

HOUSE No. 1002

The Commonwealth of Massachusetts

PRESENTED BY:

Ruth B. Balsler

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 adoption of the accompanying bill:

An Act relative to the licensure of behavior analysts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Ruth B. Balsler</i>	<i>12th Middlesex</i>	<i>1/20/2011</i>
<i>James J. O'Day</i>	<i>14th Worcester</i>	<i>2/4/2011</i>
<i>Frank I. Smizik</i>	<i>15th Norfolk</i>	<i>1/28/2011</i>
<i>James J. Dwyer</i>	<i>30th Middlesex</i>	<i>2/3/2011</i>

HOUSE No. 1002

By Ms. Balsler of Newton, a petition (accompanied by bill, House, No. 1002) of Ruth B. Balsler and others relative to the licensure of behavior analysts. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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, as appearing in the 2008 Official Edition,
2 is hereby amended by inserting the following section:

3 Section 79A. There shall be within the board of registration of psychologists a
4 committee on behavior analysts and applied behavior analysis. Members of the committee shall
5 be appointed by the board with the following qualifications: one member shall be a licensed
6 psychologist who is a member of the board, one member shall be a licensed psychologist who
7 has been actively involved with the practice of applied behavior analysis for at least four years,
8 one member shall be from the general public and shall not be engaged in or have a financial
9 interest in the delivery of health services, and four members shall be behavior analyst
10 practitioners. Any of these individuals may also be licensed psychologists or individuals
11 licensed to provide mental health services to the public from within other disciplines licensed by
12 the commonwealth.

13 The board of registration of psychologists shall appoint four of the initial members to
14 terms of three years, and three of the initial members to terms of two years. Thereafter, all
15 appointees shall serve for terms of three years. The board shall fill vacancies with persons who
16 possess the qualification required of the original appointees. Those members appointed to the
17 initial committee as behavior analysts need not be licensed as behavior analysts. Such members
18 so appointed after the initial committee is appointed shall be licensed under these provisions as
19 licensed behavior analysts, prior to such appointment.

20 SECTION 2. Chapter 112 of the General Laws, as appearing in the 2008 Official
21 Edition, is hereby amended in section 130 by inserting the following new definition:

22 “Applied Behavior Analysis”, a set of techniques derived from basic and clinical research
23 in the psychology of learning. The techniques are employed therapeutically in an effort to
24 control or reduce abnormal and maladaptive behaviors in specific populations, predominately
25 children with severe developmental disabilities and autism, consistent with the psychological
26 principles of operant conditioning and learning. Applied behavior analysis with the
27 developmentally delayed and autistic populations includes conducting functional analyses of
28 behavior seeking causes for the behavior, developing behavioral treatment objectives and goals,
29 developing individual behavior change plans, using operant conditioning techniques in an effort
30 to teach new skills, directing or monitoring the implementation of these plans, developing and
31 implementing data collection systems and reviewing the data to monitor treatment effectiveness.
32 The techniques represent a subset of psychological treatment methodologies, which along with
33 other techniques within the field of psychology have proven helpful with these specific
34 populations. Applied behavior analysis as a technical set of skills does not replace or in any way

35 obviate the need for broad clinical assessment, diagnosis and treatment of individuals with such
36 disabilities.

37 SECTION 3. Chapter 112 of the General Laws, as so appearing, is hereby amended in
38 section 130 by inserting after the definition of “psychotherapy of a nonmedical nature” the
39 following new definition:

40 “Licensed Behavior Analyst”, an individual who is trained in applied behavior analysis
41 and who by training and experience meets the requirements of section 129E and possesses
42 licensure as defined in section 129H. A licensed behavior analyst designs, implements, and
43 evaluates environmental modifications in an effort to produce socially significant improvements
44 in human behavior through skill acquisition and the reduction of problematic behavior in
45 developmentally delayed or autistic individuals. Treatment plans shall be based on empirical
46 research, including the direct observation and measurement of behavior as well as a functional
47 behavioral assessment; and utilize antecedent stimuli, positive reinforcement and other
48 consequences to produce behavior change.

49 SECTION 4. Chapter 112 of the General Laws, as so appearing, is hereby amended by
50 inserting the following new sections:

51 Section 129C. The committee on behavior analysts and applied behavior analysis may
52 adopt reasonable rules to carry out sections 129D to 129K, inclusive, and may amend and revoke
53 such rules at its discretion. The committee shall keep a record of its proceedings and a register of
54 all persons licensed by it. The register shall contain the name of every living licensee, his
55 address, and the date and number of his license as a licensed behavior analyst. The committee
56 shall develop criteria for the licensure of licensed behavior analysts, including both academic

57 qualification and supervised experience. Rules created by the committee shall be subject to
58 approval by the board of registration of psychologists.

59 The committee shall meet not less than four times per calendar year. At the first meeting
60 of each year, the committee shall elect a chairperson, vice-chairperson, and secretary.

61 Section 129D. A person who desires to be licensed as a licensed behavior analyst shall
62 apply to the committee the manner prescribed by the committee. The applicant shall include
63 statements under oath satisfactory to the committee, showing that he possess the qualifications
64 preliminary to examination required by section 129E. He shall pay to the committee at the time
65 of his filing such application a fee which shall be determined annually by the secretary of
66 administration and finance under the provisions of section three B of chapter seven.

67 Section 129E. To be eligible for licensure by the committee as a licensed behavior
68 analyst, an applicant shall make application to the committee upon such form and in such manner
69 as the board shall prescribe and shall furnish evidence satisfactory to the board that such person:

70 (a) is at least eighteen years of age,

71 (b) is of good moral character,

72 (c) has a master's degree or higher degree from a regionally or nationally accredited
73 college or university,

74 (d) has received his degree from within the department of psychology at the university, or
75 other department designed specifically to train behavior analysts through the study of applied
76 behavior analysis

77 (e) has coursework in the pursuit of that degree that is acceptable to the committee on
78 behavior analysts

79 (f) has supervised experience in the practice of applied behavior analysis that is
80 acceptable to the committee on behavior analysts

81 (g) has passed an examination in applied behavior analysis the form and content of which
82 is determined by the board of registration of psychologists.

83 (h) At its discretion, the board of registration of psychologists and the committee may
84 allow an applicant to substitute successful completion of the requirements of the Behavior
85 Analyst Certification Board for the examination and supervised experience requirements.

86 (i) has passed a state jurisprudence examination

87 (j) conducts his professional activities in accordance with accepted standards including
88 the Ethical Standards of Psychologists of the American Psychological Association and the
89 Guidelines for Responsible Conduct of the Behavior Analyst Certification Board.

90 Section 129F. Licensed behavior analysts are trained to work with children and adults
91 with severe developmental disabilities and autism. The scope of practice of the licensed
92 behavior analyst includes conducting functional analyses of behavior seeking causes for the
93 behavior, development of behavioral treatment objectives and goals, development of individual
94 behavior change plans, using operant conditioning techniques utilizing reward and punishment in
95 an effort to teach new skills, direct implementation of these plans and/or monitoring of the
96 implementation of these plans, developing and implementing data collection systems and
97 reviewing the data to monitor treatment effectiveness.

98 Applied behavior analysis as practiced by a licensed behavior analyst is a technical set of
99 skills and does not replace or in any way obviate the need for broad clinical assessment and
100 treatment of individuals with such handicaps. Provision of services by a licensed behavior
101 analyst expressly excludes psychological testing, psychotherapy, cognitive therapy, cognitive
102 behavior therapy, neuropsychology, sex therapy, psychoanalysis, hypnotherapy, both long and
103 short-term counseling as treatment modalities and any mental health treatment modality not
104 directly related to operant conditioning and applied behavior analysis. The licensed behavior
105 analyst works exclusively as a member of a clinical or educational treatment team, within a
106 school system, a licensed clinic or a licensed day treatment or residential program working with
107 children and adults with developmental disabilities and or autism. Services may be provided
108 within a home setting, providing they are under the auspices of a school system, licensed clinic
109 or licensed day treatment or residential treatment program for developmentally delayed or
110 autistic individuals.

111 Unless the licensed behavior analyst is also licensed by the commonwealth in a mental
112 health field whose scope of practice includes the diagnosis of mental disorders, the scope of
113 practice of the licensed behavior analyst does not include the diagnosis of mental, emotional or
114 behavioral disorders. Prior to the implementation of a behavioral treatment plan for any
115 individual, the licensed behavior analyst who is not also licensed in a field whose scope of
116 practice includes the diagnosis of mental, emotional and behavior disorders, must assure that an
117 appropriate medical and psychological evaluation of the individual has been conducted, by
118 appropriately licensed individuals, and obtain a written referral from those professionals that
119 treatment by a licensed behavior analyst with techniques of applied behavior analysis represents
120 an appropriate primary or adjunctive treatment modality for that individual's current

121 presentation. Such a licensed behavior analyst is required to maintain a documented, ongoing
122 consultative relationship as defined by regulation of the committee with the referring licensed
123 provider relative to appropriateness of treatment, duration of treatment, progress and the need for
124 further evaluation of the individual.

125 Section 129G. The committee shall examine applicants for licensure as a licensed
126 behavior analyst at least annually in such places as it may determine commencing in calendar
127 year two thousand and twelve. The examination may be written and or oral and shall test the
128 applicant's competency in and knowledge of the theory and practice of behavioral psychology,
129 applied behavior analysis, behavioral measurement, functional analysis, reinforcement theory,
130 single subject design, and theory underlying behavioral treatment methodology. Additionally,
131 applicants will be examined for knowledge of ethics and relevant Massachusetts law. The
132 committee shall determine the type of examination. Substitution of this requirement with
133 certification by the Behavior Analyst Certification Board may be permitted as described in
134 section 129E. Any applicant who fails to pass such examination may take a second examination
135 upon the payment of an additional application fee that shall be determined annually by the
136 commissioner of administration and finance under the provisions of section 3B of chapter 7, and
137 must be so re-examined at the next scheduled examination. Upon failure of an applicant to pass
138 a second examination, the committee may require him to complete additional courses of study as
139 designated by the committee, in which case he shall be required, before taking another
140 examination, to present to the committee satisfactory evidence of having completed the required
141 additional courses, and shall pay the re-examination fee as noted above.

142 Section 129H. The committee shall license as a licensed behavior analyst each applicant
143 who proves to the satisfaction of the committee his fitness for licensure under the provisions of

144 sections 129D to 129E, inclusive. It shall issue to each person so licensed, a license, which shall
145 be prima face evidence of the right of such person to represent himself as a licensed behavior
146 analyst and authorized to use the initials L.B.A.

147 Section 129I. The director of professional licensure shall determine the renewal cycle and
148 renewal period for all licenses issued by the committee. Persons licensed in accordance with
149 these sections shall apply to the committee for renewal of their licenses on or before the
150 expiration date, as determined by the director, unless such license was earlier revoked, suspended
151 or canceled as a result of a disciplinary proceeding instituted pursuant to this chapter.
152 Applications for renewal shall be made on forms approved by the committee and accompanied
153 by payment of a renewal fee, as determined by the secretary of administration and finance
154 pursuant to section 3B of chapter 7. All licensing and application fees and civil administrative
155 penalties collected pursuant to sections 129D and 129G, shall be deposited into the trust fund
156 established in section 35V of chapter 10.

157 Section 129J. The committee may, after a hearing pursuant to chapter thirty A, revoke,
158 suspend, or cancel the license of a licensed behavior analyst, or reprimand or censure a licensed
159 behavior analyst if it finds upon proof satisfactory to the committee that such licensed behavior
160 analyst:

161 (a) fraudulently procured licensure as a licensed behavior analyst;

162 (b) violated any provision of law relating to practice as a licensed behavior analyst, or
163 any rule or regulation adopted hereunder;

164 (c) acted with gross misconduct in practicing as a licensed behavior analyst or of
165 practicing fraudulently, or beyond its authorized scope, or with gross incompetence, or with
166 gross negligence on a particular occasion or negligence on repeated occasions;

167 (d) practiced as a licensed behavior analyst while the ability to practice was impaired by
168 alcohol, drugs, physical disability or mental instability;

169 (e) was habitually drunk or being or having been addicted to, dependent on, or a habitual
170 user of narcotics, barbiturates, amphetamines, hallucinogens, or other drugs having similar
171 effects;

172 (f) knowingly permitted, aided or abetted an unlicensed person to perform activities
173 requiring a license for purposes of fraud, deception or personal gain;

174 (g) has been convicted of a criminal offense that reasonably calls into question the ability
175 to practice as a licensed behavior analyst;

176 (h) violated any rule or regulation of the board or the committee;

177 (i) acted in a manner that is professionally unethical according to ethical standards of the
178 American Psychological Association or the Behavior Analyst Certification Board.

179 No person filing a complaint or reporting information pursuant to this section or assisting
180 the committee or board at its request in any manner in discharging its duties and functions shall
181 be liable in any cause of action arising out of receiving such information or assistance, providing
182 the person making the complaint or reporting or providing such information or assistance does so
183 in good faith and without malice.

184 Section 129K. Any person who practices applied behavior analysis in the commonwealth
185 without a license or practices applied behavior analysis without license to provide mental health
186 services, shall be punished by a fine of not less than \$100 nor more than \$1,000 or by
187 imprisonment for not more than three months, or both. Nothing in this statute shall prevent the
188 practice of applied behavior analysis within school, residential or day treatment settings or state-
189 operated facilities by individuals trained to provide such services, providing (1) they do not hold
190 themselves out as licensed behavior analysts (2) they are licensed by the commonwealth as
191 educators or providers of mental health services, such as psychologists, psychiatrists and social
192 workers practicing within their scope of practice and training or (3) they are working under the
193 direct clinical supervision of an individual who is licensed by the commonwealth as an educator
194 or as a provider of mental health services, such as a psychologist, psychiatrist or social worker
195 practicing within their scope of practice and training.

196 The committee may petition in any court of competent jurisdiction for an injunction
197 against any person practicing as a behavior analyst without a license. Such injunction may be
198 issued without proof of damage sustained by any person. Such injunction shall not relieve such
199 person from criminal prosecution for practicing without a license.

200 Section 129L. A person who does not possess a valid license as a licensed behavior
201 analyst pursuant to the provisions of this statute, shall not represent himself as a “behavior
202 analyst” or “licensed behavior analyst.”

203 SECTION 5. Nothing in this act shall prevent other mental health practitioners licensed
204 by the commonwealth from engaging in the practice of applied behavioral analysis or

205 functioning as a behavior analyst, if it is already within their scope of practice under their
206 existing license and they are practicing within the scope of their training and experience.