

HOUSE No. 4457

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, February 26, 2020.

The committee on Consumer Protection and Professional Licensure, to whom was referred the petition (accompanied by bill, House, No. 3479) of Tackey Chan and others relative to the establishment of a board of registration of applied behavior analysts, reports recommending that the accompanying bill (House, No. 4457) ought to pass.

For the committee,

TACKEY CHAN.

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

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. Section 88 of chapter 13 of the General Laws, as appearing in the 2018
2 Official Edition, is hereby amended by striking out the figure “13”, in line 4, and inserting in
3 place thereof the following figure:- 11

4 SECTION 2. Section 89 of said chapter 13 of the General Laws is hereby amended by
5 striking out subsection (A), and inserting in place thereof the following:-

6 (A) Eight members shall be licensed practicing mental health and human services
7 professionals, two of whom shall be marriage and family therapists, two of whom shall be
8 rehabilitation counselors, two of whom shall be clinical mental health counselors, two of whom
9 shall be educational psychologists; and each shall have been, for at least five years immediately
10 preceding appointment, actively engaged as a practitioner rendering professional services in that
11 field, or in the education and training of graduate students or interns in the field, or in appropriate
12 human developmental research, or in other areas substantially equivalent thereto, and shall have
13 spent the majority of the professional time in such activity during the two years preceding the

14 appointment in the commonwealth. One of the 8 shall also be a member of a union licensable
15 under sections 163 to 172, inclusive, of chapter 112; and

16 SECTION 3. Said chapter 13 of the General Laws is hereby further amended by adding
17 the following 3 sections:-

18 Section 110. (a) There shall be within the division of professional licensure a board of
19 registration of behavior analysts. The board shall consist of 9 members to be appointed by the
20 governor, 2 of whom shall be Licensed Behavior Analysts licensed under this section who hold
21 doctoral degrees, 4 of whom shall be Licensed Behavior Analysts licensed under this section
22 who hold master's degrees, 1 of whom shall be a Licensed Assistant Behavior Analyst licensed
23 under this section who holds a bachelor's degree, and 2 members of the general public, subject to
24 section 9B. Members of the board shall be residents of the commonwealth.

25 (b) Each member of the board shall serve for a term of 3 years and until a successor has
26 been appointed and qualified. A vacancy in the membership of the board shall be filled for the
27 unexpired term in the manner provided for the original appointment. No member shall serve
28 more than 2 full consecutive terms. A member appointed for less than a full term may serve 2
29 full terms in addition to that part of a full term. A former member shall be eligible for
30 appointment after a lapse of 1 year.

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

35 Section 111.. The board shall hold at least 2 meetings annually and will determine an
36 appropriate schedule of meetings that meets the needs of licensees. At its first regular meeting in
37 each year the board shall elect from its own members by majority vote a chair. A majority of the
38 board shall constitute a quorum. The members of the board shall serve without compensation but
39 shall be reimbursed for actual expenses reasonably incurred in the performance of their board
40 duties. The board may hire such staff as it deems necessary to carry out its activities.

41 Section 112. (a) The board of registration of behavior analysts may: (i) pass upon the
42 qualifications of an application for a license under sections 275 to 287, inclusive, of chapter 112
43 and shall issue a license to an applicant who is determined to be qualified to practice as a
44 licensed behavior analyst or licensed assistant behavior analyst; (ii) adopt rules and regulations
45 governing the licensure of behavior analysts and assistant behavior analysts; (iii) establish
46 eligibility and renewal requirements; (iv) receive, review and approve or disapprove an
47 application for a reciprocal license for an applicant who is licensed or certified as a behavior
48 analyst in another state and who has demonstrated qualifications that equal or exceed those
49 required under sections 275 to 287, inclusive, of said chapter 112; (v) fine, censure, revoke,
50 suspend or deny a license and place on probation, reprimand or otherwise discipline a licensee
51 for a violation of the code of ethics or the rules and regulations of the board under said sections
52 275 to 287, inclusive, of said chapter 112; (vi) summarily suspend the license of a licensee who
53 poses an imminent danger to the public; provided, however, that a hearing shall be afforded to
54 the licensee within 10 day after any such action by the board to determine whether such
55 summary action is warranted; and (vii) perform any other functions and duties as may be
56 required to carry out this section.

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

59 (c) The members of the board, its officers and employees shall be indemnified by the
60 commonwealth for all actions taken as part of their responsibilities described in this section.

61 SECTION 4. Section 163 of chapter 112 of the General Laws is hereby amended by
62 striking out the definitions, “Licensed applied behavior analyst” and “Licensed assistant applied
63 behavior analyst”, and inserting in place thereof the following definitions:-

64 "Licensed assistant behavior analyst", an individual who, by training, experience and
65 examination meets the requirements for licensing by the board of registration of behavior
66 analysts and is duly licensed to engage in the practice of applied behavior analysis under the
67 supervision of a licensed behavior analyst under sections 275 through 287, inclusive.

68 “Licensed behavior analyst”, an individual who, by training, experience and examination
69 meets the requirements for licensing by the board of registration of behavior analysts and is duly
70 licensed to engage in the practice of applied behavior analysis in the commonwealth under
71 sections 275 through 287, inclusive.

72 SECTION 5. Section 165 of chapter 112 of the General Laws is hereby amended by
73 striking out the following words in the title of the section:- “applied behavior analysts”.

74 SECTION 6. Said Section 165 of chapter 112 of the General Laws is hereby further
75 amended by striking out the eighth through fifteenth paragraphs in their entirety.

76 SECTION 7. Chapter 112 of the General Laws is hereby amended by adding the
77 following 13 sections:-

78 Section 275. As used in sections 275 to 287, inclusive, the following words shall, unless
79 the context clearly requires otherwise, have the following meanings:

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

81 “Certifying entity”, the Behavior Analyst Certification Board, Inc. (BACB), or another
82 entity whose programs to credential practitioners of applied behavioral analysis are accredited by
83 the National Commission on Certifying Agencies (NCCA) or American National Standards
84 Institute (ANSI) and approved by the board. “Licensed assistant behavior analyst”, an individual
85 who, by training, experience and examination meets the requirements for licensing by the board
86 and is duly licensed to engage in the practice of applied behavior analysis under the supervision
87 of a licensed behavior analyst.

88 “Licensed behavior analyst”, an individual who, by training, experience and examination
89 meets the requirements for licensing by the board and is duly licensed to engage in the practice
90 of applied behavior analysis in the commonwealth.

91 “Practice of applied behavior analysis”, the design, implementation and evaluation of
92 systematic instructional and environmental modifications, using behavioral stimuli and
93 consequences, to produce socially significant improvements in human behavior, including the
94 direct observation and measurement of behavior and the environment, the empirical
95 identification of functional relations between behavior and environmental factors, known as
96 functional assessment and analysis, and the introduction of interventions based on scientific
97 research and which utilize contextual factors, antecedent stimuli, positive reinforcement and
98 other consequences to develop new behaviors, increase or decrease existing behaviors and elicit
99 behaviors under specific environmental conditions that are delivered to individuals and groups of

100 individuals; provided, however, that the "practice of applied behavior analysis" shall not include
101 psychological testing, neuropsychology, diagnosis of mental health or developmental conditions,
102 psychotherapy, cognitive therapy, sex therapy, psychoanalysis, psychopharmacological
103 recommendations, hypnotherapy or academic teaching by college or university faculty.

104 "Recognized educational institution", a degree-granting college or university which is
105 accredited by (i) a regional accreditation body recognized by the United States Department of
106 Education and (ii) a certifying entity.

107 Section 276. The board may issue a license to an applicant as a behavior analyst provided
108 that the applicant:

109 (a) is of good moral character;

110 (b) has not engaged or is not engaging in any practice or conduct that would be
111 grounds for refusing to issue a license under section 286; and

112 (c) has current certification at the appropriate level verified with the certifying entity
113 by the board; and any other requirements and qualifications as deemed necessary by the board

114 Section 277. The board may issue a license to an applicant as an assistant behavior
115 analyst provided that the applicant:

116 (a) is of good moral character;

117 (b) has not engaged or is not engaging in any practice or conduct that would be
118 grounds for refusing to issue a license under section 286;

119 (c) has current certification at the appropriate level verified with the certifying entity
120 by the board; and

121 (d) can provide the board upon request with evidence of current and ongoing
122 supervision by a licensed behavior analyst who is approved as a supervisor by the certifying
123 entity; and any other requirements and qualifications as deemed necessary by the board.

124 Section 278. Each person desiring to obtain a license as a behavior analyst or as
125 an assistant behavior analyst shall make application to the board upon such form and in such
126 manner as the board shall prescribe and shall furnish evidence satisfactory to the board that the
127 person is of good moral character including, but not limited to, the fact that such applicant has
128 not been convicted of a felony; provided, however, that for the purposes of this section, a
129 conviction shall include a judgment, an admission of guilt or a plea of nolo contendere to any
130 such felony charges or a conviction of an offense under the laws of another jurisdiction which, if
131 committed in the commonwealth, would be a felony unless:

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

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

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

139 Section 279. Notwithstanding sections 276 and 277, the board may issue a license to an
140 applicant who presents evidence that such applicant has been licensed or certified as a behavior
141 analyst or assistant behavior analyst by a similar board of another jurisdiction the standards of
142 which are at least the same as those required in the commonwealth.

143 Section 280. A fee shall be paid to the board for the original license. A license to
144 practice as a licensed behavior analyst or a licensed assistant behavior analyst shall be valid for 2
145 years and must be renewed biennially. Any application for renewal of a license that has expired
146 shall require the payment of a re-registration fee.

147 On or before September 13 of the year preceding the expiration of a license, the board
148 shall forward to the holder of the license a form of application for renewal thereof. Upon the
149 receipt of the completed form and the renewal fee on or before November 13, the board shall
150 verify with the certifying entity that the applicant is certified at the appropriate level and is not
151 the subject of any active investigation or disciplinary action by the certifying entity. If such
152 verification is attained, the board shall issue a new license for the year commencing January 1.

153 Section 281. All fees required by sections 275 to 287, inclusive, shall be determined
154 annually by the secretary of administration and finance under section 3B of chapter 7. All
155 licensing and application fees and civil administrative penalties collected under said sections 275
156 to 287, inclusive, shall be deposited into the Division of Professional Licensure Trust Fund
157 established in section 35V of chapter 10.

158 Section 282. Nothing in sections 275 to 287, inclusive, shall be construed to prevent
159 qualified members of other professions or occupations including, but not limited to, physicians,
160 psychologists, teachers, members of the clergy, authorized Christian Science practitioners,

161 attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment
162 counselors, speech pathologists, audiologists or rehabilitation counselors from practicing applied
163 behavior analysis if it is consistent with the legislated scope of practice and accepted ethical
164 standards of their respective professions and the individual professional's training and
165 competence; provided, however, that no such Christian Science practitioner, attorneys-at-law,
166 social worker, guidance counselor, clinical counselor, adjustment counselor, speech pathologist,
167 audiologist or rehabilitation counselor shall use any title or description stating or implying that
168 such person is a licensed behavior analyst or licensed assistant behavior analyst without holding
169 said license.

170 Section 283. A person licensed under sections 275 to 287, inclusive, shall comply with
171 the standards of ethical practice as adopted by the board.

172 Section 284. A person not licensed to practice applied behavior analysis who holds
173 himself out to be a licensed behavior analyst or licensed assistant behavior analyst or who uses
174 the title "licensed behavior analyst" or "licensed assistant behavior analyst" or engages in the
175 practice of applied behavior analysis shall be subject to the penalties set forth in section 65A.

176 Section 285. The penalties set forth in section 284 shall not apply to faculty or students of
177 applied behavior analysis currently enrolled in a recognized educational institution which meets
178 educational standards determined by the board or to interns or persons preparing for the practice
179 of applied behavior analysis under qualified supervision in any such program; provided, that they
180 are designated by such titles as "behavior analyst intern", "behavior analyst trainee" or other title
181 clearly indicating such training status.

182 Section 286. The board shall investigate all complaints relating to the proper practice of
183 applied behavior analysis by a person licensed under sections 275 to 287, inclusive.

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

187 (i) fraudulently procured the license;

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

190 (iii) engaged in conduct that calls into question their competence to practice applied
191 behavior analysis including, but not limited to, gross misconduct in the practice of applied
192 behavior analysis or of practicing applied behavior analysis fraudulently, or beyond its
193 authorized scope, or with gross incompetence, or with gross negligence on a particular occasion
194 or negligence on repeated occasions;

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

197 (v) has been habitually drunk or being or having been within a reasonable period of time
198 addicted to, dependent on or a habitual user of narcotics, barbiturates, amphetamines,
199 hallucinogens or other drugs having similar effects;

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

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

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

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

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

212 If the licensee is found not to have violated this section, the board shall forthwith order a
213 dismissal of the charges.

214 Written notice of a contemplated revocation or suspension of a license or the cause
215 therefor, in sufficient particularity, and the date of a hearing thereon, shall be sent by registered
216 or certified mail to the licensee at the licensee's last known address at least 15 days before the
217 date of the hearing. The licensee against whom a charge is filed shall have a right to appear
218 before the board in person or by counsel, or both, may produce witnesses, introduce evidence
219 and question witnesses. No license shall be revoked or suspended without such hearing, but the
220 nonappearance of the licensee, after notice, shall not prevent such revocation or suspension. All
221 matters upon which a contemplated revocation or suspension is based shall be introduced in
222 evidence at the proceeding. The licensee shall be notified in writing of the board's decision. The

223 board may make such rules and regulations as it deems proper for the filing of charges and the
224 conduct of hearings.

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

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

231 Section 287. After three years from the date of revocation, an application for
232 reinstatement may be made to the board and the board may, upon the affirmative vote of a
233 majority of its members, grant such reinstatement.

234 SECTION 8. Notwithstanding section 110 of chapter 13 of the General Laws, the initial
235 members of the board of registration of behavior analysts shall consist of 9 members to be
236 appointed by the governor, 2 of whom shall be doctoral-level, Board-Certified Behavior Analysts
237 designated as such by the Behavior Analyst Certification Board, 4 of whom shall be Board-
238 Certified Behavior Analysts designated as such by the Behavior Analyst Certification Board who
239 hold master's degrees, 1 of whom shall be a Board-certified Assistant Behavior Analyst
240 designated as such by the Behavior Analyst Certification Board who holds a bachelor's degree,
241 and 2 members of the general public, subject to section 9B of chapter 13. Of the said initial
242 members appointed to the board, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2
243 years and 3 shall serve for a term of 1 year.

244 SECTION 9. Individuals licensed in good standing as applied behavior analysts or
245 assistant applied behavior analysts within the commonwealth upon the effective date of this Act
246 shall be grandfathered, and not required to resubmit applications for licensure until the time as
247 their license is due for renewal.