



THE STATE EDUCATION DEPARTMENT / THE UNIVERSITY OF THE STATE OF NEW YORK / ALBANY, NY 12234

TO: Professional Practice Committee

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

SUBJECT: Proposed Amendment of Sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Psychologists, Social Workers and Mental Health Practitioners

DATE: October 3, 2022

AUTHORIZATION(S): *Dom N. P.* *Betty M.*

SUMMARY

Issue for Decision

Should the Board of Regents amend sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education relating to continuing education requirements for psychologists, social workers and mental health practitioners?

Reason for Consideration

Review of policy.

Proposed Handling

The proposed amendment is being presented to the Professional Practice Committee for recommendation to the Full Board for adoption at the October 2022 meeting of the Board of Regents. A copy of the proposed rule is attached (Attachment A).

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion at the April 2022 meeting. A Notice of Proposed Rule Making was published in the State Register on April 27, 2022. Following the 60-day public comment period required under the State Administrative Procedure Act, the Department

received approximately 29 comments. An Assessment of Public Comment is included (Attachment B).

No changes to the proposed amendment are recommended at this time based upon the public comment. However, the Department made one non-substantial revision to the proposed rule due to an omitted word. Supporting materials for the proposed amendment are available upon request from the Secretary to the Board of Regents.

Background Information

Several disciplinary matters have recently come before the Board of Regents for action against licensed psychologists, social workers and mental health practitioners, which, included, among other things, boundary violations. Boundary violations are based on an unequal power relationship, where the licensed professional has the role of authority in the professional relationship and access to personal, confidential information about the patient/client. Examples of recent boundary violation disciplinary matters include:

- Licensee leaving multiple messages on a former patient's voicemail with inappropriate statements;
- Licensee sending inappropriate text messages to a patient on more than one occasion, causing such patient to think that licensee and patient were friends; and
- Licensee sending abundant text messages, which were not therapy-related, to a patient's phone, outside of their normally scheduled therapeutic meeting times, over a period of several months.

When a professional violates the patient's/client's trust by converting the professional into the personal, some patients/clients may not recognize the violation. In other cases, the patient/client may want to avoid terminating the professional relationship and, therefore, may not report inappropriate action by the licensee who is responsible for establishing and maintaining boundaries.¹ Therefore, it is likely that boundary violations occur more frequently than suggested even by the Board of Regents disciplinary actions.

The Education Law defines the license and practice of psychologists (Article 153), licensed master social work and licensed clinical social work (Article 154), and mental health counselors, marriage and family therapists, creative arts therapists and psychoanalysts (Article 163; together, "mental health practitioners"). Licensees in each of these seven professions must complete 36 hours of continuing education from a Department-approved provider each triennial registration period (Education Law §§7607[1], 7710[1] and 8410[1]). Licensees can only practice their professions if their registrations are current.

¹ Practice guidelines on appropriate professional boundaries for these professions can be found at:

Psychology: <http://www.op.nysed.gov/prof/psych/psychdual.htm>

Social Work: <http://www.op.nysed.gov/prof/sw/swboundaries.htm>

Mental Health Practitioners: <http://www.op.nysed.gov/prof/mhp/mhppg5.htm>

Pursuant to Education Law §§7607(3)(c), 7710(3)(b) and 8412(3)(b), the Department is authorized, in its discretion and as needed to contribute to the health and welfare of the public, to require the completion of continuing education courses in specific subjects to fulfill the mandatory continuing education requirements for psychologists, social workers and mental health practitioners, respectively.

Proposed Amendments

To further the interest of public health and protection, the proposed amendments to sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Commissioner's regulations require psychologists, social workers and mental health practitioners to complete three continuing education credits on issues related to maintaining appropriate professional boundaries with patients/clients commencing with registration periods beginning on and after April 1, 2023. While professional education programs for psychology, social work and mental health practitioners include overviews of professional ethics that underlie those professions and discussions about transference and countertransference, licensees may be faced with real world challenges when engaged in practice that go beyond those covered by these educational requirements. Newly licensed and experienced professionals may blur the boundaries that separate the professional from the personal. Therefore, it is proposed that each licensee in these professions, whether engaged in education, direct patient care or administration, be required to complete three hours of acceptable continuing education in maintaining appropriate boundaries in professional relationships.

Non-Substantial Revision

Since publication of the proposed amendment in the State Register, Department staff discovered that, the word "between" was inadvertently omitted from the beginning of the proposed amendment to section 79-9.8(c)(2)(ii)(c) which should have read:

Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

The Department proposed identical language in the amendment to sections 72.6, 74.10, 79-10.8, 79-11.8, and 79-12.8. This omitted language is needed to clarify the intent of the proposed amendment and ensure consistency in the language throughout the proposed amendment. Consequently, a non-substantial revision has been made to the amendment of section 79-9.8(c)(2)(ii)(c) of the Commissioner's regulations.

Related Regents Items

April 2022: [Proposed Amendment of Sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education Relating to Continuing Education Requirements for Psychologists, Social Workers and Mental Health Practitioners](https://www.regents.nysed.gov/common/regents/files/422ppcd1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/422ppcd1.pdf>)

Recommendation

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

VOTED: That Sections 72.6, 74.10, 79-9.8, 79-10.8, 79-11.8, and 79-12.8 of the Regulations of the Commissioner of Education be amended, as submitted, effective October 19, 2022.

Timetable for Implementation

If adopted at the October 2022 meeting the proposed rule will become effective on October 19, 2022.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6507, 7607, 7710 and 8412 of the Education Law.

1. Subdivision (c) of section 72.6 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

2. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 74.10 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional

boundaries between licensees and patients, from a provider approved by the department.

3. Clause (c) of subparagraph (ii) paragraph (2) of subdivision (c) of section 79-9.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

4. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-10.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

5. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-11.8 of the Regulations of the Commissioner of Education is amended, to read as

follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

6. Clause (c) of subparagraph (ii) of paragraph (2) of subdivision (c) of section 79-12.8 of the Regulations of the Commissioner of Education is amended, to read as follows:

(c) The department may, in its discretion and as needed to contribute to the health and welfare of the public, require the completion of continuing education courses in specific subjects to fulfill this mandatory continuing education requirement.

(i) Commencing with registration periods beginning on or after April 1, 2023, a licensee shall complete, as part of the required 36 hours of continuing education, three hours of continuing education on issues related to maintaining appropriate professional boundaries between licensees and patients, from a provider approved by the department.

8 NYCRR §§ 72.8, 74.10, 79-9.8, 79-10.8, 79-11.8 and 79-12.8

ASSESSMENT OF PUBLIC COMMENT

Since publication of a Notice of Proposed Rule Making in the April 27, 2022, State Register, the State Education Department received the following comments on the proposed rule:

1. COMMENT: A number of commenters supported the requirement while asserting that the majority of licensed professionals do not violate boundaries.

RESPONSE: The Department appreciates and acknowledges these comments. No changes are needed.

2. COMMENT: Several social workers suggested that boundary issues should be addressed in ethics coursework.

RESPONSE: Courses in ethics, which may include setting and honoring appropriate boundaries, may be offered by Department-approved providers as an acceptable subject for social work continuing education (CE), as defined in Education Law and NYCRR §74.10(2)(i)(e). Mandating coursework in boundary issues is intended to protect the public and remind licensed professionals of their responsibility to establish and maintain appropriate boundaries. No changes to the proposed rule are needed.

3. COMMENT: A social work commenter opined that course work on boundary issues should only be required for licensees who have violated boundaries.

RESPONSE: As part of their discipline of a licensee, the Board of Regents can and have required coursework relating to boundary issues. However, over the last 5 years, one-half of the disciplinary actions in these mental health professions were due to boundary violations by licensees. The purpose of the proposed rule is to require a triennial

refresher to licensees on the importance of professional boundaries in order to protect patients from future violations. No changes to the proposed rule are needed

4. COMMENT: A social worker supports the proposed rule, stating that telehealth and the prevalence of texting/emailing can blur boundaries between client and professional, and lead to inappropriate behaviors.

RESPONSE: The Department appreciates the supportive comment, and no changes to the proposed rule are necessary.

5. COMMENT: A social worker acknowledged that boundary issues are a valid concern, suggesting that coursework on professional burnout and similar topics may play a preventive role and mitigate the occurrence of boundary violations.

RESPONSE: The Department appreciates that many factors, including burnout, can affect a licensed professional's behavior. Coursework offered by Department-approved providers can aid licensees in setting and maintaining appropriate boundaries, which may include content on how professional burnout and/or other factors may adversely impact a licensed professional's behavior, without changing the proposed rule.

6. COMMENT: Two commenters suggested that mandatory professional boundaries CE is unnecessary, since "everyone knows appropriate boundaries" and this requirement will not enhance professional skill.

RESPONSE: In the past five years, approximately 50 percent of the Board of Regents disciplinary actions taken in these professions were the result of boundary issues. While disciplinary actions involve a fraction of these professions' licensees, the Board of Regents believes that preventive action, such as requiring three hours of professional boundaries CE in each three-year registration period, is necessary to protect patients and clients. No changes to the proposed rule are necessary.

7. COMMENT: A licensed social worker and the dean of a social work program both

commented that boundary issues should be addressed in professional education programs that award bachelor's and/or master's degrees.

RESPONSE: Section 52.30(a)(2)(i) of the Commissioner's regulations defines curriculum requirements for earning the Master of Social Work degree, which include social work values and ethics. While ethics should be addressed in the classroom and field instruction, it is apparent that post-licensure education in appropriate boundaries is necessary to better protect the public. No changes to the proposed rule are needed.

8. COMMENT: Two commenters suggested that boundary issues are only relevant to social workers who work directly with individuals, therefore, the proposal is over-reaching and broader ethics topics should be required instead.

RESPONSE: Licensed social workers provide services to individuals, couples, families, groups, organizations, and communities; boundary violations can occur in any or all of those interactions and/or settings. Boundaries are critical for patient protection from physical, sexual and/or financial abuse by a licensed professional, as well as protecting patient autonomy and privacy. Therefore, the proposed rule's mandatory professional boundaries CE requirement is appropriate and necessary for all licensed social workers seeking to register and practice in New York and, therefore, no changes to the proposed rule are needed.

9. COMMENT: Several commenters stated that licensees should be able to choose the topics of CE rather than have it mandated.

RESPONSE: The Department appreciates and understands licensees' concerns about mandatory CE topics. However, section 7210 of the Education Law allows the Department, as needed, to require the completion of CE courses in specific subjects to contribute to the health and welfare of the public. The professional boundaries coursework was proposed to protect the public by ensuring that, at least, three of the 36 hours of

triennially required CE for licensed social workers includes this content. No changes to the proposed rule are needed.

10. COMMENT: A social work commenter asked what the number of incidents of boundary violations that occur per hundred social workers in New York State? Additionally, the commenter asked if there is a comparison to others in the healthcare field like doctors and nurses and what the CE requirements are for those practitioners.

RESPONSE: During the period from 2017 to present, about 50 percent of 144 final disciplinary actions by the Board of Regents were based on boundary violations by licensees in these seven professions. Disciplinary actions are typically based on complaints; as such, the number of actual violations that are occurring in New York is likely even higher. The completion of at least three hours of CE on professional boundaries in each 36-month registration period will assist in increasing public protection. Regarding the comments on other healthcare professionals, these comments are beyond the scope of the proposed rule, however, the Department notes that physicians and nurses do not have CE requirements. No changes to the proposed rule are necessary.

11. COMMENT: Two social work associations suggested that licensees should be able to “carry over” credit for coursework in boundary issues to a subsequent registration period for a period starting on or after April 1, 2013.

RESPONSE: Education Law §§ 7607(2), 7710(2) and 8412(2) prohibit licensed psychologists, social workers, and mental health practitioners from transferring CE hours taken during one triennial registration period to the subsequent three-year period. While the Department appreciates the associations’ concern, this cannot be permitted without statutory change.

12. COMMENT: Several commenters suggested that boundary issues CE should be offered by the State or by a professional association for free or at low-cost.

RESPONSE: Courses are developed and offered by providers approved by the Department, based on the applicable law and regulation. An approved provider may offer courses that meet the requirements as live in-person, live interactive (using phone or video technology), and self-study formats in acceptable subjects. CE fees, if any, are set by the approved provider, not the Department. No changes to the proposed rule are necessary.

13. COMMENT: An association of psychologists suggested that the proposed rule is duplicative, in that Education Law § 7607(2) requires each licensed psychologist to complete a minimum of 36 hours of acceptable learning activities, a minimum of three hours of which shall be course work in the area of professional ethics, including the laws, rules, and regulations for practice in New York.

RESPONSE: Boundary violations are a leading source of complaints against licensed psychologists, social workers and mental health practitioners and constitute unprofessional conduct under Education Law § 6509 and Parts 29.1(b)(2) and (5) of the Regents Rules. Coursework on appropriate boundaries, when taken from an approved provider, could meet some or all of the requirement for at least three hours of CE in ethics, based on law and regulation, therefore, no change to the proposed rule is required.

14. COMMENT: A psychologist expressed concern that the proposed rule would increase the number of required CE hours, imposing a burden on licensees.

RESPONSE: The proposed three-hours of professional boundaries CE would be included in the existing 36 hours of triennially required CE for all seven professions. A psychologist could complete more than three hours of CE in ethics, as part of the 36 required hours, if they chose to do so. No changes to the proposed rule are needed.

15. COMMENT: State professional associations commented that they did not have a chance to comment on the proposed regulation before it was discussed by the Board of Regents and urge changes to the regulation process.

RESPONSE: The time for professional organizations, or any other member of the public, to submit comments under the State Administrative Procedures Act (SAPA) is the 60-day comment period—the time period in which this comment was received. In any event, the Department notes that the proposed rule was shared with the State Boards for Psychology, Social Work, and Mental Health Practitioners for review and comment prior to its presentation to the Board of Regents as a discussion item. No changes to the proposed rule are needed.

16. COMMENT: A state psychological association thinks it is imperative to hire a permanent Board Secretary for Psychology before the Department takes any further action impacting the future of the profession.

RESPONSE: The comment is not relevant to the proposed rule. However, suggesting that action on laws, rules or regulations related to the psychology profession be deferred during this period does not serve the profession or the public. No changes to the proposed rule are necessary.

17. COMMENT: Several social work commenters suggested a pre-licensure course on boundary violations be required, similar to the required coursework for identifying and reporting suspected child abuse and neglect.

RESPONSE: A requirement for pre-licensure coursework is beyond the scope of the proposed rule, which focuses on CE for licensed social workers, psychologists, and mental health practitioners. A one-time requirement would not provide the on-going education to assist licensees in establishing and maintaining appropriate boundaries to protect the public throughout their professional careers. No changes to the proposed rule are needed.