

SENATE No. 02217

Senate, April 12, 2012 – New draft of Senate, No. 108 and House, Nos. 1002 and 1901 reported from the committee on Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to the licensure of behavior analysts.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 13 of the General Laws is hereby amended by adding the
2 following sections:-

3 Section 109. (a) There shall be within the division of professional licensure a board of
4 registration of applied behavior analysts, in this section and in sections 110 to 114, inclusive,
5 hereinafter called the board, consisting of nine members appointed by the governor for terms of
6 three years. Members of the board shall be residents of the Commonwealth and citizens of the
7 United States. Upon the creation of the Board, two members of the board shall be Doctoral-level
8 Board Certified Behavior Analysts (BCBA-Ds), four shall be Board Certified Behavior Analysts
9 (BCBAs), one shall be a Board Certified Assistant Behavior Analysts (BCaBAs), and two
10 members of said board shall be selected from and shall represent the public, subject to the
11 provisions of section nine B of chapter 13. After the first year, five members of the board shall
12 be Licensed Applied Behavior Analysts and two shall be Licensed Assistant Applied Behavior

13 Analysts under the provisions of sections two hundred and sixty-three to two hundred and sixty-
14 nine, inclusive, of chapter one hundred and twelve and shall have been actively engaged in the
15 practice of behavior analysis for the five years next preceding their appointment.

16 (b) Of the initial members appointed to said board, three shall serve for terms of three
17 years, three shall serve for terms of two years, and three shall serve for a term of one year. Each
18 member of said board shall hold office until his successor has been qualified. A vacancy in the
19 membership of the board shall be filled for the unexpired term in the manner provided for the
20 original appointment. No member shall serve more than two consecutive full terms. A member
21 appointed for less than a full term may serve 2 full terms in addition to such part of a full term.

22 (c) The governor shall have the power to remove from office any member of the board
23 for cause; but no board member may be so removed without being informed in writing at least
24 thirty days in advance of the reasons for his removal and of his right to a public or private
25 hearing with counsel.

26 Section 110. The board shall at its first meeting and, annually thereafter, organize by
27 electing from among its members, by majority vote, a chairman, a vice-chairman, and a
28 secretary. Such officers shall serve until their successors are elected and qualified. The board
29 shall hold at least two meetings each year, but additional meetings may be held upon the call of
30 the chairman, or the secretary, or at the written request of any three members of the board. Five
31 members of the board shall constitute a quorum. The members of the board shall serve without
32 compensation but each member shall be reimbursed for actual expenses reasonably incurred in
33 the performance of his/her duties as a member on behalf of the board. The board shall be
34 empowered to hire such assistants as it may deem necessary to carry on its activities.

35 Section 111. The board shall have the following powers and duties: (i) to pass upon the
36 qualifications of all applications for licenses under sections two hundred and sixty-three to two
37 hundred and sixty-nine, inclusive, of chapter one hundred and twelve, and issue a license to
38 those who are determined to be qualified as Licensed Applied Behavior Analysts or Licensed
39 Assistant Applied Behavior Analysts (ii) to adopt rules and promulgate regulations governing
40 the licensure of behavior analysts; (iii) to establish eligibility, renewal and examination
41 requirements, which will include current certification by the Behavior Analyst Certification
42 Board®, Inc. (BACB), its successor or other equivalent nationally accredited behavior analyst
43 certification board, as determined by the board; (iv) to define by regulation the appropriate
44 standards for education and experience necessary to qualify for licensing, including, but not
45 limited to, continuing professional education requirements for licensed behavior analysts, which
46 shall be no less stringent than those of the BACB, its successor or other equivalent nationally
47 accredited behavior analyst certification board, as determined by the board; and for the conduct
48 and ethics which shall govern the practice of behavior analysis; (v) to receive, review, and
49 approve or disapprove applications for a reciprocal license to applicants who are licensed or
50 certified as an applied behavior analyst in another state and who have demonstrated
51 qualifications which equal or exceed those required pursuant to sections two hundred and sixty-
52 three to two hundred and sixty-nine, inclusive, of chapter one hundred and twelve, provided that
53 no reciprocal license shall be granted under this section to an applicant unless the state in which
54 the applicant is licensed affords reciprocal treatment to persons who are residents of the
55 Commonwealth of Massachusetts and who are licensed pursuant to said chapter one hundred and
56 twelve; (vi) (vi) to fine, censure, revoke, suspend or deny a license, place on probation,
57 reprimand or otherwise discipline licensees for violations of the code of ethics or the rules of the

58 board in accordance with sections two hundred and sixty-six to two hundred and seventy-seven,
59 inclusive of chapter 112, but the board shall not have the power of subpoena; (vii) to summarily
60 suspend the license of a licensee who poses an imminent danger to the public but a hearing shall
61 be afforded to the licensee within 7 days of an action by the board to determine whether such
62 summary action is warranted; and (viii) to perform such other functions and duties as may be
63 required to carry out this section.

64 Section 112. The board shall take no action with respect to the granting of a license or its
65 revocation or suspension without the concurrence of at least five members of the board. The
66 board shall adopt a seal which shall be affixed to all licenses issued by the board.

67 Section 113. The board shall make available to the public a list of Licensed Applied
68 Behavior Analysts and Licensed Assistant Applied Behavior Analysts.

69 Section 114. The members of the board, as well as the BACB, its officers and
70 employees, shall be indemnified by the Commonwealth for all actions taken as part of their
71 responsibilities described herein.

72 SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the
73 following sections:-

74 Section 263. As used in sections two hundred and sixty-three to two hundred and
75 seventy-seven, inclusive, the following words, unless the context clearly indicates otherwise,
76 shall have the following meanings:

77 "Assistant Applied Behavior Analyst", an individual who by training, experience, and
78 examination meets the requirements for licensing by the board and is duly licensed to engage in
79 the practice of behavior analysis under the supervision of a licensed Behavior Analyst.

80 "Applied Behavior Analyst", an individual who by training, experience and examination
81 meets the requirements for licensing by the board and is duly licensed to engage in the practice
82 of behavior analysis in the Commonwealth.

83 "Board", the board of registration of behavior analysts.

84 "Nationally Accredited Behavior Analyst Certification Board", a non-profit organization
85 with a national behavior analyst certification program that is accredited by the American
86 National Standards Institute (ANSI) or the National Commission for Certifying Agencies
87 (NCCA).

88 "Recognized educational institution", a degree-granting college or university which is
89 accredited by a Regional Board or Association of Institutions of higher education approved by
90 the Council on Post Secondary Education of the United States Department of Education, or
91 which is chartered to grant masters or doctoral degrees by the Commonwealth. Such institutional
92 accreditation shall exist at the time that the degree is granted or within two years thereafter.

93 "The scope of practice of applied behavior analysis", means the design, implementation
94 and evaluation of systematic instructional and environmental modifications, using behavioral
95 stimuli and consequences, to produce socially significant improvements in human behavior,
96 including the direct observation and measurement of behavior and the environment, the
97 empirical identification of functional relations between behavior and environmental factors,
98 known as functional assessment and analysis, and the introduction of interventions based on

99 scientific research and which utilize contextual factors, antecedent stimuli, positive
100 reinforcement and other consequences to develop new behaviors, increase or decrease existing
101 behaviors, and elicit behaviors under specific environmental conditions that are delivered to
102 individuals and groups of individuals. The practice of applied behavior analysis does not include
103 psychological testing, neuropsychology, diagnosis of psychiatric conditions, psychotherapy,
104 cognitive therapy, sex therapy, psychoanalysis, or hypnotherapy, as treatment modalities, nor
105 does it include academic teaching by college or university faculty.

106 Section 264 (a). The standards to qualify for the designation of Applied Behavior
107 Analyst include:

108 1. A Doctoral or Master's Degree from a recognized educational institution which
109 includes specific graduate level instruction in behavior analysis or a Master's degree combined
110 with successful completion of a BACB approved course sequence or coursework which
111 otherwise meets the BACB standards.

112 2. The program in behavior analysis used to meet the coursework standards for licensure
113 under this section must be a BACB approved coursework sequence or meet the coursework
114 standards established by the BACB, its successor or other equivalent nationally accredited
115 behavior analyst certification board, as determined by the board.

116 3. The successful completion of a practicum or supervised experience in the practice of
117 behavior analysis that meets the standards established by the BACB, its successor or other
118 equivalent nationally accredited behavior analyst certification board, as determined by the board.

119 4. The successful completion of the BACB examination for Board Certified Behavior
120 Analysts or other equivalent nationally accredited examination related to the principles and
121 practice of the profession of behavior analysis, as determined by the board.

122 (b) For the first three years after enactment of this legislation, any applicant who is a
123 “Board Certified Behavior Analyst®” (BCBA) certificant of the BACB or who has graduated
124 with a Doctoral Degree from a recognized educational institution whose doctoral program
125 included a minimum of 60 graduate credit hours in courses directly related to the study of
126 applied behavior analysis or who has graduated with a Master’s Degree from a recognized
127 educational institution whose master’s program included a minimum of 30 graduate credit hours
128 in courses directly related to the study of behavior analysis and can demonstrate that s/he has
129 practiced as an applied behavior analyst continuously for the preceding five years will be eligible
130 to be granted status as a licensed Applied Behavior Analyst. An applicant granted licensure
131 under this section will be permitted to renew said licensure biennially provided that the applicant
132 complete and provide evidence to the board of the proscribed minimum number of hours of
133 continuing education as specified in section 269. All candidates applying for licensure more
134 than three years after enactment of this legislation must meet the requirements noted above in
135 Section 264(a).

136 Section 265 (a).The standards to qualify for the designation of Assistant Applied
137 Behavior Analyst include:

138 1. A Bachelor’s Degree from a recognized educational institution which includes specific
139 coursework in behavior analysis or a Bachelor’s degree combined with successful completion of
140 a BACB approved course sequence or coursework which otherwise meets the BACB standards.

141 2. The program in behavior analysis used to meet the coursework standards for licensure
142 under this section must be a BACB approved coursework sequence or meet the coursework
143 standards established by the BACB, its successor or other equivalent nationally accredited
144 behavior analyst certification board, as determined by the board.

145 3. The successful completion of a practicum or supervised experience in the practice of
146 behavior analysis that meets the BACB eligibility requirements;

147 4. The successful completion of the BACB nationally accredited examination for Board
148 Certified Assistant Behavior Analyst.

149 (b) For the first three years of enactment of this legislation, any applicant is a “Board
150 Certified Assistant Behavior Analyst (BCaBA) certificant of the BACB will be eligible to be
151 granted status as a licensed Assistant Applied Behavior Analyst. Thereafter, applicants must
152 meet the requirements noted above in Section 265(a).

153 Section 266. Each person desiring to obtain a license as an Applied Behavior Analyst or
154 as an Assistant Applied Behavior Analyst shall make application to the board upon such form
155 and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the
156 board that such person is of good moral character, including, but not limited to the fact that such
157 applicant has not been convicted of a felony, which shall include a judgment, an admission of
158 guilt or a plea of nolo contendere to such charges, or of an offense under the laws of another
159 jurisdiction, which, if committed in the Commonwealth of Massachusetts, would be a felony
160 unless the following apply:

161 (i) At least 10 years have elapsed from the date of conviction.

162 (ii) The applicant satisfactorily demonstrates to the Board that the applicant has made
163 significant progress in personal rehabilitation since the conviction, so that licensure of the
164 applicant would not be expected to create a substantial risk of harm to the health and safety of
165 the applicant's clients or the public or a substantial risk of further criminal violations.

166 Section 267. Notwithstanding the provisions of sections two hundred sixty-four and two
167 hundred and sixty-five, the board may issue a license without examination to an applicant who
168 presents evidence that he/she has been licensed or certified as a Behavior Analyst by a similar
169 board of another jurisdiction whose standards are not lower than those required in the
170 Commonwealth.

171 Section 268. The board may grant a temporary license for a period not to exceed one
172 year to a Behavior Analyst with prior legal residence outside the Commonwealth to practice
173 within the Commonwealth, provided he/she registers with the board and practices in consultation
174 with, or under the supervision of, a licensed Applied Behavior Analyst or possesses
175 qualifications acceptable to the board.

176 Section 269. Licenses shall be valid for two years and shall be renewed biennially. On or
177 before April fifteenth every two years, the secretary of the board shall forward to each licensed
178 Applied Behavior Analyst and Assistant Applied Behavior Analyst an application form for
179 renewal. Upon the receipt of the completed form and the renewal fee on or before June first, the
180 secretary shall renew the license for three years commencing July first. Pursuant to the renewal,
181 the applicant shall present to the board documented evidence of the completion of a minimum
182 number of hours of continuing education programs as specified by the board and which are
183 designed to improve the professional competence of the licensee. Such programs shall be

184 completed during the licensed period immediately prior to renewal. Such CEUs must meet the
185 standards specified by the BACB, its successor or other equivalent nationally accredited
186 recognized behavior analyst certification board, as determined by the board. Any application for
187 renewal of a license which has expired shall require the payment of a new application fee and the
188 applicant must meet all of the requirements for licensure as delineated in sections 264(a) and
189 sections 265(a).

190 Section 270. The following fees shall be determined annually by the commissioner of
191 administration under the provision of section three B of chapter seven and shall be collected by
192 the board: (a) application fee; (b) initial license fee; (c) temporary license fee; and (d) triennial
193 biennial renewal fee.

194 Section 271. Nothing in sections two hundred and sixty-three to two hundred and
195 seventy-seven, inclusive, shall be construed to prevent qualified members of other professions or
196 occupations such as physicians, psychologists, teachers, members of the clergy, authorized
197 Christian Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical
198 counselors, adjustment counselors, speech pathologists, audiologists or rehabilitation counselors,
199 from doing work of an applied behavior analytic nature consistent with the accepted standards of
200 their respective professions, provided, however, that they do not hold themselves out to the
201 public by any title or description stating or implying that they are Applied Behavior Analysts or
202 that they are licensed to practice applied behavior analysis without holding said license.

203 Section 272. Those engaged in the practice of applied behavior analysis within the
204 Commonwealth of Massachusetts shall comply with the standards of ethical practice as adopted

205 by the BACB, its successor or other equivalent nationally accredited behavior analyst
206 certification board, as determined by the board.

207 Section 273. As provided in the Individuals with Disabilities Education Act (2004), the
208 Commonwealth of Massachusetts Department of Elementary and Secondary Education (DESE)
209 will establish educational licensure status for licensed applied behavior analysts relative to the
210 provision of special educational services provided at all levels within the Commonwealth. DESE
211 shall adopt the standards provided herein as the elements to meet said educational licensure.

212 Section 274. Any person not licensed to practice applied behavior analysis who holds
213 himself out to be an applied behavior analyst or who uses the title applied behavior analyst or
214 engages in the practice of applied behavior analysis shall be punished by a fine of not more than
215 five hundred dollars, or by imprisonment of not more than three months, or both such fine and
216 imprisonment.

217 Section 275. The penalties in section two hundred and forty-eight shall not apply to:
218 faculty or students of applied behavior analysis currently enrolled in an recognized educational
219 institution which meets the educational standards of the BACB its successor or other equivalent
220 nationally accredited behavior analyst certification board, as determined by the board, or interns
221 or persons preparing for the practice of applied behavior analysis under qualified supervision in
222 such a program; provided, however, that they are designated by such titles as “applied behavior
223 analyst intern”, “applied behavior analyst trainee” or other title clearly indicating such training
224 status.

225 Section 276. The board shall investigate all complaints relating to the proper practice of
226 applied behavior analysis by any person licensed under sections two hundred and sixty-three to
227 two hundred and seventy-five, inclusive.

228 The board may, after a hearing in accordance with the provisions of chapter thirty A,
229 revoke, suspend or cancel the license, or reprimand, censure or otherwise discipline an Applied
230 Behavior Analyst or Assistant Applied Behavior Analyst licensed under said sections two
231 hundred and sixty-three to two hundred and seventy-five, inclusive, upon proof satisfactory to a
232 majority of the board that said Applied Behavior Analyst or Assistant Applied Behavior Analyst

233 (a) fraudulently procured said license;

234 (b) is guilty of an offense against any provision of the laws of the Commonwealth
235 relating to the practice of applied behavior analysis or any rule or regulation adopted thereunder;

236 (c) is guilty of conduct that places into question the applied behavior analyst's
237 competence to practice applied behavior analysis, including but not limited to gross misconduct
238 in the practice of applied behavior analysis or of practicing applied behavior analysis
239 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
240 negligence on a particular occasion or negligence on repeated occasions;

241 (d) is guilty of practicing applied behavior analysis while the ability to practice was
242 impaired by alcohol, drugs, physical disability or mental instability;

243 (e) is guilty of being habitually drunk or being or having been within a reasonable period
244 of time addicted to, dependent on, or a habitual user of narcotics, barbiturates, amphetamines,
245 hallucinogens, or other drugs having similar effects;

246 (f) is guilty of knowingly permitting, aiding or abetting an unlicensed individual to
247 perform activities requiring a license for purposes of fraud, deception or personal gain, excluding
248 activities permissible under any provision of laws of the Commonwealth or rules or regulations
249 of the board;

250 (g) has been convicted of a criminal offense which reasonably calls into question his/her
251 ability to practice behavior analysis; or

252 (h) is guilty of violating any rule or regulation of the board governing the practice of
253 applied behavior analysis.

254 (i) is guilty of violating any provision of the Professional Disciplinary and Ethical
255 Standards of the BACB, its successor or other equivalent nationally accredited behavior analyst
256 certification board, as determined by the board.

257 No person filing a complaint or reporting or providing information pursuant to this
258 section or assisting the board at its request in any manner in discharging its duties and functions
259 shall be liable in any cause of action arising out of the receiving of such information and
260 assistance; provided, however, that the person making the complaint or reporting or providing
261 said information or assistance does so in good faith and without malice. Anonymous complaints
262 submitted to the board of such violations shall not be considered.

263 If the Applied Behavior Analyst or Assistant Applied Behavior Analyst is found not to
264 have violated any of the provisions set forth in this section, the board shall forthwith order a
265 dismissal of the charges.

266 Notice in writing of a contemplated revocation or suspension of a license, or the cause
267 therefore in sufficient particularity, and of the date of hearing thereon, shall be sent by registered
268 or certified mail to the licensee at his/her last known address at least fifteen days before the date
269 of such hearing. The Applied Behavior Analyst or Assistant Applied Behavior Analyst against
270 whom a charge is filed shall have a right to appear before the board in person or by counsel, or
271 both, may produce witnesses and evidence on his/her behalf, and may question witnesses. No
272 license shall be revoked or suspended without such hearing, but the nonappearance of the
273 licensee, after notice, shall not prevent such hearing. All matters upon which the decision is
274 based shall be introduced in evidence at the proceeding. The licensee shall be notified in writing
275 of the board's decision. The board may make such rules and regulations as it deems proper for
276 the filing of charges and the conduct of hearings.

277 After issuing an order or revocation or suspension the board may also file a petition in
278 equity in the superior court in a county in which the respondent resides or transacts business, or
279 in Suffolk County, to ensure appropriate injunctive relief to expedite and secure the enforcement
280 of its order, pending the final determination.

281 Any decision the board makes pursuant to this section shall be subject to review in
282 superior court in accordance with the provisions of chapter thirty A.

283 Section 277. After three years from the date of revocation, an application for
284 reinstatement may be made to the board, which may, upon the affirmative vote of at least five of
285 its members, grant such reinstatement.