

## **The Behavior Analytic Community Unites to Support A Massachusetts Licensing Bill**

Steve Woolf, Ph.D., BCBA-D

President of the Massachusetts Association of Applied Behavior Analysis

Robert F. Littleton, Ed.D.

Executive Director of the Evergreen Center & President of Beacon ABA Services

Since 1998, the Behavior Analyst Certification Board (BACB) has been the single governing body for professionals working in the field of applied behavior analysis. Under certification, the field has thrived resulting in increased numbers of BACB certificants and the creation of new graduate training programs with coursework concentrations in applied behavior analysis (ABA). Board Certified Behavior Analysts (BCBA) are employed worldwide and work in numerous fields (e.g., autism treatment, developmental disabilities, foster care, schools, corporations). Within the last two years, individual states have created licenses or began the process of licensing behavior analysts. Massachusetts is the latest state to take up the issue of behavior analyst's licensure. On September 20<sup>th</sup> a hearing on Beacon Hill will consider public comment on House Bill 1901: *An Act relative to the licensure of behavior analysts*. The hearings will be conducted by the Joint Committee on Consumer Protection and Professional Licensure and are the culmination of an arduous, 4-year debate within the Commonwealth's behavioral community.

Although Massachusetts is not the first state to consider the licensing of behavior analysts, the outcomes from this debate may represent the biggest challenge, risk, and potential reward to the field of applied behavior analysis in recent years. This is largely due to Massachusetts' unique status as possessing the densest concentration (on a per capita basis) of

BACB certificants in the world. There is one BACB certificant for every 8,431 residents of the Commonwealth, 12 BACB University approved graduate coursework programs, and a total of 782 BCBA/BCABAs. Although California and Florida each contain more BACB certificants, the populations of these states are vastly larger than Massachusetts.

The passage of any legislation can be a contentious process, and this bill is not immune to controversy. The Massachusetts Psychological Association (MPA) is supporting an opposing bill, House Bill 1002, which would significantly restrict the scope of practice of BACB certificants. House Bill 1002 would also cede supervision of BCBA's and treatment decision authority regarding behavior analytic treatment to licensed psychologists. The fact that fewer than 20 Massachusetts licensed psychologists have a BACB credential suggests there would be a lack of qualified professionals available to supervise ABA based treatment if HB 1002 was enacted into law. This would substantially restrict the ABA services available to children, adults, and families affected by ASD in the Commonwealth. HB 1002 would also have the deleterious effect of driving up the overall cost of services per client by adding the expense of supervision from a licensed psychologist. The increased per case cost and limited number of licensed psychologists required to supervise BCBA's would most certainly slow the implementation of Massachusetts' recently enacted ARICA bill (*An Act Relative to Insurance Coverage for Autism*), which mandated health insurance for children, adults, and families affected by ASD, and sought to improve access to effective treatment.

One of the major advantages to HB 1901 is the experience of the bill's author, Representative John Scibak. Representative Scibak has a Ph.D. in psychology with a specialty in applied behavior analysis. He has been an invited speaker at Association for Behavior Analysis International (ABAI) conferences and has a deep and clear understanding of ABA's scope of

practice, contributions to society, and key elements that differentiate behavior analysts from licensed psychologists. In constructing HB 1901, Representative Scibak consulted widely and built consensus within the behavior analytic community. As a result, this bill has garnered the support of the Massachusetts Association for Behavior Analysis (MassABA), the Berkshire Association for Behavior Analysis and Therapy (BABAT), the Association for Behavior Analysis International (ABAI), the Association for Professional Behavior Analysts (APBA) and the Behavior Analyst Certification Board (BACB). After much debate, problem solving, and compromise, Representative Scibak was able to design HB 1901 with the consensus and support of state and national behavioral associations.

Like most pieces of legislation, the language and detailing of these bills is legalistic and can be challenging for individuals not regularly accustomed to reading laws and regulations. For these reasons, we have broken-down HB 1904 into five key elements and analyzed the implications for behavior analysts across the Commonwealth.

### **Element 1: The licensing board**

HB 1901 calls for a licensing board comprised of nine members appointed to three-year terms by the Governor. Of the nine members, seven must be BACB certificants (2 BCBA-Ds, 4 BCBAAs, and 1 BCABA) and two members from the general public. Board composition is one of the most critical elements of concern for behavior analysts. If the board were to be staffed with licensed psychologists, the possibility of modifying the behavior analyst's licensure qualification standards or adding regulations such as required BCBA supervision from a licensed psychologist would increase. It is worth noting that the great majority of licensed MA psychologists would not meet the minimum course requirements or supervision standards for approval to sit for the BACB examination. Given the relative paucity of qualified psychologists who can conduct or

supervise behavioral services, it is possible that a psychologist-dominated licensing board would inadvertently limit access to services to families and clients.

## **Element 2: Board powers**

The most fundamental responsibility of a board is to examine licensure applications and render acceptance/rejection for state licensure. The behavior analysis licensing board will have the power to issue two types of licenses: Licensed Behavior Analyst (LBA) and Licensed Assistant Behavior Analyst (LABA). The board would also adopt rules and regulations governing the licensure of behavior analysts and the practice of applied behavior analysis in the state. Within the authority of the board, a LBA or LABA may be fined, censured, revoked, suspended or denied a license, or otherwise disciplined for substantiated violations of the BACB “code of ethics” or of rules subsequently adopted by the licensing board.

The authority given to the licensing board satisfies the primary rationale for behavior analysts’ licensure, which is **consumer protection**. The responsibility for protecting consumers served by BCBAs has in the past fallen under the auspices of the BACB’s disciplinary review committee. The BACB review committee has been very effective in monitoring complaints and identifying individuals fraudulently claiming certification. However, this committee reviews only those behavioral professionals who hold a BACB certificate. An individual that practices applied behavior analysis without a certification and does not claim to be a BACB certificant would not be subject to the authority of the BACB review committee. It is also important to note that the BACB has limited investigation and enforcement capacity, where the harshest action administered by the review committee is limited to the revocation of an active BACB certificate.

With the establishment of a behavior analyst's license, the Commonwealth would have the authority to conduct localized investigations into claims of professional misconduct or misrepresentation using the resources of a local state investigatory department. A state licensing board investigation would also provide the BACB review committee additional evidence for potential professional misconduct. The BACB review committee would also gain increased enforcement authority by referring certificants that also hold a state license to local state licensing boards for potential violations of professional practice.

### **Element 3: Defining qualifications**

Under HB 1901, LBAs must complete the BCBA approved coursework and supervision requirements established by the BACB. The LBA must obtain a passing outcome on the BCBA examination and maintain the professional continuing education standards established by the BACB. The standards of the BCaBA established by the BACB would also apply to the LABA license. For the first five years of this legislation, any applicant who is a BCBA/BCaBA shall be eligible for status as a LBA/LABA. This segment of the legislation is often referred to as the grandfathering rule, and has the intention and effect of qualifying all active BACB certificants for the appropriate license at the time of enactment and throughout the grandfather period.

### **Element 4: Consumer protections**

As briefly referred to in Element 2, the primary purpose of this legislation is to protect the consumers of applied behavior analysis. Behavior Analysts work with some of the most vulnerable and disabled populations in the Commonwealth. In Massachusetts ABA services are often conducted in schools or home by non-certified paraprofessional staff under the supervision of a BCBA. Licensure will offer families a regulated process to investigate accusations of misconduct and prosecute those who violate their scope of practice or the BACB guidelines for

responsible conduct. These increased regulatory standards should also serve to protect the field, as all practitioners of ABA would be subject to regulatory standards consistent with other established licensed professional disciplines (such as speech language therapists, physical therapists, and psychologists).

### **Element 5: Scope of Practice and Prohibition of Practice**

HB 1901 also contains a clear description of the LBA's scope of professional practice. This scope of practice defines the procedures, actions, and processes that are permitted for the licensed individuals. Representative Scibak's bill defines a scope of practice that is consistent with and similar to the definition of the Practice of Behavior Analysis promulgated by the BACB. The HB 1901 scope of practice is a contemporary and evidenced based description that covers the scope of professional duties of a practicing behavior analyst.

HB1901 also specifies some clarifications and restrictions of practice as a behavior analyst. For example, LBA's would be prohibited from psychological testing, neuropsychological assessment, diagnosis of psychiatric conditions, psychotherapy, cognitive therapy, sex therapy, psychoanalysis and hypnotherapy. This bill would not prohibit those BCBA's who are also licensed psychologists from engaging in those activities while representing themselves as psychologists. Implementation of HB 1904 would not restrict or prohibit psychologists or other helping professionals from treating others utilizing the principles or procedures of ABA. The legislation would only prohibit individuals from promoting themselves as an LBA without a supporting license. Psychologists would be permitted to treat clients utilizing ABA or behavior procedures if they were properly trained as defined through their professional scope of practice.

## **Implication for the field of ABA in Massachusetts**

The licensing of behavior analysis would have a number of benefits to behavior analysts and the citizens of the Commonwealth:

- 1) Result in increased protections for the consumers of behavior analysis services.
- 2) Potentially increases the number of insurance companies who reimburse LBA services through 3<sup>rd</sup> party billing. This would increase access to ABA services for numerous families.
- 3) Ensures that the scope of the applied practice of behavior analysis is not restricted to developmental disabilities and autism treatment. Research in a variety of applications of the technology of ABA demonstrates its usefulness working with individuals beyond DD and autism (e.g., those with learning challenges, attention/concentration issues, basic parenting concerns, challenging behavior in non-disabled populations). Success with these populations will ultimately grow the field and create numerous opportunities for LBAs.
- 4) A professional license is prestigious! Adding the LBA/LABA can increase the professional stature of the field and help to create long-term viability for the profession.

House Bill 1904 currently has the support of the state's two main organizations representing behavior analysts, the Massachusetts Association for Behavior Analysis (MassABA) and the Berkshire Association for Behavior Analysis and Therapy (BABAT). The events that transpire following the September 20<sup>th</sup> public hearing may set the stage for the continued growth and expansion of the field and most importantly ensures that the citizens of the

Commonwealth of Massachusetts finally receive the consumer protections they require to guarantee access to effective treatment.