STATE OF NEW YORK

722

2023-2024 Regular Sessions

IN ASSEMBLY

January 11, 2023

Introduced by M. of A. L. ROSENTHAL, PAULIN, ROZIC, STECK -- Multi-Sponsored by -- M. of A. JONES -- 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:

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

§ 2. The education law is amended by adding a new article 166-A to 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.

§ 8750. Legislative intent. The legislature acknowledges that the application of specific knowledge and skill is required to evaluate and manage clinical problems in lactation and breastfeeding that diminish the health and well being of families and acknowledges that the rendering of such care in institutional and private practice settings requires trained and competent professionals. Furthermore, the legislature declares it to be the purpose of this article to protect the health, safety and welfare of the public by providing for the licensure and regulation of the activities of persons engaged in clinical evaluation and management of lactation and breastfeeding.

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

LBD00951-01-3

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

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

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

(b) conducting an evaluation of:

i. the breasts of the client who is intending to lactate, currently lactating, and/or in the process of ceasing to lactate which may include, as needed, a physical examination;

ii. milk production and as needed, milk expression (manually or by other means using tools of the trade or other aids) to induce, maintain, augment, and/or reduce lactation;

iii. the feeding behavior with direct feeding from the breast and/or feeding using assistive feeding devices, on and off the breast;

iv. the sucking efficacy of the infant or young child which may include, as needed, a visual or digital exam of the infant's oral cavity;

v. the adequacy of intake and growth by the infant or young child using observations of swallowing patterns, which may include, but not be limited to, the use of a digital weighing scale;

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

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

(e) provision of preventive clinical consulting and/or education to the client-defined family;

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

(g) collaboration and communication with other health care practitioners as needed, including referrals to other appropriate health care practitioners when existing problems fall outside the scope of licensed lactation consultants.

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

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

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

§ 8753. Lactation consultant licensing board composition and terms. 1. (a) A state board for lactation consultation shall be appointed by

the board of regents on the recommendation of the commissioner for the purpose of assisting the board of regents and the department on matters of professional licensing and professional conduct in accordance with section sixty-five hundred eight of this title. The board shall be composed of not less than eight members. Seven members of the board must be licensed lactation consultants, except that the members of the first board will be grandfathered as eligible for the board if they registered as IBCLCs and have been actively practicing in New York state for the preceding five years. One member of the board will represent the client or care receiving community.

(b) Among the seven licensed lactation consultant members:

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

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

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

(a) owners of their own practices;

(b) employees in a hospital setting or a similar large institutional setting;

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

(d) participants in a group practice, either community based or private.

At least two members must represent the autonomy of the profession by holding no other license than licensed lactation consultant. Reasonable attempts will be made to ensure diversity among other complementary professional licenses held by board members who are licensed in additional professions.

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

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

§ 8754. Lactation consultant licensing board responsibilities. The purpose of the lactation consultant licensing board is to assist the board of regents on matters of professional licensing, practice and conduct. As stated in section sixty-five hundred eight of this title, each member of the board shall receive an honorarium up to one hundred dollars as prescribed by the board of regents for each day devoted to board work, and shall be reimbursed for necessary expenses. The board

shall elect from its members a chairman and vice-chairman annually, shall meet upon call of chairman or the department, and may adopt bylaws consistent with this title and approved by the board of regents. A quorum for the transaction of business by the board shall be five members. The board must provide for a period of public commentary before changes are made to the requirements for licensure for lactation consultation. An executive secretary shall be appointed by the board of regents on the recommendation of the commission. Any member may be removed from a board by the board of regents for misconduct, incapacity or neglect of duty.

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

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

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

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

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

(d) Documentation verifying three hundred clinical hours by an IBLCE were completed concurrently or after completing the prerequisites and lactation specific coursework, except that those who submit proof that they were certified by the IBCLC prior to enactment of this article, will be grandfathered as exempt.

(e) Proof of having passed the comprehensive lactation exam administered by the IBLCE (or an equivalent or higher level exam) after completion of the educational and supervision requirements.

2. Prerequisites.

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

(b) Complete at least twenty-four semester credits in health science courses from an accredited institution of higher learning, advanced placement high school classes and/or receive the equivalent credit from College Level Examination Program through independent study. Course content may include, but is not limited to, biology, human anatomy, human physiology, infant and child growth and development, nutrition, psychology and/or counseling or communication skills, and sociology or cultural sensitivity or cultural anthropology.

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

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

3. Education in human lactation and breastfeeding. Within five years prior to sitting for the exam, complete at least ninety hours in human lactation and breastfeeding that have been verified by IBLCE or the equivalent from any other certifying body that provides continuing education recognition points as determined by the board and in accord-

ance with the commissioner's regulations and in compliance with the international code of marketing of breastmilk substitutes.

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

5. Examination. After having completed the educational and supervision requirements, pass the exam administered by the IBLCE or another examination determined by the board to have the equivalent or higher standards and in accordance with the commissioner's regulations.

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

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

8. Character. Be of good moral character as determined by the department.

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

§ 8756. Exemptions. 1. As provided in section sixty-five hundred five of this title, this article reaffirms that no definition of the practice of lactation consultation shall be construed to restrain or restrict the performance of similar acts authorized in the definitions of other professions.

2. Furthermore, nothing contained in this article shall be construed to prohibit or limit the practice of students, interns, or persons preparing for lactation consultation under the qualified supervision of the licensee.

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

§ 3. This act shall take effect on the one hundred twentieth day after it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized to be made and completed on or before such effective date.