

HOUSE BILL NO. HB0110

Board of psychology-behavior analyst regulation.

Sponsored by: Representative(s) Larsen, Barlow and Wilson
and Senator(s) Baldwin and Gierau

A BILL

for

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

10

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

12

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

15

1

CHAPTER 27

2

PSYCHOLOGY AND BEHAVIOR ANALYSTS

3

4

33-27-124. Requirements for licensure; behavior

5

analysis.

6

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

14

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

19

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

1

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

8

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

15

16 **33-27-125. Exemptions; behavior analysis.**

17

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

1

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

9

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

13

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

17

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

22

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

6

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

14

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

21

22 (viii) A behavior technician who delivers
23 behavior analysis services under the supervision of a

1 licensed behavior analyst or licensed assistant behavior
2 analyst. A behavior technician shall not represent himself
3 as a licensed behavior analyst or licensed assistant
4 behavior analyst and shall only use titles that communicate
5 his unlicensed status, such as "applied behavior analysis
6 technician," "behavior technician" or "tutor." As used in
7 this paragraph, "behavior technician" means a
8 paraprofessional who practices under the supervision of a
9 licensed behavior analyst or licensed assistant behavior
10 analyst and who delivers services as assigned by the
11 supervisor responsible for the technician's work. The
12 services that may be assigned to a behavior technician
13 shall not include designing assessment or intervention
14 plans or procedures;

15

16 (ix) A caregiver of a recipient of behavior
17 analysis services who delivers behavior analysis services
18 to the recipient under the authority and direction of a
19 licensed behavior analyst or licensed assistant behavior
20 analyst. The caregiver shall not represent themselves as a
21 licensed behavior analyst or licensed assistant behavior
22 analyst under this paragraph and shall deliver behavior
23 analysis services only to the person who is receiving

1 behavior analysis services from the licensed behavior
2 analyst or licensed assistant behavior analyst who is
3 supervising the caregiver; or

4

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

9

10 **Section 2.** W.S. 7-19-106(a) by creating a new
11 paragraph (xxxvi), 7-19-201(a) by creating a new paragraph
12 (xxxii), 33-27-113(a) by creating new paragraphs (x) through
13 (xiii) and by amending and renumbering (x) as (xiv),
14 33-27-115(a) and (c)(intro), 33-27-116(a) and by creating a
15 new subsection (o), 33-27-117(a)(intro), 33-27-119(b) and
16 (d), 33-27-120(a), (b)(intro), (i), (iii), (iv), (ix), (x),
17 (xiii) and (xvii), 33-27-122(a), (f), (g), (h)(intro) and
18 (iii) and 33-27-123(a)(intro) and (iii) through (v) are
19 amended to read:

20

21 **7-19-106. Access to, and dissemination of,**
22 **information.**

23

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

4

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

9

10 **7-19-201. State or national criminal history record**
11 **information.**

12

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

16

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

20

21 **33-27-113. Definitions.**

22

23 (a) As used in this act:

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(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;

1 (xiii) "Practice of behavior analysis" means the
 2 design, implementation and evaluation of instructional and
 3 environmental modifications based on scientific research
 4 and direct and indirect observation and measurement of
 5 behavior and environment to produce socially significant
 6 improvements in human behavior. The "practice of behavior
 7 analysis" includes the empirical identification of
 8 functional relations between behavior and environmental
 9 factors. The "practice of behavior analysis" does not
 10 include psychotherapy, cognitive therapy, psychoanalysis,
 11 hypnotherapy, counseling, psychological testing,
 12 personality, intellectual or neuropsychological assessments
 13 or the diagnosis of psychological disorders;

14
 15 ~~(x)~~(xiv) "This act" means W.S. 33-27-113 through
 16 ~~33-27-123~~ 33-27-125.

17
 18 **33-27-115. State board of psychology.**

19
 20 (a) The Wyoming state board of psychology shall
 21 consist of six (6) licensed psychologists, ~~one (1)~~
 22 ~~psychological practitioner~~ two (2) licensed behavior
 23 analysts, and ~~two (2) public members~~ one (1) public member

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

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

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

21

22 **33-27-116. Powers and duties of the board.**

23

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

8
9 (o) The board shall request criminal history
10 background information as authorized under W.S.
11 7-19-106(a)(xxxvi) for all initial applicants and all
12 renewal applicants every two (2) years as provided by rule
13 of the board.

14

15 **33-27-117. Requirements for licensure.**

16

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

1

2 **33-27-119. Practice without license.**

3

4 (b) Unless exempt under W.S. 33-27-114 or 33-27-125,

5 any person who represents himself as a psychologist and who

6 engages in the practice of psychology or represents himself

7 as a behavior analyst or assistant behavior analyst and who

8 engages in the practice of behavior analysis in violation

9 of this act, is guilty of a misdemeanor punishable by a

10 fine of not more than seven hundred fifty dollars

11 (\$750.00), imprisonment for not more than six (6) months,

12 or both. Each violation shall constitute a separate

13 offense.

14

15 (d) ~~No~~Any person whose license to practice as a

16 psychologist, behavior analyst or assistant behavior

17 analyst in any jurisdiction has been suspended or revoked

18 and which license has not been reinstated shall not

19 practice psychology or behavior analysis in this state. The

20 board may suspend or revoke the license of ~~that~~any person.

21 ~~The board~~ under this subsection and may issue a new license

22 whenever it deems the issuance to be safe and just.

23

1 33-27-120. Grounds for denial, suspension or
2 revocation of license and other disciplinary sanctions.

3
4 (a) A psychologist, behavior analyst or assistant
5 behavior analyst and anyone under his supervision shall
6 conduct his professional activities in conformity with
7 ethical and professional standards as promulgated by rule
8 of the board. ~~under its rules and regulations.~~

9
10 (b) After notice and a hearing, the board may revoke,
11 refuse to renew, reprimand, censure, limit the scope of
12 practice, place on probation with or without terms,
13 conditions or limitations or suspend licenses to practice
14 psychology or behavior analysis for any of the following
15 acts or offenses:

16
17 (i) Fraud in applying for or procuring a license
18 to practice psychology or behavior analysis;

19
20 (iii) Practicing psychology or behavior analysis
21 in a manner which endangers the welfare of clients or
22 patients;

23

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

4
5 (ix) Malpractice or negligence in the practice
6 of psychology or behavior analysis;

7
8 (x) Aiding or abetting the practice of
9 psychology or behavior analysis by a person not licensed by
10 the board;

11
12 (xiii) The suspension or revocation by another
13 ~~state jurisdiction~~ of a license to practice psychology or
14 behavior analysis or the suspension or revocation of a
15 behavior analysis certification issued by the certifying
16 entity;

17
18 (xvii) Inability to practice psychology or
19 behavior analysis with reasonable skill and safety to
20 patients or clients by reason of illness, inebriation,
21 misuse of drugs, narcotics, alcohol, chemicals or any other
22 substance or as a result of any mental or physical
23 condition.

1

2 **33-27-122. Board hearings and investigations.**

3

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

11

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

20

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

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

5

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

13

14 (iii) The board may impose revocation or
15 suspension of a license, but suspend enforcement thereof by
16 placing the psychologist, behavior analyst or assistant
17 behavior analyst on probation, which probation shall be
18 revocable if the board finds the conditions of the
19 probation order are not being followed. As a condition of
20 probation the board may require the psychologist, behavior
21 analyst or assistant behavior analyst to submit to care,
22 counseling or treatment by a professional designated by the
23 board. The expense of the action shall be borne by the

1 probationer. The board may at any time modify the
2 conditions of the probation and may include among them any
3 reasonable condition for the purpose of the protection of
4 the public, or for the purpose of the rehabilitation of the
5 probationer, or both;

6

7 **33-27-123. Privileged communication.**

8

9 (a) In judicial proceedings, whether civil, criminal,
10 or juvenile, in legislative and administrative proceedings,
11 and in proceedings preliminary and ancillary thereto, a
12 patient or client, or his guardian or personal
13 representative, may refuse to disclose or prevent the
14 disclosure of confidential information, including
15 information contained in administrative records,
16 communicated to a person licensed or otherwise authorized
17 to practice under this act, or to persons reasonably
18 believed by the patient or client to be so licensed, and
19 their agents, for the purpose of diagnosis, evaluation or
20 treatment of any mental or emotional condition or disorder.
21 The psychologist, behavior analyst or assistant behavior
22 analyst shall not disclose any information communicated as

1 described above in the absence of an express waiver of the
2 privilege except in the following circumstances:

3

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

8

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

13

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

18

19 **Section 3.** W.S. 33-27-115(c)(i) through (iv) and
20 33-27-117(a)(i) are repealed.

21

22 **Section 4.**

23

1 (a) The two (2) licensed behavior analysts to be
2 appointed by the governor to the state board of psychology
3 as required under W.S. 33-27-115(a) and (c) as amended by
4 section 2 of this act shall be administered as follows:

5
6 (i) To replace the one (1) board member formerly
7 required to be a psychology practitioner, the governor may
8 appoint the first licensed behavior analyst member
9 immediately upon the expiration of the psychology
10 practitioner's term of office or upon the psychology
11 practitioner's resignation or vacancy, whichever occurs
12 first.

13
14 (ii) To replace the one (1) board member
15 formerly required to be a public member, the governor may
16 appoint the second licensed behavior analyst member
17 immediately upon the expiration of the public member's term
18 of office which term is nearest to expiration or upon the
19 resignation or vacancy of either public member from the
20 board, whichever occurs first.

21
22 **Section 5.** Notwithstanding the behavior analysis
23 licensing requirements imposed by this act, any person

1 certified and in good standing as a board certified
2 behavior analyst or board certified assistant behavior
3 analyst before the effective date of this act by the
4 behavior analyst certification board is authorized to
5 engage in the practice of behavior analysis during the time
6 required by the state board of psychology to implement the
7 behavior analysis licensing program required under this
8 act. Upon the board's implementation of the licensing
9 program, a person practicing behavior analysis under this
10 section shall only continue to practice behavior analysis
11 as authorized by 33-27-125(a)(x) as created by section 1 of
12 this act. Any person practicing behavior analysis as an
13 assistant behavior analyst under this section shall only
14 practice under the supervision of a behavior analyst in
15 compliance with the requirements of the certifying entity.

16

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

21

22

(END)