

HOUSE No. 01901

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 passage of the accompanying bill:

An Act relative to the licensure of behavior analysts.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Linda Dean Campbell</i>	<i>15th Essex</i>
<i>Edward 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>Second Hampden and Hampshire</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Kimberly Ferguson</i>	<i>1st Worcester</i>
<i>Anthony W. Petruccelli</i>	<i>First Suffolk and Middlesex</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>
<i>Anne M. Gobi</i>	<i>5th Worcester</i>
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</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>Second Middlesex and Norfolk</i>
<i>James E. Timilty</i>	<i>Bristol and Norfolk</i>

<i>Elizabeth 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 Cariddi</i>	<i>1st Berkshire</i>
<i>David M. Torrisi</i>	<i>14th Essex</i>
<i>William N. Brownsberger</i>	<i>24th Middlesex</i>
<i>Thomas P. Conroy</i>	<i>13th Middlesex</i>
<i>Michael O. Moore</i>	<i>Second Worcester</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>First Hampden and Hampshire</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. 01901

By Mr. Scibak of South Hadley, a petition (accompanied by bill, House, No. 1901) of Clark and others for legislation to establish a board of registration of behavior analysts within the Division of Professional Licensure Joint Committee on 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 following
2 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 years,
17 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 for cause;
23 but no board member may be so removed without being informed in writing at least thirty days
24 in advance of the reasons for his removal and of his right to a public or private hearing with
25 counsel.

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

33 of his/her duties as a member on behalf of the board. The board shall be empowered to hire such
34 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 Analysts
69 and Licensed Assistant Behavior Analysts.

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

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

75 Section 236. As used in sections two hundred and thirty-six to two hundred and fifty-one,
76 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 examination meets
79 the requirements for licensing by the board and is duly licensed to engage in the practice of
80 behavior analysis under the supervision of a licensed Behavior Analyst.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

217 (a) fraudulently procured said license;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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