The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act providing for the licensing 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 3 sections:-

Section 109. (a) There shall be within the division of professional licensure a board of registration of applied behavior analysts. The board shall consist of 9 members who shall be residents of the commonwealth and who shall be appointed by the governor for terms of 3 years. Five members of the board shall be applied behavior analysts licensed under sections 264 to 268, inclusive, of chapter 112 who shall have been actively engaged in the practice of applied behavior analysis for the 5 years preceding their appointments, 2 members shall be assistant applied behavior analysts licensed under said sections 264 to 268, inclusive, of said chapter 112 who shall have been actively engaged in the practice as an assistant in applied behavior analysis for the 5 years preceding their appointments and 2 members shall be selected from and shall represent the public.

(b) Each member of the board shall hold office until a successor has been appointed and 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 2 full
consecutive terms. A member appointed for less than a full term may serve 2 full terms in
addition to that part of a full term.

(c) The governor may remove a member of the board for cause, but no board member
shall be removed without first being informed in writing at least 30 days in advance of the
reasons for such removal and of the member’s right to a public or private hearing and to have
counsel present at the hearing.

Section 110. At its first meeting and annually thereafter, the board of registration of
applied behavior analysts shall organize by electing from among its members, by majority vote, a
chair, a vice chair and a secretary. Such officers shall serve until their successors are elected and
qualified. The board shall hold at least 2 meetings annually and may hold additional meetings
upon the call of the chair or the secretary or at the written request of any 3 members of the board.
A majority of the board shall constitute a quorum. The members of the board shall serve without
compensation but shall be reimbursed for actual expenses reasonably incurred in the
performance of their board duties. The board may hire such staff as it deems necessary to carry
out the its activities.

Section 111. (a) The board of registration of applied behavior analysts may: (i) pass
upon the qualifications of an application for a license under sections 264 to 270, inclusive, of
chapter 112 and shall issue a license to an applicant who is determined to be qualified to practice
as a licensed applied behavior analyst or licensed assistant applied behavior analyst; (ii) adopt
rules and regulations governing the licensure of applied behavior analysts; (iii) establish
eligibility and renewal requirements; (iv) establish specifications for the licensing examination
that are consistent and fair; (v) 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; (vi) define, by regulation, the appropriate standards for conduct and ethics which shall govern the practice of applied behavior analysis; (vii) receive, review and approve or disapprove an application for a reciprocal license for an applicant who is licensed or certified as an applied behavior analyst in another state and who has demonstrated qualifications which equal or exceed those required under sections 264 to 270, inclusive, of chapter 112; (viii) adopt rules and regulations necessary to regulate and inspect the business associations of its licensees and, in its discretion, require licensure of business associations not regulated or licensed by the department of public health; (ix) fine, censure, revoke, suspend or deny a license and place on probation, reprimand or otherwise discipline a licensee for a violation of the code of ethics or the rules and regulations of the board under said sections 264 to 277, inclusive, of said chapter 112; (x) summarily suspend the license of a licensee who poses an imminent danger to the public; provided, however, that a hearing shall be afforded to the licensee within 10 days after any such action by the board to determine whether such summary action is warranted; and (xi) perform any other functions and duties as may be required to carry out this section.

(b) The board shall make available to the public a list of licensed applied behavior analysts and licensed assistant applied behavior analysts.

(c) The members of the board, its officers and employees shall be indemnified by the commonwealth for all actions taken as part of their responsibilities described in this chapter.
SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the following 14 sections:-

Section 264. As used in this section and sections 265 to 277, inclusive, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Applied 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 applied behavior analysis in the commonwealth.

“Assistant applied 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 applied behavior analysis under the supervision of a licensed applied behavior analyst.

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

“Recognized educational institution”, a degree-granting college or university which is accredited by a regional accreditation body recognized by the United States Department of Education.

“Scope of practice of applied behavior analysis”, 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; provided, that such practice of applied behavior analysis shall only be conducted
upon referral from a licensed mental health or medical professional whose scope of practice
includes diagnosis and evaluation; and provided further, that "scope of practice of applied
behavior analysis" shall not include psychological testing, neuropsychology, diagnosis of mental
health or developmental conditions, psychotherapy, cognitive therapy, sex therapy,
psychoanalysis, psychopharmacological recommendations, hypnotherapy or academic teaching
by college or university faculty.

Section 265. The standards to qualify for the designation of applied behavior analyst
shall include:

(1) a doctoral degree from a recognized educational institution in which the doctoral
program included a minimum of 60 graduate credit hours in courses directly related to the study
of behavior analysis or a master’s degree from a recognized educational institution wherein the
master’s program included a minimum of 30 graduate credit hours in courses directly related to
the study of behavior analysis combined with the successful completion of an approved course
sequence formally approved by the board;

(2) the successful completion of a practicum or supervised experience in the practice of
behavior analysis that meets the standards established by the board; and

(3) the successful completion of a board-approved examination related to the principles
and independent practice of applied behavior analysis.
Section 266. The standards to qualify for the designation of assistant applied behavior analyst shall include:

(1) a bachelor’s degree from a recognized educational institution wherein a minimum of 45 credit hours specifically in behavior analysis or a bachelor’s degree combined with successful completion of a board-approved course sequence or course work which otherwise meets professional standards, as determined by the board;

(2) the successful completion of a practicum or supervised experience in the practice of behavior analysis that meets board established eligibility requirements; and

(3) the successful completion of a board-approved examination related to the principles and practice of applied behavior analysis.

Section 267. Each person desiring to obtain a license as an applied behavior analyst or as an assistant applied 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 the person is of good moral character including, but not limited to, the fact that such applicant has not been convicted of a felony; provided, however, that for the purposes of this section, a conviction shall include a judgment, an admission of guilt or a plea of nolo contendere to any such felony charges or a conviction of an offense under the laws of another jurisdiction which, if committed in the commonwealth, would be a felony unless:

(i) at least 10 years have elapsed from the date of the conviction; and

(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.

The board shall have access to criminal offender record information to review such
felony or misdemeanor convictions as are necessary to carry out this section.

Section 268. Notwithstanding sections 265 and 266, the board may issue a license
without examination to an applicant who presents evidence that such applicant has been licensed
or certified as an applied behavior analyst by a similar board of another jurisdiction the standards
of which are at least the same as those required in the commonwealth.

Section 269. The board may grant a temporary license to practice applied behavior
analysis for a period not to exceed 1 year to an applied behavior analyst with prior legal evidence
outside the commonwealth to practice; provided, however, that such applied behavior analyst
shall register with the board and shall practice in consultation with or under the supervision of a
licensed applied behavior analyst or possesses qualifications acceptable to the board.

Section 270. A license to practice applied behavior analysis or to practice as an assistant
applied behavioral analyst shall be valid for 2 years and shall be renewed on or before the
anniversary of the date of birth of the licensee next occurring more than 24 months after the date
of issuance of the license and every 2 years thereafter. Under the renewal, the applicant shall
attest to the completion of and, if requested, 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
continuing education programs shall meet the standards specified by the board. The board may
provide for the late renewal of a license which has lapsed and may require the payment of a late
fee.

Section 271. All fees required by sections 265 to 277, inclusive, shall be determined
annually by the secretary of administration and finance under section 3B of chapter 7. All
licensing and application fees and civil administrative penalties collected under said sections 265
to 277, inclusive, shall be deposited into the Division of Professional Licensure Trust Fund
established in section 35V of chapter 10.

Section 272. Nothing in sections 264 to 277, inclusive, shall be construed to prevent
qualified members of other professions or occupations including, but not limited to, 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 practicing applied
behavior analysis if it is consistent with the accepted standards of their respective professions;
provided, however, that no such Christian Science practitioner, attorneys-at-law, social worker,
guidance counselor, clinical counselor, adjustment counselor, speech pathologist, audiologist or
rehabilitation counselor shall use any title or description stating or implying that such person is a
licensed applied behavior analyst without holding said license.

Section 273. A person licensed under sections 264 to 270, inclusive, shall comply with
the standards of ethical practice as adopted by the board.

Section 274. A 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 subject to the penalties set forth in section 65A of chapter 112.

Section 275. The penalties in section 274 shall not apply to faculty or students of applied behavior analysis currently enrolled in a recognized educational institution which meets educational standards determined by the board or to interns or persons preparing for the practice of applied behavior analysis under qualified supervision in any such program; provided, 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 276. The board shall investigate all complaints relating to the proper practice of applied behavior analysis by a person licensed under sections 264 to 277, inclusive.

The board, after a hearing held under chapter 30A, may revoke, suspend or cancel the license, or reprimand, censure or otherwise discipline a licensed applied behavior analyst or licensed assistant applied behavior analyst upon proof satisfactory to a majority of the board that the applied behavior analyst or assistant applied behavior analyst:

(i) fraudulently procured the license;

(ii) is guilty of an offense under any law of the commonwealth relating to the practice of applied behavior analysis or a rule or regulation adopted under those laws;

(iii) engaged in conduct that calls 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;

(iv) practiced applied behavior analysis while the ability to practice was impaired by alcohol, drugs, physical disability or mental instability;

(v) has been 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;

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

(vii) has been convicted of a criminal offense which reasonably calls into question the licensee’s ability to practice applied behavior analysis;

(viii) violated any rule or regulation of the board governing the practice of applied behavior analysis; or

(ix) violated any professional disciplinary or ethical standard established by the board.

No person who files a complaint or who reports or provides information under this section or assists the board at its request in any manner in discharging its duties and functions shall be liable in a cause of action arising out of the receiving of such information or assistance if the person making the complaint or reporting or providing the information or assistance does so in good faith and without malice.

If the applied behavior analyst or assistant applied behavior analyst is found not to have violated this section, the board shall forthwith order a dismissal of the charges.
Written notice of a contemplated revocation or suspension of a license or the cause therefor, in sufficient particularity, and the date of a hearing thereon, shall be sent by registered or certified mail to the licensee at the licensee’s last known address at least 15 days before the date of the hearing. The applied behavior analyst or assistant 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, introduce evidence and question witnesses. No license shall be revoked or suspended without such hearing, but the nonappearance of the licensee, after notice, shall not prevent such revocation or suspension. All matters upon which a contemplated revocation or suspension 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 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.

A decision by the board under this section shall be subject to review in superior court under chapter 30A.

Section 277. After three years from the date of revocation, an application for reinstatement may be made to the board and the board may, upon the affirmative vote of a majority of its members, grant such reinstatement.

SECTION 3. Notwithstanding section 109 of chapter 13 of the General Laws, the initial members of the board of registration of applied behavior analysts shall consist of 9 members to
be appointed by the governor, 2 of whom shall be doctoral-level, board-certified behavior analysts designated as such by the Behavior Analyst Certification Board, 4 of whom shall be board-certified behavior analysts designated as such by the Behavior Analyst Certification Board, 1 of whom shall be a board-certified assistant behavior analyst designated as such by the Behavior Analyst Certification Board and 2 of whom shall be selected from and shall represent the public, subject to section 9B of said chapter 13. Of the initial members appointed to the board, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2 years and 3 shall serve for a term of 1 year.

SECTION 4. Notwithstanding section 265 of chapter 112 of the General Laws, an applicant who applies to be licensed as an applied behavior analyst before January 1, 2014, may be granted status as a licensed applied behavior analyst, subject to the approval of the board of registration of applied behavior analysts, if: (i) the applicant is a board-certified behavior analyst certificant of the Behavior Analysis Certification Board; or (ii) the applicant has graduated with a doctoral degree from a recognized educational institution as defined in section 264 of said chapter 112 and the doctoral program included a minimum of 60 graduate credit hours in courses directly related to the study of applied behavior analysis; or (iii) the applicant has graduated with a master’s degree from a recognized educational institution as defined in said section 264 of said chapter 112 and the master’s program included a minimum of 30 graduate credit hours in courses directly related to the study of behavior analysis and can demonstrate that the applicant has practiced as an applied behavior analyst full-time or equivalent part-time for a minimum of 5 years. An applicant who is granted a license under this section may renew the license biennially if the applicant completes and, when requested, provides evidence to the board of registration of applied behavior analysts the prescribed minimum number of hours of continuing education as
provided in section 270 of said chapter 112. On or after January 1, 2014, an applicant for a
license as an applied behavior analyst or assistant applied behavior analyst shall meet the
requirements of said section 265 of said chapter 112.

SECTION 5. Notwithstanding section 266 of chapter 112 of the General Laws, an
applicant who applies for a license as an assistant applied behavior analyst before January 1,
2014 may be granted status as a licensed assistant applied behavior analyst, subject to approval
by the board of registration of applied behavior analysts, if the applicant is a board-certified
assistant behavior analyst certificant of the Behavior Analyst Certification Board. On or after
January 1, 2014, an applicant for a license as an assistant applied behavior analyst shall meet the
requirements of said section 266 of said chapter 112.