SENATE . . . . . No. 2379

The committee on Ways and Means, to whom was referred the Senate bill relative to the licensure of behavior analysts (Senate, No. 2217); report recommending that the same ought to pass with an amendment substituting a new draft entitled An Act providing for the licensing of applied behavior analysts (Senate, No. 2379).

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act providing for the licensing of applied behavior analysts.

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

1 SECTION 1. Chapter 13 of the General Laws is hereby amended by adding the
2 following 3 sections:-

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

13 (b) Each member of the board shall hold office until a successor has been appointed and
14 qualified. A vacancy in the membership of the board shall be filled for the unexpired term in the
15 manner provided for the original appointment. No member shall serve more than 2 full
16 consecutive terms. A member appointed for less than a full term may serve 2 full terms in
17 addition to that part of a full term.

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

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

31 Section 111. (a) The board of registration of applied behavior analysts may: (i) pass
32 upon the qualifications of an application for a license under sections 264 to 270, inclusive, of
33 chapter 112 and shall issue a license to an applicant who is determined to be qualified to practice
34 as a licensed applied behavior analyst or licensed assistant applied behavior analyst; (ii) adopt

35 rules and regulations governing the licensure of applied behavior analysts; (iii) establish
36 eligibility and renewal requirements; (iv) establish specifications for the licensing examination
37 that are consistent and fair; (v) define, by regulation, the appropriate standards for education and
38 experience necessary to qualify for licensing including, but not limited to, continuing
39 professional education requirements for licensed applied behavior analysts; (vi) define, by
40 regulation, the appropriate standards for conduct and ethics which shall govern the practice of
41 applied behavior analysis; (vii) receive, review and approve or disapprove an application for a
42 reciprocal license for an applicant who is licensed or certified as an applied behavior analyst in
43 another state and who has demonstrated qualifications which equal or exceed those required
44 under sections 264 to 270, inclusive, of chapter 112; (viii) adopt rules and regulations necessary
45 to regulate and inspect the business associations of its licensees and, in its discretion, require
46 licensure of business associations not regulated or licensed by the department of public health;
47 (ix) fine, censure, revoke, suspend or deny a license and place on probation, reprimand or
48 otherwise discipline a licensee for a violation of the code of ethics or the rules and regulations of
49 the board under said sections 264 to 277, inclusive, of said chapter 112; (x) summarily suspend
50 the license of a licensee who poses an imminent danger to the public; provided, however, that a
51 hearing shall be afforded to the licensee within 10 days after any such action by the board to
52 determine whether such summary action is warranted; and (xi) perform any other functions and
53 duties as may be required to carry out this section.

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

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

58 SECTION 2. Chapter 112 of the General Laws is hereby amended by adding the
59 following 14 sections:-

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

62 “Applied behavior analyst”, an individual who, by training, experience and examination
63 meets the requirements for licensing by the board and is duly licensed to engage in the practice
64 of applied behavior analysis in the commonwealth.

65 "Assistant applied behavior analyst”, an individual who, by training, experience and
66 examination meets the requirements for licensing by the board and is duly licensed to engage in
67 the practice of applied behavior analysis under the supervision of a licensed applied behavior
68 analyst.

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

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

73 “Scope of practice of applied behavior analysis”, the design, implementation and
74 evaluation of systematic instructional and environmental modifications, using behavioral stimuli
75 and consequences, to produce socially significant improvements in human behavior, including
76 the direct observation and measurement of behavior and the environment, the empirical
77 identification of functional relations between behavior and environmental factors, known as
78 functional assessment and analysis, and the introduction of interventions based on scientific

79 research and which utilize contextual factors, antecedent stimuli, positive reinforcement and
80 other consequences to develop new behaviors, increase or decrease existing behaviors and elicit
81 behaviors under specific environmental conditions that are delivered to individuals and groups of
82 individuals; provided, that such practice of applied behavior analysis shall only be conducted
83 upon referral from a licensed mental health or medical professional whose scope of practice
84 includes diagnosis and evaluation; and provided further, that ”scope of practice of applied
85 behavior analysis” shall not include psychological testing, neuropsychology, diagnosis of mental
86 health or developmental conditions, psychotherapy, cognitive therapy, sex therapy,
87 psychoanalysis, psychopharmacological recommendations, hypnotherapy or academic teaching
88 by college or university faculty.

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

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

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

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

101 Section 266. The standards to qualify for the designation of assistant applied behavior
102 analyst shall include:

103 (1) a bachelor's degree from a recognized educational institution wherein a minimum of
104 45 credit hours specifically in behavior analysis or a bachelor's degree combined with successful
105 completion of a board-approved course sequence or course work which otherwise meets
106 professional standards, as determined by the board;

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

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

111 Section 267. Each person desiring to obtain a license as an applied behavior analyst or as
112 an assistant applied behavior analyst shall make application to the board upon such form and in
113 such manner as the board shall prescribe and shall furnish evidence satisfactory to the board that
114 the person is of good moral character including, but not limited to, the fact that such applicant
115 has not been convicted of a felony; provided, however, that for the purposes of this section, a
116 conviction shall include a judgment, an admission of guilt or a plea of nolo contendere to any
117 such felony charges or a conviction of an offense under the laws of another jurisdiction which, if
118 committed in the commonwealth, would be a felony unless:

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

120 (ii) the applicant satisfactorily demonstrates to the board that the applicant has made
121 significant progress in personal rehabilitation since the conviction so that licensure of the

122 applicant would not be expected to create a substantial risk of harm to the health and safety of
123 the applicant's clients or the public or a substantial risk of further criminal violations.

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

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

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

135 Section 270. A license to practice applied behavior analysis or to practice as an assistant
136 applied behavioral analyst shall be valid for 2 years and shall be renewed on or before the
137 anniversary of the date of birth of the licensee next occurring more than 24 months after the date
138 of issuance of the license and every 2 years thereafter. Under the renewal, the applicant shall
139 attest to the completion of and, if requested, present to the board documented evidence of the
140 completion of a minimum number of hours of continuing education programs as specified by the
141 board and which are designed to improve the professional competence of the licensee. Such
142 programs shall be completed during the licensed period immediately prior to renewal. Such
143 continuing education programs shall meet the standards specified by the board. The board may

144 provide for the late renewal of a license which has lapsed and may require the payment of a late
145 fee.

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

151 Section 272. Nothing in sections 264 to 277, inclusive, shall be construed to prevent
152 qualified members of other professions or occupations including, but not limited to, physicians,
153 psychologists, teachers, members of the clergy, authorized Christian Science practitioners,
154 attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment
155 counselors, speech pathologists, audiologists or rehabilitation counselors from practicing applied
156 behavior analysis if it is consistent with the accepted standards of their respective professions;
157 provided, however, that no such Christian Science practitioner, attorneys-at-law, social worker,
158 guidance counselor, clinical counselor, adjustment counselor, speech pathologist, audiologist or
159 rehabilitation counselor shall use any title or description stating or implying that such person is a
160 licensed applied behavior analyst without holding said license.

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

163 Section 274. A person not licensed to practice applied behavior analysis who holds
164 himself out to be an applied behavior analyst or who uses the title “applied behavior analyst” or

165 engages in the practice of applied behavior analysis shall be subject to the penalties set forth in
166 section 65A of chapter 112.

167 Section 275. The penalties in section 274 shall not apply to faculty or students of applied
168 behavior analysis currently enrolled in a recognized educational institution which meets
169 educational standards determined by the board or to interns or persons preparing for the practice
170 of applied behavior analysis under qualified supervision in any such program; provided, that they
171 are designated by such titles as "applied behavior analyst intern", "applied behavior analyst
172 trainee" or other title clearly indicating such training status.

173 Section 276. The board shall investigate all complaints relating to the proper practice of
174 applied behavior analysis by a person licensed under sections 264 to 277, inclusive.

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

179 (i) fraudulently procured the license;

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

182 (iii) engaged in conduct that calls into question the applied behavior analyst's
183 competence to practice applied behavior analysis including, but not limited to, gross misconduct
184 in the practice of applied behavior analysis or of practicing applied behavior analysis

185 fraudulently, or beyond its authorized scope, or with gross incompetence, or with gross
186 negligence on a particular occasion or negligence on repeated occasions;

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

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

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

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

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

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

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

204 If the applied behavior analyst or assistant applied behavior analyst is found not to have
205 violated this section, the board shall forthwith order a dismissal of the charges.

206 Written notice of a contemplated revocation or suspension of a license or the cause
207 therefor, in sufficient particularity, and the date of a hearing thereon, shall be sent by registered
208 or certified mail to the licensee at the licensee's last known address at least 15 days before the
209 date of the hearing. The applied behavior analyst or assistant applied behavior analyst against
210 whom a charge is filed shall have a right to appear before the board in person or by counsel, or
211 both, may produce witnesses, introduce evidence and question witnesses. No license shall be
212 revoked or suspended without such hearing, but the nonappearance of the licensee, after notice,
213 shall not prevent such revocation or suspension. All matters upon which a contemplated
214 revocation or suspension is based shall be introduced in evidence at the proceeding. The licensee
215 shall be notified in writing of the board's decision. The board may make such rules and
216 regulations as it deems proper for the filing of charges and the conduct of hearings.

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

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

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

226 SECTION 3. Notwithstanding section 109 of chapter 13 of the General Laws, the initial
227 members of the board of registration of applied behavior analysts shall consist of 9 members to

228 be appointed by the governor, 2 of whom shall be doctoral-level, board-certified behavior
229 analysts designated as such by the Behavior Analyst Certification Board, 4 of whom shall be
230 board-certified behavior analysts designated as such by the Behavior Analyst Certification
231 Board, 1 of whom shall be a board-certified assistant behavior analyst designated as such by the
232 Behavior Analyst Certification Board and 2 of whom shall be selected from and shall represent
233 the public, subject to section 9B of said chapter 13. Of the initial members appointed to the
234 board, 3 shall serve for terms of 3 years, 3 shall serve for terms of 2 years and 3 shall serve for a
235 term of 1 year.

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

251 provided in section 270 of said chapter 112. On or after January 1, 2014, an applicant for a
252 license as an applied behavior analyst or assistant applied behavior analyst shall meet the
253 requirements of said section 265 of said chapter 112.

254 SECTION 5. Notwithstanding section 266 of chapter 112 of the General Laws, an
255 applicant who applies for a license as an assistant applied behavior analyst before January 1,
256 2014 may be granted status as a licensed assistant applied behavior analyst, subject to approval
257 by the board of registration of applied behavior analysts, if the applicant is a board-certified
258 assistant behavior analyst certificant of the Behavior Analyst Certification Board. On or after
259 January 1, 2014, an applicant for a license as an assistant applied behavior analyst shall meet the
260 requirements of said section 266 of said chapter 112.