

CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: AB 2229

VERSION: AMENDED APRIL 29, 2010

AUTHOR: BROWNLEY

**SPONSOR: LOS ANGELES COUNTY DISTRICT
ATTORNEY'S OFFICE**

RECOMMENDED POSITION: NONE

SUBJECT: MANDATED CHILD ABUSE REPORTING

Existing Law:

- 1) Specifies that licensees of the Board of Behavioral Sciences (Board) are mandated reporters under the Child Abuse and Neglect Reporting Act and as such, he or she must submit a report to law enforcement whenever in their professional capacity, they have knowledge of, or observe a child who is known, or reasonably suspected to have been, a victim of child abuse or neglect. (Penal Code § 11165.7(a)(21) and 11166(a))
- 2) Defines a "multidisciplinary personnel team" as any team of three or more persons who are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse, and may include Board licensees. (Welfare and Institutions Code §18951(d)(1))
- 3) Allows members of a multidisciplinary team, in the prevention, identification, and treatment of child abuse, to disclose and exchange information in writing to and with one another relating to any incidents of child abuse that may be confidential under state law, if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification or treatment of child abuse. (WIC §830)
- 4) Requires information exchanged by the multidisciplinary team be kept confidential and states testimony concerning this information is not admissible in any criminal, civil, or juvenile court proceeding. (WIC §830)

This Bill:

- 1) Allows a county to establish a child abuse investigation and prevention multidisciplinary personnel team to allow provider agencies to share confidential information in order to investigate reports of suspected child abuse or neglect, or to make a child welfare services referral or detention determination (WIC §18961.7(a))
- 2) Defines a "child abuse investigation and prevention multidisciplinary personnel team" as any team of *two* or more persons are trained in the prevention, identification, and treatment of child abuse and neglect cases and who are qualified to provide a broad range of services related to child abuse. This may include Board licensees. (WIC §18961.7(b))
- 3) Allows members of a child abuse investigation and prevention multidisciplinary personnel team to disclose and exchange with one another information and writings that relate to any

incident of child abuse that may be designated as confidential under state law if it is can reasonably be considered relevant to the prevention, identification, or treatment of child abuse. (WIC §18961.7(c)(1))

- 4) Requires that the exchange of any information and writings that relate to any incident of child abuse must take place within a 48 hour period following a report of suspected child abuse or neglect. (WIC §18961.7(c)(1))
- 5) Requires any exchange of information and writings by a child abuse investigation and prevention multidisciplinary personnel team be considered confidential, and testimony concerning any such information is not admissible in any criminal, civil, or juvenile court proceeding. (WIC §18961.7(c)(1))
- 6) Allows disclosure and exchange of this information to occur via telephone or electronically if there is adequate verification of the identity of the child abuse investigation and prevention multidisciplinary personnel involved. (WIC §18961.7(c)(2))
- 7) States that this law remains in effect until January 1, 2014. (WIC § 18961.7(i))

Comment:

- 1) **Author's Intent.** According to the author's office, "Due to budget cuts, and the lack of staff children who are victims of abuse and taken into protective custody cannot receive timely treatment for medical problems unless information is shared among verified members of the team investigating the abuse.

"Existing law requires at least three team members convene before confidential information may be shared. Nurses, social workers and law officers complain that valuable time is lost while responding to an emergency child abuse problem while trying to locate a third team member. AB 2229 would help by allowing multidisciplinary investigative teams to be two or more people be allowed to be considered a multidisciplinary team, which is currently practiced when investigating elder abuse; which was originally a three person team as well.

- 2) **Background.** According to background information provided by the author, "Existing law provides for the formation of a child abuse Multidisciplinary Team (MDT) comprised of three individuals who are trained in the prevention, treatment and identification of child abuse. The benefit and purpose of forming a child abuse MDT is that information that would otherwise be confidential may be shared within the confines of the team. Unfortunately, nurses, social workers, and law enforcement personnel complain that valuable time is lost in responding to an emergency child abuse program while a third party is sought to complete the team and allow for the information to be shared. Additionally, the existing statute is silent as to the telephonic and electronic communication as an acceptable mode for the sharing of information upon the proper verification of the recipient's status as a team member.

"In 1987, the Legislature enacted AB 1049 (Bader), which first authorized the use of MTDs in both child abuse and elder abuse cases to exchange confidential information. At that time, MDTs were a relatively new concept, which primarily existed as pilot projects in certain counties. In 1994, however, there was a comprehensive overhaul of the elder abuses statutes proposed by SB 1681 (Mello). SB 1681 reduced from three to two the number of members necessary to form an elder abuse MDT. By 1994, the change from three to two members was no longer considered controversial because there was no discussion of this change in the legislative history of SB 1681. However, since that time, the law regarding

MDTs in elder abuse and child abuse cases has no longer been consistent.

"According to the Elder Abuse Unit in Los Angeles County, elder abuse MDTs currently exchange information telephonically, and there have been no problem with either the formation of elder abuse MDTs with two members or the manner of communication among them.

"The work of child abuse MDTs is very time sensitive because county Children's Protective Service agencies only have 48 hours from the time an incident of potential child abuse is reported to make a determination on whether or not to file a petition under California Welfare and Institutions Code Section 300. Because of this short time line, it is critical that information needed by a Children's Protective Service agent that may be in the possession of an agency represented on the child abuse MDT be shared.

"By bringing the law regarding child abuse MDTs into line with existing law regarding elder abuse MDTs, which only require two members, AB 2229 will enhance the treatment and prevention of child abuse by streamlining the ability of qualified personnel to aid victims by promptly sharing relevant information, and save time and resources by eliminating the need for a redundant third person consulted merely to satisfy the statute."

- 3) Disclosure Already Permitted.** The disclosure and exchange of information by multidisciplinary personnel team members is already permitted by law, this bill simply expands the method by which that disclosure or exchange can be made. The language, as currently written, requires adequate verification of the identity of the multidisciplinary personnel member involved in the disclosure or exchange of information when that exchange or disclosure happens telephonically or electronically. It is unclear to staff if this is adequate language to ensure information shared through electronic means remains confidential.
- 4) **Policy and Advocacy Committee Recommendation.** On April 9, 2010, the Policy and Advocacy Committee did not make a position recommendation to the Board. The bill had been amended on April 7th, after staff drafted the bill analysis included for Committee discussion. Staff requested time to analyze the new amendments. This bill has subsequently been amended twice since that Committee meeting (April 15th and April 29th).

5) Support and Opposition.

Support: None on file.

Oppose: California Medical Association (prior version)

6) History

2010

Apr. 29 Read second time and amended. Ordered returned to second reading.

Apr. 28 From committee: Amend, and do pass as amended. (Ayes 6. Noes 0.) (April 27).

Apr. 19 Re-referred to Com. on HUM. S.

Apr. 15 From committee chair, with author's amendments: Amend, and re-refer to Com. on HUM. S. Read second time and amended.

Apr. 14 From committee: Do pass, and re-refer to Com. on HUM. S. Re-referred. (Ayes 7. Noes 0.) (April 13).

Apr. 8 Re-referred to Com. on PUB. S.

- Apr. 7 From committee chair, with author's amendments: Amend, and re-refer to Com. on PUB. S. Read second time and amended.
- Apr. 6 In committee: Set, first hearing. Hearing canceled at the request of author.
- Mar. 11 Referred to Com. on PUB. S.
- Feb. 19 From printer. May be heard in committee March 21.
- Feb. 18 Read first time. To print.

AMENDED IN ASSEMBLY APRIL 29, 2010

AMENDED IN ASSEMBLY APRIL 15, 2010

AMENDED IN ASSEMBLY APRIL 7, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2229

Introduced by Assembly Member Brownley

February 18, 2010

An act to amend ~~Sections 830 and~~ *Section 18961.5* of, and to add and repeal *Section 18961.7* of, the Welfare and Institutions Code, relating to child abuse reporting.

LEGISLATIVE COUNSEL'S DIGEST

AB 2229, as amended, Brownley. Mandated child abuse reporting.

Existing law authorizes members of a multidisciplinary personnel team engaged in the prevention, identification, and treatment of child abuse to disclose and exchange information and writings to and with one another relating to any incidents of child abuse that may also be a part of a juvenile court record or otherwise designated as confidential under state law if the member of the team having that information or writing reasonably believes it is generally relevant to the prevention, identification, or treatment of child abuse. *Under existing law, all discussions relative to the disclosure or exchange of this information during team meetings are confidential and testimony concerning those discussions is not admissible in any criminal, civil, or juvenile court proceeding.* A multidisciplinary personnel team is defined for purposes of this provision to mean any team of 3 or more persons who are trained in the prevention, identification, and treatment of child abuse, as specified.

This bill would, *until January 1, 2014*, additionally authorize the disclosure and exchange of information to occur telephonically and electronically, *for up to 48 hours following a report of suspected child abuse or neglect*, if there is adequate verification of the identity of the multidisciplinary personnel who are involved in that disclosure or exchange of information. The bill would revise the definition of a multidisciplinary personnel team for purposes of this provision to mean any team of 2 or more persons created to investigate a report of suspected child abuse, as specified, who are trained in the prevention, identification, and treatment of child abuse, as specified. *The bill would require that the sharing of information permitted in the 48-hour period following a report of suspected child abuse or neglect be governed by memoranda of understanding among participating provider agencies, as defined, that prescribes the types of information that may be shared and the process to ensure that specified confidentiality requirements are met.*

Existing law provides that a county may establish a computerized data base system within that county to allow provider agencies to share identifying information regarding families at risk for child abuse or neglect, for the purpose of forming multidisciplinary personnel teams for the prevention, identification, management, or treatment of child abuse. A multidisciplinary personnel team is defined for purposes of this provision to mean any team of 3 or more persons who are trained in the prevention, identification, and treatment of child abuse, as specified.

This bill would revise the definition of multidisciplinary personnel teams for purposes of this provision to additionally include any team of 2 or more persons who are trained in the prevention, identification, management, or treatment of child abuse, as specified.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. ~~Section 830 of the Welfare and Institutions Code~~
 2 ~~is amended to read:~~
 3 830. ~~(a) Notwithstanding any other provision of law, members~~
 4 ~~of a multidisciplinary personnel team engaged in the prevention,~~
 5 ~~identification, and treatment of child abuse may disclose and~~
 6 ~~exchange information and writings to and with one another relating~~

1 to any incidents of child abuse that may also be a part of a juvenile
2 court record or otherwise designated as confidential under state
3 law if the member of the team having that information or writing
4 reasonably believes it is generally relevant to the prevention,
5 identification, or treatment of child abuse. All discussions relative
6 to the disclosure or exchange of any such information or writings
7 during team meetings are confidential and, notwithstanding any
8 other provision of law, testimony concerning any such discussion
9 is not admissible in any criminal, civil, or juvenile court
10 proceeding.

11 (b) Disclosure and exchange of information pursuant to this
12 section may occur telephonically and electronically if there is
13 adequate verification of the identity of the multidisciplinary
14 personnel who are involved in that disclosure or exchange of
15 information.

16 (c) As used in this section, the following definitions shall apply:

17 (1) "Child abuse" has the same meaning as defined in Section
18 18951.

19 (2) "Multidisciplinary personnel team" means any team of two
20 or more persons created to investigate a report of suspected child
21 abuse made pursuant to Section 11166 or 11166.05 of the Penal
22 Code, the members of which are trained in the prevention,
23 identification, and treatment of child abuse and are qualified to
24 provide a broad range of services related to child abuse. The team
25 may include, but shall not be limited to, all of the following:

26 (A) Psychiatrists, psychologists, marriage and family therapists,
27 or other trained counseling personnel.

28 (B) Police officers or other law enforcement agents.

29 (C) Medical personnel with sufficient training to provide health
30 services.

31 (D) Social service workers with experience or training in child
32 abuse prevention.

33 (E) Any public or private school teacher, administrative officer,
34 supervisor of child welfare attendance, or certified pupil personnel
35 employee.

36 ~~SEC. 2.~~

37 *SECTION 1.* Section 18961.5 of the Welfare and Institutions
38 Code is amended to read:

39 18961.5. (a) Notwithstanding any other provision of law, any
40 county may establish a computerized data base system within that

1 county to allow provider agencies, as defined in subdivision (h),
2 to share identifying information, as specified in subdivision (c),
3 regarding families at risk for child abuse or neglect, for the purpose
4 of forming multidisciplinary personnel teams, as defined in either
5 ~~paragraph (2) of subdivision (e) of Section 830 or~~ subdivision (d)
6 of Section 18951 *or paragraph (2) of subdivision (b) of Section*
7 *18961.7*, for the prevention, identification, management, or
8 treatment of child abuse.

9 (b) Each county shall develop its own standards for defining
10 “at risk” before joining this system. Only information about
11 children or the families of children at risk for child abuse or neglect
12 may be entered into a computerized data base system established
13 pursuant to this section.

14 (c) With regard to a case in which a child or family has been
15 identified as at risk for child abuse or neglect under this section,
16 only the following information shall be entered into the system:

17 (1) The name, address, telephone number, and date and place
18 of birth of family members.

19 (2) The number assigned to the case by each provider agency.

20 (3) The name and telephone number of each employee assigned
21 to the case from each provider agency.

22 (4) The date or dates of contact between each provider agency
23 and a family member or family members.

24 (d) The information may only be entered into the system by, or
25 disclosed to, provider agency employees designated by the director
26 of each participating provider agency. Members of the
27 multidisciplinary personnel teams shall be drawn from these
28 designated employees, or other persons, as specified in Section
29 18961. The heads of provider agencies shall establish a system by
30 which unauthorized personnel cannot access the data contained in
31 the system.

32 (e) The information obtained pursuant to this section shall be
33 kept confidential and shall be used solely for the prevention,
34 identification, management, or treatment of child abuse, child
35 neglect, or both.

36 (f) This section shall not supplant any duties required by the
37 Child Abuse and Neglect Reporting Act (Article 2.5 (commencing
38 with Section 11164) of Chapter 2 of Title 1 of Part 3 of the Penal
39 Code).

1 (g) No employee of a provider agency which serves children
2 and their families shall be civilly or criminally liable for furnishing
3 or sharing information as authorized by this section.

4 (h) For the purposes of this section, “provider agency” means
5 any governmental or other agency which has as one of its purposes
6 the prevention, identification, management, or treatment of child
7 abuse or neglect. The provider agencies serving children and their
8 families which may share information under this section shall
9 include, but not be limited to, the following entities or service
10 agencies:

- 11 (1) Social services.
- 12 (2) Children’s services.
- 13 (3) Health services.
- 14 (4) Mental health services.
- 15 (5) Probation.
- 16 (6) Law enforcement.
- 17 (7) Schools.

18 *SEC. 2. Section 18961.7 is added to the Welfare and Institutions*
19 *Code, to read:*

20 *18961.7. (a) Notwithstanding any other provision of law, a*
21 *county may establish a child abuse investigation and prevention*
22 *multidisciplinary personnel team within that county to allow*
23 *provider agencies to share confidential information in order to*
24 *investigate reports of suspected child abuse or neglect made*
25 *pursuant to Section 11166 or 11166.05 of the Penal Code, or for*
26 *the purposes of making a child welfare services referral or*
27 *detention determination.*

28 *(b) For the purposes of this section, the following terms shall*
29 *have the following meanings:*

30 *(1) “Child abuse investigation and prevention multidisciplinary*
31 *personnel team” means any team of two or more persons who are*
32 *trained in the prevention, identification, or treatment of child abuse*
33 *and neglect cases and who are qualified to provide a broad range*
34 *of services related to child abuse. The team may include, but shall*
35 *not be limited to:*

36 *(A) Psychiatrists, psychologists, marriage and family therapists,*
37 *or other trained counseling personnel.*

38 *(B) Police officers or other law enforcement agents.*

39 *(C) Medical personnel with sufficient training to provide health*
40 *services.*

1 (D) Social service workers with experience or training in child
2 abuse prevention.

3 (E) Any public or private school teacher, administrative officer,
4 supervisor of child welfare attendance, or certified pupil personnel
5 employee.

6 (2) “Provider agency” means any governmental or other agency
7 that has as one of its purposes the prevention, identification,
8 management, or treatment of child abuse or neglect. The provider
9 agencies serving children and their families that may share
10 information under this section shall include, but not be limited to,
11 the following entities or service agencies:

12 (A) Social services.

13 (B) Children’s services.

14 (C) Health services.

15 (D) Mental health services.

16 (E) Probation.

17 (F) Law enforcement.

18 (G) Schools.

19 (c) (1) Notwithstanding Section 827 of the Welfare and
20 Institutions Code or any other provision of law, during the 48-hour
21 period following a report of suspected child abuse or neglect,
22 members of a child abuse investigation and prevention
23 multidisciplinary personnel team engaged in the prevention,
24 identification, and treatment of child abuse may disclose to and
25 exchange with one another information and writings that relate
26 to any incident of child abuse that may also be designated as
27 confidential under state law if the member of the team having that
28 information or writing reasonably believes it is generally relevant
29 to the prevention, identification, or treatment of child abuse. Any
30 discussion relative to the disclosure or exchange of the information
31 or writings during a team meeting is confidential and,
32 notwithstanding any other provision of law, testimony concerning
33 that discussion is not admissible in any criminal, civil, or juvenile
34 court proceeding.

35 (2) Disclosure and exchange of information pursuant to this
36 section may occur telephonically and electronically if there is
37 adequate verification of the identity of the child abuse investigation
38 and prevention multidisciplinary personnel who are involved in
39 that disclosure or exchange of information.

1 (3) *Disclosure and exchange of information pursuant to this*
2 *section shall not be made to anyone other than members of the*
3 *child abuse investigation and prevention multidisciplinary*
4 *personnel team, and those qualified to receive information as set*
5 *forth in subdivision (d).*

6 (d) *The child abuse investigation and prevention*
7 *multidisciplinary personnel team may designate persons qualified*
8 *pursuant to paragraph (1) of subdivision (b) to be a member of*
9 *the team for a particular case. A person designated as a team*
10 *member pursuant to this subdivision may receive and disclose*
11 *relevant information and records, subject to the confidentiality*
12 *provisions of subdivision (f).*

13 (e) *The sharing of information permitted under subdivision (c)*
14 *shall be governed by memoranda of understanding among the*
15 *participating service providers or provider agencies. These*
16 *memoranda shall specify the types of information that may be*
17 *shared, and the process to be used to ensure that current*
18 *confidentiality requirements, as described in subdivision (f), are*
19 *met.*

20 (f) *Every member of the child abuse investigation and prevention*
21 *multidisciplinary personnel team who receives information or*
22 *records regarding children and families in his or her capacity as*
23 *a member of the team shall be under the same privacy and*
24 *confidentiality obligations and subject to the same confidentiality*
25 *penalties as the person disclosing or providing the information or*
26 *records. The information or records obtained shall be maintained*
27 *in a manner that ensures the maximum protection of privacy and*
28 *confidentiality rights.*

29 (g) *This section shall not be construed to restrict guarantees of*
30 *confidentiality provided under federal law.*

31 (h) *Information and records communicated or provided to the*
32 *team members by all providers and agencies, as well as*
33 *information and records created in the course of a child abuse or*
34 *neglect investigation, shall be deemed private and confidential*
35 *and shall be protected from discovery and disclosure by all*
36 *applicable statutory and common law protections. Existing civil*
37 *and criminal penalties shall apply to the inappropriate disclosure*
38 *of information held by the team members.*

- 1 (i) *This section shall remain in effect only until January 1, 2014,*
- 2 *and as of that date is repealed.*

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CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

BILL ANALYSIS

BILL NUMBER: SB 1282 **VERSION:** AMENDED APRIL 28, 2010

AUTHOR: STEINBERG **SPONSOR:** California Association for Behavioral Analysis (CalABA)

RECOMMENDED POSITION: NONE

SUBJECT: APPLIED BEHAVIORAL ANALYSIS SERVICES

Existing Law:

- 1) Defines several types of professionals used in regional centers for functions related to behavioral analysis for persons with developmental disabilities as follows:
(17CCR§54342(a)(8),(11),(12),(13)):
 - A. Behavior Analyst
 - Assesses the function of a consumer's behavior and designs, implements, and evaluates modifications to produce socially significant improvements in behavior through skill acquisition and the reduction of behavior.
 - Engages in functional assessments or analyses to identify environmental factors of which behavior is a function.
 - Prohibited from practicing psychology.
 - Must be certified by the National Behavior Analyst Certification Board.
 - B. Behavior Management Consultant

Designs or implements behavior modification intervention services and possesses all of the following:

 - 12 semester units in applied behavior analysis;
 - Valid license as a Psychologist, Clinical Social Worker, Marriage and Family Therapist, or other professional whose California licensure permits the design or implementation of behavior modification intervention services; and,
 - Two years of experience designing and implementing behavior modification intervention services.
 - C. Associate Behavior Analyst

Performs the same functions as a Behavior Analyst (see A. above), but under the direct supervision of a Behavior Analyst or Behavior Management Consultant and:

 - Is prohibited from practicing psychology.
 - Must be certified by the National Behavior Analyst Certification Board.
 - D. Behavior Management Assistant
 - Designs or implements behavior modification intervention services under the direct supervision of a Behavior Management Consultant.
 - May perform the same functions as a Behavior Analyst under direct supervision of a Behavior Analyst or Behavior Management Consultant, if the individual meets either of the following requirements:

1. Possesses a Bachelor's degree and one of the following:
 - 12 semester units in applied behavior analysis and one year of experience in designing or implementing behavior modification intervention services; OR
 - Two years of experience in designing or implementing behavior modification intervention services.
 OR
 2. Is registered as either a psychological assistant or an associate clinical social worker.
- 2) Defines "Applied behavioral analysis" as the design, implementation, and evaluation of systematic instructional and environmental modifications to promote positive social behaviors and reduce or ameliorate behaviors which interfere with learning and social interaction. (WIC § 4686.2(d)(1), GC § 95021(d)(1))
 - 3) Defines "Intensive behavioral intervention" as any form of applied behavioral analysis that is comprehensive, designed to address all domains of functioning, and provided in multiple settings for no more than 40 hours per week, across all settings, depending on the individual's needs and progress. (WIC § 4686.2(d)(2), GC § 95021(d)(2))
 - 4) Defines "Behavioral intervention case manager" as a designated certificated school/district/county/nonpublic school or agency staff member(s) or other qualified contracted personnel trained in behavioral analysis with an emphasis on positive behavioral interventions. Permits such work to be performed by any staff member with specific training in this area and may include but is not limited to, a teacher, resource specialist, school psychologist, or program specialist. (5 CCR § 3001(f))
 - 5) Defines "Behavioral intervention plan" as a document developed when the individual exhibits a serious behavior problem that significantly interferes with the implementation of the goals and objectives of the pupil's individual education plan (IEP). (5 CCR § 3001(g))
 - 6) Permits a Behavioral intervention plan to only be implemented by, or under the supervision of, staff with documented training in behavior analysis, including the use of positive behavioral interventions. (5 CCR § 3052(a)(2))
 - 7) Requires a Functional analysis assessment to be conducted by, or under the supervision of a person who has documented training in behavior analysis with an emphasis on positive behavioral interventions. A functional analysis assessment shall occur after the individualized education program team finds that instructional/behavioral approaches specified in the student's IEP have been ineffective. (5 CCR § 3052(b))
 - 8) Requires nonpublic school and agency personnel who design or plan behavior intervention services to possess one of the following: (5 CCR § 3065(d))
 - Pupil personnel services credential in school counseling or school psychology
 - Special education instruction credential
 - Marriage and Family Therapist, Clinical Social worker, Educational Psychologist or Psychologist license
 - Master's degree issued by a regionally accredited post-secondary institution in education, psychology, counseling, behavior analysis, behavioral science, human development, social work, rehabilitation, or a related field.
 - 9) Requires nonpublic school and agency personnel who provide behavior intervention to meet one of the following: (5 CCR § 3065(e))
 - The qualifications under subdivision (d); OR

- Work under the supervision of personnel qualified under subdivision (d); AND
 - Possess a high school diploma or its equivalent; AND
 - Receive the specific level of supervision required in the pupil's IEP.

This Bill:

- 1) Establishes the California Behavioral Certification Organization (CBCO), a nonprofit organization that provides for the certification and registration of applied behavioral analysis practitioners if they submit a written application, pay fees as required by the CBCO, meet specified educational and professional requirements, and submit fingerprints. (Business and Professions Code §§ 2529.6(a), 2529.8, 2529.10)
- 2) States that a person qualified to provide applied behavioral analysis services, as defined in this bill, may do all of the following: (BPC §2529.55(a))
 - a) Design, implement, and evaluate systematic instructional and environmental modifications to produce social improvements in the behavior of individuals or groups.
 - b) Apply the principles, methods, and procedures of behavior analysis.
 - c) Utilize contextual factors and establish operations, antecedent stimuli, positive reinforcement, other consequences, and other behavior analysis procedures to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
 - d) Assess functional relations between behavior and environmental factors, known as functional assessment and functional analysis.
 - e) Use procedures based on scientific research and the direct observation and measurement of behavior and environment.
- 3) Provides that the practice of applied behavioral analysis does not include psychological testing, neuropsychology, psychotherapy, sex therapy, psychoanalysis, hypnotherapy and long-term counseling. (BPC §2529.55(b))
- 4) Allows the CBCO to deny an application for a certificate, or to discipline a certificate holder for specified reasons (BPC §2529.12)
- 5) Prohibits any person from stating, advertising, or representing to the public in any way that he or she is certified, registered, or licensed by a governmental agency as an applied behavior analyst or an applied behavioral analyst assistant. (BPC §2529.14)
- 6) Prohibits any person from holding himself or herself out as a Board Certified Behavior Analyst (CABA) Board Certified Assistant Behavior Analyst (CABAA) unless the person is currently certified as such by the CBCO. (BPC §2529.15)
- 7) Requires the CBCO make available to the public the current status of certificate holders, including whether they are in good standing, whether their certificate has been suspended, revoked, and whether any disciplinary action has been taken. (BPC §2529.17)

- 8) States that nothing in the provisions of this bill shall be construed to require certification, licensure, recognition, or authorization to provide applied behavior analysis services nor to add to or increase requirements for providing those services. (BPC §2529.18(b))
- 9) States that the provisions of this law shall remain in effect until January 1, 2017 unless a later enacted statute deletes or extends this date.

Comments:

- 1) **Author's Intent.** Uncodified legislative intent language in section one of this bill states that this bill is intended "to create an additional pathway for certification through the establishment of a private nonprofit organization that will enable consumers to identify qualified providers of applied behavioral analysis services."
- 2) **Current Certification.** A nonprofit corporation, The Behavior Analyst Certification Board (BACB) provides the following certification for behavioral analysts: Board Certified Behavior Analyst (BCBA) and Board Certified Assistant Behavior Analyst (BCaBA). The Behavior Analyst Certification Board's BCBA and BCaBA credentialing programs are accredited by the National Council for Certifying Agencies in Washington, DC.

The BACB credentials practitioners at three levels. Individuals who wish to become a BCBA must possess at least a Masters Degree, have 225 classroom hours of specific graduate-level coursework, meet experience requirements, and pass the Behavior Analyst Certification Examination. Persons wishing to be Board Certified BCaBA must have at least a Bachelors Degree, have 135 classroom hours of specific coursework, meet experience requirements, and pass the Assistant Behavior Analyst Certification Examination. Board Certified Behavior Analyst-Doctoral must be BCBAs with doctorate degrees and meet other criteria. BACB certificants must accumulate continuing education credit to maintain their credentials.

- 3) **Unclear purpose.** The need for this bill unclear. This bill creates a new nonprofit organization to issue registration and certification to individuals providing behavior analysis services. However, a national nonprofit certifying body already exists with that purpose. Additionally, this bill does not provide for practice protection, or in any way regulates the practice of behavior analysis. This bill does provide title protection for those certifications issued by the national certifying body, the Behavior Analyst Certification Board, as well as the newly established California Behavioral Certification Organization.
- 4) **Affect of Board Licensees.** This bill does not provide that an individual must have certification or registration to practice behavior analysis services, but only that an individual cannot use the protected titles specified in the bill (unless that individual is so registered or certified). Therefore, all Board licensees would be able to practice behavior analysis (if it is within that practitioner's scope of competency) but could not use the specified titles that imply certification or registration by either the private certifying board described, by a governmental agency or by the established nonprofit CBCO.
- 5) **Consumer Confusion.** By creating a private nonprofit entity that provides a certification which allows the individual to represent themselves as a "California Certified Behavior Service Professional", this bill may cause confusion as to what that certification really means. The words "California Certified" has the connotation that the State is the entity

certifying the practitioner. In general, consumers have certain expectations of liability and protections afforded by the government when an individual is assumed to be regulated by the state. One such expectation is an established course of action by the regulating entity for unprofessional conduct by a certificate holder. This bill establishes disciplinary provisions for the CBCO for its certificate holders, but the State would not have any control or responsibility for such discipline.

6) Policy and Advocacy Committee Recommendation. On April 9, 2010, the Policy and Advocacy Committee did not recommend a position to the Board on this bill, but instead requested that the Board further discuss the policy implications of this legislation.

7) Support and Opposition.

Support: None on file

*Oppose: California Psychological Association
California Association of Health Plans*

8) History

2010

- Apr. 28 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on B., P. & E.D.
- Apr. 9 Set for hearing May 3.
- Apr. 8 Hearing postponed by committee.
- Apr. 7 Set for hearing April 12.
- Mar. 25 Re-referred to Com. on B., P. & E.D.
- Mar. 23 From committee with author's amendments. Read second time. Amended. Re-referred to Com. on RLS.
- Mar. 4 To Com. on RLS.
- Feb. 20 From print. May be acted upon on or after March 22.
- Feb. 19 Introduced. Read first time. To Com. on RLS. for assignment. To print.

AMENDED IN SENATE APRIL 28, 2010

AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1282

Introduced by Senator Steinberg

February 19, 2010

An act to add *and repeal* Chapter 5.2 (commencing with Section 2529.50) ~~to~~ of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1282, as amended, Steinberg. Applied behavior analysis services: California Behavioral Certification Organization.

Existing law provides for the licensure and regulation of various healing arts practitioners, including, but not limited to, marriage and family therapists, clinical social workers, educational psychologists, and professional clinical counselors, by the Board of Behavioral Sciences in the Department of Consumer Affairs.

This bill would, *commencing September 1, 2011, and until January 1, 2017*, provide for the certification ~~or registration~~ of specified applied behavior ~~analysis practitioners~~ *analysts and applied behavior analyst assistants* by a California Behavioral Certification Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would ~~specify which individuals would be considered as qualified to practice applied behavior analysis services, and would prohibit an individual from holding himself or herself out as a practitioner unless he or she has complied with the act or another applicable licensing provision or is otherwise certified by certain nationally recognized entities. The bill would authorize the organization to establish specified curriculum and~~

~~continuing education standards, and establish a certification and registration process, in conjunction with the California Association for Behavior Analysis (CalABA). The bill would require CalABA to implement the certification or registration process until the organization is established. The bill would set forth other disciplinary standards and hearing requirements require applicants for certification to meet specified requirements, to pay fees required by the organization, and to submit fingerprints to the organization for purposes of obtaining background information, and would authorize the organization to take certain disciplinary action against certificate holders for specified reasons. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as an applied behavior analyst or an applied behavior analyst assistant, or to use certain titles or other terms implying that he or she is certified under these provisions unless he or she is so certified. The bill would make its provisions subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to provide state recognition of educated, trained, and
3 experienced individuals that provide applied behavior analysis
4 services to individuals with medical conditions such as autism
5 spectrum disorder and other conditions that are responsive to
6 behavior analysis. This act recognizes those professionals
7 practicing with existing licenses issued by the state and those
8 certified by nationally accredited organizations, and is intended
9 to create an additional pathway for certification through the
10 establishment of a private nonprofit organization that will enable
11 consumers to identify qualified providers of applied behavior
12 analysis services. These pathways for recognition of qualified
13 providers will ensure that providers have completed sufficient
14 training at approved institutions of higher education and follow
15 nationally recognized standards for recognition of these
16 professionals upon which consumers and those who pay for applied
17 behavior analysis services, including private entities, governmental

1 entities, nonprofit organizations, health care service plans, or
2 insurers, may rely.

3 SEC. 2. Chapter 5.2 (commencing with Section 2529.50) is
4 added to Division 2 of the Business and Professions Code, to read:

5

6

CHAPTER 5.2. APPLIED BEHAVIOR ANALYSIS SERVICES

7

8 2529.50. For purposes of this chapter, the following terms have
9 the following meanings:

10 (a) *“Applicant” means a person who applies for certification*
11 *pursuant to this chapter.*

12 (b) *“Applied behavior analyst” means a person who provides*
13 *applied behavior analysis services and who may be certified by*
14 *the CBCO.*

15 (c) *“Applied behavior analyst assistant” means a person who*
16 *provides applied behavior analysis services under the supervision*
17 *of an applied behavioral analyst and who may be certified by the*
18 *CBCO.*

19 (a)

20 (d) *“ANSI” means the American National Standards Institute.*

21 (b)

22 (e) *“BACB” means the Behavior Analyst Certification Board.*

23 ~~(e) “CalABA” means the California Association for Behavior~~
24 ~~Analysis.~~

25 (d)

26 (f) *“CBCO” or “organization” means the California Behavioral*
27 *Certification Organization established by this chapter.*

28 (e)

29 (g) *“NCCA” means the National Commission for Certifying*
30 *Agencies.*

31 ~~2529.55.— (a) A person who is qualified to provide applied~~
32 ~~behavior analysis services, as enumerated in Section 2529.6, may~~
33 ~~do all of the following:~~

34 2529.55. (a) *For purposes of this chapter, “applied behavior*
35 *analysis services” means any of the following functions:*

36 (1) ~~Design, implement, and evaluate~~ *Designing, implementing,*
37 *and evaluating* systematic instructional and environmental
38 modifications to produce social improvements in the behavior of
39 individuals or groups.

1 (2) ~~Apply~~ *Applying* the principles, methods, and procedures of
2 behavior analysis.

3 (3) ~~Utilize~~ *Utilizing* contextual factors and ~~establish~~ *establishing*
4 operations, antecedent stimuli, positive reinforcement, other
5 consequences, and other behavior analysis procedures to help
6 people develop new behaviors, increase or decrease existing
7 behaviors, and emit behaviors under specific environmental
8 conditions.

9 (4) ~~Assess~~ *Assessing* functional relations between behavior and
10 environmental factors, known as functional assessment and
11 functional analysis.

12 (5) ~~Use~~ *Using* procedures based on scientific research and the
13 direct observation and measurement of behavior and environment.

14 (6) ~~Determine whether a nonlicensed or noncertified individual~~
15 ~~shall be deemed as qualified to provide applied behavior analysis~~
16 ~~services, exclusive of paragraph (7), subject to his or her~~
17 ~~supervision and solely for the purpose of implementing the services~~
18 ~~of applied behavior analysis developed by a person described in~~
19 ~~subdivision (a) of Section 2529.6.~~

20 (7) ~~Supervise the delivery of applied behavior analysis services~~
21 ~~by nonlicensed or noncertified individuals as described in~~
22 ~~paragraph (6).~~

23 (b) ~~The practice of applied behavior analysis excludes~~

24 (6) *Determining whether a nonlicensed or noncertified*
25 *individual shall be deemed as qualified to perform all of the*
26 *functions under this subdivision, subject to his or her supervision.*

27 (b) *“Applied behavior analysis services” do not include*
28 *psychological testing, neuropsychology, psychotherapy, sex*
29 *therapy, psychoanalysis, hypnotherapy,—and or long-term*
30 *counseling.*

31 (c) *The definition in this section shall apply regardless of the*
32 *source of payment or reimbursement.*

33 2529.6. (a) ~~The following persons shall be recognized as~~
34 ~~qualified to provide applied behavior analysis services as described~~
35 ~~in Section 2529.55:~~

36 (1) ~~Licensed professionals, including, but not limited to,~~
37 ~~physicians and surgeons, psychologists, social workers, marriage~~
38 ~~and family therapists, speech-language pathologists, occupational~~
39 ~~therapists, physical therapists, or counselors, when acting within~~

1 the scope of their license, formal training, experience, and accepted
2 standards of their profession.

3 ~~(2) An individual with certification in applied behavior analysis
4 from the BACB or another organization that is accredited by the
5 NCCA or ANSI whose mission is to meet professional
6 credentialing needs identified by behavior analysts, governments,
7 and consumers of behavior analysis services.~~

8 ~~(3) An individual specializing in the treatment of autism
9 spectrum disorder who meets all of the following requirements if
10 verified on or before December 31, 2014, by one of the
11 organizations specified in Section 2529.8:~~

12 ~~(A) Possesses a master's or doctorate degree in applied behavior
13 analysis or a related field.~~

14 ~~(B) Demonstrates three years of experience in the last five years
15 of providing, on a consistent rather than an episodic basis, applied
16 behavior analysis services to individuals with autism spectrum
17 disorder, either as an independent professional or as an employee
18 of an organization providing services to those with autism spectrum
19 disorder.~~

20 ~~(C) Submits references from at least two individuals who meet
21 the requirements of paragraph (1) or (2).~~

22 ~~(4) An individual certified by the CBCO pursuant to subdivision
23 (f) of Section 2529.7.~~

24 ~~(5) An individual who holds a bachelor's degree and meets the
25 requirements of subparagraphs (B) and (C) of paragraph (3), subject
26 to registration by one of the organizations specified in Section
27 2529.8.~~

28 ~~(b) The following persons shall be recognized as qualified to
29 provide applied behavior analysis services as described in Section
30 2529.55, so long as supervised by a person described in paragraph
31 (1), (2), (3), or (4) of subdivision (a):~~

32 ~~(1) A person who is certified as an Assistant Behavior Analyst
33 by the BACB.~~

34 ~~(2) A person who is certified as a California certified assistant
35 services professional by the CBCO pursuant to subdivision (g) of
36 Section 2529.7.~~

37 ~~(e) (1) Pursuant to subdivisions (a) and (b), all of the following
38 shall apply:~~

39 ~~(A) Persons meeting the requirements of paragraph (1) of
40 subdivision (a) may hold themselves out as licensed professionals~~

1 according to the conditions of their professional license and shall
2 be deemed by the state as qualified to provide the services set forth
3 in Section 2529.55. These persons may also hold themselves out
4 as certified behavior analysis professionals if they meet any of the
5 criteria specified in paragraph (2), (3), or (4) of subdivision (a).

6 ~~(B) Persons meeting the requirements of paragraph (2), (3), or~~
7 ~~(4) of subdivision (a) may hold themselves out as certified behavior~~
8 ~~analysis professionals and shall be deemed by the state as qualified~~
9 ~~to provide the services set forth in Section 2529.55.~~

10 ~~(C) Persons meeting the requirements of paragraph (5) of~~
11 ~~subdivision (a) may hold themselves out as registered behavior~~
12 ~~analysis professionals and shall be deemed by the state as qualified~~
13 ~~to provide the services set forth in Section 2529.55.~~

14 ~~(D) Persons meeting the requirements of subdivision (b) may~~
15 ~~hold themselves out as certified assistant behavior analysis~~
16 ~~professionals and shall be deemed by the state as qualified to~~
17 ~~provide the services set forth in Section 2529.55.~~

18 ~~(E) Persons meeting the requirements of paragraph (6) of Section~~
19 ~~2529.55 may hold themselves out as qualified by the state solely~~
20 ~~for the purpose of implementing the services of applied behavior~~
21 ~~analysis, as set forth in Section 2529.55.~~

22 ~~(2) Paragraph (1) shall apply regardless of whether the services~~
23 ~~provided by those persons are paid for by private entities,~~
24 ~~governmental entities, nonprofit organizations, health care service~~
25 ~~plans, or insurers.~~

26 ~~2529.7. (a) There is hereby established a California~~
27 ~~Behavioral Certification Organization, which shall be a nonprofit~~
28 ~~corporation exempt from taxation under Section 501(c)(3) of the~~
29 ~~Internal Revenue Code and subdivision (d) of Section 23701 of~~
30 ~~the Revenue and Taxation Code.~~

31 ~~(b) The organization may commence activities as authorized~~
32 ~~by this chapter once it has submitted a request to the Internal~~
33 ~~Revenue Service and the Franchise Tax Board seeking tax~~
34 ~~exemption. The tax exempt application shall include information~~
35 ~~necessary to illustrate that the organization will operate in a manner~~
36 ~~consistent with the requirements imposed upon, and authority~~
37 ~~given to, the organization pursuant to this chapter.~~

38 ~~(c) The organization shall have until January 1, 2016, to receive~~
39 ~~accreditation from either ANSI or NCCA.~~

1 ~~(d) If the organization does not obtain national accreditation by~~
2 ~~January 1, 2016, it may not certify any additional individuals.~~
3 ~~However, any individuals certified during the five-year period~~
4 ~~commencing with the enactment of this section may retain their~~
5 ~~certification indefinitely provided they continue to meet any~~
6 ~~requirements established by the organization for certification~~
7 ~~maintenance and ethical compliance.~~

8 ~~(e) The CBCO board of directors shall be comprised of 12~~
9 ~~members who shall be residents of the state.~~

10 ~~(f) The CBCO board of directors shall determine through a~~
11 ~~process involving public input the specific standards necessary to~~
12 ~~receive certification as a certified behavior analysis professional,~~
13 ~~as described in paragraph (4) of subdivision (a) of Section 2529.6.~~
14 ~~However, in the interest of consumer protection, the specific~~
15 ~~standards shall include one of the following:~~

16 ~~(1) Option one, which minimum requirements shall include all~~
17 ~~of the following:~~

18 ~~(A) A doctoral or master's degree in applied behavior analysis~~
19 ~~or a related field from a nationally accredited institution of higher~~
20 ~~learning and a course sequence in applied behavior analysis that~~
21 ~~is approved by the CBCO. The course sequence shall be at least~~
22 ~~equivalent to or more rigorous than an approved course sequence~~
23 ~~of the BACB.~~

24 ~~(B) The successful completion of an approved practicum or~~
25 ~~supervised experience in the practice of applied behavior analysis,~~
26 ~~totaling at least 1,500 hours over a period of not less than one~~
27 ~~calendar year, of which at least 75 hours are in direct one-to-one~~
28 ~~contact with the supervisor, or which is equivalent to or more~~
29 ~~rigorous than the approved practicum requirements of the BACB.~~

30 ~~(C) To ensure mastery of the material, successful completion~~
31 ~~of an examination administered by the BACB or the CBCO, which~~
32 ~~is at least as rigorous or equivalent to the examination administered~~
33 ~~by the BACB.~~

34 ~~(2) Option two, which minimum requirements shall include all~~
35 ~~of the following:~~

36 ~~(A) A doctoral or master's degree from a recognized educational~~
37 ~~program accredited by the Association for Behavior Analysis~~
38 ~~International, or from a program at a recognized educational~~
39 ~~institution that is approved by the third organization and that~~
40 ~~substantially meets the educational standards of the accreditation~~

1 board of the Association for Behavior Analysis International. The
2 program shall also include an approved course sequence of the
3 BACB.

4 (B) The successful completion of an approved practicum or
5 supervised experience in the practice of applied behavior analysis,
6 totaling at least 1,500 hours over a period of not less than one
7 calendar year, of which at least 75 hours are in direct one-to-one
8 contact with the supervisor.

9 (C) To ensure mastery of the material, successful completion
10 of an examination administered by the BACB or the CBCO, which
11 is at least as rigorous or equivalent to the examination administered
12 by the BACB.

13 (g) The CBCO board of directors shall determine through a
14 process involving public input the specific standards necessary to
15 receive certification as a California certified assistant services
16 professional, as described in paragraph (2) of subdivision (b) of
17 Section 2529.6. However, in the interest of consumer protection,
18 the specific standards shall meet all the following minimum
19 requirements:

20 (1) A bachelor's degree from a nationally accredited institution
21 of higher learning and a course sequence in applied behavior
22 analysis that is approved by the CBCO. The course sequence shall
23 be at least equivalent to or more rigorous than an approved course
24 sequence for an Assistant Behavior Analyst from the BACB.

25 (2) The successful completion of an approved practicum or
26 supervised experience in the practice of applied behavior analysis,
27 totaling at least 1,000 hours over a period of not less than six
28 months, of which at least 50 hours are in direct one-to-one contact
29 with the supervisor, or which is equivalent to or more rigorous
30 than the approved practicum requirements for an Assistant
31 Behavior Analyst from the BACB.

32 (3) To ensure mastery of the material, successful completion of
33 an examination administered by the CBCO, which is equivalent
34 to or more rigorous than the examination for an Assistant Behavior
35 Analyst administered by the BACB.

36 (h) The CBCO may charge applicants a fee not to exceed the
37 costs of implementation of the chapter.

38 2529.8.— (a) (1) Until December 31, 2014, the CBCO shall
39 have the primary responsibility for verifying the qualifications of

1 persons submitting the information set forth in paragraph (3) of
2 subdivision (a) of Section 2529.6.

3 (2) The CBCO shall have the primary responsibility for verifying
4 the qualifications of persons submitting the information set forth
5 in paragraph (5) of subdivision (a) of Section 2529.6.

6 (b) (1) Prior to the establishment and operation of the CBCO
7 or through December 31, 2014, whichever is earlier, CalABA or
8 its designee shall be authorized to verify the qualifications of
9 persons submitting the information set forth in paragraph (3) of
10 subdivision (a) of Section 2529.6.

11 (2) Prior to the establishment and operation of the CBCO,
12 CalABA or its designee shall be authorized to verify the
13 qualifications of persons submitting the information set forth in
14 paragraph (5) of subdivision (a) of Section 2529.6.

15 (e) (1) Prior to December 31, 2014, an individual meeting the
16 requirements of paragraph (3) of subdivision (a) of Section 2529.6
17 may submit to the CBCO, or to CalABA, if the latter is accepting
18 submissions, information necessary to establish that the individual
19 meets the requirements set forth in paragraph (3) of subdivision
20 (a) of Section 2529.6.

21 (2) If submitted to CalABA under subdivision (b), CalABA
22 shall issue to an individual that meets the qualifications a certificate
23 of temporary certification as a California Certified Behavior
24 Services Professional, which shall be valid for one year or until
25 the CBCO is accepting submissions from those seeking certification
26 pursuant to paragraph (3) of subdivision (a) of Section 2529.6,
27 whichever is later. Once the CBCO commences accepting
28 applications, CalABA shall finish processing all the submissions
29 it has received and shall notify the CBCO of all individuals
30 previously receiving certification from CalABA. Those individuals
31 shall automatically receive CBCO certification.

32 (3) If an individual submits information to the CBCO, the CBCO
33 shall issue to an individual that meets the qualifications,
34 certification as a California Certified Behavior Services
35 Professional.

36 (d) (1) An individual meeting the requirements of paragraph
37 (5) of subdivision (a) of Section 2529.6 may submit to the CBCO,
38 or to CalABA, if the latter is accepting submissions, information
39 necessary to establish that the individual meets the requirements
40 set forth in paragraph (5) of subdivision (a) of Section 2529.6.

1 ~~(2) If submitted to CalABA under subdivision (b), CalABA~~
2 ~~shall issue to an individual that meets the qualifications a certificate~~
3 ~~of temporary registration as a California applied behavior analysis~~
4 ~~professional, which shall be valid for one year or until the CBCO~~
5 ~~is accepting submissions from those seeking registration pursuant~~
6 ~~to paragraph (5) of subdivision (a) of Section 2529.6, whichever~~
7 ~~is later. Once the CBCO commences accepting applications,~~
8 ~~CalABA shall finish processing all the submissions it has received~~
9 ~~and shall notify the CBCO of all individuals previously receiving~~
10 ~~registration from CalABA. Those individuals shall automatically~~
11 ~~receive CBCO registration, which shall be valid for five years from~~
12 ~~the original date of issuance by CalABA.~~

13 ~~(3) If an individual submits information to the CBCO, the CBCO~~
14 ~~shall issue to an individual who meets the qualifications,~~
15 ~~registration as a California applied behavior analysis professional,~~
16 ~~which shall be valid for five years.~~

17 ~~(e) No later than January 1, 2016, individuals who have received~~
18 ~~certification pursuant to subdivision (c), shall maintain that~~
19 ~~certification only if they meet the requirements established by the~~
20 ~~CBCO for compliance with continuing education and ethical~~
21 ~~standards. If the CBCO is not in operation, those previously~~
22 ~~certified by the CBCO shall no longer be able to represent~~
23 ~~themselves as California Certified Behavior Services Professionals,~~
24 ~~but may represent that they are recognized by the state as qualified~~
25 ~~to provide applied behavior analysis services.~~

26 ~~2529.9. (a) It shall be unlawful for any person to hold himself~~
27 ~~or herself out as a Board Certified Behavior Analyst (BCBA)~~
28 ~~unless the person is currently certified as a Board Certified~~
29 ~~Behavior Analyst by the BACB.~~

30 ~~(b) It shall be unlawful for any person to hold himself or herself~~
31 ~~out as a Board Certified Assistant Behavior Analyst (BCaBA)~~
32 ~~unless the person is currently certified as a Board Certified~~
33 ~~Assistant Behavior Analyst by the BACB.~~

34 ~~(e) It shall be unlawful to claim to have state recognition,~~
35 ~~certification, or registration as a California Certified Behavior~~
36 ~~Services Professional, California applied behavior analysis~~
37 ~~professional, or California certified assistant services professional~~
38 ~~by CalABA, the CBCO, or the BACB, unless the person is~~
39 ~~otherwise recognized, certified, or registered by that entity.~~

- 1 ~~2529.10. The CBCO shall implement this chapter in conformity~~
2 ~~with accepted standards for professional credentialing programs,~~
3 ~~including, but not limited to, doing all of the following:~~
- 4 ~~(a) Conducting certification activities in a manner that upholds~~
5 ~~standards for the competent practice of the profession of behavior~~
6 ~~analysis.~~
 - 7 ~~(b) Structuring and governing the certification program in ways~~
8 ~~that are appropriate for the profession of behavior analysis and~~
9 ~~ensure autonomy in decision making over certification activities.~~
 - 10 ~~(c) Including certified behavior analysts and at least one~~
11 ~~consumer or public member on the CBCO board of directors.~~
 - 12 ~~(d) Having adequate financial and human resources to conduct~~
13 ~~effective and thorough certification, registration, recertification,~~
14 ~~and reregistration activities.~~
 - 15 ~~(e) Establishing, publishing, applying, and reviewing policies~~
16 ~~and procedures for key certification or registration activities, such~~
17 ~~as determining eligibility criteria, applying for certification or~~
18 ~~registration, administering assessment instruments, establishing~~
19 ~~performance domains, appeals confidentiality, certification and~~
20 ~~registration statistics, and discipline, and complying with applicable~~
21 ~~laws.~~
 - 22 ~~(f) Publishing a description of the assessment instruments used~~
23 ~~to make certification and registration decisions and the research~~
24 ~~methods used to ensure that the assessment instruments are valid.~~
 - 25 ~~(g) Awarding certification or registration only after the~~
26 ~~applicant's knowledge and skill have been evaluated and found to~~
27 ~~be acceptable.~~
 - 28 ~~(h) Maintaining a publicly available list of certified behavior~~
29 ~~analysts and verifying their certification.~~
 - 30 ~~(i) Analyzing, defining, and publishing performance domains~~
31 ~~and tasks and associated knowledge and skills for the practice of~~
32 ~~behavior analysis, and using them to develop the assessment~~
33 ~~instruments.~~
 - 34 ~~(j) Using assessment instruments that are derived from the job~~
35 ~~or practice analysis and are consistent with accepted psychometric~~
36 ~~principles and procedures, such as for setting passing scores,~~
37 ~~scoring and interpreting assessment results, ensuring reliability of~~
38 ~~scores, or establishing that different forms of the assessment~~
39 ~~instruments are equivalent.~~

- 1 ~~(k) Developing, adhering to, and publishing appropriate,~~
2 ~~standardized, and secure procedures for developing and~~
3 ~~administering the assessment instruments and for retaining all~~
4 ~~evidence of the validity and reliability of the assessment~~
5 ~~instruments, assessment results, and scores of all candidates.~~
6 ~~(l) Requiring periodic recertification and establishing,~~
7 ~~publishing, applying, and periodically reviewing policies and~~
8 ~~procedures for recertification or reregistration.~~
9 ~~(m) Requiring adequate continuing education.~~
10 ~~(n) Monitoring the practicing of applied behavioral analysis~~
11 ~~services consistent with the accepted standards of their respective~~
12 ~~professions and that the practice of applied behavior analysis is~~
13 ~~commensurate with their level of formal training and experience.~~
14 ~~(o) Maintaining accreditation by demonstrating continued~~
15 ~~compliance with accreditation standards.~~
16 ~~(p) Demonstrating that recertification or reregistration~~
17 ~~requirements measure or enhance the competence of those certified~~
18 ~~or registered.~~
19 ~~(q) Developing appropriate supervision guidelines for the~~
20 ~~provision of applied behavior analysis services.~~
21 ~~(r) (1) Establishing and maintaining a process to receive, review,~~
22 ~~and take corrective action, when necessary, with regard to~~
23 ~~complaints by consumers of applied behavior analysis or other~~
24 ~~interested parties against certificate holders or registrants and to~~
25 ~~make available to the public current status of those persons, such~~
26 ~~as whether they are in good standing or their certificate or~~
27 ~~registration has been suspended or revoked and details of any~~
28 ~~complaints or corrective action taken.~~
29 ~~(2) Maintaining on the organization's Internet Web site~~
30 ~~information updated annually related to implementation of this~~
31 ~~chapter.~~
32 ~~(s) Establishing a disciplinary and hearing process pursuant to~~
33 ~~Sections 2529.11 and 2529.12.~~
34 ~~(t) Requiring an applicant for certification or registration to~~
35 ~~submit fingerprint images to the CBCO, and establishing a~~
36 ~~procedure consistent with state law to obtain background~~
37 ~~information on the applicant.~~
38 ~~2529.6. (a) A California Behavioral Certification Organization~~
39 ~~(SCBCO) shall be created as a nonprofit corporation exempt from~~
40 ~~taxation under Section 501(c)(3) of the Internal Revenue Code~~

1 *and subdivision (d) of Section 23701 of the Revenue and Taxation*
2 *Code. The CBCO may commence activities as authorized by this*
3 *chapter after it has submitted a request to the Internal Revenue*
4 *Service and the Franchise Tax Board seeking that exemption.*

5 *(b) The CBCO shall have the responsibilities and duties as set*
6 *forth in this chapter and may take any reasonable actions to carry*
7 *out the responsibilities and duties set forth in this chapter,*
8 *including, but not limited to, hiring staff and entering into*
9 *contracts.*

10 *(c) (1) The CBCO shall be governed by a board of directors*
11 *made up of two representatives selected by each professional*
12 *society, association, or other entity whose membership is comprised*
13 *of applied behavior analysts, unless any of those entities choose*
14 *not to exercise this right of selection. To qualify, a professional*
15 *society, association, or other entity shall have a dues-paying*
16 *membership in California or on a national basis of at least 1,000*
17 *individuals for the last three years, and shall have bylaws that*
18 *require its membership to comply with a code of ethics. The board*
19 *of directors shall also include additional persons as established*
20 *by the bylaws of the CBCO. Additional members of the board of*
21 *directors may include certified behavior analysts, consumers, and*
22 *public members.*

23 *(2) The initial board of directors shall establish the CBCO,*
24 *initiate the request for tax-exempt status from the Internal Revenue*
25 *Service and the Franchise Tax Board, and solicit input from the*
26 *applied behavior analyst community concerning the operations of*
27 *the organization. The initial board of directors, in its discretion,*
28 *may immediately undertake to issue the certificates authorized by*
29 *this chapter after adopting the necessary bylaws or other rules,*
30 *or may establish by adoption of bylaws the permanent governing*
31 *structure of the CBCO prior to issuing certificates.*

32 *(d) The board of directors shall establish fees reasonably related*
33 *to the cost of providing services and carrying out its ongoing*
34 *responsibilities and duties. Initial and renewal fees shall be*
35 *established by the board of directors annually.*

36 *(e) The meetings of the CBCO shall be subject to the rules of*
37 *the Bagley-Keene Open Meetings Act (Article 9 (commencing with*
38 *Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of*
39 *the Government Code). Section 11130.7 of the Government Code*
40 *shall not apply to the CBCO board of directors.*

1 2529.8. (a) *The CBCO shall issue a certificate under this*
2 *chapter to an applicant who satisfies the requirements of this*
3 *chapter.*

4 (b) *In order to obtain certification as an applied behavior*
5 *analyst, an applicant shall submit a written application, pay all*
6 *fees required by the CBCO, and provide the CBCO with*
7 *satisfactory evidence of either of the following:*

8 (1) *That he or she holds a current, valid certification in applied*
9 *behavior analysis from the BACB or another organization that is*
10 *accredited by the NCCA or ANSI whose mission is to meet*
11 *professional credentialing needs identified by behavior analysts,*
12 *governments, and consumers of applied behavior analysis services.*

13 (2) *That he or she meets all of the following requirements:*

14 (A) *Possesses a master's or doctorate degree in applied*
15 *behavior analysis or a related field.*

16 (B) *Demonstrates three years of experience in the last five years*
17 *of providing those functions specified in subdivision (a) of Section*
18 *2529.55 to individuals, either as an independent professional or*
19 *as an employee of an organization.*

20 (c) *In order to obtain certification as an applied behavior*
21 *analyst assistant, an applicant shall submit a written application,*
22 *pay all fees required by the CBCO, and provide the CBCO with*
23 *satisfactory evidence of either of the following:*

24 (1) *That he or she holds a current, valid certification as an*
25 *applied behavior analyst assistant from the BACB or another*
26 *organization that is accredited by the NCCA or ANSI whose*
27 *mission is to meet professional credentialing needs identified by*
28 *behavior analysts, governments, and consumers of applied*
29 *behavior analysis services.*

30 (2) *That he or she meets all of the following requirements:*

31 (A) *Possesses a bachelor's degree.*

32 (B) *Demonstrates three years of experience in the last five years*
33 *of providing those functions specified in subdivision (a) of Section*
34 *2529.55 to individuals, either as an independent professional or*
35 *as an employee of an organization.*

36 (d) *A certificate issued pursuant to this chapter shall be subject*
37 *to renewal every two years in a manner prescribed by the CBCO,*
38 *and shall expire unless renewed in that manner. The CBCO may*
39 *provide for late renewal of a certificate.*

1 (e) For purposes of this section and any other provision of this
2 chapter for which the CBCO is authorized to receive factual
3 information as a condition of taking any action, the CBCO shall
4 have the authority to conduct oral interviews of the applicant and
5 others or to make any investigation deemed necessary to establish
6 that the information received is accurate and satisfies any criteria
7 established by this chapter.

8 (f) Individuals who have received certification pursuant to
9 subdivision (b) may maintain that certification only if they meet
10 the requirements established by the CBCO for compliance with
11 continuing education and ethical standards.

12 2529.9. The CBCO shall not issue certificates pursuant to this
13 chapter prior to September 1, 2011.

14 2529.10. (a) The CBCO shall establish a procedure consistent
15 with state law to obtain background information on each applicant.

16 (b) Prior to issuing a certificate to an applicant, the CBCO
17 shall require each applicant to submit fingerprint images to the
18 CBCO for purposes of obtaining background information on the
19 applicant.

20 2529.11. (a) The CBCO may discipline a certificate holder or
21 registrant by any, or a combination, of the following methods:

22 (1) Placing the certificate holder or registrant on probation.

23 (2) Suspending the certificate or registration and the rights
24 conferred by this chapter on a certificate holder or registrant for a
25 period not to exceed one year.

26 (3) Revoking the certificate or registration.

27 (4) Suspending or staying the disciplinary order, or portions of
28 it, with or without conditions.

29 (5) Taking other action as the organization, as authorized by
30 this chapter or its bylaws, deems proper.

31 (b) The CBCO may issue an initial certificate or registration on
32 probation, with specific terms and conditions, to any applicant.

33 2529.12. It is a violation of this chapter for a certificate holder
34 to commit, and the CBCO may deny an application for a certificate
35 or discipline a certificate holder for, any of the following:

36 (a) Unprofessional conduct, including, but not limited to, denial
37 of licensure, revocation, suspension, restriction, or any other
38 disciplinary action against a certificate holder by another state
39 or territory of the United States, by any other government agency,
40 or by a California health care professional licensing board. A

1 *certified copy of the decision, order, or judgment shall be*
2 *conclusive evidence of these actions.*

3 *(b) Procuring a certificate by fraud, misrepresentation, or*
4 *mistake.*

5 *(c) Violating or attempting to violate, directly or indirectly, or*
6 *assisting in or abetting the violation of, or conspiring to violate,*
7 *any provision or term of this chapter or any rule or bylaw adopted*
8 *by the CBCO.*

9 *(d) Conviction of any felony, or conviction of a misdemeanor*
10 *that is substantially related to the qualifications or duties of a*
11 *certificate holder, in which event the record of the conviction shall*
12 *be conclusive evidence of the crime.*

13 *(e) Impersonating an applicant or acting as a proxy for an*
14 *applicant in any examination referred to under this chapter for*
15 *the issuance of a certificate.*

16 *(f) Impersonating a certified applied behavior analyst or*
17 *certified applied behavior analyst assistant, or permitting or*
18 *allowing an uncertified person to use a certificate.*

19 *(g) Committing any fraudulent, dishonest, or corrupt act that*
20 *is substantially related to the qualifications or duties of a certificate*
21 *holder.*

22 *(h) Committing any act punishable as a sexually related crime.*
23 ~~2529.12.~~

24 2529.13. (a) No certificate holder, registrant, or applicant may
25 be disciplined or denied a certificate or registration pursuant to
26 Section ~~2529.11~~ 2529.12 except according to procedures satisfying
27 the requirements of this section. A denial or discipline not in accord
28 with this section shall be void and without effect.

29 (b) Any applicant denial or discipline shall be done in good
30 faith and in a fair and reasonable manner. Any procedure that
31 conforms to the requirements of subdivision (c) is fair and
32 reasonable, but a court may also find other procedures to be fair
33 and reasonable when the full circumstances of the denial or
34 discipline are considered.

35 (c) A procedure is fair and reasonable if all of the following
36 apply:

37 (1) The provisions of the procedure have been set forth in the
38 CBCO articles or bylaws, or copies of those provisions are sent
39 annually to certificate holders or registrants if required by the
40 articles or bylaws.

1 (2) It provides the giving of 15 days prior notice of the denial
2 or discipline and the reasons therefor.

3 (3) It provides an opportunity for the applicant or certificate
4 holder or registrant to be heard, orally or in writing, not less than
5 five days before the effective date of the denial or discipline by a
6 person or body authorized to decide that the proposed denial or
7 discipline not take place.

8 (d) Any notice required under this section may be given by any
9 method reasonably calculated to provide actual notice. Any notice
10 given by mail must be given by first-class or certified mail sent to
11 the last address of the applicant or certificate holder or registrant
12 shown on the organization's records.

13 (e) Any action challenging a denial or discipline, including any
14 claim alleging defective notice, shall be commenced within one
15 year after the date of the denial or discipline. If the action is
16 successful, the court may order any relief, including reinstatement,
17 that it finds equitable under the circumstances.

18 (f) This section governs only the procedures for denial or
19 discipline and not the substantive grounds therefor. A denial or
20 discipline based upon substantive grounds that violates contractual
21 or other rights or is otherwise unlawful is not made valid by
22 compliance with this section.

23 (g) An applicant or certificate holder or registrant who is denied
24 or disciplined shall be liable for any charges incurred, services or
25 benefits actually rendered, dues, assessments, or fees incurred
26 before the denial or discipline or arising from contract or otherwise.

27 ~~2529.13. (a) Nothing in this chapter shall be interpreted to~~
28 ~~prohibit individuals not recognized in Section 2529.6 from~~
29 ~~providing the services defined as applied behavior analysis~~
30 ~~services, as set forth in Section 2529.55, provided those individuals~~
31 ~~do not hold themselves out to be Certified Behavior Analysts or~~
32 ~~claim to have state recognition or certification by the CBCO or~~
33 ~~CalABA pursuant to this chapter.~~

34 ~~(b) Nothing in this chapter shall be construed to prevent~~
35 ~~2529.14. It is an unfair business practice for a person to state~~
36 ~~or advertise or put out any sign or card or other device, or to~~
37 ~~represent to the public through any print or electronic media, that~~
38 ~~he or she is certified, registered, or licensed by a governmental~~
39 ~~agency as an applied behavior analyst or an applied behavior~~
40 ~~analyst assistant.~~

1 2529.15. *It is an unfair business practice for any person to*
2 *hold himself or herself out or to use the title of “certified applied*
3 *behavior analyst” or “certified applied behavior analyst assistant”*
4 *or any other term, such as “licensed,” “registered,” “CABA,” or*
5 *“CABAA,” that implies or suggests that the person is certified as*
6 *a applied behavior analyst or applied behavior analyst assistant*
7 *without having a certificate issued pursuant to Section 2529.8.*

8 2529.16. *The superior court in and for the county in which any*
9 *person acts in violation of the provisions of this chapter, may,*
10 *upon a petition by any person, issue an injunction or other*
11 *appropriate order restraining the conduct. The proceedings under*
12 *this paragraph shall be governed by Chapter 3 (commencing with*
13 *Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.*

14 2529.17. *The CBCO shall make available to the public the*
15 *current status of certificate holders, including, but not limited to,*
16 *whether they are in good standing or their certificate has been*
17 *suspended or revoked and the details of any disciplinary action*
18 *taken. The CBCO shall maintain on its Internet Web site*
19 *information updated annually related to implementation of this*
20 *chapter.*

21 2529.18. (a) *Nothing in this chapter shall be construed to*
22 *prevent behavior analysis service providers who are vendorized*
23 *by one of the California Regional Centers or hold state accredited*
24 *nonpublic agency status from developing, providing, or supervising*
25 *applied behavior analysis consistent with the requirements of their*
26 *Regional Center vendorization or nonpublic agency certification*
27 *or accreditation, provided their practice of behavior analysis is*
28 *commensurate with their level of training and experience, and they*
29 *do not hold themselves out to the public by any title or description*
30 *stating or implying that they are Certified Behavior Analysts, that*
31 *they are “certified” to practice behavior analysis if they are not in*
32 *fact certified, or that they are recognized or certified by the state*
33 *to practice applied behavior analysis.*

34 (e)

35 (b) *Nothing in this chapter shall be construed to require*
36 *certification, licensure, recognition, or authorization to provide*
37 *applied behavior analysis services nor to add to or increase*
38 *requirements for providing those services.*

39 ~~SEC. 3.— Nothing in this act shall be construed as interpreting~~
40 ~~an existing statutory or regulatory requirement.~~

1 2529.19. *This chapter shall be subject to the review required*
2 *by Division 1.2 (commencing with Section 473).*
3 2529.20. *This chapter shall remain in effect only until January*
4 *1, 2017, and as of that date is repealed, unless a later enacted*
5 *statute, that is enacted before January 1, 2017, deletes or extends*
6 *that date.*

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