

## Physician Assistants and Specialist Assistants

Effective date: 3/11/15

Pursuant to the authority vested in the Commissioner of Health by Sections 3308, 3701 and 3702 of the Public Health Law, and in accordance with Sections 6541 and 6542 of the Education Law, Part 94 (Physician's Assistants and Specialist's Assistants) of Title 10 (Health) of the Official Compilation of Codes, Rules and Regulations of the State of New York is hereby amended, to be effective upon publication of a Notice of Adoption in the New York State Register, to read as follows:

### PART 94

#### PHYSICIAN[ 'S] ASSISTANTS AND SPECIALIST[ 'S] ASSISTANTS

##### Section 94.1 Definitions.

(a) *[Registered] Licensed physician[ 's] assistant* means an individual who is currently [registered] licensed as a physician[ 's] assistant by the New York State Department of Education.

(b) *Registered specialist[ 's] assistant* means an individual who is currently registered as a specialist[ 's] assistant by the New York State Department of Education.

(c) *Hospital* means an institution or facility possessing a valid operating certificate issued pursuant to article 28 of the Public Health Law and authorized to employ physician[’s] assistants pursuant to part 707 of the State Hospital Code.

(d) *Physician* means a practitioner of medicine licensed to practice medicine pursuant to article 131 of the Education Law.

#### 94.2 Supervision and scope of duties.

(a) A [registered] licensed physician[’s] assistant or a registered specialist[’s] assistant may perform medical services but only when under the supervision of a physician. Such supervision shall be continuous but shall not necessarily require the physical presence of the supervising physician at the time and place where the services are performed. The licensed physician assistant or registered specialist assistant shall retain records documenting the continuous supervision by the physician who is responsible for such supervision.

(b) Medical acts, duties and responsibilities performed by a [registered] licensed physician[’s] assistant or registered specialist[’s] assistant must:

(1) be assigned to him or her by the supervising physician;

(2) be within the scope of practice of the supervising physician; and

(3) be appropriate to the education, training and experience of the [registered] licensed physician[’s] assistant or registered specialist[’s] assistant.

(c) No physician may employ or supervise more than [two] four [registered] licensed physician[’s] assistants and two registered specialist[’s] assistants in his or her private practice.

(d) No physician may supervise more than six [registered] licensed physician[’s] assistants or registered specialist[’s] assistants or any combination thereof [employed by] in a hospital setting, no matter if the licensed physician assistants or registered specialist assistants are employed or contracted by a hospital.

(e) Prescriptions and medical orders may be [written] issued by a [registered] licensed physician[’s] assistant as provided in this subdivision when assigned by the supervising physician.

(1) A [registered] licensed physician[’s] assistant may [write]issue prescriptions for a patient who is under the care of the physician responsible for the supervision of the [registered] licensed physician[’s] assistant. The prescription shall be issued in accordance with Section 281 and Article 33 of the Public Health Law and Part 80 of this Title, written on the blank form of the supervising physician and shall include the name, address and telephone number of the supervising physician and the name of the licensed physician assistant. The prescription shall also bear the name, the address, the age of the patient and the date on which the prescription was [written] issued.

(2) [Prescriptions for controlled substances not listed under section 80.67 of this Part shall be written on the blank form of the supervising physician and shall include all other information required by Article 28 of the Public Health Law and Part 80 of this Title.] A licensed physician assistant, in good faith and acting within his or her lawful scope of practice, and to the extent assigned by his or her supervising physician, may prescribe controlled substances as a practitioner under Article 33 of the Public Health Law, to patients under the care of such physician responsible for his or her supervision. Licensed physician assistants may issue prescriptions for controlled substances under section 3306 of the Public Health Law provided that such prescriptions shall be issued in accordance with Section 281 and Article 33 of the Public Health Law and Part 80 of this Title.

(3) [Registered physician's assistants may write prescriptions for those controlled substances listed under section 80.67 of this Part which are not classified as Schedule II controlled substances, provided that such prescriptions shall be written on official New York State forms issued to the physician's assistant.] The licensed physician assistant shall sign all such prescriptions with his or her own name followed by the letters P.A. and his or her State Education Department license number, except that an electronic prescription must contain the electronic signature of the licensed physician assistant and shall include the name, address and telephone number of the supervising physician.

(4) [The registered physician's assistant shall sign all such prescriptions by printing the name of the supervising physician, printing his/her own name and additionally signing his/her own name followed by the letters R.P.A. and his/her State Education Department registration

number.] A licensed physician assistant employed or extended privileges by a hospital may, if permissible under the bylaws, policies and procedures of the hospital, issue prescriptions for controlled substances listed under section 3306 of the Public Health Law on official New York State prescription forms issued to the hospital. Such prescriptions shall be issued in accordance with Section 281 and Article 33 of the Public Health Law and Part 80 of this Title and must include the imprinted name of the licensed physician assistant and the name of the physician responsible for his or her supervision.

[(5) Registered physician's assistants may not write prescriptions for controlled substances listed under section 3306 of the Public Health Law as Schedule II controlled substances.

(6) (5) A [registered] licensed physician[']s assistant employed or extended privileges by a hospital may, if permissible under the bylaws, [rules and regulations] policies and procedures of the hospital, write medical orders, including those for controlled substances, for inpatients under the care of the physician responsible for his supervision. Countersignature of such orders may be required if deemed necessary and appropriate by the supervising physician or the hospital, but in no event shall countersignature be required prior to execution.

(f) A physician supervising or employing a [registered] licensed physician[']s assistant or registered specialist[']s assistant shall remain medically responsible for the medical services performed by the [registered] licensed physician[']s assistant or registered specialist[']s assistant whom such physician supervises or employs.

(g) Qualified individuals may be registered as specialist[’s] assistants in the following categories:

(1) Orthopedic assistant. A specialist[’s] assistant registered in this category is an individual:

(i) who satisfactorily completed a program for the training of orthopedic assistants approved by the New York State Department of Education; or

(ii) who possesses equivalent education, training and experience. Training and experience while in military service which led to an orthopedic specialist, orthopedic cast room technician, or orthopedic clinic technician rating and two years of satisfactory experience as an orthopedic assistant working under the supervision of an orthopedic surgeon within the past five years; or completion of medical corps school and five years of satisfactory experience as an orthopedic assistant working under the supervision of an orthopedic surgeon within the past eight years may be considered equivalent education, training and experience for the purpose of registration in this category.

(2) Urologic assistant. A specialist[’s] assistant registered in this category is an individual:

(i) who satisfactorily completed a program for the training of urologic assistants approved by the New York State Department of Education; or

(ii) who possesses equivalent education, training and experience. Training and experience while in military service which led to a urology surgical technician or urological technician or clinical specialist rating and two years of satisfactory experience as a urologic assistant working under the supervision of an urologist within the past five years; or completion of medical corps school and five years of satisfactory experience as an urologic assistant working under the supervision of an urologist within the past eight years may be considered equivalent education, training and experience for the purpose of registration in this category.

(3) Acupuncture. A specialist[’s] assistant registered in this category shall be employed or supervised only by a physician authorized to administer acupuncture in accordance with the rules and regulations of the New York State Department of Education and is an individual:

(i) who satisfactorily completed a program of training in acupuncture approved by the New York State Department of Education; or

(ii) who possesses equivalent education and training acceptable to the New York State Department of Education; and

(iii) in addition to satisfying the requirements of subparagraphs (i) and (ii) of this paragraph has completed at least five years of experience in the use of acupuncture acceptable to the New York State Department of Education.

(4) Radiologic assistant. A specialist[’s] assistant in this category is an individual:

(i) who is licensed as a radiologic technologist by the New York State Department of Health;  
and

(ii) who satisfactorily completed a program for the training of radiologic assistants approved  
by the New York State Education Department.



## **REGULATORY IMPACT STATEMENT**

### **Statutory Authority:**

The authority for the promulgation of these regulations is contained in Sections 3308, 3701 and 3702 of the Public Health Law (PHL) and in accordance with Section 6541 and 6542 of the Education Law. PHL Section 3308 authorizes and empowers the commissioner to make rules or regulations necessary and proper to supplement the provisions in PHL Article 33 (Controlled Substances) to effectuate the purposes and intent, or to clarify its provisions to provide the procedure or details to secure effective and proper enforcement of its provisions. PHL Section 3701 authorizes the commissioner to adopt rules and regulations necessary to implement the provisions in PHL Article 37 (Physician's Assistants and Specialist's Assistants). PHL Section 3702 (Special Provisions) sets forth provisions that include authority for licensed physician assistants (LPAs) to prescribe controlled substances, and authorizes the Commissioner of Health in consultation with the Commissioner of Education to promulgate regulations necessary to carry out the purposes of PHL Section 3702. Education Law Section 6542 prohibits a physician from employing or supervising more than four physician assistants in his or her private practice. Education Law Section 6541 provides for the licensing, as opposed to the registration, of physician assistants in accordance with amendments found under Section 3 of Chapter 48 of the Laws of New York of 2012.

**Legislative Objectives:**

The legislative objectives of PHL Article 33 are to “combat the illegal use of and trade in controlled substances; and to allow legitimate use of controlled substances in health care, including palliative care; veterinary care; research and other uses authorized by this article or other law; under appropriate regulation and subject to this article, title eight (the professions) of the education law, and other applicable law.” The legislative objective and purpose of PHL Article 37 is “to provide for the registration [licensing] of physician’s assistants and specialist’s assistants who will be available for employment by physicians to permit medical services to be given to persons not receiving them now and whose qualifications will assure that the health needs of patients are met properly.”

**Needs and Benefits:**

Part 94 of Title 10 of the New York Codes Rules and Regulations (10 NYCRR) outlines the provisions for registered physician assistants (RPAs) (to be known as “licensed physician assistants” or “LPAs”) and registered specialist assistants (RSAs), including scope of duties. Currently the regulation states that RPAs may write prescriptions for those controlled substances not classified as Schedule II controlled substances. Such prescriptions must be written on official New York State prescription forms. A change in the Public Health Law (PHL) now allows LPAs, in good faith and acting within his or her lawful scope of practice, and to the extent assigned by his or her supervising physician, to prescribe controlled substances, (including Schedule II controlled substances) to patients under the care of such physician responsible for his

or her supervision. PHL Section 3702(3). 10 NYCRR Section 94.2 must be revised to be consistent with that amendment to the PHL.

Also, in 10 NYCRR Part 94 LPAs and RSAs are referred to as “registered physician’s assistants” and “registered specialist’s assistants.” However, key statutory provisions use the terms physician assistant and specialist assistant, not the possessive terms physician's assistant and specialist's assistant. Furthermore, changes to the Education Law and Public Health Law provide for the licensing, instead of the registration, of physician assistants. Those statutory provisions are: Education Law Article 131-B, which authorizes the professions of "physician assistants and specialist assistants"; Article 37 of the Public Health Law, regarding special provisions related to licensed physician assistants and registered specialist assistants; and Education Law Section 6541, which provides for the licensing of physician assistants. The New York State Society of Physician Assistants (NYSPA) uses the title “physician assistant” rather than “physician’s assistant” and frequently requests that Department of Health regulations be amended to conform to the statutory authority in the Education Law for their profession. This regulation revises Part 94 to conform with the terms “physician assistant” and “specialist assistant” and to replace references to registered physician assistants with references to licensed physician assistants.

Additionally, 10 NYCRR Part 94.2(c) provides that “no physician may employ or supervise more than two registered physician's assistants and two specialist's assistants in his private practice.” A recent statutory amendment to Subdivision 3 of Section 6542 of the Education Law has increased this number from two to four. As such, this regulation revises Part 94 to conform with the increase from two to four.

**Costs for the Implementation of and Continuing Compliance with these Regulations to the Regulated Entity:**

The regulated parties will not be affected by this proposal as it will conform Department regulations to reflect current practice authorized by statute. This proposal will conform Department regulations to provisions in PHL Section 3702 (Special Provisions) regarding LPA prescribing of controlled substances and provisions in Education Law Section 6542 regarding the maximum amount of physician assistants a physician in private practice may employ or supervise.

**Cost to State and Local Government:**

There are no additional programs, services, duties or responsibilities imposed upon any county, city, village, school district, fire district or other special district by this proposal and no increased costs.

**Cost to the Department of Health:**

These regulatory changes will not increase costs to the Department. The proposed rule will update current regulatory provisions to reflect current practice authorized by statute.

**Local Government Mandates:**

There are no additional programs, services, duties or responsibilities imposed upon any county, city, village, school district, fire district or other special district by this proposal.

**Paperwork:**

No additional new paperwork will be required. This measure clarifies that every prescription issued by the physician assistant, whether or not for a controlled substance, shall be imprinted with, by stamping or typing, the name of both the physician assistant and the supervising physician.

**Duplication:**

This proposal overlaps, in that it is consistent with, the requirements regarding the manner in which all prescriptions must be issued in NYS specified in PHL Section 281, PHL Article 33 and 10 NYCRR Part 80.

**Alternative Approaches:**

This proposal updates the Department's regulations to reflect current practice and statutes. The State Education Department (SED) suggested replacing the phrase "scope of practice" as set forth in Section 94.2 (b) (2) with the phrase "scope of competence" when

referring to the supervising physician. The Department chose not to make that change since “scope of practice” mirrors the language in SED Law Section 6542 (1), relating to performance of medical services.

**Federal Requirements:**

This regulatory amendment does not exceed any minimum standards of the federal government for the same or similar subject areas.

**Compliance Schedule:**

This proposal will go into effect upon a Notice of Adoption in the *New York State Register*.

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**REGULATORY FLEXIBILITY ANALYSIS  
FOR SMALL BUSINESS AND LOCAL GOVERNMENTS**

**Effect of Rule:**

There are approximately 10,210 LPAs and 91 RSAs in New York State impacted by this rule.

**Compliance Requirements:**

This proposal does not impose any new requirements. It updates current provisions to reflect current practice and law and makes technical changes so the regulations refer to “licensed physician assistants and registered specialist assistants” rather than to “registered physician’s assistants and registered specialist’s assistants.”

**Professional Services:**

This proposal does not require any additional professional services.

**Compliance Costs:**

There are no additional costs required to comply with this measure.

**Economic and Technological Feasibility:**

This proposal is economically and technically feasible.

**Minimizing Adverse Impact:**

There will be no adverse impact to small businesses or local governments from this regulation.

**Small Business and Local Government Participation:**

Outreach to the affected parties is being conducted. Organizations representing the affected parties include the New York State Society of Physician Assistants (NYSPA), Medical Society of the State of New York (MSSNY), Greater New York Hospital Association (GNYHA), and the Healthcare Association of New York State (HANYYS). NYSPA has requested that these changes be made. The Department has consulted with the Department of Education and this proposal has been reviewed by the New York State Department of Education as required pursuant to PHL Section 3702.



## **RURAL AREA FLEXIBILITY ANALYSIS**

Pursuant to section 202-bb of the State Administrative Procedure Act (SAPA), a rural area flexibility analysis is not required. These provisions apply uniformly throughout New York State, including all rural areas.

The proposed rule will not impose an adverse economic impact on rural facilities defined within PHL Articles 28, nor will it impose any additional reporting, record keeping or other compliance requirements on public or private entities in rural areas.

## **JOB IMPACT STATEMENT**

A Job Impact Statement is not included in accordance with Section 201-a (2) of the State Administrative Procedure Act (SAPA), because it will not have a substantial adverse effect on jobs and employment opportunities.