

STATE OF NEW YORK

4383

2019-2020 Regular Sessions

IN ASSEMBLY

February 4, 2019

Introduced by M. of A. DenDEKKER, FINCH -- read once and referred to the Committee on Higher Education

AN ACT to amend the education law, in relation to requirements for licensure of mental health practitioners and providing mental health practitioners authority to give diagnosis

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

1 Section 1. Section 8401 of the education law is amended by adding a
2 new subdivision 3 to read as follows:

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

8 § 2. Subdivision 2 of section 8402 of the education law, as added by
9 chapter 676 of the laws of 2002, is amended to read as follows:

10 2. Practice of mental health counseling and use of the titles "mental
11 health counselor" and "licensed mental health counselor". (a) Only a
12 person licensed or exempt under this article shall practice mental
13 health counseling or use the title "mental health counselor". Only a
14 person licensed under this article shall use the title "licensed mental
15 health counselor" or any other designation tending to imply that the
16 person is licensed to practice mental health counseling.

17 (b) Mental health counselors who have obtained the diagnosis privilege
18 set forth in section eighty-four hundred two-a of this article may diag-
19 nose mental, emotional, behavioral, addictive and developmental disor-
20 ders and disabilities and of the psychosocial aspects of illness, inju-
21 ry, disability and impairment undertaken within a psychosocial
22 framework.

23 § 3. Paragraphs (b) and (c) of subdivision 3 of section 8402 of the
24 education law, paragraph (b) as added by chapter 676 of the laws of 2002

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

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1 and paragraph (c) as amended by chapter 130 of the laws of 2010, are
2 amended to read as follows:

3 (b) Education: Have received an education, including a master's or
4 higher degree in counseling from a program registered by the department
5 or determined by the department to be the substantial equivalent there-
6 of, which includes the completion of at least twelve credit hours of
7 clinical courses, in accordance with the commissioner's regulations. A
8 person who has received a master's, or equivalent degree in counseling,
9 during which they did not complete all twelve credit hours of clinical
10 courses, may satisfy this requirement by completing any remaining equiv-
11 alent post-graduate clinical courses, in accordance with the commission-
12 er's regulations. The graduate coursework shall include, but not be
13 limited to, the following areas:

14 (i) human growth and development;
15 (ii) social and cultural foundations of counseling;
16 (iii) counseling theory and practice and psychopathology;
17 (iv) group dynamics;
18 (v) lifestyle and career development;
19 (vi) assessment and appraisal of individuals, couples and families and
20 groups;
21 (vii) research and program evaluation;
22 (viii) professional orientation and ethics;
23 (ix) foundations of mental health counseling and consultation;
24 (x) clinical instruction; and
25 (xi) completion of a minimum one year supervised internship or practi-
26 cum in mental health counseling;

27 (c) Experience: An applicant shall complete a minimum of three thou-
28 sand hours of post-master's supervised experience relevant to the prac-
29 tice of mental health counseling, two thousand hours of which shall
30 include diagnosis, psychotherapy, and assessment-based treatment plans,
31 satisfactory to the board and in accordance with the commissioner's
32 regulations. Satisfactory experience obtained in an entity operating
33 under a waiver issued by the department pursuant to section sixty-five
34 hundred three-a of this title may be accepted by the department,
35 notwithstanding that such experience may have been obtained prior to the
36 effective date of such section sixty-five hundred three-a and/or prior
37 to the entity having obtained a waiver. The department may, for good
38 cause shown, accept satisfactory experience that was obtained in a
39 setting that would have been eligible for a waiver but which has not
40 obtained a waiver from the department or experience that was obtained in
41 good faith by the applicant under the belief that appropriate authori-
42 zation had been obtained for the experience, provided that such experi-
43 ence meets all other requirements for acceptable experience;

44 § 4. The education law is amended by adding a new section 8402-a to
45 read as follows:

46 § 8402-a. Diagnosis privilege. 1. Applicants licensed on January
47 first, two thousand twenty-four or thereafter are authorized to diag-
48 nose, as provided in paragraph (b) of subdivision two of section eight-
49 y-four hundred two of this article, and as defined in subdivision three
50 of section eighty-four hundred one of this article without meeting any
51 additional requirements.

52 2. Applicants for license as a mental health counselor who have been
53 issued a limited permit after successfully completing the requirements
54 of paragraph (b) of subdivision three of section eighty-four hundred two
55 of this article, which includes twelve credit hours of clinical courses,
56 are authorized to diagnose as provided in paragraph (b) of subdivision

1 two of section eighty-four hundred two of this article, and as defined
2 in subdivision three of section eighty-four hundred one of this article,
3 while under supervision.

4 3. Those licensed prior to January first, two thousand twenty-four,
5 shall be granted the privilege to diagnose as provided in paragraph (b)
6 of subdivision two of section eighty-four hundred two of this article,
7 and as defined in subdivision three of section eighty-four hundred one
8 of this article, if the licensee fulfills the following requirements:

9 (a) Files an application with the department;

10 (b) Is licensed and registered as a mental health counselor; and:

11 (i) Provides verification of twelve credit hours of clinical course
12 work as defined by the department from a college or university accepta-
13 ble to the department; or

14 (ii) Provides verification of a minimum of two years of employment as
15 a licensed mental health counselor by a licensed supervisor or colleague
16 on forms acceptable to the department, in a program or service operated,
17 regulated, funded, or approved by the department of mental hygiene, the
18 office of children and family services, the office of temporary and
19 disability assistance, the department of corrections and community
20 supervision, the state office for the aging, the department of health,
21 or a local governmental unit as that term is defined in article forty-
22 one of the mental hygiene law or a social services district as defined
23 in section sixty-one of the social services law; or

24 (iii) Provides verification of being licensed as a licensed mental
25 health counselor for a minimum of two years; and

26 (1) Provides documentation of at least six credit hours of clinical
27 coursework as defined by the department from a college or university
28 acceptable to the department; or

29 (2) Provides documentation of at least twelve hours of continuing
30 education in clinical coursework subject to section eighty-four hundred
31 twelve-a of this article; and

32 (c) Pays a fee to the department of two hundred twenty dollars.

33 4. A privilege to diagnose issued under this section shall be valid
34 for the life of the holder, unless revoked, annulled, or suspended by
35 the board of regents. Such a privilege shall be subject to the same
36 oversight and disciplinary provisions as licenses issued under this
37 title.

38 § 5. Subdivision 2 of section 8405 of the education law, as added by
39 chapter 676 of the laws of 2002, is amended to read as follows:

40 2. Practice of psychoanalysis and use of the titles "psychoanalyst"
41 and "licensed psychoanalyst". (a) Only a person licensed or exempt under
42 this article shall practice psychoanalysis or use the title "psychoana-
43 lyst". Only a person licensed under this article shall use the title
44 "licensed psychoanalyst" or any other designation tending to imply that
45 the person is licensed to practice psychoanalysis.

46 (b) Psychoanalysts who have obtained the diagnosis privilege as set
47 forth in section eighty-four hundred five-a of this article may diagnose
48 mental, emotional, behavioral, addictive and developmental disorders and
49 disabilities and of the psychosocial aspects of illness, injury, disa-
50 bility and impairment undertaken within a psychosocial framework.

51 § 6. Paragraphs (b) and (c) of subdivision 3 of section 8405 of the
52 education law, paragraph (b) as added by chapter 676 of the laws of 2002
53 and paragraph (c) as amended by chapter 130 of the laws of 2010, are
54 amended to read as follows:

55 (b) Education: Have received a master's degree or higher from a
56 degree-granting program registered by the department or the substantial

equivalent and have completed a program of study registered by the department in a psychoanalytic institute chartered by the board of regents or the substantial equivalent as determined by the department. The program of study in a psychoanalytic institute shall include coursework substantially equivalent to coursework required for a master's degree in a health or mental health field of study and shall also include the completion of at least twelve credit hours of clinical courses. An individual who has completed a licensed psychoanalyst program that did not include twelve credit hours of clinical courses may satisfy this requirement by completing any remaining equivalent post-graduate clinical courses, in accordance with the commissioner's regulations. The coursework shall include, but not be limited to, the following areas:

(i) personality development;
(ii) psychoanalytic theory of psychopathology;
(iii) psychoanalytic theory of psychodiagnosis;
(iv) sociocultural influence on growth and psychopathology;
(v) practice technique (including dreams and symbolic processes);
(vi) analysis of resistance, transference, and countertransference;
(vii) case seminars on clinical practice;
(viii) practice in psychopathology and psychodiagnosis;
(ix) professional ethics and psychoanalytic research methodology; and
(x) a minimum of three hundred hours of personal analysis and one hundred fifty hours of supervised analysis;

(c) Experience: Have completed a minimum of [~~fifteen hundred~~] two thousand hours of supervised clinical practice which shall include diagnosis, psychotherapy, and assessment-based treatment plans satisfactory to the department and in accordance with the commissioner's regulations. Satisfactory experience obtained in an entity operating under a waiver issued by the department pursuant to section sixty-five hundred three-a of this title may be accepted by the department, notwithstanding that such experience may have been obtained prior to the effective date of such section sixty-five hundred three-a and/or prior to the entity having obtained a waiver. The department may, for good cause shown, accept satisfactory experience that was obtained in a setting that would have been eligible for a waiver but which has not obtained a waiver from the department or experience that was obtained in good faith by the applicant under the belief that appropriate authorization had been obtained for the experience, provided that such experience meets all other requirements for acceptable experience;

§ 7. The education law is amended by adding a new section 8405-a to read as follows:

§ 8405-a. Diagnosis privilege. 1. Applicants licensed on January first, two thousand twenty-four or thereafter are authorized to diagnose as provided in paragraph (b) of subdivision two of section eighty-four hundred five of this article and further defined in subdivision three of section eighty-four hundred one of this article without meeting any additional requirements.

2. Applicants for license as a psychoanalyst who have been issued a limited permit after successfully completing the requirements of paragraph (b) of subdivision two of section eighty-four hundred five of this article, which includes twelve credit hours of clinical courses are authorized to diagnose as provided in paragraph (b) of subdivision three of section eighty-four hundred five of this article, and as defined in subdivision three of section eighty-four hundred one of this article while under supervision.

1 3. For those licensed prior to January first, two thousand twenty-
2 four, shall be granted the privilege to diagnose as provided in para-
3 graph (c) of subdivision one of section eighty-four hundred five of this
4 article, and further defined in subdivision three of section eighty-four
5 hundred one of this article if the licensee fulfills the following
6 requirements:

7 (a) Files an application with the department;

8 (b) Is licensed and registered as a psychoanalyst; and

9 (i) Provides verification of twelve credit hours of clinical course
10 work as defined by the department from a college, university, or insti-
11 tute acceptable to the department; or

12 (ii) Provides verification of a minimum of two years of employment as
13 a licensed psychoanalyst by a licensed supervisor or colleague on forms
14 acceptable to the department, in a program or service operated, regu-
15 lated, funded, or approved by the department of mental hygiene, the
16 office of children and family services, the office of temporary and
17 disability assistance, the department of corrections and community
18 supervision, the state office for the aging, the department of health,
19 or a local governmental unit as that term is defined in article forty-
20 one of the mental hygiene law or a social services district as defined
21 in section sixty-one of the social services law; or

22 (iii) Provides verification of being licensed as a licensed psychoana-
23 lyst for a minimum of three years; and

24 (1) Provides documentation of at least six credit hours of clinical
25 coursework as defined by the department from a college, university, or
26 institute acceptable to the department; or

27 (2) Provides documentation of at least twelve hours of continuing
28 education in clinical coursework subject to section eighty-four hundred
29 twelve-a of this article; and

30 (c) Pays a fee to the department of two hundred twenty dollars.

31 4. A privilege to diagnose issued under this section shall be valid
32 for the life of the holder, unless revoked, annulled, or suspended by
33 the board of regents. Such a privilege shall be subject to the same
34 oversight and disciplinary provisions as licenses issued under this
35 title.

36 § 8. Subdivision 2 of section 8409 of the education law, as amended by
37 chapter 485 of the laws of 2013, is amended to read as follows:

38 2. Limited permits shall be for [~~two~~] **three** years; such limited
39 permits may be renewed, at the discretion of the department, for up to
40 two additional one year periods.

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

43 11. Notwithstanding any provision of law to the contrary, nothing in
44 this section shall be construed to prohibit or limit the activities or
45 services provided under this article on the part of any person who, upon
46 the effective date of this subdivision, is in the employ of a program or
47 service, as defined in this article, for the period during which such
48 person maintains employment in such program or service. This section
49 shall not authorize the use of any title authorized pursuant to this
50 article by any such employed person, except as otherwise provided by
51 this article respectively. Provided however, that any person who
52 commences employment in such program or service on or after July first,
53 two thousand twenty and performs services that are restricted under this
54 article shall be appropriately licensed or authorized under this arti-
55 cle.

1 § 10. The education law is amended by adding a new section 8412-a to
2 read as follows:

3 § 8412-a. Continuing education for diagnosis privilege. 1. Continuing
4 education required in clause two of subparagraph (iii) of paragraph (b)
5 of subdivision three of section eighty-four hundred two-a of this arti-
6 cle shall:

7 (a) Be offered by a provider approved by the department pursuant to
8 paragraph (b) of subdivision three of section eighty-four hundred twelve
9 of this article; and

10 (b) In addition to meeting the standards set forth in paragraph (a) of
11 subdivision three of section eighty-four hundred twelve of this article,
12 be determined by the department as providing clinical content in the
13 following areas:

14 (i) Diagnosis in clinical practice;

15 (ii) Assessment based treatment; or

16 (iii) Clinical practice with general and special populations.

17 2. The department shall maintain a list of continuing education
18 approved by the department as meeting the requirements of this section.

19 3. A separate continuing education approval application fee, as deter-
20 mined by the department, shall be applied to providers seeking approval
21 of continuing education that meets the requirements of this section.

22 § 11. This act shall take effect one year after it shall have become a
23 law, provided that section four of this act shall take effect January 1,
24 2024. Effective immediately, the addition, amendment and/or repeal of
25 any rule or regulation necessary for the implementation of this act on
26 its effective date are authorized to be made and completed on or before
27 such effective date.