

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:
<i>Linda Campbell</i>	<i>15th Essex</i>
<i>Edward F. Copping</i>	<i>10th Suffolk</i>
<i>Thomas A. Golden, Jr.</i>	<i>16th Middlesex</i>
<i>Katherine M. Clark</i>	<i>Middlesex and Essex</i>
<i>Michael R. Knapik</i>	
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Anthony W. Petrucci</i>	
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Barry R. Finegold</i>	
<i>James Arciero</i>	<i>2nd Middlesex</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>John D. Keenan</i>	<i>7th Essex</i>
<i>Louis L. Kafka</i>	<i>8th Norfolk</i>
<i>Karen E. Spilka</i>	
<i>James E. Timilty</i>	
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>

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

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:

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 board of
4 registration of behavior analysts, in this section and in sections 102 to 104, inclusive, hereinafter
5 called the board, consisting of nine members appointed by the governor for terms of three years.

6 Members of the board shall be residents of the Commonwealth and citizens of the United States.

7 Upon the creation of the Board, two members of the board shall be Doctoral-level Board
8 Certified Behavior Analysts (BCBA-Ds), four shall be Board Certified Behavior Analysts

9 (BCBAs), one shall be a Board Certified Assistant Behavior Analysts (BCaBAs), and two

10 members of said board shall be selected from and shall represent the public, subject to the

11 provisions of section nine B of chapter 13. After the first year, five members of the board shall

12 be Licensed Behavior Analysts and two shall be Licensed Assistant Behavior Analysts under the

13 provisions of sections two hundred and thirty-six to two hundred and fifty-one, inclusive, of

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

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

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

26 Section 102. The board shall at its first meeting and, annually thereafter, organize by
27 electing from among its members, by majority vote, a chairman, a vice-chairman, and a
28 secretary. Such officers shall serve until their successors are elected and qualified. The board
29 shall hold at least two meetings each year, but additional meetings may be held upon the call of
30 the chairman, or the secretary, or at the written request of any three members of the board. Five
31 members of the board shall constitute a quorum. The members of the board shall serve without
32 compensation but each member shall be reimbursed for actual expenses reasonably incurred in
33 the performance of his/her duties as a member on behalf of the board. The board shall be
34 empowered to hire such assistants as it may deem necessary to carry on its activities.

35 Section 103. The board shall have the following powers and duties: (i) to pass upon the
36 qualifications of all applications for licenses under sections two hundred and thirty-six to two
37 hundred and fifty-two, inclusive, of chapter one hundred and twelve, and issue a license to those
38 who are determined to be qualified as Licensed Behavior Analysts or Licensed Assistant
39 Behavior Analysts (ii) to adopt rules and promulgate regulations governing the licensure of
40 behavior analysts and the practice of behavior analysis; (iii) to recommend policy and budgetary
41 matters to the division of professional licensure; (iv) to establish eligibility, renewal and
42 examination requirements, which will include current certification by the Behavior Analyst
43 Certification Board®, Inc. (BACB), its successor or other equivalent nationally accredited
44 behavior analyst certification board, as determined by the board; (v) to define by regulation the
45 appropriate standards for education and experience necessary to qualify for licensing, including,
46 but not limited to, continuing professional education requirements for licensed behavior analysts,
47 which shall be no less stringent than those of the BACB, its successor or other equivalent
48 nationally accredited behavior analyst certification board, as determined by the board; and for the
49 conduct and ethics which shall govern the practice of behavior analysis; (vi) to receive, review,
50 and approve or disapprove applications for a reciprocal license to applicants who are licensed or
51 certified as an behavior analyst in another state and who have demonstrated qualifications which
52 equal or exceed those required pursuant to sections two hundred and thirty-six to two hundred
53 and fifty-two, inclusive, of chapter one hundred and twelve, provided that no reciprocal license
54 shall be granted under this section to an applicant unless the state in which the applicant is
55 licensed affords reciprocal treatment to persons who are residents of the Commonwealth of
56 Massachusetts and who are licensed pursuant to said chapter one hundred and twelve; (vii) to
57 fine, censure, revoke, suspend or deny a license, place on probation, reprimand or otherwise

58 discipline licensees for violations of the code of ethics or the rules of the board in accordance
59 with sections two hundred and forty-six, two hundred and forty-eight, and two hundred and fifty
60 of chapter 112, but the board shall not have the power of subpoena; (viii) to summarily suspend
61 the license of a licensee who poses an imminent danger to the public but a hearing shall be
62 afforded to the licensee within 7 days of an action by the board to determine whether such
63 summary action is warranted; and (ix) to perform such other functions and duties as may be
64 required to carry out this section.

65 Section 104. The board shall take no action with respect to the granting of a license or its
66 revocation or suspension without the concurrence of at least five members of the board. The
67 board shall adopt a seal which shall be affixed to all licenses issued by the board.

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

70 Section 106. The members of the board, as well as the BACB, its officers and
71 employees, shall be indemnified by the Commonwealth for all actions taken as part of their
72 responsibilities described herein.

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

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

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

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

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

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

89 "Recognized educational institution", a degree-granting college or university which is
90 accredited by a Regional Board or Association of Institutions of higher education approved by
91 the Council on Post Secondary Education of the United States Department of Education, or
92 which is chartered to grant masters or doctoral degrees by the Commonwealth. Such institutional
93 accreditation shall exist at the time that the degree is granted or within two years thereafter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

167 Section 242. Licenses shall be valid for two years and shall be renewed biennially. On or
168 before April fifteenth every two years, the secretary of the board shall forward to each licensed
169 Behavior Analyst an application form for renewal. Upon the receipt of the completed form and
170 the renewal fee on or before June first, the secretary shall renew the license for three years
171 commencing July first. Any application for renewal of a license which has expired shall require
172 the payment of a new application fee. Pursuant to the renewal, the applicant shall present to the
173 board documented evidence of the completion of a minimum number of hours of continuing
174 education programs as specified by the board and which are designed to improve the professional
175 competence of the licensee. Such programs shall be completed during the licensed period
176 immediately prior to renewal. Such CEUs must meet the standards specified by the BACB, its
177 successor or other equivalent nationally accredited recognized behavior analyst certification
178 board, as determined by the board.

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

183 Section 244. Nothing in sections two hundred and thirty-six to two hundred and fifty-
184 two, inclusive, shall be construed to prevent qualified members of other professions or
185 occupations such as physicians, psychologists, teachers, members of the clergy, authorized
186 Christian Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical

187 counselors, adjustment counselors, speech pathologists, audiologists or rehabilitation counselors
188 from doing work of an behavior analytic nature consistent with the accepted standards of their
189 respective professions, provided, however, that they do not hold themselves out to the public by
190 any title or description stating or implying that they are Behavior Analysts or that they are
191 licensed to practice behavior analysis.

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

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

201 Section 247. Any person not licensed to practice behavior analysis who holds himself
202 out to be a behavior analyst or who uses the title behavior analyst or engages in the practice of
203 behavior analysis shall be punished by a fine of not more than five hundred dollars, or by
204 imprisonment of not more than three months, or both such fine and imprisonment.

205 Section 248. The penalties in section two hundred and forty-eight shall not apply to:
206 students of behavior analysis currently enrolled in an recognized educational institution which
207 meets the educational standards of the BACB its successor or other equivalent nationally
208 accredited behavior analyst certification board, as determined by the board, or interns or persons

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

212 Section 249. The board shall investigate all complaints relating to the proper practice of
213 behavior analysis by any person licensed under sections two hundred and thirty-six to two
214 hundred and fifty-two, inclusive.

215 The board may, after a hearing in accordance with the provisions of chapter thirty A,
216 revoke, suspend or cancel the license, or reprimand, censure or otherwise discipline a Behavior
217 Analyst or Assistant Behavior Analyst licensed under said sections two hundred and thirty-six to
218 two hundred and fifty-two, inclusive, upon proof satisfactory to a majority of the board that said
219 Behavior Analyst:

220 (a) fraudulently procured said license;

221 (b) is guilty of an offense against any provision of the laws of the Commonwealth
222 relating to the practice of behavior analysis or any rule or regulation adopted thereunder;

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

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

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

233 (f) is guilty of knowingly permitting, aiding or abetting an unlicensed individual to
234 perform activities requiring a license for purposes of fraud, deception or personal gain, excluding
235 activities permissible under any provision of laws of the Commonwealth or rules or regulations
236 of the board;

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

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

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

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

247 No person filing a complaint or reporting or providing information pursuant to this
248 section or assisting the board at its request in any manner in discharging its duties and functions
249 shall be liable in any cause of action arising out of the receiving of such information and
250 assistance; provided, however, that the person making the complaint or reporting or providing

251 said information or assistance does so in good faith and without malice. Anonymous complaints
252 submitted to the board of such violations shall not be considered.

253 If the Behavior Analyst or Assistant Behavior Analyst is found not to have violated any
254 of the provisions set forth in this section, the board shall forthwith order a dismissal of the
255 charges.

256 Notice in writing of a contemplated revocation or suspension of a license, or the cause
257 therefore in sufficient particularity, and of the date of hearing thereon, shall be sent by registered
258 or certified mail to the licensee at his/her last known address at least fifteen days before the date
259 of such hearing. The Behavior Analyst or Assistant Behavior Analyst against whom a charge is
260 filed shall have a right to appear before the board in person or by counsel, or both, may produce
261 witnesses and evidence on his/her behalf, and may question witnesses. No license shall be
262 revoked or suspended without such hearing, but the nonappearance of the licensee, after notice,
263 shall not prevent such hearing. All matters upon which the decision is based shall be introduced
264 in evidence at the proceeding. The licensee shall be notified in writing of the board's decision.
265 The board may make such rules and regulations as it deems proper for the filing of charges and
266 the conduct of hearings.

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

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

273 Section 250. After three years from the date of revocation, an application for
274 reinstatement may be made to the board, which may, upon the affirmative vote of at least five of
275 its members, grant such reinstatement.