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NEW JERSEY ADMINISTRATIVE CODE
TITLE 13
LAW AND PUBLIC SAFETY
CHAPTER 42A
CERTIFIED PSYCHOANALYSTS ADVISORY
COMMITTEE

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**SUBCHAPTER 1.
GENERAL PROVISIONS**

13:42A-1.1 PURPOSE AND SCOPE

- a) The rules in this chapter implement the provisions of P.L. 2000, c. 57, N.J.S.A. 45:14BB-1 et seq., the Psychoanalysts State Certification Act.
- b) This chapter shall apply to all persons applying for certification as a psychoanalyst and to persons certified as psychoanalysts in the State of New Jersey by the Director or a designee.

13:42A-1.2 DEFINITIONS

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise:

"Committee" means the Certified Psychoanalysts Advisory Committee established pursuant to N.J.S.A. 45:14BB-4.

"Director" means the Director of the Division of Consumer Affairs in the Department of Law and Public Safety or a designee.

"National psychoanalytic association" means a national professional organization of psychoanalysts, which is generally recognized in the psychoanalytic community, that conducts on-site visits of psychoanalytic institutes applying for accreditation.

"Psychoanalytic services" means therapeutic services that are based on an understanding of the unconscious and how unconscious processes affect the human mind as a whole, including actions, thoughts, perceptions and emotions.

"State-certified psychoanalyst" means an individual who has met the eligibility requirements contained in N.J.S.A. 45:14BB-6 and N.J.A.C. 13:42A-2.1 who holds a current, valid certification as a psychoanalyst issued by the Director or a designee.

13:42A-1.3 OFFICE OF THE CERTIFIED PSYCHOANALYSTS ADVISORY COMMITTEE

The office of the Committee shall be maintained at 124 Halsey Street, Newark, New Jersey. The mailing address of the Certified Psychoanalysts Advisory Committee is Post Office Box 45050, Newark, New Jersey 07101. The website address is <http://www.njconsumeraffairs.gov/psyan/>.

13:42A-1.4 USE OF TITLE

No person shall use the title, "State Certified Psychoanalyst" or the abbreviation "SCP" or "SCPsyA," unless certified by the Director or a designee pursuant to the provisions of N.J.S.A. 45:14BB-1 et seq. and this chapter. No person shall hold himself or herself out as a State-certified psychoanalyst in the State of New Jersey while his or her certificate is in inactive status.

13:42A-1.5 FEE SCHEDULE

a) Charges for certification and other services are as follows:

- 1) Application fee \$ 100.00
- 2) Examination fee \$ 175.00
- 3) Initial certification fee
 - i) During the first year of a biennial renewal period \$ 275.00

- ii) During the second year of a biennial renewal period \$ 138.00
- 4) Biennial renewal fee \$ 275.00
- 5) Verification fee \$ 25.00
- 6) Replacement wall certificate fee \$ 25.00
- 7) Duplicate certificate fee \$ 25.00
- 8) Inactive certification fee \$ 175.00
- 9) Late renewal fee (to be established by rule by the Director)
- 10) Reinstatement fee (to be established by rule by the Director)

**SUBCHAPTER 2.
QUALIFICATIONS; APPLICATION PROCESS**

13:42A-2.1 REQUIREMENTS FOR CERTIFICATION AS A PSYCHOANALYST

- a) To be eligible to be certified as a State-certified psychoanalyst, an applicant shall:
 - 1) Be at least 18 years of age;
 - 2) Be of good moral character;
 - 3) Have received at least a master's degree from an accredited institution of higher education. For purposes of this section "accredited" shall mean the institution is accredited by a United States regional or national accrediting body recognized within the national academic community or the institution is chartered or approved by a foreign government after meeting requirements established by a governmental or independent educational agency recognized in the foreign country. In order to meet the requirements of this paragraph, the applicant shall:
 - i) Submit proof that the institution of higher education is accredited as defined in (a)3 above, if requested by the Committee; and

- ii) If the applicant is a graduate of a foreign institution of higher education, submit a certification by a foreign transcript evaluating service on the Committee's approved list establishing that the foreign degree is the substantial equivalent of a master's degree in the U.S.;
- 4) Have received a certificate of graduation in psychoanalysis from a free-standing psychoanalytic institute that is either:
 - i) Accredited by a national psychoanalytic association at the time the applicant graduated and approved by the Director or a designee; or
 - ii) Chartered by a state or foreign government with substantially similar requirements as those for accreditation by a national psychoanalytic association and approved by the Director or a designee;
 - 5) Have passed an examination to determine the applicant's competence to practice psychoanalytic services; and
 - 6) Have undergone a criminal history record background check pursuant to N.J.S.A. 45:1-29.

13:42A-2.2 REQUIREMENTS FOR APPLICANTS HOLDING A CERTIFICATE OF GRADUATION FROM A NONACCREDITED PSYCHOANALYTIC INSTITUTE

- a) The Director or a designee may waive the requirement in N.J.A.C. 13:42A-2.1(a)4 that the applicant hold a certificate from an accredited psychoanalytic institute and allow an applicant to take the examination, if the applicant has:
 - 1) Received a certificate of graduation in psychoanalysis from a free-standing, psychoanalytic institute that:
 - i) Has not been accredited as set forth in N.J.A.C. 13:42A-2.1(a)4i; or
 - ii) Has been chartered by a state or foreign government that does not have substantially similar requirements of accreditation as those required by a national psychoanalytic association and has not been approved by the Director or a designee; and
 - 2) Documented clinical training and work experience from a psychoanalytic institute, which requires at a minimum:
 - i) Three hundred hours of patient contact hours in psychoanalytic treatment;

- ii) Seventy-two credit hours of classroom instruction in psychoanalysis;
 - iii) Three hundred hours of personal psychoanalysis with a psychoanalyst who meets the requirements of (b) below; and
 - iv) One hundred and fifty hours of supervision of psychoanalytic cases with a psychoanalyst who does not serve as the applicant's personal psychoanalyst and who meets the requirements of (b) below, of which 50 hours shall be individual supervision with one supervisor working on one case, plus a minimum of 100 hours of supervision with at least one other supervisor, not necessarily with one case; at least 50 hours of those 100 hours shall be individual supervision; and
- 3) A current State of New Jersey license, registration, or certificate in a mental health profession, which includes a licensed physician, a licensed psychologist, a licensed social worker, a licensed clinical social worker, a licensed marriage and family therapist, a licensed professional counselor, a licensed rehabilitation counselor, a licensed clinical alcohol and drug counselor, and a psychiatric advanced practice nurse.
- b) In order to provide personal psychoanalysis or supervision of psychoanalytic cases pursuant to (a) above, a psychoanalyst shall be:
- 1) A State-certified psychoanalyst; or
 - 2) A graduate of a psychoanalytic institute and the holder of a license from a professional board in a profession for which the scope of practice includes the independent provision of psychotherapy.

13:42A-2.3 CERTIFICATION BY ENDORSEMENT

The Director or a designee shall waive the education, experience and examination requirements for State certification and issue a State certification by endorsement to any applicant who holds a current license, registration or certificate to practice psychoanalysis issued by the agency of another state or country that has requirements for licensure, registration or certification equivalent to or higher than those required in this State for certification.

SUBCHAPTER 3. EXAMINATION

13:42A-3.1 EXAMINATION

An applicant shall take and pass the examination to determine the applicant's appropriate competencies, qualifications and abilities to practice psychoanalysis, pursuant to the statute and rules in this chapter except as provided in N.J.A.C. 13:42A-2.2 or 2.3.

SUBCHAPTER 4. CONTINUING EDUCATION

13:42A-4.1 CERTIFICATION RENEWAL AND CONTINUING EDUCATION REQUIREMENT

All State-certified psychoanalysts shall complete 20 credits of continuing education for certification renewal. A State-certified psychoanalyst shall confirm on the renewal application that he or she has completed all continuing education requirements pursuant to N.J.A.C. 13:42A-4.2 during the biennial period preceding application for renewal.

13:42A-4.2 CREDIT REQUIREMENTS

- a) A State-certified psychoanalyst shall not be required to obtain continuing education credits during the biennial period in which initial certification was obtained but shall be subject to the requirements of N.J.A.C. 13:42A-4.1 for all subsequent biennial renewal periods.
- b) A State-certified psychoanalyst who earns more than 20 credits of continuing education during a biennial period may not carry any credits into the next succeeding biennial period.
- c) A State-certified psychoanalyst who is ordered by the Committee to complete continuing education courses or programs for remedial purposes shall not use that continuing education toward the required 20 credits of continuing education per biennial period.

13:42A-4.3 ACCEPTABLE SOURCES OF CONTINUING EDUCATION; CONTINUING EDUCATION CREDITS

- a) The following are acceptable sources of continuing education credits if directly related to the clinical and theoretical practice of psychoanalysis:
 - 1) Credits granted by the following organizations for completing courses or programs:

- i) Accredited psychoanalytic institutes;
- ii) The National Association for the Advancement of Psychoanalysis;
- iii) The Society of Modern Psychoanalysts;
- iv) The American Psychoanalytic Association;
- v) The American Group Psychotherapy Association;
- vi) The Eastern Group Psychotherapy Society;
- vii) The New Jersey Group Psychotherapy Association;
- viii) Other national psychoanalytic associations;
- ix) The National Board for Certified Counselors;
- x) The American Counseling Association;
- xi) The American Psychological Association;
- xii) The American Psychiatric Association;
- xiii) The National Association of Social Workers;
- xiv) The New Jersey Society for Clinical Social Work;
- xv) The American Association for Marriage and Family Therapy;
- xvi) The Commission on Rehabilitation Counselors Certification;
- xvii) The American Orthopsychiatric Association;
- xviii) The American Medical Association;
- xix) The American Nurses Association;
- xx) The National Association of Alcoholism and Drug Abuse Counselors; and

- xxi) Any of the New Jersey State chapters and affiliates of the organizations or associations listed in (a)1i through xx above;
 - 2) Completing graduate coursework at an accredited institution of higher education or an accredited psychoanalytic institute: hour for hour credit;
 - 3) Authoring a refereed article published in a professional journal: eight credits per article; and
 - 4) Teaching new graduate coursework at an accredited institution of higher education or an accredited psychoanalytic institute or presenting a new course or program: one and one-half credit for each hour of teaching or presenting. For the purposes of this paragraph, "new" means a course that the State-certified psychoanalyst has not taught or presented previously in any educational setting.
- b) A State-certified psychoanalyst who has attended or wishes to attend a course or program that has not been approved or offered by any of the organizations listed in (a)1 above may apply to and obtain approval from one of the listed organizations in (a)1 above in order to obtain continuing education credit from the Committee.
- c) The Committee will not conduct independent reviews of any continuing education courses or programs.

13:42A-4.4 DOCUMENTATION OF CONTINUING EDUCATION CREDIT

- a) A State-certified psychoanalyst shall retain documentation of continuing education credit in order to verify program attendance or activity completion and shall submit such documentation to the Committee upon its request. The Committee may periodically audit the records of State-certified psychoanalysts, on a random basis, to determine compliance with continuing education requirements of this subchapter.
- b) A State-certified psychoanalyst shall verify attendance at continuing education courses or programs by a certificate of attendance or by a written statement from the course or program instructor. The verification shall include the name of the State-certified psychoanalyst, the name of the sponsor, the title, location and date of the course or program and the number of continuing education credits awarded.
- c) A State-certified psychoanalyst shall verify continuing education activities by retaining the following:
- 1) For publications, a copy of the published article;

- 2) For program presentations, copies of the program, syllabus, outlines and bibliographies;
 - 3) For teaching, copies of the syllabus, bibliography, course outline and verification from the academic institution that the course was "new" as defined by N.J.A.C. 13:42A-4.3(a)4; and
 - 4) For graduate coursework, an official transcript.
- d) A State-certified psychoanalyst shall maintain verification documentation for five years following the continuing education activity.
- e) Failure to complete continuing education requirements or falsification of any information pertaining to continuing education may result in the Committee taking any appropriate disciplinary measures, including suspension of certification, pursuant to N.J.S.A. 45:1-21.

13:42A-4.5 WAIVER OF CONTINUING EDUCATION REQUIREMENTS

- a) The Director may waive continuing education requirements on an individual basis for reasons of hardship, such as illness, disability, active service in the military or other good cause.
- b) A State-certified psychoanalyst who seeks a waiver of the continuing education requirements shall provide to the Committee, in writing, the specific reasons and any additional documentation the Committee may request in support of the waiver.

SUBCHAPTER 5. CERTIFICATION RENEWAL; CHANGE OF STATUS; REINSTATEMENT

13:42A-5.1 CERTIFICATION RENEWAL

- a) Certifications shall be renewed biennially upon a form provided by the Committee. Each applicant shall attest whether the continuing education requirements of N.J.A.C. 13:42A-4 have been completed during the prior 24-month renewal period.
- b) The Committee shall send a notice of renewal to each State-certified psychoanalyst at least 60 days prior to the expiration of the certificate. If the notice to renew is not sent at least 60 days prior to the expiration date, no monetary penalties or fines shall apply to the holder for failure to renew.
- c) The State-certified psychoanalyst shall submit the renewal application and pay the renewal fee pursuant to N.J.A.C. 13:42A-1.5 prior to the date of expiration of the certificate. If the

State-certified psychoanalyst does not renew the certificate prior to its expiration date, the State-certified psychoanalyst may renew it no later than 30 days after its expiration date by submitting a renewal application and paying a renewal fee and a late fee pursuant to N.J.A.C. 13:42A-1.5. The State-certified psychoanalyst who fails to renew the certificate within 30 days after the expiration date of the certificate shall have the certification suspended without a hearing.

- d) A person who continues to hold him- or herself out as a State-certified psychoanalyst after 30 days following the expiration date of the certificate shall be deemed to be engaged in the uncertified practice of psychoanalysis, even if no notice of suspension has been provided to the person.
- e) Renewal applications for all certificates shall provide the applicant with the option of either active or inactive renewal. Renewal applicants electing to renew as inactive shall not hold themselves out to the public as State-certified psychoanalysts. An applicant who selects the inactive renewal option shall remain on inactive status for the entire renewal period, unless the applicant applies for change of status pursuant to N.J.A.C. 13:42A-5.2.

13:42A-5.2 CHANGE OF STATUS

Upon application to the Director, the Director may permit an applicant who has been on inactive status to return to active status provided such applicant has completed 10 continuing education credits per year for each year the applicant has been on inactive status.

13:42A-5.3 REINSTATEMENT OF EXPIRED CERTIFICATE

- a) A person seeking reinstatement within five years following the expiration date of the State-certified psychoanalyst certification shall submit the following to the Committee:
 - 1) A completed reinstatement application;
 - 2) An affidavit of employment listing each job held during the period of suspended certification, which includes the names, addresses and telephone numbers of each employer;
 - 3) A certification verifying completion of the continuing education credits required pursuant to N.J.A.C. 13:42A-4 for the renewal of a State-certified psychoanalyst certification; and
 - 4) Payment of a reinstatement fee as set forth in N.J.A.C. 13:42A-1.5.

- b) A person seeking reinstatement after more than five years following the expiration date of the State-certified psychoanalyst certification shall satisfy the requirements of (a) above and shall successfully complete the examination required for initial certification.

SUBCHAPTER 6. PATIENT RECORDS; CONFIDENTIALITY

13:42A-6.1 PREPARATION AND MAINTENANCE OF PATIENT RECORDS

- a) A State-certified psychoanalyst shall contemporaneously prepare and maintain separately for each patient a permanent record, which accurately reflects the State-certified psychoanalyst's contact with the patient whether in an office, hospital or other treatment, evaluation or consultation setting.
- b) A State-certified psychoanalyst shall include in the patient record the following information pertinent to the nature and extent of the professional interaction between the State-certified psychoanalyst and the patient:
- 1) The patient's name, address and telephone number;
 - 2) The patient's complaint on intake;
 - 3) Initial and ongoing diagnostic impressions;
 - 4) Dates of all treatment, evaluation or consultation sessions and progress or session notes, if any;
 - 5) The client identity on each page;
 - 6) Fees charged and paid; and
 - 7) In a multi-person practice, the identity of each provider of treatment, evaluation or consultation.
- c) The patient record shall contain information regarding referrals to other professionals.
- d) When records are to be maintained as confidential, the State-certified psychoanalyst shall establish and maintain a procedure to protect such records from access by unauthorized persons.

- e) The State-certified psychoanalyst shall retain the permanent patient record for at least seven years from the date of last entry, unless otherwise provided by law.

13:42A-6.2 ACCESS TO COPY OF PATIENT RECORD

- a) For purposes of this section, "authorized representative" means, but is not necessarily limited to, a person designated by the patient or a court to exercise rights under this section. An authorized representative may be the patient's attorney or an agent of a third-party payor with whom the patient has a contract that provides that the third-party payor be given access to records to assess a claim for monetary damages or reimbursement.
- b) A State-certified psychoanalyst may require the record request to be in writing. No later than 30 days from receipt of a request from a patient or duly authorized representative, the State-certified psychoanalyst shall provide a copy of the patient record and/or billing records, including reports relating to the patient.
- c) The State-certified psychoanalyst may elect to provide a summary of the record, as long as the summary adequately reflects the patient's history and treatment, unless otherwise required by law.
- d) A State-certified psychoanalyst may charge a reasonable fee for the preparation of a summary and reproduction of records, which shall be no greater than an amount reasonably calculated to recoup the costs of transcription or copying.
- e) A State-certified psychoanalyst may withhold information contained in the patient record from a patient or the patient's authorized representative if, in the reasonable exercise of his or her professional judgment, the State-certified psychoanalyst believes release of such information would adversely affect the patient's health or welfare.
 - 1) That record or the summary, with an accompanying explanation of the reasons for the original refusal, shall nevertheless be provided upon request of and directly to:
 - i) The patient's attorney;
 - ii) Another psychoanalyst or other licensed health care professional; or
 - iii) The patient's health insurance carrier.
- f) Records maintained as confidential pursuant to N.J.A.C. 13:42A-6.1(d) shall be released:

- 1) If requested or subpoenaed by the Committee or the Office of the Attorney General in the course of any Committee investigation;
 - 2) Pursuant to an order of a court of competent jurisdiction;
 - 3) Upon a waiver of the patient or an authorized representative to release the patient record to any person or entity, including to the Violent Crimes Compensation Board; or
 - 4) In order to contribute appropriate patient information to the patient record maintained by a hospital, nursing home or similar licensed institution that is providing or has been asked to provide treatment to the patient.
- g) A State-certified psychoanalyst's obligation under this section to release information shall include the obligation to complete forms or reports required for third-party reimbursement of patient treatment expenses.
- h) When a request is made for release of already completed reports to enable the patient to receive ongoing care by another practitioner, the State-certified psychoanalyst shall not require that payment shall have been made for the professional services to which such reports relate as a condition for making such reports available. A State-certified psychoanalyst may, however, require advance payment for a report prepared for services as an expert witness.

13:42A-6.3 CONFIDENTIALITY

- a) A State-certified psychoanalyst shall preserve the confidentiality of information from a patient in the course of the State-certified psychoanalyst's teaching, practice or investigation. However, the State-certified psychoanalyst shall reveal the information to appropriate professionals, public authorities and threatened individual(s) or their representatives only if in the State-certified psychoanalyst's judgment, exercised in accordance with the standards of the profession, any one of the following circumstances occur:
- 1) There is a clear and imminent danger to the individual or the public;
 - 2) There is probable cause to believe that an identifiable potential victim of a patient is likely to be in danger; or
 - 3) Release of such information is otherwise mandated by law.
- b) In the case of a patient's death:

- 1) Confidentiality survives the patient's death and a State-certified psychoanalyst shall preserve the confidentiality of information obtained from the patient in the course of the patient's teaching, practice or investigation.
 - 2) The disclosure of information in a deceased patient's records is governed by the same provisions for living patients set forth in (a) above and N.J.A.C. 13:42A-6.2; and
 - 3) A State-certified psychoanalyst shall retain a deceased patient's record for at least seven years from the date of last entry, unless otherwise provided by law.
- c) A State-certified psychoanalyst may discuss the information obtained in clinical or consulting relationships, or in evaluating data concerning children, students, employees and others, only for professional purposes and only with persons clearly connected with the case.
- d) A State-certified psychoanalyst may reveal in writing, lectures or other public forums, personal information obtained during the course of professional work only as follows:
- 1) With prior consent of the patients or persons involved; or
 - 2) Where the identity of the patient or person involved is adequately disguised.
- e) A State-certified psychoanalyst may share confidential communications with other interested parties, in a non-public forum, only where the original source and other persons involved have given their express permission to do so.
- f) A State-certified psychoanalyst may reveal the identity of research subjects only if the subjects have granted explicit permission.
- g) A State-certified psychoanalyst may release confidential documents, testimony or other information contained in the patient record only in accordance with the provisions of N.J.A.C. 13:42A-6.2 and this section.

SUBCHAPTER 7. GENERAL OBLIGATIONS OF A STATE-CERTIFIED PSYCHOANALYST

13:42A-7.1 POSTING OF PRACTICE AUTHORIZATION

A State-certified psychoanalyst shall prominently display the current certificate in every location where the State-certified psychoanalyst practices.

13:42A-7.2 NOTIFICATION OF CHANGE OF ADDRESS; SERVICE OF PROCESS

- a) A State-certified psychoanalyst shall notify the Committee, in writing, not later than 30 days after any change in the address of record on file with the Committee.
- b) Service of an administrative complaint or other process initiated by the Committee, the Attorney General or the Division of Consumer Affairs at the address of record on file with the Committee shall be deemed adequate notice for the commencement of any inquiry or disciplinary proceeding.

13:42A-7.3 REPORTING OF CONDUCT OF OTHER STATE-CERTIFIED PSYCHOANALYSTS

- a) A State-certified psychoanalyst shall promptly notify the Committee when in possession of information that reasonably indicates that another State-certified psychoanalyst has demonstrated an impairment, gross incompetence, repeated acts of incompetence or professional misconduct that would present an imminent danger to a patient or to the public health, safety or welfare.
- b) Notwithstanding the provisions of (a) above, a State-certified psychoanalyst who acquires knowledge of impairment, gross incompetence, repeated acts of incompetence or professional misconduct in the course of treating a patient-State-certified psychoanalyst shall not be obligated to notify the Committee if:
 - 1) The treating State-certified psychoanalyst reasonably believes that the improper conduct has ceased and the current treatment is adequate to prevent a recurrence of the impairment, incompetence or professional misconduct; or
 - 2) The treating State-certified psychoanalyst has reasonable cause to believe that the patient-State-certified psychoanalyst is currently receiving professional supervisory and educational measures, which are reasonably likely to protect patients against gross incompetence.
- c) A State-certified psychoanalyst is not exempt from reporting any information otherwise required by law, such as the mandatory reporting of an abused child as defined in N.J.S.A. 9:6-8.10 et seq. and mandatory reporting required by the Health Care Professional Responsibility and Reporting Enhancement Act, N.J.S.A. 45:1-33 et seq.

13:42A-7.4 PROFESSIONAL INTERACTIONS WITH PATIENTS

- a) A State-certified psychoanalyst who does not possess the requisite training, experience, education or supervision for a particular case shall obtain supervision for that case or make appropriate referrals to practitioners. Failure to obtain supervision or make the appropriate referral shall be deemed professional misconduct.

- b) A State-certified psychoanalyst shall not abandon nor neglect a patient in need of professional care without making reasonable arrangements for the continuation of such care or offering to assist the patient in finding alternative sources of assistance.

13:42A-7.5 FINANCIAL ARRANGEMENTS WITH PATIENTS AND OTHERS

- a) A State-certified psychoanalyst shall inform patients, preferably in writing, of the financial arrangements for psychoanalytical services. If the State-certified psychoanalyst elects not to provide the financial arrangement(s) in writing, the burden of demonstrating that the patient has been informed of the financial arrangements shall be on the State-certified psychoanalyst.
- b) A State-certified psychoanalyst, upon request, shall provide to a patient or the patient's designated insurance carrier, a statement of services.

13:42A-7.6 CONFLICTS OF INTEREST

- a) A State-certified psychoanalyst shall not refer a patient to a person or entity in which the State-certified psychoanalyst has any financial or significant beneficial interest unless:
 - 1) The State-certified psychoanalyst has disclosed that he or she has a financial interest; and
 - 2) The State-certified psychoanalyst has provided an alternative referral.
- b) A State-certified psychoanalyst shall not enter into or continue any treating relationship in which he or she has any family, personal, financial, business, employment or beneficial interest other than that arising from the State-certified psychoanalyst-patient relationship. Entering into any business relationship or paying or bartering for any services provided by any current patient shall also be prohibited.

13:42A-7.7 PROHIBITION ON REFERRAL FEES AND FEE SPLITTING

- a) A State-certified psychoanalyst shall not pay, offer to pay or receive any fee or other form of compensation for referral of a patient for professional services or for the purchase of goods. This subsection shall not prohibit a State-certified psychoanalyst from:
 - 1) Paying a flat fee for regular advertising services;
 - 2) Paying a flat fee for the State-certified psychoanalyst's placement on a commercially sponsored "referral list" of health care providers; or
 - 3) Contributing a fee to a professionally sponsored referral service.

- b) A State-certified psychoanalyst shall not permit the division of fees for professional services other than among health care professionals in the same or in a closely allied professional health care field engaged in a bona fide partnership or professional service corporation, limited liability company or limited liability partnership.
- c) A State-certified psychoanalyst shall not divide fees for professional services rendered to a patient with a State-certified psychoanalyst practicing as an independent contractor. This subsection shall not prohibit a State-certified psychoanalyst from charging a flat fee to an independent contractor on a per hour or per service basis to cover expenses.

13:42A-7.8 SEXUAL MISCONDUCT

- a) As used in this section, the following terms shall have the following meanings unless the context indicates otherwise:

"Patient" means any person who is the recipient of psychoanalytic services rendered by a certificate holder. "Patient" for purposes of this section also means a person who is the subject of professional consultation or evaluation even if the purpose of that consultation or evaluation is unrelated to treatment.

"Sexual contact" means the knowing touching of a person's body directly or through clothing, where the circumstances surrounding the touching would be construed by a reasonable person to be motivated by a State-certified psychoanalyst's own prurient interest or for sexual arousal or gratification. "Sexual contact" includes, but is not limited to, the imposition of a part of the State-certified psychoanalyst's body upon a part of the patient's body, sexual penetration or the insertion or imposition of any object or any part of a State-certified psychoanalyst's or patient's body into or near the genital, anal or other opening of the other person's body.

"Sexual harassment" means solicitation of any sexual act, physical advances or verbal or non-verbal conduct, that is sexual in nature, and which occurs in connection with a State-certified psychoanalyst's activities or role as a provider of psychoanalytic services, that is either unwelcome, offensive to a reasonable person or creates a hostile work place environment and the State-certified psychoanalyst knows, should know or is told this, or that is sufficiently severe or intense to be abusive to a reasonable person in that context. "Sexual harassment" may consist of a single extreme or severe act, or multiple acts, and may include, but is not limited to, conduct of a State-certified psychoanalyst with a patient, co-worker, employee, employer, student, supervisee or supervisor whether or not such individual is in a subordinate position to the State-certified psychoanalyst.

- b) A State-certified psychoanalyst shall not engage in sexual contact with a current patient, a former patient to whom psychoanalytic services were rendered within the immediately preceding 24 months, a current student, a direct supervisee or supervisor or a research subject.
- c) In circumstances where any of the persons listed in (b) above are, or should be, recognized by the State-certified psychoanalyst as clearly vulnerable by reason of emotional or cognitive disorder to exploitive influence by the State-certified psychoanalyst, the prohibition on sexual contact shall extend indefinitely.
- d) A State-certified psychoanalyst shall not engage in sexual harassment in a professional setting (including, but not limited to, an office, hospital or health care facility) or outside of the professional setting.
- e) A State-certified psychoanalyst shall not accept as a patient a former sexual partner.
- f) Violation of any of the prohibitions or directives set forth at (b) through (e) above shall be deemed to constitute professional misconduct pursuant to N.J.S.A. 45:1-21(e).
- g) It shall not be a defense to any action under this section that:
 - 1) The patient solicited or consented to sexual contact with the State-certified psychoanalyst; or
 - 2) The State-certified psychoanalyst was in love with or had affection for the patient.

13:42A-7.9 ADVERTISING

- a) A State-certified psychoanalyst may advertise, in print or electronic media. The advertisement shall include, at a minimum, the name of the State-certified psychoanalyst as registered with the Committee and the designation "State Certified Psychoanalyst" or "SCP" or "SCPsyA."
- b) A State-certified psychoanalyst shall not make any statement or claim or make use of any professional format which is false, fraudulent, misleading or deceptive with regard to the performance of professional services or accepted standards of professional practice.
- c) A State-certified psychoanalyst who is on inactive status shall not hold himself or herself out to the public as a State-certified psychoanalyst.

13:42A-7.10 INFORMED CONSENT

- a) Prior to providing an initial professional service to a patient, a State-certified psychoanalyst shall provide the patient with documentation indicating:
- 1) The goals of therapy;
 - 2) The State-certified psychoanalyst's training and education; and
 - 3) If the State-certified psychoanalyst was educated in a specific school of thought, such as modern or classical, a description of that school of thought.

SUBCHAPTER 8. TELEMEDICINE

13:42A-8.1 PURPOSE AND SCOPE

- a) The purpose of this subchapter is to implement the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.), which authorizes healthcare providers to engage in telemedicine and telehealth.
- b) This subchapter shall apply to all persons who are certified by the Committee as psychoanalysts.

13:42A-8.2 DEFINITIONS

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

"Asynchronous store-and-forward" means the acquisition and transmission of images, diagnostics, data, and information either to or from an originating site or to or from the State-certified psychoanalyst at a distant site, which allows for the patient to be evaluated without being physically present.

"Committee" means the Certified Psychoanalyst Advisory Committee.

"Cross-coverage service" means a State-certified psychoanalyst who engages in a remote evaluation of a patient, without in-person contact, at the request of another State-

certified psychoanalyst who has established a proper State-certified psychoanalyst-patient relationship with the patient.

"Distant site" means a site at which a State-certified psychoanalyst is located while providing health care services by means of telemedicine or telehealth.

"State-certified psychoanalyst" means an individual certified by the Director as a psychoanalyst.

"On-call" means a State-certified psychoanalyst is available, where necessary, to physically attend to the urgent and follow-up needs of a patient for whom the State-certified psychoanalyst has temporarily assumed responsibility, as designated by the patient's primary care provider or other health care provider of record.

"Originating site" means a site at which a patient is located at the time that health care services are provided to the patient by means of telemedicine or telehealth.

"Telehealth" means the use of information and communications technologies, including telephones, remote patient monitoring devices, or other electronic means, to support clinical health care, provider consultation, patient and professional health-related education, public health, health administration, and other services in accordance with the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.).

"Telemedicine" means the delivery of a health care service using electronic communications, information technology, or other electronic or technological means to bridge the gap between a State-certified psychoanalyst who is located at a distant site and a patient who is located at an originating site, either with or without the assistance of an intervening State-certified psychoanalyst, and in accordance with the provisions of P.L. 2017, c. 117 (N.J.S.A. 45:1-61 et seq.). "Telemedicine" does not include the use, in isolation, of audio-only telephone conversation, electronic mail, instant messaging, phone text, or facsimile transmission.

13:42A-8.3 STANDARD OF CARE

- a) Prior to providing services through telemedicine or telehealth, a State-certified psychoanalyst shall determine whether providing those services through telemedicine or telehealth would be consistent with the standard of care applicable for those services when provided in-person.

- b) If a State-certified psychoanalyst determines, either before or during the provision of services, that services cannot be provided through telemedicine or telehealth in a manner that is consistent with in-person standards of care, the State-certified psychoanalyst shall not provide services through telemedicine or telehealth.
- c) A State-certified psychoanalyst who determines that services cannot be provided through telemedicine or telehealth pursuant to (b) above shall advise the patient to obtain services in-person.
- d) A State-certified psychoanalyst who provides a diagnosis, treatment, or consultation recommendation, including discussions regarding the risk and benefits of a patient's treatment options, through telemedicine or telehealth shall be held to the same standard of care or practice standards as are applicable to in-person settings.

13:42A-8.4 STATE-CERTIFIED PSYCHOANALYST-PATIENT RELATIONSHIP

- a) (a) Prior to providing services through telemedicine or telehealth, a State-certified psychoanalyst shall establish a State-certified psychoanalyst-patient relationship by:
 - 1) Identifying the patient with, at a minimum, the patient's name, date of birth, phone number, and address. A State-certified psychoanalyst may also use a patient's assigned identification number, Social Security number, photo, health insurance policy number, or other identifier associated directly with the patient; and
 - 2) Disclosing and validating the State-certified psychoanalyst's identity, license, and title.
- b) Prior to an initial contact with a patient for the purpose of providing services to the patient using telemedicine or telehealth, a State-certified psychoanalyst shall review the patient's history and any available records.
- c) Prior to initiating contact with a patient for the purpose of providing services through telemedicine or telehealth, a State-certified psychoanalyst shall determine whether he or she will be able to provide the same standard of care using telemedicine or telehealth as would be provided if the services were provided in person. The State-certified psychoanalyst shall make this determination prior to each unique patient encounter.
- d) Notwithstanding (a), (b), and (c) above, service may be provided through telemedicine or telehealth without a proper provider-patient relationship if:

- 1) The provision of services is for informal consultations with another healthcare provider performed by a State-certified psychoanalyst outside the context of a contractual relationship, or on an irregular or infrequent basis, without the expectation or exchange of direct or indirect compensation;
- 2) The provision of services is during episodic consultations by a specialist located in another jurisdiction who provides consultation services, upon request, to a State-certified psychoanalyst in this State;
- 3) A State-certified psychoanalyst furnishes assistance in response to an emergency or disaster, provided that there is no charge for the assistance; or
- 4) A substitute State-certified psychoanalyst, who is acting on behalf of an absent State-certified psychoanalyst in the same specialty, provides health care services on an on-call or cross-coverage basis, provided that the absent State-certified psychoanalyst has designated the substitute State-certified psychoanalyst as an on-call State-certified psychoanalyst or cross-coverage service provider.

13:42A-8.5 PROVISION OF SERVICES THROUGH TELEMEDICINE OR TELEHEALTH

- a) (As long as a State-certified psychoanalyst has satisfied the requirements of N.J.A.C. 13:42A-8.4, a State-certified psychoanalyst may provide health care services to a patient through the use of telemedicine and may engage in telehealth to support and facilitate the provision of health care services to patients.
- b) Prior to providing services through telemedicine or telehealth, a State-certified psychoanalyst shall determine the patient's originating site and record this information in the patient's record.
- c) A State-certified psychoanalyst providing healthcare services through telemedicine shall use interactive, real-time, two-way communication technologies, which shall include, except as provided in (e) below, a video component that allows a State-certified psychoanalyst to see a patient and the patient to see the State-certified psychoanalyst during the provision of services.
- d) A State-certified psychoanalyst providing services through telemedicine or telehealth may use asynchronous store-and-forward technology to allow for the electronic transmission of:
 - 1) Images;

- 2) Diagnostics;
 - 3) Data; and
 - 4) Medical information.
- e) If, after accessing and reviewing the patient's records, a State-certified psychoanalyst determines that he or she is able to meet the standard of care for such services if they were being provided in-person without using the video component described in (c) above, the State-certified psychoanalyst may use interactive, real-time, two-way audio in combination with asynchronous store-and-forward technology, without a video component.
- f) During the provision of services through telemedicine or telehealth, and after the provision of services, a State-certified psychoanalyst, or another designated State-certified psychoanalyst, shall provide his or her name, professional credentials, and contact information to the patient. Such contact information shall enable the patient to contact the State-certified psychoanalyst for at least 72 hours following the provision of services, or for a longer period if warranted by the patient's circumstances and accepted standards of care.
- g) Prior to providing services through telemedicine or telehealth, a State-certified psychoanalyst shall review any history or records provided by a patient as follows:
- 1) For an initial encounter with a patient, history and records shall be reviewed prior to the provision of services through telemedicine or telehealth; and
 - 2) For any subsequent interactions with a patient, history and records shall be reviewed either prior to the provision of services through telemedicine or telehealth or contemporaneously with the encounter with the patient.
- h) After the provision of services through telemedicine or telehealth, a State-certified psychoanalyst shall provide the patient, upon request, with his or her records created due to the services provided, or a summary of the record, as long as the summary adequately reflects the patient's history and treatment, unless otherwise required by law.
- i) A State-certified psychoanalyst shall provide, upon a patient's written request, the patient's information to the patient's primary care provider or to other health care providers.
- j) A State-certified psychoanalyst engaging in telemedicine or telehealth shall refer a patient for follow-up care when necessary.

13:42A-8.6 RECORDS

A State-certified psychoanalyst who provides services through telemedicine or telehealth shall maintain a record of the care provide to a patient. Such records shall comply with the requirements of N.J.A.C. 13:42A-6, and all other applicable State and Federal statutes, rules, and regulations for recordkeeping, confidentiality, and disclosure of a patient's record.

13:42A-8.7 PREVENTION OF FRAUD AND ABUSE

- a) In order to establish that a State-certified psychoanalyst has made a good faith effort to prevent fraud and abuse when providing services through telemedicine or telehealth, a State-certified psychoanalyst must establish written protocols that address:
- 1) Authentication and authorization of users;
 - 2) Authentication of the patient during the initial intake pursuant to N.J.A.C. 13:42A-8.4(a)1;
 - 3) Authentication of the origin of information;
 - 4) The prevention of unauthorized access to the system or information;
 - 5) System security, including the integrity of information that is collected, program integrity, and system integrity;
 - 6) Maintenance of documentation about system and information usage;
 - 7) Information storage, maintenance, and transmission; and
 - 8) Synchronization and verification of patient profile data.

13:42A-8.8 PRIVACY AND NOTICE TO PATIENTS

- a) State-certified psychoanalysts who communicate with patients by electronic communications other than telephone or facsimile shall establish written privacy practices that are consistent with Federal standards under 45 CFR Parts 160 and 164, as amended and supplemented, which are incorporated herein by reference, relating to privacy of individually identifiable health information.

- b) A State-certified psychoanalyst who becomes aware of a breach in confidentiality of patient information, as defined in 45 CFR 164.402, shall comply with the reporting requirements of 45 CFR Part 164.
- c) State-certified psychoanalysts, or their authorized representatives, shall provide a patient, prior to evaluation or treatment, with copies of written privacy practices and shall obtain the patient's written acknowledgement of receipt of the notice.
- d) State-certified psychoanalysts who provide services through telemedicine or telehealth, or their authorized representatives, shall, prior to providing services, give patients notice regarding telemedicine and telehealth, including the risks and benefits of being treated through telemedicine or telehealth and how to receive follow-up care or assistance in the event of an adverse reaction to the treatment or in the event of an inability to communicate as a result of a technological or equipment failure. A State-certified psychoanalyst shall obtain a signed and dated statement indicating that the patient received this notice.
- e) When telemedicine or telehealth is unable to provide all pertinent clinical information that a State-certified psychoanalyst exercising ordinary skill and care would deem reasonably necessary to provide care to a patient, the State-certified psychoanalyst shall inform the patient of this prior to the conclusion of the provision of care through telemedicine or telehealth and shall advise the patient regarding the need for the patient to obtain an additional in-person evaluation reasonably able to meet the patient's needs.