
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2725 Session of
2018

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ORTITAY, HARPER AND STURLA, OCTOBER 16, 2018

REFERRED TO COMMITTEE ON PROFESSIONAL LICENSURE,
OCTOBER 16, 2018

AN ACT

1 Providing for licensure of behavior analysts; establishing the
2 Behavior Analyst Licensing Board and providing for its
3 membership, powers and duties; establishing the Behavior
4 Analyst Licensure Fund; and providing for penalties.

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3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Legislative findings and declaration of policy.

6 The General Assembly finds and declares as follows:

7 (1) The practice of applied behavior analysis affects
8 the health, safety and welfare of the citizens of this
9 Commonwealth.

10 (2) Individuals practicing applied behavior analysis
11 shall be subject to regulation to protect the public from the
12 practice of applied behavior analysis by unqualified
13 individuals and to prevent unprofessional, unethical and
14 harmful conduct.

15 Section 2. Short title.

16 This act shall be known and may be cited as the Behavior
17 Analyst Licensure Act.

18 Section 3. Definitions.

19 The following words and phrases when used in this act shall
20 have the meanings given to them in this section unless the
21 context clearly indicates otherwise:

22 "Applied behavior analysis." The term shall include all of
23 the following:

24 (1) The design, implementation and evaluation of
25 instructional and environmental modifications to produce
26 socially significant improvements in human behavior or
27 prevent the loss of attained skill or function.

28 (2) The empirical identification of functional relations
29 between behavior and environmental factors, known as
30 functional assessment and analysis.

1 (3) Interventions derived from scientific research,
2 functional relations and direct and indirect observation and
3 measurement of behavior and environmental events or
4 conditions.

5 (4) Utilization of contextual factors, motivating
6 operations, antecedent stimuli, reinforcement and other
7 procedures to help individuals develop new behaviors,
8 increase or decrease existing behaviors and emit behaviors
9 under specific environmental conditions.

10 "Behavior technician." A paraprofessional who practices
11 under the close, ongoing clinical supervision of a license
12 holder and delivers services as assigned by the clinical
13 supervisor responsible for the individual's work and who does
14 not design assessment or intervention plans or procedures.

15 "Board." The Behavior Analyst Licensing Board established
16 under section 12.

17 "Certifying entity." The Behavior Analyst Certification
18 Board or another entity whose programs to credential
19 practitioners of applied behavior analysis are accredited by the
20 National Commission for Certifying Agencies or the American
21 National Standards Institute.

22 "Conviction." A judgment, admission of guilt or plea of nolo
23 contendere.

24 "Fund." The Behavior Analyst Licensure Fund established
25 under section 12(g).

26 "License holder." An individual holding an active license
27 under this act.

28 "Licensed assistant behavior analyst." An individual who is
29 certified by a certifying entity as a board-certified assistant
30 behavior analyst and who meets the requirements under section 4.

1 "Licensed behavior analyst." An individual who is certified
2 by a certifying entity as a board-certified behavior analyst or
3 a board-certified behavior analyst-doctoral and who meets the
4 requirements under section 4.

5 Section 4. Qualifications for licensure.

6 (a) Application.--An applicant for licensure shall submit an
7 application, a completed attestation and disclosure form and
8 requisite fees as provided by the board. The application shall
9 include evidence of the following:

10 (1) Proof of a criminal background check conducted by
11 the Pennsylvania State Police, a State-approved child abuse
12 clearance and a Federal Bureau of Investigation fingerprint-
13 based record check in accordance with applicable Federal law
14 and 23 Pa.C.S. Ch. 63 (relating to child protective services)
15 conducted through either the Department of Education or the
16 Department of Human Services.

17 (2) For a licensed behavior analyst applicant, the
18 applicant has a current certification as a board-certified
19 behavior analyst or board-certified behavior analyst-doctoral
20 verified with the certifying entity.

21 (3) For a licensed assistant behavior analyst applicant,
22 the applicant has a current certification as a board-
23 certified assistant behavior analyst verified with the
24 certifying entity and maintains proof of ongoing supervision
25 by a licensed behavior analyst who is approved as a
26 supervisor by the certifying entity, in accordance with the
27 certifying entity's current supervision standards.

28 (4) Good moral character as determined by the board.

29 (b) Licensure restrictions.--The board may not grant a
30 license to an applicant who:

1 (1) Has been convicted of a felony offense under section
2 635.2(g) (3) of the act of May 17, 1921 (P.L.682, No.284),
3 known as The Insurance Company Law of 1921, unless at least
4 10 years have elapsed from the date of conviction and the
5 applicant has satisfactorily demonstrated to the board that
6 the applicant has made significant progress in personal
7 rehabilitation since the conviction and that licensure of the
8 applicant should not be expected to create a substantial risk
9 of harm to the health and safety of the applicant's patients
10 or the public or a substantial risk of further criminal
11 violations.

12 (2) Has been convicted of, entered a plea of nolo
13 contendere to or adjudicated delinquent of a crime for which
14 the applicant has been required to register under 42 Pa.C.S.
15 Ch. 97 Subch. H (relating to registration of sexual
16 offenders), without regard to the time elapsed since the date
17 of the conviction, plea or adjudication or the length of the
18 registration required.

19 (3) Has failed to satisfy the board that the applicant
20 is of good moral character.

21 Section 5. License enforcement and penalty.

22 (a) Violations.--The following shall constitute a violation
23 of this act:

24 (1) The unlicensed practice of applied behavior analysis
25 in this Commonwealth, unless exempt under section 6.

26 (2) Holding oneself out to be a licensed behavior
27 analyst or licensed assistant behavior analyst unless the
28 individual meets the applicable requirements under section 4.

29 (3) Except as provided under section 6, using the title
30 "licensed behavior analyst" or "licensed assistant behavior

1 analyst" or any title that is substantially the same unless
2 the individual is licensed under this act.

3 (b) Penalty.--A violation of this section shall be
4 punishable by a fine to be determined by the board.

5 Section 6. Exceptions.

6 The provisions of this act shall not be construed as
7 prohibiting or restricting the practice of any of the following:

8 (1) An Individual licensed to practice psychology in
9 this Commonwealth, so long as the applied behavior analysis
10 services provided by the licensed psychologist are within the
11 boundaries of the licensed psychologist's education, training
12 and competence and the licensed psychologist does not
13 represent oneself as a licensed behavior analyst unless also
14 licensed under this act.

15 (2) A behavior technician or family member who delivers
16 applied behavior analysis services under the extended
17 authority and direction of a licensed behavior analyst or a
18 licensed assistant behavior analyst. The individual may not
19 represent oneself as a professional behavior analyst and
20 shall use a title that indicates the individual's
21 nonprofessional status.

22 (3) A behavior analyst who practices with nonhumans,
23 including applied animal behaviorists and animal trainers.
24 The individual may use the title behavior analyst but may not
25 represent oneself as a licensed behavior analyst or a
26 licensed assistant behavior analyst unless licensed under
27 this act.

28 (4) A professional who provides general applied behavior
29 analysis services to organizations so long as these services
30 are for the benefit of the organizations and do not involve

1 direct services to individuals. The professional may use the
2 title behavior analyst but may not represent oneself as a
3 licensed behavior analyst or a licensed assistant behavior
4 analyst unless licensed under this act.

5 (5) A matriculated college or university student or
6 postdoctoral fellow whose applied behavior analysis
7 activities are part of a defined program of study, course,
8 practicum, internship or fellowship and are directly
9 supervised by a licensed behavior analyst in this
10 Commonwealth or a qualified faculty member. The individual
11 may not represent oneself as a licensed behavior analyst and
12 shall use a title that clearly indicates the individual's
13 trainee status.

14 (6) An unlicensed individual pursuing experience in
15 applied behavior analysis consistent with a certifying
16 entity's experience requirements, provided such experience is
17 supervised by a licensed behavior analyst in this
18 Commonwealth. The individual may not represent oneself as a
19 licensed behavior analyst and shall use a title that clearly
20 indicates the individual's trainee status.

21 (7) An individual who teaches behavior analysis or
22 conducts behavior-analytic research, provided that such
23 activities do not involve the direct delivery of applied
24 behavior analysis services beyond the typical parameters of
25 applied research. The individual may use the title behavior
26 analyst but may not represent oneself as a licensed behavior
27 analyst or a licensed assistant behavior analyst unless
28 licensed under this act.

29 (8) An individual directly employed by a school district
30 who delivers applied behavior analysis services to students

1 of that district. The individual may not represent oneself as
2 a licensed behavior analyst or a licensed assistant behavior
3 analyst unless licensed under this act and may not offer
4 applied behavior analysis services to any individuals or
5 entities other than the school employer or accept
6 remuneration for providing applied behavior analysis services
7 other than the remuneration the individual receives from the
8 school employer.

9 (9) A licensed behavior specialist under section 635.2
10 of the act of May 17, 1921 (P.L.682, No.284), known as The
11 Insurance Company Law of 1921, shall be exempt from licensure
12 under this act if:

13 (i) The services the individual provides are within
14 the boundaries of the individual's education, training
15 and competence.

16 (ii) The individual does not represent oneself as a
17 licensed behavior analyst, licensed assistant behavior
18 analyst or represent oneself as a professional behavior
19 analyst or use a substantially similar term.

20 (iii) A licensed behavior specialist who wishes to
21 practice as a licensed behavior analyst or a licensed
22 assistant behavior analyst must meet the licensure
23 requirements of this act.

24 Section 7. Temporary license.

25 A behavior analyst licensed in another jurisdiction or
26 certified by a certifying entity to practice independently who
27 provides applied behavior analysis services in this Commonwealth
28 on a short-term basis may apply for a temporary license. An
29 applicant for a temporary license shall submit an application
30 and fee as provided by the board and evidence that their

1 practice in the jurisdiction is temporary as defined by the
2 board in regulation. A temporary license shall only be granted
3 if the board verifies the applicant's licensure or certification
4 status with the relevant certifying entity.

5 Section 8. Reciprocity.

6 (a) General rule.--The board shall issue a license to an
7 individual who is currently licensed as a behavior analyst or
8 assistant behavior analyst in good standing in another
9 jurisdiction that imposes licensure requirements comparable to
10 those specified in this act. An applicant for reciprocal
11 licensure shall have their current licensure verified by the
12 board and comply with other requirements provided in this act.

13 (b) Requirements.--An applicant for reciprocity shall
14 provide the board with a State-approved criminal background
15 check, a State-approved child abuse clearance and a Federal
16 Bureau of Investigation fingerprint-based record check in
17 accordance with applicable Federal law and 23 Pa.C.S. Ch. 63
18 (relating to child protective services) conducted through either
19 the Department of Education or the Department of Human Services.

20 Section 9. License expiration, renewal and other status.

21 (a) General rule.--A license issued under this act shall be
22 valid for two years. Prior to expiration of a license, the board
23 may issue a license renewal upon submission of the following:

24 (1) An application for renewal as provided by the board.

25 (2) Board verification of current certification by the
26 certifying entity, which signifies that the applicant for
27 renewal has met the continuing education requirements
28 established by the certifying entity.

29 (3) Payment of the renewal fee imposed by the board.

30 (4) Record completion of a State-approved criminal

1 background check, a State-approved child abuse clearance and
2 a Federal Bureau of Investigation fingerprint-based record
3 check in accordance with applicable Federal law and 23
4 Pa.C.S. Ch. 63 (relating to child protective services)
5 conducted through either the Department of Education or the
6 Department of Human Services.

7 (b) Inactive or retired status.--The board may adopt a
8 system for placing an individual licensed under this act on
9 inactive or retired status.

10 Section 10. Sanctions and disciplinary action.

11 (a) General rule.--The board, after due notice of a
12 violation of this act and an opportunity for an administrative
13 hearing, may take any one or a combination of the following
14 actions against a licensed behavior analyst, licensed assistant
15 behavior analyst or an applicant:

- 16 (1) Refuse to license an applicant.
- 17 (2) Refuse to renew the license of an individual.
- 18 (3) Suspend or revoke the license of an individual.
- 19 (4) Impose restrictions on the scope of practice of an
20 individual.
- 21 (5) Issue an administrative reprimand to an individual.
- 22 (6) Issue a private admonishment to an individual.
- 23 (7) Impose fines for violations of this act, not to
24 exceed \$2,500.
- 25 (8) Issue a notice to a certifying entity.

26 (b) Revocation and other disciplinary action.--A license
27 issued under this act may be revoked or a license holder may be
28 sanctioned by the board or face disciplinary action upon
29 demonstration of the following:

- 30 (1) ineligibility for licensure, including, but not

1 limited to, failure to maintain active certification or
2 failure to maintain inactive status by a certifying entity or
3 falsification of documentation submitted for licensure;

4 (2) aiding and abetting an unlicensed individual to
5 directly or indirectly perform activities requiring a license
6 for the practice of behavior analysis;

7 (3) engaging in professional misconduct, incompetence,
8 gross negligence or manifest incapacity in the practice of
9 behavior analysis;

10 (4) engaging in the practice of behavior analysis while
11 impaired by alcohol or drugs;

12 (5) engaging in conduct or practice contrary to a
13 certifying entity's current professional and ethical
14 standards;

15 (6) failing to comply with, observe or adhere to any law
16 in a manner that causes the board to determine that the
17 applicant or license holder is unfit to hold a license;

18 (7) having a license revoked or suspended or other
19 disciplinary action by a Federal or State agency for any
20 reason that is provided by the applicable licensing laws or
21 by this section;

22 (8) having been convicted of a crime directly related to
23 the qualifications, functions or duties of the practice of
24 behavior analysis;

25 (9) failing to report in writing to the board any
26 disciplinary decision issued against the applicant or license
27 holder in another jurisdiction within 30 days of the
28 disciplinary decision;

29 (10) failing to report in writing to the board
30 revocation or disciplinary action of the certification of a

1 license holder by a certifying entity within 15 days of the
2 revocation; or

3 (11) employing, whether gratuitously or for pay, an
4 individual not licensed under this act to perform the
5 functions or duties of the practice of behavior analysis.

6 (c) Appeal.--Any individual aggrieved by a final order of
7 the board denying, suspending or revoking a license may appeal
8 to the Bureau of Professional and Occupational Affairs in the
9 Department of State.

10 Section 11. Reinstatement of license.

11 (a) Lapsed license.--Within three years, the board may
12 reinstate a license that has lapsed, upon completion of all
13 renewal requirements, including payment of the required renewal
14 fee and a reinstatement fee to be established by the board.

15 (b) Revoked or suspended license.--The board may reinstate a
16 license that has been revoked or suspended if the board
17 determines that the applicant is currently certified at the
18 appropriate level by a certifying entity. As a condition of
19 reinstatement, the board may impose reasonable restrictions
20 under which the license holder may practice.

21 Section 12. Behavior Analyst Licensing Board.

22 (a) Establishment.--The Behavior Analyst Licensing Board is
23 hereby established. The board may promulgate regulations and
24 establish fees necessary to implement this act and investigate
25 complaints relating to the practice of applied behavior analysis
26 by a licensed behavior analyst, licensed assistant behavior
27 analyst or any other individual alleged to be in violation of
28 this act.

29 (b) Membership.--The board shall consist of five members
30 appointed by the Governor as follows:

1 (1) The members shall include:

2 (i) One physician or psychologist whose scope of
3 practice includes prescribing applied behavior analysis
4 services and has a minimum of 10 years' experience.

5 (ii) One board-certified behavior analyst or board-
6 certified behavior analyst-doctoral who is eligible for
7 licensure under this act and has a minimum of five years'
8 experience.

9 (iii) One board-certified assistant behavior analyst
10 or board-certified behavior analyst who is eligible for
11 licensure under this act and has a minimum of five years'
12 experience.

13 (iv) Two public members who are not professional
14 behavior analysts.

15 (2) The board-certified behavior analyst, board
16 certified behavior analyst-doctoral and board certified
17 assistant behavior analyst members of the board shall apply
18 for licensure under this act as soon as feasible.

19 (3) Appointments to the board shall be made without
20 regard to the race, color, disability, sex, sexual
21 orientation, religion, age or national origin of the
22 appointee.

23 (4) Terms of the initial board shall be as follows:

24 (i) The physician or psychologist shall serve a term
25 of one year.

26 (ii) The board-certified behavior analyst or board-
27 certified behavior analyst-doctoral shall serve a term of
28 three years.

29 (iii) The board-certified behavior analyst or board-
30 certified assistant behavior analyst shall serve a term

1 of two years.

2 (iv) One public member shall serve a term of one
3 year.

4 (v) One public member shall serve a term of two
5 years.

6 (5) The terms of subsequent board members shall be for
7 three years and no member shall serve more than two
8 consecutive terms.

9 (6) A vacancy on the board shall be filled in the manner
10 of the original appointment for the unexpired portion of the
11 term.

12 (7) The Governor, after notice and opportunity for a
13 hearing, may remove any member of the board for malfeasance,
14 neglect of duty, incompetency or revocation or suspension of
15 a license.

16 (8) The board may request the removal of a board member
17 by the Governor.

18 (9) The board shall annually elect a chair, vice-chair
19 and secretary.

20 (10) Members of the board may not receive a salary but
21 shall be allowed reimbursement for mileage, subsistence and
22 receive per diem as deemed necessary by the board.

23 (11) There shall be no liability on the part of, and no
24 action for damages against, any current or former board
25 member, representative, agent or employee of the board when
26 the individual is functioning within the scope of board
27 duties, acting without malice and with the reasonable belief
28 that the actions taken by the individual are permitted by
29 law.

30 (c) Meetings of board.--The board shall meet at least twice

1 annually and may meet at such other times as necessary to
2 complete the business required. A majority of the members of the
3 board shall constitute a quorum for the transaction of business.

4 (d) Board staff and expenses.--The board may employ an
5 executive secretary and any clerical or other assistants as
6 necessary for the performance of the board's work and may make
7 expenditures of funds for any purpose which in the opinion of
8 the board are necessary for proper performance of its duties,
9 including compensation of the executive secretary.

10 (e) Regulations.--The board shall:

11 (1) Promulgate regulations necessary to carry out the
12 provisions of this act.

13 (2) Promulgate temporary regulations which shall expire
14 no later than five years following the publication of the
15 temporary regulations. The board may promulgate temporary
16 regulations not subject to:

17 (i) Sections 201, 202, 203, 204 and 205 of the act
18 of July 31, 1968 (P.L.769, No.240), referred to as the
19 Commonwealth Documents Law.

20 (ii) Section 204(b) of the act of October 15, 1980
21 (P.L.950, No.164), known as the Commonwealth Attorneys
22 Act.

23 (iii) The act of June 25, 1982 (P.L.633, No.181),
24 known as the Regulatory Review Act.

25 (3) The authority provided to the board to adopt
26 temporary regulations under paragraph (2) shall expire five
27 years following the publication of the temporary regulations.
28 Regulations adopted after this period shall be promulgated as
29 provided by law.

30 (f) Duties of board.--The board shall:

1 (1) Review applications for initial licensure and
2 renewals, collect required fees, make determinations on
3 alleged violations, check certifications and clearances and
4 issue a license if appropriate.

5 (2) Have the power to institute criminal proceedings for
6 a violation of this act and to institute civil proceedings to
7 enjoin a violation of this act.

8 (3) Investigate alleged violations of this act brought
9 to the board's attention and take action as it may deem
10 appropriate.

11 (4) Conduct investigations and schedule and conduct
12 administrative hearings to enforce the provisions of this act
13 or regulations promulgated under this act.

14 (5) Have the authority to administer oaths, receive
15 evidence, interview individuals, issue subpoenas and require
16 the production of books, papers, documents or other evidence.

17 (6) Hold meetings at the call of the chair or at the
18 call of a majority of members of the board upon not less than
19 10 days' written notice, unless notice shall be waived. The
20 presence of any member at a meeting of the board shall
21 constitute a waiver of notice thereof by the member.

22 (7) Maintain a book to keep the minutes containing a
23 record of all meetings of the board.

24 (8) Maintain a register of all individuals licensed
25 under this act. The register shall contain the names of every
26 license holder in this Commonwealth, the license holder's
27 current business and residential address and telephone
28 numbers and the date and number of the holder's license. A
29 license holder shall notify the board of a change of name,
30 address or telephone number within 90 days of the change.

1 (9) Annually update the board's records.

2 (10) Annually publish and make available a current
3 directory of all licensed behavior analysts, licensed
4 assistant behavior analysts and temporary licensees.

5 (11) Adopt a seal which shall be affixed to every
6 license granted by the board.

7 (g) Regulation of practice of applied behavior analysis.--
8 The board shall:

9 (1) Have the responsibility of evaluating the
10 qualifications of applicants for licensure.

11 (2) Promulgate rules and regulations which:

12 (i) Establish standards for temporary licensure,
13 inactive and retirement status.

14 (ii) Govern the physical and mental examination of
15 licensed behavior analysts, licensed assistant behavior
16 analysts and temporary licensees who may be impaired by
17 reason of a mental, physical or other condition that
18 impedes their ability to practice competently. For
19 purposes of enforcing this section, the board shall have
20 the power to order an immediate temporary suspension of
21 licensure if there is a reasonable cause to believe that
22 a licensed behavior analyst, licensed assistant behavior
23 analyst, temporary licensee or applicant may be impaired
24 by reason of a mental, physical or other condition that
25 impedes the individual's ability to practice competently.

26 (iii) Establish reasonable fees for the licensure
27 and license renewal of licensed behavior analysts,
28 licensed assistant behavior analysts and temporary
29 licensees.

30 (h) Behavior Analyst Licensure Fund.--The Behavior Analyst

1 Licensure Fund is established as a special fund in the State
2 Treasury. All fees received by the board and all penalties
3 assessed in accordance with this act shall be deposited into the
4 Behavior Analyst Licensure Fund to be used by the board for the
5 administration of this act.

6 Section 13. Consumer protection and complaint procedures.

7 (a) Duty to report by license holders and employers.--A
8 license holder or an employer of a license holder having actual
9 or direct knowledge of facts shall report to the board a
10 licensed behavior analyst or licensed assistant behavior analyst
11 who:

12 (1) has been convicted of a felony that involved an act
13 that bears directly on the qualifications or ability of the
14 applicant or license holder to practice behavior analysis;

15 (2) is suspected of fraud or deceit in procuring or
16 attempting to procure a license to practice behavior analysis
17 or of negligently performing actions that justify action
18 against a licensed behavior analyst's or licensed assistant
19 behavior analyst's license;

20 (3) has had a license to practice as a behavior analyst
21 or assistant behavior analyst denied, limited, suspended,
22 probated or revoked in another jurisdiction on grounds
23 sufficient to cause a license or certificate to be denied,
24 limited, suspended, probated or revoked in this Commonwealth;
25 or

26 (4) has had a certification revoked or suspended by a
27 certifying entity.

28 (b) Duty to report by others.--An individual having actual
29 or direct knowledge of facts shall report to the board an
30 individual who is practicing behavior analysis without a current

1 license issued by the board. The following shall apply:

2 (1) The board shall provide reasonable assistance to an
3 individual who wishes to file a complaint regarding an
4 individual or activity regulated under this act.

5 (2) The board shall list a toll-free telephone number
6 that may be called to present a complaint about a licensed
7 behavior analyst, assistant behavior analyst or temporary
8 license holder or an individual who is practicing behavior
9 analysis without a license.

10 (c) Confidentiality of complaint information.--All of the
11 following shall apply:

12 (1) Except as provided by law a complaint and
13 investigation and all information and materials compiled by
14 the board in connection with the complaint and investigation
15 shall remain confidential.

16 (2) A complaint or investigation under this section and
17 relevant information and materials compiled by the board in
18 connection with the complaint may be disclosed to:

19 (i) The board and its employees or agents involved
20 in discipline.

21 (ii) A party to a disciplinary action or that
22 party's designated representative.

23 (iii) A law enforcement agency if required by law.

24 (iv) A governmental agency if:

25 (A) The disclosure is required by law.

26 (B) The agency obtaining the disclosure protects
27 the identity of any patient whose records are
28 examined.

29 (3) The board shall protect the identity of a patient
30 whose records are examined in connection with a disciplinary

1 investigation or proceeding, except:

2 (i) a patient who initiates the disciplinary action;

3 or

4 (ii) a patient who has submitted a written consent

5 to release records.

6 Section 14. Effective date.

7 This act shall take effect in one year.