

2019 SENATE HUMAN SERVICES

SB 2236

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB 2236
1/23/2019
Job # 31297

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Florence Mayer for Justin Velez
--

Explanation or reason for introduction of bill/resolution:

A BILL for an Act to create and enact chapter 43-64 of the North Dakota Century Code, relating to the licensure and regulation of behavior analyst professionals; to amend and reenact sections 43-32-01, 43-32-02, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, 43-32-14, 43-32-16, 43-32-17, 43-32-19.1, 43-32-20, 43-32-27, 43-32-27.1, 43-32-30, 43-57-01, 43-57-03, and 43-57-06, subsection 2 of section 43-57-07, and section 43-57-11, relating to the regulation of applied behavioral analysts of psychologist examiners and to the board of integrative health care; to provide a penalty; and to provide an effective date.

Minutes:

Attachments # 1 - 3

Vice Chairman O. Larsen: Opens the hearing on SB 2236.

Senator Judy Lee, District 13, West Fargo: Introduced SB 2236 and gave a brief description.

Senator Anderson: The previous bill we heard had provisions about provisional licenses and so forth, that isn't included in this bill is it? (SB 2286).

Chair Lee: I was unaware of that. It was not a part of the original discussion. We wanted to shorten the amount of time it takes for licensure.

(07:15) Sandy Smith, Co-Founder, President, and Executive Director of the North Dakota Autism Center, Inc.: Testified in favor of SB 2236. Please see Attachment #1 for testimony.

Chair Lee: I'm curious about the practicing with non-humans, is that's something that's really important in the model legislation?

(18:08) Sandy Smith: These amendments were put together after the ND Autism Spectrum Disorder Coalition meeting. (Inaudible) We just put all of them in there.

Chair Lee: Senator Larsen just mentioned people who are doing a therapy thing. But my understand is we're talking about modifying the behavior of non-humans. Modifying the behavior of humans with animal therapy, horses, dogs, whatever.

Senator Lee: We don't want to be out of compliance with model legislation. But we need to know how other states are doing this. Have Gina send us something.

Sandy Smith: Autism Speaks in the past has been keepers of this model legislation. It was handed off to The Association of Professional Behavior Analyst, which is a good thing.

Senator Lee: Difference between a board regulating a profession and an association which advocates for them.

Sandy Smith: Autism Speaks has signed on as a supporter of this model licensure act. Continued with descriptions of recommended amendments, Attachment 1, page 25.

Chair Lee: The certification would be consistent with that of nurses. Gave example of different levels of nurses' certification.

Sandy Smith: Continued with recommended amendments.

(32:10) Lorena Poppe, Owner and Executive Director of Poppy's Promise: Testified in favor of SB 2236. Please see Attachment #2 for testimony.

Holly Johnson, Licensed Board Certified Behavior Analyst and Executive Board President for the North Dakota Association for Behavior Analysis (NDABA). Written testimony provided by Lorena Poppe. Please see **Attachment #3** for testimony.

Chair Lee: Asked for further testimony for, against, or neutral.
Closed the hearing on SB 2236.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB2236
1/31/2019
Job # 31796

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

A Bill relating to the licensure and regulation of behavior analyst professionals; relating to the regulation of applied behavioral analysts of psychologist examiners and to the board of integrative health care; to provide a penalty; and to provide an effective date.

Minutes:

No Attachment

Vice Chair Larsen opened the Human Services Committee for discussion on SB2236. I think there were some amendments on that.

Senator Anderson: I did pass out some testimony from Dr. Kolsteau who is Chair of the Board that regulates the Applied Behavioral Therapists now, and you can kind of look at that in your own spare time, but basically he says they are trying to fix the problems that they had with the licensure and the delay and their making gradual progress toward that. His opinion is they could stay with the Psychology Board where it is now and wouldn't have to move. I really didn't hear clearly from the Applied Behavioral Therapists about why they were seeing problems and why they wanted to move. Maybe some of the rest of you did, I don't know.

Senator Hogan: I know as a boarder community, a number of agencies ABA Certified in Minnesota, have waited years to get through the state board of psychology and through the current process and they are just so frustrated and because there is such a shortage of this group that people just literally give up trying to get licensed. Many of them who clearly, I mean some of the time lines on these have been outrageous. Because you know in the old days, insurance didn't cover it, but now that insurance is covering it we have numbers of kids in schools often they will want an ABA to work with the teacher and the family. Literally there is good skilled people in Moorhead and they can't come into West Fargo because of this barrier. So, I know that Dr. Kolstoe believes that he is timely, it's just not the experience of people that I've heard from at least in my community. I think Senator Lee, has heard these stories over and over again.

Vice-Chair Larsen: Does anybody know if the ABA certification and ABA therapy is mostly falling. Are the people that are getting certified are they mostly the school psychologists or are they a sprinkling of the other counselors that are in the Human Services umbrella? Do we know that?

Senator Hogan: I know the schools are probably one of the major areas. Day care providers are using them, residential treatment programs often have them, DD providers have them. In most states we have a much stronger group of professionals but because the licensing has been so, people have even stopped trying to get licensed or trying to go into the field. This has been an issue that's been on the interim agenda for a while. Then when the insurance commissioner decided to with mental health parity, we have to fund it. That was like okay now is the time maybe, that is kind of where these bills came from.

Vice-Chair Larsen: There is only one provider at Riverside in Minot, where my wife works that does ABA therapy. But my sister-in-law in Wyoming, just got certified with that through the schools and she is a school psychologist. That's why I was wondering why where that goes. So is the amendment then, completed and we haven't moved on that. I don't have a copy.

Senator Hogan: We have a proposed amendment, that was submitted don't we? It looks like this, and we might need to get this drafted into the right amendment.

Vice-Chair Larsen: I don't have a draft piece of that. Was that put together? Did Alex put that together? It was SB22236, those amendments that were proposed by. **Alex:** replied I did not put those together. **Vice-Chair Larsen:** Was it Holly? It came from LC. Andie Smith and she brought that.

Senator Roers: I have to admit the whole time she was quoting this one person, Gina Green, and I am wondering is there only one person who is like the knowledge holder in this space.

Vice-Chair Larsen: She brought the bill. I got a copy of the bill, and then on the back page were the amendments and I've got those amendments to the bill.

Senator Roers: Then she had like recommendations as well.

Senator Hogan: We're trying to figure out the 2236 amendments suggestions from the national group.

Madam Chair Lee: The model legislation was what the basic funds for this and we may want to have a little time to look at what those all are. But the idea was of course that we would be in sync then with the other states which are adopting it. I believe that I forwarded it to all of you the information about the number of states that now are building their state legislation around that model legislation. I believe it was something like 20, but I can't recall exactly. I have it in my computer file. The idea being that it would be a lot better for reciprocity and the ability to get more ADA's into the state if we're making sure that what we have in place is going to be in parallel with what is the licensing in the state where they maybe currently residing. So, that was the reason for this whole thought here. Hopefully because it was Jennifer Clark was the one who worked with me on this one. We were trying to put that in place as much as possible.

Vice-Chair Larsen: What we were just looking at is that this document that was referencing this Gina Green and it has Chapter 43-57 Integrated Health Care, where it talks about the Board qualifications and powers and duties and then amendments to the Senate bill of 2236,

the front and back page. Then I don't know if Alex had moved where that would integrate this page here into the bill of where that looked. I don't see that at all yet either.

Alex: I don't remember being asked to doing that previously so I hadn't.

Madam Chair Lee: I am sure you would've done it if we had asked you too. **Alex:** Well I am happy to do that.

Senator Hogan: I think that Senator Roers this is a big deal. You're right. This is a huge deal because it's a major change and it's come after maybe four to six years of frustration from the ABA people. That was the Behavioral, it's come? (10:05)

Senator Roers: I am not doubting the need for a lot of this work. I worry that this is a lot of words. Are we in, I sit on GVA, and then I sit on this and in both of them we are having all these conversations about Occupational Licensing Boards and what role they play in barriers to entry into practice. I know that the intent of this is to actually remove barriers by moving them to a different board that can be a little more responsive to their needs. However, I just want to make sure that whatever the words are that we place in that section now don't just create a different barrier. So I think being able to see it all at once in one nice big picture will be very helpful for us to be like okay, Yes, this makes sense but maybe we don't need this or perhaps we don't need to be that specific or something. But I think right now I can't see it.

Madam Chair Lee: I don't have no problem with that at all. I would like to that as well. Part of the issue is we talked about earlier on is that the Board of Psychology Examiners, Psychologists Examiners did not want the ABA's and the ABA's didn't really want to be there. It has not worked well. There have been tremendous delays in trying to get licensing and I have a message up at my desk.

Senator Roers: Do we know that the Integrative Health want it?

Madam Chair Lee: Oh that is an orphan group anyway. Acupuncturists. That is intended to be for these professions that don't have enough individual of their own and when they get to 100 then they can have their own board. So it is the same with some others. I think the Nuclear Rad Techs we did last time, are in Integrated Health Board. So it allows them to be they are not running each other, but some administrative stuff ends up being run through this Integrative Health Board. But if you haven't gotten messages from Dr. Kolstoe, whose is on the Psychology Board, I have and what I should've done was print them out and bring them down. We got them. He is on the board and we need to be concerned what he has to say but as is true of all boards, memberships changes over a period of time and so we need to recognize what's good for the professions, both of them, in moving that whole thing forward. When would you be able to have that little-markup done? **Alex:** By the time you're off the floor by 3PM. So I could have it done today. That would be great. I was hoping it might be possible but I didn't want to push you to hard.

Madam Chair Lee: If we could have it after the floor session, that would be really good. Which would allow us then to really look at both bills together and see one or the other or both, how we work this. We need to consider them at the same time.

Alex: What I can do is make all of the changes and highlight the changes in a word document.

Madam Chair Lee: We will be happy with it. Is there anything you wanted to talk to us about this morning? We're happy to have you come visit. Let's side aside the ABA stuff until after floor session because she'll have that ready and then why don't you begin some chat about the Medicaid fraud units and we'll see if there's information that we need to further that discussion and I will be right back.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB2236
2/12/2019
Job # 32605

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Justin Velez/ Mary Jo Wocken

Explanation or reason for introduction of bill/resolution:

A Bill relating to the licensure and regulation of behavior analyst professionals; relating to the regulation of applied behavioral analysts of psychologist examiners and to the board of integrative health care; to provide a penalty; and to provide an effective date.

Minutes:

No Attachments

Madam Chair Lee opened the Senate Human Services Committee for discussion on SB2236.

(00:00- 5:21 no record of voices on tape)

Senator Hogan: How common is it to have in boards to establish exemptions from regulation, that is an interesting line that I don't know that I've seen before.

Senator Anderson: I think more commonly what you would see would be to establish variances, it doesn't make any sense to make regulations and then the board also establishes the exemptions from the regulations that they made. But sometimes you do see that they can grant variances for specific things. We didn't do that a lot in our board but it could be done. So, I don't think this really is appropriate language because why would the board establish exemptions from the regulations that they make. So we need to straighten that out.

Senator Hogan: So you're suggesting the strike-out makes sense?

Senator Anderson: yes.

Senator Hogan: Let's just it through while we are going through them.

Madam Chair Lee: next would be, Section 22. While in here as we've noted, instead of them being in the Board of Psychologists Examiners, that they are going to be moved to the State Board of Integrative Health Care. As you see on Line 11, certifying entity means the behavior analyst certification board or another entity whose programs to credential practitioners of applied behavior analysis are accredited by these national certifying agencies. So that would be new language that permits more than one credentialing entity.

Senator Hogan: So I am going to try and understand this now. So the Board would license but everybody would have to be certified by this national board, so it's an external standard.

Madam Chair Lee: That would be my expectation.

Senator Hogan: So as long as were clear about that is what we are doing then.

Madam Chair Lee: You may recall that there is now model legislation which Ms. Grossman up in Legislative Council used as the basis for some of these changes, so that ours would be in parallel with the laws in several other states and that would make it easier for someone to come from another state here and get a license. So the categories of certification are in parallel. So then there is the phrase, that's added to the license assistant behavior analyst for whom on 17 and 18 but it is proved by the certifying entity to supervise assist behavior analyst.

Senator Anderson: When I was recently in CSL in Florida, some of the proponents there said was all we needed was to say that they needed to be a certified by a national certifying body and then we didn't need to license it. So here you are saying both.

Madam Chair Lee: Okay, so what do you think?

Senator Anderson: I think the licensure kind of meets the standard that we have in North Dakota. We haven't been just willing to throw it off to a national certifying agency, so maybe we're doing both.

Madam Chair Lee: Well it seems to me, unless I am misunderstanding here that they would have to have the certification in order to be licensed. I think that's the deal. Then moving down into #5, the practice.

Senator Hogan: I like this because it's really specific about what the practice is and that sometimes has been confusing with behavior analysts.

Madam Chair Lee: Some also wanted to exclude diagnosis of disorders psychological testing, psycho- therapy, cognitive therapy, psycho- analysis and counseling. And so that is the one definition there with licensed behavior analyst and then we get to behavior technicians which is #6 on page 17, if you have it in paper, with a paraprofessional who practices under close ongoing supervision of a licensed behavioral analyst or a assistant behavior analyst. It does not design an assessment or intervention plans or procedures but delivers services as assigned. So, Rosalie one of the things that we dealt with when we first had the legislation about behavior analyst, was the individuals who are working for the Department of Human Services who are not doing the same kind of work as the folks who are working in the Autism Center for example. We don't want them to be prevented from doing what they have been doing for years. We want to make sure that this does not interfere with that, so if we call them behavior technicians, are we okay or do we have any barriers to those people who are working like at the Life Skills in Transition Center?

(11:00) **Dr. Rosalie Etherington:** I am hoping this might not sound like a really stupid question. Considering that there are a set of technicians that were currently under a group of

professionals that are already licensed elsewhere, would this creation in law, prevent us as other professionals from supervising their work that is not licensed? So what purpose would this serve when it's not called out than its not relevant here, and the work of those groups that still work under a different professional can continue because there is no other rule that would prevent it. That makes sense. So under HOMS at the moment there is a classification for Behavior Modification Specialist, for example, and that is a group of professionals that I and other psychologists to provide within the Department of Human Services for the purpose under supervision of others to provide certain care. Right now there is no board that governs their work, and there is no license that would give them a reason to exist so to speak. Yet, we do have a classification system what would say what degrees are necessary and what training.

Madam Chair Lee: That was what we were trying to make sure we didn't mess up last time. I don't want to mess it up this time either. So you think that and maybe we should as Jonathan Alm what his opinion might be about this because I don't think it is a terrible thing have them identified as people who are providing services in a positive way, but I don't want it to restrict the supervision of them by people licensed in another area.

Senator Roers: I worry about that Madam Chair, of being unsupervised.

Dr. Rosalie Etherington: In relation to the certification so we require already the National Certification for ABA, and so I do ask a question about why is licensing even necessary because they already have that certification. If they come into the state immediately they could practice under that certification without a license if the purpose of a licensing board just to gather the group of individuals.

Madam Chair Lee: Or to charge them an annual renewal fee. **Senator Roers:** That's what I was thinking.

Dr. Rosalie Etherington: May I further state that so under Medicaid for example, and potentially other third party payers, we've already identified it not as a licensed professional but as a nationally certified ABA, that is a requirement to actually bill for services and put out your shingle.

Senator Anderson: You're a psychologist, and apparently licensed under the Board of Psychologist Examiners. What do you think about his moving them or your used to license them under the board? So what was the reason for that is there is no reason to have them licensed now? Of course it seems to me we had people in here clamoring to get them licensed previously, explain that to us, if you can?

Dr. Rosalie Etherington: So, for the sake of sounding like I am not supporting my board, I do believe that the initial request for them to come under the Board of Psychologist Examiners was to identify them as a profession and bring legitimacy to their practice within the state because they were often not recognized for the skills and the work that they did. The Board was misguided in the requirements that they set under the Board of Psychologist Examiners because in many ways it set them out as somehow having to meet the same criteria that we as psychologists did, which was because they are not psychologists. They are Certified Behavioral Analysts. They already have an identified set of criteria necessary

to meet that certification. So simply if it had been brought under the Board of Psychologist Examiners which in many ways Behavior Analysts belong with us as behaviorists-that's the origin of psychology. I am a Behaviorist that somehow if it would have been brought under but just with the requirement for the certification and then it would have unified the board, it would have made a lot more sense. It would have been simple.

Madam Chair Lee: It didn't seem to be a happy marriage between the ABA's and the psychologist so it seems to me that this would be a cheerful divorce.

Dr. Rosalie Etherington: Agreed unfortunately. **Madam Chair Lee:** I mean analogies. The Integrated Health Board who seems like the only logical place to go, because we want them to have professional recognition. The only thing I am wondering is was the licensing having something to do with their reimbursement under insurance carriers. It's not that at all.

Dr. Rosalie Etherington: No, because currently for example under Medicaid they are not identified as licensed behavior analysts, they are identified as certified ABA. Correct? Board Certified Behavior Analysts.

Senator Hogan: Do you think we should take number 6 out and just not reference behavioral technicians in this, is that what I am hearing you say?

Dr. Rosalie Etherington: So committee, with all due respect I believe that it's not only unnecessary but it would hinder it, it would create problems. I would also go further to state that certified behavior analysts within their scope serve good purpose, but not necessarily in the supervision of others in trying to bring forward a set of paraprofessionals.

Senator Hogan: But looking at their national standards, this appears to be, and I thinking particularly in school based services now. I know schools are moving to using behavior analysts a lot in having technicians in the school based setting and so, this I don't want to risk it in other settings, if this would be a helpful tool in some settings?

Dr. Rosalie Etherington: That provision in capacity already exists under Special Education in schools. So they already have capacity to hire special education technicians for the purpose of working under another set of professionals to provide service and often one to one assistance for students that are in special education.

Senator Hogan: So perhaps we should take 6 out? **Dr. Rosalie Etherington:** In my opinion yes. Example cited (18:28)

Madam Chair Lee: We also know that the schools who are looking to hire professionals need to be encouraged to contract for those services and not hire them directly. It is just a way better way to do it. So do we have any issues with that, if Senator Larson is running ABC services and it includes professionals that include that you're the superintendent of the school and that you need for your student, is there anything that this general bill and concept of licensing would do to make that more difficult so that you could hire Senator Larson's business to contract with them to provide whatever kinds of professional services that might be able to offer that the school needs.

Dr. Rosalie Etherington: In my opinion, if number 6 remained, then it would require the school when employing those technicians to also employ a certified ABA and they couldn't use potentially other professionals that might be in that region that could provide equivalent supervision within the schools. So for example, in Dickinson, there are no current certified ABA's in Dickinson, but they do have several private psychologists that do also treat children. So if they hire Dr. Fair for example and his group, and they went into the schools they could not in fact, supervise those technicians and provide ongoing support if this was in place. If that's what they would call them.

Madam Chair Lee: Did you have any other reservations? I realize we're all getting our memories refreshed at the last minute here, but, any other reservations about the highlighted items that we have now seen. We've gone through them all. Do you have any strong feelings about certifying versus licensing or both?

Dr. Rosalie Etherington: It does in my opinion so the section right above 6, and I am presuming that is 5, identifies what is the practice of applied behavioral analysis is. I cannot see from any of that, that it would exclude me as a psychologist and a behaviorist to be able to do within in my scope of practice, behavior analysis because I am trained to do so. So, I don't believe so. I just want to make sure that you guys are aware that the practice of psychology in of itself, is behavioral analysis. It is the very crux of it.

Madam Chair Lee: I think we get that, and the problem is it is just professionally for that group has not tried under the current program.

Dr. Rosalie Etherington: It is just important to know that we have a program within the state at NDSU where we have a group of so in their Psychology department they actually train up a lot of individuals either at the VA level and at the Master's level, in Behavioral Analysis.

Madam Chair Lee: Do we not have one at the UND Psychology Department also?

Dr. Rosalie Etherington: I am not sure.

Madam Chair Lee: I thought that the women who ran that talked to me one day.

Krista Flemming (22:20) from the Medical Services Division: I believe that at UND, it is within the School of Education instead of psychology. There is a program at UND.

Madam Chair Lee: I thought they had the program.

Dr. Rosalie Etherington: Probably in their Master's Program for Special Education, I wonder. **Madam Chair Lee:** That could be it.

Senator Anderson: I think we ought to keep in mind that maybe we ought to pare this whole thing down and whether we leave them with the psychologists and just say they have to be certified behavioral analysis to be licensed in North Dakota or whether you create a new board and make it as simple as Dr. Hanson did, appoint. I think we ought to seriously consider that at this point.

Madam Chair Lee: Seriously consider moving it. **Senator Anderson:** Let the ABA's tell us why that won't work? **Madam Chair Lee:** They want it moved. **Senator Anderson:** I am

talking about you know they have just as many criteria for licensure in their board as they had in the previous board, it is just the different board is going to be governed.

Madam Chair Lee: You said it would be 17 months to get a license. It might be fewer. Well I do want to have a chance to visit with Dr. Lisa Faust (24:12) at Blue Cross also because she has been kind enough to do the grid that you all got that kind of compares things there.

Dr. Rosalie Etherington: To not that I have any obligation to stand up and in support of the board taking 17 months for licensure however, I think important for the committee to know that the board has been at half board membership for more than 6 months. I believe actually more than 9 months to no fault of their own. So I think that is just is an important thing to understand that there have been applicants that have been brought forward and they have not been vetted. Therefore, the board has been brought to their knees in their capacity to do their job in trying to just license and re-license.

Madam Chair Lee: So they are waiting for the appointment? **Dr. Rosalie Etherington:** Correct.

Madam Chair Lee: I do recall hearing that and I am glad you brought it up, because it was important. Would you like to have a little time to kind of digest this and then we could act on it tomorrow actually, but I do want Sandy to hear what our discussions are and I would Lisa Faust and Barb Stanton also who have been our advisors along the way with this whole thing. So I could forward the completed mock up to them and let them see what's going on, and let them know that we are thinking of deleting section 6 because of the subsection 6 because of the reasons described already.

Senator Hogan: The other thing while you were out, we talked a bit with Alex about trying to merge 2163 the second ABA bill, and is there section anything in 2163 that needs to be added to this or is it covered by the amendments that we're currently looking at?

Madam Chair Lee: The expedited license portion number? **Senator Hogan:** Yes, the expedited license portion. So I think that cross reference if we can Alex look at that, simultaneously, so that if we have one set of amendments it has both pieces in it.

Madam Chair Lee: Because the price of vaping this is the only little package that we have. I want to do it thoughtfully. So rather than ignoring the people that have been getting us some input much of which we have forgotten in our busyness in the last 5 weeks. Lori is this a testimonial as to why you ought to do it the first week. We just couldn't then. We didn't have money in it. But with that thought in mind, if we allow.

Senator Anderson: If you look at 2286 and I think we can look at the merge, but, that pretty much says that if they are certified they ought to be able to license in North Dakota. So, if we make this other bill to include the certification then we've solved both problems at the same time, it seems to me. We'll look at that.

Madam Chair Lee: That's what I want to ask the people who are really tuned in about that. I am not the expert. Any other questions that we'll want to have answered by a variety of people. Anyone comes to mind right now?

Senator Anderson: I hope that the doctor will look at this and tell us where other problems might exist because there is some other language in here at least in the amendments that talk about who can certify whom; who can supervise whom; so.

Madam Chair Lee: We don't end sentences in prepositions either. This is from Dr. Lisa Faust and she had done this comparison grid and that gives us a chance to include that in our little review. We're going to do the vaping one today and that will be it. We will recess until after session.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee Red River Room, State Capitol

SB 2236
2/13/2019
32660

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Justin Velez / Marne Johnson

Explanation or reason for introduction of bill/resolution:

A BILL relating to the licensure and regulation of behavior analyst professionals; relating to the regulation of applied behavioral analysts of psychologist examiners and to the board of integrative health care; to provide a penalty; and to provide an effective date.

Minutes:

No Attachments

Madam Chair Lee opens the discussion on SB 2236. Please call the roll. We will work off the original bill.

(1:00) **Jill Grossman, Legislative Council:** What we are talking about specifically is on page 16 of the bill, section 22. That creates a new chapter of the century code. (Chapter 43.64) There has been some communications regarding which new professions to license in this chapter, and when Sen. Lee gave me this to draft, she put me in contract with Dr. Fouse. Currently, ND has licensed assistant behavioral analysts and there is model legislation that I was working off of for this draft. The licensed behavioral analyst used to be called applied behavioral analysts. Dr. Fouse encouraged the model language terms, so when people go from state to state, they can understand who they are referring to. there were some questions about including a behavioral technician. Currently, there is a para-professional staff that is not licensed or registered under our law. The term isn't consistent, so she tried to get that be consistent. She called it a skills trainer. I believe that would be the model legislation's behavior technician. Currently, we don't do anything with those individuals, so not including them in this wouldn't have a significant impact. The mock up included language about a certifying entity. The person is supposed to be licensed. We really discourage doing that in our laws. We want a state actor to be involved. We want a board to approve a certifying entity.

(05:10) **Sen. Anderson:** Does that work by the board define that the certifying agency be done by administrative rules?

Jill: We kind of took care of that on page 17, subsection 1, division A. When we talk about the applicant applying for licensure we say that they need to have successful completion of education, examination, and experience requirements established by the board. It goes on to list. That is kind of a tip off to the board to what we are telling you.

Sen. Anderson: Sometimes more than one of those national certifying agencies comes forward. The board establishes those either by vote or by rule. I've heard the attorney general say it should be done by rule. (6.36)

Chair Lee: We could ask the AG's office if it should be rule or vote.

Jill: I would think that would give them enough leeway because it talks about the requirements established by the board. That gives them enough authority to look at other entities. If anyone asked me I would say we typically don't do the certifying entity. I think that is why it wasn't included in the original bill. The behavioral technician was not included in the current bill, because they are not currently registered or licensed. The intent of the bill was to remove them from the state board of Psychologists Examiners, and put them in a new board; the State Board of Integrative Health.

Sen. Hogan: They also suggested a pretty expanded definition on of the practice of behavioral analysis. Do you have feedback on that specific change?

Jill: My office does not like the term 'they'. A lot is included. the first sentence is the same the second says the practice of applied behavioral analyst. We also have the last sentence in there, too. We pared it down a bit.

Chair Lee: I am comfortable with what Jill is explaining. Roselle, are you comfortable with the language in the original bill?

Jill: The exemptions on the mock up on page 18, we allowed for the board to do that in a different section of the bill. The bill is so long because we are removing the ABA's from the state board of Psychologists Examiners. We were tweaking the language in the state board of Integrative Health, and we are creating a chapter as well. I believe it's on page 14 of the mock up. We gave the board the power to create exemptions from regulations. That would eliminate the requirement of having 43.64.05 and list all of those in Code.

Sen. Anderson: Should we say exemptions from regulations or a variance may be better term?

Jill: I believe exemption is often used. I have done that a fair amount so far. I believe exemption is appropriate, but I can look into that.

Chair Lee: Variance means it will be different. Exemption can still be different. An exemption can be varied? (23.24)

Sen. Anderson: When you make regulations, if there are things that are exempt, you need to state those when you make the regulations in the first place. A variance might be time specific. It seems strange to make exemptions on regulations when your making regulations.

Jill: I believe these exemptions are for people that are exempt from licensure completely. You can see there are quite a few people who teach behavioral analyst.

Sen. Kristin Roers: Would a better way to say this is to establish an exemption from licensure? It would be more clear.

Jill: Yes, if you want to change the language on page 14 of the mock, that would be permissible. Unless the Attorney General has a problem.

Dave Schible, Att. General Office: (14:40): If you want the person to not have the license, you want to say to be exempt from licensure. It is better to have the language that the two senators were proposing. (15.11)

Sen. Anderson: Let's use the terminology for licensure or registration to be consistent.

Dave: I think the appropriate place would be in the section that deals with exemptions. This section 18 of the amendment is modifying 43.57.03. That statute may have the exemptions for licensure, also.

Chair Lee: Would you rather than we say exemptions from licensure?

Dave: What I could do is take this language back to the assistant attorney general that works with the board and see how it works with the board. If it doesn't work, we can ensure they could come back and explain to you.

Chair Lee: On page 14, changing the word regulations to licensure. Should be include 'or regulations'.

Sen. Kristin Roers: Licensure or registration.

Jill: I can also visit with Jen Clark and confirm with her interpretation.

Sen. Hogan: There is something we need to look at. On the mock up on page 18, line 9-12. That whole reciprocity recognizing others on a temp license. It goes back to that certifying entity to someplace else. I'm not sure where that should be in the bill.

Jill: Can you repeat?

Sen. Hogan: On page 18 of the mock up, lines 9-12. Also on page 20, lines 20-26. It is the temporary licensing stuff.

Jill: On page 17 of the bill, that talks about certification - subdivision A on page 17 of the bill. I believe as it is written is getting towards what the mock up is saying.

Sen. Hogan: The temporary license stuff?

Jill: On page 20 of the mock up. I will look into that. I don't think we talked about a temp license in our original bill draft, so I would have to look into that. (21.48)

Chair Lee: Part of that is we did not know that Sen. Poolman was going to have SB2286. We thought we could incorporate that bill in ours to speed things up. She was not opposed.

Jill: I did not work on that particular draft, but I know who did so I will check back. We can look into the temporary license as well as page 14 on the state board for integrated health, looking at the language added for exemptions.

Sen. Anderson: Sen. Poolman's bill calls it an expedited license and that is similar language used in SB 2306. I would consider maybe looking at that language but not really intending to be temporary, just means to get it as quick as possible.

Jill: I will look at SB 2306 regarding the expedited language.

Sen. Kristin Roers: Also know that there are no fewer than 3 bills for military spouses out there.

(24:20-27:10) A discussion about duplicative bills ensued.

Sen. Hogan: I want to make sure that what we talk about this morning that there won't be any unintended consequences for the behavior related staff at the State Hospital, or nursing homes or schools that we don't anticipate.

Rosalie Ethrington, Department of Human Services: From what I hear we are regulating the certified behavioral analysts, that makes complete sense and that won't interfere with any other practices, and will also not interfere the capacity for behavioral technicians, mental health technicians, CNAs, a variety of those folks that work in nursing homes, group homes, State Hospitals or LSTC to work under supervision of other in the change of behavior.

Sen. Hogan: I just wanted to make sure that we're all clear about that.

Rosalie Ethrington: May we speak about the definition? Under the practice of behavior analysis; was that in the original statute? Do you understand it when you read it? I'm going to use language that is found on the American Psychological site in regards to behaviorism and behavioral analysis and on the site of the Certified Behavioral Analysts. Simply, the practice of behavioral analysis is the specific and comprehensive use of principles of learning. Which in regular terms is just behaviorism. You could just simply say 'behaviorism, including operant and respondent conditioning' or 'operant and respondent learning'. There are two types of learning, there is a whole set of principles around how to apply those things, but put simply it's just the principles of operant and respondent learning, in order to address behavioral needs of individuals through a focus of observable behaviors and techniques, to learn new behaviors or reduce problem behaviors.

Chair Lee: Do you think that fights with subsection 4 in section 22?

Rosalie Ethrington: In my opinion, that although it may be even wordier than it has to be, it is at least explanatory, and can remain and still be aligned with what you will find on the site for certification or the site of the American Psychological Association.

Chair Lee: Doesn't this come from what the model legislation was? Can you explain that for us, Jill?

Jill: Yes, it did come from the model language. That is what we modeled it after, but with serious cuts, and style and form.

Chair Lee: As long as Dr. Ethrington doesn't see a conflict with that. I'd like to stick as close as we can to the model legislation, so reciprocity is enhanced.

Rosalie Ethrington: That's a good point. In my opinion, that speaks to what they really are and does not confuse anybody. I'm glad you used some stylistic change.

Sen. Kristin Roers: Under powers and duties of the Board, Chapter 43.57-03, there was a proposed amendment that originally stated, 'to establish any exemptions from regulations' we didn't like that word, they are a regulatory board, they shouldn't get to exempt which regulations, we thought 'to establish any exemptions from licensure or registration' if there are certain times where they don't need to be licensed, if that would be amenable language.

Allyson Hicks, Assistant Attorney General, General Council, Board of Integrative Health: At this time, I don't see any legal problem with that. This Board is set up a little strangely, in that it was originally established after the practice acts were established. The existing exemptions from licensure are in the specific scopes of practice. That's why currently this board isn't within the powers and duties of the Board. However, I do think that this would assist in regards to the behavioral analysts, it's a new field, they're going to have to work with members of that field to tailor the boards licensure and regulation process to meet that need. Because 43-57 is the integrative health board, it's not the specific scope of practice, factually this will also apply to the other factions of the integrative health board; that is one of the ramifications of putting that into the integrative health board practice act as opposed to that specific practice act.

Sen. Hogan: Do you see any problems with that?

Allyson Hicks: No, I do not. It would be a beneficial change and allow the Board to operate more expediently. This is a strange creature of statute and has to tailor itself to different practices, this allows the Board to do that more efficiently.

Sen. Hogan: In terms of the integrative health; because this is a group that has been licensed by another board prior, have you done that before?

Allyson Hicks: My understanding is the Board has, but I have not. I was not the attorney at that time the Board was established. I believe this Board is much more well equipped to handle some of those transitions.

Sen. Anderson: We are planning to incorporate SB 2286 which asks for expedited licensure, if they meet the qualifications, with your comments I was wondering if this was something that we could place so that all of your boards could do that. If we placed it in the right place would that make it easier for your boards to grant an expedited license if they met the criteria.

Allyson Hicks: There are general licensure procedures within 43-57 that would apply, so I do believe that if you wanted to tuck it in there, I think it would possibly fit, I don't know the boards opinion on that. There is a statutory slot to slide it in there.

Sen. Anderson: I don't think Sen. Poolman spoke with them either, and I think that if we put something in there they all could utilize that. I think it could be a positive step.

Allyson Hicks: I think that is entirely possible and I will speak with my board about where they want to put it and how to incorporate it. Putting it into statute indicates that they have the authority to do rules.

Sen. Hogan: Tell me the five groups?

Allyson Hicks: Currently, there are three: naturopaths, music therapists and acupuncturists

Chair Lee: If the two of you feel like you would be rushed to get it together, we can put it on the schedule for Monday. The hearing was closed.

2019 SENATE STANDING COMMITTEE MINUTES

Human Services Committee
Red River Room, State Capitol

SB 2236
2/13/2019
Job # 32685

☐ Subcommittee
☐ Conference Committee

Committee Clerk: Justin Velez

Explanation or reason for introduction of bill/resolution:

Relating to the licensure and regulation of behavior analyst professionals, relating to the regulation of applied behavioral analysts of psychologist's examiners and to the board of integrative health care; to provide a penalty; and to provide and effective date.

Minutes:

No Attachments

Madam Chair Lee opens the discussion on SB 2236.

Madam Chair Lee: We will look at the amendment that was done for SB 2236. We have included the expedited procedure for licensure.

Senator O. Larsen: I'm using the old bill; we are getting away from the yellow thing.

Madam Chair Lee: Yes, we are working off of the .01000 version. We will be moving in, and I talked to Senator Poolman about this and she said that would be it and it sounded good to her.

Senator Anderson: Do you want to move this right away?

Madam Chair Lee: I'd be happy to unless anyone had any comments.

Allyson Hicks, Assistant Attorney General representing the Board of Integrated Health: These amendments are fine. I think the board will be fine with it.

Senator Hogan: I move to **ADOPT AMENDMENT 19.0673.01002**
Seconded by Senator O. Larsen

Senator Anderson: As I understand it now, it supplies to the Board of Integrated Health Care?

Madam Chair Lee: Correct.

Senator Anderson: Ok.

Madam Chair Lee: Any further discussion?

**ROLL CALL VOTE TAKEN
6 YEA, 0 NAY, 0 ABSENT
MOTION CARRIES TO ADOPT AMENDMENT**

Senator O. Larsen: I move a **DO PASS, AS AMENDED.**
Seconded by Senator Hogan

**ROLL CALL VOTE TAKEN
6 YEA, 0 NAY, 0 ABSENT
MOTION CARRIES DO PASS, AS AMENDED
Senator Anderson will carry SB 2236 to the floor.**

(05:20) Madam Chair Lee and the committee move on to SB 2286.

SK
1081

PROPOSED AMENDMENTS TO SENATE BILL NO. 2236

Page 14, line 29, replace "regulations" with "licensure"

Page 15, line 21, after "**license**" insert "**- Expedited**"

Page 15, line 21, after the second boldfaced period insert:

"1."

Page 15, after line 24, insert:

"2. The board shall establish an expedited procedure for licensure of an applicant who is certified by a professional organization identified by the board by rule or who holds a valid license or certificate of registration in another jurisdiction. The board may grant a provisional license to an expedited licensure applicant while the expedited license application is pending."

Renumber accordingly

Date: 2/13/19
Roll Call Vote #: 1

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2236

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 19.0673.01002

Recommendation: ☒ Adopt Amendment
☐ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐

Motion Made By Sen. Hegan Seconded By Sen. O. Larsen

Senators	Yes	No	Senators	Yes	No
Chair Lee	X		Senator Hogan	X	
Vice Chair Larsen	X				
Senator Anderson	X				
Senator Clemens	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment _____

If the vote is on an amendment, briefly indicate intent:

Date: 2/13/19
Roll Call Vote #: 2

2019 SENATE STANDING COMMITTEE
ROLL CALL VOTES
BILL/RESOLUTION NO. 2234

Senate Human Services Committee

☐ Subcommittee

Amendment LC# or Description: 19.0673.01002

Recommendation: Adopt Amendment

☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☒ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar

Other Actions: ☐ Reconsider ☐ _____

Motion Made By Sen. O. Larsen Seconded By Sen. Hogan

Senators	Yes	No	Senators	Yes	No
Chair Lee	X		Senator Hogan	X	
Vice Chair Larsen	X				
Senator Anderson	X				
Senator Clemens	X				
Senator Roers	X				

Total (Yes) 6 No 0

Absent 0

Floor Assignment Sen. Anderson

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2236: Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (6 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2236 was placed on the Sixth order on the calendar.

Page 14, line 29, replace "regulations" with "licensure"

Page 15, line 21, after "**license**" insert "**- Expedited**"

Page 15, line 21, after the second boldfaced period insert:

"1."

Page 15, after line 24, insert:

"2. The board shall establish an expedited procedure for licensure of an applicant who is certified by a professional organization identified by the board by rule or who holds a valid license or certificate of registration in another jurisdiction. The board may grant a provisional license to an expedited licensure applicant while the expedited license application is pending."

Renumber accordingly

2019 HOUSE HUMAN SERVICES

SB 2236

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

SB 2236
3/6/2019
Job # 33309

- ☐ Subcommittee
☐ Conference Committee

Committee Clerk: Nicole Kaman

By: Carmen Hickie

Explanation or reason for introduction of bill/resolution:

Relating to the licensure and regulation of behavior analyst professionals; relating to the regulation of applied behavioral analysts of psychologist examiners and to the board of integrative health care; to provide a penalty; and to provide an effective date

Minutes:

1,2,3,4

Chairman Weisz: Opened the hearing on SB 2236.

Senator Judy Lee: Introduced SB 2236. She stated there were two bills that dealt with behavioral analysts in our committee, SB 2286 and SB 2236, and we combined the two. SB 2236 recommends a change in board oversight for the behavioral analysis professionals moving them from the Board of Psychologist to the Board of Integrative Health Care. We established that board for those professions for which there was not a large enough number in practice to be able to sustain their own board. This makes sure the licensing is covered appropriately. At the same time model legislation for the profession of Behavioral Analysts became available and it has been incorporated into SB 2236, it describes the various categories of the profession. The bill is deleting the part that is in the Board of Psychologist Examiners and placing it into the Integrative Health Care. We know how short we are to have these professionals in North Dakota, with the idea of adopting model legislation we have a better chance of reciprocity, which we felt would be an advantage to us. The benefits of the adopting are going to be licensing and reciprocity. On page 3 the ADA is removed from representation on the State Board of Psychologist Examiners and references to registrants and behavioral analyst is deleted throughout the bill and leaving it covering just the Psychologists. On page 14 Section 17 is the language putting the Behavioral Analysts into the Integrated Health Board. It is the umbrella board that integrates several professions. On line 29 the board can establish rules, to establish exemptions from regulations. Section 43-64 is added beginning on page 16 which includes Licensed Assistant Behavioral Analyst and Licensed Behavioral Analyst. The practice is defined including what they cannot do. A license is required in order for a practitioner to use the title Licensed Behavioral Analyst or Licensed Assistant Behavioral Analyst. Those currently licensed through December of 2019 will be grandfathered in. The effective date is January 1, 2020 to allow time to develop specific rules. This proposal is brought forward by an individual who hires Behavioral Analyst in the work of her business which serves the needs of individuals on the Autism spectrum. SB 2286 was

incorporated into this bill. That section on page 15 which calls for an expedited license to be available. It was in response to the fact that it was taking many months to get these licenses approved. We defeated SB 2286 to have everything in one bill.

Rep. Tveit: On page 15 line 21 is all of bill SB 2286?

Sen. Lee: I don't recall but Sen. Poolman was pleased with the way we did this. This was prepared by Legislative Council in response to our request the purpose of SB 2286 was incorporated into this bill.

Rep. Schneider: Do we know how many states have adopted this model of legislation and whether they include any of our neighbors?

Sen. Lee: We were given the information during the committee hearing and I believe it was at least 20.

Rep. Beadle: (Attachment #)1. He read his testimony.

Jon Godfread, North Dakota Insurance Commissioner: I am here to clarify and support. We have effectively removed the insurance rule for autism therapies. There is demand for this and our research and discussion with the autism community this was the number one issue outside of how do we get therapists to do this. We spoke with the Board of Psychiatry and it did not result in fruitful changes. We support this bill because there is need out there. By not passing the mandate it left the door open to provide the most comprehensive coverage in the country for autism therapies. South Dakota has a mandate in their law that says autism is a medical condition. So allowing that flexibility by not having the mandate allowed us to come to this conclusion and issue the bulletin which resulted in comprehensive coverage.

Sandy Smith, Executive director ND Autism Center. Read his written testimony, (Attachment 2). There are 26 states that have adopted this model licensure act. There are 29 states who have regulated licensure of Board Certified of Behavioral Analyst, 10 of the states have Behavioral Analysts licensing boards, one uses social work, one uses medicine, seven use the Board of Psychology Examiners in their state, seven are direct licenses issued by state agencies, such as Department of Commerce, Consumer Affairs, Health and Safety Professional Services, then there are three others that relate more to Mental Health and Human Services Board. So moving this to Integrated Health Care Board is very similar to some of the things they have done in the past. (0:29:03)

Rep. Rohr: You mentioned there are 30 to 35 Licensed Behavioral Analysts in North Dakota today and on page 2 you indicate they can be either a Masters or Doctorate degree what is the breakdown in that 30 to 35 between Masters and Doctorate? What is the difference besides the years of education?

Sandy Smith: There are three of the Doctorate BCBA's. The rest are all Masters level degree. The ones that are PHD's have focused on autism and ADA therapy, the Psychologists that have a BCBAD have focused on their doctorate education and residency on autism and applied behavioral analyst.

Rep. Rohr: Do the three that have their Doctorate have their own independent practice?

Sandy Smith: I know two of them work for established organizations in Fargo. One is in the western part of the state and I'm not sure where she works.

Rep. Skroch: I received emails regarding the delay in licensures being approved and that the main causes were a misstep in the application process and the board cannot act upon incomplete applications. Is that part of the problem and with a change to this other board change that in any way? Or are we going to have the same problem?

Sandy Smith: Yes, I understand that there have been problems with paperwork. I had brought the application to the Senate it is four pages long and the print is so tiny that you can barely read it without a magnifying glass. It is an application for both Psychologist's and Board Certified Behavioral Analysis candidates. It is very difficult to determine what question should I actually answer. Part of them are just for Psychology so it is very cumbersome. Some of the other professions that need licensing the application is one or two pages. So some of the questions don't even apply to the Behavioral Analysis.

Rep. Skroch: If you are completing it on line wouldn't it seem more appropriate to fix the application process and separate those two categories of professional licensure? Rather than set up a different board rather than everything that goes along with that?

Sandy Smith: We are not setting up a separate board, we are just moving it to a board that already exists. We have submitted feedback to the Board of Psychology over the years to change the application process and we haven't gotten anywhere. An Anne Carlsen representative will also be speaking today and we are the two largest providers in the state and we have waiting lists of 40 to 50 people. We will never get to them without a faster process and being able to get these people through the licensure process or to recruit people from out of state. Today it is very difficult to get a license if you are from out of state.

Taylor Hill, licensed BCBA, Anne Carlson's Behavioral Health Group, Bismarck: Read his written testimony **attachment 3**. Regardless of which board licenses and regulates BCBA's, all Board Behavioral Analysts are going to adhere strictly to our Code of Ethics and only provide the best evidence based practices. In moving to a board like Integrated Health Board allows more opportunities for BCBA's to become members and to help regulations for other individuals. I think this is a huge opportunity to get other professionals from other states interested if they know people who are looking over their work are going to be in the same position. If we do want to have BCBA's to provide services, this is a huge step and doing so in getting a board to conduct their own licenses and regulations.

Holly Johnson, Licensed Board Certified Behavioral Analysts, Executive Board President for the North Dakota Association for Behavioral Analysis (NDABA). **Attachment 4.** Read her testimony in opposition.
0:48:19)

Rep. Schnieder: How many members are in your organization?

Holly Johnson: We have an annual conference every year and last year had 54. Some of those that attended were Occupational Therapist, Speech Pathologists.

Rep. Schneider: The way that is structured I assume you were not able to poll those members before your board made that decision?

Holly Johnson: Last fall Sandy Smith had reached out to me, as the NDABA President, and we have been working together on this bill. I have reached out as much as I can to get our membership involved and no one moved on anything. After it passed in the Senate I pushed hard for us to have an official stance as the state association for the profession so that is why we have an official stance at this committee hearing.

Rep. Tveit: Do you agree the current licensing process and application is cumbersome and problematic? How much can that be fixed rather than create a new law?

Holly Johnson: It is a tough process. I do supervise graduate students and I mentor them and help them through the licensure process. As Sandy mentioned it is one uniform application for Psychologists and Behavior Analysts. I don't understand why they can't create the software to have our own online process.

Rep. Tveit: The delayed appointment to that board, can you address that in more detail? Is it an intentional delay or are there other reasons?

Holly Johnson: I am not sure what the delay is. The first step that needed to happen did happen last session where we got Century Code to say that a Behavioral Analyst could be an appointed board member. The next hurdle was whoever was appointed had to hold their license for five years and the first ones licensed in 2012 became eligible in 2017, then there had to be a vacancy. The first licensed Behavioral Analyst sent their application to the Governor's office several months ago expressing interest in that position.

Rep. Skroch: In previous testimony there was expressed frustration about navigating through this cycle process, is that part of the delay? We have talked about why not split those applications and make the online process simpler, might that resolve some of the issues in the delays?

Holly Johnson: I do believe it could be completed. The Board of Psychology Examiners outsources administrative duties, processes the applications and sends them to the board. There are definite flaws and I think there needs to be efforts to fix some of those things. I know Sandy and I have both provided feedback to the board but I don't know what the catalyst will be to get that done.

Rep. Skroch: Will shifting this licensing process to this other board, that will not fix this problem, correct? The application processing and working through the online provider for this.

Holly Johnson: I believe the new board could make the application and administer it however they would want. So they could have the Administrative Code written and the rules

written in a whole new way if we were to move. The application process now wouldn't necessarily follow us.

Rep. Rohr: Can you address the difference in the price of \$650 for the Psychology Board and \$250 for the Integrated Health one? You mentioned there were 2 of the 7 members who support this bill, could you share why they supported this?

Holly Johnson: Mr. Hill testified supporting the bill and then I submitted written testimony on my own behalf that was supportive of the bill and the amendments we had proposed. I believe the fee is what the Psychologist have to pay for the application. I assume it is that board and that price.

Rep. Devlin: Have you or any anyone of your group reached out to the Governor's office to find out what the delay is in the appointment?

Holly Johnson: NDABA hasn't reached out. The person who has applied is a former NDABA board member and he has continually reached out, however I do not know what the reason was given.

Chairman Weisz: Closed the hearing on SB 2236.

2019 HOUSE STANDING COMMITTEE MINUTES

Human Services Committee Fort Union Room, State Capitol

SB 2236

3/6/2019

Job # 33341

☐ Subcommittee

☐ Conference Committee

Committee Clerk: Nicole Klamann

By: Carmen Hickle

Explanation or reason for introduction of bill/resolution:

Relating to the licensure and regulation of behavior analyst professionals; relating to the regulation of applied behavioral analysts of psychologist examiners and to the board of integrative health care; and to provide a penalty; and to provide an effective date

Minutes:

Chairman Weisz: Opened for committee work on SB 2236. Does anyone remember why Behavioral Analysts was put in with the Board of Psychology and not the Integrated Health?

Rep. Porter: There was nowhere else to put them. They were there before Integrated Health existed.

Chairman Weisz: Did we establish them before we got Integrated Health?

Rep. Porter: The Psychologist came in and there was a bill in the early 2000 that created them as a component of the Board of Psychology.

Chairman Weisz: They should have been in the Board of Integrated Health to start with.

Rep. Porter: They have always considered themselves a working partner of the Psychologists. It seems like there are some folks who don't want to be there anymore.

Rep. Tveit: Is it some that don't want to be there anymore? Or some that don't want them to be there anymore?

Chairman Weisz: There seems to be some issue with some with the board, there's no question with that. The question for us is to we want to move them to the Board of Integrated Health, leave them the way it is or try to fix a couple of things?

Rep. Schneider: They made a compelling case about delays, about the fees, about the responsiveness to them as a group, about the application and a number of other areas. It could be fixed by moving them to Integrated Health. Made a do pass motion.

Rep. Anderson: Second the motion.

Rep. Ruby: This bill doesn't require a spot on the new board for the Behavioral Health does it?

Chairman Weisz: Yes it does, in 43-57.

Rep. Tveit: I am going to vote against this, it's two groups that aren't getting along that need to work it out amongst themselves.

Vote yes 9, no 4, absent 1.

Rep. Porter: Will carry the bill.

**2019 HOUSE STANDING COMMITTEE
ROLL CALL VOTES
BILL SB 2236**

House Human Services Committee

☐ Subcommittee

Amendment LC# or Description: _____

Recommendation: ☐ Adopt Amendment
☒ Do Pass ☐ Do Not Pass ☐ Without Committee Recommendation
☐ As Amended ☐ Rerefer to Appropriations
☐ Place on Consent Calendar
Other Actions: ☐ Reconsider ☐ _____

Motion Made By Rep. Schneider Seconded By Rep. Anderson

Representatives	Yes	No	Representatives	Yes	No
Robin Weisz - Chairman	X		Gretchen Dobervich	X	
Karen M. Rohr – Vice Chairman	X		Mary Schneider	X	
Dick Anderson	X				
Chuck Damschen	X				
Bill Devlin	-	-			
Clayton Fegley		X			
Dwight Kiefert	X				
Todd Porter	X				
Matthew Ruby		X			
Bill Tveit		X			
Greg Westlind		X			
Kathy Skroch	X				

Total (Yes) 9 No 4

Absent 1

Floor Assignment Rep. Porter

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE

SB 2236, as engrossed: Human Services Committee (Rep. Weisz, Chairman)
recommends **DO PASS** (9 YEAS, 4 NAYS, 1 ABSENT AND NOT VOTING).
Engrossed SB 2236 was placed on the Fourteenth order on the calendar.

2019 TESTIMONY

SB 2236

#1

SB 2236
v/23/19
#1 PS.1

TESTIMONY IN SUPPORT OF SENATE BILL 2236 – LICENSURE AND REGULATION OF BEHAVIOR ANALYSTS

Sandy Smith, Executive Director
North Dakota Autism Center, Inc.
647 13th Ave E, Ste A, West Fargo, ND 58078
701-367-9855

Chairman Lee and Senate Human Services Committee Members, my name is Sandy Smith. I am a co-founder, President and Executive Director of the North Dakota Autism Center, Inc. in West Fargo. I am testifying in support of Senate Bill 2236 with amendments and recommendations. My 16 year old son was diagnosed with autism at 22 months old and I have spent the last 14 years advocating for him and other individuals with autism to have access to life changing applied behavior analysis (ABA) therapy. I have been involved in ND behavior analyst licensure law since the 2011 legislative session when at my urging Chairman Lee introduced a bill to establish the first licensure law. The bill passed and has been amended several times and the administrative rules have evolved over the years.

Over the last two years ND Medicaid and all ND insurance companies are now offering coverage for ABA Therapy. This has dramatically increased the demand for providers in ND and has called attention to the fact that getting certified professionals through the licensure process in a timely manner has become a significant challenge under current licensure law. It is also significantly disparate to other like professions as such as speech and language pathologists, occupational therapists and physical therapists. The process to get licensure as a behavior analyst is cumbersome, redundant and takes significantly longer than like professions. Once speech and language pathologists, occupational therapists and physical therapists complete their applications for licensure it takes weeks to get their license versus the months it takes for behavior analysts. I have included a document titled “Comparison of Professional Licensure” as part of this testimony that you can review.

Although North Dakota’s current behavior analyst licensure law requires professionals to be certified by the Behavior Analyst Certification Board (BACB) the ND Board of Psychologist Examiners has candidates repeating processes and submitting information that the BACB requires before candidates can even sit for the exam. There are also requirements for endorsements and an oral exam that is offered only 4 times per year that can add months to the process.

Senate Bill 2236 is modeled after the Association of Professional Behavior Analysts Model Licensure Act. In this model act, current certification by the Behavior Analyst Certification Board (BACB) is the principal requirement for obtaining and maintaining licenses. The BACB’s Professional and Ethical Compliance Code of Behavior Analysts is incorporated as the code of conduct for individuals licensed under this Act.

SB 2236

1/23/19

#1 pg. 2

The demand for licensed behavior analysts in ND greatly exceeds the supply. There are currently approximately 30 licensed behavior analysts in ND. Using data from the North Dakota Department of Public Instruction in 2017 there were 1,311 students ages 3-21 with an autism diagnosis in the public school system. Applying the 2016 to 2017 growth rate to 2019 there are very likely more than 1,500 children with autism in ND schools. What is even more concerning is that there are many children who are diagnosed before age three and this also does not address the many individuals over 21 years of age. ND needs well over 100 licensed behavior analysts to address just the needs of the children in our state and many more to address the adult population. That is why Senate Bill 2236 is so important.

After reviewing Senate Bill 2236 I sought feedback and suggestions from Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts, ND Association of Behavior Analysts, ND Autism Spectrum Disorder Advocacy Coalition, other provider agencies and individual licensed behavior analysts. As a result, we would like to submit the included list of Amendments and Recommendations.

SB 2236
1/23/19
1pg.3

Comparison of Professional Licensure

COLLEGE GRADUATE	Speech Pathologist	Physical Therapist	Occupational Therapist	Behavior Analysts
Education Level Required	Master's or Doctorate	Master's or Doctorate	Master's or Doctorate	Master's or Doctorate
On-Site Experience before Graduation	Externship 2x16 week	Clinical Affiliation 18 weeks & 10 weeks	Fieldwork Experience 2x2 week & 2x12 week	1500 hours of supervised independent fieldwork (max 130 per month) going up to 2000 hrs. in 2020
Graduated from an Approved & Accredited Professional Program	Yes	Yes	Yes	Yes
Certification Board	National PRAXIS exam	Federation of State Boards of Physical Therapy	National Board for Certification in Occupational Therapy	Behavior Analyst Certification Board (BACB)
Official Transcripts Needed	Sent directly to the Board	Sent directly to the Board	Sent directly to the NBCOT before exam can be taken	Sent directly to BACB before exam and course work must be approved by BACB before exam can be taken.
Initial Exam Cost	\$120	\$485	\$515	\$245
Standardized Test	American Speech-Language Hearing Association Praxis Test (Praxis)	National Physical Therapy Exam (NPTE)	National Board for Certification of Occupational Therapy Practitioner Exam (NBCOTP)	Behavior Analyst Certification Board - BCBA or BCaBA Exam
Testing Center Fee	No	No	Yes	\$125
Score Transfer Fee	\$0	\$0	\$40/request	\$0
INITIAL LICENSURE				
State Licensing Board	North Dakota State Board of Examiners: Audiology & Speech Language Pathology	North Dakota Board of Physical Therapy	North Dakota State Board of Occupational Therapy Practice	ND Board of Psychologist Examiners
Number of State Board Members	9	6	5	7
Number of State Board Administrative Staff	1	5	3	1 or 2?
Initial State License Application Fee	\$100	\$200	\$200	\$450 Use one application for both Psychologists and Behavior Analysts. It is very confusing and very long. Difficult to determine what information needed from Behavior Analyst vs. Psychologist
State Initial Licensure Application Exam	No	Juris Prudence Examination	Juris Prudence Examination & NDSBOTP Law/Administrative Rules Self Assessment	No
PLUS Online Application Fee (hosted on PSY/PRO)	NA	NA	NA	\$200 Request for information that has already been provided and verified by the BACB prior to being able to take the BCBA or BCaBA Exam. System is confusing because it is designed for Psychologists
Board Interview	At Board discretion	At Board discretion	At Board discretion	Mandatory Oral Exam offered 4 times per year in various different cities throughout ND. Licensee sometimes given less than 24 hours notice of where they need to be the next day. NDBPE says they are working on a written exam.
References Required	No	No	Yes - 2	Yes - 3 (endorsements). Must be mailed to endorsers who complete them and mail them back to outsourcing agency. Licensee has to keep checking if they have been received. Can delay application.
Temp License Available & Cost	No - Reinstate is \$350	No - Reinstate is \$200	Yes - \$90 taking next exam within 4 months	Yes, with initial fee if requirements are met. Unsure of length of provisional license and what happen if licensee fail oral exam. If they take on clients who takes on their clients when provisional license expires. There are no extra BCBA's available to take them on. Against BACB Code of Ethics to abandon clients.
Background Check (No finger Prints)	No	No	Yes - Done by NBCOT to sit for Exam	No
Finger Print Background Check	Yes- State Board	Yes - State Board	No	No
Finger Print Cards - Agency Fee	\$10	\$10	\$0	No
Initial Background Check Fee	\$0 - but done at College before Externship \$40	\$40	\$0 - but complete at College before Fieldwork \$40	No fee done with licensure disclosure
Application Notorized	Yes	Yes	Yes	Yes
State License Application Review	7-10 Days	Within 2 weeks	Within Week	Few months. Typically 4 to 6 months. If one of the endorsers fail to send in endorsement in timely manner licensee may miss scheduled Oral Exam and have to wait 3 months. If licensee fails Oral Exam must wait 3 months to retake it.
LICENSE RENEWAL				
State License Authorization Duration	Yearly	Yearly	Every 2 Year	Yearly
State Renewal Licensure Fee	\$75	\$100	\$200	\$250
State Renewal Schedule	December 1st, Yearly	January 1st, Yearly	June 1st, Every 2 Years	November 1st, Yearly
State Renewal Continue Education Requirements	10 CEUs per calendar year	25 CEUs every 2 years with	20 CEUs every 2 Years	40 CEUs every 2 years
State Additional License Renewal Exam	No	Juris Prudence Examination	Juris Prudence Examination & NDSBOTP	No
State License Application Review	7-10 Days	Within 2 weeks	Within Week	A month
Association Membership Required	Yes	No	No	No
Supervision Abilities	Yes- Speech Language Pathology Assistant (SLPA) & Speech Language Pathology Licensed Assistant (SLPLA) & College Students after Year CFY Completed	Yes- Physical Therapy Assistants (PTA), Physical Therapy Aides & College Students	Yes - Occupational Therapy Assistants (OTA) & College Students	Yes - Registered Behavior Technicians (RBT), RABA, BCaBA
Supervision Ratio	1 SLP : 2 SLPA or SLPLA	1 PT : 3 Supportive Personnel	1 OT : 3 OTA & 1 OT : 6 OTS	Not stated; Depending on ability/availability of BCBA caseload.

SB 2236
1/23/19
#1 pg. 4

19.0673.01000

Sixty-sixth
Legislative Assembly
of North Dakota

SENATE BILL NO. 2236

Introduced by

Senators J. Lee, Anderson

Representative Beadle

1 A BILL for an Act to create and enact chapter 43-64 of the North Dakota Century Code, relating
2 to the licensure and regulation of behavior analyst professionals; to amend and reenact
3 sections 43-32-01, 43-32-02, 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13,
4 43-32-14, 43-32-16, 43-32-17, 43-32-19.1, 43-32-20, 43-32-27, 43-32-27.1, 43-32-30, 43-57-01,
5 43-57-03, and 43-57-06, subsection 2 of section 43-57-07, and section 43-57-11, relating to the
6 regulation of applied behavioral analysts of psychologist examiners and to the board of
7 integrative health care; to provide a penalty; and to provide an effective date.

8 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

9 **SECTION 1. AMENDMENT.** Section 43-32-01 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-32-01. Definitions.**

- 12 1. ~~"Applied behavior analyst" means an individual licensed under this chapter as an~~
13 ~~applied behavior analyst. The term does not include a registered applied behavior~~
14 ~~analyst.~~
- 15 2. "Board" means the North Dakota state board of psychologist examiners.
- 16 ~~3.2.~~ "Industrial-organizational psychologist" means an individual who is licensed under this
17 chapter to engage in the practice of industrial-organizational psychology.
- 18 ~~4.3.~~ "Industrial-organizational psychology" means the provision of psychological research
19 services or consultation services to a group or an organization. The term does not
20 include the delivery or supervision of services to individuals who are themselves,
21 rather than the group or organization, the intended beneficiaries of the services,
22 regardless of the source or extent of payment for services rendered.
- 23 ~~5.4.~~ "Industrial-organizational psychology resident" means an individual who has met the
24 requirement of subdivision b of subsection 2 of section 43-32-20, is involved in

1 supervised employment in industrial-organizational psychology, and has registered
2 with the board.

3 6.5. "Licensee" means an industrial-organizational psychologist, an applied behavior
4 analyst, or a psychologist.

5 7. "Practice of applied behavior analysis":

6 a. Means the application of the principles, methods, and procedures of the
7 experimental analysis of behavior and applied behavior analysis, including
8 principles of operant and respondent learning. The term includes applications of
9 these principles, methods, and procedures to:

10 (1) Design, supervise, evaluate, and modify treatment programs to change the
11 behavior of individuals diagnosed with an autism spectrum disorder;

12 (2) Design, supervise, evaluate, and modify treatment programs to change the
13 behavior of individuals;

14 (3) Design, supervise, evaluate, and modify treatment programs to change the
15 behavior of groups; and

16 (4) Consult with individuals and organizations.

17 b. The term does not include diagnosis, counseling, psychological testing,
18 personality assessment, intellectual assessment, neuropsychological
19 assessment, psychotherapy, cognitive therapy, sex therapy, family therapy,
20 coordination of care, psychoanalysis, hypnotherapy, and long term counseling as
21 treatment modalities.

22 8.6. "Practice of psychology" means the observation, description, evaluation, interpretation,
23 or modification of human behavior by the application of psychological principles,
24 methods, and procedures for the purpose of preventing or eliminating symptomatic,
25 maladaptive, or undesired behavior and enhancing interpersonal relationships, work
26 and life adjustment, personal effectiveness, behavioral health, and mental health. The
27 term includes psychological testing and the evaluation or assessment of personal
28 characteristics, such as intelligence, personality, abilities, interests, aptitudes, and
29 neuropsychological functioning; counseling, psychotherapy, biofeedback, behavior
30 analysis and therapy, clinical applications of hypnosis, and other therapeutic
31 techniques based on psychological principles; diagnosis and treatment of mental and

SB 2236
1/23/19
#1 pg. 6

Sixty-sixth
Legislative Assembly

1 emotional disorder or disability, compulsive disorders, disorders of habit or conduct as
2 well as of the psychological aspects of physical illness, accident, injury, or disability;
3 and psychoeducational evaluation, therapy, remediation, and consultation. The term
4 includes providing psychological services to individuals, families, groups,
5 organizations, institutions, and the public regardless of whether payment is received
6 for services rendered. The term includes supervising others who are engaged in the
7 practice of psychology.

8 9-7. "Psychologist" means an individual who is licensed under this chapter in the practice
9 of psychology.

10 10-8. "Psychology resident" means an individual who is registered by the board and is
11 actively engaged in supervised practice.

12 11. ~~"Registered applied behavior analyst" or "registrant" means an individual who is~~
13 ~~registered under this chapter as a registered applied behavior analyst and is~~
14 ~~supervised by a psychologist or applied behavior analyst. The term does not include~~
15 ~~an applied behavior analyst.~~

16 12-9. "School or college" means any university or other institution of higher learning which is
17 accredited by a regional accrediting association, offering a full-time graduate course of
18 study in industrial-organizational psychology, or psychology, ~~or applied behavior~~
19 ~~analysis~~, as appropriate.

20 **SECTION 2. AMENDMENT.** Section 43-32-02 of the North Dakota Century Code is
21 amended and reenacted as follows:

22 **43-32-02. State board of psychologist examiners - How appointed - Qualifications.**

23 The governor shall appoint a state board of psychologist examiners consisting of seven
24 members, all of whom are residents of the state. One board member must be designated a
25 public member who is a resident of this state, is at least twenty-one years of age, and is not
26 affiliated with any group or profession that provides or regulates health care in any form. Of the
27 remaining six board members, at least one member must be engaged primarily in providing
28 service in psychology ~~or applied behavior analysis~~, and at least one member must be engaged
29 primarily in teaching, training, or research in psychology ~~or applied behavior analysis~~. Except
30 the public member, each member must be licensed under this chapter for at least five years.

1 **SECTION 3. AMENDMENT.** Section 43-32-08 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-32-08. Rules.**

4 The board may adopt rules as necessary to enable the board to carry into effect the
5 provisions of this chapter. The rules may include a code of ethics for licensees and registrants.
6 The board shall adopt rules defining what programs of study are substantially psychological in
7 nature; and what educational programs are acceptable for the licensing of psychologists ~~and~~
8 ~~applied behavior analysts and for registering registered applied behavior analysts; and what~~
9 ~~educational programs are acceptable for the licensing of industrial-organizational psychologists.~~

10 **SECTION 4. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is
11 amended and reenacted as follows:

12 **43-32-08.1. Continuing education requirements.**

13 The board shall adopt rules establishing requirements for the continuing education of all
14 licensees, psychology residents, ~~registrants~~, and industrial-organizational psychology residents.
15 The board may refuse to renew, suspend, revoke, or place on probationary status any license
16 ~~or registration~~ issued under this chapter if the licensee ~~or registrant~~ fails to meet applicable
17 continuing education requirements. Sponsors of continuing education courses, classes, or
18 activities may be charged a reasonable fee determined by the board.

19 **SECTION 5. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **43-32-08.2. Continuing education requirements - Renewal.**

22 Absent a showing of good cause, the board may not renew a license ~~or registration~~ issued
23 under this chapter without proof the continuing education requirements under section
24 43-32-08.1 have been met. An individual whose license ~~or registration~~ is not renewed because
25 of failure to meet the continuing education requirements must be reinstated and the license ~~or~~
26 ~~registration~~ renewed if, within one year from the date of nonrenewal, the individual
27 demonstrates to the secretary of the board the continuing education requirements have been
28 satisfied, pays the renewal fee, and pays a late fee to be determined by rule of the board.

29 **SECTION 6. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is
30 amended and reenacted as follows:

1 **43-32-09. Examination of qualifications of applicants.**

2 The board shall examine for, deny, approve, revoke, suspend, and renew the licensing and
3 registration of applicants as provided under this chapter.

4 **SECTION 7. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-32-12. Application and fee for licensure and registration.**

7 The board shall adopt rules establishing the amount of the application fee for licensure and
8 registration. A fee is not refundable.

9 **SECTION 8. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is
10 amended and reenacted as follows:

11 **43-32-13. Annual license and registration fee.**

12 Annually, the board shall mail or transmit by electronic mail a renewal notice and application
13 to each licensee and registrant at the address or electronic mail address on file with the board.
14 Before November fifteenth of each year, every licensee and registrant shall apply for renewal on
15 a renewal application form provided by the board and pay to the secretary of the board an
16 annual fee determined by the board by rule. Upon confirmation by the board the renewal
17 application is complete, the criteria for renewal have been met, and the secretary of the board
18 has received payment of the annual fee, the secretary shall issue the licensee or registrant a
19 certificate of annual renewal, which commences on January first. An individual may not hold out
20 as an industrial-organizational psychologist, an applied behavior analyst, a registered applied
21 behavior analyst, or a psychologist until the annual fee is paid. The board may deny renewal of
22 the license or registration of an individual who violates this section. Annually, the board shall
23 mail or electronically mail a renewal notice to each licensee and registrant at the address or
24 electronic mail address on file with the board.

25 **SECTION 9. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is
26 amended and reenacted as follows:

27 **43-32-14. Payment of delinquent annual fee - Reinstatement.**

28 If an individual's license or registration issued under this chapter expires for failure to pay
29 the annual fee, the board shall reinstate that individual and renew the license or registration if,
30 within one year from the date of expiration, the individual pays to the secretary of the board the
31 amount of the annual fees in default and a late fee in the amount established by the board by

1 rule and demonstrates all continuing education requirements have been met or the board has
2 granted an extension of the period in which to meet the continuing education requirements.

3 **SECTION 10. AMENDMENT.** Section 43-32-16 of the North Dakota Century Code is
4 amended and reenacted as follows:

5 **43-32-16. Board to keep records.**

- 6 1. The board shall keep a record of its proceedings and a register of all applicants for
7 licensing ~~or registration~~ which must show:
- 8 a. The name, date of birth, and residence of each applicant.
9 b. The date of each applicant's application.
10 c. The place of business of each applicant.
11 d. A summary of the educational and other qualifications of each applicant.
12 e. Whether an examination was required of an applicant.
13 f. Whether a license ~~or registration~~ was granted to an applicant.
14 g. The date of the action of the board.
15 h. Any information the board determines necessary or advisable in aid of the
16 requirements of this subsection.
- 17 2. Except as otherwise provided by law, the records of the board are public records and
18 evidence of the proceedings of the board, and a transcript of board proceedings, duly
19 certified by the secretary of the board is admissible in evidence with the same effect
20 as if the original were produced.

21 **SECTION 11. AMENDMENT.** Section 43-32-17 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-32-17. License required for practice - Titles.**

- 24 1. Except as otherwise provided under this chapter, a person may not engage in the
25 practice of psychology unless that person is licensed as a psychologist or is registered
26 as a psychology resident under this chapter. Except as otherwise provided by this
27 chapter, a person may not engage in the practice of industrial-organizational
28 psychology unless that person is licensed as a psychologist or
29 industrial-organizational psychologist or is registered as a psychology resident or
30 industrial-organizational psychology resident under this chapter. ~~Except as otherwise~~
31 ~~provided under this chapter, a person may not engage in the practice of applied~~

1 ~~behavior analysis unless that person is a licensee or is registered and supervised as~~
2 ~~an applied behavior analyst as provided under this chapter.~~

- 3 2. A person may not use the title "psychologist" or similar title unless that person is
4 licensed as a psychologist. A person may not use the titles "industrial psychologist",
5 "organizational psychologist", or "industrial-organizational psychologist" unless that
6 person is licensed as a psychologist or industrial-organizational psychologist. A person
7 may not use the title "licensed applied behavior analyst" or similar title unless that
8 person is an applied behavior analyst. A person may not use the title "registered
9 applied behavioral analyst" or similar title unless that person is registered and
10 supervised as a registered applied behavior analyst.
- 11 3. A person may not use the title "psychology resident" or similar title unless that person
12 is registered as a psychology resident. A person may not use the titles "industrial
13 psychology resident", "organizational psychology resident", or
14 "industrial-organizational psychology resident" unless that person is registered as a
15 psychology resident or industrial-organizational psychology resident.

16 **SECTION 12. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is
17 amended and reenacted as follows:

18 **43-32-19.1. Expedited licensure - Licensing ~~or registering~~ applicants licensed or**
19 **registered in other jurisdictions.**

- 20 1. The board may grant a license ~~or registration~~ to an applicant who is an individual
21 licensed, certified, or registered in another jurisdiction and who files a completed
22 application on a form and in a manner the board prescribed, submits the required fee,
23 and submits documentation:
- 24 a. Confirming graduation from an accredited program in the degree of licensure ~~or~~
25 ~~registration~~ for which the individual is applying in this state;
- 26 b. Confirming completion of a national examination required by the board related to
27 competence in psychology ~~or applied behavior analysis~~;
- 28 c. Identifying all professional licenses, certifications, or registrations previously
29 obtained by the applicant in any jurisdiction;

- 1 d. Explaining any professional or personal conduct that reasonably may be
- 2 interpreted as indicating an inability to adhere to this chapter, including the code
- 3 of ethical conduct adopted by the board; and
- 4 e. Providing the board with a release by which the board may obtain from the
- 5 applicant's current jurisdiction, confirmation of the educational degree the
- 6 applicant's licensure or registration required, documentation of any disciplinary
- 7 action related to the applicant's license or registration, and an explanation of all
- 8 levels in the applicant's profession the current jurisdiction licenses or registers.
- 9 2. As a condition to qualify for licensure ~~or registration~~ under subsection 1, the board
- 10 may require the applicant pass an examination on the ethics, laws, and rules
- 11 regulating the practice of psychology; or industrial-organizational psychology; ~~or~~
- 12 ~~applied behavior analysis~~, as appropriate to the licensure ~~or registration~~ sought by the
- 13 applicant.
- 14 3. Notwithstanding any contrary provision of this chapter, the board may issue a license
- 15 ~~or registration~~ as authorized under chapter 43-51.
- 16 4. The board may grant a provisional license ~~or registration~~ to an expedited licensure
- 17 applicant while the application is pending. The board may grant a provisional
- 18 ~~registration to an individual who is applying for registration as an applied behavior~~
- 19 ~~analyst if the individual is certified by a professional organization that is identified by~~
- 20 ~~the board by rule.~~ The board may deny or place restrictions on a provisional license ~~or~~
- 21 ~~registration~~ under this subsection if in another jurisdiction, within the previous five
- 22 years, the applicant had a disciplinary action against the applicant's license or
- 23 registration.
- 24 5. Except as otherwise provided under this chapter, and in accordance with rules
- 25 adopted by the board, the board may issue a limited practice certificate to an applicant
- 26 who is licensed or registered in another jurisdiction to practice psychology; or
- 27 industrial-organizational psychology; ~~or applied behavior analysis~~. A limited practice
- 28 certificate issued under this subsection authorizes the practice of psychology; or
- 29 industrial-organizational psychology; ~~or applied behavior analysis~~ in this state for no
- 30 more than thirty days in a calendar year.

1 **SECTION 13. AMENDMENT.** Section 43-32-20 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-32-20. Licensing - Written and oral examination - Qualifications of applicants.**

4 The board may issue a license ~~or registration~~ to each applicant who files a completed
5 application upon a form and in a manner the board prescribes, submits the required fee, and
6 meets the requirements of subsection 1, or 2, ~~or~~ 3.

7 1. An applicant for licensure as a psychologist shall demonstrate all of the following:

8 a. The applicant will adhere to the code of ethical conduct adopted by the board by
9 rule.

10 b. The applicant has received, from a school or college, a doctorate degree in a
11 program that is accredited as a doctoral program in psychology by an accrediting
12 body approved by the board by rule.

13 c. The applicant has passed the examinations, written or oral, or both, as the board
14 determines necessary.

15 d. The applicant has completed at least two full years of supervised professional
16 experience, one year of which must be an internship program, and one year of
17 which may be postdoctoral. Both years of experience must comply with the
18 board's rules.

19 2. An applicant for licensure as an industrial-organizational psychologist shall
20 demonstrate all of the following:

21 a. The applicant will adhere to the code of ethical conduct adopted by the board by
22 rule.

23 b. The applicant has received, from a school or college, a doctorate degree in a
24 program of studies accredited by an accrediting body approved by the board by
25 rule.

26 c. The applicant has passed the examinations, written or oral, or both, as the board
27 determines necessary.

28 d. The applicant has completed the professional experience requirements
29 established by the board. The requirements may not exceed the professional
30 experience requirements for psychologists. If the professional experience
31 requirements include a supervised experience requirement:

1 (1) The board must allow an applicant to submit to the board a personalized
2 plan for supervised experience which may include distance-supervision by a
3 qualified industrial-organizational psychologist.

4 (2) The board may adopt rules to establish who is qualified to perform
5 supervision, supervision requirements, and reporting.

6 ~~3. An applicant for licensure as an applied behavior analyst or registration as a registered~~
7 ~~applied behavior analyst shall:~~

8 a. ~~Submit written documentation confirming the applicant will adhere to the code of~~
9 ~~ethical conduct adopted by the board by rule.~~

10 b. ~~Demonstrate the applicant meets board approved education requirements~~
11 ~~adopted by the board by rule.~~

12 c. ~~Demonstrate the applicant passed examinations demonstrating professional~~
13 ~~competence adopted by the board by rule.~~

14 d. ~~Provide documentation indicating the applicant has established supervision~~
15 ~~requirements as determined by the board by rule. The board's rule must allow for~~
16 ~~supervision of board certified behavioral analysts by professionals with equivalent~~
17 ~~or greater training.~~

18 **SECTION 14. AMENDMENT.** Section 43-32-27 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **43-32-27. Denial - Revocation or suspension of license ~~or registration~~ - Grounds.**

21 1. The board, after notice, hearing, and an affirmative vote of at least a majority of board
22 members, may withhold, deny, revoke, or suspend any license ~~or registration~~ issued or
23 applied for under this chapter and may otherwise discipline a licensee, ~~a registrant~~, or
24 an applicant upon proof the applicant, ~~registrant~~, or licensee:

25 a. Has been convicted of an offense determined by the board to have a direct
26 bearing upon an individual's ability to serve the public in the practice of
27 psychology ~~or applied behavior analysis~~, or if the board finds, after the conviction
28 of any offense, that an individual is not sufficiently rehabilitated under section
29 12.1-33-02.1.

30 b. Is unable to practice psychology ~~or applied behavior analysis~~ with reasonable
31 skill and safety to clients or patients by reason of illness, inebriation, misuse of

- 1 drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any
- 2 mental or physical condition.
- 3 c. Has impersonated another individual holding a license ~~or registration~~ issued
- 4 under this chapter or allowed another person to use the licensee's license ~~or~~
- 5 ~~registration~~.
- 6 d. Has used fraud or deception in applying for a license ~~or registration~~ or in taking
- 7 an examination under this chapter.
- 8 e. Has allowed the licensee's ~~or registrant's~~ name or license ~~or registration~~ issued
- 9 under this chapter to be used in connection with any person who performs
- 10 psychological ~~or applied behavior analysis~~ services outside of the area of that
- 11 person's training, experience, or competence.
- 12 f. Is legally adjudicated insane or mentally incompetent. The record of the
- 13 adjudication is conclusive evidence of that fact.
- 14 g. Has engaged in any form of unethical conduct as defined in the code of ethical
- 15 conduct adopted by the board by rule.
- 16 h. Has become grossly negligent in the practice of psychology ~~or applied behavior~~
- 17 ~~analysis~~.
- 18 i. Has willfully or negligently violated this chapter.
- 19 j. Has engaged in an act in violation of rules adopted by the board.
- 20 k. Has had a license ~~or registration~~ revoked or suspended or was disciplined in
- 21 another jurisdiction.
- 22 2. The board shall state in writing the board's reason for denying a license ~~or registration~~.
- 23 3. The board may assess costs incurred by the board related to investigations and
- 24 disciplinary actions. By rule, the board may set fees or fines, not to exceed five
- 25 hundred dollars, for minor infractions of this chapter.
- 26 4. An individual whose license ~~or registration~~ has been revoked under this section may
- 27 not reapply for licensure ~~or registration~~ for at least two years after the date of
- 28 revocation.
- 29 5. Other than the term "in good standing", by rule, the board shall define terms related to
- 30 license status, such as "revoked", "suspended", "inactive", and "probationary".

1 **SECTION 15. AMENDMENT.** Section 43-32-27.1 of the North Dakota Century Code is
2 amended and reenacted as follows:

3 **43-32-27.1. Complaints - Investigations.**

- 4 1. A person aggrieved by the actions of a licensee, ~~registrant~~, or psychology resident
5 may file a written statement with the board citing the specific allegations of
6 misconduct. The board shall notify the licensee, ~~registrant~~, or psychology resident of
7 the allegation and request a written response. The board may establish procedural
8 exceptions for processing multiple allegations from the same person.
- 9 2. The board shall determine if the information in an allegation warrants investigation as
10 a complaint, without requiring the source of the information to be made a matter of
11 public record, if the board concludes that good cause exists for preserving the
12 confidentiality of the source.
- 13 3. A licensee, ~~registrant~~, or psychology resident who is the subject of an investigation by
14 the board shall cooperate fully with the investigation. Cooperation includes responding
15 fully and promptly to any reasonable question raised by or on behalf of the board
16 relating to the subject of the investigation and providing copies of patient or client
17 records if reasonably requested by the board and accompanied by the appropriate
18 release.
- 19 4. In order to pursue an investigation, the board may subpoena and examine witnesses
20 and records, including patient and client records, and may copy, photograph, or take
21 samples of the records. The board may require the licensee, ~~registrant~~, or psychology
22 resident to give statements under oath, to submit to a physical or psychological
23 examination, or both, by a physician or other qualified evaluation professional selected
24 by the board, if requiring an examination is in the best interest of the public. The
25 patient and client records released to the board are not public records. The board may
26 adopt rules to assign, define duties, and compensate an investigator to assist the
27 board to process a complaint.
- 28 5. Unless a patient or client release is on file allowing the release of information at the
29 public hearing, patient and client records acquired by the board in the board's
30 investigation are confidential and closed to the public. All board meetings at which
31 patient or client testimony or records are taken or reviewed are confidential and closed

SB 2236
1/23/19
#1 pg. 16

Sixty-sixth
Legislative Assembly

1 to the public. If patient or client testimony or records are not taken or reviewed, the
2 remainder of the meeting is an open meeting unless a specific exemption is otherwise
3 applicable.

4 **SECTION 16. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is
5 amended and reenacted as follows:

6 **43-32-30. Persons exempt from this chapter.**

7 This chapter does not apply to:

- 8 1. A student or intern pursuing a course of study in psychology; or
9 industrial-organizational psychology; ~~or applied behavior analysis~~ at a school or
10 college, if the activities and services are a part of the individual's supervised course of
11 study and are under the supervision of a licensed psychologist who meets the required
12 supervision and continuing education requirements and demonstrates competency in
13 the area of the student's or intern's practice; or industrial-organizational psychologist;
14 ~~or applied behavior analyst~~. The student or intern may not use the title "psychologist";
15 or "industrial-organizational psychologist", "licensed behavior analyst", or "registered
16 ~~applied behavior analyst"~~. The student or intern status and the supervisor must be
17 clearly stated.
- 18 2. A lecturer, from any school or college, who uses an academic or research title when
19 lecturing to institutions or organizations. However, the lecturer may not engage in the
20 practice of psychology, ~~applied behavior analysis~~, or industrial-organizational
21 psychology unless the lecturer is licensed or registered under this chapter.
- 22 3. An individual employed by a public school if that individual's activities and services are
23 restricted to the practice of psychology in the district or service unit of employment.
24 This exemption applies only if the individual has received a master's degree in school
25 psychology from an accredited graduate training program. Standards must be
26 established by mutual consent of the board and the education standards and practices
27 board.
- 28 4. ~~A person~~An individual certified, licensed, or registered in this state in another health
29 care profession, or as a member of the clergy functioning in a ministerial capacity,
30 whose scope of practice is consistent with the accepted standards of that
31 ~~person's~~individual's profession. ~~A person~~An individual claiming an exemption under

1 this subsection may not represent to be rendering psychological or applied behavior
2 analysis services.

3 5. ~~A person~~An individual employed by an agency, a nonprofit corporation, or an institution
4 if that ~~person~~individual is currently exempt from licensure. ~~A person~~An individual
5 exempt under this subsection continues to be exempt if the ~~person~~individual continues
6 employment in the same position with the agency, nonprofit corporation, or institution
7 that applied for and received the exemption.

8 6. ~~An individual providing applied behavior analysis services to an individual in a public~~
9 ~~school setting.~~

10 7. ~~An individual who is implementing applied behavior analysis services to an immediate~~
11 ~~family member or as a paid or volunteer caregiver implementing procedures~~
12 ~~established by the family or by the individual served in any setting, if the individual or~~
13 ~~caregiver does not represent as a registrant or an applied behavior analyst.~~

14 **SECTION 17. AMENDMENT.** Section 43-57-01 of the North Dakota Century Code is
15 amended and reenacted as follows:

16 **43-57-01. Definitions.**

17 As used in this chapter, unless the context otherwise requires:

- 18 1. "Board" means the state board of integrative health care.
19 2. "Licensee" means an individual licensed by the board under this chapter and under
20 chapter 43-58, 43-59, ~~or 43-61, or 43-64.~~

21 **SECTION 18. AMENDMENT.** Section 43-57-03 of the North Dakota Century Code is
22 amended and reenacted as follows:

23 **43-57-03. Powers and duties of board.**

- 24 1. The board shall adopt rules:
25 a. To administer and enforce this chapter and chapters 43-58, 43-59, ~~and 43-61,~~
26 ~~and 43-64;~~
27 b. That specify the scope of practice, which must be consistent with the required
28 education for each profession regulated by the board;
29 c. To establish any exemptions from regulations;
30 d. That endorse equivalent licensure examinations of another state or foreign
31 country and which may include licensure by reciprocity;

- SB 2236
1/23/19
#1 pg. 18
- 1 d-e. That establish educational standards for each profession regulated by the board
2 as appropriate; and
3 e-f. That set fees for licensure, which may include:
4 (1) Application fee;
5 (2) License fee;
6 (3) Renewal fee;
7 (4) Late fee;
8 (5) Administrative fees; and
9 (6) Continuing education fees.
10 2. The board shall produce an annual list of the names and level of licensure of all
11 individuals licensed by the board and make the list available upon request.
12 3. The board may employ staff and provide for staff compensation.
13 4. The board shall receive all moneys collected under this chapter, ~~chapter and chapters~~
14 43-58, 43-59, ~~and 43-61, and 43-64~~ and shall deposit and disburse all fees and
15 moneys collected in accordance with section 54-44-12.
16 5. The board may establish continuing education requirements for license renewal.
17 6. The board may adopt a code of ethics for each profession regulated by the board.
18 7. The board may adopt rules allowing students to practice under licensed supervision.

19 **SECTION 19. AMENDMENT.** Section 43-57-06 of the North Dakota Century Code is
20 amended and reenacted as follows:

21 **43-57-06. Issuance of license.**

22 If the board determines that an applicant possesses the qualifications required under this
23 chapter and under chapter 43-58, 43-59, ~~or 43-61, or 43-64~~, the board shall issue a license to
24 the applicant.

25 **SECTION 20. AMENDMENT.** Subsection 2 of section 43-57-07 of the North Dakota
26 Century Code is amended and reenacted as follows:

- 27 2. A license issued under chapter 43-58 or 43-59 expires on December thirty-first of
28 every odd-numbered year. A license issued under chapter 43-61 ~~or 43-64~~ expires on
29 December thirty-first of every even-numbered year.

30 **SECTION 21. AMENDMENT.** Section 43-57-11 of the North Dakota Century Code is
31 amended and reenacted as follows:

1 **43-57-11. Enforcement - Penalty.**

2 A person that violates this chapter or chapter 43-58, 43-59, or 43-61, or 43-64 is guilty of a
3 class B misdemeanor. In addition to the criminal penalties provided under this section, the civil
4 remedy of injunction is available to restrain and enjoin any violation of this chapter or chapter
5 43-58, 43-59, or 43-61, or 43-64 without proof of actual damages sustained by any person.

6 **SECTION 22.** Chapter 43-64 of the North Dakota Century Code is created and enacted as
7 follows:

8 **43-64-01. Definitions.**

9 For purposes of this chapter, unless the context otherwise requires:

- 10 1. "Board" means the state board of integrative health care created under chapter 43-57.
11 2. "Licensed assistant behavior analyst" means an individual who is licensed under this
12 chapter as a licensed assistant behavior analyst and is supervised by a licensed
13 behavior analyst.
14 3. "Licensed behavior analyst" means an individual licensed under this chapter as a
15 licensed behavior analyst.
16 4. "Practice of applied behavior analysis" means the design, implementation, and
17 evaluation of instructional and environmental modifications to produce socially
18 significant improvements in human behavior. The term includes the empirical
19 identification of functional relations between behavior and environmental factors. The
20 term does not include the diagnosis of disorders, psychological testing, psychotherapy,
21 cognitive therapy, psychoanalysis, and counseling.

22 **43-64-02. Licensed required - Title restrictions.**

- 23 1. Effective January 1, 2020, an individual may not practice applied behavior analysis
24 without a current license issued by the board under this chapter.
25 2. A licensed behavior analyst may use the title "licensed behavior analyst." A licensed
26 assistant behavior analyst may use the title "licensed assistant behavior analyst."
27 Effective January 1, 2020, an individual who uses these terms as identification without
28 having received a license as required under this chapter is engaging in the practice of
29 applied behavior analysis without a license.

SB 2236
1/23/19
#1 pg. 20

1 **43-64-03. Qualifications for licensure.**

2 To obtain a license to practice applied behavior analysis in this state, an applicant shall
3 submit an application to the board. The application must be upon the form adopted by the board
4 and must be made in the manner prescribed by the board.

5 **43-64-04. Application for licensure.**

- 6 1. An applicant for licensure shall file an application on forms provided by the board
7 showing to the board's satisfaction the applicant is of good moral character and has
8 satisfied the requirements of this chapter and chapter 43-57, including:
9 a. Successful completion of education, examination, and experience requirements
10 established by the board, such as certification from the behavior analyst
11 certification board or a certifying entity accredited by the national commission for
12 certifying entities or the American national standards institute;
13 b. Physical, mental, and professional capability for the practice of applied behavior
14 analysis in a manner acceptable to the board; and
15 c. A history free of any finding by the board, any other state licensure board, or any
16 court of competent jurisdiction of the commission of any act that would constitute
17 grounds for disciplinary action under this chapter and chapter 43-57. The board
18 may modify this restriction for cause.
19 2. The application must be accompanied by the board-established license fees and
20 application fees and by the documents, affidavits, and certificates necessary to
21 establish the applicant possesses the necessary qualifications.
22 3. The board shall establish standards for licensed behavior analysts supervising
23 licensed assistant behavior analysts.

24 **43-64-05. Initial applications - Grandfather provision.**

25 Notwithstanding the education, experience, and examination requirements for licensure
26 under this chapter, if on December 31, 2019, an applicant held a valid license or registration
27 issued by the state board of psychologist examiners under chapter 43-32, the applicant is
28 deemed to have met the education, experience, and examination requirements for licensure.

29 **SECTION 23. EFFECTIVE DATE.** Sections 1 through 16 of this Act become effective on
30 January 1, 2020.

SB 2236
1/23/19
#1 pg. 21

**CHAPTER 43-57
INTEGRATIVE HEALTH CARE**

43-57-01. Definitions.

As used in this chapter, unless the context otherwise requires:

1. "Board" means the state board of integrative health care.
2. "Licensee" means an individual licensed by the board under this chapter and under chapter 43-58, 43-59, or 43-61.

43-57-02. Board - Qualifications - Appointment - Term of office - Compensation.

1. The governor shall appoint the state board of integrative health care, which must consist of at least five members. Each profession regulated by the board must have one member on the board representing that profession. In addition, one member must be a doctor of medicine or osteopathy, one member must be a pharmacist, one member must be an advanced practice registered nurse, and at least one but no more than two members must be laypersons. If a doctor of medicine or osteopathy is not willing and able to serve, the governor may appoint an advanced practice registered nurse to fill this position. A board member must be a resident of this state. The professional members must be licensed to practice in this state, except the initial appointment for a newly regulated profession, who must be eligible for licensure. The layperson must be at least twenty-one years of age and may not be affiliated with any organization or profession that represents, provides, or regulates health care.
2. The term of office of each board member is three years with appointments distributed evenly from year to year. A member may not serve more than two consecutive full terms.
3. The governor may remove any board member for good cause after giving that member a written statement of the reasons for removal and after that member has had an opportunity for a hearing.
4. Each board member shall serve without compensation but is entitled to receive expenses as provided in section 54-06-09 and per diem as must be fixed by the board.
5. Annually, board members shall elect a chairman to preside at meetings of the board and a vice chairman to preside at meetings of the board in the chairman's absence.

43-57-03. Powers and duties of board.

1. The board shall adopt rules:
 - a. To administer and enforce this chapter and chapters 43-58, 43-59, and 43-61;
 - b. That specify the scope of practice, which must be consistent with the required education for each profession regulated by the board;
 - c. That endorse equivalent licensure examinations of another state or foreign country and which may include licensure by reciprocity;
 - d. That establish educational standards for each profession regulated by the board as appropriate; and
 - e. That set fees for licensure, which may include:
 - (1) Application fee;
 - (2) License fee;
 - (3) Renewal fee;
 - (4) Late fee;
 - (5) Administrative fees; and
 - (6) Continuing education fees.
2. The board shall produce an annual list of the names and level of licensure of all individuals licensed by the board and make the list available upon request.
3. The board may employ staff and provide for staff compensation.
4. The board shall receive all moneys collected under this chapter, chapter 43-58, 43-59, and 43-61 and shall deposit and disburse all fees and moneys collected in accordance with section 54-44-12.

- SB 2236
1/23/19
1 pg. 22
5. The board may establish continuing education requirements for license renewal.
 6. The board may adopt a code of ethics for each profession regulated by the board.
 7. The board may adopt rules allowing students to practice under licensed supervision.

43-57-04. Board duties in regulating professions - Subgroups.

1. The board shall establish a subgroup for each profession regulated by the board. The board shall appoint at least three and no more than five members of the profession to serve as volunteer members of the subgroup. A subgroup member must be a licensed member of the profession, except in the case of a newly regulated profession in which case each subgroup member must be eligible for licensure. The board may appoint a board member to serve on a subgroup representing that board member's profession. The subgroup members serve at the pleasure of the board.
2. A subgroup established under this section shall serve in an advisory capacity to advise the board when requested by the board. The subgroup on its own motion may advise the board as the subgroup determines necessary.
3. The board may not take any action that impacts a profession regulated by the board as a whole or which impacts one or more licensees of that profession unless the board first consults with and requests the recommendation of the appropriate subgroup. If the board takes an action that is contrary to a subgroup's recommendation, the board shall articulate in writing why the subgroup's recommendation was not followed.

43-57-05. Petition to the board - Inclusion as a board-regulated profession - Consideration of additional health care professions.

1. An existing occupational or professional board of this state or agency of this state which regulates the practice of a health profession or a representative of a health profession that is not regulated by this state may submit to the board a petition and proposed bill draft requesting inclusion of that health profession as a profession regulated by the board. Upon receipt of a petition and proposed bill draft submitted under this section, the board shall review the petition and may work with the person submitting the petition to provide assistance in accomplishing this requested inclusion.
2. If a committee of the legislative assembly considers a measure to regulate a health care profession with fewer than fifty likely members, the committee shall consider whether it is desirable and feasible to have the state board of integrative health, some other existing board, or an existing state agency regulate that profession rather than create a new board.
3. If the membership of a board-regulated profession increases to at least one hundred licensees, the board may introduce legislation creating an independent board to regulate that profession.

43-57-06. Issuance of license.

If the board determines that an applicant possesses the qualifications required under this chapter and under chapter 43-58, 43-59, or 43-61, the board shall issue a license to the applicant.

43-57-07. License renewal - Continuing education.

1. A license is effective when granted by the board.
2. A license issued under chapter 43-58 or 43-59 expires on December thirty-first of every odd-numbered year. A license issued under chapter 43-61 expires on December thirty-first of every even-numbered year.
3. A license may be renewed by payment of the renewal fee and completion of any continuing education requirements set by the board, provided the applicant's license is not currently revoked or grounds for denial do not exist.
4. If the application for renewal is not received on or before the expiration date, the license expires and the individual may not practice until a new application is made and a license is granted by the board.

5. At the time of renewal, the board shall require each applicant to present satisfactory evidence that the applicant has completed any continuing education requirements specified by the board.
6. If a license has not been renewed as a result of nonpayment of the renewal fee or the failure of the licensee to present satisfactory evidence of completion of any continuing education requirements, the licensee must reapply for licensure.
7. The board may extend the renewal deadline for an applicant having proof of medical or other hardship rendering the applicant unable to meet the renewal deadline.

SB 2236
1/23/19
#1 pg. 23

43-57-08. Discipline.

1. The board may take disciplinary action against a licensee by any of the following means:
 - a. Revocation of license;
 - b. Suspension of license;
 - c. Probation;
 - d. Imposition of stipulations, limitations, or conditions relating to the licensee's practice;
 - e. Letter of censure;
 - f. Require the licensee to provide free public or charitable service for a defined period; and
 - g. Impose fines, not to exceed five thousand dollars for any single disciplinary action. Any fines collected by the board must be deposited in the state general fund.
2. Disciplinary action may be imposed against a licensee upon any of the following grounds:
 - a. The use of any false, fraudulent, or forged statement or document, or the use of any fraudulent, deceitful, dishonest, or immoral practice, in connection with any of the licensing requirements.
 - b. The making of false or misleading statements about the licensee's skill or the efficacy of any medicine, treatment, or remedy.
 - c. The conviction of any misdemeanor determined by the board to have a direct bearing upon the licensee's ability to serve the public or any felony. A license may not be withheld contrary to the provisions of chapter 12.1-33.
 - d. Habitual use of alcohol or drugs.
 - e. Physical or mental disability materially affecting the ability to perform the duties of the profession in a competent manner.
 - f. The performance of any dishonorable, unethical, or unprofessional conduct likely to deceive, defraud, or harm the public.
 - g. Obtaining any fee by fraud, deceit, or misrepresentation.
 - h. Aiding or abetting the practice of the profession by an unlicensed, incompetent, or impaired person.
 - i. The violation of any provision of the rules of the board, or any action, stipulation, condition, or agreement imposed by the board.
 - j. The practice of the profession under a false or assumed name.
 - k. The advertising for the practice of the profession in an untrue or deceptive manner.
 - l. The representation to a patient that a manifestly incurable condition, sickness, disease, or injury can be cured.
 - m. The willful or negligent violation of the confidentiality between licensee and patient, except as required by law.
 - n. Gross negligence in the practice of the profession.
 - o. Sexual abuse, misconduct, or exploitation related to the licensee's practice of the profession.
 - p. A continued pattern of inappropriate care.
 - q. The imposition by another state or jurisdiction of disciplinary action against a license or other authorization to practice based upon acts or conduct by the

SB 2236

1/23/19

*1 pg. 24

licensee which would constitute grounds for disciplinary action as set forth in this section. A certified copy of the record of the action taken by the other state or jurisdiction is conclusive evidence of that action.

- r. The lack of appropriate documentation in medical records for diagnosis, testing, and treatment of patients.

43-57-09. Disciplinary proceedings - Appeals.

1. Upon the filing of a written and signed complaint that alleges that a licensee practicing in this state has engaged in conduct identified as grounds for disciplinary action under this chapter, and which sets forth information upon which a reasonable and prudent person might believe that further inquiry should be made, the board shall cause the matter to be investigated.
2. The board may investigate a complaint on the board's own motion, without requiring the identity of the complainant to be made a matter of public record, if the board concludes that good cause exists for preserving the anonymity of the complainant.
3. If the investigation reveals no grounds to support the complaint, the board, three years following the date on which the complaint was filed, shall expunge the complaint from the licensee's individual record in the board's office.
4. If the investigation reveals grounds to support the complaint, the board shall initiate a disciplinary action by serving upon the licensee a notice of disciplinary action setting forth the allegations upon which the action is based, as well as a specification of the issues to be considered and determined.
5. If a written response contesting the allegations is not received by the board within twenty days of the date that the notice of disciplinary action was received or refused, the allegations may be deemed admitted and disciplinary sanctions deemed appropriate by the board must be imposed.
6. The board may at any time enter an informal resolution to resolve the complaint or disciplinary action.
7. An appeal from the board's final decision may be taken in accordance with chapter 28-32.

43-57-10. Disciplinary proceedings - Cost of prosecution.

In any order or decision issued by the board in resolution of a disciplinary proceeding in which disciplinary action is imposed against a licensee, the board may direct the licensee to pay the board a sum not to exceed the reasonable and actual costs, including reasonable attorney's fees, incurred by the board in the investigation and prosecution of the case. When applicable, the licensee's license may be suspended until the costs are paid to the board. A licensee may challenge the reasonableness of any cost item in a hearing under chapter 28-32 before an administrative law judge. The administrative law judge may approve, deny, or modify any cost item, and the determination of the administrative law judge is final. The administrative hearing must occur before the licensee's license may be suspended for nonpayment.

43-57-11. Enforcement - Penalty.

A person that violates this chapter or chapter 43-58, 43-59, or 43-61 is guilty of a class B misdemeanor. In addition to the criminal penalties provided under this section, the civil remedy of injunction is available to restrain and enjoin any violation of this chapter or chapter 43-58, 43-59, or 43-61 without proof of actual damages sustained by any person.

SB 2236
1/23/19
#1 pg. 25

AMENDMENTS TO SENATE BILL NO. 2236

Section 18, 43-57-03 Powers and duties of board

Remove 1c. "To establish any exemptions from regulations: This provision would have the integrative health care board develop exemptions from behavior analyst licensure and put them in regulations. *Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts thinks it's far better to have those in the statute instead of regulations, so strongly recommend replacing this provision c with a section of the bill that specifies exemptions, using the language in the Association of Professional Behavior Analyst Model Licensure Act as a template.*

Section 22, 43-64-05 Initial applications - Grandfather provision

Change 43-64-05 to 43-64-06 Initial applications - Grandfather provision.

Add Section 22, 43-64-05. Exemptions

Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts thinks it's far better to have exemptions in the statute instead of regulations and strongly recommend replacing this provision c with a section of the bill that specifies exemptions, using the language in the Association of Professional Behavior Analyst Model Licensure Act as a template.

The provisions of this Act shall not be construed as prohibiting or restricting the practice of any of the following:-

1. Individuals licensed to practice psychology in North Dakota and those who deliver psychological services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the North Dakota psychology licensure law; (b) the applied behavior analysis services provided are within the boundaries of the Licensed Psychologist's education, training, and competence; and (c) the Licensed Psychologist does not represent that s/he is a Licensed Behavior Analyst unless also licensed under this Act.
2. Individuals licensed to practice other professions in North Dakota and those who deliver services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the profession's licensure law; (b) the applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and (c) the licensed professional does not represent that he or she is a Licensed Behavior Analyst unless also licensed under this Act.
3. Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a Licensed Behavior Analyst or a Licensed Assistant Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as "ABA technician," "behavior technician," or "tutor."
4. Caregivers of recipients of applied behavior analysis services who deliver those services to the recipients under the extended authority and direction of a Licensed Behavior Analyst or a Licensed Assistant Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts.
- E. Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such individuals may use the title "behavior analyst" but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.
- F. Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such

SB 2236

1/23/19

#1 pg. 26 professionals may use the title "behavior analyst" but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.

5. Matriculated college or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a Licensed Behavior Analyst in this jurisdiction or a qualified faculty member. Such individuals must not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as "student," "intern," or "trainee."
6. Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity.
7. Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title "behavior analyst" but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.
8. Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently and who practice in North Dakota no more than 30 days within a calendar year unless the behavior analyst has applied for and is granted a temporary license.
9. Individuals employed or contracted by a school performing the duties of their positions or contract. Such individuals shall not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or school contracted employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer or school contracted employer.

Section 22,43-64-01. – Definitions

Add "2. "Certifying entity" means the Behavior Analyst Certification Board (BACB) or another entity whose programs to credential practitioners of applied behavior analysis are accredited by the National Commission on Certifying Agencies (NCCA) or the American National Standards Institute (ANSI)." *Explanation: Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts recommended this change.*

Change 2 to 3 and add at the end " who is approved by the certifying entity to supervise assistant behavior analysts." *Explanation: Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts states [Per BACB standards, LABAs/BCaBAs must be supervised by LBAs/BCBAs who meet BACB supervisor standards in order to maintain their certification and hence their ND license if this bill is adopted].*

Change 4 to 5 and replace the definition " Practice of applied behavior analysis" with the following. "Practice of applied behavior analysis" the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes diagnosis of disorders,

SB 2236
1/23/19
#1 pg. 27

psychological testing, psychotherapy, cognitive therapy, psychoanalysis, and counseling. *Explanation: Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts states [Since this will be the legislated scope of practice for the profession if the bill is adopted, it's essential that it reflect the definition of practice that has been developed by the profession.]*

Add 6 "Behavior Technicians" A paraprofessional who practices under the close, ongoing supervision of a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst. The behavior technician does not design assessment or intervention plans or procedures but delivers services as assigned by the supervisor responsible for his or her work. *Explanation: This was feedback from several ND licensed behavior analysts that reviewed the bill.*

Section 22, 43-64-04 - Application for licensure

Change 1a to "Current certification by the certifying entity at the appropriate level, which signifies that the applicant has met the education and supervised experiential training requirements established by the profession and has passed the national certifying examination." *Explanation: Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts states [Much stronger and more straightforward to state this essential qualification clearly in statute than to leave it to the regulations to be developed if the bill is adopted.]*

Change 1c - after "state licensure board," insert "certifying entity," *Explanation: Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts states [to include any disciplinary action taken by the BACB]*

Add Section 22, 43-64-07 Temporary License

Add Section 22, 43-64-07. Temporary License. Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently who provide applied behavior analysis services in North Dakota on a short-term basis may apply for a temporary license. Applicants for temporary licenses shall submit an application and fee established by the Board, and evidence that their practice in the jurisdiction will be temporary as defined by the Board in rules. A temporary license will be granted only if the Board verifies the applicant's licensure or certification status with the relevant entity.

SB 2236
1/23/19
1 pg 28

RECOMMENDATIONS FOR SENATE BILL NO. 2236

- 1) Recommend that Legislative Council research Section 18, 43-57-03 1 c Powers and duties of board to ensure all exemptions listed for behavior analysts are included in Section 22, 43-64-05. Exemptions that was added as an amendment.
- 2) Recommend that Legislative Council research the following Section and consider whether or not it needs to remain in the bill.
Section 22, 43-64-05 — Initial applications - Grandfather provision
Licensed and registered behavior analysts are currently BACB certificants in good standing. *Gina Green, PhD, BCBA-D, CEO, Association Professional Behavior Analysts* states [Since they are currently in good standing, there is no need to “grandfather” them in because they “have met the education, experience, and examination requirements for licensure” but should still have to get a license from the Integrated Health Care Board.
- 3) Recommend that Legislative Council research how to address the BCBA-D certification. These are individuals who are licensed psychologists and BCBA’s.
- 4) Recommend that the subgroups referenced in 43-57-04. Board duties in regulating professions – Subgroups select professionals that represent both public and private entities.
- 5) Recommend that by moving behavior analyst licensure under Chapter 43-57 INTEGRATED HEALTH CARE and creating Chapter 43-64 that candidates will be granted licensure in a much more timely manner making the need for a temporary or expedited license less critical.

Testimony
Senate Bill 2236 – Licensure & Regulation of Behavior Analyst Professionals
Senate Human Services Committee
Senator Judy Lee, Chairwoman

January 23, 2019

Chairwoman Lee and Members of the Senate Human Services Committee:

My name is Lorena Poppe. I am the owner and executive director of Poppy's Promise, a provider of Applied Behavior Analysis (ABA) in the Bismarck region. I am testifying today in support of SB 2236 and would recommend the addition of amendments to strengthen the currently proposed bill language.

Poppy's Promise has been in operation for just over a year. We are building our ABA program from the ground up. As any new business does, we struggle with balancing the costs of providing this service with establishing and maintaining a stable revenue stream. As a small business, we have deeply felt the impacts of lengthy and costly processes that often create significant barriers to providing needed services in our state. One of those is most certainly the BCBA licensing process. Poppy's Promise currently contracts with a BCBA who has been licensed in the state for a number of years, but we know it is only a matter of time until we will be in the same position as other ABA provider organizations in supporting BCBAs as employees to obtain licensure.

The current licensure process through the ND Board of Psychology Examiners is both cumbersome and costly. I am encouraged by the introduction of SB 2236 and believe that with the addition of model language proposed by the Association of Professional Behavior Analysts (APBA) the licensure of BCBAs will occur in a timely manner and in a way that is relevant to the profession. An improved licensure process will remove many of the challenges that stop people from pursuing the education required to become a BCBA or moving to North Dakota from another state to work as a BCBA.

The addition of ABA to the Medicaid State Plan and last fall's bulletin from the ND Insurance Commissioner providing for the coverage of ABA by private insurers in the state, combined with the abundance of evidence proving its effectiveness, send the message that ABA is clearly not going away in North Dakota.

SB 2236
1/23/19
#2 Pg. 2/2

Our state owes it to the children, teenagers and adults in North Dakota who experience life-changing results from ABA therapy to assure there is an efficient and meaningful process in place to license the professionals who design and oversee the delivery of ABA services.

Thank you for the opportunity to testify in support of SB 2236. I would be happy to answer any questions you might have.

Testimony
Senate Bill 2286 – Regulation of Applied Behavior Analysts
Senate Bill 2236 – Licensure & Regulation of Behavior Analyst Professionals
Senate Human Services Committee
Senator Judy Lee, Chairwoman
January 23, 2019

Chairwoman Lee and Members of the Senate Human Services Committee:

I am Holly Johnson, Licensed Board Certified Behavior Analyst, and current Executive Board President for the North Dakota Association for Behavior Analysis (NDABA). I am providing this written testimony from my personal standpoint regarding Senate Bill 2286 and Senate Bill 2236, both bills relating to the licensure and regulation of Behavior Analysts in North Dakota. While this testimony is not officially supported or opposed by NDABA Executive Board or its membership, I do want to provide valuable information from a Behavior Analyst (BA) professional currently practicing Applied Behavior Analysis (ABA) in North Dakota (ND).

Executive board members of NDABA are split on supporting SB 2286 and SB 2236, as likely an accurate representation of the membership of NDABA, comprised of BA professionals in ND, at large also being split on SB 2236. An informal survey invitation was sent to NDABA members in October of 2018, with a few questions regarding the current licensure process under the North Dakota State Board of Psychological Examiners (NDSBPE):

- 6 of 11 respondents reported it taking between 6 months – 3 years to obtain their license from the initial application period until they passed the oral exam;
- 4 of 6 respondents only took the oral exam once;
- 1 of those 6 respondents took the oral exam twice;
- 1 of the 6 respondents took the oral exam 3+ times before obtaining licensure.
- One respondent of 6 respondents reported it took 2 months to receive a provisional license; and,
- One respondent of 6 respondents reported it took 13 months for them to receive their provisional license.

While the NDSBPE and its regulation of BAs is not without flaws, those flaws are slowly being resolved since licensure inception in 2012. I was licensed in January of 2014, after not passing my first oral exam from NDSBPE in October 2013. I passed my national board certification test in February of 2013. For me, it took nearly a year to obtain licensure in ND. At the time of my oral examination, provisional licenses were not granted to BAs. A graduate student I supervised for fieldwork practicum hours recently took 4-5 weeks to be granted her provisional license by NDSBPE this past fall.

The proposed SB 2236 would be a major shift for BAs, and it does not contain ideal language for our regulation in ND. The Association for Professional Behavior Analysts (APBA) has a model

SB 2236

1/23/19

#3 pg 2/2

licensure act, and I would need to see language from that model licensure act included in SB 2236 before I would give my full support. Some of those additional revisions include:

- There is a lack of mention of the supervision and exemption of Registered Behavior Technicians (RBTs), which the APBA has in their model licensure act, that would be important.
- The bill as proposed may create potential barriers and issues with licensed psychologists who are also Board Certified Behavior Analysts (BCBAs) and those professionals would likely need to be dually licensed if SB 2236 were to pass into law.
- There is no language in regard to Telehealth practice.

I do value that the Integrative Health Care Board allows one BA to sit on the board and then have advisory subgroup of 3-5 BAs. I also appreciate that once membership consists of 100 licensed professionals, the discipline/profession is required to separate from this regulatory board and create their own regulatory board. This is the case for Physical Therapists, under Senate Bill 2125 currently introduced this legislative session, creating their own, separate regulatory board.

I do not appreciate that BAs are not currently represented on the NDSBPE by an appointed board member being a Licensed Applied Behavior Analyst. This appointment has been vacant for over six months, waiting on the Governor to appoint a board member to the open position. This may be a factor in the efficiency of the NDSBPE currently. I also think the outsourcing of administrative duties, including the processing of applications and a cumbersome, confusing application process, is also hindering the efficiency of the NDSBPE. However, merely creating an amendment, as found in SB 2286, to allow for an expedited license to be granted, is not the solution to this issue either.

Therefore, I am not in support of SB 2286 as written because it does not resolve the issues with current licensure and regulation of Behavior Analysts by merely creating an expedited license.

I am more supportive of SB 2236; however, not without major revisions needed in the language of the proposed bill, to fully provide my support.

This concludes my testimony, and I am happy to answer any further questions you may have by emailing me at holly.johnson.bcba@outlook.com.

Sincerely,



Holly Johnson, MS, BCBA, LABA
Board Certified Behavior Analyst #1-14-15198
ND Licensed Applied Behavior Analyst #L15

North Dakota Applied Behavior Analyst Licensing

Title	Education Requirement	Examination Requirements	Supervision Requirements	Scope of Practice	BACB Equivalent	Grandfathered Staff?
ND Licensed psychologist	Doctoral Degree, Psychology	Active license from NDSBPE	None	Can diagnose ASD conditions. Can design, supervise, evaluate, and modify treatment programs to change behavior in ASD.	N/A	N/A
ND Licensed ABA	Masters Degree, Psychology, Special Education, or specific additional coursework	1) Requires BCBA from BACB 2) Oral Exam by the NDSBPE	None	Cannot diagnose. Can design, supervise, evaluate, and modify treatment programs to change behavior in ASD. Can code and file a claim independently.	BCBA	Yes, without BCBA, closed 2013 and beyond
ND Registered ABA	Bachelors Degree with specific requirements	1) BCaBA from BACB OR 2) Score of ≥ 450 points or higher on national written exam for Psychology (EPPP) AND 3) Passing oral exam by the NDSBPE	Supervised by 1) Licensed Psychologist OR 2) Licensed ABA Supervisors must be on file with NDSBPE	Cannot diagnose. Can design, supervise, evaluate, and modify treatment programs to change behavior in ASD under required supervisor. Cannot code and file a claim independently per Century Code.	BCaBA	No
Skills Trainer	Paraprofessional staff-employed, trained in general techniques to a basic competence, and trained in specific techniques of ABA treatments and monitored/adjusted by supervising ABA therapist	Not regulated by NDSBPE	Supervision by 1) Licensed ABA OR 2) Registered ABA	Direct Implementation of ABA Therapy. Does not design intervention or assessment plans. Cannot code and file a claim independently per Century Code.	RBT	No

Behavior Analyst Certification Board

Title		Education Requirement	Examination Requirements	Supervision Requirements	Scope of Practice
BCBA-D	Board Certified Behavior Analyst- Doctoral	Doctoral Training in BA	Pass BCBA Exam offered by BACB	None	Cannot diagnose. Independent practitioner who provides therapy and supervises work of BCaBA's, RBT's
BCBA	Board Certified Behavior Analyst	Masters Degree	Pass BCBA Exam offered by BACB	None	Cannot diagnose. Independent practitioner who provides therapy and supervises work of BCaBA's, RBT's
BCaBA	Board Certified Assistant Behavior Analyst	Bachelors Degree	Pass BCaBA Exam offered by BACB	Supervised by BCBA/BCBA-D	Cannot diagnose. Supervised practitioner who may supervise RBT's in implementing behavior analytic interventions
RBT	Registered Behavior Technician	Paraprofessional	BACB Certification	Supervised by BCBA/BCaBA	Does not design intervention or assessment plans. Primarily responsible for direct implementation of ABA Services. BCBA supervising RBT is responsible for work performed by RBT.

Terms

BACB	Behavior Analyst Certification Board
BCBA	Board Certified Behavior Analyst
BCBA-D	Board Certified Behavior Analyst- Doctoral
BCaBA	Board Certified Assistant Behavior Analyst
RBT	Registered Behavior Technician
NDSBPE	ND State Board of Psychologist Examiners
DSP	Direct Support Professional (Paraprofessional)
ASD	Autism Spectrum Disorders

#1
HB 2236
3/6/19
pg. 1

SB 2236
ABA Therapist Licensing
House Human Services Committee
Robin Weisz - Chairman

Chairman Weisz and members of the committee,

For the record, my name is Thomas Beadle, State Representative from District 27 in Fargo. I am also a board member for the North Dakota Autism Center, located in West Fargo. I am here today in support of SB 2236, dealing with the licensing and regulation of behavior analyst professionals.

If you recall last session, we had lengthy discussion on HB 1434 which dealt with insurance coverage for ABA therapy. We recognized that this therapy and treatment was immensely valuable and could do wonders for the kids that were treated. The House passed that bill even though we tend to not favor insurance mandates, but it was unsuccessful in the Senate. Last year, Insurance Commissioner Godfread put out a bulletin from his office that required companies to cover it, as he saw the need for this coverage and ensuring that patients weren't denied treatment that could work and benefit us all. This was a tremendous victory for the Autism community, but was only part of the hurdle.

As you'll recall, we had lengthy discussions last session about how the insurance piece would increase the demand for ABA, but we recognized that we also needed to work on the supply side of licensed practitioners. This bill is our attempt to do that. There is a severe bottleneck with the current licensing process with the Board of Psychologists, who currently license them, and we have heard of a number of individuals who don't feel like the current system is the best fit. There are not enough ABA therapists to justify their own board, but it is the feeling of those operating in this field that the Integrative Health Board could do the job well, and help expedite the process. I know that there is some reservation from the Board of Psychologist Examiners about losing these licensees, but I think that this is truly a good step to help alleviate the problem. I know there are some directors and practitioners who are here today that can help better explain the current situation and necessity of this change.

Thank you, Mr. Chairman.

#2
SB 2236
3-6-19

TESTIMONY IN SUPPORT OF SENATE BILL 2236 – LICENSURE AND REGULATION OF BEHAVIOR ANALYSTS

Sandra Smith, Executive Director
North Dakota Autism Center, Inc.
647 13th Ave E, Ste A, West Fargo, ND 58078
701-367-9855

Chairman Weisz and House Human Services Committee Members, my name is Sandy Smith. I am a co-founder, the President and Executive Director of the North Dakota Autism Center, Inc. in West Fargo. My 16 year old son was diagnosed with autism at 22 months old and I have spent the last 14 years advocating for him and other individuals with autism to have access to life changing applied behavior analysis (ABA) therapy. I have been involved in ND behavior analyst licensure law since the 2011 legislative session when at my urging Senator Judy Lee introduced a bill to establish the first behavior analyst licensure law because my insurance required a Board Certified Behavior Analyst to supervise my son's treatment and the one I recruited from Nebraska could not practice in North Dakota without violating the law. After being amended the bill passed and licensure of behavior analysts was added to the responsibility of the North Dakota Board of Psychologist Examiners. The original licensure law has been amended several times and the administrative rules have continued to evolve over the years into a process that presents many challenges for Board Certified Behavior Analysts to obtain licensure in a timely manner. I am testifying in support of Senate Bill 2236 which essentially transfers the responsibility of licensing Board Certified Behavior Analysts to the Integrative Health Care Board. Moving it to the Integrative Health Care Board also provides an opportunity for Board Certified Behavior Analysts to be part of the licensing process which is not the case under current law. It is my understanding that a BCBA will be added to the Integrative Health Care Board and the board also has subgroups so additional BCBA's in the state will have a part in making recommendations to the board.

Over the last two years ND Medicaid and all ND insurance companies are now offering coverage for ABA Therapy. This has dramatically increased the demand for providers in ND and has called attention to the fact that getting certified professionals through the North Dakota Board of Psychologist Examiner's licensure process in a timely manner has become a significant challenge. It is also significantly disparate to other like professions as such as speech and language pathologists, occupational therapists and physical therapists. The North Dakota Board of Psychologist Examiners requires masters' degree behavior analysts to go through a process that is very similar to what PhD Psychologist's go through. It is cumbersome, redundant and takes significantly longer than other like professions. Once speech and language pathologists, occupational therapists and physical therapists pass their national exam and complete their applications for ND licensure it takes weeks to get their license versus the months it takes for behavior analysts. In addition, the application for BCBA licensure is \$650 versus \$240 or less for speech, occupational and physical therapists. I have included a document titled "Comparison of Professional Licensure" as part of this testimony for your review.

#2
SB2236
3-6-19

Although North Dakota's current behavior analyst licensure law requires professionals to be certified by the Behavior Analyst Certification Board (BACB) the ND Board of Psychologist Examiners has candidates repeating processes and submitting the same information that the BACB has already gathered and verified before allowing candidates to even sit for the BCBA exam. There are also requirements for endorsements which puts the candidate at the mercy of the endorser to get the endorsement completed and sent in a timely manner so the candidate can get on the schedule for the next oral exam that is offered only 4 times per year. Endorsers missing the date and other paperwork delays can add months to the process.

Senate Bill 2236 is modeled after the Association of Professional Behavior Analysts Model Licensure Act. In this model act, current certification by the Behavior Analyst Certification Board (BACB) is the principal requirement for obtaining and maintaining licenses. The Behavior Analyst Certification Board®, Inc. (BACB®) is a nonprofit 501(c)(3) corporation established in 1998 to meet professional credentialing needs identified by behavior analysts, governments, and consumers of behavior analysis services. The BACB adheres to international standards for boards that grant professional credentials. The BACB's Professional and Ethical Compliance Code of Behavior Analysts is incorporated as the code of conduct for individuals licensed under this Act. The BACB has established itself as the gold standard of certification for behavior analysts and there is absolutely no reason state licensing boards need to create redundant, cumbersome and additional time consuming processes and requirements for licensure.

The demand for licensed behavior analysts in ND greatly exceeds the supply. There are approximately 30-35 licensed behavior analysts in ND today. Using data from the North Dakota Department of Public Instruction there are currently over 1,500 students ages 3-21 in our public school system with an autism diagnosis. What is even more concerning is that there are many children who are diagnosed before age three and this also does not address the many individuals with autism who are over 21 years of age. ND needs well over 100 licensed behavior analysts to address just the needs of the children in our state and many more to address the adult population. That is why Senate Bill 2236 is so important. We need to get BCBA's who currently live in the state through the licensure process in a timely manner and ensure they as well as out of state BCBA's don't view ND as a state with a difficult licensure process and go elsewhere.

I urge you to send Senate Bill 2236 to the House floor with a do pass recommendation. Thank you for your time today.

Comparison of Professional Licensure

#2
SB2236

COLLEGE GRADUATE	Speech Pathologist	Physical Therapist	Occupational Therapist	Behavior Analyst
Education Level Required	Master's or Doctorate	Master's or Doctorate	Master's or Doctorate	Master's or Doctorate
On-Site Experience before Graduation	Externship 2x16 week	Clinical Affiliation 18 weeks & 10 weeks	Fieldwork Experience 2x2 week & 2 x12 week	1500 hours of supervised independent fieldwork (max 130 per month) going up to 2000 hrs. in 2020
Graduated from an Approved & Accredited Professional Program	Yes	Yes	Yes	Yes
Certification Board	National PRAXIS exam	Federation of State Boards of Physical Therapy	National Board for Certification in Occupational Therapy	Behavior Analyst Certification Board (BACB)
Official Transcripts Needed	Sent directly to the Board	Sent directly to the Board	Sent directly to the NBCOT before exam can be taken	Sent directly to BACB before exam and course work must be approved by BACB before exam can be taken.
Initial Exam Cost	\$120	\$485	\$515	\$245
Standardized Test	American Speech-Language Hearing Association Praxis Test (Praxis)	National Physical Therapy Exam (NPTE)	National Board for Certification of Occupational Therapy Practitioner Exam (NBCOTP)	Behavior Analyst Certification Board - BCBA or BCaBA Exam
Testing Center Fee	No	No	Yes	\$125
Score Transfer Fee	\$0	\$0	\$40/request	\$0
INITIAL LICENSURE				
State Licensing Board	North Dakota State Board of Examiners: Audiology & Speech Language Pathology	North Dakota Board of Physical Therapy	North Dakota State Board of Occupational Therapy Practice	ND Board of Psychologist Examiners
Number of State Board Members	9	6	5	7
Number of State Board Administrative Staff	1	5	3	1 or 2?
Initial State License Application Fee	\$100	\$200	\$200	\$450 Use one application for both Psychologists and Behavior Analysts. It is very confusing and very long. Difficult to determine what information needed from Behavior Analyst vs. Psychologist
State Initial Licensure Application Exam	No	Juris Prudence Examination	Juris Prudence Examination & NDSBOTP Law/Administrative Rules Self Assessment	No
PLUS Online Application Fee (hosted on PSY/PRO)	NA	NA	NA	\$200 Request for information that has already been provided and verified by the BACB prior to being able to take the BCBA or BCaBA Exam. System is confusing because it is designed for Psychologists
Board Interview	At Board discretion	At Board discretion	At Board discretion	Mandatory Oral Exam offered 4 times per year in various different cities throughout ND. Licensee sometimes given less than 24 hours notice of where they need to be the next day. NDBPE says they are working on a written exam.
References Required	No	No	Yes - 2	Yes - 3 (endorsements). Must be mailed to endorsers who complete them and mail them back to outsourcing agency. Licensee has to keep checking if they have been received. Can delay application.
Temp License Available & Cost	No - Reinstate is \$350	No - Reinstate is \$200	Yes - \$90 taking next exam within 4 months	Yes, with initial fee if requirements are met. Unsure of length of provisional license and what happens if licensee fail oral exam. If they take on clients who take on their clients when provisional license expires. There are no extra BCBA's available to take them on. Against BACB Code of Ethics to abandon clients.
Background Check (No finger Prints)	No	No	Yes - Done by NBCOT to sit for Exam	No
FingerPrint Background Check	Yes - State Board	Yes - State Board	No	No
FingerPrint Cards - Agency Fee	\$10	\$10	\$0	No
Initial Background Check Fee	\$0 - but done at College before Externship \$40	\$40	\$0 - but complete at College before Fieldwork \$40	No fee done with licensure disclosure
Application Notarized	Yes	Yes	Yes	Yes
State License Application Review	7-10 Days	Within 2 weeks	Within Week	Few months. Typically 4 to 6 months. If one of the endorsers fail to send in endorsement in timely manner licensee may miss scheduled Oral Exam and have to wait 3 months. If licensee fails Oral Exam must wait 3 months to retake it.
LICENSE RENEWAL				
State License Authorization Duration	Yearly	Yearly	Every 2 Year	Yearly
State Renewal Licensure Fee	\$75	\$100	\$200	\$250
State Renewal Schedule	December 1st, Yearly	January 1st, Yearly	June 1st, Every 2 Years	November 1st, Yearly
State Renewal Continue Education Requirements	10 CEUs per calendar year	25 CEUs every 2 years with	20 CEUs every 2 Years	40 CEUs every 2 years
State Additional License Renewal Exam	No	Juris Prudence Examination	Juris Prudence Examination & NDSBOTP	No
State License Application Review	7-10 Days	Within 2 weeks	Within Week	A month
Association Membership Required	Yes	No	No	No
Supervision Abilities	Yes - Speech Language Pathology Assistant (SLPA) & Speech Language Pathology Licensed Assistant (SLPLA) & College Students after Year CFY Completed	Yes - Physical Therapy Assistants (PTA), Physical Therapy Aides & College Students	Yes - Occupational Therapy Assistants (OTA) & College Students	Yes - Registered Behavior Technicians (RBT), RABA, BCaBA
Supervision Ratio	1 SLP : 2 SLPA or SLPLA	1 PT : 3 Supportive Personnel	1 OT : 3 OTA & 1 OT : 6 OTS	Not stated; Depending on ability/availability of BCBA caseload.

3-6-19

#3
SB 2236
3-6-19

Testimony
Senate Bill 2236 – Licensure & Regulation of Behavior Analyst Professionals
House Human Services Committee
Representative Robin Weisz, Chairman
March 6, 2019

Good morning, Chairman Weisz and Members of the House Human Services Committee. My name is Taylor Hill, and I am a licensed BCBA providing services through Anne Carlsen's Behavioral Health Group in Bismarck.

I would like to thank the Representatives for letting me share my testimony today. I appreciate the work you are doing to help make the licensing process more accommodating and efficient for professionals in the future. In my personal experience, it took me a year and a half to get licensed as a BCBA in the state of North Dakota. During a recent conference for behavior analysis, my colleagues and I shared that we were from North Dakota. An individual from Hawaii commented that she had heard our licensing process was frustrating. If we want to provide opportunities for other professionals to come to our state and serve a population in much need of assistance, we need to change that narrative. We should be encouraging other experts in this field to come share their years of experience with us here in this state instead of worrying them with our licensing process.

There are many families around the state that need services and continue to sit on waitlists. They can't afford to wait longer while potential service providers are waiting and running in circles to complete a frustrating licensing process. Improving this process may motivate other individuals from this state, who are discouraged by the current obstacles associated with licensure, to take the next steps forward in obtaining training in this field. This would provide families with more professionals who understand and appreciate the same North Dakota ideals and values they share.

#3
SB 2236
3-6-19

I love watching the individuals I serve make progress with their goals. This might be something as small as learning to greet a peer as they enter the room, or as big as learning to use the bathroom independently. When families share stories about the successes they see in the home or community, I know the work I do is making a difference. I would like for more families around the state to have these kinds of impactful experiences and that means allowing the opportunity for more professionals to provide services in a timely manner. I will not read the timeline of my experience with the BCBA licensing process, but I have included it in my testimony as an example of what I and others have experienced. I look forward to the recommended changes you have proposed to take effect, and I thank you for the opportunity to testify. I am happy to answer any questions you might have.

Timeline outline – 9/20/16 to 3/22/18

ASPPB – Association of State and Provincial Psychology Boards

NDSBPE – North Dakota State Board of Psychologist Examiners

PLUS – Psychology Licensure Universal System

PsyPro – Online Application Management System

9.20.16 – 9.22.16 - I completed the online PLUS application after receiving an email from the ASPPB that contained forms and direction on how to complete the application.

10.12.16 – I received an email from the ASPPB stating I needed verification from the BACB that I was certified. I sent an email to the BACB to get verification and was notified that verification was sent on 10.14.16.

#3
SB 2236
3-6-19

1.23.17 – I received an email that the PLUS system was changing to PsyPro, but all the information I entered would be saved. The email also informed me that the site will be down from 1.27.17 – 1.30.17.

1.9.17 – I emailed the ASPPB to check the status of my application. One endorser hadn't responded, and I was informed that none of my endorsers were licensed (Illinois does not require licensure) and because of that, my application does not meet the necessary requirements.

3.8.17 – I sent an email to the ASPPB that administrative codes in North Dakota were changing and asked how that might affect the requirement for licensed endorsements. I received an email back stating that the ASPPB only enforces the rules, they do not set them. I sent an email to the NDSBPE to get clarification on this but got no response. The ASPPB informed me that they can send in the application and see how the NDSBPE responds. I asked them to send in the application. The ASPPB sent me an email saying that I am missing information online. I logged into PsyPro and the information that was supposed to save during the transfer from PLUS to PsyPro in January did not save. I re-entered my information, including course records, certification confirmation, and official transcript. I also sent a new endorsement form to a new licensed endorser in North Dakota.

5.8.17 – I received an email from the ASPPB that they received the new endorsement. I was told I needed to resubmit my application using PsyPro. I submitted the application again and then received an email from the ASPPB stating that I needed to add undergraduate coursework and transcript. I added coursework and ordered an official transcript for my undergraduate degree.

6.30.17 – I received an email from the ASPPB that my transcript had been received and that my application had been submitted.

#3
SB 2230
3-6-19

8.3.17 – I sent an email to the NDSBPE after my application was reviewed in a board meeting at the end of the July. I received an email from the NDSBPE on 8.14.17 that my application was going to be reviewed on 8.21.17.

8.18.17 – I received an email from the NDSBPE that my BCBA certification was going to expire on 8.31.17 and that they needed confirmation that it was renewed. I contacted the BACB about sending a “Letter of Good Standing” to the NDSBPE. I received an email from the BACB on 8.25.17 that my “Letter of Good Standing” had been sent.

9.4.17 – I received a letter from the NDSBPE that I had been granted a Provisional License. The Provisional License was good from 8.21.17 – 2.21.18.

11.15.17 – I sent an email to the NDSBPE about my application. I received an email that I was on the agenda for 11.20.17. Between 11.21.17 – 12.1.17 I sent 6 emails to see the outcome of the NDSBPE meeting held on 11.20.17. I received an email back stating that my inquiry had been sent to the board on 12.1.17.

12.20.17 - I sent an email to the NDSBPE to see if the board had received my inquiry. I received a call from a board member. He told me my application did not meet requirements of the board because two of my endorsers were not licensed in ND. I asked about the licensed endorser requirement being removed. He informed me that the board discussed removing this requirement but decided against it.

12.28.17 – I received a letter from NDSBPE reiterating that all endorsers had to be licensed in the state of ND.

1.29.2018 – I requested an extension of my provisional license to allow time for the endorser information to get to the NDSBPE and was informed my provisional license would be extended on 2.13.2018.

#3
SB 2236
3-6-19

3.22.2018 – The NDSBPE informed me that I would be allowed to sit for the oral exam on April 18, 2018. I took the exam in Fargo and I was notified on 4.20.2018 via phone call that I had passed the oral exam and would be a Licensed Applied Behavior Analyst in the state of North Dakota.

Taylor Hill

Behavioral Health Services - Behavior Supports Coordinator

Anne Carlsen Center – Bismarck

Ph:701.751.2315 Ext.3055

Taylor.Hill@annecenter.org

#4
SB 2236
3-6-19

Testimony in Opposition of
Senate Bill 2236 – Licensure & Regulation of Behavior Analyst Professionals
House Human Services Committee
Representative Robin Weisz, Chairman
March 6, 2019

Chairman Weisz and Members of the House Human Services Committee:

I am Holly Johnson, Licensed Board Certified Behavior Analyst, and current Executive Board President for the North Dakota Association for Behavior Analysis (NDABA). Our mission is to support and grow the field of behavior analysis in ND. I am providing this testimony in opposition to SB 2236 and representing NDABA and its membership; however, there are possibly BAs who are NDABA members who would not share this official position by NDABA. The NDABA Executive Board is comprised of seven member-elected executive members with voting on this bill comprising of five opposing, one supporting, and one member abstained from voting. I've also provided additional opposition testimony from other BAs and members of NDABA with this testimony.

While there is nothing inherently wrong with the proposed bill (SB 2236) and the language contained there within, it would be a major shift for BAs. Changing our regulatory body is not the answer. The workforce issue does not come down to how long it takes to obtain licensure in ND. The testimony I provided last week on SB 2143 would help the BA workforce issue. The origins of this legislation come from providers who employ BAs in ND, not professionals. As far as I'm aware, less than 10% (only 2) of BAs have testified at the Senate hearing for this bill (1 in person testimony and my own written testimony). Some BAs who are also NDABA members, may work for provider agencies requesting the switch, and their testimony may come from a perspective of respecting their employers. Three recent BAs received provisional licenses in 2-4 weeks from their application submission date. One of the graduate students I supervised for fieldwork practicum hours took a month to be granted a provisional license by NDSBPE this past fall. To put this in perspective with other states, I personally just obtained licensure as a BA in Virginia. That process that took just over a month to receive my notice of licensure in the mail.

An informal survey invitation was sent to NDABA members in October of 2018, with a few questions regarding the current licensure process under the North Dakota State Board of Psychological Examiners (NDSBPE):

- 6 of 11 respondents reported it taking between 6 months – 3 years to obtain their license from the initial application period until they passed the oral exam; 1 respondent of 6 respondents reported it took 2 months to receive a provisional license; and 1 respondent of 6 respondents reported it took 13 months for them to receive their provisional license.
- 4 of 6 respondents only took the oral exam once; 1 of those 6 respondents took the oral exam twice; and, 1 of the 6 respondents took the oral exam 3+ times before obtaining licensure.

This survey information is a small sampling of experiences. Eleven respondents equates to approximately 37% of BAs in ND. I am hopeful other BAs have provided testimony on this bill.

#4
SB 2236
3-6-19

While the NDSBPE and its regulation of BAs is not without flaws, those flaws are slowly being resolved since licensure inception in 2012. The vetting process currently in place ensures high quality and ethically competent BAs receive licenses. I was licensed in January of 2014, after not passing my first oral exam from NDSBPE in October 2013. For me, it took nearly a year to obtain licensure in ND. At the time of my oral examination, provisional licenses were not granted to BAs. Provisional licenses are now being granted in a timelier manner, and extensions of those provisional licenses are being given if the six-month period lapses, which was the case last fall with a BA in Grand Forks. Her provisional license was granted an extension and she continued to provide ABA without interruption.

Personally, I do not appreciate that BAs are not currently represented on the NDSBPE. This appointment has been delayed for over six months or more, waiting on the Governor to appoint a BA board member. NDCC was changed last session to make that clearly able to be accomplished, but the Governor has yet to appoint. I also think the outsourcing of administrative duties, including the processing of applications and a cumbersome, confusing application process, is also hindering the efficiency of the NDSBPE. A switch to the Integrative Health Care Board would give us a representative position on the licensing board and 3-5-member advisory committee, which is something of value to our profession, but again, the Governor would need to appoint. This could be accomplished with the current licensing board vacancies being filled with a ND-LABA.

In summary, it is unclear whether a switch to a different regulatory board would resolve the licensure issues for BAs in ND, and NDAC would struggle to be implemented on the proposed timeline. It's likely that the BAs in ND are split on whether to support or oppose this piece of legislation. The NDABA did have five of seven executive board members opposing this bill, and thus wishing to remain with the NDSPBE at this time. The Governor needs to appoint a BA to NDSBPE, in order for us to be represented on our own regulatory board. There does need to be efforts to expand the workforce in ND, which likely needs the help of legislative efforts.

This concludes my testimony. Thank you for your time and consideration of this testimony. I'm happy to answer any further questions you may have. If I can be of assistance during this time of deliberation, please contact me at holly.johnson.bcba@outlook.com or call me at (701) 240-9595.

Sincerely,

Holly Johnson, MS, BCBA, LABA
Board Certified Behavior Analyst #1-14-15198
ND Licensed Applied Behavior Analyst #L15
President, North Dakota Association for Behavior Analysis (NDABA)

All opinion expressed here is my own. These opinions in no way represent the Department of Human Services/Life Skills and Transition Center, the ND Autism Spectrum Disorder (ASD) Task Force, or my supervisor's position on the NDSBPE, all of which I am connected to, adding to my unique perspective contained in this testimony.

#4
SB2236
3-6-19

Testimony in Opposition for
Senate Bill 2236 – Licensure & Regulation of Behavior Analyst Professionals
House Human Services Committee
Representative Robin Weisz, Chairman
March 6, 2019

Representatives Weisz, Rohr, D. Anderson, Damschen, Devlin, Dobervich, Fegley, Kiefert, Porter, Ruby, Schneider, Skroch, Tveit, and Westlind,

Because of my unique background with behavior analysis, specifically for North Dakota, I would like to provide you with information about SB2236 changing the statute on regulating behavior analysis.

SB2236: To remove regulation of Applied Behavior Analysis from ND St. Board of Psychologist to a Sub-Board of the Unified Profession Regulatory Board.

More than half of states now have regulatory boards governing behavior analysis. Most of the rest have some form of credentialing to protect insurance providers that they are paying for qualified behavior analysis services. Behavior analysis has always been a specialty within psychology.

Combined Boards vs Separated Boards:

Where psychology and behavior analysis are served by the same regulators, there has been little difficulty providing timely and effective oversight and licensing. Several states that separate the specialties have reported significant political complications due to confusion from professional overlap, along with public confusion about the differences. These have had to be brought to the legislature to umpire.

Currently, the Psychology Board has 3 vacancies on the Board and there is at least one KNOWN qualified ABA who has expressed interest in being appointed to the Board membership by the governor. The appointment has been held up since June 2018, or there would have already been at least one ABA on the current Psychology licensing board. More can be appointed as only 3 of the 7 Board appointees are required to be psychologists.

The Unified Board, however, would have one ABA appointed to the membership which is otherwise required to be made up of a variety of medical professionals. To offset that, a 3 person 'advisory' sub-committee may be appointed to advise the larger board. There are only a few businesses that appear to advocate for this move, with a vague argument that there is some advantage to separating ABA regulatory activities from Psychology regulatory activities. ABA will disappear into the medical regulatory world in that arrangement and lose the human service perspective.

Historical Concerns:

North Dakota applicants in behavior analysis experienced some normal startup complications when ABA licensing first began as has been true of all startup operations. Initially, there was paperwork and logistics problems that had to be sorted out. These have been addressed and the past year has been relatively smooth for ABA licensing. I know from both the Psychology Board (I am an appointed member) and applicant perspective (I have employed ABAs for the state for over 35 years).

#4
SB 2236
3-6-19

This past year I have had 3 ABA employees go/going through the process, and one Psychologist. They all received Provisional licenses within a month or less of initial application, with one Provisional License issued in less than 2 weeks. Provisional licensing enables immediate billing while waiting to take the Professional Responsibility Examination (PRE) which is specific to North Dakota law and ethics. I have now supervised 10 ABAs through or going through the process, and advised another half dozen out of the about two dozen licensed/registered ABA's in North Dakota.

Those who experienced delays - whether ABA's or Psychologists - neglected to get their application materials into the Board. In some cases, delaying the process due to applicant missteps as much as 8 to 10 months. The Board cannot act on an incomplete application and offer assistance where possible.

It is my opinion that moving ABA to the Unified Board will set back the current efficient and effective system. Setting up new regulatory mechanisms with the new board is likely to introduce new and awkward bureaucracies that will impede the business of getting our trained ABAs into service, and provide them with experienced ethics and jurisprudence oversight. The current board efficiently blends the two highly similar branches of psychology to maximize benefits to both.

Of particular concern is the transition date of January 1, 2020. That will cease the Psychology Board's authority to issue licenses and the Unified Boards Administrative Code is not likely to be in place to enable issuance of licenses - potentially leaving a void of several months getting new ABA's into practice. Because I recruit, train, and assist ABA's to obtain licensure to meet the needs of North Dakota, this is a seriously flawed initiation date and threatens to hamper my ability to get ABA's into practice to meet pressing needs.

I would urge you to leave the regulation of psychology and behavior analysis in the current hands. Over the past 2 years, I was regularly asked to testify to the Health Services Interim Committee meetings on behalf of the Psychology Board. Executive Directors of businesses who were present and employ behavior analysts were publicly asked of current difficulties getting ABA's licensed. They consistently reported on the record to the Chair that there were no problems being encountered, while recognizing there had been some glitches in past years.

Summary:

As a professional behavioral psychologist myself, and the leading employer and developer of behavior analysis in North Dakota, I would have assisted the constituents asking for such a bill to craft useful changes. I did so on the original bill for Senator Lee in the 2011 session. As noted above, I have assisted almost two dozen people through the licensing process (I must frequently recuse myself on the Licensing Board from voting as a result). I see both sides, including improvements the Board is working on now. While well-meaning, this bill actually will make hiring behavior analysts more confusing and complicated, and even then will not accomplish those constituents' intended goals. If there are concerns, they have not been expressed to the Psychology Board, or to me (in my role with the state) professionally, or to the North Dakota Association on Behavior Analysis in which I am very active. Concerns that have been expressed have been addressed relatively well to date.

I continue to have most difficulty NOT with Licensing - but in finding ABAs to hire, and going so far as to train them myself. Providing resources for ABA practicum experiences and loan repayment work

#4
SB 2236
3-6-19

incentives are crucial and are not addressed in the behavioral health workforce initiatives introduced so far. If ABA could be added to those it would be a tremendous help in expanding ABA in North Dakota.

Sincerely,

PDK

Paul. D. Kolstoe, PhD - ND Licensed Psychologist #333

Specialist in Developmental Disabilities & Behavior Analysis

Fellow - American Assoc on Intellectual & Developmental Disabilities

Fellow - American Psychological Assoc: Int. & Dev. Disability Division

All opinion expressed here is my own. The opinions in no way represent the Department of Human Services/Life Skills and Transition Center, ND State Board of Psychologist Examiners, ND Psychological Association, or ND Association on Behavior Analysis, all in which I have membership that adds to my unique perspective.

Credential Information:

My 39 year career has been exclusively in the practice of behavior analysis in psychology, first in Nebraska and the past 35 years in North Dakota. This includes 10 years of private practice of ABA in the Grand Forks region. I currently wear several hats in various professional roles:

- Author and nationally recognized behavioral psychologist in the Am. Assoc. On Intellectual & Developmental Disabilities (AAIDD). Recognized as Fellow Status (outstanding contributions) in 1994.
- Author and nationally recognized behavioral psychologist in the Am. Psychological Assoc. (APA). Recognized as Fellow Status (outstanding contributions) in 2009.
- Clinical Director of CARES (1994) and Life Skills & Transition Center (2000). Psychologist since 1993. Director of Psychology 1995, DD Behavioral Health Service 7 ABAs added (2009).
- Chair - Behavior Intervention Review Committees of Grand Forks (1989) and Grafton (1983).
- Appointed to ND St. Board of Psychologist Examiners (2012) regulating Psychologists and Applied Behavior Analysts (added 2013).
- Past President of ND Psychological Association (2007-2009).
- Co-Founder ND Association On Behavior Analysis (2010).

Additionally, my family began serving North Dakota in psychology in 1922 when my grandfather, S.O. Kolstoe began teaching educational psychology at Valley City State University to teachers with his masters degree in psychology from UND. He became the first PhD in psychology from UND when he graduated in 1932. He retired in 1958 and a residence hall is named for him at VCSU. My father, Ralph Kolstoe, PhD joined the UND Psychology Department in 1957, became Chair 1963-1979, and retired in 1992 - 9 years after I started at Grafton State School. He was the behavior modification consultant to the ND State Hospital and the Grafton State School through the 1960's and 1970's in the development of their specialized behavior modification programs. My family has provided 97 years of continuous behavioral and psychological service to the people of North Dakota, with cumulative years now totaling 106.

5

March 6, 2019

Chairman Weiz and Members of the House Human Services Committee:

My name is Blake Peterson. I am a board certified and Licensed Applied Behavior Analyst in Wahpeton. I have been practicing Applied Behavior Analysis in North Dakota since 1991 and became licensed when this became available in 2012.

I have been following SB 2236 as it moves through the legislature. From my understanding this bill was put forward to address concerns relating to the timeliness and process of becoming a Licensed Applied Behavior Analyst through the North Dakota State Board of Psychologist Examiners (NDSBPE). I do not believe that SB 2236 is necessary as the NDSBPE has made improvements in their efficiency while continuing to provide a thorough vetting process.

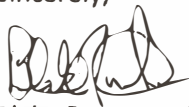
Part of their vetting involves an oral exam in which they address issues pertaining to professional conduct and knowledge of the North Dakota century code related to the protection of vulnerable adults and children. Prior to sitting for an oral exam an applicant can be issued a provisional license. The provisional license can be used for third party reimbursement. The use of the provisional license has helped eliminate some of the concerns regarding the amount of time a person needs to wait to begin practicing in North Dakota. After a person passes their oral exam with the NDSBPE they may be fully licensed. Please note that this is my understanding of the process from my own experience.

For a person I supervise it took about one month to obtain a provisional license. This was even after additional information was requested from the NDSBPE. I would assume that the process may have taken less time if the additional information was not needed.

Although the time to become fully licensed may take several months, I feel that such timelines are appropriate when the vetting process is used along with the issuance of provisional licenses.

Before voting on this bill I would ask that the Committee members consider the NDSBPE's increased efficiency along with the important vetting process they have in place to protect the citizens of North Dakota. Consideration should also be given to how changes in the licensee titles proposed in the bill may cause confusion among consumers, insurance companies, and others.

Sincerely,



Blake Peterson, M.S.

Board Certified Behavior Analyst #1-14-9551

ND Licensed Applied Behavior Analyst #L1

btpeterson@702com.net

Testimony for
Senate Bill 2236 – Licensure & Regulation of Behavior Analyst Professionals
House Human Services Committee
Representative Robin Weisz, Chairman
March 6, 2019

Greetings committee members,

I am Cristine Deaver, Licensed Applied Behavior Analyst (LABA) and Board Certified Behavior Analyst (BCBA). I am writing you today to share my thoughts about the SB 2236 Licensure of Behavior Analysts in ND. I was one of the first three BCBAs in ND (2009) and one of the first 4 Licensed Behavior Analysts in ND (2012). I am an instructor in UND's ABA program and the ABA Graduate Director at UND and am a NDABA board member. I share this information with you to demonstrate my professional training and experience in behavior analysis and the practice of behavior analysis within ND. I speak to you on my own behalf and not to represent UND or the NDABA board.

I am providing you with my thoughts about SB 2236 that related to the Licensure of Behavior Analysts in North Dakota. I know that there have been some concerns in the past about the turnaround time in communication and licensing of Behavior Analysts in North Dakota by the North Dakota State Board of Psychological Examiners (NDSBPE). However, I believe that changes have been made to address these concerns (expedited temporary licenses). I am also aware that a behavior analyst would be eligible to be appointed to the NDSBPE by the governor and to date this has not taken place; the governor would also need to appoint a behavior analyst to the Board of Integrative Health Care. I believe that if the problems that were present in the past have been addressed and are no longer an ongoing problem, changing boards may not be in our best interest at this time.

Thank you for your time.

Cristine Deaver, BCBA, LABA
Board Certified Behavior Analyst
ND Licensed Applied Behavior Analyst

NORTH DAKOTA PSYCHOLOGICAL ASSOCIATION

House Human Services Committee

SB 2236

Chairman Weisz and members of the committee,

The North Dakota Psychological Association is a non-profit professional association for licensed psychologists and others affiliated with the delivery of psychological services. We are made up of over 100 psychologists all across the state who practice in a wide variety of settings. It is part of our stated mission to foster awareness of mental health and psychological issues among consumers, the general public, health care providers, and government agencies, and to advocate for issues affecting our community members so that the interests of the public welfare and psychologists are mutually enhanced.

I'm writing to bring awareness to the unnecessary changes to the licensure and regulation of applied behavior analysts (ABAs). The hard work logistics of figuring out how license ABAs in North Dakota has now been completed by the ND State Board of Psychologist Examiners, and it is working well, as acknowledged during interim committee hearings by several employers of ABAs. I'd invite your attention to the points below:

- Board certified behavioral analysts applying for initial licensure in North Dakota can reliably receive their provisional license (enabling their immediate independent practice and billing) within 2 to 4 weeks of initial application. Upon assessment of the behavioral analyst's full application and successful passage of the Professional Responsibility Evaluation (PRE), ensuring knowledge of ND state law (such as how to report child and vulnerable adult abuse), a behavioral analyst may receive their full licensure. The PRE is assessed every 90 days. Thus, new applicants can be provisionally practicing within 2 weeks and fully vetted within 90 days of initial application.
- Movement to a new board will create unnecessary bureaucratic confusion in the transition. It will provide no new advantages, as the new board will still need to assess new licensees to ensure that the applicant has knowledge of North Dakota law before granting a full license.
- Under the Integrated Health Board, ABAs would be regulated by medical professionals, practicing in an unrelated field, rather than human service specialists. The Integrated Health Board's primary membership would include, at most, 1 ABA, and it would only receive advice from a 3-member ABA advisory committee with no regulatory authority. The Psychology Board, which has regulatory authority and is focused on the broad discipline of psychology, can ultimately include up to 3 ABAs.

- Currently, there is no complaint on public record with the Human Services or Health Services Interim Committees of problems with the licensure/registration of ABAs in North Dakota. No complaint has been received by the ND State Board of Psychologist Examiners, North Dakota Psychological Association, or North Dakota Association on Behavior Analysis. Thus, there is no factual basis for a need for a regulatory change.

Matthew Doppler
matthew.doppler@sanfordhealth.org