

August 13, 2008

Mr. Frank Muñoz  
Associate Commissioner for the Professions  
New York State Education Department  
89 Washington Avenue  
Albany, NY 12234-1000

Dear Mr. Muñoz,

On behalf of our 22,000 members, we would like to thank the Office of Professions for hosting the recent meeting on licensure implementation issues as they relate to the fields of Psychology, Social Work and Mental Health Practitioners. As you are aware, the meeting primarily revolved around implementation of the social work licensure statute, specifically:

1. The recent “clarification” issued by the New York State Education Department regarding clinical experience obtained in independently owned and operated LMSW practices.. (Such clarifications appear contradictory to earlier guidance issued by the Department during the implementation period of social work licensure beginning September of 2004.)
2. Operating certificate requirements for facilities providing social work services.

With regard to the former, two substantive changes (both on the NY State Office of Professions Social Work website) have occurred since June 2008, effectively altering the perception of what constitutes acceptable settings and appropriate supervision leading to the LCSW. The first alteration was issued on the Office of Professions website in June 2008, whereby it redacted specific examples of “Types of Supervision” as they relate to fulfilling the LCSW experience requirements. Specifically, all examples of acceptable supervision were completely removed from the site, thus leaving the profession with little to no guidance. Prior to this alteration the explicit inclusion of an “individual consultant” for LMSWs in private practice (as an acceptable form of supervision) lead many such applicants in pursuit of their clinical license to believe that such experience met the LCSW requirements:

**Types of Supervision (as per [www.op.nysed.gov/lcsw.htm](http://www.op.nysed.gov/lcsw.htm) prior to June 2008):**

2. Individual, consultant: The applicant (or facility) hires an appropriately qualified individual to supervise the applicant’s clinical work in one-to-one sessions. If hired to supervise facility-based work, an appropriate agreement or contract should be reached between the facility, the consultant and the applicant. If hired to supervise a private practice, the supervisor should have experience (a minimum of three years) or documentable clinical expertise superior to that of the applicant.

Creating further confusion was the alteration of the “Frequently Asked Questions” section of the Office of Professions Social Work website (also June 2008) as it related to Question Six: Can a Licensed Master Social Worker operate a private practice? (Altered text is italicized)

**SED OP website answer prior to June 6, 2008:**

*A Licensed Master Social Worker is considered an "independent" license and the license holder may own or operate a private practice. However, the LMSW may only practice licensed clinical social work under supervision acceptable to the Department.*

An LMSW may establish a professional service corporation, professional limited liability corporation or professional limited liability partnership, subject to the requirements of the Education and the Business Corporation laws. You should consult with your attorney and accountant to determine if the creation of a professional entity is appropriate. In most cases, your attorney will file an application with the Department of State and the Education Department must consent to the title and purpose of a professional entity. You can access more information about establishing professional corporations on the Office of Professions web site: [www.op.nysed.gov/pcorp.htm](http://www.op.nysed.gov/pcorp.htm).

**SED OP Website answer post June 6, 2008:**

*A Licensed Master Social Worker who is registered to practice may form any legal business entity, including a private practice. The LMSW may provide any services defined as within the scope of practice of Licensed Master Social Work, so long as the licensee is competent. However, Education Law Section 7701 restricts Licensed Master Social Workers from providing clinical services in settings other than "facility settings or other supervised settings." Accordingly, New York law does not allow an LMSW to establish a private practice or professional entity (e.g., professional corporation or professional limited liability partnership) for the purpose of providing "clinical social work services".*

An LMSW may establish a professional service corporation, professional limited liability corporation or professional limited liability partnership, subject to the requirements of the Education and the Business Corporation laws. You should consult with your attorney and accountant to determine if the creation of a professional entity is appropriate. In most cases, your attorney will file an application with the Department of State and the Education Department must consent to the title and purpose of a professional entity. You can access more information about establishing professional corporations on our web site: [www.op.nysed.gov/pcorp.htm](http://www.op.nysed.gov/pcorp.htm).

As you will note, SED’s original response explicitly stated that an LMSW “may own or operate a private practice;” it then goes on to iterate that an LMSW may provide licensed clinical social work as long as it is “under supervision acceptable to the Department.” Such statement does not make explicit that an LMSW may provide licensed clinical social work in an LMSW-owned private practice, yet nor does it state that an LMSW may not operate a private practice *for the purpose of providing clinical social work services*. Hence, this has lead many LMSWs to

believe they could own and operate a private practice *and* provide clinical services in such setting.

Furthermore, an amended response to this FAQ attempted to explicate the prohibition over LMSW owned private practices from providing licensed clinical social work (an amendment made, presumably to eliminate prior confusion regarding this issue). The new FAQ response also cites §7701 of the Education Law which provides that an LMSW may provide clinical social work services in “other supervised settings” (language that was included in Chapter 230 of the Laws of 2004).

Adding to the confusion, the amended FAQ response again refers to section 7701 as a clarifying point that LMSWs may not provide clinical services (nor, consequently, gain clinical experience toward the LCSW) in an independently owned and operated private practice. The conclusion that an LMSW may not establish a private practice for clinical services is not necessarily linked to Education Law §7701, but is more closely associated with New York State business laws.

While we recognize and appreciate that both changes to the website were attempts to clarify that LMSWs may not provide clinical social work services in LMSW owned private practices, the altered language acts as a *de facto* policy change by the Office of Professions. As such, this prima facie contradiction could be construed as a regulatory change that would require it to go through the rule making procedure. In the interest of fairness and due process, we believe that this policy change requires a comment period which would afford a broad constituency the opportunity to share appropriate comments on the rule making.

As many applicants, acting in good faith, were led to the point of denial of their LCSW application based on guidance issued by the Department prior to June of 2008. The apparent shift or reversal in guidance issued after June 6, 2008 leaves untold numbers of LCSW applicants in a legal and professional quandary.

As per our second concern, it has also come to our attention that numerous LCSW applicants are being denied licensure on the grounds that their experience was obtained in facilities that do not list “social work services” (or other language suggesting licensed clinical social work practice) in their operating certificates. As a result, many LCSW applicants, whose clinical experience may otherwise be inherently legitimate, are denied licensure. While NASW-NYS and NASW-NYC understand the legal requirement for including such language in operating certificates, we posit that such requirements were neither communicated to the facilities nor members of the profession.

Based on the aforementioned problems, NASW-NYS and NASW-NYC have the following recommendations to stem the current crisis, as well as recommendations regarding protocol for future changes or clarifications to the social work licensure statute:

1. Amnesty for applicants who practiced in good faith and meet all other requirements for the LCSW license, but were denied LCSW licensure due to confusion over LMSW clinical practice.

2. A clear and direct regulatory statement similar to that of the mental health counselor regulation which explicitly states that for LCSW experience: “the setting shall not be a private practice owned or operated by the applicant” (see commissioners regulations subpart 79-9).
3. Amnesty for applicants who practiced in good faith and meet all other requirements for the LCSW license, but were denied LCSW licensure due to facility operating certificate oversights.
4. Development of a prospective review process for all potential LCSW applicants.
5. A reexamination of appropriate settings that recognizes the broad array of settings for LCSW practice across all service delivery systems.
6. Development of protocol for issuance of guidance documents and other “clarifications” of the social work licensure law and regulations, to avoid unnecessary confusion in the future. While the State Administrative Procedure Act requires that all state agencies annually submit text of all guidance documents to the Department of State, or seek an exemption, review of the State Register shows no evidence that the State Education Department filed any guidance documents or was given an exemption (both should be published in the State Register). Beyond registering all guidance documents with the Department of State, NYSED should share any changes in guidance with relevant professional associations before their public release in order to avoid contradictory information being disseminated by multiple organizations and agencies.

In conclusion, we look forward to working collaboratively with the Department in an effort to expeditiously resolve the aforementioned concerns, as numerous social workers in New York State are currently in limbo, unsure of their appropriate scope of practice, and concerned over their professional future. Thank you for your attention to these matters.

With Regards,

Reinaldo Cardona  
Executive Director  
NASW-NYS

Robert Schachter  
Executive Director  
NASW-NYC

Cc: Dr. David Hamilton