Sixty-fourth Legislative Assembly of North Dakota
In Regular Session Commencing Tuesday, January 6, 2015

HOUSE BILL NO. 1274
(Representatives Fehr, D. Anderson, Hofstad, Lefor)

AN ACT to amend and reenact sections 43-32-02, 43-32-08, 43-32-12, 43-32-13, 43-32-14, 43-32-17, 43-32-19.1, 43-32-20, 43-32-20.1, 43-32-21, 43-32-26, 43-32-27, 43-32-27.1, 43-32-30, and 43-32-34 of the North Dakota Century Code, relating to the membership, powers, and duties of the state board of psychologist examiners; and to provide a penalty.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. AMENDMENT. Section 43-32-02 of the North Dakota Century Code is amended and reenacted as follows:

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

The governor shall appoint a state board of psychologist examiners consisting of ~~five~~seven members. ~~At~~One board member must be designated a public member who is a resident of this state, is at least twenty-one years of age, and is not affiliated with any group or profession that provides or regulates health care in any form. Of the remaining six board members, at least one member must be engaged primarily in providing service in psychology, and at least one member must be engaged primarily in teaching, training, or research in psychology. ~~Each~~Except the public member, each member must:

1. Be a resident of this state.

2. Be ~~a psychologist~~ licensed under this chapter for at least five years.

3. ~~Have received a doctorate degree in psychology from a school or college at least five years before appointment.~~

4. ~~Have actively engaged in the practice of teaching or research of psychology for at least five years.~~

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 43-32-12 of the North Dakota Century Code is amended and reenacted as follows:

43-32-12. Application and 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 4. 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~~November fifteenth of each year, every licensee and registrant shall pay to the secretary of the board an annual fee determined by the board ~~not to exceed one hundred fifty dollars~~by rule. The secretary of the board, upon receipt of payment of the annual fee, shall issue the licensee or registrant a certificate of annual renewal, which commences on January first. 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 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 or electronically mail a renewal notice to each licensee and registrant at the address or electronic mail address on file with the board.

SECTION 5. AMENDMENT. Section 43-32-14 of the North Dakota Century Code is amended and reenacted as follows:

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

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

SECTION 6. AMENDMENT. Section 43-32-17 of the North Dakota Century Code is amended and reenacted as follows:

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

1. Except as otherwise provided under this chapter, a person may not engage in the practice of psychology unless that person is licensed as a psychologist or is registered as a psychology resident under this chapter. Except as otherwise provided by this chapter, a person may not engage in the practice of industrial-organizational psychology unless that person is licensed as a psychologist or industrial-organizational psychologist or is registered as a psychology resident or industrial-organizational psychology resident under this chapter. Except as otherwise provided under this chapter, a person may not engage in the practice of applied behavior analysis unless that person is a psychologist, is licensed as an applied behavior analyst, or is registered and supervised as an applied behavior analyst as provided under this chapter.

2. A person may not use the title "psychologist" or similar title unless that person is licensed as a psychologist. A person may not use the titles "industrial psychologist", "organizational psychologist", or "industrial-organizational psychologist" unless that person is licensed as a psychologist or industrial-organizational psychologist. A person may not use the title "applied behavior analyst" or similar title unless that person is licensed as an applied behavior analyst. A person may not use the title "registered applied behavioral analyst" or similar title unless that person is registered and supervised as a registered applied behavior analyst.

3. A person may not use the title "psychology resident" or similar title unless that person is registered as a psychology resident. A person may not use the titles "industrial psychology resident", "organizational psychology resident", or "industrial-organizational psychology resident" unless that person is registered as a psychology resident or industrial-organizational psychology resident.

SECTION 7. AMENDMENT. Section 43-32-19.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-19.1. Licensing ~~applicant~~or registering applicants licensed or registered in other jurisdictions.

1. The board may grant a license or registration to an applicant~~,~~ who is licensed or registered in good standing in another jurisdiction~~,~~ that imposes requirements for licensure or registration and who ~~passes the oral examination on the law and rules regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis and meets one of the following requirements~~:

   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.~~Meets standards established by the board; or

   b. ~~The~~Is an applicant for licensure as a psychologist who holds a certificate of professional qualification in psychology issued by an entity approved by the board, such as the association of state and provincial psychology boards or its successor.

2. As a condition to qualify for licensure or registration under subsection 1, the board may require the applicant pass an oral examination on the laws and rules regulating the practice of psychology, industrial-organizational psychology, or applied behavior analysis, as appropriate to the licensure or registration sought by the applicant.

3. Notwithstanding any contrary provision of this chapter, the board may issue a license or registration as authorized under chapter 43-51.

4. The board ~~shall~~may 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~~if the applicant is~~:~~

   ~~a.~~ ~~Licensed~~ licensed or registered and is in good standing in another jurisdiction~~;~~ or

   ~~b.~~ ~~Certified in good standing with the national behavior analyst certification board~~is certified by a professional organization that is identified by the board by rule. The board may not grant a provisional license or registration under this subsection if in another jurisdiction, within the previous five years, the applicant had a disciplinary action against the applicant's license or registration.

5. Except as otherwise provided under this chapter, and in accordance with rules adopted by the board, the board shall issue a limited practice certificate to an applicant who is licensed or registered in another jurisdiction to practice psychology, industrial-organizational psychology, or applied behavior analysis. A limited practice certificate issued under this subsection authorizes the practice of psychology, industrial-organizational psychology, or applied behavior analysis in this state for no more than thirty days in a calendar year.

SECTION 8. AMENDMENT. Section 43-32-20 of the North Dakota Century Code is amended and reenacted as follows:

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

The board shall issue a license to each applicant who files an application upon a form and in a manner the board prescribes, submits the required fee, and meets the requirements of subsection 1 or 2.

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

a. The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct adopted by the board by rule.

b. The applicant has received, from a school or college, a doctorate degree in a program ~~which meets any of the following requirements:~~

~~(1) The program is accredited by the American psychological association or the Canadian psychological association.~~

~~(2) The program is designated as a doctoral program in psychology by the association of state and provincial psychology boards.~~

~~(3) The program~~that is accredited as a doctoral program in psychology by an accrediting body approved by the board by rule.

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

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

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

a. The applicant will adhere to the American psychological association ethical principles of psychologists and code of conduct adopted by the board by rule.

b. The applicant has received, from a school or college, a doctorate degree in a program of studies accredited by ~~the American psychological association or~~ an accrediting body approved by the board by rule, which may include the American psychological association.

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

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

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

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

SECTION 9. AMENDMENT. Section 43-32-20.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-20.1. Postdoctoral supervised psychological employment.

This section applies to postdoctoral supervised employment in the practice of psychology and industrial-organizational psychology. ~~Supervision may only be performed by a psychologist or industrial-organizational psychologist with~~Before starting supervised employment, a psychologist with at least three years of post-license practice experience must be identified as the primary supervisor. The primary supervisor must have a competency in supervision in professional psychology in the general area of practice being supervised.

Supervision must ~~include at least two hours of regularly scheduled direct supervision a week for full-time employment, one hour of which must be with the supervisor on a one-to-one basis~~occur weekly and consist of at least one hundred hours of direct supervision, either face-to-face or through distance communications. ~~The remaining hour~~At least fifty of the hours of supervision must be with the primary supervisor. Additional hours of supervision may be with other professionals designated by the supervisor and competent in the area of practice being supervised. The board may adopt rules to prorate ~~the two hours per week of~~ supervision for individuals preparing for licensure on a part-time basis.

The board may adopt rules regarding postdoctoral psychology and industrial-organizational psychology supervision requirements and reporting.

SECTION 10. AMENDMENT. Section 43-32-21 of the North Dakota Century Code is amended and reenacted as follows:

43-32-21. Consideration of application and notice to applicant.

Upon investigation of the application and other evidence submitted, the board~~, not less than thirty days before the examination,~~ shall notify each applicant that the application and evidence submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected, the notice must state the reasons for rejection and explain the right to a hearing under chapter 28-32, if a hearing is requested within thirty days.

SECTION 11. AMENDMENT. Section 43-32-26 of the North Dakota Century Code is amended and reenacted as follows:

43-32-26. Issuance and display of license.

The board is the sole agency empowered to examine competence in the practice of psychology. A ~~license~~ certificate of license or registration issued by the board must show the full name of the licensee, have a serial number, be signed by the president of the board, and be attested by the secretary under the board's adopted seal. The license issued by the board under this chapter must be prominently displayed at the principal place of business at which the licensee practices.

SECTION 12. AMENDMENT. Section 43-32-27 of the North Dakota Century Code is amended and reenacted as follows:

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

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

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

   b. Is unable to practice psychology or applied behavior analysis with reasonable skill and safety to clients or patients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

   c. Has impersonated another individual holding a ~~psychology or industrial-organizational psychology~~ license or registration issued under this chapter or allowed another person to use the licensee's license or registration.

d. Has used fraud or deception in applying for a license or registration or in taking an examination under this chapter.

e. Has allowed the licensee's or registrant's name or license or registration issued under this chapter to be used in connection with any person who performs psychological or applied behavior analysis services outside of the area of that person's training, experience, or competence.

f. Is legally adjudicated insane or mentally incompetent. The record of the adjudication is conclusive evidence of that fact.

g. Has engaged in any form of unethical conduct as defined in ethical principles ~~of psychologists~~ and code of conduct ~~of the American psychological association~~ adopted by the board by rule.

h. Has become grossly negligent in the practice of psychology or ~~industrial-organizational psychology~~applied behavior analysis.

i. Has willfully or negligently violated this chapter.

j. Has engaged in an act in violation of rules adopted by the board.

k. Has had a license or registration revoked or suspended or was disciplined in another jurisdiction.

2. The board may assess costs incurred by the board related to investigations and disciplinary actions. By rule, the board may set fines for minor infractions of this chapter.

3. An individual whose license or registration has been revoked under this section may not reapply for licensure or registration for at least two years after the date of revocation.

4. Other than the term "in good standing", by rule, the board shall define terms related to license status, such as "revoked", "suspended", "inactive", and "probationary".

SECTION 13. AMENDMENT. Section 43-32-27.1 of the North Dakota Century Code is amended and reenacted as follows:

43-32-27.1. Complaints - Investigations.

1. A person aggrieved by the actions of a licensee, registrant, or psychology resident may file a written ~~complaint~~statement with the board citing the specific allegations of misconduct by the licensee. The board shall notify the licensee, registrant, or psychology resident of the ~~complaint~~allegation and request a written response ~~from the licensee~~. The board may establish procedural exceptions for processing multiple ~~complaints~~allegations from the same ~~complainant~~person.

2. The board ~~may investigate a complaint on the board's own motion~~shall determine if the information in an allegation warrants investigation as a complaint, without requiring the ~~identity of the complainant~~source of the information to be made a matter of public record, if the board concludes that good cause exists for preserving the confidentiality of the ~~complainant~~source.

3. A licensee, registrant, or psychology resident who is the subject of an investigation by the board shall cooperate fully with the investigation. Cooperation includes responding fully and promptly to any reasonable question raised by or on behalf of the board relating to the subject of the investigation and providing copies of patient or client records if reasonably requested by the board and accompanied by the appropriate release.

4. In order to pursue an investigation, the board may subpoena and examine witnesses and records, including patient and client records, and may copy, photograph, or take samples of

the records. The board may require the licensee, registrant, or psychology resident to give statements under oath, to submit to a physical or psychological examination, or both, by a physician or other qualified evaluation professional selected by the board, if requiring an examination is in the best interest of the public. The patient and client records released to the board are not public records. The board may adopt rules to assign, define duties, and compensate an investigator to assist the board to process a complaint.

5. Unless a patient or client release is on file allowing the release of information at the public hearing, patient and client records acquired by the board in the board's investigation are confidential and closed to the public. All board meetings at which patient or client testimony or records are taken or reviewed are confidential and closed to the public. If patient or client testimony or records are not taken or reviewed, the remainder of the meeting is an open meeting unless a specific exemption is otherwise applicable.

SECTION 14. 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, 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, industrial-organizational psychologist, or applied behavior analyst. The student or intern may not use the title "psychologist", "industrial-organizational psychologist", "licensed behavior analyst", or "registered applied behavior analyst" ~~and the~~. The student or intern status and the supervisor must be clearly stated.

2. ~~A nonresident licensed, registered, or certified in the state of the individual's residence who does not practice psychology, 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.~~3. 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.~~4. 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.~~5. 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.~~6. 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.~~7. An individual providing applied behavior analysis services to an individual in a public school setting.

~~9.~~8. 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, or psychologist.

~~10.~~9. 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.

~~11.~~10 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.

SECTION 15. AMENDMENT. Section 43-32-34 of the North Dakota Century Code is amended and reenacted as follows:

43-32-34. Applied behavior analysis - Renewal - Fees.

1. The board shall issue a license or registration to each applicant who files an application for registration as a registered applied behavior analyst or for licensure as an applied behavior analyst upon a form and in a manner the board prescribes; submits the required fee established by the board; and demonstrates the applicant meets the requirements of subsection 2.

2. An applicant under this section shall demonstrate the applicant:

   a. Has met board-approved education requirements, such as the education requirements of the board-certified behavior analyst standards;

   b. Has passed a board-approved demonstration of professional competence, such as a standardized examination specific to the profession such as the board-certified behavior analyst examination; and

   c. ~~Is credentialed as a behavior analyst by a board-approved credentialing entity, such as the behavior analyst certification board; and~~

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

3. The board may withhold, deny, revoke, or suspend a license or registration for applied behavior analyst applied for or issued under this chapter and otherwise may discipline a license or registration holder or applicant in the same manner provided under section 43-32-27.

4. A complaint regarding or board investigation of a licensed or registered applied behavior analyst is filed or conducted in the same manner as provided under section 43-32-27.1.

~~5. 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.~~

Wesley R. Belter
Speaker of the House

President of the Senate

Brent J. Reich
Chief Clerk of the House

Secretary of the Senate

This certifies that the within bill originated in the House of Representatives of the Sixty-fourth Legislative Assembly of North Dakota and is known on the records of that body as House Bill No. 1274.

House Vote:	Yeas 87	Nays 0	Absent 7
Senate Vote:	Yeas 47	Nays 0	Absent 0

Brent J. Reich
Chief Clerk of the House

Received by the Governor at 10:44 A.M. on April 8, 2015.

Approved at 2:29 P.M. on April 9, 2015.

Jack Dalrymple
Governor

Filed in this office this 9th day of April, 2015,

at 4:37 o'clock P M.

Secretary of State