

EDUCATION LAW

Article 163 – Mental Health Practitioners Effective January 1, 2005

§8400. Introduction.

This article applies to the professions of mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis and provides for the licensing of such practitioners. The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

§8401. Definitions.

For purposes of this article, the following terms shall have the following meanings:

1. "Board" means the state board for mental health practitioners authorized by section eighty-four hundred six of this article.

2. "Psychotherapy" means the treatment of mental, nervous, emotional, behavioral and addictive disorders, and ailments by the use of both verbal and behavioral methods of intervention in interpersonal relationships with the intent of assisting the persons to modify attitudes, thinking, affect, and behavior which are intellectually, socially and emotionally maladaptive.

§8402. Mental health counseling.

1. Definition of the practice of mental health counseling. The practice of the profession of mental health counseling is defined as:

(a) the evaluation, assessment, amelioration, treatment, modification, or adjustment to a disability, problem, or disorder of behavior, character, development, emotion, personality or relationships by the use of verbal or behavioral methods with individuals, couples, families or groups in private practice, group, or organized settings; and

(b) the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate mental health counseling services.

2. Practice of mental health counseling and use of the titles "mental health counselor" and "licensed mental health counselor". Only a person licensed or exempt under this article shall practice mental health counseling or use the title "mental health counselor". Only a person licensed under this article shall use the title "licensed mental health counselor" or any other designation tending to imply that the person is licensed to practice mental health counseling.

3. Requirements for a professional license. To qualify for a license as a "licensed mental health counselor", an applicant shall fulfill the following requirements:

(a) Application: File an application with the department;

(b) Education: Have received an education, including a master's or higher degree in counseling from a program registered by the department or determined by the department to be the substantial equivalent thereof, in accordance with the commissioner's regulations. The graduate coursework shall include, but not be limited to, the following areas:

- (i) human growth and development;
- (ii) social and cultural foundations of counseling;
- (iii) counseling theory and practice and psychopathology;
- (iv) group dynamics;
- (v) lifestyle and career development;
- (vi) assessment and appraisal of individuals, couples and families and groups;
- (vii) research and program evaluation;
- (viii) professional orientation and ethics;
- (ix) foundations of mental health counseling and consultation;
- (x) clinical instruction; and
- (xi) completion of a minimum one year supervised internship or practicum in mental health counseling;

(c) Experience: An applicant shall complete a minimum of three thousand hours of post-master's supervised experience relevant to the practice of

mental health counseling satisfactory to the board and in accordance with the commissioner's regulations;

(d) Examination: Pass an examination satisfactory to the board and in accordance with the commissioner's regulations;

(e) Age: Be at least twenty-one years of age;

(f) Character: Be of good moral character as determined by the department; and

(g) Fees: Pay a fee of one hundred seventy-five dollars for an initial license and a fee of one hundred seventy dollars for each triennial registration period.

§8403. Marriage and family therapy.

1. Definition of the practice of marriage and family therapy. The practice of the profession of marriage and family therapy is defined as:

(a) the assessment and treatment of nervous and mental disorders, whether affective, cognitive or behavioral, which results in dysfunctional interpersonal family relationships including, but not limited to familial relationships, marital/couple relationships, parent-child relationships, pre-marital and other personal relationships;

(b) the use of mental health counseling, psychotherapy and therapeutic techniques to evaluate and treat marital, relational, and family systems, and individuals in relationship to these systems;

(c) the use of mental health counseling and psychotherapeutic techniques to treat mental, emotional and behavioral disorders and ailments within the context of marital, relational and family systems to prevent and ameliorate dysfunction; and

(d) the use of assessment instruments and mental health counseling and psychotherapy to identify and evaluate dysfunctions and disorders for purposes

of providing appropriate marriage and family therapy services.

2. Practice of marriage and family therapy and use of the titles "marriage and family therapist" and "licensed marriage and family therapist". Only a person licensed or exempt under this article shall practice marriage and family therapy or use the title "marriage and family "therapist". Only a person licensed under this article shall use the titles "licensed marriage and family therapist", "licensed marriage therapist", "licensed family therapist" or any other designation tending to imply that the person is licensed to practice marriage and family therapy.

3. Requirements for a professional license. To qualify for a license as a "licensed marriage and family therapist", an applicant shall fulfill the following requirements:

(a) Application: File an application with the department;

(b) Education: Have received a master's or doctoral degree in marriage and family therapy from a program registered by the department, or determined by the department to be the substantial equivalent, in accordance with the commissioner's regulations or a graduate degree in an allied field from a program registered by the department and graduate level coursework determined to be equivalent to that required in a program registered by the department. This coursework shall include, but not be limited to:

- (i) the study of human development, including individual, child and family development;
- (ii) psychopathology;
- (iii) marital and family therapy;
- (iv) family law;
- (v) research;
- (vi) professional ethics; and
- (vii) a practicum of at least three hundred client contact hours;

(c) Experience: The completion of at least one thousand five hundred client contact hours of supervised clinical experience, by persons holding a degree from a master's or doctoral program, or the substantial equivalent, in accordance with the commissioner's regulations or the completion of at least one thousand five hundred client hours of supervised post-master's clinical experience in marriage and family therapy satisfactory to the department in accordance with the commissioner's regulations;

(d) Examination: Pass an examination satisfactory to the board and in accordance with the commissioner's regulations;

(e) Age: Be at least twenty-one years of age;

(f) Character: Be of good moral character as determined by the department; and

(g) Fees: Pay a fee of one hundred seventy-five dollars for an initial license and a fee of one hundred seventy dollars for each triennial registration period.

§8404. Creative arts therapy.

1. Definition of the practice of creative arts therapy. The practice of the profession of creative arts therapy is defined as:

(a) the assessment, evaluation, and the therapeutic intervention and treatment, which may be either primary, parallel or adjunctive, of mental, emotional, developmental and behavioral disorders through the use of the arts as approved by the department; and

(b) the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate creative arts therapy services.

2. Practice of creative arts therapy and use of the titles "creative arts therapist" and "licensed creative arts therapist". Only a person licensed or exempt under this article shall practice creative arts therapy or use the title "creative arts therapist". Only a person licensed under this article shall use the title "licensed creative arts therapist" or any other designation tending to imply that the person is licensed to practice creative arts therapy.

3. Requirements for a professional license. To qualify for a license as a "licensed creative arts therapist", an applicant shall fulfill the following requirements:

(a) Application: File an application with the department;

(b) Education: Have received an education, including a master's or higher degree in creative arts therapy from a program registered by the department or determined by the department to be the substantial equivalent thereof, in accordance with the commissioner's regulations. The graduate coursework shall include, but not be limited to, the following areas:

- (i) human growth and development;
- (ii) theories in therapy;
- (iii) group dynamics;
- (iv) assessment and appraisal of individuals and groups;
- (v) research and program evaluation;
- (vi) professional orientation and ethics;
- (vii) foundations of creative arts therapy and psychopathology; and
- (viii) clinical instruction;

(c) Experience: Have completed at least fifteen hundred hours of post-master's supervised experience in one or more creative arts therapies satisfactory to the department and in accordance with the commissioner's regulations;

(d) Examination: Pass an examination in creative arts therapy satisfactory to the department and in accordance with the commissioner's regulations;

(e) Age: Be at least twenty-one years of age;

(f) Character: Be of good moral character as determined by the department; and

(g) Fees: Pay a fee of one hundred seventy-five dollars for an initial license and a fee of one hundred seventy dollars for each triennial registration period.

§8405. Psychoanalysis.

1. Definition of the practice of psychoanalysis. The practice of the profession of psychoanalysis is defined as:

(a) the observation, description, evaluation, and interpretation of dynamic unconscious mental processes that contribute to the formation of personality and behavior in order to identify and resolve unconscious psychic problems which affect interpersonal relationships and emotional development, to facilitate changes in personality and behavior through the use of verbal and nonverbal cognitive and emotional communication, and to develop adaptive functioning; and

(b) the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate psychoanalytic services.

2. Practice of psychoanalysis and use of the titles "psychoanalyst" and "licensed psychoanalyst". Only a person licensed or

exempt under this article shall practice psychoanalysis or use the title "psychoanalyst". Only a person licensed under this article shall use the title "licensed psychoanalyst" or any other designation tending to imply that the person is licensed to practice psychoanalysis.

3. Requirements for a professional license. To qualify for a license as a "licensed psychoanalyst", an applicant shall fulfill the following requirements:

(a) Application: File an application with the department;

(b) Education: Have received a master's degree or higher from a degree-granting program registered by the department or the substantial equivalent and have completed a program of study registered by the department in a psychoanalytic institute chartered by the board of regents or the substantial equivalent as determined by the department. The program of study in a psychoanalytic institute shall include coursework substantially equivalent to coursework required for a master's degree in a health or mental health field of study. The coursework shall include, but not be limited to, the following areas:

- (i) personality development;
- (ii) psychoanalytic theory of psychopathology;
- (iii) psychoanalytic theory of psychodiagnosis;
- (iv) sociocultural influence on growth and psychopathology;
- (v) practice technique (including dreams and symbolic processes);
- (vi) analysis of resistance, transference, and countertransference;
- (vii) case seminars on clinical practice;
- (viii) practice in psychopathology and psychodiagnosis;
- (ix) professional ethics and psychoanalytic research methodology; and
- (x) a minimum of three hundred hours of personal analysis and one hundred fifty hours of supervised analysis;

(c) Experience: Have completed a minimum of fifteen hundred hours of supervised clinical practice satisfactory to the department and in accordance with the commissioner's regulations;

(d) Examination: Pass an examination in psychoanalysis satisfactory to the department and in accordance with the commissioner's regulations;

(e) Age: Be at least twenty-one years of age;

(f) Character: Be of good moral character as determined by the department; and

(g) Fees: Pay a fee of one hundred seventy-five dollars for an initial license and a fee of one hundred seventy dollars for each triennial registration period.

§8406. State board for mental health practitioners.

A state board for mental health practitioners 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 licensing and regulation. The board shall be composed of at least three licensed members from each profession licensed pursuant to this article and at least three public representatives who do not hold interests in the organization, financing, or delivery of mental health services. Additionally, the board shall contain one physician who shall be a psychiatrist. Members of the first board need not be licensed prior to their appointment to the board. The terms of the first appointed members shall be staggered so that five are appointed for three years, five are appointed for four years, and six are appointed for five years. An executive secretary to the board shall be appointed by the board of regents on recommendation of the commissioner.

§8407. Boundaries of professional competency.

1. It shall be deemed practicing outside the boundaries of his or her professional competence for a person licensed pursuant to this article, in the case of treatment of any serious mental illness, to provide any mental health service for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness. Such medical evaluation and consultation shall be to determine and advise whether any medical care is indicated for such illness. For purposes of this section, "serious mental illness" means schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder and autism.

2. Any individual whose license or authority to practice derives from the

provisions of this article shall be prohibited from:

(a) prescribing or administering drugs as defined in this chapter as a treatment, therapy, or professional service in the practice of his or her profession; or

(b) using invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For purposes of this subdivision, "invasive procedure" means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedure includes surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy.

§8408. Hospital privileges.

Nothing herein contained shall be deemed to authorize, grant, or extend hospital privileges to individuals licensed under this article.

§8409. Limited permits.

The following requirements for a limited permit shall apply to all professions licensed pursuant to this article:

1. The department may issue a limited permit to an applicant who meets all qualifications for licensure, except the examination and/or experience requirements, in accordance with regulations promulgated therefor.

2. Limited permits shall be for one year, except that limited permits for mental health counseling shall be for two years; such limited permits may be renewed, at the discretion of the department, for one additional year.

3. The fee for each limited permit and for each renewal shall be seventy dollars.

§8410. Exemptions.

Nothing contained in this article shall be construed to:

1. Apply to the practice, conduct, activities, services or use of any title by any person licensed or otherwise authorized to practice medicine within the state pursuant to article one hundred thirty-one of this title or by any person registered to perform services as a physician assistant within the state pursuant to article one hundred thirty-one-B of this title or by any person licensed or otherwise authorized to practice psychology within this state pursuant to article one hundred fifty-three of this title or by any person licensed or

otherwise authorized to practice social work within this state pursuant to article one hundred fifty-four of this title, or by any person licensed or otherwise authorized to practice nursing as a registered professional nurse or nurse practitioner within this state pursuant to article one hundred thirty-nine of this title; provided, however, that no physician, physician's assistant, registered professional nurse, nurse practitioner, psychologist, licensed master social worker, or licensed clinical social worker may use the titles "licensed mental health counselor", "licensed marriage and family therapist", "licensed creative arts therapist", or "licensed psychoanalyst", unless licensed under this article.

2. Prohibit or limit any individual who is credentialed under any law, including attorneys, rape crisis counselors, certified alcoholism counselors and certified substance abuse counselors from providing mental health services within their respective established authorities.

3. Prohibit or limit the practice of a profession licensed pursuant to this article by a student, intern or resident in, and as part of, a supervised educational program in an institution approved by the department.

4. Prohibit or limit the provision of pastoral counseling services by any member of the clergy or Christian Science practitioner, within the context of his or her ministerial charge or obligation.

5. Prohibit or limit individuals, churches, schools, teachers, organizations, or not-for-profit businesses, from providing instruction, advice, support, encouragement, or information to individuals, families, and relational groups.

6. Prohibit or limit an occupational therapist from performing work consistent with article one hundred fifty-six of this title.

§8411. Special provisions.

1. This section shall apply to all professions licensed pursuant to this article, unless otherwise provided.

2. Any nonexempt person practicing a profession to be licensed pursuant to this article shall apply for a license of said profession within one year of the effective date of the specified profession.

(a) If such person does not meet the requirements for a license established within this article, such person may meet alternative criteria determined by

the department to be the substantial equivalent of such criteria.

(b) If such person meets the requirements for a license established within this article, except for examination, and has been certified or registered by a national certifying or registering body having certification or registration standards acceptable to the commissioner, the department shall license without examination.

(c) If such person meets the requirements for a license established within this article, except for examination, and there exists no national certifying or registering body having certification or registration standards acceptable to the commissioner, the department shall license without examination if the applicant submits evidence satisfactory to the department of having been engaged in the practice of the specified profession for at least five of the immediately preceding eight years.

3. Any person licensed pursuant to this article may use accepted classifications of signs, symptoms, dysfunctions and disorders, as approved in accordance with regulations promulgated by the department, in the practice of such licensed profession.

Note: Sunset provision for individuals employed by certain programs

Section 17-a of chapter 676 of the Laws of 2002, as amended by section 1 of chapter 419 of the Laws of 2003, provides: "Nothing in this act shall prohibit or limit the activities or services on the part of any person in the employ of a program or service operated, regulated, funded, or approved by the department of mental hygiene or the office of children and family services, or a local government unit as that term is defined in article 41 of the mental hygiene law or a social services district as defined in section 61 of the social services law, provided, however, this section shall not authorize the use of any title authorized pursuant to article 153 or 163 of the education law, except as otherwise provided by such articles, except that this section shall be deemed repealed on January 1, 2010."

LAWS OF NEW YORK, 2006
CHAPTER 130

AN ACT to amend chapter 676 of the laws of 2002 amending the education law relating to defining the practice of psychology; amending the education law and the social services law relating to licensing mental health practitioners; and amending the business corporation law, the limited liability company law and the partnership law relating to the practices of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis, in relation to the effectiveness of such chapter

Became a law July 5, 2006, with the approval of the Governor.

Passed by a majority vote, three-fifths being present.

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

Section 1. Section 19 of chapter 676 of the laws of 2002 amending the education law relating to defining the practice of psychology; amending the education law and the social services law relating to licensing mental health practitioners; and amending the business corporation law, the limited liability company law and the partnership law relating to the practices of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis, as amended by chapter 210 of the laws of 2004, is amended to read as follows:

§ 19. This act shall take effect immediately; provided that:

1. Sections one through six and section ten of this act shall take effect September 1, 2003; provided, however, that the commissioner of education and the board of regents are authorized to promulgate such rules and regulations as may be necessary for the timely implementation of sections one through six and section ten of this act; and

2. Sections seven, eight and nine and sections eleven through eighteen of this act shall take effect January 1, 2005; provided that the department of education is authorized to promulgate any and all rules and regulations and take any other measures necessary to implement sections seven, eight and nine and sections eleven through eighteen of this act on or before their effective date, including but not limited to the appointment of the state board for mental health practitioners, the acceptance and processing of applications for licensure, and the issuance of licenses; provided further that the provisions of article 163 of the education law requiring a license or limited permit to practice under such article shall not be enforced until January 1, 2006; **provided**

further, however, that the provisions of such article 163 requiring a license or limited permit to practice under such article shall not be enforced until January 1, 2007 with respect to any individual who applied for a license pursuant to the provisions of subdivision 2 of section 8411 of the education law, unless such individual has otherwise been denied a license thereunder.

§ 2. This act shall take effect immediately and shall be deemed to have been in full force and effect on and after January 1, 2006.

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