§ 8807. Exemptions. 1. Nothing contained in this article shall be construed to limit the scopes of practice of any other profession licensed under this title.

2. Nothing in this article shall be construed as prohibiting a person from performing the duties of a licensed behavior analyst or a certified behavior analyst assistant, in the course of such employment, if such person is employed:

a. by a federal, state, county or municipal agency, or other political subdivision;

b. by a chartered elementary or secondary school or degree-granting institution;

c. as a certified teacher or teaching assistant, other than a pupil personnel services professional, in an approved program as defined in paragraph b of subdivision one of section forty-four hundred ten of this chapter; or

d. in a setting to the extent that the exemption in paragraph d of subdivision six of section forty-four hundred ten of this chapter applies.

3. Nothing in this article shall be construed as prohibiting a certified teacher or teaching assistant, other than a pupil personnel services professional, from performing the duties of a licensed behavior analyst or certified behavior analyst assistant, in the course of such employment or contractual agreement, if such person is employed or contracted with an agency approved by the department of health to provide early intervention services or has an agreement with the department of health to provide early intervention services pursuant to title two-A of article twenty-five of the public health law.

4. Nothing in this article shall be construed as prohibiting the activities and services required of a student, intern, or resident in an educational program acceptable to the department pursuant to the

commissioner's regulations, pursuing a course of study leading to a bachelor's or higher degree in an educational program acceptable to the department pursuant to the commissioner's regulations in an institution approved by the department, provided that such activities and services constitute a part of his or her supervised course of study in an educational program acceptable to the department pursuant to the commissioner's regulations. Such person shall be designated by title which clearly indicates his or her training status.

5. Nothing in this article shall be construed to affect or prevent a person without a license or other authorization pursuant to this title from performing assessments, including collecting basic information, gathering demographic data, and making informal observations, for the purpose of determining need for services unrelated to an ABA plan. Further, licensure or authorization pursuant to this article shall not be required to create, develop or implement a service plan unrelated to an ABA plan. This article shall not apply to behavioral health treatments other than ABA that may be provided to persons with autism spectrum disorder. A license under this article shall not be required for persons to participate as a member of a multi-disciplinary team to implement an ABA plan; provided, however, that such team shall include one or more professionals licensed under this article or articles one hundred thirty-one, one hundred fifty-three, one hundred fifty-four or one hundred sixty-three of this chapter; and provided further that the activities performed by members of the team shall be consistent with the scope of practice for each team member licensed or authorized under this title, and those who are not so authorized may not engage in the following restricted practices: creation, modification or termination of an ABA plan; diagnosis of mental, emotional, behavioral, addictive and developmental disorders and disabilities; patient assessment and evaluating; provision of psychotherapeutic treatment; provision of treatment other than psychotherapeutic treatment; and development and implementation of assessment-based treatment plans, as defined in section seventy-seven hundred one of this title. Provided further, however, that nothing in this subdivision shall be construed as requiring a license or authorization for any particular activity or function based solely on the fact that the activity or function is not

listed in this subdivision. Provided further, however, that nothing in this subdivision shall authorize the delegation of restricted activities to an individual who is not appropriately licensed or authorized under this title.

6. Nothing in this article shall be construed as prohibiting an early intervention ABA aide, pursuant to regulations promulgated by the commissioner of health, and acting under the supervision and direction of a qualified supervisor who is licensed or otherwise authorized pursuant to title eight of this chapter from:

(a) assisting the supervisor and qualified personnel with the implementation of individual ABA plans;

(b) assisting in the recording and collection of data needed to monitor progress;

(c) participating in required team meetings; and

(d) completing any other activities as directed by his or her supervisor and as necessary to assist in the implementation of individual ABA plans.

Provided however, that nothing in this subdivision shall authorize the delegation of restricted activities to an individual who is not appropriately licensed or otherwise authorized under this title; provided further however, that in regard to the early intervention program established pursuant to title two-A of article twenty-five of the public health law, an early intervention ABA aide under the supervision and direction of a qualified supervisor may complete activities necessary to assist in the implementation of an individual ABA plan, provided that such activities do not require professional skill or judgment.

7. This article shall not be construed to prohibit care delivered by any family member, household member or friend, or person employed primarily in a domestic capacity who does not hold himself or herself out, or accept employment, as a person licensed to practice applied behavior analysis under the provisions of this article; provided that, if such person is remunerated, the person does not hold himself or herself out as one who accepts employment for performing such care.

8. Nothing in this article shall be construed as prohibiting programs certified by the office of alcoholism and substance abuse services from providing substance use disorder services for persons with autism and autism spectrum disorders and related disorders.

9. Nothing in this article shall be construed as prohibiting the activities and services required of a graduate of an educational program acceptable to the department, seeking to complete supervised experience and/or examination requirements for certification or registration by a national certifying body having certification or registration standards acceptable to the commissioner; provided, however, that the graduate shall be under the supervision of a licensed behavior analyst who is licensed and registered in New York and employed by a setting authorized to provide applied behavior analysis services in New York, acceptable to the department. The supervising licensed behavior analyst shall submit, upon commencing the supervision of any graduate or no later than ninety days after the effective date of this subdivision, on a form prescribed by the department, a sworn statement attesting to compliance with the requirements of this subdivision. Such use of a graduate shall subject the supervising licensed behavior analyst to the full disciplinary and regulatory authority of the board of regents and the department pursuant to this title. The supervising licensed behavior analyst shall notify the patient or the person legally responsible for the patient if the patient is a minor, or other individual incapable of consenting, when services will be provided by a graduate under supervision. The supervising licensed behavior analyst shall remain responsible for services provided to the patient by the graduate and shall provide the patient or person legally responsible for the patient an opportunity to object to the use of a graduate to provide applied behavior analysis services under supervision.