

REFERENCE TITLE: behavior analysts; credentialing committee

State of Arizona
Senate
Fiftieth Legislature
First Regular Session
2011

SB 1254

Introduced by
Senator Reagan

AN ACT

AMENDING SECTIONS 32-2091, 32-2091.02, 32-2091.03, 32-2091.04, 32-2091.05, 32-2091.06, 32-2091.07, 32-2091.09, 32-2091.10, 32-2091.12 AND 32-2091.13, ARIZONA REVISED STATUTES; AMENDING TITLE 32, CHAPTER 19.1, ARTICLE 4, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-2091.14; 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 32-2091, Arizona Revised Statutes, is amended to
3 read:

4 32-2091. Definitions

5 In this article, unless the context otherwise requires:

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

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

12 3. "Behavior analysis" means the design, implementation and evaluation
13 of **INSTRUCTIONAL AND** systematic environmental modifications by a behavior
14 analyst to produce socially significant improvements in human behavior based
15 on the principles of behavior identified through the experimental analysis of
16 behavior, **INCLUDING THE EMPIRICAL IDENTIFICATION OF FUNCTIONAL RELATIONS**
17 **BETWEEN BEHAVIOR AND ENVIRONMENTAL FACTORS, KNOWN AS FUNCTIONAL ASSESSMENT**
18 **AND ANALYSIS.** Behavior analysis does not include cognitive therapies or
19 psychological testing, neuropsychology, psychotherapy, sex therapy,
20 psychoanalysis, hypnotherapy and long-term counseling as treatment
21 modalities.

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

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

28 6. "Client" means:

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

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

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

37 7. **"CREDENTIALING COMMITTEE" MEANS THE BEHAVIOR ANALYST CREDENTIALING**
38 **COMMITTEE ESTABLISHED BY SECTION 32-2091.14.**

39 ~~7.~~ 8. "Exploit" means an action by a behavior analyst who takes undue
40 advantage of the professional association with a client, student or
41 supervisee for the advantage or profit of the behavior analyst.

42 ~~8.~~ 9. "Health care institution" means a facility that is licensed
43 pursuant to title 36, chapter 4, article 1.

44 ~~9.~~ 10. "Incompetent as a behavior analyst" means that a person who is
45 licensed pursuant to **THIS** article ~~4 of this chapter~~ lacks the knowledge or

1 skills of a behavior analyst to a degree that is likely to endanger the
2 health of a client.

3 ~~10.~~ 11. "Letter of concern" means an advisory letter to notify a
4 licensee that while there is insufficient evidence to support disciplinary
5 action the board believes the licensee should modify or eliminate certain
6 practices and that continuation of the activities that led to the information
7 being submitted to the board may result in action against the license.

8 ~~11.~~ 12. "Supervisee" means a person who acts under the extended
9 authority of a behavior analyst to provide behavioral services and includes a
10 person who is in training to provide these services.

11 ~~12.~~ 13. "Unprofessional conduct" includes the following activities,
12 whether occurring in this state or elsewhere:

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

14 (b) Betraying professional confidences.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16 32-2091.02. Qualifications of applicant

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

20 1. Submit an application as prescribed by the board.

21 2. Be at least twenty-one years of age.

22 3. Be of good moral character. The board's standard to determine good
23 moral character shall not violate federal discrimination laws.

24 4. Pay all applicable fees prescribed by the board.

25 5. Have the physical and mental capability to safely and competently
26 engage in the practice of behavior analysis.

27 6. Not have committed any act or engaged in any conduct that would
28 constitute grounds for disciplinary action against a licensee pursuant to
29 this article.

30 7. Not have had a professional license or certificate refused,
31 revoked, suspended or restricted in any regulatory jurisdiction in the United
32 States or in another country for reasons that relate to unprofessional
33 conduct. If the board **OR THE CREDENTIALING COMMITTEE** finds that the
34 applicant committed an act or engaged in conduct that would constitute
35 grounds for disciplinary action in this state, the board **OR THE CREDENTIALING**
36 **COMMITTEE** shall determine to its satisfaction that the conduct has been
37 corrected, monitored and resolved. If the matter has not been resolved, the
38 board shall determine to its satisfaction that mitigating circumstances exist
39 that prevent its resolution.

40 8. Not have voluntarily surrendered a license or certificate in
41 another regulatory jurisdiction in the United States or in another country
42 while under investigation for reasons that relate to unprofessional conduct.
43 If another jurisdiction has taken disciplinary action against an applicant,
44 the board **OR THE CREDENTIALING COMMITTEE** shall determine to its satisfaction
45 that the cause for the action was corrected and the matter resolved. If the

1 matter has not been resolved by that jurisdiction, the board shall determine
2 to its satisfaction that mitigating circumstances exist that prevent its
3 resolution.

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

11 Sec. 3. Section 32-2091.03, Arizona Revised Statutes, is amended to
12 read:

13 **32-2091.03. Educational and training qualifications for**
14 **licensure**

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

16 1. Have a graduate degree, master's degree or doctoral degree from an
17 accredited college or university or institution of higher learning accredited
18 by a recognized accrediting agency.

19 2. If the applicant completes a degree, coursework and work experience
20 requirements after January 1, 2000, complete a minimum of one thousand five
21 hundred hours of supervised work experience or independent fieldwork in the
22 practice of applied behavior analysis in not less than twelve months.

23 3. Have as part of or in addition to the coursework required for the
24 graduate degree at least two hundred twenty-five classroom hours of specific
25 graduate level instruction that meet nationally recognized standards for
26 behavior analysts as determined by the board, **WITH A RECOMMENDATION FROM THE**
27 **CREDENTIALING COMMITTEE.**

28 4. Have a minimum of one thousand five hundred hours of supervised
29 work experience as a behavior analyst engaged in tasks that meet nationally
30 recognized standards for behavior analysts as determined by the board, **WITH A**
31 **RECOMMENDATION FROM THE CREDENTIALING COMMITTEE.** The supervised work
32 experience hours must be completed after the applicant completes the required
33 coursework prescribed pursuant to paragraph 3 of this subsection.

34 B. The supervised work experience required pursuant to subsection A,
35 paragraph 4 must include the following:

36 1. Conducting behavioral assessments and assessment activities related
37 to the need for behavioral interventions.

38 2. Designing, implementing and monitoring behavior analysis programs
39 for clients.

40 3. Overseeing the implementation of behavior analysis programs by
41 others.

42 4. Other activities normally performed by a behavior analyst that are
43 directly related to behavior analysis, such as attending planning meetings
44 regarding the behavior analysis program, researching the literature related
45 to the program, talking to individuals about the program and any additional

1 activities related to oversight of behavioral programming such as behavior
2 analyst supervision issues or evaluation of behavior analysts' performance.

3 C. The following activities are not considered supervised work
4 experience required pursuant to subsection A, paragraph 4:

- 5 1. Attending meetings with little or no behavior analytic content.
- 6 2. Providing interventions that are not based in behavior analysis.
- 7 3. Doing nonbehavior analytic administrative activities.
- 8 4. Any other activities that are not directly related to behavior
9 analysis.

10 D. For supervised work experience required pursuant to subsection A,
11 paragraph 4, the supervisor must observe the applicant engaging in behavior
12 analytic activities in the natural environment at least once every two weeks.
13 This observation may be conducted by web cameras, videotape,
14 videoconferencing or similar means instead of the supervisor being physically
15 present. Supervision may be conducted in small groups of ten or fewer
16 participants for not more than half of the total supervised hours in each
17 supervisory period. The remainder of the total supervision hours in each
18 supervisory period must consist of direct one-to-one contact. Supervision
19 hours may be counted toward the total number of experience hours required.

20 E. A supervisor conducting the supervised work experience pursuant to
21 subsection D shall not be the applicant's relative, subordinate or employee
22 during the experience period. The supervisor is not an employee of the
23 applicant if the only compensation received by the supervisor from the
24 applicant consists of payment for supervision. A supervisor must be a
25 licensed behavior analyst who meets requirements for licensure pursuant to
26 subsection A.

27 F. An applicant may submit a written request to the board for an
28 exemption from the requirement prescribed in subsection E. The request must
29 include the name of the behavior analyst proposed by the applicant to act as
30 the clinical supervisor, a copy of the proposed clinical supervisor's
31 transcript and curriculum vitae and any additional documentation requested by
32 the board. The board, WITH A RECOMMENDATION FROM THE CREDENTIALING
33 COMMITTEE, shall review the supervision exemption request to determine if the
34 proposed supervisor has the necessary education, training and experience to
35 provide supervision acceptable for behavior analyst licensure. If the
36 proposed supervisor has the necessary education, training and experience, the
37 board shall grant the supervision exemption request. The board, WITH A
38 RECOMMENDATION FROM THE CREDENTIALING COMMITTEE, shall not grant an exemption
39 request for an unlicensed clinical supervisor providing clinical supervision
40 in this state after July 1, 2011, except that an exemption may be granted by
41 the board if the clinical supervisor holds a current national certification
42 from a nationally recognized behavior analyst certification board as
43 determined by the board, WITH A RECOMMENDATION FROM THE CREDENTIALING
44 COMMITTEE.

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

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

7 2. The applicant has met the requirements for and received the
8 certification credential from a nationally recognized behavior analyst
9 certification board as determined by the board, WITH A RECOMMENDATION FROM
10 THE CREDENTIALING COMMITTEE.

11 H. The board, WITH A RECOMMENDATION FROM THE CREDENTIALING COMMITTEE,
12 may prescribe by rule additional requirements relating to education and
13 training.

14 Sec. 4. Section 32-2091.04, Arizona Revised Statutes, is amended to
15 read:

16 32-2091.04. Reciprocity

17 The board, WITH A RECOMMENDATION FROM THE CREDENTIALING COMMITTEE, may
18 issue a license to a person as a behavior analyst if the person is licensed
19 or certified by a regulatory agency of another state that imposes
20 requirements that are substantially equivalent to those imposed by this
21 article at an equivalent or higher practice level as determined by the board,
22 pays the fee prescribed by the board and meets all of the following
23 requirements:

24 1. Submits a written application prescribed by the board.

25 2. Is of good moral character. The board's OR THE CREDENTIALING
26 COMMITTEE'S standard to determine good moral character shall not violate
27 federal discrimination laws.

28 3. Documents to the board's OR THE CREDENTIALING COMMITTEE'S
29 satisfaction proof of initial licensure or certification at an equivalent
30 designation for which the applicant is seeking licensure in this state and
31 proof that the license or certificate is current and in good standing.

32 4. Documents to the board's OR THE CREDENTIALING COMMITTEE'S
33 satisfaction proof that any other license or certificate issued to the
34 applicant by another state has not been suspended or revoked. If a licensee
35 or certificate holder has been subjected to any other disciplinary action,
36 the board OR THE CREDENTIALING COMMITTEE may assess the magnitude of that
37 action and make a decision regarding reciprocity based on this assessment.

38 5. Meets any other requirements prescribed by the board by rule.

39 Sec. 5. Section 32-2091.05, Arizona Revised Statutes, is amended to
40 read:

41 32-2091.05. Examinations

42 A. An applicant for licensure must pass an examination from a
43 nationally recognized behavior analyst certification board as determined by
44 the board, WITH A RECOMMENDATION FROM THE CREDENTIALING COMMITTEE.

1 B. The board, WITH A RECOMMENDATION FROM THE CREDENTIALING COMMITTEE,
2 may require an additional examination for all applicants to cover areas of
3 professional ethics and practice that is consistent with the applicant's
4 education and experience, state law relating to the practice of behavior
5 analysis or other areas the board determines are suitable.

6 C. An applicant may not take an examination administered for or by the
7 board until the applicant completes the education requirements of this
8 article.

9 D. An applicant who fails the national examination administered for or
10 by any jurisdiction three times is not eligible to take that examination
11 again until the applicant meets additional requirements prescribed by the
12 board.

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

15 32-2091.06. Temporary licenses; inactive status; reinstatement
16 to active status

17 A. If the board, WITH A RECOMMENDATION FROM THE CREDENTIALING
18 COMMITTEE, requires an additional examination, it may issue a temporary
19 license to a behavior analyst who is licensed or certified under the laws of
20 another jurisdiction, if the behavior analyst applies to the board for
21 licensure and meets the educational, experience and first examination
22 requirements of this article.

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

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

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

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

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

10 G. A behavior analyst on inactive status may request reinstatement of
11 the license to active status by applying to the board. The board, **WITH A**
12 **RECOMMENDATION FROM THE CREDENTIALING COMMITTEE**, shall determine whether the
13 person has been or is in violation of any provisions of this article and
14 whether the person has maintained and updated the person's professional
15 knowledge and capability to practice as a behavior analyst. The board, **WITH**
16 **A RECOMMENDATION FROM THE CREDENTIALING COMMITTEE**, may require the person to
17 take or retake the licensure examinations and may require other knowledge or
18 skill training experiences. If approved for active status, the person shall
19 pay a renewal fee that equals the renewal fee for the license to be
20 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, **WITH A RECOMMENDATION FROM THE**
27 **CREDENTIALING COMMITTEE**, shall issue an active license and shall prorate the
28 fee for issuing that license for the period remaining until May 1 of the next
29 odd-numbered year.

30 B. A person holding an active or inactive license shall apply to renew
31 the license on or before April 30 of each odd-numbered year. The application
32 shall include any applicable renewal fee as prescribed by the board by rule.
33 A license expires if the licensee fails to renew the license on or before
34 April 30 of that year. A licensee may reinstate an expired license by paying
35 a reinstatement fee as prescribed by the board by rule on or before June 30
36 of that year. Beginning on July 1 of that year through April 30 of the next
37 year, a licensee may reinstate the license by paying a reinstatement fee as
38 prescribed by the board by rule, **WITH A RECOMMENDATION FROM THE CREDENTIALING**
39 **COMMITTEE**, and providing proof of competency and qualifications to the board.
40 This proof may include continuing education, an oral examination, a written
41 examination or an interview with the board **OR THE CREDENTIALING COMMITTEE**. A
42 licensee whose license is not reinstated on or before April 30 of the next
43 even-numbered year may reapply for licensure as prescribed by this article.
44 A notice to renew is fully effective by mailing the renewal application to

1 the licensee's last known address of record in the board's file. Notice is
2 complete at the time of deposit in the mail.

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

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

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

20 **32-2091.09. Grounds for disciplinary action; duty to report;**
21 **immunity; proceedings; board action; notice**
22 **requirements; civil penalty**

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

42 B. The board **OR THE CREDENTIALING COMMITTEE** shall not consider a
43 complaint against a behavior analyst arising out of a judicially ordered
44 evaluation of a person charged with violating any provision of title 13,
45 chapter 14 to present a charge of unprofessional conduct unless the court

1 ordering the evaluation has found a substantial basis to refer the complaint
2 for consideration by the board OR THE CREDENTIALING COMMITTEE. The board OR
3 THE CREDENTIALING COMMITTEE shall not consider a complaint against a
4 judicially appointed behavior analyst arising out of a court ordered
5 evaluation of a person to present a charge of unprofessional conduct unless
6 the court ordering the evaluation has found a substantial basis to refer the
7 complaint for consideration by the board OR THE CREDENTIALING COMMITTEE.

8 C. A health care institution shall inform the board OR THE
9 CREDENTIALING COMMITTEE if the privileges of a licensee to practice in that
10 institution are denied, revoked, suspended or limited because of actions by
11 the licensee that appear to show that the person is incompetent as a behavior
12 analyst, guilty of unprofessional conduct or mentally or physically unable to
13 safely engage in the practice of behavior analysis, along with a general
14 statement of the reasons that led the health care institution to take this
15 action. A health care institution shall inform the board OR THE
16 CREDENTIALING COMMITTEE if a licensee under investigation resigns the
17 licensee's privileges or if a licensee resigns in lieu of disciplinary action
18 by the health care institution. Notification must include a general
19 statement of the reasons for the resignation.

20 D. The board OR THE CREDENTIALING COMMITTEE may require the licensee
21 to undergo any combination of mental, physical or psychological competence
22 examinations at the licensee's expense and shall conduct investigations
23 necessary to determine the competence and conduct of the licensee.

24 E. ~~The chairperson of the board shall appoint a complaint screening~~
25 ~~committee of at least three members of the board, including a public member.~~
26 ~~The complaint screening committee is subject to open meeting requirements~~
27 ~~pursuant to title 38, chapter 3, article 3.1. The complaint screening THE~~
28 CREDENTIALING committee shall review all complaints and, based on the
29 information provided pursuant to subsection A or ~~B~~ C of this section, may
30 take either ANY of the following actions:

31 1. RECOMMEND TO THE BOARD TO dismiss the complaint if the
32 CREDENTIALING committee determines that the complaint is without merit.
33 Complaints dismissed by the ~~complaint screening committee~~ BOARD shall not be
34 disclosed in response to a telephone inquiry or placed on the board's
35 website.

36 ~~2. Refer the complaint to the full board for further review and~~
37 ~~action.~~

38 2. RECOMMEND TO THE BOARD THAT A LETTER OF CONCERN BE ISSUED.

39 3. RECOMMEND TO THE BOARD THAT A NONDISCIPLINARY ORDER BE ISSUED
40 REQUIRING THE LICENSEE TO COMPLETE A PRESCRIBED NUMBER OF HOURS OF CONTINUING
41 EDUCATION IN AN AREA OR AREAS TO PROVIDE THE LICENSEE WITH THE NECESSARY
42 UNDERSTANDING OF CURRENT DEVELOPMENTS, SKILLS, PROCEDURES OR TREATMENT.

43 F. If the board OR THE CREDENTIALING COMMITTEE finds, based on the
44 information it receives under subsection A or ~~B~~ C of this section, that the
45 public health, safety or welfare requires emergency action, the board, WITH A

1 RECOMMENDATION FROM THE CREDENTIALING COMMITTEE, may order a summary
2 suspension of a license pending proceedings for revocation or other action.
3 If the board issues this order, it shall serve the licensee with a written
4 notice of complaint and formal hearing pursuant to title 41, chapter 6,
5 article 10, setting forth the charges made against the licensee and the
6 licensee's right to a formal hearing before the board or an administrative
7 law judge within sixty days.

8 G. If the board, WITH A RECOMMENDATION FROM THE CREDENTIALING
9 COMMITTEE, finds that the information provided pursuant to subsection A or ~~B-~~
10 C of this section is not of sufficient seriousness to merit direct action
11 against the licensee, it may take any of the following actions:

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

13 2. File a letter of concern.

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

18 H. If the board OR THE CREDENTIALING COMMITTEE believes the
19 information provided pursuant to subsection A or C of this section is or may
20 be true, it may request an informal interview with the licensee. If the
21 licensee refuses to be interviewed or if pursuant to an interview the board
22 determines that cause may exist to revoke or suspend the license, it shall
23 issue a formal complaint and hold a hearing pursuant to title 41, chapter 6,
24 article 10. If as a result of an informal interview or a hearing the board
25 determines that the facts do not warrant revocation or suspension of the
26 license, it may take any of the following actions:

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

28 2. File a letter of concern.

29 3. Issue a decree of censure.

30 4. Fix a period and terms of probation best adapted to protect the
31 public health and safety and to rehabilitate or educate the licensee.
32 Probation may include temporary suspension for not more than twelve months,
33 restriction of the license or restitution of fees to a client resulting from
34 violations of this article. If a licensee fails to comply with a term of
35 probation, the board, WITH A RECOMMENDATION FROM THE CREDENTIALING COMMITTEE,
36 may file a complaint and notice of hearing pursuant to title 41, chapter 6,
37 article 10 and take further disciplinary action.

38 5. Enter into an agreement with the licensee to restrict or limit the
39 licensee's practice or activities in order to rehabilitate the licensee,
40 protect the public and ensure the licensee's ability to safely engage in the
41 practice of behavior analysis.

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

1 I. If the board OR THE CREDENTIALING COMMITTEE finds that the
2 information provided pursuant to subsection A or ~~B~~ C of this section
3 warrants suspension or revocation of a license, it shall hold a hearing
4 pursuant to title 41, chapter 6, article 10. Notice of a complaint and
5 hearing is fully effective by mailing a true copy to the licensee's last
6 known address of record in the board's files. Notice is complete at the time
7 of its deposit in the mail.

8 J. The board, WITH A RECOMMENDATION FROM THE CREDENTIALING COMMITTEE,
9 may impose a civil penalty of at least three hundred dollars but not more
10 than three thousand dollars for each violation of this article or a rule
11 adopted under this article. The board shall deposit, pursuant to sections
12 35-146 and 35-147, all monies it collects from civil penalties pursuant to
13 this subsection in the state general fund.

14 K. If the board, WITH A RECOMMENDATION FROM THE CREDENTIALING
15 COMMITTEE, determines after a hearing that a licensee has committed an act of
16 unprofessional conduct, is mentally or physically unable to safely engage in
17 the practice of behavior analysis or is incompetent as a behavior analyst, it
18 may do any of the following in any combination and for any period of time it
19 determines necessary:

- 20 1. Suspend or revoke the license.
- 21 2. Censure the licensee.
- 22 3. Place the licensee on probation.

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

26 M. A letter of concern is a public document and may be used in future
27 disciplinary actions against a licensee. A decree of censure is an official
28 action against the behavior analyst's license and may include a requirement
29 that the licensee return fees to a client.

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

33 O. If during the course of an investigation the board determines that
34 a criminal violation may have occurred involving the delivery of behavior
35 analysis services, it shall inform the appropriate criminal justice agency.

36 Sec. 9. Section 32-2091.10, Arizona Revised Statutes, is amended to
37 read:

38 32-2091.10. Right to examine and copy evidence; subpoenas;
39 right to counsel; confidentiality

40 A. In connection with an investigation conducted pursuant to this
41 article, at all reasonable times the board OR THE CREDENTIALING COMMITTEE and
42 ~~its~~ authorized BOARD agents may examine and copy documents, reports, records
43 and other physical evidence wherever located relating to the licensee's
44 professional competence, unprofessional conduct or mental or physical ability
45 to safely practice behavior analysis.

1 B. The board **OR THE CREDENTIALING COMMITTEE** and ~~its~~ authorized **BOARD**
2 agents may issue subpoenas to compel the attendance and testimony of
3 witnesses and the production of documents and other physical evidence as
4 prescribed in subsection A. The board may petition the superior court to
5 enforce a subpoena.

6 C. Within five days of receiving a subpoena, a person may petition the
7 board to revoke, limit or modify the subpoena. The board shall take this
8 action if it determines that the evidence demanded is not relevant to the
9 investigation. The person may petition the superior court for this relief
10 without first petitioning the board.

11 D. A person appearing before the board **OR THE CREDENTIALING COMMITTEE**
12 or ~~its~~ authorized **BOARD** agents may be represented by an attorney.

13 E. Documents associated with an investigation are not open to the
14 public and shall remain confidential. Documents may not be released without
15 a court order compelling their production.

16 F. This section or any other provision of law making communications
17 between a behavior analyst and client privileged does not apply to an
18 investigation conducted pursuant to this article. The board, **THE**
19 **CREDENTIALING COMMITTEE**, ~~its~~ **BOARD** employees and ~~its~~ **BOARD** agents shall keep
20 in confidence the names of clients whose records are reviewed during an
21 investigation.

22 Sec. 10. Section 32-2091.12, Arizona Revised Statutes, is amended to
23 read:

24 **32-2091.12. Violations; classification**

25 A. It is a class 2 misdemeanor for a person who is not licensed
26 pursuant to this article to engage in the practice of behavior analysis.

27 B. It is a class 2 misdemeanor for any person to:

28 1. Secure a license to practice pursuant to this article by fraud or
29 deceit.

30 2. Impersonate a member of the board **OR THE CREDENTIALING COMMITTEE** in
31 order to issue a license to practice pursuant to this article.

32 C. It is a class 2 misdemeanor for a person who is not licensed
33 pursuant to this article to use any combination of words, initials and
34 symbols that leads the public to believe the person is licensed to practice
35 behavior analysis in this state.

36 Sec. 11. Section 32-2091.13, Arizona Revised Statutes, is amended to
37 read:

38 **32-2091.13. Confidential communications**

39 A. The confidential relations and communications between a client and
40 a person who is licensed pursuant to this article, including temporary
41 licensees, are placed on the same basis as those provided by law between an
42 attorney and client. Unless the client waives the behavior analyst-client
43 privilege in writing or in court testimony, a behavior analyst shall not
44 voluntarily or involuntarily divulge information that is received by reason
45 of the confidential nature of the behavior analyst's practice. The behavior

1 analyst shall divulge to the board OR THE CREDENTIALING COMMITTEE, AS
2 APPROPRIATE, information ~~to~~ THE BOARD OR CREDENTIALING COMMITTEE requires in
3 connection with any investigation, public hearing or other proceeding. The
4 behavior analyst-client privilege does not extend to cases in which the
5 behavior analyst has a duty to report information as required by law.

6 B. The behavior analyst shall ensure that client records and
7 communications are treated by clerical and paraprofessional staff at the same
8 level of confidentiality and privilege required of the behavior analyst.

9 Sec. 12. Title 32, chapter 19.1, article 4, Arizona Revised Statutes,
10 is amended by adding section 32-2091.14, to read:

11 32-2091.14. Behavior analyst credentialing committee;
12 appointment; qualifications; terms; compensation;
13 immunity; duties

14 A. THE BEHAVIOR ANALYST CREDENTIALING COMMITTEE IS ESTABLISHED
15 CONSISTING OF FOUR BEHAVIOR ANALYSTS AND ONE PUBLIC MEMBER WHO ARE APPOINTED
16 BY THE GOVERNOR TO STAGGERED THREE YEAR TERMS.

17 B. EACH PROFESSIONAL CREDENTIALING COMMITTEE MEMBER MUST:

18 1. BE A RESIDENT OF THIS STATE FOR AT LEAST ONE YEAR BEFORE THE
19 APPOINTMENT.

20 2. HOLD AN ACTIVE LICENSE IN GOOD STANDING AS A BEHAVIOR ANALYST
21 PURSUANT TO THIS ARTICLE.

22 3. HAVE AT LEAST FIVE YEARS OF EXPERIENCE IN AN AREA OF BEHAVIOR
23 ANALYSIS. BEGINNING JANUARY 1, 2016, A PROFESSIONAL MEMBER MUST HAVE BEEN
24 LICENSED PURSUANT TO THIS ARTICLE FOR AT LEAST FIVE YEARS.

25 C. THE PUBLIC MEMBER MUST:

26 1. BE A RESIDENT OF THIS STATE FOR AT LEAST ONE YEAR BEFORE THE
27 APPOINTMENT.

28 2. BE AT LEAST TWENTY-ONE YEARS OF AGE.

29 3. NOT BE OR EVER HAVE BEEN A BEHAVIORAL HEALTH PROFESSIONAL IN ANY
30 DISCIPLINE OR THE SPOUSE OF A BEHAVIORAL HEALTH PROFESSIONAL.

31 4. NOT HAVE OR EVER HAVE HAD ANY FINANCIAL INTEREST IN THE PROVISION
32 OF BEHAVIOR ANALYSIS.

33 5. NOT HAVE ENGAGED IN ANY ACTIVITY DIRECTLY RELATED TO THE PRACTICE
34 OF BEHAVIOR ANALYSIS.

35 D. THE CREDENTIALING COMMITTEE SHALL ANNUALLY ELECT A CHAIRPERSON AND
36 SECRETARY FROM ITS MEMBERSHIP.

37 E. A CREDENTIALING COMMITTEE MEMBER IS NOT SUBJECT TO CIVIL LIABILITY
38 FOR ANY ACT DONE OR ANY ACTION TAKEN IN GOOD FAITH AND IN FURTHERANCE OF THE
39 PURPOSES OF THIS ARTICLE.

40 F. CREDENTIALING COMMITTEE MEMBERS ARE NOT ELIGIBLE FOR COMPENSATION
41 OR REIMBURSEMENT OF EXPENSES.

42 G. THE CREDENTIALING COMMITTEE, AS DIRECTED BY THE BOARD, SHALL:

43 1. ADMINISTER AND ENFORCE THIS ARTICLE, RULES ADOPTED PURSUANT TO THIS
44 ARTICLE AND BOARD ORDERS.

1 2. REVIEW LICENSURE AND LICENSURE RENEWAL APPLICATIONS AND RECOMMEND
2 THE APPROVAL OR DENIAL OF LICENSURE AND LICENSURE RENEWAL TO THE BOARD.
3 3. CONDUCT INVESTIGATIONS AND HEARINGS REGARDING CHARGES OF VIOLATIONS
4 OF THIS ARTICLE AND BOARD RULES AND ORDERS AND MAKE RECOMMENDATIONS TO THE
5 BOARD PURSUANT TO THIS ARTICLE.
6 H. THE CREDENTIALING COMMITTEE SHALL PROVIDE RECOMMENDATIONS TO THE
7 BOARD ON MATTERS RELATING TO LICENSING, INVESTIGATIONS AND OTHER ISSUES
8 PERTAINING TO THE REGULATION OF BEHAVIOR ANALYSTS BEFORE THE BOARD TAKES
9 ACTION ON THESE MATTERS.
10 Sec. 13. Initial terms of members of the behavior analysts
11 credentialing committee
12 A. Notwithstanding section 32-2091.14, Arizona Revised Statutes, as
13 added by this act, the initial terms of members of the behavioral analysts
14 credentialing committee are:
15 1. One term ending January 1, 2013.
16 2. Two terms ending January 1, 2014.
17 3. Two terms ending January 1, 2015.
18 B. The governor shall make all subsequent appointments as prescribed
19 by statute.
20 Sec. 14. Effective date
21 This act is effective from and after October 31, 2011.