

AMENDED IN SENATE MAY 26, 2010
AMENDED IN SENATE APRIL 28, 2010
AMENDED IN SENATE MARCH 23, 2010

SENATE BILL

No. 1282

Introduced by Senator Steinberg

February 19, 2010

An act to add and repeal Chapter 5.2 (commencing with Section 2529.50) of Division 2 of the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 1282, as amended, Steinberg. ~~Applied behavior analysis services: California Behavioral Certification Organization.~~ *analysis.*

Existing law provides for the licensure and regulation of various healing arts practitioners, including, but not limited to, marriage and family therapists, clinical social workers, educational psychologists, and professional clinical counselors, by the Board of Behavioral Sciences in the Department of Consumer Affairs.

This bill would, ~~commencing September 1, 2011, and until January 1, 2017, provide for the certification of specified applied behavior analysts and applied behavior analyst assistants by a California Behavioral Certification Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would require applicants for certification to meet specified requirements, to pay fees required by the organization, and to submit fingerprints to the organization for purposes of obtaining background information, and would authorize the organization to take certain disciplinary action against certificate holders~~

for specified reasons. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as an applied behavior analyst or an applied behavior analyst assistant, or to use certain titles or other terms implying that he or she is certified under these provisions as an applied behavior analyst unless he or she is so certified holds a current certification from a specified organization, or to state, advertise, or represent that he or she is certified or licensed by a governmental agency as an applied behavior analyst. The bill would make its provisions subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. It is the intent of the Legislature in enacting this
2 act to provide state recognition of educated, trained, and
3 experienced individuals that provide applied behavior analysis
4 services to individuals with medical conditions such as autism
5 spectrum disorder and other conditions that are responsive to
6 applied behavior analysis. This act recognizes those professionals
7 practicing with existing licenses issued by the state and those
8 certified by nationally accredited organizations, and is intended
9 to create an additional pathway for certification through the
10 establishment of a private nonprofit organization that will enable
11 consumers to identify qualified providers of applied behavior
12 analysis services. These pathways for recognition of qualified
13 providers will ensure that providers have completed sufficient
14 training at approved institutions of higher education and follow
15 nationally recognized standards for recognition of these
16 professionals upon which consumers and those who pay for applied
17 behavior analysis services, including private entities, governmental
18 entities, nonprofit organizations, health care service plans, or
19 insurers, may rely.

20 SEC. 2. Chapter 5.2 (commencing with Section 2529.50) is
21 added to Division 2 of the Business and Professions Code, to read:

1 CHAPTER 5.2. APPLIED BEHAVIOR ANALYSIS ~~SERVICES~~

2
3 2529.50. ~~For purposes of this chapter, the following terms have~~
4 ~~the following meanings:~~

5 (a) ~~“Applicant” means a person who applies for certification~~
6 ~~pursuant to this chapter.~~

7 (b) ~~“Applied behavior analyst” means a person who provides~~
8 ~~applied behavior analysis services and who may be certified by~~
9 ~~the CBCO.~~

10 (c) ~~“Applied behavior analyst assistant” means a person who~~
11 ~~provides applied behavior analysis services under the supervision~~
12 ~~of an applied behavioral analyst and who may be certified by the~~
13 ~~CBCO.~~

14 (d) ~~“ANSI” means the American National Standards Institute.~~

15 (e) ~~“BACB” means the Behavior Analyst Certification Board.~~

16 (f) ~~“CBCO” means the California Behavioral Certification~~
17 ~~Organization established by this chapter.~~

18 (g) ~~“NCCA” means the National Commission for Certifying~~
19 ~~Agencies.~~

20 2529.50. *For purposes of this chapter, “applied behavior*
21 *analyst” means a person who provides applied behavior analysis.*

22 2529.55.

23 2529.51. (a) For purposes of this chapter, “applied behavior
24 ~~analysis services” analysis” means any of the following functions:~~

25 (1) Designing, implementing, and evaluating systematic
26 instructional and environmental modifications to produce social
27 improvements in the behavior of individuals or groups.

28 (2) Applying the principles, methods, and procedures of behavior
29 analysis.

30 (3) Utilizing contextual factors and establishing operations,
31 antecedent stimuli, positive reinforcement, other consequences,
32 and other behavior analysis procedures to help people develop
33 new behaviors, increase or decrease existing behaviors, and emit
34 behaviors under specific environmental conditions.

35 (4) Assessing functional relations between behavior and
36 environmental factors, known as functional assessment and
37 functional analysis.

38 (5) Using procedures based on scientific research and the direct
39 observation and measurement of behavior and environment.

1 (6) Determining whether a nonlicensed or noncertified individual
2 shall be deemed as qualified to perform all of the functions under
3 this subdivision, subject to his or her supervision.

4 (b) “Applied behavior analysis services” *do analysis* does not
5 include psychological testing, neuropsychology, psychotherapy,
6 sex therapy, psychoanalysis, hypnotherapy, or long-term
7 counseling.

8 (c) The definition in this section shall apply regardless of the
9 source of payment or reimbursement.

10 ~~2529.6. (a) A California Behavioral Certification Organization~~
11 ~~(SCBCO) shall be created as a nonprofit corporation exempt from~~
12 ~~taxation under Section 501(c)(3) of the Internal Revenue Code~~
13 ~~and subdivision (d) of Section 23701 of the Revenue and Taxation~~
14 ~~Code. The CBCO may commence activities as authorized by this~~
15 ~~chapter after it has submitted a request to the Internal Revenue~~
16 ~~Service and the Franchise Tax Board seeking that exemption.~~

17 ~~(b) The CBCO shall have the responsibilities and duties as set~~
18 ~~forth in this chapter and may take any reasonable actions to carry~~
19 ~~out the responsibilities and duties set forth in this chapter,~~
20 ~~including, but not limited to, hiring staff and entering into contracts.~~

21 ~~(c) (1) The CBCO shall be governed by a board of directors~~
22 ~~made up of two representatives selected by each professional~~
23 ~~society, association, or other entity whose membership is comprised~~
24 ~~of applied behavior analysts, unless any of those entities choose~~
25 ~~not to exercise this right of selection. To qualify, a professional~~
26 ~~society, association, or other entity shall have a dues-paying~~
27 ~~membership in California or on a national basis of at least 1,000~~
28 ~~individuals for the last three years, and shall have bylaws that~~
29 ~~require its membership to comply with a code of ethics. The board~~
30 ~~of directors shall also include additional persons as established by~~
31 ~~the bylaws of the CBCO. Additional members of the board of~~
32 ~~directors may include certified behavior analysts, consumers, and~~
33 ~~public members.~~

34 ~~(2) The initial board of directors shall establish the CBCO,~~
35 ~~initiate the request for tax-exempt status from the Internal Revenue~~
36 ~~Service and the Franchise Tax Board, and solicit input from the~~
37 ~~applied behavior analyst community concerning the operations of~~
38 ~~the organization. The initial board of directors, in its discretion,~~
39 ~~may immediately undertake to issue the certificates authorized by~~
40 ~~this chapter after adopting the necessary bylaws or other rules, or~~

1 may establish by adoption of bylaws the permanent governing
2 structure of the CBCO prior to issuing certificates.

3 ~~(d) The board of directors shall establish fees reasonably related~~
4 ~~to the cost of providing services and carrying out its ongoing~~
5 ~~responsibilities and duties. Initial and renewal fees shall be~~
6 ~~established by the board of directors annually.~~

7 ~~(e) The meetings of the CBCO shall be subject to the rules of~~
8 ~~the Bagley-Keene Open Meetings Act (Article 9 (commencing~~
9 ~~with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title~~
10 ~~2 of the Government Code). Section 11130.7 of the Government~~
11 ~~Code shall not apply to the CBCO board of directors.~~

12 ~~2529.8. (a) The CBCO shall issue a certificate under this~~
13 ~~chapter to an applicant who satisfies the requirements of this~~
14 ~~chapter.~~

15 ~~(b) In order to obtain certification as an applied behavior analyst,~~
16 ~~an applicant shall submit a written application, pay all fees required~~
17 ~~by the CBCO, and provide the CBCO with satisfactory evidence~~
18 ~~of either of the following:~~

19 ~~(1) That he or she holds a current, valid certification in applied~~
20 ~~behavior analysis from the BACB or another organization that is~~
21 ~~accredited by the NCCA or ANSI whose mission is to meet~~
22 ~~professional credentialing needs identified by behavior analysts,~~
23 ~~governments, and consumers of applied behavior analysis services.~~

24 ~~(2) That he or she meets all of the following requirements:~~

25 ~~(A) Possesses a master's or doctorate degree in applied behavior~~
26 ~~analysis or a related field.~~

27 ~~(B) Demonstrates three years of experience in the last five years~~
28 ~~of providing those functions specified in subdivision (a) of Section~~
29 ~~2529.55 to individuals, either as an independent professional or~~
30 ~~as an employee of an organization.~~

31 ~~(c) In order to obtain certification as an applied behavior analyst~~
32 ~~assistant, an applicant shall submit a written application, pay all~~
33 ~~fees required by the CBCO, and provide the CBCO with~~
34 ~~satisfactory evidence of either of the following:~~

35 ~~(1) That he or she holds a current, valid certification as an~~
36 ~~applied behavior analyst assistant from the BACB or another~~
37 ~~organization that is accredited by the NCCA or ANSI whose~~
38 ~~mission is to meet professional credentialing needs identified by~~
39 ~~behavior analysts, governments, and consumers of applied behavior~~
40 ~~analysis services.~~

- 1 ~~(2) That he or she meets all of the following requirements:~~
2 ~~(A) Possesses a bachelor's degree.~~
3 ~~(B) Demonstrates three years of experience in the last five years~~
4 ~~of providing those functions specified in subdivision (a) of Section~~
5 ~~2529.55 to individuals, either as an independent professional or~~
6 ~~as an employee of an organization.~~
7 ~~(d) A certificate issued pursuant to this chapter shall be subject~~
8 ~~to renewal every two years in a manner prescribed by the CBCO,~~
9 ~~and shall expire unless renewed in that manner. The CBCO may~~
10 ~~provide for late renewal of a certificate.~~
11 ~~(e) For purposes of this section and any other provision of this~~
12 ~~chapter for which the CBCO is authorized to receive factual~~
13 ~~information as a condition of taking any action, the CBCO shall~~
14 ~~have the authority to conduct oral interviews of the applicant and~~
15 ~~others or to make any investigation deemed necessary to establish~~
16 ~~that the information received is accurate and satisfies any criteria~~
17 ~~established by this chapter.~~
18 ~~(f) Individuals who have received certification pursuant to~~
19 ~~subdivision (b) may maintain that certification only if they meet~~
20 ~~the requirements established by the CBCO for compliance with~~
21 ~~continuing education and ethical standards.~~
22 ~~2529.9. The CBCO shall not issue certificates pursuant to this~~
23 ~~chapter prior to September 1, 2011.~~
24 ~~2529.10. (a) The CBCO shall establish a procedure consistent~~
25 ~~with state law to obtain background information on each applicant.~~
26 ~~(b) Prior to issuing a certificate to an applicant, the CBCO shall~~
27 ~~require each applicant to submit fingerprint images to the CBCO~~
28 ~~for purposes of obtaining background information on the applicant.~~
29 ~~2529.11. (a) The CBCO may discipline a certificate holder or~~
30 ~~registrant by any, or a combination, of the following methods:~~
31 ~~(1) Placing the certificate holder or registrant on probation.~~
32 ~~(2) Suspending the certificate or registration and the rights~~
33 ~~conferred by this chapter on a certificate holder or registrant for a~~
34 ~~period not to exceed one year.~~
35 ~~(3) Revoking the certificate or registration.~~
36 ~~(4) Suspending or staying the disciplinary order, or portions of~~
37 ~~it, with or without conditions.~~
38 ~~(5) Taking other action as the organization, as authorized by~~
39 ~~this chapter or its bylaws, deems proper.~~

- 1 ~~(b) The CBCO may issue an initial certificate or registration on~~
2 ~~probation, with specific terms and conditions, to any applicant.~~
3 ~~2529.12. It is a violation of this chapter for a certificate holder~~
4 ~~to commit, and the CBCO may deny an application for a certificate~~
5 ~~or discipline a certificate holder for, any of the following:~~
6 ~~(a) Unprofessional conduct, including, but not limited to, denial~~
7 ~~of licensure, revocation, suspension, restriction, or any other~~
8 ~~disciplinary action against a certificate holder by another state or~~
9 ~~territory of the United States, by any other government agency, or~~
10 ~~by a California health care professional licensing board. A certified~~
11 ~~copy of the decision, order, or judgment shall be conclusive~~
12 ~~evidence of these actions.~~
13 ~~(b) Procuring a certificate by fraud, misrepresentation, or~~
14 ~~mistake.~~
15 ~~(c) Violating or attempting to violate, directly or indirectly, or~~
16 ~~assisting in or abetting the violation of, or conspiring to violate,~~
17 ~~any provision or term of this chapter or any rule or bylaw adopted~~
18 ~~by the CBCO.~~
19 ~~(d) Conviction of any felony, or conviction of a misdemeanor~~
20 ~~that is substantially related to the qualifications or duties of a~~
21 ~~certificate holder, in which event the record of the conviction shall~~
22 ~~be conclusive evidence of the crime.~~
23 ~~(e) Impersonating an applicant or acting as a proxy for an~~
24 ~~applicant in any examination referred to under this chapter for the~~
25 ~~issuance of a certificate.~~
26 ~~(f) Impersonating a certified applied behavior analyst or certified~~
27 ~~applied behavior analyst assistant, or permitting or allowing an~~
28 ~~uncertified person to use a certificate.~~
29 ~~(g) Committing any fraudulent, dishonest, or corrupt act that is~~
30 ~~substantially related to the qualifications or duties of a certificate~~
31 ~~holder.~~
32 ~~(h) Committing any act punishable as a sexually related crime.~~
33 ~~2529.13. (a) No certificate holder, registrant, or applicant may~~
34 ~~be disciplined or denied a certificate or registration pursuant to~~
35 ~~Section 2529.12 except according to procedures satisfying the~~
36 ~~requirements of this section. A denial or discipline not in accord~~
37 ~~with this section shall be void and without effect.~~
38 ~~(b) Any applicant denial or discipline shall be done in good~~
39 ~~faith and in a fair and reasonable manner. Any procedure that~~
40 ~~conforms to the requirements of subdivision (c) is fair and~~

1 reasonable, but a court may also find other procedures to be fair
2 and reasonable when the full circumstances of the denial or
3 discipline are considered.

4 (e) A procedure is fair and reasonable if all of the following
5 apply:

6 (1) ~~The provisions of the procedure have been set forth in the~~
7 ~~CBCO articles or bylaws, or copies of those provisions are sent~~
8 ~~annually to certificate holders or registrants if required by the~~
9 ~~articles or bylaws.~~

10 (2) ~~It provides the giving of 15 days prior notice of the denial~~
11 ~~or discipline and the reasons therefor.~~

12 (3) ~~It provides an opportunity for the applicant or certificate~~
13 ~~holder or registrant to be heard, orally or in writing, not less than~~
14 ~~five days before the effective date of the denial or discipline by a~~
15 ~~person or body authorized to decide that the proposed denial or~~
16 ~~discipline not take place.~~

17 (d) ~~Any notice required under this section may be given by any~~
18 ~~method reasonably calculated to provide actual notice. Any notice~~
19 ~~given by mail must be given by first-class or certified mail sent to~~
20 ~~the last address of the applicant or certificate holder or registrant~~
21 ~~shown on the organization's records.~~

22 (e) ~~Any action challenging a denial or discipline, including any~~
23 ~~claim alleging defective notice, shall be commenced within one~~
24 ~~year after the date of the denial or discipline. If the action is~~
25 ~~successful, the court may order any relief, including reinstatement,~~
26 ~~that it finds equitable under the circumstances.~~

27 (f) ~~This section governs only the procedures for denial or~~
28 ~~discipline and not the substantive grounds therefor. A denial or~~
29 ~~discipline based upon substantive grounds that violates contractual~~
30 ~~or other rights or is otherwise unlawful is not made valid by~~
31 ~~compliance with this section.~~

32 (g) ~~An applicant or certificate holder or registrant who is denied~~
33 ~~or disciplined shall be liable for any charges incurred, services or~~
34 ~~benefits actually rendered, dues, assessments, or fees incurred~~
35 ~~before the denial or discipline or arising from contract or otherwise.~~

36 ~~2529.14.~~

37 2529.52. It is an unfair business practice for a person to state
38 or advertise or put out any sign or card or other device, or to
39 represent to the public through any print or electronic media, that
40 he or she is certified, registered, or licensed by a governmental

1 agency as an applied behavior analyst ~~or an applied behavior~~
2 ~~analyst assistant.~~

3 ~~2529.15.~~

4 2529.53. It is an unfair business practice for any person to hold
5 himself or herself out or to use the title of “certified applied
6 behavior analyst” ~~or “certified applied behavior analyst assistant”~~
7 or any other term, such as “licensed,” “registered,” ~~“CABA,” or~~
8 ~~“CABAA,”~~ or “CABA,” that implies or suggests that the person
9 is certified as ~~a applied behavior analyst or applied behavior analyst~~
10 ~~assistant without having a certificate issued pursuant to Section~~
11 ~~2529.8: an applied behavior analyst without holding a current~~
12 ~~certification from a national organization that certifies applied~~
13 ~~behavior analysts and that is accredited by the National~~
14 ~~Commission on Certifying Agencies.~~

15 ~~2529.16.~~

16 2529.54. The superior court in and for the county in which any
17 person acts in violation of the provisions of this chapter, may, upon
18 a petition by any person, issue an injunction or other appropriate
19 order restraining the conduct. The proceedings under this paragraph
20 shall be governed by Chapter 3 (commencing with Section 525)
21 of Title 7 of Part 2 of the Code of Civil Procedure.

22 ~~2529.17. The CBCO shall make available to the public the~~
23 ~~current status of certificate holders, including, but not limited to,~~
24 ~~whether they are in good standing or their certificate has been~~
25 ~~suspended or revoked and the details of any disciplinary action~~
26 ~~taken. The CBCO shall maintain on its Internet Web site~~
27 ~~information updated annually related to implementation of this~~
28 ~~chapter.~~

29 ~~2529.18.~~

30 2529.55. (a) Nothing in this chapter shall be construed to
31 prevent *applied* behavior analysis ~~service~~ providers who are
32 vendorized by one of the California Regional Centers or hold state
33 accredited nonpublic agency status from developing, providing,
34 or supervising applied behavior analysis consistent with the
35 requirements of their Regional Center vendorization or nonpublic
36 agency certification or accreditation, provided their practice of
37 *applied* behavior analysis is commensurate with their level of
38 training and experience, and they do not hold themselves out to
39 the public by any title or description stating or implying that they
40 are Certified Behavior Analysts, that they are “certified” to practice

1 *applied* behavior analysis if they are not in fact certified, or that
2 they are recognized or certified by the state to practice applied
3 behavior analysis.

4 (b) Nothing in this chapter shall be construed to require
5 certification, licensure, recognition, or authorization to provide
6 applied behavior analysis ~~services~~ nor to add to or increase
7 requirements for providing ~~those services~~ *applied behavior*
8 *analysis*.

9 (c) *Nothing in this chapter shall be construed to prevent a*
10 *physician and surgeon, psychologist, clinical social worker,*
11 *marriage and family therapist, speech-language pathologist,*
12 *occupational therapist, physical therapist, or professional clinical*
13 *counselor from providing applied behavior analysis when acting*
14 *within the scope of his or her license, formal training, experience,*
15 *and accepted standards of his or her profession.*

16 ~~2529.19.~~

17 2529.56. This chapter shall be subject to the review required
18 by Division 1.2 (commencing with Section 473).

19 ~~2529.20.~~

20 2529.57. This chapter shall remain in effect only until January
21 1, 2017, and as of that date is repealed, unless a later enacted
22 statute, that is enacted before January 1, 2017, deletes or extends
23 that date.