

**MEMORANDUM**

TO: The Reproductive Health Access Project  
FROM: Law Students for Reproductive Justice, Georgetown Chapter\*  
RE: Provider Licensing Requirements – **New York (Revised)**  
DATE: January 18<sup>th</sup>, 2016

\*not formally affiliated with the Georgetown University Law Center.

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**I. Requirements for a Professional License**

*A. Standard Application Process - Physician*

To be licensed as a physician in New York State, you must:

- (1) be of good moral character as determined by the department;
- (2) be at least 21 years of age;<sup>1</sup>
- (3) meet education, examination and experience requirements;
- (4) be a United States citizen or an alien lawfully admitted for permanent residence in the United States; and
- (5) pay relevant fees<sup>2</sup>.

N.Y. EDUC. LAW § 6524 (McKinney, Westlaw through L.2015).

The education and examination requirements for licensure include two years of pre-professional education, the completion of a medical program of not less than 32 months, receipt of a degree of doctor of medicine or doctor of osteopathic medicine, and a passing score on a proficiency examination. N.Y. COMP. CODES R. & REGS. tit. 8, § 60.1 (Westlaw through 2015). A clinical clerkship may be part of the program of study, subject to the requirements of § 60.2.<sup>3</sup> N.Y. COMP. CODES R. & REGS. tit. 8, § 60.2 (Westlaw through 2015). The experience requirement includes the completion of at least one year of post-graduate hospital training in an accredited residency program. N.Y. COMP. CODES R. & REGS. tit. 8, § 60.3(a) (Westlaw through 2015).

To re-register, a physician must include an attestation that he or she has updated his or her physician profile pursuant to New York Public Health law within six months

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<sup>1</sup> The Commissioner of the New York State Education Department, Office of the Professions, may waive the age requirement for applicants who are 18 or over and who will be in a residency program until the age of 21. N.Y. EDUC. LAW § 6524(5) (McKinney, Westlaw through L.2015).

<sup>2</sup> The applicable fees will depend on the circumstances under which the applicant applies. *See* N.Y. EDUC. LAW § 6528(8-10) (McKinney, Westlaw through L.2015)

<sup>3</sup> The details of the education requirements differ slightly for graduates of non-accredited medical programs and for graduates of foreign medical schools. *See* N.Y. EDUC. LAW § 6528 (McKinney, Westlaw through L.2015).

prior to submitting re-registration application. N.Y. EDUC. LAW § 6524(11) (McKinney, Westlaw through L.2015).

*B. Standard Application Process – Physician Assistant*

A physician's assistant may perform medical services only when under the supervision of a physician and the medical service is within the scope of practice of the supervising physician. N.Y. EDUC. LAW § 6524 (McKinney, Westlaw through L.2015).

To be licensed as a physician assistant in New York State, one must:

- (1) be at least twenty-one years of age;
- (2) be of good moral character;
- (3) have received an education including a bachelor's or equivalent degree
- (4) have satisfactorily completed an approved program for the training of physician assistants; and
- (5) have obtained a passing score on an examination acceptable to the department.

N.Y. EDUC. LAW § 6541(1) (McKinney, Westlaw through L.2015).

The requirements for an approved program include not less than forty weeks of supervised clinical training and thirty-two credit hours of classroom work. In addition to the necessary requirements applicants must pay the accompanying fees to receive a license. For those who satisfy all of the above requirements, the department shall furnish a license for a period expiring December 31 of the first odd-numbered year terminating subsequent to the issuance. Licenses may be renewed for forty-five dollars, and renewal periods shall be triennial. N.Y. EDUC. LAW § 6541 (McKinney, Westlaw through L.2015).

*C. Standard Application Process – Specialist Assistant*

A special assistant may perform medical services only when under the supervision of a physician, the medical service performed is within the scope of practice of the supervising physician, and the medical service performed is related to the designated medical specialty for which the special assistant is registered. N.Y. EDUC. LAW § 6549 (McKinney, Westlaw through L.2015).

To register as a specialist assistant, one must:

- (1) be at least twenty-one years of age;
- (2) be of good moral character;
- (3) have completed a four-year course of study in a secondary school approved by the board of regents or has passed an equivalency test; and
- (4) have satisfactorily completed an approved program.

N.Y. EDUC. LAW § 6548(1) (McKinney, Westlaw through L.2015).

In addition to the above requirements, applicants must pay the proper accompanying fees. For those who satisfy all the above requirements, the department shall furnish a certificate of registration as a specialist assistant for a period expiring December 31 of the first odd-numbered year terminating subsequent to registration. Registrants may renew their registrations for forty-five dollars, and registration periods shall be triennial. N.Y. EDUC. LAW § 6548 (McKinney, Westlaw through L.2015).

*D. Standard Application Process – Nurse Practitioner*

To register as a nurse practitioner, one must:

- (1) be licensed as a registered professional nurse (see below);
- (2) have completed educational preparation in an approved program
- (3) submit evidence of current certification by a national certifying body

N.Y. EDUC. LAW § 6910(1) (McKinney, Westlaw through L.2015).

In addition to the above requirements, applicants must pay the proper accompanying fees with the application, followed by a triennial registration fee. Only persons certified by this process shall use the title “nurse practitioner.” N.Y. EDUC. LAW § 6910 (McKinney, Westlaw through L.2015).

To register as a professional nurse, one must:

- (1) be at least eighteen years of age;
- (2) be of good moral character as determined by the department;
- (3) have received an education, and a diploma or degree in professional nursing;
- (4) have passed an examination satisfactory to the board and in accordance with the commissioner’s regulations;
- (5) pay the relevant fees.

N.Y. EDUC. LAW § 6905 (McKinney, Westlaw through L.2015).

*E. Licensure by Endorsement*

In New York, the term “endorsement” refers to satisfaction of the New York State licensure exam requirement by acceptance of the applicant’s licensure by examination in another jurisdiction, both foreign and other states.

New York State may endorse medical licenses from other States or Canadian Provinces if the applicant:

- (1) is eligible for admission to the New York State licensing examination;
- (2) has not less than 2 years of satisfactory professional experience; and

- (3) has achieved grades satisfactory to the State Board for Medicine on a medical licensing examination that meets New York State standards.

N.Y. COMP. CODES R. & REGS. tit. 8, § 60.5(b) (Westlaw through 2015).

*F. Telemedicine Licensure Requirements*

Telemedicine is the delivery of clinical services for a patient at the originating site by the health care provider at the distant site by means of two-way electronic communications. New York law allows distant site hospitals licensed pursuant to New York state law or another state to enter an agreement with an originating hospital; under such agreement, physicians at the distant hospital may provide telemedicine services for the originating hospital. To provide telemedicine services, the distant site hospital must fulfill certain requirements, including credentialing its physicians and participating in Medicaid and Medicare. The hospital must ensure that each health care practitioner providing telemedicine is licensed to practice in New York and must conduct a periodic internal review, at least every two years, of the practitioner's performance in providing telemedicine services. Other stipulations exist regarding the details of the agreement between the originating and distant site hospitals. N.Y. PUB. HEALTH § 2805-u (McKinney, Westlaw through L.2015).

*G. Exemptions from Licensure Requirements*

In New York, several categories of person may practice medicine without a license. The categories relevant to the possible training of new abortion providers include:

- (1) Residents in public hospitals whose practice is supervised by a licensed physician and limited to that hospital;
- (2) Physicians licensed in bordering states who reside near the New York border, who practice in the vicinity of the border and who do not maintain an office or place to meet patients or receive calls within New York;
- (3) "Physicians licensed in another state or country and who is meeting a physician licensed in this state, for purposes of consultation, provided such practice is limited to such consultation;"
- (4) Physicians licensed in another state or country who are visiting a medical school or teaching hospital in New York State to receive medical instruction for a period of up to 6 months, so long as the practice is supervised by a licensed physician and is limited to that instruction;
- (5) "Commissioned medical officers who are serving in the United States armed forces or public health service or any physician who is employed in the United States Veterans Administration, provided such practice is limited to such service or employment;
- (6) Interns, employed by a hospital, who are graduates of US or Canadian medical schools, provided that the practice is limited to that hospital and supervised by a licensed physician"; or

- (7) Medical students performing a clinical clerkship or similar function in a hospital, who are matriculated in an approved medical school, provided the practice is limited to the clerkship or similar function in the hospital.

N.Y. EDUC. LAW § 6526 (McKinney, Westlaw through L.2015).

## **II. Limited Permits for Physicians without Licensure**

New York State law has created a limited permit to practice medicine in the state under the supervision of a New York-licensed physician, in a public, voluntary or proprietary hospital.<sup>4</sup> Such permits, which cost \$105, are valid for two years. N.Y. EDUC. LAW § 6525 (McKinney, Westlaw through L.2015). These permits will not be renewed for more than 24 months. N.Y. COMP. CODES R. & REGS. tit. 8, § 60.6 (Westlaw through 2015).

To be eligible for a limited permit, the applicant must fulfill all of the requirements for a license except those pertaining to examination and citizenship or permanent residence in the United States. Certain foreign physicians and interns are also eligible. N.Y. EDUC. LAW § 6525 (McKinney, Westlaw through L.2015).

Although limited permits are likely to be quite useful for the purposes of training physicians in abortion procedures in New York State, please note that persons employed in ACGME-approved post-graduate training programs in New York State are not required to have a physician license or a limited permit to work in that program. <http://www.op.nysed.gov/prof/med/medlic.htm>.

## **III. Limited Permits for Physician Assistants without Licensure**

New York State law provides limited permits for physician assistants to practice without licensure if they meet all requirements for a license except for the examination. They are permitted to practice only under direct physician supervision. N.Y. EDUC. LAW § 6546 (McKinney, Westlaw through L.2015).

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<sup>4</sup> The terms “hospital” and “public hospital” have been construed by the Commissioner’s Regulations to include a general hospital, as defined by the Public Health Law. N.Y. COMP. CODES R. & REGS. tit. 8, § 60.7(a) (Westlaw through 2015). N.Y. PUB. HEALTH § 2801(10) (McKinney, Westlaw through L.2015) defines a general hospital as:

a hospital engaged in providing medical or medical and surgical services primarily to in-patients by or under the supervision of a physician on a twenty-four hour basis with provisions for admission or treatment of persons in need of emergency care and with an organized medical staff and nursing service, including facilities providing services relating to particular diseases, injuries, conditions or deformities. The term general hospital shall not include a residential health care facility, public health center, diagnostic center, treatment center, out-patient lodge, dispensary and laboratory or central service facility serving more than one institution.

For the purposes of the Education Law as it pertains to exemptions from licensure and limited permits, the term “hospital” includes several other types of facilities, none of which should be relevant here. N.Y. COMP. CODES R. & REGS. tit. 8, § 60.7(a) (Westlaw through 2015).

Permits will expire one year from when they are issued or upon notice that an application for license has been denied. They can be extended for only one year, provided that request is endorsed by a physician who has supervised or will supervise licensee. The cost of a permit is \$105. N.Y. EDUC. LAW § 6546 (McKinney, Westlaw through L.2015).

#### **IV. Limited Permits for Nurses without Licensure**

Upon filing an application for licensure to practice as a registered professional nurse or practical nurse, limited permits are available in the interim to (i) graduates of registered nursing schools; (ii) graduates of nursing schools approved in another state, province, or country; or (iii) applicants for a license in practical nursing whose preparation is considered equivalent of that required in the state of New York. Applicants are permitted to practice nursing only under supervision of a nurse registered in New York and endorsed by the employing agency. N.Y. EDUC. LAW § 6907 (McKinney, Westlaw through L.2015).

Permits will expire one year from date of issue or upon notice to the applicant that the application for licensure has been denied. The cost of the permit is \$35. N.Y. EDUC. LAW § 6907 (McKinney, Westlaw through L.2015).

Graduates of registered nursing schools may be employed under the supervision of a professional nurse registered in New York, with endorsement from employing agency, in the immediate ninety days following graduation from such program, pending receipt of the limited permit for which an application has been filed. N.Y. EDUC. LAW § 6907 (McKinney, Westlaw through L.2015).

#### **V. Denial and Revocation of Licenses**

##### *A. Penalties*

In New York, any licensee (physician, physician's assistant, specialist's assistant) found guilty of professional misconducts shall be subject to penalty. Educ. Law § 6530. Penalties include censure, fine, requirement to pursue a course of education or training, requirement to perform public service; and/or his or her license or registration may be limited to a specific area of practice, revoked, suspended, or annulled. N.Y. EDUC. LAW § 6531 (McKinney, Westlaw through L.2015); N.Y. PUB. HEALTH § 230-a (McKinney, Westlaw through L.2015).

##### *B. Professional Misconduct*

Professional misconduct includes, but is not limited to:

##### *License related*

- (1) Obtaining the license or practicing the profession fraudulently;

- (2) Permitting or abetting an unlicensed person to perform activities requiring a license;
- (3) Practicing the profession beyond the scope of license or while license is suspended or inactive;
- (4) Revealing information about a patient, except as authorized by law;

*Duty to Patients*

- (1) Practicing the profession with negligence or incompetence;
- (2) Refusing to provide professional service to a person due to that person's race, creed, color, or national origin.
- (3) Failing to inform patient and obtain consent of patient regarding treatment, identities of physicians, and procedure, except in emergency cases;
- (4) Failing to provide proper services to patient (e.g. revealing information about patient unless authorized by law, neglecting a patient in need of care, willfully harassing or intimidating a patient physically or verbally, failing to maintain record for each patient, ordering excessive tests and treatments not warranted for patient, failing to provide patient information)
- (5) Guaranteeing that satisfaction or a cure will result from performance of services

*Moral Character*

- (1) Practicing the profession where there is evidence of moral unfitness;
- (2) Being convicted for committing a crime under state or federal law;
- (3) Failing to comply with all other statutory requirements, federal, state, or local laws, rules or regulations governing the practice of medicine;
- (4) Receiving, advertising, soliciting for any type of consideration to or from a third party for referral or provision of professional services.

*Other*

- (1) Permitting any person to share in the fees for professional services, except a partner, employee, associate in a professional firm or corporation, professional subcontractor, or consultant;
- (2) Failing to respond to department of health with respect to inquiry about the licensee's professional misconduct or provide relevant records requested by state or local health department;
- (3) Failing to comply with signed agreement to practice medicine;

N.Y. EDUC. LAW § 6530 (McKinney, Westlaw through L.2015).

**VI. Restrictions on the Provision of Abortion Services**

*A. General Requirements for Abortion*

“For physician services, the operator shall ensure that:

- (a) physicians performing abortions at the center are qualified through training and experience; and
- (b) at least one physician with admitting privileges at a hospital in order to ensure the necessary back-up for care.”

N.Y. COMP. CODES R. & REGS. tit. 10, § 756.4 (Westlaw through 2015).

For nursing services, “the operator shall ensure that:

- (a) nursing services are staffed to assure that the nursing needs of all patients are met;
- (b) patient care responsibilities are delineated in writing for all nursing service personnel;
- (c) as a minimum, a licensed nurse is present in each treatment room when an abortion procedure is being performed;
- (d) the recovery area is staffed to allow for continual observation of post-procedure patients;
- (e) if abortions are performed in operating rooms, a registered professional nurse is in charge of the nursing services in the operating rooms;
- (f) if there are rooms for post-operative recovery of patients, a registered professional nurse is in charge of the nursing services for the recovery rooms to ensure continual observation of post-operative patients; and
- (g) only registered professional nurses function as circulating nurses in the operating room.”

N.Y. COMP. CODES R. & REGS. tit. 10, § 756.5 (Westlaw through 2015).

If the medical director is not an obstetrician/gynecologist who meets the definition of a qualified specialist, consultation from an obstetrician/gynecologist is required for the development of policies and procedures governing the provision of abortion services. N.Y. COMP. CODES R. & REGS. tit. 10, § 756.2 (Westlaw through 2015).

To provide abortion services, the facility must comply with requirements set for in section 755.3(b)-(d), 755.4 (if anesthesia services are provided), and 755.6-755.8.

These provisions include, but are not limited to:

- (1) a surgeon or anesthesiologist who meets the definition of a qualified specialist, licensed and registered by the New York State Education Department is responsible for the surgery service;
- (2) all surgical procedures are performed in accordance with current standards of professional practice;
- (3) there is a documented plan and procedure for the transfer of patients to a nearby hospital when hospitalization is indicated. Such plans shall include arrangements for an ambulance service and, when appropriate, escort of the patient to the hospital by a clinical staff member of the abortion service; and



- (4) patients shall be admitted only under the care of a licensed and currently registered physician, who shall be a member of the staff. The patient's condition and provisional diagnosis shall be established on admission by the patient's physician;
- (5) informed consent of the patient or, if applicable, the patient's representative, is obtained before surgery.

N.Y. COMP. CODES R. & REGS. tit. 10, §§ 756.1, 755.3(b)-(d), 755.4, 755.6-.8 (Westlaw through 2015).

#### *B. Abortion criminalization*

New York criminalizes abortion under Penal Law §§125.40 and 125.45, unless the act is a justifiable abortifacient act. N.Y. PENAL LAW § 125.45 (McKinney, Westlaw through L.2015).

An abortifacient act is justifiable when committed upon a female with her consent by a duly licensed physician or by herself, acting:

- (a) under a reasonable belief that such is necessary to preserve her life, or,
- (b) within twenty-four weeks from the commencement of her pregnancy.

N.Y. PENAL LAW § 125.45 (McKinney, Westlaw through L.2015).

#### *C. Restrictions on Who May Provide Abortion Services*

Only a licensed physician may provide abortion care. N.Y. PENAL LAW § 125.45 (McKinney, Westlaw through L.2015).

However, the New York Department of Health permits physician's assistants to provide first-trimester abortion care. New York State Dep't of Health, Declaratory Ruling: Performance of an Abortion by Physician Assistant (Dec. 20, 1994); *see New York: Targeted Regulation of Abortion Providers*, NARAL, <http://www.prochoiceamerica.org/government-and-you/state-governments/state-profiles/new-york.html?templateName=template-161602701&issueID=8&ssumID=2744> (last visited Jan. 7, 2015).

#### *D. Restrictions on Where Abortion Services May Be Provided*

New York requires that all abortion services after the twelfth week be provided in a hospital and on an in-patient basis. Additionally, after the twentieth week of pregnancy, the physician performing the abortion must be accompanied by another physician to provide immediate medical care in case a live birth is to result from the abortion. N.Y. PUB. HEALTH § 4164(1) (McKinney, Westlaw through L.2015).