



May 2005

As the 2005 legislative season draws to a close the Guild wants to update you on legislation in your state and remind you of changes you may need to make in your practice. This file is intended to put into your hands the documents you need in order to keep your practice both safe and legal. This file was created by the Guild's New York Governmental Concerns Task Force, consisting of Dwight Damon, C. Scot Giles and Anthony DeMarco, assisted by the law firm of Pryor Cashman Sherman and Flynn, LLP and Guild legal counsel.

First, we must begin with a disclaimer. As the Mental Health Law has just come into existence, you must realize that there have been no official interpretations of the scope of the law by the Courts or other bodies of competent jurisdiction. Therefore, the National Guild of Hypnotists provides this information to you in good faith with an intent to help, but assumes no responsibility for its opinions that are rendered solely as an effort to promote full compliance with the existing law. This letter is not intended as a blueprint to circumvent the New York mental health laws but is intended to provide guidance to legitimately practice as a Certified Hypnotist, which the Guild does not consider to be "mental health" practice.

As background, two years ago the New York Legislature passed a comprehensive behavioral health license law. The law went into effect in 2005 and enforcement will begin in 2006. The language in the law is very broad and if you practice any form of mental health care you will need to be licensed. Licensure requires an accredited Master's Degree in one of the standard mental health disciplines and passing a test administered by the New York State Department of Education. The law does not regulate the practice of hypnotism specifically. However, it will certainly regulate anyone who holds services out to the public as psychotherapy, counseling or hypnotherapy (defined as the use of hypnotism in the treatment of mental disorders).

In 2005 the law was expanded to include Biofeedback Therapy as a licensed activity requiring a Master's Degree. The Scope of Practice of a Licensed Biofeedback Therapist states:

"In addition to teaching self-regulation by the use of such [biofeedback] instruments, other methods promoting health and coping skills taught by the

biofeedback therapist include, but are not limited to, diaphragmatic breathing, progressive relaxation, autogenic training, imagery, psycho-physiological therapy and cognitive restructuring.”

While this new section does not mention hypnotism, it must be noted that it does mention techniques that hypnotists also employ. It is allowable under the law for a hypnotist to use these techniques provided the hypnotist does not employ these techniques for any purpose regulated by the behavioral health license law.

The Guild has obtained a legal opinion that states that you do not need to be licensed as a behavioral health professional to practice hypnotism in New York, provided you strictly follow the Standards and Terminology of the National Guild of Hypnotists. However, as noted above, there are no official representations or court cases to provide guidance in this area and the Guild legal opinion is just that, an opinion. The Guild assumes no responsibility for any actions taken against any hypnotist by the State of New York under its Comprehensive Behavioral Health License Law. Additionally, the Guild does not warrant protection from any enforcement action, notwithstanding the suggestions made in this letter.

Our suggestions are as follows:

- ✓ You must call yourself a hypnotist, not a hypnotherapist.
- ✓ You should not display any certificate that uses any other title. The Guild will issue you a Certified Hypnotist certificate to replace any Guild certificate using a different title in return for a small processing fee of \$6.00.
- ✓ You must call what you do hypnotism, not hypnotherapy and certainly not counseling or psychotherapy.
- ✓ You must hold your services out to the public as a form of self-hypnotic instruction to empower clients. Basically, you must represent yourself as a success coach, motivator and guide, not as any form of mental health professional. Your advertising in all media must strictly follow this requirement.
- ✓ You must use only the nontherapeutic terminology approved by the National Guild of Hypnotists when representing your services or discussing issues with clients.
- ✓ You must not use diagnostic nor psychological language with clients, either as a description of their problem nor for what you do except when working on referral from an appropriately licensed behavioral health professional.
- ✓ You should add to your Client Bill of Rights the following paragraph:
“The services I render are held out to the public as nontherapeutic hypnotism, defined as the use of hypnosis to inculcate positive thinking and the capacity for self-hypnosis. I do not represent my services as any form of medical, behavioral or mental health care, and despite research to the contrary, by law I may make no health benefit claims for my services.”

We recommend you do not hold your services out to the public using an unaccredited academic degree that makes it appear that you are claiming to be any sort of psychologist

or counselor. Similarly, we advise you that some of your colleagues in Texas, where similar restrictions apply, were unfairly cited simply because they mentioned affiliation with an organization that had the word “hypnotherapy” as part of its name.

We stress that a person does not have to be a member of the National Guild of Hypnotists to make use of our Standards and Terminology. We encourage all hypnotists to do so regardless of their affiliation.

If you have not already done so, we urge you to download the Standards of Practice and Recommended Terminology from the web site of the National Guild of Hypnotists at <http://www.ngh.net> and adjust your practice accordingly. Feel free to share them with colleagues who may not be Guild members.

To the best of our knowledge, obtaining ministerial credentials to circumvent the law has never worked. Case law is crystal clear that the government can ignore such ministerial credentials unless your practice meets specific legal tests, including the requirement that the “ministry” not be run for the enrichment of any person. This file contains a copy of the formal opinion from the Texas Attorney General rejecting such ordinations when some hypnotists attempted to use them to circumvent the law in that state. We believe the situation will be identical in New York.

The National Guild of Hypnotists remains committed to you and to professional hypnotism. We see no cause for alarm in New York provided you practice within our Recommended Standards and Terminology and do not antagonize your state government by attempting to circumvent the law using a ruse. If practitioners do the latter they may so affect the political environment that your right to practice could be lost. Therefore, we suggest all members make an effort to correct any other practitioner who seems to be violating the law. Ultimately, it will be up to the practitioners to either preserve or ruin New York State for the practice of hypnotism.

We were frankly advised by legislative consultants not to attempt to amend the new mental health license law, for to seek exemption from it could be construed as admission that we were regulated by it. However, we are always willing to actively pursue different paths to provide legal protection for your practice and will update you if and as events unfold.

The contents of this file are:

1. This introduction
2. An explanation of Article 163 created by the Board of Regents
3. A copy of the actual license legislation (the biofeedback section mentioned above will be added at the close of the 2005 legislative season)
4. A copy of the Letter of Opinion from the law firm of Pryor Cashman Sherman and Flynn, LLP
5. A copy of the Opinion of the Attorney General of the State of Texas regarding internet or mail order ordinations.

Licensure and Practice of the Mental Health Professions in New York State

Below, please find information on a new law that affects the licensure and practice of the mental health professions in New York State. Specifically, the law:

- Establishes four new mental health professions: Mental Health Counseling, Marriage and Family Therapy, Creative Arts Therapy, and Psychoanalysis by adding Article 163 to Education Law.
- Establishes a scope of practice for the profession of psychology in New York State and requires a limited permit for individuals gaining supervised experience to meet the requirements for licensure, by amending Article 153 of Education Law.

Chapter 676 of the Laws of 2002 was signed into law on December 9, 2002. Preliminary information about this new law in the form of a series of questions and answers is provided below based upon questions recently received by the State Education Department.

[Counseling and Psychotherapy](#) | [The Psychology Profession](#) | [Four New Mental Health Professions](#) | [Additional Requirements](#) | [Social Work Licensure](#) | [For more information](#)

Counseling and Psychotherapy

1. Is a license currently required to practice counseling and psychotherapy in New York State?

A professional license is not required currently for the practice of counseling or psychotherapy. However, beginning on January 1, 2005, most people who practice counseling or psychotherapy will be required to be licensed in one of several professions, unless exempt under law.

2. What are the benefits of requiring licensure for individuals practicing counseling and psychotherapy?

This law will protect members of the public who seek mental health services by ensuring that mental health practitioners have met entry level standards of education, experience, examination, and good moral character before becoming licensed in a mental health profession. Additionally, professionals whose licenses in another profession have been revoked or surrendered will no longer be able to continue to practice counseling or psychotherapy as unlicensed practitioners.

The Psychology Profession

1. What changes will affect the profession of psychology?

- *Scope of Practice:* Chapter 676 establishes a scope of practice for the profession of psychology, which defines the practice of psychology and restricts that practice to individuals who are licensed as psychologists, or are able to practice by specific exemptions. Some of these exemptions include the practices, conduct, activities and services of certain other licensed professionals, such as nurses, physicians and certified social workers, to the extent that the activities are a part of their authorized scopes of practice. As a result, individuals currently licensed and authorized under Title VIII of the Education Law to provide mental health services continue to have authorization to provide mental health services without any change in their practices.
- *Limited Permits:* Beginning in September 2003, a limited permit will be required for individuals who are

gaining supervised experience to meet the requirements for licensure as psychologists. A limited permit will initially be issued for an aggregate of three years and may be re-issued for a maximum period of one additional year for good cause, as determined by the Department. Information will be available soon regarding the circumstances under which a limited permit will be required.

2. What other provisions are included in the amendments to Article 153?

Psychologists are currently not allowed to prescribe or administer drugs as a treatment, therapy, or professional service in the practice of the profession or to use invasive procedures as a treatment, therapy, or professional service. This prohibition is now incorporated into Article 153 of Education Law, which also defines invasive procedures, e.g. surgery, ultrasound, or electroconvulsive therapy.

Four New Mental Health Professions

1. What new professions have been established?

Four new licensed professions have been established: Mental Health Counseling; Marriage and Family Therapy; Creative Arts Therapy; and Psychoanalysis.

2. Who may practice Mental Health Counseling, Marriage and Family Therapy, Creative Arts Therapy and Psychoanalysis or represent themselves as such?

Only New York State licensed psychologists, physicians, physician assistants, certified social workers, nurses, mental health counselors, marriage and family therapists, creative arts therapists, and psychoanalysts can engage or claim to engage in these practices. None of these professionals, however, may use the protected title of another profession unless they are also licensed in that profession. For example, a physician may practice psychoanalysis, but may only claim to be a "licensed psychoanalyst" if the physician also is licensed as a psychoanalyst.

3. Who is exempt from becoming licensed in one of the four new mental health professions?

Professionals, including psychologists, nurses, certified social workers, physicians and physician assistants, whose license, certification, or other authorization enables them to engage in the practice of psychotherapy and counseling are exempt under Chapter 676.

Additionally, the new law does not prohibit or limit individuals, churches, schools, teachers, organizations or not-for-profit businesses from providing instruction, advice, support, encouragement, or information to individuals, families or relational groups.

4. Who will license and regulate these professions?

The Board of Regents and the New York State Education Department oversee the preparation, licensure, and practice of the professions. The State Education Department's Office of the Professions will regulate the four new mental health therapy professions, along with thirty-nine other professions defined in Title VIII of the Education Law.

5. When will a license be required to practice the four newly established mental health professions?

The Department will begin issuing licenses and limited permits in the four new mental health professions on January 2, 2005. The requirement to hold a valid license or limited permit to practice the profession will not be enforced until January 1, 2006.

6. Is a license in these four new mental health professions available now?

No, licenses are not available now. Before a license can be issued, several activities must occur. The Board of Regents must appoint a Board for Mental Health Practitioners. The Board will assist the Department in the development of regulations to implement the new law. In addition, processes necessary to license these professionals efficiently, must be developed before applications for licensure can be made available (e.g. selection

of a licensure examination). At the same time, the Board of Regents and the Department will solicit and consider public comment on the development of regulations for these professions. When it is available, information on applying for licensure will be posted on this site.

7. Will colleges, universities and psychotherapy institutes that prepare individuals for these professions be required to register their professional education programs with the State Education Department?

Yes. Colleges, universities, and psychotherapy institutes that wish to offer programs leading to licensure in the four new professions will have to register their programs as licensure-qualifying with the Department. We will begin accepting applications from institutions after the Board of Regents has enacted regulations for the four new mental health professions. The regulations will clarify the education and experience requirements for licensure and limited permits in the new professions, providing specific information for the colleges, universities and psychotherapy institutes that prepare individuals for these professions as well as for applicants themselves. Information on program registration will be sent to schools and posted on our Web site as soon as it is available.

8. Are there grandparenting provisions for individuals who do not meet the new requirements for licensure?

Yes. The Education Department has the authority under the law to establish criteria for individuals who do not meet the requirements specified in Article 163 for licensure in the four new mental health professions. Individuals will be able to apply under grandparenting requirements on January 1, 2005.

There are also provisions for individuals who meet all requirements for licensure except the examination requirement and:

- are certified by a national or other acceptable registration body , or
- have been practicing the profession for five of the preceding eight years

Additional Requirements

1. What other mandates are in Chapter 676?

- Professionals licensed in the four new mental health professions cannot prescribe or administer drugs or use specific and defined invasive procedures as treatments, therapies or professional services under any circumstances. Examples of invasive procedures are surgery and electroconvulsive therapy.
- The Social Services Law was amended to add licensed creative arts therapist, licensed marriage and family therapist, licensed mental health counselor, and licensed psychoanalyst to the list of professionals and occupations required to report suspected cases of child abuse or neglect. In addition, Education Law was amended to require that professionals seeking licensure or a limited permit in one of these professions must complete a two-hour course in the Identification and Reporting of Child Abuse and Maltreatment as a condition of licensure.
- Amendments were made to the Business Corporation Law regarding the establishment of professional service limited liability partnerships or companies by professionals in the four new mental health professions.
- Individuals licensed in one of the four new mental health professions, cannot provide continuous and sustained mental health services to individuals with serious mental illnesses (as defined in Section 8407 (1)) without a medical evaluation of the patient by a physician and a consultation with the physician regarding the illness.

Social Work Licensure

Recent changes to the Education Law regarding licensure in Social Work, are included in Chapter 420 of the Laws of 2002. A series of [Questions and Answers](#) can be found on our Web site.

For more information

If you have additional questions or need more information related to:

- *Psychology* - please contact Kathleen M. Doyle, Executive Secretary, State Board for Psychology, by phone at 518-474-3817, ext. 150 or by e-mail at psychbd@mail.nysed.gov
- *Mental Health Counseling, Marriage and Family Therapy, Creative Arts Therapy, and Psychoanalysis* - please contact David Hamilton, Executive Secretary, by phone at 518-474-3817, ext. 180 or by e-mail at mhpbdc@mail.nysed.gov
- *Social Work* - please contact Norman G. Cohen, Executive Secretary, State Board for Social Work, by phone at 518-474-3817, ext. 450 or by e-mail at swbd@mail.nysed.gov
- *For General Information* - please contact the Office of the Professions by phone at 518-474-3817 or by e-mail at op4info@mail.nysed.gov

<http://www.op.nysed.gov/mhpques-ans.htm>

Page last updated: 01/22/2003 08:39:20

Law, Rules, and Regulations

Chapter 676, Laws of New York, 2002

CHAPTER 676, LAWS OF NEW YORK, 2002

AN ACT to amend the education law, in relation to defining the practice of psychology; and repealing certain provisions of such law relating thereto; to amend the education law and the social services law, in relation to licensing mental health practitioners; and to amend the business corporation law, the limited liability company law and the partnership law, in relation to the practices of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis

Became a law December 9, 2002, with the approval of the Governor.

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

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 7600 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

S 7600. Introduction. This article applies TO THE PROFESSION AND PRACTICE OF PSYCHOLOGY AND to the use of the title "psychologist". The general provisions for all professions contained in article one hundred thirty of this title apply to this article.

S 2. Section 7601 of the education law, as added by chapter 987 of the laws of 1971, is amended to read as follows:

S 7601. {Use} PRACTICE OF PSYCHOLOGY AND USE of THE title "psychologist". Only a person licensed OR OTHERWISE AUTHORIZED under this article shall be authorized to PRACTICE PSYCHOLOGY OR TO use the title "psychologist" or to describe his OR HER services by use of the words "psychologist", "psychology" or "psychological" in connection with his OR HER practice.

S 3. The education law is amended by adding a new section 7601-a to read as follows:

S 7601-A. DEFINITION OF THE PRACTICE OF PSYCHOLOGY. 1. THE PRACTICE OF PSYCHOLOGY IS THE OBSERVATION, DESCRIPTION, EVALUATION, INTERPRETATION, AND MODIFICATION OF BEHAVIOR FOR THE PURPOSE OF PREVENTING OR ELIMINATING SYMPTOMATIC, MALADAPTIVE OR UNDESIRE BEHAVIOR; ENHANCING INTERPERSONAL RELATIONSHIPS, PERSONAL, GROUP OR ORGANIZATIONAL EFFECTIVENESS AND WORK AND/OR LIFE ADJUSTMENT; AND IMPROVING BEHAVIORAL HEALTH AND/OR MENTAL HEALTH. THE PRACTICE INCLUDES, BUT IS NOT LIMITED TO PSYCHOLOGICAL (INCLUDING NEUROPSYCHOLOGICAL) TESTING AND COUNSELING; PSYCHOANALYSIS; PSYCHOTHERAPY; THE DIAGNOSIS AND TREATMENT OF MENTAL, NERVOUS, EMOTIONAL, COGNITIVE OR BEHAVIORAL DISORDERS, DISABILITIES, AILMENTS OR ILLNESSES, ALCOHOLISM, SUBSTANCE ABUSE, DISORDERS OF HABIT OR CONDUCT, THE PSYCHOLOGICAL ASPECTS OF PHYSICAL ILLNESS, ACCIDENT, INJURY OR DISABILITY, PSYCHOLOGICAL ASPECTS OF LEARNING (INCLUDING LEARNING DISORDERS); AND THE USE OF ACCEPTED CLASSIFICATION SYSTEMS.

2. THE TERM "DIAGNOSIS AND TREATMENT" MEANS THE APPROPRIATE PSYCHOLOGICAL DIAGNOSIS AND THE ORDERING OR PROVIDING OF TREATMENT ACCORDING TO NEED. TREATMENT INCLUDES, BUT IS NOT LIMITED TO COUNSELING, PSYCHOTHERAPY, MARITAL OR FAMILY THERAPY, PSYCHOANALYSIS, AND OTHER PSYCHOLOGICAL INTERVENTIONS, INCLUDING VERBAL, BEHAVIORAL, OR OTHER APPROPRIATE MEANS AS DEFINED IN REGULATIONS PROMULGATED BY THE COMMISSIONER.

S 4. Section 7604 of the education law is amended by adding a new subdivision 1-a to read as follows:

1-A. ON THE RECOMMENDATION OF THE BOARD, THE DEPARTMENT MAY ISSUE A LIMITED PERMIT VALID FOR AN AGGREGATE OF THREE YEARS TO A PERSON WHO HAS COMPLETED THE DOCTORAL DISSERTATION AND OTHER DOCTORAL DEGREE REQUIREMENTS AND IS GAINING SUPERVISED EXPERIENCE TO MEET THE EXPERIENCE REQUIREMENTS FOR LICENSURE. THIS PERMIT MAY BE RE-ISSUED FOR A MAXIMUM PERIOD OF ONE YEAR FOR GOOD CAUSE, AS DETERMINED BY THE DEPARTMENT.

S 5. Subdivision 3 of section 7605 of the education law is REPEALED, subdivision 4 is renumbered subdivision 8, and five new subdivisions 3, 4, 5, 6 and 7 are added to read as follows:

3. THE PRACTICE, CONDUCT, ACTIVITIES OR SERVICES BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE MEDICINE WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THIS TITLE OR BY ANY PERSON REGISTERED TO PERFORM SERVICES AS A PHYSICIAN ASSISTANT WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE-B OF THIS TITLE.

4. THE PRACTICE, CONDUCT, ACTIVITIES, OR SERVICES BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE NURSING AS A REGISTERED PROFESSIONAL NURSE WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-NINE OF THIS TITLE OR BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE AS A CERTIFIED SOCIAL WORKER WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED FIFTY-FOUR OF THIS TITLE, OR BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE MENTAL HEALTH COUNSELING, MARRIAGE AND FAMILY THERAPY, CREATIVE ARTS THERAPY, OR PSYCHOANALYSIS WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED SIXTY-THREE OF THIS TITLE, OR ANY INDIVIDUAL WHO IS CREDENTIALLED UNDER ANY LAW, INCLUDING ATTORNEYS, RAPE CRISIS COUNSELORS, CERTIFIED ALCOHOLISM COUNSELORS, AND CERTIFIED SUBSTANCE ABUSE COUNSELORS FROM PROVIDING MENTAL HEALTH SERVICES WITHIN THEIR RESPECTIVE ESTABLISHED AUTHORITIES.

5. THE CONDUCT, ACTIVITIES, OR SERVICES OF ANY MEMBER OF THE CLERGY OR CHRISTIAN SCIENCE PRACTITIONER, IN THE PROVISION OF PASTORAL COUNSELING SERVICES WITHIN THE CONTEXT OF HIS OR HER MINISTERIAL CHARGE OR OBLIGATION.

6. THE CONDUCT, ACTIVITIES, OR SERVICES OF INDIVIDUALS, CHURCHES, SCHOOLS, TEACHERS, ORGANIZATIONS, OR NOT-FOR-PROFIT BUSINESSES IN PROVIDING INSTRUCTION, ADVICE, SUPPORT, ENCOURAGEMENT, OR INFORMATION TO INDIVIDUALS, FAMILIES, AND RELATIONAL GROUPS.

7. THE PRACTICE, CONDUCT, ACTIVITIES, OR SERVICES OF AN OCCUPATIONAL THERAPIST FROM PERFORMING WORK CONSISTENT WITH ARTICLE ONE HUNDRED FIFTY-SIX OF THIS TITLE.

S 6. The education law is amended by adding a new section 7606 to read as follows:

S 7606. PROHIBITIONS. ANY INDIVIDUAL WHOSE LICENSE OR AUTHORITY TO PRACTICE DERIVES FROM THE PROVISIONS OF THIS ARTICLE SHALL BE PROHIBITED FROM:

1. PRESCRIBING OR ADMINISTERING DRUGS AS DEFINED IN THIS CHAPTER AS A TREATMENT, THERAPY, OR PROFESSIONAL SERVICE IN THE PRACTICE OF HIS OR HER PROFESSION; OR

2. USING INVASIVE PROCEDURES AS A TREATMENT, THERAPY, OR PROFESSIONAL SERVICE IN THE PRACTICE OF HIS OR HER PROFESSION. FOR PURPOSES OF THIS SUBDIVISION, "INVASIVE PROCEDURE" MEANS ANY PROCEDURE IN WHICH HUMAN TISSUE IS CUT, ALTERED, OR OTHERWISE INFILTRATED BY MECHANICAL OR OTHER MEANS. INVASIVE PROCEDURE INCLUDES SURGERY, LASERS, IONIZING RADIATION, THERAPEUTIC ULTRASOUND, OR ELECTROCONVULSIVE THERAPY.

S 7. Legislative intent. The practices of mental health counseling, marriage and family therapy, creative arts therapy, and psychoanalysis within the state of New York affects the public safety and welfare of its citizens. The legislature finds it is in the public interest to regulate and control these practices in order to protect the public from unprofessional, improper, unauthorized and unqualified practice of counseling and psychotherapy. The statutory framework proposed by this act

includes exemptions to assure that those individuals, including registered professional nurses, physicians, social workers and psychologists who are licensed and authorized under title 8 of the education law, continue to have authorization to provide mental health services without any change in their practice; similarly, the exemptions are designed to allow those who are newly licensed with a legally defined scope of practice to practice to the full extent permitted by their own scope of practice. Individuals who are credentialed under any other law, such as attorneys, rape crisis counselors, certified alcoholism counselors and certified substance abuse counselors, shall continue to provide services within their respective established authorities.

S 8. The education law is amended by adding a new article 163 to read as follows:

ARTICLE 163

MENTAL HEALTH PRACTITIONERS

SECTION 8400. INTRODUCTION.

8401. DEFINITIONS.

8402. MENTAL HEALTH COUNSELING.

8403. MARRIAGE AND FAMILY THERAPY.

8404. CREATIVE ARTS THERAPY.

8405. PSYCHOANALYSIS.

8406. STATE BOARD FOR MENTAL HEALTH PRACTITIONERS.

8407. BOUNDARIES OF PROFESSIONAL COMPETENCY.

8408. HOSPITAL PRIVILEGES.

8409. LIMITED PERMITS.

8410. EXEMPTIONS.

8411. SPECIAL PROVISIONS.

S 8400. INTRODUCTION. THIS ARTICLE APPLIES TO THE PROFESSIONS OF MENTAL HEALTH COUNSELING, MARRIAGE AND FAMILY THERAPY, CREATIVE ARTS THERAPY, AND PSYCHOANALYSIS AND PROVIDES FOR THE LICENSING OF SUCH PRACTITIONERS. THE GENERAL PROVISIONS FOR ALL PROFESSIONS CONTAINED IN ARTICLE ONE HUNDRED THIRTY OF THIS TITLE APPLY TO THIS ARTICLE.

S 8401. DEFINITIONS. FOR PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "BOARD" MEANS THE STATE BOARD FOR MENTAL HEALTH PRACTITIONERS AUTHORIZED BY SECTION EIGHTY-FOUR HUNDRED SIX OF THIS ARTICLE.

2. "PSYCHOTHERAPY" MEANS THE TREATMENT OF MENTAL, NERVOUS, EMOTIONAL, BEHAVIORAL AND ADDICTIVE DISORDERS, AND AILMENTS BY THE USE OF BOTH VERBAL AND BEHAVIORAL METHODS OF INTERVENTION IN INTERPERSONAL RELATIONSHIPS WITH THE INTENT OF ASSISTING THE PERSONS TO MODIFY ATTITUDES, THINKING, AFFECT, AND BEHAVIOR WHICH ARE INTELLECTUALLY, SOCIALLY AND EMOTIONALLY MALADAPTIVE.

S 8402. MENTAL HEALTH COUNSELING. 1. DEFINITION OF THE PRACTICE OF MENTAL HEALTH COUNSELING. THE PRACTICE OF THE PROFESSION OF MENTAL HEALTH COUNSELING IS DEFINED AS:

(A) THE EVALUATION, ASSESSMENT, AMELIORATION, TREATMENT, MODIFICATION, OR ADJUSTMENT TO A DISABILITY, PROBLEM, OR DISORDER OF BEHAVIOR, CHARACTER, DEVELOPMENT, EMOTION, PERSONALITY OR RELATIONSHIPS BY THE USE OF VERBAL OR BEHAVIORAL METHODS WITH INDIVIDUALS, COUPLES, FAMILIES OR GROUPS IN PRIVATE PRACTICE, GROUP, OR ORGANIZED SETTINGS; AND

(B) THE USE OF ASSESSMENT INSTRUMENTS AND MENTAL HEALTH COUNSELING AND PSYCHOTHERAPY TO IDENTIFY, EVALUATE AND TREAT DYSFUNCTIONS AND DISORDERS FOR PURPOSES OF PROVIDING APPROPRIATE MENTAL HEALTH COUNSELING SERVICES.

2. PRACTICE OF MENTAL HEALTH COUNSELING AND USE OF THE TITLES "MENTAL HEALTH COUNSELOR" AND "LICENSED MENTAL HEALTH COUNSELOR". ONLY A PERSON LICENSED OR EXEMPT UNDER THIS ARTICLE SHALL PRACTICE MENTAL HEALTH COUNSELING OR USE THE TITLE "MENTAL HEALTH COUNSELOR". ONLY A PERSON LICENSED UNDER THIS ARTICLE SHALL USE THE TITLE "LICENSED MENTAL HEALTH COUNSELOR" OR ANY OTHER DESIGNATION TENDING TO IMPLY THAT THE PERSON IS

LICENSED TO PRACTICE MENTAL HEALTH COUNSELING.

3. REQUIREMENTS FOR A PROFESSIONAL LICENSE. TO QUALIFY FOR A LICENSE AS A "LICENSED MENTAL HEALTH COUNSELOR", AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

- (A) APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;
- (B) EDUCATION: HAVE RECEIVED AN EDUCATION, INCLUDING A MASTER'S OR HIGHER DEGREE IN COUNSELING FROM A PROGRAM REGISTERED BY THE DEPARTMENT OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT THEREOF, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS. THE GRADUATE COURSEWORK SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING AREAS:
 - (I) HUMAN GROWTH AND DEVELOPMENT;
 - (II) SOCIAL AND CULTURAL FOUNDATIONS OF COUNSELING;
 - (III) COUNSELING THEORY AND PRACTICE AND PSYCHOPATHOLOGY;
 - (IV) GROUP DYNAMICS;
 - (V) LIFESTYLE AND CAREER DEVELOPMENT;
 - (VI) ASSESSMENT AND APPRAISAL OF INDIVIDUALS, COUPLES AND FAMILIES AND GROUPS;
 - (VII) RESEARCH AND PROGRAM EVALUATION;
 - (VIII) PROFESSIONAL ORIENTATION AND ETHICS;
 - (IX) FOUNDATIONS OF MENTAL HEALTH COUNSELING AND CONSULTATION;
 - (X) CLINICAL INSTRUCTION; AND
 - (XI) COMPLETION OF A MINIMUM ONE YEAR SUPERVISED INTERNSHIP OR PRACTICUM IN MENTAL HEALTH COUNSELING;
- (C) EXPERIENCE: AN APPLICANT SHALL COMPLETE A MINIMUM OF THREE THOUSAND HOURS OF POST-MASTER'S SUPERVISED EXPERIENCE RELEVANT TO THE PRACTICE OF MENTAL HEALTH COUNSELING SATISFACTORY TO THE BOARD AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;
- (D) EXAMINATION: PASS AN EXAMINATION SATISFACTORY TO THE BOARD AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;
- (E) AGE: BE AT LEAST TWENTY-ONE YEARS OF AGE;
- (F) CHARACTER: BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT; AND
- (G) FEES: PAY A FEE OF TWO HUNDRED FORTY DOLLARS TO THE DEPARTMENT FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND FOR AN INITIAL LICENSE; A FEE OF EIGHTY-FIVE DOLLARS FOR EACH REEXAMINATION; A FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS FOR AN INITIAL LICENSE FOR PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND A FEE OF ONE HUNDRED SEVENTY DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

S 8403. MARRIAGE AND FAMILY THERAPY. 1. DEFINITION OF THE PRACTICE OF MARRIAGE AND FAMILY THERAPY. THE PRACTICE OF THE PROFESSION OF MARRIAGE AND FAMILY THERAPY IS DEFINED AS:

- (A) THE ASSESSMENT AND TREATMENT OF NERVOUS AND MENTAL DISORDERS, WHETHER AFFECTIVE, COGNITIVE OR BEHAVIORAL, WHICH RESULTS IN DYSFUNCTIONAL INTERPERSONAL FAMILY RELATIONSHIPS INCLUDING, BUT NOT LIMITED TO FAMILIAL RELATIONSHIPS, MARITAL/COUPLE RELATIONSHIPS, PARENT-CHILD RELATIONSHIPS, PRE-MARITAL AND OTHER PERSONAL RELATIONSHIPS;
- (B) THE USE OF MENTAL HEALTH COUNSELING, PSYCHOTHERAPY AND THERAPEUTIC TECHNIQUES TO EVALUATE AND TREAT MARITAL, RELATIONAL, AND FAMILY SYSTEMS, AND INDIVIDUALS IN RELATIONSHIP TO THESE SYSTEMS;
- (C) THE USE OF MENTAL HEALTH COUNSELING AND PSYCHOTHERAPEUTIC TECHNIQUES TO TREAT MENTAL, EMOTIONAL AND BEHAVIORAL DISORDERS AND AILMENTS WITHIN THE CONTEXT OF MARITAL, RELATIONAL AND FAMILY SYSTEMS TO PREVENT AND AMELIORATE DYSFUNCTION; AND
- (D) THE USE OF ASSESSMENT INSTRUMENTS AND MENTAL HEALTH COUNSELING AND PSYCHOTHERAPY TO IDENTIFY AND EVALUATE DYSFUNCTIONS AND DISORDERS FOR PURPOSES OF PROVIDING APPROPRIATE MARRIAGE AND FAMILY THERAPY SERVICES.

2. PRACTICE OF MARRIAGE AND FAMILY THERAPY AND USE OF THE TITLES "MARRIAGE AND FAMILY THERAPIST" AND "LICENSED MARRIAGE AND FAMILY THERAPIST". ONLY A PERSON LICENSED OR EXEMPT UNDER THIS ARTICLE SHALL PRACTICE

TICE MARRIAGE AND FAMILY THERAPY OR USE THE TITLE "MARRIAGE AND FAMILY THERAPIST". ONLY A PERSON LICENSED UNDER THIS ARTICLE SHALL USE THE TITLES "LICENSED MARRIAGE AND FAMILY THERAPIST", "LICENSED MARRIAGE THERAPIST", "LICENSED FAMILY THERAPIST" OR ANY OTHER DESIGNATION TENDING TO IMPLY THAT THE PERSON IS LICENSED TO PRACTICE MARRIAGE AND FAMILY THERAPY.

3. REQUIREMENTS FOR A PROFESSIONAL LICENSE. TO QUALIFY FOR A LICENSE AS A "LICENSED MARRIAGE AND FAMILY THERAPIST", AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

(A) APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

(B) EDUCATION: HAVE RECEIVED A MASTER'S OR DOCTORAL DEGREE IN MARRIAGE AND FAMILY THERAPY FROM A PROGRAM REGISTERED BY THE DEPARTMENT, OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS OR A GRADUATE DEGREE IN AN ALLIED FIELD FROM A PROGRAM REGISTERED BY THE DEPARTMENT AND GRADUATE LEVEL COURSEWORK DETERMINED TO BE EQUIVALENT TO THAT REQUIRED IN A PROGRAM REGISTERED BY THE DEPARTMENT. THIS COURSEWORK SHALL INCLUDE, BUT NOT BE LIMITED TO:

(I) THE STUDY OF HUMAN DEVELOPMENT, INCLUDING INDIVIDUAL, CHILD AND FAMILY DEVELOPMENT;

(II) PSYCHOPATHOLOGY;

(III) MARITAL AND FAMILY THERAPY;

(IV) FAMILY LAW;

(V) RESEARCH;

(VI) PROFESSIONAL ETHICS; AND

(VII) A PRACTICUM OF AT LEAST THREE HUNDRED CLIENT CONTACT HOURS;

(C) EXPERIENCE: THE COMPLETION OF AT LEAST ONE THOUSAND FIVE HUNDRED CLIENT CONTACT HOURS OF SUPERVISED CLINICAL EXPERIENCE, BY PERSONS HOLDING A DEGREE FROM A MASTER'S OR DOCTORAL PROGRAM, OR THE SUBSTANTIAL EQUIVALENT, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS OR THE COMPLETION OF AT LEAST ONE THOUSAND FIVE HUNDRED CLIENT HOURS OF SUPERVISED POST-MASTER'S CLINICAL EXPERIENCE IN MARRIAGE AND FAMILY THERAPY SATISFACTORY TO THE DEPARTMENT IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

(D) EXAMINATION: PASS AN EXAMINATION SATISFACTORY TO THE BOARD AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

(E) AGE: BE AT LEAST TWENTY-ONE YEARS OF AGE;

(F) CHARACTER: BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT; AND

(G) FEES: PAY A FEE OF TWO HUNDRED FORTY DOLLARS TO THE DEPARTMENT FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND FOR AN INITIAL LICENSE; A FEE OF EIGHTY-FIVE DOLLARS FOR EACH REEXAMINATION; A FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS FOR AN INITIAL LICENSE FOR PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND A FEE OF ONE HUNDRED SEVENTY DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

S 8404. CREATIVE ARTS THERAPY. 1. DEFINITION OF THE PRACTICE OF CREATIVE ARTS THERAPY. THE PRACTICE OF THE PROFESSION OF CREATIVE ARTS THERAPY IS DEFINED AS:

(A) THE ASSESSMENT, EVALUATION, AND THE THERAPEUTIC INTERVENTION AND TREATMENT, WHICH MAY BE EITHER PRIMARY, PARALLEL OR ADJUNCTIVE, OF MENTAL, EMOTIONAL, DEVELOPMENTAL AND BEHAVIORAL DISORDERS THROUGH THE USE OF THE ARTS AS APPROVED BY THE DEPARTMENT; AND

(B) THE USE OF ASSESSMENT INSTRUMENTS AND MENTAL HEALTH COUNSELING AND PSYCHOTHERAPY TO IDENTIFY, EVALUATE AND TREAT DYSFUNCTIONS AND DISORDERS FOR PURPOSES OF PROVIDING APPROPRIATE CREATIVE ARTS THERAPY SERVICES.

2. PRACTICE OF CREATIVE ARTS THERAPY AND USE OF THE TITLES "CREATIVE ARTS THERAPIST" AND "LICENSED CREATIVE ARTS THERAPIST". ONLY A PERSON LICENSED OR EXEMPT UNDER THIS ARTICLE SHALL PRACTICE CREATIVE ARTS THERAPY OR USE THE TITLE "CREATIVE ARTS THERAPIST". ONLY A PERSON LICENSED

UNDER THIS ARTICLE SHALL USE THE TITLE "LICENSED CREATIVE ARTS THERAPIST" OR ANY OTHER DESIGNATION TENDING TO IMPLY THAT THE PERSON IS LICENSED TO PRACTICE CREATIVE ARTS THERAPY.

3. REQUIREMENTS FOR A PROFESSIONAL LICENSE. TO QUALIFY FOR A LICENSE AS A "LICENSED CREATIVE ARTS THERAPIST", AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

(A) APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

(B) EDUCATION: HAVE RECEIVED AN EDUCATION, INCLUDING A MASTER'S OR HIGHER DEGREE IN CREATIVE ARTS THERAPY FROM A PROGRAM REGISTERED BY THE DEPARTMENT OR DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT THEREOF, IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS. THE GRADUATE COURSEWORK SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING AREAS:

(I) HUMAN GROWTH AND DEVELOPMENT;

(II) THEORIES IN THERAPY;

(III) GROUP DYNAMICS;

(IV) ASSESSMENT AND APPRAISAL OF INDIVIDUALS AND GROUPS;

(V) RESEARCH AND PROGRAM EVALUATION;

(VI) PROFESSIONAL ORIENTATION AND ETHICS;

(VII) FOUNDATIONS OF CREATIVE ARTS THERAPY AND PSYCHOPATHOLOGY; AND

(VIII) CLINICAL INSTRUCTION;

(C) EXPERIENCE: HAVE COMPLETED AT LEAST FIFTEEN HUNDRED HOURS OF POST-MASTER'S SUPERVISED EXPERIENCE IN ONE OR MORE CREATIVE ARTS THERAPIES SATISFACTORY TO THE DEPARTMENT AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

(D) EXAMINATION: PASS AN EXAMINATION IN CREATIVE ARTS THERAPY SATISFACTORY TO THE DEPARTMENT AND IN ACCORDANCE WITH THE COMMISSIONER'S REGULATIONS;

(E) AGE: BE AT LEAST TWENTY-ONE YEARS OF AGE;

(F) CHARACTER: BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT; AND

(G) FEES: PAY A FEE OF TWO HUNDRED FORTY DOLLARS TO THE DEPARTMENT FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND FOR AN INITIAL LICENSE; A FEE OF EIGHTY-FIVE DOLLARS FOR EACH REEXAMINATION; A FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS FOR AN INITIAL LICENSE FOR PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND A FEE OF ONE HUNDRED SEVENTY DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

S 8405. PSYCHOANALYSIS. 1. DEFINITION OF THE PRACTICE OF PSYCHOANALYSIS. THE PRACTICE OF THE PROFESSION OF PSYCHOANALYSIS IS DEFINED AS:

(A) THE OBSERVATION, DESCRIPTION, EVALUATION, AND INTERPRETATION OF DYNAMIC UNCONSCIOUS MENTAL PROCESSES THAT CONTRIBUTE TO THE FORMATION OF PERSONALITY AND BEHAVIOR IN ORDER TO IDENTIFY AND RESOLVE UNCONSCIOUS PSYCHIC PROBLEMS WHICH AFFECT INTERPERSONAL RELATIONSHIPS AND EMOTIONAL DEVELOPMENT, TO FACILITATE CHANGES IN PERSONALITY AND BEHAVIOR THROUGH THE USE OF VERBAL AND NONVERBAL COGNITIVE AND EMOTIONAL COMMUNICATION, AND TO DEVELOP ADAPTIVE FUNCTIONING; AND

(B) THE USE OF ASSESSMENT INSTRUMENTS AND MENTAL HEALTH COUNSELING AND PSYCHOTHERAPY TO IDENTIFY, EVALUATE AND TREAT DYSFUNCTIONS AND DISORDERS FOR PURPOSES OF PROVIDING APPROPRIATE PSYCHOANALYTIC SERVICES.

2. PRACTICE OF PSYCHOANALYSIS AND USE OF THE TITLES "PSYCHOANALYST" AND "LICENSED PSYCHOANALYST". ONLY A PERSON LICENSED OR EXEMPT UNDER THIS ARTICLE SHALL PRACTICE PSYCHOANALYSIS OR USE THE TITLE "PSYCHOANALYST". ONLY A PERSON LICENSED UNDER THIS ARTICLE SHALL USE THE TITLE "LICENSED PSYCHOANALYST" OR ANY OTHER DESIGNATION TENDING TO IMPLY THAT THE PERSON IS LICENSED TO PRACTICE PSYCHOANALYSIS.

3. REQUIREMENTS FOR A PROFESSIONAL LICENSE. TO QUALIFY FOR A LICENSE AS A "LICENSED PSYCHOANALYST", AN APPLICANT SHALL FULFILL THE FOLLOWING REQUIREMENTS:

(A) APPLICATION: FILE AN APPLICATION WITH THE DEPARTMENT;

(B) EDUCATION: HAVE RECEIVED A MASTER`S DEGREE OR HIGHER FROM A DEGREE-GRANTING PROGRAM REGISTERED BY THE DEPARTMENT OR THE SUBSTANTIAL EQUIVALENT AND HAVE COMPLETED A PROGRAM OF STUDY REGISTERED BY THE DEPARTMENT IN A PSYCHOANALYTIC INSTITUTE CHARTERED BY THE BOARD OF REGENTS OR THE SUBSTANTIAL EQUIVALENT AS DETERMINED BY THE DEPARTMENT. THE PROGRAM OF STUDY IN A PSYCHOANALYTIC INSTITUTE SHALL INCLUDE COURSEWORK SUBSTANTIALLY EQUIVALENT TO COURSEWORK REQUIRED FOR A MASTER`S DEGREE IN A HEALTH OR MENTAL HEALTH FIELD OF STUDY. THE COURSEWORK SHALL INCLUDE, BUT NOT BE LIMITED TO, THE FOLLOWING AREAS:

(I) PERSONALITY DEVELOPMENT;
(II) PSYCHOANALYTIC THEORY OF PSYCHOPATHOLOGY;
(III) PSYCHOANALYTIC THEORY OF PSYCHODIAGNOSIS;
(IV) SOCIOCULTURAL INFLUENCE ON GROWTH AND PSYCHOPATHOLOGY;
(V) PRACTICE TECHNIQUE (INCLUDING DREAMS AND SYMBOLIC PROCESSES);
(VI) ANALYSIS OF RESISTANCE, TRANSFERENCE, AND COUNTERTRANSFERENCE;
(VII) CASE SEMINARS ON CLINICAL PRACTICE;
(VIII) PRACTICE IN PSYCHOPATHOLOGY AND PSYCHODIAGNOSIS;
(IX) PROFESSIONAL ETHICS AND PSYCHOANALYTIC RESEARCH METHODOLOGY; AND
(X) A MINIMUM OF THREE HUNDRED HOURS OF PERSONAL ANALYSIS AND ONE HUNDRED FIFTY HOURS OF SUPERVISED ANALYSIS;

(C) EXPERIENCE: HAVE COMPLETED A MINIMUM OF FIFTEEN HUNDRED HOURS OF SUPERVISED CLINICAL PRACTICE SATISFACTORY TO THE DEPARTMENT AND IN ACCORDANCE WITH THE COMMISSIONER`S REGULATIONS;

(D) EXAMINATION: PASS AN EXAMINATION IN PSYCHOANALYSIS SATISFACTORY TO THE DEPARTMENT AND IN ACCORDANCE WITH THE COMMISSIONER`S REGULATIONS;

(E) AGE: BE AT LEAST TWENTY-ONE YEARS OF AGE;

(F) CHARACTER: BE OF GOOD MORAL CHARACTER AS DETERMINED BY THE DEPARTMENT; AND

(G) FEES: PAY A FEE OF TWO HUNDRED FORTY DOLLARS TO THE DEPARTMENT FOR ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND FOR AN INITIAL LICENSE; A FEE OF EIGHTY-FIVE DOLLARS FOR EACH REEXAMINATION; A FEE OF ONE HUNDRED SEVENTY-FIVE DOLLARS FOR AN INITIAL LICENSE FOR PERSONS NOT REQUIRING ADMISSION TO A DEPARTMENT CONDUCTED EXAMINATION AND A FEE OF ONE HUNDRED SEVENTY DOLLARS FOR EACH TRIENNIAL REGISTRATION PERIOD.

S 8406. STATE BOARD FOR MENTAL HEALTH PRACTITIONERS. A STATE BOARD FOR MENTAL HEALTH PRACTITIONERS SHALL BE APPOINTED BY THE BOARD OF REGENTS ON THE RECOMMENDATION OF THE COMMISSIONER FOR THE PURPOSE OF ASSISTING THE BOARD OF REGENTS AND THE DEPARTMENT ON MATTERS OF LICENSING AND REGULATION. THE BOARD SHALL BE COMPOSED OF AT LEAST THREE LICENSED MEMBERS FROM EACH PROFESSION LICENSED PURSUANT TO THIS ARTICLE AND AT LEAST THREE PUBLIC REPRESENTATIVES WHO DO NOT HOLD INTERESTS IN THE ORGANIZATION, FINANCING, OR DELIVERY OF MENTAL HEALTH SERVICES. ADDITIONALLY, THE BOARD SHALL CONTAIN ONE PHYSICIAN WHO SHALL BE A PSYCHIATRIST. MEMBERS OF THE FIRST BOARD NEED NOT BE LICENSED PRIOR TO THEIR APPOINTMENT TO THE BOARD. THE TERMS OF THE FIRST APPOINTED MEMBERS SHALL BE STAGGERED SO THAT FIVE ARE APPOINTED FOR THREE YEARS, FIVE ARE APPOINTED FOR FOUR YEARS, AND SIX ARE APPOINTED FOR FIVE YEARS. AN EXECUTIVE SECRETARY TO THE BOARD SHALL BE APPOINTED BY THE BOARD OF REGENTS ON RECOMMENDATION OF THE COMMISSIONER.

S 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 DEPRES-

SIVE DISORDER, PANIC DISORDER, OBSESSIVE-COMPULSIVE DISORDER, ATTENTION-DEFICIT HYPERACTIVITY DISORDER AND AUTISM.

2. ANY INDIVIDUAL WHOSE LICENSE OR AUTHORITY TO PRACTICE DERIVES FROM THE PROVISIONS OF THIS ARTICLE SHALL BE PROHIBITED FROM:

(A) PRESCRIBING OR ADMINISTERING DRUGS AS DEFINED IN THIS CHAPTER AS A TREATMENT, THERAPY, OR PROFESSIONAL SERVICE IN THE PRACTICE OF HIS OR HER PROFESSION; OR

(B) USING INVASIVE PROCEDURES AS A TREATMENT, THERAPY, OR PROFESSIONAL SERVICE IN THE PRACTICE OF HIS OR HER PROFESSION. FOR PURPOSES OF THIS SUBDIVISION, "INVASIVE PROCEDURE" MEANS ANY PROCEDURE IN WHICH HUMAN TISSUE IS CUT, ALTERED, OR OTHERWISE INFILTRATED BY MECHANICAL OR OTHER MEANS. INVASIVE PROCEDURE INCLUDES SURGERY, LASERS, IONIZING RADIATION, THERAPEUTIC ULTRASOUND, OR ELECTROCONVULSIVE THERAPY.

S 8408. HOSPITAL PRIVILEGES. NOTHING HEREIN CONTAINED SHALL BE DEEMED TO AUTHORIZE, GRANT, OR EXTEND HOSPITAL PRIVILEGES TO INDIVIDUALS LICENSED UNDER THIS ARTICLE.

S 8409. LIMITED PERMITS. THE FOLLOWING REQUIREMENTS FOR A LIMITED PERMIT SHALL APPLY TO ALL PROFESSIONS LICENSED PURSUANT TO THIS ARTICLE:

1. THE DEPARTMENT MAY ISSUE A LIMITED PERMIT TO AN APPLICANT WHOSE QUALIFICATIONS HAVE BEEN APPROVED FOR ADMISSION TO THE EXAMINATION IN ACCORDANCE WITH REGULATIONS PROMULGATED THEREFOR.

2. LIMITED PERMITS SHALL BE FOR ONE YEAR AND BE RENEWED, AT THE DISCRETION OF THE DEPARTMENT, FOR ONE ADDITIONAL YEAR.

3. THE FEE FOR EACH LIMITED PERMIT AND FOR EACH RENEWAL SHALL BE SEVENTY DOLLARS.

S 8410. EXEMPTIONS. NOTHING CONTAINED IN THIS ARTICLE SHALL BE CONSTRUED TO:

1. APPLY TO THE PRACTICE, CONDUCT, ACTIVITIES, SERVICES OR USE OF ANY TITLE BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE MEDICINE WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE OF THIS TITLE OR BY ANY PERSON REGISTERED TO PERFORM SERVICES AS A PHYSICIAN ASSISTANT WITHIN THE STATE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-ONE-B OF THIS TITLE OR BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE PSYCHOLOGY WITHIN THIS STATE PURSUANT TO ARTICLE ONE HUNDRED FIFTY-THREE OF THIS TITLE OR BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE AS A CERTIFIED SOCIAL WORKER WITHIN THIS STATE PURSUANT TO ARTICLE ONE HUNDRED FIFTY-FOUR OF THIS TITLE, OR BY ANY PERSON LICENSED OR OTHERWISE AUTHORIZED TO PRACTICE NURSING AS A REGISTERED PROFESSIONAL NURSE WITHIN THIS STATE PURSUANT TO ARTICLE ONE HUNDRED THIRTY-NINE OF THIS TITLE; PROVIDED, HOWEVER, THAT NO PHYSICIAN, PHYSICIAN'S ASSISTANT, REGISTERED PROFESSIONAL NURSE, PSYCHOLOGIST, OR CERTIFIED SOCIAL WORKER MAY USE THE TITLES "LICENSED MENTAL HEALTH COUNSELOR", "LICENSED MARRIAGE AND FAMILY THERAPIST", "LICENSED CREATIVE ARTS THERAPIST", OR "LICENSED PSYCHOANALYST", UNLESS LICENSED UNDER THIS ARTICLE.

2. PROHIBIT OR LIMIT ANY INDIVIDUAL WHO IS CREDENTIALLED UNDER ANY LAW, INCLUDING ATTORNEYS, RAPE CRISIS COUNSELORS, CERTIFIED ALCOHOLISM COUNSELORS AND CERTIFIED SUBSTANCE ABUSE COUNSELORS FROM PROVIDING MENTAL HEALTH SERVICES WITHIN THEIR RESPECTIVE ESTABLISHED AUTHORITIES.

3. PROHIBIT OR LIMIT THE PRACTICE OF A PROFESSION LICENSED PURSUANT TO THIS ARTICLE BY A STUDENT, INTERN OR RESIDENT IN, AND AS PART OF, A SUPERVISED EDUCATIONAL PROGRAM IN AN INSTITUTION APPROVED BY THE DEPARTMENT.

4. PROHIBIT OR LIMIT THE PROVISION OF PASTORAL COUNSELING SERVICES BY ANY MEMBER OF THE CLERGY OR CHRISTIAN SCIENCE PRACTITIONER, WITHIN THE CONTEXT OF HIS OR HER MINISTERIAL CHARGE OR OBLIGATION.

5. PROHIBIT OR LIMIT INDIVIDUALS, CHURCHES, SCHOOLS, TEACHERS, ORGANIZATIONS, OR NOT-FOR-PROFIT BUSINESSES, FROM PROVIDING INSTRUCTION, ADVICE, SUPPORT, ENCOURAGEMENT, OR INFORMATION TO INDIVIDUALS, FAMILIES,

AND RELATIONAL GROUPS.

6. PROHIBIT OR LIMIT AN OCCUPATIONAL THERAPIST FROM PERFORMING WORK CONSISTENT WITH ARTICLE ONE HUNDRED FIFTY-SIX OF THIS TITLE.

S 8411. SPECIAL PROVISIONS. 1. THIS SECTION SHALL APPLY TO ALL PROFESSIONS LICENSED PURSUANT TO THIS ARTICLE, UNLESS OTHERWISE PROVIDED.

2. ANY NONEXEMPT PERSON PRACTICING A PROFESSION TO BE LICENSED PURSUANT TO THIS ARTICLE SHALL APPLY FOR A LICENSE OF SAID PROFESSION WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THE SPECIFIED PROFESSION.

(A) IF SUCH PERSON DOES NOT MEET THE REQUIREMENTS FOR A LICENSE ESTABLISHED WITHIN THIS ARTICLE, SUCH PERSON MAY MEET ALTERNATIVE CRITERIA DETERMINED BY THE DEPARTMENT TO BE THE SUBSTANTIAL EQUIVALENT OF SUCH CRITERIA.

(B) IF SUCH PERSON MEETS THE REQUIREMENTS FOR A LICENSE ESTABLISHED WITHIN THIS ARTICLE, EXCEPT FOR EXAMINATION, AND HAS BEEN CERTIFIED OR REGISTERED BY A NATIONAL CERTIFYING OR REGISTERING BODY HAVING CERTIFICATION OR REGISTRATION STANDARDS ACCEPTABLE TO THE COMMISSIONER, THE DEPARTMENT SHALL LICENSE WITHOUT EXAMINATION.

(C) IF SUCH PERSON MEETS THE REQUIREMENTS FOR A LICENSE ESTABLISHED WITHIN THIS ARTICLE, EXCEPT FOR EXAMINATION, AND THERE EXISTS NO NATIONAL CERTIFYING OR REGISTERING BODY HAVING CERTIFICATION OR REGISTRATION STANDARDS ACCEPTABLE TO THE COMMISSIONER, THE DEPARTMENT SHALL LICENSE WITHOUT EXAMINATION IF THE APPLICANT SUBMITS EVIDENCE SATISFACTORY TO THE DEPARTMENT OF HAVING BEEN ENGAGED IN THE PRACTICE OF THE SPECIFIED PROFESSION FOR AT LEAST FIVE OF THE IMMEDIATELY PRECEDING EIGHT YEARS.

3. ANY PERSON LICENSED PURSUANT TO THIS ARTICLE MAY USE ACCEPTED CLASSIFICATIONS OF SIGNS, SYMPTOMS, DYSFUNCTIONS AND DISORDERS, AS APPROVED IN ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT, IN THE PRACTICE OF SUCH LICENSED PROFESSION.

S 9. Paragraph a of subdivision 3 of section 6507 of the education law, as amended by chapter 194 of the laws of 1989, is amended to read as follows:

a. Establish standards for preprofessional and professional education, experience and licensing examinations as required to implement the article for each profession. Notwithstanding any other provision of law, the commissioner shall establish standards requiring that all persons applying, on or after January first, nineteen hundred ninety-one, initially, or for the renewal of, a license, registration or limited permit to be a physician, chiropractor, dentist, registered nurse, podiatrist, optometrist, psychiatrist, psychologist, LICENSED CREATIVE ARTS THERAPIST, LICENSED MARRIAGE AND FAMILY THERAPIST, LICENSED MENTAL HEALTH COUNSELOR, LICENSED PSYCHOANALYST, or dental hygienist shall, in addition to all the other licensure, certification or permit requirements, have completed two hours of coursework or training regarding the identification and reporting of child abuse and maltreatment. The coursework or training shall be obtained from an institution or provider which has been approved by the department to provide such coursework or training. The coursework or training shall include information regarding the physical and behavioral indicators of child abuse and maltreatment and the statutory reporting requirements set out in sections four hundred thirteen through four hundred twenty of the social services law, including but not limited to, when and how a report must be made, what other actions the reporter is mandated or authorized to take, the legal protections afforded reporters, and the consequences for failing to report. Each applicant shall provide the department with documentation showing that he or she has completed the required training. The department shall provide an exemption from the child abuse and maltreatment training requirements to any applicant who requests such an exemption

and who shows, to the department's satisfaction, that there would be no need because of the nature of his or her practice for him or her to complete such training;

S 10. Section 6909 of the education law is amended by adding a new subdivision 6 to read as follows:

6. A REGISTERED PROFESSIONAL NURSE DEFINED UNDER SUBDIVISION ONE OF SECTION SIXTY-NINE HUNDRED TWO OF THIS ARTICLE MAY USE ACCEPTED CLASSIFICATIONS OF SIGNS, SYMPTOMS, DYSFUNCTIONS AND DISORDERS, INCLUDING, BUT NOT LIMITED TO, CLASSIFICATIONS USED IN THE PRACTICE SETTING FOR THE PURPOSE OF PROVIDING MENTAL HEALTH SERVICES.

S 11. Subdivision 1 of section 413 of the social services law, as amended by chapter 432 of the laws of 2001, is amended to read as follows:

1. The following persons and officials are required to report or cause a report to be made in accordance with this title when they have reasonable cause to suspect that a child coming before them in their professional or official capacity is an abused or maltreated child, or when they have reasonable cause to suspect that a child is an abused or maltreated child where the parent, guardian, custodian or other person legally responsible for such child comes before them in their professional or official capacity and states from personal knowledge facts, conditions or circumstances which, if correct, would render the child an abused or maltreated child: any physician; registered physician assistant; surgeon; medical examiner; coroner; dentist; dental hygienist; osteopath; optometrist; chiropractor; podiatrist; resident; intern; psychologist; registered nurse; emergency medical technician; LICENSED CREATIVE ARTS THERAPIST; LICENSED MARRIAGE AND FAMILY THERAPIST; LICENSED MENTAL HEALTH COUNSELOR; LICENSED PSYCHOANALYST; hospital personnel engaged in the admission, examination, care or treatment of persons; a Christian Science practitioner; school official; social services worker; day care center worker; provider of family or group family day care; employee or volunteer in a residential care facility defined in subdivision seven of section four hundred twelve of this {chapter} TITLE or any other child care or foster care worker; mental health professional; substance abuse counselor; alcoholism counselor; peace officer; police officer; district attorney or assistant district attorney; investigator employed in the office of a district attorney; or other law enforcement official. Whenever such person is required to report under this title in his or her capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, he or she shall immediately notify the person in charge of such institution, school, facility or agency, or his or her designated agent, who then also shall become responsible to report or cause reports to be made. However, nothing in this section or title is intended to require more than one report from any such institution, school or agency. At the time of the making of a report, or at any time thereafter, such person or official may exercise the right to request, pursuant to paragraph (A) of subdivision four of section four hundred twenty-two of this {article} TITLE, the findings of an investigation made pursuant to this title or section 45.07 of the mental hygiene law.

S 12. Section 1503 of the business corporation law is amended by adding a new paragraph (g) to read as follows:

(G) THE PRACTICES OF CREATIVE ARTS THERAPY, MARRIAGE AND FAMILY THERAPY, MENTAL HEALTH COUNSELING, AND PSYCHOANALYSIS SHALL NOT BE DEEMED THE SAME PROFESSIONAL SERVICE FOR THE PURPOSE OF PARAGRAPH (A) OF THIS SECTION, NOTWITHSTANDING THAT SUCH PRACTICES ARE ALL LICENSED UNDER ARTICLE ONE HUNDRED SIXTY-THREE OF THE EDUCATION LAW.

S 13. Subdivision (a) of section 1203 of the limited liability company law, as amended by chapter 643 of the laws of 1995, is amended to read

as follows:

(a) Notwithstanding the education law or any other provision of law, one or more professionals each of whom is authorized by law to render a professional service within the state, or one or more professionals, at least one of whom is authorized by law to render a professional service within the state, may form, or cause to be formed, a professional service limited liability company for pecuniary profit under this article for the purpose of rendering the professional service or services as such professionals are authorized to practice. With respect to a professional service limited liability company formed to provide medical services as such services are defined in article 131 of the education law, each member of such limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in this state. With respect to a professional service limited liability company formed to provide dental services as such services are defined in article 133 of the education law, each member of such limited liability company must be licensed pursuant to article 133 of the education law to practice dentistry in this state. With respect to a professional service limited liability company formed to provide veterinary services as such services are defined in article 135 of the education law, each member of such limited liability company shall be licensed pursuant to article 135 of the education law to practice veterinary medicine. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural and/or landscape architectural services as such services are defined in article 145, article 147 and article 148 of the education law, each member of such limited liability company must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE CREATIVE ARTS THERAPY SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE CREATIVE ARTS THERAPY IN THIS STATE. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE MARRIAGE AND FAMILY THERAPY SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MARRIAGE AND FAMILY THERAPY IN THIS STATE. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE MENTAL HEALTH COUNSELING SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MENTAL HEALTH COUNSELING IN THIS STATE. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE PSYCHOANALYSIS SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE PSYCHOANALYSIS IN THIS STATE. In addition to engaging in such profession or professions, a professional service limited liability company may engage in any other business or activities as to which a limited liability company may be formed under section two hundred one of this chapter. Notwithstanding any other provision of this section, a professional service limited liability company (i) authorized to practice law may only engage in another profession or business or activities or (ii) which is engaged in a profession or other business or activities other than law may only engage in the practice of law, to the extent not prohibited by any other law of this state or any rule adopted by the appropriate appellate division of the supreme court or the court of appeals.

S 14. Subdivision (b) of section 1207 of the limited liability company law, as amended by chapter 170 of the laws of 1996, is amended to read as follows:

(b) With respect to a professional service limited liability company formed to provide medical services as such services are defined in article 131 of the education law, each member of such limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in this state. With respect to a professional service limited liability company formed to provide dental services as such services are defined in article 133 of the education law, each member of such limited liability company must be licensed pursuant to article 133 of the education law to practice dentistry in this state. With respect to a professional service limited liability company formed to provide veterinary services as such services are defined in article 135 of the education law, each member of such limited liability company must be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. With respect to a professional service limited liability company formed to provide professional engineering, land surveying, architectural and/or landscape architectural services as such services are defined in article 145, article 147 and article 148 of the education law, each member of such limited liability company must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE CREATIVE ARTS THERAPY SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE CREATIVE ARTS THERAPY IN THIS STATE. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE MARRIAGE AND FAMILY THERAPY SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MARRIAGE AND FAMILY THERAPY IN THIS STATE. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE MENTAL HEALTH COUNSELING SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MENTAL HEALTH COUNSELING IN THIS STATE. WITH RESPECT TO A PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY FORMED TO PROVIDE PSYCHOANALYSIS SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE PSYCHOANALYSIS IN THIS STATE.

S 15. Subdivision (a) of section 1301 of the limited liability company law, as amended by chapter 643 of the laws of 1995, is amended to read as follows:

(a) "Foreign professional service limited liability company" means a professional service limited liability company, whether or not denominated as such, organized under the laws of a jurisdiction other than this state, (i) each of whose members and managers, if any, is a professional authorized by law to render a professional service within this state and who is or has been engaged in the practice of such profession in such professional service limited liability company or a predecessor entity, or will engage in the practice of such profession in the professional service limited liability company within thirty days of the date such professional becomes a member, or each of whose members and managers, if any, is a professional at least one of such members is authorized by law to render a professional service within this state and who is or has been engaged in the practice of such profession in such

professional service limited liability company or a predecessor entity, or will engage in the practice of such profession in the professional service limited liability company within thirty days of the date such professional becomes a member, or (ii) authorized by, or holding a license, certificate, registration or permit issued by the licensing authority pursuant to, the education law to render a professional service within this state; except that all members and managers, if any, of a foreign professional service limited liability company that provides health services in this state shall be licensed in this state. With respect to a foreign professional service limited liability company which provides veterinary services as such services are defined in article 135 of the education law, each member of such foreign professional service limited liability company shall be licensed pursuant to article 135 of the education law to practice veterinary medicine. With respect to a foreign professional service limited liability company which provides medical services as such services are defined in article 131 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 131 of the education law to practice medicine in this state. With respect to a foreign professional service limited liability company which provides dental services as such services are defined in article 133 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 133 of the education law to practice dentistry in this state. With respect to a foreign professional service limited liability company which provides professional engineering, land surveying, architectural and/or landscape architectural services as such services are defined in article 145, article 147 and article 148 of the education law, each member of such foreign professional service limited liability company must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. WITH RESPECT TO A FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY WHICH PROVIDES CREATIVE ARTS THERAPY SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE CREATIVE ARTS THERAPY IN THIS STATE. WITH RESPECT TO A FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY WHICH PROVIDES MARRIAGE AND FAMILY THERAPY SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MARRIAGE AND FAMILY THERAPY IN THIS STATE. WITH RESPECT TO A FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY WHICH PROVIDES MENTAL HEALTH COUNSELING SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MENTAL HEALTH COUNSELING IN THIS STATE. WITH RESPECT TO A FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY WHICH PROVIDES PSYCHOANALYSIS SERVICES AS SUCH SERVICES ARE DEFINED IN ARTICLE 163 OF THE EDUCATION LAW, EACH MEMBER OF SUCH FOREIGN PROFESSIONAL SERVICE LIMITED LIABILITY COMPANY MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE PSYCHOANALYSIS IN THIS STATE.

S 16. Subdivision (q) of section 121-1500 of the partnership law, as amended by chapter 643 of the laws of 1995, is amended to read as follows:

(q) Each partner of a registered limited liability partnership formed to provide medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in this state and

each partner of a registered limited liability partnership formed to provide dental services in this state must be licensed pursuant to article 133 of the education law to practice dentistry in this state. Each partner of a registered limited liability partnership formed to provide veterinary services in this state shall be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a registered limited liability partnership formed to provide professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions in this state. EACH PARTNER OF A REGISTERED LIMITED LIABILITY PARTNERSHIP FORMED TO PROVIDE CREATIVE ARTS THERAPY SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE CREATIVE ARTS THERAPY IN THIS STATE. EACH PARTNER OF A REGISTERED LIMITED LIABILITY PARTNERSHIP FORMED TO PROVIDE MARRIAGE AND FAMILY THERAPY SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MARRIAGE AND FAMILY THERAPY IN THIS STATE. EACH PARTNER OF A REGISTERED LIMITED LIABILITY PARTNERSHIP FORMED TO PROVIDE MENTAL HEALTH COUNSELING SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MENTAL HEALTH COUNSELING IN THIS STATE. EACH PARTNER OF A REGISTERED LIMITED LIABILITY PARTNERSHIP FORMED TO PROVIDE PSYCHOANALYSIS SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE PSYCHOANALYSIS IN THIS STATE.

S 17. Subdivision (q) of section 121-1502 of the partnership law, as amended by chapter 643 of the laws of 1995, is amended to read as follows:

(q) Each partner of a foreign limited liability partnership which provides medical services in this state must be licensed pursuant to article 131 of the education law to practice medicine in the state and each partner of a foreign limited liability partnership which provides dental services in the state must be licensed pursuant to article 133 of the education law to practice dentistry in this state. Each partner of a foreign limited liability partnership which provides veterinary service in the state shall be licensed pursuant to article 135 of the education law to practice veterinary medicine in this state. Each partner of a foreign limited liability partnership which provides professional engineering, land surveying, architectural and/or landscape architectural services in this state must be licensed pursuant to article 145, article 147 and/or article 148 of the education law to practice one or more of such professions. EACH PARTNER OF A FOREIGN LIMITED LIABILITY PARTNERSHIP WHICH PROVIDES CREATIVE ARTS THERAPY SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE CREATIVE ARTS THERAPY IN THIS STATE. EACH PARTNER OF A FOREIGN LIMITED LIABILITY PARTNERSHIP WHICH PROVIDES MARRIAGE AND FAMILY THERAPY SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MARRIAGE AND FAMILY THERAPY IN THIS STATE. EACH PARTNER OF A FOREIGN LIMITED LIABILITY PARTNERSHIP WHICH PROVIDES MENTAL HEALTH COUNSELING SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE MENTAL HEALTH COUNSELING IN THIS STATE. EACH PARTNER OF A FOREIGN LIMITED LIABILITY PARTNERSHIP WHICH PROVIDES PSYCHOANALYSIS SERVICES IN THIS STATE MUST BE LICENSED PURSUANT TO ARTICLE 163 OF THE EDUCATION LAW TO PRACTICE PSYCHOANALYSIS IN THIS STATE.

S 17-a. Nothing in this act shall prohibit or limit the activities or services on the part of any person in the employ of a program or service operated, regulated, funded, or approved by the department of mental hygiene or a local government unit as that term is defined in article 41 of the mental hygiene law, provided, however, this section shall not

authorize the use of any title authorized pursuant to article 153 or 163 of the education law, except that this section shall be deemed repealed on January 1, 2010.

S 18. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, the judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part thereof directly involved in the controversy in which the judgment shall have been rendered.

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

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

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

The Legislature of the STATE OF NEW YORK SS:

Pursuant to the authority vested in us by section 70-b of the Public Officers Law, we hereby jointly certify that this slip copy of this session law was printed under our direction and, in accordance with such section, is entitled to be read into evidence.

JOSEPH L. BRUNO SHELDON SILVER

TEMPORARY PRESIDENT OF THE SENATE SPEAKER OF THE ASSEMBLY

<http://www.op.nysed.gov/mhplawregs.htm>

Page last updated: 01/17/2003 15:50:25

PRYOR CASHMAN SHERMAN & FLYNN LLP

NEW YORK CITY OFFICE
410 PARK AVENUE
NEW YORK, NY 10022-4441
TEL: (212) 421-4100
FAX: (212) 326-0806

111 WASHINGTON AVENUE
ALBANY, N.Y. 12210-2210
(518) 449-3320
FAX: (518) 449-5812
www.pryorcashman.com

LOS ANGELES OFFICE
1801 CENTURY PARK EAST, 24TH FLOOR
LOS ANGELES, CA 90067-2302
TEL: (310) 556-9607
FAX: (310) 556-9608

June 15, 2004

Rev. C. Scot Giles
National Federation of Hypnotists
Local 104 of the Office of Professional Employees
International Union of the AFL-CIO & CLC
1211 East Pershing Avenue
Wheaton, Illinois 60187-6783

Dear Scot:

Per your request, the following opinion outlines the applicability of New York State Chapter 676 of the Laws of 2002 which defines the practice of psychology and provides for licensure of mental health practitioners to the practice of hypnotism in New York State. In formulating this opinion, I have reviewed Chapter 676 of the Laws of 2002 (Appendix A) and the definition of the occupation of hypnotism as defined by the U.S. Department of Labor in the Directory of Occupational Titles (079.157-010) (Appendix B).

Chapter 676 of the Laws of 2002 contains language which provides an exemption from the mental health practitioner licensure requirement for "individuals, churches, schools, teachers, organizations, or not-for-profit businesses from providing instruction, advice, support, encouragement or information to individuals, families or relationship groups."¹ Based upon the U.S. Department of Labor definition of the occupation of hypnotism,² this exemption would apply to the following defined practice: "may train client in self-hypnosis conditioning". Although the Department of Labor outlines additional areas of practice, it is my opinion that the defined activities include a scope of practice beyond which will be allowed by New York State law effective January 1, 2005 unless said practitioner is duly licensed. These other activities

¹ Section 8410 of the New York State Laws of 2002. Subdivision 6 of Section 8410 in its entirety reads:

§ 8410. Exemptions. Nothing contained in this article shall be construed to:

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

² U.S. Department of Labor Directory of Occupational Titles (079.157-010)

Occupational definition of Hypnotherapist

Induces hypnotic state in client to increase motivation or alter behavior patterns; consults with client to determine nature of problem. Prepares client to enter hypnotic state by explaining how hypnotism works and what client will experience. Tests subjects to determine degree of physical and emotional suggestibility. Induces hypnotic state in client, using individualized methods and techniques of hypnosis based on interpretation of test results and analysis of client's problem. May train client in self-hypnosis conditioning

Rev. C. Scot Giles
Page 2

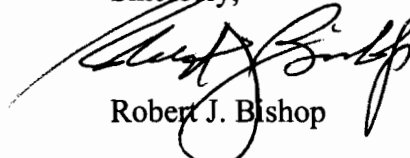
include, but are not limited to:

induces hypnotic state in client to increase motivation or alter behavior patterns”, “tests subject to determine degree of physical and emotional suggestibility, and induces hypnotic state in client, using individualized methods and techniques of hypnosis based on interpretation of test results and analysis of client's problem.

In my opinion Section 8410.5 should be interpreted to provide an exemption for unlicensed persons who engage in the independent use of non-therapeutic hypnotism to provide instruction in the use of self-hypnosis to help persons achieve goals through the use of self-help, motivational or organizational strategies; provided that no protected title is used nor therapeutic claim made when holding such services out to the public. Activities beyond this limited scope of practice would subject the practitioner to New York State Department of Education regulation.

Please be advised that my opinion is not dispositive of New York State law and is subject to revision based upon future interpretations by courts of competent jurisdiction.

Sincerely,



Robert J. Bishop

cc: Mike Goodwin, OPEIU
Vincent Pitta, Esq.



Office of the Attorney General - State of Texas
John Cornyn

August 5, 2002

<p>Ms. Sherry L. Lee, Executive Director Texas State Board of Examiners of Psychologists 333 Guadalupe, Suite 2-450 Austin, Texas 78701</p>	<p>Opinion No. JC-0535</p> <p>Re: What constitutes a "recognized member of the clergy" for purposes of section 501.004(4) of the Occupations Code, which governs exemptions from the Psychologists Licensing Act (RQ-0503-JC)</p>
---	--

Dear Ms. Lee:

You have asked this office how the Texas State Board of Examiners of Psychologists (the "Board") may determine, for the purpose of section 501.004 (4) of the Occupations Code (the "Code"), whether to accept particular claims that an individual is exempt from the licensing requirements of the Code on the ground that he or she is a "recognized member of the clergy" who is acting "within the person's ministerial capabilities." ⁽¹⁾ Tex. Occ. Code Ann. § 501.004(4) (Vernon 2002). You ask what guidelines may exist in Texas law or regulation that would define such recognition. In particular, you ask whether a person who has been ordained "via the Internet or mail for a fee" is a recognized member of the clergy. Request Letter, *supra* note 1, at 1. We conclude that, in examining the question of whether a person who purports to be exempt from licensing under the Code is a recognized member of the clergy, the Board may take into account, as one factor, the ordination of that person for a fee by Internet or mail. However, the Board should not conclusively presume that a person is not a recognized member of the clergy based on that factor alone, unless the person provides no other evidence of his or her ministerial activities and religious affiliation other than the Internet or mail order certificate.

Chapter 501 of the Occupations Code, the Psychologists' Licensing Act, establishes the Board and requires those who "engage[] in or represent that [they are] engaged in the practice of psychology" to be licensed by the Board unless they are "exempt under Section 501.004." Tex. Occ. Code Ann. § 501.251 (Vernon 2002). Section 501.004 exempts "the activity or service of a recognized member of the clergy who is acting within the person's ministerial capabilities" if the clergyman does not describe him- or herself as a psychologist or the services as psychological. *Id.* § 501.004(4). The Board has power to commence an action for injunctive relief to prevent a violation of chapter 501. *Id.* § 501.501(a). Engaging in the unlicensed practice of psychology is a Class A misdemeanor. *Id.* § 501.503.

As we understand the situation giving rise to your inquiry, the Board, when seeking to enjoin the unlicensed practice of psychology, is faced with "persons who claim exemption using a ministerial certificate or other ordination procured without training via the mail or Internet." Request Letter, *supra* note 1, at 1. Recognizing the possibility that such claims may be made for the purpose of evading the strictures of the Code, but mindful of the free exercise rights embodied in the First Amendment to the United States Constitution, you inquire as to the criteria by which the Board can distinguish spurious claims of exemption from legitimate ones.

You ask "[w]hat guidelines exist in the laws or regulations of the State of Texas that define 'recognition' of a member of the clergy?" *Id.* We note that the statute governing licensed professional counselors also exempts "a recognized religious practitioner." *See* Tex. Occ. Code Ann. § 503.054(2) (Vernon 2002). The Texas State Board of Examiners of Professional Counselors has promulgated a rule further defining "[r]ecognized religious practitioner" as "[a] rabbi, member of the clergy, or person of similar status who is a member in good standing of and accountable to a legally recognized denomination, church, sect or religious organization legally recognized under the Internal Revenue Code § 501(c)(3)" 22 Tex. Admin. Code § 681.2(14) (2002). Such practitioners must be counseling "within the scope . . . of their regular or specialized ministerial duties . . . under the auspices of . . . [their] organization," must be "accountable to [its] established authority," and must not hold themselves out as professional counselors. *Id.* *See also* Tex. R. Evid. 505 (defining member of clergy for purposes of privileged communications as "a minister, priest, rabbi, accredited Christian Science Practitioner, or other similar functionary of a religious organization or an individual reasonably believed so to be by the person consulting with such individual.").

In our view, the Texas State Board of Examiners of Professional Counselors' rule offers a model that may be of value to you, given its focus on a member of the clergy as a person who has an acknowledged place within some sort of religious organization. In both your statute and that of the licensed professional counselors, an exemption is in effect being offered for pastoral counseling, an activity that implies a relation within and accountability to a religious organization. Moreover, in both cases, the counseling is limited to the clergy member's ministry, in his or her ministerial capacity.

Determining what constitutes a legitimate claim for a religious exemption from generally applicable law and distinguishing such a claim from those asserted for the purpose of evading the effect of such law is a difficult task. In the necessarily factual investigation of whether a claim for religious exemption such as the one about which you have asked is valid or spurious, the Board may rely on a variety of inquiries. By way of example, and in light of the Board of Examiners of Professional Counselors' rule, we note that the Internal Revenue Service has historically relied in this context on a series of questions developed to investigate whether a religious organization may qualify as a church for tax exemption purposes, including, among other things, whether such an organization has a distinct legal existence, a recognized creed, a distinct ecclesiastical government, a formal code of doctrine and discipline, a

distinct religious history, a literature of its own, ordained ministers selected after a prescribed course of study, and regular congregations and services. *See* Scialabba, Kurtzman, and Steinhart, *Mail-Order Ministries Under the Section 170 Charitable Contribution Deduction: The First Amendment Restrictions, the Minister's Burden of Proof, and the Effect of TRA '86*, 11 Campbell L. Rev. 27 n.31 (Winter 1988) (citing Internal Revenue Manual); *see also* Internal Revenue Service, Form 1023: Application for Recognition of Exemption, Schedule A (revised 1998) (current Internal Revenue Service questions).

Your particular concern is what once was referred to as "Mail-Order Ministries." *See supra*, *Mail-Order Ministries*, 11 Campbell L. Rev. 1. Such enterprises permit any person, for a small fee or donation, to receive credentials asserting that they have been ordained as clergy. Some recipients have used such credentials in a variety of schemes to avoid the law, and in particular to attempt to evade payment of income taxes. *See, e.g.*, *Church of World Peace, Inc. v. Commissioner*, 67 T.C.M. (CCH) 2282 (1994); *Stephenson v. Commissioner*, 79 T.C. 995 (1983) ("Life Science Church of Allegan"); *Davis v. Commissioner*, 81 T.C. 806 (1983) ("Universal Life Church"). One such ministry is the Universal Life Church of Modesto, California. As the district court notes in *Universal Life Church v. Utah*:

The ULC will ordain anyone free, for life, without questions of faith. Anyone can be ordained a ULC minister in a matter of minutes by clicking onto the ULC's website and by providing a name, address, and e-mail address. Anyone can also be ordained by mailing to the ULC a name and address. There is no oath, ceremony, or particular form required.

The ULC requires virtually nothing from its ministers: they are not required to perform any religious ceremonies, to oversee a congregation, to provide religious guidance or counseling, to report religious ceremonies to headquarters, to keep in contact with the ULC other than routine address changes, or to attend any worship services.

Universal Life Church v. Utah, 189 F. Supp.2d 1302, 1307 (D. Utah 2002).

In *Universal Life Church*, the district court declared unconstitutional on equal protection grounds a Utah statute that distinguished between ministers who applied for their ordination through the Internet or mail from those who had applied "via fax, telephone, or in person." *Id.* at 1317-18. The statute at issue forbade only ministers who had applied for their credentials through the Internet or mail, but not those who applied in another manner, from solemnizing marriages. *See id.* at 1307. While the court dismissed the Universal Life Church's substantive due process claim on the ground that the Utah legislature could reasonably decide that "one who so cavalierly becomes a minister might not appreciate the gravity of solemnizing a marriage," *id.* at 1315-16, it held that a distinction based solely on the method of application for ordination was "a classification whose relationship to a goal is so attenuated as to render the distinction arbitrary and irrational." *Id.* at 1317-18.

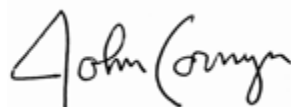
While *Universal Life Church* is not controlling law in Texas, it demonstrates that the Board is better advised not to distinguish between applicants for exemption from the strictures of chapter 501 solely on the basis of the means by which they obtained ordination. The Board may, however, require more information from a person claiming such exemption than the mere production of a ministerial certificate granted by mail or Internet.

Accordingly, while mere Internet ordination, which would appear to be the cyberspace equivalent of mail-order ministry, is a factor which the Board may consider in seeking to enjoin a purported minister from practicing psychology without a license, that factor alone may not be dispositive in every case. The Board should inquire further in seeking to establish whether the person in question has a legitimate claim for exemption as a member of the clergy. If, for example, the facts show that the sole "religious" activity of the person in question is the provision of counseling otherwise indistinguishable from the practice of psychology, or that such counseling is independent of any relationship or accountability to a religious organization of some sort, we believe that the Board would be justified in seeking to enjoin such activity.

S U M M A R Y

In examining whether a person is a "recognized member of the clergy" acting "within the person's ministerial capabilities" for the purpose of exemption from the licensing requirements of chapter 501 of the Occupations Code, the Texas State Board of Examiners of Psychologists may consider, as one factor, the ordination of that person for a fee by Internet or mail. However, the Board should not conclusively presume that the person may not make a claim for exemption based on that factor alone. The Board should inquire further in seeking to establish whether the person in question has a legitimate claim for exemption as a member of the clergy, and may require more information from a person making such a claim for exemption than the mere production of a ministerial certificate granted by mail or Internet.

Yours very truly,



JOHN CORNYN
Attorney General of Texas

HOWARD G. BALDWIN, JR.
First Assistant Attorney General

NANCY FULLER
Deputy Attorney General - General Counsel

SUSAN DENMON GUSKY
Chair, Opinion Committee

James E. Tourtelott
Assistant Attorney General, Opinion Committee

Footnotes

1. *See* Letter from Sherry L. Lee, Executive Director, Texas State Board of Examiners of Psychologists, to Honorable John Cornyn, Texas Attorney General (Jan. 29, 2002) (on file with Opinion Committee) [hereinafter Request Letter].

POST OFFICE BOX 12548, AUSTIN, TEXAS 78711-2548 TEL: (512) 463-2100 WEB: WWW.OAG.STATE.TX.US
An Equal Employment Opportunity Employer

[Home](#) | [Opinions](#)