

# 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:

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  
25 regulation of the activities of persons engaged in clinical evaluation  
26 and management of lactation and breastfeeding.

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

LBD00951-01-3

1     § 8751. Definitions. As used in this article, the following terms  
2 shall have the following meanings:

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

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

14     (b) conducting an evaluation of:

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

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

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

23     iv. the sucking efficacy of the infant or young child which may  
24 include, as needed, a visual or digital exam of the infant's oral cavi-  
25 ty;

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

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

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

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

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

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

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

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

51     § 8752. Practice of lactation consultation and use of title "licensed  
52 lactation consultant". Only a person licensed pursuant to section  
53 eighty-seven hundred fifty-five of this title shall be authorized to use  
54 the title "lactation consultant" or "licensed lactation consultant".

55     § 8753. Lactation consultant licensing board composition and terms.

56     1. (a) A state board for lactation consultation shall be appointed by

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

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

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

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

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

20 (a) owners of their own practices;

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

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

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

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

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

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

50 § 8754. Lactation consultant licensing board responsibilities. The  
51 purpose of the lactation consultant licensing board is to assist the  
52 board of regents on matters of professional licensing, practice and  
53 conduct. As stated in section sixty-five hundred eight of this title,  
54 each member of the board shall receive an honorarium up to one hundred  
55 dollars as prescribed by the board of regents for each day devoted to  
56 board work, and shall be reimbursed for necessary expenses. The board

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

11 § 8755. Requirements for a professional license. To qualify for a  
12 license as a lactation consultant, an applicant shall fulfill the  
13 following requirements:

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

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

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

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

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

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

31 2. Prerequisites.

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

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

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

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

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

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

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

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

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

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

33 8. Character. Be of good moral character as determined by the depart-  
34 ment.

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

37 § 8756. Exemptions. 1. As provided in section sixty-five hundred five  
38 of this title, this article reaffirms that no definition of the practice  
39 of lactation consultation shall be construed to restrain or restrict the  
40 performance of similar acts authorized in the definitions of other  
41 professions.

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

46 § 8757. Professional misconduct. In addition to the definitions of  
47 misconduct under section sixty-five hundred nine of this title, it shall  
48 further constitute professional misconduct to discriminate on the basis  
49 of gender identity, or sexual orientation or status as a legal guardian  
50 (or in the process of becoming a legal guardian) of an infant or child  
51 who is not biologically related to that infant or child.

52 § 3. This act shall take effect on the one hundred twentieth day after  
53 it shall have become a law. Effective immediately, the addition, amend-  
54 ment and/or repeal of any rule or regulation necessary for the implemen-  
55 tation of this act on its effective date is authorized to be made and  
56 completed on or before such effective date.