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**Testimony of Max Foster, Executive Director  
Kansas Behavioral Sciences Regulatory Board  
To The House Health and Human Services Committee  
Regarding HB 2149  
February 15, 2017**

Good Day Mister Chairperson and Committee Members:

I am Max Foster, the Executive Director of the Kansas Behavioral Sciences Regulatory Board (BSRB). Thank you for the invitation to testify today to brief the committee on the structure of the (BSRB), and to offer information to the committee as to why the BSRB is **opposed** to the creation of the social work examining committee within the BSRB as contained in HB 2149.

**What is the BSRB?**

The BSRB is the licensing board for most of the state's mental health professionals including; licensed psychologists, master level psychologists, clinical psychotherapists, bachelor, master and specialist clinical level social workers, master and clinical level professional counselors, master and clinical level marriage and family therapists, bachelor, master and clinical level addiction counselors, assistant behavior analysts and behavior analysts.

**History of the Board**

The BSRB traces its origin to 1980 – when the Board of Psychology and the Social Work Board were combined into one regulatory body that was named the BSRB. In 1987, the regulation of Masters Level Psychologists and Professional Counselors were added to the BSRB. In 1992, the regulation of Marriage and Family Therapists became a function of the BSRB. In 2011, regulation of Addiction Counselors was made a part of the BSRB and effective July 1, 2016 the BSRB started to license Behavioral Analysts.

**Board Members**

There are twelve individuals who are members of the Board. These individuals serve at the pleasure of the Governor and serve staggered four year terms. An individual may serve up to a maximum of two terms.

Here is the list of current Board members:

<u>Name</u>	<u>Profession/Public</u>	<u>Term</u>	<u>Expiration</u>
Dr. Grant Edwards, Chair	Psychology	2 <sup>nd</sup>	2018
Cheryl Reynolds, Vice-Chair	Public Member	2 <sup>nd</sup>	2018
Kathy Armstrong	Public Member	2 <sup>nd</sup>	2019
Dr. Barbara Callahan	Psychology	2 <sup>nd</sup>	2019
Jill Craven	Public Member	2 <sup>nd</sup>	2020
Dr. Todd Frye	Professional Counseling	2 <sup>nd</sup>	2020
Kathryn Herzog	Public Member	2 <sup>nd</sup>	2020
Dr. Terry Pfannenstiel	Marriage and Family Therapy	2 <sup>nd</sup>	2018
Larry Salmans	Masters Level Psychology	2 <sup>nd</sup>	2019
Marcia Simoneau	Social Work	2 <sup>nd</sup>	2019
Deb Stidham	Addiction Counseling	1 <sup>st</sup>	2020
Carolyn Szafran	Social Work	1 <sup>st</sup>	2018

My position serves at the pleasure of the Board and I hire and evaluate the staff.

**Our Mission**

The mission of the BSRB, in accordance with the intent of the Kansas Legislature, is to **protect and serve the consumers** of services offered by BSRB licensees, through the issuance of licenses, resolution of complaints and the creation of appropriate regulations, accomplished through efficiency, fairness and respect to all those involved.

**Professions Licensed**

<b>License Type</b>	<b># Licensees</b>
Psychologist (PhD)	911
	<b>911</b>
Associate Social Worker	21
Bachelors Level Social Worker	1,758
Masters Level Social Worker	3,663
Clinical Level Social Worker	2,021
	<b>7,463</b>
Professional Counselor	744
Clinical Professional Counselor	555
	<b>1,299</b>
Masters Level Psychologist	303
Clinical Psychotherapist	296
	<b>599</b>
Marriage and Family Therapist	355
Clinical Marriage and Family Therapist	520
	<b>875</b>
Addiction Counselor	744
Masters Level Addiction Counselor	215
Clinical Addiction Counselor	532
	<b>1,491</b>
Assistant Behavior Analyst	15
Behavior Analyst	111
	<b>126</b>
<b>Total Licensees</b>	<b>12,764</b>

*Note: The professions of Social Worker, Addiction Counselor and Assistant Behavioral Analyst are the only professions in which a person can obtain a license with only a Bachelor’s degree. A doctoral level Psychologist and any individual licensed at the “clinical” level may work independently.*

## **Agency Budget**

The BSRB is funded exclusively with fees. There are no federal funds, nor is there any State General Fund contained in our funding sources. Ten percent of all revenue received is transferred to the State General Fund prior to the revenue being made available for agency use.

FY 2017 Level	\$733,843
FY 2018 Level	\$750,560

It should be noted that 74% of the agency budget is expended for salaries and wages for the agency's nine employees.

## **Advisory Committees**

There is an advisory committee to the Board for each profession licensed by the Board. Each advisory committee is chaired by the Board member for that profession. Other members of the advisory committee could include educators, and practitioners (active as well as retired). These individuals work on tasks provided to them by the Board (e.g. regulations) and provide input to the Board from the perspective of that profession.(e.g. supervisory training requirements). Committee members serve at the pleasure of the Chairperson of the Board and may serve a maximum of four – two year terms.

## **Outreach Activities of the Board**

We actively participate in national associations for each profession to assure national trends / continuity of public protection efforts is maintained.

We coordinate an annual roundtable with Kansas educators (university level) from the programs who instruct potential BSRB licensees. This gives educators the opportunity to bring concerns regarding licensure requirements to the attention of the Board. This forum provides an open dialogue between all parties involved.

As an example of a product of these roundtable activities was the development of a tri-fold licensing brochure for new students.

We regularly present information to students in their classroom during their final year of study concerning licensure requirements and the application process. A general overview of the complaint process is also discussed at this time. The Board makes it known that we will make ourselves available to all universities who request such assistance.

## **Investigation Activity**

As far as the enforcement of our statutes and regulations are concerned, FIRST it is the goal of the BSRB to educate. When educational outreach is unsuccessful, and violations of our statutes and regulations occur, the Board initiates investigative activity.

All reports of alleged violation are reviewed, and if a determination is made to proceed with the investigation, the case is docketed. The BSRB has a committee composed of 5 current Board members that reviews the information presented by the work of our Special Investigator, and usually makes one of three decisions:

- **The facts do not support a violation**  
If the facts do not support a violation, the committee usually dismisses the case without further action. The committee can issue a cautionary letter.
- **The facts do support a violation**  
If the facts do support a violation, the committee can issue a cautionary letter for a non-disciplinary closure, propose a Consent Agreement and Order, propose a Summary Proceeding Order or propose an adjudicative hearing.

- **The committee does not have sufficient evidence to make a decision**

The case is returned to the investigator for follow up if the committee does not have sufficient evidence to make a decision.

### Examples of Violations

- Practicing without a license
- Falsifying continuing education requirements or renewing license prior to completing all CEU requirements.
- Failing to report child or elder abuse in a reasonable length of time
- Exercising undue influence over or making sexual advances toward or engaging in physical intimacies with any client
- Revealing information, a confidence, or a secret of any client, or failing to protect the confidences, secrets or information contained in a client's records. (except when disclosure is required by law; failure to disclose presents a clear and present danger to the health or safety of an individual or the public; or if the licensee is a party to a civil, criminal or disciplinary investigation in which case disclosure is limited to that action).

### Sanctions Available

The Board has statutory authority to revoke, suspend, limit, condition, refuse to issue a license, or refuse to renew a license. It can also assess an administrative penalty in an amount not to exceed \$1,000.00 and assess actual costs. In addition, it can revoke the license or registration when the license has been voluntarily surrendered when an investigation or charges of misconduct are pending.

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## **Brief Summary of HB 2149**

HB 2149 creates the social work examining committee within the BSRB. This committee would consist of five members who are licensed to engage in the practice of social work and two members who represent the public. Committee members would be appointed by the governor. The bill outlines specific duties and responsibilities of the social work examining committee concerning licensure and regulation of social workers under the social workers licensure act. The BSRB shall serve as the administrative and enforcement agency of the examining committee in all respects. The number of members of the BSRB would be reduced from 12 to 10 as a result of the elimination of the board members who currently represent the profession of social work.

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## **Specific Comments Regarding Provisions Contained in HB 2149**

### **Will there need to be a clear delineation of services provided by BSRB staff?**

HB 2149 has a provision that states the BSRB shall serve as the administrative and enforcement agency of the examining committee in all respects. Currently, BSRB staff members handle all regulatory functions for seven mental health professions. There isn't one staff member that works exclusively in the area of social work licensure and regulation. Under the provision of HB 2149 will it be necessary for staff to identify and keep track of specific job tasks associated only with the profession of social work? It is not possible for two boards to provide authority over and direction to a staff.

**What administrative functions will be performed by the social work examination committee?**

For example, what input will the social work examination committee have in the selection of BSRB employees? Specifically, regarding the position of Executive Director of the BSRB, will the social work examination committee participate in the process of selecting the Executive Director and evaluating his/ her performance?

**How will general policy decisions concerning the function of the BSRB be handled and maintained?**

Since the social work examining committee will reside within the BSRB, will there be a requirement for specific policies that only relate to the social work profession? Will the social work examining committee desire input into all general BSRB policies and procedures? Will this lead to duplication of efforts and services?

**HB 2149 appears to imply that only social workers can regulate the social work profession.**

One of the current strengths of the BSRB is that there are eight licensed professionals and four public members who currently serve on the board. These previously identified board members provide an excellent representation of a diverse scope of mental health disciplines – and combined with the presence of the four members representing the public (who are truly public and independent) - we can be assured that the primary mission of this agency – public protection – is always first and foremost.

**Promotion versus regulation.**

It is essential that the primary function for a regulatory board to exist is never forgotten. Recently, in the State of North Carolina, the NC Dental Board – which was made up primarily of board members elected by dentists in North Carolina – was found to be in violation of antitrust laws because they were more interested in self-promotion rather than consumer protection. They were also found to not have sufficient state oversight of their activity. As a result, regulatory boards across the country have been urged to review this decision and assess the impact on their particular board structure. The current structure of the BSRB, in which individuals express interest in serving on the board, and contact the Governor’s office, rather than have their name submitted by a professional organization to the Governor, provides for a separation of self-promotion versus consumer protection.

**There is a possibility of an increase in future costs if HB 2149 is passed.**

Passage of HB 2149 would engage the possibility of the other professions we regulate to follow suit with their own stand-alone board. If this occurs, future costs would rise, and public protection would not necessarily be heightened.

**Dual licensed individuals should not have two boards to deal with.**

The BSRB has 1018 individuals who have more than one license with this agency. 506 of these individuals are social workers. Currently, licensure activity, investigative activity and policy guidelines are consistent for each profession licensed. In disciplinary matters involving dually licensed social workers, conflicting disciplinary actions may occur. Creation of a potential separate set of rules and policies for social work is not needed and could create confusion with dual licensed individuals.

**The BSRB is opposed to HB 2149**

In closing, Mister Chairman and Committee Members, I wish to thank you for the opportunity to testify before you to provide an overview of the operation and activity of the Kansas Behavioral Sciences Regulatory Board as well as give you information as to why the Board is **opposed** to the creation of the social work examining committee within the BSRB as contained in HB 2149.

At this time I will be happy to stand for questions.