

*Association of*



***Professional  
Behavior Analysts***

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September 23, 2013

The Honorable Presiding Justice Joan Dempsey Klein  
and Associate Justices H. Walter Croskey and Patti S. Kitching  
Court of Appeal of the State of California  
Second Appellate District, Division Three  
Ronald Reagan State Building  
300 S. Spring Street  
2<sup>nd</sup> Floor, North Tower  
Los Angeles, CA 90013

Re: September 10, 2013 opinion in Consumer Watchdog et al. v. California  
Department of Managed Health Care et al.  
2d Civ. No. B232338 (Los Angeles Super. Ct. No. BS121397)

Honorable Justices Klein, Croskey, and Kitching:

The Association of Professional Behavior Analysts (APBA) is an international membership organization for professional practitioners of applied behavior analysis (ABA) and others with an interest in ABA. On behalf of our constituents in California and our Affiliate, the California Association for Behavior Analysis, we respectfully urge you to reconsider the assertions in the above-referenced opinion that the practice of behavior analysis is the practice of psychology, and that CA professionals certified by the Behavior Analyst Certification Board (BACB) have been engaging in the unlicensed practice of psychology. Unless it is modified promptly, the opinion will cause serious hardship for BACB-certified practitioners in CA who are likely to fear that they will be in legal jeopardy if they continue practicing. That will in turn harm the thousands of recipients of services provided by those practitioners, the people who are employed by those practitioners, and the entities that are required by law to see that California citizens receive ABA services from qualified professionals (e.g., public and private health plans; the Departments of Insurance, Managed Health Care, and Developmental Services).

The practice of behavior analysis is in fact distinct from the practice of psychology. That fact was confirmed in a written opinion issued by legal counsel for the California Department of Consumer Affairs (the state agency that is responsible for licensing clinical psychologists) in February 2000. Since that time, the California Code of Regulations governing the Department of Developmental Services has included specific 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 description of the practice of behavior analysis in those regulations is very different from the description of the practice of clinical psychology as defined in the same regulations. Additionally, the DDS regulations specifically prohibit behavior analysts from practicing psychology (California Code of Regulations, Title 17, Division 2, §54342).

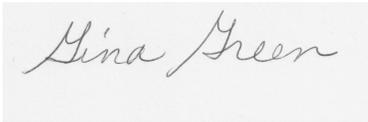
Evidence that the practice of behavior analysis is not the practice of psychology includes the following:

- Behavior analysis is 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.
- The practice of ABA has long been established as a distinct profession. It originated in the experimental analysis of behavior and developmental psychology, not clinical psychology (the area in which the large majority of licensed psychologists are trained).
- Although some college and university programs that train behavior analysts are located in departments of psychology, many reside in other academic departments (e.g., behavior analysis, human development, education, counseling, medicine, sociology, social work, human services). Data collected by the BACB shows that only about 50% of ABA practitioners credentialed by the BACB have degrees in psychology.
- The BACB has conducted thorough practice analysis studies to identify the knowledge, skills, and abilities required to practice the profession of ABA. Those studies have involved several panels of expert behavior analysts and extensive surveys completed by thousands of practicing behavior analysts. The resulting Task List (see <http://www.bacb.com/index.php?page=100248>) reflects the profession's consensus as to the competencies required to practice ABA. It is used by the BACB to set degree, coursework, experiential training, and examination requirements for obtaining BACB certifications. It is important to note that the BACB Task List does not include any references to psychology or behavior modification.
- A recent practice analysis study for licensed psychologists conducted for the Association of State and Provincial Psychology Boards (available at [http://c.ymcdn.com/sites/www.asppb.net/resource/resmgr/EPPP\\_/ASPPB\\_PA\\_July\\_2010.pdf](http://c.ymcdn.com/sites/www.asppb.net/resource/resmgr/EPPP_/ASPPB_PA_July_2010.pdf)) did not include behavior analysis, applied behavior analysis, or even

behavioral psychology among the major areas of training or practice for licensed psychologists. Comparing the resulting task list to the BACB task list reveals that there is almost no overlap between the two.

In sum, practitioners of behavior analysis do not do what most licensed clinical psychologists do unless the behavior analysts are also licensed in psychology (very few are). Requirements for obtaining and maintaining professional credentials in the practice of behavior analysis are very different from requirements for professional credentials in the practice of psychology. Those distinctions have been recognized by the CA Departments of Consumer Affairs and Developmental Services for over a decade. They are also embodied in the state's autism insurance law. Clarification by this Court that BACB certificants are not practicing psychology illegally is essential to enable those professionals to continue to provide vital services and to enable state agencies to meet their legislated obligations regarding ABA services.

Sincerely yours,

A rectangular box containing a handwritten signature in cursive script that reads "Gina Green".

Gina Green, PhD, BCBA-D  
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## PROOF OF SERVICE

STATE OF CALIFORNIA  
COUNTY OF LOS ANGELES

Re: *Consumer Watchdog et al. v. California Department of Managed Health  
Care et al.*, 2<sup>nd</sup> Civ. No. B232338, (L.A.S.C. Case No. BS121397)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 2701 Ocean Park Blvd., Santa Monica, CA 90405.

On September 24, 2013 I served the foregoing document described as **APBA Amicus Support for Reconsideration Letter** on all appropriate parties in this action, by the method stated.

If U.S. Mail service is indicated, by placing this date for collection for mailing true copies in sealed envelopes, first-class postage prepaid, addressed to each person as indicated, pursuant to Code of Civil Procedure section 1013a(3). I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing contained in the affidavit.

If electronic-mail service is indicated, by causing a true copy to be sent via electronic transmission from my computer network in Portable Document Format (PDF) to the this date to the e-mail address(es) stated, to the attention of the person(s) named.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on September 24, 2013, at Santa Monica, California.

  
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Jason Roberts

*Consumer Watchdog et al., v. California Department of Managed HealthCare*  
2<sup>nd</sup> Civ. No. B232338

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