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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 4441

04/19/2018 Authored by Albright and Halverson
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; amending Minnesota Statutes 2016, section 148B.51;
1.4 proposing coding for new law in Minnesota Statutes, chapter 148B.

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

1.6 Section 1. Minnesota Statutes 2016, section 148B.51, is amended to read:

1.7 148B.51 BOARD OF BEHAVIORAL HEALTH AND THERAPY.

1.8 The Board of Behavioral Health and Therapy consists of ~~13~~ 14 members appointed by
1.9 the governor. Five of the members shall be professional counselors licensed or eligible for
1.10 licensure under sections 148B.50 to 148B.593. Five of the members shall be alcohol and
1.11 drug counselors licensed under chapter 148F. One of the members shall be a behavior analyst
1.12 licensed under sections 148B.73 to 148B.88. Three of the members shall be public members
1.13 as defined in section 214.02. The board shall annually elect from its membership a chair
1.14 and vice-chair. The board shall appoint and employ an executive director who is not a
1.15 member of the board. The employment of the executive director shall be subject to the terms
1.16 described in section 214.04, subdivision 2a. Chapter 214 applies to the Board of Behavioral
1.17 Health and Therapy unless superseded by sections 148B.50 to 148B.593.

1.18 Sec. 2. 148B.73] DEFINITIONS.

1.19 Subdivision 1. Scope. For the purposes of sections 148B.73 to 148B.88, the terms in
1.20 this section have the meanings given.

1.21 Subd. 2. Accredited school or educational program. "Accredited school or educational
1.22 program" means a school, university, college, or other postsecondary education program

2.1 that, at the time the student completes the program, is accredited by a regional accrediting
2.2 association whose standards are substantially equivalent to those of the North Central
2.3 Association of Colleges and Postsecondary Education Institutions or an accrediting
2.4 association that evaluates schools of behavior analysis, psychology, or education for inclusion
2.5 of the education, practicum, and core function standards.

2.6 Subd. 3. **Assessment.** "Assessment" means any observational recording system,
2.7 instrument, device, survey, questionnaire, technique, scale, inventory, or other process that
2.8 is designed or constructed for the purpose of measuring, evaluating, assessing, describing,
2.9 or predicting behavior, cognitive functioning, skills, values, preferences, or other
2.10 characteristics of individuals.

2.11 Subd. 4. **Assistant behavior analyst.** "Assistant behavior analyst" means a person who
2.12 holds a valid license issued under sections 148B.73 to 148B.88 to assist in the practice of
2.13 behavior analysis.

2.14 Subd. 5. **Behavior analyst.** "Behavior analyst" means a person who holds a valid license
2.15 issued under sections 148B.73 to 148B.88 to engage in the practice of behavior analysis.

2.16 Subd. 6. **Behavior Analyst Certification Board.** "Behavior Analyst Certification Board"
2.17 means the Behavior Analyst Certification Board, Incorporated, whose programs to certify
2.18 professional practitioners of behavior analysis are accredited by the National Commission
2.19 for Certifying Agencies.

2.20 Subd. 7. **Board.** "Board" means the Board of Behavioral Health and Therapy established
2.21 in section 148B.51.

2.22 Subd. 8. **Client.** "Client" means an individual who is the recipient of behavior analysis
2.23 services. Client also means "patient" as defined in section 144.291, subdivision 2, paragraph
2.24 (g).

2.25 Subd. 9. **Credential.** "Credential" means a certification given by the Behavior Analyst
2.26 Certification Board.

2.27 Subd. 10. **Practice of behavior analysis.** (a) "Practice of behavior analysis" means the
2.28 utilization of special skills to assist individuals, families, or groups in achieving objectives
2.29 through the design, implementation, and evaluation of instructional and environmental
2.30 modifications to produce socially significant improvements in human behavior. Behavior
2.31 analysis services are provided to clients whose symptoms significantly interfere with daily
2.32 functioning and would most likely not improve in a reasonable time period without
2.33 intervention. Behavior analysis interventions are based on scientific applied behavior analysis

3.1 research and the direct observation and measurement of the individual client's behavior and
3.2 environment.

3.3 (b) The practice of behavior analysis expressly excludes psychological testing,
3.4 psychotherapy, cognitive therapy, sex therapy, psychoanalysis or hypnotherapy, and
3.5 counseling as treatment modalities.

3.6 (c) The practice of behavior analysis includes, but is not limited to, the following
3.7 activities, regardless of whether the behavior analyst receives compensation for the activities:

3.8 (1) a functional behavior assessment (FBA) employing direct observation of behavior,
3.9 structured assessment tools, indirect interviews, questionnaires, consultation with other
3.10 professionals, or review of historical records of the environmental factors that function to
3.11 increase, decrease, or maintain the behaviors of social importance. An FBA includes
3.12 evaluation of contextual factors, motivating operations, antecedent stimuli, and reinforcement
3.13 of behavior;

3.14 (2) an empirical functional behavior analysis in which the environmental conditions that
3.15 might affect an individual's behavior are purposely manipulated in a controlled manner in
3.16 order to recommend a specific behavior intervention;

3.17 (3) delivering an intervention employing direct or mediated manipulation of contextual
3.18 factors, motivating operations, antecedent stimuli, contingent reinforcement, and other
3.19 procedures to help clients develop new behaviors, increase or decrease existing behaviors,
3.20 and emit behaviors under specific environmental conditions;

3.21 (4) the observation, description, evaluation, and interpretation of the results of services
3.22 for the purpose of treatment planning, making recommendations, providing clinical direction,
3.23 further assessment, or referral;

3.24 (5) behavior analysis strategies that effectively respond to multicultural populations;

3.25 (6) conforming with relevant laws and ethical codes in the delivery of services;

3.26 (7) case management, including the screening, intake, orientation, service development,
3.27 and referral activities necessary to provide an organized behavior analysis service to the
3.28 client;

3.29 (8) crisis intervention;

3.30 (9) providing consultation to other professionals in regard to client treatment and services
3.31 to assure comprehensive, quality care for the client;

4.1 (10) providing personnel training to other professionals and paraprofessionals whose
4.2 activities directly affect the client;

4.3 (11) conducting program evaluation and applied behavior analysis research to improve
4.4 client services;

4.5 (12) preparation of reports and keeping records of the behavior analysis services,
4.6 including progress notes, discharge summaries, and other client-related data; and

4.7 (13) providing the services in clauses (1) to (12), as needed, to family members or others
4.8 who are directly affected by the behavior of the client.

4.9 Sec. 3. **[148B.75] DUTIES OF THE BOARD.**

4.10 The board shall:

4.11 (1) adopt and enforce standards for licensure and regulation of behavior analysts and
4.12 assistant behavior analysts;

4.13 (2) issue licenses to qualified individuals under sections 148B.73 to 148B.88;

4.14 (3) carry out disciplinary actions against licensees;

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

4.18 (5) collect license fees for behavior analysts and assistant behavior analysts.

4.19 Sec. 4. **[148B.76] REQUIREMENTS FOR LICENSURE.**

4.20 Subdivision 1. **Form; fee.** An individual seeking licensure as a behavior analyst or as
4.21 an assistant behavior analyst shall complete and submit a written application on forms
4.22 provided by the board together with the appropriate fee in the amount set under section
4.23 148B.85.

4.24 Subd. 2. **Requirements for licensure.** (a) An applicant for licensure must submit
4.25 evidence satisfactory to the board that the applicant:

4.26 (1) has a valid certification as a behavior analyst or as an assistant behavior analyst
4.27 issued by the Behavior Analyst Certification Board;

4.28 (2) maintains active status and has fulfilled all requirements for continued certification
4.29 with the Behavior Analyst Certification Board as a board-certified behavior analyst or
4.30 board-certified assistant behavior analyst; and

5.1 (3) has passed the national professional examination in applied behavior analysis and
5.2 ethical and disciplinary standards administered by the Behavior Analyst Certification Board.

5.3 Subd. 3. **Background investigation.** The applicant must sign a release authorizing the
5.4 board to obtain information from the Bureau of Criminal Apprehension, the Department of
5.5 Human Services, the Office of Health Facilities Complaints, and other agencies specified
5.6 by the board. After the board has given written notice to an individual who is the subject
5.7 of a background investigation, the agencies shall assist the board with the investigation by
5.8 giving the board criminal conviction data, reports about substantiated maltreatment of minors
5.9 and vulnerable adults, and other information. The board may contract with the commissioner
5.10 of human services to obtain criminal history data from the Bureau of Criminal Apprehension.
5.11 Information obtained under this subdivision is private data on individuals as defined in
5.12 section 13.02, subdivision 12.

5.13 **Sec. 5. [148B.78] LICENSE RENEWAL REQUIREMENTS.**

5.14 Subdivision 1. **Biennial renewal.** A license must be renewed every two years.

5.15 Subd. 2. **License renewal notice.** At least 60 calendar days before the renewal deadline
5.16 date, the board shall mail a renewal notice to the licensee's last known address on file with
5.17 the board. The notice must include instructions for accessing an online application for license
5.18 renewal, the renewal deadline, and notice of fees required for renewal. The licensee's failure
5.19 to receive notice does not relieve the licensee of the obligation to meet the renewal deadline
5.20 and other requirements for license renewal.

5.21 Subd. 3. **Renewal requirements.** (a) To renew a license, a licensee must submit to the
5.22 board:

5.23 (1) a completed and signed application for license renewal;

5.24 (2) the license renewal fee required under section 148B.85; and

5.25 (3) evidence satisfactory to the board that the licensee holds a current and active national
5.26 certification as a behavior analyst or assistant behavior analyst from the Behavior Analyst
5.27 Certification Board.

5.28 (b) The application for license renewal and fee must be postmarked or received by the
5.29 board by the end of the day on which the license expires or the following business day if
5.30 the expiration date falls on a Saturday, Sunday, or holiday. A renewal application that is
5.31 not completed and signed, or that is not accompanied by the correct fee, is void and must
5.32 be returned to the licensee.

6.1 Subd. 4. **Pending renewal.** If a licensee's application for license renewal is postmarked
6.2 or received by the board by the end of the business day on the expiration date of the license,
6.3 the licensee may continue to practice after the expiration date while the application for
6.4 license renewal is pending with the board.

6.5 Subd. 5. **Late renewal fee.** If the application for license renewal is postmarked or
6.6 received after the expiration date, the licensee shall pay a biennial renewal late fee as
6.7 specified by section 148B.85, in addition to the renewal fee, before the application for
6.8 license renewal will be considered by the board.

6.9 **Sec. 6. [148B.79] EXPIRED LICENSE.**

6.10 Subdivision 1. **Expiration of license.** A licensee who fails to submit an application for
6.11 license renewal, or whose application for license renewal is not postmarked or received by
6.12 the board as required by section 148B.78, is not authorized to practice behavior analysis
6.13 after the expiration date and is subject to disciplinary action by the board if the individual
6.14 practices behavior analysis after the expiration date.

6.15 Subd. 2. **Termination for nonrenewal.** (a) Within 30 days after the renewal date, a
6.16 licensee who has not renewed the license shall be notified by letter sent to the last known
6.17 address of the licensee in the board's file that the renewal is overdue and that failure to pay
6.18 the current fee and current biennial renewal late fee within 60 days after the renewal date
6.19 will result in termination of the license.

6.20 (b) The board shall terminate the license of a licensee whose license renewal is at least
6.21 60 days overdue and to whom notification has been sent as provided in paragraph (a). Failure
6.22 of a licensee to receive notification is not grounds for later challenge of the termination.
6.23 The former licensee shall be notified of the termination by letter within seven days after the
6.24 board action, in the same manner as provided in paragraph (a).

6.25 **Sec. 7. [148B.80] PROHIBITED PRACTICE OR USE OF TITLES; PENALTY.**

6.26 Subdivision 1. **Practice.** Effective July 1, 2019, no person shall engage in the practice
6.27 of behavior analysis without first being licensed under sections 148B.73 to 148B.88 as a
6.28 behavior analyst or assistant behavior analyst.

6.29 Subd. 2. **Use of titles.** (a) No person shall hold themselves out to the public by any title
6.30 incorporating the words "licensed behavior analyst," "behavior analyst," "licensed assistant
6.31 behavior analyst," "assistant behavior analyst," or use any other title or description stating
6.32 or implying that they are licensed or otherwise qualified to practice behavior analysis, unless

7.1 that person holds a valid license under sections 148B.73 to 148B.88, or is authorized to use
 7.2 the title under section 148B.81.

7.3 (b) A person who is participating in a behavior analysis practicum must be designated
 7.4 as a behavior analyst intern.

7.5 (c) Any person who is exempt from licensure under section 148B.81 must not use any
 7.6 of the titles identified in paragraph (a), or represent that they are licensed to engage in the
 7.7 practice of behavior analysis, unless that person is licensed as a behavior analyst or assistant
 7.8 behavior analyst under sections 148B.73 to 148B.88.

7.9 Subd. 3. **Penalty.** A person who violates this section is guilty of a misdemeanor.

7.10 **Sec. 8. [148B.81] EXCEPTIONS TO LICENSE REQUIREMENT.**

7.11 Subdivision 1. **Other professionals.** Nothing in sections 148B.73 to 148B.88 shall be
 7.12 construed to:

7.13 (1) prevent members of other professions or occupations from performing functions for
 7.14 which they are qualified or licensed;

7.15 (2) prohibit persons employed or subcontracted by a city, county, tribe, state agency, or
 7.16 public school to provide behavior analysis services to an individual or group;

7.17 (3) limit the activities, services, and descriptions of persons who are employed or
 7.18 subcontracted by a provider licensed by the commissioner of human services or the
 7.19 commissioner of health to provide behavior analysis services to an individual or group;

7.20 (4) prohibit an employee of a program licensed according to section 245D.091 from
 7.21 discharging their duties as provided in section 245D.091;

7.22 (5) prohibit the practice of behavior analysis with nonhumans, including applied animal
 7.23 behaviorists and animal trainers. These individuals may use the title "behavior analyst" but
 7.24 may not use the title of or represent themselves to the public as a "licensed behavior analyst"
 7.25 or "licensed assistant behavior analyst" unless the individual holds a valid license under
 7.26 sections 148B.73 to 148B.88;

7.27 (6) prohibit teaching behavior analysis or conducting behavior analysis research provided
 7.28 that the teaching or research does not involve the direct delivery of behavior analysis services.
 7.29 These individuals may use the title "behavior analyst" but may not use the title or represent
 7.30 themselves to the public as a "licensed behavior analyst" or "licensed assistant behavior
 7.31 analyst" unless the individual holds a valid license under sections 148B.73 to 148B.88; or

8.1 (7) provide behavior analysis services as an unlicensed supervisee or trainee under the
8.2 authority and direction of a licensed behavior analyst or licensed assistant behavior analyst.
8.3 These individuals must not use the title or represent themselves to the public as a "licensed
8.4 behavior analyst" or "licensed assistant behavior analyst."

8.5 Subd. 2. **Students.** Nothing in sections 148B.73 to 148B.88 prevents students enrolled
8.6 in an accredited school or educational program from engaging in the practice of behavior
8.7 analysis while under supervision in an accredited school or educational program.

8.8 Subd. 3. **Federally recognized tribes.** Persons practicing behavior analysis according
8.9 to standards established by federally recognized tribes, while practicing under tribal
8.10 jurisdiction, are exempt from the requirements of sections 148B.73 to 148B.88. In practicing
8.11 behavior analysis under tribal jurisdiction, persons practicing under that authority shall be
8.12 afforded the same rights, responsibilities, and recognition as persons licensed under sections
8.13 148B.73 to 148B.88.

8.14 Subd. 4. **Other health care professionals.** Nothing in sections 148B.73 to 148B.88
8.15 prohibits a health care professional licensed by a health-related licensing board as defined
8.16 in section 214.01, subdivision 2, from practicing within the scope of practice of the
8.17 professional's license.

8.18 Sec. 9. **[148B.82] NONTRANSFERABILITY OF LICENSES.**

8.19 A behavior analyst license or an assistant behavior analyst license is not transferable.

8.20 Sec. 10. **[148B.83] DUTY TO MAINTAIN CURRENT INFORMATION.**

8.21 All licensees and all applicants for licensure must notify the board within 30 days of the
8.22 occurrence of any of the following:

8.23 (1) a change of name, address, place of employment, and home or business telephone
8.24 number; and

8.25 (2) a change in any other application information.

8.26 Sec. 11. **[148B.84] DISCIPLINE; REPORTING.**

8.27 For purposes of sections 148B.73 to 148B.88, licensed behavior analysts and licensed
8.28 assistant behavior analysts are subject to the provisions of sections 148B.59 to 148B.5905.

8.29 Sec. 12. **[148B.85] FEES.**

8.30 Subdivision 1. **Fees.** (a) All applicants and licensees shall pay fees as follows:

- 9.1 (1) application fee, \$.....;
 9.2 (2) license renewal fee, \$.....;
 9.3 (3) inactive license renewal fee, \$.....;
 9.4 (4) biennial renewal late fee, \$.....;
 9.5 (5) inactive license renewal late fee, \$.....; and
 9.6 (6) supervisor application processing fee, \$.....

9.7 (b) The fee for renewal of a license that has been expired for less than two years is the
 9.8 total of the biennial renewal fee in effect at the time of late renewal and the biennial renewal
 9.9 late fee.

9.10 Subd. 2. **Nonrefundable fees.** All fees in this section are nonrefundable.

9.11 Subd. 3. **Deposit of fees.** Fees collected by the board under this section shall be deposited
 9.12 in the state government special revenue fund.

9.13 **Sec. 13. [148B.86] COMPETENT PROVISION OF SERVICES.**

9.14 Subdivision 1. **Limits on practice.** Behavior analysts shall limit their practice to the
 9.15 client populations and services for which they have competence or for which they are
 9.16 developing competence.

9.17 Subd. 2. **Developing competence.** When a behavior analyst is developing competence
 9.18 in a service, method, procedure, or to treat a specific client population, the behavior analyst
 9.19 shall obtain professional education, training, continuing education, consultation, supervision
 9.20 or experience, or a combination thereof, necessary to demonstrate competence.

9.21 Subd. 3. **Experimental, emerging, or innovative services.** A behavior analyst may
 9.22 offer experimental services, methods, or procedures competently and in a manner that
 9.23 protects clients from harm. However, when doing so, the behavior analyst has a heightened
 9.24 responsibility to understand and communicate the potential risks to clients, to use reasonable
 9.25 skill and safety, and to undertake appropriate preparation as required in subdivision 2.

9.26 Subd. 4. **Limitations.** A behavior analyst shall recognize the limitations to the scope of
 9.27 practice of behavior analysis. When the needs of a client appears to be outside a behavior
 9.28 analyst's scope of practice, the behavior analyst shall inform the client that there may be
 9.29 other professional, technical, community, and administrative resources available to the
 9.30 client. A behavior analyst shall assist with identifying resources when it is in the best interest
 9.31 of a client to be provided with alternative or complementary services.

10.1 Subd. 5. **Burden of proof.** Whenever a complaint is submitted to the board involving
10.2 a violation of this section, the burden of proof is on the behavior analyst to demonstrate that
10.3 the elements of competence have reasonably been met.

10.4 Sec. 14. [148B.87] **DISCLOSURE OF INFORMATION.**

10.5 (a) Private information may be disclosed without the consent of the client when a duty
10.6 to warn arises, or as otherwise provided by law or court order. The duty to warn of, or take
10.7 reasonable precautions to provide protection from, violent behavior arises only when a client
10.8 or other person has communicated to the licensee a specific, serious threat of physical
10.9 violence to self or a specific, clearly identified or identifiable potential victim. If a duty to
10.10 warn arises, the duty is discharged by the licensee if reasonable efforts are made to
10.11 communicate the threat to law enforcement agencies, the potential victim, the family of the
10.12 client, or appropriate third parties who are in a position to prevent or avert the harm. No
10.13 monetary liability and no cause of action or disciplinary action by the board may arise
10.14 against a licensee for disclosure of confidences to third parties, for failure to disclose
10.15 confidences to third parties, or for erroneous disclosure of confidences to third parties in a
10.16 good faith effort to warn against or take precautions against a client's violent behavior or
10.17 threat of suicide.

10.18 (b) For purposes of this section, "licensee" includes behavior analysis interns, supervisees,
10.19 and individuals who are participating in a postdegree professional practice in behavior
10.20 analysis.

10.21 Sec. 15. [148B.88] **INFORMED CONSENT.**

10.22 Subdivision 1. **Obtaining informed consent for services.** A licensed behavior analyst
10.23 shall obtain informed consent from the client before initiating services. The informed consent
10.24 must be in writing, signed by the client, and include the following, at a minimum:

10.25 (1) authorization for the behavior analyst to engage in an activity that directly affects
10.26 the client;

10.27 (2) the goals, purposes, and procedures of the proposed services;

10.28 (3) the factors that may impact the duration of the service;

10.29 (4) the applicable fee schedule;

10.30 (5) the behavior analyst responsibilities if the client terminates the service;

10.31 (6) the significant risks and benefits of the service;

11.1 (7) the behavior analyst's responsibilities under section 148G.86 if the proposed service,
11.2 method, or procedure is of an experimental or innovative nature; and

11.3 (8) if applicable, information that the behavior analyst is developing competence in the
11.4 proposed service, method, or procedure, and alternatives to the proposed service, if any.

11.5 Subd. 2. **Updating informed consent.** If there is a substantial change in the nature or
11.6 purpose of a service, the behavior analyst must obtain a new informed consent from the
11.7 client.

11.8 Subd. 3. **Emergency or crisis services.** Informed consent is not required when a behavior
11.9 analyst is providing emergency or crisis services. If services continue after the emergency
11.10 or crisis has abated, informed consent must be obtained.

11.11 Sec. 16. **TRANSITION PERIOD.**

11.12 Notwithstanding Minnesota Statutes, section 148B.51, the first behavior analyst appointed
11.13 to the Board of Behavioral Health and Therapy need not be licensed under Minnesota
11.14 Statutes, sections 148B.73 to 148B.88, but must hold a valid and active certification as a
11.15 behavior analyst issued by the Behavior Analyst Certification Board.

11.16 Sec. 17. **APPROPRIATION.**

11.17 \$..... in fiscal year 2019 is appropriated from the state government special revenue fund
11.18 to the Board of Behavioral Health and Therapy to implement Minnesota Statutes, sections
11.19 148B.73 to 148B.88.

11.20 Sec. 18. **EFFECTIVE DATE.**

11.21 Sections 1 to 16 are effective July 1, 2018.