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July 27, 2018

SENT VIA E-MAIL: opdepcom@nysed.gov

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

Re: Opportunity for public input regarding the implementation of Part Y of Chapter 57 of the Laws of 2018

Dear Mr. Lentivech:

Thank you for the opportunity to offer comments on the above-referenced laws. These comments are submitted on behalf of our client, the New York State Psychological Association ("NYSPA").

NYSPA is the leading voice of the psychology profession in New York State. Consisting of over twenty divisions and committees, with representation from various practice areas such as addiction, clinical psychology, adult development and aging, and school psychology. NYSPA's mission is to advance the science of and practice of psychology as a means to promote human welfare. NYSPA is affiliated with the American Psychological Association (APA).

Guiding Principals

- NYSPA appreciates the Governor's and Legislature's efforts to end the exemption from professional licensure for individuals using the title "psychologist" in state operated facilities.

- NYSPA is not supportive of the law's "grandfathering" of unlicensed individuals already employed as "psychologists" in state run facilities by the date of implementation of yet to be promulgated regulations (§7605(12) of the Education Law).
- NYSPA is pleased that the roles of unlicensed individuals are more limited in nature under the new law. NYSPA appreciates the law's focus on ensuring that unlicensed professionals tasks are centered on treatment options available to patients, as well as assisting licensed professionals.

Comments

The history of the professional exemption in psychology is a long and complicated one, however, one central fact has remained consistent throughout: there are professionals, practicing in State approved settings, who have the title psychologist, yet who have not completed the education, training, or licensing to properly be called psychologist in public. Putting aside the policy considerations and laws that led to the current reality, doctoral-level psychologists are upset with this fact, and members of the public are often confused by it. There is no other licensed profession in New York State where professionals who have failed to meet the requirements for licensure still get to use the title in practice. It has long been recognized that this situation treated the psychology profession unfairly, and NYSPA is pleased that a solution was implemented this year.

There are several concerns that we urge the Education Department to look at while developing guidance as required by law:

- Incorporating into the guidance and regulations the language contained in 7605(10)(c)(ii) regarding the definition of "assist", as it applies to the "development or implementation of a behavioral health services or treatment plan" as stated in 7605(10)(c)(i). In addition, how it will be made clear that those who assist in such development are not practicing within the scope of psychology;
- What the supervision parameters will be for members participating on the treatment team and how that team will properly adhere to the out-of-scope limitations imposed by the language in the enacted budget under 7605(10)(c)(i);
- Further clarification regarding what de-escalation techniques would be appropriate and what training is required under 7605(10)(c)(ii)(12). Additionally, it may be helpful to offer guidance on how to avoid any inherent pitfalls in using such techniques while staying away from practicing within the scope of psychology;
- Further clarification regarding what standardized or structured interview tools or instruments may be used under 7605(10)(c)(ii)(13). Additionally, it may be helpful to offer guidance on how to avoid any inherent pitfalls in using such tools while staying way from practicing within the scope of psychology;

- Further guidance relating to how to verify that the delivery of services is done pursuant to a diagnosis from a licensed professional under 7605(10)(c)(ii)(14). It may be helpful to develop a system to verify that such diagnosis has been received prior to delivery of services under this provision;

- It is essential that State Agencies employing exempt individuals comply with the requirement to create a process to track and verify employment history under 7605(12). It has long been NYSPA's concern that there were many professionals providing services within the scope of psychology without proper supervision by a licensee or exemption under law. Historically, it has been difficult to quantify this concern. Clear guidance regarding this provision and proper compliance will provide all stakeholders with the appropriate information upon which to base assertions and propose solutions to ensure that all affected New Yorkers are receiving the proper level of mental health services from the proper professional;

- Further clarification regarding what qualifies as "working under the supervision of a licensed psychologist" under 7605(13).

NYSPA stands ready to work alongside SED through this process to ensure that the people of New York in need of mental health services get those services from licensed professionals, or those otherwise authorized to provide services under enacted budget language and other related provisions of law.

Very truly yours,

Jackson Lewis P.C.



Bradley M. Pryba

BMP:dks