



UNIVERSITY OF HAWAII SYSTEM

Legislative Testimony

Testimony Presented Before the
House Committees on Lower and Higher Education, and
Intrastate Commerce

Thursday, March 14, 2019 at 2:15 p.m.

By

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And

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SB 341 SD2 – RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS

Chairs Woodson and Ohno, Vice Chairs Hashem, Perruso, and Kobayashi, and members of the committees:

Thank you for the opportunity to provide testimony in strong support of SB 341 SD2, related to the practice of behavior analysis. This measure: (1) makes the exemption from the behavior analyst licensing requirements permanent for certain teachers working in collaboration with a licensed behavior analyst or licensed psychologist, (2) clarifies that the licensure exemption for registered behavior technicians applies to those working under the direction of a licensed behavior analyst or licensed psychologist; and exempts licensed special education teachers and individuals in approved and accredited special education training programs who are working toward licensure as special education teachers whose scope of practice and training includes applied behavior analysis.

We have one comment: Please add wording to item (10) on page 2 as following (suggested wording underlined):

(10) A licensed special education teacher, or any supervisee of a licensed special education teacher, or any individual who is working toward licensure as a special education teacher and who is enrolled in a state-approved and nationally-accredited special education teacher preparation program that includes training in behavior analysis assessments and interventions....

Including the supervisees of special education teachers who have behavior analysis in the scope of their training and practice brings the exemption of special education teachers in line with the exemptions of psychologists and behavior analysts who are permitted to oversee their supervisees in providing behavior analysis services. Note that we include research-based practices in supervision of educational assistants as part of our teacher preparation programs.

We encourage your committees' passage of this measure.

Thank you.

COMMITTEE ON LOWER AND HIGHER EDUCATION

Rep. Justin H. Woodson, Chair
Rep. Mark J. Hashem, Vice Chair
Rep. Amy A. Peruso, Vice Chair

COMMITTEE ON INTRASTATE COMMERCE

Rep. Takashi Ohno, Chair
Rep. Mark J. Hashem, Vice Chair

DATE: Thursday, March 14, 2019
TIME: 2:15pm
PLACE: Conference Room 309

**Testimony in Support of SB341 SD2 with AMENDMENTS
RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS**

I have worked in Hawaii as a licensed psychologist for over thirty years. Since 1996, my work has included training and supervising paraprofessionals, practicum students, interns, postdoctoral residents and master's level clinicians in providing applied behavior analysis (ABA) through contracts with the Hawaii Department of Education as well as the Hawaii Department of Health, Developmental Disabilities Division and Early Intervention Section.

I strongly support SB341 SD2 and appreciate that the current bill allows for licensed psychologists to supervise paraprofessionals who are credentialed as registered behavior technicians (RBTs), in accord with the requirements of their credentialing board, in addition to allowing licensed psychologists to supervise master's level practitioners and postdoctoral fellows who may in turn supervise direct support workers, comparably trained paraprofessionals who are not credentialed as RBTs, caregivers, parents, and guardians in a manner and to the extent determined by the supervising psychologist.

ACT199 and related laws have been misinterpreted by state agencies and insurance companies as restricting licensed and credentialed professionals from providing and supervising the ABA services that are within their scope of training and practice, even though the licensure law for behavior analysts expressly exempts them. Such a restriction does not well serve our community, which needs to retain as well as increase its professional and paraprofessional workforce. Thus, I support the amendment to SB341 SD2 which clarifies that ABA-trained licensed special education teachers may continue to provide ABA services. And, I request that the amendment makes it clear that APA-trained licensed special education teachers be allowed to continue supervising their educational assistants in implementing individualized ABA programs for their students.

The need for evidence-based treatments for students with autism spectrum disorders cannot be filled by Licensed Behavior Analysts alone.¹ This is true in Hawai‘i and across the U.S. I support any amendment that would help to clarify that other licensed or credentialed professionals, e.g., licensed clinical social workers, advance practice registered nurses with a specialization in psychiatry, licensed marriage family therapists, licensed mental health counselors, school psychologists and those they supervise, are similarly exempt from the licensed behavior analyst law, *provided that the applied behavior analysis (ABA) services performed are within the boundaries of the licensed or credentialed practitioner’s education, training, and competence.*

I also support further amending SB341 SD2 to include guidance for the Department of Education to seek necessary approvals to bill for services provided for Medicaid-eligible students diagnosed with autism by an array of qualified licensed behavioral professionals and their supervisees as is the practice in other jurisdictions (e.g., California) by adding the following paragraph to SB341 SD2:

SECTION 2. The department of education will seek any approvals that may be necessary from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to provide reimbursement for necessary ABA services provided to Medicaid-eligible students diagnosed with autism provided by licensed behavior analysts, licensed psychologists, licensed clinical social workers, advance practice registered nurses with a specialization in psychiatry, licensed marriage family therapists, licensed mental health counselors, and those they supervise.

Thank you for the opportunity to provide input into this important bill.

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¹ The attached document “Model Behavior Analyst Licensure Act” adopted by the *Association of Professional Behavioral Analysts* in August 2018, addresses exemptions from behavior analyst licensure for ABA-trained licensed psychologists, other licensed professionals, and those they supervise, and also notes that a similar exemption may be necessary or desirable for individuals employed by a school performing the duties of their position in order to comply with education laws as well as for developmental disabilities vendors.

Association of



*Professional
Behavior Analysts*

Model Behavior Analyst Licensure Act

ADOPTED AUGUST 2018

Model Behavior Analyst Licensure Act

This model act for licensing behavior analysts is provided for general information purposes and is designed to cover the primary areas and approaches that commonly appear in laws (statutes) adopted by governments to regulate professions. If your jurisdiction¹ is considering licensure or another form of regulation of individuals practicing applied behavior analysis, please first contact the Association of Professional Behavior Analysts (APBA; info@apbahome.net). Although each jurisdiction has some unique processes and structures for regulating professionals, there are commonalities. In working on dozens of behavior analyst licensure laws and other public policies over the past decade, APBA has garnered a great deal of information about typical processes and structures as well as issues that often arise when governmental regulation of behavior analysts is proposed. Contacting APBA early in the process will help you prepare to avoid or minimize problems and ensure that your jurisdiction's proposed licensure law is consistent with the profession's standards and similar laws.

Some laws to regulate professions specify requirements for obtaining and renewing the government-issued credential (license, certificate, or registration), the composition and operations of the board or other entity that is to manage the credentialing program, fees, ethical and disciplinary standards, complaint and investigatory procedures, and sanctions that can be imposed on credentialed individuals as well as those who practice without holding the required credential. Other laws include only some basic requirements, leaving details to be spelled out in rules or regulations. Some of the language that appears in this model act could be used in regulations or rules instead of, or in addition to, the licensure law.

Each section and some subsections of the proposed model act are accompanied by comments that explain the rationale for the preceding or following section or describe options to be considered. To differentiate them from the proposed statutory language, the comments are italicized.

¹In this model act, "jurisdiction" means a state, province, country, or other area organized under one government.

Model Behavior Analyst Licensure Act

An Act to License Behavior Analysts

Preamble

An Act to license professional practitioners of applied behavior analysis; to establish the Behavior Analyst Licensing Board; to authorize the Board to regulate the practice of behavior analyst professionals; to provide for the membership, terms of office, powers, and duties of the Board; to establish requirements for licensure; and to provide exemptions from licensure.

Section 1. Declaration of Policy

The practice of applied behavior analysis in [jurisdiction] is hereby declared to affect the health, safety, and welfare of citizens of [jurisdiction] and to be subject to regulation to protect the public from (i) the practice of applied behavior analysis by unqualified persons, and (ii) unprofessional, unethical, and/or harmful conduct by behavior analysis practitioners.

***Comment:** A preamble and Declaration of Policy may not be required in all jurisdictions.*

Section 2. Prohibitions and Penalties

- A. The practice of applied behavior analysis by unlicensed individuals is prohibited unless they are exempted in Section 7 of this Act.

***Comment:** See Section 7 for information on how this model act addresses other regulated professionals, such as licensed psychologists, and individuals in other specified categories.*

- B. No person shall hold himself or herself out to be a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst unless he or she is licensed under this Act.

***Comment:** APBA recommends that behavior analyst licensure laws include both practice and title protections, as in A and B above. In some jurisdictions, restricting the use of professional titles without also restricting who can practice the profession has been held to be unconstitutional. Advice should be sought from an attorney employed by the jurisdiction before proposing a licensure act that would restrict title use without also restricting who can practice.*

- C. The Behavior Analyst Certification Board's Professional and Ethical Compliance Code for Behavior Analysts is incorporated herein as the code of conduct for individuals licensed under this Act.

Model Behavior Analyst Licensure Act

Comment: *In this model act, current certification by the Behavior Analyst Certification Board® (BACB®) is the principal requirement for obtaining and maintaining licenses (see Section 5). Since all certificants are required to adhere to the BACB Compliance Code, it follows that the Code should serve as the code of conduct for licensees. Some jurisdictions, however, have laws specifying conduct standards for all professionals who are licensed in that jurisdiction. In that case this provision may need to be written so as to integrate those standards with the BACB Compliance Code standards. In other jurisdictions, the licensure law may state that the licensing board will promulgate conduct rules.*

- D. Any person found to be in violation of any provision(s) of this Act shall be subject to a fine of no less than [X] dollars. Violators who are licensed under this Act shall be subject to other sanctions and penalties, up to and including revocation of licenses.

Comment: *Many jurisdictions have laws and processes in place for investigating alleged violations of licensure laws and rules or regulations and for sanctioning individuals who are found to have committed violations. In that case, this provision should be revised accordingly.*

Section 3. Definitions

For the purposes of this Act, the following terms shall have the following meanings:

- A. BOARD. The [jurisdiction] Behavior Analyst Licensing Board, which is authorized to implement and enforce this Act and oversee the practice of applied behavior analysis.
- B. CERTIFYING ENTITY. The Behavior Analyst Certification Board (BACB) or another entity whose programs to credential practitioners of applied behavior analysis are accredited by the National Commission on Certifying Agencies (NCCA) or the American National Standards Institute (ANSI).

Comment: *If the laws of a jurisdiction prohibit naming the certifying entity in the licensure law, an alternative is to authorize the licensing board or other regulatory authority to approve the certifying entity by rule, as long as the certifying entity is a professional behavior analyst certifying organization. In that case, APBA strongly recommends that the law specify that the certifying entity must hold NCCA or ANSI accreditation for its behavior analyst credentialing program(s).*

- C. LICENSED BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a Board Certified Behavior Analyst® (BCBA®) or Board Certified Behavior Analyst -Doctoral™ (BCBA-D™) and who meets the other requirements specified in Section 5 of this Act.

Model Behavior Analyst Licensure Act

Comment: See the BACB's Terms of Use (<https://www.bacb.com/terms-of-use/>) for information on how to avoid unlawful infringement of the BACB's registered trademarks. When titles of credentials issued by the BACB are included in laws, regulations, or rules, they should always be identical to the BACB titles, including first letters capitalized and the use of lower case for the first "a" in BCaBA. If non-BACB certified individuals will or may also be licensed (which is not recommended by APBA), it is important to use an alternative title to distinguish licensees who have met the BACB's standards from those who qualify for licensure based on other standards (e.g., requirements set by the licensing board or another regulatory authority in the jurisdiction). For example, an individual licensed as a behavior analyst should not be permitted to use the title BCBA or Board Certified Behavior Analyst unless the individual is certified by the BACB.

- D. LICENSED ASSISTANT BEHAVIOR ANALYST. An individual who is certified by the certifying entity as a Board Certified Assistant Behavior Analyst® (BCaBA®) and who meets the other requirements specified in Section 5 of this Act.

Comment: Please see the comment following Section 3(C) above.

- E. BEHAVIOR TECHNICIAN. A paraprofessional who practices under the close, ongoing supervision of a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst. The behavior technician does not design assessment or intervention plans or procedures but delivers services as assigned by the supervisor responsible for his or her work.

Comment: APBA recommends making behavior technicians exempt from licensure (see Section 7) rather than licensed or otherwise regulated directly by the licensing board or other regulatory authority. The work of behavior technicians must be supervised closely by appropriately credentialed professional behavior analysts.

- F. PRACTICE OF APPLIED BEHAVIOR ANALYSIS. The design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. The practice of applied behavior analysis includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and direct and indirect observation and measurement of behavior and environment. They utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other procedures to help individuals develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of applied behavior analysis excludes

Model Behavior Analyst Licensure Act

diagnosis of disorders, psychological testing, psychotherapy, cognitive therapy, psychoanalysis, and counseling.

Comment: *The definition of practice (often referred to as the “scope of practice”) should not refer to any particular consumers, client populations, or settings. Rather, it should describe the practice of the profession generally. This model act presumes that the practice of applied behavior analysis involves delivering services directly to human clients and consumers. Please see Section 7 for exemptions from licensure for behavior analysts who practice in other contexts.*

Section 4. Behavior Analyst Licensing Board

- A. The [jurisdiction] Behavior Analyst Licensing Board is hereby established. The Board shall issue licenses to individuals who meet the requirements specified in this Act, promulgate rules and establish fees necessary to implement this Act, and investigate all complaints relating to the practice of applied behavior analysis by any Licensed Behavior Analyst, Licensed Assistant Behavior Analyst, or any other person alleged to be violating any of the provisions of this Act.
- B. The initial Board shall consist of five members, including three Board Certified Behavior Analysts or Board Certified Behavior Analysts-Doctoral who are eligible for licensure under this Act, one Board Certified Assistant Behavior Analyst who is eligible for licensure under this Act, and one public member who is not a professional behavior analyst. The Board Certified Behavior Analyst, Board Certified Behavior Analyst–Doctoral, and Board Certified Assistant Behavior Analyst members shall apply for licensure as soon as feasible. Subsequently the Board shall consist of three Licensed Behavior Analysts, one Licensed Assistant Behavior Analyst, and one public member.
- C. The membership of the Board shall be inclusive and reflect the racial, gender, geographic, urban/rural, and economic diversity of [jurisdiction]. Each member shall serve a three-year term, with initial terms being staggered so that one member serves an initial term of one year, three members serve initial terms of two years, and three members serve initial terms of three years, as provided by the [jurisdiction official]. The public member shall be a person who is not and never was a member of the profession licensed or regulated under this Act or the spouse of such a person, and who does not have and never has had a material interest in the practice of applied behavior analysis.
- D. Members of the Board shall be appointed by the [jurisdiction official] upon recommendations submitted by the [behavior analysis professional organization in the jurisdiction] and any other group deemed appropriate by the [jurisdiction official]. Terms and vacancies shall be filled as follows:

Model Behavior Analyst Licensure Act

- (i) Any vacancy occurring other than by expiration of terms shall be filled for the remainder of the unexpired term by appointment by the [jurisdiction official] upon recommendation of the Board.
 - (ii) No member shall serve more than two successive three-year terms.
 - (iii) A member shall serve until a successor is appointed and assumes office.
 - (iv) Members shall not be remunerated, but shall be paid out of the funds of the Board the same per diem as prescribed by law for [jurisdiction] employees for each day of attendance at Board meetings.
- E. The Board shall meet at least twice annually and may meet at such other times as necessary, at the call of the chair or by a majority of the members, to complete the business required.
- (i) Three members of the Board shall constitute a quorum.
 - (ii) The Board shall elect a chair from among its membership on an annual basis.

Comment: *It is preferable for the behavior analyst licensing program to be managed by a separate, independent behavior analyst board, as described above. Where that is not possible, the licensing program may be housed within another regulatory body, such as a behavioral sciences, human services, or healthcare professions licensing board. In that instance it is wise to work to ensure that regulation and decision-making regarding the practice of applied behavior analysis are carried out by professional behavior analysts independently of other professions whose members may not be knowledgeable about applied behavior analysis or who may have competing interests. One mechanism for accomplishing that, if allowed by the jurisdiction's laws, is to establish a behavior analyst committee within the regulatory body and grant it the authority to regulate the practice of applied behavior analysis.*

Many jurisdictions have overarching laws or regulations that specify processes for constituting licensing boards, their operating procedures, etc. If so, the foregoing section should be revised accordingly. To the extent allowed by extant laws and regulations, a large majority of the members of the behavior analyst licensing board or committee should be Licensed Behavior Analysts with additional membership of at least one Licensed Assistant Behavior Analyst (if those individuals are licensed by the jurisdiction) and at least one public member. Some jurisdictions may require more than one of the latter.

Model Behavior Analyst Licensure Act

Section 5. Eligibility Requirements for Initial Licensure

A. Each applicant for licensure as a Licensed Behavior Analyst shall submit an application and specified fees to the Board. The application must include evidence that the applicant meets all of the following requirements:

- (i) Is of good moral character.
- (ii) Has successfully completed a criminal background check.

Comment: *Many jurisdictions in the U.S. require all applicants for licensure to complete a specific background check/clearance. If that is not required, (ii) above should be omitted. The jurisdiction may also require all applicants to pass an examination on the jurisdiction's laws relevant to the practice of applied behavior analysis (often called a jurisprudence examination). If so, the requisite language should be included in this section.*

- (iii) Each applicant shall also have his/her current certification as a Board Certified Behavior Analyst or Board Certified Behavior Analyst-Doctoral verified with the certifying entity by the Board.

Comment: *Licensure requirements in many professions include completion of specified degrees, coursework, and supervised experiential training as well as passage of a valid and reliable professional examination in the subject matter. Those requirements are typically set by the profession, and are often derived from job analysis studies involving many members of the profession as well as input from experts in the subject matter, psychometrics, and applicable laws. The BACB's certification programs have all of those features and are accredited by the National Commission on Certifying Agencies, which means that the programs meet rigorous standards that are grounded in case law and best practices in professional credentialing. Making current BACB certification the principal requirement for licensure therefore has multiple benefits. It ensures that*

- *all licensees have been verified to have met the education and training standards set by the profession and have passed a psychometrically and legally validated professional examination in behavior analysis;*
- *licensees are required to comply with the BACB's Professional and Ethical Compliance Code for Behavior Analysts and are not subject to any disciplinary action by the BACB;*
- *the jurisdiction and Board have sound legal and empirical bases for determining who does and does not qualify for licensure; and*

Model Behavior Analyst Licensure Act

- *the licensure program is cost-effective for the jurisdiction because the Board does not have to check every applicant's degrees, coursework, and supervised training; it need only search for the applicant's name at <https://www.bacb.com/verify-certification/>*

Licensure laws, regulations, or rules that allow individuals other than current BACB certificants to qualify for licensure lack the foregoing safeguards and run the risk of failing to reflect the standards set by the profession. Therefore, APBA does not recommend including such provisions.

Direct verification of BACB certification by the licensing board is preferable to having applicants for licensure submit evidence of certification because it avoids the risk that such evidence might be counterfeit or outdated.

It may seem efficient to copy and paste the current BACB certification standards into a proposed licensure law or rules. That is not recommended, because the BACB's standards are updated regularly to reflect the results of recent job analysis studies and developments in research, laws, social norms, and other variables that affect the professional practice of applied behavior analysis. If a licensure law specifies the BACB education and training requirements that are in place at the time the law or rules are adopted, the law or rules will have to be amended every time BACB requirements change. It is impossible to predict how difficult or easy that will be. The safer approach is to require verification that each applicant for licensure has met current BACB certification requirements.

- B. Each applicant for licensure as a Licensed Assistant Behavior Analyst shall submit an application and specified fees to the Board. The application must include evidence that the applicant meets all of the following requirements:
- (i) Is of good moral character.
 - (ii) Has successfully completed a criminal background check.
 - (iii) Is supervised by a Licensed Behavior Analyst who is approved as a supervisor by the certifying entity, in accordance with the certifying entity's current supervision standards.

Comment: *APBA recommends that jurisdictions license assistant behavior analysts. If the jurisdiction opts not to do that, then Board Certified Assistant Behavior Analysts (BCaBAs) should be identified in Section 7 as exempt from licensure as long as they maintain current BACB certification as BCaBAs and have their work supervised by Licensed Behavior Analysts in accordance with current BACB supervision standards (see <https://www.bacb.com/bcaba/>). If the law provides for licensure of individuals who are not BACB certified and allows*

Model Behavior Analyst Licensure Act

those individuals to supervise the work of BCaBAs, it is imperative to specify that each BCaBA will still need to satisfy BACB supervision requirements. That is, a licensed professional who is not BACB certified may supervise the work of a BCaBA, but such supervision will not fulfill the requirements for the BCaBA to maintain his/her BACB certification. S/he will also have to obtain the necessary supervision from a Licensed Behavior Analyst who is approved as a supervisor by the BACB (see <https://www.bacb.com/requirements-for-supervisors/>).

(iv) Each applicant shall also have his/her current certification as a Board Certified Assistant Behavior Analyst verified with the certifying entity by the Board.

Comment: See rationale in the comment following Section 5(A)(iii).

Section 6. Expiration and Renewal

A license shall be granted for a period of [X] years. Prior to expiration of a license, the license may be renewed upon submission of an application for renewal, Board verification of current certification by the certifying entity, and payment of any renewal fee established by the Board.

Comment: *Requiring that all applicants for renewal have their BACB certification verified ensures that all licensees meet the current standards of the profession even as those standards change over time. That includes continuing education standards, supervision standards, and adherence to the BACB's Professional and Ethical Compliance Code for Behavior Analysts, all of which are required to maintain BACB certification. Passage of a BACB certification exam at some point in the past without current certification is not an adequate requirement for licensure renewal, because that would permit individuals who have not kept up with developments in the profession to be licensed to practice behavior analysis.*

Section 7. Exemptions

Comment: *Exemptions are commonly included in licensure laws. They typically describe categories of individuals who are allowed to engage in specified aspects of the practice under specified conditions without being licensed. Some exemptions are suggested here. It is essential, however, to discuss with APBA and carefully consider the likely effects of each and every potential exemption on behavior analyst practitioners and consumers in your jurisdiction.*

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

Model Behavior Analyst Licensure Act

- A. Individuals licensed to practice psychology in [jurisdiction] and those who deliver psychological services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the [jurisdiction] psychology licensure law; (b) the applied behavior analysis services provided are within the boundaries of the Licensed Psychologist's education, training, and competence; and (c) the Licensed Psychologist does not represent that s/he is a Licensed Behavior Analyst unless also licensed under this Act.
- B. Individuals licensed to practice other professions in [jurisdiction] and those who deliver services under their supervision, provided that (a) applied behavior analysis is in the scope of practice section of the profession's licensure law; (b) the applied behavior analysis services provided are within the boundaries of the licensed professional's education, training, and competence; and (c) the licensed professional does not represent that he or she is a Licensed Behavior Analyst unless also licensed under this Act.

Comment: *Including exemptions like A and/or B above may be necessary or desirable to allow certain qualified and licensed members of other professions to practice behavior analysis in the jurisdiction without holding a license in behavior analysis.*

- C. Behavior technicians who deliver applied behavior analysis services under the extended authority and direction of a Licensed Behavior Analyst or a Licensed Assistant Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts, and must use titles that indicate their nonprofessional status, such as "ABA technician," "behavior technician," or "tutor."

Comment: *Failure to include this exemption may result in behavior technicians being charged with practicing applied behavior analysis without a license. It may also have the unintended effect of making it difficult to obtain funding for services delivered by technicians.*

- D. Caregivers of recipients of applied behavior analysis services who deliver those services to the recipients under the extended authority and direction of a Licensed Behavior Analyst or a Licensed Assistant Behavior Analyst. Such individuals must not represent themselves as professional behavior analysts.

Comment: *This exemption is consistent with BACB Professional and Ethical Compliance Code for Behavior Analysts standards and best practices in applied behavior analysis for training caregivers to deliver certain applied behavior analysis services.*

Model Behavior Analyst Licensure Act

- E. Behavior analysts who practice with nonhumans, including applied animal behaviorists and animal trainers. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.
- F. Professionals who provide general applied behavior analysis services to organizations, so long as those services are for the benefit of the organizations and do not involve direct services to individuals. Such professionals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.

Comment: *This exemption is meant to cover practitioners of organizational behavior management (OBM); however, some jurisdictions may require such individuals to be licensed.*

- G. Matriculated college or university students or postdoctoral fellows whose applied behavior analysis activities are part of a defined program of study, course, practicum, internship, or fellowship and are directly supervised by a Licensed Behavior Analyst in this jurisdiction or a qualified faculty member. Such individuals must not represent themselves as professional behavior analysts and must use titles that clearly indicate their trainee status, such as “student,” “intern,” or “trainee.”
- H. Unlicensed individuals pursuing experience in applied behavior analysis consistent with the experience requirements of the certifying entity, provided such experience is supervised in accordance with the requirements of the certifying entity.

Comment: *Exemptions G and H and any accompanying rules or regulations must be constructed carefully to ensure that the supervision provided will qualify individuals for both BACB certification and licensure.*

- I. Individuals who teach behavior analysis or conduct behavior-analytic research, provided that such activities do not involve the direct delivery of applied behavior analysis services beyond the typical parameters of applied research. Such individuals may use the title “behavior analyst” but may not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act.
- J. Behavior analysts licensed in another jurisdiction or certified by the certifying entity to practice independently and who practice in [jurisdiction] no more than [X hours/ days/weeks] within a calendar year.

Model Behavior Analyst Licensure Act

Comment: *This provision allows for appropriately credentialed behavior analysts from other jurisdictions to practice in this jurisdiction on a time-limited basis without being licensed by this jurisdiction. An alternative is to include in the law a requirement for all such individuals to obtain a temporary license to practice in this jurisdiction and specifying the qualifications and conditions for the temporary license (see Section 8).*

- K. Individuals employed by a school [board, district] performing the duties of their positions. Such individuals shall not represent themselves as Licensed Behavior Analysts or Licensed Assistant Behavior Analysts unless licensed under this Act, and shall not offer applied behavior analysis services to any persons or entities other than their school employer or accept remuneration for providing applied behavior analysis services other than the remuneration they receive from their school employer.

Comment: *This exemption may be necessary to comply with education laws. A similar exemption for specified employees or vendors of the jurisdiction's developmental disabilities services system may also be necessary or desirable. As with all exemptions, those possibilities should be researched and their ramifications considered carefully.*

Section 8. Temporary License

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

Comment: *If this provision is included in lieu of exemption 7(J), it and any accompanying rules or regulations should be constructed carefully to ensure that the individual's practice in the jurisdiction is temporary. If that practice involves supervision of candidates for BACB certification/licensure, then the licensure law or the accompanying rules or regulations should clearly specify that such supervision must be provided in accordance with the BACB's supervision standards. Note that requiring professionals who practice in the jurisdiction for short periods of time to obtain temporary licenses will add to the work of the licensing board and therefore to the costs of operating the licensure program.*

Model Behavior Analyst Licensure Act

Section 9. Reciprocity

The Board shall issue a license to a person who is currently licensed as a behavior analyst or assistant behavior analyst in good standing in another jurisdiction that imposes licensure requirements comparable to those specified in this Act. Applicants for reciprocal licensure shall have current licensure verified by the Board and comply with other requirements set forth in Section 5 of this Act.

Comment: *If the jurisdiction requires passage of a criminal background check by all applicants for licensure, then the reciprocity provision will need to address whether a background check completed in another jurisdiction will be accepted. Not all background checks are the same. Factors to consider in comparing background checks include determining whether they captured certain felonies, misdemeanors, and expunged charges, and how they treated pleas of nolo contendere and passage of time since an offense. An attorney employed by the jurisdiction should be able to provide input regarding the extant laws and necessary language.*

Some jurisdictions offer reciprocal licenses only to individuals who are licensed in jurisdictions that also offer reciprocity.



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COMMITTEE ON LOWER AND HIGHER EDUCATION

Rep. Justin H. Woodson, Chair
Rep. Mark J. Hashem, Vice Chair
Rep. Amy A. Peruso, Vice Chair

COMMITTEE ON INTRASTATE COMMERCE

Rep. Takashi Ohno, Chair
Rep. Mark J. Hashem, Vice Chair

DATE: Thursday, March 14, 2019
TIME: 2:15pm
PLACE: Conference Room 309

Testimony in Support of SB341 SD2 with AMENDMENTS RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS

The Hawai'i Psychological Association (HPA) strongly supports SB341 SD2. HPA appreciates that the current bill allows for licensed psychologists to supervise paraprofessionals who are credentialed as registered behavior technicians (RBTs) in accord with their requirements in addition to supervising master's level practitioners and postdoctoral fellows who may in turn supervise direct support workers, comparably trained paraprofessionals who are not credentialed as RBTs, caregivers, parents, and guardians in a manner and to the extent determined by the supervising psychologist.

HPA respectfully proposes further amending SB341 SD2 to include guidance for the Department of Education to seek necessary approvals to bill for services provided for Medicaid-eligible students diagnosed with autism by an array of qualified licensed behavioral professionals and their supervisees as is the practice in other jurisdictions (e.g., California). We recommend the following paragraph be added as SECTION 2 (page 6, starting on line 5):

SECTION 2. The department of education will seek any approvals that may be necessary from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to provide reimbursement for necessary ABA services provided to Medicaid-eligible students diagnosed with autism provided by licensed behavior analysts, licensed psychologists, licensed clinical social workers, advance practice registered nurses with a

specialization in psychiatry, licensed marriage family therapists, licensed mental health counselors, and those they supervise.

Thank you for the opportunity to provide input into this important bill.

Sincerely,

Julie Takishima-Lacasa, Ph.D.
Chair, HPA Legislative Action Committee



COMMITTEE ON EDUCATION
COMMITTEE ON INTRASTATE COMMERCE

Conference Room, State Capitol
415 South Beretania Street
3/14/2019

COMMENTS ON SB 341 SD2

Honorable Chairs, Vice Chairs, and members of the Joint Committee:

On behalf of the Hawai'i Association for Behavior Analysis (HABA), we would like to thank you for your continued support for our keiki and our teachers. We appreciate the opportunity to testify on this measure. In regard to SB341 SD2, HABA would like to offer the following comments for your consideration.

In 2015, Behavior Analyst Licensure law passed, and in 2016, it was amended to allow the Department of Education three years to develop an internal ABA workforce. Applied behavior analysis depends on a tiered delivery of service model. In order to be reimbursed for services, there needs to be a licensed behavior analyst who oversees registered behavior technicians. With no exceptions, this needs to be the standard of care in the licensure law. Exemptions from licensure need to be carefully considered so that the integrity of services is maintained and can be reimbursed.

We appreciate that amendments made in the Senate to the current version of SB 341,SD2 to delete the exemption for direct support workers and add an exemption for special education teachers. However, with respect to the exemption of special education teachers, we would respectfully request that the following amendments be made so that their exemption is consistent with that of other teachers:

1. Delete the current amendment for special education teachers at page 5, line 15 through page 6, line 4 (currently proposed as HRS 467D-7(a)(10)).
2. Add special education teachers instead to the existing teachers exemption at page 2, lines 8-14 (HRS 467D-7(a)(2)) as follows:

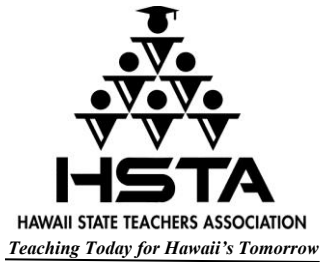
A licensed **general or special education** classroom teacher or an individual who is working as a **general or special education** classroom teacher and is enrolled in a teacher preparation program working towards licensure who implements but does not design applied behavior analysis services in a school setting in direct collaboration with a licensed behavior analyst or a licensed psychologist [~~on or before July 1, 2019~~];

We appreciate the opportunity to testify on this measure. We are available for questions.

Mahalo,

Kathleen Penland

Kathleen Penland, M.Ed., BCBA, LBA
HABA Past President



Corey Rosenlee
President
Osa Tui Jr.
Vice President
Logan Okita
Secretary-Treasurer
Wilbert Holck
Executive Director

TESTIMONY BEFORE THE HOUSE COMMITTEE ON
LOWER & HIGHER EDUCATION AND THE COMMITTEE ON INTRASTATE
COMMERCE

RE: SB 341, SD2 - RELATING TO THE PRACTICE OF BEHAVIOR ANALYSIS

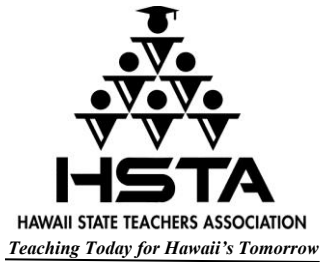
THURSDAY, MARCH 14, 2019

COREY ROSENLEE, PRESIDENT
HAWAII STATE TEACHERS ASSOCIATION

Chair Woodson, Chair Ohno, and Members of the Committee:

The Hawaii State Teachers Association **opposes SB 341, SD2**, with suggested amendments, relating to the practice of behavior analysis.

In the last committee, unfortunately language was added yet again to exempt our Special Education teachers. They should not be exempt from this additional license to be able to design/create and monitor Applied Behavior Analysis plans. Yes, some of their practices overlap, and that is fine and this law does not change that, but they should not be exempt from this licensure law. **When our special education teachers have used their practices and methods, but yet, they are not seeing progress in their student and they need help, they should be allowed to consult outside experts, as determined in an IEP meeting, to assist them.** In this case, they should be able to ask for the services of a Licensed Behavior Analyst (LBA) or psychologist with the appropriate training and credentials. The HDOE is working on getting our Medicaid reimbursements for ABA services which are allowable, and teachers, not even SPED teachers, are NOT on that list for reimbursable services. The experts they list that are able to design/create and monitor ABA plans have a specialized license. Yes, some of our teachers do have that license and are Board Certified Behavior Analysts (BCBAs) and they, of course, may design/create and monitor ABA plans, but the majority of teachers are not BCBAs. Teachers often consult other experts such as psychiatrists, speech therapists, occupational therapists, social workers etc., and we need to. Thus, we also need to be able to consult BCBAs or psychologists as well when our IEP Team decides we need additional help with a student.



Corey Rosenlee
President
Osa Tui Jr.
Vice President
Logan Okita
Secretary-Treasurer
Wilbert Holck
Executive Director

Thus, we have a suggestion to clarify that our special education teachers can implement Applied Behavior Analysis plans, but they cannot be the ones who design/create, nor monitor ABA plans.

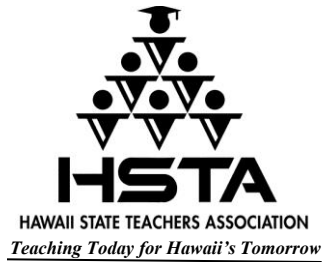
We suggest the amendment to HRS465D-7(2), which is the current section pertaining to classroom teachers. Noting that the term “classroom” teacher is not in other statutes and thus should just be “licensed teacher”

Our suggested amendment is on page 2, lines 8-14, of SB341, SD2

(2) A licensed general or special education ~~classroom~~ teacher or an individual who is working as a general or special education teacher and is enrolled in a state approved teacher education program working toward licensure who implements, but does not design nor monitor applied behavior analysis services plans, in a school setting in direct collaboration with a licensed behavior analyst or a licensed psychologist. ~~[on or before July 1, 2019]~~

We were in agreement with SB341, SD1, as was the HIDEOE and HABA according to their testimony, which just removed the dates in sections (HRS465D-7; 2), which would remove perceived restrictions imposed on classroom teachers; and (HRS465D-7; 4B), as this provision is already in effect currently for psychologists, whose right to practice was never intended to be infringed upon. HSTA remains in support of licensed psychologists’ right to practice applied behavior analysis (ABA), who have ABA in their “education, training, and competence”. Reverting back to that would be the best option; however, if compromise is necessary, this is our suggested amendment above.

Act 199, Session Laws of Hawaii 2015, otherwise known as Luke’s Law, established the behavior analyst program within the Department of Commerce and Consumer Affairs and created licensing requirements for behavior analysts. Licensing of behavior analysis services was made concurrent with mandated insurance coverage for diagnosis and treatment related to autism disorders, with which nearly 1,500 public school students are currently diagnosed. Act 205 further clarified the licenses requirements for behavior analysts. The removal of these dates will ensure that our teachers may implement these ABA plans, under the direct supervision of a Licensed Behavior Analyst or a licensed psychologists who have ABA in their “education, training, and competence”, as was the intention of this law.



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Corey Rosenlee
President

Osa Tui Jr.
Vice President

Logan Okita
Secretary-Treasurer

Wilbert Holck
Executive Director

To ensure our most vulnerable keiki are given the care they deserve, the Hawaii State Teachers Association asks your committee to **oppose** this bill in its current form.

COMMITTEE ON LOWER AND HIGHER EDUCATION

Rep. Justin H. Woodson, Chair
Rep. Mark J. Hashem, Vice Chair
Rep. Amy A. Peruso, Vice Chair

COMMITTEE ON INTRASTATE COMMERCE

Rep. Takashi Ohno, Chair
Rep. Mark J. Hashem, Vice Chair

DATE: Thursday, March 14, 2019
TIME: 2:15pm
PLACE: Conference Room 309

**Testimony in Support of SB341 SD2 with AMENDMENTS
RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS**

I am a behaviorally trained psychologist and have been licensed as a psychologist by the state for over 30 years. My experience has included working in the DOE, CAMHD, independent practice and overseeing contracts to provide evidence-based services, including applied behavior analysis (ABA) for toddlers ages 1-3, elementary age and high school age youth in the DOE, CAMHD youth and their families, individuals receiving services through the DD Division, and children with autism under contracts with HMSA and the third-party payers.

I strongly support SB341 SD2 with the amendments proposed by the Hawai'i Psychological Association (HPA) and appreciate that the current bill allows for licensed psychologists to supervise paraprofessionals who are credentialed as registered behavior technicians (RBTs), in accordance with the requirements of their credentialing board, in addition to allowing licensed psychologists to supervise master's level practitioners and postdoctoral fellows who may in turn supervise direct support workers, comparably trained paraprofessionals who are not credentialed as RBTs, caregivers, parents, and guardians in a manner and to the extent determined by the supervising psychologist.

As stated in previous testimony submitted by the HPA (dated February 14, 2019) "The need for evidence-based treatments for students with autism spectrum disorders cannot be filled by Licensed Behavior Analysts alone." There are many well-qualified professionals who are trained and experienced in providing ABA services in Hawai'i. SB341 SD1 clarifies exemptions for ABA-trained licensed psychologists and their supervisees and for ABA-trained licensed special education teachers. I would like to request that the committees also consider clarifying exemptions for any and all licensed or credentialed professionals and those they supervise, are similarly exempt from the licensed behavior analyst law, **provided that the applied behavior analysis (ABA) services performed are within the boundaries of the licensed or credentialed practitioner's education, training, and competence.**

Such an amendment would be consistent with exemptions in the current licensure law for behavior analysts, but help clarify for employers or funders the types of licensed or credentialed professionals who may be exempt from the licensed behavior analyst law, provided **that the applied behavior analysis (ABA) services performed are within the boundaries of the licensed or credentialed practitioner's education, training, and competence.**

As a cost savings measure for our state, I also support HPA's request to amend SB341 SD2 to include guidance for the Department of Education to seek necessary approvals to bill for services provided for Medicaid-eligible students diagnosed with autism by an array of qualified licensed behavioral professionals and their supervisees as is the practice in other jurisdictions (e.g., California) by adding the following paragraph to SB341 SD2:

SECTION 2. The department of education will seek any approvals that may be necessary from the Centers for Medicare and Medicaid services to amend the state Medicaid plan to provide reimbursement for necessary ABA services provided to Medicaid-eligible students diagnosed with autism provided by licensed behavior analysts, licensed psychologists, licensed clinical social workers, advance practice registered nurses with a specialization in psychiatry, licensed marriage family therapists, licensed mental health counselors, and those they supervise.

Thank you for the opportunity to provide input into this important bill.

Linda D. Hufano, Ph.D.
Hawai'i Licensed Psychologist
1100 Alakea St., Suite 900
Honolulu, Hawaii 96813
(808) 523-7771

LATE

DAVID Y. IGE
GOVERNOR



DR. CHRISTINA M. KISHIMOTO
SUPERINTENDENT

STATE OF HAWAII
DEPARTMENT OF EDUCATION
P.O. BOX 2360
HONOLULU, HAWAII 96804

Date: 03/14/2019

Time: 02:15 PM

Location: 309

Committee: House Lower & Higher
Education

House Intrastate Commerce

Department: Education

Person Testifying: Dr. Christina M. Kishimoto, Superintendent of Education

Title of Bill: SB 0341, SD2 RELATED TO THE PRACTICE OF BEHAVIOR ANALYSIS.

Purpose of Bill: Makes the exemption from the behavior analyst licensing requirements permanent for certain teachers working in collaboration with a licensed behavior analyst or licensed psychologist. Clarifies that the licensure exemption for registered behavior technicians applies to those working under the direction of a licensed behavior analyst or licensed psychologist. Exempts licensed special education teachers and individuals in approved and accredited special education training programs who are working toward licensure as special education teachers whose scope of practice and training includes applied behavior analysis. Effective 7/1/2050. (SD2)

Department's Position:

The Department of Education (Department) supports SB 341 SD2 which makes the exemption from behavior analyst licensing requirement permanent for teachers working in collaboration with a licensed behavior analyst. It further exempts a licensed special education teacher and individuals in approved and accredited special education training programs who are working toward licensure as special education teachers whose scope of practice and training includes behavior analysis. SB 341 SD2 also clarifies that the licensure exemption for registered behavior technicians applies to those working under the direction of a licensed behavior analyst or licensed psychologist.

Teachers should be allowed to continue implementing behavior analysis services in collaboration with a Licensed Behavior Analyst (LBA) or a licensed psychologist as teachers work directly with students. Without lifting the timeline requirement, a teacher's ability to address individual student needs using evidence based practices would be significantly limited. The Department agrees with permanently exempting teachers that implement behavior analysis

services and who are working in collaboration with a LBA or licensed psychologist.

The professional competencies for a special education teacher are set by Council for Exceptional Children and are recognized as standard practices for special education teachers across the nation. These professional competencies are reflected in the teacher training accreditation standards and the licensing requirement set by the Hawaii Teacher Standards Board for special education teachers. Therefore, the Department supports exempting licensed special education teacher and individuals in approved and accredited special education training programs who are working toward licensure as special education teachers whose scope of practice and training includes behavior analysis.

The Department supports the deletion of Section 1(a)(1)(4)(B) and recognizes that paraprofessionals can continue implementing under the supervision of a licensed psychologist and any supervisee as authorized under Section 1(a)(1).

Thank you for this opportunity to provide testimony on this measure.

The Hawaii State Department of Education seeks to advance the goals of the Strategic Plan which is focused on student success, staff success, and successful systems of support. This is achieved through targeted work around three impact strategies: school design, student voice, and teacher collaboration. Detailed information is available at www.hawaiipublicschools.org.



S E A C
Special Education Advisory Council

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Phone: 586-8126 Fax: 586-8129

email: spin@doh.hawaii.gov

March 14, 2019

**Special Education
Advisory Council**

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Ms. Dale Matsuura, *Vice Chair*
Dr. Patricia Sheehey, *Vice
Chair*
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to the Superintendent*
Dr. Bob Campbell, *liaison to
the military community*

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Susan Rocco, Staff

LATE

Representative Justin H. Woodson, Chair
Committee on Lower & Higher Education
Representative Takashi Ohno, Chair
Committee on Intrastate Commerce
Hawaii State Capitol
Honolulu, HI 96813

RE: SB 341, SD 2 - Related to the Practice of Behavior Analysis

Dear Chairs Woodson and Ohno and Members of the Committees,

The Special Education Advisory Council (SEAC), Hawaii's State Advisory Panel under the Individuals with Disabilities Education Act (IDEA), **strongly supports** SB 341, SD 2 which makes permanent exemptions from the behavior analyst licensing requirements for certain teachers working with a licensed behavior analyst or licensed psychologist as well as licensed special education teachers and individuals in accredited special education training programs whose scope of practice and training includes applied behavior analysis.

SEAC was an early and persistent supporter of legislation mandating health insurance coverage for children and youth with autism. Passage of this legislation required the concurrent establishment of a behavior analyst program and specific licensing requirements for behavior analysts. The resulting statute (HRS 465D-7) purposefully exempted from ABA licensure other licensed or credentialed practitioners practicing within their own recognized scopes of practice.

Unfortunately, the wording of the statute and subsequent interpretations have had the unintended effect of limiting access to timely and appropriate ABA services to students who need these interventions in order to reach their academic, behavioral and functional goals. Last session, the right of psychologists to design and implement ABA services was acknowledged. SB 341, SD 2 goes justifiable further to lift the restriction of ABA practice by licensed special education teachers.

--continued



Testimony regarding SB 341, SB 2
March 14, 2019
Page 2

SEAC recently learned that the current language of HRS 465D-7 is jeopardizing the UH College of Education's nationally accredited and state approved teacher education program by prohibiting the preparation of special education teachers to conduct behavioral assessments or to develop and implement interventions based on applied behavioral analysis. Without this training, these teacher candidates will not meet state requirements or be able to answer required questions on the state licensing exam regarding applied behavior analysis.

SEAC believes that SB 341, SB 2 is needed to prevent further shortages of qualified special education teachers and to help ensure timely and appropriate ABA interventions to our most vulnerable students.

Respectfully,


Martha Guinan
SEAC Chair


Ivalee Sinclair
Legislative Committee Chair