

# Rules of the Board of Regents

## Part 29, Unprofessional Conduct

Effective August 20, 2009

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### § 29.1 General provisions.

- a. Unprofessional conduct shall be the conduct prohibited by this section. The provisions of these rules applicable to a particular profession may define additional acts or omissions as unprofessional conduct and may establish exceptions to these general prohibitions.
- b. Unprofessional conduct in the practice of any profession licensed, certified or registered pursuant to title VIII of the Education Law, except for cases involving those professions licensed, certified or registered pursuant to the provisions of Article 131 or 131-B of such law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991, shall include:
  1. willful or grossly negligent failure to comply with substantial provisions of Federal, State or local laws, rules or regulations governing the practice of the profession;
  2. exercising undue influence on the patient or client, including the promotion of the sale of services, goods, appliances or drugs in such manner as to exploit the patient or client for the financial gain of the practitioner or of a third party;
  3. directly or indirectly offering, giving, soliciting, or receiving or agreeing to receive, any fee or other consideration to or from a third party for the referral of a patient or client or in connection with the performance of professional services;
  4. permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, professional subcontractor or consultant authorized to practice the same profession, or a legally authorized trainee practicing under the supervision of a licensed practitioner. This prohibition shall include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment or personnel services used by a professional licensee constitutes a percentage of, or is otherwise dependent upon, the income or receipts of the licensee from such practice, except as otherwise provided by law with respect to a facility licensed pursuant to Article 28 of the Public Health Law or Article 13 of the Mental Hygiene Law;
  5. conduct in the practice of a profession which evidences moral unfitness to practice the profession;
  6. willfully making or filing a false report, or failing to file a report required by law or by the Education Department, or willfully impeding or obstructing such filing, or inducing another person to do so;

7. failing to make available to a patient or client, upon request, copies of documents in the possession or under the control of the licensee which have been prepared for and paid for by the patient or client;
8. revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the patient or client, except as authorized or required by law;
9. practicing or offering to practice beyond the scope permitted by law, or accepting and performing professional responsibilities which the licensee knows or has reason to know that he or she is not competent to perform, or performing without adequate supervision professional services which the licensee is authorized to perform only under the supervision of a licensed professional, except in an emergency situation where a person's life or health is in danger;
10. delegating professional responsibilities to a person when the licensee delegating such responsibilities knows or has reason to know that such person is not qualified, by training, by experience or by licensure, to perform them;
11. performing professional services which have not been duly authorized by the patient or client or his or her legal representative;
12. advertising or soliciting for patronage that is not in the public interest:
  - i. Advertising or soliciting not in the public interest shall include, but not be limited to, advertising or soliciting that:
    - a. is false, fraudulent, deceptive or misleading;
    - b. guarantees any service;
    - c. makes any claim relating to professional services or products or the cost or price therefore which cannot be substantiated by the licensee, who shall have the burden of proof;
    - d. makes claims of professional superiority which cannot be substantiated by the licensee, who shall have the burden of proof; or
    - e. offers bonuses or inducements in any form other than a discount or reduction in an established fee or price for a professional service or product.
  - ii. The following shall be deemed appropriate means of informing the public of the availability of professional services:
    - a. informational advertising not contrary to the foregoing prohibitions; and
    - b. the advertising in a newspaper, periodical or professional directory or on radio or television of fixed prices, or a stated range of prices, for specified routine professional services, provided that if there is an additional charge for related services which are an integral part of the overall service being provided by the licensee, the advertisement shall so state, and provided further that the advertisement indicates the period of time for which the advertised prices shall be in effect.
  - iii.
    - a. all licensees placing advertisements shall maintain, or cause to be maintained, an exact copy of each advertisement, transcript, tape or videotape thereof as appropriate for the medium used, for a period of one year after its last appearance. This copy shall be made available for inspection upon demand of the Education Department;
    - b. a licensee shall not compensate or give anything of value to representatives of the press, radio, television or other communications media in anticipation of or in return for professional publicity in a news item;
  - iv. Testimonials, demonstrations, dramatizations, or other portrayals of professional practice are permissible provided that they otherwise comply with the rules of professional conduct and further provided that the following conditions are satisfied:
    - a. the patient or client expressly authorizes the portrayal in writing;

- b. appropriate disclosure is included to prevent any misleading information or imagery as to the identity of the patient or client;
  - c. reasonable disclaimers are included as to any statements made or results achieved in a particular matter;
  - d. the use of fictional situations or characters may be used if no testimonials are included; and
  - e. fictional client testimonials are not permitted;
13. failing to respond within 30 days to written communications from the Education Department or the Department of Health and to make available any relevant records with respect to an inquiry or complaint about the licensee's unprofessional conduct. The period of 30 days shall commence on the date when such communication was delivered personally to the licensee. If the communication is sent from either department by registered or certified mail, with return receipt requested, to the address appearing in the last registration, the period of 30 days shall commence on the date of delivery to the licensee, as indicated by the return receipt;
14. violating any term of probation or condition or limitation imposed on the licensee by the Board of Regents pursuant to Education Law, Section 6511.

### § 29.2 General provisions for health professions.

- a. Unprofessional conduct shall also include, in the professions of: acupuncture, athletic training, audiology, certified dental assisting, chiropractic, creative arts therapy, dental hygiene, dentistry, dietetics/nutrition, licensed practical nursing, marriage and family therapy, massage therapy, medicine, mental health counseling, midwifery, occupational therapy, ophthalmic dispensing, optometry, pharmacy, physical therapist assistant, physical therapy, physician assistant, podiatry, psychoanalysis, psychology, registered professional nursing, respiratory therapy, respiratory therapy technician, social work, specialist assistant, occupational therapy assistant, speech-language pathology, except for cases involving those professions licensed, certified or registered pursuant to the provisions of Article 131 or 131-B of the Education Law in which a statement of charges of professional misconduct was not served on or before July 26, 1991, the effective date of Chapter 606 of the Laws of 1991:
- 1. abandoning or neglecting a patient or client under and in need of immediate professional care, without making reasonable arrangements for the continuation of such care, or abandoning a professional employment by a group practice, hospital, clinic or other health care facility, without reasonable notice and under circumstances which seriously impair the delivery of professional care to patients or clients;
  - 2. willfully harassing, abusing or intimidating a patient either physically or verbally;
  - 3. failing to maintain a record for each patient which accurately reflects the evaluation and treatment of the patient. Unless otherwise provided by law, all patient records must be retained for at least six years. Obstetrical records and records of minor patients must be retained for at least six years, and until one year after the minor patient reaches the age of 21 years;
  - 4. using the word "Doctor" in offering to perform professional services without also indicating the profession in which the licensee holds a doctorate;
  - 5. failing to exercise appropriate supervision over persons who are authorized to practice only under the supervision of the licensed professional;
  - 6. guaranteeing that satisfaction or a cure will result from the performance of professional services;
  - 7. ordering of excessive tests, treatment, or use of treatment facilities not warranted by the condition of the patient;
  - 8. claiming or using any secret or special method of treatment which the licensee refuses to divulge to the State Board for the profession;

9. failing to wear an identifying badge, which shall be conspicuously displayed and legible, indicating the practitioner's name and professional title authorized pursuant to the Education Law, while practicing as an employee or operator of a hospital, clinic, group practice or multiprofessional facility, registered pharmacy, or at a commercial establishment offering health services to the public;
10. entering into an arrangement or agreement with a pharmacy for the compounding and/or dispensing of coded or specially marked prescriptions;
11. with respect to all professional practices conducted under an assumed name, other than facilities licensed pursuant to Article 28 of the Public Health Law or Article 13 of the Mental Hygiene Law, failing to post conspicuously at the site of such practice the names and the licensure field of all of the principal professional licensees engaged in practice at that site (i.e., principal partners, officers or principal shareholders);
12. issuing prescriptions for drugs and devices which do not contain the following information: the date written, the prescriber's name, address, telephone number, profession and registration number, the patient's name, address and age, the name, strength and quantity of the prescribed drug or device, as well as the directions for use by the patient. In addition, all prescriptions for controlled substances shall meet the requirements of Article 33 of the Public Health Law; and
13. failing to use scientifically accepted infection prevention techniques appropriate to each profession for the cleaning and sterilization or disinfection of instruments, devices, materials and work surfaces, utilization of protective garb, use of covers for contamination-prone equipment and the handling of sharp instruments. Such techniques shall include but not be limited to:
  - i. wearing of appropriate protective gloves at all times when touching blood, saliva, other body fluids or secretions, mucous membranes, nonintact skin, blood-soiled items or bodily fluid-soiled items, contaminated surfaces, and sterile body areas, and during instrument cleaning and decontamination procedures;
  - ii. discarding gloves used following treatment of a patient and changing to new gloves if torn or damaged during treatment of a patient; washing hands and donning new gloves prior to performing services for another patient; and washing hands and other skin surfaces immediately if contaminated with blood or other body fluids;
  - iii. wearing of appropriate masks, gowns or aprons, and protective eyewear or chin-length plastic face shields whenever splashing or spattering of blood or other body fluids is likely to occur;
  - iv. sterilizing equipment and devices that enter the patient's vascular system or other normally sterile areas of the body;
  - v. sterilizing equipment and devices that touch intact mucous membranes but do not penetrate the patient's body or using high-level disinfection for equipment and devices which cannot be sterilized prior to use for a patient;
  - vi. using appropriate agents, including but not limited to detergents for cleaning all equipment and devices prior a sterilization or disinfection;
  - vii. cleaning, by the use of appropriate agents, including but not limited to detergents, equipment and devices which do not touch the patient or that only touch the intact skin of the patient;
  - viii. maintaining equipment and devices used for sterilization according to the manufacturer's instructions;
  - ix. adequately monitoring the performance of all personnel, licensed or unlicensed, for whom the licensee is responsible regarding infection control techniques;
  - x. placing disposable used syringes, needles, scalpel blades, and other sharp instruments in appropriate puncture-resistant containers for disposal; and placing reusable needles, scalpel blades, and other sharp instruments in appropriate puncture-resistant containers until appropriately cleaned and sterilized;
  - xi. maintaining appropriate ventilation devices to minimize the need for emergency mouth-to-mouth resuscitation;
  - xii. refraining from all direct patient care and handling of patient care equipment when the health care professional has exudative lesions or weeping dermatitis and the condition has not been medically evaluated and determined to be safe or capable of being safely protected against in

include any arrangement or agreement whereby the amount received in payment for furnishing space, facilities, equipment, or personnel services used by a professional licensee constitutes a percentage of or is otherwise dependent upon the income or receipts of the licensee from such practice. This provision shall apply in lieu of Section 29.1(b)(4) of this Part;

7. accepting any form of compensation from more than one party for services on the same project without fully disclosing the circumstances and receiving approval from all interested parties;
8. participating as a member, advisor or employee or a government body in those actions or deliberations which pertain to services provided by the practitioner or his or her organization for such government body; or
9. in the profession of land surveying, the revision, alteration, or update of any existing boundary survey without adequate confirmation of relevant boundary lines and monuments. To be adequate, such confirmation shall include a reasonable field verification and shall be sufficiently extensive to reasonably ensure the accuracy of the revision, alteration, or update, as appropriate to the circumstances of the revision, alteration, or update.

b. Unprofessional conduct shall not be construed to include:

1. the employment, with the knowledge of the client, of qualified consultants to perform work in which the consultant has special expertise. This provision shall apply in conjunction with Section 29.1(b)(9) of this Part; and
2. participation as a delegator, or delegatee in delegating or accepting delegation, through an intermediate entity not authorized to provide professional design services, of specifically defined work involving the performance of a design function requiring a professional license, under the following terms, conditions and limitations:
  - i. such specifically defined design work shall be limited to project components ancillary to the main components of the project;
  - ii. the delegator shall specify in writing to the delegatee all parameters which the design must satisfy;
  - iii. the design function shall be required to be performed in accordance with performance specifications established by the delegator;
  - iv. the delegatee shall be required to be licensed or otherwise legally authorized to perform the design work involved and shall be required to sign and certify any design prepared;
  - v. the delegator shall be required to review and approve the design submitted by the delegatee for conformance with the established specifications and parameters and such determination shall be in writing; and
  - vi. the delegator shall be required to determine that the design prepared by the delegatee conforms to the overall project design and can be integrated into such design and such determination shall be in writing.
3. As used in paragraph (2) of this subdivision:
  - i. *Delegator* means a primary design team or team of design professionals which may be composed of professional engineers, land surveyors, architects and landscape architects acting either alone or in combination, licensed and registered in accordance with Articles 145, 147 or 148 of the Education Law, and authorized to provide the services being delegated.
  - ii. *Intermediate entity* means a person or entity, typically a contractor or subcontractor, responsible for performing the work under the contract for construction.
  - iii. *Delegatee* means a design professional, licensed and registered in accordance with Articles 145, 147 or 148 of the Education Law, who is employed or retained by the intermediate entity to produce design work in compliance with the performance requirements and parameters specified by a delegator.
  - iv. *Certify* means a written statement by a licensee confirming responsibility for the work and attesting that the work prepared meets the specifications (as well as conforming to governing

codes applicable at the time the work was prepared), and conforms to prevailing standards of practice.

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- ii. in therapy groups, immoral conduct shall include activities which promote or allow explicit physical sexual contact between group members during sessions;
  3. the provisions of Section 29.2(a)(5) of this Part shall apply to psychologists, who may also list in directories and on professional stationery areas of specialization and subspecialties recognized by the Board of Regents.
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**§ 29.13 Special provisions for the profession of massage therapy.**

- a. Unprofessional conduct in the practice of massage therapy shall include all conduct prohibited by Sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:
    1. advertising not in the public interest shall include but not be limited to:
      - i. using pictures depicting an unclad or undraped human form;
      - ii. using any proper name under which the licensee is not registered unless it is the name of the establishment, firm, partnership, corporation, or professional limited liability partnership or corporation;
    2. nothing in this Part shall be construed to prevent a licensed massage therapist, when advertising his or her practice, from using the letters "LMT" or from identifying areas of practice, such as, but not limited to: shiatsu, acupressure, amma, bodywork, reflexology, Swedish medical massage therapy, polarity, tuina, and connective tissue massage, provided that such identified areas of practice are within the scope of practice of massage therapy as defined in Section 7805 of the Education Law.
    3. nothing in this Part shall be construed to prevent the ownership of a firm or corporation practicing massage therapy in this State by an unlicensed person or persons, or to prevent any contractual or employment arrangement between such person or persons and the professional licensee conducting such practice and computing the salary of professional employees, or the amount due the owner of such firm, partnership, or corporation on the basis of a percentage of the receipts from the performance of professional services. This provision shall apply in lieu of Section 29.1(b)(4) of this Part;
    4. the provisions of Section 29.1(b)(5) of this Part prohibiting immoral conduct shall apply in the practice of massage therapy. Massage of genital areas and massage of a client who is not properly draped for massage, or by a massage therapist who is not properly dressed, shall be considered immoral conduct;
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**§ 29.14 Special provisions for the profession of nursing.**

- a. Unprofessional conduct in the practice of nursing shall include all conduct prohibited by sections 29.1 and 29.2 of this Part, except as provided in this section, and shall also include the following:
  1. Failure to adhere to any requirement prescribed in section 64.7 of this Title.
  2. Administering an immunization agent or anaphylaxis treatment agent, pursuant to section 64.7 of this Title, when:
    - i. such administration is after the agent's date, if any, marked upon the label as indicative of the date beyond which the contents cannot be expected beyond reasonable doubt to be safe and effective. When the expiration date is expressed by month and year, the expiration date shall be the last day of the month indicated; or
    - ii. the agent, the nature of which requires storage under special conditions of temperature control as indicated either on the labeling, in the directions for storage of said agent contained in an official compendium, or as directed by common prudence, has not been so stored under special conditions of temperature control, and the registered professional nurse has knowledge or reasonably should have had knowledge that the agent has not been so stored.