§ 90-742. Denial, suspension, or revocation of licenses and other disciplinary and remedial actions for violations of the Code of Conduct; relinquishing of license.

(a) Any applicant for licensure and any individual licensed under this Article shall comply with the ethical and professional standards specified in this Code of Conduct and in the rules of the Board. The Board may deny, suspend, or revoke licensure and may discipline, place on probation, limit practice, and require examination, remediation, and rehabilitation of any applicant or licensee, as provided for in subsection (b) of this section, for any violation listed in this subsection. The following are considered violations of the Code of Conduct:

(1) Conviction of a felony or entry of a plea of guilty or nolo contendere to any felony charge.

(2) Conviction of a felony or entry of a plea of guilty or nolo contendere to any misdemeanor involving moral turpitude, misrepresentation or fraud in dealing with the public, or conduct otherwise relevant to fitness to practice, or a misdemeanor charge reflecting the inability to practice behavior analysis relating to the health and safety of clients or patients.

(3) Using fraud or deceit in securing or attempting to secure or renew a license under this Article or willfully concealing from the Board material information in connection with application for a license or for renewal of a license under this Article.

(4) Using fraud, deceit, or misrepresentation upon the public, the Board, or any individual in connection with the practice of behavior analysis, the filing of Medicare, Medicaid, or other claims to any third-party payor, or in any manner otherwise relevant to fitness for the practice of behavior analysis.

(5) Making fraudulent, misleading, or intentionally or materially false statements pertaining to education, licensure, license renewal, supervision, continuing education, any disciplinary actions or sanctions pending or occurring in any other jurisdiction, professional credentials, or qualifications or fitness for the practice of behavior analysis to the public, any individual, the Board, or any other organization.

(6) Revocation or suspension of a license for the practice of behavior analysis in any other jurisdiction or having been disciplined by the licensing board or certifying entity in any other jurisdiction for conduct which would subject the licensee to discipline under this Article.

(7) Violation of any provision of this Article or of the rules adopted by the Board.

(8) Aiding or abetting the unlawful practice of behavior analysis by any individual not licensed by the Board.

(9) Engaging in immoral, dishonorable, unprofessional, or unethical conduct as defined in this subsection, or the current ethics code of the certifying entity.

(10) Practicing behavior analysis in a manner that endangers the welfare of clients or patients.

(11) Demonstrating an inability to practice behavior analysis with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition.

(12) Practicing behavior analysis outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(13) Failing to provide competent treatment, consultation, or supervision, in keeping with standards of usual and customary practice in this State.

(14) Failing to take all reasonable steps to ensure the competence of services.

(15) Failing to maintain a clear and accurate case record documenting the following for each patient or client:
   a. Presenting problems, diagnosis, or purpose of the evaluation, treatment, or other services provided.
   b. Fees, dates of services, and itemized charges.
   c. Summary content of each session of evaluation, treatment, or other services, except summary content that may cause significant harm to any individual if the information were released.
   d. Copies of all reports prepared.

(16) Failing to retain securely and confidentially the complete case record indefinitely if there are pending legal or ethical matters or if there is any other compelling circumstance, or failing to retain securely and confidentially the complete case record for at least seven years from the date of the last provision of services, except when under either circumstance, the behavior analyst was prevented from doing so by circumstances beyond the behavior analyst's control.

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

(18) Exercising undue influence in a manner that exploits the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the licensed behavior analyst, licensed assistant behavior analyst, or a third party.

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

(20) Failing to cooperate with or to respond promptly, completely, and honestly to the Board, to credentialing committees, institutional review boards, professional standards review organizations, or ethics committees of professional behavior analyst associations, hospitals, or other health care organizations or educational institutions, when those organizations or entities have jurisdiction.

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

(b) Upon proof that an applicant or licensee under this Article has engaged in any of the prohibited actions specified in subsection (a) of this section, the Board may, in lieu of denial, suspension, or revocation, do all of the following:

(1) Issue a formal reprimand or formally censure the applicant or licensee.

(2) Place the applicant or licensee on probation with appropriate conditions as the Board may deem advisable.

(3) Require examination, remediation, or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense of which shall be paid by the applicant or licensee.

(4) Require supervision for the services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense of which shall be paid by the applicant or licensee.

(5) Limit or circumscribe the practice of behavior analysis provided by the applicant or licensee with respect to the extent, nature, or location of the services provided, as the Board deems advisable.

(6) Impose conditions of probation or restrictions upon continued practice at the conclusion of a period of suspension or as requirements for the restoration of a revoked or suspended license.

(c) In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to the discipline, supervision, probation, remediation, rehabilitation, or practice limitation of a licensee or applicant for a license.

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

(e) When considering whether an applicant or licensee is physically or mentally capable of practicing behavior analysis with reasonable skill and safety with patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee to submit to a psychological evaluation by a psychologist to determine psychological status or a physical evaluation by a physician to determine physical condition, or both, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing behavior analysis with reasonable skill and safety with patients or clients. The psychologist or physician that conducts an evaluation of the applicant or licensee shall be designated by the court of competent jurisdiction. The Board shall be responsible for the expenses of evaluations ordered under this subsection. If the applicant or licensee raises the issue of mental or physical competence or appeals a decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant's or licensee's expense. If the Board suspects the objectivity or adequacy of the evaluation, the Board may compel an evaluation by its designated practitioners at its own expense.

(f) Except as provided otherwise in this Article, the procedure for revocation, suspension, denial, limitations of the license, or other disciplinary, remedial, or rehabilitative actions shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B of the General Statutes to any applicant whose license is denied or to whom licensure is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations or to any licensee before revoking, suspending, or restricting a license or imposing any other disciplinary action or remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a hearing for failure to pass an examination.

(g) In any proceeding, record of hearing, complaint, notice of charges, or decision before the Board, the Board may withhold from public disclosure the identity of any clients or patients who have not consented to the public disclosure of behavior analysis services having been provided by the licensee or applicant. The Board may close a hearing to the public and receive in executive session evidence involving or concerning the treatment of or delivery of behavior analysis services to a client or a patient who has not consented to the public disclosure of treatment or services as may be necessary for the protection and rights of the patient or client of the accused applicant or licensee and the full presentation of relevant evidence. All records, papers, and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries, or interviews conducted in connection with licensing or disciplinary matters, will not be considered public records as defined in G.S. 132-1. However, any notice or statement of charges, notice of hearing, or decision against or to any licensee or applicant shall be a public record notwithstanding that it may contain information collected and compiled as a result of an investigation, inquiry, or hearing except that identifying

information concerning the treatment or delivery of services to a patient or client who has not consented to the public disclosure of treatment or services shall be deleted. If any record, paper, or other document containing information collected and compiled by or on behalf of the Board is received and admitted in evidence in any hearing before the Board, it shall be a public record, subject to any deletions of identifying information concerning the treatment or delivery of behavior analysis services to a patient or client who has not consented to the public disclosure of treatment or services.

(h) A license issued under this Article is suspended automatically by operation of law after failure to renew a license for a period of more than 60 days after the renewal date. The Board may reinstate a license suspended under this subsection upon payment of a fee as specified in G.S. 90-743 and may require that the applicant file a new application, furnish references, update credentials, or submit to examination for reinstatement. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any individual whose license is suspended under this subsection, and, upon proof of any violation of this Article by any individual, the Board may take disciplinary action as authorized by this section.

(i) An individual whose license has been denied or revoked may reapply to the Board for licensure after the passage of one calendar year from the date of the denial or revocation.

(j) A licensee may voluntarily relinquish a license at any time with the consent of the Board. The Board may delay or refuse granting consent as necessary in order to investigate any pending complaint, allegation, or issue regarding violation of any provision of this Article by the licensee. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any individual whose license is relinquished under this subsection, and, upon proof of any violation of this Article by any individual, the Board may take disciplinary action as authorized by this section.

(k) The Board may adopt rules to interpret and implement the provisions of this section. (2021-22, s. 1(a).)