

SENATE No. 00108

The Commonwealth of Massachusetts

PRESENTED BY:

Brian A. Joyce

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the licensure of applied behavior analysts..

PETITION OF:

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

SENATE No. 00108

By Mr. Joyce, petition (accompanied by bill, Senate, No. 108) of Eldridge, DiDomenico, Jehlen and other members of the Senate for legislation relative to behavior analysts [Joint Committee on Consumer Protection and Professional Licensure].

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

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the licensure of applied behavior analysts..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

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

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

10 twelve and shall have been actively engaged in the practice of Applied Behavior Analysis for the
11 five years next preceding their appointment. Two members of said board shall be selected from
12 and shall represent the public, subject to the provisions of section nine B of chapter 13.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 “Recognized educational institution”, a degree-granting college or university which is accredited
92 by a Regional Board or Association of Institutions of higher education approved by the Council
93 on Post Secondary Education of the United States Department of Education, or which is
94 chartered to grant doctoral degrees by the commonwealth. Such institutional accreditation shall
95 exist at the time that the doctoral degree is granted or within two years thereafter. The program
96 in applied behavior analysis used to meet the standards for licensure under this law must be

97 accredited by the Association for Behavior Analysis International Accreditation Board at the
98 time of graduation or be approved by the board.

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

120 nonprofit agency which delivers services to residents of the commonwealth as a subcontractor of
121 a state agency, a Local Education agency (LEA), an approved Ch. 766 private school, or other
122 entity approved by the board. However, nothing in this scope of practice should be construed as
123 allowing applied behavior analysts the ability to diagnose psychiatric conditions.

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

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

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

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

138 (b) For the first five years of enactment of this legislation in the Commonwealth of
139 Massachusetts, applicants who have graduated with a Doctoral Degree from a regionally
140 accredited university and are a Board Certified Behavior Analyst (BCBA) certificant of the
141 Behavior Analysis Certification Board™ or whose Doctoral program included a minimum of 60

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

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

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

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

160 3. The successful completion, as defined by the Board, of a nationally
161 recognized examination adopted by the Association for Behavior Analysis International and
162 approved by the Board, related to the principles and practice of the profession of Applied
163 Behavior Analysis.

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

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

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

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

182 Section 240. Notwithstanding the provisions of sections two hundred thirty-seven and
183 two hundred and thirty-eight, the board may issue a license without examination to an applicant
184 who presents evidence that he/she has been licensed or certified as an applied behavior analyst
185 by a similar board of another jurisdiction whose standards, in the opinion of the board, are not

186 lower than those required in the commonwealth; or that he/she holds a diploma from a nationally
187 recognized board or agency approved by the board.

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

196 Section 242. Licenses shall be valid for two years and shall be renewed biennially. On
197 or before April fifteenth every two years the secretary of the board shall forward to each licensed
198 applied behavior analyst an application form for renewal. Upon the receipt of the completed
199 form and the renewal fee on or before June first, the secretary shall renew the license for two
200 years commencing July first. Any application for renewal of a license which has expired shall
201 require the payment of a new application fee. Pursuant to the renewal, the applicant shall present
202 to the board documented evidence of the completion of 36 hours of continuing education
203 programs designed to improve the professional competence of the licensee. Such programs shall
204 be completed during the licensed period immediately prior to renewal. Such CEUs must be
205 obtained either directly from the Association for Behavior Analysis International, an
206 organization offering CEU activities which are approved by the Association for Behavior
207 Analysis International, or be approved by the board.

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

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

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

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

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

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

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

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

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

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

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

245 (b) students of applied behavior analysis currently enrolled in a recognized educational
246 institution accredited by the Association for Behavior Analysis International Accreditation
247 Board, interns or persons preparing for the practice of applied behavior analysis under qualified
248 supervision in such a program; provided, however, that they are designated by such titles as
249 “applied behavior analyst intern”, “applied behavior analyst trainee” or other title clearly
250 indicating such training status.

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

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

258 (a) fraudulently procured said license;

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

261 (c) is guilty of conduct that places into question the applied behavior analyst's
262 competence to practice applied behavior analysis, including but not limited to gross misconduct
263 in the practice of applied behavior analysis or of practicing applied behavior analysis
264 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
265 negligence on a particular occasion or negligence on repeated occasions;

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

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

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

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

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

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

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

284 No person filing a complaint or reporting or providing information pursuant to this section or
285 assisting the board at its request in any manner in discharging its duties and functions shall be
286 liable in any cause of action arising out of the receiving of such information and assistance;
287 provided, however, that the person making the complaint or reporting or providing said
288 information or assistance does so in good faith and without malice. Anonymous complaints
289 submitted to the board of such violations shall not be considered.

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

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

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

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

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

311 Section 252. All communications between a licensed applied behavior analyst and the
312 individuals with whom the applied behavior analyst engages in the practice of applied behavior
313 analysis are confidential and shall be considered as privileged communications. At the initiation

314 of the professional relationship the applied behavior analyst shall inform the patient of the
315 following limitations to the confidentiality of their communications. No applied behavior
316 analyst, colleague, agent or employee of any applied behavior analyst, whether professional,
317 clerical, academic or therapeutic, or a graduate of, or student enrolled in, a degree program in
318 applied behavior analysis at a recognized educational institution as that term is defined in section
319 two hundred and thirty-six, who is working under the supervision of a licensed applied behavior
320 analyst, shall disclose any information acquired or revealed in the course of or in connection with
321 the performance of the applied behavior analyst's professional services, including the fact,
322 circumstances, findings or records of such services, except under the following circumstances:

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

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

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

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

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

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

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

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

346 (3) the patient has a history of physical violence which is known to the
347 applied behavior analyst and the applied behavior analyst has a reasonable basis to believe that
348 there is a clear and present danger that the patient will attempt to kill or inflict serious bodily
349 injury upon a reasonably identified person. In such circumstances the applied behavior analyst
350 shall have a duty to take reasonable precautions. An applied behavior analyst shall be deemed to
351 have taken reasonable precautions if said applied behavior analyst makes reasonable efforts to
352 take one or more of the following actions:

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

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

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

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

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

367 The applied behavior analyst shall only disclose that information which is essential in
368 order to protect the rights and safety of others. Furthermore, nothing contained herein shall
369 require an applied behavior analyst to take any action which, in the exercise of reasonable
370 professional judgment, would endanger him or increase the danger to a potential victim or
371 victims.

372 No provision of this section shall be construed to prevent a nonprofit hospital service
373 or medical service corporation from inspecting and copying, in the ordinary course of
374 determining eligibility for or entitlement to benefits, any and all records relating to diagnosis,
375 treatment, or other services provided to any person, including a minor or incompetent, for which
376 coverage, benefit or reimbursement is claimed, so long as the policy or certificate under which

377 the claim is made provides that such access to such records is permitted. No provision of this
378 section shall be construed to prevent access to any such records in connection with any
379 coordination of benefits, subrogation, workers' compensation, peer review, utilization review or
380 benefit management procedures applied and implemented in good faith.