

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 8802, 8804, 8805, and 8807 of the Education Law and Chapter 818 of the Laws of 2021 and Chapter 641 of the Laws of 2022.

1. Section 52.44 of the Regulations of the Commissioner of Education is REPEALED.

2. Section 79-17.1 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-17.1 is added to read as follows:

79-17.1 Professional study for licensed behavior analysts

(a) As used in this section, *acceptable credentialing organization* shall mean an organization accepted by the department as a reliable authority for the purpose of establishing standards for the practice of applied behavior analysis, as that profession is defined in Education Law, and applying its criteria in a fair, consistent, and nondiscriminatory manner.

(b) To meet the professional education requirements for licensure, the applicant shall present satisfactory evidence of:

(1) holding a master's or higher degree awarded upon successful completion of a program in applied behavior analysis leading to a master's or higher degree that is:

(i) registered by the department as leading to licensure as a licensed behavior analyst;

(ii) accredited, recognized, or verified by a credentialing organization acceptable to the department; or

(iii) determined by the department to be the equivalent of such a registered, accredited, recognized, or verified program that prepares the applicant to practice as a licensed behavior analyst; or

(2) both:

(a) holding a master's or higher degree awarded upon successful completion of a program in a related field acceptable to the department and registered by the department, or its substantial equivalent as determined by the department; and

(b) completing a credit bearing graduate-level program in applied behavior analysis that is registered by the department as leading to licensure or accredited, recognized, or verified by a credentialing organization acceptable to the department, or determined by the department to be substantially equivalent to such a registered, accredited, recognized, or verified program. Such equivalent program shall be recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a licensed behavior analyst and must be designed and conducted by the degree-granting institution to prepare graduates to practice professional applied behavior analysis independently.

3. Section 79-17.2 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-17.2 is added to read as follows:

79-17.2 Experience requirement for licensed behavior analysts

(a) For licensure, an applicant shall present evidence of supervised experience in the practice of applied behavior analysis acceptable to the department. The number of

acceptable hours shall meet the requirements of a credentialing organization acceptable to the department.

(b) Content. The content shall meet the requirements of a credentialing organization acceptable to the department.

(c) Setting. Experience completed in New York shall be completed in a setting which is legally authorized to provide services that constitute the practice of applied behavior analysis, as defined in section 8802 of the Education Law.

(d) Supervision.

(1) Experience completed in New York shall be under the supervision of a licensed behavior analyst registered to practice in this state.

(2) The supervisor shall be the owner of, be employed by, or be retained by the entity providing the experience opportunities to the applicant who is gaining experience for licensure.

(3) In order to prevent a potential conflict of interest, the supervisor shall not be a member of the applicant's family or an individual who has a close personal relationship with the applicant and/or his or her family and may not be paid by the applicant.

(4) The supervisor shall be responsible for the assessment and treatment of each patient seen under supervision and shall not be employed or compensated by the applicant.

(5) Experience completed in another jurisdiction must be under the supervision of a qualified supervisor, as defined in that jurisdiction, in a setting authorized to provide services that constitute the practice of applied behavior analysis.

(6) Supervision shall be individual or group supervision of a duration and frequency acceptable to the department or a credentialing organization acceptable to the department. Supervision may utilize technology acceptable to the Department, including secure video technology.

4. Section 79-17.3 of the Regulations of the Commissioner of Education is amended to read as follows:

79-17.3 Licensing examinations for licensed behavior analysts

(a) The licensing examination shall consist of an examination designed to test knowledge related to all areas of applied behavior analysis.

(b) The department may accept scores [satisfactory to the State Board for Applied Behavior Analysis] on an examination acceptable to [the State Board for Applied Behavior Analysis and] the department, or an examination determined by the department to be comparable in content, as meeting the requirement for passing the licensing examination.

(c) The applicant shall pass the examination with a [converted score of at least 75, as determined by the State Board for Applied Behavior Analysis] score acceptable to the department.

5. The title of section 79-17.5 of the Regulations of the Commissioner of Education is amended to read as follows:

79-17.5 [Special provisions] Exemptions

6. Section 79-17.5 of the Regulations of the Commissioner of Education is amended by adding subdivision (i) to read as follows:

(i) Nothing in this Subpart 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.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

7. The Regulations of the Commissioner of Education is amended by adding a new section 79-17.6 to read as follows:

79-17.6. Special provisions

As specified in section 8805(1) of the Education Law, an individual who meets the requirements for a license as a licensed behavior analyst, pursuant to section 8804(2) of the Education law, except for examination, experience and education, and who is certified or registered by a national certifying body having certification or registration standards acceptable to the commissioner, may be licensed without meeting additional requirements as to examination, experience and education. Provided, however, that such individual must submit an application for licensure and the required fee for licensure and initial registration to the department, and must be of good moral character, as determined by the department.

8. Section 52.45 of the Regulations of the Commissioner of Education is REPEALED.

9. Section 79-18.1 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-18.1 is added to read as follows:

79-18.1 Professional study for certified behavior analyst assistant

(a) As used in this section, *acceptable credentialing organization* shall mean an organization accepted by the department as a reliable authority for the purpose of establishing standards for the practice of applied behavior analysis, as that profession is defined in Education Law, and applying its criteria in a fair, consistent, and nondiscriminatory manner.

(b) To meet the professional education requirements for certification as a certified behavior analyst assistant, the applicant shall present satisfactory evidence of:

(1) holding a bachelor's or higher degree awarded upon successful completion of a program in applied behavior analysis leading to a bachelor's or higher degree that is:

(i) registered by the department as leading to certification as a certified behavior analyst assistant;

(ii) accredited, recognized, or verified by a credentialing organization acceptable to the department; or

(iii) determined by the department to be the equivalent of such a registered, accredited, recognized, or verified program that prepares the applicant for practice as a certified behavior analyst assistant; or

(2) both:

(a) holding a bachelor's or higher degree awarded upon successful completion of a bachelor's or higher degree program in a related field acceptable to the department and registered by the department, or its substantial equivalent as determined by the department; and

(b) completing a credit bearing certificate program in applied behavior analysis that is registered by the department as leading to certification or accredited, recognized, or verified by a credentialing organization acceptable to the department, or determined by the department to be substantially equivalent to such a registered, accredited, recognized, or verified program. Such equivalent program shall be recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a certified behavior

analyst assistant and must be designed and conducted by the degree-granting institution to prepare graduates to practice as an applied behavior analyst assistant.

10. Section 79-18.2 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-18.2 is added to read as follows:

79-18.2 Experience requirement for certified behavior analyst assistant

(a) For licensure, an applicant shall present evidence of supervised experience in the practice of applied behavior analysis acceptable to a credentialing organization having certification or registration standards acceptable to the department for practice as a certified behavior analyst assistant.

(b) Content. The content shall meet the requirements of a credentialing organization acceptable to the department.

(c) Setting. Experience completed in New York shall be completed in a setting which is legally authorized to provide services that constitute the practice of applied behavior analysis, as defined in section 8802 of the Education Law.

(d) Supervision.

(1) Experience completed in New York shall be under the supervision of a licensed behavior analyst registered to practice in this state.

(2) The supervisor shall be the owner of, be employed by, or be retained by the entity providing the experience opportunities to the applicant who is gaining experience for certification.

(3) In order to prevent a potential conflict of interest, the supervisor shall not be a member of the applicant's family or an individual who has a close personal relationship with the applicant and/or his or her family and may not be paid by the applicant.

(4) The supervisor shall be responsible for the assessment and treatment of each patient seen under supervision and shall not be employed or compensated by the applicant.

(5) Experience completed in another jurisdiction must be under the supervision of a qualified supervisor, as defined in that jurisdiction, in a setting authorized to provide services that constitute the practice of applied behavior analysis, as defined in section 8802 of the Education Law.

(6) Supervision shall be individual or group supervision of a duration and frequency acceptable to the department or a credentialing organization acceptable to the department. Supervision may utilize technology acceptable to the department, including secure video technology.

11. Section 79-18.3 of the Regulations of the Commissioner of Education is amended to read as follows:

79-18.3 Licensing examination for certified behavior analyst assistant

(a) The licensing examination shall consist of an examination designed to test knowledge related to all areas of applied behavior analysis.

(b) The department may accept scores [satisfactory to the State Board for Applied Behavior Analysis] on an examination acceptable to [the State Board for Applied Behavior Analysis and]the department, or an examination determined by the department to be comparable in content, as meeting the requirement for passing the licensing examination.

[(c) The applicant shall pass the examination with a converted score of at least 75, as determined by the State Board for Applied Behavior Analysis.]

12. The title of Section 79-18.5 of the Regulations of the Commissioner of Education is amended to read as follows:

79-18.5 [Special provisions] Exemptions

13. Section 79-18.5 of the Regulations of the Commissioner of Education is amended by adding a new subdivision (i) to read as follows:

(i) Nothing in this Subpart 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.

(1) 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.

(2) 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.

(3) 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.

(4) 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.

14. The Regulations of the Commissioner of Education are amended by adding a new section 79-18.6 to read as follows:

79-18.6. Special provisions

As specified in section 8805(1) of the Education Law, an individual who meets the requirements for certification as a certified behavior analyst assistant, pursuant to section 8804(1) of the Education Law, except for examination, experience and education, and who is certified or registered by a national certifying body having certification or registration standards acceptable to the commissioner, may be certified, without meeting additional requirements as to examination, experience, and education. Provided, however, that such individual must submit an application for certification and the required fee for licensure and initial registration to the department, and must be of good moral character, as determined by the department.

15. The Rules of the Board of Regents is amended by adding a new section 29.20 to read as follows:

§ 29.20. Special provisions for the applied behavior analysis professions

(a) Unprofessional conduct in the practice of licensed behavior analyst and certified behavior analyst assistant shall include conduct prohibited by sections 29.1 and

29.2 of this Part and, in accordance with section 8802 (3) and (4) of the Education Law, shall also include:

(1) Prescribing or administering drugs as defined in the Education Law or as a treatment, therapy, or professional service in the practice of his or her profession;

(2) 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, but is not limited to, surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy; or

(3) Diagnosis of a disorder or condition for which applied behavior analysis may be appropriate or prescribing or ordering applied behavior analysis for a particular individual.

(b) In accordance with section 8801(1) of the Education Law, for licensed behavior analysts providing services pursuant to a prescription or order, unprofessional conduct shall also include failing to provide a report at least annually regarding the status of the individual served to the licensed person who prescribed or ordered such service, or more frequently, if needed, in order to report significant changes in the condition of the individual.