Testimony regarding CT H.B. 5425 An Act Concerning Special Education

Monday, March 8, 2010

Dear Education Committee members,

Good afternoon. My name is Michael Weinberg, and I thank you for the opportunity to present my views on this bill.

I am a resident of Thompson CT, a licensed Psychologist here in CT, and BCBA.

I am also a member of the Association for Behavior Analysis International's (ABAI) Practice Board, with 6,000 members, and total with affiliate chapters members, including CT ABA, of over 16,000 members worldwide.

I wish to congratulate The Connecticut General Assembly's Education Committee's work to recognize the need to establish standards to protect children receiving Applied Behavior analysis (ABA) services by considering Bill 5425. I would go on to stress that consumer protection should be the primary focus of this bill, and suggest that they include the under 3 group in this bill;

As a practitioner for nearly 30 years, I am concerned that there is a risk to students/children from the use of Applied Behavior Analysis by untrained/undertrained practitioners. The national trend has been to move to the establishment of a formal licensing standard for Behavior Analysts, with an increase in the training and experience required to be recognized as a Behavior Analyst, which has now been enacted into law by 4 states. Speaking for myself and the ABAI practice board, we wish to support this legislation with the BCBA as an entry level qualification. Over time, we hope to work to increase the educational and training requirements for behavior analyst practitioners, eventually moving toward licensure. But, we recognize that there needs to be a starting point, and the existing behavior analyst certification program is a very good one. I wish to respectfully suggest a means of consumer protection be included in the bill, as you deem appropriate. This will help safeguard against practitioners not adequately trained or not providing effective or appropriate behavior analysis services.

We are now seeing that those with the BCBA in CT, as well as other states, are able to receive insurance payment for services to children on the autism spectrum that began here in January, 2010. However, I notice in the billing codes that BCBAs are permitted to bill at lower rates than their licensed counterparts such as licensed psychologists, or speech therapists. There is a national move to billing insurance companies for ABA services and these insurance companies are moving to requiring independent licensure in order to bill for services. Insurance companies will pay at higher rates to those licensed, rather than those with certification or not licensed.

Finally, I am submitting for your review a copy of a letter sent in January 2010, by the current president of the Association for Behavior Analysis International, Dr. Ray Miltenberger, concerning licensing and a copy of the ABAI's model bill. This is intended to provide a standard for developing such legislation when and if the state and its behavior analyst professionals are ready.

Michael Weinberg, Ph.D., LP, BCBA-D

The ABAI Model Licensing Act, Educational Standards, and the Protection of the Profession

By Raymond G. Miltenberger

This article is offered on behalf of the ABAI Executive Council and provides an update on the most recent developments within the Association and behavior analysis in support of the professionalization of our field and the protection of its scientific and educational underpinnings. Recently, affiliated chapters in the United States and internationally have been working to protect and promote the profession of applied behavior analysis through legislative and lobbying efforts. Licensure, among a number of other topics, is currently being pursued through states' efforts across the U.S. at the grassroots level. Arizona, Nevada, Oklahoma, and Pennsylvania have recently enacted laws establishing licensing standards for applied behavior analysts. Several others, including Kentucky, Massachusetts, Missouri, New Jersey, and Tennessee, are in the process of developing and/or considering such legislation. Behavior analysts and members of behavioral associations in other countries also are beginning discussions related to how to license or otherwise regulate the profession of behavior analysis.

In 2008, the ABAI Executive Council approved, in principle, a recommendation of the Practice Board to pursue development of an ABAI Model Licensing Act. Central to this decision was the uniformly held understanding that ABAI has a responsibility to promote the protection of consumers of applied behavior analytic services. Since that meeting, many hours have been spent drafting and refining a Model Licensing Act that ABAI could support. ABAI's Model Act is now complete, and we are pleased to make it available to Association members, constituents, and consumers of behavior analysis services. One purpose of this article is to provide background on the development of the Act and to elucidate the Council's understanding of the implications of its dissemination in the public realm.

Why Licensing?

The ABAI Council's agreement to pursue licensure efforts was made with the input of ABAI members. In 2008, ABAI conducted a strategic development survey of members and constituents, including members of state and international chapters and special interest groups. The survey was distributed to over 16,000 stakeholders worldwide. The overwhelming majority of respondents indicated support for the pursuit of a licensing standard for applied behavior analysts.

Licensure allows consumers to identify behavior analysts with defined competencies and protects them from harm and the misuse of behavioral technologies by untrained practitioners. It allows for legal oversight of professionals who meet criteria established by state boards and who wish to advertise themselves as "behavior analysts." State boards have the staff and authority to respond to complaints by the general public (or other behavior analysts) of unethical practices by those who are licensed, which protects not only consumers but also professionals who practice following ethical guidelines.

Furthermore, licensure promotes credibility of the field. It defines our field and scope of practice within state law, protecting it from other groups or professions that might attempt to claim jurisdiction over our technologies and the right to supervise our work. Licensure also has the potential to result in more funding for research and more support for academic programs and positions in behavior analysis. Finally, defining our profession legally through licensure could facilitate our ability to secure third party payment for our services and to promote and advocate for other professional issues of importance to the field.

Risks Associated with Licensure

ABAI recognizes that licensing, if pursued without careful consideration of potential consequences and pitfalls, has the potential to negatively affect the profession within a state. We believe that the attached Model Licensing Act provides an appropriate standard to guide state chapters in the process of developing individual state licensing laws. We strongly encourage each state affiliated chapter to consider carefully the nature of the political climate in the state and take from this Model Act those sections that meet your needs. Members of the Practice Board and others representing ABAI have developed a Legislative Handbook addressing many of the preliminary issues that must be considered prior to initiating such an effort. We strongly recommend that state chapters review this document, and if desired, invite members of the Practice Board to attend their respective chapter meetings and/or consult with them throughout the process. We recognize states' rights and recommend that decisions about procedures and the ongoing process of administrating licensing standards rest with the state board overseeing the profession.

How Does Licensure Differ from Certification?

Licensure and certification are different, but could be compatible methods of defining the credentials of professionals in a field. Certification is most often done by private organizations, such as the Behavior Analyst Certification Board (BACB), while licensing is done through state boards. Board Certification is a non-statutory recognition of professional achievement generally given by an outside organization to professionals who have completed a terminal degree in their respective field and demonstrated competency in their field. Licensing is the legal control of the use of a title and the scope of practice of a profession. Obtaining a license is required of occupations and professions where maintenance of standards is required to protect public safety. In order to establish 'applied behavior analyst' as a licensed profession, state legislation is necessary, thus the need for lobbying and advocacy—state legislators need to be convinced that specific credentials for an area of expertise are needed to protect consumers.

One advantage of states adopting the ABAI Model Licensing Act is that individual state licensing bills will have consistent requirements across states, making portability of the credential possible from state-to-state. ABAI encourages individual states to develop licensing bills which specifically facilitate such portability and encourages states to retain uniform educational standards.

What is ABAI's Model Licensing Act?

ABAI's Model Licensing Act is a document for use by legislators drafting bills that govern the profession of applied behavior analysis. The Model Act is provided in full following this article. It defines the makeup and powers of state boards, the scope of practice of the profession, and standards to qualify for licensure—education, practicum, examination, and continuing education requirements. The Act also addresses complaint resolution and ethical violation investigation as well as penalties for operating without a license or in violation of ethical guidelines or the laws of the state.

What are the Points of Similarity between the BACB and ABAI Model Acts?

The ABAI Executive Council is committed to the development of a unified position within the field and has worked with the BACB to find common ground with regard to licensure, in the hopes of developing a unified Model Act. At the 2009 ABAI annual convention in Phoenix, representatives of the ABAI Executive Council and Practice Board met with Drs. Judy Favell and Gerald Shook to discuss our positions and begin the process of producing a unified bill. The results of this meeting were very positive, with the majority of the differences in our two positions resolved and the beginnings of a single bill developed.

ABAI's Model Act shares many characteristics with the BACB's Act, including adoption of:

- bachelor's level licensure;
- the requirement that all applicants must first meet the standards of the BACB to apply for licensure and pass the BACB examinations;
- a requirement that all approved educational institutions meet the standards as an "Approved Course Sequence" of the BACB;
- a standard that all bachelor's level behavior analysts be supervised by either a master's or doctoral-level licensed behavior analyst; and
- a requirement that all licensed applied behavior analysts maintain their active status under the Behavior Analyst Certification Board.

How do the BACB and ABAI Model Licensing Acts Differ?

The main remaining difference between ABAI's Model Act and that of the BACB is in defining educational standards for becoming licensed. The BACB's Act requires that potential licensees complete 135 (bachelor's level) or 225 (master's level) classroom hours of instruction in applied behavior analysis and hold a degree (in any field) to be eligible for licensure. ABAI believes that licensure should require further training. The ABAI Executive Council, Education Board, Practice Board, and Science Board all have defined a critical need for higher educational standards for licensees. More robust standards are necessary to practice independently and help improve the protection of as well as quality of services provide to the consumers of ABA services. ABAI's position is also based on the fact that, in every other human service profession that is licensed by its state and allowed to practice independently and bill individuals or third party insurers for their services, licensees are required to hold a degree in their respective profession.

Rational for Grandfathering Clause

ABAI's Model Act provides two alternatives for the licensing of professionals who do not meet the regulatory standards for licensing otherwise provided at the time of the establishment of the licensing law, allowing a five year period to become licensed under these wavers. The first provides that all persons certified by the BACB are eligible for licensing, irrespective of the ABAI accreditation status of the program from which they graduated or the number of graduate (undergraduate) credit hours completed. The second provides for the licensing of behavior analysts who are not BACB-certified, but who meet specific educational/experience standards established by the State/Commonwealth Board of Registration. The second alternative is particularly important for the membership of ABAI, given that the majority of respondents to ABAI's 2008 strategic development survey who self-identified as "practicing applied behavior analyst" do not hold certification by the BACB. Given that Boards of Registration are composed of Licensed Behavior Analysts, we trust that only highly qualified non-BCBA applicants will be granted licensure under this clause.

MW Note: The 2nd clause seems contradictory to the earlier statement that all licensees must become, and maintain, BACB Certification.

What are ABAI's Criteria for Education Requirements?

The Council believes that licensing applied behavior analysis not only protects practitioners, but also protects the integrity of and demand for higher education training in behavior analysis. Promotion of appropriate educational requirements for licensed practitioners is ABAI's top priority. An initial strategic session held a year ago in Chicago with representation of the Membership, Science, Education and Practice Boards recommended revised educational criteria. Graduate programs in behavior analysis are now being reviewed to see how they meet

recommended criteria and how further criteria for accreditation standards and licensure have the potential, if pursued correctly, to preserve experimental and conceptual foundations as the field grows. During the last Council meeting, the Association made significant advances in developing and enhancing training standards for the field in the areas of licensure of individuals and accreditation of educational programs. The ABAI Council hopes that the educational standards in state licensing laws are those specified in the ABAI Accreditation programs. The criteria are under revision and will be announced by May of this year.

ABAI began the process of accrediting graduate programs in 1988. As the field becomes further professionalized and licensure makes its way through state legislatures, the alignment of educational requirements for licensees with those of accredited programs must be undertaken. To that end, the ABAI Council has initiated several projects, the first of which is to approve the development of undergraduate accreditation programs. ABAI's undergraduate accreditation system will recognize two different emphases for undergraduate education—applied and experimental. The Council also directed that both master's and doctoral level accreditation program requirements be reviewed and revised to align with licensure goals and the requirement of ABAI's Model Licensing Act. Criteria are currently undergoing review with input being sought from the Education, Science, and Practice Boards as well as accredited programs. It is expected that revised criteria will be launched by May 2010.

We also will pursue recognition by the Council for Higher Education Accreditation (CHEA) this year. CHEA recognition will ensure that the profession of applied behavior analysis is understood to require standards similar to all other human service professions and will enhance the protection of consumers by ensuring a level of competency and training far beyond those currently required.

How Will ABAI's Accreditation Program Meet the Needs of Licensed Behavior Analysts?

While it is the goal that graduation from an ABAI Accredited program be a requirement for licensure, this requirement is meant to be grandfathered in over a period of five years. To date, a total of 23 behavior analysis programs at 16 universities have sought ABAI accreditation. We expect that, with the advent of licensure and national recognition of the ABAI accreditation program, programs will have new contingencies to explore accreditation. It is a primary goal of ABAI to encourage and assist programs to seek accreditation so that within 5-7 years there will be an educational infrastructure in place to support the substantial growth in the field we expect to see as state licensure laws are established. During the grandfathering period, ABAI will embark on a program we are calling the ABAI Educational Capital Campaign: Investing in our Future to encourage and assist programs to seek accreditation.

What Will We Do for Those Outside of the USA?

The field is growing not only in the United States ~~but~~but also in many other countries represented by our members and affiliated chapters. ABAI will work with national chapters on a one on one basis to identify needs within other countries and to develop strategies to promote international professionalization in the field. The Practice Board in conjunction with ABAI's International Representative to the ABAI Council is eager to provide consultation to help develop strategic plans to make this happen.

Where Can You Receive Guidance and Support?

ABAI welcomes your input on the issues of licensure and the development of educational requirements for the field. As well, if you are interested in training or access to expertise as your state chapter addresses issues of licensure, we encourage chapter officers to contact the ABAI Practice Board, who will be happy to arrange presentations and training sessions during your events. Furthermore, we welcome Program Directors and Department Chairs to participate in

the development of strategies to bring behavior analysis programs into alignment with accreditation requirements. Members of the ABAI Executive Council and Practice Board have attended numerous state conferences over the past several months to address these issues and offer support in the development of state licensing laws. ABAI is committed to this process and recognizes the need for our profession to speak to legislators and stakeholders with a single voice. We will continue to work diligently to provide guidance to graduate training programs and to members of U.S. state chapters and countries around the world to provide guidance for educational standards and model licensing for the profession.

ABAI Model Licensing Act for Applied Behavior Analysts

SECTION 1. Adding the following sections: hereby amends the General Laws of the State/Commonwealth of _____.

Section 101. (a) There shall be within the division of professional licensure a Board of Registration of applied behavior analysts, in this section and in sections 102 through 104, hereinafter called the Board, consisting of nine members appointed by the governor for terms of three years. Members of the Board shall be residents of the State/Commonwealth and citizens of the United States. Five members of the Board shall be Licensed Behavior Analysts and two shall be Licensed Assistant Behavior Analysts, under the provisions of sections 236 through 252 and shall have been actively engaged in the practice of applied behavior analysis for the five years preceding their appointment. Two members of the Board shall be selected from and shall represent the public.

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

(c) The governor shall have the power to remove from office any member of the Board with cause after submitting in writing to the Board member the reasons for his/her removal and describing the right to a public or private hearing with counsel at least thirty days before the proposed removal.

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

Section 103. The Board shall have the following powers and duties: (i) to examine and pass upon the qualifications of all applications for licenses under sections 236 through 252, and issue a license to those who are determined to be qualified as applied behavior analysts or assistant behavior analysts; (ii) to adopt rules and promulgate regulations governing the licensure of applied behavior analysts and the practice of behavior analysis; (iii) to recommend policy and budgetary matters to the division of professional licensure; (iv) to establish specifications for the

licensure examination, which may be or may include the complete certification examination given by the Behavior Analyst Certification Board®, or its successor, and to provide or procure appropriate examination questions and answers and to establish examination procedures; (v) to define by regulation the appropriate standards for education and experience necessary to qualify for licensing, including, but not limited to, continuing professional education requirements for Licensed Behavior Analysts or Licensed Assistant Behavior Analysts, which shall be no less stringent than those of the Behavior Analyst Certification Board, or its successor, and for the conduct and ethics which shall govern the practice of applied behavior analysis; (vi) to receive, review, and approve or disapprove applications for a reciprocal license to applicants who are licensed or certified as applied behavior analysts in another state and who have demonstrated qualifications that equal or exceed those required pursuant to sections 236 through 252, provided that no reciprocal license shall be granted under this section to an applicant unless the state in which the applicant is licensed affords reciprocal treatment to persons who are residents of the State/Commonwealth of _____; (vii) to establish standards of supervision for students or persons in training to become qualified to obtain a license in applied behavior analysis; (viii) to fine, censure, revoke, suspend, or deny a license, place on probation, reprimand, or otherwise discipline licensees for violations of the code of ethics or the rules of the Board in accordance with sections 246, 248, and 250, but the Board shall not have the power of subpoena; (ix) to summarily suspend the license of a licensee who poses an imminent danger to the public but a hearing shall be afforded to the licensee within 7 days of an action by the Board to determine whether such summary action is warranted; and (x) to perform such other functions and duties as may be required to carry out this section.

MW Note: Regarding the reciprocity statement - it seems to not support reciprocity well if one state can impose higher criteria than another state – then states can therefore continue to add requirements for education and training for example, that a licensee in one state may not have when seeking licensure in another state. The candidate would need to re-take courses, or take additional coursework, or hours of supervision to be licensed under this concept. I see this as a problem and is not consistent with the concept of reciprocity.

Section 104. The Board may also appoint Licensed Behavior Analysts, subject to the approval of the director of consumer affairs and business regulations, who meet the qualifications for appointment to the Board, to assist in the administration of the examination required by sections 237 and 239. Said assistance shall be provided under the supervision of a Board member.

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

Section 106. The Board shall make available to the public a list of Licensed Behavior Analysts and Licensed Assistant Behavior Analysts.

Section 107. The members of the Board shall be indemnified by the State/Commonwealth for all actions taken as part of their responsibilities described herein.

SECTION 2. The General Laws of the State/Commonwealth is hereby amended by adding the following sections:

Section 236. As used in sections 236 through 252, the following words, unless the context clearly indicates otherwise, shall have the following meanings:

"*Applied Behavior Analysis*", is the design, implementation, and evaluation of systematic environmental modifications for the purpose of producing socially significant improvements in and understanding of behavior based on the principles of behavior identified through the experimental analysis of behavior. It includes the identification of functional relationships

between behavior and environments. It uses direct observation and measurement of behavior and environment. Contextual factors, establishing operations, antecedent stimuli, positive reinforcers, and other consequences are used, based on identified functional relationships with the environment, in order to produce practical behavior change.

"*Applied Behavior Analyst*", is an individual who by training and experience meets the requirements for licensing by the Board and is duly licensed to practice applied behavior analysis in the State/Commonwealth.

"*Board*", the Board of Registration of applied behavior analysts.

"*Licensed Behavior Analyst (LBA)*", an individual who by training and experience meets the requirements for licensing by the Board and is duly licensed to independently practice applied behavior analysis.

MW Note: I had thought we were going to use the term "Licensed Applied Behavior Analyst."

"*Licensed Assistant Behavior Analyst (LABA)*", an individual who by training and experience meets the requirements for licensing by the Board and is duly licensed to practice applied behavior analysis under the supervision of a Licensed Behavior Analyst.

"*Recognized educational institution*", a degree-granting college or university that is accredited by a Regional Board or Association of Institutions of higher education approved by the Council on Post Secondary Education of the United States Department of Education, or which is chartered to grant doctoral degrees by the State/Commonwealth. Such institutional accreditation shall exist at the time that the respective degree is granted or within two years thereafter. The program must be accredited by the Accreditation Board of the Association for Behavior Analysis International®. The program must also include an approved course sequence of the Behavior Analyst Certification Board or its successor.

"*The scope of practice of applied behavior analysis*" is defined as the application of the principles, methods, and procedures of the experimental analysis of behavior and applied behavior analysis (including principles of operant and respondent learning) to assess and improve socially important human behaviors. It includes, but is not limited to, applications of those principles, methods, and procedures to (a) the design, implementation, evaluation, and modification of treatment programs to change behavior of individuals; (b) the design, implementation, evaluation, and modification of treatment programs to change behavior of groups; and (c) consultation to individuals and organizations. The practice of behavior analysis expressly excludes psychological testing, neuropsychology, cognitive therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

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

A doctoral or master's degree from a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board, or from a program at a recognized educational institution that is approved by the Board and that substantially meets the educational standards of the Association for Behavior Analysis International Accreditation Board. The program must also include an approved course sequence of the Behavior Analyst Certification Board.

The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,500 hours over a period of not less than one calendar year, of which at least 75 hours are in direct 1:1 contact with the supervisor;

The successful completion, as defined by the Board, of a nationally recognized examination adopted from the Behavior Analyst Certification Board and approved by the Board, related to the principles and practice of the profession of applied behavior analysis. Thereafter, the individual must maintain his or her active status under the Behavior Analyst Certification Board.

(b) For the first five years after enactment of this legislation in the State/Commonwealth of _____, an applicant who has graduated with a doctoral or master's degree from a regionally accredited university and is a Board Certified Behavior Analyst certificant of the Behavior Analyst Certification Board will be eligible to be granted status as a Licensed Behavior Analyst. Additionally, individuals who hold either a doctoral or master's degree in Behavior Analysis or a related field and can demonstrate competency in applied behavior analysis by virtue of training and experience may petition the Board to be licensed as a behavior analyst. Thereafter, applicants must meet the requirements noted above.

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

A Bachelor's degree, from a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board, or from a program at a recognized educational institution approved by the Board and that substantially meets the educational standards of the Association for Behavior Analysis International Accreditation Board. The program must also include an approved course sequence of the Behavior Analyst Certification Board.

The successful completion of an approved practicum or supervised experience in the practice of applied behavior analysis, totaling at least 1,000 hours of supervised experience over a period of not less than two calendar years, of which not less than 150 hours are spent in direct 1:1 contact with the supervisor;

The successful completion, as defined by the Board, of a nationally recognized examination adopted from the Behavior Analyst Certification Board and approved by the Board, related to the principles and practice of the profession of applied behavior analysis. Thereafter, the individual must maintain his or her active status under the Behavior Analyst Certification Board. The status of Licensed Assistant Behavior Analyst is not to be considered an "independent" practitioner. Licensed Assistant Behavior Analysts must secure the direct, face-to-face, supervision of a Licensed Behavior Analyst for no less than 5 hours per month, including the direct observation of the services provided by the practitioner. This seems like an unusual number of hours per month. Why not 4 (1 hr./week) or 5 (1.5 hrs./wk)/

(b) For the first five years of enactment of this legislation in the State/Commonwealth of _____, applicants who have graduated with a Bachelor's degree from a regionally accredited university and are a Board Certified Assistant Behavior Analyst certificant of the Behavior Analyst Certification Board will be eligible to be granted status as a Licensed Assistant Behavior Analyst. Thereafter, applicants must meet the requirements noted above.

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

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

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

Section 240. Notwithstanding the provisions of sections 237 and 238, the Board may issue a license without examination to an applicant who presents evidence that he/she has been licensed or certified as an applied behavior analyst by a similar Board of another jurisdiction whose standards, in the opinion of the Board, are not lower than those required in the State/Commonwealth; or that he/she holds a diploma from a nationally recognized board, university, or agency approved by the Board with 5 or more years of practice in applied behavior analysis and provides letters of recommendation.

Section 241. The Board may grant a temporary license for a period not to exceed three years to an applied behavior analyst with prior legal residence outside the State/Commonwealth of _____, provided he/she registers with the Board and practices in consultation with, or under the supervision of, a Licensed Behavior Analyst or possesses qualifications acceptable to the Board, and demonstrates that he/she is enrolled in a recognized educational program accredited by the Association for Behavior Analysis International Accreditation Board that includes an approved course sequence of the Behavior Analyst Certification Board, in preparation for meeting the standards and the requirements noted herein for licensure as an applied behavior analyst in the State/Commonwealth of _____. Why give a temporary license to someone not licensed anywhere – I fail to see the purpose or logic for this. Also, what about the idea of graduating from, or being enrolled in , a graduate program that is equivalent to, or exceeds, standards of an ABAI Accredited program, as allowed for licensure?

Section 242. Licenses shall be valid for two years and shall be renewed biennially. On or before April 15th every two years the secretary of the Board shall forward to each licensee an application form for renewal. Upon the receipt of the completed form and the renewal fee on or before June 1st, the secretary shall renew the license for two years commencing July 1st. Any application for renewal of a license, which has expired, shall require the payment of a new application fee. Pursuant to the renewal, the applicant shall present to the Board documented evidence of the completion of 36 hours of continuing education programs designed to improve the professional competence of the licensee. Such programs shall be completed during the license period immediately prior to renewal. Such CEUs must be obtained either directly from the Association for Behavior Analysis International, an organization offering CEU activities that is approved by the Association for Behavior Analysis International, the Behavior Analyst Certification Board, or be approved directly by the Board.

I find the inclusion of specific dates to be inappropriate and unduly prescriptive.

Each state will decide its own renewal dates and time frames, as well as determining number of CEs needed for renewal. For Eg., for psychologist and other professional licenses PA renews licenses every 2 years in November, whereas in CT, licenses are renewed every year in January.

Section 243. The commissioner of administration shall determine the following fees annually and the fees shall be collected by the Board: (a) application fee; (b) initial license fee; (c) temporary license fee; and (d) biennial renewal fee.

Section 244. Nothing in sections 236 through 252, shall be construed to prevent qualified members of other professions or occupations such as physicians, psychologists, teachers, members of the clergy, authorized Christian Science practitioners, attorneys-at-law, social workers, guidance counselors, clinical counselors, adjustment counselors, speech pathologists, audiologists, occupational therapists, or rehabilitation counselors from doing work of an applied behavior analytic nature consistent with the accepted standards of their respective professions, provided, however, that they do not hold themselves out to the public by any title or description stating or implying that they are applied behavior analysts, that they are providing services included within the scope of practice of applied behavior analysis, or that they are licensed to practice applied behavior analysis.

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

Holds a license as a Licensed Behavior Analyst in the State/Commonwealth of _____, and is a Board Certified Behavior Analyst (BCBA) in good standing with the Behavior Analyst Certification Board.

Or, until three years after the passage of this bill is a Board Certified Behavior Analyst (BCBA) in good standing with the Behavior Analyst Certification Board.

Section 246. Those engaged in the practice of applied behavior analysis within the State/Commonwealth of _____ shall comply with the standards of ethical practice as adopted by both the Association for Behavior Analysis International and the Behavior Analyst Certification Board.

Section 247. As provided in the Individuals with Disabilities Education Act (2004), the State/Commonwealth of _____ Department of Education will evaluate and provide an educational licensure status for licensed applied behavior analysts relative to the provision of special educational services provided within the State/Commonwealth, and shall adopt the standards provided herein as those required to meet this standard.

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

Section 249. The penalties in section 248 shall not apply to:

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

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

Section 250. The Board shall investigate all complaints relating to the proper practice of applied behavior analysis by any person licensed under sections 236 through 252.

The Board may, after a hearing in accordance with the provisions any relevant law, revoke, suspend or cancel the license, or reprimand, censure, or otherwise discipline an applied behavior analyst licensed under said sections 236 through 252, upon proof satisfactory to a majority of the Board that said applied behavior analyst:

(a) ~~(a)~~ Fraudulently procured said license; (There seems to be some circularity here- if the person is not licensed to start with, and is holding him/herself out to be licensed illegally, there is no license to suspend, cancel , revoke, etc. since there is no license to start with). If the person creates a fake license - there is nothing to revoke again. If the person uses fraud to procure a license, this would apply.

(b) is guilty of an offense against any provision of the laws of the State/Commonwealth relating to the practice of applied behavior analysis or any rule or regulation adopted there under;

(b) ~~(c)~~ is guilty of conduct that places into question the licensee's competence to practice, including but not limited to gross misconduct in the practice of applied behavior analysis, practicing fraudulently, beyond its authorized scope, or with gross incompetence or negligence on a particular occasion or negligence on repeated occasions; If the person is practicing fraudulently, then it cannot be said legitimately that such disciplinary action is being take against an "applied behavior analyst." And if this is true, can any legal action be taken against such person who pretends to be an applied behavior analyst by the Board?

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

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

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

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

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

(i) is guilty of violating any provision of the ethical standards for applied behavior analysts as adopted by the Association for Behavior Analysis International or the Behavior Analyst Certification Board.

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

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

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

Notice in writing of a contemplated revocation or suspension of a license, or the cause therefore in sufficient particularity, and of the date of hearing thereon, shall be sent by registered or certified mail to the licensee at his/her last known address at least fifteen days before the date

of such hearing. The applied behavior analyst against whom a charge is filed shall have a right to appear before the Board in person or by counsel, or both, may produce witnesses and evidence on his/her behalf, and may question witnesses. No license shall be revoked or suspended without such hearing, but the nonappearance of the licensee, after notice, shall not prevent such hearing. All matters upon which the decision is based shall be introduced in evidence at the proceeding. The licensee shall be notified in writing of the Board's decision. The Board may make such rules and regulations as it deems proper for the filing of charges and the conduct of hearings.

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

Any decision the Board makes pursuant to this section shall be subject to review in superior court in accordance with the provisions of relevant law.

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

Section 252. All communications between a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst and the individuals with whom the licensee engages in the practice of applied behavior analysis are confidential and shall be considered as privileged communications. At the initiation of the professional relationship, the applied behavior analyst shall inform the patient of the following limitations to the confidentiality of their communications. No applied behavior analyst, colleague, agent, or employee of any applied behavior analyst, whether professional, clerical, academic or therapeutic, or a graduate of, or student enrolled in, a degree program in applied behavior analysis at a recognized educational institution as that term is defined in section 236, who is working under the supervision of a Licensed Behavior Analyst, shall disclose any information acquired or revealed in the course of or in connection with the performance of the applied behavior analyst's professional services, including the fact, circumstances, findings, or records of such services, except under the following circumstances:

(a) pursuant to the provisions of any other law;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

No provision of this section shall be construed to prevent a nonprofit hospital service or medical service corporation from inspecting and copying, in the ordinary course of determining eligibility for or entitlement to benefits, any and all records relating to diagnosis, treatment, or other services provided to any person, including a minor or incompetent, for which coverage, benefit, or reimbursement is claimed, so long as the policy or certificate under which the claim is made provides that such access to such records is permitted. No provision of this section shall be construed to prevent access to any such records in connection with any coordination of benefits, subrogation, workers' compensation, peer review, utilization review, or benefit management procedures applied and implemented in good faith.

This section, 252, seems unnecessary as these conditions of confidentiality are already covered in federal law under HIPAA, and are also covered in the BACB's Guidelines for Responsible Conduct for behavior analysts, and also should be included in ABAI's ethical standards when they are developed. Perhaps a reference too these standards and federal HIPAA law would suffice pertaining to patient records and confidentiality, etc.?