

HOUSE No. 181

The Commonwealth of Massachusetts

PRESENTED BY:
John W. Scibak

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:
An Act relative to the licensure of applied behavior analysts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
John W. Scibak	2nd Hampshire
Michael F. Dorsey	16 Priest Rd. Plymouth, MA 02360
Brian A. Joyce	Norfolk, Bristol and Plymouth
Matthew C. Patrick	3rd Barnstable
Tom Sannicandro	7th Middlesex
Denise Provost	27th Middlesex
Viriato Manuel deMacedo	1st Plymouth

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2244 OF 2007-2008.]

The Commonwealth of Massachusetts

—————
In the Year Two Thousand and Nine
—————

AN ACT RELATIVE TO THE LICENSURE OF APPLIED 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:

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

Section 101□(a) There shall be within the division of professional licensure a board of registration of applied behavior analysts, in this section and in sections 102 to 104, inclusive, hereinafter called the board, consisting of nine members appointed by the governor for terms of three years. Members of the board shall be residents of the commonwealth and citizens of the United States. Five members of the board shall be Independently Licensed Applied Behavior Analysts and two shall be Licensed Applied Behavior Analysts, under the provisions of sections two hundred and thirty-six to two hundred and fifty-two, inclusive, of chapter one hundred and twelve and shall have been actively engaged in the practice of Applied Behavior Analysis for the five years next preceding their appointment. Two members of said board shall be selected from and shall represent the public, subject to the provisions of section nine B of chapter 13.

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

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

Section 102. The board shall at its first meeting and, annually thereafter, organize by electing from among its members, by majority vote, a chairman, a vice-chairman, and a secretary. Such officers shall serve until their successors are elected and qualified.□□The board shall hold at least two meetings each year, but additional meetings may be held upon the call of the chairman, or the secretary, or at the written request of any three members of the board. Five members of the

board shall constitute a quorum. The members of the board shall serve without compensation but each member shall be reimbursed for actual expenses reasonably incurred in the performance of his/her duties as a member on behalf of the board. The board shall be empowered to hire such assistants as it may deem necessary to carry on its activities.

Section 103. The board shall have the following powers and duties: (i) to examine and pass upon the qualifications of all applications for licenses under sections two hundred and thirty-six to two hundred and fifty-two, inclusive, of chapter one hundred and twelve, and issue a license to those who are determined to be qualified as independent applied behavior analysts or applied behavior analysts; (ii) to adopt rules and promulgate regulations governing the licensure of applied behavior analysts and the practice of behavior analysis; (iii) to recommend policy and budgetary matters to the division of professional licensure; (iv) to establish specifications for the licensure examination, which may be or may include the complete certification examination given by the Behavior Analysis Certification Board™, or its successor, and to provide or procure appropriate examination questions and answers and to establish examination procedures; (v) to define by regulation the appropriate standards for education and experience necessary to qualify for licensing, including, but not limited to, continuing professional education requirements for licensed applied behavior analysts, which shall be no less stringent than those of the Behavior Analysis Certification Board™, or its successor, and for the conduct and ethics which shall govern the practice of applied behavior analysis; (vi) to receive, review, and approve or disapprove applications for a reciprocal license to applicants who are licensed or certified as an applied behavior analyst in another state and who has demonstrated qualifications which equal or exceed those required pursuant to sections two hundred and thirty-six to two hundred and fifty-two, inclusive, of chapter one hundred and twelve, provided that no reciprocal license shall be granted under this section to an applicant unless the state in which the applicant is licensed affords reciprocal treatment to persons who are residents of the Commonwealth of Massachusetts and who are licensed pursuant to said chapter one hundred and twelve; (vii) to establish standards of supervision for students or persons in training to become qualified to obtain a license in applied behavior analysis; (viii) to fine, censure, revoke, suspend or deny a license, place on probation, reprimand or otherwise discipline licensees for violations of the code of ethics or the rules of the board in accordance with sections two hundred and forty-six, two hundred and forty-eight, and two hundred and fifty of chapter 112, but the board shall not have the power of subpoena; (ix) to summarily suspend the license of a licensee who poses an imminent danger to the public but a hearing shall be afforded to the licensee within 7 days of an action by the board to determine whether such summary action is warranted; and (x) to perform such other functions and duties as may be required to carry out this section.

Section 104. The board may also appoint Independently Licensed Applied Behavior Analysts, subject to the approval of the director of consumer affairs and business regulations, who meet the qualifications for appointment to the board, to assist it in administering the examination required by sections two hundred and thirty seven and two hundred and thirty nine of chapter one hundred and twelve. Said assistance shall be provided under the supervision of a board member.

Section 105. The board shall take no action with respect to the granting of a license or its revocation or suspension without the concurrence of at least five members of the board. The board shall adopt a seal which shall be affixed to all licenses issued by the board.

Section 106. The board shall make available to the public a list of Licensed Independent Behavior Analysts and Licensed Behavior Analysts□

Section 107. The members of the board shall be indemnified by the commonwealth for all actions taken as part of their responsibilities described herein.

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

Section 236. As used in sections two hundred and thirty-six to two hundred and fifty-two, inclusive, the following words, unless the context clearly indicates otherwise, shall have the following meanings:

Applied behavior analyst, an individual who by training and experience meets the requirements for licensing by the board and is duly licensed to practice applied behavior analysis in the commonwealth.

“Board”, the board of registration of applied behavior analysts.

“Licensed Independent Applied Behavior Analyst (LIABA)”, an individual who by training and experience meets the requirements for licensing by the board and is duly licensed to practice independent applied behavior analysis.

"Licensed Applied Behavior Analyst (LABA)", an individual who by training and experience meets the requirements for licensing by the board and is duly licensed to practice applied behavior analysis.

“Recognized educational institution”, a degree-granting college or university which is accredited by a Regional Board or Association of Institutions of higher education approved by the Council on Post Secondary Education of the United States Department of Education, or which is chartered to grant doctoral degrees by the commonwealth. Such institutional accreditation shall exist at the time that the doctoral degree is granted or within two years thereafter. The program in applied behavior analysis used to meet the standards for licensure under this law must be accredited by the Association for Behavior Analysis International Accreditation Board at the time of graduation or be approved by the board.

“The scope of practice of applied behavior analysis”, includes rendering or offering to render professional service for any fee, monetary or otherwise, to individuals, groups of individuals, organizations or members of the public which includes the observation, description, measurement, evaluation, and modification of observable human behavior, consistent with the principles of learning and operant conditioning, and the application of operant and respondent conditioning procedures for shaping new behaviors, modifying established behaviors and the reduction of behavioral problems. With an emphasis on habilitation and enhanced functioning, applied behavior analysis uses environmental manipulation through changes in setting events, stimulus control and verbal learning principles to analyze and change behaviors of a wide variety of populations, including developmentally disabled, mentally ill, and socially maladjusted individuals, as well as groups, or organizations. The practice of applied behavior analysis

includes, but is not limited to, conducting functional behavioral analyses, standardized behavioral assessments and curriculum based measurements, creating behavioral objectives, developing individual behavioral plans, monitoring the application and effectiveness of behavioral interventions, training program staff in applied behavior analysis and intervention techniques, designing data collection programs, developing and implementing teaching curricula, conducting task analyses, using precision teaching and direct instruction methods, as well as providing behavioral consultation to teachers and training to parents and other caregivers, and conducting behavior analytically based therapy. Under this scope of practice, Licensed Applied Behavior Analysts must either work under the direct supervision of a Licensed Independent Applied Behavior Analyst, or be employed to provide such services by the commonwealth, a nonprofit agency which delivers services to residents of the commonwealth as a subcontractor of a state agency, a Local Education agency (LEA), an approved Ch. 766 private school, or other entity approved by the board. However, nothing in this scope of practice should be construed as allowing applied behavior analysts the ability to diagnose psychiatric conditions.

Section 237 (a). The standards to qualify for the designation of Licensed Independent Applied Behavior Analyst include:

1. A Doctoral Degree from a recognized educational institution accredited by the Association for Behavior Analysis International Accreditation Board, or from a program at a recognized educational institution with a specific applied behavior analysis track and which is approved by the Board.
2. The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1500 hours of supervised experience over a period of not less than one calendar year, of which not less than 75 hours is spent in direct 1:1 contact with the supervisor;
3. The successful completion, as defined by the Board, of a nationally recognized examination adopted by the Association for Behavior Analysis International and approved by the Board, related to the principles and practice of the profession of applied behavior analysis.

(b) For the first five years of enactment of this legislation in the Commonwealth of Massachusetts, applicants who have graduated with a Doctoral Degree from a regionally accredited university and are a Board Certified Behavior Analyst (BCBA) certificant of the Behavior Analysis Certification Board™ or whose Doctoral program included a minimum of 60 graduate credit hours in courses directly related to the study of Applied Behavior Analysis, will be eligible to be granted status as a Licensed Independent Applied Behavior Analyst.

Additionally for the first five years of enactment of this legislation in the Commonwealth of Massachusetts, applicants who have graduated with a Masters Degree from a regionally accredited university, are a Board Certified Behavior Analyst (BCBA) certificant of the Behavior Analysis Certification Board™, and have practiced as an Applied Behavior Analyst continuously for the past ten years will be eligible to be granted status as a Licensed Independent Applied Behavior Analyst. Thereafter, applicants must meet the requirements noted above.

Section 238 (a). The standards to qualify for the designation of Licensed Applied Behavior Analyst include:

1. A Master's Degree from a recognized educational institution accredited by the Association for Behavior Analysis International Accreditation Board, or from a

Section 242. Licenses shall be valid for two years and shall be renewed biennially. On or before April fifteenth every two years the secretary of the board shall forward to each licensed applied behavior analyst an application form for renewal. Upon the receipt of the completed form and the renewal fee on or before June first, the secretary shall renew the license for two years commencing July first. Any application for renewal of a license which has expired shall require the payment of a new application fee. Pursuant to the renewal, the applicant shall present to the board documented evidence of the completion of 36 hours of continuing education programs designed to improve the professional competence of the licensee. Such programs shall be completed during the licensed period immediately prior to renewal. Such CEUs must be obtained either directly from the Association for Behavior Analysis International, an organization offering CEU activities which are approved by the Association for Behavior Analysis International, or be approved by the board.

Section 243. The following fees shall be determined annually by the commissioner of administration under the provision of section three B of chapter seven and shall be collected by the board: (a) application fee; (b) initial license fee; (c) temporary license fee; and (d) biennial renewal fee.

Section 244. Nothing in sections two hundred and thirty-six to two hundred and fifty-two, inclusive, shall be construed to prevent qualified members of other professions or occupations such as physicians, psychologists, teachers, members of the clergy, authorized Christian Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment counselors, speech pathologists, audiologists or rehabilitation counselors from doing work of an applied behavior analytic nature consistent with the accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are applied behavior analysts or that they are licensed to practice applied behavior analysis.

Section 245. To qualify as a supervisor of approved practicum or supervised experience, an individual shall meet one of the following criteria:

1. Holds a license as a Licensed Independent Applied Behavior Analyst or as a Licensed Applied Behavior Analyst in the Commonwealth of Massachusetts;
2. Holds a license as a psychologist and holds ABPP Diplomate status in Behavioral Psychology;
3. Until January 1, 2015, is a Board Certified in Behavior Analysis (BCBA) certificant in good standing by the Behavior Analysis Certification Board.

Section 246. Those engaged in the practice of applied behavior analysis within the Commonwealth of Massachusetts shall comply with the standards of ethical practice as adopted by the Association for Behavior Analysis International.

Section 247. As provided in the Individuals with Disabilities Education Act (2004), the Massachusetts Department of Education will implement such policies necessary to include the profession of applied behavior analysis as a “Related Service Provider” relative to the provision of Special Education services provided within the commonwealth, and shall adopt the standards provided herein as those required to meet this standard.

Section 248. Any person not licensed to practice applied behavior analysis who holds himself out to be an applied behavior analyst or who uses the title applied behavior analyst or engages in the practice of applied behavior analysis shall be punished by a fine of not more than five hundred dollars, or by imprisonment of not more than three months, or both such fine and imprisonment.

Section 249. The penalties in section two hundred and forty-eight shall not apply to:

(a) persons eligible for licensure as an applied behavior analyst under this law and who provide consultative services for a fee no more than one day a month; or

(b) students of applied behavior analysis currently enrolled in a recognized educational institution accredited by the Association for Behavior Analysis International Accreditation Board, interns or persons preparing for the practice of applied behavior analysis under qualified supervision in such a program; provided, however, that they are designated by such titles as “applied behavior analyst intern”, “applied behavior analyst trainee” or other title clearly indicating such training status.

Section 250. The board shall investigate all complaints relating to the proper practice of applied behavior analysis by any person licensed under sections two hundred and thirty-six to two hundred and fifty-two, inclusive.

The board may, after a hearing in accordance with the provisions of chapter thirty A, revoke, suspend or cancel the license, or reprimand, censure or otherwise discipline an applied behavior analyst licensed under said sections two hundred and thirty-six to two hundred and fifty-two, inclusive, upon proof satisfactory to a majority of the board that said applied behavior analyst:

(a) fraudulently procured said license;

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

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

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

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

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

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

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

(i) is guilty of violating any provision of the Ethical Standards for applied behavior analysts as adopted by the Association for Behavior Analysis International.

The board shall, after proper notice and hearing, adopt rules and regulations governing the practice of applied behavior analysis in order to promote the public health, welfare, and safety and to implement the provisions of this section.

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

If the applied behavior analyst is found not to have violated any of the provisions set forth in this section, the board shall forthwith order a dismissal of the charges.

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

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

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

Section 251. After three years from the date of revocation, an application for reinstatement may be made to the board, which may, upon the affirmative vote of at least five of its members, grant such reinstatement.

Section 252. All communications between a licensed applied behavior analyst and the individuals with whom the applied behavior analyst engages in the practice of applied behavior analysis are confidential and shall be considered as privileged communications. At the initiation of the professional relationship the applied behavior analyst shall inform the patient of the following limitations to the confidentiality of their communications. No applied behavior analyst, colleague, agent or employee of any applied behavior analyst, whether professional, clerical, academic or therapeutic, or a graduate of, or student enrolled in, a degree program in applied behavior analysis at a recognized educational institution as that term is defined in section two hundred and thirty-six, who is working under the supervision of a licensed applied behavior analyst, shall disclose any information acquired or revealed in the course of or in connection with the performance of the applied behavior analyst's professional services, including the fact, circumstances, findings or records of such services, except under the following circumstances:

(a) pursuant to the provisions of section twenty B of chapter two hundred and thirty-three or any other law;

(b) upon express, written consent of the patient (if competent) or his/her guardian;

(c) upon the need to disclose information which protects the rights and safety of others if:

(1) the patient presents a clear and present danger to himself and refuses explicitly or by his behavior to voluntarily accept further appropriate treatment. In such circumstances, where the applied behavior analyst has a reasonable basis to believe that a patient can be committed to a hospital pursuant to chapter one hundred and twenty-three, he/she shall have a duty to seek said commitment. The applied behavior analyst may also contact members of the patient's family or other individuals if in the applied behavior analyst's opinion, it would assist in protecting the safety of the patient; or

(2) the patient has communicated to the applied behavior analyst an explicit threat to kill or inflict serious bodily injury upon a reasonably identified person and the patient has the apparent intent and ability to carry out the threat. In such circumstances, the applied behavior analyst shall have a duty to take reasonable precautions. An applied behavior analyst shall be deemed to have taken reasonable precautions if said applied behavior analyst makes reasonable efforts to take one or more of the following actions:

(a) communicates a threat of death or serious bodily injury to a reasonably identified person;

(b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;

(c) arranges for the patient to be hospitalized voluntarily;

(3) the patient has a history of physical violence which is known to the applied behavior analyst and the applied behavior analyst has a reasonable basis to believe that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily injury upon a reasonably identified person. In such circumstances the applied behavior analyst shall have a duty to take reasonable precautions. An applied behavior analyst shall be deemed to have taken reasonable precautions if said applied behavior analyst makes reasonable efforts to take one or more of the following actions:

(a) communicates a threat of death or serious bodily injury to the reasonably identified person;

(b) notifies an appropriate law enforcement agency in the vicinity where the patient or any potential victim resides;

(c) arranges for his patient to be hospitalized voluntarily;

(4) in order to collect amounts owed by the patient for professional services rendered by the applied behavior analyst or his/her employees; provided, however, that the applied behavior analyst may only disclose the nature of services provided, the dates of services, the amount due for services and other relevant financial information; provided, further, that if the patient raises as a defense to said action substantive assertions concerning the competence of the applied behavior analyst or the quality of the services provided, the applied behavior analyst may disclose whatever information is necessary to rebut such assertions; or

(5) in such other situations as shall be defined in the rules and regulations of the board.

The applied behavior analyst shall only disclose that information which is essential in order to protect the rights and safety of others. Furthermore, nothing contained herein shall require an applied behavior analyst to take any action which, in the exercise of reasonable professional judgment, would endanger him or increase the danger to a potential victim or victims.

No provision of this section shall be construed to prevent a nonprofit hospital service or medical service corporation from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment, or other services provided to any person, including a minor or incompetent, for which coverage, benefit or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. No provision of this section shall be construed to prevent access to any such records in connection with any coordination of benefits, subrogation, workers' compensation, peer review, utilization review or benefit management procedures applied and implemented in good faith.