S T A T E O F N E W Y O R K

3263

2009-2010 Regular Sessions

I N A S S E M B L Y

January 23, 2009

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

AN ACT to amend the education law, in relation to requiring licensing of behavioral health practitioners

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The education law is amended by adding a new article 167 to read as follows:

ARTICLE 167

BEHAVIORAL HEALTH SERVICES

SECTION 8800. INTRODUCTION.
8801. DEFINITION OF THE PRACTICE OF BEHAVIORAL HEALTH SERVICES.
8802. DEFINITIONS.
8803. USE OF THE TITLE "LICENSED BEHAVIORAL HEALTH PRACTITIONER" OR "LBHP".
8804. NEW YORK STATE ADVISORY BOARD FOR BEHAVIORAL HEALTH SERVICES.
8805. REQUIREMENTS FOR PROFESSIONAL LICENSURE.
8806. LIMITED PERMITS.
8807. EXEMPT PERSONS.
8808. RENEWAL OF LICENSURE AND CONTINUING EDUCATION.
8809. RECIPROCITY; ENDORSEMENT.
8810. GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF PROFESSIONAL LICENSURE.
8811. PRIVILEGED COMMUNICATION.
8812. UNLAWFUL PRACTICE.
8813. SPECIAL PROVISIONS.
8814. SEPARABILITY.

S 8800. INTRODUCTION. THIS ARTICLE APPLIES TO THE PROFESSIONAL PRACTICE OF BEHAVIORAL HEALTH SERVICES. THE GENERAL PROVISIONS FOR ALL

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

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PROFESSIONS CONTAINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE SHALL APPLY TO THIS ARTICLE.

S 8801. DEFINITION OF THE PRACTICE OF BEHAVIORAL HEALTH SERVICES. THE PRACTICE OF BEHAVIORAL HEALTH SERVICES IS DEFINED AS THE APPLICATION OF THE SCIENTIFIC COMPONENTS OF PSYCHOLOGICAL AND MENTAL HEALTH PRINCIPLES IN ORDER TO:

1. FACILITATE HUMAN DEVELOPMENT AND ADJUSTMENT THROUGHOUT THE LIFE SPAN,

2. PREVENT, DIAGNOSE, OR TREAT MENTAL, EMOTIONAL, OR BEHAVIORAL DISORDERS OR ASSOCIATED DISTRESS WHICH INTERFERE WITH HUMAN MENTAL HEALTH, AND

3. CONDUCT ASSESSMENTS OR DIAGNOSES FOR THE PURPOSE OF ESTABLISHING TREATMENT GOALS AND OBJECTIVES, AND PLAN, IMPLEMENT, OR EVALUATE TREATMENT PLANS CONCERNING HUMAN DEVELOPMENT USING BEHAVIORAL TREATMENT INTERVENTIONS.

BEHAVIORAL HEALTH SERVICES MAY BE PROVIDED TO INDIVIDUAL CHILDREN OR ADULTS, FAMILIES, GROUPS OR ORGANIZATIONS AS PART OF EITHER A DIRECT THERAPEUTIC RELATIONSHIP, THE SUPERVISION OF UNLICENSED PERSONNEL OR THE LICENSED PRACTITIONER'S ROLE AS A CONSULTANT. BEHAVIORAL HEALTH SERVICES MAY BE PROVIDED IN A VARIETY OF RESIDENTIAL SETTINGS, INCLUDING BUT NOT LIMITED TO, PSYCHIATRIC HOSPITALS, CORRECTIONAL FACILITIES, RESIDENTIAL TREATMENT CENTERS FOR THE DEVELOPMENTALLY DISABLED, DRUG/ALCOHOL TREATMENT CENTERS AS WELL AS ANY COMMUNITY-BASED RESIDENTIAL SETTINGS SERVING THOSE SAME POPULATIONS. IN ADDITION, BEHAVIORAL HEALTH SERVICES MAY BE PROVIDED ON AN OUTPATIENT BASIS OR AS PART OF AN INDEPENDENT PRACTICE IN A CLINIC SETTING.

S 8802. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "BEHAVIORAL TREATMENT INTERVENTIONS" SHALL MEAN THE APPLICATION OF EMPIRICALLY VALIDATED TREATMENT MODALITIES, INCLUDING, BUT NOT LIMITED TO, OPERANT AND CLASSICAL CONDITIONING TECHNIQUES, ADHERENCE/COMPLIANCE METHODS, HABIT REVERSAL PROCEDURES, COGNITIVE THERAPY, BIOFEEDBACK PROCEDURES AND PARENT TRAINING. SUCH INTERVENTIONS ARE SPECIFICALLY IMPLEMENTED IN THE CONTEXT OF A PROFESSIONAL THERAPEUTIC RELATIONSHIP.

2. "BOARD" SHALL MEAN THE NEW YORK STATE ADVISORY BOARD FOR BEHAVIORAL HEALTH SERVICES ESTABLISHED BY SECTION EIGHTY-EIGHT HUNDRED FOUR OF THIS ARTICLE.

S 8803. USE OF THE TITLE "LICENSED BEHAVIORAL HEALTH PRACTITIONER" OR "LBHP". ONLY A PERSON LICENSED OR OTHERWISE AUTHORIZED UNDER THIS ARTICLE SHALL USE THE TITLE LICENSED BEHAVIORAL HEALTH PRACTITIONER OR THE LETTERS "LBHP" TO REPRESENT SUCH TITLE.

S 8804. NEW YORK STATE ADVISORY BOARD FOR BEHAVIORAL HEALTH SERVICES. THE NEW YORK STATE ADVISORY BOARD FOR BEHAVIORAL HEALTH SERVICES SHALL BE APPOINTED BY THE BOARD OF REGENTS ON RECOMMENDATION OF THE COMMISSIONER FOR THE PURPOSE OF ASSISTING THE BOARD OF REGENTS AND THE DEPARTMENT ON MATTERS OF LICENSURE AND PROFESSIONAL CONDUCT IN ACCORDANCE WITH SECTION SIXTY-FIVE HUNDRED EIGHT OF THIS TITLE.

1. THE BOARD SHALL BE COMPOSED OF SEVEN MEMBERS, FOUR OF WHOM SHALL BE LICENSED BEHAVIORAL HEALTH PRACTITIONERS SELECTED FROM RECOMMENDATIONS MADE BY THE EXECUTIVE BOARD OF THE NORTH AMERICAN ASSOCIATION OF MASTERS IN PSYCHOLOGY, ACTING IN CONJUNCTION WITH THE EXECUTIVE BOARD OF THE NEW YORK STATE ASSOCIATION OF MASTERS IN PSYCHOLOGY. TWO MEMBERS OF THE BOARD SHALL BE PERSONS REPRESENTING THE PUBLIC AT LARGE AND WHO DO NOT ENGAGE IN THE DELIVERY OF BEHAVIORAL HEALTH SERVICES AND DO NOT HAVE ANY FINANCIAL INTEREST IN ANY INDIVIDUAL OR BUSINESS OR ENTERPRISE ENGAGED IN THE PROVISION OF BEHAVIORAL HEALTH SERVICES. ONE MEMBER OF THE BOARD SHALL BE A LICENSED MENTAL HEALTH PROFESSIONAL OTHER THAN A LICENSED

BEHAVIORAL HEALTH PRACTITIONER AND SHALL BE CHOSEN FROM A LIST OF QUALIFIED CANDIDATES SUBMITTED BY THE NORTH AMERICAN ASSOCIATION OF MASTERS IN PSYCHOLOGY.

2. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE, THE MEMBERS OF THE FIRST BOARD ESTABLISHED PURSUANT TO THIS SECTION WHO ARE BEHAVIORAL HEALTH PRACTITIONERS NEED NOT BE LICENSED PRIOR TO THEIR APPOINTMENT TO THE BOARD, PROVIDED, HOWEVER, SUCH PERSONS ARE CERTIFIED BY THE NORTH AMERICAN ASSOCIATION OF MASTERS OF PSYCHOLOGY, AND SHALL RECEIVE LICENSES PURSUANT TO THIS ARTICLE WITHIN ONE YEAR OF APPOINTMENT TO THE BOARD. THE TERM OF OFFICE OF THE MEMBERS OF THE BOARD SHALL BE FIVE YEARS. ANY VACANCY ON THE BOARD SHALL BE FILLED BY APPOINTMENT FOR THE REMAINDER OF SUCH VACATING MEMBER'S TERM IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION.

3. THIS ARTICLE SHALL NOT BE CONSTRUED TO AFFECT OR PREVENT A STUDENT STUDYING PSYCHOLOGY OR A RELATED FIELD FROM ENGAGING IN CLINICAL PRACTICE UNDER THE SUPERVISION OF A LICENSED OR CERTIFIED PSYCHOLOGIST OR OTHER MENTAL HEALTH PROFESSIONAL AS PART OF A PROGRAM CONDUCTED IN AN APPROVED AGENCY AFFILIATED WITH A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY.

4. THE BOARD SHALL HOLD AT LEAST FOUR REGULAR MEETINGS EACH YEAR. MEETINGS SHALL BE HELD AT SUCH TIME AND PLACE AS THE BOARD MAY PROVIDE. THE BOARD SHALL ELECT ANNUALLY THE FOLLOWING OFFICERS: A CHAIR, A VICE-CHAIR, AND A SECRETARY. FOUR MEMBERS OF THE BOARD SHALL CONSTITUTE A QUORUM.

5. THE DEPARTMENT SHALL, WITH CONSIDERATION OF THE RECOMMENDATIONS OF THE BOARD, HAVE THE AUTHORITY TO:

A. PRESCRIBE, ADOPT, AND PROMULGATE RULES AND REGULATIONS TO IMPLEMENT AND ENFORCE THE PROVISIONS OF THIS ARTICLE;

B. ADOPT AND ESTABLISH RULES OF PROFESSIONAL CONDUCT;

C. SET LICENSE AND EXAMINATION FEES AS REQUIRED BY THIS ARTICLE;

D. SEEK INJUNCTIVE RELIEF;

E. REQUEST THE DISTRICT ATTORNEY OR OTHER APPROPRIATE LAW ENFORCEMENT OFFICIAL TO BRING AN ACTION TO ENFORCE THE PROVISIONS OF THIS ARTICLE;

F. ISSUE, RENEW, REVOKE, DENY, SUSPEND AND PLACE ON PROBATION LICENSES TO PRACTICE BEHAVIORAL HEALTH PURSUANT TO THE PROVISIONS OF THIS ARTICLE;

G. EXAMINE ALL QUALIFIED APPLICANTS FOR LICENSES TO PRACTICE BEHAVIORAL HEALTH; AND

H. INVESTIGATE COMPLAINTS AND POSSIBLE VIOLATIONS OF THIS ARTICLE.

S 8805. REQUIREMENTS FOR PROFESSIONAL LICENSURE. TO QUALIFY FOR LICENSURE AS A BEHAVIORAL HEALTH PRACTITIONER PURSUANT TO THIS ARTICLE, AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

1. APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

2. EDUCATION: HAVE MET ONE OF THE TWO FOLLOWING CONDITIONS:

A. RECEIVED A MASTER'S DEGREE FROM A PROGRAM IN PSYCHOLOGY FROM A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY, OR

B. HAVE SUCCESSFULLY COMPLETED AT LEAST SIXTY GRADUATE SEMESTER HOURS, OR THE EQUIVALENT GRADUATE QUARTER HOURS IN A PROGRAM LEADING TO A DOCTORAL DEGREE IN PSYCHOLOGY FROM A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY;

3. EXPERIENCE: HAVE TWO YEARS OF SUPERVISED FULL-TIME EXPERIENCE IN THE DELIVERY OF PROFESSIONAL BEHAVIORAL HEALTH OR PSYCHOLOGICAL SERVICES SUBJECT TO THE SUPERVISION OF A LICENSED MENTAL HEALTH PROFESSIONAL PURSUANT TO CONDITIONS ESTABLISHED BY THE BOARD;

4. EXAMINATION: PASS AN EXAMINATION SATISFACTORY TO THE BOARD AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS; EXAMINATIONS FOR LICEN-

SURE SHALL BE HELD AT SUCH TIMES, AT SUCH PLACE, AND IN SUCH MANNER AS THE DEPARTMENT SHALL DIRECT. SUCH EXAMINATIONS SHALL BE HELD, AT LEAST, ANNUALLY. THE DEPARTMENT SHALL DETERMINE THE GRADING SYSTEM FOR SUCH EXAMINATIONS. EXAMINATIONS SHALL COVER TECHNICAL, PROFESSIONAL, AND PRACTICAL SUBJECT MATTERS RELATED TO THE PRACTICE OF BEHAVIOR SCIENCE. IF AN APPLICANT FAILS TO PASS SUCH EXAMINATION, SUCH APPLICANT MAY REAPPLY TO TAKE THE EXAMINATION;

5. AGE: BE AT LEAST TWENTY-ONE YEARS OF AGE;

6. CITIZENSHIP OR IMMIGRATION STATUS: BE A UNITED STATES CITIZEN OR AN ALIEN LAWFULLY ADMITTED FOR PERMANENT RESIDENCE IN THE UNITED STATES;

7. CHARACTER: BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT;

8. FEES: PAY A FEE OF ONE HUNDRED FIFTY DOLLARS TO THE DEPARTMENT FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND FOR AN INITIAL LICENSE, A FEE OF SEVENTY-FIVE DOLLARS FOR EACH REEXAMINATION, A FEE OF ONE HUNDRED DOLLARS FOR AN INITIAL LICENSE FOR PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION, AND A FEE OF ONE HUNDRED DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

S 8806. LIMITED PERMITS. ON RECOMMENDATION OF THE BOARD, THE DEPARTMENT MAY ISSUE BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, A LIMITED PERMIT TO PRACTICE BEHAVIORAL HEALTH SERVICES TO AN APPLICANT CURRENTLY EMPLOYED TO PROVIDE BEHAVIORAL HEALTH SERVICES AND WHO MEETS THE EXPERIENCE REQUIREMENTS FOR LICENSURE. SUCH LIMITED PERMIT SHALL BE VALID FOR A PERIOD OF NO MORE THAN THREE YEARS, DURING WHICH TIME SUCH APPLICANT SHALL COMPLETE THE REQUIREMENTS FOR ADMISSION TO THE LICENSURE EXAMINATION. UPON SUCCESSFUL PASSAGE OF THE EXAMINATION SUCH APPLICANT SHALL BECOME ELIGIBLE FOR LICENSURE PURSUANT TO THIS ARTICLE. THE FEE FOR EACH LIMITED PERMIT SHALL BE ONE HUNDRED DOLLARS.

S 8807. EXEMPT PERSONS. 1. PERSONS APPLYING FOR LICENSURE AS BEHAVIORAL HEALTH PRACTITIONERS PURSUANT TO THIS ARTICLE, BEFORE JANUARY FIRST, TWO THOUSAND TWELVE, SHALL BE DEEMED TO HAVE MET ALL THE QUALIFICATIONS FOR LICENSURE AND BE EXEMPT FROM THE REQUIREMENT FOR EXAMINATION, IF SUCH PERSONS HAVE BEEN EMPLOYED TO PROVIDE BEHAVIORAL HEALTH OR PSYCHOLOGICAL SERVICES OR TO SUPERVISE PROVIDERS OF SUCH SERVICES, FOR AT LEAST TWO YEARS DURING THE FIVE YEAR PERIOD IMMEDIATELY PRECEDING SUCH PERSONS' APPLICATIONS OR IF SUCH PERSONS ARE CREDENTIALED AS NATIONALLY CERTIFIED PSYCHOLOGISTS.

2. THIS ARTICLE SHALL NOT BE CONSTRUED TO AFFECT OR PREVENT QUALIFIED PHYSICIANS, NURSES, PHYSICAL OR OCCUPATIONAL THERAPISTS, PSYCHOLOGISTS, MENTAL HEALTH COUNSELORS, CREATIVE ARTS THERAPISTS, PSYCHOANALYSTS, SOCIAL WORKERS, MEMBERS OF THE CLERGY, MARRIAGE AND FAMILY THERAPISTS, REHABILITATION COUNSELORS, ALCOHOL AND DRUG COUNSELORS OR ANY OTHER LICENSED OR CERTIFIED PROFESSIONAL FROM PERFORMING THE WORK OF A BEHAVIORAL HEALTH PRACTITIONER WHERE INCIDENT TO THE PRACTICE OF SUCH PROFESSIONS, PROVIDED THAT ANY SUCH PROFESSIONAL DOES NOT USE THE TITLE "LICENSED BEHAVIORAL HEALTH PRACTITIONER" OR "LBHP" OR REPRESENT TO THE PUBLIC, BY ANY TITLE, THAT HE OR SHE IS ENGAGED IN THE PRACTICE OF BEHAVIORAL HEALTH SERVICES.

3. THIS ARTICLE SHALL NOT BE CONSTRUED TO AFFECT OR PREVENT STUDENTS STUDYING PSYCHOLOGY OR A RELATED FIELD FROM ENGAGING IN CLINICAL PRACTICE UNDER THE SUPERVISION OF A LICENSED OR CERTIFIED PSYCHOLOGIST OR OTHER MENTAL HEALTH PROFESSIONAL AS PART OF A PROGRAM CONDUCTED IN AN APPROVED AGENCY AFFILIATED WITH A REGIONALLY ACCREDITED COLLEGE OR UNIVERSITY.

4. THE BEHAVIORAL HEALTH SERVICES PROVIDED BY A PERSON IN THE EMPLOY OF ANY STATE, COUNTY OR MUNICIPAL GOVERNMENT AGENCY, OR IN THE EMPLOY OF

A NON-PROFIT AGENCY CONTRACTED WITH ANY STATE, COUNTY OR MUNICIPAL GOVERNMENT, SHALL BE EXEMPT FROM THE LICENSURE REQUIREMENT OF THIS ARTICLE, IF SUCH SERVICES ARE RENDERED AS PART OF THE OFFICIAL DUTIES OF SUCH PERSON WITH SUCH EMPLOYING AGENCY PROVIDED THAT:

A. ANY PERSON WHO IS UNLICENSED AND PROVIDING SERVICES UNDER THE EXEMPTION SPECIFIED IN THIS SUBDIVISION, SHALL NOT USE THE TITLE OF "LICENSED BEHAVIORAL HEALTH PRACTITIONER" OR THE LETTERS "LBHP"; AND

B. THE EXEMPTION PROVIDED IN THIS SUBDIVISION SHALL APPLY ONLY WHILE THE UNLICENSED INDIVIDUAL IS OPERATING UNDER THE AUSPICES OF SUCH EMPLOYER, AND IT IS NOT APPLICABLE TO OTHER EMPLOYMENT OR NONEMPLOYMENT SETTINGS.

S 8808. RENEWAL OF LICENSURE AND CONTINUING EDUCATION. BEHAVIORAL HEALTH PRACTITIONERS LICENSED UNDER THIS ARTICLE SHALL BE REQUIRED TO SUBMIT TRIENNIALLY AT THE TIME OF RENEWAL, A LICENSURE RENEWAL FEE OF ONE HUNDRED DOLLARS. NO LICENSE SHALL BE RENEWED UNLESS THE RENEWAL REQUEST IS ACCOMPANIED BY EVIDENCE SATISFACTORY TO THE BOARD OF THE COMPLETION OF RELEVANT PROFESSIONAL CONTINUING EDUCATION EXPERIENCES. THE CONTINUING EDUCATION REQUIREMENTS OF THE BOARD SHALL BE MAILED TO EACH LICENSED BEHAVIORAL HEALTH PRACTITIONER ONE YEAR PRIOR TO THE RENEWAL DATE OF SUCH PRACTITIONER'S LICENSE. RENEWAL OF LICENSURE IS ACCOMPLISHED BY PAYING THE RENEWAL FEE AND SUBMITTING EVIDENCE OF CONTINUING EDUCATION. NO EXAMINATION IS REQUIRED. A PRACTITIONER'S REQUEST FOR LICENSE RENEWAL SHALL BE MAILED THREE MONTHS PRIOR TO THE EXPIRATION DATE OF SUCH PRACTITIONER'S LICENSE. FAILURE TO RENEW SUCH LICENSE SHALL RESULT IN FORFEITURE OF THE RIGHTS AND PRIVILEGES GRANTED BY SUCH LICENSE. A PERSON WHOSE LICENSE HAS EXPIRED MAY MAKE APPLICATION WITHIN ONE YEAR FOLLOWING SUCH EXPIRATION, IN WRITING, TO THE DEPARTMENT REQUESTING REINSTATEMENT IN A MANNER PRESCRIBED BY THE DEPARTMENT AND PAYMENT OF THE FEES REQUIRED BY THE PROVISIONS OF THIS ARTICLE. A PERSON WHOSE LICENSE HAS EXPIRED FOR MORE THAN ONE YEAR SHALL NOT BE REINSTATED AND MAY APPLY FOR A NEW LICENSE AS PROVIDED IN SECTION EIGHTY-EIGHT HUNDRED FIVE OF THIS ARTICLE.

S 8809. RECIPROCITY; ENDORSEMENT. 1. THE DEPARTMENT MAY ENTER INTO A RECIPROCAL AGREEMENT WITH ANY STATE THAT CREDENTIALS BEHAVIORAL HEALTH PRACTITIONERS, IF THE BOARD FINDS THAT SUCH OTHER STATE HAS SUBSTANTIALLY THE SAME OR HIGHER LICENSURE REQUIREMENTS AS NEW YORK STATE.

2. THE DEPARTMENT MAY LICENSE ANY RESIDENT OF THE STATE WHO IS CURRENTLY CREDENTIALED IN ANOTHER JURISDICTION OF THE UNITED STATES, IF SUCH RESIDENT HAS MET THE SAME OR HIGHER LICENSURE REQUIREMENTS AS REQUIRED BY NEW YORK STATE.

3. THE DEPARTMENT SHALL DELINEATE, BY RULES AND REGULATIONS, THE PROCEDURES REGARDING THE VERIFICATION OF AN APPLICANT'S CREDENTIALS FROM ANOTHER JURISDICTION.

4. THE BOARD WILL NOT LICENSE BY RECIPROCITY OR ENDORSEMENT ANY APPLICANT WHO IS UNDER INVESTIGATION IN THIS OR ANOTHER JURISDICTION FOR AN ACT WHICH WOULD CONSTITUTE A VIOLATION OF THIS ARTICLE UNTIL SUCH A TIME AS THE INVESTIGATION IS COMPLETE. WHEN DECIDING SUCH A CASE, THE BOARD WILL DETERMINE WHAT, IF ANY, RULES OR DISCIPLINE SHALL APPLY.

S 8810. GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF PROFESSIONAL LICENSURE. GROUNDS FOR DENIAL, SUSPENSION OR REVOCATION OF A LICENSE GRANTED UNDER THIS ARTICLE INCLUDE, BUT ARE NOT LIMITED TO:

1. USE OF DRUGS OR ALCOHOL OR BOTH, TO AN EXTENT THAT SUBSTANTIALLY IMPAIRS THE INDIVIDUAL'S ABILITY TO ENGAGE IN THE PRACTICE OF BEHAVIORAL HEALTH SERVICES;

2. CONVICTION OF A FELONY AND, AFTER INVESTIGATION, A FINDING BY THE BOARD THAT THE INDIVIDUAL HAS NOT BEEN SUFFICIENTLY REHABILITATED TO MERIT THE PUBLIC TRUST;

3. USE OF FRAUD, DECEPTION, MISREPRESENTATION OR BRIBERY IN SECURING ANY LICENSE ISSUED UNDER THIS ARTICLE OR IN OBTAINING PERMISSION TO TAKE AN EXAMINATION GIVEN OR REQUIRED PURSUANT TO THE PROVISIONS OF THIS ARTICLE;

4. OBTAINING OR ATTEMPTING TO OBTAIN ANY FEE, CHARGE, TUITION OR OTHER COMPENSATION BY FRAUD, DECEPTION OR MISREPRESENTATION;

5. INCOMPETENCE, GROSS MISCONDUCT OR FRAUD IN THE PERFORMANCE OF THE FUNCTIONS OR DUTIES OF A LICENSED BEHAVIORAL HEALTH PRACTITIONER;

6. VIOLATION OF, OR ASSISTING OR ENABLING ANY INDIVIDUAL TO VIOLATE, ANY PROVISION OF THIS ARTICLE OR ANY RULE OR REGULATION ADOPTED PURSUANT TO THIS ARTICLE;

7. IMPERSONATION OF ANY PERSON HOLDING A LICENSE OR ALLOWING ANY INDIVIDUAL TO USE A LICENSE OR DIPLOMA FROM ANY SCHOOL TO OBTAIN LICENSURE UNDER THIS ARTICLE;

8. REVOCATION OR SUSPENSION OF A LICENSE OR OTHER AUTHORIZATION TO PRACTICE BEHAVIORAL HEALTH SERVICES GRANTED BY ANOTHER STATE, TERRITORY, FEDERAL AGENCY OR COUNTRY UPON GROUNDS FOR WHICH REVOCATION OR SUSPENSION IS AUTHORIZED BY THIS ARTICLE;

9. MENTAL ILLNESS OR PHYSICAL DISABILITY TO AN EXTENT THAT SUBSTANTIALLY PREVENTS THE INDIVIDUAL FROM ENGAGING IN THE PRACTICE OF BEHAVIORAL HEALTH SERVICES;

10. ASSISTING OR ENABLING ANY PERSON TO REPRESENT HIMSELF OR HERSELF TO THE PUBLIC AT LARGE AS A LICENSED BEHAVIORAL HEALTH PRACTITIONER WITHIN THIS STATE AND WHO IS NOT LICENSED UNDER THE PROVISIONS OF THIS ARTICLE;

11. ISSUANCE OF A LICENSE PURSUANT TO THIS ARTICLE BASED UPON A PURPOSEFUL, INTENTIONAL AND MATERIAL MISTAKE OF FACT;

12. VIOLATION OF ANY PROFESSIONAL TRUST OR CONFIDENCE;

13. USE OF ANY ADVERTISEMENT OR SOLICITATION WHICH IS FALSE, MISLEADING, OR DECEPTIVE TO THE GENERAL PUBLIC OR PERSON TO WHOM THE ADVERTISEMENT IS PRIMARILY DIRECTED;

14. FAILING TO RESPOND WITHIN THIRTY DAYS TO A WRITTEN COMMUNICATION FROM THE BOARD CONCERNING ANY INVESTIGATION BY THE BOARD, OR FAILING TO MAKE AVAILABLE ANY RELEVANT RECORDS WITH RESPECT TO ANY INVESTIGATION ABOUT ANY LICENSEE'S CONDUCT OR BACKGROUND UPON KNOWLEDGE OF SUCH INVESTIGATION.

NO LICENSE MAY BE DENIED, SUSPENDED, OR REVOKED UNDER ANY PROVISION OF THIS SECTION WITHOUT PRIOR NOTICE AND OPPORTUNITY FOR A HEARING, EXCEPT THAT THE BOARD MAY, WITHOUT PRIOR NOTICE OR HEARING, SUSPEND FOR UP TO ONE YEAR THE LICENSE OF ANY PERSON CONVICTED OF A CRIME AS SET FORTH IN SUBDIVISION TWO OF THIS SECTION. THE BURDEN OF PROOF SHALL BE ON THE BOARD IN ANY PROCEEDING TO DENY, SUSPEND OR REVOKE A LICENSE. NO LICENSE MAY BE DENIED, SUSPENDED, OR REVOKED UNDER ANY PROVISION OF THIS SECTION WITHOUT PRIOR NOTICE AND OPPORTUNITY FOR A HEARING, EXCEPT BY MAJORITY VOTE OF THE BOARD. NO BOARD MEMBER SHALL BE LIABLE IN A CIVIL ACTION FOR ANY ACT PERFORMED IN GOOD FAITH AND IN THE EXECUTION OF HIS OR HER DUTIES UNDER THIS ARTICLE.

ANY PERSON MAY FILE A COMPLAINT WITH THE BOARD SEEKING DENIAL, SUSPENSION, OR REVOCATION OF A LICENSE ISSUED BY THE BOARD. SUCH A COMPLAINT SHALL BE IN A FORM PRESCRIBED BY THE BOARD AND SHALL BE VERIFIED UNDER OATH BY THE COMPLAINANT. IF THE BOARD DETERMINES THAT A COMPLAINT ALLEGES FACTS, WHICH, IF TRUE, WOULD REQUIRE DENIAL, REVOCATION, OR SUSPENSION OF A LICENSE, IT SHALL PROMPTLY INITIATE A HEARING. WHENEVER

THE BOARD IS OF THE OPINION THAT A COMPLAINT DOES NOT ALLEGE FACTS WHICH WARRANT A HEARING, THE COMPLAINT MAY BE DISMISSED BY THE BOARD.

S 8811. PRIVILEGED COMMUNICATION. ANY COMMUNICATION MADE BY ANY PERSON OR PERSONS TO A LICENSED BEHAVIORAL HEALTH PRACTITIONER IN THE COURSE OF RECEIVING PROFESSIONAL SERVICES RENDERED BY SUCH LICENSED PRACTITIONER SHALL BE DEEMED A PRIVILEGED COMMUNICATION. NO PERSON LICENSED UNDER THIS ARTICLE, OR SUCH PERSON'S AGENT, MAY VOLUNTARILY DISCLOSE, OR BE COMPELLED TO DISCLOSE, SUCH PRIVILEGED COMMUNICATION WITH THE FOLLOWING SPECIFIED EXCEPTIONS:

1. WHEN THERE IS A CLEAR AND IMMEDIATE PROBABILITY OF PHYSICAL HARM TO THE CLIENT, TO OTHER INDIVIDUALS, OR TO SOCIETY AND THE LICENSED BEHAVIORAL HEALTH PRACTITIONER COMMUNICATES SUCH PRIVILEGED INFORMATION ONLY TO THE POTENTIAL VICTIM, APPROPRIATE FAMILY MEMBERS OF THE POTENTIAL VICTIM, OR LAW ENFORCEMENT OR OTHER APPROPRIATE AUTHORITIES;

2. WITH THE WRITTEN CONSENT OF A CLIENT, OR IN THE CASE OF DEATH, LEGAL INCOMPETENCE, OR A MINOR, OF HIS OR HER PARENT, A LEGAL GUARDIAN OR CONSERVATOR OR OTHER PERSON AUTHORIZED BY THE COURTS;

3. WHEN THE CLIENT WAIVES SUCH PRIVILEGE BY BRINGING SUIT AGAINST THE LICENSED BEHAVIORAL HEALTH PRACTITIONER;

4. WHEN THE LICENSED BEHAVIORAL HEALTH PRACTITIONER IS RENDERING PROFESSIONAL COUNSELING SERVICES IN A COURT-APPOINTED CAPACITY;

5. WHEN THE CLIENT INTRODUCES MENTAL CONDITION AS A CLAIM OR DEFENSE IN ANY CIVIL OR CRIMINAL ACTION; OR

6. WHEN TESTIFYING IN COURT HEARINGS OR MATTERS PERTAINING TO THE WELFARE OF CHILDREN, INCLUDING CHILD ABUSE, CHILD NEGLECT AND ADOPTION.

S 8812. UNLAWFUL PRACTICE. IT SHALL BE UNLAWFUL FOR ANY PERSON, OTHER THAN PERSONS DESCRIBED IN THIS ARTICLE TO ENGAGE IN THE FOLLOWING ACTS:

1. ENGAGE IN THE PRACTICE OF BEHAVIORAL HEALTH SERVICES, OR TO ADVERTISE OR OTHERWISE OFFER TO PERFORM SUCH SERVICES, WITHOUT HOLDING A VALID LICENSE AS REQUIRED BY THIS ARTICLE;

2. REPRESENT THEMSELVES BY THE TITLE "LICENSED BEHAVIORAL HEALTH PRACTITIONER" OR THE LETTERS "LBHP" WITHOUT BEING DULY LICENSED ACCORDING TO THE PROVISIONS OF THIS ARTICLE;

3. MAKE USE OF ANY TITLE, WORDS, LETTERS, OR ABBREVIATIONS WHICH MAY REASONABLY BE CONFUSED WITH A DESIGNATION PROVIDED BY THIS ARTICLE TO DENOTE A STANDARD OF PROFESSIONAL OR OCCUPATIONAL COMPETENCE, WITHOUT BEING DULY LICENSED.

ANY PERSON WHO WILLFULLY ENGAGES IN ANY UNLAWFUL ACT ENUMERATED IN THIS SECTION SHALL BE GUILTY OF A MISDEMEANOR AND UPON CONVICTION THEREOF SHALL BE PUNISHED BY A FINE FOR EACH OFFENSE, AND IN ADDITION MAY BE IMPRISONED. THE THIRD OR ANY SUBSEQUENT CONVICTION FOR VIOLATION OF THIS SECTION DURING A THIRTY-SIX MONTH PERIOD SHALL CONSTITUTE A FELONY. ALL CLIENT FEES RECEIVED FOR PROFESSIONAL SERVICES RENDERED UNDER THESE UNLAWFUL CONDITIONS OF PROFESSIONAL SERVICE SHALL BE REFUNDED TO THE CLIENT BY THE GUILTY PARTY.

S 8813. SPECIAL PROVISIONS. 1. THE COMMISSIONER SHALL ESTABLISH BY RULES AND REGULATIONS ALL FEES AUTHORIZED PURSUANT TO THIS ARTICLE. SUCH FEES SHALL BE SET IN AMOUNTS SUFFICIENT TO MEET THE EXPENSES OF ADMINISTERING THE PROVISIONS OF THIS ARTICLE.

2. THE DEPARTMENT SHALL PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO ESTABLISH PROFESSIONAL STANDARDS OF BEHAVIORAL HEALTH PRACTITIONERS AND ANY OTHER RULES AND REGULATIONS NECESSARY TO ADMINISTER THE PROVISIONS OF THIS ARTICLE.

S 8814. SEPARABILITY. IF ANY SECTION OF THIS ARTICLE, OR PART THEREOF, SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID,

SUCH JUDGEMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINDER OF ANY OTHER SECTION OR PART OF THIS ARTICLE.

S 2. This act shall take effect January 1, 2010. Effective immediately, the commissioner of the department of education is authorized to promulgate any rules and regulations required by this act and take any other measures necessary to implement this act on or before such effective date.