

ARTICLE 4. BEHAVIOR ANALYSTS

32-2091. Definitions; court ordered evaluations

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.

32-2091.01. Fees

- A. The board, by a formal vote, shall establish fees for the following relating to the licensure of behavior analysts:
1. An application for an active license.
 2. An application for a temporary license.
 3. Renewal of an active license.
 4. Issuance of an initial license.
- B. The board may charge additional fees for services it deems necessary and appropriate to carry out this article. These fees shall not exceed the actual cost of providing the service.
- C. The board shall not refund fees except as otherwise provided in this article. On special request and for good cause, the board may return the license renewal fee.

32-2091.02. Qualifications of applicant

Beginning January 1, 2011, a person who wishes to practice as a behavior analyst must be licensed pursuant to this article. An applicant for licensure must meet all of the following requirements:

1. Submit an application as prescribed by the board.
2. Be at least twenty-one years of age.
3. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
4. Pay all applicable fees prescribed by the board.
5. Have the physical and mental capability to safely and competently engage in the practice of behavior analysis.
6. Not have committed any act or engaged in any conduct that would constitute grounds for disciplinary action against a licensee pursuant to this article.
7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.

9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.

32-2091.03. Educational and training qualifications for licensure

A. An applicant for licensure as a behavior analyst must:

1. Have a graduate degree, master's degree or doctoral degree from an accredited college or university or institution of higher learning accredited by a recognized accrediting agency.
2. Complete a minimum of one thousand five hundred hours of supervised work experience or independent fieldwork, university practicum or intensive university practicum which shall follow appropriate academic preparation and may run concurrently with coursework, if the applicant completes a degree and coursework requirements in the practice of behavior analysis after January 1, 2000. The supervised work experience, independent field work, university practicum or intensive university practicum shall include supervision once every two weeks for five percent of the total hours the applicant spends in the supervised work experience, independent field work, university practicum or intensive university practicum. The total hours spent in supervised work experience, independent field work, university practicum or intensive university practicum shall not be more than thirty hours per week. The total supervision hours must be at least seventy-five hours.
3. Have as part of or in addition to the coursework required for the graduate degree at least two hundred twenty-five classroom hours of specific graduate level instruction that meet nationally recognized standards for behavior analysts as determined by the board.
4. Have the supervised work experience, independent fieldwork, practicum or intensive practicum pursuant to paragraph 2 of this subsection, as a behavior analyst engaged in tasks that meet nationally recognized standards for behavior analysts as determined by the board.

B. The supervised work experience, independent field work, practicum or intensive practicum required pursuant to subsection A, paragraph 4 must include the following:

1. Conducting behavioral assessments and assessment activities related to the need for behavioral interventions.
2. Designing, implementing and monitoring behavior analysis programs for clients.
3. Overseeing the implementation of behavior analysis programs by others.
4. Other activities normally performed by a behavior analyst that are directly related to behavior analysis, such as attending planning meetings regarding the behavior analysis program, researching the literature related to the program, talking to individuals about the program and any additional activities related to oversight of behavioral programming such as behavior analyst supervision issues or evaluation of behavior analysts' performance.

C. The following activities are not considered supervised work experience, independent field work, practicum or intensive practicum required pursuant to subsection A, paragraph 4:

1. Attending meetings with little or no behavior analytic content.
2. Providing interventions that are not based in behavior analysis.

3. Doing nonbehavior analytic administrative activities.

4. Any other activities that are not directly related to behavior analysis.

D. For supervised work experience, independent field work, practicum or intensive practicum required pursuant to subsection A, paragraph 4, the supervisor must observe the applicant engaging in behavior analytic activities in the natural environment. This observation may be conducted by web cameras, videotape, videoconferencing or similar means instead of the supervisor being physically present. Supervision may be conducted in small groups of ten or fewer participants for not more than half of the total supervised hours in each supervisory period. The remainder of the total supervision hours in each supervisory period must consist of direct one-to-one contact. Supervision hours may be counted toward the total number of experience hours required.

E. A supervisor conducting the supervised work experience, independent field work, practicum or intensive practicum pursuant to subsection D shall not be the applicant's relative, subordinate or employee during the experience period. The supervisor is not an employee of the applicant if the only compensation received by the supervisor from the applicant consists of payment for supervision. For any applicant who obtained supervised experience pursuant to subsection A, Paragraph 2 after January 1, 2011, the supervisor must be a licensed behavior analyst who meets requirements for licensure pursuant to subsection A.

F. An applicant may submit a written request to the board for an exemption from the requirement prescribed in subsection E. The request must include the name of the behavior analyst proposed by the applicant to act as the clinical supervisor, a copy of the proposed clinical supervisor's transcript and curriculum vitae and any additional documentation requested by the board. The board shall review the supervision exemption request to determine if the proposed supervisor has the necessary education, training and experience to provide supervision acceptable for behavior analyst licensure. If the proposed supervisor has the necessary education, training and experience, the board shall grant the supervision exemption request. The board shall not grant an exemption request for an unlicensed clinical supervisor providing clinical supervision in this state after July 1, 2011, except that an exemption may be granted by the board if the clinical supervisor holds a current national certification from a nationally recognized behavior analyst certification board as determined by the board and the applicant received the supervised work experience, independent field work, practicum or intensive practicum in a state that did not license behavior analysts during the period in which the supervision was obtained.

G. An individual who completed the degree, coursework or experience before January 1, 2000 may have supervised work experience or core specified coursework that was accrued in a setting outside of a college or university program if the following conditions are met:

1. The acquired coursework or supervised work experience was acquired after the graduate degree and before January 1, 2000.

2. The applicant has met the requirements for and received the certification credential from a nationally recognized behavior analyst certification board as determined by the board.

H. The board may prescribe by rule additional requirements relating to education and training.

Section 2. Behavior analysts

A. Beginning on the effective date of this act and ending on August 15, 2012, the board of psychologist examiners shall waive the requirements of sections 32-2091.03 and 32-2091.05, Arizona Revised Statutes, for an applicant requesting a license as a behavior analyst if the applicant meets all of the following requirements:

1. Submits an application as prescribed by the board.
 2. Has been certified by a nationally recognized behavior analyst certification board as chosen by the board of psychologist examiners for a period of not less than two years and is in good standing.
 3. Be at least twenty-one years of age.
 4. Be of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
 5. Pay all applicable fees prescribed by the board.
 6. Have the physical and mental capability to safely competently engage in the practice of behavior analysis.
 7. Not have had a professional license or certificate refused, revoked, suspended or restricted in any regulatory jurisdiction in the United States or in another country for reasons that relate to unprofessional conduct. If the board finds that the applicant committed an act or engaged in conduct that would constitute grounds for disciplinary action in this state, the board shall determine to its satisfaction that the conduct has been corrected, monitored and resolved. If the matter has not been resolved, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
 8. Not have voluntarily surrendered a license or certificate in another regulatory jurisdiction in the United States or in another country while under investigation for reasons that relate to unprofessional conduct. If another jurisdiction has taken disciplinary action against an applicant, the board shall determine to its satisfaction that the cause for the action was corrected and the matter resolved. If the matter has not been resolved by that jurisdiction, the board shall determine to its satisfaction that mitigating circumstances exist that prevent its resolution.
 9. Not have a complaint, allegation or investigation pending before another regulatory jurisdiction in the United States or another country that relates to unprofessional conduct. If an applicant has any such complaints, allegations or investigations pending, the board shall suspend the application process and may not issue or deny a license to the applicant until the complaint, allegation or investigation is resolved.
- B. The board may deny an application submitted under subsection A of this section if the nationally recognized behavior analyst certification board adopts substantial changes that reduces the qualifications necessary to issue a certificate, as determined by the board of psychologist examiners.

Sec. 3. Supervision requirements

Before January 1, 2011, an applicant for licensure as a behavior analyst pursuant to title 32, chapter 19.1, article 4, Arizona Revised Statutes, may obtain the supervised work experience required pursuant to section 32-2091.03, Arizona Revised Statutes, from a person who is certified by a nationally recognized behavior analyst certification board. The nationally recognized behavior analyst certification board must be approved by the board of psychologist examiners.

32-2091.04. Reciprocity

The board may issue a license to a person as a behavior analyst if the person is licensed or certified by a regulatory agency of another state that imposes requirements that are substantially equivalent to

those imposed by this article at an equivalent or higher practice level as determined by the board, pays the fee prescribed by the board and meets all of the following requirements:

1. Submits a written application prescribed by the board.
2. Is of good moral character. The board's standard to determine good moral character shall not violate federal discrimination laws.
3. Documents to the board's satisfaction proof of initial licensure or certification at an equivalent designation for which the applicant is seeking licensure in this state and proof that the license or certificate is current and in good standing.
4. Documents to the board's satisfaction proof that any other license or certificate issued to the applicant by another state has not been suspended or revoked. If a licensee or certificate holder has been subjected to any other disciplinary action, the board may assess the magnitude of that action and make a decision regarding reciprocity based on this assessment.
5. Meets any other requirements prescribed by the board by rule.

32-2091.05. Examinations

- A. An applicant for licensure must pass an examination from a nationally recognized behavior analyst certification board as determined by the board.
- B. The board may require an additional examination for all applicants to cover areas of professional ethics and practice that is consistent with the applicant's education and experience, state law relating to the practice of behavior analysis or other areas the board determines are suitable.
- C. An applicant may not take an examination administered for or by the board until the applicant completes the education requirements of this article.
- D. An applicant who fails the national examination administered for or by any jurisdiction three times is not eligible to take that examination again until the applicant meets additional requirements prescribed by the board.

32-2091.06. Temporary licenses; inactive status; reinstatement to active status

- A. If the board requires an additional examination, it may issue a temporary license to a behavior analyst who is licensed or certified under the laws of another jurisdiction, if the behavior analyst applies to the board for licensure and meets the educational, experience and first examination requirements of this article.
- B. A temporary license issued pursuant to this section is effective from the date the application is approved until the last day of the month in which the applicant receives the results of the additional examination.
- C. The board shall not extend, renew or reissue a temporary license or allow it to continue in effect beyond the period authorized by this section.
- D. The board's denial of an application for licensure terminates a temporary license.
- E. The board may place on inactive status and waive the license renewal fee requirements for a person who is temporarily or permanently unable to practice as a behavior analyst due to physical or mental incapacity or disability. An initial request for the waiver of renewal fees shall be

accompanied by the renewal fee for an active license, which the board shall return if the waiver is granted. The board shall judge each request for the waiver of renewal fees on its own merits and may seek the verification it deems necessary to substantiate the facts of the situation. A behavior analyst who is retired is exempt from paying the renewal fee. A behavior analyst may request voluntary inactive status by submitting to the board an application on a form prescribed by the board and an affirmation that the behavior analyst will not practice as a behavior analyst in this state for the duration of the voluntary inactive status and by paying the required fee as prescribed by the board by rule.

- F. A behavior analyst who is on any form of inactive status shall renew the inactive status every two years by submitting a renewal form provided by the board and paying any applicable fee as prescribed by the board by rule. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of its deposit in the mail. A behavior analyst who is on inactive status due to physical or mental incapacity or disability or retirement shall use the term "inactive" to describe the person's status and shall not practice as a behavior analyst.
- G. A behavior analyst on inactive status may request reinstatement of the license to active status by applying to the board. The board shall determine whether the person has been or is in violation of any provisions of this article and whether the person has maintained and updated the person's professional knowledge and capability to practice as a behavior analyst. The board may require the person to take or retake the licensure examinations and may require other knowledge or skill training experiences. If approved for active status, the person shall pay a renewal fee that equals the renewal fee for the license to be reinstated.

32-2091.07. Active license; issuance; renewal; expiration; continuing education

- A. If the applicant satisfies all of the requirements for licensure pursuant to this article, the board shall issue an active license and shall prorate the fee for issuing that license for the period remaining until May 1 of the next odd-numbered year.
- B. A person holding an active or inactive license shall apply to renew the license on or before April 30 of each odd-numbered year. The application shall include any applicable renewal fee as prescribed by the board by rule. A license expires if the licensee fails to renew the license on or before April 30 of that year. A licensee may reinstate an expired license by paying a reinstatement fee as prescribed by the board by rule on or before June 30 of that year. Beginning on July 1 of that year through April 30 of the next year, a licensee may reinstate the license by paying a reinstatement fee as prescribed by the board by rule and providing proof of competency and qualifications to the board. This proof may include continuing education, an oral examination, a written examination or an interview with the board. A licensee whose license is not reinstated on or before April 30 of the next even-numbered year may reapply for licensure as prescribed by this article. A notice to renew is fully effective by mailing the renewal application to the licensee's last known address of record in the board's file. Notice is complete at the time of deposit in the mail.
- C. A person renewing a license shall attach to the completed renewal form a report of disciplinary actions or restrictions placed against the license by another state licensing or disciplinary board or disciplinary actions or sanctions imposed by a state or national behavior analysis ethics committee or health care institution. The report shall include the name and address of the sanctioning agency or health care institution, the nature of the action taken and a general statement of the charges leading to the action.
- D. A person who renews an active license to practice behavior analysis in this state shall satisfy a continuing education requirement designed to provide the necessary understanding of current developments, skills, procedures or treatment related to the practice of behavior analysis in the

amount and during the period the board prescribes. The board shall prescribe documentation requirements.

32-2091.08. Exemptions from licensure

A. This article does not limit the activities, services and use of a title by the following:

1. A behavior analyst who is employed in a common school, high school or charter school setting and who is certified to use that title by the department of education if the services or activities are a part of the duties of that person's common school, high school or charter school employment.
2. An employee of a government agency in a subdoctorate position who uses the word "assistant" or "associate" after the title and who is supervised by a doctorate position employee who is licensed as a behavior analyst, including a temporary licensee.
3. A student of behavior analysis pursuing an official course of graduate study at an educational institution accredited as prescribed by the board, if after the title the word "trainee", "intern" or "extern" appears and the student uses the title only in conjunction with activities and services that are a part of the supervised program.
4. A person who resides outside of this state and who is currently licensed or certified as a behavior analyst in that state if the activities and services conducted in this state are within the behavior analyst's customary area of practice, do not exceed twenty days per year and are not otherwise in violation of this article and the client, public or consumer is informed of the limited nature of these activities and services and that the behavior analyst is not licensed in this state.
5. A person in the employ of Arizona state university, northern Arizona university or the university of Arizona if the services are a part of the faculty duties of that person's salaried position and the person is participating in a postdoctoral program.
6. A supervisee who is pursuing a postdoctoral professional experience if the services or activities are provided under the direct supervision of a licensed behavior analyst, clients are informed of the training nature of the services provided and the supervisee has a title that designates that person's training status.

B. This article does not limit the use of the title "behavior analyst" by a person who possesses a doctoral degree from an educational institution if that person is not engaged in the practice of behavior analysis.

C. This article does not prevent a member of other recognized professions who is licensed, certified or regulated under the laws of this state from rendering services within that person's scope of practice and code of ethics if that person does not claim to be a behavior analyst.

32-2091.09. Grounds for disciplinary action; duty to report; immunity; proceedings; board action; notice requirements; civil penalty

A. The board on its own motion may investigate evidence that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. A health care institution shall, and any other person may, report to the board information that appears to show that a behavior analyst is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis. The board shall notify the licensee about whom information has been received as to the content of the information within one hundred twenty

days after receiving the information. A person who reports or provides information to the board in good faith is not subject to an action for civil damages. The board, if requested, shall not disclose the name of the person providing information unless this information is essential to proceedings conducted pursuant to this section. The board shall report a health care institution that fails to report as required by this section to the institution's licensing agency.

- B. The board shall not consider a complaint against a behavior analyst arising out of a judicially ordered evaluation of a person charged with violating any provision of title 13, chapter 14 to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board. The board shall not consider a complaint against a judicially appointed behavior analyst arising out of a court ordered evaluation of a person to present a charge of unprofessional conduct unless the court ordering the evaluation has found a substantial basis to refer the complaint for consideration by the board.
- C. A health care institution shall inform the board if the privileges of a licensee to practice in that institution are denied, revoked, suspended or limited because of actions by the licensee that appear to show that the person is incompetent as a behavior analyst, guilty of unprofessional conduct or mentally or physically unable to safely engage in the practice of behavior analysis, along with a general statement of the reasons that led the health care institution to take this action. A health care institution shall inform the board if a licensee under investigation resigns the licensee's privileges or if a licensee resigns in lieu of disciplinary action by the health care institution. Notification must include a general statement of the reasons for the resignation.
- D. The board may require the licensee to undergo any combination of mental, physical or psychological competence examinations at the licensee's expense and shall conduct investigations necessary to determine the competence and conduct of the licensee.
- E. The chairperson of the board shall appoint a complaint screening committee of at least three members of the board, including a public member. The complaint screening committee is subject to open meeting requirements pursuant to title 38, chapter 3, article 3.1. The complaint screening committee shall review all complaints and, based on the information provided pursuant to subsection A or B of this section, may take either of the following actions:
 - 1. Dismiss the complaint if the committee determines that the complaint is without merit. Complaints dismissed by the complaint screening committee shall not be disclosed in response to a telephone inquiry or placed on the board's website.
 - 2. Refer the complaint to the full board for further review and action.
- F. If the board finds, based on the information it receives under subsection A or B of this section, that the public health, safety or welfare requires emergency action, the board may order a summary suspension of a license pending proceedings for revocation or other action. If the board issues this order, it shall serve the licensee with a written notice of complaint and formal hearing pursuant to title 41, chapter 6, article 10, setting forth the charges made against the licensee and the licensee's right to a formal hearing before the board or an administrative law judge within sixty days.
- G. If the board finds that the information provided pursuant to subsection A or B of this section is not of sufficient seriousness to merit direct action against the licensee, it may take any of the following actions:
 - 1. Dismiss if the board believes the information is without merit.
 - 2. File a letter of concern.

3. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
- H. If the board believes the information provided pursuant to subsection A or C of this section is or may be true, it may request an informal interview with the licensee. If the licensee refuses to be interviewed or if pursuant to an interview the board determines that cause may exist to revoke or suspend the license, it shall issue a formal complaint and hold a hearing pursuant to title 41, chapter 6, article 10. If as a result of an informal interview or a hearing the board determines that the facts do not warrant revocation or suspension of the license, it may take any of the following actions:
1. Dismiss if the board believes the information is without merit.
 2. File a letter of concern.
 3. Issue a decree of censure.
 4. Fix a period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. Probation may include temporary suspension for not more than twelve months, restriction of the license or restitution of fees to a client resulting from violations of this article. If a licensee fails to comply with a term of probation, the board may file a complaint and notice of hearing pursuant to title 41, chapter 6, article 10 and take further disciplinary action.
 5. Enter into an agreement with the licensee to restrict or limit the licensee's practice or activities in order to rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavior analysis.
 6. Issue a nondisciplinary order requiring the licensee to complete a prescribed number of hours of continuing education in an area or areas prescribed by the board to provide the licensee with the necessary understanding of current developments, skills, procedures or treatment.
- I. If the board finds that the information provided pursuant to subsection A or B of this section warrants suspension or revocation of a license, it shall hold a hearing pursuant to title 41, chapter 6, article 10. Notice of a complaint and hearing is fully effective by mailing a true copy to the licensee's last known address of record in the board's files. Notice is complete at the time of its deposit in the mail.
- J. The board may impose a civil penalty of at least three hundred dollars but not more than three thousand dollars for each violation of this article or a rule adopted under this article. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies it collects from civil penalties pursuant to this subsection in the state general fund.
- K. If the board determines after a hearing that a licensee has committed an act of unprofessional conduct, is mentally or physically unable to safely engage in the practice of behavior analysis or is psychologically incompetent, it may do any of the following in any combination and for any period of time it determines necessary:
1. Suspend or revoke the license.
 2. Censure the licensee.
 3. Place the licensee on probation.

- L. A licensee may submit a written response to the board within thirty days after receiving a letter of concern. The response is a public document and shall be placed in the licensee's file.
- M. A letter of concern is a public document and may be used in future disciplinary actions against a licensee. A decree of censure is an official action against the behavior analyst's license and may include a requirement that the licensee return fees to a client.
- N. Except as provided in section 41-1092.08, subsection H, a person may appeal a final decision made pursuant to this section to the superior court pursuant to title 12, chapter 7, article 6.
- O. If during the course of an investigation the board determines that a criminal violation may have occurred involving the delivery of behavior analysis services, it shall inform the appropriate criminal justice agency.

32-2091.10. Right to examine and copy evidence; subpoenas; right to counsel; confidentiality

- A. In connection with an investigation conducted pursuant to this article, at all reasonable times the board and its authorized agents may examine and copy documents, reports, records and other physical evidence wherever located relating to the licensee's professional competence, unprofessional conduct or mental or physical ability to safely practice behavior analysis.
- B. The board and its authorized agents may issue subpoenas to compel the attendance and testimony of witnesses and the production of documents and other physical evidence as prescribed in subsection A. The board may petition the superior court to enforce a subpoena.
- C. Within five days of receiving a subpoena, a person may petition the board to revoke, limit or modify the subpoena. The board shall take this action if it determines that the evidence demanded is not relevant to the investigation. The person may petition the superior court for this relief without first petitioning the board.
- D. A person appearing before the board or its authorized agents may be represented by an attorney.
- E. Documents associated with an investigation are not open to the public and shall remain confidential. Documents may not be released without a court order compelling their production.
- F. This section or any other provision of law making communications between a behavior analyst and client privileged does not apply to an investigation conducted pursuant to this article. The board, its employees and its agents shall keep in confidence the names of clients whose records are reviewed during an investigation.

32-2091.11. Injunction

- A. The board may petition the superior court for an order to enjoin the following:
 - 1. A person who is not licensed pursuant to this article from practicing behavior analysis.
 - 2. The activities of a licensee that are an immediate threat to the public.
 - 3. Criminal activities.
- B. If the board seeks an injunction to stop the unlicensed practice of behavior analysis, it is sufficient to charge that the respondent on a certain day in a specific county engaged in the practice of behavior analysis without a license and without being exempt from the licensure requirements of this article. It is not necessary to show specific damages or injury.

- C. The issuance of an injunction does not limit the board's authority to take other action against a licensee pursuant to this article.

32-2091.12. Violations; classification

- A. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to engage in the practice of behavior analysis.
- B. It is a class 2 misdemeanor for any person to:
1. Secure a license to practice pursuant to this article by fraud or deceit.
 2. Impersonate a member of the board in order to issue a license to practice pursuant to this article.
- C. It is a class 2 misdemeanor for a person who is not licensed pursuant to this article to use any combination of words, initials and symbols that leads the public to believe the person is licensed to practice behavior analysis in this state.

32-2091.13. Confidential communications

- A. The confidential relations and communications between a client and a person who is licensed pursuant to this article, including temporary licensees, are placed on the same basis as those provided by law between an attorney and client. Unless the client waives the behavior analyst-client privilege in writing or in court testimony, a behavior analyst shall not voluntarily or involuntarily divulge information that is received by reason of the confidential nature of the behavior analyst's practice. The behavior analyst shall divulge to the board information it requires in connection with any investigation, public hearing or other proceeding. The behavior analyst-client privilege does not extend to cases in which the behavior analyst has a duty to report information as required by law.
- B. The behavior analyst shall ensure that client records and communications are treated by clerical and paraprofessional staff at the same level of confidentiality and privilege required of the behavior analyst.

32-2091.14. Status as behavioral health professional

Notwithstanding any law to the contrary, the department of health services shall recognize a behavior analyst who is licensed pursuant to this article as a behavior health professional who is eligible for reimbursement of services.

Sec. 9. Exemption from rule making

For the purposes of this act, the state board of psychologist examiners is exempt from the rule making requirements of title 41, chapter 6, Arizona Revised Statutes, for three years after the effective date of this act.