

Agenda
State Board for Mental Health Practitioners
Friday, June 23rd, 2023
10:00 a.m. - 12:30 p.m.

Sites:

1411 Broadway, NYC

Education Building Albany, NY EB150

Syracuse OPD Office

333 East Washington Street, Suite 211
Syracuse, New York

Rochester OPD office

NYS Department of Education Access-VR
Office Assistant II – Receptionist
109 S. Union Street 2nd Floor
Rochester, New York 14607
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****Agenda and Discussion**

1. Welcome and review of agenda
2. Review of February 3, 2023, meeting minutes
3. Executive Secretary's Report
 - a. Staffing and Processing
 - b. Board member recruitment
 - c. Executive Orders, Review
4. Legislation and Regulation affecting social work
 - a. Progress Diagnostic Privilege for mental health counselors (Ch. 230 of 2022) progress
5. Discussion Topics
 - a. Teletherapy Regulation Discussion
6. Other business

Executive Session Board Members Only

7. Elections
8. Adjournment

The University of the State of New York
State Education Department
Office of the Professions

**State Board for Mental Health Practitioners
Meeting Minutes**

Friday, February 3, 2023

The meeting was held in-person via WebEx at the following locations:

State Education Building, 89 Washington Avenue, EB 150, Albany, NY 12234
Office of the Professions, 1411 Broadway, 10th Floor, New York, NY 10018
Rochester Regional Office, 109 South Union Street, 2nd Floor, Rochester, NY

Board members present:

Helena Boersma (Rochester)
Susan Boxer Kappel (New York)
Ann Canastra (New York)
Renee Jones (Rochester)
Michele Meyer (Albany)
Angela Musolino (New York)
Christopher Smith (New York)
Jill Weldum (Albany)

Board members absent:

Thomas Biglin
Sargam Jain
Timothy Mooney
Natalie Riccio (Chair)

Staff present:

Evan Seiden, Executive Secretary, Social Work and Mental Health Practitioners (New York)
David Hamilton, Assistant Commissioner of Professional Licensing & Practice (Albany)
Dennis Spillane, Executive Director of Office of Professional Discipline (New York)
Dina Jazrawi, Executive Secretary, Pharmacy and Midwifery (New York)
Mary Fish, Associate in Professional Education (Albany)
Michele Govertsen, Senior Administrative Analyst (Albany)
Henry Phillips, Education Program Assistant 1 (Albany)

Welcome and Review of Agenda

Evan Seiden called the meeting to order at 10:04 AM and determined there was a quorum of members present. Board members and staff introduced themselves and welcomed new Board member Christopher Smith, LMFT, LMHC.

Office of Professional Discipline Presentation

Dennis Spillane provided a presentation and handout on the work of the Office of Professional Discipline and the different types of discipline cases that Board members would be involved in. Questions were entertained and answered by Dennis Spillane, and the Board thanked him for the helpful information he provided.

Review of September 30, 2022 Board Meeting Minutes

The Board reviewed the minutes from the September 30, 2022 Board meeting. There were no changes made. A motion was made to approve the minutes by Susan Boxer Kappel, seconded by Angela Musolino, and passed unanimously.

Executive Secretary's Report

- a. **Staffing and Processing:** The Executive Secretary reported that the State Grade 18, Senior Administrative Analyst position has been filled. A new State Grade 14, Education Program Assistant was hired and began work on February 2, 2023. With both of these positions filled, the Board office is now fully staffed. Application processing times are currently at 3-4 weeks out. It was noted that unofficially, the number of limited permit applications has risen 13% compared to the same time last year.
- b. **Board Member Recruitment:** The Executive Secretary is still actively recruiting new members to the Board and asked Board members to refer those interested to him for further information. A Board Nomination Form is located on the NYSED Office of the Professions website.
- c. **Executive Orders 4.0:** The executive order allowing Mental Health Practitioners who have an unencumbered license and are currently in good standing in New York State but not registered in New York State to practice in New York State without civil or criminal penalty related to lack of registration, has been extended by EO #4.17 until February 21, 2023.
- d. **State of the State:** As an information item, the Executive Secretary presented two items of interest discussed in the Governor's 2023 State of the State Address. The first item is licensing compacts specifically concerning the nursing and medical professions. Discussion ensued regarding challenges for state licensing boards and licensees. There is currently no licensing compact for Mental Health Practitioners or Social Workers in New York. The second item is the permanent expansion of the scope of practice for certain professions to alleviate the healthcare workforce shortages in New York.

Legislation and Regulation Affecting Mental Health Practitioners

- a. **Mandatory Continuing Education on Appropriate Boundaries:** The Board of Regents approved the proposed amendment on October 4, 2022 that requires all social workers, mental health practitioners and psychologists to complete three hours of acceptable continuing education on issues related to maintaining appropriate professional boundaries between licensees and clients, for every three-year registration period. The course work must be taken from an approved CE provider and counts toward the 36 hours of CE

required for every three-year period. The regulation goes into effect for those licensees renewing their registration on April 1, 2023 and thereafter. An Advisory Notice has been placed on the homepage for each of these professions.

- b. Expiration of 100% Self-Study for Continuing Education: Although not an agenda item, the Executive Secretary announced the expiration of the continuing education adjustment provided to licensees as part of the Covid-19 response. The adjustment allowed licensees with registrations due to renew between March 1, 2020 – January 1, 2023 to complete 100% of their CE requirement by taking self-study courses. This adjustment expired on January 1, 2023. The Covid-19 Frequently Asked Questions website has been updated to read: Starting January 2, 2023, the adjustment is no longer available and licensees should resume their required percentages of self-study for continuing education that is in each individual profession’s laws and regulations.
- c. Insurance Law: Chapter 818 of the Laws of 2022 has been signed by the Governor. This law adds all licensed mental health providers as eligible for insurance reimbursement. It requires blanket health insurance policies to provide coverage for outpatient treatment by a mental health practitioner or clinical social worker. Insurers providing reimbursement for psychiatric or psychological services or for the diagnosis and treatment of mental health conditions by physicians, psychiatrists or psychologists, shall provide the same coverage to the insured for such services when performed by a licensed clinical social worker, licensed mental health counselor, licensed creative arts therapist, licensed marriage and family therapist, and licensed psychoanalyst, within the scope of practice. This law eliminates the need for the “R” privilege. Currently, there is no reference to the “R” privilege in insurance law. The Law requires access to a registry of eligible licensees, however, the public has access to our online verification search of licensees. More recently, a chapter amendment to the Insurance Law has been introduced that will remove any reference to licensed creative arts therapists as eligible providers, based on cost concerns, which initiated some discussion among Board members and staff.

Regulations

Mental Health Practitioners’ Diagnosis Privilege (Chapter 230 of the Laws of 2022).

After Governor Hochul signed Chapter 230 of the Laws of 2022 on June 24, 2022, the Board of Regents adopted emergency regulations on July 12, 2022. A 60-day public comment period commenced through the State Register. Those comments were received, reviewed and addressed, and on November 14, 2022 the Board of Regents permanently adopted the amendment which has established a diagnostic privilege available to licensed mental health counselors (LMHCs), licensed marriage and family therapists (LMFTs) and licensed psychoanalysts (LPs).

David Hamilton provided an overview of the proposed amendments to the Regulations of the Commissioner of Education currently being drafted for the provisions that take effect on June 24, 2024. The proposed amendments for each profession affected describe specified requirements for earning the diagnostic privilege, including acceptable clinical education and experience, application, registration and fees. It also includes amendments to the boundaries of professional practice as defined in Subpart 29.15 of the Rules of the Board of Regents. It is anticipated that the proposed amendments will be presented to the Board of Regents at their March 2023 meeting

for adoption. The meeting opened up for discussion, allowing Board members to ask questions, get clarification and share feedback pertaining to the new law.

Other Business

- a. NYS Budget: There were a few items of interest that the Governor included in the proposed FY 2023-2024 budget. The budget includes plans to move 47 licensed professions out of the NYS Education Department and place them in the NYS Department of Health, and to expand the scope of practice for certain licensed professions.

Closing Remarks and Adjournment

A motion was made to adjourn the meeting at 12:03 PM by Jill Weldum, seconded by Susan Boxer Kappel and passed unanimously.

Minutes submitted by,



Evan Seiden MBA, LCSW-R
Executive Secretary
State Board for Social Work
State Board for Mental Health Practitioners



TO: Professional Practice Committee

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

SUBJECT: Proposed Amendment of Section 29.15 of the Rules of the Board of Regents and Sections 79-9.6, 79-10.6, 79-12.6 of the Regulations of the Commissioner of Education Relating to Mental Health Practitioners' Diagnostic Privilege

DATE: March 2, 2023

AUTHORIZATION(S):

Donna M. Bell
SUMMARY

Issue for Discussion

Should the Board of Regents adopt the proposed amendments of section 29.15 of the Rules of the Board of Regents and sections 79-9.6, 79-10.6, 79-12.6 of the Regulations of the Commissioner of Education relating to mental health practitioners' diagnostic privilege?

Reason(s) for Consideration

Required by statute (Chapter 230 of the Laws of 2022).

Proposed Handling

The proposed amendment is presented to the Professional Practice Committee for discussion at its March 2023 meeting. A copy of the proposed rule (Attachment A) is attached.

Procedural History

A Notice of Proposed Rulemaking will be published in the State Register on March 29, 2023, for a 60-day public comment period required under the State Administrative Procedure Act (SAPA). Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

An increased demand for behavioral health services during and after the COVID-19 pandemic has taxed the available resources of the behavioral health profession. Chapter 230 of the Laws of 2022 (Chapter 230) intends to address some of these unmet needs. Chapter 230 authorizes three professions—Licensed Mental Health Counselors (LMHCs), Licensed Marriage and Family Therapists (LMFTs) and Licensed Psychoanalysts (LPs)—to diagnose behavioral health conditions if licensees qualify for the diagnostic privilege issued by the Department.

Although Chapter 230 does not allow the Department to issue a diagnostic privilege until June 24, 2024, the Department is authorized to promulgate regulations prior to that date so eligible applicants can prepare to apply for the privilege when it becomes available. The Board of Regents approved emergency regulations at its July 2022 meeting (effective July 12, 2022) to implement provisions of Chapter 230 that took effect on June 24, 2022. These provisions authorized the issuance of a limited diagnostic permit in an authorized setting to LMHCs, LMFTs or LPs seeking to complete supervised experience in diagnosis, psychotherapy and assessment-based treatment planning to qualify for the diagnostic privilege. The regulations were adopted on a permanent basis on November 30, 2022, following the 60-day public comment period required under SAPA.

Sections 2 and 3 of Chapter 230, become effective June 24, 2024. Section 2 adds a new section 8401-a to the Education Law. Education Law §8401-a(1) sets forth the requirements for the issuance of a diagnostic privilege including: (1) filing an application with the Department; (2) being licensed and registered as a LMHC, LMFT, or LP in New York State; (3) education requirements; (4) experience requirements; and (5) payment of a \$175 fee. Education Law §8401-a(2) provides that a LMHC, LMFT, or LP who engages in diagnosis and the development of assessment-based treatment plans without a privilege may be charged with professional misconduct under Education Law §6509. Additionally, Education Law §8401-a(3) sets forth the duration, oversight, and registration requirements for the privilege. Section 3 of Chapter 230 amends section 8407(1) of the Education Law to provide that a licensee with the privilege does not require a physician's evaluation of a patient with specified mental health diagnosis.

Proposed Amendments

The Department now proposes to implement sections 2 and 3 of Chapter 230 as follows:

Clinical Education:

Consistent with Education Law §8401-a(1)(c), the Department proposes to add new subdivisions 79-9.6(e), 79-10.6(e) and 79-12.6(e) to define clinical content in education programs leading to licensure as an LMHC, LMFT, or LP. The proposed regulation requires that an applicant for the diagnostic privilege must demonstrate satisfactory evidence of receipt of a master's degree or higher in LMHC, LMFT, or LP from a program that includes at least 60-semester hours or the clock-hour equivalent program of study in psychoanalysis. Such program must also contain at least 12 semester hours, or the equivalent, of clinical

content acceptable to the Department that prepares the applicant to engage in diagnosis, psychotherapy and assessment-based treatment planning. An applicant who did not complete acceptable clinical content in a license-qualifying program may complete post-graduate coursework acceptable to the Department to remedy any deficiencies.

Experience:

Consistent with Education Law §8401-a(1)(d), the Department proposes to add new subdivisions 79-9.6(f), 79-10.6(f) and 79-12.6(f) to set forth the experience requirements for the diagnostic privilege. The proposed rule provides two different experience criteria, based upon the applicant's date of licensure in New York:

- An applicant who was licensed on or after June 24, 2024 must submit verification of completion of a supervised experience of at least 2,000 hours of supervised, direct client contact that includes, but is not to be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans.
- An applicant who was licensed in New York prior to June 24, 2024 must submit an attestation of at least three years of experience engaged in direct client contact that includes diagnosis, psychotherapy and the development of assessment-based treatment plans. The privilege application and fee must be submitted by June 24, 2027.

Application:

Consistent with Education Law §8401(1) the Department proposes to add new subdivisions 79-9.6(g), 79-10.6(g), and 79-12.6(g) to set forth the application requirements for the diagnostic privilege. Candidates must: (1) submit the application and pay the \$175 fee; (2) submit verification of licensure; (3) cause to be submitted verification of acceptable clinical education; and (4) cause to be submitted verification of supervised experience.

Registration:

Consistent with Education Law §8401(3) the Department proposes to add new subdivisions 79-9.6(h), 79-10.6(h), and 79-12.6(h) to set forth registration requirements. The proposed rule requires licensees who hold a diagnostic privilege to certify that they continue to meet the requirements for the privilege each triennial registration period. Additionally, the licensee must pay a \$175 fee in addition to the triennial registration fee for licensure. The registration period for a privilege holder is coterminous with his or her license registration.

Privilege Duration and Oversight:

Consistent with Education Law §8410(3) the Department proposes to add new subdivisions 79-9.6(i), 79-10.6(i), and 79-12.6(i) to set forth provisions regarding duration and oversight of the privilege. The proposed rule provides that a diagnostic privilege is valid for the life of the holder unless revoked, annulled, or suspended by the Board of

Regents. Such privilege is subject to the same oversight and disciplinary provisions as licenses issued under Title VIII of the Education Law.

Professional Misconduct:

Consistent with Education Law §8410(2) the Department proposes to amend section 29.15 of the Rules of the Board of Regents to provide that it shall constitute unprofessional conduct for a LMHC, LMFT or LP to engage in diagnosis and/or the development of assessment-based treatment plans without a diagnostic privilege. Additionally, such section is amended to implement Education Law §8407(1), as amended by Chapter 230, to provide that a licensee with the privilege does not require a physician's evaluation of a patient with specified mental health diagnosis.

Related Regents Actions

November 2022: [Proposed Repeal of Sections 79-9.6, 79-10.6, 79-12.6, Addition of New Sections of 79-9.6, 79-10.6, 79-12.6 and Amendment of Sections of 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education Relating to Mental Health Practitioners' Diagnosis Privilege](https://www.regents.nysed.gov/common/regents/files/1122ppca1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1122ppca1.pdf>)

Timetable for Implementation

It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the July 2023 Regents meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedures Act. If adopted at the July 2023 meeting, the proposed rule will become effective on August 2, 2023.

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 8401, 8402, 8403, 8405, 8409, 8410, 8401-a of the Education Law and Chapter 230 of the Laws of 2022.

1. Section 79-9.6 of the Regulations of the Commissioner of Education is amended by adding new subdivisions (e), (f), (g), and (h) to read as follows:

(e) Acceptable clinical education.

(1) To meet the clinical education requirement for the diagnostic privilege, the applicant shall cause to be submitted verification of receipt of a master's degree or higher in mental health counseling from a program which includes at least 60 semester hours or the equivalent, as defined in section 79-9.1 of this Subpart, and clinical content as defined in paragraph (2) of this subdivision, acceptable to the Department.

(2) Clinical coursework. An applicant must demonstrate satisfactory completion of at least 12 semester hours, or the equivalent, of clinical coursework that prepares the individual to diagnose and develop assessment-based treatment plans acceptable to the department that includes coursework such as:

(i) diagnosis and assessment-based treatment planning in the practice of mental health counseling and psychotherapy;

(ii) assessment, evaluation and diagnosis using accepted classification systems in the practice of mental health counseling;

(iii) developing and implementing assessment-based treatment plans for the provision of mental health counseling services; and

(iv) clinical mental health counseling interventions with diverse populations.

(3) Where an applicant has received a master's or higher degree pursuant to paragraph (1) of this subdivision but has not completed the clinical coursework hours required by paragraph (2) of this subdivision, such applicant may satisfy such requirement by taking post-graduate courses to remedy such deficiencies.

(f) Acceptable experience. To meet the experience requirement for the diagnostic privilege an applicant shall complete supervised experience, in accordance with subdivision (d) of this section, in an acceptable setting, as set forth in section 79-9.3(d) of this Subpart, that satisfies paragraphs (1) or (2) of this subdivision.

(1) An applicant who is licensed as a mental health counselor on or after June 24, 2024 shall cause to be submitted, in a form and format acceptable to the Department, verification from a supervisor of the completion of at least 2,000 hours of supervised, direct client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans; or

(2) An applicant who is licensed as a mental health counselor prior to June 24, 2024 shall cause to be submitted in a form and format acceptable to the Department an attestation from a supervisor 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 the privilege application, fee and all required documentation to the department on or before June 24, 2027.

(g) Application. An applicant for the diagnostic privilege shall:

(1) Submit the application and pay the \$175 fee for issuance of a privilege;

(2) Submit verification of licensure as a mental health counselor in New York;

(3) Cause to be submitted verification of acceptable clinical education, as required by subdivision (e) of this section; and

(4) Cause to be submitted verification or attestation, as applicable, of supervised experience in diagnosis and assessment-based treatment plans, as required by subdivision (f) of this section.

(h) Registration. 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 Education Law §6502, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the diagnostic privilege. The fee for such registration shall be \$175 which shall be paid in addition to the triennial registration fee for the license. The registration period for a privilege holder shall be coterminous with his or her license registration.

(i) Privilege duration and oversight. 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 Title VIII of the Education Law.

2. Section 79-10.6 of the Regulations of the Commissioner of Education is amended with the addition of the following:

(e) Acceptable clinical education.

(1) To meet the clinical education requirement for the diagnostic privilege, the applicant shall cause to be submitted verification of receipt of a master's degree or higher in marriage and family therapy from a program which includes at least 60 semester hours or the equivalent, as defined in section 79-10.1 of this Subpart, and

clinical content as defined in paragraph (2) of this subdivision, acceptable to the Department.

(2) Clinical coursework. An applicant must demonstrate satisfactory completion of at least 12 semester hours or equivalent coursework that prepares the individual to diagnose and develop assessment-based treatment plans acceptable to the department, including coursework such as:

(i) diagnosis and assessment-based treatment planning in the practice of marriage and family therapy and psychotherapy;

(ii) assessment, evaluation and diagnosis using accepted classification systems in the practice of marriage and family therapy;

(iii) developing and implementing assessment-based treatment plans for the provision of marriage and family therapy services; and

(iv) clinical marriage and family therapy interventions with diverse populations.

(3) Where an applicant has received a master's or higher degree pursuant to paragraph (1) of this subdivision but has not completed the clinical coursework hours required by paragraph (2) of this subdivision, such applicant may satisfy such requirement by taking post-graduate courses to remedy such deficiencies.

(f) Acceptable experience. To meet the experience requirement for the diagnostic privilege an applicant shall complete supervised experience, in accordance with subdivision (d) of this section in an acceptable setting, as set forth in section 79-10.3(d) of this Subpart, that satisfies paragraphs (1) or (2) of this subdivision.

(1) An applicant who is licensed as a marriage and family therapist on or after June 24, 2024 shall cause to be submitted, in a form and format acceptable to the Department, verification of the completion of at least 2,000 hours of supervised, direct

client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans; or

(2) An applicant who is licensed as a marriage and family therapist prior to June 24, 2024 shall cause to be submitted in a form and format acceptable to the department, an attestation from a supervisor 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 the privilege application, fee and all required documentation to the department on or before June 24, 2027.

(g) Application. An applicant for the diagnostic privilege shall:

(1) Submit the application and pay the \$175 fee for issuance of a privilege;

(2) Submit verification of licensure as a marriage and family therapist in New York;

(3) Cause to be submitted verification of acceptable clinical education, as defined in subdivision (e) of this Subpart; and

(4) Cause to be submitted verification or attestation, as applicable, of supervised experience in diagnosis and assessment-based treatment plans, as defined in subparagraph (f) of this Subpart.

(h) Registration. 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 Education Law §, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the diagnostic privilege. The fee for such registration shall be \$175 which shall be paid in addition to the triennial registration fee for the license. The

registration period for a privilege holder shall be coterminous with his or her license registration.

(i) Privilege duration and oversight. 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 Title VIII of the Education Law.

3. Section 79-12.6 of the Regulations of the Commissioner of Education is amended with the addition of the following:

(e) Acceptable clinical education.

(1) To meet the clinical education requirement for the diagnostic privilege, the applicant shall cause to be submitted verification of receipt of a master's degree or higher in psychoanalysis from a program which includes at least 60 semester hours or the clock hour equivalent as defined in section 79-12.1 of this Subpart, and clinical content as defined in paragraph (2) of this subdivision, acceptable to the Department.

(2) Clinical coursework. An applicant must demonstrate satisfactory completion of at least 12 semester hours or the clock work equivalent of coursework that prepares the individual to diagnose and develop assessment-based treatment plans, acceptable to the department that includes coursework such as:

(i) diagnosis and assessment-based treatment planning in the practice of psychoanalysis and psychotherapy;

(ii) assessment, evaluation and diagnosis using accepted classification systems in the practice of psychoanalysis;

(iii) developing and implementing assessment-based treatment plans for the provision of psychoanalysis services; and

(iv) clinical psychoanalysis interventions with diverse populations.

(3) Where an applicant has received a master's or higher degree pursuant to paragraph (1) of this subdivision but has not completed the clinical coursework hours required by paragraph (2) of this subdivision, such applicant may satisfy such requirement by taking post-graduate courses to remedy deficiencies.

(f) Acceptable experience. To meet the experience requirement for the diagnostic privilege an applicant shall complete supervised experience, in accordance with subdivision (d) of this section in an acceptable setting, as set forth in section 79-12.3(d) of this Subpart, that satisfies paragraphs (1) or (2) of this subdivision.

(1) An applicant who is licensed as a psychoanalyst on or after June 24, 2024 shall cause to be submitted, in a form and format acceptable to the Department, verification of the completion of at least 2,000 hours of supervised, direct client contact that shall include, but not be limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans.

(2) An applicant who is licensed as a psychoanalyst prior to June 24, 2024 shall cause to be submitted, in a form and format acceptable to the department, an attestation from a supervisor 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 the privilege application, fee and all required documentation to the department on or before June 24, 2027.

(g) Application. An applicant for the diagnostic privilege shall:

(1) Submit the application and pay the \$175 fee for issuance of a privilege;

(2) Submit verification of licensure as a psychoanalyst in New York;

(3) Cause to be submitted verification of acceptable clinical education, as defined in sub-paragraph (e) of this Subpart; and

(4) Cause to be submitted verification or attestation, as applicable, of supervised experience in diagnosis and assessment-based treatment plans, as defined in sub-paragraph (f) of this Subpart.

(h) Registration. 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 Education Law §6502, provided that, at the time of each registration, the privilege holder shall certify that he or she continues to meet the requirements for the diagnostic privilege set forth in this section. The fee for such registration shall be \$175 which shall be paid in addition to the triennial registration fee for the license. The registration period for a privilege holder shall be coterminous with his or her license registration.

(i) 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 VIII of the Education Law.

4. Subpart 29.15 of the Rules of the Board of Regents is amended, to read as follows:

29.15 Special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.

Unprofessional conduct in the practice of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis shall include conduct

prohibited by sections 29.1 and 29.2 of this Part and, in accordance with section 8407 of the Education Law, shall also include:

(a) in the case of treatment of schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder and autism, providing 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 diagnose 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;

(b) prescribing or administering drugs as a treatment, therapy, or professional service in the practice of his or her profession; [or]

(c) using invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For purposes of this subdivision, invasive procedure means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedure includes, but is not limited to surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy; or

(d) a mental health counselor, marriage and family therapist or psychoanalyst who engages in diagnosis and/or the development of assessment-based treatment plans without a diagnostic privilege.

Videoconferencing

Videoconferencing includes varied points of delivery, including hospitals/ER's, Community Mental Health Centers (CMHCs), doctors' offices, institutional settings (e.g., nursing homes, prisons, schools), and clients' homes

Clinical applications of videoconferencing include clinical interviews for intake and diagnosis, consultation with other providers including the referring provider and with family members, emergency pre- and post-hospitalization evaluations, outpatient psychotherapy (scheduled and crisis), medication management or consultation, and professional consultation.

Videoconferencing may include supervision and consultation. A licensed professional who is consulting with other health professionals or, if allowed by State law and regulation, receiving supervision through video technology, should exercise caution in these interactions, in order to ensure the confidentiality of patient information. A licensed professional remains responsible for the security of patient communications and information to the same extent as if the session or consultation were occurring with all parties in the practitioner's office. Prior to using any videoconferencing technology, the licensed professional should verify the encryption and security of data to protect the confidentiality of patient information.

Potential benefits of videoconferencing may include that it:

- can reduce costs to both client and practitioner,
- can reach individuals who might not otherwise have access to treatment,
- has overall empirical support for outcomes similar to traditional psychotherapies, and
- clients report positive experiences with videoconferencing.

Concerns regarding videoconferencing include whether practitioners are:

- ensuring that clients are able to adequately participate and understand the appropriate uses of videoconferencing (Informed Consent);
- whether videoconferencing technologies that are used are secure;
- whether the empirical validation of this methodology is sufficient; and
- whether individual states require that practitioners are qualified and licensed to practice within that state.

If using telecommunications, it is recommended that patients are informed there are risks to electronic communications. Clinicians should also have a contingency plan for

telecommunications failures (e.g., a back-up way of contacting the patient). Patients should be informed as to how they can verify the clinician's professional license (the license status of all New York licensees can be ascertained [here](#)), and clinicians should be aware of the potential for patient misrepresentation.

Experience

To meet the experience requirement for licensure as a Mental Health Counselor, you must submit documentation of completion of a supervised experience of at least 3,000 clock hours providing Mental Health Counseling in a setting acceptable to the Department. The supervised experience must be obtained **after** completion of the master's degree program required for licensure.

The practice of Mental Health Counseling is defined as:

- the evaluation, assessment, amelioration, treatment, modification, or adjustment to a disability, problem, or disorder of behavior, character, development, emotion, personality or relationships by the use of verbal or behavioral methods with individuals, couples, families or groups in private practice, group, or organized settings; and
- the use of assessment instruments and Mental Health Counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate Mental Health Counseling services.

Not less than 1,500 clock hours of such required experience must consist of direct contact with clients. The remaining experience may consist of other activities that do not involve direct client contact, including but not limited to, recordkeeping, case management, research, supervision and professional development.

When an applicant completes less than 3,000 hours in a setting, at least one-half of the hours must be direct; the remainder may be indirect. It is not acceptable to complete direct and indirect activities in different settings under different supervisors and attempt to combine these hours to meet the experience requirement.

Experience for licensure must be completed in a legal manner, under a qualified supervisor in a setting that is authorized to provide professional services. Hour calculations are based on a typical 40-45 hour work week to ensure that the applicant meeting the experience requirement obtains the appropriate supervision, client contact, and supervisor feedback in an educationally sound manner. Obtaining experience in an unreasonable amount of time is not acceptable as it compromises the learning process. In New York State, the experience must be under a limited permit issued by the Department for a specific setting under a qualified supervisor (see below). Experience in other jurisdictions will be evaluated to determine if the equivalent requirements have been satisfied in a legal manner.

You must apply for a license and have your education approved to be eligible for a limited permit. For additional information about limited permits, see the Limited Permits Section.

To be acceptable to the Department, your supervised experience in New York State must meet the following supervision and setting requirements.

Supervision of Experience

Your supervisor must be licensed and registered in New York State to practice Mental Health Counseling, medicine, as a physician assistant, psychology, licensed clinical social work, or as a registered professional nurse or nurse practitioner and competent in the practice of Mental Health Counseling, or must have the equivalent qualifications as determined by the Department for experience completed in another jurisdiction.

The supervisor is responsible for the assessment, evaluation, and treatment of each patient and must delegate to the limited permit holder those activities the limited permit holder is competent to perform by education, training or licensure. The supervisor must provide an average of one hour per week or two hours every other week of in-person individual or group supervision.

The supervisor provides you with oversight and guidance in assessment and evaluation, treatment planning, completing psychosocial histories and progress notes, individual counseling, group counseling, psychotherapy, and consultation, and reviews your assessment and treatment of each client seen under his/her general supervision.

In addition, the supervisor is responsible for appropriate oversight of all services provided by a limited permit holder under his or her general supervision. **No supervisor can supervise more than five limited permit holders at one time.**

All supervised experience must be verified by your supervisor(s) using a Certification of Supervised Experience ([Form 4B](#)). Acceptable verification should include an attestation by the actual supervisor. In cases where such attestation is not available, the Department may accept an attestation of the duration and frequency of the supervised experience and the qualifications of the supervisor submitted by a licensed colleague.

Setting for Experience

The setting where the experience is obtained must be a location where legally authorized individuals provide services that constitute the practice of Mental Health Counseling, as defined in Education Law, and must be responsible for the services provided by individuals gaining experience for licensure. The setting cannot be a private

practice owned or operated by the applicant. If the experience is completed in a setting other than the permit setting, you must submit an operating certificate or certificate of incorporation that indicates the entity is authorized to employ licensed professionals and provide services that are restricted under [Title VIII](#) of the Education Law.

An acceptable setting is defined in the Commissioner's Regulations as:

- i. a professional corporation, registered limited liability partnership, or professional service limited liability company authorized to provide services that are within the scope of practice of Mental Health Counseling;
- ii. a sole proprietorship owned by a licensee who provide services that are within the scope of his or her profession and services that are within the scope of practice of Mental Health Counseling;
- iii. a professional partnership owned by licensees who provide services that are within the scope of practice of Mental Health Counseling;
- iv. a hospital or clinic authorized under Article 28 of the Public Health Law to provide services that are within the scope of practice of Mental Health Counseling;
- v. a program or facility authorized under the Mental Hygiene Law to provide services that are within the scope of practice of Mental Health Counseling;
- vi. a program or facility authorized under Federal Law to provide services that are within the scope of practice of Mental Health Counseling;
- vii. an entity defined as exempt from the licensing requirements or otherwise authorized under New York State law or the laws of the jurisdiction in which the entity is located to provide services that are within the scope of practice of Mental Health Counseling.

The setting where the experience is gained is responsible for the services provided by individuals gaining experience for licensure. The setting is also responsible for providing adequate supervision to such individuals and for assigning a qualified supervisor, as defined in this section, to individuals gaining experience for licensure.