House Engrossed Senate Bill

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MICHELE REAGAN
SECRETARY OF STATE

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CHAPTER 154

SENATE BILL 1212

AN ACT

AMENDING SECTION 32-3251, ARIZONA REVISED STATUTES; AMENDING SECTION 32-3253, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2012, CHAPTER 321, SECTION 70; AMENDING SECTION 32-3253, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 242, SECTION 3; AMENDING TITLE 32, CHAPTER 33, ARTICLE 1, ARIZONA REVISED STATUTES, BY ADDING SECTION 32-3256; AMENDING SECTION 32-3261, ARIZONA REVISED STATUTES, AS ADDED BY LAWS 2013, CHAPTER 242, SECTION 7; AMENDING SECTIONS 32-3274 AND 32-3281, ARIZONA REVISED STATUTES; AMENDING SECTION 32-3311, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 242, SECTION 20; AMENDING SECTION 32-3321, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2013, CHAPTER 242, SECTION 21; RELATING TO THE BOARD OF BEHAVIORAL HEALTH EXAMINERS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Section 32-3251, Arizona Revised Statutes, is amended to read:

32-3251. Definitions

In this chapter, unless the context otherwise requires:

1. "Board" means the board of behavioral health examiners.

2. "Client" means a patient who receives behavioral health services from a person licensed pursuant to this chapter.

3. "Direct client contact" means, beginning November 1, 2015, the performance of therapeutic or clinical functions related to the applicant's professional practice level of psychotherapy that includes diagnosis, assessment and treatment and that may include psychoeducation for mental, emotional and behavioral disorders based primarily on verbal or nonverbal communications and intervention with, and in the presence of, one or more clients.

4. "Equivalent" means comparable in content and quality but not identical.

5. "Indirect client service" means, beginning November 1, 2015, training for, and the performance of, functions of an applicant's professional practice level in preparation for or on behalf of a client for whom direct client contact functions are also performed, including case consultation and receipt of clinical supervision. Indirect client service does not include the provision of psychoeducation.

6. "Letter of concern" means a nondisciplinary written document sent by the board to notify a licensee that, while there is insufficient evidence to support disciplinary action, the board believes that continuation of the activities that led to the investigation may result in further board action against the licensee.

7. "Licensee" means a person who is licensed pursuant to this chapter.

8. "Practice of behavioral health" means the practice of marriage and family therapy, professional counseling, social work and substance abuse counseling pursuant to this chapter.

9. "Practice of marriage and family therapy" means the professional application of family systems theories, principles and techniques to treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral. The practice of marriage and family therapy includes:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

10. "Practice of professional counseling" means the professional application of mental health, psychological and human development theories, principles and techniques to:

(a) Facilitate human development and adjustment throughout the human life span.

(b) Assess and facilitate career development.

(c) Treat interpersonal relationship issues and nervous, mental and emotional disorders that are cognitive, affective or behavioral.

(d) Manage symptoms of mental illness.

(e) Assess, appraise, evaluate, diagnose and treat individuals, couples, families and groups through the use of psychotherapy.

11. "Practice of social work" means the professional application of social work theories, principles, methods and techniques to:

(a) Treat mental, behavioral and emotional disorders.

(b) Assist individuals, families, groups and communities to enhance or restore the ability to function physically, socially, emotionally, mentally and economically.

(c) Assess, appraise, diagnose, evaluate and treat individuals, couples, families and groups through the use of psychotherapy.

12. "Practice of substance abuse counseling" means the professional application of general counseling theories, principles and techniques as specifically adapted, based on research and clinical experience, to the specialized needs and characteristics of persons who are experiencing substance abuse, chemical dependency and related problems and to the families of those persons. The practice of substance abuse counseling includes the following as they relate to substance abuse and chemical dependency issues:

(a) Assessment, appraisal and diagnosis.

(b) The use of psychotherapy for the purpose of evaluation, diagnosis and treatment of individuals, couples, families and groups.

13. "Psychoeducation" means the education of a client as part of a treatment process that provides the client with information regarding mental health, emotional disorders or behavioral health.

14. "Psychotherapy" means a variety of treatment methods developing out of generally accepted theories about human behavior and development.

15. "TELEPRACTICE" MEANS PROVIDING BEHAVIORAL HEALTH SERVICES THROUGH INTERACTIVE AUDIO, VIDEO OR ELECTRONIC COMMUNICATION THAT OCCURS BETWEEN THE BEHAVIORAL HEALTH PROFESSIONAL AND THE CLIENT, INCLUDING ANY ELECTRONIC COMMUNICATION FOR EVALUATION, DIAGNOSIS AND TREATMENT, INCLUDING DISTANCE COUNSELING, IN A SECURE PLATFORM, AND THAT MEETS THE REQUIREMENTS OF TELEMEDICINE PURSUANT TO SECTION 36-3602.

~~15.~~ 16. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:

(a) Conviction of a felony. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the conviction.

(b) Use of fraud or deceit in connection with rendering services as a licensee or in establishing qualifications pursuant to this chapter.

(c) Any oral or written misrepresentation of a fact by an applicant or licensee:

(i) To secure or attempt to secure the issuance or renewal of a license.

(ii) In any statements provided during an investigation or disciplinary proceeding by the board.

(iii) Regarding the licensee's skills or the value of any treatment provided or to be provided.

(d) Any false, fraudulent or deceptive statement connected with the practice of behavioral health, including false or misleading advertising by the licensee or the licensee's staff or a representative compensated by the licensee.

(e) Securing or attempting to secure the issuance or renewal of a license by knowingly taking advantage of the mistake of another person or the board.

(f) Active habitual intemperance in the use of alcohol or active habitual substance abuse.

(g) Using a controlled substance that is not prescribed for use during a prescribed course of treatment.

(h) Obtaining a fee by fraud, deceit or misrepresentation.

(i) Aiding or abetting a person who is not licensed pursuant to this chapter to purport to be a licensed behavioral health professional in this state.

(j) Conduct that the board determines is gross negligence or repeated negligence in the licensee's profession.

(k) Any conduct or practice that is contrary to recognized standards of ethics in the behavioral health profession or that constitutes a danger to the health, welfare or safety of a client.

(l) Any conduct, practice or condition that impairs the ability of the licensee to safely and competently practice the licensee's profession.

(m) Engaging or offering to engage as a licensee in activities that are not congruent with the licensee's professional education, training or experience.

(n) Failing to comply with or violating, attempting to violate or assisting in or abetting the violation of any provision of this chapter, any rule adopted pursuant to this chapter, any lawful order of the board, or any formal order, consent agreement, term of probation or stipulated agreement issued under this chapter.

(o) Failing to furnish information within a specified time to the board or its investigators or representatives if legally requested by the board.

(p) Failing to conform to minimum practice standards as developed by the board.

(q) Failing or refusing to maintain adequate records of behavioral health services provided to a client.

(r) Providing behavioral health services that are clinically unjustified or unsafe or otherwise engaging in activities as a licensee that are unprofessional by current standards of practice.

(s) Terminating behavioral health services to a client without making an appropriate referral for continuation of care for the client if continuing behavioral health services are indicated.

(t) Disclosing a professional confidence or privileged communication except as may otherwise be required by law or permitted by a valid written release.

(u) Failing to allow the board or its investigators on demand to examine and have access to documents, reports and records in any format maintained by the licensee that relate to the licensee's practice of behavioral health.

(v) Any sexual conduct between a licensee and a client or former client.

(w) Providing behavioral health services to any person with whom the licensee has had sexual contact.

(x) Exploiting a client, former client or supervisee. For the purposes of this subdivision, "exploiting" means taking advantage of a professional relationship with a client, former client or supervisee for the benefit or profit of the licensee.

(y) Engaging in a dual relationship with a client that could impair the licensee's objectivity or professional judgment or create a risk of harm to the client. For the purposes of this subdivision, "dual relationship" means a licensee simultaneously engages in both a professional and nonprofessional relationship with a client that is avoidable and not incidental.

(z) Engaging in physical contact between a licensee and a client if there is a reasonable possibility of physical or psychological harm to the client as a result of that contact.

(aa) Sexually harassing a client, former client, research subject, supervisee or coworker. For the purposes of this subdivision, "sexually harassing" includes sexual advances, sexual solicitation, requests for sexual favors, unwelcome comments or gestures or any other verbal or physical conduct of a sexual nature.

(bb) Harassing, exploiting or retaliating against a client, former client, research subject, supervisee, coworker or witness or a complainant in a disciplinary investigation or proceeding involving a licensee.

(cc) Failing to take reasonable steps to inform potential victims and appropriate authorities if the licensee becomes aware during the course of providing or supervising behavioral health services that a client's condition indicates a clear and imminent danger to the client or others.

(dd) Failing to comply with the laws of the appropriate licensing or credentialing authority to provide behavioral health services by electronic

means in all governmental jurisdictions where the client receiving these services resides.

(ee) Giving or receiving a payment, kickback, rebate, bonus or other remuneration for a referral.

(ff) Failing to report in writing to the board information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. This duty does not extend to information provided by a licensee that is protected by the behavioral health professional-client privilege unless the information indicates a clear and imminent danger to the client or others or is otherwise subject to mandatory reporting requirements pursuant to state or federal law.

(gg) Failing to follow federal and state laws regarding the storage, use and release of confidential information regarding a client's personal identifiable information or care.

(hh) Failing to retain records pursuant to section 12-2297.

(ii) Violating any federal or state law, rule or regulation applicable to the practice of behavioral health.

(jj) Failing to make client records in the licensee's possession available in a timely manner to another health professional or licensee 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.

(kk) Failing to make client records in the licensee's possession promptly available to the client, a minor client's parent, the client's legal guardian or the client's authorized representative 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.

(ll) Being the subject of the revocation, suspension, surrender or any other disciplinary sanction of a professional license, certificate or registration or other adverse action related to a professional license, certificate or registration in another jurisdiction or country, including the failure to report the adverse action to the board. The action taken may include refusing, denying, revoking or suspending a license or certificate, the surrendering of a license or certificate, otherwise limiting, restricting or monitoring a licensee or certificate holder or placing a licensee or certificate holder on probation.

(mm) Any conduct that results in a sanction imposed by an agency of the federal government that involves restricting, suspending, limiting or removing the licensee's ability to obtain financial remuneration for behavioral health services.

(nn) Violating the security of any licensure examination materials.

(oo) The use of fraud or deceit in connection with taking or assisting another person in taking a licensure examination.

Sec. 2. Section 32-3253, Arizona Revised Statutes, as amended by Laws 2012, chapter 321, section 70, is amended to read:

32-3253. Powers and duties

A. The board shall:

1. Adopt rules consistent with and necessary or proper to carry out the purposes of this chapter.

2. Administer and enforce this chapter, rules adopted pursuant to this chapter and orders of the board.

3. Issue a license by examination, reciprocity or temporary recognition to, and renew the license of, each person who is qualified to be licensed pursuant to this chapter. The board must issue or deny a license within one hundred eighty days after the applicant submits a completed application.

4. Establish a licensure fee schedule annually, by a formal vote at a regular board meeting.

5. Collect fees and spend monies.

6. Keep a record of all persons licensed pursuant to this chapter, actions taken on all applications for licensure, actions involving renewal, suspension, revocation or denial of a license or probation of licensees and the receipt and disbursal of monies.

7. Adopt an official seal for attestation of licensure and other official papers and documents.

8. Subject to title 41, chapter 4, article 4, employ personnel as it deems necessary.

9. Conduct investigations and determine on its own motion if a licensee or an applicant has engaged in unprofessional conduct, is incompetent or is mentally or physically unable to engage in the practice of behavioral health.

10. Conduct disciplinary actions pursuant to this chapter and board rules.

11. Establish and enforce standards or criteria of programs or other mechanisms to ensure the continuing competence of licensees.

12. Establish and enforce compliance with professional standards and rules of conduct for licensees.

13. Engage in a full exchange of information with the licensing and disciplinary boards and professional associations for behavioral health professionals in this state and other jurisdictions.

14. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

15. ADOPT RULES REGARDING THE USE OF TELEPRACTICE BEGINNING ON NOVEMBER 1, 2015.

B. The board may join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of behavioral health, protect the health and welfare of the public or assist and facilitate the work of the board.

C. The board may establish a confidential program for the monitoring of licensees who are chemically dependent and who enroll in a rehabilitation program that meets the criteria prescribed by the board. The board may take further action if a licensee refuses to enter into a stipulated agreement or fails to comply with the terms of a stipulated agreement. In order to protect the public health and safety, the confidentiality requirements of this subsection do not apply if a licensee does not comply with the stipulated agreement.

Sec. 3. Section 32-3253, Arizona Revised Statutes, as amended by Laws 2013, chapter 242, section 3, is amended to read:

32-3253. Powers and duties

A. The board shall:

1. Adopt rules consistent with and necessary or proper to carry out the purposes of this chapter.

2. Administer and enforce this chapter, rules adopted pursuant to this chapter and orders of the board.

3. Issue a license by examination, endorsement or temporary recognition to, and renew the license of, each person who is qualified to be licensed pursuant to this chapter. The board must issue or deny a license within one hundred eighty days after the applicant submits a completed application.

4. Establish a licensure fee schedule annually, by a formal vote at a regular board meeting.

5. Collect fees and spend monies.

6. Keep a record of all persons licensed pursuant to this chapter, actions taken on all applications for licensure, actions involving renewal, suspension, revocation or denial of a license or probation of licensees and the receipt and disbursal of monies.

7. Adopt an official seal for attestation of licensure and other official papers and documents.

8. Conduct investigations and determine on its own motion if a licensee or an applicant has engaged in unprofessional conduct, is incompetent or is mentally or physically unable to engage in the practice of behavioral health.

9. Conduct disciplinary actions pursuant to this chapter and board rules.

10. Establish and enforce standards or criteria of programs or other mechanisms to ensure the continuing competence of licensees.

11. Establish and enforce compliance with professional standards and rules of conduct for licensees.

12. Engage in a full exchange of information with the licensing and disciplinary boards and professional associations for behavioral health professionals in this state and other jurisdictions.

13. Subject to section 35-149, accept, expend and account for gifts, grants, devises and other contributions, money or property from any public or private source, including the federal government. Monies received under this paragraph shall be deposited, pursuant to sections 35-146 and 35-147, in special funds for the purpose specified, which are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

14. Adopt rules regarding the application for and approval of educational curricula of regionally accredited colleges or universities with a program not otherwise accredited by an organization or entity recognized by the board that are consistent with the requirements of this chapter and maintain a list of those programs. Approvals shall be valid for a period of five years if no changes of curricula are made that are inconsistent with the requirements of this chapter or board rule.

15. Maintain a registry of licensees who have met the educational requirements to provide supervision as required pursuant to this chapter to applicants in the same profession.

16. Adopt rules to allow approval of persons who wish to provide supervision pursuant to this chapter and who are not licensed by the board and who are licensed in a profession other than the profession in which the applicant is seeking licensure.

17. Recognize not more than four hundred hours of psychoeducation for work experience required pursuant to sections 32-3293, 32-3301, 32-3311 and 32-3321.

18. ADOPT RULES REGARDING THE USE OF TELEPRACTICE BEGINNING ON NOVEMBER 1, 2015.

B. The board may join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of behavioral health, protect the health and welfare of the public or assist and facilitate the work of the board.

C. The board may enter into stipulated agreements with a licensee for the confidential treatment, rehabilitation and monitoring of chemical dependency or ~~medical,~~ psychiatric, psychological or behavioral health disorders in a program provided pursuant to subsection D of this section. A licensee who materially fails to comply with a program shall be terminated from the confidential program. Any records of the licensee who is terminated from a confidential program are no longer confidential or exempt from the public records law, notwithstanding any law to the contrary. Stipulated agreements are not public records if the following conditions are met:

1. The licensee voluntarily agrees to participate in the confidential program.

2. The licensee complies with all treatment requirements or recommendations including participation in approved programs.

3. The licensee refrains from professional practice until the return to practice has been approved by the treatment program and the board.

4. The licensee complies with all monitoring requirements of the stipulated agreement, including random bodily fluid testing.

5. The licensee's professional employer is notified of the licensee's chemical dependency or medical, psychiatric, psychological or behavioral health disorders and participation in the confidential program and is provided a copy of the stipulated agreement.

D. The board shall establish a confidential program for the monitoring of licensees who are chemically dependent or who have ~~medical,~~ psychiatric, psychological or behavioral health disorders that may impact their ability to safely practice and who enroll in a rehabilitation program that meets the criteria prescribed by the board. The licensee shall be responsible for the costs associated with rehabilitative services and monitoring. The board may take further action if a licensee refuses to enter into a stipulated agreement or fails to comply with the terms of a stipulated agreement. In order to protect the public health and safety, the confidentiality requirements of this subsection do not apply if a licensee does not comply with the stipulated agreement.

E. The board shall audio record all meetings and maintain all audio and video recordings or stenographic records of interviews and meetings for a period of three years from when the record was created.

Sec. 4. Title 32, chapter 33, article 1, Arizona Revised Statutes, is amended by adding section 32-3256, to read:

32-3256. Executive director; complaints; dismissal; review

A. IF DELEGATED BY THE BOARD, THE EXECUTIVE DIRECTOR MAY DISMISS A COMPLAINT IF THE INVESTIGATIVE STAFF'S REVIEW INDICATES THAT THE COMPLAINT IS WITHOUT MERIT AND THAT DISMISSAL IS APPROPRIATE.

B. AT EACH REGULARLY SCHEDULED BOARD MEETING, THE EXECUTIVE DIRECTOR SHALL PROVIDE TO THE BOARD A LIST OF EACH COMPLAINT THE EXECUTIVE DIRECTOR DISMISSED PURSUANT TO SUBSECTION A OF THIS SECTION SINCE THE LAST BOARD MEETING.

C. A PERSON WHO IS AGGRIEVED BY AN ACTION TAKEN BY THE EXECUTIVE DIRECTOR PURSUANT TO SUBSECTION A OF THIS SECTION MAY FILE A WRITTEN REQUEST THAT THE BOARD REVIEW THAT ACTION. THE REQUEST MUST BE FILED WITHIN THIRTY DAYS AFTER THAT PERSON IS NOTIFIED OF THE EXECUTIVE DIRECTOR'S ACTION BY PERSONAL DELIVERY OR, IF THE NOTIFICATION IS MAILED TO THAT PERSON'S LAST KNOWN RESIDENCE OR PLACE OF BUSINESS, WITHIN THIRTY-FIVE DAYS AFTER THE DATE ON THE NOTIFICATION. AT THE NEXT REGULAR BOARD MEETING, THE BOARD SHALL REVIEW THE EXECUTIVE DIRECTOR'S ACTION AND, ON REVIEW, SHALL APPROVE, MODIFY OR REJECT THE EXECUTIVE DIRECTOR'S ACTION.

Sec. 5. Section 32-3261, Arizona Revised Statutes, as added by Laws 2013, chapter 242, section 7, is amended to read:

32-3261. Academic review committees; members; appointment; qualifications; terms; compensation; immunity; training

A. The board ~~may~~ SHALL establish an academic review committee for each professional area licensed pursuant to this chapter to do the following:

1. Review applications referred to the committee by the board or the executive director to determine~~:~~

~~(a) If~~ whether an applicant, whose curriculum has not been approved pursuant to section 32-3253, subsection A, paragraph ~~15~~ 14 or whose program is not accredited by an organization or entity approved by the board, has met the educational requirements of this chapter or board rules.

~~(b)~~ 2. ~~If~~ ON REFERRAL BY THE EXECUTIVE DIRECTOR, MAKE RECOMMENDATIONS TO THE BOARD REGARDING WHETHER an applicant has met the requirements of SUPERVISED work ~~supervision~~ EXPERIENCE required for licensure pursuant to this chapter or board rules.

~~2.~~ 3. Make specific findings concerning an application's deficiencies ~~and make recommendations to the board regarding the manner in which the deficiencies can be addressed~~.

~~3.~~ 4. Review ~~requests~~ APPLICATIONS and make recommendations to the board for curriculum approval applications made pursuant to section 32-3253, SUBSECTION A, PARAGRAPH 14.

~~4.~~ 5. At the request of the board, make recommendations regarding examinations required pursuant to this chapter.

6. REVIEW APPLICATIONS FOR AND MAKE DETERMINATIONS REGARDING EXEMPTIONS RELATED TO CLINICAL SUPERVISION REQUIREMENTS.

B. An academic review committee shall be composed of three members who have been residents of this state for at least one year before appointment, at least one but not more than two of whom are licensed IN THE PROFESSIONAL AREA pursuant to this chapter and have five years of experience in the applicable profession. At least one but not more than two members must have served within the previous ten years as core or full-time faculty at a regionally accredited college or university in a program related to the applicable profession AND HAVE EXPERIENCE IN THE DESIGN AND DEVELOPMENT OF THE CURRICULUM OF A RELATED PROGRAM. IF QUALIFIED, A FACULTY MEMBER MAY SERVE ON MORE THAN ONE ACADEMIC REVIEW COMMITTEE. A BOARD MEMBER MAY NOT BE APPOINTED TO SERVE ON AN ACADEMIC REVIEW COMMITTEE.

C. COMMITTEE MEMBERS SHALL INITIALLY BE APPOINTED BY THE BOARD. FROM AND AFTER JANUARY 1, 2016, THE GOVERNOR SHALL APPOINT THE COMMITTEE MEMBERS. A COMMITTEE MEMBER WHO IS INITIALLY APPOINTED BY THE BOARD MAY BE REAPPOINTED BY THE GOVERNOR. A COMMITTEE MEMBER WHO IS INITIALLY APPOINTED BY THE BOARD SHALL CONTINUE TO SERVE UNTIL APPOINTED OR REPLACED BY THE GOVERNOR.

~~C.~~ D. Committee members serve at the pleasure of the ~~board~~ GOVERNOR for terms of three years. A member shall not serve more than two full consecutive terms. ~~The board shall stagger the terms of members.~~

~~D.~~ E. Committee members are eligible to receive compensation of not more than eighty-five dollars for each ~~eight hours~~ DAY actually and necessarily spent in the performance of their duties.

~~E.~~ F. An academic review committee shall annually elect a chairman and secretary from its membership.

~~F.~~ G. Committee members are personally immune from suit with respect to all acts done and actions taken in good faith and in furtherance of the purposes of this chapter.

~~G.~~ H. COMMITTEE MEMBERS SHALL RECEIVE AT LEAST FIVE HOURS OF TRAINING AS PRESCRIBED BY THE BOARD WITHIN ONE YEAR AFTER THE MEMBER IS INITIALLY APPOINTED AND THAT INCLUDES INSTRUCTION IN ETHICS AND OPEN MEETING REQUIREMENTS.

Sec. 6. Section 32-3274, Arizona Revised Statutes, is amended to read:

32-3274. Licensure by endorsement

A. The board may issue a license by endorsement to a person in that person's particular behavioral health profession if the person is licensed or certified by the regulatory agency of one or more other states 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. The person is currently licensed or certified in behavioral health by the regulatory agency of one or more other states and each license or certification is current and in good standing.

2. The person has been licensed or certified in the discipline applied for and at the same practice level as determined by the board for a minimum of three years.

3. The person was engaged in the practice of behavioral health in one or more states issuing the license or certification used by the person to qualify for a license by endorsement pursuant to this section for a minimum of three thousand six hundred hours in a period of not more than five years prior to applying for licensure by endorsement. The three thousand six hundred hours must be in the discipline and at least in the practice level for which the person is applying. A PERSON WHO WAS ENGAGED IN THE PRACTICE OF BEHAVIORAL HEALTH WHILE APPOINTED UNDER 38 UNITED STATES CODE SECTION 7402(b)(9), (10) OR (11) OR A PERSON WHO MEETS THE LICENSURE REQUIREMENTS OF 10 UNITED STATES CODE SECTION 1094 AND PERFORMS AUTHORIZED DUTIES FOR THE UNITED STATES DEPARTMENT OF DEFENSE MAY SUBMIT BEHAVIORAL HEALTH PRACTICE OUTSIDE THE STATE OR STATES ISSUING THE LICENSE OR CERTIFICATION.

~~4. The person met the education, work experience and clinical supervision requirements in effect at the time the person was licensed or certified by the regulatory agency of the other state or states and the licensing or certifying agency of the other state or states verifies that the~~

~~person met those requirements in order to be licensed or certified in the other state or states.~~

~~5.~~ 4. The person passed an examination required for the license sought pursuant to article 5, 6, 7 or 8 of this chapter.

~~6.~~ 5. The person meets the basic requirements for licensure prescribed by section 32-3275.

~~7.~~ 6. The person submits to the board a notarized affidavit listing every jurisdiction in the United States in which the person has been licensed or certified in the practice of behavioral health and any disciplinary action taken by any regulatory agency or any instance in which a license has been surrendered in lieu of discipline and verification of licensure or certification from every state in which the person is licensed or certified for the particular health profession for which the person applies.

B. In addition to the requirements of subsection A of this section, a person seeking license by endorsement for the following practice levels must have earned a master's or higher degree in the applicable field of practice granted by a regionally accredited college or university:

1. Licensed clinical social worker.
2. Licensed professional counselor.
3. Licensed marriage and family therapist.
4. Licensed independent substance abuse counselor.

C. Except for licenses by endorsement issued in the practice levels prescribed in subsection B of this section, a person issued a license pursuant to this section shall practice behavioral health only under the direct supervision of a licensee.

D. The board by rule may prescribe a procedure to issue licenses pursuant to this section.

Sec. 7. Section 32-3281, Arizona Revised Statutes, is amended to read:

32-3281. <u>Disciplinary action; investigations; hearings; civil penalty; timely complaints; burden of proof</u>

A. The board, on its own motion or on a complaint, may investigate any evidence that appears to show that a licensee is or may be incompetent, is or may be guilty of unprofessional conduct or is or may be mentally or physically unable to safely engage in the practice of behavioral health. As part of its investigation, the board may hold an investigational meeting pursuant to this chapter. Any person may, and a licensee and any entity licensed by the office of behavioral health licensure shall, report to the board any information that would cause a reasonable licensee to believe that another licensee is guilty of unprofessional conduct or is physically or mentally unable to provide behavioral health services competently or safely. Any person or entity that reports or provides information to the board in good faith is not subject to an action for civil damages. It is an act of unprofessional conduct for any licensee to fail to report as required by this section. The board shall report to the office of behavioral health licensure in the department of health services any entity licensed by the office of

behavioral health licensure that fails to report as required by this section. For complaints related to conduct that is inconsistent with professional standards or ethics, scope of practice or standard of care, the board may consult with one or more licensed or retired behavioral health professionals of the same profession as the licensee to review complaints and make recommendations to the board.

B. On determination of reasonable cause the board shall require, at the licensee's own expense, any combination of mental, physical or psychological examinations, assessments or skills evaluations necessary to determine the licensee's competence or ability to safely engage in the practice of behavioral health and conduct necessary investigations, including investigational interviews between representatives of the board and the licensee, to fully inform itself with respect to any information filed with the board under subsection A of this section. These examinations may include biological fluid testing. The board may require the licensee, at the licensee's expense, to undergo assessment by a rehabilitative, retraining or assessment program approved by the board.

C. If the board finds, based on the information received pursuant to subsection A or B of this section, that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the board may restrict, limit or order a summary suspension of a license pending proceedings for revocation or other action. If the board takes action pursuant to this subsection, it must also serve the licensee with a written notice that states the charges and that the licensee is entitled to a formal hearing before the board or an administrative law judge within sixty days.

D. If after completing an investigation the board finds that the information provided is not of sufficient seriousness to merit disciplinary action against the licensee, the board shall either:

1. Dismiss the complaint if, in the opinion of the board, the complaint is without merit.

2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the 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.

E. A complaint dismissed by the board pursuant to subsection D, paragraph 1 of this section is not a complaint of unprofessional conduct and shall not be disclosed by the board as a complaint on the licensee's complaint history.

F. If after completing its investigation the board believes that the information is or may be true, the board may enter into a consent agreement with the licensee to limit or restrict the licensee's practice or to

rehabilitate the licensee, protect the public and ensure the licensee's ability to safely engage in the practice of behavioral health. A consent agreement may also require the licensee to successfully complete a board approved rehabilitative, retraining or assessment program.

G. If the board finds that the information provided pursuant to subsection A of this section is or may be true, the board may request a formal interview with the licensee. If the licensee refuses the invitation for a formal interview or accepts and the results indicate that grounds may exist for revocation or suspension of the licensee's license for more than twelve months, the board shall issue a formal complaint and order that a hearing be held pursuant to title 41, chapter 6, article 10. If after completing a formal interview the board finds that the protection of the public requires emergency action, the board may order a summary suspension of the licensee's license pending formal revocation proceedings or other action authorized by this section.

H. If after completing the formal interview the board finds the information provided is not of sufficient seriousness to merit suspension for more than twelve months or revocation of the license, the board may take the following actions:

1. Dismiss if, in the opinion of the board, the information is without merit.

2. File a letter of concern and dismiss the complaint. The licensee may file a written response with the board within thirty days after the licensee receives the letter of concern.

3. Issue a decree of censure. A decree of censure is an official action against the licensee's license and may include a requirement for restitution of fees to a client resulting from violations of this chapter or rules adopted pursuant to this chapter.

4. Fix a period and terms of probation best adapted to protect the public health and safety and rehabilitate or educate the licensee concerned. Probation may include temporary suspension not to exceed twelve months, restriction of the licensee's license to practice behavioral health, a requirement for restitution of fees to a client or education or rehabilitation at the licensee's own expense. If a licensee fails to comply with the terms of probation, the board shall serve the licensee with a written notice that states that the licensee is subject to a formal hearing based on the information considered by the board at the formal interview and any other acts or conduct alleged to be in violation of this chapter or rules adopted by the board pursuant to this chapter, including noncompliance with the terms of probation or a consent agreement.

5. 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 in subsection A or G of this section warrants suspension or revocation of a license issued under this chapter, the board shall initiate formal proceedings pursuant to title 41, chapter 6, article 10.

J. In a formal interview pursuant to subsection G of this section or in a hearing pursuant to subsection I of this section, the board in addition to any other action may impose a civil penalty not to exceed one thousand dollars for each violation of this chapter or a rule adopted under this chapter.

K. A letter of concern is a public document.

L. A licensee who after a formal hearing is found by the board to be guilty of unprofessional conduct, to be mentally or physically unable to safely engage in the practice of behavioral health or to be professionally incompetent is subject to censure, probation as provided in this section, suspension of license or revocation of license or any combination of these, including a stay of action, and for a period of time or permanently and under conditions as the board deems appropriate for the protection of the public health and safety and just in the circumstance. The board may charge all costs incurred in the course of the investigation and formal hearing to the licensee it finds is in violation of this chapter. The board shall deposit, pursuant to sections 35-146 and 35-147, monies collected pursuant to this subsection in the board of behavioral health examiners fund established by section 32-3254.

M. If the board during the course of any investigation determines that a criminal violation may have occurred involving the delivery of behavioral health services, the board shall make the evidence of violations available to the appropriate criminal justice agency for its consideration.

N. The board shall deposit, pursuant to sections 35-146 and 35-147, all monies collected from civil penalties paid pursuant to this chapter in the state general fund.

O. Notice of a complaint and hearing is effective by a true copy of the notice being sent by certified mail to the licensee's last known address of record in the board's files. Notice of the complaint and hearing is complete on the date of its deposit in the mail.

P. In determining the appropriate disciplinary action under this section, the board shall consider all previous nondisciplinary and disciplinary actions against a licensee.

Q. The board may defer action with regard to an impaired licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing to practice restrictions and treatment and monitoring programs deemed necessary by the board to protect the public health and safety. A licensee who is impaired and who does not agree to enter into an agreement with the board is subject to other action as provided pursuant to this chapter.

R. Subject to an order duly entered by the board, a person whose license to practice behavioral health has been suspended or restricted

pursuant to this chapter, whether voluntarily or by action of the board, may at reasonable intervals apply to the board for reinstatement of the license. The person shall submit the application in writing and in the form prescribed by the board. After conducting an investigation and hearing, the board may grant or deny the application or modify the original finding to reflect any circumstances that have changed sufficiently to warrant modification. The board may require the applicant to pass an examination or complete board imposed continuing education requirements or may impose any other sanctions the board deems appropriate for reentry into the practice of behavioral health.

S. A person whose license is revoked, suspended or not renewed must return the license to the offices of the board within ten days after notice of that action.

T. The board may enforce a civil penalty imposed pursuant to this section in the superior court in Maricopa county.

U. For complaints being brought before the full board, the information released to the public regarding an ongoing investigation must clearly indicate that the investigation is a pending complaint and must include the following statement:

> Pending complaints represent unproven allegations. On investigation, many complaints are found to be without merit or not of sufficient seriousness to merit disciplinary action against the licensee and are dismissed.

V. The board shall not act on any complaint in which an allegation of unprofessional conduct or any other violation of this chapter occurred more than seven years before the complaint is received by the board. The time limitation does not apply to malpractice settlements or judgments.

W. The board shall not open an investigation if identifying information regarding the complainant is not provided.

X. Except for disciplinary matters ~~brought pursuant to~~ PRESCRIBED BY section 32-3251, paragraph ~~15~~ 16, subdivision (v), the board has the burden of proof by clear and convincing evidence for disciplinary matters brought pursuant to this chapter.

Sec. 8. Section 32-3311, Arizona Revised Statutes, as amended by Laws 2013, chapter 242, section 20, is amended to read:

32-3311. Licensed marriage and family therapist; licensure; qualifications

A. A person who wishes to be licensed by the board to engage in the practice of marriage and family therapy as a licensed marriage and family therapist shall furnish documentation as prescribed by the board by rule that the person has:

1. Earned a master's or doctorate degree in behavioral science, including, but not limited to, marriage and family therapy, psychology, sociology, counseling and social work, granted by a regionally accredited college or university in a program accredited by the commission on

accreditation for marriage and family therapy education or a degree based on a program of study that the board determines is substantially equivalent.

2. Completed three thousand two hundred hours of post-master's degree experience IN NOT LESS THAN TWENTY-FOUR MONTHS in the practice of marriage and family therapy under supervision that meets the requirements prescribed by the board by rule, including at least one thousand hours of clinical experience with couples and families, at least one thousand six hundred hours of direct client contact and not more than one thousand six hundred hours of indirect client service. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.

3. Passed an examination approved by the board.

B. The curriculum for the master's or doctorate degree in behavioral science accepted by the board pursuant to subsection A, paragraph 1 of this section shall include a specified number of graduate courses as prescribed by the board by rule and shall be consistent with national standards of marriage and family therapy. Part of this course of study may be taken in a post-master's degree program as approved by the board.

C. The one thousand hours of clinical experience required by subsection A, paragraph 2 of this section shall include a combination of ~~two~~ ONE hundred hours of group or individual supervision in the practice of marriage and family therapy. The one thousand hours may include one year in an approved marriage and family internship program.

Sec. 9. Section 32-3321, Arizona Revised Statutes, as amended by Laws 2013, chapter 242, section 21, is amended to read:

32-3321. Licensed substance abuse technician; licensed associate substance abuse counselor; licensed independent substance abuse counselor; licensure; qualifications; supervision

A. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed substance abuse technician shall present documentation as prescribed by the board by rule that the person has:

1. Received one of the following:

(a) An associate degree in chemical dependency or substance abuse with an emphasis on counseling, that meets the requirements as prescribed by the board by rule, from a regionally accredited college or university.

(b) Beginning January 1, 2009, a bachelor's degree in a behavioral science with an emphasis on counseling, that meets the requirements as prescribed by the board by rule, from a regionally accredited college or university.

2. Passed an examination approved by the board.

B. A licensed substance abuse technician shall only practice under direct supervision as prescribed by the board.

C. The board may waive the education requirement for an applicant requesting licensure as a substance abuse technician if the applicant provides services pursuant to contracts or grants with the federal government under the authority of Public Law 93-638 (25 United States Code sections 450 through 450(n)) or Public Law 94-437 (25 United States Code sections 1601 through 1683). A person who becomes licensed as a substance abuse technician pursuant to this subsection shall only provide substance abuse services to those persons who are eligible for services pursuant to Public Law 93-638 (25 United States Code sections 450 through 450(n)) or Public Law 94-437 (25 United States Code section 1601 through 1683).

D. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed associate substance abuse counselor shall present evidence as prescribed by the board by rule that the person has:

1. Received one of the following:

(a) A bachelor's degree in a behavioral science with an emphasis on counseling, that meets the requirements as prescribed by the board by rule, from a regionally accredited college or university and present documentation as prescribed by the board by rule that the applicant has received at least three thousand two hundred hours of work experience IN NOT LESS THAN TWENTY-FOUR MONTHS in substance abuse counseling under supervision that meets the requirements prescribed by the board by rule. The three thousand two hundred hours must include a minimum of one thousand six hundred hours of direct client contact and not more than one thousand six hundred hours of indirect client service. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.

(b) A master's degree or a higher degree in a behavioral science with an emphasis on counseling, as prescribed by the board by rule, from a regionally accredited college or university.

2. Passed an examination approved by the board.

E. A licensed associate substance abuse counselor shall only practice under direct supervision as prescribed by the board.

F. A person who wishes to be licensed by the board to engage in the practice of substance abuse counseling as a licensed independent substance abuse counselor shall:

1. Have received a master's degree or higher degree in a behavioral science with an emphasis on counseling, in a program that is approved by the board pursuant to section 32-3253 or that meets the requirements as prescribed by the board by rule, from a regionally accredited college or university.

2. Present documentation as prescribed by the board by rule that the applicant has received at least three thousand two hundred hours of work experience IN NOT LESS THAN TWENTY-FOUR MONTHS in substance abuse counseling

under supervision that meets the requirements as prescribed by the board by rule. The three thousand two hundred hours must include at least one thousand six hundred hours of direct client contact and not more than one thousand six hundred hours of indirect client service. For the direct client contact hours, not more than four hundred hours may be in psychoeducation. The board by rule may prescribe the number of hours required for functions related to direct client contact and indirect client service.

3. Pass an examination approved by the board.

Sec. 10. Rulemaking exemption; hearings; public comment

A. For the purposes of implementing this act, the board of behavioral health examiners is exempt from the rulemaking requirements of title 41, chapter 6, Arizona Revised Statutes, until November 1, 2016.

B. Notwithstanding subsection A of this section, the board shall allow interested parties to provide to the board written comments or testimony on proposed rules as provided in section 41-1023, Arizona Revised Statutes, and shall adequately address those comments as provided in section 41-1052, subsection D, Arizona Revised Statutes, including comments or testimony concerning the information contained in the economic, small business and consumer impact statement. The board shall prepare a mailing list of persons who wish to be notified of hearings relating to proposed rule changes. The board shall hold at least two public hearings on its proposed rules before adoption and shall testify before the joint legislative budget committee regarding the proposed rules.

Sec. 11. Effective date

The following sections, as amended by this act, are effective from and after October 31, 2015:

1. Section 32-3253, Arizona Revised Statutes, as amended by Laws 2013, chapter 242, section 3.

2. Section 32-3261, Arizona Revised Statutes, as added by Laws 2013, chapter 242, section 7.

3. Section 32-3311, Arizona Revised Statutes, as amended by Laws 2013, chapter 242, section 20.

4. Section 32-3321, Arizona Revised Statutes, as amended by Laws 2013, chapter 242, section 21.

APPROVED BY THE GOVERNOR APRIL 1, 2015.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 2, 2015.

Passed the House March 23, 2015,

by the following vote: 57 Ayes,

0 Nays, 3 Not Voting

Speaker of the House

Chief Clerk of the House

Passed the Senate February 16, 2015,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20_____,

at _____ o'clock _____ M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

S.B. 1212

SENATE CONCURS IN HOUSE AMENDMENTS AND FINAL PASSAGE

Passed the Senate March 25, 2015

by the following vote: 30 Ayes,

1 Nays, 1 Not Voting

President of the Senate

Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill received by the Governor this

26th day of March, 2015

at 8:47 o'clock P. M.

Secretary to the Governor

Approved this 1st day of

April

at 3:18 o'clock P. M.

Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill received by the Secretary of State

this 2 day of April, 2015

at 9:00 o'clock A M.

Secretary of State

S.B. 1212