BEHAVIOR ANALYST CERTIFICATION BOARD®
7991 Shaffer Parkway, Suite 202, Littleton, CO 80127 USA
Tel. 850-765-0905 | www.BACB.com

September 24, 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
2nd Floor, North Tower
Los Angeles, CA 90013

Re: Amicus support for Reconsideration in Consumer Watchdog et al. v. California Department of Managed Health Care et al.
2d Civ. No. B232338 (Los Angeles Super. Ct. No. BS121397)

Your Honor,

As the Chief Executive Officer of the Behavior Analyst Certification Board ("BACB"), I appreciate the opportunity to submit this Amicus letter in support of the request for reconsideration in *Consumer Watchdog et al. v. California Department of Managed Health Care et al.* I will focus my comments on one point -- applied behavior analysis ("ABA") is a separate and distinct profession, not part of, or a subset of, any another profession (in this case, psychology). The practice of ABA originated in the experimental analysis of behavior and developmental psychology, not clinical psychology, as psychology is statutorily defined in California. In the half-century since its origins, ABA has matured as a fully independent profession. Behavior analysis has its own philosophical assumptions and conceptualizations, research journals, professional associations, and professional credentials -- all separate from psychology.

It is true that "behavior modification," an outdated term that was used to describe ABA in the 1960s, is included in the legislative scope of practice of (clinical) psychology in California. However, it is important to note that it is not uncommon for related disciplines to have overlapping scopes of practice. Indeed, the scopes of practice of psychology, clinical social work, marriage and family therapy, and professional clinical counseling all substantially overlap in California. Furthermore, the February 2000 opinion of the Legal Affairs Division of the State of California, Department of Consumer Affairs, finding that "[w]hile behavior analysts are engaged in behavior modification, it is in a context and methodology different than that of psychologist or marriage, family and child counselors" supports the position that ABA is a separate and distinct profession. This finding is consistent when considered in the context of how the services are delivered. Unlike with psychologists or counselors, clients do not typically receive services in a behavior analyst's office. Services are instead provided directly in the client's home or school

environments, among others. Indeed, in the case of ABA treatment of childhood autism, comprehensive services may exceed 30 hours per week across multiple environments.

It is important to note that the field of psychology does not generally include a standard university requirement for coursework or supervised experience in ABA to qualify for doctoral degrees or licensure. Applied behavior analysis is not listed in the 2005 or 2010 Job Task Analysis of the Association of State and Provincial Psychology Boards for the Examination for Professional Practice in Psychology. *See, http://www.asppb.net/files/ASPPB_PA_July_2010.pdf.*
In fact, "Behavioral analyses" is only mentioned in relation to the 2005 report in regards to a listing of Psychologists' Roles, and then only among examples of procedures, as follows:

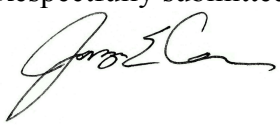
4. *Develop procedures and/or instruments (e.g., behavioral analyses; structured interviews; surveys and questionnaires; work samples; and tests of knowledge, skills, and abilities) for the assessment of relevant characteristics of individuals, groups, jobs, organizations, educational and social institutions, and/or environments.* (*See* Appendix A (2010) - Test Specifications / Summary of EPPP Content Areas Psychologists' Roles of the Current ASPPB Information for Candidates, identifying the 2005 Content Areas.)

The isolated reference to "Behavioral Analyses" in the 2005 report is manifestly not a reference to ABA as a term of art, but a reference to such analyses as merely one procedure to measure relevant characteristics of individuals, groups, and organizations. It does not appear that the term was intended to bring the wide range of disciplines engaged in such evaluations (including economists, business, marketing, social workers) within the ambit of the regulated practice of psychology.

Based on the long-established understanding that ABA does not constitute the practice of psychology, laws have been implemented and various institutional protocols and procedures have developed that would be upended if a different view were now adopted. A review of state licensing laws is equally important. Of the 13 states that have enacted ABA licensure, the majority have housed their licensure boards in non-psychology boards or agency divisions.

We are gravely concerned that defining ABA as the practice of psychology -- an erroneous classification as described above -- will negatively impact the 2,016 BACB certificants in California who have rightly believed they were working under sanctioned conditions and significantly disrupt the availability of greatly needed services within the state.

Respectfully submitted,



James E. Carr, PhD, BCBA-D
Chief Executive Officer

PROOF OF SERVICE

STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

Re: *Consumer Watchdog et al. v. California Department of Managed Health Care et al.*, 2nd 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 **BACB 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.

Jason Roberts

Service List

Consumer Watchdog et al., v. California Department of Managed HealthCare
2nd Civ. No. B232338

Holly Pearson [U. S. Mail] Debra L. Denton Drew A. Brereton California Dept. of Managed Health Care 980 Ninth Street, Suite 500 Sacramento, CA 95814 Tel: (916) 323-0435 Fax: (916) 323-0438 E-mail: dbrereton@dmhc.ca.gov *Attorneys for Defendants, Respondents and Cross-Appellants*	Kamala D. Harris [U. S. Mail] Julie Weng-Guttierrez Leslie P. McElroy Carmen D. Snuggs Deputy Attorneys General Office of the Attorney General 300 S. Spring Street, Suite 1700 Los Angeles, CA 90013 Tel: (213) 897-2450 Fax: (213) 897-2805 Email: Carmen.Snuggs@doj.ca.gov *Attorneys for Defendants, Respondents and Cross-Appellants*
Harvey Rosenfield [U. S. Mail] Pamela M. Pressley Jerry Flanagan Consumer Watchdog 2701 Ocean Park Boulevard, Suite 112 Santa Monica, CA 90405 Tel: (310) 392-0522 Fax: (310) 392-8874	Robert Barnes [U. S. Mail] Kaye Scholer LLP 1999 Avenue of the Stars, Suite 1700 Los Angeles, CA 90067 Tel: (310) 788-1000 Fax: (310) 788-1200 Email: rbarnes@kayescholer.com *Attorney for Amicus curiae Autism Deserves Equal Coverage*
Daniel R. Unumb [U. S. Mail] Autism Speaks 863 Corley Mill Road Lexington, SC 29072 Tel: (803) 520-8080 Fax: (803) 520-6531 Email: daniel.unumb@autismspeaks.org *Attorney for Amicus curiae Autism Deserves Equal Coverage*	Adam Cole [U. S. Mail] Patricia Tenoso Sturdevant Department of Insurance 45 Fremont Street, 23rd Floor San Francisco, CA 94105 Tel: (415) 538-4010 Fax: (415) 904-5889 Email: colea@insurance.ca.gov *Attorneys for Amicus curiae Department of Insurance*
Una Lee Jost [U. S. Mail] Law Office of Stephen P. Sommers 301 North Lake Avenue, 7th Floor Pasadena, CA 91101 Tel: (626) 793-3995 Fax: (626) 796-0107 *Attorneys for Amicus curiae California Association for Behavior Analysis*	California Association [U. S. Mail] of Health Plans 1415 L Street, Suite 850 Sacramento, CA 95814
Clerk, Department 85 [U. S. Mail] Los Angeles Superior Court 111 N. Hill Street Los Angeles, CA 90012	Office of the Clerk [U.S. Mail] California Supreme Court 350 McAllister Street San Francisco, CA 94102-4797

Fredric D. Woocher Beverly Grossman Strumwasser & Woocher LLP 10940 Wilshire Blvd., Ste. 2000 Los Angeles, California 90024	