

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 8401, 8401-a, 8402, 8403, 8405, 8409, 8410 of the Education Law and Chapter 230 of the Laws of 2022

1. Section 79-9.4 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 79-9.4 Limited permits for licensure and limited diagnostic permits.

As authorized by section 8409 of the Education Law, the department may issue a limited permit for licensure or a limited diagnostic permit to practice mental health counseling in accordance with the requirements of this section, to allow an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure or while meeting the experience for the diagnostic privilege pursuant to section 8401-a of the Education Law.

(a) Limited permits for licensure.

[(a)](1) An applicant for a limited permit to practice mental health counseling shall:

[(1)](i) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

[(2)](ii) meet all requirements for licensure as a mental health counselor, including but not limited to the moral character and education requirements, except the examination and/or experience requirements; and

[(3)](iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-9.3 of this Subpart.

[(b)](2) In accordance with the requirements of section 79-9.3 of this Subpart, the limited permit in mental health counseling shall be issued for specific employment setting(s), acceptable to the department and the permit shall identify a qualified supervisor acceptable to the department.

[(1)](i) The supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision.

[(2)](ii) No supervisor shall supervise more than five permit holders at one time.

[(c)](3) The limited permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for no more than two additional 12-month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement, and provided further that the time authorized by such limited permit and subsequent extensions shall not exceed 48 months total.

(b) Limited diagnostic permits.

(1) An applicant for a limited diagnostic permit to practice mental health counseling under supervision while gaining experience for the diagnostic privilege pursuant to section 8401-a of the Education Law shall:

(i) file an application for a limited diagnostic permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(ii) meet all the requirements for the mental health counselor diagnostic privilege prescribed in section 8401-a of the Education Law, including, but not limited to, licensure and registration in New York State as a mental health counselor except for the education and/or experience requirements required for the diagnostic privilege; and

(iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79.9-6 of this Subpart.

(2) In accordance with the requirements of section 79-9.6 of this Subpart, the limited diagnostic permit in mental health counseling shall be issued for specific employment setting(s), acceptable to the department and shall identify a qualified supervisor acceptable to the department.

(i) The supervisor shall be responsible for appropriate oversight of all services provided by a limited diagnostic permit holder under his or her general supervision.

(ii) No supervisor shall supervise more than five limited permit holders of any type at one time.

(3) The limited diagnostic permit in mental health counseling shall be valid for a period of not more than 24 months, provided that the limited diagnostic permit may be extended for no more than two additional 12 month periods at the discretion of the department if the department determines that the limited diagnostic permit holder has made good faith efforts to successfully complete the education and/or experience requirements but has not completed such education and/or experience requirements, or has other good cause, as determined by the department, for not completing the education and/or experience requirements, and provided further that the time authorized

by such limited diagnostic permit and subsequent extensions shall not extend 48 months in total.

2. Section 79-9.6 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-9.6 is added to read as follows:

79-9.6 Diagnostic privilege

(a) Definitions. As used in this section:

(1) "Diagnosis" means the process of distinguishing, beyond a general assessment, between similar mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities within a psychosocial framework on the basis of their similar and unique characteristics consistent with accepted classification systems.

(2) "Development of assessment-based treatment plans" means the development of an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of the client, to address mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities.

(3) "General supervision" means that a qualified supervisor shall be available for consultation, diagnosis and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances.

(4) "Face-to-face supervision" means in-person supervision provided, however, that it may also be satisfied by utilizing technology acceptable to the department, including secure video-conferencing to protect confidentiality.

(b) General provisions. As authorized by subdivision (11) of section 8410 of the Education Law, effective June 24, 2022, a mental health counselor licensed and registered pursuant to Article 163 of the Education Law, may engage in diagnosis and the development of assessment-based treatment plans in accordance with the provisions of this section.

(c) Acceptable setting. The experience shall be completed in a setting acceptable to the department, as described in subdivision (d) of section 79-9.3 of this Subpart.

(d) Supervision of experience. The experience shall be supervised in accordance with the requirements of this subdivision:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. The supervisor shall provide an average of one hour per week or two hours every other week of face-to-face individual or group supervision wherein such supervisor shall:

(i) review the applicant's diagnosis and treatment of each client under his or her general supervision; and

(ii) provide oversight, guidance and direction to the applicant in developing skills in diagnosis, psychotherapy and assessment-based treatment planning.

(2) The supervisor shall be authorized to diagnose, provide psychotherapy and assessment-based treatment plans and shall be licensed and registered in New York State to practice as:

(i) a licensed clinical social worker licensed under Article 154 of the Education Law or the equivalent, as determined by the department; or

(ii) a psychologist licensed under Article 153 of the Education Law who was educated and trained in psychotherapy through the completion of a program in psychology registered pursuant to Part 52 of this Title or a program in psychology accredited by the American Psychological Association; or

(iii) a physician licensed under Article 131 of the Education Law who, at the time of the supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department; or

(iv) after June 24, 2022, a mental health counselor licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a of the Education Law or the equivalent, as determined by the department.

3. Section 79-10.4 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 79-10.4 Limited permits for licensure and limited diagnostic permits.

As authorized by section 8409 of the Education Law, the department may issue a limited permit for licensure or a limited diagnostic permit to practice marriage and family therapy in accordance with the requirements of this section, to allow an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure or while meeting the experience for the diagnostic privilege pursuant to section 8401-a of the Education Law.

(a) Limited permits for licensure

[(a)](1) An applicant for a limited permit to practice marriage and family therapy shall:

[(1)](i) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

[(2)](ii) meet all requirements for licensure as a marriage and family therapist, including but not limited to the moral character and education requirements, except the examination and/or experience requirements; and

[(3)](iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-10.3 of this Subpart.

[(b)](2) In accordance with the requirements of section 79-10.3 of this Subpart, the limited permit in marriage and family therapy shall be issued for specific employment setting(s), acceptable to the department and the permit shall identify a qualified supervisor, acceptable to the department.

[(1)](i) The supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision.

[(2)](ii) No supervisor shall supervise more than five permit holders at one time.

[(c)](3) The limited permit in marriage and family therapy shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for no more than two additional 12-month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination

and/or experience requirement, and provided further that the time authorized by such limited permit and subsequent extensions shall not exceed 48 months total.

(b) Limited diagnostic permits

(1) An applicant for a limited diagnostic permit to practice marriage and family therapy under supervision while gaining experience for the diagnostic privilege pursuant to section 8401-a of the Education Law shall:

(i) file an application for a limited diagnostic permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(ii) meet all the requirements for the marriage and family therapist diagnostic privilege prescribed in section 8401-a of the Education Law, including, but not limited to, licensure and registration in New York State as a marriage and family therapist, except for the education and/or experience requirements required for the diagnostic privilege;
and

(iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79.10-6 of this Subpart.

(2) In accordance with the requirements of section 79-10.6 of this Subpart, the limited diagnostic permit in marriage and family therapy shall be issued for specific employment setting(s), acceptable to the department and shall identify a qualified supervisor acceptable to the department.

(i) The supervisor shall be responsible for appropriate oversight of all services provided by a limited diagnostic permit holder under his or her general supervision.

(ii) No supervisor shall supervise more than five limited permit holders of any type at one time.

(3) The limited diagnostic permit in marriage and family therapy shall be valid for a period of not more than 24 months, provided that the limited diagnostic permit may be extended for no more than two additional 12 month periods at the discretion of the department if the department determines that the limited diagnostic permit holder has made good faith efforts to successfully complete the education and/or experience requirements but has not completed such education and/or experience requirement, or has other good cause as determined by the department, for not completing the education and/or experience requirements, and provided further that the time authorized by such limited diagnostic permit and subsequent extensions shall not extend 48 months in total.

4. Section 79-10.6 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-10.6 is added to read as follows:

79-10.6 Diagnostic privilege

(a) Definitions. As used in this section:

(1) "Diagnosis" means the process of distinguishing, beyond a general assessment, between similar mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities within a psychosocial framework on the basis of their similar and unique characteristics consistent with accepted classification systems.

(2) "Development of assessment-based treatment plans" means the development of an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of the client, to address mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities.

(3) “General supervision” means that a qualified supervisor shall be available for consultation, diagnosis and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances.

(4) “Face-to-face supervision” means in-person supervision provided, however, that it may also be satisfied by utilizing technology acceptable to the department, including secure video-conferencing to protect confidentiality.

(b) General provisions. As authorized by subdivision (11) of section 8410 of the Education Law, effective June 24, 2022, a marriage and family therapist licensed and registered pursuant to Article 163 of the Education Law may engage in diagnosis and the development of assessment-based treatment plans in accordance with the provisions of this section.

(c) Acceptable setting. The experience shall be completed in a setting acceptable to the department, as described in subdivision (d) of section 79-10.3 of this Subpart.

(d) Supervision of experience. The experience shall be supervised in accordance with the requirements of this subdivision:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. The supervisor shall provide an average of one hour per week or two hours every other week of face-to-face individual or group supervision wherein the supervisor shall:

(i) review the applicant’s diagnosis and treatment of each client under his or her general supervision; and

(ii) provide oversight, guidance and direction to the applicant in developing skills in diagnosis, psychotherapy and assessment-based treatment planning.

(2) The supervisor shall be authorized to diagnose, provide psychotherapy and assessment-based treatment plans and shall be licensed and registered in New York State to practice as :

(i) a licensed clinical social worker under Article 154 of the Education Law or the equivalent as determined by the department; or

(ii) a psychologist licensed under Article 153 of the Education Law who was educated and trained in psychotherapy through the completion of a program in psychology registered pursuant to Part 52 of this Title or a program in psychology accredited by the American Psychological Association; or

(iii) a physician licensed under Article 131 of the Education Law who, at the time of the supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department; or

(iv) after June 24, 2022, a marriage and family therapist licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a Education Law or the equivalent as determined by the department.

5. Section 79-12.4 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 79-12.4 Limited permits for licensure and limited diagnostic permits.

As authorized by section 8409 of the Education Law, the department may issue a limited permit for licensure or a limited diagnostic permit to practice psychoanalysis in accordance with the requirements of this section, to allow an applicant to practice under supervision while meeting the experience and/or examination requirements for licensure or while meeting the experience for the diagnostic privilege pursuant to section 8401-a of the Education Law.

(a) Limited permits for licensure

[(a)](1) An applicant for a limited permit to practice psychoanalysis shall:

[(1)](i) file an application for a limited permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

[(2)](ii) meet all requirements for licensure as a psychoanalyst, including but not limited to the moral character and education requirements, except the examination and/or experience requirements; and

[(3)](iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79-12.3 of this Subpart.

[(b)](2) In accordance with the requirements of section 79-12.3 of this Subpart, the limited permit in psychoanalysis shall be issued for specific employment setting(s), acceptable to the department and the permit shall identify a qualified supervisor, acceptable to the department.

[(1)](i) The supervisor shall be responsible for appropriate oversight of all services provided by a permit holder under his or her general supervision.

[(2)](ii) No supervisor shall supervise more than five permit holders at one time.

[(c)](3) The limited permit in psychoanalysis shall be valid for a period of not more than 24 months, provided that the limited permit may be extended for no more than two additional 12-month periods at the discretion of the department if the department determines that the permit holder has made good faith efforts to successfully complete the examination and/or experience requirements but has not passed the licensing examination or completed the experience requirement, or has other good cause as determined by the department for not completing the examination and/or experience requirement, and provided further that the time authorized by such limited permit and subsequent extensions shall not exceed 48 months total.

(b) Limited diagnostic permits

(1) An applicant for a limited diagnostic permit to psychoanalysis under supervision while gaining experience for the diagnostic privilege pursuant to section 8401-a of the Education Law shall:

(i) file an application for a limited diagnostic permit with the department and pay the application fee, as prescribed in section 8409(3) of the Education Law;

(ii) meet all the requirements for the psychoanalyst diagnostic privilege prescribed in section 8401-a of the Education Law, including, but not limited to, licensure and registration in New York State as a psychoanalyst, except for the education and/or experience requirements required for the diagnostic privilege; and

(iii) be under the supervision of a supervisor acceptable to the department in accordance with the requirements of section 79.12-6 of this Subpart.

(2) In accordance with the requirements of section 79-12.6 of this Subpart, the limited diagnostic permit in psychoanalysis shall be issued for specific employment

setting(s), acceptable to the department and shall identify a qualified supervisor acceptable to the department.

(i) The supervisor shall be responsible for appropriate oversight of all services provided by a limited diagnostic permit holder under his or her general supervision.

(ii) No supervisor shall supervise more than five limited permit holders of any type at one time.

(3) The limited diagnostic permit in psychoanalysis shall be valid for a period of not more than 24 months, provided that the limited diagnostic permit may be extended for no more than two additional 12 month periods at the discretion of the department if the department determines that the limited diagnostic permit holder has made good faith efforts to successfully complete the education and/or experience requirements but has not completed such education and/or experience requirement, or has other good cause as determined by the department, for not completing the education and/or experience requirements, and provided further that the time authorized by such limited diagnostic permit and subsequent extensions shall not extend 48 months in total.

6. Section 79-12.6 of the Regulations of the Commissioner of Education is REPEALED and a new section 79-12.6 is added to read as follows:

79-12.6 Diagnostic privilege

(a) Definitions. As used in this section:

(1) "Diagnosis" means the process of distinguishing, beyond a general assessment, between similar mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities within a psychosocial framework on

the basis of their similar and unique characteristics consistent with accepted classification systems.

(2) “Development of assessment-based treatment plans” means the development of an integrated plan of prioritized interventions, that is based on the diagnosis and psychosocial assessment of the client, to address mental, emotional, behavioral, developmental, and addictive disorders, impairments, and disabilities.

(3) “General supervision” means that a qualified supervisor shall be available for consultation, diagnosis and evaluation when professional services are being rendered by an applicant and the supervisor shall exercise the degree of supervision appropriate to the circumstances.

(4) “Face-to-face supervision” means in-person supervision provided, however, that it may also be satisfied by utilizing technology acceptable to the department, including secure video-conferencing to protect confidentiality.

(b) General provisions. As authorized by subdivision (11) of section 8410 of the Education Law, effective June 24, 2022, a psychoanalyst licensed and registered pursuant to Article 163 of the Education Law may engage in diagnosis and the development of assessment-based treatment plans in accordance with the provisions of this section.

(c) Acceptable setting. The experience shall be completed in a setting acceptable to the department, as described in subdivision (d) of section 79-12.3 of this Part.

(d) Supervision of experience. The experience shall be supervised in accordance with the requirements of this subdivision:

(1) An applicant shall obtain experience under this section while under the general supervision of a qualified supervisor. The supervisor shall provide an average of one hour per week or two hours every other week of face-to-face individual or group supervision wherein the supervisor of such experience shall:

(i) review the applicant's diagnosis and treatment of each client under his or her general supervision; and

(ii) provide oversight, guidance and direction to the applicant in developing skills in diagnosis, psychotherapy and assessment-based treatment planning.

(2) The supervisor shall be authorized to diagnose, provide psychotherapy and assessment-based treatment plans and shall be licensed and registered in New York State to practice as :

(i) a licensed clinical social worker licensed under Article 154 of the Education Law or the equivalent as determined by the department; or

(ii) a psychologist licensed under Article 153 of the Education Law who was educated and trained in psychotherapy through the completion of a program in psychology registered pursuant to Part 52 of this Title or a program in psychology accredited by the American Psychological Association; or

(iii) a physician licensed under Article 131 of the Education Law who, at the time of the supervision of the applicant, was a diplomate in psychiatry of the American Board of Psychiatry and Neurology, Inc. or had the equivalent training and experience as determined by the department; or

(iv) after June 24, 2022, a psychoanalyst licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a of the Education Law or the equivalent as determined by the department.