

S9449 BROUK Same as A 6008-E Bronson

ON FILE: 05/27/22 Education Law

TITLE...Relates to required clinical education for certain mental health practitioners and other mental health professionals

05/27/22 REFERRED TO HIGHER EDUCATION

06/01/22 COMMITTEE DISCHARGED AND COMMITTED TO RULES

06/01/22 ORDERED TO THIRD READING CAL.1800

06/01/22 PASSED SENATE

06/01/22 DELIVERED TO ASSEMBLY

06/01/22 referred to ways and means

06/02/22 substituted for a6008e

06/02/22 ordered to third reading rules cal.603

06/02/22 passed assembly

06/02/22 returned to senate

06/23/22 DELIVERED TO GOVERNOR

06/24/22 SIGNED CHAP.230

LAWS OF NEW YORK, 2022

CHAPTER 230

AN ACT to amend the education law, in relation to diagnostic privilege; and providing for the repeal of certain provisions upon expiration thereof

Became a law June 24, 2022, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section 8401 of the education law is amended by adding two new subdivisions 3 and 4 to read as follows:

3. "Diagnosis" means the process of distinguishing, beyond a general assessment, between similar mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities within a psychosocial framework on the basis of their similar and unique characteristics consistent with accepted classification systems.

4. "Development of assessment-based treatment plans" means the development of an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of the client, to address mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities.

§ 2. The education law is amended by adding a new section 8401-a to read as follows:

§ 8401-a. Diagnostic privilege. 1. For issuance of a privilege to diagnose and develop assessment-based treatment plans, as defined in section eighty-four hundred one of this article, the applicant shall fulfill the following requirements:

(a) Application: File an application with the department;

(b) License: Be licensed and registered as a mental health counselor, marriage and family therapist, or a psychoanalyst in the state;

(c) Education: Verify the completion of a sixty semester hour master's degree or higher, or the clock hour equivalent program of study in a psychoanalytic institute, that includes completion of a core curriculum which includes at least twelve semester hours or clock hour equivalent of clinical courses that prepares the applicant to diagnose and develop assessment-based treatment plans acceptable to the department. A person who has received a master's or higher degree during which they did not complete the required hours, may satisfy such requirement by completing the equivalent post-graduate courses in accordance with the commissioner's regulations;

(d) Experience: (i) Have completed at least two thousand hours of supervised, direct client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of this article, satisfactory to the department.

(ii) Subparagraph (i) of this paragraph shall not apply to a mental health counselor, marriage and family therapist, or psychoanalyst who was licensed prior to June twenty-fourth, two thousand twenty-four, and

EXPLANATION--Matter in italics is new; matter in brackets [-] is old law to be omitted.

who provides attestation, on a form prescribed by the department, from a supervisor in a facility setting or other supervised setting approved by the department under supervision in accordance with the commissioner's regulations, that such licensee has at least three years of experience engaged in direct client contact that shall include diagnosis, psychotherapy and the development of assessment-based treatment plans. Such licensee shall submit an application to the department within three years of the effective date of this section.

(e) Fee: Pay a fee of one hundred seventy-five dollars for issuance of a privilege to diagnose and develop assessment-based treatment plans.

2. A mental health counselor, marriage and family therapist or psychoanalyst who engages in diagnosis and the development of assessment-based treatment plans without a privilege may be charged with professional misconduct under section sixty-five hundred nine of this title.

3. A privilege issued under this section shall be valid for the life of the holder, unless revoked, annulled, or suspended by the board of regents. Such a privilege shall be subject to the same oversight and disciplinary provisions as licenses issued under this title. The holder of a privilege issued under this section shall register with the department as a privilege holder in the same manner and subject to the same provisions as required of a licensee pursuant to section sixty-five hundred two of this title, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the privilege set forth in this section. The fee for such registration shall be one hundred seventy-five dollars. The registration period for a privilege holder shall be coterminous with his or her registration under this article.

§ 3. Subdivision 1 of section 8407 of the education law, as added by chapter 676 of the laws of 2002, is amended to read as follows:

1. It shall be deemed practicing outside the boundaries of his or her professional competence for a person licensed pursuant to this article, in the case of treatment of any serious mental illness, to provide any mental health service for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness, unless such licensed professional has been issued a privilege to diagnosis and develop assessment-based treatment plans by the department. Such medical evaluation and consultation shall be to determine and advise whether any medical care is indicated for such illness. For purposes of this section, "serious mental illness" means schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder and autism.

§ 4. Subdivision 1 of section 8409 of the education law, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

1. The department may issue a limited permit to an applicant who meets all qualifications for licensure, except the examination and/or experience requirements, or to an applicant who is gaining experience for the diagnostic privilege, in accordance with regulations promulgated therefor.

§ 5. Section 8410 of the education law is amended by adding a new subdivision 11 to read as follows:

11. Prohibit or limit a mental health counselor, marriage and family therapist, or psychoanalyst licensed and registered pursuant to this article from engaging in diagnosis and the development of assessment-based treatment plans, as defined in section eighty-four hundred one of this article, in a facility setting or other supervised settings

approved by the department under supervision in accordance with the commissioner's regulations.

§ 6. This act shall take effect June 24, 2022; provided however, that sections two and three of this act shall take effect June 24, 2024; provided, further, that the provisions of section five of this act shall expire and be deemed repealed June 24, 2025. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized to be made and completed on or before such effective date.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly

A7405-A Bronson Same as S 6431 BROUK

Education Law

TITLE....Relates to extending certain exemptions for persons employed as mental health practitioners, psychologists and social workers

This bill is not active in the current session.

05/07/21 referred to higher education
05/19/21 amend (t) and recommit to higher education
05/19/21 print number 7405a
05/25/21 reported referred to rules
06/01/21 reported
06/01/21 rules report cal.242
06/01/21 ordered to third reading rules cal.242
06/02/21 passed assembly
06/02/21 delivered to senate
06/02/21 REFERRED TO RULES
06/09/21 SUBSTITUTED FOR S6431
06/09/21 3RD READING CAL.1698
06/09/21 PASSED SENATE
06/09/21 RETURNED TO ASSEMBLY
06/17/21 delivered to governor
06/24/21 signed chap.159

LAWS OF NEW YORK, 2021

CHAPTER 159

AN ACT to amend the education law, in relation to extending certain exemptions for persons employed as mental health practitioners, psychologists and social workers

Became a law June 24, 2021, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subdivision 12 section 7605 of the education law, as added by section 2 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

12. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment in a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, or a local governmental unit as that term is defined in section 41.03 of the mental hygiene law or a social services district as defined in section sixty-one of the social services law on or before [~~one-year~~] two years from the date that the regulations issued in accordance with section six of [~~the~~] part Y of chapter fifty-seven of the laws of two thousand eighteen [~~which added this subdivision~~] appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided, however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision.

§ 2. Subdivision 8 of section 7706 of the education law, as added by section 4 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

8. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment in a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, the department of corrections and community supervision, the office of temporary and disability assistance, the state office for the aging and the department of health or a local governmental unit as that term is defined in section 41.03 of the mental hygiene law or a social services district as defined in section sixty-one of the social services law on or before [~~one-year~~] two years from the date that the regulations issued in accordance with section six of

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[the] part Y of chapter fifty-seven of the laws of two thousand eighteen [~~which added this subdivision~~] appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision.

§ 3. Subdivision 9 of section 8410 of the education law, as added by section 5 of part Y of chapter 57 of the laws of 2018, is amended to read as follows:

9. Notwithstanding any other provision of law to the contrary, nothing in this article shall be construed to prohibit or limit the activities or services provided under this article by any person who is employed or who commences employment in a program or service operated, regulated, funded, or approved by the department of mental hygiene, the office of children and family services, the department of corrections and community supervision, the office of temporary and disability assistance, the state office for the aging and the department of health or a local governmental unit as that term is defined in section 41.03 of the mental hygiene law or a social services district as defined in section sixty-one of the social services law on or before [~~one year~~] two years from the date that the regulations issued in accordance with section six of [the] part Y of chapter fifty-seven of the laws of two thousand eighteen [~~which added this subdivision~~] appear in the state register or are adopted, whichever is later. Such prohibitions or limitations shall not apply to such employees for as long as they remain employed by such programs or services and whether they remain employed by the same or other employers providing such programs or services. Provided however, that any person who commences employment in such program or service after such date and performs services that are restricted under this article shall be appropriately licensed or authorized under this article. Each state oversight agency shall create and maintain a process to verify employment history of individuals exempt under this subdivision.

§ 4. This act shall take effect immediately.

The Legislature of the STATE OF NEW YORK ss:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

ANDREA STEWART-COUSINS
Temporary President of the Senate

CARL E. HEASTIE
Speaker of the Assembly

A1171-A Bronson Same as S 6574-A KENNEDY

Insurance Law

TITLE....Requires blanket health insurance policies to provide coverage for outpatient treatment by mental health practitioners; repealer

01/07/21 referred to insurance
05/20/21 amend and recommit to insurance
05/20/21 print number 1171a
05/25/21 reported referred to codes
06/02/21 reported referred to ways and means
06/08/21 reported referred to rules
06/08/21 reported
06/08/21 rules report cal.529
06/08/21 ordered to third reading rules cal.529
06/10/21 passed assembly
06/10/21 delivered to senate
06/10/21 REFERRED TO RULES
01/05/22 DIED IN SENATE
01/05/22 RETURNED TO ASSEMBLY
01/05/22 ordered to third reading cal.67
03/30/22 passed assembly
03/30/22 delivered to senate
03/30/22 REFERRED TO INSURANCE
05/24/22 SUBSTITUTED FOR S6574A
05/24/22 3RD READING CAL.1506
05/24/22 PASSED SENATE
05/24/22 RETURNED TO ASSEMBLY

STATE OF NEW YORK

1171--A

2021-2022 Regular Sessions

IN ASSEMBLY

January 7, 2021

Introduced by M. of A. BRONSON, CLARK, LUNSFORD, MEEKS, WALLACE, BUTTENSCHON, ROZIC, SANTABARBARA, LUPARDO, HUNTER, GUNTHER, STECK, STIRPE, JONES, MAGNARELLI, FAHY, McMAHON, BARRETT, WOERNER, WEPRIN, GOTTFRIED, CRUZ, CARROLL -- read once and referred to the Committee on Insurance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the insurance law, in relation to health insurance coverage of outpatient care provided by a mental health practitioner and a clinical social worker; and to repeal certain provisions of such law relating thereto

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Items (i) and (ii) of subparagraph (A) of paragraph 35 of
2 subsection (i) of section 3216 of the insurance law, item (i) as amended
3 by section 12 of part AA of chapter 57 of the laws of 2021 and item (ii)
4 as added by section 8 of subpart A of part BB of chapter 57 of the laws
5 of 2019, are amended to read as follows:

6 (i) where the policy provides coverage for inpatient hospital care,
7 such policy shall include benefits for inpatient care in a hospital as
8 defined by subdivision ten of section 1.03 of the mental hygiene law and
9 benefits for outpatient care provided in a facility issued an operating
10 certificate by the commissioner of mental health pursuant to the
11 provisions of article thirty-one of the mental hygiene law, or in a
12 facility operated by the office of mental health, or in a crisis
13 stabilization center licensed pursuant to section 36.01 of the mental
14 hygiene law, or, for care provided in other states, to similarly
15 licensed or certified hospitals or facilities; and

16 (ii) where the policy provides coverage for physician services, such
17 policy shall include benefits for outpatient care provided by a psychia-
18 trist or psychologist licensed to practice in this state, a licensed
19 clinical social worker [~~who meets the requirements of subparagraph (D)~~]

EXPLANATION--Matter in italics (underscored) is new; matter in brackets
[-] is old law to be omitted.

LBD05221-02-1

1 ~~of paragraph four of subsection (1) of section three thousand two~~
2 ~~hundred twenty-one of this article,] within the lawful scope of his or~~
3 ~~her practice, who is licensed pursuant to article one hundred fifty-four~~
4 ~~of the education law, a mental health counselor, marriage and family~~
5 ~~therapist, creative arts therapist or psychoanalyst licensed pursuant to~~
6 ~~article one hundred sixty-three of the education law, a nurse practi-~~
7 ~~tioner licensed to practice in this state, or a professional corporation~~
8 ~~or university faculty practice corporation thereof. Nothing herein~~
9 ~~shall be construed to modify or expand the scope of practice of a mental~~
10 ~~health counselor, marriage and family therapist, creative arts therapist~~
11 ~~or psychoanalyst licensed pursuant to article one hundred sixty-three of~~
12 ~~the education law. Further, nothing herein shall be construed to create~~
13 ~~a new mandated health benefit.~~

14 § 2. Subparagraph (A) of paragraph 4 of subsection (1) of section 3221
15 of the insurance law, as amended by section 11 of subpart A of part BB
16 of chapter 57 of the laws of 2019, is amended to read as follows:

17 (A) Every insurer delivering a group policy or issuing a group policy
18 for delivery, in this state, that provides reimbursement for psychiatric
19 or psychological services or for the diagnosis and treatment of mental
20 health conditions, however defined in such policy, by physicians,
21 psychiatrists or psychologists, shall [~~make available and if requested~~
22 ~~by the policyholder]~~ provide the same coverage to insureds for such
23 services when performed by a licensed clinical social worker, within the
24 lawful scope of his or her practice, who is licensed pursuant to article
25 one hundred fifty-four of the education law[~~. Written notice of the~~
26 ~~availability of such coverage shall be delivered to the policyholder~~
27 ~~prior to inception of such group policy and annually thereafter, except~~
28 ~~that this notice shall not be required where a policy covers two hundred~~
29 ~~or more employees or where the benefit structure was the subject of~~
30 ~~collective bargaining affecting persons who are employed in more than~~
31 ~~one state.] and mental health counselors, marriage and family thera-~~
32 ~~pists, creative arts therapists and psychoanalysts licensed pursuant to~~
33 ~~article one hundred sixty-three of the education law, within the lawful~~
34 ~~scope of his or her practice. Nothing herein shall be construed to modi-~~
35 ~~fy or expand the scope of practice of a mental health counselor,~~
36 ~~marriage and family therapist, creative arts therapist or psychoanalyst~~
37 ~~licensed pursuant to article one hundred sixty-three of the education~~
38 ~~law. Further, nothing herein shall be construed to create a new mandated~~
39 ~~health benefit.~~

40 § 3. Subparagraph (D) of paragraph 4 of subsection (1) of section 3221
41 of the insurance law is REPEALED.

42 § 4. Item (ii) of subparagraph (A) of paragraph 5 of subsection (1) of
43 section 3221 of the insurance law, as amended by section 13 of subpart A
44 of part BB of chapter 57 of the laws of 2019, is amended to read as
45 follows:

46 (ii) where the policy provides coverage for physician services, it
47 shall include benefits for outpatient care provided by a psychiatrist or
48 psychologist licensed to practice in this state, or a mental health
49 ~~counselor, marriage and family therapist, creative arts therapist or~~
50 ~~psychoanalyst licensed pursuant to article one hundred sixty-three of~~
51 ~~the education law, or~~ a licensed clinical social worker [~~who meets the~~
52 ~~requirements of subparagraph (D) of paragraph four of this subsection]~~
53 ~~within the lawful scope of his or her practice, who is licensed pursuant~~
54 ~~to article one hundred fifty-four of the education law, a nurse practi-~~
55 ~~tioner licensed to practice in this state, or a professional corporation~~
56 ~~or university faculty practice corporation thereof. Nothing herein shall~~

1 be construed to modify or expand the scope of practice of a mental
2 health counselor, marriage and family therapist, creative arts therapist
3 or psychoanalyst licensed pursuant to article one hundred sixty-three of
4 the education law. Further, nothing herein shall be construed to create
5 a new mandated health benefit.

6 § 5. Paragraph 2 of subsection (g) of section 4303 of the insurance
7 law, as added by section 22 of subpart A of part BB of chapter 57 of the
8 laws of 2019, is amended to read as follows:

9 (2) where the contract provides coverage for physician services such
10 contract shall provide benefits for outpatient care provided by a
11 psychiatrist or psychologist licensed to practice in this state, or a
12 mental health counselor, marriage and family therapist, creative arts
13 therapist or psychoanalyst licensed pursuant to article one hundred
14 sixty-three of the education law, or a licensed clinical social worker
15 [who meets the requirements of subsection (n) of this section] within
16 the lawful scope of his or her practice, who is licensed pursuant to
17 article one hundred fifty-four of the education law, a nurse practition-
18 er licensed to practice [on] in this state, or professional corporation
19 or university faculty practice corporation thereof. Nothing herein shall
20 be construed to modify or expand the scope of practice of a mental
21 health counselor, marriage and family therapist, creative arts therapist
22 or psychoanalyst licensed pursuant to article one hundred sixty-three of
23 the education law. Further, nothing herein shall be construed to create
24 a new mandated health benefit.

25 § 6. Subsection (i) of section 4303 of the insurance law is REPEALED.

26 § 7. Subsection (n) of section 4303 of the insurance law, as amended
27 by section 30 of subpart A of part BB of chapter 57 of the laws of 2019,
28 is amended to read as follows:

29 (n) [~~In addition to the requirements of subsection (i) of this~~
30 ~~section, every] Every health service or medical expense indemnity corpo-~~
31 ~~ration issuing a group contract pursuant to this section or a group~~
32 ~~remittance contract for delivery in this state which contract provides~~
33 ~~reimbursement to subscribers or physicians, psychiatrists or psychol-~~
34 ~~ogists for psychiatric or psychological services or for the diagnosis~~
35 ~~and treatment of mental health conditions, however defined in such~~
36 ~~contract, must provide the same coverage to persons covered under the~~
37 ~~group contract for such services when performed by a licensed clinical~~
38 ~~social worker, within the lawful scope of his or her practice, who is~~
39 ~~licensed pursuant to [subdivision two of section seven thousand seven~~
40 ~~hundred four of the education law and in addition shall have either (i)~~
41 ~~three or more additional years experience in psychotherapy, which for~~
42 ~~the purposes of this subsection shall mean the use of verbal methods in~~
43 ~~interpersonal relationships with the intent of assisting a person or~~
44 ~~persons to modify attitudes and behavior which are intellectually,~~
45 ~~socially or emotionally maladaptive, under supervision, satisfactory to~~
46 ~~the state board for social work, in a facility, licensed or incorporated~~
47 ~~by an appropriate governmental department, providing services for diag-~~
48 ~~nosis or treatment of mental health conditions, or (ii) three or more~~
49 ~~additional years experience in psychotherapy under the supervision,~~
50 ~~satisfactory to the state board for social work, of a psychiatrist, a~~
51 ~~licensed and registered psychologist or a licensed clinical social work-~~
52 ~~er qualified for reimbursement pursuant to subsection (i) of this~~
53 ~~section, or (iii) a combination of the experience specified in para-~~
54 ~~graphs (i) and (ii) totaling three years, satisfactory to the state~~
55 ~~board for social work.] article one hundred fifty-four of the education
56 law and a mental health counselor, marriage and family therapist, crea-~~

1 tive arts therapist or psychoanalyst licensed pursuant to article one
2 hundred sixty-three of the education law. Nothing herein shall be
3 construed to modify or expand the scope of practice of a mental health
4 counselor, marriage and family therapist, creative arts therapist or
5 psychoanalyst licensed pursuant to article one hundred sixty-three of
6 the education law. Further, nothing herein shall be construed to create
7 a new mandated health benefit. The state board for social work shall
8 maintain a list of all licensed clinical social workers qualified for
9 reimbursement under this subsection. The state board for mental health
10 practitioners shall maintain a list of all licensed mental health coun-
11 selors, marriage and family therapists, creative arts therapists or
12 psychoanalysts qualified for reimbursement under this subsection.

13 § 8. This act shall take effect on the first of January next succeed-
14 ing the date upon which it shall have become a law; provided, however,
15 that the amendments made to item (i) of subparagraph (A) of paragraph 35
16 of subsection (i) of section 3216 of the insurance law made by section
17 one of this act shall take effect on the same date and in the same
18 manner as part AA of chapter 57 of the laws of 2021 takes effect; and
19 provided further, shall apply to policies and contracts issued, renewed,
20 modified, altered or amended on or after such effective date.



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Professional Practice Committee

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Amendment of Sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Psychologists, Social Workers and Mental Health Practitioners

DATE: April 6, 2022

AUTHORIZATION(S): *Jan M. G. Bellotti*

SUMMARY

Issue for Discussion

Should the Board of Regents amend sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education relating to continuing education requirements for psychologists, social workers and mental health practitioners?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendments will be presented to the Professional Practice Committee for discussion at the April 2022 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

Procedural History

A Notice of Proposed Rule Making will be published in the State Register on April 27, 2022. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

Several disciplinary matters have recently come before the Board of Regents for action against licensed psychologists, social workers and mental health practitioners, which, included, among other things, boundary violations. Boundary violations are based on an unequal power relationship, where the licensed professional has the role of authority in the professional relationship and access to personal, confidential information about the patient/client. Examples of recent boundary violation disciplinary matters include:

- Licensee leaving multiple messages on a former patient's voicemail with inappropriate statements;
- Licensee sending inappropriate text messages to a patient on more than one occasion, causing such patient to think that licensee and patient were friends; and
- Licensee sending abundant text messages, which were not therapy-related, to a patient's phone, outside of their normally scheduled therapeutic meeting times, over a period of several months.

When a professional violates the patient's/client's trust by converting the professional into the personal, some patients/clients may not recognize the violation. In other cases, the patient/client may want to avoid terminating the professional relationship and, therefore, may not report inappropriate action by the licensee who is responsible for establishing and maintaining boundaries.¹ Therefore, it is likely that boundary violations occur more frequently than suggested even by the Board of Regents disciplinary actions.

The Education Law defines the license and practice of psychologists (Article 153), licensed master social work and licensed clinical social work (Article 154), and mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts (Article 163; together, "mental health practitioners"). Licensees in each of these seven professions must complete 36 hours of continuing education from a Department-approved provider each triennial registration period (Education Law §§7607[1], 7710[1] and 8410[1]). Licensees can only practice their professions if their registrations are current.

Pursuant to Education Law §§7607(3)(c), 7710(3)(b) and 8412(3)(b), the Department is authorized, in its discretion and as needed to contribute to the health and welfare of the public, to require the completion of continuing education courses in specific subjects to fulfill the mandatory continuing education requirements for psychologists, social workers and mental health practitioners, respectively.

¹ Practice guidelines on appropriate professional boundaries for these professions can be found at:

Psychology: <http://www.op.nysed.gov/prof/psych/psychdual.htm>

Social Work: <http://www.op.nysed.gov/prof/sw/swboundaries.htm>

Mental Health Practitioners: <http://www.op.nysed.gov/prof/mhp/mhppg5.htm>

Proposed Amendments

To further the interest of public health and protection, the proposed amendments to sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Commissioner's regulations require psychologists, social workers and mental health practitioners to complete three continuing education credits on issues related to maintaining appropriate professional boundaries with patients/clients commencing with registration periods beginning on and after April 1, 2023. While professional education programs for psychology, social work and mental health practitioners include overviews of professional ethics that underlie those professions and discussions about transference and countertransference, licensees may be faced with real world challenges when engaged in practice that go beyond those covered by these educational requirements. Newly licensed and experienced professionals may blur the boundaries that separate the professional from the personal. Therefore, it is proposed that each licensee in these professions, whether engaged in education, direct patient care or administration, be required to complete three hours of acceptable continuing education in maintaining appropriate boundaries in professional relationships.

Related Regents Items

Not applicable.

Timetable for Implementation

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption at the September 2022 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 60-day public comment period required under the State Administrative Procedure Act. If adopted at the September 2022 meeting the proposed rule will become effective on September 28, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7607, 7710 and 8412 of the Education Law.

1. Subdivision (c) of section 72.6 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

2. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional

boundaries between licensees and patients, from a provider approved by the department.

3. Clause (c) of subparagraph (ii) paragraph (2) of subdivision (c) of section 79-9.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries licensees and patients, from a provider approved by the department.

4. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-10.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

5. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-11.8 of the Regulations of the Commissioner of Education is amended, to read as

follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

6. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-12.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.



SUMMARY OF KEY PROVISIONS

SECTION 1: PURPOSE

The purpose of this compact is to facilitate interstate practice of licensed professional counseling with the goal of improving public access to professional counseling services.

The compact preserves the regulatory authority of states to protect public health and safety through the current system of state licensure.

The compact is designed to:

- Provide for the mutual recognition of other member state licenses.
- Enhance states' abilities to protect the public's health and safety.
- Encourage the cooperation of member states in regulating multistate practice for licensed professional counselors.
- Support active duty military personnel and their spouses.
- Enhance the exchange of licensure, investigative, and disciplinary information among member states.
- Allow for the use of telehealth technology to increase access to counseling services.
- Support the uniformity of professional counseling licensure requirements throughout the states.
- Eliminate the necessity for licenses in multiple states.
- Facilitate interstate practice by licensed professional counselors who meet uniform requirements.

SECTION 2: DEFINITIONS

Establishes the definitions of key terms as used throughout the compact, to alleviate confusion on the part of practitioners and jurisdictions. Defined terms are capitalized throughout the document.

SECTION 3: STATE PARTICIPATION IN THE COMPACT

This section establishes the duties of the compact's member states.

A member state must:

- License and regulate licensed professional counselors.
- Require licensees to pass a nationally recognized exam.
- Require licensees to have a 60-hour master's degree in counseling or 60 hours of graduate coursework in relevant areas.
- Require licensees to complete a supervised postgraduate professional experience.

- Have a mechanism in place for receiving and investigating complaints about licensees.
- Participate fully in the compact commission's licensure data system.
- Notify the commission of any adverse action against or current significant investigative information regarding a licensee.
- Conduct criminal background checks of candidates for an initial privilege to practice.
- Comply with the rules of the commission, the governing body of the compact.
- Grant the privilege to practice professional counseling to a licensee holding a valid, unencumbered license in another member state.
- Provide for the state's commissioner to attend the meetings of the commission.

Member states may charge a fee for granting the privilege to practice.

A licensed professional counselor may only utilize the compact if their *home state* joins the compact.

SECTION 4: PRIVILEGE TO PRACTICE

To exercise the privilege to practice professional counseling in a remote state, a licensee must:

- Hold a license in their home state, which must be a member of the compact.
- Have had no encumbrance or restriction against on any license or privilege to practice within the previous two years.
- Meet any jurisprudence requirements of the remote state and pay all applicable fees.
- Report to the commission any adverse action, encumbrance, or restriction imposed on the licensee by a non-member state within 30 days from the date of the action.

A privilege to practice is valid until the expiration date of the practitioner's home state license.

If a licensee's home state license is revoked, the licensee loses the privilege to practice in *all* member states for the next two years.

If a licensee' privilege to practice is revoked by a member state, the licensee *may* lose the privilege to practice in other member states for the next two years.

SECTION 5: OBTAINING A NEW HOME STATE LICENSE BASED ON A PRIVILEGE TO PRACTICE

This section creates an alternative pathway to licensure for privilege holders who change their primary state of residence between compact member states.

A licensee who moves from one member state to another member state may obtain a new, expedited home state license in the new state of residence if they hold a privilege to practice in the new state.

The licensee will be required to complete a new FBI fingerprint based criminal background check, any required state-level background check, and any jurisprudence requirements of the new home state.

If a practitioner moves from a non-member state to a member state, or from a member state to a non-member state, the practitioner must apply for a single-state license in the new state, under the new state's licensure requirements.

A licensee may hold more than one single-state license concurrently, but only the license tied to the individual's primary state of residence may serve as the individual's "home state license" for the purposes of the compact.

Nothing in the compact affects a member state's requirements for issuance of a single-state license.

SECTION 6: ACTIVE DUTY MILITARY PERSONNEL OR THEIR SPOUSES

This section allows an active duty servicemember, or their spouse, to designate a home state where the individual has a current license in good standing. This state then serves as the individual's home state for the duration of the servicemember's active duty.

SECTION 7: COMPACT PRIVILEGE TO PRACTICE TELEHEALTH

This section establishes that privilege to practice under the compact shall include provision of telehealth services to patients in remote states. Licensees providing telehealth services in a remote state must adhere to the laws and regulations, including scope of practice, of the remote state.

SECTION 8: ADVERSE ACTIONS

This section clarifies that *only* a practitioner's home state may take adverse action against a *home state* license.

However, remote states may take adverse action against a counselor's privilege to practice and may issue enforceable subpoenas for witnesses and evidence from other member states.

Home states must take reported adverse action from any member state into account, in accordance with the home state's laws.

Member states may initiate joint investigations of licensees and are required to share investigative materials in furtherance of any joint or single-state investigation of a licensee. Member states must report any adverse action to the compact data system, which then promptly alerts the home state of this adverse action. Any member state may take adverse action based on the factual findings of a remote state.

If a licensee changes their home state during an active investigation by their former home state, the former home state completes the investigation, takes appropriate action under its laws, and then reports its findings to the compact commission's data system.

Member states retain the right to require a licensee to participate in an alternative program for mental health-related concerns in lieu of adverse action.

SECTION 9: ESTABLISHMENT OF COUNSELING COMPACT COMMISSION

This section outlines the composition and powers of the compact commission and executive committee. The compact is not a waiver of sovereign immunity.

- Each member state is entitled to exactly one delegate selected by that state's licensing board from among the board's members and/or employees.
- Each delegate has one (1) vote on commission affairs.
- The commission is directed to establish a term of office for delegates and may establish term limits.
- The commission may establish and maintain a code of ethics, bylaws, rules, a budget and financial records in order to carry out the compact.
- The commission shall elect an executive committee composed of up to eleven members: seven members of the commission and up to four ex-officio, nonvoting members from four recognized national professional counselor organizations.
- All commission meetings shall be open to the public unless confidential or privileged information must be discussed.
- Commission members and employees are immune from liability related to their positions except in cases of wanton misconduct.

SECTION 10: DATA SYSTEM

This section requires the sharing of licensure information by all compact states. A member state shall submit a uniform dataset to the data system on all counselors to whom this compact is applicable as required by the rules of the commission. This database will allow for the expedited sharing of adverse action or significant investigative information against professional counselors utilizing the compact.

Adverse action information pertaining to a licensee in any member state will be available to any other member state, except that any submitted information that subsequently must be expunged from the submitting state's records will also be removed from the data system.

Member states may designate information submitted to the data system that may not be shared with the public without the express permission of the state in question.

Investigative information pertaining to a licensee in a member state shall not be available to non-member states.

SECTION 11: RULEMAKING

- Rules carry the force of law in all member states.
- A simple majority of member state legislatures may veto a rule of the commission.
- Changes to the rules require a 30-day notice of proposed rulemaking, with an opportunity for a public hearing if one is requested by 25 people or by a government agency.
- If the commission issues a rule that exceeds its authority under the compact, such a rule shall be void and have no force or effect.

SECTION 12: OVERSIGHT, DISPUTE RESOLUTION, AND ENFORCEMENT

Ensures compliance with the compact by member states. The procedures to be followed in the event of a failure by a member state to comply with the compact include:

- A period of technical assistance in remedying the situation
- Dispute resolution processes; and
- Termination from the compact in the event no other means of compliance has been successful.

The commission shall attempt to resolve any compact-related disputes that may arise between states.

SECTION 13: DATE OF IMPLEMENTATION, WITHDRAWAL, AND AMENDMENT

The compact takes effect on the date of enactment by the tenth state.

States that join after this date are subject to the rules of the commission as they exist on the date when the compact becomes law in that state.

Member states may enact a law to repeal their membership in the compact. A state's withdrawal takes effect 6 months after enactment of such a law.

The member states may amend the compact, but changes do not take effect until enacted into the laws of all member states.

SECTION 14: CONSTRUCTION AND SEVERABILITY

The compact is to be liberally construed so as to effectuate its purposes.

The compact's provisions are severable, meaning that:

- If a provision of the compact is declared to conflict with the United States Constitution, all other provisions remain valid for all member states, and
- If a provision is held contrary to a member state's constitution, the compact retains its full force in all other states, and all other provisions remain valid in the affected state.

SECTION 15: BINDING EFFECT OF COMPACT AND OTHER LAWS

Reiterates that licensees must adhere to the laws and regulations, including scope of practice, of the state in which they are practicing.

Reiterates that all rules and bylaws of the commission are binding on member states.

According to legal precedent, in the event of a conflict between a law of a member state and the compact, the state law is superseded to the extent of the conflict.