California Board of
PSYCHOLOGY

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MEMORANDUM

DATE	May 5, 2016
TO	Board of Psychology
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #22 (a)(2) – Legislative Update – AB 1715 (Holden) Healing Arts: Behavior Analysis: Licensing

Background:

This bill:

- Increases the number of members of the Board of Psychology.
- Establishes the Behavior Analyst Act.
- Creates the Behavior Analyst Committee.
- Requires a person to obtain a license from the Board to engage in the practice of either a behavior analyst or an assistant behavior analyst.
- Provides the procedures necessary to obtain such license.
- Provides the requirements for persons to be employed behavior analysis technicians and Interns.
- Relates to medical records procedures.
- Provides a violation is a misdemeanor.

Location: Assembly Appropriations Committee

Status: In Assembly Committee on Appropriations: To Suspense File

Action Requested:
The Policy and Advocacy Committee recommendation is the Board take a "Support if Amended" position.

Attachment A is the analysis of AB 1715 (Holden)
Attachment B is the language of AB 1715 (Holden)
Attachment C is the position letter for AB 1715 (Holden)
Attachment D is the Assembly Appropriations Analysis of AB 1715 (Holden)

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: AB 1715 **VERSION:** AMENDED: APRIL 12, 2016

AUTHOR: HOLDEN **SPONSOR:** CALIFORNIA ASSOCIATION FOR BEHAVIOR ANALYSIS

BOARD POSITION NONE

SUBJECT: HEALING ARTS: BEHAVIOR ANALYSIS: LICENSING

Overview

This bill would establish the Behavior Analyst Act. The bill would require a person to apply for and obtain a license from the Board of Psychology (Board), prior to engaging in the practice of behavior analysis, as defined, either as a licensed behavior analyst, licensed assistant behavior analyst, registered behavior analyst intern, and registered behavior analysis technician. The bill would require applicants to, among other things, meet certain educational and training requirements, and submit fingerprints for both a state and federal criminal background check.

This bill would, until January 1, 2022, vest the board with the power to enforce the Behavior Analyst Act, and would require the Board to, among other things, post information regarding licensed behavior analysts and licensed assistant behavior analysts, as specified. The bill would, until January 1, 2022, create the Behavior Analyst Committee within the jurisdiction of the board, and would require the committee to be comprised of five (5) members who shall be appointed as specified. The bill would authorize the committee to make recommendations to the board regarding the implementation of the act.

Existing Law:

1) Requires that every health care service plan or insurance policy that provides hospital, medical or surgical coverage must also provide coverage for behavioral health treatment for pervasive developmental disorder or autism (PDD/A). (Health and Safety Code (HSC) §1374.73(a), Insurance Code (IC) §10144.51(a))

2) Requires these health care service plans and health insurers subject to this provision to maintain an adequate network of qualified autism service providers. (HSC §1374.73(b), IC §10144.51(b))

3) Defines "behavioral health treatment" as professional services and treatment programs, including applied behavior analysis and evidence-based behavior intervention programs which develop or restore the functioning of an individual with pervasive developmental disorder or autism, and meets the following criteria (HSC §1374.73(c), IC §10144.51(c):

    a) Is prescribed by a licensed physician and surgeon or is developed by a licensed psychologist;

    b) Is provided under a treatment plan prescribed by a qualified autism service provider and administered by such a provider or by a qualified autism service professional under supervision and employment of a qualified autism service provider;

    c) The treatment plan has measurable goals over a specific timeline and the plan is reviewed by the provider at least once every six months; and

    d) Is not used for purposes of providing or for the reimbursement of respite, day care, or educational services.

4) Defines a "qualified autism service provider" as either (HSC §1374.73(c), IC §10144.51(c)):

    a) A person, entity, or group that is certified by a national entity, such as the Behavior Analyst Certification Board, that is accredited and which designs, supervises, or provides treatment for pervasive developmental disorder or autism; or

    b) A person who is licensed as a specified healing arts practitioner, including a psychologist, marriage and family therapist, educational psychologist, clinical social worker, or professional clinical counselor. The licensee must design, supervise, or provide treatment for pervasive developmental disorder or autism and be within his or her experience and competence.

5) Defines a "qualified autism service professional" as someone who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):

    a) Provides behavioral health treatment;

b) Is employed and supervised by a qualified autism service provider;

c) Provides treatment according to a treatment plan developed and approved by the qualified autism service provider.

d) Is a behavioral service provider approved by a regional center to provide services as an Associate Behavior Analyst, Behavior Analyst, Behavior Management Assistant, Behavior Management Consultant, or Behavior Management Program as defined in Section 54342 of Title 17 of the California Code of Regulations (CCR); and

e) Has training and experience providing services for pervasive developmental disorder or autism pursuant to the Lanterman Developmental Disabilities Services Act.

6) Defines a "qualified autism service paraprofessional" as an unlicensed and uncertified person who meets all of the following (HSC §1374.73(c), IC §10144.51(c)):

a) Is employed and supervised by a qualified autism service provider;

b) Provides treatment according to a treatment plan developed and approved by the qualified autism service provider;

c) Meets criteria set forth in regulations regarding use of paraprofessionals in group practice providing behavioral intervention services; and

d) Is certified by a qualified autism service provider as having adequate education, training, and experience.

7) Defines vendor service codes and sets requirements for regional to classify the following professions (CCR 17 §54342):

a) Associate Behavior Analysts;

b) Behavior Analysts;

c) Behavior Management Assistants;

d) Behavior Management Consultants; and

e) Behavior Management Programs.

Comments:

1) **ASPPB Position**. The Association of State and Provincial Psychology Boards' Position Statement Regarding Applied Behavior analysis is as follows:

   a) ASPPB adopts the position that applied behavior analysis (ABA) services must be state, provincially or territorially regulated in order to ensure consumer protection.
   b) ASPPB adopts the position that applied behavior analysis services should be regulated under the psychology boards with a defined scope of practice and title separate from that of psychologists.

   AB 1715 (Holden) meets these two conditions.

2) **ABA Task Force Recommendations:** The Applied Behavior Analysis Task Force met in January 2015 and passed the following recommendations that were adopted by the full Board at its February 2015 Meeting:

   a) That any licensure bill contain an exemption for licensed psychologists and their supervisees,
   b) That any licensure bill exclude diagnosis in the ABA practitioners scope of practice and;
   c) That it be communicated that ABA is within the existing scope of practice for licensed psychologists.

   AB 1715 (Holden) includes these three conditions.

3) **Increased Board Membership**. The bill would increase the number of Board members from 9 to 11. One of the new members would be licensed ABA practitioners as well as a licensed psychologist, and one is a public member.

4) The bill establishes a **Behavior Analyst Committee (BAC)** staffed by civil service employees of the Board of Psychology. This five member body would meet at least four times per year and have authority to make recommendations to the Board for its approval. The Board would have the ability to reject or amend BAC recommendations before they came into effect. The five members would be drawn from the following categories:

   a) Licensed Behavior Analyst and Board Member (GO appointed): 1 year term
   b) Licensed Assistant Behavior Analyst (GO appointed): 2 year term
   c) Licensed Psychologist who is also BACB certified (GO appointed): 3 year term

d) Licensed Behavior Analyst (Assembly Speaker appointed): 4 year term
e) Public member (Sen. Rules Com. Appointed) 4 year term.

5) **Exemptions from licensure:**

- In section BPC 2999.38 (g): individuals employed or contracted by a local educational agency, or nonpublic agency or school with a contract with a local educational agency, for the purpose of serving students with behavioral and developmental issues when in a classroom and other school settings.

  This exemption allows a large group, to actively continue working in the field of Behavior Analysis without any licensure or registration verification, and therefore withholding the recipient of Behavior Analysis the consumer protection afforded by licensure.

6) **Fiscal Impact.** Approximate fiscal impact to BOP of $1.9 million in 2017-18, the first year of implementation, and about $2.6 million ongoing (loan from the Psychology Fund, to be reimbursed by fees). Initial costs relate to promulgation of regulations, development of materials, build-out of office space, and information technology changes to add a licensure category. This is based on an assumption of 3,850 licensees and 45,000 technicians and interns.

Support

None on file.

Opposition.

The DIR/Floortime Coalition of California

History

04/20/16 In committee: Set, first hearing. Referred to APPR. suspense file.
04/13/16 Re-referred to Com. on APPR.
04/12/16 Read second time and amended.
04/11/16 From committee: Amend, and do pass as amended and re-refer to Com. on APPR. (Ayes 14. Noes 0.) (April 5).
03/30/16 Re-referred to Com. on B. & P.
03/29/16 From committee chair, with author's amendments: Amend, and re-refer to Com. on B. & P. Read second time and amended.
02/18/16 Referred to Com. on B. & P.
01/27/16 From printer. May be heard in committee February 26.
01/26/16 Read first time. To print.

California LEGISLATIVE INFORMATION

AB-1715 Healing arts: behavior analysis: licensing. (2015-2016)

AMENDED IN ASSEMBLY APRIL 12, 2016

AMENDED IN ASSEMBLY MARCH 29, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

ASSEMBLY BILL **No. 1715**

Introduced by Assembly Member Holden

January 26, 2016

An act to amend Sections 27 and 2920 of, to amend, repeal, and add Sections 2922, 2923, and 2927 of, to add Chapter 6.7 (commencing with Section 2999.10) to Division 2 of, and to repeal Sections 2999.20, 2999.26, 2999.31, and 2999.33 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1715, as amended, Holden. Healing arts: behavior analysis: licensing.

Existing law provides for the licensure and regulation of various healing arts licensees by various boards within the Department of Consumer Affairs, including the Board of Psychology. Under existing law, until January 1, 2017, the board is vested with the power to enforce the Psychology Licensing Law, and the board consists of 9 members, 4 of whom are public members and 5 of whom are licensed psychologists. Existing law specifies that a quorum of the board requires 5 members. Existing law requires the board to post information on its licensees, including the license status and address of record for a licensee, as specified.

This bill would enact the Behavior Analyst Act and would, until January 1, 2022, vest the board with the power to enforce the act.

This bill would, on and after July 1, 2018, increase the number of members that constitute a quorum of the board to 6 members, and would require the Governor to appoint 2 additional members to the board that meet certain requirements, including, but not limited to, that one member is licensed as a psychologist and is qualified to practice behavior analysis, as defined. The bill would also additionally require the board to post license information regarding behavior analysts, assistant behavior analysts, behavior analysis technicians, and behavior analyst interns.

This bill would require a person to apply for and obtain a license from the board prior to engaging in the practice of behavior analysis, as defined, either as a behavior analyst or an assistant behavior analyst. The bill would require these applicants to, among other things, meet certain educational and training requirements, and submit fingerprints for both a state and federal criminal background check. The bill would require an assistant behavior analyst applicant to provide proof to the board of ongoing supervision by a licensed behavior analyst or a

licensed psychologist who is qualified to practice behavior analysis, as specified. The bill would provide that those licenses expire 2 years after the date of issuance and would authorize the renewal of unexpired licenses if certain requirements are met, including the completion of specified continuing education. The bill would also require an applicant to certify, under penalty of perjury, that he or she is in compliance with that continuing education requirement. By expanding the crime of perjury, the bill would impose a state-mandated local program.

This bill would require the registration of a behavior analyst intern by the board and would require the intern to be supervised by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis. In order to be registered, the bill would require an intern applicant to meet certain educational requirements, submit fingerprints for a criminal background check, and pay an application fee, as provided. The bill would make these intern registrations subject to renewal every 2 years and would require the payment of a renewal fee.

This bill would also require a behavior analysis technician, as defined, who practices under the direction and supervision of a licensed behavior analyst, a licensed assistant behavior analyst, or a licensed psychologist who is qualified to practice behavior analysis, to submit, among other things, an application subject to board approval, fingerprints for a state and federal criminal background check, and payment of an application fee. The bill would make these approvals subject to renewal every 2 years and would require the payment of a renewal fee.

This bill would, until January 1, 2022, create the Behavior Analyst Committee within the jurisdiction of the board, and would require the committee to be composed of 5 members who shall be appointed as specified. The bill would authorize the committee to make recommendations to the board regarding the regulation of the practice of behavior analysis.

This bill would require the board to conduct disciplinary hearings, as specified. The bill, on and after July 1, 2019, would make it unlawful to, among other things, practice behavior analysis without being licensed by the board, except as specified.

This bill would make a licensee or health care facility, as defined, that fails or refuses to comply with an authorized client request or court order for the medical records of a client subject to a specified civil penalty, except as specified. The bill would also make a licensee or health care facility with multiple violations of those court orders subject to a crime. By creating a new crime, the bill would impose a state-mandated local program.

This bill would make a violation of the act a misdemeanor punishable by 6 months in the county jail or a fine not to exceed $2,500, or by both imprisonment and a fine. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 27 of the Business and Professions Code is amended to read:

27. (a) Each entity specified in subdivisions (c), (d), and (e) shall provide on the Internet information regarding the status of every license issued by that entity in accordance with the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code) and the Information Practices Act of 1977 (Chapter 1 (commencing with Section 1798) of Title 1.8 of Part 4 of Division 3 of the Civil Code). The public information to be provided on the Internet shall include information on suspensions and revocations of licenses issued by the entity and other related enforcement action, including accusations filed pursuant to the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code) taken by the entity relative to persons, businesses, or facilities subject to licensure or regulation by the entity. The information may not include personal information, including home telephone number, date of birth, or social security number. Each entity shall disclose a licensee's address of record. However, each entity shall allow a licensee to provide a post office box number or other alternate address, instead of his or her home address, as the address of record. This section shall not preclude an entity from also requiring a licensee, who has provided a post office box number or other alternative mailing address as his or

her address of record, to provide a physical business address or residence address only for the entity's internal administrative use and not for disclosure as the licensee's address of record or disclosure on the Internet.

(b) In providing information on the Internet, each entity specified in subdivisions (c) and (d) shall comply with the Department of Consumer Affairs' guidelines for access to public records.

(c) Each of the following entities within the Department of Consumer Affairs shall comply with the requirements of this section:

(1) The Board for Professional Engineers, Land Surveyors, and Geologists shall disclose information on its registrants and licensees.

(2) The Bureau of Automotive Repair shall disclose information on its licensees, including auto repair dealers, smog stations, lamp and brake stations, smog check technicians, and smog inspection certification stations.

(3) The Bureau of Electronic and Appliance Repair, Home Furnishings, and Thermal Insulation shall disclose information on its licensees and registrants, including major appliance repair dealers, combination dealers (electronic and appliance), electronic repair dealers, service contract sellers, and service contract administrators.

(4) The Cemetery and Funeral Bureau shall disclose information on its licensees, including cemetery brokers, cemetery salespersons, cemetery managers, crematory managers, cemetery authorities, crematories, cremated remains disposers, embalmers, funeral establishments, and funeral directors.

(5) The Professional Fiduciaries Bureau shall disclose information on its licensees.

(6) The Contractors' State License Board shall disclose information on its licensees and registrants in accordance with Chapter 9 (commencing with Section 7000) of Division 3. In addition to information related to licenses as specified in subdivision (a), the board shall also disclose information provided to the board by the Labor Commissioner pursuant to Section 98.9 of the Labor Code.

(7) The Bureau for Private Postsecondary Education shall disclose information on private postsecondary institutions under its jurisdiction, including disclosure of notices to comply issued pursuant to Section 94935 of the Education Code.

(8) The California Board of Accountancy shall disclose information on its licensees and registrants.

(9) The California Architects Board shall disclose information on its licensees, including architects and landscape architects.

(10) The State Athletic Commission shall disclose information on its licensees and registrants.

(11) The State Board of Barbering and Cosmetology shall disclose information on its licensees.

(12) The State Board of Guide Dogs for the Blind shall disclose information on its licensees and registrants.

(13) The Acupuncture Board shall disclose information on its licensees.

(14) The Board of Behavioral Sciences shall disclose information on its licensees, including licensed marriage and family therapists, licensed clinical social workers, licensed educational psychologists, and licensed professional clinical counselors.

(15) The Dental Board of California shall disclose information on its licensees.

(16) The State Board of Optometry shall disclose information regarding certificates of registration to practice optometry, statements of licensure, optometric corporation registrations, branch office licenses, and fictitious name permits of its licensees.

(17) The Board of Psychology shall disclose information on its licensees, including psychologists, psychological assistants, registered psychologists, behavior analysts, assistant behavior analysts, behavior analysis technicians, and behavior analyst interns.

(d) The State Board of Chiropractic Examiners shall disclose information on its licensees.

(e) The Structural Pest Control Board shall disclose information on its licensees, including applicators, field representatives, and operators in the areas of fumigation, general pest and wood destroying pests and organisms, and wood roof cleaning and treatment.

(f) The Bureau of Medical Marijuana Regulation shall disclose information on its licensees.

(g) "Internet" for the purposes of this section has the meaning set forth in paragraph (6) of subdivision (f) of Section 17538.

SEC. 2. Section 2920 of the Business and Professions Code is amended to read:

2920. (a) The Board of Psychology shall enforce and administer this chapter and Chapter 6.7 (commencing with Section 2999.10). The board shall consist of nine members, four of whom shall be public members.

(b) On and after July 1, 2018, notwithstanding subdivision (a), the board shall consist of 11 members, five of whom shall be public members.

(c) This section shall remain in effect only until January 1, 2017, and as of that date is repealed.

(d) Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

SEC. 3. Section 2922 of the Business and Professions Code is amended to read:

2922. (a) In appointing the members of the board, except the public members, the Governor shall use his or her judgment to select psychologists who represent, as widely as possible, the varied professional interests of psychologists in California.

(b) The Governor shall appoint two of the public members and the five licensed members of the board qualified as provided in Section 2923. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(c) This section shall become inoperative on July 1, 2018, and, as of January 1, 2019, is repealed.

SEC. 4. Section 2922 is added to the Business and Professions Code, to read:

2922. (a) In appointing the licensed members of the board, the Governor shall use his or her judgment to select psychologists and behavior analysts who represent, as widely as possible, the varied professional interests of psychologists and behavior analysts in California.

(b) The Governor shall appoint three of the public members and the six licensed members of the board qualified as provided in Section 2923. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(c) This section shall become operative on July 1, 2018.

SEC. 5. Section 2923 of the Business and Professions Code is amended to read:

2923. (a) Each member of the board shall have all of the following qualifications:

(1) He or she shall be a resident of this state.

(2) Each member appointed, except the public members, shall be a licensed psychologist.

(b) The public members shall not be licentiates of the board or of any board under this division or of any board referred to in the Chiropractic Act or the Osteopathic Act.

(c) This section shall become inoperative on July 1, 2018, and, as of January 1, 2019, is repealed.

SEC. 6. Section 2923 is added to the Business and Professions Code, to read:

2923. (a) Each member of the board shall be a resident of this state.

(b) Five members of the board shall be licensed as psychologists under this chapter.

(c) One member shall be licensed as a psychologist and qualified to practice behavior analysis, as defined in Section 2999.12, as follows:

(1) For the first appointment after the operative date of this section, the member shall hold a certificate as a

certified behavior analyst from a certifying entity, as defined in Section 2999.12.

(2) For subsequent appointments, the member shall be licensed as a behavior analyst under Chapter 6.7 (commencing with Section 2999.10).

(d) The public members shall not be licentiates of the board or of any board under this division or of any board referred to in the Chiropractic Act or the Osteopathic Act.

(e) This section shall become operative on July 1, 2018.

SEC. 7. Section 2927 of the Business and Professions Code is amended to read:

2927. (a) Five members of the board shall at all times constitute a quorum.

(b) This section shall become inoperative on July 1, 2018, and, as of January 1, 2019, is repealed.

SEC. 8. Section 2927 is added to the Business and Professions Code, to read:

2927. (a) Six members of the board shall at all times constitute a quorum.

(b) This section shall become operative on July 1, 2018.

SEC. 9. Chapter 6.7 (commencing with Section 2999.10) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 6.7. Behavior Analysts
Article 1. General Provisions

2999.10. This chapter shall be known, and may be cited, as the Behavior Analyst Act.

2999.11. (a) The Legislature finds and declares that the practice of behavior analysis in California affects the public health, safety, and welfare, and is subject to regulation to protect the public from the unauthorized and unqualified practice of behavior analysis, and unprofessional, unethical, or harmful conduct by persons licensed to practice behavior analysis.

(b) It is the intent of the Legislature that the board begin accepting applications for behavior analyst licensure, assistant behavior analyst licensure, behavior analysis technician approval, and behavior analyst intern registration no later than January 1, 2018, provided that the funds necessary to implement this chapter have been appropriated by the Legislature as specified in Section 2999.98.

2999.12. For purposes of this chapter, the following terms have the following meanings:

(a) "Behavior analysis technician" means an individual who works directly with a client to implement applied behavior analysis services under the direction and supervision of a licensed behavior analyst, a licensed assistant behavior analyst, or a licensed psychologist who is qualified to practice behavior analysis, and has successfully completed the application requirements described in Section 2999.36.

(b) "Board" means the Board of Psychology.

(c) "Certifying entity" means the Behavior Analyst Certification Board or its successor, or another national credentialing organization with behavior analyst certification programs approved by the board and accredited by the National Commission for Certifying Agencies.

(d) "Committee" means the Behavior Analyst Committee.

(e) "Department" means the Department of Consumer Affairs.

(f) "Licensed assistant behavior analyst" means a person licensed under this chapter to practice behavior analysis under the supervision of a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis.

(g) "Behavior analyst intern" means a person registered under this chapter to practice behavior analysis under the supervision of a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis.

(h) "Licensed behavior analyst" means a person licensed under this chapter to practice behavior analysis.

(i) "Practice of behavior analysis" or "to practice behavior analysis" means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior and includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis, interventions based on scientific research and the direct observation and measurement of behavior and the environment, and utilization of contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.

(1) The practice of behavior analysis does not include psychological testing and assessment, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, counseling, prescribing drugs, performing surgery, or administering electroconvulsive therapy.

(2) The Legislature recognizes that the scopes of practice of healing arts licensees regulated under this division sometimes contain similar practices. However, nothing herein shall be construed to allow a licensed behavior analyst or a licensed assistant behavior analyst to engage in those practices, including, but not limited to, assessments, other than specific to their scope of practice within behavior analysis as described herein. Any person practicing behavior analysis under this chapter who violates this provision is subject to disciplinary action by both the Board of Psychology and the board overseeing the relevant practice.

Article 2. Administration

2999.20. (a) The Board of Psychology is vested with the power to administer the provisions and requirements of this chapter, and may make and enforce rules and regulations that are reasonably necessary to carry out its provisions.

(b) This section shall remain in effect only until January 1, 2022, and as of that date is repealed. Notwithstanding any other law, the repeal of this section renders the board subject to review by the appropriate policy committees of the Legislature.

2999.21. Protection of the public shall be the highest priority for the board in exercising its licensing, regulatory, and disciplinary functions pursuant to this chapter. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

2999.22. The board shall adopt, amend, and repeal regulations to implement the requirements of this chapter. All regulations adopted by the board shall comply with the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

2999.23. The board shall adopt a program of consumer and professional education in matters relevant to the ethical practice of behavior analysis. The board shall establish standards of ethical conduct relating to the practice of behavior analysis that are based on current standards published by a national credentialing organization with behavior analyst certification programs approved by the board and accredited by the National Commission for Certifying Agencies. These standards shall be applied by the board as the accepted standard of ethics in all law and ethics licensing examination development and in all board enforcement policies and disciplinary case evaluations involving the practice of behavior analysis.

2999.24. The board may employ, subject to civil service and other laws, employees as may be necessary to carry out the provisions of this chapter under the direction of the executive officer of the board.

2999.25. The board shall maintain, and make available to the public, a list of all licensees. The board shall make available on its Internet Web site information regarding the status of every license issued by the board under this chapter pursuant to Section 27.

2999.26. (a) The Behavior Analyst Committee is hereby created within the jurisdiction of the board to make recommendations to the board regarding the regulation of the practice of behavior analysis in the state in order to protect the public from the unauthorized and unqualified practice of applied behavior analysis, and unprofessional, unethical, or harmful conduct by persons licensed to practice behavior analysis.

(b) The committee shall consist of five members. Two members shall be licensed behavior analysts, one of which shall also be a member of the board. One member shall be a psychologist licensed under Chapter 6.6

(commencing with Section 2900) and who holds a current certification from a certifying entity as a behavior analyst. One member shall be a licensed assistant behavior analyst. One member shall be a public member who is not licensed under this chapter, under any chapter within this division, or by any board referred to in the Chiropractic Act or the Osteopathic Act.

(c) The Governor shall appoint one licensed behavior analyst member, the licensed psychologist member, and the licensed assistant behavior analyst member. The Senate Committee on Rules shall appoint the public member, and the Speaker of the Assembly shall appoint one licensed behavior analyst member.

(d) Notwithstanding subdivisions (b) and (c), the initial appointed members of the committee shall be appointed as follows:

(1) The initial members appointed by the Governor shall be as follows:

(A) One member shall be currently certified by a certifying entity as a certified behavior analyst and shall serve an initial term of one year.

(B) One member shall be currently certified by a certifying entity as a certified assistant behavior analyst and shall serve an initial term of two years.

(C) One member shall be a licensed psychologist who is currently certified by a certifying entity as a certified behavior analyst and shall serve an initial term of three years.

(2) The initial member appointed by the Senate Committee on Rules shall serve a term of four years.

(3) The initial member appointed by the Speaker of the Assembly shall be currently certified by a certifying entity as a certified behavior analyst and shall serve an initial term of four years.

(e) Except as provided in subdivision (d), each member of the committee shall hold office for a term of four years, and shall serve until the appointment of his or her successor or until one year has elapsed since the expiration of the term for which he or she was appointed, whichever occurs first. Vacancies shall be filled by the appointing power for the unexpired portion of the terms in which they occur. A member shall not serve for more than two consecutive terms.

(f) All terms shall begin on July 1 and expire on June 30.

(g) Each member of the committee shall receive per diem and expenses as provided in Sections 103 and 113.

(h) Three members of the committee shall at all times constitute a quorum.

(i) This section shall become operative on July 1, 2018.

(j) This section shall remain in effect only until January 1, 2022, and as of that date is repealed.

2999.27. The committee shall do all of the following:

(a) Meet at least once per quarter. All meetings of the committee shall be public meetings. Notice of each regular meeting of the committee shall be given in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(b) Committee meetings may be called upon reasonable notice at the discretion of the chair, and shall be called at any time upon reasonable notice by a written request of two committee members to the chair.

(c) The committee shall elect a chair and a vice chair from among its members at the first meeting held in each fiscal year. The chair shall preside at all meetings of the committee and shall work with the executive officer of the board to coordinate the committee's business. If the chair is unable to attend a meeting, the vice chair shall preside at the meeting.

2999.28. (a) The committee may make recommendations to the board regarding licensing and practice standards.

(b) The committee may make recommendations to the board regarding the adoption, amendment, and repeal of regulations to implement the requirements of this chapter including, but not limited to, the setting of fees and the establishment of disciplinary guidelines.

Article 3. Licensing

2999.30. To qualify for licensure as a licensed behavior analyst or a licensed assistant behavior analyst, each applicant shall meet the board's requirements for behavior analyst or assistant behavior analyst licensure, as applicable, including all of the following:

(a) The applicant has not committed acts or crimes constituting grounds for denial of licensure under Section 480.

(b) The board shall not issue a license or registration to any person who has been convicted of a crime in this state, or another state, or in a territory of the United States that involves sexual abuse of a child, or who is required to register pursuant to Section 290 of the Penal Code or the equivalent in another state or territory.

(c) The applicant has successfully passed a state and federal level criminal offender record information search conducted through the Department of Justice, as follows:

(1) The board shall request from the Department of Justice subsequent arrest notification service, pursuant to Section 11105.2 of the Penal Code, for each person who submitted information pursuant to this subdivision.

(2) The Department of Justice shall charge a fee sufficient to cover the cost of processing the request described in this section.

2999.31. (a) In order to obtain a license as a behavior analyst, an individual shall submit an application on a form approved by the board accompanied by the fees required by the board as specified in Section 2999.93.

(b) An applicant shall include, with the application, verification from the certifying entity that the applicant meets both of the following requirements:

(1) Has passed the Board Certified Behavior Analyst examination or an equivalent examination administered by the certifying entity.

(2) Maintains an active status as a certified behavior analyst with the certifying entity.

(c) Each applicant shall obtain a passing score on a California law and ethics examination administered by the board.

(d) This section shall become inoperative on July 1, 2019. An applicant who submits his or her application prior to July 1, 2019, shall be required to meet the requirements of this section to be licensed by the board.

(e) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

2999.32. (a) In order to obtain a license as a behavior analyst, an individual shall submit an application on a form approved by the board accompanied by the fees required by the board as specified in Section 2999.93.

(b) An applicant shall include, with the application, verification from the certifying entity that the applicant meets both of the following requirements:

(1) Has passed the Board Certified Behavior Analyst examination or an equivalent examination administered by the certifying entity.

(2) Maintains an active status as a certified behavior analyst with the certifying entity.

(c) Each applicant shall obtain a passing score on a California law and ethics examination administered by the board.

(d) The applicant shall meet one of the following requirements:

(1) Possess a master's degree or higher level of education from an institution, which meets the requirements described in Section 2999.35, that was conferred in behavior analysis, psychology, or education.

(2) Possess a master's degree or higher level of education, which meets the requirements described in Section 2999.35, and completed a behavior analysis course sequence approved by the certifying entity.

(e) In addition to subdivisions (a) to (d), inclusive, an individual shall meet one of the following paragraphs in order to be licensed under this chapter:

(1) An individual shall have completed both of the following:

(A) Two hundred seventy hours of classroom graduate-level instruction in all of the following content areas:

(i) Ethical and professional conduct coursework consisting of 45 hours. The content must be taught in one or more freestanding courses devoted to ethical and professional conduct of behavior analysts.

(ii) Concepts and principles of behavior analysis consisting of 45 hours.

(iii) Research methods in behavior analysis, consisting of 25 hours of measurement, including data analysis, and 20 hours of experimental design.

(iv) Applied behavior analysis, consisting of 45 hours of fundamental elements of behavior change and specific behavior change procedures, 30 hours of identification of the problem and assessment, 10 hours of intervention and behavior change considerations, 10 hours of behavior change systems, and 10 hours of implementation, management, and supervision.

(v) Elective coursework in behavior analysis consisting of 30 hours.

(B) Supervised experiential training by any of the following:

(i) One thousand five hundred hours of independent field work in behavior analysis supervised in accordance with the requirements of the certifying entity.

(ii) One thousand hours of supervised practicum in behavior analysis within a university practicum approved by the certifying entity, taken for graduate academic credit, and completed with a passing grade.

(iii) Seven hundred fifty hours of supervised intensive practicum in behavior analysis within a university practicum approved by the certifying entity, taken for graduate academic credit, and completed with a passing grade.

(iv) A combination of the supervised experience in clause (i), (ii), or (iii). Hours may be completed in any combination of the categories of supervised experience. Hours accrued through a combination of supervised experience shall be proportionately calculated.

(2) An individual shall meet all of the following requirements:

(A) Have a faculty appointment of at least three years, cumulatively, of full-time work as a faculty member at a fully accredited higher education institution within a five-year period.

(B) Taught at least five sections or iterations of behavior analysis coursework. An applicant shall have taught at least two behavior analysis content areas, which are concepts and principles of behavior, single-subject research methods, applied behavior analysis, and ethics in behavior analysis, in separate courses. Each course taught shall have been exclusively or primarily devoted to behavior analysis content, and shall have been taught at the graduate level. An applicant shall submit proof of completion of the faculty appointment and teaching requirements from a department head, including the syllabus for each course taught, to the board.

(C) Published one article with all of the following characteristics:

(i) Behavior analytic in nature.

(ii) Includes at least one experimental evaluation.

(iii) Published in a high-quality, peer reviewed journal.

(iv) The applicant is the first, second, or corresponding author.

(v) The article may have been published at any time during the applicant's career.

(D) Obtained supervised experiential training by any of the following:

(i) One thousand five hundred hours of independent field work in behavior analysis supervised in accordance with the requirements of the certifying entity.

(ii) One thousand hours of supervised practicum in behavior analysis within a university practicum approved by the certifying entity, taken for graduate academic credit, and completed with a passing grade.

(iii) Seven hundred fifty hours of supervised intensive practicum in behavior analysis within a university practicum approved by the certifying entity, taken for graduate credit, and completed with a passing grade.

(iv) A combination of the supervised experience in clause (i), (ii), or (iii). Hours may be completed in any combination of the categories of supervised experience. Hours accrued through a combination of supervised

experience shall be proportionately calculated.

(3) An individual shall have completed all of the following:

(A) A doctoral degree in behavior analysis, psychology, or education from an accredited higher education institution.

(B) Ten years of postdoctoral experience practicing behavior analysis. The duration of practice shall be at least 10 years, cumulatively, of full-time practice. An applicant's practice shall have occurred under a relevant state professional credential or license.

(C) At least 500 hours of supplemental supervised experiential training that meets current experience standards of the certifying entity, commencing after the 10 years of postdoctoral experience required in paragraph (b).

(f) This section shall become operative on July 1, 2019.

2999.33. (a) To obtain a license as an assistant behavior analyst, an individual shall submit an application on a form approved by the board accompanied by the fees required by the board as specified in Section 2999.93.

(b) An applicant shall include, with the application, verification from the certifying entity that the applicant meets all of the following requirements:

(1) Has passed the Board Certified Assistant Behavior Analyst examination or equivalent examination administered by the certifying entity.

(2) Maintains an active status as a certified assistant behavior analyst with the certifying entity.

(c) Each applicant shall obtain a passing score on a California law and ethics examination administered by the board.

(d) Each applicant shall provide proof to the board of ongoing supervision by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis in a manner consistent with the certifying entity's requirements for supervision of assistant behavior analysts.

(e) This section shall become inoperative on July 1, 2019. An applicant who submits his or her application prior to July 1, 2019, shall be required to meet the requirements of this section to be licensed by the board.

(f) This section shall remain in effect only until January 1, 2020, and as of that date is repealed.

2999.34. (a) In order for an individual to be licensed as an assistant behavior analyst under this chapter, he or she shall possess a baccalaureate degree or higher level of education from an institution that meets the requirements described in Section 2999.35.

(b) An applicant shall include, with the application, verification from the certifying entity that the applicant meets both of the following requirements:

(1) Has passed the Board Certified Assistant Behavior Analyst examination or an equivalent examination administered by the certifying entity.

(2) Maintains an active status as a certified assistant behavior analyst with the certifying entity.

(c) Each applicant shall obtain a passing score on a California law and ethics examination administered by the board.

(d) Each applicant shall provide proof to the board of ongoing supervision by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis in a manner consistent with the certifying entity's requirements for supervision of assistant behavior analysts.

(e) In addition to subdivisions (a) to (d), inclusive, an individual shall meet all of the following requirements in order to be licensed under this chapter:

(1) Completed a baccalaureate degree or higher level of education from an institution that meets the requirements in Section 2999.35.

(2) An applicant shall meet both of the following:

(A) Completed 180 classroom hours of undergraduate or graduate level instruction in all of the following content

areas:

(i) Ethical and professional conduct coursework of behavior analysis consisting of 15 hours.

(ii) Concepts and principles of behavior analysis consisting of 45 hours.

(iii) Research methods in behavior analysis, consisting of 10 hours of measurement, including data analysis, and five hours of experimental design.

(iv) Applied behavior analysis, consisting of 45 hours of fundamental elements of behavior change and specific behavior change procedures, 30 hours of identification of the problem and assessment, five hours of intervention and behavior change considerations, five hours of behavior change systems, and five hours of implementation, management, and supervision.

(v) Elective coursework in behavior analysis consisting of 15 hours.

(B) Obtained supervised experiential training by any of the following:

(i) One thousand hours of independent field work in behavior analysis supervised in accordance with the requirements of the certifying entity, taken for academic credit, and completed with a passing grade.

(ii) Six hundred seventy hours of supervised practicum in behavior analysis within a university practicum approved by the certifying entity, taken for academic credit, and completed with a passing grade.

(iii) Five hundred hours of supervised intensive practicum in behavior analysis within a university practicum approved by the certifying entity, taken for academic credit, and completed with a passing grade.

(iv) A combination of the supervised experience in clause (i), (ii), or (iii). Hours may be completed in any combination of the categories of supervised experience. Hours accrued through a combination of supervised experience shall be proportionately calculated.

(f) This section shall become operative on July 1, 2019.

2999.35. The education required to obtain a behavior analyst license or an assistant behavior analyst license shall be from any of the following:

(a) A United States institution of higher education listed by the Council for Higher Education Accreditation.

(b) A Canadian institution of higher education that is a member of the Association of Universities and Colleges of Canada or the Association of Canadian Community Colleges.

(c) An applicant for licensure trained in an educational institution outside the United States or Canada shall demonstrate to the satisfaction of the board that he or she possesses a degree in a relevant subject that is equivalent to a degree earned from a regionally accredited university in the United States or Canada. Such an applicant shall provide to the board a comprehensive evaluation of the degree performed by a foreign credential service that is a member of the National Association of Credential Evaluation Services (NACES), and any other documentation that the board deems necessary.

2999.35.5. (a) A person other than a licensed behavior analyst, licensed assistant behavior analyst, or approved behavior analysis technician may be registered as a behavior analyst intern by the board in order to prepare for licensure as a behavior analyst. The behavior analyst intern shall be supervised in accordance with the board's regulations by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis in order to perform behavior analysis services provided that all of the following apply:

(1) The person's title is "behavior analyst intern."

(2) The person meets one of the following requirements:

(A) Is enrolled in a defined program of study, course, practicum, internship, or postdoctoral program that meets the requirements of subdivision (d) of Section 2999.32.

(B) Has completed a defined program of study, course, or postdoctoral traineeship that meets the requirements of subdivision (d) of Section 2999.32 and is currently completing supervised experiential training in accordance with this chapter.

(b) The behavior analyst intern's supervisor shall be responsible for ensuring that the extent, kind, and quality

of the behavior analysis services the behavior analyst intern performs are consistent with his or her training and experience and shall be responsible for the behavior analyst intern's compliance with this chapter and regulations duly adopted hereunder, including those provisions set forth in Section 2999.62.

(c) The behavior analyst intern shall be registered by the board. In order to register as a behavior analyst intern an individual shall:

(1) Submit fingerprint images to the California Department of Justice for a state and federal criminal background report within 14 days from the date of application.

(2) Pay an application fee, in an amount not to exceed a reasonable regulatory cost, to be determined by the board.

(3) Renew his or her application every two years by submitting to the board verification of continued practice, as specified in this section, and by paying to the board a renewal fee in an amount that is 50 percent of the application fee.

(4) An individual may only practice as a behavior analyst intern for up to six years from the date of initial registration.

(d) No licensed behavior analyst or licensed psychologist who is qualified to practice behavior analysis may supervise more than four behavior analyst interns at any given time unless specifically authorized to do so by the board. No behavior analyst intern may provide behavior analysis services to the public except as a supervisee of a licensed behavior analyst or licensed psychologist who is qualified to practice behavior analysis.

2999.36. (a) Behavior analysis technicians practicing in this state under the direction and supervision of an individual licensed under this chapter or a licensed psychologist who is qualified to practice behavior analysis shall satisfy all of the following requirements:

(1) Be at least 18 years of age and possess a minimum of a high school diploma or its equivalent.

(2) Submit an application on a form approved by the board.

(3) Submit fingerprint images to the California Department of Justice for a state and federal criminal background report within 14 days from the date of application.

(4) Pay an application fee, in an amount not to exceed a reasonable regulatory cost, to be determined by the board.

(5) Renew his or her application every two years by submitting to the board verification of continued practice as a behavior analysis technician and by paying to the board a renewal fee in an amount that is 50 percent of the application fee.

(b) The board may deny or revoke acceptance of an application or the renewal of an application under this section if it is determined to be in the best interest of public safety and welfare, as described in Section 2999.21.

2999.37. On and after July 1, 2019, it shall be unlawful for any person to engage in any of the following acts:

(a) Engage in the practice of behavior analysis, as defined in Section 2999.12, without first having complied with the provisions of this chapter and without holding a current, valid, and active license as required by this chapter.

(b) Represent himself or herself by using the title "licensed behavior analyst," or "licensed assistant behavior analyst" without being duly licensed according to the provisions of this chapter.

(c) Make any use of any title, words, letters, or abbreviations that may reasonably be confused with a designation provided by this chapter to denote a standard of professional or occupational competence without being duly licensed.

(d) Materially refuse to furnish the board information or records required or requested pursuant to this chapter.

2999.38. This chapter does not apply to any of the following:

(a) An individual licensed to practice psychology in this state under Chapter 6.6 (commencing with Section 2900), if the practice of behavior analysis engaged in by the licensed psychologist is within the licensed

psychologist's training and competence.

(b) A speech-language pathologist or an audiologist licensed under Chapter 5.3 (commencing with Section 2530), an occupational therapist licensed under Chapter 5.6 (commencing with Section 2570), a physical therapist licensed under Chapter 5.7 (commencing with Section 2600), a marriage and family therapist licensed under Chapter 13 (commencing with Section 4980), an educational psychologist licensed under Chapter 13.5 (commencing with Section 4989.10), a clinical social worker licensed under Chapter 14 (commencing with Section 4991), or a professional clinical counselor licensed under Chapter 16 (commencing with Section 4999.10), if the services provided by any of those licensees are within his or her licensed scope of practice and within the scope of his or her training and competence, provided that he or she does not represent himself or herself as a licensed behavior analyst or licensed assistant behavior analyst.

(c) A parent or guardian, or his or her designee, of a recipient of behavior analysis services who acts under the direction of a licensed behavior analyst or an individual exempt pursuant to subdivision (a) or (b) for that recipient.

(d) An individual who teaches behavior analysis or conducts behavior analysis research, provided that such teaching or research does not involve the direct delivery of behavior analysis services.

(e) A behavior analyst licensed in another state or certified by the certifying entity to practice independently, and who temporarily provides behavior analysis services in California during a period of not more than 90 days in a calendar year.

~~(f)An individual who is vendorized by one or more regional centers of the State Department of Developmental Services while practicing behavior analysis services authorized under that vendorization. That individual shall not represent himself or herself as a licensed behavior analyst or licensed assistant behavior analyst unless he or she holds a license under this chapter, and shall not offer behavior analysis services to any person or entity other than the regional centers with which he or she is vendorized or accept remuneration for providing behavior analysis services other than the remuneration received from those regional centers unless he or she holds a license under this chapter.~~

~~(g)~~

(f) An individual employed or contracted by a local educational agency, or a nonpublic agency or school with a contract with a local educational agency, for the purpose of serving students with behavioral and developmental issues when in classroom and other school settings. This individual shall not represent himself or herself as a licensed behavior analyst or licensed assistant behavior analyst unless he or she holds a license under this chapter, and shall not offer behavior analysis services to any person or entity other than the local education agencies with which he or she has a contract or accept remuneration for providing behavior analysis services other than the remuneration received from those local education agencies unless he or she holds a license under this chapter.

2999.41. A licensee shall give written notice to the board of a name change within 30 days after each change, giving both the old and new names. A copy of the legal document authorizing the name change, such as a court order or marriage certificate, shall be submitted with the notice.

2999.44. (a) A license shall expire and become invalid two years after it is issued at 12 midnight on the last day of the month in which it was issued, if not renewed.

(b) To renew an unexpired license, the licensee shall, on or before the date on which it would otherwise expire, apply for renewal on a form provided by the board, accompanied by the renewal fee set by the board. The licensee shall include verification from the certifying entity that he or she maintains an active certification status with the renewal form.

(c) To renew an assistant behavior analyst license, in addition to the requirements in subdivision (b), the licensee shall submit proof of ongoing supervision by a licensed behavior analyst or a licensed psychologist who is qualified to practice behavior analysis in a manner consistent with the board's requirements for supervision of assistant behavior analysts.

2999.45. (a) A license that has expired may be renewed at any time within three years after its expiration by applying for renewal on a form provided by the board, payment of all accrued and unpaid renewal fees, and the delinquency fee specified in Section 2999.93. The licensee shall include verification from the certifying entity that he or she maintains an active certification status with the renewal form.

(b) Except as provided in Section 2999.47, a license that is not renewed within three years of its expiration shall not be renewed, restored, or reinstated, and the license shall be canceled immediately upon expiration of the three-year period.

2999.46. (a) The board shall not issue any renewal license, a new license after expiration of an expired license, or a reinstatement license unless the applicant submits proof that he or she has completed not less than 32 hours of approved continuing education in the preceding two-year licensure cycle for licensed behavior analysts and 20 hours of approved continuing education in the preceding two-year licensure cycle for licensed assistant behavior analysts.

(b) Each person renewing or reinstating his or her license or obtaining a new license after expiration of a prior license issued pursuant to this chapter shall submit proof of compliance with this section to the board.

(c) A person applying for renewal, a new license after expiration of a prior license, or reinstatement to an active license status shall certify under penalty of perjury that he or she is in compliance with this section.

(d) The board may recognize continuing education courses that have been approved by the certifying entity.

(e) The board shall adopt regulations as necessary for implementation of this section.

2999.47. (a) A suspended license is subject to expiration and shall be renewed as provided in this article, but such renewal does not entitle the licensee, while the license remains suspended, and until it is reinstated, to engage in the licensed activity or in any other activity or conduct in violation of the order or judgment by which the license was suspended.

(b) A license revoked on disciplinary grounds is subject to expiration as provided in this article, but it may not be renewed. If it is reinstated after its expiration, the licensee, as a condition of reinstatement, shall pay a reinstatement fee in an amount equal to the renewal fee, plus the delinquency fee, and any fees accrued at the time of its revocation.

Article 4. Enforcement

2999.60. The board may on its own, and shall, upon the receipt of a complaint from any person, investigate the actions of any licensee. The board shall review a licensee's alleged violation of statute, regulation, or any other law and any other complaint referred to it by the public, a public agency, or the department, and may upon a finding of a violation take disciplinary action under this article.

2999.61. A license issued under this chapter may be denied, revoked, or otherwise sanctioned upon demonstration of ineligibility for licensure, including, but not limited to, failure to maintain active certification by the certifying entity or falsification of documentation submitted to the board for licensure or submitted to the certifying authority for certification.

2999.62. The board may refuse to issue a registration or license, or may issue a registration or license with terms and conditions, or may suspend or revoke the registration or license of any registrant or licensee if the applicant, registrant, or licensee has been guilty of unprofessional conduct. Unprofessional conduct shall include, but not be limited to:

(a) Conviction of a crime substantially related to the qualifications, functions, or duties of a licensed behavior analyst or a licensed assistant behavior analyst.

(b) Use of any controlled substance as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code, dangerous drug, or any alcoholic beverage to an extent or in a manner dangerous to himself or herself, any other person, or the public, or to an extent that this use impairs his or her ability to safely perform the practice of behavior analysis.

(c) Fraudulently or neglectfully misrepresenting the type or status of a license actually held.

(d) Impersonating another person holding a license or allowing another person to use his or her license.

(e) Use of fraud or deception in applying for a license or in passing any examination required by this chapter.

(f) Paying, offering to pay, accepting, or soliciting any consideration, compensation, or remuneration, whether monetary or otherwise, for the referral of clients.

(g) Violating Section 17500.

(h) Willful, unauthorized communication of information received in professional confidence.

(i) Violating any rule of professional conduct promulgated by the board and set forth in regulations duly adopted under this chapter.

(j) Being grossly negligent in the practice of his or her profession.

(k) Violating any of the provisions of this chapter or regulations duly adopted thereunder.

(l) The aiding or abetting of any person to engage in the unlawful practice of behavior analysis.

(m) The suspension, revocation, or imposition of probationary conditions or other disciplinary action by another state or country of a license, certificate, or registration to practice behavior analysis issued by that state or country to a person also holding a license issued under this chapter if the act for which the disciplinary action was taken constitutes a violation of this section. A certified copy of the decision or judgment of the other state or country shall be conclusive evidence of that action.

(n) The commission of any dishonest, corrupt, or fraudulent act.

(o) Any act of sexual abuse or sexual relations with a patient, with a former patient, or with a patient's parent, guardian, or caregiver within two years following termination of therapy, or sexual misconduct that is related to the qualifications, functions, or duties of a licensed behavior analyst or a licensed assistant behavior analyst.

(p) Functioning outside of his or her particular field or fields of competence as established by his or her education, training, and experience.

(q) Willful failure to submit, on behalf of an applicant for licensure, verification of supervised experience to the board.

(r) Repeated acts of negligence.

(s) Failure to comply with all ethical and disciplinary standards published by the certifying entity.

2999.63. (a) Except as provided in subdivisions (b), (c), and (e), any accusation filed against a licensee pursuant to Section 11503 of the Government Code shall be filed within three years from the date the board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging the procurement of a license by fraud or misrepresentation is not subject to the limitations set forth in subdivision (a).

(c) The limitation provided for by subdivision (a) shall be tolled for the length of time required to obtain compliance when a report required to be filed by the licensee or registrant with the board pursuant to Article 11 (commencing with Section 800) of Chapter 1 is not filed in a timely fashion.

(d) If an alleged act or omission involves a minor, the seven-year limitations period provided for by subdivision (a) and the 10-year limitations period provided for by subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging sexual misconduct shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(f) The limitations period provided by subdivision (a) shall be tolled during any period if material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

2999.64. Notwithstanding Section 2999.62, any proposed decision or decisions issued under this chapter in accordance with the procedures set forth in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code that contains any finding of fact that the licensee engaged in any act of sexual contact, as defined in Section 728, when that act is with a patient, with a former patient, or with a patient's parent, guardian, or caregiver within two years following termination of services, shall contain an order

of revocation. The revocation shall not be stayed by the administrative law judge.

2999.66. The board may deny an application for, or issue subject to terms and conditions, or suspend or revoke, or impose probationary conditions upon, a license or registration after a hearing as provided in Section 2999.70.

2999.67. A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge which is substantially related to the qualifications, functions, and duties of a licensed behavior analyst or licensed assistant behavior analyst is deemed to be a conviction within the meaning of this article. The board may order the license suspended or revoked, or may decline to issue a license when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

2999.68. Any person required to register as a sex offender pursuant to Section 290 of the Penal Code, is not eligible for licensure by the board.

2999.69. An administrative disciplinary decision that imposes terms of probation may include, among other things, a requirement that the licensee who is being placed on probation pay the monetary costs associated with monitoring the probation.

2999.70. The proceedings under this article shall be conducted by the board in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

2999.80. A person who violates any of the provisions of this chapter is guilty of a misdemeanor punishable by imprisonment in a county jail not exceeding six months or by a fine not exceeding two thousand five hundred dollars ($2,500), or by both that fine and imprisonment.

2999.81. In addition to other proceedings provided in this chapter, whenever any person has engaged, or is about to engage, in any acts or practices that constitute, or will constitute, an offense against this chapter, the superior court in and for the county wherein the acts or practices take place, or are about to take place, may issue an injunction or other appropriate order restraining that conduct on application of the board, the Attorney General, or the district attorney of the county. Proceedings under this section shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that it shall be presumed that there is no adequate remedy at law and that irreparable damage will occur if the continued violation is not restrained or enjoined. On the written request of the board, or on its own motion, the board may commence an action in the superior court under this section.

2999.83. (a) (1) A licensee who fails or refuses to comply with a request for the medical records of a client, that is accompanied by that client's written authorization for release of those records to the board, within 15 days of receiving the request and authorization, shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 15th day, unless the licensee is unable to provide the documents within this time period for good cause.

(2) A health care facility shall comply with a request for the medical records of a client that is accompanied by that client's written authorization for release of records to the board together with a notice citing this section and describing the penalties for failure to comply with this section. Failure to provide the authorizing client's medical records to the board within 30 days of receiving the request, authorization, and notice shall subject the health care facility to a civil penalty, payable to the board, of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced after the 30th day, up to ten thousand dollars ($10,000), unless the health care facility is unable to provide the documents within this time period for good cause. This paragraph shall not require health care facilities to assist the board in obtaining the client's authorization. The board shall pay the reasonable costs of copying the medical records.

(b) (1) A licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board shall pay to the board a civil penalty of one thousand dollars ($1,000) per day for each day that the documents have not been produced after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(2) Any licensee who fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, in an amount not to exceed five thousand dollars ($5,000). The amount of the penalty shall be added to the licensee's renewal fee if it is not paid by the next succeeding renewal date. Any statute of limitations applicable to the filing of an accusation by the board shall be tolled during the period the licensee is out of compliance with the court order and during any related appeals.

(3) A health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of client records to the board, that is accompanied by a notice citing this section and describing the penalties for failure to comply with this section, shall pay to the board a civil penalty of up to one thousand dollars ($1,000) per day for each day that the documents have not been produced, up to ten thousand dollars ($10,000), after the date by which the court order requires the documents to be produced, unless it is determined that the order is unlawful or invalid. Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(4) Any health care facility that fails or refuses to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board, shall be subject to a civil penalty, payable to the board, in an amount not to exceed five thousand dollars ($5,000). Any statute of limitations applicable to the filing of an accusation by the board against a licensee shall be tolled during the period the health care facility is out of compliance with the court order and during any related appeals.

(c) Multiple acts by a licensee in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) or by imprisonment in a county jail not exceeding six months, or by both that fine and imprisonment. Multiple acts by a health care facility in violation of subdivision (b) shall be a misdemeanor punishable by a fine not to exceed five thousand dollars ($5,000) and shall be reported to the State Department of Health Care Services and shall be considered as grounds for disciplinary action with respect to licensure, including suspension or revocation of the license or certificate.

(d) A failure or refusal of a licensee to comply with a court order, issued in the enforcement of a subpoena, mandating the release of records to the board constitutes unprofessional conduct and is grounds for suspension or revocation of his or her license.

(e) The imposition of the civil penalties authorized by this section shall be in accordance with the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code).

(f) For purposes of this section, "health care facility" means a clinic or health facility licensed or exempt from licensure pursuant to Division 2 (commencing with Section 1200) of the Health and Safety Code.

Article 5. Revenue

2999.90. The board shall report each month to the Controller the amount and source of all revenue received pursuant to this chapter and at the same time deposit the entire amount thereof in the State Treasury for credit to the Psychology Fund established by Section 2980.

2999.91. (a) The moneys credited to the Psychology Fund under Section 2999.90 shall, upon appropriation by the Legislature, be used for the purposes of carrying out and enforcing the provisions of this chapter.

(b) The board shall keep records that will reasonably ensure that funds expended in the administration of each licensing category bear a reasonable relation to the revenue derived from each category, and shall so notify the department no later than May 31 of each year.

2999.93. The board shall establish fees for the application for and the issuance and renewal of licenses to cover, but not exceed, the reasonable regulatory costs of the board related to administering this chapter. The fees shall be fixed by the board in regulations that are duly adopted under this chapter. Fees assessed pursuant to this section shall not exceed the following:

(a) The delinquency fee shall be 50 percent of the biennial renewal fee.

(b) The fee for rescoring an examination shall be twenty dollars ($20).

(c) The fee for issuance of a replacement license shall be twenty dollars ($20).

(d) The fee for issuance of a certificate or letter of good standing shall be twenty-five dollars ($25).

2999.94. (a) A person licensed under this chapter is exempt from the payment of the renewal fee in any one of the following instances:

(1) While engaged in full-time active service in the United States Army, Navy, Air Force, or Marine Corps.

(2) While in the United States Public Health Service.

(3) While a volunteer in the Peace Corps or AmeriCorps VISTA.

(b) Every person exempted from the payment of the renewal fee by this section shall not engage in any private practice and shall become liable for the fee for the current renewal period upon the completion of his or her period of full-time active service and shall have a period of 60 days after becoming liable within which to pay the fee before the delinquency fee becomes applicable. Any person who completes his or her period of full-time active service within 60 days of the end of a renewal period is exempt from the payment of the renewal fee for that period.

(c) The time spent in that full-time active service or full-time training and active service shall not be included in the computation of the three-year period for renewal of an expired license specified in Section 2999.45.

(d) The exemption provided by this section shall not be applicable if the person engages in any practice for compensation other than full-time service in the United States Army, Navy, Air Force, or Marine Corps, in the United States Public Health Service, or the Peace Corps or AmeriCorps VISTA.

2999.98. The licensing and regulatory program under this chapter shall be supported from fees assessed to applicants and licensees. Startup funds to implement this program shall be derived, as a loan, from the Psychology Fund, subject to an appropriation by the Legislature in the annual Budget Act. The board shall not implement this chapter until funds have been appropriated.

SEC. 10. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

California Board of
PSYCHOLOGY

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March 8, 2016

The Honorable Susan A. Bonilla
California State Assembly
State Capitol, Room 4140
Sacramento, CA 94249-0041

RE: **AB 1715 (Holden) – HEALING ARTS: BEHAVIOR ANALYSIS LICENSING – OPPOSE UNLESS AMENDED**

Dear Assembly Member Bonilla:

At its February 25, 2016 meeting, the Board of Psychology (Board) adopted an **Oppose Unless Amended** position on AB 1715 (Holden). The bill would create two new licensure and one new registration categories for Behavior Analysis under the authority and jurisdiction of the Board.

The Board supports and agrees with author's intention to regulate the discipline of Applied Behavior Analysis (ABA) under the jurisdiction of the Board. However, the Board has identified some significant concerns with the proposed language:

The Board requests the deletion of the exemption for individuals vendorized through the regional centers in Proposed Section BPC 2999.37(g). A key component of the consumer protection mandate of the Board is the jurisdiction the Board has over an individual's license to ensure minimal competency. Exempting an entire category from licensure because of their relationships to the regional centers potentially places a large number of ABA practitioners beyond the Board's jurisdiction and does not ensure their minimal competency. The Board is aware of concerns regarding access to care. However, if the legislature believes an individual must obtain minimum standards of competency to provide ABA services to the public, the threshold for such services should not be determined by one's financial status or insurance. Californians should be confident that ABA services are being given by a trained, ethical individual free of criminal history. Additionally, financially disadvantaged individuals should not be deprived of the ability to pursue administrative action if there is a deviation from the standard of care simply because of the agency through which they received services.

The Board requests an amendment to the exemption of family members in Proposed Section BPC 2999.38 (d). The Board does not initiate actions against parents or legal guardians who administer treatment to a child as prescribed by a licensee as part the child's therapy. However, the Board agrees that a parent, guardian, or a designee of a licensed professional should be able to provide behavior analytic services under the direction of that licensed professional to the affected child. The Board's proposed language expands upon the existing exemption as follows;

> BPC 2999.38(d). A parent, guardian, or his or her designee, of a recipient of applied behavior analysis services ~~who acts under the direction~~ acting per the direction of a licensed behavior analyst, ~~or licensed assistant behavior~~ or individuals exempt per 2999.38(a-b) for that recipient.

The Board's mission is to advance quality psychological services for Californians by ensuring ethical and legal practice and supporting the evolution of the profession.

If you have any questions or concerns, please feel free to contact the Board's Executive Officer, Antonette Sorrick, at (916) 574-7113. Thank you.

Sincerely,

STEPHEN C. PHILLIPS, JD, PsyD
President, Board of Psychology

cc: Assembly Committee on Business and Professions
Assembly Member Chris R. Holden
Le Ondra Clark Harvey, PhD

Date of Hearing: April 20, 2016

ASSEMBLY COMMITTEE ON APPROPRIATIONS
Lorena Gonzalez, Chair
AB 1715 (Holden) – As Amended April 12, 2016

Policy Committee: Business and Professions Vote: 14 - 0

Urgency: No State Mandated Local Program: Yes Reimbursable: No

SUMMARY:

This bill establishes the Behavior Analyst Act (Act), which provides for the licensure, registration, and regulation of behavior analysts and related providers, and requires the California Board of Psychology (BOP), until January 1, 2022, to administer and enforce the Act. Specifically, this bill:

1) States intent that BOP begin accepting applications for behavior analyst licensure and assistant behavior analyst licensure no later than January 1, 2018, provided necessary funds have been appropriated.

2) Defines "practice of behavior analysis" or "to practice behavior analysis" as the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior, as specified,

3) Defines licensed and registered personnel under the act, including "licensed behavior analysts," assistants, technicians, and interns; and establishes educational and other criteria as well as supervision standards.

4) Establishes licensing and registration provisions, including licensure, renewal, enforcement, discipline, ethical standards, background checks, continuing education, and related provisions. Establishes civil penalty authority for violations.

5) Makes it unlawful, on and after July 1, 2019, to practice behavior analysis without being licensed by BOP, except as specified. Exempts other healing arts licensees, parents, researchers, and individuals employed or contracted by a school from licensure.

6) Vests the BOP, until January 1, 2022, with the power to enforce the Act. Creates, until January 1, 2022, the Behavior Analyst Committee within the jurisdiction of the BOP to make recommendations to the BOP regarding the regulation of the practice of behavior analysis.

7) Establishes revenue provisions:

   a) Requires the board to establish fees in regulation for the application for and the issuance and renewal of licenses to cover, but not exceed, the reasonable regulatory costs of the board.

   b) Specifies fee revenues collected for this purpose are credited to the Psychology Fund and such funds are available upon appropriation, for the purposes of the Act.

c) Sets fee amounts for several smaller fee categories. However, it does not specify licensure or renewal fees. Exempts certain categories of public service personnel from renewal fees during active service.

d) Requires the licensing and regulatory program under this chapter to be supported from fees assessed to applicants and licensees. Requires startup funds to implement the Act be derived, as a loan, from the Psychology Fund, subject to a budget appropriation.

e) Specifies the board shall not implement the Act until funds have been appropriated.

FISCAL EFFECT:

1) Approximate fiscal impact to BOP of $1.9 million in 2017-18, the first year of implementation, and about $2.6 million ongoing (loan from the Psychology Fund, to be reimbursed by fees). Initial costs relate to promulgation of regulations, development of materials, build-out of office space, and information technology changes to add a licensure category. This is based on an assumption of 3,850 licensees and 45,000 technicians and interns. The Psychology Fund has a projected balance of $9.4 million at the end of $2016-17 based on GF loan repayments of $6.3 million in 2016-17.

2) Unknown, likely minor if any, potential GF revenue, if penalty authority contained in the bill is used to enforce the bill's provisions.

3) Significant costs over the first year of licensure and minor ongoing costs to DOJ for additional background checks, reimbursed by the individuals being screened (Fingerprint Fees Account).

COMMENTS:

1) **Purpose.** According to the author, a state mandate for health plans and insurers to cover behavioral health treatment for autism have substantially increased demand for applied behavioral analysis (ABA) services. With the increased demand, there is a greater need to regulate the BA profession, and to protect autistic children and others who can benefit from ABA treatment from people who falsely claim that they are qualified to practice behavior analysis. This bill will ensure BA professionals are qualified and overseen by the Board of Psychology, for whom consumer protection will be paramount.

2) **BA.** According to the American Psychological Association, behavior analysis is the study of behavior. The clinical practice of behavior analysis, called ABA, applies interventions based upon the principles of learning theory to improve socially significant behaviors to a meaningful degree. Socially significant behaviors include reading, academics, social skills, communication, and adaptive living skills like motor skills, eating and food preparation, personal self-care, domestic skills, home and community orientation, and work skills. ABA often requires intensive treatments of more than 25 hours each week.

3) **BA practitioners.** The Behavior Analyst Certification Board (BACB) is a private non-profit that provides four types of credentials: (1) board certified behavior analyst, (2) board certified assistant behavior analyst, registered behavior technicians (RBTs), and (3) doctoral-level BCBA. The BACB requirements for the initial certification and renewal of analysts

and assistant analyst certifications are nearly identical to the requirements for LBAs and LABAs under this bill. Nineteen other states either license or certify ABA practitioners.

State law currently recognizes "qualified autism service providers" (QASPs) who are authorized to provide ABA services under the state's mandate for health insurers to provide behavioral health treatment. QASPs must be a specified licensed health care provider or a person, entity, or group that is certified by a national entity such as the BACB. "Qualified autism service *professionals"* can be employed by QASPs and must be approved as a regional center vendor by the Department of Developmental Services (DDS) system, among other requirements.

4) **Related Legislation**. AB 796 (Nazarian), pending in the Senate Health Committee, requires the BOP, no later than December 31, 2017, and thereafter as necessary, upon appropriation of the Legislature, to convene a committee to create a list of evidence-based treatment modalities for purposes of behavioral health treatment (BHT) for pervasive developmental disorder or autism. It also extends the sunset on the existing behavioral health treatment mandate for an additional five years, from January 1, 2017 to January 1, 2022.

5) **Previous Legislation.**

   a) SB 946 (Steinberg), Chapter 650, Statutes of 2011, among other things, mandated health care service plan contracts and health insurance policies, except as specified, to provide coverage for BHT.

   b) SB 126 (Steinberg), Chapter 680, Statutes of 2013, extended the operation of the BHT mandate until January 1, 2017.

   c) SB 479 (Bates) was substantially similar to this bill, and is pending on the Suspense File of this committee.

6) **Support and Opposition.** The DIR/Floortime Coalition of California has expressed opposition, citing concerns that licensing for one treatment technique may inadvertently suggest other treatment modalities such as DIR/Floortime are less legitimate. The California Association for Behavior Analysis (sponsor) and a number of treatment service providers write in support.

7) **Staff Comment**s. Many fee types for other professional licensure categories have caps in statute. Since it is a new licensure program, it is appropriate not to set a fee cap at this time. However, the first sunset review in 2021 should critically examine whether fees are set commensurate with workload. It appears given expected costs and number of regulated individuals, that fees could be set at reasonable levels.

Analysis Prepared by: Lisa Murawski / APPR. / (916) 319-2081