



BEHAVIOR ANALYST CERTIFICATION BOARD®

# Model Act for Licensing/Regulating Behavior Analysts

*Revised September 2012*

## Introduction

If your state is considering licensure or another form of regulation of individuals certified by the Behavior Analyst Certification Board®, Inc. (“BACB®”), please contact the BACB. Each state has a unique legislative process and there is a great deal of variability in how professionals may be regulated. Contacting the BACB early in the process will help ensure that the proposed regulatory system is consistent with current BACB standards and that the proposed title use does not infringe upon the BACB’s registered trademarks.

This Model Act is provided for general information purposes and is designed to cover the primary areas and approaches that commonly appear in professional regulation. The BACB welcomes the opportunity to comment on and help support proposed legislation, rules, and regulations that will strengthen the behavior analysis profession and the overall value and recognition of the BACB’s credentials. The BACB may also be able to provide you with additional information about BACB certification and help educate legislators and stakeholders about the different credentials offered by the BACB.

Statutes of this type generally specify details such as requirements for obtaining and renewing the license, fees, ethical and disciplinary standards, complaint and investigatory procedures, and sanctions that can be imposed on credentialed individuals. It is also common for statutory language to be fairly broad and brief, and for the governmental body that administers the license to promulgate regulations or rules that articulate the details. Much of the language that appears in this Model Act could be used in regulations or rules instead of, or in addition to, statutes.

Please also note that the BACB is available to assist states with specific regulatory requirements, such as conducting mandatory criminal background checks and/or testing candidates on local laws and rules. Such provisions should always be coordinated with the BACB prior to introduction of specific legislation. For more information about the BACB and its certification programs, please visit <http://www.BACB.com>.

<sup>1</sup> References in this Model Act to “state(s)” are also generally applicable to countries and regional regulatory authorities outside of the United States.



Each section of the proposed Model Act is followed by commentary, the purpose of which is to explain the rationale for the proposed section. To differentiate between the commentary and the proposed statutory language, the commentary is italicized.

## A. Declaration of Policy

The practice of applied behavior analysis in [State] is hereby declared to affect the public health, safety, and welfare of citizens of [State] and to be subject to regulation to protect the public from (i) the practice of applied behavior analysis by unqualified persons, and (ii) unprofessional, unethical and/or harmful conduct by behavior analysis practitioners.

*Comment: In some states, the Declaration of Policy may also be linked to an autism insurance bill recently passed or pending in the state. The BACB does not offer an opinion on whether professional regulation should be introduced before, during, or after the introduction of autism insurance regulation. Strategic legislative timing will depend on a number of factors beyond the scope of BACB credentialing.*

*Some states may omit the Declaration of Policy altogether. For example, see the Wisconsin and Kentucky licensure laws at <http://www.bacb.com/index.php?page=100170>.*

## B. Definitions

1. "Regulatory Authority" means the [State] Behavior Analyst regulatory board, agency, department, or individual charged with overseeing the regulation of behavior analyst professionals. The Regulatory Authority should be authorized to enforce the Act through the promulgation of regulations consistent with the Act and through the acceptance of applications, charging of fees, issuing of initial and renewed licenses, and conduct of disciplinary investigations and sanctioning of licensees.

*Comment: The Regulatory Authority will ideally be a separate and independent behavior analyst regulatory board or agency. Where this is not possible, it is wise to ensure independence of regulation and decision-making authority from other professions that may not be knowledgeable about applied behavior analysis. If independence is assured, then the regulatory authority may be housed within other professional licensing boards, such as behavioral health or healthcare licensing boards or professional practice boards.*

*An overwhelming majority of the members of the Regulatory Authority should be Board Certified Behavior Analysts with additional membership of at least one Board Certified*



*Assistant Behavior Analyst and at least one Consumer/Public Member. Some states currently require more than one Consumer/Public Member serve on licensing boards. Each state will need to identify the individual authorized to appoint members to the Regulatory Authority.*

2. “Certifying Entity” means the Behavior Analyst Certification Board,<sup>®</sup> Inc., or its successor.

*Comment: If a state prohibits naming of the Certifying Entity in the law, then an alternative would be to authorize the Regulatory Authority to approve the Certifying Entity, so long as the Certifying Entity is a behavior analyst certifying organization. The Act may even specify that the Certifying Entity hold national accreditation by the National Commission for Certifying Agencies (“NCCA”) for its certification program(s).*

3. “Practice of behavior analysis” means the design, implementation, and evaluation of instructional and environmental modifications to produce socially significant improvements in human behavior. It includes the empirical identification of functional relations between behavior and environmental factors, known as functional assessment and analysis. Applied behavior analysis interventions are based on scientific research and the direct observation and measurement of behavior and the environment. Behavior analysts utilize contextual factors, motivating operations, antecedent stimuli, positive reinforcement, and other consequences to help people develop new behaviors, increase or decrease existing behaviors, and emit behaviors under specific environmental conditions. The practice of behavior analysis expressly excludes psychological testing, diagnosis of a mental or physical disorder, neuropsychology, psychotherapy, cognitive therapy, sex therapy, psychoanalysis, hypnotherapy, and long-term counseling as treatment modalities.

*Comment: Although autism insurance laws may be the impetus for regulating behavior analysts, the definition of practice should not be restricted to practice with a particular consumer or client population. This Model Act presumes practice will involve human clients and consumers. Please see Section F for exemptions of the practice behavior analysis in other contexts (e.g., applied animal behavior).*

4. “Licensed Behavior Analyst” means an individual who is certified by the Certifying Entity as a “Board Certified Behavior Analyst<sup>®</sup>” and who meets the criteria identified in Section C.2.(a) below.

*Comment: Please review the BACB’s Terms of Use for information on how to avoid unlawful infringement of the BACB’s registered trademarks. When titles of credentials issued by the BACB are included in laws, regulations, or rules, they should always be identical to the BACB titles, including first letter capitalized and the use of lower case for the*



*first “a” in “BCaBA.” Where non-BACB certified individuals will also be licensed, it may be preferable to use an alternative title to distinguish between those who have meet the BACB’s standards and those who qualify for licensure based on other standards (e.g., grandfathered practitioners and/or temporary licensees).*

5. “Licensed Assistant Behavior Analyst” means an individual who is certified by the Certifying Entity as a “Board Certified Assistant Behavior Analyst<sup>®</sup>” and who meets the criteria specified in Section C.2.(b) below.

*Comment: Please see the comment in Section 4, above.*

6. “Applied behavior analysis direct contact technician” means an individual who directly implements applied behavior analysis services.

*Comment: The ABA direct contact technician may or may not be required to be licensed, but must practice and be supervised, as identified in Section F. This individual might be identified by other regionally accepted titles, such as “behavioral technician,” “front-line therapist,” or “tutor.”*

## C. Qualifications for Initial Licensure

Each person desiring to obtain a license shall submit an application and authorized fees to the Regulatory Authority; such application to include evidence demonstrating that the applicant meets all of the following requirements:

1. is of good moral character and conducts his or her professional activities in accordance with accepted professional and ethical standards, including:

(a) compliance with the BACB Professional Disciplinary and Ethical Standards and the BACB Guidelines for Responsible Conduct for Behavior Analysts; and

(b) completion of a state approved criminal background check and/or jurisprudence examination; and

*Comment: The law may require a specific background check/clearance or examination on local laws. The BACB has authorization from its Board of Directors to work with states to secure the required background check, if not separately conducted by the Regulatory*



*Authority. Similarly, the BACB also provides verification of whether the applicant for licensure has been the subject of prior disciplinary actions by the BACB. Additionally, the BACB is available to coordinate the development and administration of local law examinations, at the request of the Regulatory Authority.*

2. (a) for a Licensed Behavior Analyst applicant:

- (i) has passed the Board Certified Behavior Analyst® (“BCBA®”) examination; and
- (ii) maintains active status as a Board Certified Behavior Analyst®; or

*Comment: It is important that the statute, regulations and rules require both passage of the examination and current certification. Passage of the examination without current certification may not adequately verify current competency of the applicant. The BACB’s examinations are regularly updated in accordance with the psychometric standards for certifying professionals (e.g., based on a valid and current job task analysis, developed by subject matter experts, administered in a secure and uniform setting, psychometrically scored consistent with a valid cut-score study, and subjected to extensive post-administration psychometric review). Current certification, however, reflects much more than passage of a psychometrically developed, administered, and evaluated examination; current certification also provides for demonstration of disciplinary compliance, along with completion of continuing education. Laws, regulations, or rules that specify eligibility standards other than current BACB certification run the risk of failing to reflect current standards in the field*

*It may seem efficient to cut-and-paste the current BACB certification standards into a proposed licensure law. The BACB’s certification standards are regularly updated to reflect growth and refinement in the field of applied behavior analysis. Regulations that identify specific education and training eligibility standards (beyond the requirement of current BACB certification) run the risk of failing to remain abreast of current developments and changes in the field, and therefore should be avoided. It is impossible to predict how difficult or easy it will be to enact amendments to regulations in the future. The safer approach is to require current BACB certification, which will ensure demonstrated compliance with current credentialing standards.*

(b) for a Licensed Assistant Behavior Analyst applicant:

- (i) has passed the Board Certified Assistant Behavior Analyst® (“BCaBA®”) examination;



(ii) maintains active status as a Board Certified Assistant Behavior Analyst®; and

(iii) provides proof of ongoing supervision by a Licensed Behavior Analyst who is a current Board Certified Behavior Analyst in a manner consistent with the Behavior Analyst Certification Board's requirements for supervision of Board Certified Assistant Behavior Analysts.

*Comment: See above comments regarding (a)(i) and (ii) which also apply to (b)(i) and (ii). Additionally, section (iii) addresses the need for the Board Certified Assistant Behavior Analyst to also demonstrate compliance with current BACB supervision requirements.*

*If the regulation does not license Board Certified Assistant Behavior Analysts, then they should be identified as being exempt in Section F, so long as they maintain current BACB certification and practice in accordance with the BACB's mandatory supervision requirements.*

*If the regulation provides for licensure of individuals who are not BACB certified, it is important to clearly identify that the Board Certified Assistant Behavior Analysts will still need to satisfy the mandatory supervision requirements of the BACB. A non-certified licensed professional may provide supervision of a Board Certified Assistant Behavior Analyst, but such supervision will need to be in addition to the mandatory supervision by a Board Certified Behavior Analyst required for continued BACB certification.*

## D. Prohibition

1. The unlicensed practice of applied behavior analysis is prohibited in this state, unless exempted in Section F.

*Comment: See Section F – Exemptions, for information on how this restriction applies to other regulated professions, such as psychology.*

2. No persons shall hold themselves out to be a Licensed Behavior Analyst or Licensed Assistant Behavior Analyst unless they meet the applicable requirements of this Act.

*Comment: In some jurisdictions, restricting the use of professional titles without also restricting the professional practice has been held to be unconstitutional. Legislative counsel should be sought before entertaining a proposed act that would restrict title use*



*without practice restrictions. In some cases, a title restriction may be acceptable without a practice restriction. See, the examples of title restrictions at <http://www.bacb.com/index.php?page=100170>.*

## E. Penalty

A violation of section D.1. or D.2. shall be punishable by a fine of not more than [X] for each occurrence.

## F. Exemptions

*Comment: Exemptions are commonly included in professional credentialing laws and some are suggested here. It is important, however, to carefully consider the likely effects of each and every exemption on applied behavior analysis practitioners and consumers in your state.*

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

1. An individual authorized to practice Psychology within the State, so long as the applied behavior analysis services provided by the Licensed Psychologist are within the Licensed Psychologist's education, training, and experience;

*Comment: This exemption should also apply to individuals acting under the extended authority and direction of Licensed Psychologists (e.g., doctoral students, postdoctoral fellows).*

2. An applied behavior analysis direct contact technician, or family member implementing a plan within the home, who acts under the extended authority and direction of a Licensed Behavior Analyst or a Licensed Assistant Behavior Analyst;

*Comment: Failure to include this exemption may result in paraprofessionals being charged with practicing applied behavior analysis without a license. Failure to include this exemption may also have the unintended effect of excluding paraprofessional services from available funding streams that require licensure or state recognition for access to reimbursement for services. Regarding the implementation by family members, the exemption is consistent with the BACB Guidelines for Responsible Conduct for Behavior Analysts provisions for family members to be actively involved in planning and delivering certain applied behavior analysis services to clients.*



3. A behavior analyst who practices with nonhuman or nonpatient clients or consumers, including, but not limited to, applied animal behaviorists and practitioners of organizational behavior management;

*Comment: Each state will need to independently identify the scope of the practice and title restrictions.*

4. A licensed professional authorized to practice in the State who is not a behavior analyst, so long as the licensed professional does not represent that he/she is a behavior analyst, and so long as the services of the licensed professional are within the scope of practice of the licensing law governing the licensed professional and the services performed are commensurate with the licensed professional's education, training, and experience;

*Comment: Applied behavior analysis may be utilized by a number of licensed professionals. The Act should address the practice of applied behavior analysis by individuals licensed in other professions (such as speech/language pathologists, special educators, and other mental health practitioners licensed by the State).*

5. A matriculated graduate student or postdoctoral fellow whose activities are part of a defined behavior analysis program of study, practicum, or intensive practicum, provided that the practice under this exemption is directly supervised by a Licensed Behavior Analyst in this State or an instructor in a BACB approved course sequence;

6. An unlicensed individual pursuing experience in behavior analysis consistent with the BACB's experience requirements, provided such experience is supervised by a Licensed Behavior Analyst in this State.

*Comment: The above two exemptions should be carefully construed to ensure that the supervision provided will qualify the candidate for both BACB certification and licensure. Supervision by an individual not certified by the BACB as a Board Certified Behavior Analyst (or otherwise approved to teach in an approved course sequence or practicum) may disqualify the practice from being used to qualify for BACB certification in the future.*

## G. Temporary License

A licensed or an unlicensed Board Certified Behavior Analyst or Board Certified Assistant Behavior Analyst residing and practicing in another state who temporarily provides applied behavior analysis





services in this State and/or to a resident of this state may apply for a temporary license to practice behavior analysis in this State. A temporary behavior analysis license is available only if the behavior analysis services are to be delivered during a limited and defined period (such as, not more than seven (7) days in a ninety (90) day period or other term otherwise approved by the State).

*Comment: This exemption should be carefully construed to ensure that the services provided are temporary in nature. A provision may be made available for extensions of temporary licenses. If the practice involves supervision of candidates for BACB certification, then the regulations should clearly identify that such supervision must be provided by a Board Certified Behavior Analyst (or individual otherwise approved to teach in a BACB approved course sequence or practicum).*

## H. Reciprocity

The Regulatory Authority shall issue a license to a person who is actively licensed as a behavior analyst in another state that currently imposes comparable licensure requirements as those imposed by this State and that offers reciprocity to individuals licensed under this Act. Applicants for reciprocity must submit proof of ethical compliance, including proof of current licensure and current BACB Certification, along with any other eligibility requirements, such as, satisfactory passage of a criminal background check.

*Comment: If a criminal background check is required of applicants, then the reciprocity provision will need to address whether reciprocity will be available to candidates who have not satisfactorily passed an equivalent criminal background check. Additionally, not all background checks are equal. Factors to consider in comparing equivalency of background checking may include, checking or excluding from the check certain felonies, misdemeanors, expunged charges, treatment of a plea of nolo contendere, and passage of time since offense.*

## I. Expiration and Renewal

A license shall be granted for a period of XX years. Prior to expiration of a license, the license may be renewed upon submission of an application for renewal, including proof of continued certification by the Certifying Entity and payment of the renewal fee imposed by the Regulatory Authority.

*Comment: By requiring proof of continued certification, the regulatory requirements will remain consistent with the national requirements for continued competency of applied behavior analysis professionals. As with the BACB's eligibility and examination*



*requirements, the BACB's continuing education requirements also change to reflect current standards for professionals. The proposed language would ensure that the State law is as current as the then-existing BACB standards.*

## J. Sanction of Licensee Status

A license issued under this Act may be revoked or otherwise sanctioned upon demonstration of:

1. Ineligibility for licensure, including failure to maintain active certification or falsification of documentation submitted for licensure; and ...

*Comment: Each state will separately identify the process for sanctioning a license. Examples of the type of conduct that typically result in sanctions may be found in other behavior analyst licensure laws at <http://www.bacb.com/index.php?page=100170>. Each state will likely already have available a mandatory process for investigating and reviewing allegations and issuing sanctions. The BACB's Professional Disciplinary and Ethical Standards and Guidelines for Professional Conduct for Behavior Analysts should also be consulted in specifying grounds for issuing sanctions.*