

ORIGINAL HOUSE
BILL NO. HB0110

ENROLLED ACT NO. 18, HOUSE OF REPRESENTATIVES

SIXTY-SIXTH LEGISLATURE OF THE STATE OF WYOMING
2022 BUDGET SESSION

AN ACT relating to professions and occupations; providing for the licensure of persons practicing behavior analysis; providing licensure exemptions; providing for the suspension or revocation of behavior analysis licenses; providing for criminal history background checks; modifying the composition of the Wyoming state board of psychology; providing definitions; making conforming amendments; repealing obsolete provisions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-27-124 and 33-27-125 are created to read:

CHAPTER 27
PSYCHOLOGY AND BEHAVIOR ANALYSTS

33-27-124. Requirements for licensure; behavior analysis.

(a) The board shall issue a license as a behavior analyst or an assistant behavior analyst to any applicant who files an application upon a form and in a manner as prescribed by the board, accompanied by the appropriate fee and who furnishes satisfactory evidence to the board of the applicant's competence and of the following which evidence shall comply with rules of the board:

(i) For licensure as a behavior analyst, the applicant holds a current certification as a board certified behavior analyst verified by the board with the certifying entity; or

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(ii) For licensure as an assistant behavior analyst, the applicant holds a current certification as a board certified assistant behavior analyst verified by the board with the certifying entity.

(b) A license may be issued to any person who is verified by the board to be currently licensed as a behavior analyst or assistant behavior analyst and in good standing in another jurisdiction that has licensure requirements comparable to and who otherwise meets the requirements of this act.

(c) Any person licensed under this section as an assistant behavior analyst may engage in the practice of behavior analysis only under the supervision of a licensed behavior analyst or licensed psychologist in compliance with the requirements of the certifying entity and as provided by rule of the board.

33-27-125. Exemptions; behavior analysis.

(a) The following persons when practicing within the scope of their authority and their education and training may engage in acts included in the definition of the practice of behavior analysis under W.S. 33-27-113(a)(xiii) without being licensed as a behavior analyst or assistant behavior analyst under this act:

(i) Any member of another recognized profession who is licensed, certified or regulated under the laws of this state as defined in the rules of the board and is authorized to render services consistent with their professional training and code of ethics, provided that they do not represent themselves to be licensed behavior analysts or licensed assistant behavior analysts;

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(ii) A psychologist licensed under this act or any person, as prescribed by rule of the board, acting under the psychologist's authority and direction;

(iii) A behavior analyst, including an applied animal behaviorist and animal trainer, who practices exclusively with non-humans;

(iv) Any person who provides general behavior analysis services to an organization when the services are for the sole benefit of the organization and do not involve providing services directly to any individual person;

(v) Any person while teaching behavior analysis or conducting behavior analytics research, provided that the teaching or research do not involve the direct delivery of behavior analysis services beyond the typical parameters of college or university instruction or applied research;

(vi) A matriculated college or university student or postdoctoral fellow whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship or fellowship and are supervised by a behavior analyst licensed in this state or by a qualified faculty member as provided by rule of the board;

(vii) Any unlicensed person who is pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity and as provided by rule of the board;

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(viii) A behavior technician who delivers behavior analysis services under the supervision of a licensed behavior analyst or licensed assistant behavior analyst. A behavior technician shall not represent himself as a licensed behavior analyst or licensed assistant behavior analyst and shall only use titles that communicate his unlicensed status, such as "applied behavior analysis technician," "behavior technician" or "tutor." As used in this paragraph, "behavior technician" means a paraprofessional who practices under the supervision of a licensed behavior analyst or licensed assistant behavior analyst and who delivers services as assigned by the supervisor responsible for the technician's work. The services that may be assigned to a behavior technician shall not include designing assessment or intervention plans or procedures;

(ix) A caregiver of a recipient of behavior analysis services who delivers behavior analysis services to the recipient under the authority and direction of a licensed behavior analyst or licensed assistant behavior analyst. The caregiver shall not represent themselves as a licensed behavior analyst or licensed assistant behavior analyst under this paragraph and shall deliver behavior analysis services only to the person who is receiving behavior analysis services from the licensed behavior analyst or licensed assistant behavior analyst who is supervising the caregiver; or

(x) Any person providing advice or counsel to a friend or relative in a nonprofessional and noncommercial setting and when no compensation is paid for the advice or counsel that is being provided.

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Section 2. W.S. 7-19-106(a) by creating a new paragraph (xxxvi), 7-19-201(a) by creating a new paragraph (xxxi), 33-27-113(a) by creating new paragraphs (x) through (xiii) and by amending and renumbering (x) as (xiv), 33-27-115(a) and (c)(intro), 33-27-116(a) and by creating a new subsection (o), 33-27-117(a)(intro), 33-27-119(b) and (d), 33-27-120(a), (b)(intro), (i), (iii), (iv), (ix), (x), (xiii) and (xvii), 33-27-122(a), (f), (g), (h)(intro) and (iii) and 33-27-123(a)(intro) and (iii) through (v) are amended to read:

7-19-106. Access to, and dissemination of, information.

(a) Criminal history record information shall be disseminated by criminal justice agencies in this state, whether directly or through any intermediary, only to:

(xxxvi) The board of psychology for purposes of obtaining background information on persons applying for licensure or certification under title 33, chapter 27 of the Wyoming statutes.

7-19-201. State or national criminal history record information.

(a) The following persons shall be required to submit to fingerprinting in order to obtain state and national criminal history record information:

(xxxi) All persons applying for licensure or certification to the board of psychology under title 33, chapter 27 of the Wyoming statutes.

33-27-113. Definitions.

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(a) As used in this act:

(x) "Certifying entity" means the behavior analyst certification board or another entity as specified by rule of the board whose programs to credential practitioners of behavior analysis are accredited by the national commission on certifying agencies, the American national standards institute or a similar successor accrediting organization and which reasonably ensures that persons certified have the qualifications, education and experience necessary to protect public health and safety and to provide services that are customary and professional;

(xi) "Licensed assistant behavior analyst" means a person licensed under this act for the practice of behavior analysis and who is supervised in accordance with W.S. 33-27-124(c);

(xii) "Licensed behavior analyst" means a person licensed under this act for the practice of behavior analysis;

(xiii) "Practice of behavior analysis" means the design, implementation and evaluation of instructional and environmental modifications based on scientific research and direct and indirect observation and measurement of behavior and environment to produce socially significant improvements in human behavior. The "practice of behavior analysis" includes the empirical identification of functional relations between behavior and environmental factors. The "practice of behavior analysis" does not include psychotherapy, cognitive therapy, psychoanalysis, hypnotherapy, counseling, psychological testing,

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personality, intellectual or neuropsychological assessments or the diagnosis of psychological disorders;

~~(x)(xiv)~~ (xiv) "This act" means W.S. 33-27-113 through ~~33-27-123-33-27-125~~.

33-27-115. State board of psychology.

(a) The Wyoming state board of psychology shall consist of six (6) licensed psychologists, ~~one (1) psychological practitioner~~ two (2) licensed behavior analysts, and ~~two (2) public members~~ one (1) public member appointed by the governor. Each member shall be a resident of this state. Each member who is a psychologist shall be licensed under this act and shall have a minimum of three (3) years of post-licensure experience. At least one (1) member who is a psychologist shall be engaged full time in the doctoral teaching and training of psychologists, and at least two (2) members who are psychologists shall be engaged full time in the professional practice of psychology. ~~The psychological practitioner shall have a minimum of three (3) years post-certification experience~~ Each member who is a behavior analyst shall be licensed under this act and shall have a minimum of three (3) years of post-licensure experience, except as provided by subsection (c) of this section. The composition of the board shall to the greatest extent practicable represent both the public and private sectors of the ~~practice~~ practices of psychology and behavior analysis. Public members shall not be psychologists, ~~psychological practitioners,~~ behavior analysts, assistant behavior analysts, applicants or former applicants for licensure or certification under this act, members of another health profession, or members of a household that includes a person licensed or certified under this act. Board members

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shall be appointed who are free from conflict of interest in performing the duties of the board.

(c) The term of office shall be five (5) years with provision for reappointment for one (1) additional term. A member may be reappointed for an additional two (2) terms after at least two (2) years off the board. The two (2) members of the board as first constituted who are required to be licensed behavior analysts shall have staggered terms. ~~as follows: One (1) behavior analyst member shall be appointed for five (5) years and one (1) behavior analyst member shall be appointed for three (3) years. Notwithstanding the requirements under subsection (a) of this section, the initial two (2) behavior analyst members appointed to the board by the governor shall not be required to be licensed in this state before their appointment but shall obtain licensure during their board tenure in order to be reappointed as a board member and shall otherwise be qualified to practice behavior analysis under this act.~~

33-27-116. Powers and duties of the board.

(a) In accordance with this act and rules and regulations promulgated under it, the board shall determine a person's initial and continuing qualifications and fitness to practice psychology or behavior analysis, proceed against the unlawful and unlicensed practice of psychology or behavior analysis and otherwise enforce this act.

(o) The board shall request criminal history background information as authorized under W.S. 7-19-106(a)(xxxvi) for all initial applicants and all

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renewal applicants every two (2) years as provided by rule of the board.

33-27-117. Requirements for licensure.

(a) The board shall issue a license as a psychologist to any applicant who files an application upon a form and in a manner as prescribed by the board, accompanied by the appropriate fee and who furnishes satisfactory evidence to the board of the applicant's competence and of the following which evidence shall comply with rules and regulations of the board:

33-27-119. Practice without license.

(b) Unless exempt under W.S. 33-27-114 or 33-27-125, any person who represents himself as a psychologist and who engages in the practice of psychology or represents himself as a behavior analyst or assistant behavior analyst and who engages in the practice of behavior analysis in violation of this act, is guilty of a misdemeanor punishable by a fine of not more than seven hundred fifty dollars (\$750.00), imprisonment for not more than six (6) months, or both. Each violation shall constitute a separate offense.

(d) ~~No~~ Any person whose license to practice as a psychologist, behavior analyst or assistant behavior analyst in any jurisdiction has been suspended or revoked and which license has not been reinstated shall not practice psychology or behavior analysis in this state. The board may suspend or revoke the license of ~~that any~~ person. ~~The board~~ under this subsection and may issue a new license whenever it deems the issuance to be safe and just.

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33-27-120. Grounds for denial, suspension or revocation of license and other disciplinary sanctions.

(a) A psychologist, behavior analyst or assistant behavior analyst and anyone under his supervision shall conduct his professional activities in conformity with ethical and professional standards as promulgated by rule of the board. ~~under its rules and regulations.~~

(b) After notice and a hearing, the board may revoke, refuse to renew, reprimand, censure, limit the scope of practice, place on probation with or without terms, conditions or limitations or suspend licenses to practice psychology or behavior analysis for any of the following acts or offenses:

(i) Fraud in applying for or procuring a license to practice psychology or behavior analysis;

(iii) Practicing psychology or behavior analysis in a manner which endangers the welfare of clients or patients;

(iv) Conviction of a felony that interferes with the ability to practice psychology or behavior analysis as defined ~~in the rules and regulations~~ by rule of the board;

(ix) Malpractice or negligence in the practice of psychology or behavior analysis;

(x) Aiding or abetting the practice of psychology or behavior analysis by a person not licensed by the board;

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(xiii) The suspension or revocation by another ~~state jurisdiction~~ of a license to practice psychology or behavior analysis or the suspension or revocation of a behavior analysis certification issued by the certifying entity;

(xvii) Inability to practice psychology or behavior analysis with reasonable skill and safety to patients or clients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals or any other substance or as a result of any mental or physical condition.

33-27-122. Board hearings and investigations.

(a) The board may investigate or cause to be investigated any allegation or evidence that appears to show that a psychologist, behavior analyst or assistant behavior analyst licensed to practice in this jurisdiction, and anyone under his supervision is, or may be, in violation of this act or of any of the rules ~~and regulations~~ adopted by the board.

(f) A psychologist, behavior analyst or assistant behavior analyst may surrender his license when he is charged with any violation of this act or board rules and regulations, and such surrender and acceptance by the board shall constitute acknowledgment by the person as an admission of guilt as charged. The circumstances of the surrender shall be reported in the same fashion as a revocation action.

(g) A psychologist, behavior analyst or assistant behavior analyst may request in writing to the board that a restriction be placed upon his license to practice. The

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board, in its discretion, may accept a surrender or grant a request for restriction and shall have the authority to attach restrictions to the license to practice within this state or otherwise to discipline the licensee.

(h) Subsequent to the holding of a hearing and the taking of evidence by the board as provided for in this section, if a majority of the board finds that a psychologist, behavior analyst or assistant behavior analyst is in violation of this act or guilty of any of the acts, offenses or conditions as enumerated by the board, the following actions may be taken:

(iii) The board may impose revocation or suspension of a license, but suspend enforcement thereof by placing the psychologist, behavior analyst or assistant behavior analyst on probation, which probation shall be revocable if the board finds the conditions of the probation order are not being followed. As a condition of probation the board may require the psychologist, behavior analyst or assistant behavior analyst to submit to care, counseling or treatment by a professional designated by the board. The expense of the action shall be borne by the probationer. The board may at any time modify the conditions of the probation and may include among them any reasonable condition for the purpose of the protection of the public, or for the purpose of the rehabilitation of the probationer, or both;

33-27-123. Privileged communication.

(a) In judicial proceedings, whether civil, criminal, or juvenile, in legislative and administrative proceedings, and in proceedings preliminary and ancillary thereto, a patient or client, or his guardian or personal

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representative, may refuse to disclose or prevent the disclosure of confidential information, including information contained in administrative records, communicated to a person licensed or otherwise authorized to practice under this act, or to persons reasonably believed by the patient or client to be so licensed, and their agents, for the purpose of diagnosis, evaluation or treatment of any mental or emotional condition or disorder. The psychologist, behavior analyst or assistant behavior analyst shall not disclose any information communicated as described above in the absence of an express waiver of the privilege except in the following circumstances:

(iii) Where such information is necessary for the psychologist, behavior analyst or assistant behavior analyst to defend against a malpractice action brought by the patient or client;

(iv) Where an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist, behavior analyst or assistant behavior analyst;

(v) In the context of civil commitment proceedings, where an immediate threat of self-inflicted damage is disclosed to the psychologist, behavior analyst or assistant behavior analyst;

Section 3. W.S. 33-27-115(c)(i) through (iv) and 33-27-117(a)(i) are repealed.

Section 4.

(a) The two (2) licensed behavior analysts to be appointed by the governor to the state board of psychology

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as required under W.S. 33-27-115(a) and (c) as amended by section 2 of this act shall be administered as follows:

(i) To replace the one (1) board member formerly required to be a psychology practitioner, the governor may appoint the first licensed behavior analyst member immediately upon the expiration of the psychology practitioner's term of office or upon the psychology practitioner's resignation or vacancy, whichever occurs first;

(ii) To replace the one (1) board member formerly required to be a public member, the governor may appoint the second licensed behavior analyst member immediately upon the expiration of the public member's term of office which term is nearest to expiration or upon the resignation or vacancy of either public member from the board, whichever occurs first.

Section 5. Notwithstanding the behavior analysis licensing requirements imposed by this act, any person certified and in good standing as a board certified behavior analyst or board certified assistant behavior analyst before the effective date of this act by the behavior analyst certification board is authorized to engage in the practice of behavior analysis during the time required by the state board of psychology to implement the behavior analysis licensing program required under this act. Upon the board's implementation of the licensing program, a person practicing behavior analysis under this section shall only continue to practice behavior analysis as authorized by 33-27-125(a)(x) as created by section 1 of this act. Any person practicing behavior analysis as an assistant behavior analyst under this section shall only

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practice under the supervision of a behavior analyst in compliance with the requirements of the certifying entity.

Section 6. This act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk