

**SENATE COMMITTEE ON BUSINESS PROFESSIONS  
AND ECONOMIC DEVELOPMENT**

**REGULATORY REQUEST QUESTIONNAIRE**

**Instructions for completing this questionnaire**

- Responses to this questionnaire should be typed and dated. Each question should be answered within a single main document, which is limited to 50 pages. Supporting evidence for your responses may be included as an *Appendix*, but all essential information should be included within the main document.
- Each question from the questionnaire should be stated in upper case (capital) letters. The response should follow in lower case letters.
- Each part of every question must be addressed. If there is no information available to answer the question, state this as your response and describe what you did to attempt to find information that would answer the question. If you think the question is not applicable, state this and explain your response.
- When supporting documentation is appropriate, include it as an *Appendix*. Appendices would be labeled as follows: Each document appended should be lettered in alphabetical order. Pages within each appendix should be numbered sequentially. For example, the third page of the first appendix will be labeled A3, and the fifth page of the second appendix will be labeled B5. References within the main document to information contained in Appendices should use these page labels.
- Please read the entire questionnaire before answering any questions so that you will understand what information is being requested and how questions relate to each other.

**Section A: Applicant Group Identification**

This section of the questionnaire is designed to help identify the group seeking regulation and to determine if the applicant group adequately represents the occupation.

1. WHAT OCCUPATIONAL GROUP IS SEEKING REGULATION? IDENTIFY BY NAME, ADDRESS AND ASSOCIATIONAL AFFILIATION THE INDIVIDUALS WHO SHOULD BE CONTACTED WHEN COMMUNICATING WITH THIS GROUP REGARDING THIS APPLICATION.

The California Association for Behavior Analysis (CalABA) is applying on behalf of nationally certified California practitioners of applied behavior analysis (ABA).

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2. LIST ALL TITLES CURRENTLY USED BY CALIFORNIA PRACTITIONERS OF THIS OCCUPATION. ESTIMATE THE TOTAL NUMBER OF PRACTITIONERS NOW IN CALIFORNIA AND THE NUMBER USING EACH TITLE.

As of March 18, 2014 there were 2,198 practitioners in California certified by the Behavior Analyst Certification Board, Inc. (BACB<sup>®</sup>) at the following levels:

- Board Certified Behavior Analyst<sup>®</sup> (BCBA<sup>®</sup>): 1779
  - Board Certified Behavior Analyst-Doctoral (BCBA-D<sup>™</sup>): 269
  - Board Certified Assistant Behavior Analyst<sup>®</sup>: (BCaBA<sup>®</sup>): 150
3. IDENTIFY EACH OCCUPATIONAL ASSOCIATION OR SIMILAR ORGANIZATION REPRESENTING CURRENT PRACTITIONERS IN CALIFORNIA, AND ESTIMATE ITS MEMBERSHIP. FOR EACH, LIST THE NAME OF ANY ASSOCIATED NATIONAL GROUP.

Many BACB certificants practicing in California are also members of the following organizations:

State

- California Association for Behavior Analysis (CalABA) - ~1600 members
- Southern California Consortium for Behavior Analysis (SCCBA) – 32 members (organizational memberships only)

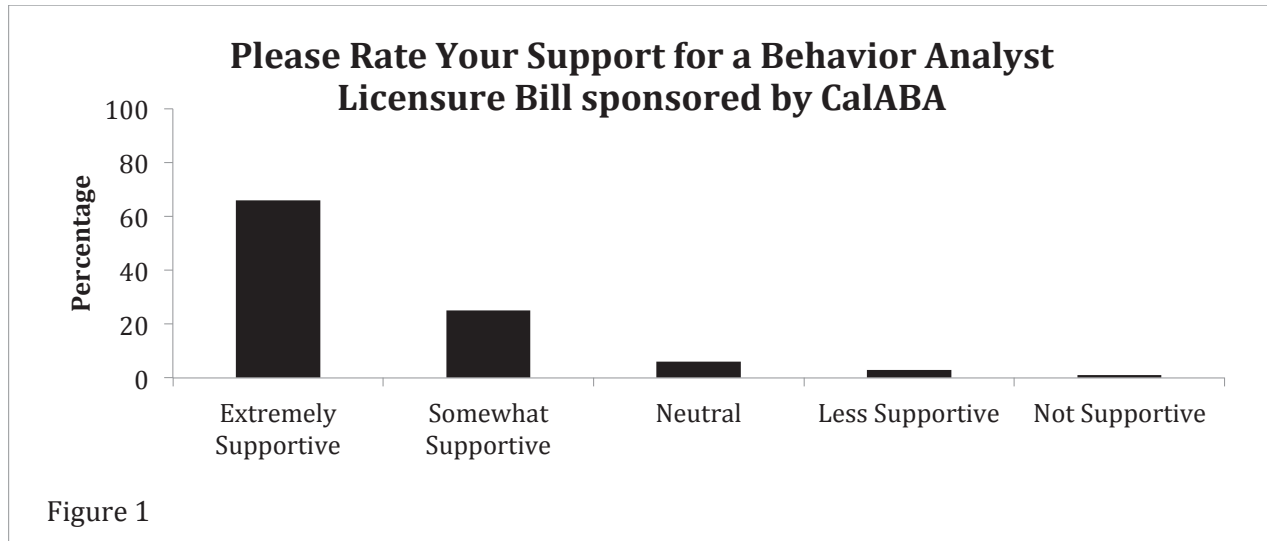
National/international

- Association for Behavior Analysis International (ABAI) – ~520 CA resident members
- Association of Professional Behavior Analysts (APBA) - ~400 CA resident members

CalABA is a state affiliated chapter of the Association for Behavior Analysis International (ABAI) and an Affiliate of the Association of Professional Behavior Analysts (APBA).

4. ESTIMATE THE PERCENTAGE OF PRACTITIONERS WHO SUPPORT THIS REQUEST FOR REGULATION. DOCUMENT THE SOURCE OF THIS ESTIMATE.

According to a survey conducted by CalABA in March/April 2014, about 90% of respondents were either “extremely supportive” or “somewhat supportive” of state regulation in the form of licensure (see figure 1 below).



5. NAME THE APPLICANT GROUP REPRESENTING THE PRACTITIONERS IN THIS EFFORT TO SEEK REGULATION. HOW WAS THIS GROUP SELECTED TO REPRESENT PRACTITIONERS?

CalABA is the applicant group representing practitioners in the effort to seek occupational regulation. CalABA was selected due to the association’s status as the oldest and largest professional organization for behavior analysts in California. It is a nonprofit membership organization whose bylaws ensure that its governing board is elected by and represents its members. Furthermore, its membership is represented across all other similar organizations listed in question 3.

6. ARE ALL PRACTITIONER GROUPS LISTED IN RESPONSE TO QUESTION 2 REPRESENTED IN THE ORGANIZATION SEEKING REGULATION? IF NOT, WHY NOT?

Yes.

**Section B: Consumer Group Identification**

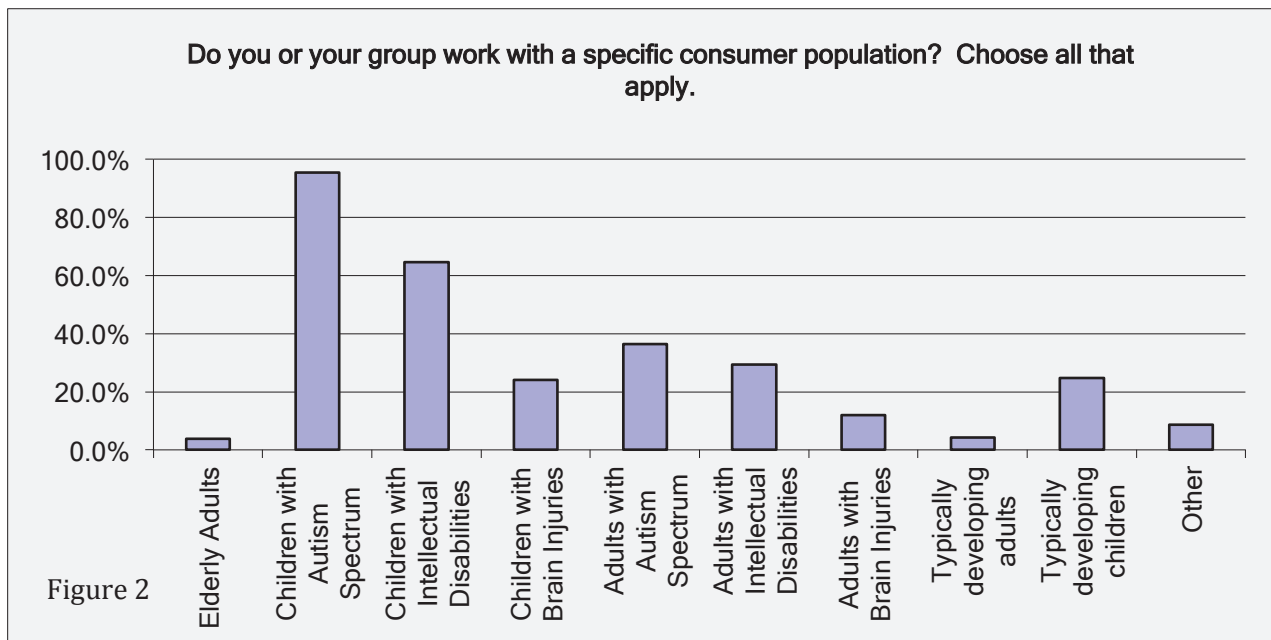
This section of the questionnaire is designed to identify consumers who typically seek practitioner services and to identify nonapplicant groups with an interest in the proposed regulation.

7. DO PRACTITIONERS TYPICALLY DEAL WITH A SPECIFIC COMSUMER POPULATION? ARE CLIENTS GENERALLY INDIVIDUALS OR ORGANIZATIONS? DOCUMENT.

Behavior analysts work with many different consumer populations to change socially important behaviors by altering aspects of the environment. Representative clients include individuals with autism and other developmental and intellectual disabilities, learning and communication difficulties, behavior disorders, brain injuries, physical disabilities, difficulties associated with aging, and typically developing individuals.

Some behavior analysts who specialize in Organizational Behavior Management (OBM) work with organizations on the behavior of people in the workplace.

Specific data on consumer populations collected through the March/April 2014 CalABA member survey are shown below.



8. IDENTIFY ANY ADVOCACY GROUPS REPRESENTING CALIFORNIA CONSUMER OF THIS SERVICE. LIST ALSO THE NAME OF APPLICABLE NATIONAL ADVOCACY GROUPS.

California Advocacy Groups

- Disability Rights California
- Autism Health Insurance Project
- Talk About Curing Autism

- Autism Deserves Equal Coverage
- Families for Effective Autism Treatment
- Consumer Watchdog

National Advocacy Groups

- Autism Speaks
- Autism Society of America

9. IDENTIFY ANY CONSUMER POPULATIONS NOT NOW USING PRACTITIONER SERVICES LIKELY TO DO SO IF REGULATION IS APPROVED.

If regulation is approved the consumer populations listed below would likely access services from professional practitioners of applied behavior analysis more than they do currently:

- Individuals experiencing behavioral difficulties associated with aging
- Individuals with traumatic brain injuries
- Individuals with a wide range of intellectual, physical and developmental disabilities
- Individuals with mental health disorders
- Typically developing individuals

10. DOES THE APPLICANT GROUP INCLUDE CONSUMER REPRESENTATION? IF SO, DOCUMENT. IF NOT, WHY NOT?

Leaders of advocacy groups including, but not limited to, Autism Speaks and the Autism Health Insurance Project are active in projects facilitated by CalABA. CalABA has also worked extensively with Consumer Watchdog on a lawsuit (Consumer Watchdog et. al. v. Department of Managed Health Care et. al.; 2d Civ. No. B232338) that was one of the catalysts for SB 946, a law requiring certain private health plans to cover ABA services for California consumers with autism.

Additionally, CalABA hosts a parent conference in conjunction with its own professional conference annually. Consumer advocates are included in both the content development and participant recruitment for this event.

11. NAME ANY NON-APPLICANT GROUPS OPPOSED TO OR WITH AN INTEREST IN THE PROPOSED REGULATION. IF NONE, INDICATE EFFORTS TO IDENTIFY THEM.

Non-applicant groups that may have an interest in the proposed regulation include:

- Advocacy groups identified in Question 8
- Association of Professional Behavior Analysts
- Association for Behavior Analysis International

- Association of State and Provincial Psychology Boards
- Behavior Analyst Certification Board, Inc.
- California Association for Licensed Professional Clinical Counselors
- California Association of Marriage and Family Therapists
- California Department of Developmental Services and Regional Centers
- California Department of Education
- California Department of Insurance
- California Department of Managed Health Care
- California Psychological Association
- Health plans serving individuals in California
- Higher education institutions listed in Question 46
- National Association of Social Workers – California Chapter
- Southern California Consortium of Behavior Analysts

### **Section C: Sunrise Criteria**

This part of the questionnaire is intended to provide a uniform method for obtaining information regarding the merits of a request for governmental regulation of an occupation. The information you provide will be used to rate arguments in favor of imposing new regulations (such as educational standards, experience requirements, or examinations) to assure occupational competence.

#### **Part C1 – Sunrise Criteria and Questions**

The following questions have been designed to allow presentation of data in support of application for regulation. Provide concise and accurate information in the form indicated in the *Instructions* portion of this questionnaire.

#### **I. UNREGULATED PRACTICE OF THIS OCCUPATION WILL HARM OR ENDANGER THE PUBLIC HEALTH SAFETY AND WELFARE**

12. IS THERE OR HAS THERE BEEN SIGNIFICANT PUBLIC DEMAND FOR A REGULATORY STANDARD? DOCUMENT. IF NOT, WHAT IS THE BASIS FOR THIS APPLICATION?

On July 1, 2012, SB 946 went into effect in California. That law mandates coverage of applied behavior analysis (ABA) services to individuals with autism spectrum disorders (ASD) by certain private health plans. Adoption of SB 946 substantially increased the already high demand for ABA services and the need for the state to adopt uniform, objective, verifiable standards and procedures for protecting consumers from risk of harms caused by individuals who make unsubstantiated claims that they are qualified to practice ABA. The Behavior Analyst Certification Board (BACB) was established in 1998 to develop such standards and procedures. The BACB is an independent, nonprofit organization that is accredited by the National Commission for Certifying Agencies (NCCA) of the

Institute for Credentialing Excellence to certify professional practitioners of ABA. The NCCA's rigorous standards are grounded in case law and best practices regarding professional credentialing. Over the past 15 years, the BACB has developed competences to practice ABA and standards for certifying practitioners based on extensive job analysis studies involving thousands of professional behavior analysts. The standards include degrees, coursework, supervised experiential training, and passage of a professionally designed and managed examination in behavior analysis (see [www.BACB.com](http://www.BACB.com)). The BACB is required to repeat the job analysis periodically and to use the results to upgrade the certification requirements so that they reflect new developments in research and in the professional practice of behavior analysis. The BACB's standards and requirements as well as the procedures from which those are derived parallel many, if not most, legitimate professional licensing standards and procedures.

The BACB has also developed *Guidelines for Responsible Conduct for Behavior Analysts* and *Professional Disciplinary and Ethical Standards* (See Appendix A and also available at [www.BACB.com](http://www.BACB.com)), which are designed to protect consumers as well as BACB-certified practitioners. All BACB certificants must comply with BACB standards as well as continuing education requirements in order to maintain their certifications. The BACB does not enforce its *Guidelines for Responsible Conduct*, but it does enforce the *Professional Disciplinary and Ethical Standards* (See Appendix B) and imposes sanctions on violators (see "Ethics and Discipline" at [www.bacb.com](http://www.bacb.com) for the standards, complaint and review procedures, and public information about disciplinary actions to date). It is important to note, however, that the BACB does not have the same authority to oversee practice as a governmental entity, such as a state regulatory board. For instance, the BACB can do little about the practice of individuals who claim to be qualified to practice ABA but are not certified by the BACB.

The BACB certifications have long been recognized as qualifications for practicing ABA in the California Department of Developmental Services regulations (California Code of Regulations Title 17, Division 2, Chapter 3, SubChapter 2, Article 3, §54342 (a) (8) and (11)) and in the state special education law (California Education Code, Part 30, Chapter 5.5, §56525). Board Certified Behavior Analysts (BCBAs) are also designated as qualified providers of ABA services in the aforementioned autism insurance law (SB 946/SB 126). At present, however, there are no laws clearly requiring that individuals document and demonstrate training and competence in ABA in order to practice in this state, and no entity within California that has legal authority to directly regulate the practice of ABA. The need for state regulation was also noted by an Autism Advisory Task Force convened by the Department of Managed Health Care, which stated in a February 2013 report to the Governor and Legislature "The Task Force concluded that all top level providers should be licensed by the state..."

The applicant therefore proposes establishment of state licensure of professional practitioners of ABA with BACB certification the principal requirement for obtaining and maintaining licenses. Benefits would include:

- Assuring the State and consumers that license holders meet standards for practicing ABA that are set by the profession. That includes passing a valid national professional examination in the subject matter – a common requirement for obtaining most legitimate professional licenses.
- Establishing a state licensing board comprising professional behavior analysts to regulate the practice of licensees, and to coordinate with the BACB on disciplinary matters. That would provide California consumers of ABA services a double layer of protection, as the practice of licensees would be overseen by both the state licensing board and the BACB.
- A cost-effective means of providing the protections just described, because those who apply to the state licensing board will have had their degree(s), coursework, and supervised experiential training in behavior analysis verified by the BACB and will have passed a psychometrically and legally validated national professional examination in behavior analysis.

13. WHAT IS THE NATURE AND SEVERITY OF THE HARM? DOCUMENT THE PHYSICAL, SOCIAL, INTELLECTUAL, FINANCIAL OR OTHER CONSEQUENCES TO THE CONSUMER RESULTING FROM INCOMPETENT PRACTICE.

Many people with autism and related disorders, intellectual disabilities, and traumatic brain injuries exhibit behaviors that directly jeopardize their health and safety, such as self-injury, elopement, pica (ingesting inedible items), feeding problems, and aggression. Such behaviors often result in costly and largely ineffective use of psychotropic medications, emergency room services, hospitalizations, and residential services as well as tremendous emotional and financial burdens for families (e.g., Mandell, 2007; Montes & Halterman, 2008; Tsakanikos, Costello, Holt, Sturmey, & Bouras, 2006). Substantial research shows that competently designed and delivered ABA interventions are effective for reducing problem behaviors (Campbell, 2003; Hagopian, Rooker, & Rolider, 2011; Hassiotis, Canagasabe, Robotham, Martston, & Romeo, 2010) Heyvaert, Maes, Van den Noortgate, Kuppens, & Onghena, 2012; Lang et al., 2009). Conversely, research has shown that interventionists who lack sufficient training in ABA can actually *increase* the occurrence of such behaviors in people with autism and other disorders (e.g., Lovaas, Freitag, Gold, & Kassorla, 1965; Lovaas & Simmons, 1969; Mason & Iwata, 1990; also see Hanley, Iwata, & McCord, 2003).

Abundant research also shows that early, intensive ABA treatment can produce moderate to large improvements in the overall functioning of many young children with autism when that treatment is designed and supervised by qualified professional behavior analysts (e.g., see Eldevik et al., 2009, 2010; Green, 2011; Rogers & Vismara, 2008). The resulting decreased need for specialized services yields large cost savings for the systems that are responsible for education, healthcare, and other services for people with autism (Chasson, Harris, & Neely, 2007; Jacobson, Mulick, & Green, 1998; Motiwala, Gupta, & Lilly, 2006). In contrast, studies have shown that early “behavioral” intervention overseen by individuals who made unsupported claims to be qualified as ABA “consultants” produced no improvements in



young children with autism (Bibby et al., 2002; Mudford et al., 2001). Thus the fees paid to those consultants as well as the very precious time of the children they served were lost.

14. HOW LIKELY IS IT THAT HARM WILL OCCUR? CITE CASES OR INSTANCES OF CONSUMER INJURY. IF NONE, HOW IS HARM CURRENTLY AVOIDED?

The availability of additional funding for ABA services through SB 946, together with increasing numbers of people receiving diagnoses of ASD and other conditions for which ABA services have proved effective, will further increase consumer demand for those services going forward. Without a statute and regulations formalizing minimum standards for practicing ABA competently and establishing a body within the state to oversee that practice, consumers will be at increasing risk of harm from individuals making false claims to be qualified to provide ABA services. The studies cited above show that such harm is likely and costly. Additional evidence is provided by a case in which an individual who fabricated training in ABA and BACB certification was found to have harmed children with autism whose behavioral services she was hired to oversee by school districts in Connecticut (see Appendix C and also available at <http://ctwatchdog.com/health/schools-need-to-require-certification-of-behavior-analysts>).

15. WHAT PROVISIONS OF THE PROPOSED REGULATION WOULD PRECLUDE CONSUMER INJURY?

As described previously, establishment of licensure for ABA practitioners with BACB certification as the principal requirement would assure consumers that licensees have completed the formal and experiential training that the profession has determined is necessary to practice ABA, and have demonstrated competence by passing a valid national professional examination in the subject matter. Additionally, it would provide a licensing board within the state comprising professional behavior analysts to whom consumers could file complaints about individuals who are practicing behavior analysis but have not met the national and state standards, and about alleged unethical or incompetent practice by licensees. The licensing board's statutory authority to investigate such complaints and sanction violators, on top of the BACB's oversight, would provide strong protections against consumer injury as well as recourse for consumers who suffer harms.

**II. EXISTING PROTECTIONS AVAILABLE TO THE CONSUMER ARE INSUFFICIENT**

16. TO WHAT EXTENT DO CONSUMERS CURRENTLY CONTROL THEIR EXPOSURE TO RISK? HOW DO CLIENTS LOCATE AND SELECT PRACTITIONERS?

Many direct recipients of ABA services have limited communication, personal safety, and other self-care skills in addition to challenging behaviors, which makes them vulnerable to a variety of risks. It is typically their family members or other caregivers who seek services for them. Those consumers are also subject to risks, due in part to the difficulties inherent in

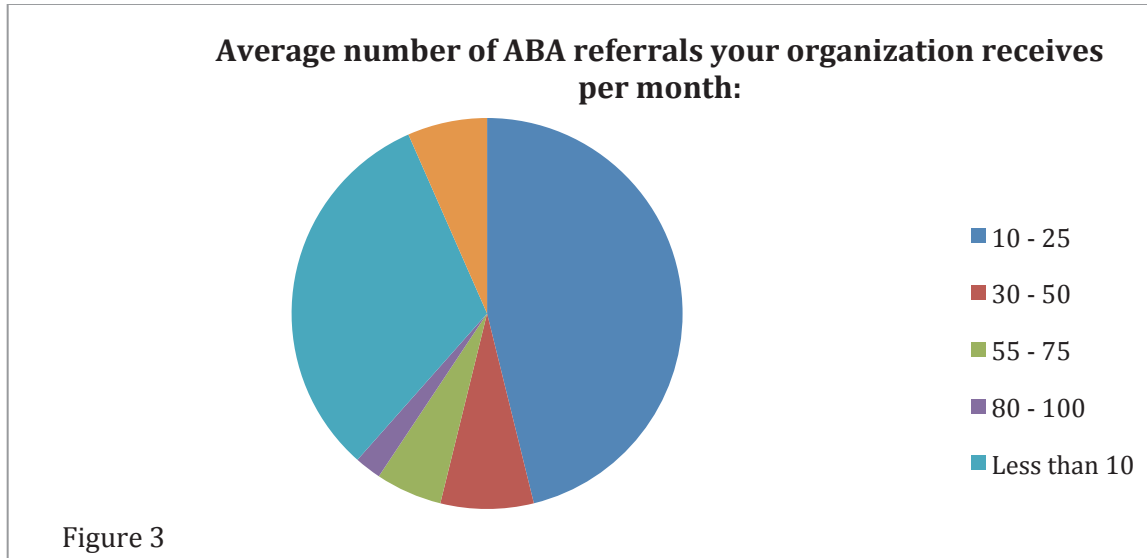
caring for family members with extensive needs. At present there are no legal restrictions on who can practice behavior analysis in this state. Consequently, many people who are not BACB certified and therefore have not met the standards for practicing ABA that have been established by the profession purport to provide “ABA” services to vulnerable consumers. Many of those consumers lack the knowledge required to discriminate such individuals from practitioners who have documented, bona fide qualifications in the practice of ABA. At present the state provides consumers with no safeguards from unqualified practitioners and no recourse if those practitioners harm them.

Consumers locate practitioners through (a) marketing tools such as websites, email promotions, and community events, (b) word-of-mouth referrals from friends, acquaintances, and parent advocacy groups, (c) referrals from medical doctors and other healthcare providers, (d) third-party funding sources such as the state’s developmental services (Regional Center) system, health plans’ lists of in-network providers, or local school districts, and/or (e) special education attorneys and advocates.

Consumers select practitioners based on factors such as (a) the practitioner’s responsiveness and availability, (b) the speed with which the practitioner can commence provision of services, (c) marketing materials, (d) geographic convenience, (e) recommendations of the referral source, (f) the practitioner’s fees and the availability of funding to cover them, and/or (f) the practitioner’s education and qualifications. If the consumer is familiar with the BACB certifications and website, s/he may read the requirements for certification, the ethical and disciplinary guidelines and standards (including descriptions of disciplinary actions taken by the BACB), and other information about the practice of ABA at [www.BACB.com](http://www.BACB.com). S/he may also search the registry of certificants on the BACB website certified practitioners in his/her area. BACB Certificants may be emailed directly via that registry.

17. ARE CLIENTS FREQUENTLY REFERRED TO PRACTITIONERS FOR SERVICE?  
GIVE EXAMPLES OF REFERRAL PATTERNS.

Clients are referred to ABA practitioners on an ongoing basis. Information about monthly referral patterns for California ABA provider organizations was collected as part of a survey conducted by CalABA in July 2013. Results are shown below in Figure 3.



A large percentage of clients referred to ABA practitioners are children or adults with autism or other developmental disabilities. They are typically referred due to deficits in communication, social, self-help, vocational, and other skills) and/or the presence of problem behaviors (e.g., self-injury, aggression, tantrums, elopement, non-compliance, food refusal).

**18. ARE CLIENTS FREQUENTLY REFERRED ELSEWHERE BY PRACTITIONERS?  
GIVE EXAMPLES OF REFFERAL PATTERNS.**

California practitioners of ABA who are credentialed by the BACB are obligated to comply with the BACB *Guidelines for Responsible Conduct*, which include requirements to refer clients to other appropriately qualified providers if the client needs services (ABA services as well as non-behavior analytic services) that are outside of the boundaries of the practitioner's training and competence. In some cases the practitioner may continue to provide services to a client (e.g., one who is receiving medical services in addition to ABA treatment), but in others s/he may not (e.g., when a client no longer needs ABA services, or their parent/guardian opts to pursue non-ABA treatment exclusively). BACB certificants are also obligated to make referrals when other conditions exist that might compromise the certificant's ability to serve the client ethically and effectively. Examples of such conditions include but are not limited to:

- Limited client availability (e.g., only after school hours)
- Practitioner is not contracted with client's funding source
- Client is found clinically ineligible for ABA services
- Resources required to deliver effective ABA services are not available
- Practitioner is unable to serve the client appropriately due to personal circumstances

At present, however, there are many individuals in California who purport to provide “ABA” services but are not regulated by either the BACB or the state, so they are bound by no code of ethics or conduct regarding referrals or any other aspect of their practice.

19. WHAT SOURCES EXIST TO INFORM CONSUMERS OF THE RISK INHERENT IN INCOMPETENT PRACTICE AND WHAT PRACTITIONER BEHAVIORS CONSTITUTE COMPETENT PERFORMANCE?

As noted earlier, the BACB has conducted several job analysis studies to identify the competencies required to practice ABA. Consumers who are familiar with the BACB may find those competencies in the 4<sup>th</sup> Edition Task List (See Appendix D and also available at [http://www.bacb.com/Downloadfiles/TaskList/BACB\\_Fourth\\_Edition\\_Task\\_List.pdf](http://www.bacb.com/Downloadfiles/TaskList/BACB_Fourth_Edition_Task_List.pdf)). The BACB *Guidelines for Responsible Conduct*, also available on the BACB website, describe the ethical practice of ABA. Additionally, in 2012 the BACB published *Health Plan Coverage of Applied Behavior Analysis Treatment for Autism Spectrum Disorder* (see Appendix E), which includes information about practitioner qualifications and responsibilities. However, none of those sources explicitly describe the risks inherent in incompetent practice of ABA.

The Autism Special Interest Group of the Association for Behavior Analysis International (ABAI) has developed guidelines for consumers that describe some behaviors that constitute competent performance of ABA in the treatment of autism and incorporate the BACB’s standards, including the Task List and conduct guidelines, by reference. However, they do not inform consumers of the risks inherent in incompetent practice. Additionally, consumers cannot readily access those guidelines, as they are being updated and are not currently accessible through the ABAI website.

Autism Speaks, a well-known non-profit organization dedicated to science and advocacy for individuals with autism, provides some information regarding practitioner qualifications, but does not describe specific practitioner behaviors that constitute competent practice, nor the risks of incompetent practice. Further, Autism Speaks warns clients and caregivers to “check the credentials of those who claim to be qualified in behavior analysis,” since there is currently no restriction on who can identify him/herself as an applied behavior analyst or practice ABA in many states.

The following websites contain information about ABA that may be useful to consumers:

- Association for Behavior Analysis International — [www.abainternational.org](http://www.abainternational.org)
- Association of Professional Behavior Analysts – [www.apbahome.net](http://www.apbahome.net)
- Association for Science in Autism Treatment — [www.asatonline.org](http://www.asatonline.org)
- ABAI Autism Special Interest Group — [www.autismsig.org](http://www.autismsig.org)
- ABAI Parent Professional Partnership Special Interest Group — [www.pppsig.org](http://www.pppsig.org)
- Behavior Analyst Certification Board, Inc. — [www.bacb.com](http://www.bacb.com)
- Cambridge Center for Behavioral Studies — [www.behavior.org](http://www.behavior.org)

20. WHAT ADMINISTRATIVE OR LEGAL REMEDIES ARE CURRENTLY AVAILABLE TO REDRESS CONSUMER INJURY OR ABUSE IN THIS FIELD?

A consumer who believes that a practitioner certified by the BACB has violated one or more of the BACB's nine *Professional Ethical and Disciplinary Standards* and has the required documentation can file a complaint with the BACB. After initial review of the complaint, the BACB establishes a Review Committee (if warranted) to determine if the alleged violations occurred and if so, what sanctions (if any) will be imposed on the certificant. The standards can be found as Appendix B, and the complaint form and description of documentation that must accompany it are included as Appendix F.

The BACB *Guidelines for Responsible Conduct* include the following provisions:

8.0 The Behavior Analyst's Responsibility to Colleagues

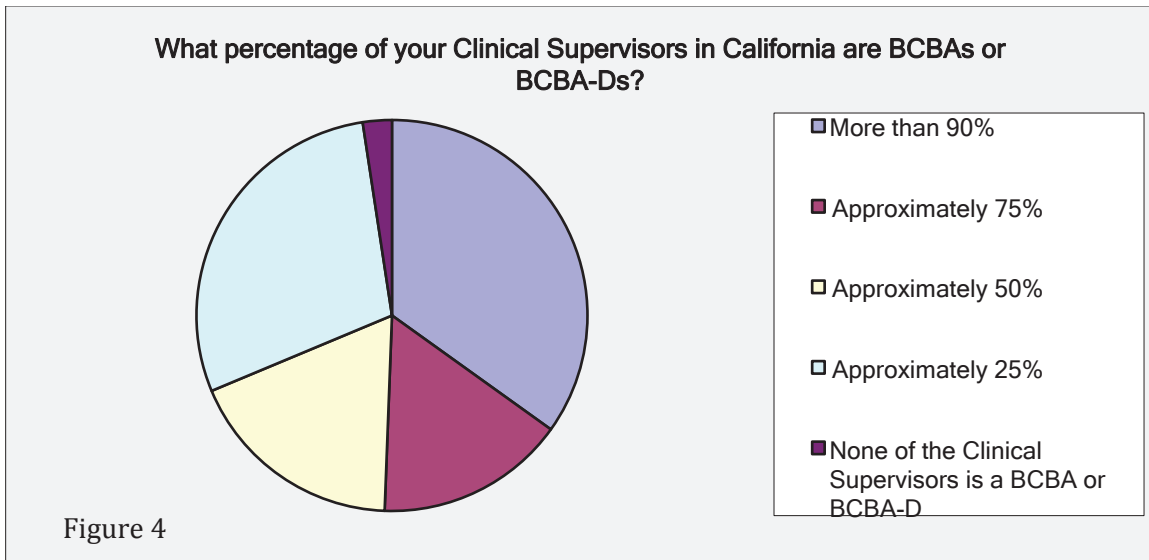
Behavior analysts have an obligation to bring attention to and resolve ethical violations by colleagues.

8.01 Ethical Violations by Behavioral and Non-behavioral Colleagues

When behavior analysts believe that there may have been an ethical violation by another behavior analyst or non-behavioral colleague, they attempt to resolve the issue by bringing it to the attention of that individual if an informal resolution appears appropriate and the intervention does not violate any confidentiality rights that may be involved. If resolution is not obtained, and the behavior analyst believes a client's rights are being violated, the behavior analyst may take additional steps as necessary for the protection of the client.

Thus BACB certificants may exert informal social pressure on colleagues who behave in ways that harm clients or otherwise violate the conduct guidelines, but those guidelines are not enforced by the BACB, do not carry the authority of law, and generally do not apply to practitioners who are not certified by the BACB.

In a July 2013 CalABA survey, respondents who employ providers of ABA services were asked what percentage of their high-level clinicians were BACB certified. Results showed that many practitioners who are given responsibility for designing and overseeing ABA treatment in California are, in fact, not BACB certified (see Figure 4), so the BACB cannot review or act on disciplinary complaints about them unless they misrepresent that they are BACB certified or eligible for involve an applicant or misuse of a BACB certification, use the BACB exams, certificates, or logo without authorization, engage in any irregularity vis a vis a BACB examination, or make false, misleading, or fraudulent statements in an effort to obtain BACB certification for themselves or someone else.



If a practitioner is not certified by the BACB, consumers can submit complaints to the practitioner’s employer or to an entity that funds the practitioner’s services, such as a health plan, Regional Center, or school district. All professionals who provide services funded by the California Department of Developmental Services or Department of Education are considered “mandated reporters” pursuant to Welfare & Institutions Code Section 15630 or Penal Code Sections 11164 through 11179.3, and must take action to ensure the health and safety of a consumer who may be the victim of abuse. Practitioners who are vendorized by Department of Developmental Services must post a link to the “Appeals, Comments, and Complaints” section of the DDS website on the public section of their website. Consumers may also report practitioners to local law enforcement agencies or to the district attorney’s office. There is, however, no central body within the state at present that can redress injuries to consumers of ABA services caused by either BACB-certified practitioners or those who are not certified by the BACB.

21. ARE THE CURRENTLY AVAILABLE REMEDIES EFFICIENT OR INEFFICIENT? IF SO, EXPLAIN WHY.

The remedies currently available are insufficient to protect consumers. As noted previously, there is no central body within California that is authorized by law to protect consumers by regulating the practice of ABA. Consumers who believe that a BACB-certified practitioner has violated one or more of the BACB’s *Professional Ethical and Disciplinary Standards* can file a complaint with the BACB. The ability of the BACB to protect the public is inherently limited, however, because it is an international credentialing body rather than a governmental entity, and the state where has not delegated legal authority to regulate the practice of ABA to the BACB.

There are stringent requirements for complaints to the BACB. At a minimum, the complainant must provide the BACB with a description of the complaint, written correspondence with the certificant in question in which the complainant specifies the nature of the complaint and a suggested remedy, and written correspondence regarding the complaint with the agency that employs or provides funding for the practitioner. Typically the BACB will only review complaints within very specific parameters and only after the complaint has already been “acted upon by an employer or governing state or health care agency.” (Behavior Analyst Certification Board, 2008.).

The BACB generally requires complaints of incompetence or malpractice include “official determinations (such as, court orders, jury findings, or treatment professional findings of incompetence or malpractice).”

If a practitioner is found to have violated one of the BACB’s *Professional Disciplinary and Ethical Standards*, there is no legal penalty. The strongest sanction available to the BACB is revocation of BACB certification. In contrast, governmental entities like licensing boards typically have authority to enforce laws and regulations and impose strong sanctions. For example, a Marriage and Family Therapist who is regulated by the California Board of Behavioral Sciences found to have violated any provisions of that profession’s licensing laws and regulations, is guilty of a misdemeanor punishable by imprisonment in the county jail not exceeding six months, by a fine not exceeding \$2500, or both (Board of Behavioral Sciences, 2014).

Generally speaking, the BACB can enforce its *Professional Ethical and Disciplinary Standards* only with practitioners who hold BACB certifications. California consumers currently have no recourse if a practitioner who is not certified by the BACB engages in unethical or incompetent behavior, except perhaps through the practitioner’s employer or funding source.

### **III. NO ALTERNATIVES TO REGULATION WILL ADEQUATELY PROTECT THE PUBLIC**

#### **22. EXPLAIN WHY MARKETPLACE FACTORS WILL NOT BE AS EFFECTIVE AS GOVERNMENTAL REGULATION IN ENSURING PUBLIC WELFARE. DOCUMENT SPECIFIC INSTANCES IN WHICH MARKET CONTROLS HAVE BROKEN DOWN OR PROVEN INEFFECTIVE IN ASSURING CONSUMER PROTECTION.**

Implementation of SB 946 has exacerbated the demand for ABA services for people with autism, which was already high. One result is that individuals who are not certified by the BACB and therefore have not met the standards established by the profession are asserting that they are qualified to be reimbursed by health plans for providing “ABA” services. Behavior analysis is younger than many other professions, and coverage of ABA services is very new to many health plans and other funding sources. For those and other reasons, relatively few funders and

consumers are familiar with the specialized training required to practice ABA competently and ethically, or with indicators of genuine, high-quality ABA services. That is, large segments of the marketplace lack the knowledge required to protect consumers of ABA services. Additionally, economic and other pressures may influence funders to adopt lower standards for identifying providers than those that are typically set by professions (i.e., specific degrees, coursework, supervised experiential training, and passage of a professional examination in the subject matter). That will result in consumers being subjected to subpar services against which they will have little protection unless the state adopts laws and regulations requiring ABA practitioners to meet the national standards of the profession and to be accountable to a state regulatory board comprising qualified professional behavior analysts.

As one example of the failure of the marketplace to protect consumers of ABA services, a large California agency that purported to provide ABA services was forced to abruptly shut its doors in March 2012 following an audit by the Department of Developmental Services that found that the agency employed individuals who were not certified by the BACB and did not have adequate training and competence in ABA. The findings of the audit can be found in Appendix G and here: <http://www.dds.ca.gov/Transparency/docs/Vendors/wellspringHealthcareServicesInc.pdf> That closure -- a direct result of the marketplace's inability to ensure public welfare -- left thousands of children and adults with developmental disabilities without services. The 2010 Connecticut case highlighted in the response to question 14 provides further evidence that the marketplace is ineffective in protecting consumers of ABA services from individuals who are not appropriately credentialed to practice ABA professionally.

23. ARE THERE OTHER STATES IN WHICH THIS OCCUPATION IS REGULATED? IF SO, IDENTIFY THE STATES AND INDICATE THE MANNER IN WHICH CONSUMER PROTECTION IS ENSURED IN THOSE STATES. PROVIDE, AS AN APPENDIX, COPIES OF THE REGULATORY PROVISIONS FROM THESE STATES.

At this writing, 17 states have adopted laws requiring practitioners of ABA to be licensed, certified, or registered by the state. All of the laws and the regulations for implementing them that have been developed to date are based predominantly on the BACB's model act for regulating the practice of ABA, with BACB certification the foundational requirement for obtaining the state-issued credential(s). Although some of the state entities that regulate the practice of ABA also regulate other professions, it is important to note that in all 17 states behavior analysts are licensed, certified, or registered *in their own right*, not as members of other professions. The table that follows summarizes those laws.



**State Regulation of Behavior Analysts as of May 6, 2014**

State	Behavior Analyst (advanced degrees)	Asst Behavior Analyst (BA/BS)	Technician	BACB certificants qualify	Others may qualify	Regulatory board	Law adopted
AL*	L	L	NA	Y	N	BehAn	2014
AZ	L	NA	NA	Y <sup>1</sup>	Y	Psych	2010
KS*	L	L	NA	Y	?	BSRB	2014
KY	L	L	NA	Y	N	BehAn	2010
LA	L	C	R	Y	Y	BehAn	2013
MA*	L	L	NA	Y	Y	AMHHSP	2013
MD*	L	NA	NA	Y	?	BPCT	2014
MO	L	L	NA	Y	N	Psych	2010
ND	L	R	NA	Y	Y	Psych	2011
NV	L	L	C <sup>2</sup>	Y	N	Psych	2009
NY*	L	C	NA	Y	?	BehAn	2014
OH	C	NA	NA	Y	?	Psych	2013
OK	L	C	NA	Y	N	BehAn	2009
OR*	L	L	R	Y	Y	BehAn	2013
RI	L	L	NA	Y	Y	BehAn	2012
VA	L	L	NA	Y	N	Medicine	2012
WI	L	NA	NA	Y	N	None <sup>3</sup>	2010

\*Regulations to be developed or finalized; no state credentials issued yet

BACB = Behavior Analyst Certification Board, Inc.

L = license; C = state certification; R = registration; NA = Not applicable

BehAn = Behavior Analysis; Psych = Psychology; BSRB = Behavioral Sciences Regulatory Board; AMHHSP = Allied Mental Health & Human Service Professionals; BPCT = Board of Professional Counselors & Therapists

<sup>1</sup> = Board Certified Behavior Analyst with 1500 hrs supervised experience

<sup>2</sup> = “Certified Autism Behavior Interventionist”

<sup>3</sup> = Direct license issued by Dept. of Safety & Professional Services

Figure 5. Laws regulating the practice of ABA (source: Association of Professional Behavior Analysts)

To date, 37 states have passed legislation similar to SB 946 requiring private health plans to cover treatments for autism spectrum disorders, including ABA (see Figure 6 below). As mentioned above 17 of those states regulate Behavior Analysts through state licensure, certification or registration. In all of the other states BCBAAs (and in some, BCaBAAs supervised by BCBAAs) are recognized as qualified providers and reimbursed by health plans. The BACB

credentials are also recognized in other types of laws in many states (e.g., Medicaid rules, developmental disabilities services and special education codes).

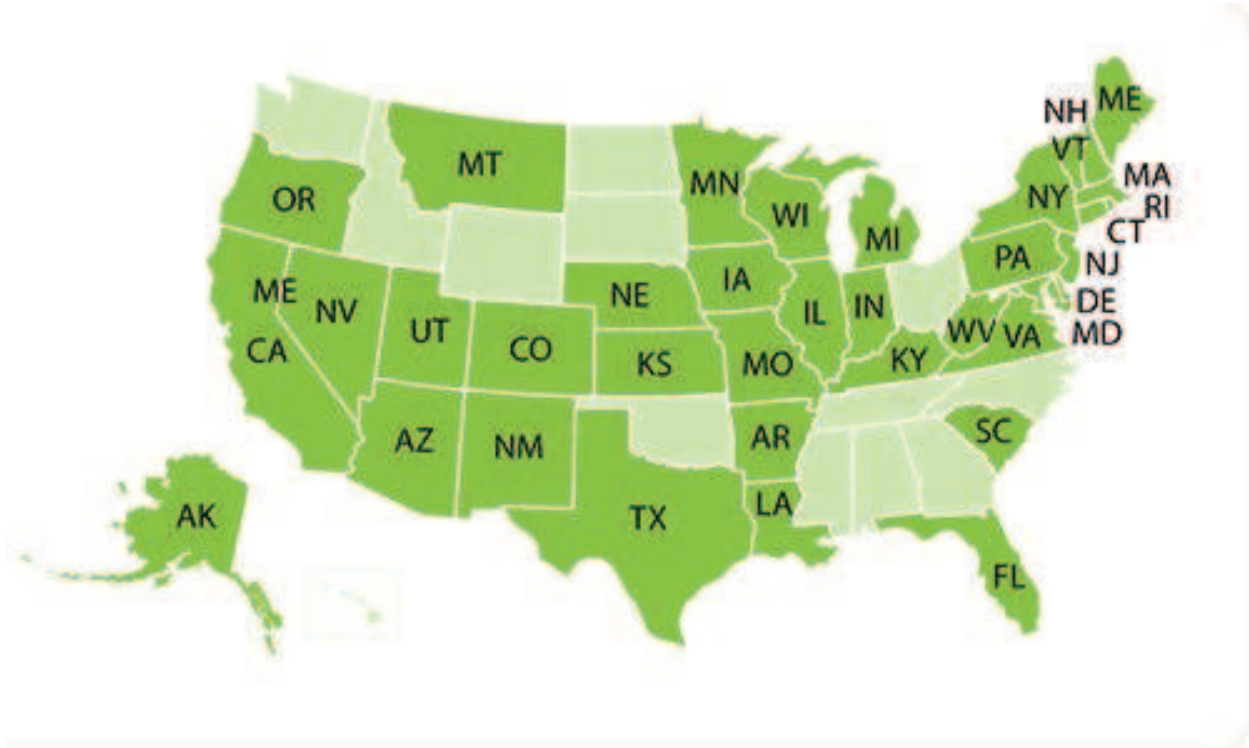


Figure 6 – Adapted from Autism Speaks

24. WHAT MEANS OTHER THAN GOVERNMENTAL REGULATION HAVE BEEN EMPLOYED IN CALIFORNIA TO ENSURE CONSUMER HEALTH AND SAFETY? SHOW WHY THE FOLLOWING WOULD BE INADEQUATE:

As described previously, the BACB's limited regulation has been available to California residents, but only with respect to practitioners certified by that body. Consumers have also had the option to complain to employers and funding sources.

- a. code of ethics – The BACB's *Guidelines for Responsible Conduct* are inadequate to protect consumers because they apply only to practitioners certified by the BACB, compliance with them is voluntary, they carry no force of law, and there is no body within the state that is authorized to enforce them.
- b. codes of practice enforced by professional associations – see previous description of enforcement of the *Professional Ethical and Disciplinary Standards* by the BACB, which

is a credentialing body rather than a professional association. At present, no professional association enforces codes of practice with behavior analysts in California.

- c. dispute-resolution mechanisms such as mediation or arbitration – We believe that direct regulation of ABA practitioners would provide more cost-effective protections for consumers than these mechanisms.
- d. recourse to current applicable law – At present there are no state laws specifically regulating the practice of ABA.
- e. regulation of those who employ or supervise practitioners – For employers who are licensed by the state, consumers could file complaints with the applicable licensing board, but not all employers are licensed, and the existing licensure boards do not regulate behavior analysts. We believe that direct regulation of ABA practitioners would afford better protections for consumers than the indirect route of complaining to boards that license employers of ABA practitioners.
- f. treatment guidelines – As the name implies, guidelines do not have the authority of law, so compliance with them is entirely voluntary on the part of practitioners, and they provide little real protection to consumers.

25. IF A “GRANDFATHER CLAUSE” (IN WHICH CURRENT PRACTITIONERS ARE EXEMPTED FROM COMPLIANCE WITH PROPOSED ENTRY STANDARDS) HAS BEEN INCLUDED IN THE REGULATION PROPOSED BY THE APPLICANT GROUP, HOW IS THAT CLAUSE JUSTIFIED? WHAT SAFEGUARDS WILL BE PROVIDED CONSUMERS REGARDING THIS GROUP?

The proposed regulation does not include a grandfather clause that would allow current practitioners to be fully licensed without meeting eligibility standards. Rather, we propose to grant limited provisional licenses to certain practitioners who will be given two years to meet the licensure eligibility requirements and apply for regular licenses. To protect consumers, applicants for provisional licensure will have to register with the behavior analyst licensing board, be supervised by a licensed behavior analyst and complete criminal background checks. They will also be subject to the same disciplinary standards as all other licensees.

#### **IV. REGULATION WILL MITIGATE EXISTING PROBLEMS**

26. WHAT SPECIFIC BENEFITS WILL THE PUBLIC REALIZE IF THIS OCCUPATION IS REGULATED? INDICTAE CLEARLY HOW THE PROPOSED REGULATION WILL CORRECT OR PRECLUDE CONSUMER INJURY. DO THESE BENEFITS GO BEYOND FREEDOM FROM HARM? IF SO, IN WHAT WAY?

Adoption of state licensure of professional practitioners of ABA with BACB certification as the principal requirement will ensure that consumers receive ABA services from professionals who have met education, experiential training, and examination requirements derived from job analysis studies involving thousands of professional behavior analysts, in accordance with rigorous standards and best practices in professional credentialing. Practitioners who have verified training and competence in ABA principles and procedures are more likely to use ABA techniques safely and effectively and less likely to harm consumers than are those who lack adequate training.

The proposed licensing law will establish a board of professional behavior analysts within the state that is authorized to investigate complaints from consumers and others and to enforce the law and accompanying regulations, including standards of professional conduct, in coordination with the BACB. That will provide consumers with protection from a well-established international credentialing entity as well as a state regulatory board. The presence of a licensing law and state regulatory board that can enforce it will provide strong incentives for practitioners to comply with ethical and disciplinary standards and best practices, which will enhance the services they provide to consumers.

27. WHICH CONSUMERS OF PRACTITIONER SERVICES ARE MOST IN NEED OF PROTECTION? WHICH REQUIRE LEAST PROTECTION? WHICH CONSUMERS WILL BENEFIT MOST AND LEAST FROM REGULATION?

Vulnerable populations served by behavior analysts (children and adults with a wide range of intellectual, physical, and developmental disabilities, traumatic brain injuries, and mental health disorders) and their families are most in need of protection and most likely to benefit from additional regulation. Because of their skill deficits, such individuals are often at particular risk of abuse and neglect and unable to advocate for themselves. Many also exhibit behaviors that pose a danger to themselves or others. ABA techniques have proven effective for reducing those behaviors, and for building skills and reducing interfering behaviors in typically developing children and adults in schools, homes, community settings, and workplaces. The latter populations of consumers are arguably the least in need of protection; however, they will also benefit from a state law requiring practitioners to have their training in ABA verified independently and objectively, and to demonstrate competence in ABA by passing a national professional examination in behavior analysis.

28. PROVIDE EVIDENCE OF “NET” BENEFIT WHEN THE FOLLOWING POSSIBLE EFFECTS OF REGULATION ARE CONSIDERED:

a. restriction of opportunity to practice

We do not foresee any undue restriction of opportunity to practice as a result of the proposed regulation. Laws and regulations governing the California Department of Developmental Services and certain health plans operating in California already recognize BACB certifications as qualifications for practitioners of behavior analysis,

and many knowledgeable employers either require or prefer BACB certification for certain positions.

b. restricted supply of practitioners

Licensure will likely increase the supply of qualified professional behavior analysts in California over time as the demand for ABA services continues to grow and there is a clear path for obtaining state-issued credentials to practice and pursue careers in California. We also foresee the development of additional university programs that prepare students for licensure and careers in the practice of behavior analysis.

c. increased costs of service to consumer

We do not predict increased costs to consumers as a result of the proposed regulation. Reimbursement rates for BACB certificants through the Department of Education, Department of Developmental Services, and private health insurance carriers are already well-established and are not likely to change simply because those practitioners become licensed.

d. increased governmental intervention in the marketplace.

Increased governmental intervention as a result of the proposed regulation will provide a net benefit by assuring protections for consumers and funders who are in the market for qualified ABA service providers.

**V. PRACTITIONERS OPERATE INDEPENDENTLY, MAKING DECISIONS OF CONSEQUENCE**

**29. TO WHAT EXTENT DO INDIVIDUAL PRACTITIONERS MAKE PROFESSIONAL JUDGEMENTS OF CONSEQUENCE? WHAT ARE THESE JUDGEMENTS? HOW FREQUENTLY DO THEY OCCUR? WHAT ARE THE CONSEQUENCES? DOCUMENT.**

The range of professional judgments of consequence that individual practitioners make on a regular basis is relatively broad. Judgments can range from day-to-day treatment and staffing decisions such as: making an initial determination and recommendation of “dosage” or intensity of treatment; decisions around discontinuation of services; decision regarding when and how to adjust a treatment plan to ensure sufficient progress etc. Decisions made on a daily basis by behavior analysts can substantially affect the short- and long-term health, safety, and functioning of clients and people around them. Many decisions made by behavior analysts can directly impact a client’s ability to function effectively at home, at school, at work, and in the community.

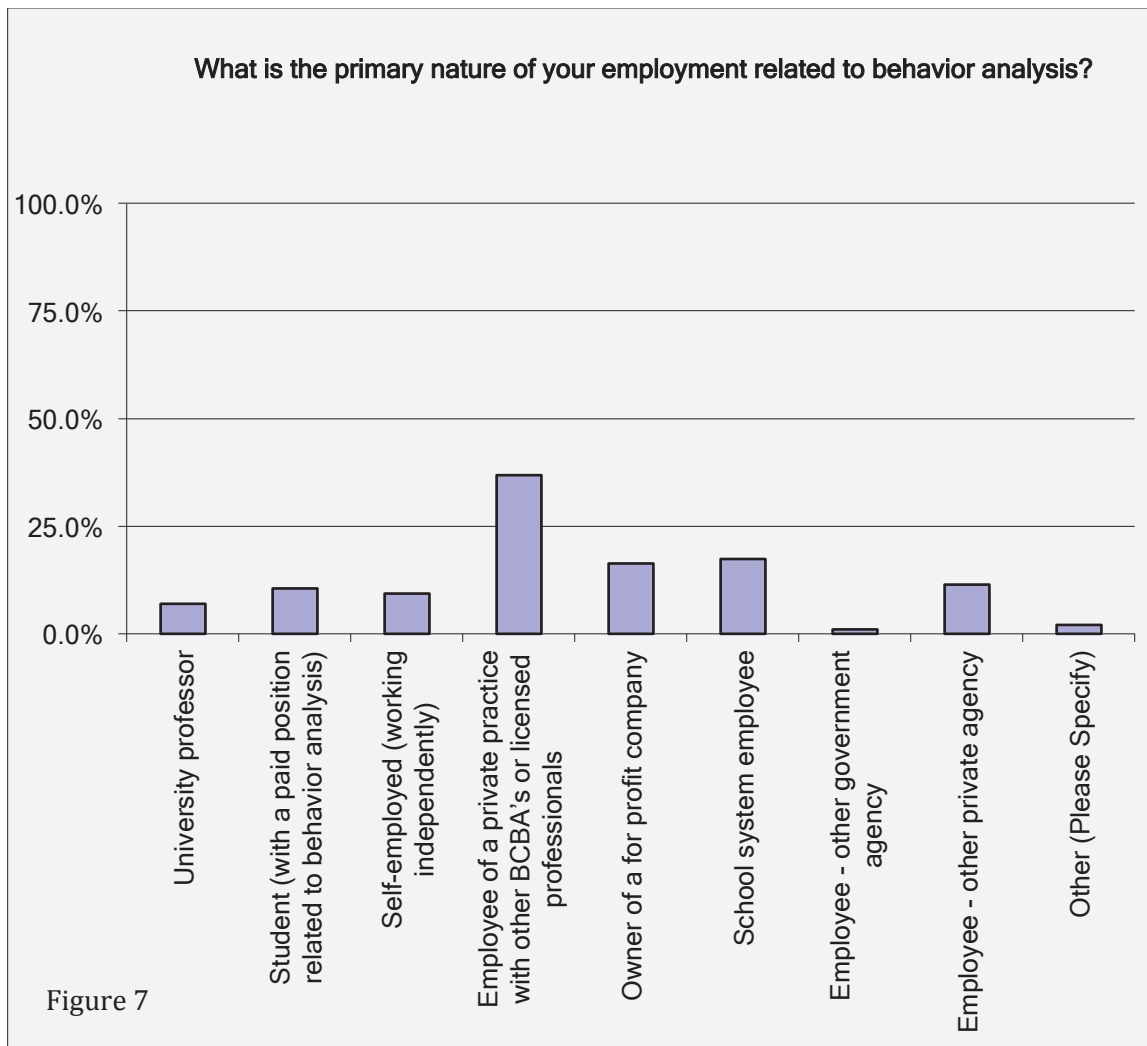
**30. TO WHAT EXTENT DO PRACTITIONERS WORK INDEPENDENTLY (AS OPPOSED TO WORKING UNDER THE AUSPICES OF, AN EMPLOYER OR SUPERVISOR)?**

The BACB describes the work circumstances of its certificants as follows:

The **Board Certified Behavior Analyst (BCBA)** is an independent practitioner who also may work as an employee or independent contractor for an organization. The BCBA conducts descriptive and systematic (e.g., analogue) behavioral assessments, including functional analyses, and provides behavior analytic interpretations of the results. The BCBA designs and supervises behavior analytic interventions. The BCBA is able to effectively develop and implement appropriate assessment and intervention methods for use in unfamiliar situations and for a range of cases. The BCBA seeks the consultation of more experienced practitioners when necessary. The BCBA teaches others to carry out ethical and effective behavior analytic interventions based on published research and designs and delivers instruction in behavior analysis. BCBA's supervise the work of Board Certified Assistant Behavior Analysts and others who implement behavior analytic interventions. Certain BCBA certificants with qualifying doctorate degrees may be recognized as “**BCBA-D**” level certificants.

The **Board Certified Assistant Behavior Analyst (BCaBA)** conducts descriptive behavioral assessments and is able to interpret the results and design ethical and effective behavior analytic interventions for clients. The BCaBA designs and oversees interventions in familiar cases (e.g., similar to those encountered during their training) that are consistent with the dimensions of applied behavior analysis. The BCaBA obtains technical direction from a BCBA for unfamiliar situations. The BCaBA is able to teach others to carry out interventions once the BCaBA has demonstrated competency with the procedures involved under the direct supervision of a BCBA. The BCaBA may assist a BCBA with the design and delivery of introductory level instruction in behavior analysis. It is mandatory that each BCaBA practice under the supervision of a BCBA. Governmental entities and other third-party funders, such as Medicaid and TRICARE (the U.S. military's health plan), private health plans, and others utilizing BCaBAs must require this supervision.

Data collected in the 2014 CalABA survey indicated that about 9% of respondents work as independent contractors, with the remainder working in various capacities under the auspices of an organization, agency, university, or school (see Figure 7 below).



**31. TO WHAT EXTENT DO DECISIONS MADE BY THE PRACTITIONER REQUIRE A HIGH DEGREE OF SKILL OR KNOWLEDGE TO AVOID HARM?**

The contemporary practice of ABA is complex and intricate. Professional behavior analysts choose from a large, well-established array of scientifically validated assessment and intervention procedures to develop and implement highly individualized plans for producing meaningful change in client behavior. Behavior change can include the development of new skills, the reduction of maladaptive behaviors, and/or the increase of adaptive behaviors. Behavior analysts use a well-researched “toolbox” of interventions in their work, beginning with functional assessments of behavior-environment interactions. They measure client progress on a continuous basis and use those data to fine-tune interventions at every step of implementation. As noted above, decisions made by ABA practitioners determine whether socially significant client behaviors change in ways that improve the client’s functioning in the short as well as the long run. The large repertoire of skills that is required to make appropriate decisions are described in the BACB Task List (see response to question 33).

## VI. FUNCTIONS AND TASKS OF THE OCCUPATION ARE CLEARLY DEFINED

32. DOES THE PROPOSED REGULATORY SCHEME DEFINE A SCOPE OF ACTIVITY, WHICH REQUIRES LICENSURE, OR MERELY PREVENT THE USE OF A DESIGNATED JOB TITLE OR OCCUPATIONAL DESCRIPTION WITHOUT A LICENSE?

The proposed regulatory scheme includes a defined scope of practice and activity for licensees. It encompasses the knowledge, skills, and abilities in the BACB Task List (see below and also included as Appendix D).



### Behavior Analyst Certification Board

#### ◆ Fourth Edition Task List ◆

The BACB Fourth Edition Task List is organized in three major sections. The first section, *Basic Behavior-Analytic Skills*, covers tasks that a practicing behavior analyst will perform with some, but probably not all, clients. These tasks represent basic, commonly used skills and procedures. The second section, *Client-Centered Responsibilities*, includes tasks related to working with all clients and they should apply in most applied situations. The third section, *Foundational Knowledge*, covers concepts that should have been mastered prior to entering practice as a behavior analyst. The topics listed in this section are not tasks that a practitioner would perform; instead, they are basic concepts that must be understood in order to perform the tasks included in the first two sections. This list is provided mainly as a resource for instructors and a study tool for candidates. Candidates for the BCBA and BCaBA credentials should have a thorough understanding of these topics.

All of the questions on the BCBA and BCaBA examinations are linked to the tasks listed under Basic Behavior-Analytic Skills and Client-Centered Responsibilities. Each examination form will contain one or two questions evaluating candidate knowledge of every task from these two sections. The topics listed in the Foundational Knowledge section will not be directly assessed with a specific number of questions; however, they may be indirectly assessed through questions about related tasks. For example, a test question about the Client-Centered Responsibility task J-11 “Program for stimulus and response generalization” might cover Foundational Knowledge item 36 “Define and provide examples of response generalization” or item 37 “Define and provide examples of stimulus generalization.”



Ethics and Professional Conduct are subsumed within each section of the task list. The BACB *Professional Disciplinary and Ethical Standards* and *Guidelines for Responsible Conduct for Behavior Analysts* are essential companion documents to the task list. BACB certificants must practice in compliance with the professional disciplinary and ethical standards and should structure their practices in accordance with the conduct guidelines. Candidates are expected to have a complete understanding of these documents, including, but not limited to, the importance of ethical conduct as it relates to professional practice of the tasks identified in the Fourth Edition Task List. **As a result, questions addressing ethical issues related to specific tasks will appear on the examination.**

## BASIC BEHAVIOR-ANALYTIC SKILLS

### A. Measurement

A-01	Measure frequency (i.e., count).
A-02	Measure rate (i.e., count per unit time).
A-03	Measure duration.
A-04	Measure latency.
A-05	Measure interresponse time (IRT).
A-06	Measure percent of occurrence.
A-07	Measure trials to criterion.
A-08	Assess and interpret interobserver agreement.
A-09	Evaluate the accuracy and reliability of measurement procedures.
A-10	Design, plot, and interpret data using equal-interval graphs.
A-11	Design, plot, and interpret data using a cumulative record to display data.
A-12	Design and implement continuous measurement procedures (e.g., event recording).
A-13	Design and implement discontinuous measurement procedures (e.g., partial & whole interval, momentary time sampling).
A-14	Design and implement choice measures.

### B. Experimental Design

B-01	Use the dimensions of applied behavior analysis (Baer, Wolf, & Risley, 1968) to evaluate whether interventions are behavior analytic in nature.
B-02	Review and interpret articles from the behavior-analytic literature.
B-03	Systematically arrange independent variables to demonstrate their effects on dependent variables.
B-04	Use withdrawal/reversal designs.
B-05	Use alternating treatments (i.e., multielement) designs.
B-06	Use changing criterion designs.
B-07	Use multiple baseline designs.
B-08	Use multiple probe designs.
B-09	Use combinations of design elements.
B-10	Conduct a component analysis to determine the effective components of an intervention package.
	Conduct a parametric analysis to determine the effective values of an independent variable.

**C. Behavior-Change Considerations**

C-01	State and plan for the possible unwanted effects of reinforcement.
C-02	State and plan for the possible unwanted effects of punishment.
C-03	State and plan for the possible unwanted effects of extinction.

**D. Fundamental Elements of Behavior Change**

D-01	Use positive and negative reinforcement.
D-02	Use appropriate parameters and schedules of reinforcement.
D-03	Use prompts and prompt fading.
D-04	Use modeling and imitation training.
D-05	Use shaping.
D-06	Use chaining.
D-07	Conduct task analyses.
D-08	Use discrete-trial and free-operant arrangements.
D-09	Use the verbal operants as a basis for language assessment.
D-10	Use echoic training.
D-11	Use mand training.
D-12	Use tact training.
D-13	Use intraverbal training.
D-14	Use listener training.
D-15	Identify punishers.
D-16	Use positive and negative punishment.
D-17	Use appropriate parameters and schedules of punishment.
D-18	Use extinction.
D-19	Use combinations of reinforcement with punishment and extinction.
D-20	Use response-independent (time-based) schedules of reinforcement (i.e., noncontingent reinforcement).
D-21	Use differential reinforcement (e.g., DRO, DRA, DRI, DRL, DRH).

**E. Specific Behavior-Change Procedures**

E-01	Use interventions based on manipulation of antecedents, such as motivating operations and discriminative stimuli.
E-02	Use discrimination training procedures.
E-03	Use instructions and rules.
E-04	Use contingency contracting (i.e., behavioral contracts).
E-05	Use independent, interdependent, and dependent group contingencies.
E-06	Use stimulus equivalence procedures.
E-07	Plan for behavioral contrast effects.
E-08	Use the matching law and recognize factors influencing choice.
E-09	Arrange high-probability request sequences.
E-10	Use the Premack principle.

E-11	Use pairing procedures to establish new conditioned reinforcers and punishers.
E-12	Use errorless learning procedures.
E-13	Use matching-to-sample procedures.
<b>F. Behavior-Change Systems</b>	
F-01	Use self-management strategies.
F-02	Use token economies and other conditioned reinforcement systems.
F-03	Use Direct Instruction.
F-04	Use precision teaching.
F-05	Use personalized systems of instruction (PSI).
F-06	Use incidental teaching.
F-07	Use functional communication training.
F-08	Use augmentative communication systems.

## CLIENT-CENTERED RESPONSIBILITIES

<b>G. Identification of the Problem</b>	
G-01	Review records and available data at the outset of the case.
G-02	Consider biological/medical variables that may be affecting the client.
G-03	Conduct a preliminary assessment of the client in order to identify the referral problem.
G-04	Explain behavioral concepts using nontechnical language.
G-05	Describe and explain behavior, including private events, in behavior-analytic (non-mentalistic) terms.
G-06	Provide behavior-analytic services in collaboration with others who support and/or provide services to one's clients.
G-07	Practice within one's limits of professional competence in applied behavior analysis, and obtain consultation, supervision, and training, or make referrals as necessary.
G-08	Identify and make environmental changes that reduce the need for behavior analysis services.
<b>H. Measurement</b>	
H-01	Select a measurement system to obtain representative data given the dimensions of the behavior and the logistics of observing and recording.
H-02	Select a schedule of observation and recording periods.
H-03	Select a data display that effectively communicates relevant quantitative relations.
H-04	Evaluate changes in level, trend, and variability.
H-05	Evaluate temporal relations between observed variables (within & between sessions, time series).
<b>I. Assessment</b>	
I-01	Define behavior in observable and measurable terms.
I-02	Define environmental variables in observable and measurable terms.

I-03	Design and implement individualized behavioral assessment procedures.
I-04	Design and implement the full range of functional assessment procedures.
I-05	Organize, analyze, and interpret observed data.
I-06	Make recommendations regarding behaviors that must be established, maintained, increased, or decreased.
I-07	Design and conduct preference assessments to identify putative reinforcers.
<b>J. Intervention</b>	
J-01	State intervention goals in observable and measurable terms.
J-02	Identify potential interventions based on assessment results and the best available scientific evidence.
J-03	Select intervention strategies based on task analysis.
J-04	Select intervention strategies based on client preferences.
J-05	Select intervention strategies based on the client's current repertoires.
J-06	Select intervention strategies based on supporting environments.
J-07	Select intervention strategies based on environmental and resource constraints.
J-08	Select intervention strategies based on the social validity of the intervention.
J-09	Identify and address practical and ethical considerations when using experimental designs to demonstrate treatment effectiveness.
J-10	When a behavior is to be decreased, select an acceptable alternative behavior to be established or increased.
J-11	Program for stimulus and response generalization.
J-12	Program for maintenance.
J-13	Select behavioral cusps as goals for intervention when appropriate.
J-14	Arrange instructional procedures to promote generative learning (i.e., derived relations).
J-15	Base decision-making on data displayed in various formats.
<b>K. Implementation, Management, and Supervision</b>	
K-01	Provide for ongoing documentation of behavioral services.
K-02	Identify the contingencies governing the behavior of those responsible for carrying out behavior-change procedures and design interventions accordingly.
K-03	Design and use competency-based training for persons who are responsible for carrying out behavioral assessment and behavior-change procedures.
K-04	Design and use effective performance monitoring and reinforcement systems.
K-05	Design and use systems for monitoring procedural integrity.
K-06	Provide supervision for behavior-change agents.
K-07	Evaluate the effectiveness of the behavioral program.
K-08	Establish support for behavior-analytic services from direct and indirect consumers.
K-09	Secure the support of others to maintain the client's behavioral repertoires in their natural environments.
K-10	Arrange for the orderly termination of services when they are no longer required.

## FOUNDATIONAL KNOWLEDGE ACCOMPANYING THE BACB FOURTH EDITION TASK LIST

### Explain and Behave in Accordance with the Philosophical Assumptions of Behavior Analysis

FK-01	Lawfulness of behavior
FK-02	Selectionism (phylogenic, ontogenic, cultural)
FK-03	Determinism
FK-04	Empiricism
FK-05	Parsimony
FK-06	Pragmatism
FK-07	Environmental (as opposed to mentalistic) explanations of behavior
FK-08	Distinguish between radical and methodological behaviorism.
FK-09	Distinguish between the conceptual analysis of behavior, experimental analysis of behavior, applied behavior analysis, and behavioral service delivery.

### Define and Provide Examples of:

FK-10	behavior, response, response class
FK-11	environment, stimulus, stimulus class
FK-12	stimulus equivalence
FK-13	reflexive relations (US-UR)
FK-14	respondent conditioning (CS-CR)
FK-15	operant conditioning
FK-16	respondent-operant interactions
FK-17	unconditioned reinforcement
FK-18	conditioned reinforcement
FK-19	unconditioned punishment
FK-20	conditioned punishment
FK-21	schedules of reinforcement and punishment
FK-22	extinction
FK-23	automatic reinforcement and punishment
FK-24	stimulus control
FK-25	multiple functions of a single stimulus
FK-26	unconditioned motivating operations
FK-27	conditioned motivating operations
FK-28	transitive, reflexive, surrogate motivating operations
FK-29	distinguish between the discriminative stimulus and the motivating operation
FK-30	distinguish between motivating operation and reinforcement effects
FK-31	behavioral contingencies
FK-32	contiguity

FK-33	functional relations
FK-34	conditional discriminations
FK-35	stimulus discrimination
FK-36	response generalization
FK-37	stimulus generalization
FK-38	behavioral contrast
FK-39	behavioral momentum
FK-40	matching law
FK-41	contingency-shaped behavior
FK-42	rule-governed behavior
<b>Distinguish between the Verbal Operants</b>	
FK-43	Echoics
FK-44	Mands
FK-45	Tacts
FK-46	Intraverbals
<b>Measurement Concepts</b>	
FK-47	Identify the measurable dimensions of behavior (e.g., rate, duration, latency, interresponse time).
FK-48	State the advantages and disadvantages of using continuous measurement procedures and discontinuous measurement procedures (e.g., partial- and whole-interval recording, momentary time sampling).

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33. DESCRIBE THE IMPORTANT FUNCTIONS, TASKS AND DUTIES PERFORMED BY PRACTITIONERS. IDENTIFY THE SERVICES AND/OR PRODUCTS PROVIDED.

The functions, tasks, and duties performed by practitioners are identified in the current (4<sup>th</sup> edition) BACB Task List, shown above and as Appendix D.

34. IS THERE A CONSENSUS ON WHAT ACTIVITIES CONSTITUTE COMPETENT PRACTICE OF THE OCCUPATION? IF SO, STATE AND DOCUMENT. IF NOT, WHAT IS THE BASIS FOR ASSESSING COMPETENCE?

The foregoing BACB Task List was derived from extensive job analysis studies conducted over the past 15 years, and constitutes the empirical consensus of thousands of behavior analysts as to the competencies required to practice ABA professionally. The

Task List provides the content for the BACB certification exams, which have been developed and validated by professional psychometricians for assessing competence in the practice of ABA.

To be eligible to take a BACB certification exam, an applicant must provide documentation to the BACB that s/he has completed a degree conferred in behavior analysis or a field related to behavior analysis and approved by the BACB, specified numbers of classroom hours of instruction in behavior analysis, and a specified number of hours of supervised experiential training in behavior analysis. Once certified, individuals must document completion of continuing education in ABA (of which at least 3 CEUs must be in ethics) in order to maintain certification. Certificants must also attest that they comply with the BACB *Guidelines for Responsible Conduct and Professional Ethical and Disciplinary Standards*.

35. ARE INDICATORS OF COMPETENT PRACTICE LISTED IN RESPONSE TO QUESTION 34 MEASURABLE BY OBJECTIVE STANDARDS SUCH AS PEER REVIEW? GIVE EXAMPLES.

The competencies in the BACB Task List are measured via objective professional examinations. Completion of the eligibility requirements to take the exams (degrees, coursework, supervised experiential training) are objectively verified by BACB staff.

36. SPECIFY ACTIVITIES OR PRACTICES THAT WOULD SUGGEST THAT A PRACTITIONER IS INCOMPETENT. TO WHAT EXTENT IS PUBLIC HARM CAUSED BY PERSONAL FACTORS SUCH AS DISHONESTY? DOCUMENT.

Some specific activities that would suggest a practitioner is incompetent, is unethical or lacking competence may include: practitioner's using ABA assessment and/or intervention procedures incorrectly; failing regulation; failing to collect and analyze data during treatment to determine client progress or lack thereof; using non-behavior analytic procedures while practicing as a behavior analyst; failing to maintain proper clinical boundaries; breaching confidentiality; or using corporal punishment.

Public harm can be caused by personal factors such as dishonesty, as documented in the description of the 2010 Connecticut case in Question 14. In that case an individual falsely represented herself as a Board Certified Behavior Analyst and caused harm to the children receiving her services.

**VII. THE OCCUPATION IS CLEARLY DISTINGUISHABLE FROM OTHER OCCUPATIONS THAT ARE ALREADY REGULATED**

37. WHAT SIMILAR OCCUPATIONS HAVE BEEN REGULATED IN CALIFORNIA?

- Licensed Psychologists



- Licensed Professional Clinical Counselors
- Licensed Marriage and Family Therapists
- Licensed Clinical Social Workers
- Licensed Educational Psychologists

38. DESCRIBE FUNCTIONS PERFORMED BY PRACTITIONERS THAT DIFFER FROM THOSE PERFORMED BY OCCUPATIONS LISTED IN QUESTION 37.

The practice of behavior analysis is distinct from the practice of other professions in both content and methodology, and expressly excludes psychological testing, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities. The BACB Task List presented previously differs very substantially from the task lists yielded by job analysis studies conducted by and for other professions (e.g., the job analysis study of the practice of licensed psychologists that was conducted by the Association of State and Provincial Psychology Boards in 2010).

39. INDICATE THE RELATIONSHIP AMONG THE GROUPS LISTED IN RESPONSE TO QUESTION 37 AND PRACTITIONERS. CAN PRACTITIONERS BE CONSIDERED A BRANCH OF CURRENTLY REGULATED OCCUPATIONS?

Although it could be said that behavior analysis – like several of the occupations listed in question 37 -- has some historic ties to psychology, the practice of behavior analysis actually originated in the experimental analysis of behavior rather than clinical psychology (the area in which most licensed psychologists are trained). Behavior analysis has long been a distinct scientific discipline with distinct concepts, research and clinical methods, professional journals, training programs, textbooks, ethical and practice standards, and scholarly and professional organizations. As the BACB Task List (question 33) shows, practitioners of behavior analysis do not do what members of the other professions listed above do. Further, the training and exam requirements for obtaining and maintaining professional certification in the practice of behavior analysis are very different from requirements for obtaining credentials in other professions.

The State of California has recognized that behavior analysis is a distinct profession for more than a decade. For instance, a written opinion issued by legal counsel for the California Department of Consumer Affairs in February 2000 stated clearly that the practice of behavior analysis is distinct from the practice of psychology (see Appendix H). Since that time, the California Code of Regulations governing the Department of Developmental Services has included unique vendor categories for behavior analysts (defined as Board Certified Behavior Analysts) and associate behavior analysts (defined as Board Certified Associate – now Assistant Behavior Analysts). The descriptions of those vendor categories state explicitly that behavior analysts do not practice psychology, and reflect the definition of the practice of behavior analysis presented earlier in this application, which also appears in the 17 state laws to license or otherwise regulate practitioners of ABA (see question 23) and most of the 37

state laws requiring private health plans to cover ABA services for people with autism, including the current California autism insurance law (SB 126).

40. WHAT IMPACT WILL THE REQUESTED REGULATION HAVE UPON THE AUTHORITY AND SCOPED OF PRACTICE OF CURRENTLY REGULATED GROUPS?

None.

41. ARE THERE UNREGULATED OCCUPATIONS PERFORMING SERVICES SIMILAR TO THOSE OF THE GROUP TO BE REGULATED? IF SO, IDENTIFY.

No. However, there are many individuals who call themselves “behavior analysts,” “behaviorists,” or “behavior specialists” and represent that they are qualified to provide ABA services to vulnerable client populations who have not met the standards for practicing ABA that have long been established by the profession, i.e., the BACB certification standards.

42. DESCRIBE THE SIMILARITIES AND DIFFERENCES BETWEEN PRACTITIONERS AND THE GROUPS IDENTIFIED IN QUESTION 41.

N/A

**VIII. THE OCCUPATION REQUIRES POSSESSION OF KNOWLEDGES, SKILLS AND ABILITIES THAT ARE BOTH TEACHABLE AND TESTABLE**

43. IS THERE A GENERALLY ACCEPTED CORE SET OF KNOWLEDGES, SKILLS AND ABILITIES WITHOUT WHICH A PRACTITIONER MAY CAUSE PUBLIC HARM? DESCRIBE AND DOCUMENT.

Yes. See the BACB Task List in question 33.

44. WHAT METHODS ARE CURRENTLY USED TO DEFINE THE REQUISITE KNOWLEDGES, SKILLS AND ABILITIES? WHO IS RESPONSIBLE FOR DEFINING THESE KNOWLEDGE, SKILLS AND ABILITIES?

The BACB is responsible for defining the knowledge, skills and abilities required to practice ABA competently. It relies on subject matter experts who are currently certified as BCBA-Ds, BCBAAs, and BCaBAs working under the guidance of the BACB’s psychometrician. The BACB uses a job analysis process that begins with convening one or more panels of subject matter experts who, with guidance from the psychometrician, develop a comprehensive list of all of the tasks performed by practicing behavior analysts with accompanying foundational knowledge. The rationale for this approach is that jobs can best be described in terms of the tasks that are performed by successful practitioners.

The draft task list is used to create a validation survey that is distributed to all current BACB certificants. The survey asks practitioners to rate each task based on its importance and frequency and to rate the importance of the foundational knowledge for each task. Results from the survey and test development standards are then used to determine which tasks are of sufficient importance to be covered on the certification examinations. Tasks that are rated as being of low importance or are only performed by a minority of practitioners are excluded from the final examination content outlines.

Once the examination content outlines have been finalized, several additional panels of subject matter experts are convened. The first panel is tasked with identifying the knowledge, skills, and abilities required to perform each of the validated tasks. The second panel reviews the bank of examination questions (currently all multiple choice) to determine whether each question accurately reflects current practices and whether it matches the new task list. Any questions that are obsolete or cannot be matched to the new task list are discarded. Subsequent panels are charged with developing examination questions to address any new content that was added to the task list.

45. ARE THESE KNOWLEDGES, SKILLS AND ABILITIES TESTABLE? IS THE WORK OF THE GROUP SUFFICIENTLY DEFINED THAT COMPETENCE COULD BE EVALUATED BY SOME STANDARD (SUCH AS RATINGS OF EDUCATION, EXPERIENCE OR EXAM PERFORMANCE)?

Yes, and all applicants must pass a professional examination to obtain BACB certification. The BACB certification programs are accredited by the National Commission for Certifying Agencies, which conducts (NCCA) a third-party review of the BACB's examination development practices to ensure compliance with NCCA's standards for accreditation.

The psychometric properties of the BACB examinations are evaluated using classical test theory methods, which include conducting item and test analysis after each examination administration. The results of these analyses are reviewed by the BACB's psychometrician and any poorly performing items are reviewed by subject matter experts. Examination forms are statistically equated to ensure equivalence and fairness.

As described earlier, the job analysis serves as the primary source of evidence for the validity of the examinations, as it links the exam content directly to activities and knowledge that practitioners have indicated are important to the practice of behavior analysis. Reliability refers to the consistency with which the exam measures knowledge. After each item analysis, the Kuder-Richardson Formula 20 (KR-20) statistic is calculated to measure internal consistency. Exams are usually considered to have acceptable reliabilities when the KR-20 is over 0.85. BACB examinations typically have KR-20 indices that exceed 0.90.

The job analysis is updated every 5-10 years to ensure that examinations continue to reflect current research and practices in behavior analysis. The most recent job analysis study was

conducted in 2009-2010. It resulted in the 4<sup>th</sup> Edition Task List, which will govern the content of the examinations starting in February 2015 (the current examinations are based on the 3<sup>rd</sup> Edition Task List, which resulted from the 2001 job analysis).

The BACB examinations are currently developed and maintained by the BACB's in-house psychometrician. Along with BACB personnel and a team of subject matter experts, the psychometrician oversees conducting the job analysis survey; developing the Task List (the content foundation for the exam); developing knowledge, skill, and ability statements; identifying examination specifications; overseeing the item-writing process; examination construction; performing post-examination psychometric performance assessments; and analyzing examination results.

The examinations are currently administered by Pearson VUE, Inc. of Minneapolis, Minnesota. Pearson VUE offers secure, controlled computer-based testing environments at over 200 sites within the United States and at over 150 sites internationally.

46. LIST INSTITUTIONS AND PROGRAM TITLES OFFERING ACCREDITED AND NON-ACCREDITED PREPATORY PROGRAMS IN CALIFORNIA. ESTIMATE THE ANNUAL NUMBER OF GRADUATES FROM EACH. IF NO SUCH PREPATORY PROGRAMS EXIST WITHIN CALIFORNIA, LIST PROGRAMS FOUND ELSEWHERE.

The BACB does not accredit university-training programs, but it does approve on-campus and online course sequences that meet coursework requirements for eligibility to take BACB certification exams. BACB-approved course sequences (on campus only) at accredited California universities are listed below with an estimate of the number of students who complete the course sequence each year. Data not available is listed as N/A

BCaBA

California State University, Fresno – 22  
California State University at Monterey Bay – N/A  
California State University, Northridge – 2  
California State University, Sacramento - 8  
California State University, San Diego – 2  
Palo Alto University – N/A

BCBA

Alliant International University – N/A  
Azusa Pacific University – N/A  
California Polytechnic University – N/A  
California State University, Fresno – 7  
California State University, Northridge – 30  
California State University, Sacramento - 6  
California State University, Los Angeles – N/A  
California State University, San Diego – 25

California State University, San Marcos – N/A  
California State University, Stanislaus – 8  
Claremont Graduate University – 2  
Fresno Pacific University – N/A  
National University – N/A  
Palo Alto University – N/A  
The Chicago School of Professional Psychology, Los Angeles - 25  
University of California, Santa Barbara – N/A  
University of the Pacific – 3

47. APART FROM THE PROGRAMS LISTED IN QUESTION 46, INDICATE VARIOUS METHODS OF ACQUIRING REQUISITE KNOWLEDGE, SKILL AND ABILITY. EXAMPLES MAY INCLUDE APPRENTISHIPS, INTERNSHIPS, ON-THE-JOB TRAINING, INDIVIDUAL STUDY ETC.

Applicants for BACB certification must complete supervised experiential training as well as degree and coursework requirements in order to sit for a BACB examination. There are three options for fulfilling the supervised experiential training requirement:

1. **SUPERVISED INDEPENDENT FIELDWORK (1500 hours BCBA, 1000 hours BCaBA)**

To qualify under this standard at the BCBA level, supervisees must complete 1500 hours of supervised independent fieldwork in behavior analysis. To qualify under this standard at the BCaBA level, supervisees must complete 1000 hours of supervised independent fieldwork in behavior analysis. A supervisory period is two weeks. In order to count experience hours within any given supervisory period, supervisees must be supervised by a BCBA at least once during that period for no less than 5% of the total hours spent in supervised independent fieldwork. For example, 20 hours of experience would include at least 1 supervised hour.

2. **PRACTICUM (1000 hours BCBA, 670 hours BCaBA)**

To qualify under this standard at the BCBA level, supervisees must complete, with a passing grade, 1000 hours of practicum in behavior analysis within a university practicum program approved by the BACB and taken for graduate academic credit. To qualify under this standard at the BCaBA level, supervisees must complete, with a passing grade, 670 hours of practicum in behavior analysis within a university practicum program approved by the BACB and taken for academic credit. A supervisory period is one week. In order to count experience hours within any given supervisory period, supervisees must be supervised at least once during that period for no less than 7.5% of the total hours spent in Practicum. For example, 20 hours of experience would include at least 1.5 supervised hours.

3. **INTENSIVE PRACTICUM (750 hours BCBA, 500 hours BCaBA)**

To qualify under this standard at the BCBA level, supervisees must complete, with a passing grade, 750 hours of intensive practicum in behavior analysis within a university practicum program approved by the BACB and taken for graduate academic credit. To

qualify under this standard at the BCaBA level, supervisees must complete, with a passing grade, 500 hours of intensive practicum in behavior analysis within a university practicum program approved by the BACB and taken for academic credit. A supervisory period is one week. In order to count experience hours within any given supervisory period, supervisees must be supervised at least twice during that period for no less than 10% of the total hours spent in intensive practicum. For example, 20 hours of experience would include at least 2 supervised hours.

For all three of the above options, no fewer than 10 hours but no more than 30 hours may be accrued per week. Supervisees may accrue experience in only one category at a time (i.e., supervised independent fieldwork, practicum, or intensive practicum).

All supervision must comply with the BACB's supervision standards (see Appendix I).

48. ESTIMATE THE PERCENTAGE OF CURRENT PRACTITIONERS TRAINED BY EACH OF THE ROUTES DESCRIBED IN QUESTIONS 46-47.

Specific data is not available regarding the percentage of practitioners trained by each of the routes described above. However, it is important to note that any individual pursuing certification as a Board Certified Behavior Analyst must complete graduate level training through an accredited educational institution in addition to the clinical supervision outlined in question 47.

49. DOES ANY EXAMINATION OR OTHER MEASURE CURRENTLY EXIST TO TEST FOR FUNCTIONAL COMPETENCE? IF SO, INDICATE HOW AND BY WHOM EACH WAS CONSTRUCTED AND BY WHOM IT IS CURRENTLY ADMINISTERED. IF NOT, INDICATE SEARCH EFFORTS TO LOCATE SUCH MEASURES.

At present the only standardized, validated examinations of competence in the practice of behavior analysis as those that have been developed by the BACB, described above.

50. DESCRIBE THE FORMAT AND CONTENT OF EACH EXAMINATION LISTED IN QUESTION 49. DESCRIBE THE SECTIONS OF EACH EXAMINATION. WHAT COMPETENCIES IS EACH DESIGNED TO MEASURE? HOW DO THESE RELATE TO THE KNOWLEDGE, SKILLS AND ABILITIES LISTED IN QUESTION 43?

The BACB examinations consist of 4-option multiple-choice questions, delivered using a computer-based testing platform. The content of each examination is based on the 4<sup>th</sup> Edition Task List, which specifies the number of questions that will be asked about each of the content areas and tasks identified during the job analysis survey. The BCBA examination consists of 150 scored questions while the BCaBA examination consists of 140 scored questions. Both examinations include an additional 10 non-scored "pilot" questions that are being evaluated for use on future examinations.

The examinations cover the content areas listed in the table below.

BACB Examination 4th Edition Content Outlines		Number of Questions	
Basic Behavior Analytic Skills		BCBA	BCaBA
A	Measurement	15	14
B	Experimental Design	11	11
C	Behavior Change Considerations	3	3
D	Fundamental Elements of Behavior Change	26	24
E	Specific Behavior Change Procedures	15	13
F	Behavior Change Systems	8	8
Client-Centered Responsibilities <i>(will include at least 2 questions addressing ethics per section)</i>			
G	Identification of the Problem	14	9
H	Measurement	9	6
I	Assessment	12	12
J	Intervention	23	18
K	Implementation, Management and Supervision	14	12
Total Number of Questions		150	130

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The competencies that the examinations are designed to measure are identified by the tasks listed within each of the content areas noted in the table above and described in the BACB’s 4th Edition Task List.

Every question on the BACB examinations (BCBA and BCaBA) is directly linked to one of the tasks in the 4<sup>th</sup> Edition Task List. Each task is further described in terms of the knowledge, skills and abilities required to perform that task (i.e., the foundational knowledge.) It is important to note that although the examination content outlines are strictly based on the task list, each of the examination forms also covers a representative sample of the knowledge, skills and abilities identified in the foundational knowledge section of the 4<sup>th</sup> Edition Task List.

51. IF MORE THAN ONE EXAMINATION IS LISTED ABOVE, WHICH STANDARD DO YOU INTEND TO SUPPORT? WHY? IF NONE OF THE ABOVE, WHY NOT, AND WHAT DO YOU PROPOSE AS AN ALTERNATIVE?

We support the only validated professional examinations in the practice of behavior analysis, the BACB examinations described above.

**IX. ECONOMIC IMPACT OF REGULATION IS JUSTIFIED**

52. HOW MANY PEOPLE ARE EXPOSED ANNUALLY TO THIS OCCUPATION? WILL REGULATION OF THIS OCCUPATION AFFECT THIS FIGURE? IF SO, IN WHAT WAY?

In a report published by the California Health Benefits Review Program (See Appendix J) it is estimated that 12,700 enrollees in DMHC-regulated plans or CDI-regulated policies currently access intensive ABA therapies. Due to the wide scope of practice of behavior analysis previously discussed, in addition to the individuals already being served, we feel there are tens of thousands of individuals who could benefit from the services of a behavior analyst.

53. WHAT IS THE CURRENT COST OF THE SERVICE PROVIDED? ESTIMATE THE AMOUNT OF MONEY SPENT ANNUALLY IN CALIFORNIA FOR THE SERVICES OF THIS GROUP. HOW WILL REGULATION AFFECT THESE COSTS? PROVIDE DOCUMENTATION FOR YOUR ANSWERS.

A typical ABA therapy session lasts between 1.5-3 hours and the cost is based on a number of variables including funding source, place of service etc. Therapy rates in California can range from ~\$20-\$75/hour for direct service. In addition to the direct service hours, ABA programs include both direct and indirect supervision by a Board Certified Behavior Analyst (BCBA). The cost for these supervision services range from \$75-150/hour.

As mentioned above in question 52, in a report published by the California Health Benefits Review Program (See Appendix J-10) it is estimated that 12,700 enrollees in DMHC-regulated plans or CDI-regulated policies currently access intensive ABA therapies. Current annual expenditures for intensive behavioral intervention therapies among these enrollees are estimated to be \$686 million. Coverage for ABA services is currently required under both the existing behavioral health treatment mandate (SB 946/126), through the Department of Developmental Services Regional Center system and the current California mental health parity law. As a result, we do not expect additional governmental regulation to have a measurable cost impact.

54. OUTLINE THE MAJOR GOVERNMENTAL ACTIVITIES YOU BELIEVE WILL BE NECESSARY TO APPROPRIATELY REGULATE PRACTITIONERS. EXAMPLES



MAY INCLUDE SUCH PROGRAM ELEMENTS AS: QUALIFICATIONS EVALUATIONS, EXAMINATION DEVELOPMENT OR ADMINISTRATION, ENFORCEMENT, SCHOOL ACCREDITATION, ETC.

A licensing board comprising professional behavior analysts will be required to (a) coordinate with the BACB to verify that applicants for licensure have met the degree, coursework, supervised experiential training, and examination requirements established by the profession; (b) verify that applicants have met any other state requirements, such as successful completion of a criminal background check; (c) review and investigate alleged violations of the licensure law or standards of conduct in coordination with other state entities and the BACB; and (d) impose sanctions when violations are found to have occurred. No development or administration of examinations or accreditation of training programs will be required.

55. PROVIDE A COST ANALYSIS SUPPORTING REGULATORY SERVICES TO THIS OCCUPATION. INCLUDE COSTS TO PROVIDE ADEQUATE REGULATORY FUNCTIONS DURING THE FIRST THREE YEARS FOLLOWING IMPLEMENTATION OF THIS REGULATION. ASSURE THAT AT LEAST THE FOLLOWING HAVE BEEN INCLUDED:
- a. costs of program administration, including staffing – see below
  - b. costs of developing and/or administering examinations – None. This task is already in place through the Behavior Analyst Certification Board.
  - c. costs of effective enforcement programs – see below

**Draft Cost Analysis - California Behavior Analyst Licensure Board**

**Operating Expenses and Equipment**

<u>Program Components</u>	<u>Personnel</u>	<u>OE&amp;E</u>
Enforcement (15%)	\$21,300	\$25,000
Licensing (25%)	\$35,500	\$35,000
Administration (60%)	\$85,200	\$85,000
Pro Rata for Dept. which is housing Board (15% of OE&E)		\$43,050
<b>Total</b>	<b>\$142,000</b>	<b>\$188,050</b>

	<b>Year 1</b>	<b>Year 2</b>	<b>Year 3</b>
Personnel	(\$71,000)	(\$142,000)	(\$142,000)
OE&E	(\$94,025)	(\$188,050)	(\$188,050)
GF Loan repayment	0	(\$50,000)	(\$50,000)

License Revenue

<i>Initial licensee fees</i>	\$630,000	\$126,000	\$126,000	
<i>Biennial renewal fees</i>			\$420,000	
<b>Total</b>	\$464,975	(\$254,050)	\$165,950	\$376,875

**Assumptions:**

- Data above is based on assumptions of 1400 initial applicants and 280 new applications for years two and three.
- Revenue assumptions based on the following fees: \$250 application fee; \$200 initial licensing fee; \$300 Biennial Active License Renewal Fee
- \$300,000 General Fund Loan for startup to be repaid over a five-year period

56. HOW MANY PRACTITIONERS ARE LIKELY TO APPLY EACH YEAR FOR CERTIFICATION IF THIS REGULATION IS ADOPTED? IF SMALL NUMBERS WILL APPLY, HOW ARE COSTS JUSTIFIED?

Year 1 – 1400 applicants  
 Year 2 – 280 applicants  
 Year 3 – 280 applicants

57. DOES ADOPTION OF THE REQUESTED REGULATION REPRESENT THE MOST COST EFFECTIVE FORM OF REGULATION? INDICATE ALTERNATIVES CONSIDERED AND COSTS ASSOCIATED WITH EACH.

Making BACB certification the principal requirement for obtaining and maintaining a California license to practice behavior analysis will be a very cost-effective way for the state to regulate this practice. The state licensing board or staff will not have to check each applicant’s degrees, coursework transcripts, or evidence of supervised experiential training to see that s/he meets national standards for practicing behavior analysis; the board will merely need to confirm that the BACB has verified that the applicant has met those requirements. Nor will the state board have to develop or administer examinations, because applicants will have already passed the national professional examination in order to obtain BACB certification.

Passage of a professionally designed and administered, psychometrically valid and reliable examination in the subject matter is required to obtain a valid credential to practice most legitimate professions. At present the only professional examinations in the practice of behavior analysis that comport with accepted psychometric and legal standards are the BACB’s. The BACB only gives its examinations to individuals that the BACB has vetted for compliance with its eligibility requirements. It does not contract with state regulatory boards to give its examinations to applicants that those boards deem eligible. We are not aware of

any other appropriately accredited entity that is developing a professional examination in the practice of behavior analysis that will meet accepted standards, or is likely to do so in the near future. Therefore, the only alternative we considered was to have the California behavior analyst licensing board develop an examination. We estimate that would take many thousands of hours of work on the part of that board, many other behavior analysts, expert psychometricians, and attorneys and would cost hundreds of thousands of dollars. We do not consider that alternative viable, and it is unnecessary because the BACB has already done the work and borne the costs of developing high-quality examinations that it is fully prepared to continue administering and updating.

**Part C2 – Rating on Sunrise Criteria**

Assign each Criterion a numeric rating of 0–5 in the space provided. The rating should be supported by the answers provided to the questions in *Part C1*. Scale descriptions are intended to give examples of characteristics indicative of ratings.

0 \_\_\_\_\_ 1 \_\_\_\_\_ 2 \_\_\_\_\_ 3 \_\_\_\_\_ 4 \_\_\_\_\_ 5  
(Little Need for Regulation) LOW HIGH (Great Need for Regulation)

**I. UNREGULATED PRACTICE OF THIS OCCUPATION WILL HARM OR  
ENDANGER THE PUBLIC HEALTH SAFETY AND WELFARE** 5

*low:* Regulation sought only by practitioners. Evidence of harm lacking or remote. Most effects secondary or tertiary. Little evidence that regulation would correct inequities.

*high:* Significant public demand. Patterns of repeated and severe harm, caused directly by incompetent practice. Suggested regulatory pattern deals effectively with inequity. Elements of protection from fraudulent activity and deceptive practice are included.

**II. EXISTING PROTECTIONS AVAILABLE TO THE CONSUMER ARE  
INSUFFICIENT** 4

*low:* Other regulated groups control access to practitioners. Existing remedies are in place and effective. Clients are generally groups or organizations with adequate resources to seek protection.

*high:* Individual clients access practitioners directly. Current remedies are ineffective or nonexistent.

**III. NO ALTERNATIVES TO REGULATION WILL ADEQUATELY PROTECT THE  
PUBLIC** 4

*low:* No alternatives considered. Practice unregulated in most other states. Current system for handling abuses adequate.

*high:* Exhaustive search of alternatives finds them lacking. Practice regulated elsewhere. Current system ineffective or nonexistent.

**IV. REGULATION WILL MITIGATE EXISTING PROBLEMS** 5

*low:* Little or no evidence of public benefit from regulation. Case not demonstrated that regulation precludes harm. Net benefit does not indicate need for regulation.

*high:* Little or no doubt that regulation will ensure consumer protection. Greatest protection provided to those who are least able to protect themselves. Regulation likely to eliminate currently existing problems.

**V. PRACTITIONERS OPERATE INDEPENDENTLY, MAKING DECISIONS OF CONSEQUENCE** 5

*low:* Practitioners operate under the supervision of another regulated profession or under the auspices of an organization which may be held responsible for services provided. Decisions made by practitioners are of little consequence.

*high:* Practitioners have little or no supervision. Decisions made by practitioners are of consequence, directly affecting important consumer concerns.

**VI. FUNCTIONS AND TASKS OF THE OCCUPATION ARE CLEARLY DEFINED** 5

*low:* Definition of competent practice unclear or very subjective. Consensus does not exist regarding appropriate functions and measures of competence.

*high:* Important occupational functions are clearly defined, with quantifiable measures of successful practice. High degree of agreement regarding appropriate functions and measures of competence.

**VII. THE OCCUPATION IS CLEARLY DISTINGUISHABLE FROM OTHER OCCUPATIONS THAT ARE ALREADY REGULATED** 5

*low:* High degree of overlap with currently regulated occupations. Little information given regarding the relationships among similar occupations.

*high:* Important occupational functions clearly different from those of currently regulated occupations. Similar non-regulated groups do not perform critical functions included in this occupation's practice.

**VIII. THE OCCUPATION REQUIRES POSSESSION OF KNOWLEDGES, SKILLS AND ABILITIES THAT ARE BOTH TEACHABLE AND TESTABLE** 5

*low:* Required knowledge undefined. Preparatory programs limited in scope and availability. Low degree of required knowledge or training. Current standard sufficient to measure competence without regulation. Required skill subjectively determined; not teachable and/or not testable.

*high:* Required knowledges clearly defined. Measures of competence both objective and testable. Incompetent practice defined by lack of knowledge, skill or ability. No current standard effectively used to protect public interest.

**IX. ECONOMIC IMPACT OF REGULATION IS JUSTIFIED**

4

*low:* Economic impact not fully considered. Dollar and staffing cost estimates inaccurate or poorly done.

*high:* Full analysis of all costs indicate net benefit of regulation is in the public interest.

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