

State of Arizona  
House of Representatives  
Forty-ninth Legislature  
First Regular Session  
2009

# HOUSE BILL 2207

AN ACT

AMENDING SECTIONS 32-2063, 32-2065, 32-2091, 32-2091.02, 32-2091.04, 32-2091.06, 32-2091.07 AND 32-2091.09, ARIZONA REVISED STATUTES; PROVIDING FOR THE DELAYED CONDITIONAL REPEAL OF TITLE 32, CHAPTER 19.1, ARTICLE 4, ARIZONA REVISED STATUTES; AMENDING LAWS 2008, CHAPTER 288, SECTION 9; RELATING TO BEHAVIOR ANALYSTS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:  
2 Section 1. Section 32-2063, Arizona Revised Statutes, is amended to  
3 read:  
4 32-2063. Powers and duties  
5 A. The board shall:  
6 1. Administer and enforce this chapter and board rules.  
7 2. Regulate disciplinary actions, the granting, denial, revocation,  
8 renewal and suspension of licenses and the rehabilitation of licensees  
9 pursuant to this chapter and board rules.  
10 3. Prescribe the forms, content and manner of application for  
11 licensure and renewal of licensure and set deadlines for the receipt of  
12 materials required by the board.  
13 4. Keep a record of all licensees, board actions taken on all  
14 applicants and licensees and the receipt and disbursal of monies.  
15 5. Adopt an official seal for attestation of licenses and other  
16 official papers and documents.  
17 6. Investigate charges of violations of this chapter and board rules  
18 and orders.  
19 7. Employ an executive director who serves at the pleasure of the  
20 board.  
21 8. Annually elect from among its membership a chairman, a  
22 vice-chairman and a secretary, who serve at the pleasure of the board.  
23 9. Adopt rules pursuant to title 41, chapter 6 to carry out this  
24 chapter and to define unprofessional conduct.  
25 10. Engage in a full exchange of information with other regulatory  
26 boards and psychological associations, national psychology organizations and  
27 the Arizona psychological association and its components.  
28 11. By rule, adopt a code of ethics relating to the practice of  
29 psychology. The board shall base this code on the code of ethics adopted and  
30 published by the American psychological association. The board shall apply  
31 the code to all board enforcement policies and disciplinary case evaluations  
32 and development of licensing examinations.  
33 B. The board may employ permanent or temporary personnel it deems  
34 necessary to carry out this chapter. The board, in investigating violations  
35 of this chapter, may employ investigators who may be psychologists. The  
36 board or its executive director may take and hear evidence, administer oaths  
37 and affirmations and compel by subpoena the attendance of witnesses and the  
38 production of books, papers, records, documents and other information  
39 relating to the investigation or hearing.  
40 C. SUBJECT TO SECTION 35-149, THE BOARD MAY ACCEPT, EXPEND AND ACCOUNT  
41 FOR GIFTS, GRANTS, DEVISES AND OTHER CONTRIBUTIONS, MONEY OR PROPERTY FROM  
42 ANY PUBLIC OR PRIVATE SOURCE, INCLUDING THE FEDERAL GOVERNMENT. THE BOARD  
43 SHALL DEPOSIT, PURSUANT TO SECTIONS 35-146 AND 35-147, MONIES RECEIVED  
44 PURSUANT TO THIS SUBSECTION IN SPECIAL FUNDS FOR THE PURPOSE SPECIFIED, AND

1 MONIES IN THESE FUNDS ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190  
2 RELATING TO LAPSING OF APPROPRIATIONS.

3 ~~C.~~ D. Compensation for all personnel shall be determined pursuant to  
4 section 38-611.

5 Sec. 2. Section 32-2065, Arizona Revised Statutes, is amended to read:  
6 32-2065. Board of psychologist examiners fund; account

7 A. The board of psychologist examiners fund is established.

8 B. Except as provided in ~~sections~~ SECTION 32-2081 and SECTION  
9 32-2091.09, subsection I, pursuant to sections 35-146 and 35-147, the board  
10 shall deposit ten per cent of all monies collected pursuant to this chapter  
11 in the state general fund and deposit the remaining ninety per cent in the  
12 board of psychologist examiners fund.

13 C. All monies deposited in the board of psychologist examiners fund  
14 are subject to section 35-143.01.

15 D. ALL MONIES DEPOSITED IN THE BOARD OF PSYCHOLOGIST EXAMINERS FUND  
16 PURSUANT TO 32-2067 AND ANY MONIES RECEIVED PURSUANT TO SECTION 32-2063,  
17 SUBSECTION C FOR PSYCHOLOGIST LICENSING AND REGULATION MUST BE USED ONLY FOR  
18 THE LICENSING AND REGULATION OF PSYCHOLOGISTS PURSUANT TO THIS ARTICLE AND  
19 ARTICLES 2 AND 3 OF THIS CHAPTER AND MAY NOT BE USED FOR THE LICENSING AND  
20 REGULATION OF BEHAVIOR ANALYSTS PURSUANT TO ARTICLE 4 OF THIS CHAPTER.

21 E. ALL MONIES DEPOSITED IN THE BOARD OF PSYCHOLOGIST EXAMINERS FUND  
22 PURSUANT TO ARTICLE 4 OF THIS CHAPTER AND ANY MONIES RECEIVED PURSUANT TO  
23 SECTION 32-2063, SUBSECTION C FOR BEHAVIOR ANALYST LICENSING AND REGULATION  
24 MUST BE USED ONLY FOR THE LICENSING AND REGULATION OF BEHAVIOR ANALYSTS  
25 PURSUANT TO ARTICLE 4 OF THIS CHAPTER AND MAY NOT BE USED FOR THE LICENSING  
26 AND REGULATION OF PSYCHOLOGISTS PURSUANT TO THIS ARTICLE AND ARTICLES 2 AND 3  
27 OF THIS CHAPTER.

28 F. THE BOARD SHALL ESTABLISH A SEPARATE ACCOUNT IN THE FUND FOR MONIES  
29 TRANSFERRED TO THE FUND PURSUANT TO ARTICLE 4 OF THIS CHAPTER AND ANY MONIES  
30 RECEIVED PURSUANT TO SECTION 32-2063, SUBSECTION C FOR BEHAVIOR ANALYST  
31 LICENSING AND REGULATION.

32 Sec. 3. Section 32-2091, Arizona Revised Statutes, is amended to read:  
33 32-2091. Definitions

34 ~~A.~~ In this article, unless the context otherwise requires:

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

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

41 3. "Behavior analysis" means the design, implementation and evaluation  
42 of systematic environmental modifications by a behavior analyst to produce  
43 socially significant improvements in human behavior based on the principles  
44 of behavior identified through the experimental analysis of behavior.  
45 Behavior analysis does not include cognitive therapies or psychological

1 testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis,  
2 hypnotherapy and long-term counseling as treatment modalities.

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

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

9 6. "Client" means:

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

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

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

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

21 8. "Health care institution" means a facility that is licensed  
22 pursuant to title 36, chapter 4, article 1. ~~-, a person who is authorized to~~  
23 ~~transact disability insurance pursuant to title 20, chapter 6, article 4 or 5~~  
24 ~~or a person who is issued a certificate of authority pursuant to title 20,~~  
25 ~~chapter 4, article 9.~~

26 9. "INCOMPETENT AS A BEHAVIOR ANALYST" MEANS THAT A PERSON WHO IS  
27 LICENSED PURSUANT TO ARTICLE 4 OF THIS CHAPTER LACKS THE KNOWLEDGE OR SKILLS  
28 OF A BEHAVIOR ANALYST TO A DEGREE THAT IS LIKELY TO ENDANGER THE HEALTH OF A  
29 CLIENT.

30 ~~9-~~ 10. "Letter of concern" means an advisory letter to notify a  
31 licensee that while there is insufficient evidence to support disciplinary  
32 action the board believes the licensee should modify or eliminate certain  
33 practices and that continuation of the activities that led to the information  
34 being submitted to the board may result in action against the license.

35 ~~10-~~ 11. "Supervisee" means a person who acts under the extended  
36 authority of a behavior analyst to provide behavioral services and includes a  
37 person who is in training to provide these services.

38 ~~11-~~ 12. "Unprofessional conduct" includes the following activities,  
39 whether occurring in this state or elsewhere:

40 (a) Obtaining a fee by fraud or misrepresentation.

41 (b) Betraying professional confidences.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

44 (s) Failing to make client records in the behavior analyst's  
45 possession promptly available to another behavior analyst on receipt of

1 proper authorization to do so from the client, a minor client's parent, the  
2 client's legal guardian or the client's authorized representative or failing  
3 to comply with title 12, chapter 13, article 7.1.

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

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

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

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

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

19 (y) Exploiting a client, student or supervisee.

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

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

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

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

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

36 (ee) REPRESENTING ONESELF AS A PSYCHOLOGIST OR PERMITTING OTHERS TO DO  
37 SO IF THE BEHAVIOR ANALYST IS NOT ALSO LICENSED AS A PSYCHOLOGIST PURSUANT TO  
38 THIS CHAPTER.

39 ~~B. The board shall not consider a complaint against a behavior analyst~~  
40 ~~arising out of a judicially ordered evaluation of a person charged with~~  
41 ~~violating any provision of title 13, chapter 14 to present a charge of~~  
42 ~~unprofessional conduct unless the court ordering the evaluation has found a~~  
43 ~~substantial basis to refer the complaint for consideration by the board.~~

1           Sec. 4. Section 32-2091.02, Arizona Revised Statutes, is amended to  
2 read:

3           32-2091.02. Qualifications of applicant

4           Beginning January 1, ~~2010~~ 2011, a person who wishes to practice as a  
5 behavior analyst must be licensed pursuant to this article. An applicant for  
6 licensure must meet all of the following requirements:

- 7           1. Submit an application as prescribed by the board.
- 8           2. Be at least twenty-one years of age.
- 9           3. Be of good moral character. The board's standard to determine good  
10 moral character shall not violate federal discrimination laws.
- 11           4. Pay all applicable fees prescribed by the board.
- 12           5. Have the physical and mental capability to safely and competently  
13 engage in the practice of behavior analysis.
- 14           6. Not have committed any act or engaged in any conduct that would  
15 constitute grounds for disciplinary action against a licensee pursuant to  
16 this article.

17           7. Not have had a professional license or certificate refused,  
18 revoked, suspended or restricted in any regulatory jurisdiction in the United  
19 States or in another country for reasons that relate to unprofessional  
20 conduct. If the board finds that the applicant committed an act or engaged  
21 in conduct that would constitute grounds for disciplinary action in this  
22 state, the board shall determine to its satisfaction that the conduct has  
23 been corrected, monitored and resolved. If the matter has not been resolved,  
24 the board shall determine to its satisfaction that mitigating circumstances  
25 exist that prevent its resolution.

26           8. Not have voluntarily surrendered a license or certificate in  
27 another regulatory jurisdiction in the United States or in another country  
28 while under investigation for reasons that relate to unprofessional conduct.  
29 If another jurisdiction has taken disciplinary action against an applicant,  
30 the board shall determine to its satisfaction that the cause for the action  
31 was corrected and the matter resolved. If the matter has not been resolved  
32 by that jurisdiction, the board shall determine to its satisfaction that  
33 mitigating circumstances exist that prevent its resolution.

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

40           Sec. 5. Section 32-2091.04, Arizona Revised Statutes, is amended to  
41 read:

42           32-2091.04. Reciprocity

43           The board may issue a license to a person as a behavior analyst if the  
44 person is licensed or certified by ~~another state~~ A regulatory agency OF  
45 ANOTHER STATE THAT IMPOSES REQUIREMENTS THAT ARE SUBSTANTIALLY EQUIVALENT TO

1 **THOSE IMPOSED BY THIS ARTICLE** at an equivalent or higher practice level as  
2 determined by the board, pays the fee prescribed by the board and meets all  
3 of the following requirements:

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

17 Sec. 6. Section 32-2091.06, Arizona Revised Statutes, is amended to  
18 read:

19 **32-2091.06. Temporary licenses; inactive status; reinstatement**  
20 **to active status**

21 A. If the board requires an additional examination, it may issue a  
22 temporary license to a behavior analyst who is licensed or certified under  
23 the laws of another jurisdiction, if the behavior analyst applies to the  
24 board for licensure and meets the educational, experience and first  
25 examination requirements of this article.

26 B. A temporary license issued pursuant to this section is effective  
27 from the date the application is approved until the last day of the month in  
28 which the applicant receives the results of the additional examination.

29 C. The board shall not extend, renew or reissue a temporary license or  
30 allow it to continue in effect beyond the period authorized by this section.

31 D. The board's denial of an application for licensure terminates a  
32 temporary license.

33 E. The board may place on inactive status and waive the license  
34 renewal fee requirements for a person who is temporarily or permanently  
35 unable to practice as a behavior analyst due to physical or mental incapacity  
36 or disability. An initial request for the waiver of renewal fees shall be  
37 accompanied by the renewal fee for an active license, which the board shall  
38 return if the waiver is granted. The board shall judge each request for the  
39 waiver of renewal fees on its own merits and may seek the verification it  
40 deems necessary to substantiate the facts of the situation. A behavior  
41 analyst who is retired is exempt from paying the renewal fee. A behavior  
42 analyst may request voluntary inactive status by submitting to the board an  
43 application on a form prescribed by the board and an affirmation that the  
44 behavior analyst will not practice as a behavior analyst in this state for

1 the duration of the voluntary inactive status and by paying the required fee  
2 AS PRESCRIBED BY THE BOARD BY RULE.

3 F. A behavior analyst who is on any form of inactive status shall  
4 renew the inactive status every two years by submitting a renewal form  
5 provided by the board and paying any applicable fee AS PRESCRIBED BY THE  
6 BOARD BY RULE. A notice to renew is fully effective by mailing the renewal  
7 application to the licensee's last known address of record in the board's  
8 file. Notice is complete at the time of its deposit in the mail. A behavior  
9 analyst who is on inactive status due to physical or mental incapacity or  
10 disability or retirement shall use the term "inactive" to describe the  
11 person's status and shall not practice as a behavior analyst.

12 G. A behavior analyst on inactive status may request reinstatement of  
13 the license to active status by applying to the board. The board shall  
14 determine whether the person has been or is in violation of any provisions of  
15 this article and whether the person has maintained and updated the person's  
16 professional knowledge and capability to practice as a behavior analyst. The  
17 board may require the person to take or retake the licensure examinations and  
18 may require other knowledge or skill training experiences. If approved for  
19 active status, the person shall pay a renewal fee that equals the renewal fee  
20 for the license to be reinstated.

21 Sec. 7. Section 32-2091.07, Arizona Revised Statutes, is amended to  
22 read:

23 32-2091.07. Active license; issuance; renewal; expiration;  
24 continuing education

25 A. If the applicant satisfies all of the requirements for licensure  
26 pursuant to this article, the board shall issue an active license and shall  
27 prorate the fee for issuing that license for the period remaining until May 1  
28 of the next odd-numbered year.

29 B. A person holding an active or inactive license shall apply to renew  
30 the license on or before April 30 of each odd-numbered year. The application  
31 shall include any applicable renewal fee AS PRESCRIBED BY THE BOARD BY RULE.  
32 A license expires if the licensee fails to renew the license on or before  
33 April 30 of that year. A licensee may reinstate an expired license by paying  
34 a reinstatement fee AS PRESCRIBED BY THE BOARD BY RULE on or before June 30  
35 of that year. Beginning on July 1 of that year through April 30 of the next  
36 year, a licensee may reinstate the license by paying a reinstatement fee AS  
37 PRESCRIBED BY THE BOARD BY RULE and providing proof of competency and  
38 qualifications to the board. This proof may include continuing education, an  
39 oral examination, a written examination or an interview with the board. A  
40 licensee whose license is not reinstated on or before April 30 of the next  
41 even-numbered year may reapply for licensure as prescribed by this article.  
42 A notice to renew is fully effective by mailing the renewal application to  
43 the licensee's last known address of record in the board's file. Notice is  
44 complete at the time of deposit in the mail.

1 C. A person renewing a license shall attach to the completed renewal  
2 form a report of disciplinary actions or restrictions placed against the  
3 license by another state licensing or disciplinary board or disciplinary  
4 actions or sanctions imposed by a state or national behavior analysis ethics  
5 committee or health care institution. The report shall include the name and  
6 address of the sanctioning agency or health care institution, the nature of  
7 the action taken and a general statement of the charges leading to the  
8 action.

9 D. A person who renews an active license to practice behavior analysis  
10 in this state shall satisfy a continuing education requirement designed to  
11 provide the necessary understanding of current developments, skills,  
12 procedures or treatment related to the practice of behavior analysis in the  
13 amount and during the period the board prescribes. The board shall prescribe  
14 documentation requirements.

15 Sec. 8. Section 32-2091.09, Arizona Revised Statutes, is amended to  
16 read:

17 32-2091.09. Grounds for disciplinary action; duty to report;  
18 immunity; proceedings; board action; notice  
19 requirements; civil penalty

20 A. The board on its own motion may investigate evidence that appears  
21 to show that a licensee BEHAVIOR ANALYST is psychologically incompetent AS A  
22 BEHAVIOR ANALYST, guilty of unprofessional conduct or mentally or physically  
23 unable to safely engage in the practice of behavior analysis. A health care  
24 institution shall, and any other person may, report to the board information  
25 that appears to show that a licensee BEHAVIOR ANALYST is psychologically  
26 incompetent AS A BEHAVIOR ANALYST, guilty of unprofessional conduct or  
27 mentally or physically unable to safely engage in the practice of behavior  
28 analysis. The board shall notify the licensee about whom information has  
29 been received as to the content of the information within one hundred twenty  
30 days after receiving the information. A person who reports or provides  
31 information to the board in good faith is not subject to an action for civil  
32 damages. The board, if requested, shall not disclose the name of the person  
33 providing information unless this information is essential to proceedings  
34 conducted pursuant to this section. The board shall report a health care  
35 institution that fails to report as required by this section to the  
36 institution's licensing agency.

37 B. THE BOARD SHALL NOT CONSIDER A COMPLAINT AGAINST A BEHAVIOR ANALYST  
38 ARISING OUT OF A JUDICIALLY ORDERED EVALUATION OF A PERSON CHARGED WITH  
39 VIOLATING ANY PROVISION OF TITLE 13, CHAPTER 14 TO PRESENT A CHARGE OF  
40 UNPROFESSIONAL CONDUCT UNLESS THE COURT ORDERING THE EVALUATION HAS FOUND A  
41 SUBSTANTIAL BASIS TO REFER THE COMPLAINT FOR CONSIDERATION BY THE BOARD. THE  
42 BOARD SHALL NOT CONSIDER A COMPLAINT AGAINST A JUDICIALLY APPOINTED BEHAVIOR  
43 ANALYST ARISING OUT OF A COURT ORDERED EVALUATION OF A PERSON TO PRESENT A  
44 CHARGE OF UNPROFESSIONAL CONDUCT UNLESS THE COURT ORDERING THE EVALUATION HAS

1 FOUND A SUBSTANTIAL BASIS TO REFER THE COMPLAINT FOR CONSIDERATION BY THE  
2 BOARD.

3 ~~B.~~ C. A health care institution shall inform the board if the  
4 privileges of a licensee to practice in that institution are denied, revoked,  
5 suspended or limited because of actions by the licensee that appear to show  
6 that the person is ~~psychologically~~ incompetent AS A BEHAVIOR ANALYST, guilty  
7 of unprofessional conduct or mentally or physically unable to safely engage  
8 in the practice of behavior analysis, along with a general statement of the  
9 reasons that led the health care institution to take this action. A health  
10 care institution shall inform the board if a licensee under investigation  
11 resigns the licensee's privileges or if a licensee resigns in lieu of  
12 disciplinary action by the health care institution. Notification must  
13 include a general statement of the reasons for the resignation.

14 ~~C.~~ D. The board may require the licensee to undergo any combination  
15 of mental, physical or psychological competence examinations at the  
16 licensee's expense and shall conduct investigations necessary to determine  
17 the competence and conduct of the licensee.

18 ~~D.~~ E. The chairperson of the board shall appoint a complaint  
19 screening committee of at least three members of the board, including a  
20 public member. The complaint screening committee is subject to open meeting  
21 requirements pursuant to title 38, chapter 3, article 3.1. The complaint  
22 screening committee shall review all complaints and, based on the information  
23 provided pursuant to subsection A or B of this section, may take either of  
24 the following actions:

25 1. Dismiss the complaint if the committee determines that the  
26 complaint is without merit. Complaints dismissed by the complaint screening  
27 committee shall not be disclosed in response to a telephone inquiry or placed  
28 on the board's website.

29 2. Refer the complaint to the full board for further review and  
30 action.

31 ~~E.~~ F. If the board finds, based on the information it receives under  
32 subsection A or B of this section, that the public health, safety or welfare  
33 requires emergency action, the board may order a summary suspension of a  
34 license pending proceedings for revocation or other action. If the board  
35 issues this order, it shall serve the licensee with a written notice of  
36 complaint and formal hearing pursuant to title 41, chapter 6, article 10,  
37 setting forth the charges made against the licensee and the licensee's right  
38 to a formal hearing before the board or an administrative law judge within  
39 sixty days.

40 ~~F.~~ G. If the board finds that the information provided pursuant to  
41 subsection A or B of this section is not of sufficient seriousness to merit  
42 direct action against the licensee, it may take any of the following actions:

- 43 1. Dismiss if the board believes the information is without merit.
- 44 2. File a letter of concern.

1           3. Issue a nondisciplinary order requiring the licensee to complete a  
2 prescribed number of hours of continuing education in an area or areas  
3 prescribed by the board to provide the licensee with the necessary  
4 understanding of current developments, skills, procedures or treatment.

5           ~~G.~~ H. If the board believes the information provided pursuant to  
6 subsection A or B of this section is or may be true, it may request an  
7 informal interview with the licensee. If the licensee refuses to be  
8 interviewed or if pursuant to an interview the board determines that cause  
9 may exist to revoke or suspend the license, it shall issue a formal complaint  
10 and hold a hearing pursuant to title 41, chapter 6, article 10. If as a  
11 result of an informal interview or a hearing the board determines that the  
12 facts do not warrant revocation or suspension of the license, it may take any  
13 of the following actions:

14           1. Dismiss if the board believes the information is without merit.

15           2. File a letter of concern.

16           3. Issue a decree of censure.

17           4. Fix a period and terms of probation best adapted to protect the  
18 public health and safety and to rehabilitate or educate the licensee.  
19 Probation may include temporary suspension for not more than twelve months,  
20 restriction of the license or restitution of fees to a client resulting from  
21 violations of this article. If a licensee fails to comply with a term of  
22 probation, the board may file a complaint and notice of hearing pursuant to  
23 title 41, chapter 6, article 10 and take further disciplinary action.

24           5. Enter into an agreement with the licensee to restrict or limit the  
25 licensee's practice or activities in order to rehabilitate the licensee,  
26 protect the public and ensure the licensee's ability to safely engage in the  
27 practice of behavior analysis.

28           6. Issue a nondisciplinary order requiring the licensee to complete a  
29 prescribed number of hours of continuing education in an area or areas  
30 prescribed by the board to provide the licensee with the necessary  
31 understanding of current developments, skills, procedures or treatment.

32           ~~H.~~ I. If the board finds that the information provided pursuant to  
33 subsection A or B of this section warrants suspension or revocation of a  
34 license, it shall hold a hearing pursuant to title 41, chapter 6, article 10.  
35 Notice of a complaint and hearing is fully effective by mailing a true copy  
36 to the licensee's last known address of record in the board's files. Notice  
37 is complete at the time of its deposit in the mail.

38           ~~I.~~ J. The board may impose a civil penalty of at least three hundred  
39 dollars but not more than three thousand dollars for each violation of this  
40 article or a rule adopted under this article. The board shall deposit,  
41 pursuant to sections 35-146 and 35-147, all monies it collects from civil  
42 penalties pursuant to this subsection in the state general fund.

43           ~~J.~~ K. If the board determines after a hearing that a licensee has  
44 committed an act of unprofessional conduct, is mentally or physically unable  
45 to safely engage in the practice of behavior analysis or is ~~psychologically~~

1 incompetent AS A BEHAVIOR ANALYST, it may do any of the following in any  
2 combination and for any period of time it determines necessary:

- 3 1. Suspend or revoke the license.
- 4 2. Censure the licensee.
- 5 3. Place the licensee on probation.

6 ~~K.~~ L. A licensee may submit a written response to the board within  
7 thirty days after receiving a letter of concern. The response is a public  
8 document and shall be placed in the licensee's file.

9 ~~L.~~ M. A letter of concern is a public document and may be used in  
10 future disciplinary actions against a licensee. A decree of censure is an  
11 official action against the behavior analyst's license and may include a  
12 requirement that the licensee return fees to a client.

13 ~~M.~~ N. Except as provided in section 41-1092.08, subsection H, a  
14 person may appeal a final decision made pursuant to this section to the  
15 superior court pursuant to title 12, chapter 7, article 6.

16 ~~N.~~ O. If during the course of an investigation the board determines  
17 that a criminal violation may have occurred involving the delivery of  
18 behavior analysis services, it shall inform the appropriate criminal justice  
19 agency.

20 Sec. 9. Conditional delayed repeal; notice

21 A. Title 32, chapter 19.1, article 4, Arizona Revised Statutes, is  
22 repealed from and after June 30, 2010 if the state board of psychologist  
23 examiners does not receive on or before that date at least \$36,000 to begin  
24 to license and regulate behavior analysts or if monies received by the state  
25 board of psychologist examiners for these purposes are transferred to the  
26 state general fund on or before that date and before the board can begin to  
27 license and regulate behavior analysts.

28 B. The state board of psychologist examiners shall notify in writing  
29 the director of the Arizona legislative council of the date on which the  
30 condition is met or if the condition is not met.

31 Sec. 10. Laws 2008, chapter 288, section 9 is amended to read:

32 Sec. 9. Exemption from rule making

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