

LMSWs, LCSWs AND SUPERVISION IN NEW YORK STATE

This is what Hafina Allen, our membership chair, wrote about this and other scope of practice questions back in May of this year. I can't improve on it and so as both Practice Management Chair and a member of the Ethics and Professional Standards Committee pass it along for future information

With a new class of MSWs graduating and looking for work, this raises the question of what practice settings LMSWs can work in. For LMSWs who want to work towards their LCSW, this further raises the issue of accruing clinical experience or "hours" towards the Clinical License. As many new graduates are asking about working in private practice settings, we have put together the following list of frequently asked questions for both LMSWs and LCSWs considering incorporating LMSW's into their practice.

I've graduated with my MSW and have a job offer. How soon can I start working?

That depends on the scope of the work you will be doing. Many agencies or private practices will hire new MSWs and have them complete the hiring process and agency trainings while they work towards licensing. Some agencies will assign case manager tasks until you get your LMSW. Once you have your LMSW or limited permit you can do any work within the scope of your license. However, as an LMSW you can only provide "clinical social work" services, which includes diagnosis, psychotherapy, and assessment-based treatment planning under supervision of a New York State licensed LCSW, psychologist or psychiatrist.

OK I got my LMSW and I want to start my own practice.

As an LMSW you can open any business that is within your scope of practice. "Clinical social work" services (diagnosis, psychotherapy, and assessment-based treatment planning) are NOT within the LMSW scope of practice and providing these services is not allowed unless you are under supervision. 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" since that is outside the LMSW scope of practice/authorization.

If you open a business that is providing non-clinical services, you should be careful about any mention of your degree or license. We recommend that you consult a lawyer to provide advice on this to avoid any confusion on the part of your clients/customers who may think they are receiving clinical service from you. Please know that practicing outside of your scope of practice may result in the loss of your current license.

Can I hire my own supervisor?

In short you cannot count paid supervision as hours towards your clinical license. LMSWs and LCSWs can engage supervisors for professional growth but this DOES NOT cover clinical experience for the purposes of licensing or providing

services. “Arrangements where an individual hires or contracts with a licensee to provide supervision are problematic and, as a general rule, unacceptable. Supervision of your practice requires the supervisor to independently direct your practice; this is not possible when the supervisor is employed by you or acts as a paid contractor to supervise the person who can only practice under supervision. Additionally, you should not accept employment in any setting where you are not supervised by a qualified supervisor. The agency or employer is responsible for the services provided to each client, and clinical social work services may only be provided by an individual licensed and authorized to practice clinical social work. If the agency does not have a qualified supervisor on staff, it is their responsibility to hire a qualified supervisor who is responsible for the clinical practice of an LMSW or other person who is only authorized to practice under supervision. In such cases, we would suggest that there be a three-way agreement between you, the proposed supervisor, and your employer.” <http://www.op.nysed.gov/prof/sw/swpracfaqs.htm>.

Can I work in a private practice as a fee for service therapist?

It depends...

If you are hired as a W2 classified employee and you will receive clinical supervision from an LCSW, licensed psychologist or licensed psychiatrist, then YES you can work in a private practice. In this case you should clarify that your employer will be covering you with all of the appropriate insurances (including but not limited to Worker’s Compensation, unemployment etc.) and paying FICA. If your employer is asking you to cover any of those costs then you are not truly an employee (you would be re-classified as an independent contractor).

If you are being offered fee for service work as an independent contractor (1099), you CANNOT provide clinical services. According to the US Department of Labor, independent contractors are not covered by anyone else’s licenses. As an LMSW, clinical services are not within your scope of practice. If someone offers to pay you as a W2 employee, but asks that you obtain your own workers compensation or unemployment insurance, the Department of Labor or the IRS may re-classify you as an independent contractor. Providing clinical services as an LMSW independent contractor (1099) is practicing outside of your scope of practice and can lead to suspension or revocation of your license.

But the LCSW who is hiring me as an independent contractor will provide supervision. Doesn’t that mean I can provide clinical services?

NO! According to the Department of Labor, anyone who is an independent contractor, is working solely under their own licenses, it does not matter if you receive additional supervision.

I have completed all of my clinical hours towards the LCSW, can I open a private practice?

Congratulations on completing your clinical experience!!! The next step is to apply for the LCSW and then sit and pass the ASWB Clinical exam. Once you have been issued an LCSW license number by New York State, you are eligible to provide clinical

services independently. Until you are issued a LCSW license number you are not yet an LCSW and you continue to require clinical supervision.

I am an LCSW in private practice and I would like to know how I can incorporate an LMSW into my practice.

You can employ an LMSW if they will be a W2 employee and you are providing all necessary insurances including but not limited to Workers' Compensation and unemployment, and you will be paying their FICA. You must provide appropriate supervision to the LMSW <http://www.op.nysed.gov/prof/sw/swsupervision.htm>. If you plan to bill insurance for services provided by an LMSW, you should check each insurance contract to see if this is allowed. You need to understand that clients are being seen under your LCSW license and you are responsible for the care they receive. You should consult with a lawyer well versed in representing mental health clinicians and in helping clinicians set up practices, to ensure that you are meeting the all regulations, licensing requirements and labor laws.

I am an LCSW who has been approached to provide supervision to an LMSW, can I do this?

When you provide supervision to an LMSW, you are "legally and professionally responsible for the diagnosis and treatment of each client and must have access to all relevant information."

Some agencies contract LCSW's to provide supervision to their LMSW employees under a third-party agreement. "Any arrangements for third-party supervision must include a written agreement between the employer, third-party supervisor and the LMSW to specify the supervisor's access to clients and client records to ensure appropriate supervision of the LMSW. The client must be informed of how confidential information is handled in the case of third-party supervision and how to raise questions with the employer and/or third-party supervisor." <http://www.op.nysed.gov/prof/sw/swpracfaqs.htm> In these cases, the LCSW is paid directly by the employer.

In short, **the supervisor must be employed by the employer, not the LMSW.** For the purposes of practicing and licensing, an LMSW cannot employ or contract a supervisor. Should you choose to become a third-party supervisor, you should consult with your insurance to see if this affects your policy.

I am an LCSW and I want to get my "R" Psychotherapy Privilege, can I pay for supervision towards this?

No, just as with the LCSW, you cannot pay for supervision towards the "R". "Arrangements where an individual hires or contracts with a licensee to provide supervision are problematic and, as a general rule, unacceptable. Supervision of your practice requires the supervisor to independently direct your practice; this is not possible when the supervisor is employed by you or acts as a paid contractor to supervise the person who can only practice under supervision."

For more information: <http://www.op.nysed.gov/prof/sw/swpracfaqs.htm>

Please note that I am not a lawyer and I recommend that any more detailed questions be directed to your malpractice insurance's risk management unit and/or that you consult a lawyer well versed in representing mental health clinicians.