

**MINUTES OF THE MEETING
OF THE
ASSEMBLY COMMITTEE ON COMMERCE AND LABOR**

**Seventy-Sixth Session
February 18, 2011**

The Committee on Commerce and Labor was called to order by Chair Kelvin Atkinson at 11:52 a.m. on Friday, February 18, 2011, in Room 4100 of the Legislative Building, 401 South Carson Street, Carson City, Nevada. The meeting was videoconferenced to Room 4401 of the Grant Sawyer State Office Building, 555 East Washington Avenue, Las Vegas, Nevada. Copies of the minutes, including the Agenda ([Exhibit A](#)), the Attendance Roster ([Exhibit B](#)), and other substantive exhibits, are available and on file in the Research Library of the Legislative Counsel Bureau and on the Nevada Legislature's website at www.leg.state.nv.us/76th2011/committees/. In addition, copies of the audio record may be purchased through the Legislative Counsel Bureau's Publications Office (email: publications@lcb.state.nv.us; telephone: 775-684-6835).

COMMITTEE MEMBERS PRESENT:

Assemblyman Kelvin Atkinson, Chair
Assemblyman Marcus Conklin, Vice Chair
Assemblywoman Irene Bustamante Adams
Assemblyman Richard (Skip) Daly
Assemblyman Ed A. Goedhart
Assemblyman Tom Grady
Assemblyman Crescent Hardy
Assemblyman Pat Hickey
Assemblyman William C. Horne
Assemblywoman Marilyn K. Kirkpatrick
Assemblyman Kelly Kite
Assemblyman John Ocegüera
Assemblyman James Ohrenschall
Assemblyman Tick Segerblom

COMMITTEE MEMBERS ABSENT:

Assemblywoman Maggie Carlton (excused)
Assemblyman John Ellison (excused)

GUEST LEGISLATORS PRESENT:

None

STAFF MEMBERS PRESENT:

Marji Paslov Thomas, Committee Policy Analyst
Brenda Erdoes, Committee Counsel
Andrew Diss, Committee Manger
Earlene Miller, Committee Secretary
Sally Stoner, Committee Assistant

OTHERS PRESENT:

Jan M. Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders
LaVonne Brooks, President and CEO, HSI/WARC, Northern Nevada Association of Service Providers
Shannon Springer, Private Citizen, Sparks, Nevada
Martha Schott-Bernius, Program Manager, Nevada Early Intervention Services, Northeast, Health Division, Department of Health and Human Services
Craig Hulse, Director of Government Affairs, Washoe County School District
Nicole Rourke, Director of Government Affairs, Clark County School District
Charles Marriott, Founder and Managing Member, Autism Care West LLC
Gary Lenkeit, PhD., Member, Board of Psychological Examiners
Tibi Ellis, Member, Board of Psychological Examiners

Chairman Atkinson:

[The roll was taken, and a quorum was present.] We have two bills before us today. I would like to welcome our audience here and in Las Vegas and Elko. We will start with Assembly Bill 65 and hear the opposition first.

Assembly Bill 65: Makes various changes concerning applied behavior analysis.
(BDR 54-503)

Jan M. Crandy, Commissioner, Nevada Commission on Autism Spectrum Disorders:

[Read from prepared testimony ([Exhibit C](#)).]

The language in this bill says that a person must have a bachelor's degree and a master's degree from one of these programs. There are currently no bachelor's degree programs, and there are only 17 nationally recognized applied behavior analysis (ABA) programs. The University of Nevada, Las Vegas does not have one of those programs, but the University of Nevada, Reno does. It received its accreditation in 2000, so people graduating from that program prior to that date would not be able to be licensed.

[Continued to read from prepared testimony.]

We do not want this bill to be a license-and-certification-to-practice bill. If this bill moves forward, section 13 would need to exclude school district, state, and early intervention staff so they can continue to work in those fields. I know the state cannot afford to have all of its staff certified and licensed. The rule of ABA prior accreditation needs to be removed from the bill. Almost all states are recognizing the standards of the national Board, officially known as the Behavior Analyst Certification Board (BACB), which licenses the Board Certified Behavior Analyst (BCBA). Their standards are fairly rigid. They have ethics standards and require 1,500 hours of fieldwork as well as 225 hours of coursework above their master's degree. Those requirements are already established in Nevada, so we do not need to go a step higher when Nevada is so early in building this workforce. There are only 6,000 people in Nevada with autism. Applied behavior analysis is not only for children with autism. It works with other families too.

The part of this bill which says that people are going to be charged with a gross misdemeanor if they practice ABA without certification is objectionable. Parents use ABA with their children. How would we regulate it? We cannot charge people for working with their own children. This bill either needs to be killed or have some drastic language changes.

Chair Atkinson:

Did you submit anything in writing?

Jan M. Crandy:

I did submit some of this, but I did not submit the section on the exclusions for section 13. If you move forward on this bill, you would also need to exclude school staff, state staff, anyone who is contracted with the state to provide these services, and early intervention staff. Parents are trying to save their kids and are paying out-of-pocket. The lower-trained people are earning \$10 to \$15 per hour. Remember, parents are trying to buy 30 hours per week. If we require all of these people to be certified, the rates are going to go up. The parents will be able to afford fewer hours.

Chair Atkinson:

We will need the additional changes to the bill you have suggested in writing. Are there any questions from the Committee?

Assemblyman Ohrenschall:

We had a lot of cooperation last session, and I hope we can work together again this session to produce a bill that will expand the availability of ABA treatment for autistic children in Nevada. I have been able to see how effective the ABA therapy in progress in Las Vegas has been.

Assemblyman Conklin:

I concur with my colleague's comments. Ms. Crandy, have you seen the amendments proposed by the Board of Psychological Examiners?

Jan M. Crandy:

I did see them and am pleased with most of them. I am concerned that the bill may still require licensure to practice ABA in this state. Maybe we could come back to reassess that in about five years.

Assemblyman Conklin:

My interpretation of the amendment is that it is adding the word "licensed" to the ABA practitioners, and that may be a problem. There needs to be some regulation relative to the practice of ABA, and at the same time there needs to be a recognition that we need to move forward with this. There are economic issues associated with this matter. The practice of regulation cannot be so onerous that it limits the number of people available to do the work. There needs to be some discussion between the interested parties to ensure there are sufficient people to help the children. When the field is flooded with capable people, we may want to review it.

Jan M. Crandy:

If the most highly qualified people supervised the lower-level therapists, we could move forward to get those people licensed. It appears the highly qualified therapists only want to be certified so they can bill insurance.

LaVonne Brooks, President and CEO, HSI/WARC Northern Nevada Association of Service Providers:

We have offices that serve adults with disabilities from Stead to Fallon. People with autism are a very visible part of our treatment population, but there is another group of providers in the state that serves thousands of people with other developmental and special disabilities. Many of us are in the process of using ABA in our individual support plans. Those plans are specially created and supervised by professionals in the field and then carried out by our direct-care

service staff within our organizations. We are regulated to provide these services on various levels, from Medicaid to the state process. This adds another level of bureaucracy. I would like to know what the authors of this bill intended, because it has some serious unintended consequences for providers like us and Opportunity Village in Las Vegas. This is a bad bill that adds regulations to already regulated areas.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Goedhart:

Could you elaborate on how you think this bill would affect access to care as well as the cost of care?

LaVonne Brooks:

It will certainly add another level of compliance. Our agency would not be able to afford compliance. The ultimate loser in the process would be the people we serve. We can barely afford to operate as it is. We have grant funding and various ways that we are using to offer services. This would make it almost impossible for the providers to do this work.

Chair Atkinson:

Are there any questions from the Committee? I see none.

Shannon Springer, Private Citizen, Sparks, Nevada:

I am the parent of an 11-year-old daughter with autism. This bill concerns me because of the gross misdemeanor language. I cannot afford 40 hours of ABA, so for the past eight years I have pursued doctors with extensive backgrounds in ABA. How does this bill affect me, as a parent trying to do everything I can for my child so she does not end up living off the state? It will cost more in the long run if this bill passes.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in opposition to A.B. 65?

Martha Schott-Bernius, Program Manager, Nevada Early Intervention Services, Northeast, Health Division, Department of Health and Human Services:

This bill is relevant to our program because 117 children with autism were served and received early intervention services during the last fiscal year. We do not have staff members who meet the criteria of this bill. We will support any negotiations between the Board of Psychological Examiners, the autism

advocates, and other agencies. We will support any amendments to this bill that would alleviate staff shortage and training expense.

Craig Hulse, Director of Government Affairs, Washoe County School District:

We oppose this bill because it includes school personnel. We would support an amendment to exclude school personnel but still oppose the bill as written. We agree that sometime regulations are too onerous to allow us to expand the number of providers. We feel that, as written, the bill would limit the number of providers and push the burden towards the school district. We would like our staff to work with the interested parties on the language in the bill.

Chair Atkinson:

You will need to provide a proposed amendment in writing. Is there anyone else in opposition to the bill?

Nicole Rourke, Director of Government Affairs, Clark County School District:

The Clark County School District (CCSD) opposes this bill, and I am here to propose an amendment ([Exhibit D](#)) that would exclude school personnel from these licensure provisions. For the past 10 years, ABA has been the district's adopted methodology for autism behavioral intervention. We currently have over 700 educational personnel, including licensed administrators, teachers, and instructional aides, using it in classrooms. Currently, CCSD providers are trained through a four-day, hands-on training, a two-day interactive training, and many additional group and individual follow-up trainings. We support the concept that people providing ABA should be thoroughly trained to ensure quality. Requiring licensure as stated in A.B. 65 would be costly to the district and unnecessary for school personnel. We ask that you not require separate licensure for ABA, as is the case for speech therapists, occupational therapists, and psychologists who work solely in schools and are not required to have separate licensure. Our amendment to section 13 excludes a person who is licensed as a special education teacher and a person who works under the direction of a licensed administrator or licensed teacher in an educational setting.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Ohrenschall:

How many children in CCSD are in the autism spectrum, and are they all getting treatment?

Nicole Rourke:

We have approximately 2,500 students in our autism spectrum programs.

Assemblyman Ohrenschall:

Are they all receiving treatment through the school district, or are some receiving treatments from private providers?

Nicole Rourke:

We serve some of them through the district, and some are treated privately in addition to the school treatment.

Assemblyman Ohrenschall:

If the 700 personnel at CCSD who are providing ABA had to be licensed, do you think they would all be able to continue to provide services?

Nicole Rourke:

No. We have licensed teachers who have already received some training through their degree but not through an accredited ABA university. We anticipate the cost of training would be between \$7,000 and \$17,000 per person.

Chair Atkinson:

Is there anyone else to speak in opposition?

Charles Marriott, Founder and Managing Member, Autism Care West LLC:

We service families in North Las Vegas, Las Vegas, and Henderson. We provide applied behavior analytic therapies to 23 different families. I want to comment on section 17, subsections 2(d) and 3(d), which speak specifically to the accreditation requirements of the Association for Behavior Analysis International. As a behavior analyst, I want to recognize the Board of Psychological Examiners for wanting to set a high standard for Nevada. The Association for Behavior Analysis International is a legal standard in terms of education for ABA, and I hope the university with the largest student body in Nevada, the University of Nevada, Las Vegas, is able to obtain such accreditation. They cannot afford the accreditation because it is costly, but they have a curriculum which is preapproved by the Behavior Analyst Certification Board. It is a diverse curriculum that requires over 1,500 hours of fieldwork, including 75 hours that are directly supervised by a Board Certified Behavior Analyst. A Board Certified Behavior Analyst is one who has earned the credentials to practice ABA, whereas ABA high accreditation is rare and in this case redundant.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else in Las Vegas wishing to testify in opposition? Seeing none, we will now hear the proponents of the bill.

Gary Lenkeit, PhD., Member, Board of Psychological Examiners:

I am here to submit modifications to A.B. 65. I have provided copies of the changes ([Exhibit E](#)). The purpose of A.B. 65 is to clarify language that was part of Assembly Bill No.162 of the 75th Session that was not subsequently added to *Nevada Revised Statutes* (NRS) Chapter 641. The language about the requirement that licensed behavior analysts obtain certification as Board Certified Behavior Analysts was included in A.B. No.162 of the 75th Session. This language was included in NRS Chapter 689B, but not in NRS Chapter 641, which is the licensing law for psychologists and behavior analysts. Without such language, the educational requirements for licensure were not clear. Individuals applying for licensure are not likely to consult NRS Chapter 689B but instead would look at the law in NRS Chapter 641. We had numerous questions from applicants regarding the educational requirements because the board certification issue was left out of NRS Chapter 641. The revisions which I have provided resolve this problem. These revisions are consistent with the intent and language of A.B. No. 162 of the 75th Session. The original bill before you did not clarify the qualifications for licensure of behavior analysts and assistant behavior analysts. Therefore, we are submitting changes to section 17, NRS 641.170(2)(d) and NRS 641.170(3)(d), adding the language requiring board certification. This is on pages 7 and 8 of the bill and in the revisions which I sent to the Legislative Counsel Bureau.

Section 37 on page 17 of A.B. 65 refers to NRS 641.440. The words "or applied behavior analysis" and "or certificate" should be removed. It was not our intention to request changes to this section by adding ABA. This would present a substantive change from the intent of A.B. No. 162 of the 75th Session. There are no requirements in A.B. No. 162 of the 75th Session for an individual practicing ABA to be licensed other than to accept health insurance for their services. We do not want that changed, but want to clarify NRS Chapter 641 to meet the intent of A.B. No. 162 of the 75th Session. Assembly Bill 33 sets out the penalties we want for violation of the licensing law for psychologists, that is for practicing without a license. Without such penalties, we are unable to enforce these sections of the licensing law for psychologists. This was never intended to apply to behavior analysis.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Daly:

Sections 2 and 4 of the bill refer to the standards recognized by the Behavior Analyst Certification Board, Inc. Does this mean a person can go to any other school that recognizes or meets those standards?

Gary Lenkeit:

We adopted the certification of the Behavior Analyst Certification Board, Inc. as part of extensive discussion regarding A. B. No. 162 of the 75th Session. They set standards for certification while looking to credential schools, and they provide a national test for people becoming certified. That is consistent with other licensing laws in the state. Psychologists have to take a national test before taking the state test. Marriage and family therapists, licensed clinical social workers, and licensed counselors all need to pass a national test. The only national test we know is with the Behavior Analyst Certification Board. They set standards for training and education and certify schools. I understand that they may be going through some changes in terms of the schools that may be certified. We want to make it clear that if any person had the Board's certification, their program had already been approved.

Assemblyman Daly:

In section 17 "college or university" is stricken and the Association for Behavior Analysis International is added. Would the Board of Psychological Examiners not want to retain the authority to recognize various organizations and universities as you find them to be accredited or valid for that type of certification?

Gary Lenkeit:

That is a possibility, but at these early stages we want to look at the people who have met the requirements to be board certified. We did not want to eliminate anybody based on changes the board made in their program. We will look at programs, but they have already certified the program. This is similar to what we do in psychology. If a person has attended an American Psychological Association-accredited program in psychology, then they are eligible to progress for licensure in the state. We feel that looking to this board is consistent with other licensing laws.

Assemblyman Ohrenschall:

I want to thank Dr. Lenkeit for his work on this bill. I do not think anyone intended the bill to limit the number of providers.

Chair Atkinson:

Are there any other questions from the Committee? I see none. Are there others to testify in favor of this bill? There are none. Is there anyone wishing to testify from a neutral position? There are none. I will encourage the sponsors of this bill to meet with concerned parties to address their concerns before we bring it back to the Committee for a work session. We will close the hearing on A.B. 65. We will open the hearing on Assembly Bill 33.

Antonio A. Quiroz submitted a letter for the record ([Exhibit F](#)).

Michele Tombari submitted a letter for the record ([Exhibit G](#)).

Assembly Bill 33: Revises provisions governing the Board of Psychological Examiners. (BDR 54-504)

Gary Lenkeit, PhD., Member, Board of Psychological Examiners:

Nevada Revised Statutes (NRS) Chapter 641 states that practicing psychology without a license is a misdemeanor. The sections added to NRS Chapter 641 by A.B. 33 address penalties for people who violate those sections. Currently, we cannot do too much to a person who practices psychology without a license. We asked that these sections be added so there will be consequence for violations.

Chair Atkinson:

Are there any questions from the Committee?

Assemblyman Ohrenschall:

What do you think about parents being prosecuted for using applied behavior analysis (ABA) with their children as we heard earlier in this hearing?

Gary Lenkeit:

That would absolutely not be the case if we eliminated all references to ABA. It should not have been added to Assembly Bill 65 in the first place, and we do not want it included. As long as it is eliminated, there will be no penalties for parents, school district employees, or anybody else practicing ABA.

Chair Atkinson:

Are there any questions from the Committee? I see none. Is there anyone else wishing to testify in favor of A.B. 33?

Tibi Ellis, Member, Board of Psychological Examiners:

I agree with Dr. Lenkeit's proposal on A.B. 33. As a public member of the Board, my commitment is to always to look out for the safety of the public. This bill will ensure this is implemented in a way that is fair and equitable.

Chair Atkinson:

Are there any questions from the Committee? I see none. Does anyone else wish to testify in favor of this bill? I see none. Is there anyone wishing to testify from a neutral position? Seeing none, we will close the hearing on A.B. 33. Is there any public comment? I see none.

The meeting is adjourned [at 12:40 p.m.].

RESPECTFULLY SUBMITTED:

Earlene Miller
Committee Secretary

APPROVED BY:

Assemblyman Kelvin Atkinson, Chair

DATE: _____

EXHIBITS

Committee Name: Committee on Commerce and Labor

Date: February 18, 2011

Time of Meeting: 11:52 a.m.

Bill	Exhibit	Witness / Agency	Description
	A		Agenda
	B		Attendance Roster
A.B. 65	C	Jan Crandy	Written Testimony
A.B. 65	D	Nicole Rourke	Proposed Amendment
A.B. 65	E	Gary Lenkeit	Proposed Amendment
A.B. 65	F	Antonio Quiroz	Letter of Opposition
A.B. 65	G	Michele Tombari	Letter of Opposition