

## **POLICY AND ADVOCACY COMMITTEE**

### **Supplemental Meeting Materials**

**April 7, 2011**

Included in this supplemental package are the following agenda item materials:

- III. Discussion and Possible Action Regarding Acceptance of Post-Degree Hours of Experience Toward Licensure as a Professional Clinical Counselor
- IV. Discussion and Possible Action Regarding Pending Legislation
  - h. AB 774 (Campos)
  - j. AB 958 (Berryhill)
  - k. AB 993 (Wagner)
  - l. AB 1205 (Berryhill)

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1625 North Market Blvd., Suite S-200  
Sacramento, CA 95834  
(916) 574-7830, (916) 574-8625 Fax  
www.bbs.ca.gov

**To:** Board Members **Date:** April 1, 2011  
**From:** Tracy Rhine **Telephone:** (916) 574-7897  
Assistant Executive Officer  
**Subject:** Licensed Professional Clinical Counselor Post-Degree Hours of Experience

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Current law (Business and Professions Code Section 4999.46(d)) requires that candidates for licensure as a professional clinical counselor (LPCC) complete 3,000 post-degree hours of supervised clinical mental health experience. In order for post-degree hours of experience to be counted toward the 3,000 hours required for licensure, a candidate must register with the Board as an LPCC intern within 90 days of the granting of a qualifying degree.

Now that the Board will be offering the LPCC license, it is a possibility that some marriage and family therapy (MFT) interns may decide to instead switch toward becoming an LPCC and become an LPCC intern, or the MFT intern may decide to pursue dual MFT and LPCC licensure. This raises several issues not presently addressed under the law:

1. Can an MFT intern decide to re-register as an LPCC intern, taking his or her post-degree hours of supervised experience gained as an MFT intern with them? Currently the law does not prohibit this, but counting of the hours would be limited by the 90-day rule (see item #3).
2. Current law requires a candidate to register with the Board as an LPCC intern within 90 days of the granting of a qualifying degree in order to count hours of experience gained before registration. Would an exception to this law be made for those already registered as MFT interns?
3. MFT and LPCC licensing law does not allow counting of experience hours gained more than six years prior to the date of application for examination eligibility (Business & Professions Code (BPC) §§4980.43(a)(6) and 4999.46(c)). If allowed to transfer hours gained as an MFT intern to an LPCC internship, how would the six year rule apply?

## History

### Continuing Education Hours

In October 2010, the Policy and Advocacy Committee (Committee) discussed a similar issue related to continuing education hours. The Board currently allows an individual who holds both an MFT and licensed clinical social worker (LCSW) license to apply their continuing education coursework toward the renewal of both licenses, as long as the courses meet the Board's

continuing education guidelines and the subject matter relates to both scopes of practice. A question was raised as to whether LPCC licensees should be allowed to double count continuing education units that they earn for another license toward their LPCC education requirement. The Committee voted to allow double counting, if the courses taken meet the Board's continuing education guidelines and the subject matter relates to both scopes of practice.

### Experience Hours

The Board has also touched on the issue of counting experience hours before. In 2009, the Board discussed a case where an MFT had subsequently completed a master's degree in social work. A question was raised as to whether this person could be credited the required supervised experience hours they had gained during their MFT internship toward LCSW licensure. It was proposed that the Board permit the MFT intern hours toward the LCSW license if the applicant had been a licensed MFT for at least four years and had completed a master's degree in social work. The Board rejected this proposal due to concerns about the equivalency of the experience hours, as well as known differences in MFT and LCSW scopes of practice.

### Previous Board Action

At its February 23, 2011 meeting the Board discussed the concerns noted in this memo and decided to refer the issue back to Committee for further policy discussion. Consensus among both stakeholders and Board members at the February meeting was to make no changes to current law and allow the double counting of hours under current statutory and regulatory constraints.

### Attachments

Relevant Business and Professions Code Sections

## **ITEM III Attachment**

### **RELEVANT BUSINESS AND PROFESSIONS CODE SECTIONS**

#### **§4980.43. PROFESSIONAL EXPERIENCE; INTERNS OR TRAINEES**

(a) Prior to applying for licensure examinations, each applicant shall complete experience that shall comply with the following:

- (1) A minimum of 3,000 hours completed during a period of at least 104 weeks.
- (2) Not more than 40 hours in any seven consecutive days.
- (3) Not less than 1,700 hours of supervised experience completed subsequent to the granting of the qualifying master's or doctoral degree.
- (4) Not more than 1,300 hours of supervised experience obtained prior to completing a master's or doctoral degree. The applicant shall not be credited with more than 750 hours of counseling and direct supervisor contact prior to completing the master's or doctoral degree.
- (5) No hours of experience may be gained prior to completing either 12 semester units or 18 quarter units of graduate instruction and becoming a trainee except for personal psychotherapy.
- (6) No hours of experience may be gained more than six years prior to the date the application for examination eligibility was filed, except that up to 500 hours of clinical experience gained in the supervised practicum required by subdivision (c) of Section 4980.37 and subparagraph (B) of paragraph (1) of subdivision (d) of Section 4980.36 shall be exempt from this six-year requirement.
- (7) Not more than a combined total of 1,250 hours of experience in the following:
  - (A) Direct supervisor contact.
  - (B) Professional enrichment activities. For purposes of this chapter, "professional enrichment activities" include the following:
    - (i) Workshops, seminars, training sessions, or conferences directly related to marriage and family therapy attended by the applicant that are approved by the applicant's supervisor. An applicant shall have no more than 250 hours of verified attendance at these workshops, seminars, training sessions, or conferences.
    - (ii) Participation by the applicant in personal psychotherapy, which includes group, marital or conjoint, family, or individual psychotherapy by an appropriately licensed professional. An applicant shall have no more than 100 hours of participation in personal psychotherapy. The applicant shall be credited with three hours of experience for each hour of personal psychotherapy.
  - (C) Client centered advocacy.
- (8) Not more than 500 hours of experience providing group therapy or group counseling.
- (9) Not more than 250 hours of experience administering and evaluating psychological tests,

writing clinical reports, writing progress notes, or writing process notes.

(10) Not less than 500 total hours of experience in diagnosing and treating couples, families, and children. For up to 150 hours of treating couples and families in conjoint therapy, the applicant shall be credited with two hours of experience for each hour of therapy provided.

(11) Not more than 375 hours of experience providing personal psychotherapy, crisis counseling, or other counseling services via telemedicine in accordance with Section 2290.5.

(12) It is anticipated and encouraged that hours of experience will include working with elders and dependent adults who have physical or mental limitations that restrict their ability to carry out normal activities or protect their rights. This subdivision shall only apply to hours gained on and after January 1, 2010.

(b) All applicants, trainees, and registrants shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of marriage and family therapy. Supervised experience shall be gained by interns and trainees either as an employee or as a volunteer. The requirements of this chapter regarding gaining hours of experience and supervision are applicable equally to employees and volunteers. Experience shall not be gained by interns or trainees as an independent contractor.

(1) If employed, an intern shall provide the board with copies of the corresponding W-2 tax forms for each year of experience claimed upon application for licensure.

(2) If volunteering, an intern shall provide the board with a letter from his or her employer verifying the intern's employment as a volunteer upon application for licensure.

(c) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting, as specified:

(1) A trainee shall receive an average of at least one hour of direct supervisor contact for every five hours of client contact in each setting.

(2) An individual supervised after being granted a qualifying degree shall receive at least one additional hour of direct supervisor contact for every week in which more than 10 hours of client contact is gained in each setting. No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour per week of face-to-face contact on an individual basis or two hours per week of face-to-face contact in a group.

(4) Direct supervisor contact shall occur within the same week as the hours claimed.

(5) Direct supervisor contact provided in a group shall be provided in a group of not more than eight supervisees and in segments lasting no less than one continuous hour.

(6) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

(7) All experience gained by a trainee shall be monitored by the supervisor as specified by regulation.

(d) (1) A trainee may be credited with supervised experience completed in any setting that meets all of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the trainee's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(C) Is not a private practice owned by a licensed marriage and family therapist, a licensed psychologist, a licensed clinical social worker, a licensed physician and surgeon, or a professional corporation of any of those licensed professions.

(2) Experience may be gained by the trainee solely as part of the position for which the trainee volunteers or is employed.

(e) (1) An intern may be credited with supervised experience completed in any setting that meets both of the following:

(A) Lawfully and regularly provides mental health counseling or psychotherapy.

(B) Provides oversight to ensure that the intern's work at the setting meets the experience and supervision requirements set forth in this chapter and is within the scope of practice for the profession as defined in Section 4980.02.

(2) An applicant shall not be employed or volunteer in a private practice, as defined in subparagraph (C) of paragraph (1) of subdivision (d), until registered as an intern.

(3) While an intern may be either a paid employee or a volunteer, employers are encouraged to provide fair remuneration to interns.

(4) Except for periods of time during a supervisor's vacation or sick leave, an intern who is employed or volunteering in private practice shall be under the direct supervision of a licensee that has satisfied the requirements of subdivision (g) of Section 4980.03. The supervising licensee shall either be employed by and practice at the same site as the intern's employer, or shall be an owner or shareholder of the private practice. Alternative supervision may be arranged during a supervisor's vacation or sick leave if the supervision meets the requirements of this section.

(5) Experience may be gained by the intern solely as part of the position for which the intern volunteers or is employed.

(f) Except as provided in subdivision (g), all persons shall register with the board as an intern in

order to be credited for post degree hours of supervised experience gained toward licensure.

(g) Except when employed in a private practice setting, all post degree hours of experience shall be credited toward licensure so long as the applicant applies for the intern registration within 90 days of the granting of the qualifying master's or doctoral degree and is thereafter granted the intern registration by the board.

(h) Trainees, interns, and applicants shall not receive any remuneration from patients or clients, and shall only be paid by their employers.

(i) Trainees, interns, and applicants shall only perform services at the place where their employers regularly conduct business, which may include performing services at other locations, so long as the services are performed under the direction and control of their employer and supervisor, and in compliance with the laws and regulations pertaining to supervision. Trainees and interns shall have no proprietary interest in their employers' businesses and shall not lease or rent space, pay for furnishings, equipment or supplies, or in any other way pay for the obligations of their employers.

(j) Trainees, interns, or applicants who provide volunteered services or other services, and who receive no more than a total, from all work settings, of five hundred dollars (\$500) per month as reimbursement for expenses actually incurred by those trainees, interns, or applicants for services rendered in any lawful work setting other than a private practice shall be considered an employee and not an independent contractor. The board may audit applicant swho receive reimbursement for expenses, and the applicants shall have the burden of demonstrating that the payments received were for reimbursement of expenses actually incurred.

(k) Each educational institution preparing applicants for licensure pursuant to this chapter shall consider requiring, and shall encourage, its students to undergo individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Each supervisor shall consider, advise, and encourage his or her interns and trainees regarding the advisability of undertaking individual, marital or conjoint, family, or group counseling or psychotherapy, as appropriate. Insofar as it is deemed appropriate and is desired by the applicant, the educational institution and supervisors are encouraged to assist the applicant in locating that counseling or psychotherapy at a reasonable cost.

#### **§4999.46. SUPERVISED EXPERIENCE REQUIREMENTS; QUALIFICATION FOR LICENSURE**

(a) To qualify for licensure, applicants shall complete clinical mental health experience under the general supervision of an approved supervisor as defined in Section 4999.12.

(b) The experience shall include a minimum of 3,000 postdegree hours of supervised clinical mental health experience related to the practice of professional clinical counseling, performed over a period of not less than two years (104 weeks) which shall include:

(1) Not more than 40 hours in any seven consecutive days.

(2) Not less than 1,750 hours of direct counseling with individuals or groups in a setting described in Section 4999.44 using a variety of psychotherapeutic techniques and recognized

counseling interventions within the scope of practice of licensed professional clinical counselors.

(3) Not more than 500 hours of experience providing group therapy or group counseling.

(4) Not more than 250 hours of experience providing counseling or crisis counseling on the telephone.

(5) Not less than 150 hours of clinical experience in a hospital or community mental health setting.

(6) Not more than a combined total of 1,250 hours of experience in the following related activities:

(A) Direct supervisor contact.

(B) Client centered advocacy.

(C) Not more than 250 hours of experience administering tests and evaluating psychological tests of clients, writing clinical reports, writing progress notes, or writing process notes.

(D) Not more than 250 hours of verified attendance at workshops, training sessions, or conferences directly related to professional clinical counseling that are approved by the applicant's supervisor.

(c) No hours of clinical mental health experience may be gained more than six years prior to the date the application for examination eligibility was filed.

(d) An applicant shall register with the board as an intern in order to be credited for postdegree hours of experience toward licensure. Postdegree hours of experience shall be credited toward licensure, provided that the applicant applies for intern registration within 90 days of the granting of the qualifying degree and is registered as an intern by the board.

(e) All applicants and interns shall be at all times under the supervision of a supervisor who shall be responsible for ensuring that the extent, kind, and quality of counseling performed is consistent with the training and experience of the person being supervised, and who shall be responsible to the board for compliance with all laws, rules, and regulations governing the practice of professional clinical counseling.

(f) Experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Experience obtained under the supervision of a supervisor with whom the applicant has had or currently has a personal, professional, or business relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(g) Supervision shall include at least one hour of direct supervisor contact in each week for which experience is credited in each work setting.

(1) No more than five hours of supervision, whether individual or group, shall be credited during any single week.

(2) An intern shall receive at least one additional hour of direct supervisor contact for every

week in which more than 10 hours of face-to-face psychotherapy is performed in each setting in which experience is gained.

(3) For purposes of this section, "one hour of direct supervisor contact" means one hour of face-to-face contact on an individual basis or two hours of face-to-face contact in a group of not more than eight persons in segments lasting no less than one continuous hour.

(4) Notwithstanding paragraph (3), an intern working in a governmental entity, a school, a college, or a university, or an institution that is both nonprofit and charitable, may obtain the required weekly direct supervisor contact via two-way, real-time videoconferencing. The supervisor shall be responsible for ensuring that client confidentiality is upheld.

### **§4996.18. ASSOCIATE CLINICAL SOCIAL WORKER; REGISTRATION; EMPLOYMENT; SUPERVISION; CREDIT**

(a) A person who wishes to be credited with experience toward licensure requirements shall register with the board as an associate clinical social worker prior to obtaining that experience. The application shall be made on a form prescribed by the board.

(b) An applicant for registration shall satisfy the following requirements:

(1) Possess a master's degree from an accredited school or department of social work.

(2) Have committed no crimes or acts constituting grounds for denial of licensure under Section 480.

(c) An applicant who possesses a master's degree from a school or department of social work that is a candidate for accreditation by the Commission on Accreditation of the Council on Social Work Education shall be eligible, and shall be required, to register as an associate clinical social worker in order to gain experience toward licensure if the applicant has not committed any crimes or acts that constitute grounds for denial of licensure under Section 480. That applicant shall not, however, be eligible for examination until the school or department of social work has received accreditation by the Commission on Accreditation of the Council on Social Work Education.

(d) Any experience obtained under the supervision of a spouse or relative by blood or marriage shall not be credited toward the required hours of supervised experience. Any experience obtained under the supervision of a supervisor with whom the applicant has a personal relationship that undermines the authority or effectiveness of the supervision shall not be credited toward the required hours of supervised experience.

(e) An applicant who possesses a master's degree from an accredited school or department of social work shall be able to apply experience the applicant obtained during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education toward the licensure requirements, if the experience meets the requirements of Section 4996.23. This subdivision shall apply retroactively to persons who possess a master's degree from an accredited school or department of social work and who obtained experience during the time the accredited school or department was in candidacy status by the Commission on Accreditation of the Council on Social Work Education.

(f) An applicant for registration or licensure trained in an educational institution outside the United States shall demonstrate to the satisfaction of the board that he or she possesses a master's of social work degree that is equivalent to a master's degree issued from a school or department of social work that is accredited by the Commission on Accreditation of the Council on Social Work Education. These applicants shall provide the board with a comprehensive evaluation of the degree and shall provide any other documentation the board deems necessary. The board has the authority to make the final determination as to whether a degree meets all requirements, including, but not limited to, course requirements regardless of evaluation or accreditation.

(g) A registrant shall not provide clinical social work services to the public for a fee, monetary or otherwise, except as an employee.

(h) A registrant shall inform each client or patient prior to performing any professional services that he or she is unlicensed and is under the supervision of a licensed professional.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 774                      **VERSION:** INTRODUCED FEBRUARY 17, 2011

**AUTHOR:** CAMPOS                      **SPONSOR:** AMERICAN FEDERATION OF STATE,  
COUNTY AND MUNICIPAL  
EMPLOYEES (AFSCME)

**RECOMMENDED POSITION:** NONE

**SUBJECT:** CLINICAL SOCIAL WORKERS; HEALTH FACILITIES; LICENSURE

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### Existing Law:

- 1) Requires that licensure requirements for professional personnel in state and other government health facilities licensed by the the State Department of Public Health (DPH) not be less than those for professional personnel in health facilities under private ownership. (Health and Safety Code [HSC] Section 1277(b)).
- 2) Allows the requirement for licensure in a government health facility licensed by DPH to be waived for individuals gaining experience to qualify for licensure as a marriage and family therapist (MFTs) and Licensed Clinical Social Workers (LCSW) for up to four years from the date employment commenced.(HSC §1277(b))
- 3) Allows DPH to extend the waiver from licensure requirements for those seeking licensure as an MFT and LCSW for an additional year based on the following extenuating circumstances: (HSC §277(b)&(e))
  - a) The employee has experienced a recent catastrophic event which may impair the employee's ability to qualify and pass the license examination;
  - b) The employee has difficulty speaking or writing the English language, or other cultural and ethnic factors exist with substantially impair the employee's ability to qualify for and pass the license examination; or,
  - c) The employee has experienced other personal hardship which DPH, in its discretion, determines to warrant the extension.
- 4) Allows personnel recruited for employment in a facility licensed by DPH whose experience is sufficient to gain admission to a license examination to become licensed within one year from their date of employment. (HSC §277 (b))
- 5) Defines "health facility" as any facility, place, or building that is organized, maintained, and operated for the diagnosis, care, prevention, and treatment of human illness, physical or mental, including convalescence and rehabilitation and including care during and after pregnancy, or for any one or more of these purposes, for one or more persons, to which the persons are admitted for a 24-hour stay or longer. (HCS §1250)

- 6) Defines "Department" as the Licensing and Certification Division of the State Department of Public Health, or its successor. (HSC §1200(b)(4))

**This Bill** would require any department that employs a marriage and family therapist of clinical social worker to grant an extension of a waiver for extenuating circumstances if certain conditions are met. (HSC §1277(e))

**Comments:**

- 1) **Author's Intent.** According to the Author's office clinical social workers are working in many different California agencies and departments, however, only an extension for the licensure waiver is only applied to those working in DPH licensed facilities.
- 2) **Drafting Issues.** This bill does not meet the intent stated by the author. As currently drafted this bill would allow any state department employing an MFT or LCSW to issue an extension to a licensure waiver. This is problematic for several reasons; the most obvious is that a department is extending a waiver issued by another entity. Secondly, this legislation makes the employer and the entity issuing the extension of the waiver the same, which appears to be a conflict.

Furthermore, it is unclear from this section of law if an amendment is needed to effectuate the intent of this bill. The code section in this legislation only requires licensure for personnel in governmental health facilities licensed by DPH. The author states that there are other health facilities that employ LCSWs and MFTS that are not licensed by DPH that cannot allow for a one year extension for extenuating circumstances, however, it is unclear if facilities not licensed by DPH are mandated to meet the licensure requirement and therefore need the waiver from licensure. If the requirement for licensure *does* apply to other government health facilities not licensed by DPH, then the amendments in this bill are misplaced and the code sections governing non-DPH health facilities should instead be amended.

- 3) **Suggested Amendments.** Recast the language in the appropriate code section of law to accomplish the author's intent, if necessary (see previous comment).
- 4) **Support and Opposition.**  
None on file.
- 5) **History**  
2011  
Mar. 10            Referred to Com. on HEALTH.  
Feb. 18            From printer. May be heard in committee March 20.  
Feb. 17            Read first time. To print.

**ASSEMBLY BILL**

**No. 774**

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**Introduced by Assembly Member Campos**

February 17, 2011

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An act to amend Section 1277 of the Health and Safety Code, relating to health facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 774, as introduced, Campos. Health facilities: licensure.

Existing law provides for the licensure of health facilities by the State Department of Public Health. Existing law requires that the licensure requirements for professional personnel, including psychologists, clinical social workers, and marriage and family therapists, among others, in state and other governmental health facilities, be not less than for those in privately owned health facilities. The department may grant a waiver from licensure requirements for persons employed in publicly operated health facilities who are gaining qualifying experience for licensure. The waiver cannot exceed 3 years from the commencement of employment in the state in the case of psychologists or 4 years for marriage and family therapists or clinical social workers, with one additional year to be granted to marriage and family therapists or clinical social workers under extenuating circumstances. Existing law requires the department to grant the extension of a waiver for extenuating circumstances if specified conditions are met.

This bill would require any other department that employs a marriage and family therapist or a clinical social worker, including a marriage and family therapist or clinical social worker recruited from outside this state, to grant the extension of a waiver for extenuating circumstances if the above-described conditions are met.

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

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

1 SECTION 1. Section 1277 of the Health and Safety Code is  
2 amended to read:  
3 1277. (a) No license shall be issued by the state department  
4 unless it finds that the premises, the management, the bylaws, rules  
5 and regulations, the equipment, the staffing, both professional and  
6 nonprofessional, and the standards of care and services are adequate  
7 and appropriate, and that the health facility is operated in the  
8 manner required by this chapter and by the rules and regulations  
9 adopted hereunder.

10 (b) Notwithstanding any provision of Part 2 (commencing with  
11 Section 5600) of Division 5 of, or Division 7 (commencing with  
12 Section 7100) of, the Welfare and Institutions Code or any other  
13 law to the contrary, except Sections 2072 and 2073 of the Business  
14 and Professions Code, the licensure requirements for professional  
15 personnel, including, but not limited to, physicians and surgeons,  
16 dentists, podiatrists, psychologists, marriage and family therapists,  
17 pharmacists, registered nurses, and clinical social workers in the  
18 state and other governmental health facilities licensed by the state  
19 department shall not be less than for those professional personnel  
20 in health facilities under private ownership. Persons employed as  
21 psychologists and clinical social workers, while continuing in their  
22 employment in the same class as of January 1, 1979, in the same  
23 state or other governmental health facility licensed by the state  
24 department, including those persons on authorized leave, but not  
25 including intermittent personnel, shall be exempt from the  
26 requirements of this subdivision. Additionally, the requirements  
27 of this subdivision may be waived by the state department solely  
28 for persons in the professions of psychology, marriage and family  
29 therapy or clinical social work who are gaining qualifying  
30 experience for licensure in such profession in this state. A waiver  
31 granted pursuant to this subdivision shall not exceed three years  
32 from the date the employment commences in this state in the case  
33 of psychologists, or four years from commencement of the  
34 employment in this state in the case of marriage and family  
35 therapists and clinical social workers, at which time licensure shall

1 have been obtained or the employment shall be terminated except  
2 that an extension of a waiver of licensure for marriage and family  
3 therapists and clinical social workers may be granted for one  
4 additional year, based on extenuating circumstances determined  
5 by the department pursuant to subdivision (e). For persons  
6 employed as psychologists, clinical social workers, or marriage  
7 and family therapists less than full time, an extension of a waiver  
8 of licensure may be granted for additional years proportional to  
9 the extent of part-time employment, as long as the person is  
10 employed without interruption in service, but in no case shall the  
11 waiver of licensure exceed six years in the case of clinical social  
12 workers and marriage and family therapists or five years in the  
13 case of psychologists. However, this durational limitation upon  
14 waivers shall not apply to active candidates for a doctoral degree  
15 in social work, social welfare, or social science, who are enrolled  
16 at an accredited university, college, or professional school, but  
17 these limitations shall apply following completion of this training.  
18 Additionally, this durational limitation upon waivers shall not  
19 apply to active candidates for a doctoral degree in marriage and  
20 family therapy who are enrolled at a school, college, or university,  
21 specified in subdivision (b) of Section 4980.36 of, or subdivision  
22 (b) of Section 4980.37 of, the Business and Professions Code, but  
23 the limitations shall apply following completion of the training.  
24 A waiver pursuant to this subdivision shall be granted only to the  
25 extent necessary to qualify for licensure, except that personnel  
26 recruited for employment from outside this state and whose  
27 experience is sufficient to gain admission to a licensing  
28 examination shall nevertheless have one year from the date of their  
29 employment in California to become licensed, at which time  
30 licensure shall have been obtained or the employment shall be  
31 terminated, provided that the employee shall take the licensure  
32 examination at the earliest possible date after the date of his or her  
33 employment, and if the employee does not pass the examination  
34 at that time, he or she shall have a second opportunity to pass the  
35 next possible examination, subject to the one-year limit for  
36 marriage and family therapists and clinical social workers, and  
37 subject to a two-year limit for psychologists.

38 (c) A special permit shall be issued by the state department  
39 when it finds that the staff, both professional and nonprofessional,  
40 and the standards of care and services are adequate and appropriate,

1 and that the special services unit is operated in the manner required  
2 in this chapter and by the rules and regulations adopted hereunder.

3 (d) The state department shall apply the same standards to state  
4 and other governmental health facilities that it licenses as it applies  
5 to health facilities in private ownership, including standards  
6 specifying the level of training and supervision of all unlicensed  
7 practitioners. Except for psychologists, the department may grant  
8 an extension of a waiver of licensure for personnel recruited from  
9 outside this state for one additional year, based upon extenuating  
10 circumstances as determined by the department pursuant to  
11 subdivision (e).

12 (e) The department, *or any other state department that employs*  
13 *a marriage and family therapist or a clinical social worker,*  
14 *including a marriage and family therapist or clinical social worker*  
15 *recruited from outside this state,* shall grant a request for an  
16 extension of a waiver based on extenuating circumstances, pursuant  
17 to subdivisions (b) and (d), if any of the following circumstances  
18 exist:

19 (1) The person requesting the extension has experienced a  
20 recent catastrophic event which may impair the person's ability  
21 to qualify for and pass the license examination. Those events may  
22 include, but are not limited to, significant hardship caused by a  
23 natural disaster, serious and prolonged illness of the person, serious  
24 and prolonged illness or death of a child, spouse, or parent, or other  
25 stressful circumstances.

26 (2) The person requesting the extension has difficulty speaking  
27 or writing the English language, or other cultural and ethnic factors  
28 exist which substantially impair the person's ability to qualify for  
29 and pass the license examination.

30 (3) The person requesting the extension has experienced other  
31 personal hardship which the department, in its discretion,  
32 determines to warrant the extension.

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 958                      **VERSION:** INTRODUCED FEBRUARY 18, 2011

**AUTHOR:** BERRYHILL, BILL              **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** REGULATORY BOARDS: LIMITATIONS PERIODS

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### Existing Law:

#### **For Board of Behavioral Sciences Licensees or Registrants:**

1. Requires that any accusation filed against a Board of Behavioral Sciences licensee or registrant must be filed within whichever occurs first of the following timeframes (Business and Professions Code (BPC) §§4982.05(a), 4990.32(a)):
  - a. Within three years from the date the board discovers the alleged act or omission; or
  - b. Within seven years from the date the alleged act or omission occurred.
2. Allows the above statute of limitations period be tolled during any period if material evidence necessary for prosecuting or determining if disciplinary action is appropriate is not available to the Board due to an ongoing criminal investigation. (BPC §§4982.05(f), 4990.32(f)).
3. States that an accusation alleging the procurement of a license by fraud or misrepresentation is not subject to the statute of limitations. (BPC §§4982.05(b), 4990.32(b)).
4. Allows the statute of limitations to be tolled for the length of time required to obtain compliance when a report required to be filed with the Board by the licensee or registrant is not filed in a timely fashion. (BPC §§4982.05(c), 4990.32(c)).
5. Requires that if the alleged act or omission involves a minor, the statute of limitation is tolled until the minor reaches the age of majority. (BPC §§4982.05(d), 4990.32(e)).
6. States that if the Board discovers an alleged act of sexual contact with a minor, under certain conditions described in the Penal Code, after the statute of limitations periods have expired, and if independent corroborating evidence exists, then an accusation shall be filled within three years from the date the Board discovers the alleged act. (BPC §4990.32(e)).
7. Requires, for a complaint received by the Board on or after January 1, 2002, an accusation filled against a licensee alleging sexual misconduct must be filed within three years after the Board discovers the act or omission, or within ten years after the act or omission occurs, whichever is first. (BPC §§4982.05(e), 4990.32(d)).

8. Defines the term “discovers” as the latest of the occurrence of any of the following with respect to each alleged act (BPC §§4982.05(g), 4990.32(g)):
  - a. The date the board received the complaint;
  - b. The date, subsequent to an original complaint or report, that the Board became aware of an additional act or omission alleged against the same person;  
or
  - c. The date the Board receives a written release of information pertaining to the complainant’s diagnosis and treatment from the complainant.

**This Bill:**

1. Requires that an accusation filed against a licensee of a board under the Department of Consumer Affairs (DCA) must be filed within whichever occurs first of the following timeframes (BPC §110.5(a)):
  - a. Within one year after the Board discovers the alleged act or omission; or
  - b. Within four years after the alleged act or omission occurs.
2. States that if the alleged act or omission involves a minor, then the four year limitations period shall be tolled until the minor reaches the age of majority. (BPC §110.5(b)).
3. States that if a licensee intentionally conceals evidence of wrongdoing, then the four year limitations period shall be tolled during the period of concealment. (BPC §110.5(c)).
4. Repeals statute of limitations law for the following boards and bureaus under DCA:
  - a. Dental Board (BPC §1670.2)
  - b. Medical Board (BPC §2230.5)
  - c. Board of Psychology (BPC §2960.05)
  - d. Board of Optometry (BPC §3137)
  - e. Board of Respiratory Therapy (BPC §3750.51)
  - f. Board of Behavioral Sciences (BPC §§4982.05 and 4990.32)**
  - g. Architects Board (BPC §5561)
  - h. Landscape Architects Committee (BPC §5661)
  - i. Cemetery and Funeral Bureau (BPC §7686.5).
  - j. Bureau of Automotive Repair (BPC §§9884.20 and 9889.8).

## **Comment:**

- 1) **Author's Intent.** This bill deletes the statute of limitations period for specified DCA boards and bureaus, and replaces them with a standard, shorter limitations period that applies to all boards within DCA.

The author's office notes the statute of limitations for crimes like fraud or grand theft have a four year statute of limitations. For professions under DCA, the Business and Professions Code sets limitations for most boards at around three years from when a board is notified or seven years after the act or omission is alleged. The statute of limitations can be as high as ten years under certain circumstances. They argue that a shorter statute of limitations reinforces the right to a speedy trial, and lessens the likelihood of prosecution based on improper or arbitrary motives.

- 2) **Contrary to Board Mandate.** Business and Professions Code §4990.16 states that "Protection of the public shall be the highest priority of the board in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." The intent of this bill to shorten the statute of limitations period is contrary to the Board's mandate to protect the public.
- 3) **License Obtained by Fraud or Misrepresentation.** This bill repeals current law that states an accusation alleging the procurement of a license by fraud or misrepresentation is not subject to the statute of limitations. This bill does not contain a similar provision, potentially leaving the Board unable to investigate an instance of obtaining a license by fraudulent means if the statute of limitations has passed. If this were to happen, then an unqualified individual who is not competent to safely practice would be allowed to continue unlicensed practice, jeopardizing consumer safety.
- 4) **Absence of Exemptions.** The language proposed by this bill leaves out several features specified in current law. It does not allow tolling of the statute of limitations due to an ongoing criminal investigation, and contains no special extension of the statute of limitations for acts of sexual misconduct. In addition, it does not define specific terms as the Board's current law does.
- 5) **Recent Statutory Change – Sexual Abuse of a Minor.** In 2008, SB 797 (Ridley-Thomas, Chapter 33) amended the unprofessional conduct codes of the Board's licenses to add new grounds for refusal, suspension, or revocation of a license based upon engaging in specified sexual acts with a minor regardless of whether the act occurred prior to or after the time the registration or license was issued by the board.

The intent of this bill was to address an enforcement complaint received by the Board. This complaint alleged that a licensee had repeatedly sexually abused a minor prior to the person being licensed with the Board. However, the board had no authority to consider the case because the alleged conduct had taken place prior to the issuance of a license. Additionally, the statute of limitations had expired. Because the complaint was received regarding conduct prior to licensure after the person became licensed, the board could not take any action.

This case highlights the importance of having an extended statute of limitations, as well as the importance of exempting certain acts of misconduct from the statute of limitations, especially in cases of sexual abuse of a minor. In child abuse cases it may take the abused child until adulthood to be able to confront the abuser, tell someone about the abuse, or

seek therapy for the abuse. Exceptions to the statute of limitations in these cases are especially crucial to consumer protection in therapy-related professions where the registrant or licensee's clients are families and children and possibly adult survivors of child sexual abuse.

- 6) **Feasibility.** The Board's enforcement division typically needs between six to twelve months to investigate an accusation upon discovery. After the Board's investigation, a case may also need to be reviewed by an expert consultant, which can take approximately two additional months. If unprofessional conduct is found, the case would then proceed to the Attorney General's office. A one year statute of limitations would inhibit the Board's ability to conduct a complete investigation, and would therefore jeopardize consumer protection.
- 7) **Does not include all DCA Board and Bureaus.** As currently written, this bill only repeals statute of limitations code for certain boards and bureaus under DCA. It does not, for example, repeal statute of limitations code for the Board of Registered Nursing, the Board of Veterinary Medicine, or the Board of Engineers, among others. Staff has brought this to the attention of the author's office and they have indicated they will look in to this issue.
- 8) **Support and Opposition.**  
*Support:* None on file.  
*Opposition:* None on file.

## 2011

Mar. 10 Referred to Com. on B., P. & C.P.

Feb. 20 From printer. May be heard in committee March 22.

Feb. 18 Read first time. To print.

**ASSEMBLY BILL**

**No. 958**

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**Introduced by Assembly Member Bill Berryhill**

February 18, 2011

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An act to add Section 110.5 to, and to repeal Sections 1670.2, 2230.5, 2960.05, 3137, 3750.51, 4982.05, 4990.32, 5561, 5661, 7686.5, 9884.20, and 9889.8 of, the Business and Professions Code, relating to regulatory boards.

LEGISLATIVE COUNSEL'S DIGEST

AB 958, as introduced, Bill Berryhill. Regulatory boards: limitations periods.

Existing law provides for the licensure and regulation of various professions and vocations by boards within the Department of Consumer Affairs. Existing law requires these boards to file disciplinary action accusations against licensees for various violations within a specified limitations period particular to each board.

This bill would delete those specified limitations periods for each board and would instead impose a specified limitations period on all boards within the Department of Consumer Affairs.

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

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

- 1 SECTION 1. Section 110.5 is added to the Business and
- 2 Professions Code, to read:
- 3 110.5. (a) Notwithstanding any other provision of law and
- 4 except as provided in subdivisions (b) and (c), any accusation filed

1 against a licensee of a board described in Section 101, pursuant to  
2 Section 11503 of the Government Code, shall be filed within one  
3 year after the board discovers the act or omission alleged as the  
4 ground for disciplinary action, or within four years after the act or  
5 omission alleged as the ground for disciplinary action occurs,  
6 whichever occurs first.

7 (b) If an alleged act or omission involves a minor, the four-year  
8 limitations period provided for by subdivision (a) shall be tolled  
9 until the minor reaches the age of majority.

10 (c) If a licensee intentionally conceals evidence of wrongdoing,  
11 the four-year limitations period provided for by subdivision (a)  
12 shall be tolled during that period of concealment.

13 SEC. 2. Section 1670.2 of the Business and Professions Code  
14 is repealed.

15 ~~1670.2. (a) Except as otherwise provided in this section, any~~  
16 ~~proceeding initiated by the board against a licensee for the violation~~  
17 ~~of any provision of this chapter shall be filed within three years~~  
18 ~~after the board discovers the act or omission alleged as the ground~~  
19 ~~for disciplinary action, or within seven years after the act or~~  
20 ~~omission alleged as the ground for disciplinary action occurs,~~  
21 ~~whichever occurs first.~~

22 ~~(b) An accusation filed against a licensee pursuant to Section~~  
23 ~~11503 of the Government Code alleging fraud or willful~~  
24 ~~misrepresentation is not subject to the limitation in subdivision~~  
25 ~~(a).~~

26 ~~(c) An accusation filed against a licensee pursuant to Section~~  
27 ~~11503 of the Government Code alleging unprofessional conduct~~  
28 ~~based on incompetence, gross negligence, or repeated negligent~~  
29 ~~acts of the licensee is not subject to the limitation in subdivision~~  
30 ~~(a) upon proof that the licensee intentionally concealed from~~  
31 ~~discovery his or her incompetence, gross negligence, or repeated~~  
32 ~~negligent acts.~~

33 ~~(d) If an alleged act or omission involves any conduct described~~  
34 ~~in subdivision (e) of Section 1680 committed on a minor, the~~  
35 ~~seven-year limitations period in subdivision (a) and the 10-year~~  
36 ~~limitations period in subdivision (e) shall be tolled until the minor~~  
37 ~~reaches the age of majority.~~

38 ~~(e) An accusation filed against a licensee pursuant to Section~~  
39 ~~11503 of the Government Code alleging conduct described in~~  
40 ~~subdivision (e) of Section 1680 not committed on a minor shall~~

1 be filed within three years after the board discovers the act or  
2 omission alleged as the ground for disciplinary action, or within  
3 10 years after the act or omission alleged as the ground for  
4 disciplinary action occurs, whichever occurs first. This subdivision  
5 shall apply to a complaint alleging conduct received by the board  
6 on and after January 1, 2005.

7 (f) In any allegation, accusation, or proceeding described in  
8 this section, the limitations period in subdivision (a) shall be tolled  
9 for the period during which material evidence necessary for  
10 prosecuting or determining whether a disciplinary action would  
11 be appropriate is unavailable to the board due to an ongoing  
12 criminal investigation.

13 SEC. 3. Section 2230.5 of the Business and Professions Code  
14 is repealed.

15 2230.5. (a) Except as provided in subdivisions (b), (c), and  
16 (e), any accusation filed against a licensee pursuant to Section  
17 11503 of the Government Code shall be filed within three years  
18 after the board, or a division thereof, discovers the act or omission  
19 alleged as the ground for disciplinary action, or within seven years  
20 after the act or omission alleged as the ground for disciplinary  
21 action occurs, whichever occurs first.

22 (b) An accusation filed against a licensee pursuant to Section  
23 11503 of the Government Code alleging the procurement of a  
24 license by fraud or misrepresentation is not subject to the limitation  
25 provided for by subdivision (a).

26 (c) An accusation filed against a licensee pursuant to Section  
27 11503 of the Government Code alleging unprofessional conduct  
28 based on incompetence, gross negligence, or repeated negligent  
29 acts of the licensee is not subject to the limitation provided for by  
30 subdivision (a) upon proof that the licensee intentionally concealed  
31 from discovery his or her incompetence, gross negligence, or  
32 repeated negligent acts.

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

37 (e) An accusation filed against a licensee pursuant to Section  
38 11503 of the Government Code alleging sexual misconduct shall  
39 be filed within three years after the board, or a division thereof,  
40 discovers the act or omission alleged as the ground for disciplinary

1 action, or within 10 years after the act or omission alleged as the  
2 ground for disciplinary action occurs, whichever occurs first. This  
3 subdivision shall apply to a complaint alleging sexual misconduct  
4 received by the board on and after January 1, 2002.

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

10 SEC. 4. Section 2960.05 of the Business and Professions Code  
11 is repealed.

12 ~~2960.05.—(a) Except as provided in subdivisions (b), (c), and  
13 (e), any accusation filed against a licensee pursuant to Section  
14 11503 of the Government Code shall be filed within three years  
15 from the date the board discovers the alleged act or omission that  
16 is the basis for disciplinary action, or within seven years from the  
17 date the alleged act or omission that is the basis for disciplinary  
18 action occurred, whichever occurs first.~~

19 ~~(b) An accusation filed against a licensee pursuant to Section  
20 11503 of the Government Code alleging the procurement of a  
21 license by fraud or misrepresentation is not subject to the  
22 limitations set forth in subdivision (a).~~

23 ~~(c) The limitation provided for by subdivision (a) shall be tolled  
24 for the length of time required to obtain compliance when a report  
25 required to be filed by the licensee or registrant with the board  
26 pursuant to Article 11 (commencing with Section 800) of Chapter  
27 1 is not filed in a timely fashion.~~

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

32 ~~(e) An accusation filed against a licensee pursuant to Section  
33 11503 of the Government Code alleging sexual misconduct shall  
34 be filed within three years after the board discovers the act or  
35 omission alleged as the ground for disciplinary action, or within  
36 10 years after the act or omission alleged as the ground for  
37 disciplinary action occurs, whichever occurs first. This subdivision  
38 shall apply to a complaint alleging sexual misconduct received by  
39 the board on and after January 1, 2002.~~

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

6 SEC. 5. Section 3137 of the Business and Professions Code is  
7 repealed.

8 ~~3137. (a) Except as otherwise provided in this section, any~~  
9 ~~accusation filed against a licensee pursuant to Section 11503 of~~  
10 ~~the Government Code for the violation of any provision of this~~  
11 ~~chapter shall be filed within three years after the board discovers~~  
12 ~~the act or omission alleged as the ground for disciplinary action,~~  
13 ~~or within seven years after the act or omission alleged as the ground~~  
14 ~~for disciplinary action occurs, whichever occurs first.~~

15 ~~(b) An accusation filed against a licensee pursuant to Section~~  
16 ~~11503 of the Government Code alleging fraud or willful~~  
17 ~~misrepresentation is not subject to the limitation in subdivision~~  
18 ~~(a).~~

19 ~~(c) An accusation filed against a licensee pursuant to Section~~  
20 ~~11503 of the Government Code alleging unprofessional conduct~~  
21 ~~based on incompetence, gross negligence, or repeated negligent~~  
22 ~~acts of the licensee is not subject to the limitation in subdivision~~  
23 ~~(a) upon proof that the licensee intentionally concealed from~~  
24 ~~discovery his or her incompetence, gross negligence, or repeated~~  
25 ~~negligent acts.~~

26 ~~(d) If an alleged act or omission involves any conduct described~~  
27 ~~in Section 726 committed on a minor, the 10-year limitations period~~  
28 ~~in subdivision (c) shall be tolled until the minor reaches the age~~  
29 ~~of majority.~~

30 ~~(e) An accusation filed against a licensee pursuant to Section~~  
31 ~~11503 of the Government Code alleging conduct described in~~  
32 ~~Section 726 shall be filed within three years after the board~~  
33 ~~discovers the act or omission alleged as the ground for disciplinary~~  
34 ~~action, or within 10 years after the act or omission alleged as the~~  
35 ~~ground for disciplinary action occurs, whichever occurs first. This~~  
36 ~~subdivision shall apply to a complaint alleging conduct received~~  
37 ~~by the board on and after January 1, 2006.~~

38 ~~(f) In any allegation, accusation, or proceeding described in this~~  
39 ~~section, the limitations period in subdivision (a) shall be tolled for~~  
40 ~~the period during which material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would  
2 be appropriate is unavailable to the board due to an ongoing  
3 criminal investigation.

4 SEC. 6. Section 3750.51 of the Business and Professions Code  
5 is repealed.

6 ~~3750.51. (a) Except as provided in subdivisions (b), (c), and~~  
7 ~~(c), any accusation filed against a licensee pursuant to Section~~  
8 ~~11503 of the Government Code shall be filed within three years~~  
9 ~~from the date the board discovers the alleged act or omission that~~  
10 ~~is the basis for disciplinary action, or within seven years from the~~  
11 ~~date the alleged act or omission that is the basis for disciplinary~~  
12 ~~action occurred, whichever occurs first.~~

13 ~~(b) An accusation filed against a licensee pursuant to Section~~  
14 ~~11503 of the Government Code alleging the procurement of a~~  
15 ~~license by fraud or misrepresentation is not subject to the~~  
16 ~~limitations set forth in subdivision (a).~~

17 ~~(c) The limitation provided for by subdivision (a) shall be tolled~~  
18 ~~for the length of time required to obtain compliance when a report~~  
19 ~~required to be filed by the licensee or registrant with the board~~  
20 ~~pursuant to Article 11 (commencing with Section 800) of Chapter~~  
21 ~~1 is not filed in a timely fashion.~~

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

26 ~~(e) An accusation filed against a licensee pursuant to Section~~  
27 ~~11503 of the Government Code alleging sexual misconduct shall~~  
28 ~~be filed within three years after the board discovers the act or~~  
29 ~~omission alleged as the ground for disciplinary action, or within~~  
30 ~~10 years after the act or omission alleged as the ground for~~  
31 ~~disciplinary action occurs, whichever occurs first.~~

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

37 SEC. 7. Section 4982.05 of the Business and Professions Code  
38 is repealed.

39 ~~4982.05. (a) Except as provided in subdivisions (b), (c), and~~  
40 ~~(e), any accusation filed against a licensee pursuant to Section~~

1 11503 of the Government Code shall be filed within three years  
2 from the date the board discovers the alleged act or omission that  
3 is the basis for disciplinary action, or within seven years from the  
4 date the alleged act or omission that is the basis for disciplinary  
5 action occurred, whichever occurs first.

6 (b) ~~An accusation filed against a licensee pursuant to Section  
7 11503 of the Government Code alleging the procurement of a  
8 license by fraud or misrepresentation is not subject to the  
9 limitations set forth in subdivision (a).~~

10 (c) ~~The limitation provided for by subdivision (a) shall be tolled  
11 for the length of time required to obtain compliance when a report  
12 required to be filed by the licensee or registrant with the board  
13 pursuant to Article 11 (commencing with Section 800) of Chapter  
14 1 is not filed in a timely fashion.~~

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

19 (e) ~~An accusation filed against a licensee pursuant to Section  
20 11503 of the Government Code alleging sexual misconduct shall  
21 be filed within three years after the board discovers the act or  
22 omission alleged as the grounds for disciplinary action, or within  
23 10 years after the act or omission alleged as the grounds for  
24 disciplinary action occurs, whichever occurs first. This subdivision  
25 shall apply to a complaint alleging sexual misconduct received by  
26 the board on and after January 1, 2002.~~

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

32 (g) ~~For purposes of this section, “discovers” means the later of  
33 the occurrence of any of the following with respect to each act or  
34 omission alleged as the basis for disciplinary action:~~

35 (1) ~~The date the board received a complaint or report describing  
36 the act or omission.~~

37 (2) ~~The date, subsequent to the original complaint or report, on  
38 which the board became aware of any additional acts or omissions  
39 alleged as the basis for disciplinary action against the same  
40 individual.~~

1     ~~(3) The date the board receives from the complainant a written~~  
2 ~~release of information pertaining to the complainant’s diagnosis~~  
3 ~~and treatment.~~

4     ~~SEC. 8. Section 4990.32 of the Business and Professions Code~~  
5 ~~is repealed.~~

6     ~~4990.32.—(a) Except as otherwise provided in this section, an~~  
7 ~~accusation filed pursuant to Section 11503 of the Government~~  
8 ~~Code against a licensee or registrant under the chapters the board~~  
9 ~~administers and enforces shall be filed within three years from the~~  
10 ~~date the board discovers the alleged act or omission that is the~~  
11 ~~basis for disciplinary action or within seven years from the date~~  
12 ~~the alleged act or omission that is the basis for disciplinary action~~  
13 ~~occurred, whichever occurs first.~~

14     ~~(b) An accusation filed against a licensee alleging the~~  
15 ~~procurement of a license by fraud or misrepresentation is not~~  
16 ~~subject to the limitations set forth in subdivision (a).~~

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

22     ~~(d) An accusation alleging sexual misconduct shall be filed~~  
23 ~~within three years after the board discovers the act or omission~~  
24 ~~alleged as the grounds for disciplinary action or within 10 years~~  
25 ~~after the act or omission alleged as the grounds for disciplinary~~  
26 ~~action occurred, whichever occurs first. This subdivision shall~~  
27 ~~apply to a complaint alleging sexual misconduct received by the~~  
28 ~~board on and after January 1, 2002.~~

29     ~~(e) If an alleged act or omission involves a minor, the seven-year~~  
30 ~~limitations period provided for by subdivision (a) and the 10-year~~  
31 ~~limitations period provided for by subdivision (d) shall be tolled~~  
32 ~~until the minor reaches the age of majority. However, if the board~~  
33 ~~discovers an alleged act of sexual contact with a minor under~~  
34 ~~Section 261, 286, 288, 288.5, 288a, or 289 of the Penal Code after~~  
35 ~~the limitations periods described in this subdivision have otherwise~~  
36 ~~expired, and there is independent evidence that corroborates the~~  
37 ~~allegation, an accusation shall be filed within three years from the~~  
38 ~~date the board discovers that alleged act.~~

39     ~~(f) The limitations period provided by subdivision (a) shall be~~  
40 ~~tolled during any period if material evidence necessary for~~

1 prosecuting or determining whether a disciplinary action would  
2 be appropriate is unavailable to the board due to an ongoing  
3 criminal investigation.

4 (g) For purposes of this section, “discovers” means the latest  
5 of the occurrence of any of the following with respect to each act  
6 or omission alleged as the basis for disciplinary action:

7 (1) The date the board received a complaint or report describing  
8 the act or omission.

9 (2) The date, subsequent to the original complaint or report, on  
10 which the board became aware of any additional acts or omissions  
11 alleged as the basis for disciplinary action against the same  
12 individual.

13 (3) The date the board receives from the complainant a written  
14 release of information pertaining to the complainant’s diagnosis  
15 and treatment.

16 SEC. 9. Section 5561 of the Business and Professions Code is  
17 repealed.

18 ~~5561.~~ All accusations against licensees charging the holder of  
19 a license issued under this chapter with the commission of any act  
20 constituting a cause for disciplinary action shall be filed with the  
21 board within five years after the board discovers, or through the  
22 use of reasonable diligence should have discovered, the act or  
23 omission alleged as the ground for disciplinary action, whichever  
24 occurs first, but not more than 10 years after the act or omission  
25 alleged as the ground for disciplinary action. However, with respect  
26 to an accusation alleging a violation of Section 5579, the accusation  
27 may be filed within three years after the discovery by the board  
28 of the alleged facts constituting the fraud or misrepresentation  
29 prohibited by Section 5579.

30 SEC. 10. Section 5661 of the Business and Professions Code  
31 is repealed.

32 ~~5661.~~ All accusations against a licensee shall be filed within  
33 three years after the board discovers, or through the use of  
34 reasonable diligence should have discovered, the act or omission  
35 alleged as the ground for disciplinary action or within six years  
36 after the act or omission alleged as the ground for disciplinary  
37 action, whichever occurs first. However, with respect to an  
38 accusation alleging a violation of Section 5667, the accusation  
39 may be filed within three years after the discovery by the board

1 of the alleged facts constituting the fraud or misrepresentation  
2 prohibited by Section 5667.

3 If any accusation is not filed within the time provided in this  
4 section, no action against a licensee shall be commenced under  
5 this article.

6 SEC. 11. Section 7686.5 of the Business and Professions Code  
7 is repealed.

8 ~~7686.5. All accusations against licensees shall be filed with  
9 the bureau within two years after the performance of the act or  
10 omission alleged as the ground for disciplinary action; provided,  
11 however, that the foregoing provision shall not constitute a defense  
12 to an accusation alleging fraud or misrepresentation as a ground  
13 for disciplinary action. The cause for disciplinary action in such  
14 case shall not be deemed to have accrued until discovery, by the  
15 bureau, of the facts constituting the fraud or misrepresentation,  
16 and, in such case, the accusation shall be filed within three years  
17 after such discovery.~~

18 SEC. 12. Section 9884.20 of the Business and Professions  
19 Code is repealed.

20 ~~9884.20. All accusations against automotive repair dealers  
21 shall be filed within three years after the performance of the act  
22 or omission alleged as the ground for disciplinary action, except  
23 that with respect to an accusation alleging fraud or  
24 misrepresentation as a ground for disciplinary action, the accusation  
25 may be filed within two years after the discovery, by the bureau,  
26 of the alleged facts constituting the fraud or misrepresentation.~~

27 SEC. 13. Section 9889.8 of the Business and Professions Code  
28 is repealed.

29 ~~9889.8. All accusations against licensees shall be filed within  
30 three years after the act or omission alleged as the ground for  
31 disciplinary action, except that with respect to an accusation  
32 alleging a violation of subdivision (d) of Section 9889.3, the  
33 accusation may be filed within two years after the discovery by  
34 the bureau of the alleged facts constituting the fraud or  
35 misrepresentation prohibited by that section.~~

# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 993                      **VERSION:** INTRODUCED FEBRUARY 18, 2011

**AUTHOR:** WAGNER                      **SPONSOR:** AUTHOR

**RECOMMENDED POSITION:** NONE

**SUBJECT:** MEDIATION AND COUNSELING SERVICES: DISCIPLINE AND IMMUNITY

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### Existing Law:

1. Specifies that in the case of a court petition, application, or other pleading to obtain or modify child custody or visitation that is being contested, the court shall set the contested issues for mediation. (Family Code (FC) §3170(a))
2. States the purposes of a mediation proceeding are as follows: (FC § 3161)
  - a. To reduce acrimony that may exist between the parties.
  - b. To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child.
  - c. To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.
3. States that mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the judicial council. (FC §3162)
4. Allows a court to require parents or any other party involved in a custody or visitation dispute, and the minor child, to participate in outpatient counseling with a licensed mental health professional, or through other community programs and services that provide appropriate counseling, for not more than one year if the court makes the following findings (FC §3190(a)):
  - a. The dispute between the parents or other party seeking custody or visitation rights with the child poses as substantial danger to the best interest of the child.
  - b. The counseling is in the best interest of the child.
5. Requires the outpatient counseling with a mental health professional to be specifically designed to do the following (FC §3191):
  - a. Facilitate communication between the parties regarding the child's best interest.

- b. Reduce conflict regarding custody or visitation.
  - c. Improve the quality of parenting skills of each parent.
6. States that a court-connected or private child custody evaluator must be a licensed marriage and family therapist, clinical social worker, or other specified licensed professional or certified evaluator. (FC §3110.5(c))
  7. States that a court-connected or private child custody evaluator licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct. (FC §3110.5(e))

**This Bill:**

1. Specifies that a mediator and a licensed mental health professional are not liable for damages for an act or omission constituting ordinary negligence that occurs on or after January 1, 2012, if the act or omission is within the scope of his or her duties and occurs while providing mediation services in cases involving custody and visitation of children required by a court in a child custody or visitation dispute or while providing outpatient counseling required by a court to parties involved in a custody or visitation dispute. (FC §3195.1)
2. Defines a “licensed mental health professional” as a person providing counseling services in a child custody or visitation dispute. (FC §3195(a))
3. Defines a “mediator” as a person who is a mediator in cases involving child custody and visitation. (FC §3195(b))
4. Requires a complaint made by any person against a mediator or licensed mental health professional regarding an act or omission occurring on or after January 1, 2012, while the mediator or licensed mental health professional provided services as required by the court pursuant to FC Chapters 11 and 12, must be made to the court that set the matter for mediation or required the outpatient counseling services be provided. (FC §3195.2(a),(b))
5. Requires the court to consider the complaint and determine whether it establishes unprofessional conduct that would subject the mediator or licensed mental health professional to disciplinary action by the board that issued his or her license to practice. If the court makes such a finding, it must refer the matter to that board for disciplinary action. (FC §3195.2(c))
6. States that on or after January 1, 2012, a complaint may not be made to a board that issued a license to a mediator or licensed mental health professional for an act or omission of ordinary negligence during the performance of mediation and counseling services required by a court in a child custody or visitation dispute. (FC §3195.3)

## **Comment:**

- 1) Author's Intent.** According to the Author, California family courts regularly appoint lawyers, social workers, marriage and family therapists, and psychiatrists to perform mediation, custody evaluations, co-parenting counseling, or parenting coordinator duties. When appointed by the court, their role is for providing fact finding, not for providing psychological services. However, these professionals are licensed by different government entities, and are governed by different laws, approaches, and standards for discipline.

While acting as a court appointed neutral professional for these purposes, these professionals are often subject to attack in contentious family or custody disputes. Because they are working under a code of conduct as a court appointee that may be different from the code of conduct of their licensed profession, they risk facing duplicative but potentially inconsistent disciplinary proceedings. Additionally, because these professionals are licensed by different agencies, one type of professional may not be held to the exact same code of conduct as another professional, even if they are performing identical duties for the court.

As a result of this situation, many qualified professionals are no longer willing to take appointments by family courts.

- 2) Licensed Mental Health Professional.** As written, this bill states that either a mediator or a licensed mental health professional is not liable for damages for an act or omission constituting ordinary negligence if it is within the scope of duties and occurs while providing services required by the court in a custody or visitation dispute. However, a licensed mental health professional that is not acting in a mediator role, would be acting as a licensed mental health professional, which would fall under the jurisdiction of the Board. Therefore, staff recommends an amendment to include only mediators within the scope of this bill.
- 3) Court-Connected Child Custody Evaluator.** The law currently specifies that a court-connected or private child custody evaluator that is licensed by the Board is subject to disciplinary action by the Board for unprofessional conduct. However, this bill does not address court-connected child custody evaluators.
- 4) Previous Deputy Attorney General Opinion.** In 2003, the Board's then-deputy attorney general issued an opinion that when acting in the capacity of a court appointed child custody mediator/evaluator, the Board does not have jurisdiction based upon the fact that neither the setting nor the services provided are clinical or psychotherapeutic services for which a Board license is required. Therefore, persons being seen by the licensee acting as a mediator or evaluator do not have a psychotherapist client or patient relationship with the mediator/evaluator, even if that person is a licensee psychotherapist.
- 5) Laws in Other States.** The author's office notes that other states currently have laws protecting court-appointed mental health professionals. Colorado, Florida, and Arizona have laws giving the appointing court primary jurisdiction over mental health

professional who conduct court-appointed evaluations. The laws also limit collateral licensing complaints over these court appointees.

- 6) Definition of “Ordinary Negligence”** This bill specifies absence of liability for “ordinary negligence,” but does not define what constitutes ordinary negligence.
- 7) Proposed Amendment.** Family Code §3195.2(c) discusses the court consideration of any complaint made, and calls for the court to determine whether unprofessional conduct that would subject the licensee to disciplinary action has occurred. It states that if the court makes a finding that unprofessional conduct has occurred, then “the court shall refer the matter to that board for disciplinary action against the mediator or licensed mental health professional.”

This language removes the discretion of the licensing entity to judge, using its particular set of laws, whether their licensee should be subject to disciplinary action. It simply mandates that the Board make disciplinary action based on the findings of the court, which may not be familiar with that particular Board’s standards of conduct. Staff recommends that the language be revised to state that if the court makes a finding that unprofessional conduct has occurred, then “the court shall refer the matter to that board for review and possible disciplinary action against the mediator or licensed mental health professional.”

- 8) Correction of Errant Reference.** Section 3195.3 contains an errant reference that staff recommends correcting. The correct reference should be Section 3195.1.
- 9) Support and Opposition.**  
*Support:* None on file.  
*Opposition:* None on file.

## **10)History**

### **2011**

Mar. 10 Referred to Com. on JUD.

Feb. 20 From printer. May be heard in committee March 22.

Feb. 18 Read first time. To print.

**ASSEMBLY BILL**

**No. 993**

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**Introduced by Assembly Member Wagner**

February 18, 2011

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An act to add Chapter 12.5 (commencing with Section 3195) to Part 2 of Division 8 of the Family Code, relating to mediation and counseling services.

LEGISLATIVE COUNSEL'S DIGEST

AB 993, as introduced, Wagner. Mediation and counseling services: discipline and immunity.

Existing law requires a court to set a case for mediation when child custody or visitation is at issue and authorizes a court to require parents, or other parties involved in a child custody or visitation dispute, to participate in outpatient counseling with a licensed mental health professional when it would be in the best interest of the child, as specified.

This bill would specify that a mediator and a licensed mental health professional are not liable for damages for an act or omission constituting ordinary negligence that occurs on or after January 1, 2012, during the performance of the above-described mediation and counseling services. The bill would prohibit a person from making a complaint to the board that issued a license to practice to the mediator or licensed mental health professional regarding the provision of those services and would, instead, require that the complaint be made to the court that set the matter for mediation or that required outpatient counseling. The bill would require the court to refer the matter to the licensing board for disciplinary action if it found unprofessional conduct on the part of the mediator or licensed mental health professional.

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

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

1 SECTION 1. Chapter 12.5 (commencing with Section 3195)  
2 is added to Part 2 of Division 8 of the Family Code, to read:

3

4

CHAPTER 12.5. DISCIPLINE AND IMMUNITY

5

6 3195. The following definitions apply for purposes of this  
7 chapter:

8 (a) “Licensed mental health professional” means a person  
9 providing counseling services in a child custody or visitation  
10 dispute pursuant to the provisions of Chapter 12 (commencing  
11 with Section 3190).

12 (b) “Mediator” means a person who is a mediator in cases  
13 involving custody and visitation concerning children pursuant to  
14 the provisions of Chapter 11 (commencing with Section 3160).

15 3195.1. A mediator and a licensed mental health professional  
16 shall not be liable for damages for an act or an omission  
17 constituting ordinary negligence that occurs on or after January 1,  
18 2012, if the act or omission is within the scope of his or her duties  
19 and occurs while providing services pursuant to Chapter 11  
20 (commencing with Section 3160) or Chapter 12 (commencing with  
21 Section 3190).

22 3195.2. (a) A complaint by any person against a mediator  
23 regarding an act or omission occurring on or after January 1, 2012,  
24 while the mediator provided services pursuant to Chapter 11  
25 (commencing with Section 3160) shall be made to the court that  
26 set the matter for mediation pursuant to Section 3170.

27 (b) A complaint by any person against a licensed mental health  
28 professional regarding an act or omission occurring on or after  
29 January 1, 2012, while the licensed mental health professional  
30 provided services pursuant to Chapter 12 (commencing with  
31 Section 3190) shall be made to the court that required that  
32 outpatient counseling services be provided pursuant to Section  
33 3190.

34 (c) The court shall consider the complaint made pursuant to this  
35 section and determine whether it establishes unprofessional conduct

1 that would subject the mediator or the licensed mental health  
2 professional to disciplinary action by the board that issued a license  
3 to practice to the mediator or licensed mental health professional.  
4 If the court makes such a finding, the court shall refer the matter  
5 to that board for disciplinary action against the mediator or licensed  
6 mental health professional.

7 3195.3. No person shall make a complaint to the board that  
8 issued a license to practice to the mediator or the licensed mental  
9 health professional for an act or omission described in Section  
10 3195.2.

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# CALIFORNIA STATE BOARD OF BEHAVIORAL SCIENCES

## BILL ANALYSIS

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**BILL NUMBER:** AB 1205                      **VERSION:** INTRODUCED FEBRUARY 18, 2011

**AUTHOR:** BILL BERRYHILL                      **SPONSOR:** CALIFORNIA ASSOCIATION FOR  
BEHAVIOR ANALYSIS

**RECOMMENDED POSITION:** NONE

**SUBJECT:** CERTIFIED APPLIED BEHAVIOR ANALYSTS

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### 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:

- a. 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
  - b. 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) Requires that no person may hold him or herself out to be a certified applied behavior analyst, or a certified assistant applied behavior analyst, unless the person is licensed by the Board of Behavioral Sciences. (BPC §§ 2529.7.2 and 2529.7.4)
- 2) States that a certified applied behavior analyst may provide all of the following services (BPC §2529.7.6(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 operant and responding learning.
  - c) Utilize contextual factors and establish operations, antecedent stimuli, position reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions.
  - d) Apply interventions based on scientific research and the direct observation and measurement of behavior and environment.
  - e) The practice of applied behavior analysis excludes the practice of psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling.
- 3) States that a certified applied assistant behavior analyst may provide the services listed above if under the supervision of a certified applied behavior analyst. (BPC §2529.7.6(b)).
- 4) Requires the Board to issue a certified applied behavior analyst license to an applicant who meets all of the following requirements (BCP §2529.7.3):
  - a) An applicant for examination must do the following:
    - i) Possess a bachelor's and master's degree from any of the following:
      - (1) A US or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or nationally accrediting body.
      - (2) An institution of higher education located outside the US or Canada that, at the time of the applicant's enrollment and graduation, maintained a standard of training equivalent to the standards of training of those institutions accredited in the United States.
    - ii) Complete 225 classroom hours of graduate instruction.

- iii) Complete 1,500 hours of supervised independent fieldwork under supervision of a certified applied behavior analyst, or initially, until January 1, 2013, under supervision of a person who otherwise meets all the requirements for certification.
  - b) Pass an exam administered by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the Board.
  - c) Be certified by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the Board.
- 5) Allows an exam applicant that can demonstrate equivalent completion of the exam requirements to take the examination, subject to board approval. (BPC §§2529.7.3(b), 2529.7.5(b)).
- 6) Requires the Board to issue a certified assistant applied behavior analyst license to an applicant who meets all of the following requirements (BCP §2529.7.5):
  - a) An applicant for examination must do the following:
    - i) Possess a bachelor's and master's degree from any of the following:
      - (1) A US or Canadian institution of higher education fully or provisionally accredited by a regional, state, provincial, or nationally accrediting body.
      - (2) An institution of higher education located outside the US or Canada that, at the time of the applicant's enrollment and graduation, maintained a standard of training equivalent to the standards of training of those institutions accredited in the United States.
    - ii) Complete 135 classroom hours of related instruction through any of the following:
      - (1) College or university courses in behavior analysis taken from an institution that meets specified requirements.
      - (2) Non-college courses offered by an educational institution and approved for this purpose.
      - (3) A combination of college or university courses.
    - iii) Complete 1,000 of supervised independent fieldwork under supervision of a certified applied behavior analyst, or initially, until January 1, 2013, under supervision of a person who otherwise meets all the requirements for certification. An applicant must be supervised for at least 50 hours.
  - b) Pass an exam administered by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the Board.
  - c) Be certified by the Behavior Analyst Certification Board, a nonprofit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code, or another similar entity approved by the Board.

- 7) Allows the following types of supervised independent fieldwork activities for both applied behavior analysts and assistant applied behavioral analysts (BPC §§2529.7.3(a)(3)(B), 2529.7.5(a)(3)(B)):
  - a. Conducting assessment activities related to the need for behavioral interventions.
  - b. Designing, implementing, and monitoring behavior analysis programs for clients.
  - c. Overseeing the implementation of behavior analysis programs by others.
  - d. Other activities normally performed by a behavior analyst directly related to the field, such as but not limited to, attending planning meetings regarding the behavior analysis program, researching literature related to the program, and talking to individuals about the program.
- 8) Includes Chapter 5.2, which is the chapter establishing licensure for certified applied behavior analysts and certified assistant applied behavior analysts, as one of the chapters under the Board's jurisdiction and gives the Board the duties of administering and enforcing this chapter. (BPC §§4990.02, 4990.12).
- 9) States that it is the intent of the legislature that the Board employ its resources for the licensure of certified applied behavior analysts and certified assistant applied behavior analysts, in addition to the other licenses that the Board already issues. (BPC §4990.18(a)).
- 10) Includes certified applied behavior analysts and certified assistant applied behavior analysts in the list of Board licensees and registrants who may, if their license or registration is on probation, revoked, or suspended, petition the Board for reinstatement or modification of the penalty. (BPC §4990.30).
- 11) Includes certified applied behavior analysis to the list of professions for which the Board may deny an application or suspend or revoke a license or registration for any disciplinary action imposed by another state or territory or possession of the United States, or by a governmental agency, on a license, certificate, or registration. (BPC §4990.38).

### **Comments:**

- 1) **Intent of This Bill.** This bill is an attempt to apply standards, criteria, and state recognition via licensure, to the profession of Applied Behavioral Analysis (ABA).

ABA is commonly used to treat autism spectrum disorders. During the past decade, there has been increasing evidence that ABA therapy is effective in the treatment of autism, and there has been an increase in the practice of this profession in California. However, the California Business and Professions Code does not apply any requirements to the practice of ABA.

Because there is no licensure of ABAs, it is difficult for consumers to make an informed decision when choosing an applied behavior analyst. In some cases, ABA programs may be designed, supervised, and/or implemented by someone who lacks training and experience in ABA.

**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.

Individuals who wish to become a BCBA must meet the following requirements:

- a. Possess a Master's Degree;
- b. Have 225 classroom hours of specific graduate-level coursework;
- c. Have 1,500 hours of supervised independent fieldwork in behavior analysis. Of those hours, 75 must be hours of direct supervision; and
- d. Pass the Behavior Analyst Certification Examination.

Persons wishing to become a BCaBA must meet the following requirements:

- a. Possess a Bachelor's Degree;
- b. Have 135 classroom hours of specific coursework;
- c. Have 1,000 hours of supervised independent fieldwork. Of those hours, 50 must be hours of direct supervision; and
- d. Pass the Assistant Behavior Analyst Certification Examination.

All BACB certificants must accumulate continuing education credit to maintain their credentials.

The BACB certification standards are the same as those required for licensure outlined by this bill. Therefore, the Board would be licensing individuals who meet the certification standards of the BACB.

**3) Description of Qualifying Degree Program.** This bill currently does not contain a definition of a qualifying degree program for licensure. The Committee may want to recommend that this bill define a qualifying degree program, including specific types of degrees accepted, content of the degree curriculum, and specific number of units required in certain topic areas.

**4) Examination.** This bill does not currently grant the Board the authority to administer the licensing exams. Instead, it requires the Board to accept the BACB's exam, or an exam administered by a nonprofit corporation or similar entity approved by the Board.

This does not allow for Board discretion in determining if an exam meets the requirements of BPC §139 and the prevailing standards for California licensure. BPC §139 states that "occupational analyses and examination validation studies are fundamental components of licensure programs," and requires that the department develop a policy regarding examination development and validation. This policy sets minimum requirements for exam development and validation, as well as standards for review of exams.

Additionally, the Council on Licensure, Enforcement, and Regulation (CLEAR) declares that a licensing entity has the responsibility to ensure the safe and competent practice of the individual it is licensing. Staff suggests the addition of language giving the Board the discretion to determine the examination(s) necessary based on the requirements of BPC

139. Additionally, it should be noted that under the Board approved examination restructure, all current Board licensees are required to pass a law and ethics examination. This bill does not currently require a law and ethics examination.

- 5) **Implementation Concerns.** Staff has major concerns about the implementation of an additional license. The Board has currently been unable to obtain the resources it needs to implement the LPCC licensing program. Additionally, due to budget constraints and the hiring freeze, the Board has been unable to fill vacancies that serve its current licensees.
- 6) **Delayed Implementation Needed.** Based on experience gained from implementing the LPCC program, the Board will need two years from the date of passage to set up the program, and create and obtain approval for regulations to implement the program.
- 7) **Title Act versus Practice Act:** This bill establishes a title act, which prohibits the use of certain professional titles if a license is not held. A practice act would prohibit engagement in the practice of behavior analysis unless a license is held. A practice act offers public protection, while a title act offers professionalization of the practitioners.
- 8) **Clarification of Terms:** Using the term “certified applied behavior analyst” may be confusing since it actually is a license that is being issued by the Board. Staff suggests the term “certified” be replaced by the term “licensed.”
- 9) **Permits Unlicensed Individuals to Practice:** This bill does not require a license in order to practice behavior analysis. Additionally, this bill would still permit a certified applied behavior analyst or a certified assistant applied behavior analyst to oversee the implementation of behavior analysis programs by others. The board has received public comment indicating that this is a major concern, because potentially unlicensed, unqualified practitioners would still be able to perform behavior analysis while the licensee supervises.
- 10) **Additional Topics:** Staff suggests that the following additional topics be addressed in this bill, as they are vital components of the Board’s other licensing laws:
  1. Exam eligibility standards: including number of hours of particular types of supervised experience, and timeline for when experience was gained (i.e. 6 years prior to application for licensure).
  2. Law and ethics exam
  3. Limit on number of years an examination score is valid
  4. Supervision standards: including maximum number supervised at once and qualifications for supervision.
  5. Establishment of fees for licensure, exams, and other Board services.
  6. Reciprocity and grandparenting requirements
  7. Grounds for denial of license
  8. Continuing education requirements and approval of continuing education providers
  9. Unprofessional conduct guidelines
  10. Statute of limitations and penalties for unprofessional conduct
  11. License renewal guidelines
  12. Guidelines for obtaining a retired license or an inactive license

**11) Suggested Amendments.** The following amendments are suggested:

- **BPC §§2529.7.3(a)(1), 2529.7.5(a)(1) Master’s Degree:** Specify the type of masters degrees accepted.
- **BPC §§2529.7.3(a)(2), 2529.7.5(a)(2) Hours of Instruction:** The proposed law requires a specified number of hours of related instruction. Specify the type of coursework that would be accepted.
- **BPC §§2529.7.3(a)(3)(A), 2529.7.5(a)(3)(A) Supervision:** The proposed language states an applicant must be supervised for a specified number of hours. Specify that this should be direct supervisor contact.
- **BPC §§2529.7.3(a)(3)(B)(iv), 2529.7.5(a)(3)(B)(iv) Supervised Fieldwork Activities:** The proposed language states that talking to individuals about a behavior analysis program is considered an acceptable supervised independent fieldwork activity to count toward hours of experience. Staff suggests this language be removed.
- **BPC §2529.7.5(a)(2)(A) Errant Reference:** Correct an errant reference to a nonexistent code section.
- **BPC §2529.7.5(a)(2)(C) Clarification:** Clarify the meaning of “a combination of college or university courses.”

**12) Previous Legislation.** A similar bill, AB 1282 (Steinberg) was proposed in 2010. AB 1282, which failed passage, attempted to establish a certification process for practitioners of behavior analysis. It would have established the California Behavioral Certification Organization (CBCO), a nonprofit organization that would have provided for the certification and registration of applied behavioral analysis practitioners if they met certain conditions, one of which was being certified by the BACB or a similar entity. The Board took an oppose position on this legislation.

**13) Support and Opposition.**

*None on file*

**14) History.**

**2011**

Mar. 21 Referred to Com. on B., P. & C.P.

Feb. 20 From printer. May be heard in committee March 22.

Feb. 18 Read first time. To print.

**15) Attachment.**

*Attachment A: BPC §139*

**ASSEMBLY BILL**

**No. 1205**

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**Introduced by Assembly Member Bill Berryhill**

February 18, 2011

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An act to amend Sections 4990.02, 4990.12, 4990.18, 4990.30, and 4990.38 of, and to add Chapter 5.2 (commencing with Section 2529.7.1) to Division 2 of, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1205, as introduced, Bill Berryhill. Certified applied behavior analysts.

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

This bill would prohibit a person from holding himself or herself out to be a certified applied behavior analyst or a certified assistant applied behavior analyst unless licensed by the Board of Behavioral Sciences. The bill would require the board to issue a license to a person who meets certain educational requirements and passes an examination administered by, and is certified by, the Behavior Analyst Certification Board, a nonprofit corporation, or another similar entity approved by the board. The bill would describe the services that may be provided by a certified applied behavior analyst and a certified assistant applied behavior analyst, subject to specified supervision. The bill would authorize the board to regulate these licensees and to enforce these provisions.

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

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

1 SECTION 1. Chapter 5.2 (commencing with Section 2529.7.1)  
2 is added to Division 2 of the Business and Professions Code, to  
3 read:

4  
5 CHAPTER 5.2. CERTIFIED APPLIED BEHAVIOR ANALYSTS  
6

7 2529.7.1. The Board of Behavioral Sciences shall administer  
8 and enforce the provisions of this chapter. For the purposes of this  
9 chapter, it shall be designated as the board.

10 2529.7.2. No person shall hold himself or herself out to be a  
11 certified applied behavior analyst unless the person is licensed by  
12 the board pursuant to this chapter.

13 2529.7.3. The board shall issue a certified applied behavior  
14 analyst license to an applicant who meets all of the following  
15 requirements:

16 (a) An applicant for examination shall, at a minimum, meet the  
17 following requirements:

18 (1) Possess a baccalaureate and a master’s degree from any of  
19 the following:

20 (A) A United States or Canadian institution of higher education  
21 fully or provisionally accredited by a regional, state, provincial,  
22 or national accrediting body.

23 (B) An institution of higher education located outside the United  
24 States or Canada that, at the time the applicant was enrolled and  
25 at the time the applicant graduated, maintained a standard of  
26 training equivalent to the standards of training of those institutions  
27 accredited in the United States.

28 (2) Complete 225 classroom hours of related graduate level  
29 instruction.

30 (3) Complete 1,500 hours of supervised independent fieldwork  
31 under the supervision of a certified applied behavior analyst or  
32 initially, until January 1, 2013, under the supervision of a person  
33 who otherwise meets all of the requirements for certification.

34 (A) An applicant must be supervised at least 75 hours.

- 1 (B) Appropriate supervised independent fieldwork activities  
2 include all of the following:
- 3 (i) Conducting assessment activities related to the need for  
4 behavioral interventions.
  - 5 (ii) Designing, implementing, and monitoring behavior analysis  
6 programs for clients.
  - 7 (iii) Overseeing the implementation of behavior analysis  
8 programs by others.
  - 9 (iv) Other activities normally performed by a behavior analyst  
10 that are directly related to behavior analysis, such as, but not  
11 limited to, attending planning meetings regarding the behavior  
12 analysis program, researching the literature related to the program,  
13 and talking to individuals about the program.
- 14 (b) An applicant for examination may, subject to approval by  
15 the board, take the examination if the applicant can demonstrate  
16 the equivalent completion of the requirements in subdivision (a).
- 17 (c) Has successfully passed an examination administered by the  
18 Behavior Analyst Certification Board, a nonprofit corporation  
19 pursuant to Section 501(c)(3) of the Internal Revenue Code, or  
20 another similar entity approved by the board.
- 21 (d) Is certified by the Behavior Analyst Certification Board, a  
22 nonprofit corporation pursuant to Section 501(c)(3) of the Internal  
23 Revenue Code, or another similar entity approved by the board.
- 24 2529.7.4. No person shall hold himself or herself out to be a  
25 certified assistant applied behavior analyst unless the person is  
26 licensed by the board pursuant to this chapter.
- 27 2529.7.5. The board shall issue a certified assistant applied  
28 behavior analyst license to an applicant who meets all of the  
29 following requirements:
- 30 (a) An applicant for examination shall, at a minimum, meet the  
31 following requirements:
    - 32 (1) Possess a baccalaureate and a master's degree from any of  
33 the following:
      - 34 (A) A United States or Canadian institution of higher education  
35 fully or provisionally accredited by a regional, state, provincial,  
36 or national accrediting body.
      - 37 (B) An institution of higher education located outside the United  
38 States or Canada that, at the time the applicant was enrolled and  
39 at the time the applicant graduated, maintained a standard of

1 training equivalent to the standards of training of those institutions  
2 accredited in the United States.

3 (2) Complete 135 classroom hours of related instruction through  
4 any of the following:

5 (A) College or university courses in behavior analysis, that are  
6 taken from an institution that meets either of the requirements  
7 described in paragraph (1) of subdivision (b).

8 (B) Noncollege or university courses offered by an educational  
9 institution and approved for this purpose.

10 (C) A combination of college or university courses.

11 (3) Complete 1,000 hours of supervised independent fieldwork  
12 under the supervision of a certified applied behavior analyst or  
13 initially, until January 1, 2013, under the supervision of a person  
14 who otherwise meets all of the requirements for certification.

15 (A) An applicant must be supervised at least 50 hours.

16 (B) Appropriate supervised independent fieldwork activities  
17 include all of the following:

18 (i) Conducting assessment activities related to the need for  
19 behavioral interventions.

20 (ii) Designing, implementing, and monitoring behavior analysis  
21 programs for clients.

22 (iii) Overseeing the implementation of behavior analysis  
23 programs by others.

24 (iv) Other activities normally performed by a behavior analyst  
25 that are directly related to behavior analysis, such as, but not  
26 limited to, attending planning meetings regarding the behavior  
27 analysis program, researching the literature related to the program,  
28 and talking to individuals about the program.

29 (b) An applicant for examination may, subject to approval by  
30 the board, take the examination if the applicant can demonstrate  
31 the equivalent completion of the requirements in subdivision (a).

32 (c) Has successfully passed an examination administered by the  
33 Behavior Analyst Certification Board, a nonprofit corporation  
34 pursuant to Section 501(c)(3) of the Internal Revenue Code, or  
35 another similar entity approved by the board.

36 (d) Is certified by the Behavior Analyst Certification Board, a  
37 nonprofit corporation pursuant to Section 501(c)(3) of the Internal  
38 Revenue Code, or another similar entity approved by the board.

39 2529.7.6. (a) A certified applied behavior analyst may provide  
40 all of the following services:

1 (1) Design, implement, and evaluate systematic instructional  
2 and environmental modifications to produce socially significant  
3 improvements in human behavior of individuals or groups.

4 (2) Apply principles, methods, and procedures of operant and  
5 responding learning.

6 (3) Utilize contextual factors, establishing operations, antecedent  
7 stimuli, position reinforcement, and other consequences to help  
8 people develop new behaviors, increase or decrease existing  
9 behaviors, and emit behaviors under specific environmental  
10 conditions.

11 (4) Assess functional relations between behavioral and  
12 environmental factors.

13 (5) Apply interventions based on scientific research and the  
14 direct observation and measurement of behavior and environment.

15 (6) The practice of applied behavior analysis excludes the  
16 practice of psychological testing, neuropsychology, psychotherapy,  
17 cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and  
18 long-term counseling.

19 (b) A certified applied assistant behavior analyst may provide  
20 the services in subdivision (a) under the supervision of a certified  
21 applied behavior analyst.

22 SEC. 2. Section 4990.02 of the Business and Professions Code  
23 is amended to read:

24 4990.02. "Board," as used in this chapter, *Chapter 5.2*  
25 (*commencing with Section 2529.7.1*), Chapter 13 (*commencing*  
26 *with Section 4980*), Chapter 13.5 (*commencing with Section*  
27 *4989.10*), Chapter 14 (*commencing with Section 4991*), and  
28 Chapter 16 (*commencing with Section 4999.10*) means the Board  
29 of Behavioral Sciences.

30 SEC. 3. Section 4990.12 of the Business and Professions Code  
31 is amended to read:

32 4990.12. The duty of administering and enforcing this chapter,  
33 *Chapter 5.2 (commencing with Section 2529.7.1)*, Chapter 13  
34 (*commencing with Section 4980*), Chapter 13.5 (*commencing with*  
35 *Section 4989.10*), Chapter 14 (*commencing with Section 4991*),  
36 and Chapter 16 (*commencing with Section 4999.10*) is vested in  
37 the board and the executive officer subject to, and under the  
38 direction of, the board. In the performance of this duty, the board  
39 and the executive officer have all the powers and are subject to all  
40 the responsibilities vested in, and imposed upon, the head of a

1 department by Chapter 2 (commencing with Section 11150) of  
2 Part 1 of Division 3 of Title 2 of the Government Code.

3 SEC. 4. Section 4990.18 of the Business and Professions Code  
4 is amended to read:

5 4990.18. It is the intent of the Legislature that the board employ  
6 its resources for each and all of the following functions:

7 (a) The licensure of *certified applied behavior analysts*, *certified*  
8 *assistant applied behavior analysts*, marriage and family therapists,  
9 clinical social workers, professional clinical counselors, and  
10 educational psychologists.

11 (b) The development and administration of licensure  
12 examinations and examination procedures consistent with  
13 prevailing standards for the validation and use of licensing and  
14 certification tests. Examinations shall measure knowledge and  
15 abilities demonstrably important to the safe, effective practice of  
16 the profession.

17 (c) Enforcement of laws designed to protect the public from  
18 incompetent, unethical, or unprofessional practitioners.

19 (d) Consumer education.

20 SEC. 5. Section 4990.30 of the Business and Professions Code  
21 is amended to read:

22 4990.30. (a) A licensed marriage and family therapist, marriage  
23 and family therapist intern, licensed clinical social worker,  
24 associate clinical social worker, licensed professional clinical  
25 counselor, professional clinical counselor intern, ~~or~~ licensed  
26 educational psychologist, *certified applied behavior analyst*, *or*  
27 *certified assistant applied behavior analyst* whose license or  
28 registration has been revoked, suspended, or placed on probation,  
29 may petition the board for reinstatement or modification of the  
30 penalty, including modification or termination of probation. The  
31 petition shall be on a form provided by the board and shall state  
32 any facts and information as may be required by the board  
33 including, but not limited to, proof of compliance with the terms  
34 and conditions of the underlying disciplinary order. The petition  
35 shall be verified by the petitioner who shall file an original and  
36 sufficient copies of the petition, together with any supporting  
37 documents, for the members of the board, the administrative law  
38 judge, and the Attorney General.

39 (b) The licensee or registrant may file the petition on or after  
40 the expiration of the following timeframes, each of which

1 commences on the effective date of the decision ordering the  
2 disciplinary action or, if the order of the board, or any portion of  
3 it, is stayed by the board itself or by the superior court, from the  
4 date the disciplinary action is actually implemented in its entirety:

5 (1) Three years for reinstatement of a license or registration that  
6 was revoked for unprofessional conduct, except that the board  
7 may, in its sole discretion, specify in its revocation order that a  
8 petition for reinstatement may be filed after two years.

9 (2) Two years for early termination of any probation period of  
10 three years or more.

11 (3) One year for modification of a condition, reinstatement of  
12 a license or registration revoked for mental or physical illness, or  
13 termination of probation of less than three years.

14 (c) The petition may be heard by the board itself or the board  
15 may assign the petition to an administrative law judge pursuant to  
16 Section 11512 of the Government Code.

17 (d) The petitioner may request that the board schedule the  
18 hearing on the petition for a board meeting at a specific city where  
19 the board regularly meets.

20 (e) The petitioner and the Attorney General shall be given timely  
21 notice by letter of the time and place of the hearing on the petition  
22 and an opportunity to present both oral and documentary evidence  
23 and argument to the board or the administrative law judge.

24 (f) The petitioner shall at all times have the burden of production  
25 and proof to establish by clear and convincing evidence that he or  
26 she is entitled to the relief sought in the petition.

27 (g) The board, when it is hearing the petition itself, or an  
28 administrative law judge sitting for the board, may consider all  
29 activities of the petitioner since the disciplinary action was taken,  
30 the offense for which the petitioner was disciplined, the petitioner's  
31 activities during the time his or her license or registration was in  
32 good standing, and the petitioner's rehabilitative efforts, general  
33 reputation for truth, and professional ability.

34 (h) The hearing may be continued from time to time as the board  
35 or the administrative law judge deems appropriate but in no case  
36 may the hearing on the petition be delayed more than 180 days  
37 from its filing without the consent of the petitioner.

38 (i) The board itself, or the administrative law judge if one is  
39 designated by the board, shall hear the petition and shall prepare  
40 a written decision setting forth the reasons supporting the decision.

1 In a decision granting a petition reinstating a license or modifying  
2 a penalty, the board itself, or the administrative law judge, may  
3 impose any terms and conditions that the agency deems reasonably  
4 appropriate, including those set forth in Sections 823 and 4990.40.  
5 If a petition is heard by an administrative law judge sitting alone,  
6 the administrative law judge shall prepare a proposed decision and  
7 submit it to the board. The board may take action with respect to  
8 the proposed decision and petition as it deems appropriate.

9 (j) The petitioner shall pay a fingerprinting fee and provide a  
10 current set of his or her fingerprints to the board. The petitioner  
11 shall execute a form authorizing release to the board or its designee,  
12 of all information concerning the petitioner’s current physical and  
13 mental condition. Information provided to the board pursuant to  
14 the release shall be confidential and shall not be subject to  
15 discovery or subpoena in any other proceeding, and shall not be  
16 admissible in any action, other than before the board, to determine  
17 the petitioner’s fitness to practice as required by Section 822.

18 (k) The board may delegate to its executive officer authority to  
19 order investigation of the contents of the petition.

20 (l) No petition shall be considered while the petitioner is under  
21 sentence for any criminal offense, including any period during  
22 which the petitioner is on court-imposed probation or parole or  
23 the petitioner is required to register pursuant to Section 290 of the  
24 Penal Code. No petition shall be considered while there is an  
25 accusation or petition to revoke probation pending against the  
26 petitioner.

27 (m) Except in those cases where the petitioner has been  
28 disciplined for violation of Section 822, the board may in its  
29 discretion deny without hearing or argument any petition that is  
30 filed pursuant to this section within a period of two years from the  
31 effective date of a prior decision following a hearing under this  
32 section.

33 SEC. 6. Section 4990.38 of the Business and Professions Code  
34 is amended to read:

35 4990.38. The board may deny an application or may suspend  
36 or revoke a license or registration issued under the chapters it  
37 administers and enforces for any disciplinary action imposed by  
38 another state or territory or possession of the United States, or by  
39 a governmental agency on a license, certificate or registration to  
40 practice marriage and family therapy, clinical social work,

1 educational psychology, professional clinical counseling, *applied*  
2 *behavior analysis*, or any other healing art. The disciplinary action,  
3 which may include denial of licensure or revocation or suspension  
4 of the license or imposition of restrictions on it, constitutes  
5 unprofessional conduct. A certified copy of the disciplinary action  
6 decision or judgment shall be conclusive evidence of that action.

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## Attachment A: Business & Professions Code Section 139

139. (a) The Legislature finds and declares that occupational analyses and examination validation studies are fundamental components of licensure programs. It is the intent of the Legislature that the policy developed by the department pursuant to subdivision (b) be used by the fiscal, policy, and sunset review committees of the Legislature in their annual reviews of these boards, programs, and bureaus.

(b) Notwithstanding any other provision of law, the department shall develop, in consultation with the boards, programs, bureaus, and divisions under its jurisdiction, and the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners, a policy regarding examination development and validation, and occupational analysis. The department shall finalize and distribute this policy by September 30, 1999, to each of the boards, programs, bureaus, and divisions under its jurisdiction and to the Osteopathic Medical Board of California and the State Board of Chiropractic Examiners. This policy shall be submitted in draft form at least 30 days prior to that date to the appropriate fiscal, policy, and sunset review committees of the Legislature for review. This policy shall address, but shall not be limited to, the following issues:

(1) An appropriate schedule for examination validation and occupational analyses, and circumstances under which more frequent reviews are appropriate.

(2) Minimum requirements for psychometrically sound examination validation, examination development, and occupational analyses, including standards for sufficient number of test items.

(3) Standards for review of state and national examinations.

(4) Setting of passing standards.

(5) Appropriate funding sources for examination validations and occupational analyses.

(6) Conditions under which boards, programs, and bureaus should use internal and external entities to conduct these reviews.

(7) Standards for determining appropriate costs of reviews of different types of examinations, measured in terms of hours required.

(8) Conditions under which it is appropriate to fund permanent and limited term positions within a board, program, or bureau to manage these reviews.

(c) Every regulatory board and bureau, as defined in Section 22, and every program and bureau administered by the department, the Osteopathic Medical Board of California, and the State Board of Chiropractic Examiners, shall submit to the director on or before December 1, 1999, and on or before December 1 of each subsequent year, its method for ensuring that every licensing examination administered by or pursuant to contract with the board is subject to periodic evaluation. The evaluation shall include (1) a description of the occupational analysis serving as the basis for the examination; (2) sufficient item analysis data to permit a psychometric evaluation of the items; (3) an assessment of the appropriateness of prerequisites for admittance to the examination; and (4) an estimate of the costs and personnel required to perform these functions. The evaluation shall be revised and a new evaluation submitted to the director whenever, in the judgment of the board, program, or bureau, there is a substantial change in the examination or the prerequisites for admittance to the examination.

(d) The evaluation may be conducted by the board, program, or

bureau, the Office of Professional Examination Services of the department, the Osteopathic Medical Board of California, or the State Board of Chiropractic Examiners or pursuant to a contract with a qualified private testing firm. A board, program, or bureau that provides for development or administration of a licensing examination pursuant to contract with a public or private entity may rely on an occupational analysis or item analysis conducted by that entity. The department shall compile this information, along with a schedule specifying when examination validations and occupational analyses shall be performed, and submit it to the appropriate fiscal, policy, and sunset review committees of the Legislature by September 30 of each year. It is the intent of the Legislature that the method specified in this report be consistent with the policy developed by the department pursuant to subdivision (b).