

SENATE No. 108

The Commonwealth of Massachusetts

PRESENTED BY:

Brian A. Joyce

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 applied behavior analysts..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Brian A. Joyce</i>	<i>Norfolk, Bristol and Plymouth</i>
<i>Patricia D. Jehlen</i>	
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>
<i>James B. Eldridge</i>	

SENATE No. 108

By Mr. Joyce, a petition (accompanied by bill, Senate, No. 108) of Brian A. Joyce, Patricia D. Jehlen, Sal N. DiDomenico and James B. Eldridge for legislation relative to behavior analysts. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 47 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

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

3 Section 101. (a) There shall be within the division of professional licensure a
4 board of registration of applied behavior analysts, in this section and in sections 102 to 104,
5 inclusive, hereinafter called the board, consisting of nine members appointed by the governor for
6 terms of three years. Members of the board shall be residents of the commonwealth and citizens
7 of the United States. Five members of the board shall be Independently Licensed Applied
8 Behavior Analysts and two shall be Licensed Applied Behavior Analysts, under the provisions of
9 sections two hundred and thirty-six to two hundred and fifty-two, inclusive, of chapter one
10 hundred and twelve and shall have been actively engaged in the practice of Applied Behavior

11 Analysis for the five years next preceding their appointment. Two members of said board shall
12 be selected from and shall represent the public, subject to the provisions of section nine B of
13 chapter 13.

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

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

25 Section 102. The board shall at its first meeting and, annually thereafter, organize by
26 electing from among its members, by majority vote, a chairman, a vice-chairman, and a
27 secretary. Such officers shall serve until their successors are elected and qualified. The board
28 shall hold at least two meetings each year, but additional meetings may be held upon the call of
29 the chairman, or the secretary, or at the written request of any three members of the board. Five
30 members of the board shall constitute a quorum. The members of the board shall serve without
31 compensation but each member shall be reimbursed for actual expenses reasonably incurred in

32 the performance of his/her duties as a member on behalf of the board. The board shall be
33 empowered to hire such assistants as it may deem necessary to carry on its activities.

34 Section 103. The board shall have the following powers and duties: (i) to
35 examine and pass upon the qualifications of all applications for licenses under sections two
36 hundred and thirty-six to two hundred and fifty-two, inclusive, of chapter one hundred and
37 twelve, and issue a license to those who are determined to be qualified as independent applied
38 behavior analysts or applied behavior analysts; (ii) to adopt rules and promulgate regulations
39 governing the licensure of applied behavior analysts and the practice of behavior analysis; (iii) to
40 recommend policy and budgetary matters to the division of professional licensure; (iv) to
41 establish specifications for the licensure examination, which may be or may include the complete
42 certification examination given by the Behavior Analysis Certification BoardTM, or its
43 successor, and to provide or procure appropriate examination questions and answers and to
44 establish examination procedures; (v) to define by regulation the appropriate standards for
45 education and experience necessary to qualify for licensing, including, but not limited to,
46 continuing professional education requirements for licensed applied behavior analysts, which
47 shall be no less stringent than those of the Behavior Analysis Certification BoardTM, or its
48 successor, and for the conduct and ethics which shall govern the practice of applied behavior
49 analysis; (vi) to receive, review, and approve or disapprove applications for a reciprocal license
50 to applicants who are licensed or certified as an applied behavior analyst in another state and
51 who has demonstrated qualifications which equal or exceed those required pursuant to sections
52 two hundred and thirty-six to two hundred and fifty-two, inclusive, of chapter one hundred and
53 twelve, provided that no reciprocal license shall be granted under this section to an applicant
54 unless the state in which the applicant is licensed affords reciprocal treatment to persons who are

55 residents of the Commonwealth of Massachusetts and who are licensed pursuant to said chapter
56 one hundred and twelve; (vii) to establish standards of supervision for students or persons in
57 training to become qualified to obtain a license in applied behavior analysis; (viii) to fine,
58 censure, revoke, suspend or deny a license, place on probation, reprimand or otherwise discipline
59 licensees for violations of the code of ethics or the rules of the board in accordance with sections
60 two hundred and forty-six, two hundred and forty-eight, and two hundred and fifty of chapter
61 112, but the board shall not have the power of subpoena; (ix) to summarily suspend the license of
62 a licensee who poses an imminent danger to the public but a hearing shall be afforded to the
63 licensee within 7 days of an action by the board to determine whether such summary action is
64 warranted; and (x) to perform such other functions and duties as may be required to carry out this
65 section.

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

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

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

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

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

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

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

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

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

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

94 “Recognized educational institution”, a degree-granting college or university which is
95 accredited by a Regional Board or Association of Institutions of higher education approved by
96 the Council on Post Secondary Education of the United States Department of Education, or
97 which is chartered to grant doctoral degrees by the commonwealth. Such institutional

98 accreditation shall exist at the time that the doctoral degree is granted or within two years
99 thereafter. The program in applied behavior analysis used to meet the standards for licensure
100 under this law must be accredited by the Association for Behavior Analysis International
101 Accreditation Board at the time of graduation or be approved by the board.

102 “The scope of practice of applied behavior analysis”, includes rendering or offering to
103 render professional service for any fee, monetary or otherwise, to individuals, groups of
104 individuals, organizations or members of the public which includes the observation, description,
105 measurement, evaluation, and modification of observable human behavior, consistent with the
106 principles of learning and operant conditioning, and the application of operant and respondent
107 conditioning procedures for shaping new behaviors, modifying established behaviors and the
108 reduction of behavioral problems. With an emphasis on habilitation and enhanced functioning,
109 applied behavior analysis uses environmental manipulation through changes in setting events,
110 stimulus control and verbal learning principles to analyze and change behaviors of a wide variety
111 of populations, including developmentally disabled, mentally ill, and socially maladjusted
112 individuals, as well as groups, or organizations. The practice of applied behavior analysis
113 includes, but is not limited to, conducting functional behavioral analyses, standardized
114 behavioral assessments and curriculum based measurements, creating behavioral objectives,
115 developing individual behavioral plans, monitoring the application and effectiveness of
116 behavioral interventions, training program staff in applied behavior analysis and intervention
117 techniques, designing data collection programs, developing and implementing teaching curricula,
118 conducting task analyses, using precision teaching and direct instruction methods, as well as
119 providing behavioral consultation to teachers and training to parents and other caregivers, and
120 conducting behavior analytically based therapy. Under this scope of practice, Licensed Applied

121 Behavior Analysts must either work under the direct supervision of a Licensed Independent
122 Applied Behavior Analyst, or be employed to provide such services by the commonwealth, a
123 nonprofit agency which delivers services to residents of the commonwealth as a subcontractor of
124 a state agency, a Local Education agency (LEA), an approved Ch. 766 private school, or other
125 entity approved by the board. However, nothing in this scope of practice should be construed as
126 allowing applied behavior analysts the ability to diagnose psychiatric conditions.

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

129 1. A Doctoral Degree from a recognized educational institution
130 accredited by the Association for Behavior Analysis International Accreditation Board, or from a
131 program at a recognized educational institution with a specific applied behavior analysis track
132 and which is approved by the Board.

133 2. The successful completion of an approved practicum or supervised
134 experience in the practice of applied behavior analysis, totaling at least 1500 hours of supervised
135 experience over a period of not less than one calendar year, of which not less than 75 hours is
136 spent in direct 1:1 contact with the supervisor;

137 3. The successful completion, as defined by the Board, of a nationally
138 recognized examination adopted by the Association for Behavior Analysis International and
139 approved by the Board, related to the principles and practice of the profession of applied
140 behavior analysis.

141 (b) For the first five years of enactment of this legislation in the
142 Commonwealth of Massachusetts, applicants who have graduated with a Doctoral Degree from a

143 regionally accredited university and are a Board Certified Behavior Analyst (BCBA) certificant
144 of the Behavior Analysis Certification Board™ or whose Doctoral program included a minimum
145 of 60 graduate credit hours in courses directly related to the study of Applied Behavior Analysis,
146 will be eligible to be granted status as a Licensed Independent Applied Behavior Analyst.
147 Additionally for the first five years of enactment of this legislation in the Commonwealth of
148 Massachusetts, applicants who have graduated with a Masters Degree from a regionally
149 accredited university, are a Board Certified Behavior Analyst (BCBA) certificant of the Behavior
150 Analysis Certification Board™, and have practiced as an Applied Behavior Analyst continuously
151 for the past ten years will be eligible to be granted status as a Licensed Independent Applied
152 Behavior Analyst. Thereafter, applicants must meet the requirements noted above.

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

155 1. A Master’s Degree from a recognized educational institution
156 accredited by the Association for Behavior Analysis International Accreditation Board, or from a
157 program at a recognized educational institution with a specific applied behavior analysis track
158 and which is approved by the Board.

159 2. The successful completion of an approved practicum or supervised
160 experience in the practice of Applied Behavior Analysis, totaling at least 3000 hours of
161 supervised experience over a period of not less than two calendar years, of which not less than
162 150 hours is spent in direct 1:1 contact with the supervisor;

163 3. The successful completion, as defined by the Board, of a nationally
164 recognized examination adopted by the Association for Behavior Analysis International and

165 approved by the Board, related to the principles and practice of the profession of Applied
166 Behavior Analysis.

167 (b) For the first five years of enactment of this legislation in the
168 Commonwealth of Massachusetts, applicants who have graduated with a Master's Degree from a
169 regionally accredited university and are a Board Certified Behavior Analyst (BCBA) certificant
170 of the Behavior Analysis Certification Board™, will be eligible to be granted status as a
171 Licensed Applied Behavior Analyst. Thereafter, applicants must meet the requirements noted
172 above.

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

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

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

187 Section 240. Notwithstanding the provisions of sections two hundred thirty-
188 seven and two hundred and thirty-eight, the board may issue a license without examination to an
189 applicant who presents evidence that he/she has been licensed or certified as an applied behavior
190 analyst by a similar board of another jurisdiction whose standards, in the opinion of the board,
191 are not lower than those required in the commonwealth; or that he/she holds a diploma from a
192 nationally recognized board or agency approved by the board.

193 Section 241. The board may grant a temporary license for a period not to
194 exceed three years to an applied behavior analyst with prior legal residence outside the
195 commonwealth to practice within the commonwealth, provided he/she registers with the board
196 and practices in consultation with, or under the supervision of, a licensed independent applied
197 behavior analyst or possesses qualifications acceptable to the board, and demonstrates that he/she
198 is enrolled in a recognized educational institution accredited by the Association for Behavior
199 Analysis International Accreditation Board program in preparation for meeting the standards and
200 the requirements noted herein for licensure as an applied behavior analyst in Massachusetts.

201 Section 242. Licenses shall be valid for two years and shall be renewed
202 biennially. On or before April fifteenth every two years the secretary of the board shall forward
203 to each licensed applied behavior analyst an application form for renewal. Upon the receipt of
204 the completed form and the renewal fee on or before June first, the secretary shall renew the
205 license for two years commencing July first. Any application for renewal of a license which has
206 expired shall require the payment of a new application fee. Pursuant to the renewal, the applicant
207 shall present to the board documented evidence of the completion of 36 hours of continuing
208 education programs designed to improve the professional competence of the licensee. Such
209 programs shall be completed during the licensed period immediately prior to renewal. Such

210 CEUs must be obtained either directly from the Association for Behavior Analysis International,
211 an organization offering CEU activities which are approved by the Association for Behavior
212 Analysis International, or be approved by the board.

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

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

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

228 1. Holds a license as a Licensed Independent Applied Behavior
229 Analyst or as a Licensed Applied Behavior Analyst in the Commonwealth of Massachusetts;

230 2. Holds a license as a psychologist and holds ABPP Diplomate
231 status in Behavioral Psychology;

232 3. Until January 1, 2015, is a Board Certified in Behavior Analysis
233 (BCBA) certificant in good standing by the Behavior Analysis Certification Board.

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

237 Section 247. As provided in the Individuals with Disabilities Education Act
238 (2004), the Massachusetts Department of Education will implement such policies necessary to
239 include the profession of applied behavior analysis as a “Related Service Provider” relative to
240 the provision of Special Education services provided within the commonwealth, and shall adopt
241 the standards provided herein as those required to meet this standard.

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

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

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

251 (b) students of applied behavior analysis currently enrolled in a recognized
252 educational institution accredited by the Association for Behavior Analysis International

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

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

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

265 (a) fraudulently procured said license;

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

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

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

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

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

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

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

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

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

292 No person filing a complaint or reporting or providing information pursuant to this
293 section or assisting the board at its request in any manner in discharging its duties and functions
294 shall be liable in any cause of action arising out of the receiving of such information and

295 assistance; provided, however, that the person making the complaint or reporting or providing
296 said information or assistance does so in good faith and without malice. Anonymous complaints
297 submitted to the board of such violations shall not be considered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

356 (3) the patient has a history of physical violence which is known to
357 the applied behavior analyst and the applied behavior analyst has a reasonable basis to believe
358 that there is a clear and present danger that the patient will attempt to kill or inflict serious bodily
359 injury upon a reasonably identified person. In such circumstances the applied behavior analyst

360 shall have a duty to take reasonable precautions. An applied behavior analyst shall be deemed to
361 have taken reasonable precautions if said applied behavior analyst makes reasonable efforts to
362 take one or more of the following actions:

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

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

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

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

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

377 The applied behavior analyst shall only disclose that information which is
378 essential in order to protect the rights and safety of others. Furthermore, nothing contained
379 herein shall require an applied behavior analyst to take any action which, in the exercise of

380 reasonable professional judgment, would endanger him or increase the danger to a potential
381 victim or victims.

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