HOUSE DOCKET, NO. 2760 FILED ON: 1/21/2011

HOUSE . . . . . No. 1901

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 adoption of the accompanying bill:

An Act relative to the licensure of behavior analysts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Linda Campbell	*15th Essex*	*1/26/2011*
Edward F. Coppinger	*10th Suffolk*	*2/4/2011*
Thomas A. Golden, Jr.	*16th Middlesex*	*2/4/2011*
Katherine M. Clark	*Fifth Middlesex*	*2/4/2011*
Michael R. Knapik		*2/4/2011*
Chris Walsh	*6th Middlesex*	*2/4/2011*
Kimberly N. Ferguson	*1st Worcester*	*2/4/2011*
Anthony W. Petruccelli		*2/4/2011*
Kay Khan	*11th Middlesex*	*2/4/2011*
Anne M. Gobi	*5th Worcester*	*2/4/2011*
Barry R. Finegold		*2/4/2011*
James Arciero	*2nd Middlesex*	*2/3/2011*
Sal N. DiDomenico	*Middlesex and Suffolk*	*2/4/2011*
John D. Keenan	*7th Essex*	*2/4/2011*
Louis L. Kafka	*8th Norfolk*	*2/4/2011*
Karen E. Spilka		*2/4/2011*
James E. Timilty		*2/1/2011*
Elizabeth A. Poirier	*14th Bristol*	*2/1/2011*

Cory Atkins	*14th Middlesex*	*2/1/2011*
Randy Hunt	*5th Barnstable*	*2/2/2011*
David Paul Linsky	*5th Middlesex*	*2/3/2011*
Carolyn C. Dykema	*8th Middlesex*	*2/3/2011*
John V. Fernandes	*10th Worcester*	*2/3/2011*
Todd M. Smola	*1st Hampden*	*2/3/2011*
Gailanne M. Cariddi	*1st Berkshire*	*2/3/2011*
David M. Torrisi	*14th Essex*	*2/3/2011*
William N. Brownsberger		*2/3/2011*
Thomas P. Conroy	*13th Middlesex*	*2/3/2011*
Michael O. Moore		*1/27/2011*
Frank I. Smizik	*15th Norfolk*	*1/27/2011*
Jennifer E. Benson	*37th Middlesex*	*1/28/2011*
Gale D. Candaras		*1/27/2011*
James J. O'Day	*14th Worcester*	*2/3/2011*
Michael F. Kane	*5th Hampden*	*2/4/2011*
F. Jay Barrows	*1st Bristol*	*2/4/2011*
Bradford Hill	*4th Essex*	*2/4/2011*

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HOUSE . . . . . No. 1901

By Mr. Scibak of South Hadley, a petition (accompanied by bill, House, No. 1901) of Linda Dean Campbell and others for legislation to establish a board of registration of behavior analysts within the Division of Professional Licensure. 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:

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 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. Upon the creation of the Board, two members of the board shall be Doctoral-level Board Certified Behavior Analysts (BCBA-Ds), four shall be Board Certified Behavior Analysts (BCBAs), one shall be a Board Certified Assistant Behavior Analysts (BCaBAs), and 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. After the first year, five members of the board shall be Licensed Behavior Analysts and two shall be Licensed Assistant Behavior Analysts under the provisions of sections two hundred and thirty-six to two hundred and fifty-one, inclusive, of

chapter one hundred and twelve and shall have been actively engaged in the practice of behavior analysis for the five years next preceding their appointment.

(b) Of the initial members appointed to said board, three shall serve for terms of three years, three 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 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 Licensed Behavior Analysts or Licensed Assistant Behavior Analysts (ii) to adopt rules and promulgate regulations governing the licensure of behavior analysts and the practice of behavior analysis; (iii) to recommend policy and budgetary matters to the division of professional licensure; (iv) to establish eligibility, renewal and examination requirements, which will include current certification by the Behavior Analyst Certification Board®, Inc. (BACB), its successor or other equivalent nationally accredited behavior analyst certification board, as determined by the board; (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 behavior analysts, which shall be no less stringent than those of the BACB, its successor or other equivalent nationally accredited behavior analyst certification board, as determined by the board; and for the conduct and ethics which shall govern the practice of behavior analysis; (vi) to receive, review, and approve or disapprove applications for a reciprocal license to applicants who are licensed or certified as an behavior analyst in another state and who have 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 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; (viii) 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 (ix) to perform such other functions and duties as may be required to carry out this section.

Section 104. 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 105. The board shall make available to the public a list of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts.

Section 106. The members of the board, as well as the BACB, its officers and employees, 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 ections:-

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

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

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

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

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

"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 masters or doctoral degrees by the Commonwealth. Such institutional accreditation shall exist at the time that the degree is granted or within two years thereafter.

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

research and which utilize contextual factors, antecedent stimuli, positive reinforcement and other consequences to develop new behaviors, increase or decrease existing behaviors, and elicit behaviors under specific environmental conditions that are delivered to individuals and groups of individuals. The practice of behavior analysis does not include psychological testing, neuropsychology, diagnosis of psychiatric conditions, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, or hypnotherapy, as treatment modalities.

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

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

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

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

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

(b) For the first five years after enactment of this legislation, any applicants who is a "Board Certified Behavior Analyst®" (BCBA) certificant of the BACB will be eligible to be granted status as a licensed Behavior Analyst. Thereafter, applicants must meet the requirements noted above.

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

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

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

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

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

(b) For the first five years of enactment of this legislation, any applicant is a "Board Certified Assistant Behavior Analyst (BCaBA) certificant of the BACB will be eligible to be granted status as a licensed Assistant Behavior Analyst. Thereafter, applicants must meet the requirements noted above.

Section 239. Each person desiring to obtain a license as a Behavior Analyst or as an Assistant Behavior Analyst shall make application to the board upon such form and in such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that such person is of good moral character, including, but not limited to the fact that such applicant has not been convicted of a felony, which shall include a judgment, an admission of guilt or a plea of nolo contendere to such charges, or of an offense under the laws of another jurisdiction, which, if committed in the Commonwealth of Massachusetts, would be a felony unless the following apply:

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

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

Section 240. Notwithstanding the provisions of sections two hundred thirty-seven and two hundred and thirty-eight, the board may issue a license without examination to an applicant who presents evidence that he/she has been licensed or certified as a Behavior Analyst by a similar board of another jurisdiction whose standards are not lower than those required in the Commonwealth.

Section 241. The board may grant a temporary license for a period not to exceed one year to a Behavior Analyst with prior legal residence outside the Commonwealth to practice within the Commonwealth, provided he/she registers with the board and practices in consultation

with, or under the supervision of, a licensed Behavior Analyst or possesses qualifications acceptable to the board.

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 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 three 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 a minimum number of hours of continuing education programs as specified by the board and which are 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 meet the standards specified by the BACB, its successor or other equivalent nationally accredited recognized behavior analyst certification board, as determined 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) triennial 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 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 Behavior Analysts or that they are licensed to practice behavior analysis.

Section 245. Those engaged in the practice of behavior analysis within the Commonwealth of Massachusetts shall comply with the standards of ethical practice as adopted by the BACB, its successor or other equivalent nationally accredited behavior analyst certification board, as determined by the board.

Section 246. As provided in the Individuals with Disabilities Education Act (2004), the Commonwealth of Massachusetts Department of Elementary and Secondary Education (DESE) will establish educational licensure status for licensed behavior analysts relative to the provision of special educational services provided at all levels within the Commonwealth. DESE shall adopt the standards provided herein as the elements to meet said educational licensure.

Section 247. Any person not licensed to practice behavior analysis who holds himself out to be a behavior analyst or who uses the title behavior analyst or engages in the practice of 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 248. The penalties in section two hundred and forty-eight shall not apply to: students of behavior analysis currently enrolled in an recognized educational institution which meets the educational standards of the BACB its successor or other equivalent nationally accredited behavior analyst certification board, as determined by the board, or interns or persons

preparing for the practice of behavior analysis under qualified supervision in such a program; provided, however, that they are designated by such titles as “behavior analyst intern”, “behavior analyst trainee” or other title clearly indicating such training status.

Section 249. The board shall investigate all complaints relating to the proper practice of 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 a Behavior Analyst or Assistant 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 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 behavior analysis or any rule or regulation adopted thereunder;

(c) is guilty of conduct that places into question the behavior analyst’s competence to practice behavior analysis, including but not limited to gross misconduct in the practice of behavior analysis or of practicing 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 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 behavior analysis; or

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

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

The board shall, after proper notice and hearing, adopt rules and regulations governing the practice of 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 Behavior Analyst or Assistant 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 Behavior Analyst or Assistant 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 or 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 250. 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.