

2011 SENATE HUMAN SERVICES

SB 2155

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2155  
2-14-2011  
Job Number 14487

Conference Committee

Committee Clerk Signature



## Explanation or reason for introduction of bill/resolution:

Relating to certification of applied behavior analysts; and to definitions related to the state board of psychologist examiners.

## Minutes:

Attached testimony.

**Senator Judy Lee** opened the hearing on SB 2155.

**Senator Judy Lee**, as sponsor, introduced SB 2155 which had grown from its original intent. The original bill was designed because the autism center in Fargo has nationally certified behavior analysts who have been working with the children there and the Board of Psychologist Examiners announced to them that they were practicing psychology without a license and could not continue. They have tried a variety of ways to satisfy the board and it has not been satisfactory up to this point.

**Senator Dick Dever** referred to page 2, the definition of "practice of applied behavior analysis" and asked if experimental refers to the whole process or to the fact that, in the process, you have to experiment to see what works.

**Senator Judy Lee** deferred the answer to others who might be more knowledgeable.

**Dan Ulmer**, BCBS, introduced **Dr. Kenneth Fischer** who is in charge of their behavior health section and is a MD in pediatric psychiatry.

**Dr. Fischer** provided support for SB 2155. Attachment #1  
Amendments were offered. Attachment #2 and Attachment #3

**Senator Tim Mathern** stated that he thought precept is kind of enshrined in the code of ethics for physicians and asked if it is part of the code of ethics for the professions they are dealing with here.

**Dr. Fischer** didn't believe so in any formal sense. It was good timeless advice and, in his opinion, should apply to anyone who treats another human being with any form of intervention.

In answer to the question earlier by **Senator Dick Dever** he wasn't sure what the intent was in using the word "experimental" here and he talked about how experimental could refer to both processes.

**Senator Tim Mathern** asked if he was suggesting that some of the high level services in the hospitals should be at the school instead of waiting until they have to be hospitalized.

**Dr. Fischer** replied, absolutely. He is a big believer in early intervention, head start, and other programs that are aimed to immediately identify these children. These services should be done in a setting where there are multiple integrated providers all talking to one another and integrating their approach to the child.

**Dr. Fischer** spoke about ABA and explained that it is a broad term that relates to a wide range of conditions. There is no "one size fits all". ABA has been shown to be helpful for a very small percentage of autistic children and can result when applied appropriately by appropriately trained individuals in measurably modest gains. The majority of autistic children also have a developmental disability.

He spoke about ensuring that the therapists have a minimum set of guidelines and training and oversight so as the field evolves and more evidence based standards emerge it can be incorporated into their training.

He pointed out that regulation by the states has started because there are some states where it is completely unregulated. Without regulation there is the situation where people can get write in degrees without any background checks or primary source verification. Unfortunately these people are treating the most vulnerable kids.

**Dr. Alan Fehr**, president of the ND State Board of Psychologist Examiners, spoke in opposition to SB 2155 in its present form but could support it with their amendments.  
Attachment #4

**Senator Tim Mathern** wanted to know if the label for the two levels was confusing for the public since the label was the same for both.

**Dr. Fehr** explained that to the general public a licensed applied behavior analyst and a registered applied behavior analyst are performing the same scope of practice. From a regulatory point of view there is a large difference.

**Senator Dick Dever** asked how many people might be affected by the license and the registration and if he was proposing that people who are licensed under other professions be included in those like psychologists.

**Dr. Fehr** replied that people who are currently licensed in other professions are of no concern to them. Their major concern is people who are not licensed and are providing the human service. If they are not licensed they do not answer to anybody. He talked about the difference between certified and licensed.

**Senator Judy Lee** asked him to elaborate on the effort of the behavior analysts to work out some kind of oversight which was denied without any response including what it was going to take to make them happy.

**Dr. Fehr** replied that he had a different perspective on that. As they became aware of people providing human service and being unlicensed and using the term behavior analysis, which is part of the scope of practice for psychologists, the concern was not that they were not regulated.

Discussion followed on the inability of the parties to work together, licensing fees, and setting up a licensing board or melding into the Board of Psychologist Examiners.

**Paul Kolstoe**, ND Developmental Center of the Dept. of Human Services, testified in support of SB 2155 (Attachment #5) with amendments (Attachment #6).

**Senator Tim Mathern** asked for an explanation of the two most important things that they and the Board of Psychologist Examiners do not agree on.

**Mr. Kolstoe** replied that probably the most disagreement would be on the issue of a grandfathering clause.

**Senator Spencer Berry** asked if there is currently a strong awareness and push within the academic institution in ND to train ND students for these positions.

There was discussion on attempts of recruiting, attempts by the University system to include programs focused on behavior analysis, and problems surrounding the issues. It would take this kind of a bill to start setting the wheels in motion to make it valuable for behavior analysts to be in the state.

**Carol Olson**, ND Occupational Therapy Association, spoke in support of SB 2155. Attachment #7 included amendments.

**Senator Judy Lee** recognized the concern and cited code 43-32-30.5 which she felt addressed those concerns.

**Bonnie Staiger**, ND Psychological Association. Attachment #8

**Senator Judy Lee** asked Ms. Staiger to address integration of one group into an existing board.

**Ms. Staiger** explained the process and cost involved in another area in which she had been involved.

**Sandy Smith**, parent of an 8 yr. old boy with autism, supported SB 2155. Attachment #9

**Barbara Murry**, ND Association of Community Providers, stated that they were included in the work group that was conducted by Dr. Kolstoe and they strongly endorse the amendments he has offered to the committee.

**Senator Judy Lee** didn't think the amendments would help Ms. Smith's problem.

Discussion followed on the various amendments that were offered and time frames for licensing. An area of concern was if any of the amendments that were proposed would permit the people currently working to continue to work.

There was no further testimony.

The hearing on SB 2155 was closed.

Attachment #10 Amendment dated 2-7-2011 (Alex Schweitzer)

Attachment #11 Other information.

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2155  
2-21-2011  
Job Number 14777

Conference Committee

Committee Clerk Signature

*Y. Anderson*

## Explanation or reason for introduction of bill/resolution:

## Minutes:

Attachments

**Senator Judy Lee** opened committee work on SB 2155 and asked **Alex Schweitzer** to explain the amendments that came from the task force (.01003). Attachment #12

**Alex Schweitzer**, Superintendent of the ND State Hospital, explained the amendments. He clarified that the registrants are individuals who can be registered to do behavior analysis as long as they are under supervision. Most behavior analysts to be registered would have bachelor degrees.

He explained that most of the group felt pretty strongly about grandfathering. There are a number of behavior analysts in ND who have anywhere from 15-30 years of experience. Some are Masters Degree Psychologists and they would be grandfathered in because of the experience. Two in the state are board certified by the National Board – they would be provisionally licensed until they meet the requirements.

Some are Bachelor level – non Masters – that would be eligible for registry and would need supervision. It is important to the department and to providers throughout the state that this section on grandfathering comes into the law because of their experience.

He said the debate in the workgroup with respect to grandfathering was whether to have it or not. There was very little debate about these individuals having to follow the same requirements as out of state. Most of the workgroup felt it was important to recognize the years of experience and training of the individuals already in state. Most of the workgroup agreed to these amendments with some division on the grandfathering issue. Initially the Board of Psychology agreed with grandfathering and then there was a division in their membership.

**Senator Judy Lee** referred to a letter from Christine J. Kuchler, PhD, ND State Board of Psychologist Examiners, which expressed the concerns of grandfathering and the exemption of those working in a licensed facility. Attachment #13

**Senator Gerald Uglem** moved to adopt amendment .01003.

Seconded by **Senator Spencer Berry**.

Discussion on grandfathering: Those who are working in that category are pretty much all working in state facilities and are working under the supervision of people who are at a higher educational level. It is a unique group of workers that the Dept. of Human Services has in group homes, state hospital, and developmental center.

There are more than nineteen behavior analysts in the state but only nineteen would meet the criteria for this bill and would be grandfathered in.

Being grandfathered in does not exempt them from continuing education and keeping up with the standards from the national board. The Board of Psychology reviews that on an annual basis.

**Mr. Schweitzer** clarified that supervision of those nineteen is required for those with Bachelor Degrees. Master Degrees don't require supervision.

Roll call vote 4-1-0. **Amendment adopted.**

**Senator Tim Mathern** moved a **Do Pass as Amended**.

Seconded by **Senator Spencer Berry**.

Roll call vote 5-0-0. **Motion passed.**

Carrier is **Senator Tim Mathern**.

February 18, 2011

*JL*  
2-22-11  
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PROPOSED AMENDMENTS TO SENATE BILL NO. 2155

Page 1, line 2, replace "certification" with "regulation"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-32-01" insert ", 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, and 43-32-14, subsection 1 of section 43-32-16, and sections 43-32-19.1 and 43-32-30"

Page 1, line 3, replace "definitions related to" with "the regulation of applied behavior analysis by"

Page 1, line 9, replace "analysis" with "analyst"

Page 1, line 9, remove "the design, implementation, and evaluation of"

Page 1, remove lines 10 through 12

Page 1, line 13, replace "environment and behavior" with "an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst"

Page 1, line 14, after "2." insert "\"Autism spectrum disorder\" means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder.

3."

Page 1, line 15, replace "3." with "4."

Page 1, line 17, replace "4." with "5."

Page 1, line 22, replace "5." with "6."

Page 2, line 3, replace "6." with "7."

Page 2, line 3, after the first "psychologist" insert ", an applied behavior analyst."

Page 2, line 4, replace "7." with "8."

Page 2, line 4, replace "means" with ":

a. Means"

Page 2, line 6, after "including" insert "principles of operant and respondent learning. The term includes"

Page 2, line 7, replace "design" with ":

(1) Design"

Page 2, line 8, replace "design" with:

"(2) Design"

Page 2, line 10, replace "design" with:



"(3) Design"

Page 2, line 11, replace "consult" with:

"(4) Consult"

Page 2, line 11, after the underscored period insert:

"b."

Page 2, line 12, replace "neuropsychology" with "personality assessment, intellectual assessment, neuropsychological assessment"

Page 2, line 13, after the third underscored comma insert "family therapy, coordination of care,"

Page 2, line 13, remove "or"

Page 2, line 13, after "hypnotherapy" insert ", and long-term counseling"

Page 2, line 15, replace "8." with "9."

Page 3, line 1, replace "9." with "10."

Page 3, line 3, replace "10." with "11."

Page 3, line 6, replace "11." with:

"12. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst. The term does not include an applied behavior analyst.

13."

Page 3, after line 9, insert:

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

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

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee

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or registrant fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 5. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual ~~license-fee~~ determined by the board not to exceed ~~one-hundred-fifty-dollar~~ the costs incurred by the board in issuing the license or registration. The secretary of the board, upon receipt of payment of the annual ~~license~~ fee, shall issue the licensee or registrant a certificate of annual ~~license~~ renewal. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual ~~license-fee~~ is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee and registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

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

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual license-fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual license-fees in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, age, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.

**SECTION 10. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-19.1. Licensing applicant licensed in other jurisdictions.**

1. The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology and industrial-organizational psychology, or applied behavior analysis and meets one of the following requirements:
  - 1-a. The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.
  - 2-b. The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.
2. The board shall grant a provisional license or registration to an applicant to be an applied behavior analyst or registered applied behavior analyst while the application is pending, provided the applicant is:
  - a. Licensed or registered and is in good standing in another jurisdiction;  
or

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b. Certified in good standing with the national behavior analyst certification board.

**SECTION 11. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

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

This chapter does not apply to:

1. A student or intern pursuing a course of study in psychology or, industrial-organizational psychology, or applied behavior analysis at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist or, industrial-organizational psychologist, registrant, or applied behavior analysis. The student or intern shall may not use the title "psychologist" or, "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" and the student or intern status shall must be clearly stated.
2. A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology or, industrial-organizational psychology, or applied behavior analysis in this state for a period of more than thirty days in any calendar year.
3. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology, applied behavior analysis, or industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.
4. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
5. A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological or applied behavior analysis services.
6. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
7. A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person continues

employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.

- 8. An individual providing applied behavior analysis services to an individual in a public school setting.
- 9. An individual providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant or an applied behavior analyst.
- 10. An individual who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the individual or caregiver does not represent as a registrant or an applied behavior analyst."

Page 3, line 12, replace "**Certification**" with "**Licensure or registration**"

Page 3, line 12, remove "**- Exemptions**"

Page 3, line 13, remove "1."

Page 3, line 13, replace "certified as" with "a registrant."

Page 3, line 13, remove "under this chapter"

Page 3, line 13, after the underscored comma insert "or a psychologist."

Page 3, line 14, replace "a." with "1."

Page 3, line 17, replace "b." with "2."

Page 3, line 17, replace "certified" with "licensed"

Page 3, line 17, after "or" insert "registered applied behavior analyst" or"

Page 3, line 18, replace "certified" with "licensed or registered"

Page 3, remove lines 19 through 30

Page 4, remove lines 1 through 5

Page 4, line 8, remove "**Certification -**"

Page 4, line 9, replace "certificate" with "license or registration"

Page 4, line 9, after "application" insert "for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst"

Page 4, line 11, remove ", not to exceed two hundred dollars"

Page 4, line 13, replace "for certification as an applied behavior analyst" with "under this section"

Page 4, line 17, after "board-approved" insert "demonstration of professional competence, such as a standardized"

Page 4, line 17, replace the underscored comma with "specific to the profession"

Page 4, line 17, remove the second "the"

Page 4, line 18, remove "and"

Page 4, line 20, after "board" insert ", and"

d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst"

Page 4, line 21, replace "certified" with "registrant and applied"

Page 4, line 22, replace "certification" with "license or registration"

Page 4, line 22, remove "not"

Page 4, line 23, remove "to exceed one hundred fifty dollars"

Page 4, line 24, remove "certification"

Page 4, line 24, replace the first "certificate" with "license or registration"

Page 4, line 26, remove the first "certification"

Page 4, line 26, replace the second "certification" with "license or registration"

Page 4, line 28, replace "certified" with "registrant and"

Page 4, line 29, replace "certification" with "license or registration"

Page 4, line 30, remove the first "certification"

Page 4, line 30, replace the second "certification" with "license or registration"

Page 5, line 1, remove "certification"

Page 5, line 3, replace "certificate" with "license or registration"

Page 5, line 5, replace "certificate" with "license or registration"

Page 5, line 6, replace "certified" with "licensed or registered"

Page 5, after line 7, insert:

"6. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:

a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.

b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.

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c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist."

Renumber accordingly

Date: 2-21-2011

Roll Call Vote # 1

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2155

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 01003

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Sen. Uglem Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern		✓
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 4 No 1

Absent 0

Floor Assignment \_\_\_\_\_

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



Date: 2-21-2011

Roll Call Vote # 2

2011 SENATE STANDING COMMITTEE ROLL CALL VOTES

BILL/RESOLUTION NO. 2155

Senate HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number 11.0017.01003

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment

Rerefer to Appropriations  Reconsider

Motion Made By Sen. Mathern Seconded By Sen. Berry

Senators	Yes	No	Senators	Yes	No
Sen. Judy Lee, Chairman	✓		Sen. Tim Mathern	✓	
Sen. Dick Dever	✓				
Sen. Gerald Uglem, V. Chair	✓				
Sen. Spencer Berry	✓				

Total (Yes) 5 No 0

Absent 0

Floor Assignment Sen. Mathern

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

REPORT OF STANDING COMMITTEE

**SB 2155:** Human Services Committee (Sen. J. Lee, Chairman) recommends **AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (5 YEARS, 0 DAYS, 0 ABSENT AND NOT VOTING). SB 2155 was placed on the Sixth order on the calendar.

Page 1, line 2, replace "certification" with "regulation"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-32-01" insert ", 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, and 43-32-14, subsection 1 of section 43-32-16, and sections 43-32-19.1 and 43-32-30"

Page 1, line 3, replace "definitions related to" with "the regulation of applied behavior analysis by"

Page 1, line 9, replace "analysis" with "analyst"

Page 1, line 9, remove "the design, implementation, and evaluation of"

Page 1, remove lines 10 through 12

Page 1, line 13, replace "environment and behavior" with "an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst"

Page 1, line 14, after "2." insert "Autism spectrum disorder means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder."

3."

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Page 1, line 17, replace "4." with "5."

Page 1, line 22, replace "5." with "6."

Page 2, line 3, replace "6." with "7."

Page 2, line 3, after the first "psychologist" insert ", an applied behavior analyst."

Page 2, line 4, replace "7." with "8."

Page 2, line 4, replace "means" with ":

a. Means"

Page 2, line 6, after "including" insert "principles of operant and respondent learning. The term includes"

Page 2, line 7, replace "design" with ":

(1) Design"

Page 2, line 8, replace "design" with:

(2) Design"

Page 2, line 10, replace "design" with:

"(3) Design"

Page 2, line 11, replace "consult" with:

"(4) Consult"

Page 2, line 11, after the underscored period insert:

"b."

Page 2, line 12, replace "neuropsychology" with "personality assessment, intellectual assessment, neuropsychological assessment"

Page 2, line 13, after the third underscored comma insert "family therapy, coordination of care."

Page 2, line 13, remove "or"

Page 2, line 13, after "hypnotherapy" insert ", and long-term counseling"

Page 2, line 15, replace "8." with "9."

Page 3, line 1, replace "9." with "10."

Page 3, line 3, replace "10." with "11."

Page 3, line 6, replace "11." with:

"12. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst. The term does not include an applied behavior analyst.

13."

Page 3, after line 9, insert:

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

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

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and

industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee or registrant fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 5. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual license-fee determined by the board not to exceed ~~one hundred fifty dollars~~ the costs incurred by the board in issuing the license or registration. The secretary of the board, upon receipt of payment of the annual license-fee, shall issue the licensee or registrant a certificate of annual license renewal. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual license-fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee and registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

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

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual ~~license-fee~~ must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual ~~license-fees~~ in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, age, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.

**SECTION 10. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-19.1. Licensing applicant licensed in other jurisdictions.**

1. The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology ~~and industrial-organizational psychology, or applied behavior analysis~~ and meets one of the following requirements:
  - ~~1-a.~~ The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.
  - ~~2-b.~~ The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.
2. The board shall grant a provisional license or registration to an applicant to be an applied behavior analyst or registered applied behavior analyst while the application is pending, provided the applicant is:
  - a. Licensed or registered and is in good standing in another jurisdiction; or
  - b. Certified in good standing with the national behavior analyst certification board.

**SECTION 11. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

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

This chapter does not apply to:

1. A student or intern pursuing a course of study in psychology or, industrial-organizational psychology, or applied behavior analysis at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist or, industrial-organizational psychologist, registrant, or applied behavior analysis. The student or intern ~~shall~~ may not use the title "psychologist" or, "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" and the student or intern status ~~shall~~ must be clearly stated.
2. A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology or, industrial-organizational psychology, or applied behavior analysis in this state for a period of more than thirty days in any calendar year.
3. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology, applied behavior analysis, or industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.
4. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
5. A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological or applied behavior analysis services.
6. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
7. A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person continues employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.
8. An individual providing applied behavior analysis services to an individual in a public school setting.
9. An individual providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant or an applied behavior analyst.

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

Page 3, line 12, replace "**Certification**" with "Licensure or registration"

Page 3, line 12, remove "**- Exemptions**"

Page 3, line 13, remove "1."

Page 3, line 13, replace "certified as" with "a registrant."

Page 3, line 13, remove "under this chapter"

Page 3, line 13, after the underscored comma insert "or a psychologist."

Page 3, line 14, replace "a." with "1."

Page 3, line 17, replace "b." with "2."

Page 3, line 17, replace "certified" with "licensed"

Page 3, line 17, after "or" insert "registered applied behavior analyst" or"

Page 3, line 18, replace "certified" with "licensed or registered"

Page 3, remove lines 19 through 30

Page 4, remove lines 1 through 5

Page 4, line 8, remove "**Certification -**"

Page 4, line 9, replace "certificate" with "license or registration"

Page 4, line 9, after "application" insert "for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst"

Page 4, line 11, remove ", not to exceed two hundred dollars"

Page 4, line 13, replace "for certification as an applied behavior analyst" with "under this section"

Page 4, line 17, after "board-approved" insert "demonstration of professional competence, such as a standardized"

Page 4, line 17, replace the underscored comma with "specific to the profession"

Page 4, line 17, remove the second "the"

Page 4, line 18, remove "and"

Page 4, line 20, after "board" insert "; and"

- d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst"

Page 4, line 21, replace "certified" with "registrant and applied"

Page 4, line 22, replace "certification" with "license or registration"

Page 4, line 22, remove "not"

Page 4, line 23, remove "to exceed one hundred fifty dollars"

Page 4, line 24, remove "certification"

Page 4, line 24, replace the first "certificate" with "license or registration"

Page 4, line 26, remove the first "certification"

Page 4, line 26, replace the second "certification" with "license or registration"

Page 4, line 28, replace "certified" with "registrant and"

Page 4, line 29, replace "certification" with "license or registration"

Page 4, line 30, remove the first "certification"

Page 4, line 30, replace the second "certification" with "license or registration"

Page 5, line 1, remove "certification"

Page 5, line 3, replace "certificate" with "license or registration"

Page 5, line 5, replace "certificate" with "license or registration"

Page 5, line 6, replace "certified" with "licensed or registered"

Page 5, after line 7, insert:

- "6. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:
- a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.
  - b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.
  - c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist."

Renumber accordingly



2011 HOUSE HUMAN SERVICES

SB 2155

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2155  
March 8, 2011  
Job #15118

Conference Committee

Committee Clerk Signature *Wicky Crabtree*

## Explanation or reason for introduction of bill/resolution:

Relating to the regulation of applied behavior analysis by the state board of psychologist examiners.

## Minutes:

See attached Testimonies #1 - 6

**Vice-Chair Pietsch:** Opened the hearing on SB 2155.

**Sen. J. Lee:** From District 13 introduced and supported the bill. (See attached Testimony #1.)

**Rep. Porter:** Are there any educational opportunities in the ND university system for someone to become a behavior analyst.

**Sen. J. Lee:** I don't know, maybe someone else in here would.

**Rep. Porter:** On the component part of the board looking at someone practicing without a license, do we need an emergency clause on this bill to take that concern out?

**Sen. J. Lee:** Our understanding was that everything was going to be satisfactory the way we put this together. But, I think it would be a good idea to discuss the value of an emergency clause. We wanted to assure that the individuals who are working with these children in the center in Fargo would be able to continue to do that work. One thing that occurs to me is that we certainly do have advanced degrees available in psychology in the state educational system.

**Dr. Alan Fehr:** Clinical psychologist and president of the ND State Board of Psychologist Examiners testified in support of the bill. (See Testimony #2.)

**Bruce Murray:** I am a registered lobbyist with the ND Occupation Therapist Association. I'd like to introduce Carol Olson, their president. She is a registered and licensed occupational therapist holding a PHD in that field.

**Carol Olson:** President of the ND Occupational Therapy Association testified in support of the bill. (See Testimony #3.)

**Paul Kolstoe:** Clinical Director of the ND Developmental Center of the DHS and a licensed clinical psychologist testified in support of the bill (See Testimony #4.)

**Rod St. Aubyn:** Introduced Dr. Kenneth Fischer.

**Dr. Kenneth Fischer:** Testified in support of the bill. (See Testimony #5.)

**Handed in Testimony**

**Bonnie Staiger:** Executive Director of ND Psychological Association testified in support of the bill. (See Testimony #6.)

**NO OPPOSITION**

**Vice-Chair Pietsch:** Closed the hearing on SB 2155

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2155  
March 15, 2011  
Job #15478

Conference Committee

Committee Clerk Signature *Ticky Crahtree*

## Minutes:

See attachment #1

**Chairman Weisz:** Took up SB 2155. Anyone have any problems within the bill? Here are some suggested amendments from Alex Schweitzer from the state hospital. (See attachment #1)

**Rep. Porter:** The ND Occupational Therapy Association had suggested a little clearer language on the exemption to make sure some of the things they are doing in their scope is crossing over into what this new one would be.

**Chairman Weisz:** We will see if this language here addresses it. (See Attachment #1) The 02000 amendment are the ones fully agreed by BC/BS, the OT, Board of Psychology and the DHS. So their amendment does address the issue that the OT had. According to the note I have, they are ok with it.

**Rep. Louser:** On my notes I have on page 8, line 1-13 to be removed and to add in what the occupational therapists have requested. Does anyone else have that? I don't know who suggested that.

**Chairman Weisz:** Does anybody have a reason why? Who testified on that one?

**Rep. Louser:** Carol Olson wasn't it?

(Much back and forth conversation.)

**Chairman Weisz:** There are a lot of proposed amendments. We can look at a set of amendments at a time and go from there.

**Chairman Weisz:** We have amendments from Dr. Fehr, Dr. Alex Schweitzer, Dr. Fleischer, and OT group. Carol Olson's amendments wouldn't be needed if we adopt Dr. Schweitzer's.

**Rep. Pietsch:** Sen. Lee wanted an emergency clause on this.

**Rep. Porter:** The behavior analysts were having a professional issue with the board of psychological examiners where they were talking about you are practicing inside of our

practice without being licensed. They worked out after that had happened that they would become licensed under that board. The behavior analysts are new to the board of psychological examiners. Do you want to go through his one by one?

**Chairman Weisz:** Dr. Fehr's?

**Rep. Porter:** The first piece of this is that they want the exemptions to be eliminated. They want anybody who is working to be licensed under this board. The family members are saying it is not necessary and probably isn't because they technically are not practicing. The fee portion of the bill I had an issue with because it removes the cap completely and replaces it with the costs incurred by the board for issuing this license or registration. They could unfairly charge the behavior analysts for their license and not charge as much to other individuals like the psychologists.

**Chairman Weisz:** Dr. Fehr suggests going back to the \$150 or change to the amount necessary to administer the chapter. Let's take them based on his testimony. Number 1 page 8, lines 1-13. The exemption, take out 8, 9 and 10. Do the OTs want to take that out too?

**Rep. Porter:** The OTs want to add number 11. They don't mind 8, 9, and 10.

**Chairman Weisz:** Both the OTs and state hospital are comfortable with those exemptions and they want to add number 11. What do you want to do with this part? We won't do a motion we will just come to an agreement.

**Rep. Porter:** I don't have a problem leaving in 8, 9 and 10 and adding number 11.

**Rep. Paur:** Just an observation 8, 9 and 10 were added by the Senate.

**Rep. Porter:** I think those individuals that fall under those categories don't need to have initial expense under this board. If I'm wrong they come back and do it again in two years.

**Chairman Weisz:** Committee are you ok leaving 8,9,10 in and adding number 11? (No motion made by anyone. Chairman Weisz took a voice vote.) **Voice Vote Motion Carried**

**Chairman Weisz:** He asks for the word "implement" be removed from lines 12, 14 and 16 on page 2. He recommends the word "supervised". On page 2, line 12, 14, and 15 we are going to change the "implement" to "supervised".

**Rep. Schmidt:** (Microphone not on and inaudible.)

**Rep. Porter:** They would be implemented through somebody else.

**Chairman Weisz:** Everybody comfortable with that change besides Rep. Schmidt? We will add that in. The next issue is the \$150 fee and we were going to leave that in. We are ok with that. Section 3 page 9, Dr. Fehr is saying there is redundancy. I think he is right. Ok with deleting all of subsection 3 on page 9? (Committee agrees.) Ok.

**Rep. Louser:** On the part we just removed, that last sentence; I don't know if it is necessary, but that last sentence is not reflected on page 5.

**Chairman Weisz:** The late fee, it is already in Section whatever page 5. They have the ability by rule. What about his number 4 suggestion?

**Rep. Porter:** There were two distinct different individuals they were talking about. They were talking about licensed and registered. One of them is a like a Masters level and one is a Bachelors level. On page 2 the licensee is an implied behavioral analyst. It doesn't have the registered. The registered shows up as number 12. That is a different person. They are trying to make them be supervised by the other two. I don't know if that is necessary or unnecessary.

**Rep. Paur:** On the talking points on the bottom, they address that to some extent. "The amended bill adds applied behavioral analysts at the license and registration levels to current psychology licensing laws." The bill regulates. Bullet point. "The licensed level of practice as identified as an independent level of practice. Requiring a Masters degree in psychology or behavioral analysis". Another bullet point. "The registration level of practice identified as a full practitioner or behavioral analyst requiring a least a Bachelors degree that includes supervision by a licensed applied behavioral analyst for a licensed psychologist". These are from Senator Lee.

**Rep. Porter:** So he didn't feel that clarified to what a registered applied behavioral analyst is. That may be one to put in there just to clarify that. It came from Sen. Lee as a means of what they are trying to do.

**Chairman Weisz:** Is the committee ok with that? We will add this language if I don't hear any opposition to it. On page 3, line 15 we will make the change.

**Chairman Weisz:** The definition of autism spectrum disorder. He wants the references of autism spectrum disorder deleted on page 1, line 2 and page 2, line 13. Was there a rationale in having the disorder listed as far as a definition?

**Rep. Porter:** Dr. Fischer talked about that point in his testimony. He was ok and said that is a definition of autism spectrum disorder as a medical definition.

**Chairman Weisz:** I don't disagree that is a correct definition, but why are we defining a particular disorder? We are not defining any other disorders that they are going to deal with correct?

**Rep. Porter:** That is correct.

(More discussion back and forth with no microphones.)

**Rep. Porter:** He wants that deleted?

**Chairman Weisz:** Dr. Fehr does.

**Rep. Paur:** Dr. Fehr wants it deleted and Dr. Fischer wants it in.

**Rep. Porter:** I know that in Dr. Fischer's testimony he felt it was important to leave it specific so that there couldn't be any question that the behavioral analyst is practicing when they are working with someone with autism spectrum disorder. That is why the definition appears and why under 8 a sub 1 it appears as a specific disease because it is part of the specific treatments that they want to do under this new licensure.

(The committee agreed to leave it the way it is.)

**Chairman Weisz:** We won't do Dr. Fehr's recommendation. Let's go to #6. He wants the deletion of "registrant" on page 6 line 29.

**Rep. Porter:** Look on page 3, number 12, that is where the term registrant comes in under the definition portion of the bill. So that individual is exempt from this chapter.

**Chairman Weisz:** A person is exempt only in this area. His argument is that registrant is already under supervision and shouldn't be able to supervise themselves. Are you ok with taking out the word "registrant" and changing the word analysis to analyst? (Committee concurs.) Steven will draft up the amendments and we won't take any action yet.

**Rep. Porter:** Sen. Lee wanted the emergency clause on.

**Chairman Weisz:** Steven will add it on.

# 2011 HOUSE STANDING COMMITTEE MINUTES

House Human Services Committee  
Fort Union Room, State Capitol

SB 2155  
March 22, 2011  
Job #15792

Conference Committee

Committee Clerk Signature	<i>Vicky Crabtree</i>
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## Minutes:

See Attachment #1

**Chairman Weisz:** Called meeting to order on SB 2155. We spent considerable amount of time going through each suggestion that all the parties involved had suggested. We either adopt or didn't adopt their suggestions. By marking it here we know the changes we did. I had a conversation with the Senate and they didn't seem to be that impressed with Dr. Fehr and weren't real thrilled with some of his suggestions. We haven't adopted anything (officially) yet. I wanted the amendments drafted and we will go through and make sure we are comfortable with them. We went through them section by section but we never voted and didn't adopt anything.

**Rep. Paur:** It looks like we are trying to rewrite the bill. The Senate put 8 pages of amendments in and now we had 3 or 4 different (drops sentence). Is this good practice?

**Chairman Weisz:** That is our job Rep. Paur. It is to look at the bill and determine (drops sentence).

**Rep. Paur:** But, we are rewriting it.

**Chairman Weisz:** That depends on your perspective. We are not changing the bill from what it is about.

**Rep. Paur:** Well somebody did, we have got 8 pages over here that they amended.

**Chairman Weisz:** We have got what they did in front of us to determine whatever changes we think are necessary. Let's walk through the amendments. (See Attachment #1) The first one is remove lines 14-16.

**Rep. Paur:** I have a note here that Dr. Fischer believes they should be kept in.

**Rep. Porter:** In my discussions the concern was the ever changing diagnosis by using that terminology inside of the Century Code. One of two things needed to happen. I don't have a problem leaving something in, but if we do that then we have to date stamp it so it is specific. Otherwise you put something in the Century Code that could change hourly depending on medical text books.



**Rep. Louser:** I talked to a psychiatrist that I've known for many years personally and he moved out of ND into MN last year. As I explained what we were considering and I wanted his input on what I found as a definition; he wanted to make sure that we were clear as to who was making diagnoses are qualified behavioral analysts. What I found for a most recent definition for autism was made in 2004 and it does cover all the spectrums that are in lines 14-16 only. It doesn't have additional or remove any of those. That is probably the best date stamp because it is seven years old. That act is the Individuals with Disabilities Education Act (IDEA). The bill we just got done discussing references the Social Security Act in the same manner.

**Chairman Weisz:** Do we want to leave the definition in and tighten it up?

**Rep. Porter:** I don't have any problem leaving the definition in as long as it is time specific and date stamped. And, if Rep. Louser has language that ties it back to a definition in the federal code, I'm comfortable with that. Just an open ended definition would be a mistake on our part.

**Chairman Weisz:** Rep. Louser, do you have a specific reference that we could adopt?

**Rep. Louser:** Mr. Chairman, I believe what you are reading says something about section 3 and should be section 4 in the code. I did look that up in the U.S. Century Code and what they are saying should be the correct section.

**Chairman Weisz:** It does say here that the definition of autism under IDEA differs from that found in the diagnostic and statistical manual of mental disorders. "This is explained because the idea is definition is focused on educational needs and the DSM is focused on clinical diagnosis. For this reason a child can be diagnosed under both definitions or under one and not the other. According to a study, autistic children were under represented in the IDEA which (inaudible) the differences in definition". That raises another question. Would we want to the DSM like we did in the definition of retardation? I don't know what to do with this. You have two different definitions in the federal.

**Rep. Louser:** We do have two different definitions, but the definition that is provided by that act recently amended in 2004 is definite. The other one is the one that evolves.

**Chairman Weisz:** (Reads definition.) "Autism means a developmental disability significantly affecting verbal and non-verbal communication and social interactions. Generally evident before age 3 that adversely affects the child's educational performance. Other characteristics often associated are engagement and repetitive activities, stereotype movements, resistance to environmental change or change in daily routines and unusually responses to sensory experiences. The term does not apply if the child's education performance is adversely affected by merely because the child has an emotional disturbance as defined in paragraph e4, etc." Emotionally disturbed does not qualify under autistic. It says, "If the autistic child is determined after evaluation not to need special education, she would not be able to eligible to receive services under the IDEA". Do we want to reference the IDEA 34-305 and use that as a definition?

**Rep. Louser:** If you were to look at the IDEA website, there are two sections. Part B is ages 3-21 and it has information. Part C ages birth to 2 says coming soon. This has been the case since 2004. That is one of my concerns is that at some point going forward almost any disorder can be included in the now spectrum as to opposed to just autism. A viable alternative that you mentioned is just to remove lines 14-16 and if necessary at some point we have a better definition than what we can find.

**Chairman Weisz:** When we take up the autism bill we are going to have the same discussion.

**Rep. Louser:** The definition there is different than what is in this bill.

**Chairman Weisz:** I know. That is the problem. Are we comfortable with leaving the language out for now? I agree with Rep. Louser that we don't want this definition to keep voting on it and changing as we go.

**Rep. Paur:** That section was inserted by the Senate. If we take it out, what is going to happen when we talk to the Senate?

**Chairman Weisz:** This is one bill with our changes will be in conference committee. Then there will be discussion of why we took it out.

**Rep. Holman:** Scanning the bill and looking for the words autism spectrum disorders and sense they occur in that definition. Then on page 2, line 12 and 13, remove that too. I don't see it any place else. The bill still licenses the behavioral analysts.

**Chairman Weisz:** It is clean and then we can decide if we have to add that language or if we can define it and maybe we can resolve that at conference. I'd be inclined to support that.

**Rep. Louser:** Looking at another definition there are five forms of autism spectrum disorder. Classic, asperger syndrome, pervasive development disorder not otherwise specified which is A typical autism, tourette syndrome and childhood disintegrative disorder. That is where my concern is where A typical autism seems to continue to grow in definition.

**Chairman Weisz:** Unless someone objects, we are going to leave that in on the amendment and leave that language out. On page 2, line 12 and 13 is the other two references so that comes out. Page 2, line 14 that changes language to supervise. I did ask Sen. Lee about doing that and she wasn't sure so I thought that will probably come up in conference committee. Then we make those changes on lines 14 and 16. On page 3, line 16 after analyst, insert "is supervised by a licensed psychologists or applied behavior analyst". Page 5, line 7 we remove \$150 and went back to current law. Page 6, line 29 we removed "registrant" and replaced "analysis" with "analyst". Page 8, after line 13 we added the language the OTs wanted. On page 9 we deleted the whole subsection 3.

**Rep. Hofstad:** (Didn't have microphone on.)

**Chairman Weisz:** Removing all the underline and overstrike. It should say, "before January of each year every licensee shall pay to the secretary of the board an annual fee determined by the board not to exceed \$150".

**Rep. Porter:** I move the amendment.

**Rep. Holman:** Second.

**Voice Vote: Motion Carried**

**Rep. Holman:** I move a Do Pass as amended.

**Rep. Porter:** Second.

**VOTE: 11 y 0 n 2 absent – Rep. Devlin and Rep. Conklin**

**DO PASS AS AMENDED – MOTION CARRIED**

**Bill Carrier: Rep. Louser**

#1

Proposed Amendments for SB 2155

Page 1, remove lines 14 through 16

Page 2, remove lines 12 and 13

Page 2, line 14, overstrike "implement" and insert immediately thereafter "supervise"

Page 2, line 16, overstrike "implement" and insert immediately thereafter "supervise"

Page 3, line 16, after "analyst" insert "and is supervised by a licensed psychologist or applied behavior analyst"

\* Page 5, line 7, remove the overstrike over "~~one hundred fifty~~"

\* Page 5, line 8, remove the overstrike over "dollars"

\* Page 5, line 8, remove "the costs incurred by the board in issuing the license or registration"

Page 6, line 29, remove ", registrant"

Page 6, line 29, replace "analysis" with "analyst"

\*\* Page 8, after line 13, insert:

"11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-40 within the body of knowledge and scope of professional practice of occupational therapy."

Page 9, removes lines 11 through 23

Renumber accordingly

\* - Amendment suggested by **both** Dr. Fehr and DHS, BCBSND, OTA, and ND Board of Psychologist Examiners

- Amendment suggested by **only** DHS, BCBSND, OTA, and ND Board Psychologist Examiners

All other amendments are suggested by Dr. Fehr **only**.

Date: 3-15-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2155

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

*no motion made by anyone*

Motion Made By \_\_\_\_\_ Seconded By \_\_\_\_\_

*Chairman Weisz took a Voice Vote*

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Voice Vote*  
*Motion Carried*  
*Leave in 8, 9 and 10 and add #11*

March 22, 2011

VR  
3/22/11  
W82

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2155

- Page 1, remove lines 14 through 16
- Page 1, line 17, replace "3." with "2."
- Page 1, line 18, replace "4." with "3."
- Page 1, line 20, replace "5." with "4."
- Page 2, line 1, replace "6." with "5."
- Page 2, line 5, replace "7." with "6."
- Page 2, line 7, replace "8." with "7."
- Page 2, remove lines 12 and 13
- Page 2, line 14, replace "(2)" with "(1)"
- Page 2, line 14, replace "implement" with "supervise"
- Page 2, line 16, replace "(3)" with "(2)"
- Page 2, line 16, replace "implement" with "supervise"
- Page 2, line 18, replace "(4)" with "(3)"
- Page 2, line 24, replace "9." with "8."
- Page 3, line 10, replace "10." with "9."
- Page 3, line 12, replace "11." with "10."
- Page 3, line 15, replace "12." with "11."
- Page 3, line 16, after "analyst" insert "and is supervised by a licensed psychologist or applied behavior analyst"
- Page 3, line 18, replace "13." with "12."
- Page 5, line 7, remove the overstrike over "~~one hundred fifty~~"
- Page 5, line 8, remove the overstrike over "~~dollars~~"
- Page 5, line 8, remove "the costs incurred by the board in issuing the license or registration"
- Page 6, line 29, remove ", registrant"
- Page 8, after line 13, insert:
  - "11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-40 within the body of knowledge and scope of professional practice of occupational therapy."
- Page 9, remove lines 11 through 23
- Page 9, line 24, replace "4." with "3."

282

Page 9, line 28, replace "5." with "4."

Page 10, line 1, replace "6." with "5."

Renumber accordingly

Date: 3-22-11  
Roll Call Vote # 1

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2155

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Porter Seconded By Rep. Holman

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ			REP. CONKLIN		
VICE-CHAIR PIETSCH			REP. HOLMAN		
REP. ANDERSON			REP. KILICHOWSKI		
REP. DAMSCHEN					
REP. DEVLIN					
REP. HOFSTAD					
REP. LOUSER					
REP. PAUR					
REP. PORTER					
REP. SCHMIDT					

Total (Yes) \_\_\_\_\_ No \_\_\_\_\_

Absent \_\_\_\_\_

Floor Assignment \_\_\_\_\_

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

*Motion Carried  
Voice Vote*



Date: 3-22-11  
Roll Call Vote # 2

2011 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2155

House HUMAN SERVICES Committee

Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken:  Do Pass  Do Not Pass  Amended  Adopt Amendment  
 Rerefer to Appropriations  Reconsider

Motion Made By Rep. Holman Seconded By Rep. Porter

Representatives	Yes	No	Representatives	Yes	No
CHAIRMAN WEISZ	✓		REP. CONKLIN	✓	
VICE-CHAIR PIETSCH	✓		REP. HOLMAN	✓	
REP. ANDERSON	✓		REP. KILICHOWSKI	✓	
REP. DAMSCHEN	✓				
REP. DEVLIN	A				
REP. HOFSTAD	✓				
REP. LOUSER	✓				
REP. PAUR	✓				
REP. PORTER	✓				
REP. SCHMIDT	✓				

Total (Yes) 11 No 0

Absent 2

Floor Assignment Rep. Louser

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

REPORT OF STANDING COMMITTEE

SB 2155, as engrossed: Human Services Committee (Rep. Weisz, Chairman) recommends AMENDMENTS AS FOLLOWS and when so amended, recommends DO PASS (11 YEAS, 0 NAYS, 2 ABSENT AND NOT VOTING). Engrossed SB 2155 was placed on the Sixth order on the calendar.

Page 1, remove lines 14 through 16

Page 1, line 17, replace "3." with "2."

Page 1, line 18, replace "4." with "3."

Page 1, line 20, replace "5." with "4."

Page 2, line 1, replace "6." with "5."

Page 2, line 5, replace "7." with "6."

Page 2, line 7, replace "8." with "7."

Page 2, remove lines 12 and 13

Page 2, line 14, replace "(2)" with "(1)"

Page 2, line 14, replace "implement" with "supervise"

Page 2, line 16, replace "(3)" with "(2)"

Page 2, line 16, replace "implement" with "supervise"

Page 2, line 18, replace "(4)" with "(3)"

Page 2, line 24, replace "9." with "8."

Page 3, line 10, replace "10." with "9."

Page 3, line 12, replace "11." with "10."

Page 3, line 15, replace "12." with "11."

Page 3, line 16, after "analyst" insert "and is supervised by a licensed psychologist or applied behavior analyst"

Page 3, line 18, replace "13." with "12."

Page 5, line 7, remove the overstrike over "one hundred fifty"

Page 5, line 8, remove the overstrike over "dollars"

Page 5, line 8, remove "the costs incurred by the board in issuing the license or registration"

Page 6, line 29, remove ", registrant"

Page 8, after line 13, insert:

"11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-40 within the body of knowledge and scope of professional practice of occupational therapy."

Page 9, remove lines 11 through 23

Page 9, line 24, replace "4." with "3."

Page 9, line 28, replace "5." with "4."

Page 10, line 1, replace "6." with "5."

Renumber accordingly

2011 SENATE HUMAN SERVICES

CONFERENCE COMMITTEE

SB 2155

# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2155

4-8-2011

Job Number 16445

Conference Committee

Committee Clerk Signature

*T. Mathern*

## Explanation or reason for introduction of bill/resolution:

Relating to certification of applied behavior analysts; and to definitions related to the state board of psychologist examiners.

## Minutes:

**Senator Gerald Uglem** opened the conference committee on SB 2155.

All members were present: Senator Gerald Uglem, Senator Judy Lee, Senator Tim Mathern, Rep. Vonnie Pietsch, Rep. Scott Louser, and Rep. Robert Kilichowski.

**Senator Tim Mathern** asked about the rationale for the House amendments.

**Rep. Pietsch** explained that the House had quite a discussion on the definition of autism. It is an ever changing diagnosis and if they put it in the Century Code their question was do they date it, reference it, which date. They were uncomfortable with defining one particular disorder. At that time they were looking at SB 2268 also and wondered if the definition would be more appropriate in that area.

**Rep. Louser** reported that he had done research on the definition. A lot of their concern was not so much the growth of autism but the growth of the definition of autism included in a spectrum disorder seemed to be undefined or loosely defined. They found a federal law in 1999 most recently amended in 2004 the closest they could find to a definition. They had a hard time referencing that in the bill so they amended it out.

**Senator Judy Lee** gave background on why the bill was introduced. There is an autism center in Fargo that was established through the strong efforts of Sandy Smith whose child has autism. The behavioral analysts who are treating the children with autism are all board certified and are not psychologists. The Board of Psychologist Examiners decided these people were practicing psychology without a license. The psychologist training does not include what they do unless they have gone, specifically, to take training in this area. For that board to tell these people they couldn't practice was preventing them from doing the work that was really important for these children to be treated.

In trying to make sure these professionals who are providing important services to these families could continue to practice this bill was introduced with the original idea of carving them out so the Board of Psychologist Examiners could not regulate them.

**Rep. Pietsch** said they had both sides of testimony in the House. Their dilemma was that they couldn't come up with a date to reference that definition.

**Senator Judy Lee** pointed out that the Senate asked all the people from the different perspectives, including the Board of Psychologist Examiners, to work together which they did. They all agreed with what the Senate sent out and at the last minute the Board of Psychologist Examiners decided they wouldn't go along with it.

She felt it was important that everyone was working together to come up with a solution that was workable to them and it is important to be tuned in to how it works for the people who are in the professions. That's why they were asked to help come up with the solution.

**Senator Tim Mathern** tried to understand the rationale from the House on the uses of the words "implement" and "supervise" and the rationale for distinguishing them.

**Rep. Pietsch** replied that as she recalled discussion they understood "implement" to mean put into practice, and "supervise" to mean oversee, manage, or control. It seemed a better change of words.

**Rep. Louser** said the "supervision" was because of the terms "registered applied behavior analyst" or "registrant". The behavior analyst was supervising the registrant under the program was a discussion.

The definition of "autism spectrum disorder" was amended after testimony. He asked if BC/BS could give some perspective.

**Rod St. Aubin**, BC/BS, referenced information he had received from Dr. Fischer. The definition given is the definition used in the current and future diagnostic manual of the American Psychiatric Association. It is the most part compatible with the international classification of diseases and the definition accepted as standard in the medical profession and insurance industry. That's why they wanted to use a standardized definition for this. It is generally recognized in the diagnostic manual. (He was referring to the original definition in the original bill.)

He said they would have no problems if the committee wanted to use either implement or supervise. He suggested they be consistent.

**Senator Tim Mathern**, in respect to the terms "implement" or "supervise", he asked if sometimes those professionals do both. Sometimes he sees that the higher level professional actually does all of the stages when there is a need for it. He didn't want to get into a situation where the higher level practitioner is unable to do the one on one application of the therapy.

**Alex Schweitzer** addressed that concern. Not all behavior analysts supervise – the only ones that can are licensed psychologists and certified behavior analysts. A behavior analyst who is not certified cannot supervise. He needs to be supervised. They all implement but they don't all supervise.

**Senator Judy Lee** asked if it creates any difficulties if both are used or one or the other.

**Mr. Schweitzer** responded that supervise is a mild improvement.

**Senator Tim Mathern** asked, if they use "supervise" only, can a supervisor provide the service if they are the only one there.

**Mr. Schweitzer** replied that they all can provide the service.

**Senator Gerald Uglen** asked if they can supervise themselves.

**Mr. Schweitzer** said yes. The only one who can't would be an applied behavior analyst who is not certified.

**Senator Judy Lee** asked Mr. Schweitzer if he had any other concerns with the way the bill is drafted as it comes to the conference committee.

**Mr. Schweitzer** said he believed the autism spectrum disorder section needs to be put back in the bill. It is the APA definition which would be the most recent. Another area is making sure that occupational therapists are exempt and that was added in the House.

He didn't have a problem with the fee. The board was pretty insistent about having a fee listed.

**Rep. Louser** asked what would happen if the APA definitions were to change next year.

**Mr. Schweitzer** responded that it wasn't likely there would be that quick a change unless there was some definitive new research in the field. This definition is acceptable to most of the experts in the field.

**Senator Judy Lee** asked if a correction needed to be made on page 3 line 17 to include "certified".

**Mr. Schweitzer** affirmed that it needed to be changed because only certified behavior analysts can do supervision. Certified is an adequate word because that is certified by a national board.

**Rep. Pietsch** asked when the APA ruling come out.

**Mr. Schweitzer** pointed out that Rep. Louser's research, when he indicated dates, was probably correct - possibly 2007.

**Senator Judy Lee** found another spot dealing with certified. Should line 1 on page 7 have certified before behavior analyst?

**Mr. Schweitzer** thought that might apply to the general area of applied behavior analyst but he wasn't sure. If it deals with supervision it should have certified in front of it.

**Senator Gerald Uglen** asked if the House was willing to bring the definition of autism back in.

**Rep. Pietsch** said they would think about it and wanted to know if the Senate wanted their exact definition put back in.

**Senator Judy Lee** hoped they would consider using what is the standard accepted professional definition.

She also said she had no objection to the fee and asked about the language on page 9 if they wanted to share any comments to share about lines 17-29 about the registration renewal.

**Rep. Pietsch** replied that part of it was whether this should be under administrative rule or in code.

**Senator Tim Mathern** suggested having the intern do some research for the committee on changing the definition and also on the use of certified.

**Rep. Pietsch** said part of the certified depends on which of the categories you are talking about. Some place would be appropriate and some may not.

The conference committee was adjourned until the next meeting.



# 2011 SENATE STANDING COMMITTEE MINUTES

Senate Human Services Committee  
Red River Room, State Capitol

SB 2155  
4-11-2011  
Job Number 16476

Conference Committee

Committee Clerk Signature

*Penolson*

## Explanation or reason for introduction of bill/resolution:

### Minutes:

Attachments

**Senator Gerald Uglem** opened the meeting of the conference committee on SB 2155. All members were present.

Attachment #1- information researched by the intern.

**Rep. Pietsch** clarified that the reason 11-23 on page 9 was deleted in the House was because it would be redundant with the amended 43-32-13 on page 5.

**Senator Judy Lee** was comfortable with the explanation of leaving out "certified".

**Senator Tim Mathern** was fine with the House amendments other than the definition. If they could put the "autism spectrum disorder" definition back in and do the consistent wording on page 2, he thought they could finish the bill.

Clarification that they were working off version .02001.

**Rep. Pietsch** said they are comfortable with putting the "autism" definition back in on page 1 and to reference it on page 2.

**Senator Judy Lee** asked Mr. Schweitzer if restoring the "autism" definition was all they had to do. All other verbiage is ok?

**Mr. Schweitzer** said it was ok, just keep it consistent.

**Rep. Kilichowski** asked if they wanted to consider putting in the "state actor" who would keep the autism spectrum updated according to the DSM.

**Senator Tim Mathern** thought they should have it in the bill.

**Senator Judy Lee** thought there were other areas that are standard accepted definitions within the medical profession. Because it is so generally accepted throughout the profession it would be clearer, in her opinion, rather than them trying to define it.

There was discussion on the intent of the committee and the proper motion to use.

**Rep. Pietsch** moved that the House recede from its amendments and amend - .02002.

Seconded by **Rep. Kilichowski**.

Roll call vote 6-0-0 – **Motion carried.**

April 11, 2011

*JB*  
4-11-11

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2155

That the House recede from its amendments as printed on pages 995 and 996 of the Senate Journal and pages 1110 and 1111 of the House Journal and that Engrossed Senate Bill No. 2155 be amended as follows:

Page 2, line 12, replace "implement" with "supervise"

Page 2, line 14, replace "implement" with "supervise"

Page 2, line 16, replace "implement" with "supervise"

Page 3, line 16, after "analyst" insert "and is supervised by a licensed psychologist or applied behavior analyst"

Page 5, line 7, remove the overstrike over "~~one hundred fifty~~"

Page 5, line 8, remove the overstrike over "~~dollars~~"

Page 5, line 8, remove "the costs incurred by the board in issuing the license or registration"

Page 6, line 29, remove "registrant."

Page 8, after line 13, insert:

"11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-30 within the body of knowledge and scope of professional practice of occupational therapy."

Page 9, remove lines 11 through 23

Page 9, line 24, replace "4." with "3."

Page 9, line 28, replace "5." with "4."

Page 10, line 1, replace "6." with "5."

Renumber accordingly

# 2011 SENATE CONFERENCE COMMITTEE ROLL CALL VOTES

Committee: Senate Human Services

Bill/Resolution No. 2155 as (re) engrossed

Date: 4-11-2011

Roll Call Vote #: \_\_\_\_\_

**Action Taken**

- SENATE accede to House amendments
- SENATE accede to House amendments and further amend
- HOUSE recede from House amendments
- HOUSE recede from House amendments and amend as follows

Senate/House Amendments on SJ/HJ page(s) 995 -- 996

Unable to agree, recommends that the committee be discharged and a new committee be appointed

((Re) Engrossed) SB 2155 was placed on the Seventh order of business on the calendar

Motion Made by: Rep. Pietsch Seconded by: Rep. Kilichowski

Senators	4-8		Yes	No		Representatives	4-8		Yes	No
	4-8	4-11					4-8	4-11		
Sen. Uglem	-	✓	✓			Rep. Pietsch	✓	✓	✓	
Sen. Judy Lee	-	✓	✓			Rep. Louser	✓	✓	✓	
Sen. Mather n	✓	✓	✓			Rep. Kilichowski	✓	✓	✓	

Vote Count: Yes 6 No 0 Absent 0

Senate Carrier Sen. Uglem House Carrier Rep. Pietsch

LC Number \_\_\_\_\_ of amendment

LC Number \_\_\_\_\_ of engrossment

Emergency clause added or deleted

Statement of purpose of amendment

**REPORT OF CONFERENCE COMMITTEE**

**SB 2155, as engrossed:** Your conference committee (Sens. Uglen, J. Lee, Mathern and Reps. Pietsch, Louser, Kilichowski) recommends that the **HOUSE RECEDE** from the House amendments as printed on SJ pages 995-996, adopt amendments as follows, and place SB 2155 on the Seventh order:

That the House recede from its amendments as printed on pages 995 and 996 of the Senate Journal and pages 1110 and 1111 of the House Journal and that Engrossed Senate Bill No. 2155 be amended as follows:

Page 2, line 12, replace "implement" with "supervise"

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Page 2, line 16, replace "implement" with "supervise"

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Page 8, after line 13, insert:

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Page 9, remove lines 11 through 23

Page 9, line 24, replace "4." with "3."

Page 9, line 28, replace "5." with "4."

Page 10, line 1, replace "6." with "5."

Renumber accordingly

Engrossed SB 2155 was placed on the Seventh order of business on the calendar.

2011 TESTIMONY

SB 2155

# 1

TESTIMONY

Senate Bill 2155—Senate Human Services Committee

Senator Lee, Chairperson

February 14, 2011

Chairperson Lee, members of the Senate Human Services Committee, I am Dr Kenneth Fischer, a physician who specializes in Pediatric Psychiatry.

I have had the privilege of working with Autistic Spectrum Disorders (ASD) afflicted children and their families for over a decade now, in multiple settings (inpatient, outpatient, community, schools, etc). I am also the newly appointed Medical Director for Behavioral Health, at Blue Cross Blue Shield of North Dakota.

I am familiar with the findings of the North Dakota Autism Spectrum Disorder Task Force Initial State Plan-2010 and the published North Dakota *Guidelines: Identifying, Serving and Educating Children and Youth with Autism*. For me SB2155 is personal.

The cornerstone of good professional practice remains, even in our own time, Primum Non Nocerum: *First Do No Harm*. By helping to define uniform standards, content and criteria for the licensure and registration of "Applied Behavior Analysts", "Registered applied behavior analysts" or "registrants", **SB2155** helps to maintain that cornerstone. So I want to share my support of **SB2155**, and in particular the amendments prepared by the legislative council in **11.0017.01001**, with some slight modifications outlined in the following three brief points:

(1), I am glad that both sets of **amendments --11.0017.01001 and 11.0017.01002**—when referring to **un-amended SB2155, Page 1, line 14, after "2"**, include the insertion of a definition of an Autism Spectrum disorder.

Indeed, like diabetes or cerebral palsy for that matter, ASD is a chronic **neurobiological medical condition**. I agree with the language of both amendments exactly as written.

(2), I worry about some troubling ambiguity in the language on **page 5 of amendments 11.0017.01001**, which refers to **un-amended SB2155, page 3, line 23** where after the word "**member**", the amended language would insert "**or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the caregiver does not represent as a registrant or applied behavior analyst**"

I would simply request that three additional words be inserted after the second use of the word "**caregiver**" to read: "**Implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by**

the individual served in any setting, if the caregiver or family member does not represent as a registrant or an applied behavior analyst.”

In some states that lack of clarity has allowed that a parent or parents then be eligible for reimbursement as a services provider without the oversight provided by licensure and registration. There is, in my measured professional opinion, an inherent contradiction in any legal definition that might define a parent as their son or daughter’s therapist, not to mention the obvious classic conflict of interest.

(3), I am also worried about the proposed language in the exemptions section on page 6 of 11.0017.01001, which refers to un-amended SB2155: page 5, after line 7, insert under “6 c. **Registration as an applied behavior analyst if the applicant has a bachelor’s degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant’s employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.**”

The titles *behavior analyst*, *behavior interventionist*, and *behavior modification specialist* are not uniformly defined titles in the bill, or in the world of clinical practice. They are not, by definition, interchangeable with ABA based on the true intent of this bill. Their presence in the bill, as written, essentially tie the hands of the Psychology Board from any meaningful credentialing, quality control and oversight.

I would propose that immediately following the words “**Acceptable work titles**”, the words “**for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist**” be deleted.

In their place, insert: “shall be determined by the board.” In my opinion, such determination should unequivocally be done by the board of psychologists via administrative rule or some other equivalent procedure.

Consider that we have an obligation to these children, as **SB2155** sets out to do, to ensure that there are uniform standards, content and criteria included in the definition of “**Applied Behavior Analyst**”, “**Registered applied behavior analyst**” or “**registrant**” that: clearly meet the legal standards established through state, federal and case law, identify “best practice” and ethical standards of the behavior analysis profession, and develop eligibility standards to certify or recertify that professional.

(See **amendment 11.0017.01001, page 5**, referring to **un-amended bill Page 4, line 16**, replace...” which **may not be less than...**” Please recall, Senators, that the amended language then goes on to cite professionally agreed upon the *minimum* ABA standards that should be required to treat these vulnerable, medically complicated and unique children).



In addition to the specific three points noted above, I agree with SB2155's obvious intent to ensure high quality standards for these children by licensing and registering Applied Behavior Analysts without endorsing Applied Behavioral Analysis (ABA) above other forms of therapies. To have done so would have the net result of moving the care of ASD afflicted individuals out of the setting where best practice guidelines and an emerging expert consensus believe they should stay: the school.

Immediate referral, usually by the primary care physician in the medical home, in the first few months to years of life at the moment an ASD is simply suspected, to a school based early intervention program, is critical because ASD children often have language delays and the inability to "learn how to learn" by the condition's very nature. (Hence they need an integrated multidisciplinary approach that can be realistically provided only in a school setting given the intensity of the intervention required).

Please keep in mind that prior to comprehensive treatment, a multidisciplinary assessment is essential, and includes a complete medical evaluation by a licensed physician (with particular attention to family history for an Autism Spectrum Disorder, mental retardation, fragile X Syndrome, tuberous sclerosis; seizures, brain injuries, lead and other metabolic testing, others), testing supervised and interpreted by an licensed psychiatrist or PhD psychologist including Intellectual testing, Adaptive testing, Communication testing, Autism measures, hearing testing by an Audiologist, etc.

It is essential to do all we can for autistic children. Autism Spectrum Disorders, similar to all neurodevelopmental disabilities, are not "curable" and chronic sophisticated management is required, and often best found at the local community level, in the school, and coordinated in the office of the child's physician and medical home. Educational interventions (as early as possible after proper diagnosis or even sometimes before, when ASD is only suspected) and behavioral therapies (in the child's natural school environment) and habilitative therapies (PT, SL, OT) remain the cornerstone of treatment. Though schools may differ in philosophy and relative emphasis on particular strategies, they share common goals.

The primary goals of early intervention for these children (and eventually young adults) therefore, are to minimize autism's core features (social, communication and narrow interests) and associated deficits, maximize independence and quality of life, and minister to affected families who are often in distress. We accomplish these by facilitating development and learning, promoting socialization, reducing maladaptive behaviors (usually by methods that are eclectic, incorporating some principles of operant learning theory, structured teaching, speech and language therapy with or without picture communication or related augmentive or alternative communication strategies, sensory integration therapies, head start activities, with appropriate neurological, psychological and psychiatric consultation as needed), and educating and supporting the family and school system.

Because these families are vulnerable, I often encourage them (even after proper diagnosis) to seek additional information, second opinions, and the advice of trusted family, friends, and their primary care physician, whenever they encounter claims of treatments based on simplified scientific theories, therapies that are claimed to be effective for multiple, different, unrelated conditions or symptoms (which is often the case with ASD), claims that their child will respond dramatically and that some will be

“cured to the point of being normal” (whatever “normal” means), the use of case reports or anecdote rather than carefully designed studies, etc.

By pursuing any “one size fits all” form of treatment , the opportunity costs could be high, indeed, of providing suboptimal care to these children, just because we as “expert” clinicians of all stripes don’t yet know what works best. If we accept any intervention because it “seems to work”, without solid evidence, research on alternatives often gets stifled.

We are only at the beginning, and much additional research is needed to identify those characteristics of any behavioral treatment (including ABA) for kids on the autism spectrum (content, technique, how often, when to start and when to stop) to maximize the treatment’s effectiveness.


The overall quality of the studies in the field need to be vastly improved, including a greater emphasis on randomized controlled trials when possible, larger sample sizes (number of kids enrolled), uniform outcome measures (to see if what we’re doing is making a difference), and finally, consistent treatments (by providers trained to the highest available standards) that don’t vary so much across environments.

Moreover, studies have not yet examined (or have done so woefully inadequately to date) the impact of changing from one therapeutic approach to another, (in real time) for children showing no/little progress; hence, there are no prescriptive formulas to help clinicians, parents and teachers select which types of treatment for ASD children who differ in their behavioral profiles after initial observation.

Stated another way, ASD’s are associated with a tremendous range in syndrome expression; that is, symptoms change over the course of development and in relation to the degree of any associated developmental disability. An ongoing awareness of the range of syndrome expression and an appreciation of the complexities of developmental change are important, even for the most seasoned of clinicians.

Though individuals with ASD’s may present for evaluation and treatment at any point during their development, most children with ASD unfortunately will remain within the spectrum as adults, and, regardless of their intellectual functioning, continue to experience problems with independent living, employment, social relationships and mental health. That is what we know from the current state of the science, and from the clinical experience of those of us clinicians who have followed these families along their Autism Journey over time.

Each child needs a unique, comprehensive treatment and education plan from a multidisciplinary team. **SB2155** helps ensure that any newly licensed members of that team have the minimum necessary training for the immense task at hand, as they keep in mind Hippocrates’ timeless precept: First Do No Harm.





Chairperson Lee, members of the committee, I submit these remarks with gratitude for your time and consideration.

Kenneth J. Fischer, MD

Board Certified Adult, Child and Adolescent Psychiatrist

Medical Director, Behavioral Health, BCBSND



February 10, 2011

#2

PROPOSED AMENDMENTS TO SENATE BILL NO. 2155

Page 1, line 2, replace "certification" with "regulation"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-32-01" insert ", 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, and 43-32-14 and subsection 1 of section 43-32-16"

Page 1, line 3, replace "definitions related to" with "the regulation of applied behavior analysis by"

Page 1, line 9, replace "analysis" with "analyst"

Page 1, line 9, remove "the design, implementation, and evaluation of"

Page 1, remove lines 10 through 12

Page 1, line 13, replace "environment and behavior" with "an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst"

Page 1, line 14, after "2." insert "\"Autism spectrum disorder\" means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder.

3."

Page 1, line 15, replace "3." with "4."

Page 1, line 17, replace "4." with "5."

Page 1, line 22, replace "5." with "6."

Page 2, line 3, replace "6." with "7."

Page 2, line 3, after the first "psychologist" insert ", an applied behavior analyst."

Page 2, line 4, replace "7." with "8."

Page 2, line 4, replace "means" with ":

a. Means"

Page 2, line 6, after "including" insert "principles of operant and respondent learning. The term includes"

Page 2, line 7, replace "design" with ":

(1) Design"

Page 2, line 8, replace "design" with:

"(2) Design"

Page 2, line 10, replace "design" with:

"(3) Design"

Page 2, line 11, replace "consult" with:

"(4) Consult"

Page 2, line 11, after the underscored period insert:

"b."

Page 2, line 12, replace "neuropsychology" with "personality assessment, intellectual assessment, neuropsychological assessment"

Page 2, line 13, after the third underscored comma insert "family therapy, coordination of care,"

Page 2, line 13, remove "or"

Page 2, line 13, after "hypnotherapy" insert ", and long-term counseling"

Page 2, line 15, replace "8." with "9."

Page 3, line 1, replace "9." with "10."

Page 3, line 3, replace "10." with "11."

Page 3, line 6, replace "11." with:

"12. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst. The term does not include an applied behavior analyst.

13."

Page 3, after line 9, insert:

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

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

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee

or registrant fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 5. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-12. Application and license fee.**

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual license-fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of payment of the annual license-fee, shall issue the licensee or registrant a certificate of annual license renewal. An individual may not hold out as an industrial-organizational psychologist, applied behavior analyst, registered applied behavior analyst, or a psychologist until the annual license-fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee and registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

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

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual license-fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual license-fees in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, age, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection."

Page 3, line 12, replace "**Certification**" with "**Licensure or registration**"

Page 3, line 13, remove "certified as"

Page 3, line 13, after "as" insert "a registrant,"

Page 3, line 13, remove "under this chapter"

Page 3, line 13, after the underscored comma insert "or a psychologist,"

Page 3, line 17, replace "certified" with "licensed"

Page 3, line 17, after "or" insert """registered applied behavior analyst" or"

Page 3, line 18, replace "certified" with "licensed or registered"

Page 3, line 19, after "2." insert "A registered applied behavior analyst must be supervised by a psychologist or an applied behavior analyst in the practice of applied behavior analysis."

3."

Page 3, line 19, replace "certification" with "license or registration"

Page 3, line 23, after "b." insert "Providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the"

professional employee does not represent to the public as a registrant or an applied behavior analyst:

c."

Page 3, line 23, after "member" insert "or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the caregiver does not represent as a registrant or an applied behavior analyst"

Page 3, line 24, replace "c." with "d."

Page 3, line 27, remove "certified"

Page 3, line 28, replace "d." with "e."

Page 4, line 1, replace "e." with "f."

Page 4, line 8, remove "Certification -"

Page 4, line 9, replace "certificate" with "license or registration"

Page 4, line 9, after "application" insert "for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst"

Page 4, line 11, remove ", not to exceed two hundred dollars"

Page 4, line 13, after "An" insert "applicant under"

Page 4, line 13, replace "applicant for certification as an applied behavior analyst" with "this section"

Page 4, line 16, replace the underscored semicolon with "which may not be less than:

(1) For an applied behavior analyst, at least a master's degree with at least two hundred twenty-five classroom hours of specific graduate-level coursework and one thousand five hundred hours of supervised independent fieldwork with supervision at least once every two weeks for a total of seventy-five hours; and

(2) For a registered applied behavior analyst, at least a baccalaureate degree with at least one hundred thirty-five hours of specific coursework and one thousand hours of supervised independent fieldwork with supervision at least once every two weeks for a total of fifty hours;"

Page 4, line 17, after "board-approved" insert "demonstration of professional competence, such as a standardized"

Page 4, line 17, after "examination" insert "specific to the profession"

Page 4, line 17, remove the second "the"

Page 4, line 18, remove "and"

Page 4, line 20, after "board" insert "; and

d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst"

Page 4, line 21, replace "certified" with "registrant and applied"



Page 4, line 22, replace "certification" with "license or registration"

Page 4, line 24, remove "certification"

Page 4, line 24, replace the first "certificate" with "license or registration"

Page 4, line 26, remove the first "certification"

Page 4, line 26, replace the second "certification" with "license or registration"

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Page 4, line 29, replace "certification" with "license or registration"

Page 4, line 30, remove the first "certification"

Page 4, line 30, replace the second "certification" with "license or registration"

Page 5, line 1, remove "certification"

Page 5, line 3, replace "certificate" with "license or registration"

Page 5, line 5, replace "certificate" with "license or registration"

Page 5, line 6, replace "certified" with "licensed or registered"

Page 5, after line 7, insert:

"6. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:

a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.

b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.

c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist."

Renumber accordingly

February 10, 2011

# 3

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(1) Design"

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Page 2, line 10, replace "design" with:

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Page 2, line 11, replace "consult" with:

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Page 2, line 11, after the underscored period insert:

"b."

Page 2, line 12, replace "neuropsychology" with "personality assessment, intellectual assessment, neuropsychological assessment"

Page 2, line 13, after the third underscored comma insert "family therapy, coordination of care."

Page 2, line 13, remove "or"

Page 2, line 13, after "hypnotherapy" insert ", and long-term counseling"

Page 2, line 15, replace "8." with "9."

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Page 3, line 3, replace "10." with "11."

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"12. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst. The term does not include an applied behavior analyst.

13."

Page 3, after line 9, insert:

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

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The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee

or registrant fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

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

**SECTION 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-12. Application and license fee.**

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual ~~license-fee~~ determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of payment of the annual ~~license-fee~~, shall issue the licensee or registrant a certificate of annual ~~licensere~~ renewal. An individual may not hold out as an industrial-organizational psychologist, applied behavior analyst, registered applied behavior analyst, or a psychologist until the annual ~~license-fee~~ is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee and registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

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

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual ~~license-fee~~ must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual ~~license-fees~~ in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, age, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection."

Page 3, line 12, replace "**Certification**" with "**Licensure or registration**"

Page 3, line 13, remove "certified as"

Page 3, line 13, after "as" insert "a registrant,"

Page 3, line 13, remove "under this chapter"

Page 3, line 13, after the underscored comma insert "or a psychologist,"

Page 3, line 17, replace "certified" with "licensed"

Page 3, line 17, after "or" insert ""registered applied behavior analyst" or"

Page 3, line 18, replace "certified" with "licensed or registered"

Page 3, line 19, after "2." insert "A registered applied behavior analyst must be supervised by a psychologist or an applied behavior analyst in the practice of applied behavior analysis."

3."

Page 3, line 19, replace "certification" with "license or registration"

Page 3, line 23, replace "Implementing applied behavior analysis services to an immediate family member" with "Providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional"

employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant or an applied behavior analyst"

Page 4, line 8, remove "Certification -"

Page 4, line 9, replace "certificate" with "license or registration"

Page 4, line 9, after "application" insert "for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst"

Page 4, line 11, remove ", not to exceed two hundred dollars"

Page 4, line 13, after "An" insert "applicant under"

Page 4, line 13, replace "applicant for certification as an applied behavior analyst" with "this section"

Page 4, line 16, replace the underscored semicolon with "which may not be less than:

(1) For an applied behavior analyst, at least a master's degree with at least two hundred twenty-five classroom hours of specific graduate-level coursework and one thousand five hundred hours of supervised independent fieldwork with supervision at least once every two weeks for a total of seventy-five hours; and

(2) For a registered applied behavior analyst, at least a baccalaureate degree with at least one hundred thirty-five hours of specific coursework and one thousand hours of supervised independent fieldwork with supervision at least once every two weeks for a total of fifty hours."

Page 4, line 17, after "board-approved" insert "demonstration of professional competence, such as a standardized"

Page 4, line 17, after "examination" insert "specific to the profession"

Page 4, line 17, remove the second "the"

Page 4, line 18, remove "and"

Page 4, line 20, after "board" insert "; and

d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst"

Page 4, line 21, replace "certified" with "registrant and applied"

Page 4, line 22, replace "certification" with "license or registration"

Page 4, line 24, remove "certification"

Page 4, line 24, replace the first "certificate" with "license or registration"

Page 4, line 26, remove the first "certification"

Page 4, line 26, replace the second "certification" with "license or registration"

Page 4, line 28, replace "certified" with "registrant and"

Page 4, line 29, replace "certification" with "license or registration"

Page 4, line 30, remove the first "certification"

Page 4, line 30, replace the second "certification" with "license or registration"

Page 5, line 1, remove "certification"

Page 5, line 3, replace "certificate" with "license or registration"

Page 5, line 5, replace "certificate" with "license or registration"

Page 5, line 6, replace "certified" with "licensed or registered"

Page 5, after line 7, insert:

- "6. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:
- a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.
  - b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.
  - c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist."

Renumber accordingly

#4

# ND STATE BOARD OF PSYCHOLOGIST EXAMINERS

P.O. BOX 661  
Dickinson, ND 58602

TELEPHONE: 701-590-1754  
FAX: 701-225-6225

## Testimony on SB 2155

Chairman Lee and members of the Human Services Committee:

I am Dr Alan Fehr, clinical psychologist and president of the North Dakota State Board of Psychologist Examiners. We are a volunteer board, under appointment by the governor to regulate the profession of psychology in North Dakota.

Thank you for the opportunity to present the Board of Psychologist Examiners' views regarding SB 2155.

We are opposed to SB 2155 in its current form. However, we support the creation of a profession of applied behavior analysts and that this profession would be regulated by the ND State Board of Psychologist Examiners.

We would support SB 2155, if it can be amended and we are offering the following amendments:

1. Instead of creating a "certification" for applied behavior analysts, the bill should create a "licensure" for applied behavior analysts with a master's degree. The term "certification" would be a confusing term, since there are currently several national boards that provide a certification. The term "licensure" more clearly



denotes an authorization by a regulating entity that has the authority to revoke that authorization for cause.

A licensed applied behavior analyst could practice independently within their scope of practice. Educational requirements, supervised training experience, and guidelines for ethical practice could be established in the Board's rules.

2. We recommend creating a "registered" applied behavior analyst, who would work under the supervision of a licensed applied behavior analyst or a licensed psychologist. A registered applied behavior analyst would need to have a bachelor's degree. Educational requirements, requirements of supervision, and guidelines for ethical practice could be established in the Board's rules.

3. We recommend the following definition of the practice of applied behavior analysis:

"Practice of applied behavior analysis" means the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis, including applications of those principles, methods and procedures to design, evaluate, modify, and supervise programs to change the behavior of individuals. This includes empirically established principles of learning, behavioral conditioning techniques, and related environmental modifications to create demonstrably effective and humane outcome-based therapies with the primary goal of establishing and enhancing socially important functional independent living skills. The term does not include diagnosis, counseling, psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, or hypnotherapy as treatment modalities."

Note that this definition of the practice of applied behavior analysis removes a reference to implementing a program, which is part of the current version of this

bill. This change would permit persons not licensed or registered under this chapter, such as parents and caregivers, to implement behavioral programs designed and supervised by individuals who are licensed or registered under this chapter.

The current version of this bill includes the term “autism spectrum disorders” in the definition of the practice of applied behavior analysis. We believe use of this term would make the law too narrow and would not serve the interests of other consumers who many benefit from this service.

4. We recommend the following definition of applied behavior analyst:

“Applied behavior analyst” means an individual licensed or registered under this chapter in the practice of applied behavior analysis.

5. We recommend that continuing education requirements be set for applied behavior analysts, which can be established by the Board by rule.
6. If an individual is serving the public as an applied behavior analyst, we believe that individual should be licensed or registered as an applied behavior analyst. In the current version of SB 2155 on page 3, beginning in line 19, there are five listed exemptions to this chapter. We recommend the removal of these exemptions.

Currently in our law, under chapter 43-32-30 there is already a list of exemptions from this chapter. This list could be expanded where appropriate to include the practice of applied behavior analysis. We recommend the following:

Subsection 1 of 43-32-30 exempts students and interns in psychology. We recommend that this paragraph be expanded to include students and interns in applied behavior analysis.

We recommend that subsection 2 of the current exemptions be expanded to allow applied behavior analysts licensed in another state to practice applied behavior analysis in this state for no more than 30 days in any calendar year.

We recommend that subsection 5 of the current exemption of other persons certified, licensed or registered this state, who are practicing within the scope of practice of their profession, be expanded to include the the practice of applied behavior analysis.

7. We understand that there are currently unlicensed individuals working in the state and holding themselves out to the public as "behavior analysts" or similar title. We want those individuals to come under this law and become a regulated profession.

We realize that it will take some time for the laws to be developed and for those individuals to conform to the law. In the interest of continuity of care, we support allowing a period of time for implementation.

However, we do not support grandfathering. We want those individuals to meet criteria set forth for either licensure or registration. We are willing to allow a time-limited exemption period. We recommend that unlicensed and unregistered individuals in this situation request this exemption from the Board of Psychologist Examiners, and that we be authorized to give this exemption until July 1<sup>st</sup> of 2013, at which time this exemption would expire. We believe this should be adequate time to establish the rules to implement this law and for affected individuals to prepare and apply for licensure or registration.

In summary, we support the creation of a profession of applied behavior analysts with a licensure for independent practice and registration for supervised practice. This regulation process would protect the public through a cost-effective means to address practice concerns.

Thank you for allowing this testimony from the ND State Board of Psychologist Examiners. I would be happy to address your questions.

#5

**Senate Bill 2155 – Department of Human Services  
Senate Human Services Committee  
Senator Lee, Chairman  
February 14, 2011**

Chairman Lee, members of the Senate Human Services Committee, I am Paul Kolstoe, Clinical Director and a licensed Clinical Psychologist at the North Dakota Developmental Center of the Department of Human Services. I am here today to testify in support of Senate 2155, with a list of amendments that I will explain in my testimony.

My role at the North Dakota Developmental Center includes directing the new statewide CARES Intellectual Disabilities Behavioral Health Service to prevent institutionalization of people with intellectual disabilities. I want to point out that this bill does not impact my practice as a licensed psychologist, but does as a leader of people doing behavior analysis in the state. I was asked by Superintendent Schweitzer to assemble a work group to craft amendments to this valuable effort to professionalize behavior analysis.

The bill as proposed is intended to enable professionals with national certification in behavior analysis to help children with autism using critically important behavioral technology in a regulated profession. Besides helping children in desperate need, it can provide an avenue to authorize financial and other resources to make a dramatic change in their lives.

However, in its current form the bill would be problematic to the network of behavior analysts currently serving people with intellectual disabilities throughout the state. This network has been critical in supporting people to live in their communities and avoid institutionalization. It would also have

the unintended impact to require regulation of a number of professionals currently working as program coordinators and similar roles, and likely complicate work in daycares and other settings.

Using the foundation of the proposed bill with the amendments proposed today I believe we can accomplish the original goal without creating issues for existing supports. These amendments were developed by a work group including two members of the State Board of Psychologist Examiners, a license exempt psychologist, a state employed behavior modification specialist, one of the two nationally Board Certified Behavior Analysts (or BCBA) that we have in North Dakota, and two behavior analysts employed with private providers serving children and adults with intellectual disabilities. The work group was chaired by this presenter.

Let me start with a brief overview of the work group recommendations, and then get into the meat of the proposed amendments:

1. The psychology act is an appropriate and acceptable place to regulate applied behavior analysis as a recognized sub-domain of psychology.
2. Align language with regulatory conventions, including the removal of specific diagnosis in licensure law.
3. Recommend replacing 'certification' with 'licensure and registration', which are terms more commonly used in professional regulation.
4. Create registered applied behavior analysts who would require supervision, in a manner similar to the national standards.
5. Leave specific qualifications for the Board to set through administrative code, where they can adjust it to conditions over time in North Dakota. The national Behavior Analysis Certification Board (BACB) standards are too limited to reflect issues unique to North Dakota in recruiting and retaining behavior analysts.

6. Modify exemptions to avoid the unintended under-regulation of professionals in schools, and unintended over-regulation in intellectual disabilities and daycares, and in family situations.
7. Include a series of 'grandparent clauses' that permit existing behavior analysts a smooth incorporation into the new regulatory standards so as to not disrupt existing supports.

Let me turn to specifics: Certification is changed to the regulatory terms of licensure and registration. In general, 'certification' is a term that is generally used when the professional groups recognize achievements; whereas, licensure and registration are terms used when regulation is passed into law. The national Behavior Analysis Certification Board is an example of a professional association recognizing accomplishments of individual professionals, while North Dakota would be regulating the professional activities of those individuals.

Several amendments on Page 1 revise elements that are needed for consistency across the section when adding behavior analysis.

On page 1, line 9 the Board members recommend that it is more consistent to define the role of applied behavior analyst, rather than the act of behavior analysis itself as the original bill does. This is consistent with the existing sections of the psychologist licensing law, and removes lines 10 through 13. On page 2, line 3 adds the licensed behavior analyst to the section, but separates the 'registered behavior analyst', defined in a later amendment.

Also on page 2, deleting lines 8 and 9, we recommend eliminating the diagnosis of autism from the bill. The inclusion of any specific diagnosis is not useful to the licensing process, becomes problematic to update as

language changes, and in this specific case is currently inaccurate. The specific term of 'autism spectrum disorder' is not yet an accepted diagnosis – although it likely will be in the next edition of the diagnostic manual. The rest of the sentence is simply removing the repeated definitional statement.

Further on page 2, line 11 the amendment specifies that a behavior analyst's service is to change the behavior of individuals. While behavior analysts use a range of contexts including groups, we distinguish behavior analyst activities from those of an industrial/organizational psychologist defined elsewhere in the statute. Industrial/organizational psychologists work in group-change strategies and not at the individual level.

On page 3, line 5 is inserted the amendment that creates the 'registered' level of applied behavior analyst. Within the amended bill, two levels of practice are created to be consistent with the nationally recognized Behavior Analysis Certification Board (BACB): Licensure for Masters Level and Registration for supervised Bachelors level practitioners. The Licensed level is the independent level of practice, requiring a Masters degree in psychology or behavior analysis. Meeting the Board Certification in Behavior Analysis (BCBA) is one method of directly qualifying for this as would be addressed in Administrative Code. The Registration level is a full practitioner, requiring at least a Bachelors degree but includes supervision by a Licensed Applied Behavior Analyst or Licensed Psychologist. This is similar to what the BACB calls the Board Certified Assistant Behavior Analyst or BCaBA. The next line renumbers the paragraphs.

Sections on rule-making, continuing education and renewal were not addressed in the original version of the bill, but are required for behavior analysts to be fully addressed. The amendments beginning on Page 3, after



line 9 insert the appropriate references to applied behavior analyst, registrant, or similar terms to make the sections consistent.

The first one, on rule making, is necessary to authorize further clarifications needed in administrative code. The rest of the amendments add requirements for continuing education and renewals that will be further spelled out in Administrative Code as is done for psychologists.

In section 5, it recognizes the separation of the licensure from registration levels with regard to examinations. In sections 6 and 7, annual renewals are required with the addition that "registered" behavior analysts will have to submit work reviews from their supervisor. Further updates adding the 'registration' information and removing duplicate 'license' references are proposed in sections 8 and 9. On Page 3, Line 12 to line 19 amendments further updates the 'certification' to the 'license' or 'registration' levels of behavior analysis.

The next area is exemptions. Beginning on Page 3, line 22 in the bill, there was a clear intent to duplicate clauses from the original psychologist code of those 'exempt' from regulation. Exemptions concern licensing boards because too many gaps can be created. In amendments created by the work group, we refine the school related services to ensure there is no interference with teachers and their duties. However, please note that the current language exempts anyone – as it is listed as an exemption - working in schools without any regulatory oversight. Instead, we recommend specifying operating within their practice license or certification and activities are part of an educational plan, which is consistent with accepted practices. Lastly, they cannot represent themselves as an applied behavior analyst.

We recommend adding an area of exemption starting on page 3, after line 22 with a new item b). This area is of serious concern to intellectual disability private and public providers. Although the definition of the practice of behavior analysis is consistent with those used nationally and in most states, it is over regulating in this area. The definition is so broad that it includes the professional activities of program coordinators and day care providers. The remedy we recommend is an amendment, similar to that in schools, that would apply to professionals designing and implementing support plans for people of all ages with intellectual disabilities to acquire general life skills. The amendment links their activities to the person's support plan within a licensed agency, and that the individual does not represent themselves as an applied behavior analyst.

Finally in the area of exemptions, the behavior analyst work group is also concerned that families of children with autism, and other disabilities, may need to have people care for their child in many environments throughout the day for consistent implementation of behavioral training. We are concerned that those agents, whether paid or voluntary, should be allowed to carry out behavioral programming at the direction of the family, but they do not represent themselves to be applied behavior analysts.

The final two exemptions in the original bill are appropriate. These exemptions, in total, will clarify the original bill to prevent interference with teachers in schools while also not leaving the door 'wide open' to those not qualified in behavior analysis. Yet they protect intellectual disabilities providers, daycares, and family situations so long as they do not represent themselves as applied behavior analysts.

Beginning on Page 3; line 24 through Page 4, line 9 are amendments that are primarily re-numbering or re-lettering, and further replace forms of 'certification' with 'licensure' or 'registration' and similar terms.

For Page 4, line 11 we propose removing the limit of fees set at two hundred dollars because such limits are problematic for the board. The cost of administering applications for applied behavior analysts, just as is true for administering psychologist applications, has costs beyond the Board's control and requires adjustment over time. Setting this limit in legislation imposes a resource and flexibility hardship. The board itself has had a history of conservative price setting based on costs incurred. Furthermore, they do not have such a limit on psychologist licensure and this has not been a problem to date. The next line also just amends the 'certification' language.

The original bill promotes, but does not require, reliance on the specific national standard such as the BACB. Beginning on Page 4, line 15 we recommend amendments that broaden the qualifications to enable more candidates in North Dakota where we have difficulties in training, recruiting, and retention.

The result of this set of amendments is to enable the board to recognize the Board Certified Behavior Analyst (BCBA) directly as one standard to automatically accept. In addition, it permits the board to set slightly broader qualifications than the national standard individualized to North Dakota. These would be outlined in Administrative Code. Board members caution how difficult Code is to codify alternatives to such standards, but recognize that right now in North Dakota BACB is seriously unrealistic.

While the recommended amendments remove the specific requirement of the behavior analyst examination, it is replaced with a 'demonstration of competence specific to the profession' which would allow use of the BACB examination when possible. The problem is no examination is readily accessible right now. In order to even sit for the BACB examination a person must also meet all their other requirements of education and supervised experience. This means that all mid-career behavior analysts with master's degrees, or even doctorates, would have to acquire another master's degree and start their supervision experience – 1500-hours worth – from scratch before taking the examination. We have searched, and right now cannot be certain that we can find a satisfactory examination to have people take. However, there may be alternatives such as submitting work product examples that might serve us well until such an exam becomes available. This would be spelled out in the Administrative Code, and the Board has a history of setting high standards. These are the changes in referenced for lines 17, 18 and 19 on Page 4.

In the proposed amendment to Page 4, line 20, the supervised experience requirement is outlined for the Board to set as well rather than the reference to national standards. Also, it sets a requirement for 'registered' applied behavior analysts to have a supervision plan when applying. The specifications for these would be identified in the Administrative Code, where similar requirements are described for Psychology Residents for example.

One problem with references to the national Behavior Analysis Certification Board is that it can create sovereignty issues by allowing other entities, in this case the national BACB, to set and arbitrarily change state standards for licensing requirements. The Administrative Code is the place to recognize such certification as one form of evidence of professional competence.

There is reasonable concern about what should or should not be in the Administrative Code versus Century Code. Among our work group this was debated, as once in the Administrative Code arena members of the Psychologist Examiners have the final decision-making even after public input. This bill introduces a whole new volume of work for the licensing board. It is their plan, should this bill pass, to appoint a standing committee comprised of licensed applied behavior analysts and psychologists to develop the Administrative Code and review applicants. The committee would submit their recommendation of 'approve' or 'disapprove' to the board itself. There are many details to be worked out in the Administrative Code.

Amendments from Page 4, line 21 through Page 5, line 6 again replace 'certification' with 'licensed' and or 'registered' language.

Every time a new profession becomes regulated, such as applied behavior analysts, we encounter a startup period and a transition from un-regulated practitioners. A 'grandfather clause' recognizes current networks of seasoned professionals and allows services to be uninterrupted. We have a number of such people who have been serving North Dakota citizens over the past 30 years in the absence of a regulated profession.

Three circumstances of 'grandfather' clause are proposed in amendments for people who meet the following: in positions on January 1, 2011; currently employed in good standing; make their applications; and pay fees by July 1, 2012.

The first group, called License Exempt Psychologist, is already known to the Board of Psychologist Examiners. There used to be a provision for the Board

to grant exemptions to be psychologists for master's level psychology-trained people when hardship in hiring licensed psychologists could be demonstrated. At one time there were nearly 20 people so exempted; in fact I was one for nearly 10 years. The Board ceased granting exemptions in 1999 and the legislature removed the option in 2009, leaving the people exempt in place until they leave their current employment. There are five people remaining, and this would grant them – in addition to their license exemption as a psychologist – a license as a behavior analyst in recognition of their skills and experience. The license exemption cannot move with the person – they lose it when they leave the job; however, the applied behavior analyst license would be theirs to take with them.

The second group of 'grandfather' clause is people also with their master's degree in psychology or behavior analysis practicing as behavior analysts, either for the state – such as people in Behavior Modification Specialist positions – or for private providers as behavior analysts or similar titles. There are people in school districts who may qualify as well. Because behavior analysts have been difficult to find and keep, some private providers hired them to supplement their services. As well, the Developmental Center, State Hospital, and Human Service Centers have had state employed behavior analysts for 30 years. This would grant a license to these current practitioners so long as their employment is in good standing.

The last group for the 'grandfather' clause is other currently practicing applied behavior analysts who do not have their masters degree in the appropriate field but have years of recognized experience. They would be granted registration status if they establish appropriate licensed supervision. In all these cases, the professionals have demonstrated their competence through years of successful employment and supervised experiences.

I apologize for the number of amendments requiring such length of the testimony, and hope it was relatively clear to follow. These changes are critical to the entry of behavior analysis as a regulated profession, and to mesh with the responsibilities of the State Board of Psychologist Examiners. The changes will also align us with the national Behavior Analysis Certification Board model which will serve the state as behavior analysis matures in the future. It provides a framework for Administrative Code that can adjust to these changes over the next several years, yet meet the immediate needs of our citizens.

The importance of this bill is the protection of the people of North Dakota for professional applied behavior analysis services. These services are critically important to people with intellectual disabilities, especially those with what is being called Autism Spectrum Disorders, and others. In providing these protections, the two levels create assurances that can enable services to develop through funding, service access, and treatment consistency the public can trust.

As a result of these amendments, fully qualified applied behavior analysts could be recruited immediately. Existing behavior analysts – who have been operating in an unregulated profession until now – are recognized while gradually more stringent standards are put into effect.

While the work group did not initiate the bill, we do recognize the serious issues it is intended to address. Our amendments have been crafted by a working group that includes stakeholders from the many diverse contexts where behavior analysis is now used. We earnestly believe we have addressed the needs and yet have offered strong regulatory measures. I

was impressed by the input of the Board of Psychologist Examiners members to help address some of these complicated issues with concern and fairness.

While specific interests may take issue with individual items in this bill and these amendments, I do urge you to consider these amendments as the best collective solution to bringing regulation to the profession of applied behavior analysis. It would be best to endorse these amendments as a single, comprehensive regulatory code.

In conclusion, let me restate that:

- The Department of Human Services supports the passage of this bill with proposed amendments to current psychologist licensing laws that include applied behavior analysis at License and Registration levels.
- These amendments follow models suggested by the national Behavior Analysis Certification Board, with important additional features to recognize issues unique to North Dakota.
- The current regulations licensing psychologists would not be compromised, but clarifies applied behavior analysis as a legitimate sub-domain of psychology.
- Psychologists are difficult to recruit to North Dakota. The same is true for behavior analysts of any significant qualifications. I have been trying to recruit psychologists and behavior analysts for the past 27 years with great difficulty. The proposed legislation respects these issues yet sets strong, firm qualifications to govern practicing professional applied behavior analysts.

I appreciate this opportunity to provide you with this testimony and would be happy to answer any questions.



## PROPOSED AMENDMENTS TO SENATE BILL NO. 2155

Page 1, line 2, replace "certification" with "licensure or registration"

Page 1, line 3, replace "section" with "sections", insert a comma after "43-32-01", after the comma insert "43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, 43-32-14 and subsection 1 of 43-32-16" and after "definitions" insert "and applied behavior analyst registrations"

Page 1, line 9, replace "analysis" with "analyst" and replace "the design, implementation, and evaluation of" with "an individual licensed under this chapter in the practice of applied behavior analysis"

Page 1, remove lines 10 through 13

Page 2, line 3, after the first "psychologist" insert ", an applied behavior analyst who is not a registered behavior analyst,"

Page 2, line 8-9, delete "diagnosed with an autism spectrum disorder; design, implement, evaluate, and modify treatment program to change the behavior of individuals"

Page 2, line 11, after "behavior of" insert "individuals in" and after "organizations" insert "serving them"

Page 3, after line 5, insert:

"11. "Registered applied behavior analyst" or "registrant" means an individual who has met the requirements of section 11 of this Act, is involved in supervised employment in the practice of applied behavior analysis, and has been approved for registration by the board."

Page 3, line 6 replace "11" with "12"

Page 3, after line 9, insert:

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

**43-32-08. Rules.** The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt the rules defining what programs of study are substantially psychological in nature, what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering applied behavior analysts, and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-08.1. Continuing education requirements.** The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee or registrant fails to meet applicable continuing educational requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**42-32-08.2. Continuing education requirements – Renewal.** Absent a showing of good cause, the board may not renew a license or registration issued under this chapter without proof the continuing education

requirements under section 43-32-08.1 have been met. An individual whose license or registration is not renewed because of failure to meet the continuing education requirements must be reinstated and the license or registration renewed if, within one year from the date of nonrenewal, the individual demonstrates to the secretary of the board the continuing education requirements have been satisfied, pays the renewal fee, and pays a late fee to be determined by the rule of the board.

**SECTION 5. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-09. Examination of qualifications of applicants.** The board shall examine for, deny, approve, revoke, suspend and renew the licensing and registration of applicants as provided under this chapter.

**SECTION 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-12. Application and license fee.** The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-13. Annual license, registration and fee.** Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual license fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of the payment of the annual license fee, shall issue the licensee or registrant a certificate of annual license renewal. An individual may not hold out as an industrial-organizational-psychologist, applied behavior analyst, including a registered applied behavior analyst, or a psychologist until the annual

license fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to the licensee or registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-14. Payment of delinquent license fees – Reinstatement.** An individual whose license or registration issued under this chapter was revoked for failure to pay the annual ~~license~~ fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual ~~license~~ fee in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, age, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection."

Page 3, line 13, replace "certified" with "licensed or registered" and after "analyst" insert "or psychologist"

Page 3, line 17, replace "certified" with "licensed" and after "or" insert "registered applied behavior analyst or"

Page 3, line 18, replace "certified" with "licensed or registered"

Page 3, line 19, replace "certification" with "licensure or registration"

Page 3, line 22, after "setting" insert "as part of an educational plan supervised by an employee who is a licensed or certified teaching professional, provided the professional employee does not represent themselves as an applied behavior analyst"

Page 3, after line 22, insert:

"b. Providing applied behavior analysis services to people served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent themselves as an applied behavior analyst;"

Page 3, line 23, replace "b" with "c" and after "member" insert "or as a paid or volunteer caregiver implementing procedures established by the family or person served in any setting provided the caregiver does not represent themselves as an applied behavior analyst"

Page 3, line 24, replace "c" with "d"

Page 3, line 27, replace "certified" with "licensed"

Page 3, line 28, replace "d" with "e"

Page 4, line 1, replace "e" with "f"

Page 4, line 8, remove "Certification -"

Page 4, line 9, replace "certificate" with "license or registration"

Page 4, line 11, remove ", not to exceed two hundred dollars"

Page 4, line 13, replace "certification" with "license or registration"

Page 4, line 15, remove ", such as the education"

Page 4, line 16, remove "requirements of the board-certified behavior analyst standards"

Page 4, line 17, after "board-approved" insert "demonstration of professional competence, such as a standardized" and remove ", such as the the board-certified"

Page 4, line 18, replace "behavior analyst examination" with "specific to the profession"

Page 4, line 19, remove "Is credentialed as a behavior analyst by a board-approved credentialing entity,"

Page 4, line 20, replace "such as the behavior analyst certification board" with "has met board-approved supervised experience requirements; and"

d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst.

Page 4, line 21, replace "certified" with "licensed or registered applied"

Page 4, line 22, replace "certification" with "license or registration"

Page 4, line 24, replace "certification" with "license or registration" and replace the first "certificate" with "license or registration" and replace the second "certificate" with "license or registration"

Page 4, line 26, remove the first "certification" and remove "of the certification"

Page 4, line 28, replace "certified" with "licensed or registered"

Page 4, line 29, replace "certification" with "license or registration"

Page 4, line 30, remove the first "certification" and replace the second "certification" with "license or registration"

Page 5, line 1, remove "certification"

Page 5, line 3, replace "certificate" with "license or registration"

Page 5, line 5, replace "certificate" with "license or registration"

Page 5, line 6, replace "certified" with "licensed or registered"

Page 5, after line 7, insert:

"6. A individual employed in North Dakota on January 1, 2011, in the behavior analyst role described in this Act who requests of the board in writing by July 1, 2012, who pays the required license or

registration application fee, and who submits to the board a written statement from their employer that their employment remains satisfactory, shall be issued by the board:

- a. A license as an applied behavior analyst if that individual is employed in a position granted license exemption by the board and submit a letter of endorsement from the licensed psychologist supervisor;
- b. A license as an applied behavior analyst to an individual with a master's degree in psychology employed as a behavior analyst as verified in writing by the individual's employer. Acceptable work titles include behavior analyst, behavior interventionist, or behavior modification specialist.
- c. Registration as an applied behavior analyst to an individual with a bachelor's degree who had been employed as a behavior analyst as verified in writing by their employer. Acceptable work titles include behavior analyst, behavior interventionist, or behavior modification specialist as verified in writing by their supervisor. A plan of supervision from a licensed psychologist or licensed behavior analyst which is approved by the board must be provided for registration to be approved."

Renumber accordingly



#7



**Testimony**  
**Senate Bill 2155 – Carol H. Olson, NDOTA**  
**Senate Human Services Committee**  
**Senator Judy Lee, Chairman**  
**February 14, 2011**

Senator Lee and members of the Senate Human Services Committee, I'm Carol Olson, and I serve as the President of the ND Occupational Therapy Association. The North Dakota Occupational Therapy Association (NDOTA) represents over 300 occupational therapists and occupational therapy assistants throughout the State of North Dakota.

The NDOTA supports SB 2155 but we are concerned about possible unintended consequences of this bill and would like to work with you to bring forth suggested language for revision. We are concerned that without revision this bill could unintentionally limit consumer access to behaviorally based services provided by occupational therapists.

NDOTA does not oppose Applied Behavior Analysts becoming certified to provide ABA services in North Dakota. However, some occupational therapists in North Dakota currently provide ABA services within the scope of their practice. They wish to continue to do so. Requiring separate certification of OT/OTAs from the Board of Psychologists is not necessary as ABA falls within the scope of practice for OT.

We would ask your consideration that the following amendment be included in SB 2155:

On page 2, line 12, after "not include" insert the words "occupational therapy,".  
 Also, in Section 2.

**Applied behavior analysis - Certification required - Titles - Exemptions.**

2. The certification requirement of subdivision a of subsection 1 does not apply to an individual who is:

f. a person licensed as an occupational therapist or an occupational therapy assistant pursuant to Section 43-40 of the North Dakota Century Code whose body of knowledge and scope of practice includes the analysis of tasks and environments and the application of interventions and environmental modifications which may be behaviorally based.

Renumber accordingly.

Thank you Madame Chair and members of the committee. I'd be happy to answer any questions you may have.

**Testimony on SB 2155**

**14 February 2011**

**Senate Human Services Committee**

Chairman Lee and Members of the Committee:

NDPA does not oppose SB2155 and the definition, registration, supervision, and regulation of behavior analysts under chapter 43-32 of the NDCC.

As this bill goes forward we do want to restate for the record that related to the practice of psychology—the backbone of this chapter, we support the doctoral degree as the minimum educational requirement for entry into professional practice as a licensed psychologist regardless of specialty area.

NDPA's position is in concert with the American Psychological Association's Revised (Feb 2010) Model Act for State Licensure of Psychologists which reaffirms APA's long-standing policy (dating back to 1977).

As presented, we do not see SB2155 in conflict with this position.

#9

Testimony to Human Services Committee  
2011 Legislative Session  
Regarding Senate Bill No. 2155  
February 14, 2011

~~XXXXXXXXXX~~

Chairman Lee, Committee Members, my name is Sandy Smith, I appear today in support of Senate Bill No. 2155. I am the mother of an 8 year old boy with autism who was diagnosed when he was only 19 months old. In the quest to help my son and other families affected by autism I founded the North Dakota Autism Center, Inc. in Fargo and I am currently the volunteer President of the Board of Directors and volunteer Executive Director.

That being said, I am here today as a mother of a child with autism. My son is eligible for an Intensive Intervention Program using Applied Behavior Analysis (ABA) Therapy through my employer's health insurance. The Microsoft Healthcare Plan that is administered by Premera Blue Cross in the state of Washington provides coverage for this program. However, under current ND law, I am unable to use this benefit because I cannot find a Licensed Psychologist that meets the provider certification qualifications. I have attached as Exhibit A to my written testimony the Intensive Intervention for Children with Autism (ABA) Therapy Program Provider Certification. See Exhibit A, Page 3 – Qualifications for Certified Providers which states a certified provider is required to have the following qualifications:

1. Master's or doctoral degree in education, psychology, speech/language pathology, behavior analysis, or occupational therapy.
2. Specialization of the master's or doctoral degree in child clinical psychology, special education, applied psychology, behavior analysis, or speech/language pathology OR is a behavior analyst credentialed by the Behavior Analyst Certification Board.
3. Fifteen hundred (1,500) documented and supervised hours of providing one-to-one intensive behavioral program consultation or program manager services to children with autism spectrum disorders. Services can be provided in center, school or home. Supervised hours must meet the following criteria:
  - a. One hour of supervision has occurred for every 20 hours of service, i.e., a minimum of 75 hours of supervision.
  - b. At least 500 hours of consultation or program manager services must be home-based OR must involve substantial contact with/service to families.
  - c. Supervised by an individual with qualifications specified in numbers 1 and 2 above and extensive experience supervising or providing intensive behavioral consultation services for children with autism.

I have been unable to find a Licensed Psychologist in North Dakota that meets the Microsoft Premera Blue Cross Qualifications for Certified Providers. To my knowledge there are not any Licensed Psychologists in the state that can meet number 3 above. However, number 3 above is a requirement to become a Board Certified Behavior Analyst. There are two Board Certified Behavior Analysts in ND that meet these qualifications and I know of two other master's degree level individuals that are actively

working towards board certification. In addition, I am in contact with two Board Certified Behavior Analysts currently living and practicing in Minnesota that are very interested in practicing in ND. One is a Fargo, ND native and is very interested in moving back to Fargo to be closer to family. However, under current law Board Certified Behavior Analysts cannot practice in North Dakota.

In addition to Microsoft's Premiera Blue Cross Health Plan, TriCare which is an insurance plan for active duty military personnel also pays for ABA Therapy. TriCare has very similar provider qualifications and military families in our state are having the same issue.

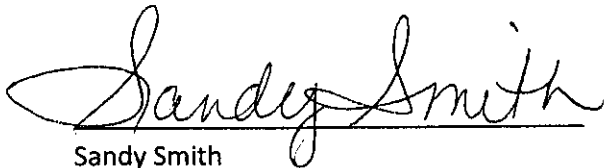
This is why Senate Bill No. 2155 is so important to families affected by autism. Current law makes it very difficult if not almost impossible to attract autism professionals to our state. For your reference, there are currently 73 Board Certified Behavior Analysts in Minnesota, 7 in South Dakota, 5 in Montana and 33 in Nebraska. As I mentioned above there are 2 in North Dakota and the chances of that number increasing is grim under current law.

Without getting into the effectiveness of Applied Behavioral Analysis Therapy for children with autism, it is clear that both Microsoft's Premiera Blue Cross Health Plan and TriCare believe in its effectiveness by providing tens of thousands of dollars of coverage per year. It is also clear by their provider qualifications that both plans believe Board Certified Behavior Analysts have the necessary qualifications to perform these services.

I understand that I am very fortunate to have insurance coverage for autism therapy as I do not know of any ND insurance company that covers it. However, as of today I cannot use it because I cannot find a Licensed Psychologist that meets the provider qualifications. There are Board Certified Behavior Analysts in ND and others willing to come to ND who meet the provider qualifications that would allow me to get therapy for my son if they were allowed to practice in our state.

I urge this committee to recommend a "Do Pass" for Senate Bill No. 2155.

Thank you for the privilege of appearing before this committee.



Sandy Smith

Parent of child with autism



**Intensive Intervention for Children with Autism  
(ABA) Therapy Program**

**Provider Certification**

Fax completed applications, with required attachments, to:  
 Microsoft ABA Therapy Program  
 Premera Blue Cross  
 Fax (425) 918-4057

Section 1: General Information		
A. Provider Name: Last	First	M.I.
		B. Date of Birth:
C. Social Security Number*	OR	Tax Identification Number*
* Either SSN or TIN may be provided; however, billing statements must use the SSN or TIN provided.		
D. Service Location (no P.O. boxes):		
E. Billing Address (P.O. boxes okay):		
F. Telephone Number:		
G. E-mail Address:		
Note: Attachment of W-9 required.		
Section 2: Education/Qualifications		
A. Highest Degree Earned:		
Institution:	Degree:	
Department:	Year:	
Degree Specialty:		
<input type="checkbox"/> Applied Psychology	<input type="checkbox"/> Behavior Analysis	<input type="checkbox"/> Child Clinical Psychology
<input type="checkbox"/> Speech/Language Pathology	<input type="checkbox"/> Special Education	<input type="checkbox"/> Other: _____
Advisor: _____		
B. Certified Behavior Analyst? <input type="checkbox"/> Yes <input type="checkbox"/> No		
C. Other License/Certification:		
<input type="checkbox"/> Counseling	<input type="checkbox"/> Medicine	<input type="checkbox"/> Occupational Therapy
<input type="checkbox"/> Psychology	<input type="checkbox"/> Speech/Language Pathology	<input type="checkbox"/> Special Education
<input type="checkbox"/> Other: _____		

Continued

Exhibit A

Section 3: Supervised Hours

Complete one page per work setting. Attach copies as needed to document all supervised hours. Parts A and B are completed by applicant. Part C is completed by supervisor.

A. Name of Agency or Institution: \_\_\_\_\_
Name of Program (if applicable): \_\_\_\_\_
Address of Agency or Institution: \_\_\_\_\_
Phone: \_\_\_\_\_

B. Please provide information regarding services rendered through this agency.

1. Home Based Intervention

Hours of home based intensive behavioral intervention to children with ASD: \_\_\_\_\_

2. Center Based Intervention

a) Hours of center/school based intervention: \_\_\_\_\_

b) Hours at center/school that involved work of parents: \_\_\_\_\_

3. Number of overall supervision hours received in setting: \_\_\_\_\_

4. Dates of service: \_\_\_\_\_

5. Age range of children with ASD: \_\_\_\_\_

6. Number of children with ASD you saw in setting: \_\_\_\_\_

7. Total hours in this setting: \_\_\_\_\_

8. Percent of total time in placement devoted to the following duties:

- Program writing/program development: \_\_\_\_\_%
• Supervision of staff working with child: \_\_\_\_\_%
• Meeting with family/other providers: \_\_\_\_\_%
• Direct provision of services to child: \_\_\_\_\_%
• Tx. plan development (i.e., IEPs, ITPs): \_\_\_\_\_%
• Case management: \_\_\_\_\_%
• Other: \_\_\_\_\_%

C. Supervisor Information

Supervisor's Name: \_\_\_\_\_

Supervisor's Degree and Area of Specialization: \_\_\_\_\_

Supervisor's Certifications/Licensures: \_\_\_\_\_

Do you have extensive experience providing intensive programming for young children with ASD?  Yes  No

Supervisor's Position/Title: \_\_\_\_\_

Supervisor's Signature: \_\_\_\_\_

Date: \_\_\_\_\_

If supervisor is not available for signature, attach letter from present head of program or agency verifying supervision hours; and/or program descriptions/practicum syllabi, or other relevant material to verify supervision.

Continued

**Section 4: Other Qualifications (optional)**

Provide a brief statement and documentation of other experiences that may qualify you for certification, such as:  
published research in peer-reviewed journals, faculty position in an autism-related intervention training or treatment program.

**Section 5: Security Data**

In the past seven years, have you been released from prison or convicted of any crime? Include convictions for which you pleaded guilty or nolo contendere (no contest), paid a fine, received a suspended sentence and/or were incarcerated. Do not include minor motor vehicle violations and convictions that have been annulled, expunged, sealed or pardoned by a court.  Yes\*  No

At any time in your life, have you ever been convicted of any criminal felony involving dishonesty or breach of trust or been convicted of an offense under Section 320603 of the Violent Crime Control and Law Enforcement Act of 1994, 18 U.S.C. Section 1033 (federal insurance crime law)?  Yes\*  No

\* If YES, please explain the circumstances of the conviction(s), including date, nature, town/city and state of each offense, disposition and any other relevant information you may want to bring to our attention.

**Section 6: Signature**

I certify that all information I have provided in this application, including any attachments, is accurate and complete to the best of my knowledge. I understand that any false statement or misrepresentation of the information I have provided on my certification request or attachments will be grounds for rejection of my certification request or termination of my certification.

Applicant Signature:	Date:
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**Qualifications for Certified Providers**

A certified provider is required to have the following qualifications:

1. Master's or doctoral degree in education, psychology, speech/language pathology, behavior analysis, or occupational therapy.  
Specialization of the master's or doctoral degree in child clinical psychology, special education, applied psychology, behavior analysis, or speech/language pathology OR is a behavior analyst credentialed by the Behavioral Analyst Certification Board.
3. Fifteen hundred (1,500) documented and supervised hours of providing one-to-one intensive behavioral program consultation or program manager services to children with autism spectrum disorders. Services can be provided in center, school or home. Supervised hours must meet the following criteria:
  - a. One hour of supervision has occurred for every 20 hours of service, i.e., a minimum of 75 hours of supervision.
  - b. At least 500 hours of consultation or program manager services must be home-based OR must involve substantial contact with/service to families.
  - c. Supervised by an individual with qualifications specified in numbers 1 and 2 above and extensive experience supervising or providing intensive behavioral program consultation services for children with autism.

PROPOSED AMENDMENTS TO SENATE BILL NO. 2155

Page 1, line 2, replace "certification" with "licensure or registration"

Page 1, line 3, replace "section" with "sections", insert a comma after "43-32-01", after the comma insert "43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, 43-32-14 and subsection 1 of 43-32-16" and after "definitions" insert "and applied behavior analyst registrations"

Page 1, line 9, replace "analysis" with "analyst" and replace "the design, implementation, and evaluation of" with "an individual licensed under this chapter in the practice of applied behavior analysis"

Page 1, remove lines 10 through 13

Page 2, line 3, after the first "psychologist" insert ", an applied behavior analyst who is not a registered applied behavior analyst,"

Page 3, after line 5, insert:

"11. "Registered applied behavior analyst" or "registrant" means an individual who has met the requirements of section 11 of this Act, is involved in supervised employment in the practice of applied behavior analysis, and has been approved for registration by the board."

Page 3, line 6 replace "11" with "12"

Page 3, after line 9, insert:

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

**43-32-08. Rules.** The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt



the rules defining what programs of study are substantially psychological in nature, what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering applied behavior analysts, and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-08.1. Continuing education requirements.** The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee or registrant fails to meet applicable continuing educational requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

**42-32-08.2. Continuing education requirements – Renewal.** Absent a showing of good cause, the board may not renew a license or registration issued under this chapter without proof the continuing education requirements under section 43-32-08.1 have been met. An individual whose license or registration is not renewed because of failure to meet the continuing education requirements must be reinstated and the license or registration renewed if, within one year from the date of nonrenewal, the individual demonstrates to the secretary of the board the continuing education requirements have been satisfied, pays the renewal fee, and pays a late fee to be determined by the rule of the board.

**SECTION 5. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-09. Examination of qualifications of applicants.** The board shall examine for, deny, approve, revoke, suspend and renew the licensing and registration of applicants as provided under this chapter.

**SECTION 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-12. Application and license fee.** The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-13. Annual license, registration and fee.** Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual ~~license~~ fee determined by the board not to exceed one hundred fifty dollars. The secretary of the board, upon receipt of the payment of the annual ~~license~~ fee, shall issue the licensee or registrant a certificate of annual ~~license~~ renewal. An individual may not hold out as an industrial-organizational-psychologist, applied behavior analyst, including a registered applied behavior analyst, or a psychologist until the annual ~~license~~ fee is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to the licensee or registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-14. Payment of delinquent license fees – Reinstatement.** An individual whose license or registration issued under this chapter was revoked for failure to pay the annual ~~license~~ fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual ~~license~~ fee in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, age, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection."

Page 3, line 12, replace "**Certification**" with "**License or Registration**"

Page 3, line 13, replace "certified" with "licensed or registered" and after "analyst" insert "or psychologist"

Page 3, line 17, replace "certified" with "licensed" and after "or" insert "registered applied behavior analyst or"

Page 3, line 18, replace "certified" with "licensed or registered"

Page 3, line 19, replace "certification" with "licensure or registration"

Page 3, line 22, after "setting" insert "as part of an educational plan supervised by an employee who is a licensed or certified teaching professional, provided the professional employee does not represent themselves as an applied behavior analyst"

Page 3, after line 22, insert:

"b. Providing applied behavior analysis services to people served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent themselves as an applied behavior analyst;"

Page 3, line 23, replace "b" with "c" and after "member" insert "or as a paid or volunteer caregiver implementing procedures established by the family or person served in any setting provided the caregiver does not represent themselves as an applied behavior analyst"

Page 3, line 24, replace "c" with "d"

Page 3, line 27, replace "certified" with "licensed"

Page 3, line 28, replace "d" with "e"

Page 4, line 1, replace "e" with "f"

Page 4, line 8, remove "Certification -"

Page 4, line 9, replace "certificate" with "license or registration"

Page 4, line 11, remove ", not to exceed two hundred dollars"

Page 4, line 13, replace "certification" with "license or registration"

Page 4, line 15, remove ", such as the education"

Page 4, line 16, remove "requirements of the board-certified behavior analyst standards"

Page 4, line 17, after "board-approved" insert "demonstration of professional competence, such as a standardized" and remove ", such as the the board-certified"

Page 4, line 18, replace "behavior analyst examination" with "specific to the profession"

Page 4, line 19, remove "Is credentialed as a behavior analyst by a board-approved credentialing entity,"

Page 4, line 20, replace "such as the behavior analyst certification board" with "Has met board-approved supervised experience requirements; and  
d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst."

Page 4, line 21, replace "certified" with "licensed or registered applied"

Page 4, line 22, replace "certification" with "license or registration"

Page 4, line 24, remove "certification" and replace the first "certificate" with "license or registration"

Page 4, line 26, remove the first "certification" and replace the second "certification" with "license or registration"

Page 4, line 28, replace "certified" with "licensed or registered"

Page 4, line 29, replace "certification" with "license or registration"

Page 4, line 30, remove the first "certification" and replace the second "certification" with "license or registration"

Page 5, line 1, remove "certification"

Page 5, line 3, replace "certificate" with "license or registration"

Page 5, line 5, replace "certificate" with "license or registration"

Page 5, line 6, replace "certified" with "licensed or registered"

Page 5, after line 7, insert:

"6. An individual employed in North Dakota on August 1, 2011, in the behavior analyst role described in this Act who requests of the board in writing by December 31, 2012, who pays the required license or registration application fee, and who submits to the board a written statement from their employer that their employment remains satisfactory, shall be issued by the board:

- a. A license as an applied behavior analyst if that individual is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor;

- b. A license as an applied behavior analyst to an individual with a master's degree in psychology employed as a behavior analyst as verified in writing by the individual's employer. Acceptable work titles include behavior analyst, behavior interventionist, or behavior modification specialist.
- c. Registration as an applied behavior analyst to an individual with a bachelor's degree who had been employed as a behavior analyst as verified in writing by their employer. Acceptable work titles include behavior analyst, behavior interventionist, or behavior modification specialist as verified in writing by their supervisor. A plan of supervision from a licensed psychologist or licensed behavior analyst which is approved by the board must be provided for registration to be approved."

Renumber accordingly

# 11

**From:** Clark, Jennifer S.  
**Sent:** Thursday, February 10, 2011 4:26 PM  
**To:** Lee, Judy E.  
**Subject:** Psych Exemptions

Senator-

Per your request, here is the citation to the "other profession" exemption under NDCC Chapter 43-32, State Board of Psychologist Examiners - NDCC Section 43-32-30(5), which provides:

5. A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological services.

Let me know if you need anything else-

Jenn

Jennifer Clark  
Counsel  
ND Legislative Council  
(701) 328-2916  
[jclark@nd.gov](mailto:jclark@nd.gov)



February 18, 2011

#12

PROPOSED AMENDMENTS TO SENATE BILL NO. 2155

Page 1, line 2, replace "certification" with "regulation"

Page 1, line 3, replace "section" with "sections"

Page 1, line 3, after "43-32-01" insert ", 43-32-08, 43-32-08.1, 43-32-08.2, 43-32-09, 43-32-12, 43-32-13, and 43-32-14, subsection 1 of section 43-32-16, and sections 43-32-19.1 and 43-32-30"

Page 1, line 3, replace "definitions related to" with "the regulation of applied behavior analysis by"

Page 1, line 9, replace "analysis" with "analyst"

Page 1, line 9, remove "the design, implementation, and evaluation of"

Page 1, remove lines 10 through 12

Page 1, line 13, replace "environment and behavior" with "an individual licensed under this chapter as an applied behavior analyst. The term does not include a registered applied behavior analyst"

Page 1, line 14, after "2." insert "\"Autism spectrum disorder\" means a neurobiological medical condition that includes autistic disorder, Asperger's disorder, pervasive development disorder not otherwise specified, Rett's disorder, and childhood disintegrative disorder.

3."

Page 1, line 15, replace "3." with "4."

Page 1, line 17, replace "4." with "5."

Page 1, line 22, replace "5." with "6."

Page 2, line 3, replace "6." with "7."

Page 2, line 3, after the first "psychologist" insert ", an applied behavior analyst."

Page 2, line 4, replace "7." with "8."

Page 2, line 4, replace "means" with ":

a. Means"

Page 2, line 6, after "including" insert "principles of operant and respondent learning. The term includes"

Page 2, line 7, replace "design" with ":

(1) Design"

Page 2, line 8, replace "design" with:

"(2) Design"

Page 2, line 10, replace "design" with:

"(3) Design"

Page 2, line 11, replace "consult" with:

"(4) Consult"

Page 2, line 11, after the underscored period insert:

"b."

Page 2, line 12, replace "neuropsychology" with "personality assessment, intellectual assessment, neuropsychological assessment"

Page 2, line 13, after the third underscored comma insert "family therapy, coordination of care."

Page 2, line 13, remove "or"

Page 2, line 13, after "hypnotherapy" insert ", and long-term counseling"

Page 2, line 15, replace "8." with "9."

Page 3, line 1, replace "9." with "10."

Page 3, line 3, replace "10." with "11."

Page 3, line 6, replace "11." with:

"12. "Registered applied behavior analyst" or "registrant" means an individual who is registered under this chapter as a registered applied behavior analyst. The term does not include an applied behavior analyst."

13."

Page 3, after line 9, insert:

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

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

The board may adopt rules as necessary to enable the board to carry into effect the provisions of this chapter. The rules may include a code of ethics for licensees and registrants. The board shall adopt rules defining what programs of study are substantially psychological in nature; what educational programs are acceptable for the licensing of psychologists and applied behavior analysts and for registering registered applied behavior analysts; and what educational programs are acceptable for the licensing of industrial-organizational psychologists. The educational program rules for industrial-organizational psychologists must take into account the availability of professionally accredited programs in the field of industrial-organizational psychology.

**SECTION 3. AMENDMENT.** Section 43-32-08.1 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing requirements for the continuing education of licensees, psychology residents, registrants, and industrial-organizational psychology residents. The board may refuse to renew, suspend, revoke, or place on probationary status any license or registration issued under this chapter if the licensee

or registrant fails to meet applicable continuing education requirements. Applicants for accreditation of continuing education courses, classes, or activities may be charged a reasonable fee determined by the board.

**SECTION 4. AMENDMENT.** Section 43-32-08.2 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 5. AMENDMENT.** Section 43-32-09 of the North Dakota Century Code is amended and reenacted as follows:

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

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

**SECTION 6. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall adopt rules establishing the amount of the application fee for licensure and registration by written and oral examination and by reciprocity. A fee is not refundable, in whole or in part, except for failure of the board to hold examinations at the time originally announced, in which event the entire fee must be refunded upon demand by the applicant.

**SECTION 7. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is amended and reenacted as follows:

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

Before January first of each year, every licensee and registrant shall pay to the secretary of the board an annual ~~license-fee~~ determined by the board not to exceed ~~one hundred fifty dollars~~ the costs incurred by the board in issuing the license or registration. The secretary of the board, upon receipt of payment of the annual ~~license~~ fee, shall issue the licensee or registrant a certificate of annual ~~license~~ renewal. An individual may not hold out as an industrial-organizational psychologist, an applied behavior analyst, a registered applied behavior analyst, or a psychologist until the annual ~~license-fee~~ is paid. The board may deny renewal of the license or registration of an individual who violates this section. Annually, the board shall mail a renewal notice to each licensee and registrant at the address on file with the board.

**SECTION 8. AMENDMENT.** Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

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

An individual whose license or registration issued under this chapter was revoked for failure to pay the annual license-fee must be reinstated and the license or registration renewed if, within one year from the date of revocation, the individual pays to the secretary of the board the amount of the annual license-fees in default and a late fee in the amount of twenty dollars.

**SECTION 9. AMENDMENT.** Subsection 1 of section 43-32-16 of the North Dakota Century Code is amended and reenacted as follows:

1. The board shall keep a record of its proceedings and a register of all applicants for licensing or registration which must show:
  - a. The name, age, and residence of each applicant.
  - b. The date of each applicant's application.
  - c. The place of business of each applicant.
  - d. A summary of the educational and other qualifications of each applicant.
  - e. Whether an examination was required of an applicant.
  - f. Whether a license or registration was granted to an applicant.
  - g. The date of the action of the board.
  - h. Any information the board determines necessary or advisable in aid of the requirements of this subsection.

**SECTION 10. AMENDMENT.** Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

**43-32-19.1. Licensing applicant licensed in other jurisdictions.**

1. The board may grant a license to an applicant, licensed in good standing in another jurisdiction, who passes the oral examination on the law and rules regulating the practice of psychology and industrial-organizational psychology, or applied behavior analysis and meets one of the following requirements:
  - 1-a. The applicant is licensed in a jurisdiction that imposes requirements for licensure which are at least as stringent as the requirements imposed in this state.
  - 2-b. The applicant holds a certificate of professional qualification in psychology issued by the association of state and provincial psychology boards or its successor.
2. The board shall grant a provisional license or registration to an applicant to be an applied behavior analyst or registered applied behavior analyst while the application is pending, provided the applicant is:
  - a. Licensed or registered and is in good standing in another jurisdiction;  
or

b. Certified in good standing with the national behavior analyst certification board.

**SECTION 11. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is amended and reenacted as follows:

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

This chapter does not apply to:

1. A student or intern pursuing a course of study in psychology or, industrial-organizational psychology, or applied behavior analysis at a school or college, if the activities and services are a part of the individual's supervised course of study and are under the supervision of a licensed psychologist or, industrial-organizational psychologist, registrant, or applied behavior analysis. The student or intern ~~shall~~ may not use the title "psychologist" or, "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" and the student or intern status ~~shall~~ must be clearly stated.
2. A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology or, industrial-organizational psychology, or applied behavior analysis in this state for a period of more than thirty days in any calendar year.
3. A lecturer, from any school or college, who uses an academic or research title when lecturing to institutions or organizations. However, the lecturer may not engage in the practice of psychology, applied behavior analysis, or industrial-organizational psychology unless the lecturer is licensed or registered under this chapter.
4. An individual employed by a public school if that individual's activities and services are restricted to the practice of psychology in the district or service unit of employment. This exemption applies only if the individual has received a master's degree in school psychology from an accredited graduate training program. Standards must be established by mutual consent of the board and the superintendent of public instruction.
5. A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological or applied behavior analysis services.
6. An applicant licensed to practice psychology or industrial-organizational psychology in another jurisdiction, pending disposition of the applicant's application in this state, if the applicant notifies the board on a form provided by the board of the applicant's intent to practice pending disposition of the application and the applicant adheres to the requirements of this chapter and the rules adopted by the board.
7. A person employed by an agency, a nonprofit corporation, or an institution if that person is currently exempt from licensure. A person exempt under this subsection continues to be exempt if the person continues

employment in the same position with the agency, nonprofit corporation, or institution that applied for and received the exemption.

8. An individual providing applied behavior analysis services to an individual in a public school setting.
9. An individual providing applied behavior analysis services to an individual served by a public or private service agency licensed by the state to provide residential, habilitative, vocational, or social support services as defined by the board when performed as part of an individual support plan supervised by a professional employee meeting the requirements of that agency's licensure standards, provided the professional employee does not represent to the public as a registrant or an applied behavior analyst.
10. An individual who is implementing applied behavior analysis services to an immediate family member or as a paid or volunteer caregiver implementing procedures established by the family or by the individual served in any setting, if the individual or caregiver does not represent as a registrant or an applied behavior analyst."

Page 3, line 12, replace "**Certification**" with "**Licensure or registration**"

Page 3, line 12, remove "- **Exemptions**"

Page 3, line 13, remove "1."

Page 3, line 13, replace "certified as" with "a registrant,"

Page 3, line 13, remove "under this chapter"

Page 3, line 13, after the underscored comma insert "or a psychologist,"

Page 3, line 14, replace "a." with "1."

Page 3, line 17, replace "b." with "2."

Page 3, line 17, replace "certified" with "licensed"

Page 3, line 17, after "or" insert "registered applied behavior analyst" or"

Page 3, line 18, replace "certified" with "licensed or registered"

Page 3, remove lines 19 through 30

Page 4, remove lines 1 through 5

Page 4, line 8, remove "**Certification -**"

Page 4, line 9, replace "certificate" with "license or registration"

Page 4, line 9, after "application" insert "for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst"

Page 4, line 11, remove ", not to exceed two hundred dollars"

Page 4, line 13, replace "for certification as an applied behavior analyst" with "under this section"

Page 4, line 17, after "board-approved" insert "demonstration of professional competence, such as a standardized"

Page 4, line 17, replace the underscored comma with "specific to the profession"

Page 4, line 17, remove the second "the"

Page 4, line 18, remove "and"

Page 4, line 20, after "board" insert " ; and

d. Has established supervision requirements as determined by the board for practice when applying as a registered applied behavior analyst"

Page 4, line 21, replace "certified" with "registrant and applied"

Page 4, line 22, replace "certification" with "license or registration"

Page 4, line 22, remove "not"

Page 4, line 23, remove "to exceed one hundred fifty dollars"

Page 4, line 24, remove "certification"

Page 4, line 24, replace the first "certificate" with "license or registration"

Page 4, line 26, remove the first "certification"

Page 4, line 26, replace the second "certification" with "license or registration"

Page 4, line 28, replace "certified" with "registrant and"

Page 4, line 29, replace "certification" with "license or registration"

Page 4, line 30, remove the first "certification"

Page 4, line 30, replace the second "certification" with "license or registration"

Page 5, line 1, remove "certification"

Page 5, line 3, replace "certificate" with "license or registration"

Page 5, line 5, replace "certificate" with "license or registration"

Page 5, line 6, replace "certified" with "licensed or registered"

Page 5, after line 7, insert:

"6. If an individual employed in the state on August 1, 2011, in the practice of applied behavior analysis submits to the board a written request before January 1, 2013, the required license or registration application fee, and a written statement from the applicant's employer that the applicant's employment remains satisfactory, the board shall issue to that applicant:

a. A license as an applied behavior analyst if the applicant is employed in a position granted license exemption by the board and submits a letter of endorsement from the licensed psychologist supervisor.

b. A license as an applied behavior analyst if the applicant has a master's degree in psychology and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist.

c. Registration as an applied behavior analyst if the applicant has a bachelor's degree; provides a board-approved plan of supervision from a licensed psychologist or applied behavior analyst; and is employed as a behavior analyst as verified in writing by the applicant's employer. Acceptable work titles for an applicant under this subdivision include behavior analyst, behavior interventionist, and behavior modification specialist."

Renumber accordingly



# 13

From: cjkuchler@bis.midco.net [mailto:cjkuchler@bis.midco.net]  
Sent: Friday, February 18, 2011 12:36 PM  
To: Lee, Judy E.; Uglem, Gerald P.; Berry, Spencer D.; Dever, Dick D.; Mathern, Tim  
Subject: SB 2155 Comments from ND State Board of Psychologist Examiners (NDSBPE)

Dear Senator Lee and Members of the Committee, I am Vice-President of the NDSBPE and was one of the board liaisons to a collaborative work group with DHS to work out agreement on proposed amendments to SB2155. I am submitting a few brief comments as you deliberate your action on this bill. We hope the Committee will look favorably upon:

- o our broader definition of the scope of practice;
- o qualifications of applied behavior analysts at the licensed and registered levels to be developed by the board in rule; and
- o requirements for Continuing Education and an Ethical Code for these practitioners to be specified by the board in rule.

We are in agreement with most of the amendments proposed by the ND Dept. of Human Services, and in fact we helped formulate many of them. Senator Mathern asked us to specify the two most important points of difference from the amendments offered by DHS, so I will highlight those points of difference now for your ease of reference:

- 1) Grandfathering - DHS wants these exemptions to be permanent; the board feels it would better protect the public to make them temporary, allowing affected individuals time to meet required qualifications in a reasonable time frame.
- 2) Added an exemption for everyone working in a licensed facility - The board opposes this, with this reasoning: Why enact a law if it doesn't apply to anyone? The only providers not working in the kinds of facilities proposed would perhaps be a solo practitioner here and there, which is not the typical employment setting for behavior analysts.

Thank you for your time and consideration of our comments in your deliberations.  
Sincerely,

Christine J. Kuchler, PhD  
VP, ND State Board of Psychologist Examiners

#1

## Talking Points for SB 2155

- The bill as originally proposed is intended to enable professionals with national certification in behavior analysis to help children with autism using critically important behavioral technology in a regulated profession.
  
- A work group of professionals including Board of Psychological Examiners , licensed psychologists, behavior analysts, Blue Cross and Blue Shield of North Dakota, the Anne Carlsen Center and the Department of Human Services recommended amendments to supplement the bill.
  
- The bill as amended regulates the practice of licensed and registered behavioral analysts in North Dakota.
  
- The amended bill adds applied behavioral analysts at the license and registration levels to current psychology licensing laws. The bill regulates;
  - The **licensed** level of practice, identified as an independent level of practice, requiring a Masters degree in psychology or behavior analysis.
  
  - The **registration** level of practice, identified as a full practitioner of behavioral analysis, requiring at least a Bachelor's degree but includes supervision by a Licensed Applied Behavioral Analyst or a Licensed Psychologist.

- The amendments follow models suggested by the National Behavior Analysis Certification Board, with important additional features to recognize issues unique to North Dakota.
- The proposed legislation sets strong, firm qualifications to govern practicing professional applied behavior analysts.
- The bill as amended also legislates;
  - The psychology act as an appropriate and acceptable place to regulate applied behavior analysis as a sub-domain of psychology.
  - Replaces 'certification' with 'licensure and registration", which are terms commonly used in professional regulation.
  - Leaves specific qualifications for the Board of Psychology Examiners to set through administrative code, where they can adjust it to conditions over time in North Dakota.
- Other specifics of the amended legislation;
  - The Board of Psychology shall grant a provisional license or registration to an applicant from another jurisdiction to be an applied behavioral analyst or registered applied behavioral analyst while their application is pending, provided the applicant is; licensed or registered and is in good standing in another jurisdiction or is certified in good standing with the national behavior analyst certification board.

- Provides for a list of exemptions, for example; students and interns, a lecturer or researcher from any school or college, individuals employed by the public schools, public or private agencies licensed by the state to provide residential, habilitative, vocational or support services or a family member carried out the plan developed by a behavioral analyst.
  
- Allows for the grandfathering of nationally board certified behavioral analysts, licensed exempt psychologists, masters level behavior analysts and non-masters registry eligible behavioral analysts currently practicing in the state. Currently 19 individuals with extensive experience and qualifications would be grandfathered under this proposed legislation.

#2

## ND STATE BOARD OF PSYCHOLOGIST EXAMINERS

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### Testimony on SB 2155

Chairman Weisz and members of the Human Services Committee:

I am Dr Alan Fehr, clinical psychologist and president of the North Dakota State Board of Psychologist Examiners. We are a volunteer board, under appointment by the governor to regulate the profession of psychology in North Dakota.

Thank you for the opportunity to present the Board of Psychologist Examiners' views regarding SB 2155.

We support the creation of a profession of applied behavior analysts and that this profession would be regulated by the ND State Board of Psychologist Examiners. The public is well served by placing this new profession under the regulation of a licensing board. This gives consumers a venue to address grievances from an independent entity without incurring the expense of legal remedies.

It is very important that this bill establish the basis for this profession in a straightforward manner, making regulation as simple, effective, and efficient as possible.

There are several amendments we are offering to improve this bill:

1. Exemptions to this law create categories of providers who are not regulated by this licensing law. Page 8 of this bill, lines 1-13, creates new categories of exemptions. We recommend that these exemptions be eliminated. We believe that professionals who are providing applied behavior analysis services should be regulated by this board, unless their scope of practice is regulated by another state board. To leave the regulation to their agency or oversight within the agency licensure does not adequately protect the consumer.

The exemption in line 10 for family members or caregivers who are “implementing” procedures is not necessary. We recommend on page 2 of this bill, the word “implement” in lines 12, 14, and 16 be removed. We recommend that the word “supervise” be added to those lines. This change would require licensure or registration for those providers who are designing, modifying, supervising, and evaluating behavioral programs. It would remove from regulation the implementation of a program that is designed by a licensee or registrant.

2. This bill as written would enact a change to our renewal fee that would decimate the financial viability of this board within a few years. The bill in current version removes the annual fee cap of \$150 and replaces that amount with language to cap the renewal fee at “the costs incurred by the board in issuing the license or registration.” Since the board does not receive any state funds, its revenue from fees provides all funding for the board. The cost of issuing the license is very

small in comparison to the cost of regulating the profession. Most of our budget expenses are for legal fees, paid to the attorney general's office for providing legal guidance and representation on an ongoing basis. We recommend that the cap of \$150 be restored or the language be changed to "the amount necessary to administer this chapter."

3. We note that there is some duplication between two sections of this bill. Subsection 3 on page 9, starting on line 11 is redundant with the amended 43-32-13, page 5, starting on line 5. We recommend deleting subsection 3 on page 9.
  
4. The bill does not provide any guidance as to what a registered applied behavior analyst is or how a registered applied behavior analyst differs from a licensed applied behavior analyst. Page 3, line 15, defines a registered applied behavior analyst as someone registered under this chapter. All other definition is left for the board to define by rule. We recommend that the definition of a registered applied behavior analyst includes the phrase "supervised by a licensed psychologist or applied behavior analyst." That provides some clarity of the bill's intent regarding registered applied behavior analysts, which can be further defined by the board by rule.
  
5. The definition section of this bill includes the definition of "autism spectrum disorder." We believe that this definition is unnecessary as a practice definition, not useful in regulating the practice, and misleading by implying that this

profession of applied behavior analysis hinges around the diagnostic category of autism spectrum disorder. The practice of applied behavior analysis should not be limited to specific diagnostic categories, whether explicit or implied. We recommend that references to autism spectrum disorder be deleted on page 1, line 2, and on page 2, line 13.

6. We recommend deletion of the term "registrant" on page 6, line 29. We expect supervisors to be independently licensed, since a supervisor has inherent responsibility for the welfare of the consumer. Since a registrant works under supervision, the responsibility for welfare of the consumer becomes too vague if a supervisor is under supervision.

In summary, we support the creation of a profession of applied behavior analysts with a licensure for independent practice and registration for supervised practice. This regulation process would protect the public through a cost-effective means to address practice concerns.

Thank you for allowing this testimony from the ND State Board of Psychologist Examiners. I would be happy to address your questions.



#3



**Testimony**  
**Senate Bill 2155 – Carol H. Olson, NDOTA**  
**House Human Services Committee**  
**Representative Robin Weisz, Chairman**  
**March 8, 2011**

Chairman Weisz and members of the House Human Services Committee, I'm Carol Olson, and I serve as the President of the ND Occupational Therapy Association. The North Dakota Occupational Therapy Association (NDOTA) represents over 300 occupational therapists and occupational therapy assistants throughout the State of North Dakota.

The NDOTA supports SB 2155 but we are concerned about possible unintended consequences of this bill. Applied Behavioral Analysis techniques have been effective methods of shaping behavior and teaching new skills to children with disabilities. As Occupational Therapists, we utilize evidence-based interventions, including Applied Behavioral Analysis techniques when working with children who are struggling to function in their environment.

NDOTA had an opportunity to testify before the Senate Human Services committee to express our concerns with possible interference of OT scope of practice should this bill pass as it is before you. Although the Senate Human Services Committee understood our concerns, they felt exemptions under the citation to the "other profession" exemption under NDCC Chapter 43-32, State Board of Psychologist Examiners - NDCC Section 43-32-30(5), would sufficiently address the problem.

NDCC Section 43-32-30(5), provides:

5. A person certified, licensed, or registered in this state in another health care profession, or as a member of the clergy functioning in a ministerial capacity, whose scope of practice is consistent with the accepted standards of that person's profession. A person claiming an exemption under this subsection may not represent to be rendering psychological services.

We feel this exemption may not sufficiently exempt our providers because as the exemption is written, there are at least two reasonable interpretations of SB 2155; this is the legal definition of an ambiguous law. Therefore we feel this may limit our scope of practice if specific amendments aren't addressed.

NDOTA does not oppose Applied Behavior Analysts becoming certified to provide ABA services in North Dakota. However, there are some therapists in North Dakota currently providing ABA services within the scope of their practice. They wish to continue to do so. Requiring separate certification of OT/OTAs from the Board of Psychologists is not necessary as ABA falls within the scope of practice for OT.

We would ask your consideration that the following amendment be included in SB 2155:

On page 2, line 12, after "not include" insert the words "occupational therapy,".

Also, in Section 2.

**Applied behavior analysis - Certification required - Titles - Exemptions.**

2. The certification requirement of subdivision a of subsection 1 does not apply to an individual who is:

f. a person licensed as an occupational therapist or an occupational therapy assistant pursuant to Section 43-40 of the North Dakota Century Code whose body of knowledge and scope of practice includes the analysis of tasks and environments and the application of interventions and environmental modifications which may be behaviorally based.

Renumber accordingly.

Thank you Chairman Weisz and members of the committee. I'd be happy to answer any questions you may have.

#4

**Engrossed Senate Bill 2155 – Department of Human Services  
House Human Services Committee  
Representative Weisz, Chairman  
March 8, 2011**

Chairman Weisz, members of the House Human Services Committee, I am Paul Kolstoe, Clinical Director of the North Dakota Developmental Center of the Department of Human Services and a Licensed Clinical Psychologist. I am here today to testify in support of Engrossed Senate Bill 2155.

My role at the North Dakota Developmental Center includes directing the new statewide Intellectual Disabilities Behavioral Health Service to prevent institutionalization of people with intellectual disabilities. I want to point out that this bill does not impact my practice as a licensed psychologist, but does as a leader of people doing behavior analysis across the state. Superintendent Alex Schweitzer asked me to form a work group to craft amendments to the original bill to aide this valuable effort to professionalize behavior analysis.

The original bill was intended to enable professionals with national certification in behavior analysis to help children with autism using critically important behavioral technology in a regulated profession. Besides helping children in desperate need, it can provide an avenue to authorize financial and other resources to make a dramatic change in their lives. With the amendments adopted by the Senate, this bill accomplishes the original goal of regulating the profession without creating problems for existing supports.

The current version of the bill was developed with a work group including two members of the Board of Psychologist Examiners, a license exempt psychologist, a state employed behavior modification specialist, one of the two nationally Board Certified Behavior Analysts (BCBA) that we have in North Dakota, two behavior analysts employed by private providers serving children and adults with intellectual disabilities, and the Medical Director of Behavioral Health Services at Blue Cross and Blue Shield of North Dakota. I had the pleasure of chairing this work group.

Behavior analysts – under that name or similar titles – have been serving children and adults with developmental disabilities in North Dakota since the 1980's. Over twenty professionals around the state have been critically important in supporting people to move from the institution or stay in their home community. Until the last few years, there has been very little professional regulation of behavior analysis in the United States and none in North Dakota.

Nationally, there is now a behavior analysis certification board that has established standards and created an examination to recognize highly skilled people. There are two such behavior analysts in North Dakota now and two known to be studying to complete those standards. While their standards are very impressive, they exceed the levels of achievement generally needed in North Dakota at this time. Amendments passed in the Senate broaden the standards to a level appropriate for North Dakota and give the Board of Psychologist Examiners the flexibility to adjust those standards as training and training programs rise to meet the higher levels.

Until a minor wording change in a 'housekeeping amendment' to the psychology licensing law in 2009, behavior analysis was not even mentioned as a practice area in North Dakota. In the last year the Board of Psychologist Examiners expressed concerns that behavior analysts might now be considered to be practicing psychology, but are currently unregulated. Between new developments in autism services through insurance coverage who expect licensing standards, and the concern of confusion with psychology practice, these issues generate the pressing need for this regulatory bill.

Let me provide a brief overview of the work groups recommendations that were incorporated to help put the bill into context:

1. Endorsed that the psychology act is an appropriate place to regulate applied behavior analysis as a recognized sub-domain of psychology.
2. The current bill now aligns language with regulatory conventions as 'licensure and registration', which are terms more commonly used in professional regulation.
3. Creates a registered applied behavior analyst role that requires supervision, in a manner parallel to the national system of standards.
4. Specific licensing and registration qualifications in the bill are set through Administrative Code, where the Board can adjust it to conditions over time in North Dakota. The National Behavior Analysis Certification Board (BACB) standards are too limited for North Dakota in recruiting and retention of behavior analysts. These are being adopted primarily in the most populated states at this time.

5. Exemptions are included to avoid over-regulation in developmental disabilities and daycares, and in family situations. Program Coordinators are not a regulated profession and should remain exempt even though they provide a minimal level of behavior analysis services.
6. Finally, 'Grandfather' clauses are included that enable existing behavior analysts to be seamlessly incorporated into the new regulatory standards, and do not disrupt existing supports. The workers have been practicing for up to 30 years and would experience a severe burden if required to further demonstrate the competencies they have already established.

In conclusion, let me restate that:

- The Department of Human Services supports the passage of this bill as amended, to join current psychologist licensing laws that include applied behavior analysis at license and registration levels.
- These amendments follow models suggested by the National Behavior Analysis Certification Board, with important additional features to recognize issues unique to North Dakota.
- The current regulations licensing psychologists would not be compromised, but clarifies applied behavior analysis as a legitimate sub-domain of psychology.
- Psychologists are difficult to recruit to North Dakota. The same is true for behavior analysts of any significant qualifications. I have been trying to recruit both psychologists and behavior analysts for the past 27 years with great difficulty. The proposed legislation respects these issues yet sets strong, firm qualifications to govern practicing professional applied behavior analysts.

I appreciate this opportunity to provide you with this testimony and would be happy to answer any questions.

TESTIMONY

Engrossed Senate Bill 2155—House Human Services Committee

Representative Weisz, Chairperson

March 8, 2011

Chairperson Weisz, members of the House Human Services Committee, I am Dr Kenneth Fischer, a physician who specializes in Pediatric Psychiatry. I have had the privilege of working with Autistic Spectrum Disorders (ASD) afflicted children and their families for over a decade now, in multiple settings (inpatient, outpatient, community, schools, etc). I am also the newly appointed Medical Director for Behavioral Health, at Blue Cross Blue Shield of North Dakota.

I am familiar with the findings of the North Dakota Autism Spectrum Disorder Task Force Initial State Plan-2010 and the published North Dakota *Guidelines: Identifying, Serving and Educating Children and Youth with Autism*.

The cornerstone of good professional practice remains, even in our own time, Primum Non Nocerum: *First Do No Harm*. By helping to define uniform standards, content and criteria for the licensure and registration of "Applied Behavior Analysts", "Registered applied behavior analysts" or "registrants", the amended SB2155 helps to maintain that.

The bill recognizes the need to have uniform standards, content and criteria included in the definition of Autism Services Provider that (1) meet the legal standards established through state, federal and case law and (2) identify "best practice" and ethical standards of the behavior analysis profession, and (3) develop eligibility standards to license and register that professional --without endorsing Applied Behavioral Analysis (ABA) above other forms of therapies.

To have done so would have the net result of moving the care of ASD afflicted individuals out of the setting where best practice guidelines (American Academy of Child and Adolescent Psychiatry) and an emerging expert consensus believe they should stay: the school.

Immediate referral, usually by the primary care physician in the medical home, in the first few months to years of life at the moment an ASD is simply suspected, to a school based early intervention program, is critical because ASD children often have language delays and the inability to "learn how to learn" by the condition's very nature. (Hence they need an integrated multidisciplinary approach that can be realistically provided only in a school setting given the intensity of the intervention required).

Please keep in mind that prior to comprehensive treatment, a multidisciplinary assessment is essential, and includes a complete medical evaluation by a licensed physician (with particular attention to family history for an Autism Spectrum Disorder, mental retardation, fragile X Syndrome, tuberous sclerosis; seizures, brain injuries, lead and other metabolic testing, others), testing supervised and interpreted by an licensed psychiatrist or PhD psychologist including Intellectual testing, Adaptive testing, Communication testing, Autism measures, hearing testing by an Audiologist, etc.



It is essential to do all we can for autistic children. Autism Spectrum Disorders, similar to all neurodevelopmental disabilities, are not “curable” and chronic sophisticated management is required, and often best found at the local community level, in the school, and coordinated in the office of the child’s physician and medical home.

Educational interventions (as early as possible when ASD is only suspected) and behavioral therapies (see footnote 1 below for more detail) and habilitative therapies (PT, SL, OT) remain the cornerstone of treatment. Though schools may differ in philosophy and relative emphasis on particular strategies, they share common goals.

The primary goals of early intervention for these children (and eventually young adults) therefore, are to minimize autism’s core features (social, communication and narrow interests) and associated deficits, maximize independence and quality of life, and minister to affected families who are often in distress.

We accomplish these by facilitating development and learning, promoting socialization, reducing maladaptive behaviors (usually by methods that are eclectic, incorporating some principles of operant learning theory, structured teaching, speech and language therapy with or without picture communication or related augmentive /alternative communication strategies, sensory integration therapies, head start activities, with appropriate neurological, psychological and psychiatric consultation as needed), and educating and supporting the family and school system.

We are only at the beginning, and much additional research is needed to identify those characteristics of any behavioral treatment (including ABA) for kids on the autism spectrum (content, technique, how often, when to start and when to stop) to maximize the treatment’s effectiveness.

The overall quality of the studies in the field need to be vastly improved, including a greater emphasis on randomized controlled trials when possible, larger sample sizes (number of kids enrolled), uniform outcome measures (to see if what we’re doing is making a difference), and finally, consistent treatments (by providers trained to the highest available standards) that don’t vary so much across environments.

Moreover, studies have not yet examined (or have done so woefully inadequately to date) the impact of changing from one therapeutic approach to another, (in real time) for children showing no/little progress; hence, there are no prescriptive formulas to help clinicians, parents and teachers select which types of treatment for ASD children who differ in their behavioral profiles after initial observation.

Stated another way, ASD’s are associated with a tremendous range in syndrome expression; that is, symptoms change over the course of development and in relation to the degree of any associated developmental disability. An ongoing awareness of the range of syndrome expression and an appreciation of the complexities of developmental change are important, even for the most seasoned of clinicians.

Though individuals with ASD’s may present for evaluation and treatment at any point during their development, most children with ASD unfortunately will remain within the spectrum as adults, and, regardless of their intellectual functioning, continue to experience problems with independent living,

employment, social relationships and mental health. That is what we know from the current state of the science, and from the clinical experience of those of us clinicians who have followed these families along their Autism Journey over time.

Each child needs a unique, comprehensive treatment and education plan from a multidisciplinary team. SB2155 helps ensure that any newly licensed members of that team have the minimum necessary training for the immense task at hand, as they keep in mind Hippocrates' timeless precept: First Do No Harm.

Chairperson Weisz, members of the committee, I submit these remarks with gratitude for your time and consideration.

Kenneth J. Fischer, MD

**Footnote 1:**

ABA type services rely exclusively on behavioral techniques such as unambiguous instruction, shaping through positive reinforcement of successive approximations, systematic prompting and fading procedures, discrimination learning, careful task analysis, positive reinforcers (edibles, sensory and perceptual objects) are soon replaced by social reinforcers (praise, tickles, hugs, kisses), ongoing data collection to monitor skill acquisition, generalization and frequency of problem behaviors, direct treatment, etc.

There have been hundreds of published studies on ABA with most not meeting research clinical trial criteria. There are many variations on intensity and type of services (Lovaas, the Denver model, LEAP, TEACCH, Pivotal Response Training, EIBI, others). The studies of these services have varied greatly with respect to the study populations and methods used to assess outcome, so it remains difficult to compare results across studies. Moreover, in general only a minority of children showed significant improvements. Variability in outcome can be predicted by pre-treatment IQ, level of communication skills and having milder symptoms to begin with (such as in Asperger's or PDD NOS). Most gains are achieved in the first year of treatment with lesser gains in subsequent years.

Selected references:

-Howlin P, Magiati, I, Charman, T (2009) Am J Intellect & Dev Disabil 114:23-41

-Spreckley M. & Boyd R. (2009). J Pediatr 154:338-44

-Evidence for Effectiveness of Treatments for Autism Spectrum Disorders in Children and Adolescents (2008), Health Resource Commission, Office for Oregon Health Policy & Research

-Bassett K, Green C, Kzanjian, A (2000). Autism and Lovaas treatment: A systematic review of the effectiveness evidence. British Columbia Office of Health Technology Assessment, University of British Columbia

#6

**Testimony on SB 2155**

**08 March 2011**

**House Human Services Committee**

Chairman Weisz and Members of the Committee:

NDPA does not oppose SB2155 and the definition, licensure, supervision, and regulation of behavior analysts under chapter 43-32 of the NDCC.

As this bill goes forward we do want to restate for the record that related to the practice of psychology—the backbone of this chapter, we support the doctoral degree as the minimum educational requirement for entry into professional practice as a licensed psychologist regardless of specialty area.

NDPA's position is in concert with the American Psychological Association's Revised (Feb 2010) Model Act for State Licensure of Psychologists which reaffirms APA's long-standing policy (dating back to 1977).

As presented, we do not see SB2155 in conflict with this position.

Attachment #1

PROPOSED AMENDMENTS TO ENGROSSED SENATE BILL NO. 2155

Page 5, line 7, remove the overstrike over "~~one hundred fifty~~"

Page 5, line 8, remove the overstrike over "~~dollars~~"

Page 5, line 8, remove "the costs incurred by the board in issuing the license or registration"

Page 8, after line 13, insert:

"11. An individual licensed as an occupational therapist or an occupational therapy assistant pursuant to chapter 43-40 within the body of knowledge and scope of professional practice of occupational therapy."

Re-number accordingly

SB 2155

#1

Clearing up language regarding certified and non-certified

-There is no need to clean up the language, keep the bill as is because it will prevent people from providing services if "certified" language is added.

-This was clarified by Mr. Schweitzer from the Department of ~~Health~~ *Human Services*

-Licensed is the difference from registered.

Definition of Autism Spectrum Disorder

- The definition used by the Senate is the definition as defined in the APA (American Psychiatric Association) diagnostic manual.

-The latest edition was in 2000, but a new version will be published in the next few years. The code could be amended should the definition be revised in the new edition. However, to avoid having to change the definition, the legislature could direct a "state actor," such as the state department of health to set the definition based on the DSM, then that state actor can update the definition as appropriate.