

Report to the Legislature and Executive
Pursuant to Chapters 130 & 132
of the Laws of 2010

Appendix F
Statements from Provider and
Professional Associations



May 29, 2012

David Hamilton, Ph.D., LMSW, ACSW
Executive Secretary
State Board for Social Work
State Board for Mental Health Practitioners
Office of the Professions
New York State Education Department
89 Washington Avenue, Albany, NY 12234-1000

Re: Response to SED Draft
Report

Dear Dr. Hamilton,

As per the recent solicitation for comments made by the Office of the Professions related to the *Draft Report to the Legislature and Executive*, NASW-NYS and NYC Chapter offer the following comments.

The two Chapters agree with the overall position reflected in the draft report that public services utilize licensed professionals in accordance with existing statutes and that permanent exemptions be opposed.

The two Chapters find the report to be, for the most part, consistent with many of our earlier offered recommendations and interpretations, specifically:

- the Department's willingness to "provide further clarification of terms and functions in the law,"
- the recognition of the need to better define "appropriate roles for unlicensed individuals such as peer counselors, mental health therapy aides and others whom function as part of a multidisciplinary team, but do not make professional determinations,"
- the acknowledgment that a "CASAC trainee may complete supervised experience, in settings defined by OASAS in law and regulations, to meet the requirements for the credential...". However, any expansion of credentials would require legislative action,

- the opposition to permanent broad based exemptions allowing unlicensed persons to continue to provide services restricted to licensed individuals,
- and the need to update civil service titles to reflect the scopes of practice defined and supervisory requirements defined in Education Law.

The Chapters also agree with the Department's assertion regarding the broad based support for the development of alternative pathways to licensure for MSWs who do not have a license. We certainly understand the potential that a measure such as this could provide in alleviating any shortage of licensed professionals. However, we share the concern that "the criteria must be sufficient to ensure individuals licensed under such a pathway meet requirements that are equivalent to those of licensure by examination." As such, we contend this topic should fall under the category of *Areas in Need of Further Study* (pg 27) as there is a clear need to engage stakeholders in a careful examination and deliberation of the issues involved.

We appreciate the inclusion of mandatory continuing education requirements as an area in need of further study. Mandatory continuing education for social workers has been adopted in every state but New York. The Chapters contend it is essential that social workers engage in continuous education to keep current with emerging practice and treatment trends and as such, the Chapters recommend such discussions take place in the context of any contemplated statutory changes during the 2013 legislative session.

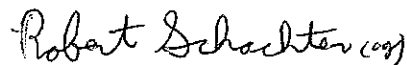
An area of significant concern to both the Chapters falls under the heading of *Clarification of Practice* whereby the Department recommends the inclusion of diagnosis in the scopes of practice for individuals licensed under Article 163. Classifying an alteration of this magnitude as merely a "clarification" is to ignore the history of careful deliberations by stakeholders *and* the legislature prior to enactment of the statute. After thoughtful consideration, legislative intent was clear in its determination that diagnosis should not be included in such scopes. While the Department asserts that the experience and educational "...requirements are similar to other mental health professions..." the Chapters contend that "similar" is not equivalent, specifically in relation to the depth of clinical experience an LCSW has accumulated upon licensure.

We thank you for the opportunity to provide input on these vital issues related to the practice of social work and we look forward to what appears will be considerable continued engagement in the near future. Should you have any questions, please do not hesitate to contact us.

Sincerely,



Reinaldo Cardona, MSSW, LCSW
Executive Director
NASW-NYS



Robert Schachter, DSW, ACSW
Executive Director
NASW-NYC

NEW YORK STATE SOCIETY FOR CLINICAL SOCIAL WORK

May 29, 2012

Response to the Draft Report to the Legislature and Executive Pursuant to Chapters 130 & 132 of the Laws of 2010

The New York State Society for Clinical Social Work, representing clinical social workers providing mental health services across New York State, offers the following comments on the above draft report.

We want to begin by congratulating Dr. David Hamilton and the State Education Department on an intelligent, readable draft report on the complex problem of providing safe and competent counseling and psychotherapy services to the public.

In the interest of maintaining a single tier of safe and proficient mental health services for the public, we would make the following suggestions:

- We strongly disagree with any permanent exemption for licensure.
- We strongly agree on the need for clarification of certain terms within the scopes of practice.

For Mental Health Practitioners (Article 163), we would like to note that there are major differences in the language of the four scopes of practice which suggests distinctive limitations on services which each of the four licenses can offer. Unlike the comprehensive scope of practice for the LCSW, no differentiations have been made for the differences between mental health practitioners. Compliance with physician consultation has not been addressed. Further, no specific course requirements in diagnosis, treatment, and special populations (including cultural distinctions) are required by the State in order to qualify for their licensing exams. Precedent has been set with the LCSW requirements for licensing.

We also recommend clarification of distinctions between services offered by the LMSW and the human services employee. Specifically, SW2: Activities that OMH listed as not requiring licensure. We recommend that discharge planning, often a complex arrangement requiring a biopsychosocial assessment of the individual and his resources be managed by a licensed professional.

We strongly recommend that OASAS include a licensed mental health professional in the intake/assessment process to safeguard that person suffering from dual-diagnostic illnesses be properly evaluated.

We cannot support a grandfathering provision until the criteria are specified. They must be sufficiently narrow to demonstrate adequate competence to provide mental health services.

- We would strongly support patient confidentiality laws passed for Article 163 providers.

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Thank you for this opportunity to participate in improving the mental health care of New York's mentally disabled population.

Marsha Wineburgh, DSW, LCSW

President, NYSSCSW

David Hamilton - Comments on Draft Report re: Chapters 130 and 132

From: "Richard Gallo " <rgallo@gallo-associates.com>
To: "David Hamilton" <DHAMILTO@MAIL.NYSED.GOV>
Date: 05/31/2012 4:07 PM
Subject: Comments on Draft Report re: Chapters 130 and 132
CC: "Kathleen Doyle" <kdoyle2@MAIL.NYSED.GOV>

David,

On behalf of the New York State Psychiatric Association, I am submitting the following brief comments on the Department's Draft Report to the Legislature and the Executive Pursuant to Chapters 130 and 132 of the Laws of 2010.

Our comments focus on the question of whether the scopes of practice of Article 163 licensed professionals, as they currently qualify to practice, should be expanded to include "diagnosis." The absence of the term "diagnose" in the practice definitions of the Article 163 professionals was neither an oversight on the part of the Legislature nor was it opposed by the proponents of the enabling legislation.

Practitioners licensed pursuant to Article 163 were expressly not authorized to "diagnose" because their level of education and post graduate clinical training was seen as being far less than that which is required of mental health professionals who are authorized by law in New York State to independently diagnose mental, nervous or emotional disorders and ailments; namely, physicians/psychiatrists, doctorate level clinical psychologists, licensed clinical social workers having successfully completed three years of supervised post graduate clinical training and psychiatric nurse practitioners in accordance with a written practice agreement with a psychiatrist.

In that regard the Legislature enacted paragraph 1. of Section 8407 which reads as follows:

§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.

In our opinion Section 8407 does not lend itself to the conclusion that " ... diagnosis is a function that could be appropriately provided by individuals licensed under Article 163..."

Richard

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May 31, 2012

Doug Lentivech, Esq.
Deputy Commissioner
Office of the Professions
New York State Education Department
89 Washington Avenue
Albany NY 12234

Dear Mr. Lentivech,

Thank you for forwarding your department's Draft Report to the Legislature and the Executive Pursuant to Chapters 130 & 132 of the Laws of 2010. We appreciate the opportunity to comment on the issues involved.

We have attached a letter from NYSPA dated December 20, 2011, commenting on the Exempt Agency Reports. NYSPA remains committed to the positions that were stated in that letter and continues to encourage that the exemptions to licensure end as planned in 2013. The exempt programs have had over a decade to insure that their clients are provided treatment by licensed providers, and many programs have successfully accomplished this goal. With respect to psychology specifically, there are over 12,000 licensed psychologists in New York State, plus scores of psychology interns and hundreds of doctoral level providers who are required to provide a year of post-doctoral service under supervision. In addition, there is no shortage of licensed mental health providers among the other disciplines.

We remain concerned about protecting the public and believe that an extension of the exemptions would needlessly allow the public to receive treatment from non-licensed providers when other clinicians who are duly licensed or authorized are available. Allowing this to continue discriminates against the public that receives these services and against licensed mental health providers. We are unaware of any situations in which this population, which includes many persons of low financial status, receives medical treatment from unlicensed physicians. There is no sufficient rationale for allowing them to receive behavioral treatment from unlicensed providers. As mentioned in the December 2011 letter, we do not want to prevent patients from obtaining needed services. If it is determined that the extension of any exemption is needed to maintain access to services, we strongly recommend making any such extensions be time-limited and include strengthened requirements for supervision by licensed psychologists. Furthermore, it should go without saying that NYSPA remains vigorously opposed to the creation of any additional permanent exemptions to licensure.

In reviewing the Draft Report we are concerned by some of the other "solutions" that have been suggested by the exempt agencies. As health care reform continues, with its reliance on the integration of physical and behavioral health, we strongly urge the Board of Regents to resist ideas that will dilute that professionalism and quality of the mental health workforce. While such ideas may seem expedient in the short run we strongly believe that lowering standards in behavioral health will ultimately prove costly in many ways. Accordingly:

NYSPA opposes "alternative pathways" to licensure. The public can be assured that licensed psychologists are well-schooled in diagnostic techniques and treatment interventions that are evidence-based and have successfully passed a licensing examination reflective of current standards of care. As previously mentioned, in psychology there is a cohort of doctoral level providers who are required in New York State (but not in all other states) to have a year of post-doctoral, supervised experience prior to licensure. These

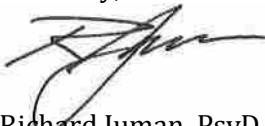
are generally young clinicians who have recently completed internships and are eager to enter the workforce. By contrast, we assume that many of the unlicensed providers that would be grandfathered in by alternative pathway have not been in an academic training situation in at least a decade. Providing an alternative pathway to licensure would make New York a state that is simultaneously maintaining obstacles against those young clinicians who have met the most stringent guidelines while creating a less stringent path to licensure for those who, for whatever reason, have not been able to fulfill the same requirements.

NYSPA is concerned about the “clarification of practice” that is discussed in the report and which could potentially allow Mental Health Counselors and other Article 163 providers to “diagnose” psychiatric illness. As you are aware, psychologists have highly specific training in both “diagnosis” and “treatment”, in part due to our expertise in psychological testing, which is reflected in our scope of practice. We are unclear as to how granting Article 163 providers the ability to diagnose will solve any of the issues presented by the expiration of the exemptions and believe that it should be considered carefully and in its own right, not rushed through at a convenient moment.

Similarly, we believe that the same degree of care must be exercised with respect to the consideration of the licensing of behavioral health practitioners. NYSPA appreciates the note of caution that is reflected in the draft report and would be very pleased to be part of such a discussion.

NYSPA appreciates the opportunity to comment on your report and would be happy to work collaboratively to make sure that all residents of New York State receive the best available mental health care.”

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Juman', written over a horizontal line.

Richard Juman, PsyD
NYSPA President

CC: NYSPA Executive Committee
David Hamilton, PhD, LMSW
Kathleen Doyle, PhD



December 20, 2011

Dr David Hamilton
State Board for Social Workers
Department of State, Division of Licensing Services
89 Washington Avenue
Albany, NY 12234

Dear Dr. Hamilton,

On behalf of the New York State Psychological Association (NYSPA), representing more than 3,000 psychologists and students of psychology across New York State (NYS), I am submitting comments on the practice of allowing non-licensed individuals to carry out duties that are protected under the Scope of Practice for Licensed Psychologists. We wish to thank the Office of Professions Division of Licensing Services for the opportunity to comment on the Exempt Agency Reports regarding the Temporary Exemption from Licensure under Chapters 130 and 132 of the Laws of 2010. For clarification we are not addressing the exemptions in the Psychology Scope of Practice Section 76-051.

NYSPA opposes this practice and recommends that the exemptions end as planned in 2013. We reference the Model Act for State Licensure of Psychology, American Psychological Association (APA), section J. 1. under Exemptions:

"The exemption should not be allowed if the individual engages in the direct delivery or supervision of psychological services to individuals or groups of individuals in any setting."
(2010, p. 10)

We are particularly concerned about protecting the public. Allowing non-licensed individuals to practice psychology under the NYS exemption is not in the best interest of the patients being served. While it is our understanding that these non-licensed individuals are supervised by licensed professionals, we are concerned about the format of the supervision and believe in some instances not enough is required to protect the patients who need and seek mental and behavioral health care. Unless the Office of Professions and the State Education Department (OP/SED) can prove otherwise, there is no reason that licensed psychologists, or psychology interns or psychology residents under the supervision of a licensed psychologist, cannot fill these roles.

NYSPA especially wants to go on record in opposition of a permanent exemption. Providing a permanent exemption to allow services by unlicensed persons to an underserved public will result in a lower standard of care and is not in the best interest of public health and safety. A permanent exemption does not take into consideration that health reform is projected to increase the number of individuals who will receive mental and behavioral health services in NYS. Doctoral trained and licensed psychologists bring a necessary skill set to health reform and are vital in delivery of collaborative care to these future populations.

In the state of New York there are more than 10,000 licensed psychologists available to provide services and treatment as outlined in the scope of practice. The individuals/organizations that have been granted exemption for now more than 10 years have had the opportunity to transition to qualified, licensed professionals. We note that one agency in particular has been hiring licensed psychologists and other licensed professionals in preparation for the system transformation. Those that have not met the requirements should not be granted any additional exemption. The patients who rely on these organizations to provide services deserve to have the confidence that their provider is qualified and has met the state standards to professionally care for their needs.

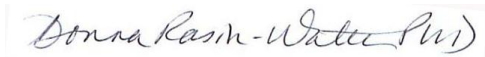
That being said, we do not want to prevent patients from obtaining needed services. If the department needs to go forward with exemptions, we strongly recommend that it remain limited and not be made into a permanent exemption. In addition we strongly recommend strengthening required supervision by licensed psychologists. This increased supervision will allow for a more efficient and effective transition to eliminating the exemption.

Finally, NYSPA would like to go on record as noting that the survey itself was presented in a cumbersome and complex manner, was very time consuming and thus not conducive to easy completion for professionals let alone consumers. As the department collects the information from the survey we hope this will be taken into consideration.

In summary, NYSPA will go on record as opposing the continued use of non-licensed professionals to carry out duties that are outlined in respective scopes of practice for licensed professionals. Further, NYSPA is strongly opposed to a permanent exemption as a solution. If further transition time is necessary so as to prevent an access issue for consumers, we suggest strengthening supervision requirements.

Again, we appreciate the time and attention to this matter from the Office of Professions and offer to work in collaboration toward a solution.

Sincerely,

A handwritten signature in cursive script that reads "Donna Rasin-Waters (PhD)". The signature is written in dark ink on a light-colored background.

Donna Rasin-Waters, PhD
NYSPA President

CC:
NYSPA Executive Committee
Dr Kathleen Doyle, Executive Secretary for the Board of Psychology

Attachment

American Psychological Association

Model Act for State Licensure of Psychologists

Adopted by Council as APA Policy 2/20/2010

As APA policy, the Model Act serves as a prototype for drafting state legislation regulating the practice of psychology. State legislatures are encouraged to use the language of this document and the policies that it espouses as the model for their own state licensure law. Inevitably each state law will reflect compromises and changes particular to that state, but the APA Model Act is meant to serve as a guide for those involved in the drafting process. State licensing boards must develop their own rules and regulations to supplement the legislation proposed here. This document also serves to educate legislatures about psychology training and practice and serves to synthesize APA policies that bear on the education, training, and practice of professional psychology.

This is the fifth set of guidelines for state legislation regulating the practice of psychology that has been developed by the American Psychological Association (APA). The first model for such regulation was developed and adopted as APA policy in 1955 (APA, 1955).

The 1955 guidelines stood for 12 years, during which the number of states enacting licensure legislation grew from 9 to 32. In 1967 the APA Committee on State Legislation (COSL) prepared the first revision of the guidelines. That revision was more comprehensive, provided more detailed guidance, and covered more issues relating to regulation of the practice of psychology, while reaffirming the basic concept found in the 1955 model (APA, 1967).

By 1977 all states and the District of Columbia had enacted licensure legislation. APA's Council of Representatives then determined that the model approved in 1967 was outdated and directed COSL to undertake a revision. However, in January 1979 the Council of Representatives failed to approve the revised model guidelines, leaving the 1967 guidelines to remain as APA policy. In 1984 the Council of Representatives directed the Board of Professional Affairs (BPA) to develop another revision of the existing 1967 model for the Council's consideration. BPA, in turn, directed its Committee on Professional Practice (COPP) to prepare it.

This document was approved by the Council of Representatives in February, 1987.

In 2006, at the recommendation of the Board of Professional Affairs and the Committee for the Advancement of Professional Practice, the APA Board of Directors and Council of Representatives funded a Task Force to undertake the revision of the 1987 model act. The existing model act did not reflect the developments in professional practice that had occurred over the preceding 20 years. Specific developments included some psychologists obtaining prescriptive authority, changes in the provision of industrial/organizational and consulting psychology that could make it desirable for those psychologists to be licensed, and changes in the recommended sequence of education and training for psychologists. The Task Force undertook this effort beginning with a comprehensive review of the 1987 document as well as relevant APA policies and other documents. Draft revisions were circulated for review and a 90-day public comment period ensued. Changes were made to the document based on commentary received. A second public comment period ensued and another review by governance groups followed by additional changes to the document occurred prior to the document being approved by Council in February 2010.

Each section of the proposed Model Act is introduced by commentary, the purpose of which is to explain the rationale for the proposed section that follows. To differentiate between the commentary and the proposed statutory language, the latter is *italicized*.

A. Declaration of Policy

This section declares that the intent of legislation for state licensure of psychologists is to ensure the practice of psychology in the public interest. The consumer should be assured that psychological services will be provided by

licensed and qualified professionals according to the provisions of this act. The public must also be protected from the consequences of unprofessional conduct by persons licensed to practice psychology.

The practice of psychology in (name of state) is hereby declared to affect the public health, safety, and welfare, and to be subject to regulation to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology.

B. Definitions

Definitions provide consistent interpretation throughout the Act without unnecessary repetition of terms. Thus “Board,” once defined in this section, can subsequently be cited with the same meaning as presented in the definition.

In defining “institution of higher education,” it is further recognized that many foreign institutions prepare psychologists for professional practice, and provision should be made to accommodate them in Board regulations.

Psychological services should be described adequately and specified in order to identify clearly the areas of psychological services, provided to individuals, groups of individuals, or organizations, that require qualified and sound professional psychology practice. There can be a legitimate use for technology-supported services, such as electronic or telephonic means. All such activities must operate according to appropriate APA Ethical guidelines and Board regulations.

1. “Board” means the (name of state) State Psychology Board.

2. “Institution of higher education” means any regionally accredited institution of higher education in the United States, including a professional school, that offers a full-time doctoral course of study in psychology that is acceptable to the Board. For Canadian universities, it means an institution of higher education that is provincially or territorially chartered.

3. “Practice of psychology” is defined as the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures, for the purposes of (a) preventing, eliminating, evaluating, assessing, or predicting symptomatic, maladaptive, or undesired behavior; (b) evaluating, assessing, and/or facilitating the enhancement of individual, group, and/or organizational effectiveness – including personal effectiveness, adaptive behavior, interpersonal relationships, work and life adjustment, health, and individual, group, and/or organizational performance, or (c) assisting in legal decision-making.

The practice of psychology includes, but is not limited to, (a) psychological testing and the evaluation or assessment of personal characteristics, such as intelligence; personality; cognitive, physical, and/or emotional abilities; skills; interests; aptitudes; and neuropsychological functioning; (b) counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and behavior analysis and therapy; (c) diagnosis, treatment, and management of mental and emotional disorder or disability, substance use disorders, disorders of habit or conduct, as well as of the psychological aspects of physical illness, accident, injury, or disability; (d) psychoeducational evaluation, therapy, and remediation; (e) consultation with physicians, other health care professionals, and patients regarding all available treatment options, including medication, with respect to provision of care for a specific patient or client; (f) provision of direct services to individuals and/or groups for the purpose of enhancing individual and thereby organizational effectiveness, using psychological principles, methods, and/or procedures to assess and evaluate individuals on personal characteristics for individual development and/or behavior change or for making decisions about the individual, such as selection; and (g) the supervision of any of the above. The practice of psychology shall be construed within the meaning of this definition without regard to whether payment is received for services rendered. (See Section G for Limitation of Practice and Maintaining and Expanding Competence and Section J for Exemptions.)

4. “Psychologist” means (a) any person licensed as a psychologist under this Act and (b) any general applied psychologist (see 5b below) whose practice areas are specifically exempted under this act, and includes a person representing himself or herself to be a psychologist if that person uses any title or description of services incorporating the words psychology, psychological, or psychologist, or if he or she uses any term that implies that

he or she possesses expert qualification in any area of psychology, or if that person offers to the public or renders to individuals or groups of individuals services defined as the practice of psychology in this Act. The title "psychologist" is also used by psychologists who are exempt from licensure as specified in Section J of this Act in their roles as teachers, researchers and/or general applied psychologists acting outside the licensed scope of practice.

5. "Applied psychologist" is one who provides services to individuals, groups, and/or organizations. Within this broad category there are two major groupings – those who provide health-related services to individuals and those who provide other services to individuals and/or services to organizations. Although licensure is generic, some of the Board's Rules and Regulations need to account for variations in relevant training, supervision, and practice.

a. "Health service provider" (HSP)

Psychologists are certified as health service providers if they are duly trained and experienced in the delivery of preventive, assessment, diagnostic, therapeutic intervention and management services relative to the psychological and physical health of consumers based on: 1) having completed scientific and professional training resulting in a doctoral degree in psychology; 2) having completed an internship and supervised experience in health care settings; and 3) having been licensed as psychologists at the independent practice level.

b. "General applied psychologist"

General applied psychologists provide psychological services outside of the health and mental health field and shall include: 1) the provision of direct services to individuals and groups, using psychological principles, methods, and/or procedures to assess and evaluate individuals on personal abilities and characteristics for individual development, behavior change, and/or for making decisions (e.g., selection, individual development, promotion, reassignment) about the individual, all for the purpose of enhancing individual and/or organizational effectiveness; and 2) the provision of services to organizations that are provided for the benefit of the organization and do not involve direct services to individuals, such as job analysis, attitude/opinion surveys, selection testing (group administration of standardized tests in which responses are mechanically scored and interpreted), selection validation studies, designing performance appraisal systems, training, organization design, advising management on human behavior in organizations, organizational assessment, diagnosis and intervention of organizational problems, and related services.

6. "Specialty" is a defined area of psychological practice which requires advanced knowledge and skills acquired through an organized sequence of education and training. The advanced knowledge and skills specific to a specialty are obtained subsequent to the acquisition of core scientific and professional foundations in psychology.

7. "Developed areas of practice" have all of the following characteristics:

- National recognition of the practice area by a national organization(s) whose purpose includes recognizing or representing and developing the practice area, by relevant divisions of the APA, or by involvement in similar umbrella organizations;
- An accumulated body of knowledge in the professional literature that provides a scientific basis for the practice area including empirical support for the effectiveness of the services provided;
- Representation by or in a national training council that is recognized, functional, and broadly accepted;
- Development and wide dissemination by the training council of doctoral educational and training guidelines consistent with the Accreditation Guidelines & Principles;
- Existence of the practice area in current education and training programs;
- Geographically dispersed psychology practitioners who identify with the practice area and provide such services.

8. "Emerging area of practice" is one that meets some but not all of the six requirements for a developed area of practice, or does not meet some of the requirements completely (e.g., there is some professional literature providing a scientific basis, but not an "accumulated body of knowledge" in that literature).

9. "Client" or "patient" is used to refer to the direct recipients of psychological services, which may include child, adolescent, adult, older adult, couple, family, group, organization, community, or any other individual. In many situations there are important and valid reasons for using such terms as consumer or person in place of client or

patient to describe the recipients of services. In some circumstances (e.g., an evaluation that is court-ordered, requested by an attorney, an agency, or other administrative body), the client may be the retaining party and not the examinee.

C. State Psychology Board

Legislation concerning the membership of the State Psychology Board should designate a sufficient number of members to accomplish the work of the Board, as well as make provisions for the appointment of public members. The appointing authority shall ensure that specialties in psychology are represented, as well as trainers and practitioners, both in health care and general applied psychology. A minimum of six psychologists plus one public member is recommended.

Public (consumer) members on boards is a recognition of the impact of consumerism on the current functioning of boards. A public member is recommended in order to ensure the representation of the public; that is, the recipient of psychological services. Members should be appointed at staggered times so that the entire group of members is not replaced at any one time.

There is hereby created the (name of state) State Psychology Board. The Board shall consist of minimally six licensed psychologists and one public member. Members should be representative of teaching, training, and the professional practice of psychology. Psychologist Board members shall be licensed to practice in this state. Each psychologist serving on the Board shall have a minimum of five years of post-licensure experience. Board members shall reflect a diversity of practice specialties, both in health care and other applications.

Board members shall be appointed who are free from conflicts of interest in performing the duties of the Board. A public member shall not be a psychologist, an applicant or former applicant for licensure as a psychologist, a member of another health profession, or a member of a household that includes a psychologist, or otherwise have conflicts of interest or the appearance of such conflicts with duties as Board members. Appointments to the Board shall be made by the duly constituted appointing authority in this state. The appointing authority in this state shall solicit nominations from psychological organizations and licensed psychologists in this state. The term of office shall be five years, with provision for reappointment for one additional term. Lengths of terms of Board members shall be staggered.

It is clear that the Board will need, from time to time, to adopt or delete rules and regulations to carry out the provisions of the Act that establish and enable the Board to operate. It is wise to have this authority clearly established within the Act.

In addition to the powers set forth elsewhere in this Act, the Board may adopt rules and regulations to carry out the provisions of this Act.

In general it is desirable for the Board to be self-supporting. Self-generated fees should be sufficient to cover all costs. This avoids the necessity of the Board's returning to the budgetary authority for approval each time fees must be increased in order for the Board to remain self-supporting. Boards should consider carefully the various elements of expense in establishing fees. Items such as overhead, examination costs, travel and per diem, disciplinary proceedings, and other expenses should be considered.

The Board shall, from time to time, establish reasonable fees for the issuance and renewal of licenses and its other services. Fees shall be set so as to defray the cost of administering the provisions of this Act, including applications, examinations, enforcement, and the cost of maintaining the Board.

It is important to have within the Act a statement that a member of the Board shall not be civilly liable for any act performed in good faith and within the scope of duties of the Board. It should be noted that such a statement does not pertain to any criminal charges brought against a member of the Board. Though individual members of the Board will not be held civilly liable, individuals may pursue legal action against the Board under any applicable state laws, such as, for example, under any administrative procedure act.

A member of the Board or any employee or agent of the Board shall not be held civilly liable for any act performed in good faith and within the scope of the duties of the Board.

D. Requirements for Licensure

There is a core of basic theory, principles, and accumulated knowledge that all professional psychologists should possess. Each practitioner must also master the specific skills and knowledge appropriate for the competent performance of psychological practice. The language of the model requires the Board to specify its criteria for acceptable professional education in psychology. In this regard, the Board will be guided by national standards.

All applicants for licensure must minimally be graduates of a regionally accredited institution of higher education, or a Canadian university that is provincially or territorially chartered, and must have completed a planned program of study which reflects an integration of the science and practice of psychology. A formal training program accredited by the American Psychological Association or Canadian Psychological Association is required. For areas of psychology where APA or CPA program accreditation does not exist, psychology programs must meet all the requirements listed below (D1).

The law recognizes that new doctoral programs may be developed in newly or already recognized specialties of professional psychology. In such instances, the law affords those programs an eight-year period in which to achieve accreditation or to meet the standards described in D1, during which the graduates of those programs may sit for licensure.

1. Educational requirements

The Act recognizes the doctorate as the minimum educational requirement for entry into professional practice as a psychologist.

Applicants for licensure shall possess a doctoral degree in psychology from a regionally accredited institution of higher education or from a Canadian university that is provincially or territorially chartered. The degree shall be obtained from a recognized program of graduate study in psychology as defined by the rules and regulations of the Board.

Applicants for licensure shall have completed a doctoral program in psychology that is accredited by the American Psychological Association (APA) or Canadian Psychological Association (CPA) or where APA or CPA program accreditation does not exist for that area of professional psychology, then the applicant must show that his or her doctoral program in psychology meets all of the following requirements:

- 1. Training in professional psychology is doctoral training offered in a regionally accredited institution of higher education. A regionally accredited institution is an institution with regional accreditation in the United States or an university that is provincially or territorially chartered in Canada.*
- 2. The program, wherever it may be administratively housed, must be clearly identified and labeled as a psychology program. Such a program must specify in pertinent institutional catalogues and brochures its intent to educate and train professional psychologists.*
- 3. The psychology program must stand as a recognizable, coherent organizational entity within the institution.*
- 4. There must be a clear authority and primary responsibility for the core and specialty areas whether or not the program cuts across administrative lines.*
- 5. The program must be an integrated, organized sequence of study.*
- 6. There must be an identifiable psychology faculty sufficient in size and breadth to carry out its responsibilities and a psychologist responsible for the program.*

7. The program must have an identifiable body of students who are matriculated in that program for a degree.

8. The program must include supervised practicum, internship, field or laboratory training appropriate to the individual's chosen area of practice of psychology.

9. The curriculum shall encompass a minimum of three academic years of full time graduate study and a minimum of one year's residency or the equivalent thereof at the educational institution granting the doctoral degree. The core program shall require every student to demonstrate competence in each of the following substantive areas. Some content areas may appropriately be taught by integrating content across the curriculum, or this requirement may be met through substantial instruction in each of these foundational areas, as demonstrated by evidence of an integrated curriculum or a minimum of three graduate semester hours, 4.5 or more graduate quarter hours (when an academic term is other than a semester, credit hours will be evaluated on the basis of fifteen hours of classroom instruction per semester hour), or the equivalent:

- a. scientific and professional ethics and standards;
- b. research design and methodology;
- c. statistics;
- d. psychometric theory;
- e. biological bases of behavior: such as physiological psychology, comparative psychology, neuropsychology, sensation and perception, physical ergonomics, or psychopharmacology;
- f. cognitive-affective bases of behavior: such as learning, thinking, motivation, emotion, memory, cognitive information processing, or social cognition;
- g. social bases of behavior: such as social psychology, group processes, organizational and systems theory; and
- h. individual differences: such as personality theory, human development, personnel psychology, or abnormal psychology.

10. All professional education programs in psychology shall include course requirements in developed practice areas/specialties.

11. The program must demonstrate that it provides training relevant to the development of competence to practice in a diverse and multicultural society.

When a new area of professional psychology is recognized as being a developed practice area and within the accreditation scope of the APA, doctoral programs within that area will be afforded a transition period of eight years from their first class of students to the time of their accreditation. During that transition period, graduates of such programs may sit for licensure examination whether or not the program has been accredited. The same principle applies as well to new doctoral programs in traditional practice areas previously recognized within the scope of APA accreditation.

Applicants trained in institutions outside the United States shall meet requirements established by the Board.

Psychologists trained in an area that falls outside the scope of APA accreditation (e.g., experimental, developmental, social) and who intend to practice in a traditional or developed practice area must complete a retraining program and/or appropriate supervised experience (e.g., internship in the developed practice area). Similarly, psychologists trained in HSP programs who intend to practice in general applied psychology non-exempt areas and psychologists trained in general applied psychology areas who intend to provide health services must first acquire the appropriate training and supervision.

2. Experience requirements

APA recommends that legislation requires the equivalent of two full-time years of sequential, organized, supervised, professional experience prior to obtaining the license. This training may be completed prior or subsequent to the granting of the doctoral degree. For applicants prepared for practice in the health services domain of psychology, one of those two years of supervised professional experience shall be a predoctoral internship which may be completed as a part-time intern over a two-year period provided that the total experience is the equivalent of one year of full-time experience. By seven years post adoption of these regulations, all licensure applicants prepared for

practice in the health services domain must minimally have completed an APA or CPA accredited (or equivalent) predoctoral internship. For applicants prepared for practice in the general applied (non-HSP) domain of psychology, whose graduate programs may not have formal internships, the option to obtain all supervision post doctorally should be available. In rules and regulations, the Board must define acceptable supervised experience at the predoctoral and postdoctoral levels as well as mechanisms for evaluation of this experience. Boards are encouraged to create definitions that are flexible and capture the variety of training and supervisory models that are appropriate for both HSP and GAP practice. Psychologists are required to limit their practice to their demonstrated areas of professional competence. Experience should be compatible with training.

To obtain licensure, applicants shall demonstrate that they have completed the equivalent of two full-time years of sequential, organized, supervised professional experience. For applicants prepared for practice in the health services domain of psychology, one of those two years of supervised professional experience shall be an APA or CPA accredited (or equivalent) predoctoral internship. For applicants prepared for practice in the general applied domain of psychology, whose graduate programs may not have formal internships, the option to obtain all supervision post doctorally should be available. The criteria for appropriate supervision shall be in accordance with regulations to be promulgated by the Board. Experience shall be compatible with the knowledge and skills acquired during formal doctoral and/or postdoctoral education in accordance with professional requirements and relevant to the intended area of practice. General Applied (non-HSP) Psychologist trainees may be supervised by an appropriate licensed psychologist outside the supervisee's place of employment so long as (a) the supervisee's employer engages the licensed supervisor to provide the required supervision; and (b) the supervisor assumes responsibility for the training of the supervisee. Applicants shall be required to show evidence of good character, e.g., that they have not been convicted of a criminal offense that bears directly on the fitness of the individual to be licensed.

3. Examinations

APA recommends that the Act specify the requirements for examination and the conditions under which the Board is authorized to waive examination. All examinations serve the purpose of verifying that a candidate for licensure has acquired a basic core of knowledge in the discipline of psychology and can apply that knowledge to the problems confronted in the practice of psychology within the applicant's area of practice as a health service provider or general applied psychologist. While written examinations typically evaluate the applicant's basic core of knowledge, any additional examinations such as oral examinations or work samples shall be representative of the applicant's area of practice. Boards should clearly specify the conditions under which the endorsement of another license will be granted.

The Board shall administer examinations to qualified applicants on at least an annual basis. The Board shall determine the subject matter and scope of the examination and shall require a written, and may require an oral, examination of each candidate for licensure. The written examination shall evaluate the basic core of knowledge in the discipline of psychology necessary to practice while any oral exams or work samples shall be representative of the applicant's area of practice as either a health service provider or general applied psychologist. The Board at its discretion, according to rules and regulations promulgated by the Board, may waive said examination of candidates for licensure. It is recommended that individuals applying for licensure be eligible to sit for the examination upon completion of all the requirements of the doctoral degree.

4. Prior credentials

APA recommends that the Act provide for continued licensure of persons already licensed as a psychologist at the time of enactment of a new law.

A person who is licensed as a psychologist under the provisions of (cite relevant section(s) of previous licensing law) as of the effective date of this Act shall be deemed to have met all requirements for licensure under this Act and shall be eligible for renewal of licensure in accordance with the provisions of this Act.

5. Applications from individuals licensed in other jurisdictions

Jurisdictions are strongly encouraged to adopt regulations to facilitate the mobility and portability of licensure. Jurisdictions may set criteria to determine conditions under which verification of education, experience, and examination requirements will be waived. These criteria may include holding a credential that verifies education and experiences of individuals (e.g. American Board of Professional Psychology (ABPP), National Register of

Health Service Providers in Psychology, Association of State and Provincial Psychology Boards' Certificate of Professional Qualification in Psychology (ASPPB's CPQ)), or Board determination that the criteria of the other jurisdiction are comparable to the Board's criteria, or other specified mechanism.

An individual applying for licensure with the Board who holds an active psychology license in another jurisdiction and shows evidence of good character is considered an eligible candidate for licensure in the jurisdiction. The Board may waive verifying the education, experience, and examination requirements for individuals who meet these criteria and for whom the Board's mechanism for verifying comparability of education, experience, and examination requirements is met. The Board retains the right to administer any required jurisdiction-specific examinations (written, oral, jurisprudence) prior to awarding the license.

E. Interstate Practice of Psychology

Psychologists may have legitimate interests in practicing in another jurisdiction for a limited amount of time. This section provides for limited practice in a jurisdiction other than the state in which the psychologist is licensed. This is not intended to eliminate the necessity for licensure for those who are setting up a regular professional practice in that jurisdiction. The psychologist must have an earned doctoral degree and be licensed in another jurisdiction.

Interjurisdictional practice is particularly critical for the practice of general applied psychology as frequently this involves activities crossing jurisdictional lines, such as engaging with employees of organizations operating in several jurisdictions. For those activities that fall under the licensed scope of practice of psychology, the provider of general applied psychological services should indeed be licensed. However, since increasingly, the provision of such services frequently does not involve face-to-face meetings but rather, these services are being provided telephonically and electronically across state lines, this section recognizes this practice and permits the provision of general applied psychological services in this manner provided that the provider of the services is licensed in at least one jurisdiction and is not using this section to avoid the requirement of licensure entirely.

Mechanisms may be developed to alleviate some of these difficulties and provide for easy interstate recognition of licensure. Jurisdictions are encouraged to adopt and implement such mechanisms as appropriate.

Nothing in this Act shall be construed to prohibit the practice of psychology in this state by a person holding an earned doctoral degree in psychology from an institution of higher education who is licensed or certified as a psychologist under the laws of another jurisdiction, provided that the aggregate of sixty (60) days per year of professional services as a psychologist under the provision of this subsection is not exceeded. Prior to providing services in this state, a doctoral level licensed psychologist from another jurisdiction should provide written notice to the Board of the type of services to be provided, approximate duration of such services along with documentation of licensure and consent to operating under the jurisdiction, law, and regulations of this state. Notice does not require approval of the Board prior to delivery of service if the aggregate of 60 days of services is maintained and the individual does not establish an ongoing, regular, professional practice in the jurisdiction.

Nothing in this Act shall be construed to prohibit an individual not domiciled in the state who does not practice psychology in an office or other place of business in the state from providing general applied psychological services telephonically and electronically if the individual holds an earned doctoral degree in psychology from an institution of higher education and is licensed or certified as a psychologist under the laws of another jurisdiction. Written notice is not required for the interjurisdictional provision of general applied psychological services that are delivered solely by telephonic or electronic means.

In disaster situations the time frame and conditions under which psychologists will provide disaster services in the jurisdiction will be defined by the Board.

To the extent that the jurisdiction has adopted the Uniform Emergency Volunteer Health Practitioners Act, it will apply in times of disaster.

F. Temporary Authorization to Practice

This portion of the Act provides for the conditions under which a licensed psychologist may practice until obtaining licensure in another jurisdiction. Jurisdictions are encouraged to adopt regulations to facilitate the mobility and portability of licensure. Provision is also made for the Board to waive examination if the requirements met by the psychologist in the original jurisdiction are judged to be equivalent to those in this state.

A psychologist holding a current, active license or certification under the laws of another jurisdiction may be authorized by the Board to practice psychology as defined in this Act for a maximum of one year, provided that the psychologist has made application to the Board for licensure and has met the educational and experience requirements for licensure in this state. Denial of licensure terminates this authorization. The Board may choose to waive examination if a psychologist is licensed in another jurisdiction on the basis of qualifications that are not less than those required for licensure in this state.

G. Limitation of Practice; Maintaining and Expanding Competence

This provision of the Act is intended to ensure licensed psychologists who provide services will not practice outside the limits of their competence. The burden of proof is on the applicant to provide evidence, acceptable to the Board, that the applicant has obtained the training necessary to engage in the practice of psychology in the specified area of competence. The Board may wish to develop forms that provide for the specification of the intended area of practice and the evidence necessary to document competence. The Board should recognize that training in psychology includes broad and general training in scientific psychology and in the foundations of practice. Practice areas include: clinical psychology, counseling psychology, school psychology, industrial-organizational psychology, and other developed practice areas.

Psychologists provide services to populations and in areas within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience and do not practice beyond their areas of competence. The Board develops requirements or structures (e.g., continuing education in general areas of practice as well as in specific areas such as ethics, domestic violence, and multicultural competence; declaration and documentation of competence) to ensure that psychologists undertake ongoing efforts to identify, develop, and maintain competence and ethical practice. Boards may choose to require applicants for licensure and renewal of licensure to self-declare their areas of practice competence. Should a psychologist's area of practice change, then the psychologist shall be required to provide documentation of the training, supervision, and/or mentoring undertaken to achieve competence in the new area at the time of license renewal. Psychologists practicing in emerging areas take reasonable steps to ensure the competence of their work by using relevant research, training, consultation, or study.

The Board shall ensure through regulations and enforcement that licensees limit their practice to demonstrated areas of competence as documented by relevant professional education, training, and experience. The Board shall develop structures to ensure that psychologists undertake ongoing efforts to maintain competence and ethical practice. The Board adopts as its standard of conduct the Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association.

H. Inactive Status

A psychologist who is on military assignment outside the state, suffering from health problems, on sabbatical, retired, or who moves to another state may wish to be on inactive status. Relieving the psychologist from paying the fee will make it possible for that person to remain in good standing without being an active practitioner.

A psychologist in good standing who will not be practicing in the state for at least one year may petition the Board to have his or her license placed on inactive status without penalty. When such psychologist wishes to return to practice, an application shall be made to the Board, which shall reinstate him or her upon payment of the registration fee for the current year.

I. Practice Without a License

The Act must clearly specify what constitutes a violation of law and what penalties may be imposed for practice without a license or for misrepresentation of oneself as a psychologist. State legislatures have the latitude to determine penalties for such illegal activities. Boards are provided with the authority to suspend or revoke licenses and to prescribe conditions for reinstatement.

It shall be a violation of this Act for any person not licensed in accordance with the provisions of this Act to represent himself or herself as a psychologist. It shall be a violation of this Act for any person not licensed in accordance with the provisions of this Act to engage in the practice of psychology as defined in this Act, whether practicing as an individual, firm, partnership, corporation, agency, or other entity.

Any person who shall represent himself or herself as a psychologist in violation of this Act, or who shall engage in the practice of psychology in violation of this Act, shall be guilty of a misdemeanor and shall be fined not less than _____ dollars and not more than _____ dollars and, in addition thereto, may be imprisoned for not more than _____ months. Each day such person shall practice psychology without meeting all the requirements of all laws now in force and of this Act shall constitute a separate offense. Any person filing or attempting to file, as his or her own, a diploma or license of another or a forged affidavit of identification shall be guilty of a felony and shall be subject to the punishment prescribed for forgery in the second degree.

Whenever a license to practice as a psychologist in the state has been suspended or revoked, it shall be unlawful for the person whose license has been so suspended or revoked to practice psychology in this state. The Board may issue, with or without reexamination, a new license whenever it deems such course safe and just.

The Board on its own motion may investigate any evidence or allegation that appears to show that any person is or may be in violation of any provision of this Act.

J. Exemptions

1. There should be an exemption from licensure for persons engaged solely in teaching in academic institutions, or research in academic and/or research institutions. In addition, those general applied (non-HSP) psychologists who provide services for the benefit of the organization as described in B.5.b.2 but not as described in B.5.b.1 and not involving direct services to individuals should be exempt from licensure and be allowed to refer to themselves as psychologists. The exemption should not be determined on the basis of work setting or place of primary employment, but on the basis of the purpose of the activity as defined in Section B3 (Practice of psychology). The exemption should not be allowed if the individual engages in the direct delivery or supervision of psychological services to individuals or groups of individuals in any setting. Persons engaged in teaching or research should not be excluded from licensure if they meet the statutory requirements for licensure.

Nothing in this Act shall be construed to prevent the teaching of psychology or the conduct of psychological research, provided that such teaching or research does not involve the delivery or supervision of direct psychological services. Nothing in this Act shall prevent the provision of general applied psychological services to organizations so long as those services are for the benefit of the organization, and does not involve direct service to individuals. Nothing in this Act shall prevent the provision of expert testimony by psychologists who are otherwise exempted by this Act. Persons holding a doctoral degree in psychology from an institution of higher education may use the title "psychologist" in conjunction with the activities permitted by this subsection.

2. Members of other established professions, such as physicians, attorneys, and clergy, may provide services that are similar or related to the scope of practice of psychology. They should be exempted from licensure on the condition that they not represent themselves to be psychologists.

Nothing in this Act shall be construed to prevent members of other recognized professions that are licensed, certified, or regulated under the laws of this state from rendering services consistent with their professional training and code of ethics, provided that they do not represent themselves to be psychologists. Duly recognized members of the clergy shall not be restricted from functioning in their ministerial capacity, provided that they do not represent themselves to be psychologists.

3. The prior version of this Model Act included an exemption for the use of the terms school psychologist or certified school psychologist for all individuals credentialed by the state agency regulating practice in public schools. This version acknowledges the authority of the relevant state education agency to credential individuals to provide school psychological services in settings under their purview and continues to restrict those individuals to practice within those settings. Additionally, the title so conferred, which must include the word “school”, is to be used solely while engaged in employment within those settings.

Nothing in this Act shall be construed to prevent (cite relevant state education authority or statutory provisions) from credentialing individuals to provide school psychological services in those settings that are under the purview of the state education agency. Such individuals shall be restricted in their practice and the use of the title so conferred, which must include the word "school", to employment within those settings.

This provision is not intended to restrict the activities of licensed psychologists.

4. Graduate students, interns, unlicensed postdoctoral trainees, and applicants for licensure are permitted to function under the supervision of a licensed psychologist, as are assistants not eligible for licensure in some states. None may use the title psychologist, but titles such as psychological trainee, psychological intern, psychological resident, or psychological assistant would be permissible under this exemption. The supervising psychologist is responsible for the professional actions of the student, trainee, or assistant. The Board is required to adopt regulations defining the nature and extent of training for qualified assistants and supervision for each category.

Nothing in this Act shall be construed to prevent persons under the supervision of a licensed psychologist from engaging in activities defined as the practice of psychology, provided that such persons shall not represent themselves by the title "psychologist," in accordance with regulations promulgated by the Board. Such persons who are preparing for the profession of psychology may use terms such as “psychological trainee,” “psychological intern,” “psychological resident.” Other persons may use terms such as “psychological assistant,” “psychological technician,” “psychological associate.” All such persons must perform their activities under the supervision and responsibility of a licensed psychologist in accordance with regulations promulgated by the Board.

Nothing in this section shall be construed to apply to any person other than:

(a) a matriculated graduate student in psychology whose activities constitute a part of the course of study for a graduate degree in psychology at an institution of higher education;
(b) an unlicensed individual pursuing postdoctoral training or experience in psychology, including persons seeking to fulfill the requirements for licensure under the provisions of this Act; or
(c) a qualified assistant, technician, or associate employed by, or otherwise directly accountable to, a licensed psychologist. Such individuals may, among other things, administer and score neuropsychological tests at the request of the supervising psychologist, but may not interpret such tests. The Board in regulations shall determine the number of assistants, technicians and associates that a psychologist may employ and the conditions under which they will be supervised.

5. This provision clarifies that the focus of licensure is the individual providing the services. Where the individual providing the services is duly licensed and qualified to provide the services, the goal of assuring the public that the services will be provided by licensed and qualified professionals is served.

Nothing in this Act shall be construed to require a license under this Act in order for a firm, partnership, corporation, limited liability company or other entity to provide general applied psychological services where such services are performed by an individual: (a) duly licensed in this state or otherwise authorized to provide general applied psychological services under this Act; or (b) supervised by a licensed psychologist in this state and permitted to provide general applied psychological services with such supervision under this Act.

6. Individuals who were previously unable to obtain licensure because of exemptions or exclusions in the previous version of this Act or where fulfilling requirements for licensure has been prohibitive (in some instances this has included I-O, human factors, and consulting psychologists), but are now expected to become licensed under the new regulations, a provision for extending licensure to those psychologists should be enacted.

All who have been practicing for 5 years or more exclusively outside of the health care psychology area and who were previously unable to obtain licensure because of exemptions or exclusions in the previous version of this Act or where fulfilling requirements has been prohibitive shall be grandparented, with the following requirements:

- a. Candidates should have graduated from a regionally accredited institution with a doctoral degree in I-O, consulting, or other recognized program in general applied psychology.*
- b. Attestation from the candidate that documents at least 5 years of relevant work history in I-O, consulting, or other general applied psychology practice. This should include written support from at least two licensed psychologists in good standing within that jurisdiction or APA Fellows in the same or similar area of practice that attests to the candidate's work history, quality of work, ethical practice and lack of any disciplinary action.*
- c. Completion of the jurisprudence examination of that jurisdiction with a passing grade.*

Individuals must have applied for this grandparenting option within two years from the enactment of this Act. After that date, the individual must comply with the regular licensing laws.

K. Grounds for Suspension or Revocation of Licenses

In order to have an effective law, the Board must have the power to suspend and revoke a license. Actions that are a violation of the enforceable standards of the APA Ethical Principles of Psychologists and Code of Conduct in effect at the time of the activities and other standards subscribed to by the Board should be clearly stated in the licensing law. Two considerations are specified below that refer to specific points in the text that follows:

Concerning Numbers 6 and 7

The Board shall specify, in rules and regulations, criteria for determining how long or under what conditions an individual or group of individuals remains a patient or a client.

Concerning Number 17

In this section, physical condition shall be differentiated from physical disability. There is no intent to obstruct physically disabled candidates' entry into the profession of psychology nor from practicing their profession after licensure as long as they practice with reasonable skill and safety to patients or clients.

A psychologist and anyone under his or her supervision shall conduct his or her professional activities in conformity with the ethical and professional standards of the APA Ethical Principles of Psychologists and Code of Conduct and those standards promulgated by the Board under its rules and regulations.

The Board shall have the power and duty to suspend, place on probation, or require remediation for any psychologist for a specified time, to be determined at the discretion of the Board, or to revoke any license to practice psychology or to take any other action specified in the rules and regulations whenever the Board shall find by a preponderance of the evidence that the psychologist has engaged in any of the following acts or offenses:

- 1. fraud in applying for or procuring a license to practice psychology;*
- 2. immoral, unprofessional, or dishonorable conduct as defined in the rules and regulations promulgated by the Board;*
- 3. practicing psychology in such a manner as to endanger the welfare of clients or patients;*
- 4. conviction of a felony (a copy of the record of conviction, certified to by the clerk of the court entering the conviction shall be conclusive evidence);*
- 5. conviction of any crime or offense that reflects the inability of the practitioner to practice psychology with due regard for the health and safety of clients or patients;*
- 6. harassment, intimidation, or abuse, sexual or otherwise, of a client or patient;*
- 7. engaging in sexual intercourse or other sexual contact with a client, patient or the individual who is the direct recipient of psychological services (where services are provided to an organization, client refers only to the individuals who are direct recipients of psychological services);*
- 8. use of repeated untruthful or deceptive or improbable statements concerning the licensee's qualifications or the effects or results of proposed treatment, including functioning outside of one's professional competence established by education, training, and experience;*
- 9. gross malpractice or repeated malpractice or gross negligence in the practice of psychology;*
- 10. aiding or abetting the practice of psychology by any person not licensed by the Board;*

11. conviction of fraud in filing Medicare or Medicaid claims or in filing claims to any third party payor (a copy of the record of conviction, certified to by the clerk of the court entering the conviction, shall be conclusive evidence);
12. exercising undue influence in such a manner as to exploit the client, patient, student, or supervisee for financial or other personal advantage to the practitioner or a third party;
13. the suspension or revocation by another state of a license to practice psychology (a certified copy of the record of suspension or revocation of the state making such a suspension or revocation shall be conclusive evidence thereof);
14. refusal to appear before the Board after having been ordered to do so in writing by the executive officer or chair of the Board;
15. making any fraudulent or untrue statement to the Board;
16. violation of the APA Ethical Principles of Psychologists and Code of Conduct and other standards adopted in the rules and regulations of the Board; and
17. inability to practice psychology with reasonable skill and safety to patients or clients by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance, or as a result of any mental or physical condition.

When the issue is whether or not a psychologist is physically or mentally capable of practicing psychology with reasonable skill and safety to patients or clients, then, upon a showing of probable cause to the Board that the psychologist is not capable of practicing psychology with reasonable skill and safety to patients or clients, the Board may petition a court of competent jurisdiction to order the psychologist in question to submit to a psychological examination by a psychologist to determine psychological status and/or a physical examination by a physician to determine physical condition. Such psychologist and/or physician is to be designated by the Board. The expense of such examination shall be borne by the Board. Where the psychologist raises the issue of mental or physical competence or appeals a decision regarding his or her mental or physical competence, the psychologist shall be permitted to obtain his or her own evaluation at the psychologist's expense. If the objectivity or adequacy of the examination is suspect, the Board may complete an examination by its designated practitioners at its own expense. When mental or physical capacity to practice is at issue, every psychologist licensed to practice psychology in the state shall be deemed to have given consent to submit to a mental or physical examination or to any combination of such examinations and to waive all objections to the admissibility of the examination, or to previously adjudicated evidence of mental incompetence.

L. Board Hearings and Investigations

In the interest of protecting the public, the Board must have authority to regulate the practice of psychology. This section specifies the powers and duties of the Board to conduct investigations, hold hearings, consider evidence or allegations brought against a psychologist, and to discipline a licensee for violation of law or regulation. Both the Board and licensee are required to follow due process standards in any disciplinary proceeding.

The Board on its own motion may investigate or cause to be investigated any allegation or evidence that appears to show that a psychologist licensed to practice in this state is, or may be, in violation of this Act or of any of the acts, offenses, or conditions set forth by the Board in rules and regulations. Investigations will be limited to the allegation or evidence upon which they were initially based, except in situations when the investigation uncovers evidence of serious misconduct on the part of the psychologist that is unrelated to the initial allegation or evidence.

1) Any accusation filed against a psychologist licensed to practice in this state shall be filed within three years from the date the Board discovers the alleged act or omission that is the basis for disciplinary action, or within seven years from the date the alleged act or omission that is the basis for disciplinary action occurred, whichever occurs first. If an alleged act or omission involves a minor, the seven-year limitations period provided for shall be tolled until the minor reaches the age of majority.

2) The following are exceptions to the limitations period in paragraph (1):

- a. acts or offenses involving a violation of Sections K(1), K(13), or K(15) ;
- b. acts or offenses involving a violation of Sections K4, where there is an element of dishonesty or fraud, and Section K5;

- c. acts or offenses involving fraudulent, deceptive or dishonest conduct that adversely affects the persons' ability or fitness to practice psychology;
- d. acts or offenses involving allegations of sexual misconduct with a psychotherapy client, or with a former psychotherapy client for a period of two years following the date of the last professional contact with the former client.

The Board shall have the power and duty to suspend, place on probation, or require remediation for a licensee for a specified time, to be determined at the discretion of the Board, or to revoke any license to practice psychology, whenever the licensee shall be found by the Board, by a preponderance of the evidence, to have engaged in conduct prohibited by this Act or rules and regulations duly promulgated pursuant thereto.

Any psychologist holding a license to practice in this state is required to report to the Board any information such psychologist in good faith may have that appears to show that any psychologist holding a license to practice in this state may be in violation of this Act or guilty of any of the acts, offenses, or conditions set forth by the Board and such violation has substantially harmed or is likely to substantially harm a person or organization, unless such intervention would violate confidentiality rights under this statute or when the knowledge comes from a peer review process qualifying under the state peer review statute or when the psychologist has been retained to review the work of that psychologist whose professional conduct is in question. Any psychologist who in good faith makes such a report to the Board shall be absolutely immune from civil liability to any person and/or entity for any statement or opinion made in such report.

If, in the opinion of the majority of the Board, there is probable cause that the information provided to it under the provisions of this section may be valid, the Board shall request by registered mail a formal interview with the psychologist. If the psychologist who is ordered to a formal interview before the Board refuses to appear for such interview, such refusal shall be considered grounds for the Board, at its discretion, to suspend or revoke the license of such psychologist. Any proceeding for suspension or revocation of a license to practice as a psychologist in this state shall be conducted in accordance with procedures established by the Board. In the event that these provisions conflict with the state's general administrative procedures, these specific provisions will take precedence. The psychologist shall be informed of his or her rights concerning Board hearings and investigations:

1. the right to a hearing within a reasonable period of time after the Board receives the allegation or evidence that serves as the basis for an investigation by the Board and 30-days notice of the hearing;
2. the right to notice that a complaint has been filed and a copy of the complaint within 120 days of receipt of the complaint and the licensed psychologist and the complainant is provided notification, at least every three months as to the status of any outstanding complaint unless the Board makes an affirmative determination that the disclosure would prejudice the investigation of the complaint and notifies the licensee of the determination or disposes of the complaint within 120 days of the date of receipt of the complaint;
3. the right to see a signed (electronically or otherwise) complaint (non anonymous);
4. the right to have access to the Board's rules and procedures;
5. the right to self-representation or representation by counsel;
6. the right to discovery: each side can request from the other side relevant documents, a list of witnesses, and for any expert witnesses, the name, C.V. and a detailed report of the expert's expected testimony;
7. the right to compel the attendance of, and produce, witnesses and to confront and cross examine opposing witnesses, and to have witnesses testify under oath;
8. the right to a written decision setting forth the violation, findings of fact, sanctions, and reasons for the sanctions, within a reasonable period following the hearing;
9. a determination of the size of the vote necessary to find a violation;
10. a determination whether the hearing will be closed or open to the public;
11. the right not to have Board members who were on the investigative committee also appear on the formal hearing panel.
12. the right to an appeal to an administrative board of review and/or to a court of competent jurisdiction.

The licensee may knowingly and voluntarily waive in writing his or her right to the formal adversary proceeding described in this section.

The Board shall have the right to conduct an ex parte hearing if, after due notice, the individual fails or refuses to appear. The Board shall have the right to issue subpoenas for production of documents and witnesses and to administer oaths. The Board shall have the right to apply to a court of competent jurisdiction to take appropriate action should a subpoena not be obeyed.

The Board shall temporarily suspend the license of a psychologist without a hearing simultaneously with the institution of proceedings for a hearing provided under this section if the Board finds that evidence in its possession indicates that the psychologist's continuation in practice may constitute an immediate danger to the public. Appropriate officials may petition the court for an injunction barring further practice unless or until the person is properly licensed. The injunction may be issued in addition to, or in lieu of, the criminal sanctions provided for in this section.

A psychologist may surrender his or her license when such person is charged with unethical conduct and upon receipt of that charge, that person decides to surrender the license, such surrender and acceptance by the Board shall constitute acknowledgment by the psychologist of guilt as charged.

A psychologist may request in writing to the Board that a restriction be placed upon his or her license to practice as a psychologist. The Board, in its discretion, may accept a surrender or grant such a request for restriction and shall have the authority to attach such restrictions to the license of the psychologist to practice psychology within this state or otherwise to discipline the licensee.

Subsequent to the holding of a hearing and the taking of evidence by the Board as provided for in this section, if a majority of the Board finds that a psychologist is in violation of this Act or guilty of any of the acts, offenses, or conditions as enumerated by the Board, the following actions may be taken:

- 1. The Board may revoke or suspend the license and impose a monetary penalty.*
- 2. The Board may suspend imposition of a revocation or suspension of a license and/or a monetary penalty.*
- 3. The Board may impose revocation or suspension of a license and/or a monetary penalty, but suspend enforcement thereof by placing the psychologist on probation, which probation shall be revocable if the Board finds the conditions of the probation order are not being followed by the psychologist.*
- 4. The Board may require the psychologist to submit to care, counseling, or treatment by a professional designated by the Board. Such action may, but is not required to, be a condition of probation. The expense of such action shall be borne by the psychologist.*
- 5. The Board may, at any time, modify the conditions of the probation and may include among them any reasonable condition for the purpose of the protection of the public, or for the purpose of the rehabilitation of the probationer, or both.*
- 6. The Board shall have the power to require restitution when necessary,*
- 7. The Board shall have the power to assess the costs of the disciplinary proceeding.*

M. Privileged Communication

This section regulates and limits the powers of the judicial system. The courts or other administrative agencies with subpoena power have the right to make use of all relevant information in the judicial fact-finding process unless this right of access to information is specifically limited. Historically, courts and legislatures have been charged with fact-finding in order to seek truth and administer justice. At the same time they have attempted to maintain the integrity of the confidential and private relationship between psychologist and patient or client. However, some societal issues have emerged, such as child abuse and sexual abuse, that have changed the absolute nature of privileged communication. Though the privilege is not absolute, it is designed to be sufficiently broad to cover all situations except those specifically enumerated. It is a privilege "owned" by the patient or client, who may assert it or waive it, although the psychologist may assert it for a patient or client who wishes to maintain such privilege of communication. It is understood that the privilege encompasses only communications between the patient or client and the psychologist in a professional relationship. The provisions herein relate only to the disclosure of confidential communications in judicial, legislative, and administrative proceedings. They do not speak to the disclosure of confidential communications in other context, such as, for example, disclosures required or permitted by law or disclosures relating to consultations. Disclosure of confidential communications outside of judicial proceedings are governed by the relevant sections of the APA Ethics Code.

In judicial proceedings, whether civil, criminal, or juvenile; in legislative and administrative proceedings; and in proceedings preliminary and ancillary thereto, a patient or client, or his or her guardian or personal representative, may refuse to disclose or prevent the disclosure of confidential information, including information contained in administrative records, communicated to a psychologist licensed or otherwise authorized to practice psychology under the laws of this jurisdiction, or to persons reasonably believed by the patient or client to be so licensed, or to students, interns, and trainees under the supervision of a licensed psychologist, and their agents, for the purpose of diagnosis, evaluation, or treatment of any mental or emotional condition or disorder. In the absence of evidence to the contrary, the psychologist is presumed authorized to claim the privilege on the patient's or client's behalf.

This privilege may not be claimed by the patient or client, or on his or her behalf by authorized persons, in the following circumstances:

- 1. where abuse or harmful neglect of children, older adults, or disabled or incompetent individuals is known or reasonably suspected;*
- 2. where the validity of a will of a former patient or client is contested;*
- 3. where such information is necessary for the psychologist to defend against a malpractice action brought by the patient or client;*
- 4. where an immediate threat of physical violence against a readily identifiable victim is disclosed to the psychologist;*
- 5. in the context of civil commitment proceedings, where an immediate threat of self-inflicted damage is disclosed to the psychologist;*
- 6. in any proceeding in which the party relies upon his or her mental or emotional condition as an element of the party's claim or defense;*
- 7. where the patient or client is examined pursuant to court order; or*
- 8. in the context of investigations and hearings brought by the patient or client and conducted by the Board, where violations of this Act are at issue.*

N. Severability

As with any law, one provision may be subject to court challenge and ruled invalid or unconstitutional. For example, it is not legally clear whether state licensing boards can regulate persons working for federal agencies. Thus, if any provision is ruled invalid or unconstitutional, it is important that the entire Act not be affected. This can only be achieved by inserting a clause at the end of the Act stating that each provision of the Act is severable from all other provisions and that the declaration that one section is invalid or unconstitutional will not affect the constitutionality or enforceability of any other section.

If any section in this Act or any part of any section thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of any section or part thereof.

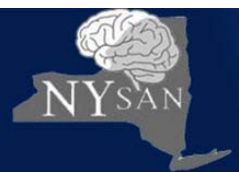
O. Effective Date

In any law regulating a profession there needs to be a specific date establishing when the law shall become effective. Thus, the final paragraph states:

This Act shall become effective upon the date it is signed by the Governor or on the date it otherwise becomes effective by operation of law.

REFERENCES

- American Psychological Association. (2002). Ethical principles of psychologists and code of conduct. *American Psychologist*, 57, 1060-1073.
- American Psychological Association. (1987). Model act for state licensure of psychologists. *American Psychologist*, 42, 696-703.
- APA Committee on Legislation. (1955). Joint report of the APA and CSPA (Conference of State Psychological Associations). *American Psychologist*, 10, 727-756.
- APA Committee on Legislation. (1967). A model for state legislation affecting the practice of psychology 1967: Report of the APA Committee on Legislation. *American Psychologist*, 22, 1095-1103.

**PRESIDENT**

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NYSAN-Advancing the Practice of Neuropsychology in New York State

May 30, 2012

Douglas E. Lentivech
Deputy Commissioner of the Professions
Office of the Professions
New York State Education Department
89 Washington Avenue
Albany, NY 12234

Dear Commissioner Lentivech:

I am writing in response to a recent SED posting "Draft Report to the Legislature and Executive Pursuant to Chapters 130 and 132 of the Laws of 2010." The posting reports on the public review and comment data generated from an exempt state agencies report on non-licensed service providers. The SED has requested input before finalizing the report and is using an online survey to complete that process. I am commenting on behalf of NYSAN by this letter instead.

The New York State Association of Neuropsychology (NYSAN) opposes the broad exemption of mental health professionals from state licensure. Extending the exemption will permit people without doctoral degrees in psychology to continue to function as psychologists in New York. The responses to the original survey, as stated in the report, clearly did not support this action. The report also does not clearly indicate how such an exemption will achieve its stated goal of public protection. It is unclear what the exemption decision was based on. If it is based on a lack of complaints to SED of consumer harm, will SED apply this same logic to exemptions for other non-licensed professionals in mental health settings?

NYSAN also asserts that the extension of the exemptions along with creating alternative pathways to licensure will create confusion among consumers as to the qualifications of a "psychologist." Exemption from qualifications dilutes the standards of psychological practice. Moreover, the healthcare redesign has clearly placed mental health and thus psychology in parity with medicine, eliminating the distinction between them in the healthcare system. Would the SED consider exempting thousands of unlicensed physicians to practice medicine in the state? Why should such a disparity exist?

The NYSAN board also believes that the proposal for license exemption creates an underclass of patients who are served by state agencies whose practitioners have bypassed the requirements of education, examination, and experience that protect the health, safety and welfare of consumers. These patients will not be afforded the same protections as other NY state citizens who will be

receiving their psychological services by a licensed, doctoral level psychologist. We believe that all citizens deserve the same protections when obtaining services.

We also oppose the alternative pathway to licensure by omitting an examination. The alternative pathway creates a separate class of practitioner, the distinction of which will not be clear to the public, again creating confusion among consumers as to the qualifications of the provider. This is clearly not in the public interest. The education and training of licensed professionals demonstrated by examination and submission of credentials is implied by the title and serves as protection against unqualified practitioners. Without uniformity in these requirements, the public is put at risk, both by the public's confusion and by the ability of unqualified person's to pass through the system.

NYSAN was encouraged to see that the report recognizes that there is broad-based support for "teams that are based on a clear definition of roles for licensed and for unlicensed persons, to provide comprehensive care in a safe and effective manner" and that "many services could, in fact, lawfully be performed by unlicensed persons". We interpret this as supporting NYSAN's long-standing assertion that safe and effective psychological practice includes the tightly restricted use of unlicensed psychological testing assistants who are under the supervision of a licensed psychologist. The supervising psychologist and trained testing assistant are a perfect example of such a team, a fact that has been recognized by virtually every other state in the country and by the Center for Medicare Services. We are dismayed that the report fails specifically to mention SED's opposition to this practice as one of the many unforeseen and unintended consequences to the licensure laws, as this has been the point of ongoing discussions and meetings since 2003. Finally, we note that the report states that no harm has been done to consumers by exempting certain mental health professionals from licensure requirements. While we certainly hope this is true, it is unclear to us what data this opinion is based on. If it is based on a lack of complaints to SED of consumer harm, we look forward to SED applying this same logic to evaluating use of supervised psychological testing assistants, as we are unaware of any such complaints or any other data suggesting harm resulting from this practice.

Signed,

A handwritten signature in black ink, appearing to read 'Joanne Festa', written in a cursive style.

Joanne Festa, PhD - President NYSAN
on behalf of the NYSAN membership

cc: NYSAN Board of Directors and Professional Affairs Committee



NEW YORK ASSOCIATION FOR MARRIAGE AND FAMILY THERAPY
Chapters: Genesee Valley Central Albany/ Hudson Valley METRO Long Island

President: Dr. Robert Burns * President Elect: Karrie Damm * Legislative Chairman: Don Paine

***“Building bridges between legislators and licensed marriage and family therapists
to create a community partnership for a healthier and better NY”***

May 29, 2012

Doug Lentivech, Deputy Commissioner
Office of the Professions
NYS Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234

On behalf of the membership of the New York Association of Marriage and Family Therapy, I am writing regarding the “Draft Report to the Legislature and Executive Pursuant to Chapters 130 & 131 of the Laws of 2010.” As you know, NYAMFT is an advocacy organization representing the professional interests of almost 900 MFT’s living and working in New York State.

While there are a number of points of the report that are of interest to NYAMFT, three sections are critical to the future success of the profession of Marriage and Family Therapy:

1. Clarification of practice

NYAMFT strongly supports the conclusion outlined in the report. The absence of the term “diagnosis” has caused confusion for almost a decade. NYAMFT believes the statute provides credibility for the authorization to diagnose as is supported by the educational requirement related to psychopathology, the prevalence of diagnosing within the approved examination for licensure, and the authority of licensed mental health practitioners to use classification systems, including the Diagnostic Statistical Manual. Clarification in statute or guidance by the Legislature on the intent regarding diagnosis would assist in opening opportunities for licensed mental health practitioners to fulfill needed mental health care throughout the system;

2. Extension of broad-based exemptions from licensure

NYAMFT supports ending the exemption and requiring licensure of individuals providing professional services in all settings. We agree with the draft report’s statement that the exempt agencies should work with the New York State Education Department to identify ways to transition into a comprehensive licensure requirement that avoids disruption in services to vulnerable populations. We agree that a responsible transition may require the extension of the exemption while alternative pathways to licensure or other policy options are explored and implemented; and

3. Civil Service titles There is a significant need for Civil Service to establish titles for the four professions licensed under Article 163. The lack of titles has limited the opportunities for agencies and programs to utilize these professional. Licensed practitioners find themselves

restricted from applying to positions that could seamlessly be held by a licensed mental health counselor or the other three practitioners.

Thank you for considering our concerns. Should you require additional information, please feel free to contact me at dmurphymcgraw@hgmlobby.com or 518-463-5449.

All my best,

Denise Murphy McGraw
Legislative Representative
Partner, Hill, Gosdeck & McGraw, LLC

cc: David Hamilton, Executive Secretary Board of Mental Health Practitioners

PITTA BISHOP DEL GIORNO & GIBLIN LLC

consulting/government relations

June 1, 2012

Doug Lentivech, Deputy Commissioner
Office of the Professions
NYS Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234

Dear Deputy Commissioner Lentivech:

Thank you for the opportunity to provide input on the “Draft Report to the Legislature and Executive Pursuant to Chapters 130 & 131 of the Laws of 2010.” On behalf of our client, the National Association for the Advancement of Psychoanalysis (NAAP), we submit the following comments in relation to the conclusions related to Mental Health Practitioners (Article 163):

1. Clarification of practice [MPH1].

Report Conclusion. There is agreement that “diagnosis” is a function that could be appropriately provided by individuals licensed under Article 163, although this term is not included in the scope of practice for each profession. The Legislature could provide clarity by amending Article 163 to define diagnosis within the practice of the professions or provide guidance that an interpretation of the existing language to include diagnosis would be consistent with the legislative intent.

NAAP strongly supports the conclusion to include “diagnose and treat” in Article 163 professions.

The absence of the term “diagnosis” within the scope of practice of psychoanalysis has caused significant confusion and has been a major concern within the profession. NAAP asserts that statutory authorization to “diagnose and treat” is supported by the statutory educational, experience, and examination requirements, and the statutory authority of licensed mental health practitioners to use classification systems, including the Diagnostic Statistical Manual (DSM).

NAAP supports the clarification as a means of bringing a common rationale for providing mental healthcare in New York State and enabling mental health professionals to meet the challenge of the ongoing and increasing needs for providing mental health care to all the citizens of New York State.

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Appendix F

2. Delegation of professional services [MHP 2]

Report Conclusion. Multi-disciplinary teams of licensed professionals and unlicensed persons are an appropriate way to provide certain services to consumers. However, it is important that the activities assigned to members of the team are consistent with the scope of practice for each team member licensed or authorized under Title VIII, and those who are not so authorized may not engage in restricted activities, even under supervision. The Department and the exempt agencies may collaborate in defining appropriate roles for unlicensed individuals, such as peer counselors, mental health therapy aides, and others who function as part of a multi-disciplinary team, but who do not make professional determinations. (Report refers same conclusion for Social Work & Mental Health Practitioners)

NAAP acknowledges the benefits of the use of a multidisciplinary team approach to care and advocates clearly defined roles for unlicensed individuals.

3. Alternative pathways [MPH4]

Report Conclusion. A significant number of long-time practitioners did not seek licensure, particularly under the special provisions in 2005 and, now must be appropriately licensed by the time the exemptions expire. As in the social work professions, there is agreement that appropriate standards for education and experience should be established as part of a time-limited, alternative pathway to licensure to avoid disruptions in the work force.

NAAP supports a structured, time-limited grandfathering period for current employees of exempt agencies. Individuals entering a profession should be held to statutory levels of education, experience, and examination to maintain public protection.

NAAP also agrees with the draft report's following statement: "an alternative pathway to licensure based on entry to a Civil Service title(s) or other criteria would not protect the public."

4. Extension of broad-based exemptions from licensure [MHP 5]

Report Conclusion. There is strong support for ending the permanent exemptions and requiring licensure of individuals who provide professional services in publicly funded programs, as in privately funded programs, to ensure the health, safety and welfare of the public. The Department is ready to collaborate with the Legislature, Executive and other stakeholders, to discuss the timeline for implementing changes in the licensing laws to minimize any disruptions in services and displacement of individuals or programs.

NAAP strongly supports ending the exemption and requiring licensure of individuals providing professional services in all settings. We understand that a responsible transition may require the extension of the exemption while alternative pathways to licensure and other policy initiatives are implemented.

5. Civil Service Titles [MHP 6]

Report Conclusion. There is agreement that the Department of Civil Service should revise job titles to reflect the new professions established in Article 163 and require an applicant to be licensed in order to hold a Civil Service position, in order to ensure the health, safety and welfare of the public.

NAAP asserts there is a need for Civil Service to establish titles for the four professions licensed under Article 163. The lack of titles has limited the opportunities for agencies and programs to utilize these professionals.

6. Areas in need of further study: Limited permits & Continuing Education

Limited Permits

NAAP advocates that SED review its current practices regarding limited permits to ensure that it accurately reflects the practices of each profession and does not inadvertently result in the discontinuation of essential mental health services for patients. NAAP welcomes the opportunity to work with the Department in this area.

Continuing Education

In conjunction with the clarification of the scope of practice, NAAP advocates implementation of a continuing education requirement for Article 163 licensed professionals to ensure that, all licensed mental health practitioners maintain the highest level of competency.

Thank you for your diligence in fulfilling your statutory charge and thank you for your continued efforts to give stakeholders a voice in the process. We look forward to further discussions on how to expand access to high quality mental health care for all New Yorkers.

Respectfully submitted on behalf of the National
Association for the Advancement of Psychoanalysis
by Pitta Bishop Del Giorno & Giblin LLC

c.c: David Hamilton, Executive Secretary Board of Mental Health Practitioners



New York Mental Health Counselors Association
206 Greenbelt Parkway, Holbrook, New York 11741
1-800-4-NYMHCA
NYMHCA.org
NYMHCA2@optonline.net

Tuesday, May 22, 2012

Doug Lentivech, Deputy Commissioner
Office of the Professions
NYS Education Building, 2nd Floor
89 Washington Avenue
Albany, NY 12234

Dear Deputy Commissioner Lentivech:

On behalf of the membership of the New York Mental Health Counselors Association (NYMHCA), we are writing to submit comments regarding the “Draft Report to the Legislature and Executive Pursuant to Chapters 130 & 131 of the Laws of 2010”. NYMHCA is an advocacy organization representing over 1200 clinical counselors of New York State. NYMHCA is the state branch of the American Mental Health Counselors Association.

To begin, we would like to thank you and your office for prioritizing this assignment and allowing for ample opportunity for the public to participate in the discussion. The issues facing the professions are complicated and pervasive. The Office of the Professions has been thorough and diligent in its investigation and review of those issues. NYMHCA appreciates the opportunity to once again offer our comments.

For simplicity, we will organize our comments in order of the points highlighted under the section relating to mental health practitioners.

1. Clarification of practice [MPH1].

NYMHCA strongly supports the conclusion identified. Indeed, the absence of the term “diagnosis” has caused confusion. NYMHCA believes the statute provides credibility for the authorization to diagnose as is supported by the educational requirement related to psychopathology, the prevalence of diagnosing within the approved examination for licensure, and the authority of licensed mental health practitioners to use classification systems, including the Diagnostic Statistical Manual. Clarification in statute or guidance by the Legislature on the intent regarding diagnosis would assist in opening opportunities for licensed mental health practitioners to fulfill needed mental health care throughout the system.

2. Delegation of professional services [MHP 2]

NYMHCA supports the use of a multidisciplinary team approach to care. However, such approach does not inherently require the utilization of unlicensed individuals to perform scope protected work. Rather, clearly defined roles for unlicensed individuals can help establish efficient and effective teams.

3. Occupational exemptions [MPH 3]

NYMHCA supports the New York State Education Department working with OASAS to evaluate whether other agency credentialed positions, similar to the Credentialed Alcoholism and Substance Abuse Counselors (CASAC), should be exempt while in practice at an OASAS facility. In addition, NYMHCA believes candidates for the CASAC should be given considerations under supervision to obtain the necessary experience for credentialing.

4. Alternative pathways [MPH4]

NYMHCA supports a structured time-limited grandfathering period for current employees of exempt agencies that require sufficient criteria to ensure competency. NYMCHA would not support any alternative pathway that allowed individuals with less than a bachelor's degree to enter the licensed profession.

NYMHCA strongly agrees with the draft report's following statement: "an alternative pathway to licensure based on entry to a Civil Service title(s) or other criteria would not protect the public." Individuals entering a profession should be held to specific levels of education, experience and examination.

5. Extension of broad-based exemptions from licensure [MHP 5]

NYMHCA strongly supports ending the exemption and requiring licensure of individuals providing professional services in all settings. NYMHCA agrees with the draft report's statement that the exempt agencies should work with the New York State Education Department to identify ways to transition into a comprehensive licensure requirement that avoids disruption in services to vulnerable populations. We agree that a responsible transition may require the extension of the exemption while alternative pathways to licensure or other policy options are explored and implemented.

6. Civil Service titles [MHP 6]

There is a significant need for Civil Service to establish titles for the four professions licensed under Article 163. The lack of titles has limited the opportunities for agencies and programs to utilize these professional. Licensed practitioners find themselves restricted from applying to positions that could seamlessly be held by a licensed mental health counselor or the other three practitioners.

7. Areas in need of further study: Continuing education & limited permits

NYMHCA appreciates the inclusion of continuing education in the larger discussion of the exemptions especially as this requirement might relate to alternative pathways or a grandfathering period for current employees in exempt agencies. Should consideration be made to allow individuals to become licensed who do not currently meet the standards for licensure, the state should impose continuing education requirement on all Article 163 licensed professionals to ensure that over time, all licensed mental health practitioners maintain the highest level of competency.

Finally, individuals seeking to be licensed as mental health counselors are struggling to maintain full time employment that provides the necessary experience under a limited permit. Statutory language that would allow the New York State Education Department under its discretion to extend a limited permit would greatly benefit those who have been affected by the sluggish employment environment.

Once again, thank you for providing our organization the opportunity to submit comments. We look forward to a continued discussion on how to expand access to high quality mental health care for all New York citizens and among all settings. As always, do not hesitate to reach out with questions or comments.

Sincerely,



Joseph R. Franco, Ph.D. LMHC
President, NYMHCA



Judith Rittman, LMHC, LMFT
Executive Director, NYMHCA

c.c: David Hamilton, Executive Secretary Board of Mental Health Practitioners



American Music Therapy Association Mid-Atlantic Regional Chapter

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June 1, 2012

David Hamilton, Ph.D., LMSW, ACSW
Executive Secretary
State Board for Social Work
State Board for Mental Health Practitioners
State Board for Podiatry (Acting)
Office of the Professions
New York State Education Department
89 Washington Ave., Albany, NY 12234-1000

Dear David;

Thank you for the opportunity to provide a comprehensive statement on behalf of LCAT music therapists in response to the *Draft Report to the Legislature and Executive Pursuant to Chapters 130 and 132 of the Laws of 2010*. As you know, the New York State Task Force on Occupational Regulation (NYSTF) has been an active participant throughout the legislative and regulatory process of the Mental Health Practitioners law.

On the issue of Clarification of Practice, based on the survey results and overwhelming support for this by the other professions, it seems appropriate to support the addition of “diagnosis” in the scope. Adding “diagnosis” would allow those who feel competent to do so to include this in their practice, while not requiring it of all practitioners. There are two main concerns that we feel must be addressed here:

1. The professional associations for music therapy (American Music Therapy Association, Certification Board for Music Therapists) as well as NYSTF were not contacted at any time to provide input, feedback, or perspective on the addition of “diagnosis” to the scope of practice for creative arts therapy. We need to be a full contributor in the process to insure that the definition of “diagnosis” is appropriate to our area of practice;
2. Faculty members in the music therapy profession have expressed concerns regarding the addition of curriculum content related to “diagnosis.”

Regarding delegation of professional services, it will be essential to insure appropriate oversight of the activity of unlicensed individuals to insure that they do not inadvertently or intentionally overstep the bounds of what services they are assigned to provide. Specific guidelines for what this scope is and how licensed professionals are to provide supervision as well as for how unlicensed individuals should seek guidance and clarification are warranted, and perhaps most appropriately delineated in regulations.

On the topic of occupational regulations, based on the survey results, consideration by the Department, and the strong commitment of LCAT music therapists to consumer protection, we oppose the exemption to allow unlicensed persons to provide restricted services. The importance of assuring consumer protection cannot be overstated. Scope of practice as well as title restrictions in statute must be insured by eliminating these occupational exemptions.

In terms of alternative pathways, we do not support the implementation of a second grandparenting period. NYSTF worked diligently during the original grandparenting period to support those who qualified to succeed with the application and licensing process, with the understanding that there would never be a second grandparenting period. Music therapists who did not meet the education and experience requirements have returned to school for their Masters degrees at great personal expense, both financially and in time. It will not be surprising if there are arguments or even lawsuits brought forth if others who ignored the original grandparenting period are now 'allowed' to be grandparented in. However, it appears that this may occur, in which case we strongly support seeking appropriately stringent standards for education and experience requirements for applicants.

Regarding broad-based, permanent exemptions, based on the strong commitment of LCAT music therapists to consumer protection, we strongly oppose the exemption to allow unlicensed persons to provide restricted services. The importance of assuring consumer protection cannot be overstated. Scope of practice as well as title restrictions in statute must be insured by eliminating permanent exemptions and requiring licensure. Frankly, we find it quite disturbing that NYS agencies which exist to protect and serve our most vulnerable citizens would advocate so strongly achieving permanent exemption from a NYS law that was enacted for the exact purpose of consumer protection.

Regarding Civil Service titles, we strongly support the establishment of Civil Service titles that reflect the new professions and their licensed scopes. It would be important for the department of Civil Service to include consideration of the following in this process:

1. Create a true career ladder for NYS LCATs, similar to that such as currently in place for OT, PT, Speech, etc., i.e. entry-grade, senior grade, head grade, chief grade;
2. Insure that specific areas of practice discipline are identified, e.g.:
 - CAT (art, dance, music)
 - Senior CAT (art, dance, music)
 - Head CAT (art, dance, music)
 - Chief CAT (art, dance, music)

In response to the areas in need of further study, NYSTF has no suggestions for things that should be added to this category, but we would like to take the opportunity to express strong support for an amendment to Articles 154 and 163 to require continuing education as a component of maintaining registration, as well as for an amendment to section 8409 to extend the time allotted for Limited Permits.

Thank you again for the opportunity to contribute. We look forward to continuing to work closely with the Board.

Most sincerely,

Donna

Donna W. Polen, LCAT, MT-BC
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ASAP Comments on SED Report on Exemptions from Licensure Laws

The New York Association of Alcoholism and Substance Abuse Providers is strongly concerned with the significant costs, potential workforce crisis, and service access disruptions that will result from full implementation of social work licensure legislation as currently written. The State Education Department report on licensure related issues ignores the conservative estimates of the significant fiscal impact of implementation offered by OASAS and other state agencies, and incorrectly maintains that the cost of replacing the existing workforce with licensed individuals would be negligible. ASAP agrees with OASAS that the cost of replacing significant sectors of the existing workforce with licensed individuals would be substantial. OASAS conservatively estimates a cost of over \$70 million in the OASAS system alone, a figure that seems to have been completely dismissed in SED's report. New York State and substance use disorder prevention, treatment, and recovery services providers cannot afford this costly workforce overhaul and also cannot afford the loss of productivity and access to life-saving services that would result in attempting such a large-scale workforce shift.

ASAP also disagrees with the assertion in SED's report that the only and best way to "protect the public" is through the licensure of individuals who provide substance use disorders services and a broad range of other health and human services. OASAS' report clearly describes how the public is already adequately protected by OASAS's highly regulated use of a multi-disciplinary team approach, guided by proper supervision. With stringent oversight by OASAS, programs are afforded the opportunity to have diverse staff teams with varied backgrounds and professional experiences, creating well-rounded treatment teams that are required to adhere to specialized program guidelines and regulations. We agree that the creation of a scope of practice and career ladder for CASACs and CASAC trainees is important and we are pleased to have been working with OASAS for more than a year to develop scopes of practice and a career ladder. ASAP does not, however, support the notion that only licensed persons can provide a high quality of care or, conversely, that those without a license are not able to provide a high standard of care under the guidance of qualified supervision. OASAS regulations and oversight also work to ensure that service consumers receive quality care in safe settings, in compliance with the laws and regulations guiding the system. This important fact is ignored in the SED report. We maintain that the level of oversight provided by OASAS and the strengths of its regulatory structure do indeed protect society and to a much better degree than would occur by simply licensing social workers and relying on SED to monitor their work.

Finally, the SED report's lack of comment on the availability of licensed individuals to replace the large volume of workers that would lose their jobs if the law were fully implemented is a glaring deficiency in the report. ASAP, along with many other advocates, maintains that there are simply not enough currently

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www.asapnys.org



licensed individuals available to replace the employees that would be laid off if provisions in the licensure statute were to be implemented. The workforce impact of implementation reflected in all areas of the health and human service sectors would be catastrophic for service providers and those needing access to services.

If scope of practice exemptions are allowed to sunset, there will be a devastating impact on the workforce and on New York State's services infrastructure. ASAP strongly advocates for a permanent exemption to the scope of practice provisions contained in the social work licensure legislation for staff working in licensed and certified programs under the auspices of the Office of Mental Hygiene.



June 26, 2012

New York State Office of the Professions
State Education Building
2nd Floor, Albany, NY 12234

The Council of Family and Child Caring Agencies (COFCCA) is actively committed to strengthening children, families and communities through strategic advocacy, education and the promotion of quality, culturally competent child welfare and juvenile justice services in the State of New York. COFCCA seeks to achieve these goals by working to strengthen the capacity of its member agencies to provide high quality services.

Thank you for the opportunity to submit this letter in addition to the comments that we submitted in review of the draft report SED has prepared for the Legislature on data collected in reference to the Social Work and Other Mental Health Professionals Licensing law, specifically the scope of practice issues. This comprehensive and thorough report contains useful and appropriate directions for further research. We would like to take this opportunity to reinforce what we believe are the key issues for our members and the children and families they provide services to.

1. We strongly support further clarification of terms and functions within the law in regard to the scopes of practice and the exemptions. Amendments to the law should be made, if necessary, to maintain the highest quality of service provision and ensure that practice is consistent with education and examination requirements. Further educational outreach to clarify the scopes of practice and exemptions will be an essential part of implementation planning for providers.
2. We support further collaboration between SED, exempt agencies, and provider agencies to define appropriate roles for members of multi-disciplinary teams. The work of unlicensed professionals on the multi-disciplinary teams is critical to the effective treatment and evaluation of individuals receiving services.
3. An essential component of the implementation strategy must be the exploration of alternative pathways to licensure and outreach to practitioners who hold the appropriate degrees but have yet to seek licensure. This will require additional resources and we ask that this be under the careful consideration of SED, the Governor, and the Legislature.
4. We encourage and support SED, the Legislature, the Executive and other key stakeholders to work together to implement the changes in the licensing laws to minimize the disruption of services and displacement of individuals or programs. Revisiting the timeline to ensure that the other pieces of this report can be adequately resolved is of great benefit to New York State.



Leadership, voice and vision for child welfare in New York State

Not included in this report, but the second key issue in reference to the implementation of this law is the Corporate Practice Waiver Issue. The Corporate Practice issues have created additional administrative workloads for nonprofit agencies at the very same time that the Governor's Executive Order 38 imposes new restrictions on administrative expenses, even those imposed by State agencies that serve no measurable purpose, like the Corporate Practice waiver processes. We support legislation that creates exemptions for agencies who receive funding and regulatory oversight from State agencies and we ask that SED advocate for alternative solutions to the Corporate Practice Issue. We appreciate that this is included in the implementation strategy planning resulting from this report.

Please consider us for further collaboration on clarifying these issues and preparing for implementation.

Sincerely,

A handwritten signature in black ink, which appears to read "Jim Purcell".

Jim Purcell, CEO
Council of Family and Child Caring Agencies