

Agenda
State Board for Mental Health Practitioners
Friday, March 1, 2024 10:00 a.m. - 12:30 p.m.

Sites:

1411 Broadway, 10th floor NYC
Education Building EB 201 Albany, NY
Wilson Building 109 S Union Street Rochester, NY 14607
508 Main Street Buffalo, NY, 14202

In order to attend the **Mental Health Practitioners Board** meeting please choose one of the sites listed above and let the board office know by emailing Tinika.White@nysed.gov to add your name to the security list of the site you choose.

"Members of the public may attend and observe the meeting. Please note that due to security restrictions, you are asked to arrive 15 minutes earlier if possible than the start of the meeting."

Thank you!

***Agenda and Discussion**

1. Welcome and review of Agenda.
2. Introduction of new MH Board members
3. Review of October 13th, 2023, meeting minutes
4. Executive Secretary's Report
 - a. Staffing and Processing
 - b. Board member recruitment
5. Legislation and Regulation affecting Mental Health
 - a. Progress Diagnostic Privilege for Mental Health Practitioners (Ch. 230 of 2022) progress.
6. Discussion Topics
 - a. Continue of tele-supervision discussion
 - b. Working with OMH on some initiatives
 - c. Psychoanalytic exam discussion.
7. Other business
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, October 13, 2023

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

State Education Building, 89 Washington Avenue, EB 201, Albany, NY 12234
Office of the Professions, 1411 Broadway, 10th Floor, New York, NY 10018
Syracuse Regional Office, 333 East Washington Street, Suite 211, Syracuse, NY 13202
Rochester Regional Office, 109 S. Union Street 2nd Floor, Rochester, NY 14607

Board members present:

Susan Boxer Kappel (New York)
Angela Musolino (New York)
Helena Boersma (Rochester)
Renee Jones (Rochester)
Ann Canastra (Syracuse)
Christopher Smith (New York)
Thomas Biglin (New York)
Timothy Mooney (Albany)
Michele "Mikki" Meyer (Albany)
John/Jay Cerio (public board member) (Rochester?)

Board members absent:

Jasmine Thomas (New York)

Staff present:

Evan Seiden, Executive Secretary (New York)
Sarah Benson, Deputy Commissioner (Albany)
David Hamilton, Assistant Commissioner of Professional Licensing & Practice (Albany)
Owen Donovan, Executive Coordinator for Professional Practice (Albany)
Kate Letzelter, Associate in Professional Education (Albany)
Michele Govertsen, Senior Administrative Analyst (Albany)
Henry Phillips, Education Program Assistant (Albany)

Welcome and Review of the Agenda

Evan Seiden called the meeting to order at 10:03 AM. Board members and staff introduced themselves. New Board Office staff member Kate Letzelter, Associate in Professional Education was welcomed. There were no changes in the agenda.

Interstate Licensure Compacts – Presentation by Sarah Benson Deputy Commissioner

Department of Education Deputy Commissioner Sarah Benson began by thanking board members for their service; gave recognition of their important role in the field of Mental Health Practitioners.

Deputy Commissioner proceeded to give a presentation to the Board on Interstate Licensure Compacts and the development of the Mental Health Counselors Compact. Deputy Commissioner offered basic definition of licensure compacts; Deputy Commissioner noted that to join a compact is a complex and a complicated process. In addition, more legislative analysis is needed to evaluate effects on resources; the ongoing SED modernization program and the needs of the current and future systems continue to be a factor.

Board member questions were answered by the Deputy Commissioner. Some of the complexities were discussed such as access to services not available in other jurisdictions; alongside financial complexities. The Board also discussed the complexities in handling illegality and misconduct across state lines with differing laws.

Review of the June 23, 2023 Board Meeting Minutes

The minutes of the June 23, 2023 Board meeting were reviewed. There were no changes made. A quorum of members was present. A motion was made and seconded to approve the previous meetings' minutes; motion was passed unanimously. Minutes accepted.

Executive Secretary's Report

Evan Seiden noted the queue for experience reviews and Limited Permit applications are both about 3 weeks out, which is well within the timeframe of 6 to 8 weeks given to applicants. The Processing Unit reported 15 to 16% higher volume of Limited Permit applications (over previous year). The number of Continuing Education providers has increased from a year ago. Executive Secretary noted the eventual implementation of the Diagnostic Privilege law will increase office workload – new queues will most likely be added for permit reviews and experience reviews.

Board actively in the process of recruiting new members – looking for 2 Psychoanalysts, 1 LCAT, and 1 LMHC or LMFT. Nomination forms for potential Board members are being reviewed and additional candidates continue to be recruited. Board nomination forms can be found on the NYSED website. Executive Secretary noted that all Executive Orders relating to MHP have expired.

Legislation and Regulation affecting Mental Health Practice: Mental Health Practitioners' Diagnosis Privilege (Chapter 230 of the Laws of 2022)

Assistant Commissioner of Professional Licensing & Practice David Hamilton gave an update of the status of adoption and implementation of forthcoming diagnostic privilege. Regulations changes were recommended – and will be out for a 45-day comment period. Adoption of regulations are potentially expected in early 2024.

Schools and institutes are working with PEPR to provide courses and programs to meet requirements.

Assistant Commissioner fielded questions from the Board. Board asked if “D” privilege laws are available online. Assistant Commissioner informed the Board the laws are on the Board of Regents website.

Discussion: Tele- Supervision

Board noted that tele-supervision is still being accepted – current regulation allows tele-supervision. Discussion of tele-supervision implementation and possible methods and requirements was continued. Board noted virtual supervision can be effective. Virtual supervision at the discretion of the supervisor – relationship can be assessed on an ongoing basis. Board noted assessment of virtual arrangements is recommended. Board noted evidence of negative outcomes for clients with practitioners utilizing tele-supervision is minimal. Board noted that counseling relationships – relationship between psychotherapist and client – are often virtual. Board noted that tele-supervision broadens the reach of supervision. Prior to tele-supervision being allowed/in use, programs closed when licensees were not available in-person; Tele-supervision allows programs to remain open expanding access.

Other Business

The Board discussed having future Board meetings on Fridays. Board continues to prefer Fridays.

Closing Remarks and Adjournment

Evan Seiden thanked the Board for their participation in the meeting. The next Board meeting will be scheduled for a date in early 2024. The meeting was adjourned at 11:54am by Board Chair Susan Boxer Kappel.



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, and 79-12.6 of the Regulations of the Commissioner of Education Relating to Mental Health Practitioners' Diagnostic Privilege

DATE: November 2, 2023

AUTHORIZATION(S): *Don McG* *Betsy...*

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, and 79-12.6 of the Regulations of the Commissioner of Education relating to mental health practitioners' diagnostic privilege?

Reason for Consideration

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

Proposed Handling

The revised proposed amendment will be presented to the Professional Practice Committee for discussion at the November 2023 meeting of the Board of Regents. A copy of the proposed rule is included (Attachment A).

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion at the March 2023 meeting of the Board of Regents. A Notice of Proposed Rulemaking was published in the State Register on March 29, 2023, for a 60-day public comment period required under the State Administrative Procedure Act (SAPA).

Following publication in the State Register, the Department received numerous comments from multiple commenters and clarification of legislative intent from the sponsors of Chapter 230 of the Laws of 2022. An Assessment of Public Comment is included (Attachment B). Based on the legislative intent, a substantial revision has been made to the proposed rule as described below.

A Notice of Revised Rule Making will be published in the State Register on November 29, 2023, for a 45-day public comment period. 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 professions. 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 diagnoses.

Original Proposed Amendment

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 an acceptable degree of 60 semester hours or the equivalent and/or the required clinical content in a license-qualifying program may complete post-graduate coursework acceptable to the Department to remedy any deficiencies in the degree or the clinical content.

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 shall include, but is not 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 diagnoses.

Substantial Revision to the Proposed Amendment

Since publication of the Notice of Proposed Rulemaking, the Department has received legislative intent on the experience requirements in Chapter 230 and as a result, has made a substantial revision to the proposed rule. The revision clarifies that an applicant who is licensed in New York prior to June 24, 2024, may meet the experience requirement for the diagnostic privilege by *either* (1) submitting verification of completion of a supervised experience of at least 2,000 hours of supervised, direct client contact that includes, but is not limited to, diagnosis, psychotherapy and the development of assessment-based treatment plans; *or* (2) submitting 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.

Additionally, an incorrect reference to experience in section 79-10.6(f) of the Commissioner's regulations was corrected to reference section 79-10.3(e), rather than section 79-10.3(d).

Related Regent's Items

March 2023: 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
(<https://www.regents.nysed.gov/sites/regents/files/323ppcd1.pdf>)

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 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>)

Recommendation

Not applicable.

Timetable for Implementation

It is anticipated that the revised proposed amendment will be presented for permanent adoption at the February 2024 Regents meeting, after publication of the proposed amendment in the State Register and expiration of the 45-day public comment period required under the State Administrative Procedure Act for revised rule making. If adopted at the February 2024 meeting, the proposed rule will become effective on February 28, 2024.

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), (h) and (i) 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 the following:

(1) An applicant who is licensed as a mental health counselor 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.

(2) Notwithstanding paragraph (1) of this subdivision, an applicant who is licensed as a mental health counselor prior to June 24, 2024 may also satisfy the experience requirement of this subdivision by submitting, 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 by adding new subdivisions (e) through (i) 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 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

(3) clinical marriage and family therapy interventions with diverse populations. 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(e) of this Subpart, that satisfies the following:

(1) An applicant who is licensed as a marriage and family therapist 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) Notwithstanding paragraph (1) of this subdivision, an applicant who is licensed as marriage and family therapist prior to June 24, 2024 may also satisfy the experience requirement of this subdivision by submitting, 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 section; and

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

3. Section 79-12.6 of the Regulations of the Commissioner of Education is amended by adding subdivisions (e) through (i) 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 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 the following:

(1) An applicant who is licensed as a psychoanalyst 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) Notwithstanding paragraph (1) of this subdivision, an applicant who is licensed as a psychoanalyst prior to June 24, 2024 may also satisfy the experience requirement of this subdivision by submitting, 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 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 defined in 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 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.

ASSESSMENT OF PUBLIC COMMENT

Following the publication of Proposed Rule Making in the State Register on March 29, 2023, the State Education Department received the following comments on the proposed regulation:

1. COMMENT: A New York City-based social work association and a statewide association

of clinical social workers commented that the proposed regulations comport with the intent and wording of Chapter 230 and no further comment is required.

DEPARTMENT RESPONSE: The Department acknowledges and appreciates the comments.

2. COMMENT: Professional associations commented that "clinical" should be removed from the heading of Acceptable Clinical Education in §79-9.6(e), §79-10.6(e) and §79-12.6(e) to avoid suggesting that all programs leading to licensure must include 12 semester hours of clinical content.

DEPARTMENT RESPONSE: An applicant for licensure and the privilege must complete an acceptable program as defined in §79-9.1, §79-10.1 or §79-12.1. The proposed rule addresses clinical content for the privilege and the requirement that applicants remedy deficiencies in general or clinical content. No change is required.

3. COMMENT: Professional associations commented that regulations should clarify that a licensee who has not met the 60-semester hour or clock hour equivalent degree for the privilege should be allowed to take courses specified in §52.32, §52.33 or §52.35 to meet the deficiency.

DEPARTMENT RESPONSE: An applicant who requires additional coursework may complete courses in the practice of the profession from a license-qualifying program or the equivalent, acceptable to the Department. No change is required.

4. COMMENT: Professional associations commented that the four clinical courses in §79-9.6(e)(2), §79-10.6(e)(2) and §79-12.6(e)(2) should be broader.

DEPARTMENT RESPONSE: The topics in the proposed rule are not exhaustive but illustrative of clinical coursework that prepares the individual to diagnose and develop assessment-based treatment plans. No change is required.

5. COMMENT: Professional associations commented that §79-9.6(f)(1), §79-10.6(f)(1) and §79-12.6(f)(1) should allow an applicant to submit verification of 2,000 hours of supervised experience that includes diagnosis, psychotherapy and assessment-based treatment planning, regardless of the date of licensure.

DEPARTMENT RESPONSE: The comment is consistent with the legislative intent of Education Law §8401-a(d), which would allow an applicant to meet either requirement for the privilege. The Department has made a substantial revision to the proposed rule to reflect this.

6. COMMENT: Associations commented that §79-9.6(g)(4), §79-10.6(g) and §79-12.6(g) should allow a licensed colleague to attest to an applicant's experience if the original supervisor is unavailable.

DEPARTMENT RESPONSE: Department policy allows a licensed colleague to attest to the experience completed under the original supervisor if a supervisor is unavailable. No change is required.

7. COMMENT: Associations commented that §79-9.6(g)(4), §79-10.6(g)(4) and §79-12.6(g)(4) should allow an applicant who completed supervised direct experience for licensure to count those hours toward the 2,000 required for the privilege.

DEPARTMENT RESPONSE: Supervised experience for licensure that included diagnosis and assessment-based treatment planning in an authorized setting under a qualified supervisor could be submitted for this purpose. No change is required.

8. COMMENT: Associations suggested that §79-9.6(2), §79-10.6(2) and §79-12.6(2) should allow a third-party to attest the applicant has met the requirements for licensure in New York, in lieu of a license issued by the Department.

DEPARTMENT RESPONSE: The comment is inconsistent with Chapter 230. No change is necessary.

9. COMMENT: Associations commented that §§79-9.6(f)(2) and 79-10.6(f)(2) should be amended to extend beyond June 24, 2027, the deadline for applicants licensed prior to June 24, 2024, to submit the application and meet all requirements for the privilege.

DEPARTMENT RESPONSE: The deadline is established by statute. No change is required.

10. COMMENT: Associations commented that §79-9.6(f), §79-10.6(f) and §79-12.6(f) do not address instances when an applicant has multiple supervisors during post-graduate practice.

DEPARTMENT RESPONSE: The proposed rule allows experience under multiple supervisors and/or in multiple settings. Each supervisor must submit verification to the Department, which may be combined, in accordance with the statute and regulations. No change is required.

11. COMMENT: Associations commented that §79-9.6(f), §79-10.6(f) and §79-12.6(f) do not allow a licensee to submit supervised hours completed in a practice owned by the applicant who does not hold the privilege.

DEPARTMENT RESPONSE: The proposed arrangement is contrary to NYCRR §79-9.3(e), §79-10.3(e) and §79-12.3(3) defining acceptable settings. The comment is outside the scope of the proposed rule as those regulations were adopted and became effective November 30, 2022, and are not the subject of the proposed amendments at issue here. No change is necessary.

12. COMMENT: Commenters suggested that the regulations should provide alternative pathways toward the privilege.

DEPARTMENT RESPONSE: Chapter 230 does not authorize the Department to consider or develop alternative pathways toward obtaining the privilege. No changes are required.

13. COMMENT: Associations of MFTs commented that §79-10.6(e) will require experienced licensees with 45-semester hour degrees to complete remedial coursework that is not required of recent 60-semester hour licensees suggesting that regulations should deem MFTs licensed with less than 60 semester hours to have met the education requirement.

DEPARTMENT RESPONSE: The comment is inconsistent with the statute, therefore no change is required.

14. COMMENT: Commenters suggested that §79-10.6(e) be amended to define non-credit bearing practicum, courses taught by licensees and other post-graduate training toward the 60-semester hour master's degree.

DEPARTMENT RESPONSE: Chapter 230 requires submission of acceptable evidence of additional graduate coursework in marriage and family therapy at a degree-granting institution. No change is required.

15. COMMENT: Associations and providers commented that the \$175 triennial registration fee for the privilege is arbitrary, burdensome, and out-of-line with other professional fees and recommend elimination of the triennial fee.

DEPARTMENT RESPONSE: Chapter 230 establishes the \$175 fee and makes the fee coterminous with the licensee's registration to practice the profession. No change is required.

16. COMMENT: Multiple commenters opined that requirements for the privilege will not increase access to mental health providers; will impose education costs on applicants; and negatively affect reimbursement.

DEPARTMENT RESPONSE: The proposed regulations are consistent with requirements established by Chapter 230. No change is required.

17. COMMENT: Psychoanalytic training programs expressed concern that courses taught in the institute prior to June 24, 2024 will not meet the clinical education requirement in §79-12.6(e).

DEPARTMENT RESPONSE: The applicant's education program(s) must submit Form 2D to verify the completion of required coursework that meets the requirements for the privilege. If there are deficiencies, the applicant will be notified. No change is required.

18. COMMENT: Psychoanalytic training programs expressed concern that experience in diagnosis will not be acceptable under §79-12.6(f) if the institute was not authorized to provide diagnosis.

DEPARTMENT RESPONSE: Experience submitted for the privilege must be completed in a lawful manner and meet the requirements in §79-12.3(d). No change is required.

19. COMMENT: Experienced psychoanalysts are concerned that they must complete additional education and supervised experience to qualify for the privilege.

DEPARTMENT RESPONSE: Chapter 230 requires a licensee seeking the privilege to meet the education and experience requirements. No changes are required.

20. COMMENT: Psychoanalysts asked that an applicant's "private practice" under a supervisor hired by the applicant be acceptable for obtaining the privilege.

DEPARTMENT RESPONSE: An acceptable setting and qualified supervisor are defined in §79-12.6(d), effective November 30, 2022. See response to comment #11 above. No change is required.

21. COMMENT: A psychotherapy institute commented that supervised experience and coursework completed in a license-qualifying program should be acceptable for the privilege.

DEPARTMENT RESPONSE: Verification of clinical coursework and pre-degree experience completed in a license-qualifying program may be submitted in accordance with §79-12.6(g)(3) and (4) for review. No change is required.

22. COMMENT: An institute commented that experience completed prior to June 2024 should be acceptable under §79-12.6(f), even if the supervising psychoanalyst was not authorized to diagnose and develop assessment-based treatment plans.

DEPARTMENT RESPONSE: The supervisor requirements in 79-12.6(d)(2) define a qualified supervisor and became effective on November 30, 2022. See response to comment #11 above. No change is required.

23. COMMENT: Several commenters opined that the regulations would allow "unqualified practitioners to provide services outside their scope of practice" and urged the Department to ensure that only qualified practitioners provide diagnoses.

DEPARTMENT RESPONSE: The comments are inconsistent with Chapter 230 which authorizes three professions—MHCs, MFTs and LPs—to diagnose behavioral health conditions if licensees qualify for the diagnostic privilege issued by the Department. No change is required.

24. COMMENT: A commenter alleged that the proposed rule would remove the diagnostic privilege for mental health providers in New York and would not allow a licensee to be reimbursed for services. The commenter asked that a private practice owned by an applicant be an acceptable setting to qualify for the privilege.

DEPARTMENT RESPONSE: Chapter 230 adds diagnosis and assessment-based treatment planning to the practice for the MHCs, MFTs, and LPs licensed under Article 163, effective June 24, 2024. Creative Arts Therapists (CATs) are not eligible under this law. Neither the regulation nor law address reimbursement, thus this comment is outside the scope of the proposed rule. No change is required.

25. COMMENT: Numerous commenters suggested the regulations should mirror the requirements for licensed clinical social workers.

DEPARTMENT RESPONSE: The proposed regulations for mental health practitioners are consistent with Chapter 230. No changes are required.

26. COMMENT: A coalition of not-for-profit behavioral health provider agencies commented that the Department has not published diagnostic limited permits, application forms, templates, and lists of acceptable education programs.

DEPARTMENT RESPONSE: The documents will be finalized after the proposed rule is adopted. No change is required.

27. COMMENT: A coalition of not-for-profit behavioral health provider agencies commented that a limit of five diagnostic permittees under a single supervisor in 79-

9.4(b), 79-10.4(b) and 79-12.4(b) is restrictive and should be expanded to 10 permittees and supervision of one hour per week should be reduced to 30 minutes.

DEPARTMENT RESPONSE: The supervisor is responsible for each patient seen by a permit holder under their supervision and training. These permittees' limit and supervision requirements are consistent across mental health professions, and protect public health and safety. No change is required.

28. COMMENT: Agencies commented that licensees will incur additional costs to comply with the education requirements and urge the Department to establish alternative standards, such as three years of post-license experience and 12 hours of clinical content.

DEPARTMENT RESPONSE: Chapter 230 does not authorize the Department to create an alternative pathway. Therefore, no changes are required.

29. COMMENT: Agencies commented that funds should be set aside for tuition assistance and loan forgiveness for licensed MHPs who will have to complete additional education under the law and create a state partnership for reduced cost online education.

DEPARTMENT RESPONSE: The comments are outside the scope of Chapter 230 and the proposed rule. No change is necessary.

30. COMMENT: A coalition of agencies commented that amendments to section 29.15 would take effect on June 24, 2024 although an exemption allows licensed and registered mental health practitioners to engage in diagnosis and assessment-based treatment planning until June 24, 2025.

DEPARTMENT RESPONSE: The regulation is consistent with Chapter 230 and an unqualified person who engaged in restricted activities could be charged with practicing beyond the scope, therefore, no change is required.

31. COMMENT: Agencies commented that a limited diagnostic permit holder could engage in diagnosis and developing assessment-based treatment plans under supervision, although such person is not mentioned in section 29.15 as amended.

DEPARTMENT RESPONSE: A permit holder or other person authorized to practice under supervision is not subject to Part 29 of the Regents Rules, as that person does not hold a professional license. No change is required.

32. COMMENT: Agencies commented that assessment-based treatment planning is in the scope of the MHPs, therefore, that activity should be deleted from the revised section 29.15.

DEPARTMENT RESPONSE: The regulation is based on section 4 of Chapter 230, which defines diagnosis and assessment-based treatment planning by a person without the privilege as unprofessional conduct. No change is required.

79-9.3

- a. Supervision of the experience. The experience shall be supervised in accordance with the requirements of this subdivision.
1. An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. General supervision shall mean that a qualified supervisor shall be available for consultation, assessment and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances. The supervisor shall provide an average of one hour per week or two hours every other week of in-person individual or group supervision wherein the supervisor of such experience shall:
 - i. review the applicant's assessment, evaluation and treatment of each client under his or her general supervision; and
 - ii. provide oversight, guidance and direction to the applicant in developing skills as a mental health counselor.
 2. Qualifications for supervisors of the required experience. The supervisor of the experience shall 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, pursuant to Articles 163, 131, 131-b, 139, 153, or 154 of the Education Law, respectively; or be an individual with equivalent qualifications as determined by the department; or for applicants who apply for licensure in mental health counseling on or before December 31, 2007, be an individual with certification or registration by an acceptable national certifying or registering body for mental health counselors. To be acceptable to the department, the national certifying or registering body must be recognized nationwide as an organization that certifies or registers mental health counselors throughout the United States based upon a review of their qualifications to practice mental health counseling and must have adequate standards for the review of the applicant's qualifications for practicing mental health counseling, as determined by the department. Such standards must include standards for the review of the applicant's education and experience for practicing mental health counseling and may include an examination requirement.
 3. The Department, in its discretion, may accept alternative means to meet the in-person supervision requirements of paragraph (1) of this subdivision that cannot be successfully completed due to the State of Emergency declared by the Governor pursuant to an Executive Order for the COVID-19 crisis.