

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

Editor's Note: The following Notice of Proposed Rulemaking was reviewed per Executive Order 2011-05 as issued by Governor Brewer. (See the text of the executive order on page 813.) The Governor's Office authorized the notice to proceed through the rulemaking process on June 22, 2011.

[R12-28]

PREAMBLE

1. Article, Part, or Section Affected (as applicable) Rulemaking Action

Article 4	New Article
R4-26-401	New Section
R4-26-402	New Section
R4-26-403	New Section
R4-26-404	New Section
R4-26-405	New Section
R4-26-406	New Section
R4-26-407	New Section
R4-26-409	New Section
R4-26-410	New Section
R4-26-411	New Section
R4-26-412	New Section
R4-26-413	New Section
R4-26-414	New Section
R4-26-415	New Section
R4-26-416	New Section
R4-26-417	New Section
R4-26-418	New Section

2. Citations to the agency's statutory rulemaking authority to include the authorizing statute (general) and the implementing statute (specific):

Authorizing statute: A.R.S. § 32-2063(A)(3) and (9)

Implementing statute: A.R.S. §§ 32-2091 through 32-2091.14

3. Citations to all related notices published in the *Register* as specified in R1-1-409(A) that pertain to the record of the proposed rule:

Notice of Rulemaking Docket Opening: 17 A.A.R. 2502, December 16, 2011

4. The agency's contact person who can answer questions about the rulemaking:

Name: Dr. Cindy Olvey, Executive Director

Address: Board of Psychologist Examiners
1400 W. Washington St., Suite 235
Phoenix, AZ 85007

Telephone: (602) 542-8162

Fax: (602) 542-8279

E-mail: Cindy.Olvey@psychboard.az.gov

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Web site: www.psychboard.az.gov

5. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:

Under Laws 2008, Ch. 288, § 2, the legislature required, beginning January 1, 2011, a person who practices as a behavior analyst in Arizona must be licensed under A.R.S. Title 32, Chapter 19.1, Article 4. The Board has been licensing behavior analysts since January 1, 2011, under a waiver provided by Laws 2010, Ch. 299, § 2, if the behavior analyst meets certain specified conditions. The waiver ends August 15, 2012. This rulemaking will complement the newly enacted statute.

The fees in subsections (A)(2) through (4) will be in effect on January 1, 2013. Through December 31, 2012, the Board shall continue to collect the current fees of \$400 for issuance of an initial license and renewal of an active license and \$50 for renewal of an inactive license.

This rulemaking was authorized under an exception to the rulemaking moratorium provided by e-mail from Steven Killian, Assistant Policy Advisor, on June 22, 2011.

6. A reference to any study relevant to the rule that the agency reviewed and proposes either to rely on or not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

None

7. A showing of good cause why the rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

8. The preliminary summary of the economic, small business, and consumer impact:

The primary economic impact results from the legislature's decision to require a behavior analyst to be licensed before providing behavior analysis services in Arizona, specify the qualifications required for licensure, require payment of a licensing fee, and require completion of continuing education. This is a new profession regulated by the Board. Fees will be received from licensees and applicants to offset the cost of regulation. Costs resulting from these rules are costs associated with the Board implementing the statutory requirements. The rules require that an application be submitted for license and license renewal as well as specify continuing education requirements determined by the Board.

Fees associated with the legislative mandate are a cost of doing business that probably will be passed to users of behavior analysis services. Fees are more than offset by the benefits from being able to work as a behavior analyst in Arizona.

9. The agency's contact person who can answer questions about the economic, small business, and consumer impact statement:

Name: Dr. Cindy Olvey, Executive Director
Address: Board of Psychologist Examiners
1400 W. Washington St., Suite 235
Phoenix, AZ 85007
Telephone: (602) 542-8162
Fax: (602) 542-8279
E-mail: Cindy.Olvey@psychboard.az.gov
Web site: www.psychboard.az.gov

10. The time, place, and nature of the proceedings to make, amend, repeal, or renumber the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

An oral proceeding regarding the proposed rules will be held as follows:

Date: Tuesday, May 1, 2012
Time: 10:00 a.m.
Location: Capitol Center Building
15 S. 15th Ave., Conference Room B
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on May 4, 2012.

11. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

None

a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:

The legislature specified that the Board issue licenses to qualified behavior analysts.

b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:

No federal law is applicable to these rules.

c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:

No analysis was submitted.

12. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

BACB Guidelines for Responsible Conduct for Behavior Analysts, July 2010, published by the BACB, 2888 Remington Green Lane, Suite C, Tallahassee, FL 32308, and available from the Board or at www.bacb.com. The material is incorporated at R4-26-406.

13. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 26. BOARD OF PSYCHOLOGIST EXAMINERS

ARTICLE 4. BEHAVIOR ANALYSTS

Section

<u>R4-26-401.</u>	<u>Definitions</u>
<u>R4-26-402.</u>	<u>Fees and Charges</u>
<u>R4-26-403.</u>	<u>Application for Initial License</u>
<u>R4-26-404.</u>	<u>License Examination</u>
<u>R4-26-405.</u>	<u>Coursework Requirement</u>
<u>R4-26-406.</u>	<u>Ethical Standard</u>
<u>R4-26-407.</u>	<u>License by Reciprocity</u>
<u>R4-26-408.</u>	<u>License Renewal</u>
<u>R4-26-409.</u>	<u>Continuing Education Requirement</u>
<u>R4-26-410.</u>	<u>Voluntary Inactive Status</u>
<u>R4-26-411.</u>	<u>License Reinstatement</u>
<u>R4-26-412.</u>	<u>Client Records</u>
<u>R4-26-413.</u>	<u>Change of Name, Mailing Address, E-mail Address, or Telephone Number</u>
<u>R4-26-414.</u>	<u>Complaints and Investigations</u>
<u>R4-26-415.</u>	<u>Informal Interview</u>
<u>R4-26-416.</u>	<u>Rehearing or Review of Decision</u>
<u>R4-26-417.</u>	<u>Licensing Time-frames</u>
<u>R4-26-418.</u>	<u>Mandatory Reporting Requirement</u>

ARTICLE 4. BEHAVIOR ANALYSTS

R4-26-401. Definitions

A. The definitions in A.R.S. § 32-2091 apply in this Article.

B. Additionally, in this Article:

1. "Advertising" means any media used to disseminate information regarding the qualifications of a behavior analyst in order to solicit clients for behavior analysis services, regardless of whether the behavior analyst pays for the advertising.
2. "Applicant" means an individual who applies to the Board for an initial or renewal license.
3. "BACB" means the Behavior Analyst Certification Board.
4. "Confidential information" means:
 - a. Minutes of an executive session of the Board except as provided under A.R.S. § 38-431.03(B);

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- b. A record that is classified as confidential by a statute or rule applicable to the Board;
- c. Materials relating to an investigation by the Board, including a complaint, response, client record, witness statement, investigative report, and any information relating to a client's diagnosis, treatment, or personal family life; and
- d. The following regarding an applicant or licensee:
 - i. College or university transcripts if requested by a person other than the applicant or licensee;
 - ii. Home address and telephone number and e-mail address;
 - iii. Test scores;
 - iv. Date of birth; and
 - v. Social Security number.
- 5. "Gross negligence" means an extreme departure from the ordinary standard of care.
- 6. "Inactive status" means a behavior analyst maintains a license as a behavior analyst but is prohibited from practicing behavior analysis or holding oneself out as practicing behavior analysis in Arizona.
- 7. "License period" means the two years between May 1 of one odd-numbered year and April 30 of the next odd-numbered year.
- 8. "Mitigating circumstances that prevent resolution" means factors the Board considers in reviewing allegations against an applicant or licensee of unprofessional conduct occurring in another regulatory jurisdiction when the allegations would not prohibit licensure in Arizona. The factors may include:
 - a. Nature of the alleged conduct,
 - b. Severity of the alleged conduct,
 - c. Recentness of the alleged conduct,
 - d. Actions taken by the applicant to remedy potential violations, and
 - e. Whether the alleged conduct was an isolated incident or part of a recurring pattern.
- 9. "Party" means the Board, an applicant, a licensee, or the state.
- 10. "Psychometric testing materials" means manuals, instruments, protocols, and questions or stimuli used in testing.
- 11. "Raw test data" means test scores, client responses to test questions or stimuli, and a behavior analyst's notes and recordings concerning client statements and behavior during examination.
- 12. "Recognized accrediting agency" means a regional accrediting agency recognized by the U.S. Department of Education or a quality assurance or accreditation entity authorized to operate by a foreign government.
- 13. "Regulatory jurisdiction" means a state or territory of the United States, the District of Columbia, or a foreign country with authority to grant or deny entry into a profession or occupation.
- 14. "Supervised experience" means supervised work experience, independent fieldwork, university practicum, or intensive university practicum.

R4-26-402. Fees and Charges

- A.** As specifically authorized by A.R.S. §§ 32-2091.01(A) and 32-2091.07(B), the Board establishes and shall collect the following fees:
 - 1. Application for an active license: \$350,
 - 2. Renewal of an active license: \$500,
 - 3. Renewal of an inactive license: \$85,
 - 4. Issuance of an initial license: \$500, and
 - 5. Reinstatement of expired license: \$200.
- B.** As specifically authorized by A.R.S. § 32-2091.01(B), the Board establishes and shall collect the following charges for the services specified:
 - 1. Duplicate license: \$25;
 - 2. Duplicate renewal receipt: \$5;
 - 3. Copy of the Board's statutes and rules: \$5;
 - 4. Verification of a license: \$2;
 - 5. Audio recording of a Board meeting: \$10 per meeting;
 - 6. Electronic medium containing the name and address of all licensees: \$.05 per name;
 - 7. Customized electronic medium containing the name and address of all licensees: \$.25 per name;
 - 8. Customized electronic medium: \$.35 per name; and
 - 9. Copy of Board records, letters, minutes, applications, files, policy statements, and other non-confidential documents: \$.25 per page.
- C.** Except as provided by law, including A.R.S. § 41-1077, the fees listed in subsection (A) are not refundable.

R4-26-403. Application for Initial License

- A.** An individual who wishes to practice as a behavior analyst and is qualified under A.R.S. § 32-2091.02 shall submit an application form, which is available from the Board office and on its web site, and provide the following information:

1. Full name;
2. Other names by which the applicant is or ever has been known;
3. Home address and telephone number;
4. Business name and address;
5. Work telephone and fax numbers;
6. E-mail address;
7. Gender;
8. Date of birth;
9. Social Security number;
10. An indication of the address and telephone number to be listed in the agency's public directory and used in correspondence;
11. Place of birth;
12. A statement of whether the applicant:
 - a. Is or ever has been licensed or certified as a behavior analyst in any regulatory jurisdiction and if so, the jurisdictions and license numbers;
 - b. Is or ever has been certified as a behavior analyst by the BACB and if so, the date of original certification and if not, whether the applicant has ever taken the examination required under R4-26-404;
 - c. Is or ever has been licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is or ever has been a member of a hospital staff or provider panel and if so, the name of the hospital or provider and dates of service;
 - e. Is or ever has been a member of a professional association and if so, the name of the professional association and dates of membership;
 - f. Has ever had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has ever voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has ever resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the applicant was investigated or adjudicated;
 - i. Is or ever has been under investigation by any professional organization, health care institution, provider panel of which the applicant is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist examiners, concerning the ethical propriety or legality of the applicant's conduct and if so, the entity doing and dates of the investigation;
 - j. Has ever been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the applicant's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has ever been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has ever been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Is currently addicted to alcohol or another drug that in any way impairs or limits the applicant's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the applicant's ability to practice behavior analysis safely and competently;
13. Name and address of every institution of higher learning attended, dates attended, degree received, name of department, and major subject area studied;
14. Title of graduate degree program;
15. Name of major advisor and department;
16. Title of thesis or dissertation, if applicable;
17. Title of specialty area, if applicable;
18. A statement of whether:
 - a. The graduate program completed was accredited at the time of graduation and if so, the name of the accrediting agency;
 - b. The applicant completed a minimum of 225 classroom hours of graduate-level instruction that meet the standards prescribed under R4-26-405; and

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- c. The applicant completed degree, coursework, and supervised experience after January 1, 2000, and if so, whether the applicant completed 1,500 hours of supervised experience in the practice of behavior analysis in no less than 12 months; or
- d. The applicant completed degree, coursework, or supervised experience before January 1, 2000, and if so, whether:
 - i. The coursework or supervised experience occurred in a setting outside of a college or university program;
 - ii. The coursework or supervised experience was acquired after the graduate degree program and before January 1, 2000; and
 - iii. The applicant is certified by the BACB;
- 19. A list of the applicant's supervised experience and the names of individuals the applicant has asked to complete verification forms under subsection (C);
- 20. A statement of whether the applicant has completed a minimum of 1,500 hours of supervised experience in behavior analysis that meets the requirements under A.R.S. § 32-2091.03;
- 21. A statement of whether the applicant's supervised experience included:
 - a. Conducting behavioral assessment and assessment activities related to the need for behavioral interventions;
 - b. Designing, implementing, and monitoring behavior analysis programs for clients;
 - c. Overseeing the implementation of behavior analysis programs by others; and
 - d. Performing or participating in other activities normally performed by a behavior analyst;
- 22. The applicant's attestation indicating that all statements in the application are true in every respect.
- B.** Additionally, an applicant shall submit:
 - 1. An original, un-retouched, passport-quality photograph that is no larger than 1.5 X 2 inches in size and taken no more than 60 days before the date of application;
 - 2. The application fee required under R4-26-402;
 - 3. As required under A.R.S. § 41-1080(A), the specified documentation of citizenship or alien status indicating the applicant's presence in the U.S. is authorized under federal law; and
 - 4. The Board's Mandatory Confidential Information form.
- C.** Additionally, an applicant shall ensure that the following is submitted directly to the Board:
 - 1. Verification that the applicant has passed the examination referenced in R4-26-404 submitted by the BACB;
 - 2. Verification of supervised experience submitted by an individual with direct knowledge of the supervised work experience, independent fieldwork, university practicum, or intensive university practicum;
 - 3. Official transcripts from all graduate institutions attended submitted by the institutions; and
 - 4. Verification of licensure, certification, or registration by another regulatory jurisdiction submitted by the regulatory jurisdiction.

R4-26-404. License Examination

- A.** To be licensed as a behavior analyst in Arizona, an individual shall take and pass the examination administered by the BACB as part of its certification process.
- B.** An individual who fails the BACB examination three times, regardless of jurisdiction, shall not take the examination again until the individual complies with additional requirements that the Board specifies based on an assessment of the knowledge and skill inadequacies causing the individual to fail.

R4-26-405. Coursework Requirement

- A.** As required under A.R.S. § 32-2091.03(A)(3), an applicant for licensure shall complete, as part of or in addition to the coursework necessary to obtain the graduate degree required under A.R.S. § 32-2091.03(A)(1), 225 classroom hours of graduate-level instruction. The applicant shall ensure that the classroom hours include the following content areas:
 - 1. Ethical and professional conduct: 15 hours;
 - 2. Definitions and characteristics; principles, processes, and concepts: 45 hours;
 - 3. Behavioral assessment; selecting intervention outcomes and strategies: 30 hours;
 - 4. Experimental evaluation of interventions: 20 hours;
 - 5. Measurement of behavior; displaying and interpreting behavioral data: 20 hours;
 - 6. Behavioral change procedures; systems support: 45 hours; and
 - 7. Discretionary content related to behavior analysis: 50 hours.
- B.** The Board shall accept only classroom hours of graduate-level instruction taken at an institution accredited by a recognized accrediting agency.

R4-26-406. Ethical Standard

The Board incorporates by reference BACB Guidelines for Responsible Conduct for Behavior Analysts, July 2010, published by the BACB, 2888 Remington Green Lane, Suite C, Tallahassee, FL 32308. The incorporated material is available for review at the Board office and available online at www.BACB.com. The incorporated material includes no later editions or amendments.

R4-26-407. License by Reciprocity

An individual who is licensed or certified as a behavior analyst in another state may apply for an initial license as a behavior analyst in Arizona by complying with R4-26-402 and submitting evidence that the individual:

1. Obtained a graduate degree from an institution of higher learning accredited by a recognized accrediting agency;
2. Completed a minimum of 1,500 hours of supervised experience;
3. Completed a minimum of 225 classroom hours of graduate-level instruction in the content areas listed in R4-26-405; and
4. Passed the examination referenced in R4-26-404.

R4-26-408. License Renewal

A. A license issued by the Board, whether active or inactive, expires on May 1 of every odd-numbered year unless renewed.

B. The Board shall provide a licensee with 60 days' notice of the license renewal deadline. Failure to receive the notice does not excuse failure to renew timely.

C. To renew a license, a licensee shall, on or before April 30 of every odd-numbered year, submit to the Board a renewal application form, which is available from the Board office and on its web site, and provide the following information:

1. License number;
2. Name;
3. Other names by which the licensee is or ever has been known;
4. Home address and telephone number;
5. Business name and address;
6. Work telephone and fax number;
7. E-mail address;
8. Date of birth;
9. Social Security number;
10. BACB certificate number;
11. A statement of whether the licensee:
 - a. Is in compliance with or exempt from the requirements of A.R.S. § 32-3211 regarding secure storage, transfer, and access of patient records and if not, explain;
 - b. Is currently licensed or certified as a behavior analyst in any regulatory jurisdiction other than Arizona and if so, the jurisdictions and license numbers;
 - c. Is currently licensed or certified in other fields or professions and if so, the name of the professions, regulatory jurisdictions, and license numbers;
 - d. Is a member of a hospital staff or provider panel and if so, the name of the hospital or provider;
 - e. Is currently a member of a professional association and if so, the name of the professional association;
 - f. Has, during the last license period, had a professional license, certification, or registration refused, revoked, suspended, or restricted in any regulatory jurisdiction for reasons relating to unprofessional conduct;
 - g. Has, during the last license period, voluntarily surrendered a license, certification, or registration, relinquished responsibilities, resigned a position in lieu of termination, or been involuntary terminated in any regulatory jurisdiction while under investigation or in lieu of administrative proceedings for reasons relating to unprofessional conduct;
 - h. Has, during the last license period, resigned or been terminated from a professional organization, hospital staff, or provider panel while a complaint against the licensee was investigated or adjudicated;
 - i. Has, during the last license period, been investigated by any professional organization, health care institution, provider panel of which the licensee is a member or staff, or a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, concerning the ethical propriety or legality of the licensee's conduct and if so, the entity doing and dates of the investigation;
 - j. Has, during the last license period, been disciplined by a regulatory agency in any jurisdiction, including the Arizona Board of Psychologist Examiners, health care institution, provider panel, or ethics panel for acts pertaining to the licensee's conduct as a behavior analyst or as a professional in any field and if so, the regulatory agency, jurisdiction, and date of discipline;
 - k. Has, during the last license period, been convicted of, pled no contest or guilty to, entered into a diversion program to avoid prosecution, or is under indictment or awaiting trial for a felony or misdemeanor, other than a minor traffic offense, including any conviction that has been expunged, pardoned, reversed, or set aside;
 - l. Has, during the last license period, been sued in a civil court or charged in a criminal court for an act or omission relating to practice as a behavior analyst or work under a license or certificate in another profession, or work as a member of a profession;
 - m. Is currently addicted to alcohol or another drug that in any way impairs or limits the licensee's ability to practice behavior analysis safely and competently; and
 - n. Has a medical, physical, or psychological condition that limits the licensee's ability to practice behavior analysis

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safely and competently;

12. An indication whether the licensee is requesting an active license, voluntary inactive license, or medical inactive license;
13. An attestation that the licensee is in compliance with the continuing education requirement specified in R4-26-409; and
14. The licensee's signature attesting that the information provided is true in every respect.

D. Additionally, to renew a license, a licensee shall submit:

1. The license renewal fee required under R4-26-402,
2. If the documentation previously submitted under R4-26-403(B)(3) was a limited form of work authorization issued by the federal government, evidence that the work authorization has not expired; and
3. The Board's Mandatory Confidential Information form.

E. If a completed application is timely submitted under subsections (C) and (D) to renew an active license, the licensee may continue to practice behavior analysis under the active license until notified by the Board that the application for renewal has been approved or denied. If the Board denies license renewal, the licensee may continue to practice behavior analysis until the last day for seeking review of the Board's decision or a later date fixed by a reviewing court.

F. Under A.R.S. § 32-2091.07, the license of a licensee who fails to submit a renewal application on or before April 30 of an odd-numbered year expires and the licensee shall immediately stop practicing as a behavior analyst in Arizona.

G. A behavior analyst whose license expires under subsection (F) may have the license reinstated by submitting the following to the Board on or before June 30 of the year in which the license expired:

1. The license renewal application required under subsection (C) and the document required under subsection (D)(2),
2. A sworn affidavit that the applicant has not practiced as a behavior analyst since the applicant's license expired, and
3. The license renewal and license reinstatement fees.

H. A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) may have the license reinstated by:

1. Complying with subsections (G)(1) through (3) on or before the following April 30th, and
2. Providing proof of competency and qualifications to the Board.

I. A behavior analyst whose license expires under subsection (F) and who fails to have the license reinstated under subsection (G) or (H) may be licensed again only by complying with R4-26-403.

R4-26-409. Continuing Education Requirement

A. A licensee shall complete a minimum of 30 hours of continuing education during each license period. A licensee shall ensure that at least four hours of continuing education addresses ethics.

B. During a licensee's first license period, the licensee shall complete a pro-rated number of continuing education hours. To determine the number of continuing education hours required during the first license period, the licensee shall multiply the number of whole months from the month of license issuance to the end of the license period by 1.25.

C. A licensee shall ensure that each continuing education program provides the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis. The following provide the necessary understanding of current developments, skills, or procedures related to the practice of behavior analysis:

1. Continuing education programs offered by a BACB-approved provider: One hour of continuing education for each hour of participation;
2. Courses that directly relate to behavior analysis and are provided by an accredited educational institution: 15 hours of continuing education for each semester hour completed and 10 hours of continuing education for each quarter hour completed;
3. Self-study, online, or correspondence course that is directly related to behavior analysis and offered by BACB-approved provider or approved or offered by an accredited educational institution: Hours of continuing education determined by the course provider;
4. Teaching a continuing education offered by a BACB-approved provider or approved or offered by an accredited educational institution: One hour of continuing education for each hour taught;
5. Credentialing activities approved for continuing education by the BACB: One hour of continuing education for each hour of participation;
6. Publication of a peer-reviewed article or text book on the practice of behavior analysis: 15 hours of continuing education; and
7. Attending a Board meeting: Two hours for attending a morning or afternoon session of a Board meeting and four hours for attending a full-day Board meeting.

D. The number of hours of continuing education is limited as follows:

1. No more than 25 percent of the required hours may be obtained from teaching a continuing education program or course under subsection (C)(4). A licensee shall not obtain continuing education hours for teaching the same continuing education program or course more than two times during each licensing period. A licensee shall earn no continuing education hours for participating as a member of a panel at a continuing education program or course;

2. No more than 25 percent of the required hours may be obtained from continuing education under subsections (C)(3) and (5).
 3. No more than six of the required hours may be obtained under subsection (C)(7). Hours obtained under subsection (C)(7) may be used to complete the ethics requirement under subsection (A).
 4. Hours obtained in excess of the minimum required during a license period shall not be carried over to a subsequent license period.
- E.** A licensee shall obtain a certificate or other evidence of attendance from the provider of each continuing education program or course attended that includes the following:
1. Name of the licensee;
 2. Title of the continuing education;
 3. Name of the continuing education provider;
 4. Date, time, and location of the continuing education; and
 5. Number of hours of continuing education obtained.
- F.** A licensee shall maintain the evidence of attendance described in subsection (E) for two licensing periods and make the evidence available to the Board upon request.

R4-26-410. Voluntary Inactive Status

- A.** A licensed behavior analyst may request that the Board place the license on inactive status for one of the following reasons:
1. The behavior analyst no longer provides behavior analysis services in Arizona.
 2. The behavior analyst is retired, or
 3. The behavior analyst is physically or mentally incapacitated or otherwise disabled.
- B.** To place a license on inactive status, a licensee shall comply with R4-26-408.
- C.** To remain licensed, a licensee on inactive status shall comply with R4-26-408 on or before April 30 of every odd-numbered year.

R4-26-411. License Reinstatement

A licensee seeking reinstatement from an inactive to an active license shall:

1. Comply with the provisions of R4-26-408(C) and (D);
2. Submit evidence of completing a pro-rated number of hours of continuing education. The licensee shall calculate the number of continuing education hours required by multiplying the number of whole months that the license was on inactive status by 1.25; and
3. Complete any other requirements the Board determines are necessary to ensure that the licensee has maintained and updated the licensee's ability to practice as a behavior analyst.

R4-26-412. Client Records

- A.** A licensee shall not condition release of a client's record on payment for services by the client or a third party.
- B.** A licensee shall release a client's raw test data to another licensed behavior analyst only after obtaining the client's informed, written consent to the release. Without a client's informed, written consent, a licensee shall release the client's raw test data only to the extent required by law or under court order compelling production.
- C.** A licensee shall retain all client records under the licensee's control for at least six years from the date of the last client activity. If a client is a minor, the licensee shall retain the client's record for at least three years past the client's 18th birthday or six years from the date of the last client activity, whichever is longer.
- D.** Audio or video tapes created primarily for training or supervisory purposes are exempt from the requirement of subsection (C).
- E.** A licensee who is notified by the Board or municipal, state, or federal officials of an investigation or pending case shall retain all records relating to the investigation or case until the licensee receives written notice that the investigation is complete or the case is closed.
- F.** A licensee may retain client records in electronic form. The licensee shall ensure that client records in electronic form are stored securely and a backup copy is maintained.
- G.** The provisions of this Section apply to all licensees including those on inactive status.

R4-26-413. Change of Name, Mailing Address, E-mail Address, or Telephone Number

- A.** The Board shall communicate with a licensee using the contact information provided to the Board. To ensure timely communication from the Board, a licensee shall notify the Board, in writing, within 30 days of any change of name, mailing address, e-mail address, or residential or business telephone number.
- B.** A licensee who reports a name change shall submit to the Board documentation that explains the name change.

R4-26-414. Complaints and Investigations

- A.** Anyone, including the Board, may file a complaint. A complainant shall ensure that a complaint filed with the Board involves:

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1. An individual licensed under this Article; or
 2. An individual, including an applicant, believed to be engaged in the unlicensed practice of behavior analysis.
- B.** Complaint requirements. A complainant shall:
1. Submit the complaint to the Board in writing; and
 2. Provide the following information:
 - a. Name and business address of licensee or other individual who is the subject of complaint;
 - b. Name and address of complainant;
 - c. Allegations constituting unprofessional conduct;
 - d. Details of the complaint with pertinent dates and activities;
 - e. Whether the complainant has contacted any other organization regarding the complaint; and
 - f. Whether complainant has contacted the licensee or other individual concerning the complaint, and if so, the response, if any.

R4-26-415. Informal Interview

- A.** As authorized by A.R.S. § 32-2091.09(H), the Board may facilitate investigation of a complaint by conducting an informal interview. The Board shall send written notice of an informal interview to the individual who is the subject of the complaint, by personal service or certified mail, return receipt requested, at least 30 days before the informal interview.
- B.** The Board shall ensure that the written notice of informal interview contains the following information:
1. The time, date, and place of the informal interview;
 2. An explanation of the informal nature of the proceedings;
 3. The individual's right to appear with legal counsel who is authorized to practice law in Arizona or without legal counsel;
 4. A statement of the allegations and issues involved with a citation to relevant statutes and rules;
 5. The individual's right to a formal hearing under A.R.S. Title 41, Chapter 6, Article 10 instead of the informal interview;
 6. The licensee's right, as specified in A.R.S. § 32-3206, to request a copy of information the Board will consider in making its determination; and
 7. Notice that the Board may take disciplinary action as a result of the informal interview if it finds the individual violated A.R.S. Title 32, Chapter 19.1, Article 4, or this Article;
- C.** The Board shall ensure that an informal interview proceeds as follows:
1. Introduction of the respondent and, if applicable, the complainant, any other witnesses, and legal counsel for the respondent;
 2. Introduction of the Board members, staff, and Assistant Attorney General present;
 3. Swearing in of the respondent, complainant, and witnesses;
 4. Brief summary of the allegations and purpose of the informal interview;
 5. Optional opening comment by the respondent and complainant;
 6. Questioning of the respondent and witnesses by the Board;
 7. Questioning of the complainant by the respondent through the Chair;
 8. Optional additional comments by the respondent and complainant; and
 9. Deliberation by the Board.

R4-26-416. Rehearing or Review of Decision

- A.** The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10.
- B.** Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party's administrative remedies.
- C.** A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- D.** The Board may grant a rehearing or review for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Board or any order or abuse of discretion that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, its staff, or an administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
 5. Excessive or insufficient penalty;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings; and
 7. The findings of fact or a decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review

shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.

- F.** Within 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits.
- H.** If, in a particular decision, the Board makes a specific finding that the immediate effectiveness of the decision is necessary for preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review.
- I.** An application for judicial review of any final Board decision may be made under A.R.S. § 12-901 et seq.

R4-26-417. Licensing Time-frames

- A.** For the purpose of A.R.S. § 41-1073, the Board establishes the following time-frames:
 - 1.** Initial license.
 - a.** Overall time-frame: 120 days.
 - b.** Administrative completeness review time-frame: 30 days, and
 - c.** Substantive review time-frame: 90 days, and
 - 2.** Renewal license.
 - a.** Overall time-frame: 150 days.
 - b.** Administrative completeness review time-frame: 60 days, and
 - c.** Substantive review time-frame: 90 days; and
- B.** An applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frames by no more than 25% of the overall time-frame.
- C.** The administrative completeness review time-frame begins when the Board receives the application materials required under R4-26-403 or R4-26-408(C) and (D). During the administrative completeness review time-frame, the Board shall notify the applicant that the application is either complete or incomplete. If the application is incomplete, the Board shall specify in the notice what information is missing.
- D.** An applicant whose application is incomplete shall submit the missing information to the Board within 240 days for an initial license. Both the administrative completeness review and overall time-frames are suspended from the date of the Board's notice under subsection (C) until the Board receives all of the missing information.
- E.** Upon receipt of all missing information, the Board shall notify the applicant that the application is complete. The Board shall not send a separate notice of completeness if the Board grants or denies a license within the administrative completeness review time-frame listed in subsection (A)(1)(b) or (2)(b).
- F.** The substantive review time-frame begins on the date of the Board's notice of administrative completeness.
- G.** If the Board determines during the substantive review that additional information is needed, the Board shall send the applicant a comprehensive written request for additional information.
- H.** An applicant who receives a request under subsection (G) shall submit the additional information to the Board within 240 days. Both the substantive review and overall time-frames are suspended from the date of the Board's request until the Board receives the additional information.
- I.** An applicant may receive a 30-day extension of the time provided under subsection (D) or (H) by providing written notice to the Board before the time expires. If an applicant fails to submit to the Board the missing or additional information within the time provided under subsection (D) or (H) or the time as extended, the Board shall close the applicant's file. To receive further consideration, a person whose file is closed shall re-apply.
- J.** Within the overall time-frame listed in subsection (A), the Board shall:
 - 1.** Grant a license if the Board determines that the applicant meets all criteria required by statute and this Article, or
 - 2.** Deny a license if the Board determines that the applicant does not meet all criteria required by statute and this Article.
- K.** If the Board grants a license under subsection (J)(1), the Board shall send the applicant a notice explaining that the Board shall issue the license only after the applicant pays the license issuance fee specified under R4-26-402 and pro-rated as prescribed under A.R.S. § 32-2091.07(A).
- L.** If the Board denies a license, the Board shall send the applicant a written notice explaining:
 - 1.** The reason for denial, with citations to supporting statutes or rules;
 - 2.** The applicant's right to appeal the denial by filing an appeal under A.R.S. Title 41, Chapter 6, Article 10;
 - 3.** The time for appealing the denial; and
 - 4.** The applicant's right to request an informal settlement conference.

M. If a time-frame's last day falls on a Saturday, Sunday, or official state holiday, the next business day is the time-frame's last day.

R4-26-418. Mandatory Reporting Requirement

A. As required by A.R.S. § 32-3208, an applicant or licensee who is charged with a misdemeanor involving conduct that may affect client safety or a felony shall provide written notice of the charge to the Board within 10 days after the charge is filed.

B. A list of reportable misdemeanors is available on the Board's web site.