



TO: The Honorable Members of the Board of Regents

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

SUBJECT: Proposed Amendment to the Title of Subpart 79-16 and Sections 79-13.1, 79-13.3, 79-13.6, 79-14.1, 79-14.3, 79-15.1, 79-15.3, 79-16.1, 79-16.2, 79-16.3, 79-16.4 and 79-16.5 of the Regulations of the Commissioner of Education Relating to Licensure as a Clinical Laboratory Technologist or Cytotechnologist and Certification as a Clinical Laboratory Technician or Histological Technician

DATE: February 2, 2023

AUTHORIZATION(S): *Dom N. P. Belmont*

SUMMARY

Issue for Decision (Consent)

Should the Board of Regents amend the title of subpart 79-16 and sections 79-13.1, 79-13.3, 79-13.6, 79-14.1, 79-14.3, 79-15.1, 79-15.3, 79-16.1, 79-16.2, 79-16.3, 79-16.4 and 79-16.5 of the Commissioner's regulations relating to licensure as a clinical laboratory technologist or cytotechnologist and certification as a clinical laboratory technician or histological technician?

Reason for Consideration

Required by State statute (Chapter 446 of the Laws of 2022) and review of policy.

Proposed Handling

The proposed amendment is presented to the Full Board for adoption as an emergency rule at the February 2023 meeting of the Board of Regents. A copy of the proposed rule (Attachment A) and a statement of facts and circumstances justifying the emergency action (Attachment B) are attached.

Procedural History

The proposed amendment was presented to the Professional Practice Committee for discussion and recommendation to the Full Board for adoption as an emergency rule at the December 2022 meeting of the Board of Regents. A Notice of Emergency Adoption and Proposed Rulemaking was published in the State Register on December 28, 2022, for a 60-day public comment period.

Because the December emergency action will expire on March 12, 2023, a second emergency action is necessary to ensure the emergency rule remains continuously in effect until it can be permanently adopted at the April 2023 Regents meeting. A Notice of Emergency Adoption will be published in the State Register on March 29, 2023. Supporting materials are available upon request from the Secretary to the Board of Regents.

Background Information

Clinical laboratory technologists, cytotechnologists, clinical laboratory technicians, and histological technicians provide services necessary for the diagnosis, treatment and monitoring of diseases and other health conditions. Clinical laboratories in New York have had great difficulty in recruiting and retaining staff due to a chronic workforce shortage of licensed clinical laboratory practitioners. This workforce shortage was further exacerbated by the COVID-19 pandemic.¹ Consequently, clinical laboratories must often send specimens to laboratories located outside of New York for processing. This delays testing and reporting of laboratory test results for New York patients. Without increased flexibility to license additional qualified individuals as clinical laboratory practitioners, New York will be unable to access timely clinical laboratory services.

To address this clinical laboratory practitioners' workforce shortage, the legislature enacted Chapter 446 of the Laws of 2022 (Chapter 446). Chapter 446 amends the Education Law, effective January 17, 2023,² to provide flexibility to license additional qualified individuals as clinical laboratory practitioners, which will improve access to needed clinical laboratory testing services. These changes, discussed below, are incorporated into the proposed regulation.

¹ The Governor declared a statewide disaster emergency due to health care staffing shortages in New York, which has been in effect since September 27, 2021. Executive Orders issued by the Governor temporarily waived Education Law and any associated regulations to the extent necessary to allow qualified unlicensed clinical laboratory technologists, clinical laboratory technicians, histotechnicians, cytotechnologists and other clinical laboratory workers to practice in New York without civil or criminal penalty. Unless the Governor renews them, these Executive Orders will expire on December 23, 2022. (See, Executive Order Numbers 4 through 4.15).

² Section 10 of Chapter 446, which establishes the licensure requirements for the new histotechnologist profession, is not effective until January 21, 2024. Therefore, implementing regulatory amendments for this provision of Chapter 446 will be brought before the Board at a later date.

Proposed Amendment

The proposed amendment to the title of Subpart 79-16 and sections 79-13.1, 79-13.3, 79-13.6, 79-14.1, 79-14.3, 79-15.1, 79-15.3, 79-16.1, 79-16.2, 79-16.3, 79-16.4 and 79-16.5 of the Commissioner's regulations implement the provisions of Chapter 446 by:

- establishing a pathway for clinical laboratory technicians to qualify for New York licensure as a clinical laboratory technologist;
- allowing applicants to fulfill certain requirements for New York licensure as a clinical laboratory technologist, cytotechnologist, clinical laboratory technician, and histotechnician by being licensed in another jurisdiction or certified by a national certifying organization acceptable to the Department;
- increasing the duration of clinical laboratory technician, clinical laboratory technologist, cytotechnologist, and histotechnician limited permits and provisional permits from up to one year to up to two years and makes such permits non-renewable; and
- changing the name of the "histological technician" profession to "histotechnician".

Additionally, the proposed amendment updates the Commissioner's regulations by:

- deleting an expired clinical laboratory technologist licensure pathway and an obsolete requirement for admission to the licensing examination for clinical laboratory technologists in section 79-13.1(c) and (d);
- deleting an expired cytotechnologist licensure pathway and an obsolete requirement for admission to the licensing examination for cytotechnologists in section 79-14.1(c) and (d);
- deleting an expired clinical laboratory technician licensure pathway and an obsolete requirement for admission to the examination for professional certification as a clinical laboratory technician in section 79-15.1(c) and (d); and
- deleting an expired histological technician licensure pathway and an obsolete requirement for admission to the examination for professional certification as a histological technician in section 79-16.1(c) and (d).

Related Regents Items

December 2022: [Proposed Amendment to the Title of Subpart 79-16 and Sections 79-13.1, 79-13.3, 79-13.6, 79-14.1, 79-14.3, 79-15.1, 79-15.3, 79-16.1, 79-16.2, 79-16.3, 79-16.4 and 79-16.5 of the Regulations of the Commissioner of Education Relating to Licensure as a Clinical Laboratory Technologist or Cytotechnologist and Certification as a Clinical Laboratory Technician or Histological Technician](https://www.regents.nysed.gov/common/regents/files/1222ppca1.pdf)
(<https://www.regents.nysed.gov/common/regents/files/1222ppca1.pdf>)

Recommendation

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

VOTED: That the title of subpart 79-16 and sections 79-13.1, 79-13.3, 79-13.6, 79-14.1, 79-14.3, 79-15.1, 79-15.3, 79-16.1, 79-16.2, 79-16.3, 79-16.4 and 79-16.5 of the Regulations of the Commissioner of Education be amended, as submitted, effective March 13, 2023, 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 Chapter 446 of the Laws of 2022, effective January 17, 2023, which will expand access to clinical laboratory services by increasing the number of clinical laboratory practitioners in New York, and to ensure that the emergency action taken at the December 2022 meeting remains continuously in effect.

Timetable for Implementation

If adopted as an emergency rule at the February 2023 Regents meeting, the emergency rule will become effective March 13, 2023. It is anticipated that the proposed amendment will be presented to the Board of Regents for permanent adoption at the April 2023 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 April meeting, the proposed rule will become effective as a permanent rule on May 3, 2023.

Attachment A

AMENDMENT TO THE REGULATIONS OF THE COMMISSIONER OF EDUCATION

Pursuant to sections 207, 6504, 6506, 6507, 8600, 8601, 8602, 8603, 8605, 8606, 8606-a and 8608 of the Education Law and Chapter 446 of the Laws of 2022

1. Section 79-13.1 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-13.1 Professional study and alternatives to professional study of clinical laboratory technology

(a) [Applicability. For purposes of this section, applicants applying for licensure as a clinical laboratory technologist prior to September 1, 2013, shall meet the professional education requirements for admission to the licensing examination set forth in either subdivision (b) or (c) of this section. Applicants applying for licensure as a clinical laboratory technologist on or after September 1, 2013 shall meet the professional education requirements for admission to the licensing examination set forth in subdivision (b) of this section.

(b) General professional education requirements for applicants applying for licensure as a clinical laboratory technologist.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting clinical laboratory technology programs, having accreditation standards that are substantially equivalent to the requirements for programs registered as leading to licensure as a clinical laboratory technologist pursuant to section 52.38 of this Title, and applying its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education or alternative to professional education requirement for [admission to the licensing examination for] licensure as a clinical laboratory [technologists] technologist, the applicant shall present satisfactory evidence of:

[(i)] (1) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technology registered as leading to licensure as a clinical laboratory technologist pursuant to section 52.38 of this Title; or

[(ii)] (2) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technology that is substantially equivalent to a program registered as leading to licensure as a clinical laboratory technologist pursuant to section 52.38 of this Title as determined by the department, which program must be accredited by [an acceptable accrediting agency] a national accrediting organization acceptable to the department or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a clinical laboratory technologist, and must be designed and conducted by the degree-granting institution to prepare graduates to practice as clinical laboratory technologists using independent judgment and responsibility; or

(3) current clinical laboratory technology certification by a national certification organization acceptable to the department; or

(4) clinical laboratory technology licensure in a jurisdiction acceptable to the department; or

(5) a bachelor's degree in a natural science or in a clinical laboratory science and coursework acceptable to the department and:

(i) two years' experience in a clinical laboratory while licensed as a clinical laboratory technician in New York or another jurisdiction acceptable to the department;

or

(ii) two years' experience in a clinical laboratory while certified as a clinical laboratory technician by a national certification organization, acceptable to the department; or

[(iii)] (6) successful completion of both:

[(a)] (i) [holding] a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

[(b) completing] (ii) a clinical laboratory technology program accredited by a national accrediting organization acceptable to the department or a credit bearing program in clinical laboratory technology [in addition to such baccalaureate or higher degree study] that is registered as leading to licensure as a clinical laboratory technologist pursuant to section 52.38 of this Title or substantially equivalent to such a registered program as determined by the department. Such equivalent program must be [accredited by an acceptable accrediting agency or] recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a clinical laboratory technologist, and must be designed and conducted by the degree-granting institution to prepare graduates to

practice as a clinical laboratory technologist using independent judgment and responsibility.

[(c) Time-limited professional education requirements for applicants applying for licensure as a clinical laboratory technologist prior to September 1, 2013.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting clinical laboratory technology programs on a national or regional basis, as having reasonable accreditation standards, and as an organization that applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the licensing examination for clinical laboratory technologists, applicants who apply for licensure prior to September 1, 2013 may, as an alternative to satisfying the requirements of subdivision (b) of this section, present satisfactory evidence of meeting the requirements of one of the following subparagraphs:

(i) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in clinical laboratory technology or a related title which:

(a) prepares graduates for employment as a clinical laboratory technologist, as defined in Education Law, section 8601(2)(a);

(b) contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement, and which is

designed and conducted to prepare graduates to practice clinical laboratory technology using independent judgment and responsibility; and

(c) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a clinical laboratory technologist; or

(ii) both:

(a) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

(b) completing a program which:

(1) prepares graduates for employment as a clinical laboratory technologist, as defined in Education Law, section 8601(2)(a);

(2) contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement, and which is designed and conducted to prepare graduates to practice clinical laboratory technology using independent judgment and responsibility; and

(3) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction

in which the program is offered as a program that prepares the applicant for professional practice as a clinical laboratory technologist.]

[(d) To meet the professional education requirement for admission to the licensing examination for clinical laboratory technologists, the applicant must also certify to the department that he or she has reviewed the rules and regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as a clinical laboratory technologist in New York State, in accordance with written guidance from the department.]

2. Section 79-13.3 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-13.3. Limited permits

(a) As authorized by section 8608 of the Education Law, upon recommendation of the State Board for Clinical Laboratory Technology, the department may issue a limited permit to practice as a clinical laboratory technologist to an applicant for licensure who meets the requirements of this section.

(b) The applicant for a limited permit to practice as a clinical laboratory technologist shall:

(1) file an application for a clinical laboratory technologist license and a limited permit with the department and pay the initial licensure and registration fee, as prescribed in section 8605(1) of the Education Law, and a limited permit fee of \$50;

(2) ...

(3) ...

(i) ...

(ii) ...

(a) ...

(b) ...

(c) ...

(c) The limited permit issued pursuant to this section shall be valid for a period of not more than [one year] twenty-four months from the date of issuance and shall not be renewable. [Such limited permit may be renewed at the discretion of the department for one additional one-year period, provided that the applicant documents good cause, such as a specific physical or mental disability certified by an appropriate health care professional or other good cause which in the judgment of the department made it impossible for the applicant to complete requirements for licensure as a clinical laboratory technologist while under the original limited permit.]

3. Section 79-13.6 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-13.6 [Limited license] Provisional permit

(a) In accordance with section [8610(2)] 8608(2) of the Education Law, the department may issue a [limited license and registration] provisional permit pursuant to which the [limited licensee] provisional permit holder may perform examinations and procedures within the definition of clinical laboratory technology set forth in section 8601(1) of the Education Law[,] under the general supervision of the director of the clinical laboratory, as determined by the department, subject to the requirements set forth in section [8610(2)] 8608(2)(a) of the Education Law and this section. In addition to the requirements for a [limited license] provisional permit established in Education Law section [8610(2)] 8608(2)(a), to qualify for a [limited license] provisional permit as a

clinical laboratory technologist, an applicant shall satisfy one of the following requirements:

(1) ...

(2) ...

(3) ...

(b) [In order to receive a limited license as a clinical laboratory technologist under section 8610(2) of the Education Law, the applicant must also certify to the department that he or she has reviewed the rules and regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as a clinical laboratory technologist in New York State, in accordance with written guidance from the department.] The applicant for a provisional permit to practice as a clinical laboratory technologist shall:

(1) file an application for a clinical laboratory technologist license and a provisional permit with the department and pay the initial licensure and registration fee as prescribed in section 8605(1) of the Education Law and the provisional permit fee as prescribed by section 8608(2)(b)(v) of the Education Law;

(2) be at least 18 years of age;

(3) be of good moral character as determined by the department; and

(4) meet requirements set forth in subdivision (a) of this section.

(c) The provisional permit issued pursuant to this section shall be valid for a period of not more than twenty-four months and shall not be renewable.

4. Section 79-14.1 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-14.1. Professional study and alternative to professional study of cytotechnology

(a) [Applicability. For purposes of this section, applicants applying for licensure as a cytotechnologist prior to September 1, 2013, shall meet the professional education requirements for admission to the licensing examination set forth in either subdivision (b) or (c) of this section. Applicants applying for licensure as a cytotechnologist on or after September 1, 2013 shall meet the professional education requirements for admission to the licensing examination set forth in subdivision (b) of this section.

(b) General professional education requirements for applicants applying for licensure as a cytotechnologist.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting cytotechnology programs, having accreditation standards that are substantially equivalent to the requirements for programs registered as leading to licensure as a cytotechnologist pursuant to section 52.39 of this Title, and applying its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education or alternative to professional education requirement for [admission to the licensing examination for] licensure as a [cytotechnologists] cytotechnologist, the applicant shall present [satisfactory] evidence satisfactory to the department of:

[(i)] (1) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in cytotechnology registered as leading to licensure as a cytotechnologist pursuant to section 52.39 of this Title; or

[(ii)] (2) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in cytotechnology that is substantially equivalent to a program registered as leading to licensure as a cytotechnologist pursuant to section 52.39 of this Title as determined by the department, which program must be accredited by an acceptable accrediting agency or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a cytotechnologist, and must be designed and conducted by the degree-granting institution to prepare graduates to practice as cytotechnologists using independent judgment and responsibility; or

(3) current cytotechnology certification by a national certification organization acceptable to the department; or

(4) cytotechnology licensure in a jurisdiction acceptable to the department; or

[(iii)] (5) successful completion of both:

[(a) holding] (i) a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

[(b) completing] (ii) a credit bearing program in cytotechnology in addition to such baccalaureate or higher degree study that is registered as leading to licensure as a cytotechnologist pursuant to section 52.39 of this Title or substantially equivalent to such a registered program as determined by the department. Such equivalent program must be accredited by an acceptable accrediting agency or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a

program that prepares the applicant for professional practice as a cytotechnologist, and must be designed and conducted by the degree-granting institution to prepare graduates to practice as a cytotechnologist using independent judgment and responsibility.

[(c) Time-limited professional education requirements for applicants applying for licensure as a cytotechnologist prior to September 1, 2013.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting cytotechnology programs on a national or regional basis, as having reasonable accreditation standards, and as an organization that applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the licensing examination for cytotechnologists, applicants who apply for licensure prior to September 1, 2013 may, as an alternative to satisfying the requirements of subdivision (b) of this section, present satisfactory evidence of meeting the requirements of one of the following subparagraphs:

(i) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in cytotechnology or a related title which:

(a) prepares graduates for employment as a cytotechnologist, as defined in Education Law, section 8601(2)(b);

(b) contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement, and which is

designed and conducted to prepare graduates to practice cytotechnology using independent judgment and responsibility; and

(c) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a cytotechnologist; or

(ii) both:

(a) holding a baccalaureate or higher degree awarded upon successful completion of a baccalaureate or higher degree program in the major of biology, chemistry, or the physical sciences registered pursuant to Part 52 of this Title or its substantial equivalent as determined by the department; and

(b) completing a program which:

(1) prepares graduates for employment as a cytotechnologist, as defined in Education Law, section 8601(2)(b);

(2) contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement, and which is designed and conducted to prepare graduates to practice cytotechnology using independent judgment and responsibility; and

(3) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by the appropriate civil authorities of the jurisdiction

in which the program is offered as a program that prepares the applicant for professional practice as a cytotechnologist.

(d) To meet the professional education requirement for admission to the licensing examination for cytotechnologists, the applicant must also certify to the department that he or she has reviewed the rules and regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as a cytotechnologist in New York State, in accordance with written guidance from the department.]

5. Section 79-14.3 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-14.3. Limited permits

(a) As authorized by section 8608 of the Education Law, upon recommendation of the State Board for Clinical Laboratory Technology, the department may issue a limited permit to practice as a cytotechnologist to an applicant for licensure who meets the requirements of this section.

(b) The applicant for a cytotechnologist license and a limited permit to practice as a cytotechnologist shall:

(1) file an application for a cytotechnologist license and a limited permit with the department and pay the initial licensure and registration fee, as prescribed in section 8605(2) of the Education Law, and a limited permit fee of \$50;

(2) ...

(3) ...

(i) ...

(ii) ...

(a) ...

(b) ...

(c) ...

(c) The limited permit issued pursuant to this section shall be valid for a period of not more than [one year] twenty-four months from the date of issuance and shall not be renewable. [Such limited permit may be renewed at the discretion of the department for one additional one-year period, provided that the applicant documents good cause, such as a specific physical or mental disability certified by an appropriate health care professional or other good cause which in the judgment of the department made it impossible for the applicant to complete requirements for licensure as a cytotechnologist while under the original limited permit.]

6. Section 79-15.1 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-15.1. Professional study [of] and alternative to professional study for clinical laboratory technician certification

(a) [Applicability. For purposes of this section, applicants applying for licensure as a clinical laboratory technician prior to September 1, 2013, shall meet the professional education requirements for admission to the examination for professional certification for clinical laboratory technicians set forth in either subdivision (b) or (c) of this section. Applicants applying for licensure as a clinical laboratory technician on or after September 1, 2013 shall meet the professional education requirements for admission to the examination for professional certification for clinical laboratory technicians set forth in subdivision (b) of this section.]

(b) General professional education requirements for applicants applying for licensure as clinical laboratory technicians.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting clinical laboratory technician programs, having accreditation standards that are substantially equivalent to the requirements for programs registered as leading to certification in clinical laboratory technician pursuant to section 52.40 of this Title, and applying its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education or alternative to professional education requirement for [admission to the examination for professional] certification as a [for] clinical laboratory technician[s], the applicant shall present [satisfactory] evidence satisfactory to the department of:

[(i)] (1) holding an associate or higher degree awarded upon successful completion of an associate or higher degree program in clinical laboratory technician registered as leading to certification as a clinical laboratory technician pursuant to section 52.40 of this Title; or

[(ii)] (2) holding an associate or higher degree awarded upon successful completion of an associate or higher degree program in clinical laboratory technician that is substantially equivalent to a program registered as leading to certification as a clinical laboratory technician pursuant to section 52.40 of this Title as determined by the department, which program must be accredited by an acceptable accrediting agency or recognized by the appropriate civil authorities of the jurisdiction in which the program is

offered as a program that prepares the applicant for professional practice as a clinical laboratory technician[.]; or

(3) completing an associate degree clinical laboratory technician program accredited by a national accrediting organization acceptable to the department; or

(4) completing an associate degree program in a natural science or a clinical laboratory science and coursework acceptable to the department and a clinical laboratory technician program accredited by a national accrediting organization acceptable to the department; or

(5) current clinical laboratory technician certification by a national certification organization acceptable to the department; or

(6) clinical laboratory technician licensure in a jurisdiction acceptable to the department.

[(c) Time-limited professional education requirements for applicants applying for licensure as a clinical laboratory technician prior to September 1, 2013.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting clinical laboratory technician programs on a national or regional basis, as having reasonable accreditation standards, and as an organization that applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the examination for professional certification for clinical laboratory technicians, applicants who apply for licensure prior to September 1, 2013 may, as an alternative to satisfying the requirements of subdivision (b) of this section, present satisfactory evidence of

holding an associate or higher degree awarded upon successful completion of an associate or higher degree program in clinical laboratory technician or a related title which:

(i) prepares graduates for employment as a clinical laboratory technician, as defined in Education Law, section 8601(2)(c);

(ii) contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement, and which is designed and conducted to prepare graduates to practice as clinical laboratory technicians under the supervision of a clinical laboratory technologist, laboratory supervisor, or director of a clinical laboratory; and

(iii) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a clinical laboratory technician.

(d) To meet the professional education requirement for admission to the examination for professional certification as a clinical laboratory technician, the applicant must also certify to the department that he or she has reviewed the rules and regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as a clinical laboratory technician in New York State, in accordance with written guidance from the department.]

7. Section 79-15.3 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-15.3. Limited permits

(a) As authorized by section 8608 of the Education Law, upon recommendation of the State Board for Clinical Laboratory Technology, the department may issue a limited permit to practice as a clinical laboratory technician to an applicant for certification who meets the requirements of this section.

(b) The applicant for a limited permit to practice as a clinical laboratory technician shall:

(1) file an application for clinical laboratory technician certification and a limited permit with the department and pay the initial certification and registration fee, as prescribed in section 8606 of the Education Law, and a limited permit fee of \$50;

(2) ...

(3) ...

(i) ...

(ii) ...

(a) ...

(b) ...

(c) ...

(c) The limited permit issued pursuant to this section shall be valid for a period of not more than [one year] from the date of issuance and shall not be renewable. [Such limited permit may be renewed at the discretion of the department for one additional one-year period, provided that the applicant documents good cause, such as, a specific physical or mental disability certified by an appropriate health care professional or other good cause which in the judgment of the department made it impossible for the

applicant to complete requirements for certification as a clinical laboratory technician while under the original limited permit.]

8. The title of subpart 79-16 of the Regulations of the Commissioner of Education is amended to read as follows:

Subpart 79-16 [Histological Technician] Histotechnician

9. Section 79-16.1 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-16.1. Professional study [of histological technician] and alternative for professional study for certification as a histotechnician

(a) [Applicability. For purposes of this section, applicants applying for licensure as a histological technician prior to September 1, 2013, shall meet the professional education requirements for admission to the examination for professional certification for histological technicians set forth in either subdivision (b) or (c) of this section. Applicants applying for licensure as a histological technician on or after September 1, 2013 shall meet the professional education requirements for admission to the examination for professional certification for histological technicians set forth in subdivision (b) of this section.

(b) General professional education requirements for applicants applying for licensure as histological technicians.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting histological technician programs, having accreditation standards that are substantially equivalent to the requirements for programs registered as leading to certification as a histological technician pursuant to section 52.41 of this Title, and

applying its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education or alternative for professional education requirement for [admission to the examination for professional] certification as a [for histological technicians] histotechnician, the applicant shall present [satisfactory] evidence satisfactory to the department of:

[(i)] (1) holding an associate or higher degree awarded upon successful completion of an associate or higher degree program [in histological technician] registered as leading to certification as a [histological technician] histotechnician pursuant to section 52.41 of this Title; or

(2) completion of a histotechnician education program accredited by a national accrediting organization acceptable to the department; or

(3) current histotechnician certification by a national certification organization acceptable to the department; or

(4) histotechnician licensure in a jurisdiction acceptable to the department; or

[(ii)] (b) holding an associate or higher degree awarded upon successful completion of an associate or higher degree program [in histological technician] that is substantially equivalent to a program registered as leading to certification as a [histological technician] histotechnician pursuant to section 52.41 of this Title as determined by the department[, which program must be accredited by an acceptable accrediting agency] or recognized by the appropriate civil authorities of the jurisdiction in which the program is offered as a program that prepares the applicant for professional practice as a [histological technician] histotechnician.

[(c) Time-limited professional education requirements for applicants applying for licensure as a histological technician prior to September 1, 2013.

(1) As used in this subdivision, acceptable accrediting agency shall mean an organization accepted by the department as a reliable authority for the purpose of accrediting histological technician programs on a national or regional basis, as having reasonable accreditation standards, and as an organization that applies its criteria for granting accreditation of programs in a fair, consistent, and nondiscriminatory manner.

(2) To meet the professional education requirement for admission to the examination for professional certification for histological technicians, applicants who apply for licensure prior to September 1, 2013 may, as an alternative to satisfying the requirements of subdivision (b) of this section, present satisfactory evidence of holding an associate or higher degree awarded upon successful completion of an associate or higher degree program in histological technician or a related title which:

(i) prepares graduates for employment as a histological technician, as defined in Education Law, section 8601(2)(d);

(ii) contains didactic and clinical education that integrates pre-analytical, analytical, and post-analytical components of laboratory services, including the principles and practices of quality assurance/quality improvement, and which is designed and conducted to prepare graduates to practice as histological technicians under the supervision of a laboratory supervisor designated by a director of a clinical laboratory, or under the supervision of the director of the clinical laboratory; and

(iii) is registered by the department for general educational purposes but need not be specifically registered for licensure purposes, or is accredited by an acceptable accrediting agency, or is recognized by appropriate civil authorities of the jurisdiction in

which the program is offered as a program that prepares the applicant for professional practice as a histological technician.

(d) To meet the professional education requirement for admission to the examination for professional certification as a histological technician, the applicant must also certify to the department that he or she has reviewed the rules and regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as a histological technician in New York State, in accordance with written guidance from the department.]

10. Section 79-16.2 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 79-16.2. Licensing examination

(a) Content. To meet the examination requirement for professional certification as a [histological technician] histotechnician, the candidate shall pass a general examination for [histological technicians] histotechnicians that is determined by the department to measure the applicant's knowledge, [judgement] judgment, and skills concerning practice as a histological technician, as defined in section 8601(2)(d) of the Education Law, and to be offered by an organization that has satisfactory administrative and psychometric procedures in place to offer the examination.

(b) ...

11. Section 79-16.3 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-16.3. Limited permits

(a) As authorized by section 8608 of the Education Law, upon recommendation of the State Board for Clinical Laboratory Technology, the department may issue a

limited permit to practice as a [histological technician] histotechnician to an applicant for certification who meets the requirements of this section.

(b) The applicant for a limited permit to practice as a [histological technician] histotechnician shall:

(1) file an application for certification as a histotechnician and a limited permit with the department and pay the initial certification and registration fee, as prescribed in section 8606-a of the Education Law, and a limited permit fee of \$50;

(2) have met all requirements for certification as a [histological technician] histotechnician, except the examination requirement;

(3) ...

(i) ...

(ii) ...

(a) ...

(b) ...

(c) ...

(d) the limited permit issued pursuant to this section shall be valid for a period of not more than [one year] twenty-four months from the date of issuance and shall not be renewable. [Such limited permit may be renewed at the discretion of the department for one additional one-year period, provided that the applicant documents good cause, such as a specific physical or mental disability certified by an appropriate health care professional or other good cause which in the judgement of the department made it impossible for the applicant to complete requirements for certification as a histological technician while under the original limited permit.]

12. Subdivision (a) of section 79-16.4 of the Regulations of the Commissioner of Education is amended, to read as follows:

Section 79-16.4. Special provisions(a) In accordance with section 8607(1)(d) of the Education Law, an applicant may be certified by the department as a [histological technician] histotechnician through meeting the requirements of this section. The applicant must apply for certification under this section by January 1, 2009, except as otherwise provided in subparagraph (b)(2)(iv) of this section, and shall meet the requirements for certification under this section by July 1, 2009, unless the particular requirement in this section prescribes an earlier date, in which case the earlier date must be met.

13. Section 79-16.5 of the Regulations of the Commissioner of Education is amended to read as follows:

Section 79-16.5. [Limited license] Provisional permit

(a) In accordance with section [8610(2)] 8608(2) of the Education Law, the department may issue a [limited license and registration] provisional permit pursuant to which the [limited licensee] provisional permit holder may perform examinations and procedures within the definition of clinical laboratory technology set forth in section 8601(1) of the Education Law[,] under the general supervision of the director of the clinical laboratory, as determined by the department, subject to the requirements set forth in Education Law, section [8610(2)] 8608(2)(a) of the Education Law and this section. [In addition to the applicable requirements for a limited license established in Education Law, section 8610(2), to qualify for a limited license as a histological technician, an applicant shall satisfy the following requirements:

(a) An applicant shall have received an education acceptable to the department, which shall include an associate or higher degree in the biological, chemical or physical sciences.

(b) An applicant must also certify to the department that he or she has reviewed the rules and regulations of the New York State Department of Health and the U.S. Department of Health and Human Services, relating to practice as a histological technician in New York State, in accordance with written guidance from the department.]

(b) An application for a provisional permit to practice as a histotechnician shall:

(1) file an application for a histotechnician certificate and a provisional permit with the department and pay the applicable licensure and registration fee and provisional permit fee as prescribed in sections 8606-a(6) and 8608(2)(b)(v) of the Education Law;

(2) be at least 18 years of age;

(3) be of good moral character as determined by the department; and

(4) have received an education acceptable to the department, which shall include an associate or higher degree in the biological, chemical, or physical sciences.

(c) A provisional permit issued pursuant to this section shall be valid for a period of not more than twenty-four months and shall not be renewable.

Attachment B

Title of Subpart 79-16 and 8 NYCRR §§79-13.1, 79-13.3, 79-13.6, 79-14.1, 79-14.3, 79-15.1, 79-15.3, 79-16.1, 79-16.2, 79-16.3, 79-16.4 and 79-16.5

STATEMENT OF FACTS AND CIRCUMSTANCES

WHICH NECESSITATE EMERGENCY ACTION

The proposed rule is necessary to implement certain provisions of Chapter 446 of the Laws of 2022 (Chapter 446), which becomes effective January 17, 2023.³ The proposed rule conforms the Commissioner’s regulations to Chapter 446, which amends the Education Law to address New York’s clinical laboratory practitioners’ workforce shortage by providing more flexibility to license additional qualified individuals as clinical laboratory practitioners to improve access to clinical laboratory services that are necessary for the diagnosis, treatment and monitoring of diseases and other health conditions. Chapter 446 amends the Education Law by, among other things, changing the name of the “histological technician” profession to “histotechnician”; establishing a pathway for clinical laboratory technicians to qualify for New York licensure as a clinical laboratory technologist; allowing applicants to fulfill certain requirements for New York licensure as a clinical laboratory technologist or a cytotechnologist by being licensed in another jurisdiction or certified by a national certifying organization acceptable to the Department; allowing applicants to fulfill certain requirements for New York certification as a clinical laboratory technician or a histological technician by being licensed in another jurisdiction or certified by a national certifying organization acceptable to the Department; and increasing the duration of limited permits and provisional permits from up to one year to up to two years and makes such permits non-renewable.

³ Section 10 of Chapter 446, which establishes the licensure requirements for the new histotechnologist profession, is not effective until January 21, 2024.

The proposed amendment was presented to the Professional Practice Committee for recommendation to the Full Board for adoption as an emergency rule at the December 2022 meeting of the Board of Regents, effective December 13, 2023. 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 comment period provided for in the State Administrative Procedure Act (SAPA) sections 201(1) and (5), would be the April 17-18, 2023 Regents meeting. Furthermore, pursuant to SAPA section 203(1), the earliest effective date of the proposed rule, if adopted at the April meeting, would be May 3, 2023, the date the Notice of Adoption would be published in the State Register. However, but for section (10) of Chapter 446, it is effective January 17, 2023.

However, the emergency rule will expire on March 12, 2023. Therefore, a second emergency action is necessary at the February 2023 meeting for the preservation of the public health and general welfare in order to timely implement the provisions of Chapter 446 of the Laws of 2022, effective January 17, 2023, which will expand access to clinical laboratory services by increasing the number of clinical laboratory practitioners in New York, and to ensure that the emergency action taken at the December 2022 meeting remains continuously in effect

It is anticipated that the proposed rule will be presented to the Board of Regents for adoption as a permanent rule at the April 2023 meeting, which is the first scheduled meeting, after expiration of the 60-day public comment period mandated SAPA for state agency rule making.