

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 714

Short Title: Behavior Analyst Licensure. (Public)

Sponsors: Representatives Jeter, McGrady, Shepard, and Cotham (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Health, if favorable, Finance.

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO CREATE LICENSURE PROCESS FOR BEHAVIOR ANALYSTS.

3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** Chapter 90 of the General Statutes is amended by adding a new
5 Article to read:

6 "Article 43.

7 "Behavior Analyst Licensure.

8 "**§ 90-726.1. Declaration of purpose.**

9 The practice of behavior analysis in North Carolina is hereby declared to affect the public
10 health, safety, and welfare of citizens of North Carolina and to be subject to regulation to
11 protect the public from (i) the practice of behavior analysis by unqualified persons and (ii)
12 unprofessional, unethical, or harmful conduct by individuals licensed to practice behavior
13 analysis.

14 "**§ 90-726.2. Definitions.**

15 The following definitions apply in this Article:

16 (1) Board. – The North Carolina Behavior Analyst Board.

17 (2) Certifying entity. – The nationally accredited Behavior Analyst Certification
18 Board, Inc., or its successor.

19 (3) Licensed assistant behavior analyst. – An individual who is certified by the
20 certifying entity as a Board Certified Assistant Behavior Analyst and to
21 whom a license has been issued pursuant to this Article, if the license is in
22 force and not suspended or revoked, and whose license permits the
23 individual to engage in the practice of behavior analysis under the
24 supervision of a licensed behavior analyst.

25 (4) Licensed behavior analyst. – An individual who is certified by the certifying
26 entity as a Board Certified Behavior Analyst and to whom a license has been
27 issued pursuant to this Article, if the license is in force and not suspended or
28 revoked.

29 (5) Practice of behavior analysis. – The design, implementation, and evaluation
30 of instructional and environmental modifications to produce socially
31 significant improvements in human behavior. The practice of behavior
32 analysis includes the empirical identification of functional relations between
33 behavior and environmental factors, known as functional assessment and
34 analysis. Behavior analysis interventions are based on scientific research and
35 the direct observation and measurement of behavior and the environment. In



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1 the practice of behavior analysis, behavior analysts utilize contextual factors,
2 motivating operations, antecedent stimuli, positive reinforcement, and other
3 consequences to help people develop new behaviors, increase or decrease
4 existing behaviors, and emit behaviors under specific environmental
5 conditions. The practice of behavior analysis expressly excludes
6 psychological testing, cognitive therapy, sex therapy, psychoanalysis,
7 hypnotherapy, and long-term counseling as treatment modalities.

8 **"§ 90-726.2A. Practice of psychology not permitted.**

9 Nothing in this Article shall be construed as permitting licensed behavior analysts or
10 licensed assistant behavior analysts to engage in any manner in the practice of psychology as
11 defined in G.S. 90-270.2(8), other than the practice of behavior analysis, as defined in
12 G.S. 90-726.2(5). A licensed behavior analyst or licensed assistant behavior analyst shall assist
13 his or her client or patient in obtaining professional help for all aspects of the client's or
14 patient's problems that fall outside the boundaries of the licensed behavior analyst's or licensed
15 assistant behavior analyst's own competence, including diagnosis, counseling, psychological
16 testing, neuropsychology, psychotherapy, cognitive-behavior therapy, sex therapy,
17 psychoanalysis, or hypnotherapy as treatment modalities.

18 **"§ 90-726.3. North Carolina Behavior Analysis Board.**

19 (a) Establishment. – The North Carolina Behavior Analysis Board is created. The
20 Board shall consist of seven members who shall serve staggered terms. The initial Board shall
21 be selected on or before August 1, 2015, as follows:

22 (1) The General Assembly, upon the recommendation of the Speaker of the
23 House of Representatives, shall appoint the following three members:

24 a. One licensed behavior analyst, who is certified by the certifying
25 entity as a Board Certified Behavior Analyst, to serve a one-year
26 term.

27 b. One licensed behavior analyst, who is certified by the certifying
28 entity as a Board Certified Behavior Analyst, to serve a two-year
29 term.

30 c. One licensed assistant behavior analyst, who is certified by the
31 certifying entity as a Board Certified Assistant Behavior Analyst, to
32 serve a three-year term.

33 (2) The General Assembly, upon the recommendation of the President Pro
34 Tempore of the Senate, shall appoint the following three members:

35 a. One licensed assistant behavior analyst, who is certified by the
36 certifying entity as a Board Certified Assistant Behavior Analyst, to
37 serve a one-year term.

38 b. One licensed behavior analyst, who is certified by the certifying
39 entity as a Board Certified Behavior Analyst, to serve a two-year
40 term.

41 c. One licensed behavior analyst, who is certified by the certifying
42 entity as a Board Certified Behavior Analyst, to serve a three-year
43 term.

44 (3) The Governor shall appoint one public member to serve a two-year term.

45 Upon the expiration of the terms of the initial Board members, each member shall be
46 appointed by the appointing authorities designated in subdivisions (1) through (3) of this
47 subsection for a three-year term, shall be required to be licensed under this Article, and shall
48 serve until a successor is appointed and qualified. No member may serve more than two
49 consecutive full terms.

50 (b) Vacancies. – In the event that a member of the Board cannot complete a term of
51 office, the vacancy shall be filled in the same manner as the original appointment, for the

1 remainder of the unexpired term. No Board member shall participate in any matter before the
2 Board in which the member has a pecuniary interest or similar conflict of interest.

3 (c) Qualifications of Board Members; Removal of Board Members. –

4 (1) Each licensed behavior analyst or licensed assistant behavior analyst
5 member of the Board shall have all the following qualifications:

6 a. Shall be a resident of this State and a citizen of the United States.

7 b. Shall be free of conflict of interest or the appearance of such conflict
8 in performing the duties of the Board.

9 (2) Each public member of the Board shall have all the following qualifications:

10 a. Shall be a resident of this State and a citizen of the United States.

11 b. Shall be free of conflict of interest or the appearance of such conflict
12 in performing the duties of the Board.

13 c. Shall not be a licensed behavior analyst or licensed assistant behavior
14 analyst, an applicant or former applicant for licensure as a behavior
15 analyst or assistant behavior analyst, or a member of a household that
16 includes a licensed behavior analyst or licensed assistant behavior
17 analyst.

18 (3) A Board member shall be automatically removed from the Board if he or she
19 does any of the following:

20 a. Ceases to meet the qualifications specified in this subsection.

21 b. Fails to attend three successive Board meetings without just cause as
22 determined by the remainder of the Board.

23 c. Is found by the remainder of the Board to be in violation of the
24 provisions of this Article or to have engaged in immoral,
25 dishonorable, unprofessional, or unethical conduct, and such conduct
26 is deemed to compromise the integrity of the Board.

27 d. Is found to be guilty of a felony or an unlawful act involving moral
28 turpitude by a court of competent jurisdiction or is found to have
29 entered a plea of nolo contendere to a felony or an unlawful act
30 involving moral turpitude.

31 e. Is found guilty of malfeasance, misfeasance, or nonfeasance in
32 relation to his or her Board duties by a court of competent
33 jurisdiction.

34 f. Is incapacitated and without reasonable likelihood of resuming Board
35 duties, as determined by the Board.

36 (d) Meetings. – The Board shall elect annually a chair and other officers as it deems
37 necessary to carry out the purposes of this Article. The Board may hold additional meetings
38 upon the call of the chairperson or any two board members. A majority of the Board shall
39 constitute a quorum.

40 (e) Compensation of Members; Expenses; Employees. – Members of the Board shall
41 receive no compensation for their services but shall receive per diem and necessary travel and
42 subsistence expenses as provided in G.S. 138-5. The Board may employ necessary personnel
43 for the performance of its functions and fix the compensation. The Board shall not employ any
44 of its members to perform inspectional or similar ministerial tasks for the Board. In no event
45 shall the State of North Carolina be liable for expenses incurred by the Board in excess of the
46 income derived from this Article.

47 **§ 90-726.5. Powers and duties of Board.**

48 (a) The Board shall have the following powers and duties:

49 (1) Administer, coordinate, and enforce the provisions of this Article.

50 (2) Adopt, amend, or repeal rules to administer and enforce this Article.

- 1 (3) Establish and determine qualification and fitness of applicants for licensure
2 under this Article.
- 3 (4) Issue, renew, deny, suspend, revoke, or refuse to issue or renew any license
4 under this Article.
- 5 (5) Establish fees for applications, initial and renewal licenses, and other
6 services provided by the Board.
- 7 (6) Discipline persons licensed under this Article.

8 (b) The Board may empower any member to conduct any proceeding or investigation
9 necessary to its purposes and may empower its agent or counsel to conduct any investigation
10 necessary to its purposes, but any final action requires a quorum of the Board. The Board may
11 order that any records concerning the practice of psychology relevant to a complaint received
12 by the Board or an inquiry or investigation conducted by or on behalf of the Board be produced
13 before the Board or for inspection and copying by representatives of or counsel to the Board by
14 the custodian of such records. The Board shall adopt an official seal, which shall be affixed to
15 all licenses issued by it.

16 **"§ 90-726.6. Annual report.**

17 On June 30 of each year, the Board shall submit a report to the Governor of the Board's
18 activities since the preceding July 1, including the names of all licensed behavior analysts and
19 licensed assistant behavior analysts to whom licenses have been granted under this Article, any
20 cases heard and decisions rendered in matters before the Board, the recommendations of the
21 Board as to future actions and policies, and a financial report. Each member of the Board shall
22 review and sign the report before its submission to the Governor. Any Board member shall
23 have the right to record a dissenting view.

24 **"§ 90-726.7. License application.**

25 (a) Each individual desiring to obtain a license under this Article shall apply to the
26 Board upon the form and in the manner prescribed by the Board. Each applicant shall furnish
27 evidence satisfactory to the Board that the applicant meets all of the following criteria:

- 28 (1) The individual is of good moral character and conducts his or her
29 professional activities in accordance with accepted professional and ethical
30 standards.
- 31 (2) The individual has not engaged in or is not engaged in any practice that
32 would be a ground for denial, revocation, or suspension of a license under
33 G.S. 90-726.11.
- 34 (3) The individual has submitted the required criminal history record, as
35 required by G.S. 90-726.13.
- 36 (4) The individual is qualified for licensure pursuant to the requirements of this
37 Article.

38 (b) A license obtained through fraud or by any false representation is void.

39 **"§ 90-726.8. Requirements for licensure as a behavior analyst.**

40 Each applicant shall be issued a license by the Board to engage in the practice of behavior
41 analysis as a licensed behavior analyst if the applicant meets the qualifications set forth in
42 G.S. 90-726.5(a) and provides satisfactory evidence to the Board of all the following criteria:

- 43 (1) The applicant has passed the certifying entity's Board Certified Behavior
44 Analyst examination.
- 45 (2) The applicant has an active status with the certifying entity as a Board
46 Certified Behavior Analyst.

47 **"§ 90-726.9. Requirement of licensure as an assistant behavior analyst.**

48 Each applicant shall be issued a license by the Board to engage in the practice of behavior
49 analysis as a licensed assistant behavior analyst if the applicant meets the qualifications set
50 forth in G.S. 90-726.5(a) and provides satisfactory evidence to the Board of all the following
51 criteria:

- 1 (1) The applicant has passed the certifying entity's Board Certified Assistant
2 Behavior Analyst examination.
- 3 (2) The applicant has an active status with the certifying entity as a Board
4 Certified Assistant Behavior Analyst.
- 5 (3) The applicant has an ongoing arrangement for supervision by a licensed
6 behavior analyst in a manner consistent with the certifying entity's
7 requirements for supervision of Board Certified Assistant Behavior
8 Analysts.

9 **"§ 90-726.10. Renewal of license.**

- 10 (a) A license shall be granted under this Article for the period of two years.
- 11 (b) The Board shall renew a license granted under this Article upon completion of the
12 following:
 - 13 (1) Proof of completion of any continuing education required by the certifying
14 entity.
 - 15 (2) Payment of the renewal fee.
 - 16 (3) Evidence of active certification by certifying entity.
 - 17 (4) For assistant behavior analysts, evidence of the ongoing arrangement for
18 supervision by a licensed behavior analyst, as required by G.S. 90-726.7.

19 **"§ 90-726.11. Temporary licensure.**

- 20 (a) An individual residing and practicing behavior analysis in another state and who is
21 certified as a Board Certified Behavior Analyst by the certifying entity may apply to the Board
22 for a temporary license to practice behavior analysis in North Carolina.
- 23 (b) An individual residing and practicing behavior analysis in another state who is
24 actively licensed in another state as a behavior analyst may apply to the Board for a temporary
25 license to practice behavior analysis in North Carolina.
- 26 (c) A temporary license is available only if the behavior analysis services are to be
27 delivered during a limited and defined period of service approved by the Board.

28 **"§ 90-726.12. Reciprocity.**

- 29 (a) The Board shall issue a license to an individual who is actively licensed as a
30 behavior analyst or assistant behavior analyst in another state that currently imposes
31 comparable licensure requirements as those imposed by this Article and that offers reciprocity
32 to individuals licensed under this Article.
- 33 (b) Applicants for licensure by reciprocity shall submit the following items:
 - 34 (1) Proof of ethical compliance.
 - 35 (2) Proof of current licensure.
 - 36 (3) Proof of current certification by the certifying entity.
 - 37 (4) A criminal history record check as required by G.S. 90-726.15.
 - 38 (5) Any other eligibility requirement as deemed appropriate by the Board.

39 **"§ 90-726.13. Denial, suspension, or revocation of licenses and other disciplinary and**
40 **remedial actions for violations of the Code of Conduct; relinquishing of license.**

- 41 (a) Any applicant for licensure and any person licensed under this Article shall comply
42 with the ethical and professional standards specified in this Code of Conduct and in the rules of
43 the Board. The Board may deny, suspend, or revoke licensure and may discipline, place on
44 probation, limit practice, and require examination, remediation, and rehabilitation, or any
45 combination thereof, all as provided for in subsection (b) below. The following are considered
46 violations of the Code of Conduct:
 - 47 (1) Conviction of a felony or entry of a plea of guilty or nolo contendere to any
48 felony charge.
 - 49 (2) Conviction of a felony or entry of a plea of guilty or nolo contendere to any
50 misdemeanor involving moral turpitude, misrepresentation or fraud in
51 dealing with the public, or conduct otherwise relevant to fitness to practice,

- 1 or a misdemeanor charge reflecting the inability to practice behavior analysis
2 with due regard to the health and safety of clients or patients.
- 3 (3) Using fraud or deceit in securing or attempting to secure or renew a license
4 under this Article or has willfully concealed from the Board material
5 information in connection with application for a license or for renewal of a
6 license under this Article.
- 7 (4) Using fraud, deceit, or misrepresentation upon the public, the Board, or any
8 individual in connection with the practice of behavior analysis, the filing of
9 Medicare, Medicaid, or other claims to any third-party payor, or in any
10 manner otherwise relevant to fitness for the practice of behavior analysis.
- 11 (5) Making fraudulent, misleading, or intentionally or materially false
12 statements pertaining to education, licensure, license renewal, supervision,
13 continuing education, any disciplinary actions or sanctions pending or
14 occurring in any other jurisdiction, professional credentials, or qualifications
15 or fitness for the practice of behavior analysis to the public, any individual,
16 the Board, or any other organization.
- 17 (6) Revocation or suspension of a license for the practice of behavior analysis in
18 any other jurisdiction or having been disciplined by the licensing board or
19 certifying entity in any other jurisdiction for conduct which would subject
20 the licensee to discipline under this Article.
- 21 (7) Violation of any provision of this Article or of the duly adopted rules of the
22 Board.
- 23 (8) Aiding or abetting the unlawful practice of behavior analysis by any person
24 not licensed by the Board.
- 25 (9) Engaging in immoral, dishonorable, unprofessional, or unethical conduct as
26 defined in this subsection, or the current Ethics Code of the certifying entity.
- 27 (10) Practicing behavior analysis in such a manner as to endanger the welfare of
28 clients or patients.
- 29 (11) Demonstrating an inability to practice behavior analysis with reasonable
30 skill and safety by reason of illness, inebriation, misuse of drugs, narcotics,
31 alcohol, chemicals, or any other substance affecting mental or physical
32 functioning, or as a result of any mental or physical condition.
- 33 (12) Practicing behavior analysis outside the boundaries of demonstrated
34 competence or the limitations of education, training, or supervised
35 experience.
- 36 (13) Failing to provide competent treatment, consultation, or supervision, in
37 keeping with standards of usual and customary practice in this State.
- 38 (14) Failing to take all reasonable steps to ensure the competence of services.
- 39 (15) Failing to maintain a clear and accurate case record which documents the
40 following for each patient or client:
- 41 a. Presenting problems, diagnosis, or purpose of the evaluation,
42 treatment, or other services provided.
- 43 b. Fees, dates of services, and itemized charges.
- 44 c. Summary content of each session of evaluation, treatment, or other
45 services, except that summary content need not include specific
46 information that may cause significant harm to any person if the
47 information were released.
- 48 d. Copies of all reports prepared.
- 49 (16) Except when prevented from doing so by circumstances beyond the behavior
50 analyst's control, failing to retain securely and confidentially the complete
51 case record for at least seven years from the date of the last provision of

1 services; or, except when prevented from doing so by circumstances beyond
2 the behavior analyst's control, has failed to retain securely and
3 confidentially the complete case record indefinitely if there are pending legal
4 or ethical matters or if there is any other compelling circumstance.

5 (17) Failing to cooperate with other behavior analysts or other professionals to
6 the potential or actual detriment of clients, patients, or other recipients of
7 service, or behaving in ways which substantially impede or impair other
8 licensed behavior analysts, licensed assistant behavior analysts, or other
9 professionals' abilities to perform professional duties.

10 (18) Exercising undue influence in such a manner as to exploit the client, patient,
11 student, supervisee, or trainee for the financial or other personal advantage
12 or gratification of the licensed behavior analyst, licensed assistant behavior
13 analyst, or a third party.

14 (19) Harassing or abusing, sexually or otherwise, a client, patient, student,
15 supervisee, or trainee.

16 (20) Failing to cooperate with or to respond promptly, completely, and honestly
17 to the Board, to credentials committees, or to ethics committees of
18 professional behavior analyst associations, hospitals, or other health care
19 organizations or educational institutions, when those organizations or
20 entities have jurisdiction; or has failed to cooperate with institutional review
21 boards or professional standards review organizations, when those
22 organizations or entities have jurisdiction.

23 (21) Refusing to appear before the Board after having been ordered to do so in
24 writing by the Chair.

25 (b) Upon proof that an applicant or licensee under this Article has engaged in any of the
26 prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial,
27 suspension, or revocation, issue a formal reprimand or formally censure the applicant or
28 licensee, may place the applicant or licensee on probation with such appropriate conditions
29 upon the continued practice as the Board may deem advisable, may require examination,
30 remediation, or rehabilitation for the applicant or licensee, including care, counseling, or
31 treatment by a professional or professionals designated or approved by the Board, the expense
32 to be borne by the applicant or licensee, may require supervision for the services provided by
33 the applicant or licensee by a licensee designated or approved by the Board, the expense to be
34 borne by the applicant or licensee, may limit or circumscribe the practice of behavior analysis
35 provided by the applicant or licensee with respect to the extent, nature, or location of the
36 services provided, as the Board deems advisable, or may discipline and impose any appropriate
37 combination of the foregoing. In addition, the Board may impose such conditions of probation
38 or restrictions upon continued practice at the conclusion of a period of suspension or as
39 requirements for the restoration of a revoked or suspended license. In lieu of or in connection
40 with any disciplinary proceedings or investigation, the Board may enter into a consent order
41 relative to the discipline, supervision, probation, remediation, rehabilitation, or practice
42 limitation of a licensee or applicant for a license.

43 (c) The Board may assess costs of disciplinary action against an applicant or licensee
44 found to be in violation of this Article.

45 (d) When considering whether an applicant or licensee is physically or mentally capable
46 of practicing behavior analysis with reasonable skill and safety with patients or clients, then,
47 upon a showing of probable cause to the Board that the applicant or licensee is not capable of
48 practicing behavior analysis with reasonable skill and safety with patients or clients, the Board
49 may petition a court of competent jurisdiction to order the applicant or licensee in question to
50 submit to a psychological evaluation by a psychologist to determine psychological status or a
51 physical evaluation by a physician to determine physical condition, or both. Such psychologist

1 or physician shall be designated by the court. The expenses of such evaluations shall be borne
2 by the Board. Where the applicant or licensee raises the issue of mental or physical competence
3 or appeals a decision regarding mental or physical competence, the applicant or licensee shall
4 be permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board
5 suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by
6 its designated practitioners at its own expense.

7 (e) Except as provided otherwise in this Article, the procedure for revocation,
8 suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative
9 actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The
10 Board is required to provide the opportunity for a hearing under Chapter 150B of the General
11 Statutes to any applicant whose license is denied or to whom licensure is offered subject to any
12 restrictions, probation, disciplinary action, remediation, or other conditions or limitations or to
13 any licensee before revoking, suspending, or restricting a license or imposing any other
14 disciplinary action or remediation. If the applicant or licensee waives the opportunity for a
15 hearing, the Board's denial, revocation, suspension, or other proposed action becomes final
16 without a hearing having been conducted. Notwithstanding the foregoing, no applicant or
17 licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the
18 Board, in any record of any hearing before the Board, in any complaint or notice of charges
19 against any licensee or applicant for licensure, and in any decision rendered by the Board, the
20 Board may withhold from public disclosure the identity of any clients or patients who have not
21 consented to the public disclosure of behavior analysis services having been provided by the
22 licensee or applicant. The Board may close a hearing to the public and receive in executive
23 session evidence involving or concerning the treatment of or delivery of behavior analysis
24 services to a client or a patient who has not consented to the public disclosure of such treatment
25 or services as may be necessary for the protection and rights of such patient or client of the
26 accused applicant or licensee and the full presentation of relevant evidence. All records, papers,
27 and other documents containing information collected and compiled by or on behalf of the
28 Board, as a result of investigations, inquiries, or interviews conducted in connection with
29 licensing or disciplinary matters will not be considered public records as defined in G.S. 132-1.
30 However, any notice or statement of charges against any licensee or applicant, or any notice to
31 any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection
32 with a hearing in any proceeding, shall be a public record notwithstanding that it may contain
33 information collected and compiled as a result of such investigation, inquiry, or hearing except
34 that identifying information concerning the treatment of or delivery of services to a patient or
35 client who has not consented to the public disclosure of such treatment or services may be
36 deleted. If any such record, paper, or other document containing information theretofore
37 collected and compiled by or on behalf of the Board, as hereinbefore provided, is received and
38 admitted in evidence in any hearing before the Board, it shall thereupon be a public record,
39 subject to any deletions of identifying information concerning the treatment of or delivery of
40 behavior analysis services to a patient or client who has not consented to the public disclosure
41 of such treatment or services.

42 (f) A license issued under this Article is suspended automatically by operation of law
43 after failure to renew a license for a period of more than 60 days after the renewal date. The
44 Board may reinstate a license suspended under this subsection upon payment of a fee as
45 specified in G.S. 90-726.14, and may require that the applicant file a new application, furnish
46 references or otherwise update his or her credentials, or submit to examination for
47 reinstatement. Notwithstanding any provision to the contrary, the Board retains full jurisdiction
48 to investigate alleged violations of this Article by any person whose license is suspended under
49 this subsection, and, upon proof of any violation of this Article by any such person, the Board
50 may take disciplinary action as authorized by this section.

1 (g) A person whose license has been denied or revoked may reapply to the Board for
2 licensure after the passage of one calendar year from the date of such denial or revocation.

3 (h) A licensee may, with the consent of the Board, voluntarily relinquish his or her
4 license at any time. The Board may delay or refuse the granting of its consent as it may deem
5 necessary in order to investigate any pending complaint, allegation, or issue regarding violation
6 of any provision of this Article by the licensee. Notwithstanding any provision to the contrary,
7 the Board retains full jurisdiction to investigate alleged violations of this Article by any person
8 whose license is relinquished under this subsection, and, upon proof of any violation of this
9 Article by any such person, the Board may take disciplinary action as authorized by this
10 section.

11 (i) The Board may adopt such rules as it deems reasonable and appropriate to interpret
12 and implement the provisions of this section.

13 **"§ 90-726.14. Fees.**

14 The Board may collect fees established by its rules, but those fees shall not exceed the
15 amounts listed below:

16 (1)	<u>Application fee for licensure</u>	<u>\$250.00</u>
17 (2)	<u>License renewal</u>	<u>\$200.00</u>
18 (3)	<u>Late renewal fee</u>	<u>\$50.00</u>
19 (4)	<u>Reciprocal license application</u>	<u>\$250.00</u>
20 (5)	<u>Temporary license application</u>	<u>\$100.00.</u>

21 **"§ 90-726.15. Criminal history record checks of applicants for licensure.**

22 (a) All applicants for licensure shall consent to a criminal history record check. Refusal
23 to consent to a criminal history record check may constitute grounds for the Board to deny
24 licensure to an applicant. The Board shall be responsible for providing to the North Carolina
25 Department of Justice the fingerprints of the applicant to be checked, a form signed by the
26 applicant consenting to the criminal history record check and the use of fingerprints and other
27 identifying information required by the State or National Repositories, and any additional
28 information required by the Department of Justice. The Board shall keep all information
29 obtained pursuant to this section confidential.

30 (b) The cost of the criminal history record check and the fingerprinting shall be borne
31 by the applicant. The Board shall collect any fees required by the Department of Justice and
32 shall remit the fees to the Department of Justice for expenses associated with conducting the
33 criminal history record check.

34 (c) If an applicant's criminal history record reveals one or more criminal convictions,
35 the conviction shall not automatically bar licensure. The Board shall consider all of the
36 following factors regarding the conviction:

- 37 (1) The level of seriousness of the crime.
- 38 (2) The date of the crime.
- 39 (3) The age of the person at the time of conviction.
- 40 (4) The circumstances surrounding the commission of the crime, if known.
- 41 (5) The nexus between the criminal conduct of the person and the job duties of
42 the position to be filled.
- 43 (6) The applicant's prison, jail, probation, parole, rehabilitation, and
44 employment records since the date the crime was committed.

45 (d) If, after reviewing the factors, the Board determines that any of the grounds to deny
46 licensure exist, the Board may deny licensure of the applicant. The Board may disclose to the
47 applicant information contained in the criminal history record that is relevant to the denial if
48 disclosure of the information is permitted by applicable State and federal law. The Board shall
49 not provide a copy of the criminal history to the applicant. The applicant shall have the right to
50 appear before the Board to appeal the Board's decision. An appearance before the full Board

1 shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of
2 the General Statutes.

3 (e) The Board, its officers, and employees, acting in good faith and in compliance with
4 this section, shall be immune from civil liability for denying licensure to an applicant based on
5 information provided in the applicant's criminal history record."

6 **SECTION 2.** Article 43 of Chapter 90 of the General Statutes is amended by
7 adding the following new sections to read:

8 **"§ 90-726.16. Prohibited acts and penalties.**

9 (a) Except as permitted in G.S. 90-726.18, it shall be a violation of this Article for any
10 person not licensed in accordance with the provisions of this Article to practice behavior
11 analysis or to hold himself or herself out to the public as a person practicing behavior analysis.

12 (b) Any person not licensed in accordance with the provisions of this Article practicing
13 behavior analysis or holding himself or herself out to the public as a person practicing behavior
14 analysis in violation of this Article is guilty of a Class 2 misdemeanor. Each violation shall
15 count as a separate offense.

16 **"§ 90-726.17. Injunction.**

17 The Board may apply to the Superior Court of Wake County for an injunction to prevent
18 violations of this Article or any rules enacted pursuant thereto. The court is empowered to grant
19 such injunctions regardless of whether criminal prosecution or other action has been or may be
20 instituted as a result of such violation.

21 **"§ 90-726.18. Exemptions from licensure.**

22 (a) A person is exempt from the requirements of this Article if any of the following
23 conditions are met:

- 24 (1) The person is a duly licensed psychologist or psychological associate in this
25 State or a person providing ancillary services pursuant to G.S. 90-270.21.
- 26 (2) The person is a Registered Behavior Technician and is acting under the
27 extended authority or direction of a licensed behavior analyst or a licensed
28 assistant behavior analyst.
- 29 (3) The person is a family member, guardian, or other caretaker implementing a
30 behavior analysis treatment plan under the direction of a licensed behavior
31 analyst or a licensed assistant behavior analyst.
- 32 (4) The person engages in the practice of behavior analysis with nonhuman
33 subjects. This includes, but is not limited to, persons who are animal
34 behaviorists and animal trainers.
- 35 (5) The person provides general behavior analysis services to organizations, so
36 long as the services are for the benefit of the organizations and do not
37 involve direct services to individuals.
- 38 (6) The person is a professional licensed under this Chapter or Chapter 90B of
39 the General Statutes, so long as the licensed professional does not represent
40 that he or she is a licensed behavior analyst or licensed assistant behavior
41 analyst and the services of the licensed professional are within the scope of
42 practice of the license possessed by that professional and the services
43 performed are commensurate with the licensed professional's education,
44 training, and experience.
- 45 (7) The activities are part of a defined college or university course program of
46 study, practicum, or intensive practicum, so long as that person is under
47 direct supervision of (i) a licensed behavior analyst, (ii) an instructor in a
48 course sequence approved by the certifying entity, or (iii) a qualified faculty
49 member.

1 (8) The person is pursuing experience in behavior analysis consistent with the
2 certifying entity's experience requirements, so long as the person's activities
3 are supervised by a licensed behavior analyst."

4 **SECTION 3.** G.S. 90-270.4 is amended by adding a new subsection to read:

5 "(f1) Nothing in this Article shall be construed to prevent a behavior analyst or an
6 assistant behavior analyst licensed under Article 43 of Chapter 90 of the General Statutes from
7 offering services within the scope of practice authorized by the North Carolina Behavior
8 Analysis Board."

9 **SECTION 4.** The North Carolina Behavior Analysis Board shall adopt temporary
10 rules to implement this section no later than November 1, 2015. The temporary rules shall
11 remain in effect until permanent rules that replace the temporary rules become effective.

12 **SECTION 5.** Chapter 8 of the General Statutes is amended by adding a new
13 section to read:

14 **"§ 8-53.14. Communications between behavior analyst and client or patient.**

15 No person, duly authorized as licensed behavior analyst, nor any of the person's employees
16 or associates, shall be required to disclose any information which the person may have acquired
17 in the practice of behavior analysis and which information was necessary to enable the person
18 to practice behavior analysis. Any resident or presiding judge in the district in which the action
19 is pending may, subject to G.S. 8-53.6, compel disclosure, either at the trial or prior thereto, if
20 in his or her opinion disclosure is necessary to a proper administration of justice. If the case is
21 in district court the judge shall be a district court judge, and if the case is in superior court the
22 judge shall be a superior court judge.

23 Notwithstanding the provisions of this section, the behavior analyst-client or behavior
24 analyst-patient privilege shall not be grounds for failure to report suspected child abuse or
25 neglect to the appropriate county department of social services or for failure to report a disabled
26 adult suspected to be in need of protective services to the appropriate county department of
27 social services. Notwithstanding the provisions of this section, the behavior analyst-client or
28 behavior analyst-patient privilege shall not be grounds for excluding evidence regarding the
29 abuse or neglect of a child, or an illness of or injuries to a child, or the cause thereof, or for
30 excluding evidence regarding the abuse, neglect, or exploitation of a disabled adult, or an
31 illness of or injuries to a disabled adult, or the cause thereof, in any judicial proceeding related
32 to a report pursuant to the Child Abuse Reporting Law, Article 3 of Chapter 7B of the General
33 Statutes."

34 **SECTION 6.** Sections 2 and 3 of this act become effective January 1, 2016. The
35 remainder of this act is effective when it becomes law.