



TO: The Honorable Members of the Board of Regents

FROM: Sarah S. Benson *Sarah S. Benson*

SUBJECT: Proposed Repeal of Sections 79-9.6, 79-10.6, 79-12.6, Addition of New Sections 79-9.6, 79-10.6, 79-12.6 and Amendment of Sections 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education Relating to Mental Health Practitioners' Diagnosis Privilege

DATE: September 1, 2022

AUTHORIZATION(S):

Don M. P. *Bell...*
SUMMARY

Issue for Decision (Consent)

Should the Board of Regents adopt the proposed repeal of sections 79-9.6, 79-10.6, 79-12.6, addition of new sections 79-9.6, 79-10.6, 79-12.6 and amendment of sections 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education relating to mental health practitioners' diagnosis privilege?

Reason(s) for Consideration

Required by statute (Chapter 230 of the Laws of 2022).

Proposed Handling

The proposed amendment will be presented to the Full Board for adoption as an emergency rule at the September 2022 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying emergency action (Attachment B) are attached.

Procedural History

The proposed rule was presented to the Professional Practice Committee for discussion and to the Full Board for adoption as an emergency rule at its July 2022 Regents meeting, effective July 12, 2022. A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on July 27, 2022, for a 60-day public comment period.

Because the July emergency action will expire on October 9, 2022, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the November 2022 Regents meeting. Additionally, the Department has made non-substantial revisions to the proposed rule to conform the proposed rule to statute. A Notice of Emergency Adoption will be published in the State Register on October 26, 2022. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Licensed mental health counselors (LMHCs), licensed marriage and family therapists (LMFTs) and licensed psychoanalysts (LPs) do not currently have the authority to diagnose. The Legislature determined that there was a need to increase the number of licensed mental health professionals authorized to diagnose in order to address critical workforce shortages and ensure that programs and services providing addiction and mental health services to children, adults and communities have the appropriate staff to provide comprehensive services, including diagnosis. On June 24, 2022, the Governor signed Chapter 230 of the Laws of 2022 (Chapter 230), which allows LMHCs, LMFTs and LPs to earn a diagnostic privilege by meeting specified requirements. These professions did not previously have the authority to diagnose. Except for two provisions that take effect June 30, 2024,¹ Chapter 230 is immediately effective.

This Chapter amends Education Law §8401 by adding a new subdivision (3), which defines the term “diagnosis” and a new subdivision (4), which defines the term “development of assessment-based treatment plans.” Chapter 230 also adds a new section 8401-a to the Education Law which, effective June 24, 2024, establishes a process and requirements for eligible LMHCs, LMFTs and LPs, to apply to the Department for the issuance of a privilege to diagnose and to develop assessment-based treatment plans.

¹ Sections 2 and 3 of Chapter 230 become effective June 24, 2024. These sections will be addressed in subsequent proposed amendments to the Commissioner’s regulations.

Additionally, Chapter 230 amends:

- Subdivision (1) of Education Law §8407 (boundaries of professional competency), effective June 24, 2024, to recognize licensed professionals who have obtained the diagnostic privilege from the Department.
- Education Law §8409 to authorize the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and
- Education Law §8410 to authorize LMHCs, LMFTs and LPs to diagnose and develop assessment-based treatment plans through June 24, 2025, in certain settings approved by the Department.

Proposed Amendments

The proposed amendments of sections 79-9.4, 79-10.4 and 79-12.4 of the Commissioner's regulations implement the provisions of Chapter 230 by:

- establishing the requirements for the Department's issuance of limited diagnostic permits to applicants for the diagnostic privilege in mental health counseling, marriage and family therapy and psychoanalysis;
- allowing applicants, with limited diagnostic permits, to practice under a qualified supervisor in an authorized setting, while they gain the required experience for the diagnostic privilege;
- authorizing applicants with limited diagnostic permits, who are licensed on or after June 24, 2024, to engage in supervised practice while meeting the additional requirements for the diagnostic privilege; and
- changing the titles of sections 79-9.4, 79-10.4 and 79-12.4 from limited permits to limited permits for licensure and limited diagnostic permits.

Additionally, the proposed amendment implements Chapter 230 by repealing current sections 79-9.6, 79-10.6 and 79-12.6 of the Commissioner's regulations and adding new sections 79-9.6, 79-10.6 and 79-12.6 which:

- establish the requirements to be met by LMHCs, LMFTs or LPs who are completing supervised experience in diagnosis and assessment-based treatment planning under the exemption in Education Law §8410(11);
- define the terms "diagnosis," "assessment-based treatment planning" and "general supervision" of the licensee providing those services;
- define an acceptable setting, as defined in sections 79-9.3, 79-10.3 and 79-12.3 of the Commissioner's regulations, for the practice of mental health counseling, marriage and family therapy and psychoanalysis, respectively; and
- define acceptable supervisors of clinical experience in diagnosis and assessment-based treatment planning for LMHCs, LMFTs and LPs, such as licensed clinical social workers, psychologists or psychiatrists or, on or after June 24, 2024, LMHCs, LMFTs or LPs who hold the diagnostic privilege pursuant to Education Law §8401-a.

Non-Substantial Revision

After the July emergency action, Department staff discovered that the proposed rule inadvertently listed the incorrect effective date of June 24, 2022, in three of its provisions, instead of June 24, 2024. June 24, 2024, is the date that section 8401-a of the Education Law, which establishes the diagnostic privilege, becomes effective. Consequently, non-substantial revisions were made to sections 79-9.6(d)(2)(iv), 79-10.6(d)(2)(iv) and 79-12.6(d)(2)(iv) of the Commissioner's regulations to replace the date June 24, 2022 with the date June 24, 2024, since, pursuant to Education Law §8401-a, licensed mental health counselors (LMHCs), licensed marriage and family therapists (LMFTs) and licensed psychoanalysts (LPs) cannot obtain the diagnostic privilege until on or after that date. Additionally, non-substantial revisions were made to clarify that LMHCs, LMFTs, and LPs can obtain the diagnostic privilege "on or after" June 24, 2024, rather than "after" June 24, 2024. Accordingly, on or after June 24, 2024, LMHCs, LMFTs or LPs who hold the diagnostic privilege pursuant to Education Law §8401-a will be considered, in addition to licensed clinical social workers, psychologists or psychiatrists, acceptable supervisors of clinical experience in diagnosis and assessment-based treatment planning for LMHCs, LMFTs and LPs. Therefore, these non-substantial changes were made to conform the proposed regulation to the statute.

Related Regents Items

July 2022: [Proposed Repeal of Sections 79-9.6, 79-10.6, 79-12.6, Addition of New Sections of 79-9.6, 79-10.6, 79-12.6 and Amendment of Sections of 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education Relating to Mental Health Practitioners' Diagnosis Privilege](https://www.regents.nysed.gov/common/regents/files/722ppca1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/722ppca1.pdf>)

Recommendation

It is recommended that the Board of Regents take the following action:

VOTED: That sections 79-9.6, 79-10.6 and 79-12.6 of the Regulations of the Commissioner of Education be repealed and new sections 79-9.6, 79-10.6, and 79-12.6 of the Regulations of the Commissioner of Education be added and sections 79-9.4, 79-10.4, 79-12.4 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 10, 2022, as an emergency action, upon the finding by the Board of Regents that such action is necessary for the preservation of the public health and general welfare in order to timely implement the provisions of sections (1), (4) and (5) of Chapter 230 of the Laws of 2022, which became effective June 24, 2022 and to ensure the emergency action taken at the July 2022 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the September 2022 Regents meeting, the emergency rule will become effective October 10, 2022. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the November 2022 Regents meeting, after publication in the State Register and the expiration of the 60-day public comment period required under the State Administrative Procedures Act. If adopted at the November meeting, the proposed rule will become effective as a permanent rule on November 30, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

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

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

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

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

(a) Limited permits for licensure.

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

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

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

[(3)](iii) be under the supervision of a supervisor acceptable to the department in

accordance with the requirements of section 79-9.3 of this Subpart.

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

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

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

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

(b) Limited diagnostic permits.

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

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

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

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

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

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

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

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

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

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

79-9.6 Diagnostic privilege

(a) Definitions. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) on or after June 24, 2024, a mental health counselor licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a of the Education Law or the equivalent, as determined by the department.

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

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

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

(a) Limited permits for licensure

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

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

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

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

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

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

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

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

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

(b) Limited diagnostic permits

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

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

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

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

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

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

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

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

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

79-10.6 Diagnostic privilege

(a) Definitions. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) on or after June 24, 2024, a marriage and family therapist licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under section 8401-a Education Law or the equivalent as determined by the department.

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

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

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

(a) Limited permits for licensure

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

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

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

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

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

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

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

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

(b) Limited diagnostic permits

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

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

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

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

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

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

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

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

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

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

79-12.6 Diagnostic privilege

(a) Definitions. As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(iv) on or after June 24, 2024, a psychoanalyst licensed and registered under Article 163 of the Education Law who holds the diagnostic privilege authorized under

section 8401-a of the Education Law or the equivalent as determined by the department.

Attachment B

8 NYCRR §§ 79-9.4, 79-9.6, 79-10.4, 79-10.6, 79-12.4 and 79-12.6

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement Sections (1), (4) and (5) of Chapter 230 of the Laws of 2022 (Chapter 230), which became effective June 24, 2022. The proposed rule conforms the Commissioner's regulations to Sections (1), (4) and (5) of Chapter 230, which amended the Education Law by defining "diagnosis" and "development of assessment-based treatment plans"; authorizing the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and authorizing licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts in certain settings approved by the Department to diagnose and develop assessment-based treatment plans through June 24, 2025.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the July 2022 meeting of the Board of Regents, effective July 12, 2022. Since the Board of Regents meets at fixed intervals, the earliest that the proposed rule can be presented for adoption, after expiration of the required 60-day public comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the November 14-15, 2022 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the November meeting, would be November 30, 2022, the date the Notice of Adoption would be

published in the State Register. However, Sections (1), (4), and (5) of Chapter 230 became effective June 24, 2022. This necessitated an emergency rule to be adopted at the July 2022 meeting of the Board of Regents.

However, the emergency rule will expire on October 9, 2022. Therefore, a second emergency action is necessary at the September 2022 meeting for the preservation of the public health and general welfare in order to enable the State Education Department to timely implement the requirements of Sections (1), (4), and (5) of Chapter 230, which, among other things, defines “diagnosis” and “development of assessment-based treatment plans”; authorizes the Department to issue limited permits to applicants who are gaining experience for the diagnostic privilege; and authorizes licensed mental health counselors, licensed marriage and family therapists and licensed psychoanalysts in certain settings approved by the Department to diagnose and develop assessment-based treatment plans through June 24, 2025, in order to address the critical workforce shortages in the mental health professions by ensuring that programs and services providing addiction and mental health services to children, adults and communities have the appropriate staff to provide comprehensive services, including diagnosis and to ensure that the emergency action taken at the July 2022 meeting remains continuously in effect until the rule can be permanently adopted.

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the November 2022 meeting, which is the first scheduled meeting after expiration of the 60-day public comment period mandated by SAPA for state agency rule making.