

# STATE OF NEW YORK

357

2017-2018 Regular Sessions

## IN ASSEMBLY

January 5, 2017

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

AN ACT to amend the education law, in relation to the licensure of lactation consultants and providing for establishment of a lactation consultant licensing board

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

1 Section 1. Short title. This act shall be known and may be cited as  
2 the "lactation consultant practice act".

3 § 2. The education law is amended by adding a new article 166-A to  
4 read as follows:

### ARTICLE 166-A

#### LACTATION CONSULTANTS

##### Section 8750. Legislative intent.

##### 8751. Definitions.

##### 8752. Practice of lactation consultation and use of title "licensed lactation consultant".

##### 8753. Lactation consultant licensing board composition and terms.

##### 8754. Lactation consultant licensing board responsibilities.

##### 8755. Requirements for a professional license.

##### 8756. Exemptions.

##### 8757. Professional misconduct.

17 § 8750. Legislative intent. The legislature acknowledges that the  
18 application of specific knowledge and skill is required to evaluate and  
19 manage clinical problems in lactation and breastfeeding that diminish  
20 the health and well being of families and acknowledges that the render-  
21 ing of such care in institutional and private practice settings requires  
22 trained and competent professionals. Furthermore, the legislature  
23 declares it to be the purpose of this article to protect the health,  
24 safety and welfare of the public by providing for the licensure and

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

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1 regulation of the activities of persons engaged in clinical evaluation  
2 and management of lactation and breastfeeding.

3 § 8751. Definitions. As used in this article, the following terms  
4 shall have the following meanings:

5 1. The practice of the profession of "lactation consultation" shall  
6 mean the clinical evaluation, management, and provision of preventive  
7 medical counseling to assist families with lactation and infant feeding  
8 problems and/or to prepare for normal infant feeding. Normal infant  
9 feeding is defined as being consistent with the recommendations of the  
10 American Academy of Pediatrics and the World Health Organization recom-  
11 mendations. Such services may include, but may not be limited to:

12 (a) collecting health and feeding histories relevant to lactation,  
13 feeding from the breast, human milk feeding (from assistive devices such  
14 as bottles, cups, syringes, feeding tubes etc.) and/or the feeding of  
15 substitutes for human milk;

16 (b) conducting an evaluation of:

17 i. the breasts, areola, and nipples of the person who is intending to  
18 lactate, currently lactating, and/or in the process of ceasing to  
19 lactate which may include, as needed, a physical examination with appro-  
20 priate informed consent;

21 ii. milk production and as needed, milk expression (by hand and/or  
22 with mechanical pumps) to induce, maintain, augment, and/or reduce  
23 lactation;

24 iii. the full cycle of feeding behavior form arousal to satiety with  
25 direct feeding from the breast and/or feeding using assistive (on the  
26 breast) and alternative (not on the breast) feeding devices;

27 iv. the sucking efficacy of the infant or young child which may  
28 include, as needed, a visual or digital exam of the infant's oral cavi-  
29 ty, with appropriate informed consent;

30 v. the adequacy of intake by the infant or young child using observa-  
31 tions of swallowing patterns, which may include, as needed, the use of a  
32 digital weighing scale;

33 vi. the adequacy of infant growth using existing records which may  
34 include, as needed, the use of a weighing scale;

35 (c) determining the nature and severity of any lactation or feeding  
36 problems based on the history and evaluation;

37 (d) demonstration of improved techniques, supplies, and/or equipment  
38 to improve lactation, feeding from the breast, human milk feeding,  
39 and/or the feeding of substitutes for human milk;

40 (e) provision of preventive medical counseling and/or education to the  
41 client-defined family;

42 (f) development of a plan of care in consultation with the family  
43 which may include, as needed, provisions for appropriate follow-up;

44 (g) collaboration and communication with other health care practition-  
45 ers as needed, including referrals to other appropriate health care  
46 practitioners when existing problems fall outside the scope of licensed  
47 lactation consultants;

48 2. Where the title "licensed lactation consultant" is used in this  
49 article it shall mean a clinical practitioner who evaluates and manages  
50 lactation and infant feeding problems and provides preventive medical  
51 counseling to prevent or minimize the occurrence of such problems. The  
52 term "international board certified lactation consultant (IBCLC)" is  
53 reserved for those who are certified and registered by the International  
54 Board of Lactation Consultant Examiners (IBLCE).

55 3. "Board" shall mean the state board for lactation consultation  
56 created by section eighty-seven hundred fifty-three of this article.

1 § 8752. Practice of lactation consultation and use of title "licensed  
2 lactation consultant". Only a person licensed pursuant to section  
3 eighty-seven hundred fifty-five of this title shall be authorized to use  
4 the title "lactation consultant" or "licensed lactation consultant".

5 § 8753. Lactation consultant licensing board composition and terms.

6 1. (a) A state board for lactation consultation shall be appointed by  
7 the board of regents on the recommendation of the commissioner for the  
8 purpose of assisting the board of regents and the department on matters  
9 of professional licensing and professional conduct in accordance with  
10 section sixty-five hundred eight of this title. The board shall be  
11 composed of not less than eight members. Seven members of the board must  
12 be licensed lactation consultants, except that the members of the first  
13 board need not be licensed, but will be grandfathered as eligible for  
14 the board if they registered as IBCLCs. One member of the board will  
15 represent the consumer and the general public.

16 (b) Among the seven licensed lactation consultant members:

17 i. six of the seven must have five years of experience immediately  
18 prior to appointment to the board, except that for the first five years  
19 after the establishment of the board may count prior experience as an  
20 IBCLC;

21 ii. one of the seven licensed members must have been licensed within  
22 the last two years prior to appointment to the board.

23 2. At least two licensed lactation consultant members shall have  
24 specific experience in the last two years as:

25 (a) owners of their own practices;

26 (b) employees in a hospital setting or a similar large institutional  
27 setting; and/or

28 (c) employees in a public health clinic or similar setting such as the  
29 federal special supplemental nutrition program for women, infants and  
30 children.

31 At least one member must have experience running peer support groups.  
32 At least two members must represent the autonomy of the profession by  
33 holding no other license than licensed lactation consultant. Reasonable  
34 attempts will be made to ensure diversity among other complementary  
35 professional licenses held by board members who are licensed in addi-  
36 tional professions.

37 3. Of the members first appointed, initially one shall be appointed  
38 for a one year term, two shall be appointed for a two year term and two  
39 shall be appointed for a three year term, two shall be appointed for a  
40 four year term and one shall be appointed for a five year term so that  
41 as nearly as possible an equal number of seats on the board shall termi-  
42 nate annually as specified in section sixty-five hundred eight of this  
43 title. Thereafter all members shall serve for five year terms. Board  
44 members may be reappointed for a second term.

45 4. Members of the board must declare that they will not violate the  
46 international code of marketing of breast-milk substitutes. During their  
47 term, board members may not engage in activities which might create a  
48 financial or professional conflict of interest with their duties to  
49 uphold the standards of the licensing for the profession. Such activ-  
50 ities shall include, but are not limited to owning, sitting on the board  
51 of, being an employee of, or holding a financial interest in an inde-  
52 pendently accredited certification and examination program for lactation  
53 consultants.

54 § 8754. Lactation consultant licensing board responsibilities. The  
55 purpose of the lactation consultant licensing board is to assist the  
56 board of regents on matters of professional licensing, practice and

1 conduct. As stated in section sixty-five hundred eight of this title,  
2 each member of the board shall receive an honorarium up to one hundred  
3 dollars as prescribed by the board of regents for each day devoted to  
4 board work, and shall be reimbursed for necessary expenses. The board  
5 shall elect from its members a chairman and vice-chairman annually,  
6 shall meet upon call of chairman or the department, and may adopt bylaws  
7 consistent with this title and approved by the board of regents. A  
8 quorum for the transaction of business by the board shall be five  
9 members. The board must provide for a period of public commentary before  
10 changes are made to the requirements for licensure for lactation consul-  
11 tation. An executive secretary shall be appointed by the board of  
12 regents on the recommendation of the commission. Any member may be  
13 removed from a board by the board of regents for misconduct, incapacity  
14 or neglect of duty.

15 § 8755. Requirements for a professional license. To qualify for a  
16 license as a lactation consultant, an applicant shall fulfill the  
17 following requirements:

18 1. Application. File an application with the department and provide:

19 (a) A copy of a high school diploma or the equivalent.

20 (b) Transcripts showing completion of the specified prerequisites and  
21 lactation specific education, except that those who submit proof that  
22 they were certified by the IBCLC prior to enactment of this article,  
23 will be grandfathered as exempt.

24 (c) An authorized certification of completion (or exemption) for the  
25 New York state mandated two hours of coursework or training related to  
26 child abuse.

27 (d) A certificate of supervised experience documenting the directly  
28 supervised clinical hours were completed after completing the prerequi-  
29 sites and lactation specific coursework, except that those who submit  
30 proof that they were certified by the IBCLC prior to enactment of this  
31 article, will be grandfathered as exempt.

32 (e) Proof of having passed the comprehensive lactation exam adminis-  
33 tered by the IBLCE (or an equivalent or higher level exam) after  
34 completion of the educational and supervision requirements.

35 2. Prerequisites.

36 (a) Attain a high school diploma or the equivalent (e.g. a New York  
37 State High School Equivalency Diploma via the Test Assessing Secondary  
38 Completion after January second, two thousand fourteen or the General  
39 Educational Development).

40 (b) Complete at least thirty semester credits in health science cours-  
41 es from an accredited institution of higher learning, advanced placement  
42 high school classes and/or receive the equivalent credit from College  
43 Level Examination Program through independent study. Course content may  
44 include, but is not limited to, biology, human anatomy, human physiol-  
45 ogy, infant and child growth and development, nutrition, psychology  
46 and/or counseling or communication skills, and sociology or cultural  
47 sensitivity or cultural anthropology.

48 (c) Complete coursework or training offered by an institution of high-  
49 er learning or continuing education courses in basic life support,  
50 medical documentation, medical terminology, occupational safety and  
51 security for health professional, universal precautions and infection  
52 control and professional ethics for health professionals.

53 (d) Further, as mandated by the state of New York for professions,  
54 complete two hours of training related to child abuse.

55 3. Education in human lactation and breastfeeding. Within five years  
56 prior to sitting for the exam, complete at least ninety hours in human

1 lactation and breastfeeding that have been verified and approved by the  
2 IBLCE or the substantial equivalent from any other certifying body that  
3 is credentialed to provide continuing education recognition points by  
4 the National Commission for Certifying Agencies of the Institute of  
5 Credentialing Excellence as determined by the board and in accordance  
6 with the commissioner's regulations.

7 4. Supervised experience. After having completed the prerequisites and  
8 educational requirements listed above, complete a minimum of five  
9 hundred directly supervised hours of clinical practice evaluating and  
10 managing lactation and infant feeding problems. Chief supervisors must  
11 have at least five years experience as a licensed lactation consultant  
12 or, during the first five years after the enactment of this article, the  
13 equivalent experience as an IBCLC. Applicants who live in geographically  
14 isolated areas that render direct supervision infeasible may, on an  
15 individual basis, have their chief supervisor submit a plan for consid-  
16 eration by the board that describes how the supervisor will support and  
17 evaluate the acquisition of the clinical skills required for the profes-  
18 sion of lactation as defined in this act. Such a plan may include  
19 options such as in-person workshops of mastery of skills that require  
20 direct physical contact and electronic supervision for mastery of those  
21 skills that do not. The plan must encompass the Competencies for the  
22 Practice of International Board Certified Lactation Consultants by the  
23 IBLCE or an equivalent or higher level of competencies as determined by  
24 the board and in accordance with the commissioner's regulations.

25 5. Examination. After having completed the educational and supervision  
26 requirements, pass the exam administered by the IBLCE or another exam-  
27 ination determined by the board to have the equivalent or higher stand-  
28 ards and in accordance with the commissioner's regulations.

29 6. Reregistration. Complete at least forty-five hours of continuing  
30 education in lactation, related fields and ethics as approved by the  
31 IBLCE or any other certifying body that is credentialed to provide  
32 Continuing Education Recognition Points by the National Commission for  
33 Certifying Agencies of the Institute of Credentialing Excellence and  
34 determined by the board to have the equivalent or higher standards and  
35 in accordance with the commissioner's regulations.

36 7. Age. Be at least twenty-one years of age.

37 8. Character. Be of good moral character as determined by the depart-  
38 ment.

39 9. Fee. Pay a fee to be determined for initial licensure, and a fee to  
40 be determined for each triennial registration.

41 § 8756. Exemptions. As provided in section sixty-five hundred five of  
42 this title, this article reaffirms that no definition of the practice of  
43 lactation consultation shall be construed to restrain or restrict the  
44 performance of similar acts authorized in the definitions of other  
45 professions.

46 Furthermore, nothing contained in this article shall be construed to:

47 1. Prohibit or limit the practice of students, interns, or persons  
48 preparing for lactation consultation under the qualified supervision of  
49 the licensee.

50 2. Prohibit or limit lactation and breastfeeding counseling provided  
51 through the federal special supplemental nutrition program for women,  
52 infants and children or any other governmental program with a federal or  
53 state mandate to provide such counseling.

54 3. Prohibit or limit peer-to-peer lactation and breastfeeding coun-  
55 seling.

1 § 8757. Professional misconduct. In addition to the definitions of  
2 misconduct under section sixty-five hundred nine of this title, it shall  
3 further constitute professional misconduct to discriminate on the basis  
4 of gender identity, or sexual orientation or status as a legal guardian  
5 (or in the process of becoming a legal guardian) of an infant or child  
6 who is not biologically related to that infant or child.

7 § 3. This act shall take effect on the one hundred twentieth day after  
8 it shall have become a law; provided, however, that any actions neces-  
9 sary for the implementation of the provisions of this act on its effec-  
10 tive date are authorized and directed to be completed on or before such  
11 effective date.