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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3213

02/13/2020 Authored by Edelson, O'Neill, Fischer, Jurgens and Cantrell
The bill was read for the first time and referred to the Committee on Health and Human Services Policy

1.1 A bill for an act
1.2 relating to health; establishing licensing requirements for behavior analysts and
1.3 assistant behavior analysts; providing criminal penalties; appropriating money;
1.4 proposing coding for new law in Minnesota Statutes, chapter 148.

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

1.6 Section 1. [148.9981] DEFINITIONS.

1.7 Subdivision 1. Scope. For the purposes of sections 148.9981 to 148.9995, the terms in
1.8 this section have the meanings given.

1.9 Subd. 2. Accredited school or educational program. "Accredited school or educational
1.10 program" means a school, university, college, or other postsecondary education program
1.11 that, at the time the student completes the program, is accredited by a regional accrediting
1.12 association whose standards are substantially equivalent to those of the North Central
1.13 Association of Colleges and Postsecondary Education Institutions or an accrediting
1.14 association that evaluates schools of behavior analysis, psychology, or education for inclusion
1.15 of the education, practicum, and core function standards.

1.16 Subd. 3. Advisory council. "Advisory council" means the Behavior Analyst Advisory
1.17 Council established in section 148.9994.

1.18 Subd. 4. Board. "Board" means the Board of Psychology established in section 148.90.

1.19 Subd. 5. Certifying entity. "Certifying entity" means the Behavior Analyst Certification
1.20 Board, Inc., or a successor organization or other organization approved by the board in
1.21 consultation with the advisory council.

2.1 Subd. 6. **Client.** "Client" means an individual who is the recipient of behavior analysis  
2.2 services. Client also means "patient" as defined in section 144.291, subdivision 2, paragraph  
2.3 (g).

2.4 Subd. 7. **Licensed assistant behavior analyst.** "Licensed assistant behavior analyst"  
2.5 or "assistant behavior analyst" means an individual who holds a valid license issued under  
2.6 sections 148.9981 to 148.9995 to assist in the practice of applied behavior analysis.

2.7 Subd. 8. **Licensed behavior analyst.** "Licensed behavior analyst" or "behavior analyst"  
2.8 means an individual who holds a valid license issued under sections 148.9981 to 148.9995  
2.9 to engage in the practice of applied behavior analysis.

2.10 Subd. 9. **Licensee.** "Licensee" means an individual who holds a valid license issued  
2.11 under sections 148.9981 to 148.9995.

2.12 Subd. 10. **Practice of applied behavior analysis.** (a) "Practice of applied behavior  
2.13 analysis" means the design, implementation, and evaluation of social, instructional, and  
2.14 environmental modifications to produce socially significant improvements in human behavior.  
2.15 The practice of applied behavior analysis includes the empirical identification of functional  
2.16 relations between behavior and environmental factors, known as functional behavioral  
2.17 assessment and analysis. Applied behavior analysis interventions are based on scientific  
2.18 research and direct and indirect observation and measurement of behavior and environment,  
2.19 and utilize contextual factors, motivating operations, antecedent stimuli, positive  
2.20 reinforcement, and other procedures to help individuals develop new behaviors, increase  
2.21 or decrease existing behaviors, and emit behaviors under specific social, instructional, and  
2.22 environmental conditions.

2.23 (b) The practice of applied behavior analysis does not include the diagnosis of psychiatric  
2.24 or mental health disorders, psychological testing, neuropsychology, psychotherapy, cognitive  
2.25 therapy, sex therapy, hypnotherapy, psychoanalysis, or psychological counseling.

2.26 **Sec. 2. [148.9982] DUTIES OF THE BOARD.**

2.27 Subdivision 1. **General.** The board, in consultation with the advisory council, must:

2.28 (1) adopt and enforce standards for licensure, licensure renewal, and the regulation of  
2.29 behavior analysts and assistant behavior analysts;

2.30 (2) issue licenses to qualified individuals under sections 148.9981 to 148.9995;

2.31 (3) carry out disciplinary actions against licensed behavior analysts and assistant behavior  
2.32 analysts;

3.1 (4) educate the public about the existence and content of the regulations for behavior  
 3.2 analyst licensing to enable consumers to file complaints against licensees who may have  
 3.3 violated statutes or rules the board is empowered to enforce; and

3.4 (5) collect license fees for behavior analysts and assistant behavior analysts as specified  
 3.5 under section 148.9995.

3.6 Subd. 2. **Rulemaking.** (a) The board, in consultation with the advisory council, may  
 3.7 adopt rules necessary to carry out the provisions of sections 148.9981 to 148.9995.

3.8 (b) The board, in consultation with the advisory council, may adopt rules related to the  
 3.9 supervision requirements for licensed assistant behavior analysts.

3.10 **Sec. 3. [148.9983] REQUIREMENTS FOR LICENSURE.**

3.11 Subdivision 1. **General.** An individual seeking licensure as a behavior analyst or an  
 3.12 assistant behavior analyst must complete and submit a written application on forms provided  
 3.13 by the board together with the appropriate fee as specified under section 148.9995.

3.14 Subd. 2. **Requirements for licensure.** (a) An applicant for licensure as a behavior analyst  
 3.15 must submit evidence satisfactory to the board that the applicant:

3.16 (1) has a current and active national certification as a board-certified behavior analyst  
 3.17 issued by the certifying entity; or

3.18 (2) has completed the equivalent requirements for certification by the certifying entity,  
 3.19 including satisfactorily passing a psychometrically valid examination administered by a  
 3.20 nationally accredited credentialing organization.

3.21 (b) An applicant for licensure as an assistant behavior analyst must submit evidence  
 3.22 satisfactory to the board that the applicant:

3.23 (1) has a current and active national certification as an assistant behavior analyst issued  
 3.24 by the certifying entity; or

3.25 (2) has completed the equivalent requirements for certification by the certifying entity,  
 3.26 including satisfactorily passing a psychometrically valid examination administered by a  
 3.27 nationally accredited credentialing organization.

3.28 Subd. 3. **Background investigation.** (a) The applicant must sign a release authorizing  
 3.29 the board to obtain information from the Bureau of Criminal Apprehension, the Department  
 3.30 of Human Services, the Office of Health Facilities Complaints, and other agencies specified  
 3.31 by the board. After the board has given written notice to an individual who is the subject  
 3.32 of a background investigation, the agencies must provide the board criminal conviction

4.1 data, reports about substantiated maltreatment of minors and vulnerable adults, and other  
4.2 information to assist the board with the investigation. The board may contract with the  
4.3 commissioner of human services to obtain criminal history data from the Bureau of Criminal  
4.4 Apprehension.

4.5 (b) Information obtained under this subdivision is private data on individuals as defined  
4.6 in section 13.02, subdivision 12.

4.7 **Sec. 4. [148.9984] LICENSE RENEWAL REQUIREMENTS.**

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

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

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

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

4.18 (2) the license renewal fee as specified under section 148.9995; and

4.19 (3) evidence satisfactory to the board that the licensee holds a current and active national  
4.20 certification as a behavior analyst or assistant behavior analyst from the certifying entity or  
4.21 otherwise meets renewal requirements as established by the board, in consultation with the  
4.22 advisory council.

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

4.28 Subd. 4. **Pending renewal.** If a licensee's application for license renewal is postmarked  
4.29 or received by the board by the end of the business day on the expiration date of the license  
4.30 or the following business day if the expiration date falls on a Saturday, Sunday, or holiday,  
4.31 the licensee may continue to practice after the expiration date while the application for  
4.32 license renewal is pending with the board.

5.1 Subd. 5. **Late renewal fee.** If the application for license renewal is postmarked or  
5.2 received after the expiration date of the license or the following business day if the expiration  
5.3 date falls on a Saturday, Sunday, or holiday, the licensee must pay a biennial renewal late  
5.4 fee as specified by section 148.9995, in addition to the renewal fee, before their application  
5.5 for license renewal will be considered by the board.

5.6 **Sec. 5. [148.9985] EXPIRED LICENSE.**

5.7 (a) Within 30 days after the renewal date, a licensee who has not renewed their license  
5.8 must be notified by letter, sent to the last known address of the licensee in the board's file,  
5.9 that the renewal is overdue and that failure to pay the current fee and current biennial renewal  
5.10 late fee within 60 days after the renewal date will result in termination of the license.

5.11 (b) The board must terminate the license of a licensee whose license renewal is at least  
5.12 60 days overdue and to whom notification has been sent as provided in paragraph (a). Failure  
5.13 of a licensee to receive notification is not grounds for later challenge of the termination.  
5.14 The former licensee must be notified of the termination by letter within seven days after  
5.15 board action, in the same manner as provided in paragraph (a).

5.16 (c) Notwithstanding paragraph (b), the board retains jurisdiction over a former licensee  
5.17 for complaints received after termination of a license regarding conduct that occurred during  
5.18 licensure.

5.19 **Sec. 6. [148.9986] PROHIBITED PRACTICE OR USE OF TITLES; PENALTY.**

5.20 Subdivision 1. **Practice.** Effective January 1, 2021, an individual must not engage in  
5.21 the practice of applied behavior analysis unless the individual is licensed under sections  
5.22 148.9981 to 148.9995 as a behavior analyst or assistant behavior analyst, or is exempt under  
5.23 section 148.9987. A psychologist licensed under sections 148.88 to 148.98 who practices  
5.24 behavior analysis is not required to obtain a license as a behavior analyst under sections  
5.25 148.9981 to 148.9995.

5.26 Subd. 2. **Use of titles.** (a) An individual must not use a title incorporating the words  
5.27 "licensed behavior analyst," "behavior analyst," "licensed assistant behavior analyst," or  
5.28 "assistant behavior analyst," or use any other title or description stating or implying that  
5.29 they are licensed or otherwise qualified to practice applied behavior analysis, unless that  
5.30 person holds a valid license under sections 148.9981 to 148.9995.

5.31 (b) Notwithstanding paragraph (a), a licensed psychologist who practices applied behavior  
5.32 analysis within the psychologist's scope of practice may use the title "behavior analyst," but

6.1 must not use the title "licensed behavior analyst" unless the licensed psychologist holds a  
6.2 valid license as a behavior analyst issued under sections 148.9981 to 148.9995.

6.3 Subd. 3. **Penalty.** An individual who violates this section is guilty of a misdemeanor.

6.4 **Sec. 7. [148.9987] EXCEPTIONS TO LICENSE REQUIREMENT.**

6.5 (a) Sections 148.9981 to 148.9995 must not be construed to prohibit or restrict:

6.6 (1) the practice of an individual who is licensed to practice psychology in the state or  
6.7 an individual who is providing psychological services under the supervision of a licensed  
6.8 psychologist in accordance with section 148.925;

6.9 (2) the practice of any other profession or occupation licensed, certified, or registered  
6.10 by the state by an individual duly licensed, certified, or registered to practice the profession  
6.11 or occupation or to perform any act that falls within the scope of practice of the profession  
6.12 or occupation;

6.13 (3) an individual who is employed by a school district from providing behavior analysis  
6.14 services as part of the individual's employment with the school district, so long as the  
6.15 individual does not provide behavior analysis services to any person or entity other than as  
6.16 an employee of the school district or accept remuneration for the provision of behavior  
6.17 analysis services outside of the individual's employment with the school district;

6.18 (4) an employee of a program licensed under chapter 245D from providing the services  
6.19 described in section 245D.091, subdivision 1;

6.20 (5) teaching behavior analysis or conducting behavior analysis research provided that  
6.21 the teaching or research does not involve the direct delivery of behavior analysis services;

6.22 (6) providing behavior analysis services by an unlicensed supervisee or trainee under  
6.23 the authority and direction of a licensed behavior analyst or licensed assistant behavior  
6.24 analyst and in compliance with the licensure and supervision standards required by statute  
6.25 or rule;

6.26 (7) a family member or guardian of the recipient of behavior analysis services who is  
6.27 performing certain behavior analysis services under the authority and direction of a licensed  
6.28 behavior analyst or a licensed assistant behavior analyst; or

6.29 (8) students or interns enrolled in an accredited school or educational program, or  
6.30 participating in a behavior analysis practicum, from engaging in the practice of applied  
6.31 behavior analysis while supervised by a licensed behavior analyst, licensed assistant behavior

7.1 analyst, or instructor of an accredited school or educational program. These individuals  
7.2 must be designated as a behavior analyst student or intern.

7.3 (b) Notwithstanding paragraph (a), a licensed psychologist may supervise an unlicensed  
7.4 supervisee, trainee, student, or intern who is engaged in the practice of behavior analysis if  
7.5 the supervision is authorized under the Minnesota Psychology Practice Act.

7.6 **Sec. 8. [148.9988] NONTRANSFERABILITY OF LICENSES.**

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

7.8 **Sec. 9. [148.9989] DUTY TO MAINTAIN CURRENT INFORMATION.**

7.9 All licensees and applicants for licensure must notify the board within 30 days of the  
7.10 occurrence of any of the following:

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

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

7.14 **Sec. 10. [148.999] DISCIPLINE; REPORTING.**

7.15 For purposes of sections 148.9981 to 148.9995, behavior analysts and assistant behavior  
7.16 analysts are subject to the provisions of sections 148.941, 148.952 to 148.965, and 148.98.

7.17 **Sec. 11. [148.9991] COMPETENT PROVISION OF SERVICES.**

7.18 Subdivision 1. **Limits on practice.** Behavior analysts must limit practice to the client  
7.19 populations and services for which the behavior analysts have competence or for which the  
7.20 behavior analysts are developing competence.

7.21 Subd. 2. **Developing competence.** When a behavior analyst is developing competence  
7.22 in a service, method, or procedure, or is developing competence to treat a specific client  
7.23 population, the behavior analyst must obtain professional education, training, continuing  
7.24 education, consultation, supervision or experience, or a combination thereof, necessary to  
7.25 demonstrate competence.

7.26 Subd. 3. **Limitations.** A behavior analyst must recognize the limitations to the scope of  
7.27 practice of applied behavior analysis. When the needs of a client appear to be outside the  
7.28 behavior analyst's scope of practice, the behavior analyst must inform the client that there  
7.29 may be other professional, technical, community, and administrative resources available to

8.1 the client. A behavior analyst must assist with identifying resources when it is in the best  
8.2 interest of a client to be provided with alternative or complementary services.

8.3 Subd. 4. **Burden of proof.** Whenever a complaint is submitted to the board involving  
8.4 a violation of this section, the burden of proof is on the behavior analyst to demonstrate that  
8.5 the elements of competence have been reasonably met.

8.6 Sec. 12. **[148.9992] DUTY TO WARN; LIMITATION ON LIABILITY; VIOLENT**  
8.7 **BEHAVIOR OF PATIENT.**

8.8 Subdivision 1. **Definitions.** (a) For the purposes of this section, the terms in this  
8.9 subdivision have the meanings given.

8.10 (b) "Other person" means an immediate family member or someone who personally  
8.11 knows the client and has reason to believe the client is capable of and will carry out a serious,  
8.12 specific threat of harm to a specific, clearly identified or identifiable victim.

8.13 (c) "Reasonable efforts" means communicating a serious, specific threat to the potential  
8.14 victim and, if unable to make contact with the potential victim, communicating the serious,  
8.15 specific threat to the law enforcement agency closest to the potential victim or the client.

8.16 (d) "Licensee" includes behavior analysis students, interns, and unlicensed supervisees  
8.17 who are participating in a behavior analysis practicum or enrolled in an accredited school  
8.18 or educational program.

8.19 Subd. 2. **Duty to warn.** The duty to predict, warn of, or take reasonable precautions to  
8.20 provide protection from violent behavior arises only when a client or other person has  
8.21 communicated to the licensee a specific, serious threat of physical violence against a specific,  
8.22 clearly identified or identifiable potential victim. If a duty to warn arises, the duty is  
8.23 discharged by the licensee if reasonable efforts are made to communicate the threat.

8.24 Subd. 3. **Liability standard.** If no duty to warn exists under subdivision 2, then no  
8.25 monetary liability and no cause of action may arise against a licensee for failure to predict,  
8.26 warn of, or take reasonable precautions to provide protection from a client's violent behavior.

8.27 Subd. 4. **Disclosure of confidences.** Good faith compliance with the duty to warn must  
8.28 not constitute a breach of confidence and must not result in monetary liability or a cause of  
8.29 action against the licensee.

8.30 Subd. 5. **Continuity of care.** Subdivision 2 must not be construed to authorize a licensee  
8.31 to terminate treatment of a client as a direct result of a client's violent behavior or threat of

9.1 physical violence unless the client is referred to another practitioner or appropriate health  
 9.2 care facility.

9.3 Subd. 6. **Exception.** This section does not apply to a threat to commit suicide or other  
 9.4 threats by a client to harm the client, or to a threat by a client who is adjudicated mentally  
 9.5 ill and dangerous under chapter 253B.

9.6 Subd. 7. **Optional disclosure.** This section must not be construed to prohibit a licensee  
 9.7 from disclosing confidences to third parties in a good faith effort to warn or take precautions  
 9.8 against a client's violent behavior or threat to commit suicide for which a duty to warn does  
 9.9 not arise.

9.10 Subd. 8. **Limitation on liability.** No monetary liability and no cause of action or  
 9.11 disciplinary action by the board may arise against a licensee for disclosure of confidences  
 9.12 to third parties, for failure to disclose confidences to third parties, or for erroneous disclosure  
 9.13 of confidences to third parties in a good faith effort to warn against or take precautions  
 9.14 against a client's violent behavior or threat of suicide for which a duty to warn does not  
 9.15 arise.

9.16 Sec. 13. [148.9993] INFORMED CONSENT.

9.17 Subdivision 1. **Obtaining informed consent for services.** A behavior analyst must  
 9.18 obtain informed consent from the client or the client's legal guardian before initiating  
 9.19 services. The informed consent must be in writing, signed by the client, and include, at a  
 9.20 minimum, the following:

9.21 (1) consent for the behavior analyst to engage in activities that directly affect the client;

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

9.23 (3) the factors that may impact the duration of the proposed services;

9.24 (4) the applicable fee schedule for the proposed services;

9.25 (5) the significant risks and benefits of the proposed services;

9.26 (6) the behavior analyst's limits under section 148.9991, including, if applicable,  
 9.27 information that the behavior analyst is developing competence in the proposed service,  
 9.28 method, or procedure, and alternatives to the proposed service, if any; and

9.29 (7) the behavior analyst's responsibilities if the client terminates the service.

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

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

10.7 **Sec. 14. [148.9994] BEHAVIOR ANALYST ADVISORY COUNCIL.**

10.8 Subdivision 1. **Membership.** The Behavior Analyst Advisory Council is created and  
10.9 composed of seven members appointed by the board. The advisory council consists of:

10.10 (1) one public member as defined in section 214.02;

10.11 (2) three members who are licensed behavior analysts;

10.12 (3) two members who are licensed assistant behavior analysts; and

10.13 (4) one member who is a licensed psychologist and, to the extent practicable, who  
10.14 practices applied behavior analysis.

10.15 Subd. 2. **Administration.** The advisory council is established and administered under  
10.16 section 15.059, except that the advisory council does not expire.

10.17 Subd. 3. **Duties.** The advisory council must:

10.18 (1) advise the board regarding standards for behavior analysts and assistant behavior  
10.19 analysts;

10.20 (2) assist with the distribution of information regarding behavior analyst standards;

10.21 (3) advise the board on enforcement of sections 148.9981 to 148.9995;

10.22 (4) review license applications and license renewal applications and make  
10.23 recommendations to the board;

10.24 (5) review complaints and complaint investigation reports and make recommendations  
10.25 to the board on whether disciplinary action should be taken and, if applicable, what type;

10.26 (6) advise the board regarding evaluation and treatment protocols; and

10.27 (7) perform other duties authorized for advisory councils under chapter 214 as directed  
10.28 by the board to ensure effective oversight of behavior analysts and assistant behavior analysts.

11.1 Sec. 15. **[148.9995] FEES.**

11.2 Subdivision 1. Fees. All applicants and licensees must pay fees as follows:

11.3 (1) application fee, \$.....;

11.4 (2) license renewal fee, \$.....;

11.5 (3) inactive license renewal fee, \$.....;

11.6 (4) biennial renewal late fee, \$.....;

11.7 (5) inactive license renewal late fee, \$.....; and

11.8 (6) supervisor application processing fee, \$.....

11.9 Subd. 2. Nonrefundable fees. All fees in this section are nonrefundable.

11.10 Subd. 3. Deposit of fees. Fees collected by the board under this section must be deposited  
 11.11 in the state government special revenue fund.

11.12 Sec. 16. **INITIAL APPLIED BEHAVIOR ANALYST ADVISORY COUNCIL.**

11.13 The Board of Psychology must make the first appointments to the Behavior Analyst  
 11.14 Advisory Council authorized under Minnesota Statutes, section 148.9994, by September 1,  
 11.15 2020. The initial behavior analysts and assistant behavior analysts appointed to the advisory  
 11.16 council need not be licensed under Minnesota Statutes, sections 148.9981 to 148.9995, but  
 11.17 must hold a current and active national certification as a board-certified behavior analyst  
 11.18 or a board-certified assistant behavior analyst issued by the Behavior Analyst Certification  
 11.19 Board. The chair of the Board of Psychology must convene the first meeting of the council  
 11.20 by September 1, 2020, and must convene subsequent meetings of the council until an  
 11.21 advisory chair is elected. The council must elect a chair from its members by the third  
 11.22 meeting of the council.

11.23 Sec. 17. **APPROPRIATION.**

11.24 \$..... in fiscal year 2020 is appropriated from the state government special revenue fund  
 11.25 to the Board of Psychology to implement Minnesota Statutes, sections 148.9981 to 148.9995.

11.26 Sec. 18. **EFFECTIVE DATE.**

11.27 Sections 1 to 17 are effective July 1, 2020.