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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2336

05/14/2015 Authored by Peterson, Norton and Clark

The bill was read for the first time and referred to the Committee on Health and Human Services Reform

1.1 A bill for an act
1.2 relating to health; establishing licensing requirements for behavior analysts and
1.3 assistant behavior analysts; modifying definitions related to autism spectrum
1.4 disorder; creating an advisory council; amending Minnesota Statutes 2014,
1.5 section 148B.51; proposing coding for new law as Minnesota Statutes, chapter
1.6 148G.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2014, section 148B.51, is amended to read:

1.9 **148B.51 BOARD OF BEHAVIORAL HEALTH AND THERAPY.**

1.10 The Board of Behavioral Health and Therapy consists of ~~13~~ 15 members appointed
1.11 by the governor. Five of the members shall be professional counselors licensed or eligible
1.12 for licensure under sections 148B.50 to 148B.593. Five of the members shall be alcohol
1.13 and drug counselors licensed under chapter 148F. Two members shall be behavior analysts
1.14 licensed under chapter 148G. Three of the members shall be public members as defined in
1.15 section 214.02. The board shall annually elect from its membership a chair and vice-chair.
1.16 The board shall appoint and employ an executive director who is not a member of the
1.17 board. The employment of the executive director shall be subject to the terms described in
1.18 section 214.04, subdivision 2a. Chapter 214 applies to the Board of Behavioral Health and
1.19 Therapy unless superseded by sections 148B.50 to 148B.593.

1.20 **Sec. 2. 148G.01 DEFINITIONS.**

1.21 (a) As used in this chapter, the following terms have the meanings given.

1.22 (b) "Applied behavior analysis" means the design, implementation, and evaluation
1.23 of environmental modifications, using behavioral stimuli and consequences, to
1.24 produce socially significant improvement in human behavior, including the use of

2.1 direct observation, measurement, and functional analysis of the relationship between
2.2 environment and behavior.

2.3 (c) "Applied behavior analysis interventions" mean interventions that are based on
2.4 scientific research and the direct observation and measurement of behavior and environment
2.5 which utilize contextual factors, establishing operations, antecedent stimuli, positive
2.6 reinforcement, and other consequences to help people develop new behaviors, increase or
2.7 decrease existing behaviors, and elicit behaviors under specific environmental conditions.

2.8 (d) "Board" means the Minnesota Board of Behavioral Health and Therapy.

2.9 (e) "Certification board" means the Behavior Analyst Certification Board or its
2.10 successor.

2.11 (f) "Certified" refers to a practitioner who has met the certification criteria of the
2.12 certification board.

2.13 (g) "Licensed behavior analyst" means an individual who is licensed by the board
2.14 and meets the requirements of section 148G.15.

2.15 (h) "Licensed assistant behavior analyst" means an individual who:

2.16 (1) is licensed by the board as an assistant behavior analyst and meets the
2.17 requirements of section 148G.15; and

2.18 (2) works under the supervision of a certified behavior analyst.

2.19 (i) "Practice of applied behavior analysis" means the application of the principles,
2.20 methods, and procedures of the experimental analysis of behavior and applied behavior
2.21 analysis, including but not limited to applications of those principles, methods, and
2.22 procedures to:

2.23 (1) design, implement, evaluate, and modify treatment programs to change the
2.24 behavior of individuals diagnosed with an autism spectrum disorder and other related
2.25 mental and physical conditions;

2.26 (2) design, implement, evaluate, and modify treatment programs to change the
2.27 behavior of individuals;

2.28 (3) design, implement, evaluate, and modify treatment programs to change the
2.29 behavior of groups; and

2.30 (4) consult with individuals and organizations.

2.31 The practice of applied behavior analysis does not include diagnosis, counseling,
2.32 psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy,
2.33 psychoanalysis, or hypnotherapy as treatment modalities.

2.34 (j) "Supervised experience" means services rendered as part of the certification
2.35 requirements of a behavior analyst or assistant behavior analyst under the supervision of a
2.36 licensed behavior analyst.

3.1 (k) "Supervisee" means a person who is not licensed but acts under the authority
 3.2 and direction of a licensed behavior analyst or a licensed assistant behavior analyst to
 3.3 provide applied behavior analysis services.

3.4 (l) "Temporary licensee" means a person who is obtaining supervised experience
 3.5 and has obtained a temporary license.

3.6 **Sec. 3. [148G.05] USE OF TITLE; PENALTY; EXEMPTIONS.**

3.7 Subdivision 1. **Use of titles; penalty.** (a) No person shall engage in the practice
 3.8 of applied behavior analysis, assist in the practice of applied behavior analysis, render
 3.9 services designated as applied behavior analysis, or hold oneself out as a practitioner of
 3.10 applied behavior analysis in this state, unless licensed under this chapter.

3.11 (b) Use of the title "licensed behavior analyst" or "licensed assistant behavior
 3.12 analyst" or any title which is substantially similar is prohibited if the person using the title
 3.13 is not licensed under this chapter.

3.14 (c) Any person who violates this subdivision shall be guilty of a misdemeanor.

3.15 Subd. 2. **Exemptions.** The provisions of this chapter do not apply to a person who:

3.16 (1) is employed by a city, county, or state agency;

3.17 (2) is employed by a public school and provides applied behavior analysis services
 3.18 to an individual in a public school setting;

3.19 (3) implements applied behavior analysis intervention services to an immediate
 3.20 family member or as a supervisee; or

3.21 (4) is regulated by a health-related licensing board as defined in section 214.01,
 3.22 subdivision 2.

3.23 **Sec. 4. [148G.10] DUTIES OF THE BOARD.**

3.24 The board shall:

3.25 (1) adopt and enforce rules for licensure and regulation of behavior analysts,
 3.26 assistant behavior analysts, and temporary licensees, including a standard disciplinary
 3.27 process and rules of professional conduct;

3.28 (2) issue licenses and temporary licenses to qualified individuals under this chapter;

3.29 (3) carry out disciplinary actions against licensees and temporary licensees;

3.30 (4) educate the public about the existence and content of the regulations for behavior
 3.31 analyst and assistant behavior analyst licensing to enable consumers to file complaints
 3.32 against licensees who may have violated the rules;

3.33 (5) collect nonrefundable license fees for behavior analysts, assistant behavior
 3.34 analysts, and temporary licensees; and

4.1 (6) carry out all other board duties listed in section 148B.52.

4.2 **Sec. 5. [148G.15] REQUIREMENTS FOR LICENSURE.**

4.3 (a) To be licensed as a behavior analyst, an applicant shall apply to the board upon
4.4 such form and in such a manner as prescribed by the board and shall furnish evidence
4.5 to the board that the applicant:

4.6 (1) has met the education requirements of the board certified behavior analyst
4.7 standards, has passed the board certified behavior analyst examination, and has a current,
4.8 valid certification as a behavior analyst issued by the certification board;

4.9 (2) maintains active status and has fulfilled all requirements for continued
4.10 certification with the certification board as a board certified behavior analyst; and

4.11 (3) has no complaints pending, uncompleted disciplinary orders, or corrective
4.12 action agreements.

4.13 (b) To be licensed as an assistant behavior analyst, an applicant shall apply to the
4.14 board upon such form and in such a manner as prescribed by the board and shall furnish
4.15 evidence to the board that the applicant:

4.16 (1) has met the education requirements of the board certified assistant behavior analyst
4.17 standards, has passed the board certified assistant behavior analyst examination, and has a
4.18 current, valid credential as an assistant behavior analyst issued by the certification board;

4.19 (2) maintains active status and has fulfilled all requirements for continued
4.20 certification with the certification board as a board certified assistant behavior analyst;

4.21 (3) has no complaints pending, uncompleted disciplinary orders, or corrective
4.22 action agreements; and

4.23 (4) is supervised by a certified behavior analyst licensed under this chapter and
4.24 consistent with the certification board requirements for supervision of a certified assistant
4.25 behavior analyst.

4.26 (c) To receive a temporary license to complete experience requirements for
4.27 certification, an applicant shall apply to the board upon such form and in such a manner as
4.28 prescribed by the board and shall furnish evidence to the board that the applicant:

4.29 (1) has met the coursework requirements for a board certified behavior analyst
4.30 or board certified assistant behavior analyst and will begin accumulating experience as
4.31 required by the certification board;

4.32 (2) has a supervisor who meets requirements established by the certification board;
4.33 and

4.34 (3) will comply with this chapter and the requirements of the certification board
4.35 during the period of temporary licensure.

5.1 (d) An applicant must submit the fees required in section 148G.20.

5.2 **Sec. 6. [148G.20] FEES.**

5.3 Nonrefundable fees are as follows:

5.4 (1) initial license application fee for behavior analyst, \$75;

5.5 (2) initial license fee for behavior analyst, \$155;

5.6 (3) annual active license renewal fee for behavior analyst, \$155;

5.7 (4) annual inactive license renewal fee for behavior analyst, \$125;

5.8 (5) initial license application fee for assistant behavior analyst, \$75;

5.9 (6) initial license fee for assistant behavior analyst, \$125;

5.10 (7) annual active license renewal fee for assistant behavior analyst, \$125;

5.11 (8) annual inactive license renewal fee for assistant behavior analyst, \$95;

5.12 (9) initial application fee for temporary licensee, \$75;

5.13 (10) initial license fee for temporary license, \$155;

5.14 (11) license renewal late fee, \$125;

5.15 (12) license reinstatement fee, \$125;

5.16 (13) copy of board order or stipulation, \$50;

5.17 (14) certificate of good standing or license verification, \$50; and

5.18 (15) duplicate license fee, \$95.

5.19 **Sec. 7. [148G.25] RECIPROCIITY.**

5.20 The board may issue a license to an individual who holds a current license or other
5.21 credential from another jurisdiction if:

5.22 (1) the individual holds a license based on a current, valid certification as a behavior
5.23 analyst or assistant behavior analyst issued by the certification board; and

5.24 (2) the individual has no imposed or pending disciplinary or corrective actions.

5.25 **Sec. 8. [148G.30] DISCIPLINARY ACTION.**

5.26 Subdivision 1. **Grounds for action.** The board may impose disciplinary action
5.27 as described in subdivision 2 against an applicant or licensee whom the board, by a
5.28 preponderance of the evidence, determines:

5.29 (1) has violated a statute, rule, or order that the board issued or is empowered to
5.30 enforce;

5.31 (2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the
5.32 conduct relates to the practice of behavior analysis, that adversely affects the person's
5.33 ability or fitness to practice;

6.1 (3) has engaged in unprofessional conduct or any other conduct which has the
6.2 potential for causing harm to the public, including any departure from or failure to
6.3 conform to the minimum standards of acceptable and prevailing practice without actual
6.4 injury having to be established;

6.5 (4) has been convicted of or has pled guilty or nolo contendere to a felony or other
6.6 crime, an element of which is dishonesty or fraud, or has been shown to have engaged
6.7 in acts or practices tending to show that the applicant or licensee is incompetent or has
6.8 engaged in conduct reflecting adversely on the applicant's or licensee's ability or fitness to
6.9 engage in the practice of behavior analysis;

6.10 (5) has employed fraud or deception in obtaining or renewing a license, or in
6.11 passing an examination;

6.12 (6) has had any professional license, certificate, registration, privilege to take an
6.13 examination, or other similar authority denied, revoked, suspended, canceled, limited, or
6.14 not renewed for cause in any jurisdiction or has surrendered or voluntarily terminated a
6.15 license or certificate during a board investigation of a complaint, as part of a disciplinary
6.16 order, or while under a disciplinary order;

6.17 (7) has failed to meet any requirement for the issuance or renewal of the person's
6.18 license. The burden of proof is on the applicant or licensee to demonstrate the
6.19 qualifications or satisfy the requirements for a license under this chapter;

6.20 (8) has failed to cooperate with an investigation of the board;

6.21 (9) has demonstrated an inability to practice behavior analysis with reasonable skill
6.22 and safety to clients due to any mental or physical illness or condition;

6.23 (10) has engaged in conduct with a client that is sexual or may reasonably be
6.24 interpreted by the client as sexual, or in any verbal behavior that is seductive or sexually
6.25 demeaning to a client;

6.26 (11) has been subject to a corrective action or similar action in another jurisdiction
6.27 or by another regulatory authority;

6.28 (12) has been adjudicated as mentally incompetent, mentally ill, or developmentally
6.29 disabled or as a chemically dependent person, a person dangerous to the public, a sexually
6.30 dangerous person, or a person who has a sexual psychopathic personality by a court of
6.31 competent jurisdiction within this state or an equivalent adjudication from another state.
6.32 Adjudication automatically suspends a license for the duration of the adjudication unless
6.33 the board orders otherwise;

6.34 (13) has paid or promised to pay a commission or part of a fee to any person who
6.35 contacts the behavior analyst or assistant behavior analyst for consultation or sends
6.36 patients to the analyst for treatment;

7.1 (14) has engaged in an incentive payment arrangement, other than that prohibited by
 7.2 clause (13), that promotes behavior analysis overutilization, whereby the referring person
 7.3 or person who controls the availability of behavior analysis services to a client profits
 7.4 unreasonably as a result of client treatment;

7.5 (15) has engaged in abusive or fraudulent billing practices, including violations of
 7.6 federal Medicare and Medicaid laws, Food and Drug Administration regulations, or state
 7.7 medical assistance laws;

7.8 (16) has performed medical diagnosis or provided treatment, other than behavior
 7.9 analysis, without being licensed to do so under the laws of this state; and

7.10 (17) has promoted for personal gain an unnecessary device, treatment, procedure,
 7.11 or service, or directed or required a client to purchase a device, treatment, procedure,
 7.12 or service which has no documented clinical justification from a facility or business in
 7.13 which he or she has a financial interest.

7.14 Subd. 2. **Actions.** If grounds for disciplinary action exist under subdivision 1, the
 7.15 board may take one or more of the following actions:

7.16 (1) refuse to grant or renew a license;

7.17 (2) revoke a license;

7.18 (3) suspend a license;

7.19 (4) impose limitations or conditions on a licensee's practice, including but not
 7.20 limited to limiting the scope of practice to designated competencies, imposing retraining
 7.21 or rehabilitation requirements, requiring the licensee to practice under supervision, or
 7.22 conditioning continued practice on the demonstration of knowledge or skill by appropriate
 7.23 examination or other review of skill and competence;

7.24 (5) censure or reprimand the licensee; and

7.25 (6) impose a civil penalty not exceeding \$40,000 for each separate violation, the
 7.26 amount of the civil penalty to be fixed so as to deprive the applicant or licensee of any
 7.27 economic advantage gained by reason of the violation charged, to discourage similar
 7.28 violations, or to reimburse the board for the cost of the investigation and proceeding,
 7.29 including but not limited to fees paid for services provided by the Office of the Attorney
 7.30 General, court reporters, witnesses, reproduction of records, board members' per diem
 7.31 compensation, board staff time, and travel costs and expenses incurred by board staff
 7.32 and board members.

7.33 Subd. 3. **Alternative or additional requirements.** In lieu of or in addition to
 7.34 subdivision 2, the board may require, as a condition of continued licensure, termination of
 7.35 suspension, reinstatement of license, or examination, that the applicant or licensee:

8.1 (1) submit to a quality review, as specified by the board, of the applicant's or
8.2 licensee's ability, skills, or quality of work; and

8.3 (2) complete, to the satisfaction of the board, one or more educational courses
8.4 specified by the board.

8.5 Subd. 4. **Health professionals services program.** The board may also refer a
8.6 licensee, if appropriate, to the health professionals services program described in sections
8.7 214.31 to 214.37.

8.8 Sec. 9. **[148G.35] TEMPORARY SUSPENSION OF LICENSE.**

8.9 (a) In addition to any other remedy provided by law, the board may issue an order to
8.10 temporarily suspend the credentials of a licensee after conducting a preliminary inquiry to
8.11 determine if the board reasonably believes that the licensee has violated a statute or rule
8.12 that the board is empowered to enforce and whether continued practice by the licensee
8.13 would create an imminent risk of harm to others.

8.14 (b) The order may prohibit the licensee from engaging in the practice of behavior
8.15 analysis in whole or in part and may condition the end of a suspension on the licensee's
8.16 compliance with a statute, rule, or order that the board has issued or is empowered to
8.17 enforce.

8.18 (c) The order shall give notice of the right to a hearing according to this section and
8.19 shall state the reasons for the entry of the order.

8.20 (d) Service of the order is effective when the order is served on the licensee
8.21 personally or by certified mail, which is complete upon receipt, refusal, or return for
8.22 nondelivery to the most recent address provided to the board for the licensee.

8.23 (e) At the time the board issues a temporary suspension order, the board shall
8.24 schedule a hearing to be held before its own members. The hearing shall begin no later than
8.25 60 days after issuance of the temporary suspension order or within 15 working days of the
8.26 date of the board's receipt of a request for hearing by a licensee, on the sole issue of whether
8.27 there is a reasonable basis to continue, modify, or lift the temporary suspension. The
8.28 hearing is not subject to chapter 14. Evidence presented by the board or the licensee shall
8.29 be in affidavit form only. The licensee or counsel of record may appear for oral argument.

8.30 (f) Within five working days of the hearing, the board shall issue its order and, if the
8.31 suspension is continued, schedule a contested case hearing within 30 days of the issuance
8.32 of the order. Notwithstanding chapter 14, the administrative law judge shall issue a report
8.33 within 30 days after closing the contested case hearing record. The board shall issue a
8.34 final order within 30 days of receipt of the administrative law judge's report.

9.1 Sec. 10. **[148G.40] MENTAL, PHYSICAL, OR CHEMICAL DEPENDENCY**
9.2 **EXAMINATION OR EVALUATION; ACCESS TO MEDICAL DATA.**

9.3 If the board has probable cause to believe section 148G.30, subdivision 1, clause (9),
9.4 applies to a licensee or applicant, the board may direct the person to submit to a mental,
9.5 physical, or chemical dependency examination or evaluation. For the purpose of this
9.6 section, every licensee and applicant is deemed to have consented to submit to a mental,
9.7 physical, or chemical dependency examination or evaluation when directed in writing
9.8 by the board and to have waived all objections to the admissibility of the examining
9.9 professionals' testimony or examination reports on the grounds that the testimony or
9.10 examination reports constitute a privileged communication. Failure of a licensee or
9.11 applicant to submit to an examination when directed by the board constitutes an admission
9.12 of the allegations against the person, unless the failure was due to circumstances beyond
9.13 the person's control, in which case a default and final order may be entered without
9.14 the taking of testimony or presentation of evidence. A licensee or applicant affected
9.15 under this section shall, at reasonable intervals, be given an opportunity to demonstrate
9.16 that the person can resume the competent practice of behavior analysis with reasonable
9.17 skill and safety to the public. In any proceeding under this section, neither the record
9.18 of proceedings nor the orders entered by the board shall be used against a licensee or
9.19 applicant in any other proceeding.

9.20 Sec. 11. **[148G.45] REINSTATEMENT OF LAPSED, SUSPENDED, OR**
9.21 **REVOKED LICENSE.**

9.22 (a) The board may, within three years, reinstate a license which has lapsed, upon
9.23 payment of the renewal fee and the reinstatement fee as established in section 148G.20.

9.24 (b) The board may reinstate a license which has been lapsed for more than three
9.25 years upon showing that the applicant is certified and upon payment of the reinstatement
9.26 fee as established in section 148G.20.

9.27 (c) The board may reinstate a license which has been suspended or revoked if,
9.28 after a hearing, the board determines the applicant is able to practice with reasonable
9.29 competence and is able to maintain the standards of practice required by the certification
9.30 board and this chapter. As a condition of reinstatement, the board may impose reasonable
9.31 restrictions under which the licensee shall practice.

9.32 (d) A licensee aggrieved by the final order of the board may request a contested
9.33 case hearing.

9.34 Sec. 12. **[148G.50] BEHAVIOR ANALYST ADVISORY COUNCIL.**

10.1 Subdivision 1. **Membership.** (a) The Behavior Analyst Advisory Council is created
10.2 and is composed of five persons appointed by the board. The five persons must include:

10.3 (1) four licensed behavior analysts who are certified by the certification board and
10.4 have a minimum of five years of clinical experience; and

10.5 (2) one public member who is receiving services, or has a child who is receiving
10.6 services, for an autism spectrum disorder or other related mental and physical conditions.
10.7 The public member must not be a behavior analyst or have a household member who is
10.8 a behavior analyst.

10.9 (b) No member may serve more than two consecutive terms. If a member is appointed
10.10 for a partial term and serves more than half of that term it shall be considered a full term.

10.11 Subd. 2. **Organization.** The council shall be organized and administered under
10.12 section 15.059.

10.13 Subd. 3. **Duties.** The council shall advise the board regarding:

10.14 (1) behavior analyst and assistant behavior analyst licensure standards;

10.15 (2) a code of ethics, including the code of ethics adopted by the certification board;

10.16 (3) enforcement of grounds for discipline;

10.17 (4) distribution of information regarding behavior analysts and assistant behavior
10.18 analysts;

10.19 (5) applications and recommendations of applicants for licensure or license renewal;

10.20 (6) complaints and recommendations to the board regarding disciplinary matters and
10.21 proceedings concerning applicants and licensees according to sections 214.10; 214.103;
10.22 and 214.13, subdivisions 6 and 7; and

10.23 (7) issues related to behavior analyst and assistant behavior analyst practice and
10.24 regulation.

10.25 The council shall perform other duties authorized for the council by chapter 214
10.26 as directed by the board.