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

OFFICE OF THE STATE BOARD FOR MENTAL HEALTH PRACTITIONERS
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July 3, 2006

Diana Georgia
Coppola, Ryan, McHugh Riddell
119 Washington Ave., 2nd Floor
Albany, NY 12210

Dear Ms. Georgia:

Frank Muñoz, Executive Director of the Office of Professional Responsibility, has asked that I respond to your letter seeking clarification of the tasks that may be performed by an unlicensed person who is providing "music therapy" services. We appreciate the opportunity to address perceptions that licensure of creative arts therapists may result in denying access to a variety of services and interventions beneficial to specific clients, especially the medically fragile and severely disabled.

Please understand that the Education Department cannot answer hypothetical questions, issue advisory opinions or offer detailed legal advice. While we can share with you commonly accepted interpretations of applicable laws and regulations, it should be noted that the applicability of statute and regulation depends ultimately on the distinctive nature of a particular case that will change given a different set of circumstances.

Article 163 establishes the requirements for licensure as a creative arts therapist and restricts the practice of creative arts therapy to individuals licensed or exempt and defines the practice of creative arts therapy as follows:

- (a) the assessment, evaluation, and the therapeutic intervention and treatment, which may be either primary, parallel or adjunctive, of mental, emotional, developmental and behavioral disorders through the use of the arts as approved by the department; and
- (b) the use of assessment instruments and mental health counseling and psychotherapy to identify, evaluate and treat dysfunctions and disorders for purposes of providing appropriate creative arts therapy services.

An unlicensed individual who engages in those activities or who uses the restricted title may be charged with the illegal practice of a profession which is a felony. A licensee may be charged with unprofessional conduct for either delegating to an unlicensed individual tasks that require a license or for delegating to a licensed person tasks that are beyond the competence of the licensee.

In anticipation of the potential effect the licensure of creative arts therapists could have on employers and practitioners, the Legislature provided exemptions until January 1, 2010. The statute provides an exemption for certain individuals, including those in programs that are regulated, funded, operated or approved by the Office of Mental Health (OMH), Office of Mental Retardation and Developmental Disabilities (OMRDD), Office of Alcoholism & Substance Abuse Services (OASAS), Office of Children & Family Services (OCFS), and local social service districts.

Finally, although the practice of creative arts therapy is restricted to licensed individuals, there are functions that may be provided by an exempt or unlicensed person, including music therapists. For instance, an unlicensed person may provide services such as:

- Collecting qualitative and quantitative information relevant to the client such as the client's treatment history, conditions, strengths, limitations, learning style, developmental profile, cultural orientation, or music background, skills, and preferences through review of records, interviewing, direct observation, interaction with client under various circumstances, and review of client responses to a range of music activities¹;
- Developing goals and objectives and music therapy strategies to address those goals and objectives, so long as these do not imply or include the practice of psychotherapy, creative arts therapy, or the use of music therapy to engage in mental health counseling;
- Promoting successful client participation in musical activities by organizing and arranging the music therapy environment; providing appropriate directions; offering visual, auditory, and/or tactile cues; and selecting and adapting music activities and musical instruments/equipment;
- Collecting and compiling data² relevant to client responses and progress, and in consultation with other professionals and caregivers, utilizing the findings to make decisions about whether or not to modify, revise, or terminate music therapy services and communicating with the client, client's family, and/or client's significant others.
- Documenting (in oral, written, and other forms, as appropriate) assessment findings, music therapy treatment plans and strategies, client responses and progress, termination and follow-up plans, recommendations, and any other required documentation for review by other professionals, as appropriate. Such assessment and music therapy treatment, however, may not include services that are within the protected scope of creative arts therapy or any other licensed professions.

We recognize the Legislature's intent as expressed in the attached letter from Assemblyman Steve Sanders, that a bachelor's prepared music therapist should not be disenfranchised by the licensure of creative arts therapists. Since there are overlaps between music therapy activities that do not require licensure and the defined practice of music therapists, we anticipate that there will be questions from


¹ Please note that the maintenance of patient records may require adherence to various State and Federal Rules. Individuals involved with records maintenance should be aware of and follow applicable rules, considering such factors as confidentiality, accessibility, etc.

² Ibid.

individuals, employers and consumers. Please feel free to share this letter with other parties and to bring to our attention specific situations that may require clarification.

If you have any other questions, please feel free to contact me at the State Board office.

Sincerely,


David Hamilton, Ph.D. LMSW
Executive Secretary

c: Frank Muñoz
Louis Catone
State Board for Mental Health Practitioners



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March 11, 2002

Mary Boyle, Ed.D., MT-BC
Director, Music Therapy Program
State University of New York at New Paltz
New Paltz, NY 12561

Dear Dr. Boyle:

Thank you for writing to me regarding my legislation, which will create four new professions for Mental Health Counselors. I appreciate hearing your thoughts on the matter.

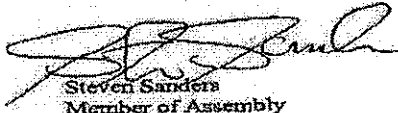
Assembly Bill 9214 will, among other things, create the professions of Mental Health Counselor, Creative Arts Therapist, Marriage and Family Therapist, and Psychoanalyst. Currently, anyone in New York State regardless of training or education, may call themselves and may advertise their services as such without regard for consumer protection or penalty in law. It is necessary to codify and professionalize these well-respected and vital avocations. The bill will protect mental health consumers and will define in law what the practice of these professions entails.

Regarding music therapy, it is my understanding that art therapy, dance therapy, drama therapy and music therapy make up Creative Arts Therapy. Music therapy, a vital part of the profession, is the only branch that offers training at the bachelors level. I understand that this training is very specific and that these bachelors level therapists engage in a very specific kind of work which does not include psychotherapy. This understanding is borne out by the American Music Therapy Association and the New York Coalition of Creative Arts Therapies.

The work of bachelors level music therapist is undoubtedly vital, filling an important niche in the field of Creative Arts Therapy. I certainly support their work and have no intention of curtailing their practice. The definition of "psychotherapy" in the bill would not prevent bachelors level music therapists from practicing music therapy that is not psychotherapy. Furthermore, there is wide agreement that training to provide psychotherapy must occur at the graduate level.

Thank you, again, for taking time to write to me on this important issue. Please feel free to contact me whenever you have an issue or concern of importance.

Sincerely,



Steven Sanders
Member of Assembly

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