on ethics where we answer questions from behavior analysts. This question came from a query through the new ABAEthicsHotline.com

QUESTION: ““I have a weird situation going in within my professional organization. I am a BCBA, and I supervise an RBT. There is another BCBA that I work with who also supervises an RBT. All four of us are overseen by a “Director of Allied Services” who also oversees therapists (OT, PT, SLP) for the organization.



Recently, our caseloads have gotten fairly high and we have asked about hiring a third BCBA. The solution that came up from our Director (who is not a behavior analyst) was to have one of the RBTs take on some of the FBAs and BIP writing so that it is off my colleague’s caseload.

When told that this was not something an RBT was certified to do, she stated that this individual could work as an RBT two days a week and as a “behavior specialist” who would write FBAs and BIPs.

We work in a school setting and under our State Department of Education where there is not a requirement to have any BACB certification to write FBAs and BIPs. However, I don’t think that she can do this and maintain her RBT credential. What do you think about this situation?

Thank you for any insight you may have.

ANSWER: It is not permissible to have RBTs take on the writing of FBAs and behavior plans, this is a clear violation of the RBT Task List. Please take a look at the April 2017 BACB Newsletter for a detailed list of Appropriate and Inappropriate Activities; you will find here that “designing a functional behavior assessment” and “designing a behavior-change program” are on the

inappropriate list.

Changing the job title of an RBT does not change anything either. This sort of make-believe workaround does not change the Task List for RBTs.

Finally, it also does not matter that your State Department of Education does not have a requirement for BACB certification for these activities; what matters is that if a person becomes a

Registered Behavior Analyst they are an entry level para-professional who is obliged to follow the BACB Professional and Ethical Compliance Code for Behavior Analysts. The RBT should have presented a copy of the Task List and the Code of Ethics to the person who interviewed and hired him/her and let the school district know that there were limiting conditions in what a RBT is allowed to do.

Our recommendation is that the school needs to hire another BCBA and the current BCBA’s need to “push back” against these attempts of non-behavior analysts to cause the RBTs to violate their Code of Ethics and exceed their Task List.



FABA Announces New Action Center!

FABA is excited to launch our new Action Center! This convenient tool connects FABA members and the public directly with their elected officials so that they can make their voice heard on important issues. Learn more at www.FABAworld.org/action-center

You can also keep up with FABA news on Facebook. <https://www.facebook.com/FloridaAssociationforBehaviorAnalysis/>



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The full list of the FABA presidents from 1980 to the present will be added to www.fabaworld.org.

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