

Sixty-fourth
Legislative Assembly
of North Dakota

ENGROSSED HOUSE BILL NO. 1274

Introduced by

Representatives Fehr, D. Anderson, Hofstad, Lefor

1 A BILL for an Act to amend and reenact sections 43-32-02, 43-32-08, 43-32-12, 43-32-13,
2 43-32-14, 43-32-17, 43-32-19.1, 43-32-20, 43-32-20.1, 43-32-21, 43-32-26, 43-32-27,
3 43-32-27.1, 43-32-30, and 43-32-34 of the North Dakota Century Code, relating to the
4 membership, powers, and duties of the state board of psychologist examiners; and to provide a
5 penalty.

6 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

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

9 **43-32-02. State board of psychologist examiners - How appointed - Qualifications.**

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

- 17 1. Be a resident of this state.
- 18 2. Be a psychologist licensed under this chapter.
- 19 3. Have received a doctorate degree in psychology from a school or college at least five
20 years before appointment.
- 21 4. Have actively engaged in the practice of teaching or research of psychology for at
22 least five years.

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

1 **43-32-08. Rules.**

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

11 **SECTION 3. AMENDMENT.** Section 43-32-12 of the North Dakota Century Code is
12 amended and reenacted as follows:

13 **43-32-12. Application and fee for licensure and registration.**

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

18 **SECTION 4. AMENDMENT.** Section 43-32-13 of the North Dakota Century Code is
19 amended and reenacted as follows:

20 **43-32-13. Annual license and registration fee.**

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

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

1 **43-32-14. Payment of delinquent annual fee - Reinstatement.**

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

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

9 **43-32-17. License required for practice - Titles.**

- 10 1. Except as otherwise provided under this chapter, a person may not engage in the
11 practice of psychology unless that person is licensed as a psychologist or is registered
12 as a psychology resident under this chapter. Except as otherwise provided by this
13 chapter, a person may not engage in the practice of industrial-organizational
14 psychology unless that person is licensed as a psychologist or
15 industrial-organizational psychologist or is registered as a psychology resident or
16 industrial-organizational psychology resident under this chapter. Except as otherwise
17 provided under this chapter, a person may not engage in the practice of applied
18 behavior analysis unless that person is a psychologist, is licensed as an applied
19 behavior analyst, or is registered and supervised as an applied behavior analyst as
20 provided under this chapter.
- 21 2. A person may not use the title "psychologist" or similar title unless that person is
22 licensed as a psychologist. A person may not use the titles "industrial psychologist",
23 "organizational psychologist", or "industrial-organizational psychologist" unless that
24 person is licensed as a psychologist or industrial-organizational psychologist. A person
25 may not use the title "applied behavior analyst" or similar title unless that person is
26 licensed as an applied behavior analyst. A person may not use the title "registered
27 applied behavioral analyst" or similar title unless that person is registered and
28 supervised as a registered applied behavior analyst.
- 29 3. A person may not use the title "psychology resident" or similar title unless that person
30 is registered as a psychology resident. A person may not use the titles "industrial
31 psychology resident", "organizational psychology resident", or

1 "industrial-organizational psychology resident" unless that person is registered as a
2 psychology resident or industrial-organizational psychology resident.

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

5 **43-32-19.1. Licensing ~~applicant~~or ~~registering applicants~~ licensed or registered in**
6 **other jurisdictions.**

- 7 1. The board may grant a license or registration to an applicant; who is licensed or
8 registered in good standing in another jurisdiction; that imposes requirements for
9 licensure or registration and who passes the oral examination on the law and rules
10 regulating the practice of psychology, industrial-organizational psychology, or applied
11 behavior analysis and meets one of the following requirements:
- 12 a. ~~The applicant is licensed in a jurisdiction that imposes requirements for licensure~~
13 ~~which are at least as stringent as the requirements imposed in this state.~~Meets
14 standards established by the board; or
- 15 b. ~~The~~s an applicant for licensure as a psychologist who holds a certificate of
16 professional qualification in psychology issued by an entity approved by the
17 board, such as the association of state and provincial psychology boards or its
18 successor.
- 19 2. As a condition to qualify for licensure or registration under subsection 1, the board
20 may require the applicant pass an oral examination on the laws and rules regulating
21 the practice of psychology, industrial-organizational psychology, or applied behavior
22 analysis, as appropriate to the licensure or registration sought by the applicant.
- 23 3. Notwithstanding any contrary provision of this chapter, the board may issue a license
24 or registration as authorized under chapter 43-51.
- 25 4. The board ~~shall~~may grant a provisional license or registration to an applicant ~~to be an~~
26 ~~applied behavior analyst or registered applied behavior analyst~~ while the application is
27 pending, ~~provided~~if the applicant is:
- 28 a. ~~Licensed~~ licensed or registered and is in good standing in another jurisdiction; or
29 b. ~~Certified in good standing with the national behavior analyst certification board~~is
30 certified by a professional organization that is identified by the board by rule. The
31 board may not grant a provisional license or registration under this subsection if

1 in another jurisdiction, within the previous five years, the applicant had a
2 disciplinary action against the applicant's license or registration.
3 5. Except as otherwise provided under this chapter, and in accordance with rules
4 adopted by the board, the board shall issue a limited practice certificate to an applicant
5 who is licensed or registered in another jurisdiction to practice psychology,
6 industrial-organizational psychology, or applied behavior analysis. A limited practice
7 certificate issued under this subsection authorizes the practice of psychology,
8 industrial-organizational psychology, or applied behavior analysis in this state for no
9 more than thirty days in a calendar year.

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

12 **43-32-20. Licensing - Written and oral examination - Qualifications of applicants.**

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

- 16 1. An applicant for licensure as a psychologist shall demonstrate all of the following:
- 17 a. The applicant will adhere to the American psychological association ethical
18 principles of psychologists and code of conduct adopted by the board by rule.
- 19 b. The applicant has received, from a school or college, a doctorate degree in a
20 program ~~which meets any of the following requirements:~~
- 21 ~~(1) The program is accredited by the American psychological association or the~~
22 ~~Canadian psychological association.~~
- 23 ~~(2) The program is designated as a doctoral program in psychology by the~~
24 ~~association of state and provincial psychology boards.~~
- 25 ~~(3) The program that is accredited as a doctoral program in psychology by an~~
26 ~~accrediting body approved by the board by rule.~~
- 27 c. The applicant has passed the examinations, written, or oral, or both, as the board
28 determines necessary.
- 29 d. The applicant has completed at least two full years of supervised professional
30 experience, one year of which must be an internship program, and one year of

1 which may be postdoctoral. Both years of experience must comply with the
2 board's rules.

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

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

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

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

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

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

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

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

24 **43-32-20.1. Postdoctoral supervised psychological employment.**

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

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

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

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

13 **43-32-21. Consideration of application and notice to applicant.**

14 Upon investigation of the application and other evidence submitted, the board, ~~not less than~~
15 ~~thirty days before the examination,~~ shall notify each applicant that the application and evidence
16 submitted for licensing is satisfactory and accepted, or unsatisfactory and rejected. If rejected,
17 the notice must state the reasons for rejection and explain the right to a hearing under chapter
18 28-32, if a hearing is requested within thirty days.

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

21 **43-32-26. Issuance and display of license.**

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

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

1 **43-32-27. Denial - Revocation or suspension of license or registration - Grounds.**

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

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

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

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

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

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

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

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

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

31 i. Has willfully or negligently violated this chapter.

- 1 j. Has engaged in an act in violation of rules adopted by the board.
- 2 k. Has had a license or registration revoked or suspended or was disciplined in
- 3 another jurisdiction.
- 4 2. The board may assess costs incurred by the board related to investigations and
- 5 disciplinary actions. By rule, the board may set fines for minor infractions of this
- 6 chapter.
- 7 3. An individual whose license or registration has been revoked under this section may
- 8 not reapply for licensure or registration for at least two years after the date of
- 9 revocation.
- 10 4. Other than the term "in good standing", by rule, the board shall define terms related to
- 11 license status, such as "revoked", "suspended", "inactive", and "probationary".

12 **SECTION 13. AMENDMENT.** Section 43-32-27.1 of the North Dakota Century Code is

13 amended and reenacted as follows:

14 **43-32-27.1. Complaints - Investigations.**

- 15 1. A person aggrieved by the actions of a licensee, registrant, or psychology resident
- 16 may file a written ~~complaint~~statement with the board citing the specific allegations of
- 17 misconduct by the licensee. The board shall notify the licensee, registrant, or
- 18 psychology resident of the ~~complaint~~allegation and request a written response ~~from~~
- 19 ~~the licensee.~~ The board may establish procedural exceptions for processing multiple
- 20 ~~complaints~~allegations from the same ~~complainant~~person.
- 21 2. ~~The board may investigate a complaint on the board's own motions~~shall determine if
- 22 the information in an allegation warrants investigation as a complaint, without requiring
- 23 ~~the identity of the complainant~~source of the information to be made a matter of public
- 24 record, if the board concludes that good cause exists for preserving the confidentiality
- 25 of the ~~complainant~~source.
- 26 3. A licensee, registrant, or psychology resident who is the subject of an investigation by
- 27 the board shall cooperate fully with the investigation. Cooperation includes responding
- 28 fully and promptly to any reasonable question raised by or on behalf of the board
- 29 relating to the subject of the investigation and providing copies of patient or client
- 30 records if reasonably requested by the board and accompanied by the appropriate
- 31 release.

- 1 4. In order to pursue an investigation, the board may subpoena and examine witnesses
2 and records, including patient and client records, and may copy, photograph, or take
3 samples of the records. The board may require the licensee, registrant, or psychology
4 resident to give statements under oath, to submit to a physical or psychological
5 examination, or both, by a physician or other qualified evaluation professional selected
6 by the board, if requiring an examination is in the best interest of the public. The
7 patient and client records released to the board are not public records. The board may
8 adopt rules to assign, define duties, and compensate an investigator to assist the
9 board to process a complaint.
- 10 5. Unless a patient or client release is on file allowing the release of information at the
11 public hearing, patient and client records acquired by the board in the board's
12 investigation are confidential and closed to the public. All board meetings at which
13 patient or client testimony or records are taken or reviewed are confidential and closed
14 to the public. If patient or client testimony or records are not taken or reviewed, the
15 remainder of the meeting is an open meeting unless a specific exemption is otherwise
16 applicable.

17 **SECTION 14. AMENDMENT.** Section 43-32-30 of the North Dakota Century Code is
18 amended and reenacted as follows:

19 **43-32-30. Persons exempt from this chapter.**

20 This chapter does not apply to:

- 21 1. A student or intern pursuing a course of study in psychology, industrial-organizational
22 psychology, or applied behavior analysis at a school or college, if the activities and
23 services are a part of the individual's supervised course of study and are under the
24 supervision of a licensed psychologist, industrial-organizational psychologist, or
25 applied behavior analyst. The student or intern may not use the title "psychologist",
26 "industrial-organizational psychologist", "licensed behavior analyst", or "registered
27 applied behavior analyst" ~~and the~~. The student or intern status and the supervisor
28 must be clearly stated.
- 29 2. ~~A nonresident licensed, registered, or certified in the state of the individual's residence~~
30 ~~who does not practice psychology, industrial-organizational psychology, or applied~~

1 behavior analysis in this state for a period of more than thirty days in any calendar-
2 year.

3 ~~3.~~ A lecturer, from any school or college, who uses an academic or research title when
4 lecturing to institutions or organizations. However, the lecturer may not engage in the
5 practice of psychology, applied behavior analysis, or industrial-organizational
6 psychology unless the lecturer is licensed or registered under this chapter.

7 4.3. An individual employed by a public school if that individual's activities and services are
8 restricted to the practice of psychology in the district or service unit of employment.
9 This exemption applies only if the individual has received a master's degree in school
10 psychology from an accredited graduate training program. Standards must be
11 established by mutual consent of the board and the superintendent of public
12 instruction.

13 5.4. A person certified, licensed, or registered in this state in another health care
14 profession, or as a member of the clergy functioning in a ministerial capacity, whose
15 scope of practice is consistent with the accepted standards of that person's
16 profession. A person claiming an exemption under this subsection may not represent
17 to be rendering psychological or applied behavior analysis services.

18 6.5. An applicant licensed to practice psychology or industrial-organizational psychology in
19 another jurisdiction, pending disposition of the applicant's application in this state, if
20 the applicant notifies the board on a form provided by the board of the applicant's
21 intent to practice pending disposition of the application and the applicant adheres to
22 the requirements of this chapter and the rules adopted by the board.

23 7.6. A person employed by an agency, a nonprofit corporation, or an institution if that
24 person is currently exempt from licensure. A person exempt under this subsection
25 continues to be exempt if the person continues employment in the same position with
26 the agency, nonprofit corporation, or institution that applied for and received the
27 exemption.

28 8.7. An individual providing applied behavior analysis services to an individual in a public
29 school setting.

30 9.8. An individual providing applied behavior analysis services to an individual served by a
31 public or private service agency licensed by the state to provide residential,

1 habilitative, vocational, or social support services as defined by the board when
2 performed as part of an individual support plan supervised by a professional employee
3 meeting the requirements of that agency's licensure standards, provided the
4 professional employee does not represent to the public as a registrant ~~or an~~, applied
5 behavior analyst, or psychologist.

6 ~~40-9.~~ An individual who is implementing applied behavior analysis services to an immediate
7 family member or as a paid or volunteer caregiver implementing procedures
8 established by the family or by the individual served in any setting, if the individual or
9 caregiver does not represent as a registrant or an applied behavior analyst.

10 ~~44-10~~ An individual licensed as an occupational therapist or an occupational therapy
11 assistant pursuant to chapter 43-30 within the body of knowledge and scope of
12 professional practice of occupational therapy.

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

15 **43-32-34. Applied behavior analysis - Renewal - Fees.**

- 16 1. The board shall issue a license or registration to each applicant who files an
17 application for registration as a registered applied behavior analyst or for licensure as
18 an applied behavior analyst upon a form and in a manner the board prescribes;
19 submits the required fee established by the board; and demonstrates the applicant
20 meets the requirements of subsection 2.
- 21 2. An applicant under this section shall demonstrate the applicant:
- 22 a. Has met board-approved education requirements, such as the education
23 requirements of the board-certified behavior analyst standards;
- 24 b. Has passed a board-approved demonstration of professional competence, such
25 as a standardized examination specific to the profession such as the
26 board-certified behavior analyst examination; and
- 27 ~~c. Is credentialed as a behavior analyst by a board-approved credentialing entity,~~
28 ~~such as the behavior analyst certification board; and~~
- 29 d. Has established supervision requirements as determined by the board for
30 practice when applying as a registered applied behavior analyst.

- 1 3. The board may withhold, deny, revoke, or suspend a license or registration for applied
2 behavior analyst applied for or issued under this chapter and otherwise may discipline
3 a license or registration holder or applicant in the same manner provided under
4 section 43-32-27.
- 5 4. A complaint regarding or board investigation of a licensed or registered applied
6 behavior analyst is filed or conducted in the same manner as provided under section
7 43-32-27.1.
- 8 5. ~~If an individual employed in the state on August 1, 2011, in the practice of applied-~~
9 ~~behavior analysis submits to the board a written request before January 1, 2013, the~~
10 ~~required license or registration application fee, and a written statement from the~~
11 ~~applicant's employer that the applicant's employment remains satisfactory, the board~~
12 ~~shall issue to that applicant:~~
 - 13 a. ~~A license as an applied behavior analyst if the applicant is employed in a position~~
14 ~~granted license exemption by the board and submits a letter of endorsement from~~
15 ~~the licensed psychologist supervisor.~~
 - 16 b. ~~A license as an applied behavior analyst if the applicant has a master's degree in~~
17 ~~psychology and is employed as a behavior analyst as verified in writing by the~~
18 ~~applicant's employer. Acceptable work titles for an applicant under this~~
19 ~~subdivision include behavior analyst, behavior interventionist, and behavior~~
20 ~~modification specialist.~~
 - 21 c. ~~Registration as an applied behavior analyst if the applicant has a bachelor's~~
22 ~~degree; provides a board-approved plan of supervision from a licensed~~
23 ~~psychologist or applied behavior analyst; and is employed as a behavior analyst~~
24 ~~as verified in writing by the applicant's employer. Acceptable work titles for an~~
25 ~~applicant under this subdivision include behavior analyst, behavior interventionist,~~
26 ~~and behavior modification specialist.~~

27