

## New York Adopts Pathologists' Assistants Law

December 7, 2016

New York State has adopted a new law that establishes the profession of licensed pathologists' assistant.

Governor Andrew Cuomo signed S.7932/A.10408 into law on November 28, 2016. The new law adds Article 168 to the Education Law.

### What is a pathologists' assistant?

The new law defines a pathologists' assistant as a person licensed to assist physicians who practice pathology pursuant to direction and supervision of the licensed pathologist.

While the new statute requires a pathologists' assistant to practice under the continuous direction and supervision of a licensed pathologist, it does not require the physical presence of the licensed pathologist while the services are being performed.

### What is the scope of practice for a pathologists' assistant?

The "scope of practice" for a pathologists' assistant includes the following services, performed in a laboratory or other site authorized under law to perform such services (and under the direction and supervision of a licensed pathologist):

- preparing gross tissue sections for pathology analysis, including cutting, staining (as required), describing gross anatomic features, dissecting surgical specimens, and submitting tissues for bio-banking, histologic processing, or other analyses;
- performing human postmortem examinations, including but not limited to, selection of tissues and fluids for further examination, external examination, dissection, and gathering and recording information for autopsy reports; and
- other functions and responsibilities to be determined by the New York State Education Department.

The scope of practice for a pathologists' assistant *does not* include the authority to diagnose or provide a medical opinion.

### What are the requirements for licensure as a pathologists' assistant?

To qualify for licensure as a pathologists' assistant, an applicant must meet the following requirements:

- File an application with the New York State Education Department;
- Receive an education, including a bachelor's or higher degree in pathologists' assistant, in a program of pathologists' assistant registered with the State Education Department (or the substantial equivalent thereof);
- Obtain a passing score on an examination acceptable to the State Education Department;
- At the time of application, be at least 21 years old;
- Be of good moral character as determined by the State Education Department; and
- Pay a fee determined by the State Education Department for an initial license and for each triennial registration period.

Only individuals licensed appropriately or otherwise authorized to practice as a pathologists' assistant may practice pathologist assisting or use the title pathologists' assistant.

### How does the law apply to individuals who are currently performing pathologists' assistant services?

The new law contains a "grandfathering" provision for individuals who have been performing the duties of a pathologists' assistant for two of the five years prior to the law's effective date.

Where an individual meets the licensure requirements except for the examination and education

provisions, he or she may be licensed pursuant to the new Article 168 of the Education Law without meeting any additional requirements if that individual:

- has been performing the duties of a pathologists' assistant for two of the five years prior to the law's effective date;
- submits an application to the State Education Department within two years of the effective date of this legislation; and
- the applicant's supervising physician(s) attest to the applicant's experience and competence.

### What are the requirements to hold a limited permit under the new law?

New Article 168 of the Education Law allows for practice as a pathologists' assistant pursuant to a limited permit. A person who fulfills all requirements for licensure as a pathologists' assistant except for the requirement of an examination will be eligible for a limited permit.

With the limited permit, the individual will be required to practice both under the direction and supervision of a licensed pathologist and under the order and direction of that licensed pathologist for one year after the permit's issuance. An applicant may seek to extend a limited permit by one additional year for good cause as determined by the State Education Department. Fees for this specific permit will be established by the State Education Department.

### What are the exemptions under the new provisions?

The rules as established by this new article of the Education Law will not apply to (or prohibit) the performance of tasks or responsibilities:

- by a student engaged only in clinical training in a general hospital, as long as the clinical training is carried out under the direct supervision of a licensed pathologist;
- by any person licensed under the other professional licensing provisions in the Education Law, provided any tasks or responsibilities rendered by that person are permitted by the professional licensing provisions governing the profession pursuant to which such person is licensed;
- by any legally qualified pathologists' assistants of any other state or territory who is serving in the armed forces or the public health services of the United States or who is employed by the Veterans Administration, while engaged in the performance of his or her duties; or
- by any individual legally carrying out the examinations and tests enumerated in Section 579(2) of the Public Health Law related to state or local government examinations in connection with a criminal investigation, the testing of blood, urine, breath, or saliva under the Vehicle and Traffic or Parks and Recreation laws, examination of materials from the body of an inmate, parolee, conditional releasee, or probationer to test for prohibited substances, and examinations done by a coroner or medical examiner.

### Which New York State agency has jurisdiction over the profession of pathologists' assistants?

As with all professions licensed pursuant to Title VIII of the Education Law, pathologists' assistants fall under the jurisdiction of the New York State Education Department.

This new law authorizes the State Education Department to establish a state Committee for Pathologists' Assistants, which will be appointed by the Board of Regents. The Committee will consist of no fewer than five individuals and include at least one licensed pathologist, three licensed pathologists' assistants, and one public representative. The Committee for Pathologists' Assistants will assist the Board of Medicine on matters of licensure and professional conduct.

### What is the effective date of the legislation?

The provisions regarding the requirements for licensure as a pathologists' assistant are effective two years after becoming law. All other provisions of this legislation are effective November 28, 2017, one year after becoming law.

Prior to the effective date of new Article 168, the New York State Education Department is authorized to implement the new law through regulations, appointment of the Committee members, and other necessary measures.

Jackson Lewis will continue to monitor developments and provide updates as warranted. Please contact us with any questions.

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