DEFINITIONS OF PROFESSIONAL MISCONDUCT APPLICABLE TO PHYSICIANS, PHYSICIAN'S ASSISTANTS AND SPECIALIST'S ASSISTANTS

Section 6530. Definitions of professional misconduct.

6531. Additional definition of professional misconduct, limited application.

6532. Enforcement, administration and interpretation of this article.

 \S 6530. Definitions of professional misconduct. Each of the following

is professional misconduct, and any licensee found guilty of such

 $\mbox{{\it misconduct}}$ under the procedures prescribed in section two hundred thirty

of the public health law shall be subject to penalties as prescribed in

section two hundred thirty-a of the public health law except that the

charges may be dismissed in the interest of justice:

- 1. Obtaining the license fraudulently;
- 2. Practicing the profession fraudulently or beyond its authorized $% \left(1\right) =\left(1\right) +\left(1\right)$

scope;

3. Practicing the profession with negligence on more than one $% \left(1\right) =\left(1\right) \left(1\right)$

occasion;

4. Practicing the profession with gross negligence on a particular

occasion;

5. Practicing the profession with incompetence on more than one $\ \ \,$

occasion;

- 6. Practicing the profession with gross incompetence;
- 7. Practicing the profession while impaired by alcohol, drugs,

physical disability, or mental disability;

8. Being a habitual abuser of alcohol, or being dependent on or a

habitual user of narcotics, barbiturates, amphetamines, hallucinogens,

or other drugs having similar effects, except for a licensee who is

maintained on an approved therapeutic regimen which does not impair the

ability to practice, or having a psychiatric condition which impairs

licensee's ability to practice;

9. (a) Being convicted of committing an act constituting a crime

under:

- (i) New York state law or,
- (ii) federal law or,

(iii) the law of another jurisdiction and which, if committed within

this state, would have constituted a crime under New York state law;

(b) Having been found guilty of improper professional practice or

professional misconduct by a duly authorized professional disciplinary

agency of another state where the conduct upon which the finding

based would, if committed in New York state, constitute professional

misconduct under the laws of New York state;

(c) Having been found guilty in an adjudicatory proceeding

violating a state or federal statute or regulation, pursuant to a final

decision or determination, and when no appeal is pending, or after

resolution of the proceeding by stipulation or agreement, and when

violation would constitute professional misconduct pursuant to this

section;

(d) Having his or her license to practice medicine revoked, suspended

or having other disciplinary action taken, or having his or

application for a license refused, revoked or suspended or having

voluntarily or otherwise surrendered his or her license after a

disciplinary action was instituted by a duly authorized professional

disciplinary agency of another state, where the conduct resulting in the

revocation, suspension or other disciplinary action involving the

license or refusal, revocation or suspension of an application for a

license or the surrender of the license would, if committed in New York

state, constitute professional misconduct under the laws of New York

state;

(e) Having been found by the commissioner of health to be in violation $\ \ \,$

of article thirty-three of the public health law;

Refusing to provide professional service to a person because of

such person's race, creed, color or national origin;

11. Permitting, aiding or abetting an unlicensed person to perform

activities requiring a license;

12. Practicing the profession while the license is suspended or

inactive as defined in subdivision thirteen of section two hundred

thirty of the public health law, or willfully failing to register

notify the department of education of any change of name or mailing

address, or, if a professional service corporation, willfully failing to

comply with sections fifteen hundred three and fifteen hundred fourteen

of the business corporation law or, if a university faculty practice

corporation wilfully failing to comply with paragraphs (b), (c) and (d)

of section fifteen hundred three and section fifteen hundred fourteen of

the business corporation law;

13. A willful violation by a licensee of subdivision eleven of section

two hundred thirty of the public health law;

* 14. A violation of section twenty-eight hundred three-d or

twenty-eight hundred five-k of the public health law; or

- * NB Effective until November 3, 2008
- * 14. A violation of section twenty-eight hundred three-d.

twenty-eight hundred five-k or subparagraph (ii) of paragraph (h) of

subdivision ten of section two hundred thirty of the public health law;

or

- * NB Effective November 3, 2008
- 15. Failure to comply with an order issued pursuant to subdivision

seven, paragraph (a) of subdivision ten, and subdivision seventeen of

section two hundred thirty of the public health law;

16. A willful or grossly negligent failure to comply with substantial $\ensuremath{\mathsf{S}}$

provisions of federal, state, or local laws, rules, or regulations

governing the practice of medicine;

- 17. Exercising undue influence on the patient, including the promotion
- of the sale of services, goods, appliances, or drugs in such manner as
- to exploit the patient for the financial gain of the licensee or of a $% \left(1\right) =\left(1\right)$

third party;

- 18. Directly or indirectly offering, giving, soliciting, or receiving
- or agreeing to receive, any fee or other consideration to or from \boldsymbol{a}

third party for the referral of a patient or in connection with

performance of professional services;

19. 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 medicine, or a legally authorized trainee practicing under

the supervision of a licensee. 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

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 twenty-eight of the public health law or article thirteen

the mental hygiene law;

20. Conduct in the practice of medicine which evidences moral

unfitness to practice medicine;

21. Willfully making or filing a false report, or failing to file

report required by law or by the department of health or the education

department, or willfully impeding or obstructing such filing, or

inducing another person to do so;

22. Failing to make available to a patient, 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;

23. Revealing of personally identifiable facts, data, or information

obtained in a professional capacity without the prior consent of the

patient, except as authorized or required by law;

24. 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

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;

25. 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;

25-a. With respect to any non-emergency treatment, procedure or

surgery which is expected to involve local or general anesthesia,

failing to disclose to the patient the identities of all physicians,

except medical residents in certified training programs, podiatrists and

dentists, reasonably anticipated to be actively involved in such

treatment, procedure or surgery and to obtain such patient's informed

consent to said practitioners' participation;

26. Performing professional services which have not been duly

authorized by the patient or his or her legal representative;

27. Advertising or soliciting for patronage that is not in the public

interest. (a) Advertising or soliciting not in the public interest shall

include, but not be limited to, advertising or soliciting that: (i) is

false, fraudulent, deceptive, misleading, sensational, or flamboyant;

- (ii) represents intimidation or undue pressure;
- (iii) uses testimonials;
- (iv) guarantees any service;
- (v) makes any claim relating to professional services or products or

the costs or price therefor which cannot be substantiated by

licensee, who shall have the burden of proof;

(vi) makes claims of professional superiority which cannot be

substantiated by the licensee, who shall have the burden of proof; or
 (vii) 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.

(b) The following shall be deemed appropriate means of informing the

public of the availability of professional services: (i)
informational

advertising not contrary to the foregoing prohibitions; and

(ii) the advertising in a newspaper, periodical or professional

directory or on radio or television of fixed prices, or a stated range $% \left(\frac{1}{2}\right) =\frac{1}{2}\left(\frac{1}{2}\right) +\frac{1}{2}\left(\frac{1}{2}\right) +\frac{1}$

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.

(c)(i) All licensees placing advertisements shall maintain, or cause

to be maintained, an exact copy of each advertisement, transcript, tape

or video tape thereof as appropriate for the medium used, for a period

of one year after its last appearance. This copy shall be made avail-

able for inspection upon demand of the department of health;

(ii) A licensee shall not compensate or give anything of value to $\ensuremath{\operatorname{rep-}}$

resentatives of the press, radio, television or other communications

media in anticipation of or in return for professional publicity in

news item;

(d) No demonstrations, dramatizations or other portrayals of

professional practice shall be permitted in advertising on radio

television;

28. Failing to respond within thirty days to written communications

from the department of health and to make available any relevant records

with respect to an inquiry or complaint about the licensee's

professional misconduct. The period of thirty days shall commence on the

date when such communication was delivered personally to the licensee.

If the communication is sent from the department of health by registered

or certified mail, with return receipt requested, to the address

appearing in the last registration, the period of thirty days shall

commence on the date of delivery to the licensee, as indicated by the

return receipt;

29. Violating any term of probation or condition or limitation imposed

on the licensee pursuant to section two hundred thirty of the public

health law;

30. Abandoning or neglecting a patient under and in need of immediate

professional care, without making reasonable arrangements for the

continuation of such care, or abandoning a professional employment by

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;

31. Willfully harassing, abusing, or intimidating a patient either

physically or verbally;

32. Failing to maintain a record for each patient which accurately

reflects the evaluation and treatment of the patient, provided, however,

that a physician who transfers an original mammogram to a $\operatorname{medical}$

institution, or to a physician or health care provider of the patient,

or to the patient directly, as otherwise provided by law, shall have no

obligation under this section to maintain the original or a copy

thereof. 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 eighteen years;

33. Failing to exercise appropriate supervision over persons who are

authorized to practice only under the supervision of the licensee;

34. Guaranteeing that satisfaction or a cure will result from the

performance of professional services;

35. Ordering of excessive tests, treatment, or use of treatment

facilities not warranted by the condition of the patient;

36. Claiming or using any secret or special method of treatment which

the licensee refused to divulge to the department of health;

37. Failing to wear an identifying badge, which shall be conspicuously

displayed and legible, indicating the practitioner's name

professional title authorized pursuant to this chapter, while practicing

as an employee or operator of a hospital, clinic, group practice or

multiprofessional facility, or at a commercial establishment offering

health services to the public;

38. Entering into an arrangement or agreement with a pharmacy for the

compounding and/or dispensing of coded or specially marked

prescriptions;

39. With respect to all professional practices conducted under an

assumed name, other than facilities licensed pursuant to article

twenty-eight of the public health law or article thirteen of the mental

hygiene law, failing to post conspicuously at the site of such practice

the name and licensure field of all of the principal professional

licensees engaged in the practice at that site (i.e., principal

partners, officers or principal shareholders);

40. Failing to provide access by qualified persons to patient

information in accordance with the standards set forth in section

eighteen of the public health law as added by chapter 497 of the laws of

1986;

- 41. Knowingly or willfully performing a complete or partial autopsy on
 - a deceased person without lawful authority;
- 42. Failing to comply with a signed agreement to practice medicine in

New York state in an area designated by the commissioner of education as

having a shortage of physicians or refusing to repay medical education

costs in lieu of such required service, or failing to comply with any

provision of a written agreement with the state or any municipality

within which the licensee has agreed to provide medical service,

refusing to repay funds in lieu of such service as consideration of

awards made by the state or any municipality thereof for his or her

professional education in medicine, or failing to comply with any

agreement entered into to aid his or her medical education;

43. Failing to complete forms or reports required for

reimbursement of a patient by a third party. Reasonable fees may be

charged for such forms or reports, but prior payment for the

professional services to which such forms or reports relate may not be

required as a condition for making such forms or reports available;

44. In the practice of psychiatry, (a) any physical contact of a

sexual nature between licensee and patient except the use of films

and/or other audiovisual aids with individuals or groups in the $% \left(1\right) =\left(1\right)$

development of appropriate responses to overcome sexual dysfunction and $% \left(1\right) =\left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left(1\right) +\left(1\right) \left(1\right)$

(b) in therapy groups, activities which promote explicit physical sexual

contact between group members during sessions; and

45. In the practice of ophthalmology, failing to provide a patient,

upon request, with the patient's prescription including the name,

address, and signature of the prescriber and the date of the

prescription.

* 46. A violation of section two hundred thirty-eight of the public

health law by a professional other than a professional subject to the

provisions of paragraph (f) of subdivision one of section twenty-eight

hundred five-k of the public health law.

- * NB Effective until November 3, 2008
- * 46. A violation of section two hundred thirty-nine of the public

health law by a professional.

- * NB Effective November 3, 2008
- 47. Failure to use scientifically accepted barrier precautions and

infection control practices as established by the department of health

pursuant to section two hundred thirty-a of the public health law.

48. A violation of section two hundred thirty-d of the public health

law or the regulations of the commissioner of health enacted thereunder.

* 49. Except for good cause shown, failing to provide within one day

any relevant records or other information requested by the state or

local department of health with respect to an inquiry into a report of a

communicable disease as defined in the state sanitary code, or HIV/AIDS.

- * NB Effective November 3, 2008
- § 6531. Additional definition of professional misconduct, limited

application. Notwithstanding any inconsistent provision of this article

or any other provisions of law to the contrary, the license or

registration of a person subject to the provisions of this article and

article one hundred thirty-one-B of this chapter may be revoked,

suspended, or annulled or such person may be subject to any other

penalty provided in section two hundred thirty-a of the public health

law in accordance with the provisions and procedures of this article for

the following:

That any person subject to the above-enumerated articles has directly

or indirectly requested, received or participated in the division,

transference, assignment, rebate, splitting, or refunding of a fee for.

or has directly requested, received or profited by means of a credit or

other valuable consideration as a commission, discount or gratuity, in

connection with the furnishing of professional care or service,

including x-ray examination and treatment, or for or in connection with

the sale, rental, supplying, or furnishing of clinical laboratory

services or supplies, x-ray laboratory services or supplies, inhalation

therapy service or equipment, ambulance service, hospital or $\operatorname{medical}$

supplies, physiotherapy or other therapeutic service or equipment,

artificial limbs, teeth or eyes, orthopedic or surgical appliances or

supplies, optical appliances, supplies, or equipment, devices for aid of

hearing, drugs, medication, or medical supplies, or any other goods,

services, or supplies prescribed for medical diagnosis, care, or

treatment under this chapter, except payment, not to exceed thirty-three

and one-third percent of any fee received for x-ray examination,

diagnosis, or treatment, to any hospital furnishing facilities for such

examination, diagnosis, or treatment. Nothing contained in this section

shall prohibit such persons from practicing as partners, in groups or as

a professional corporation or as a university faculty practice

corporation, nor from pooling fees and moneys received, either by the

partnerships, professional corporations, or university faculty practice

corporations or groups by the individual members thereof, for $\ensuremath{\mathsf{T}}$

professional services furnished by an individual professional member,

employee of such partnership, corporation, or group, nor shall the $% \left(1\right) =\left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left(1\right) +\left(1\right) \left(1\right$

professionals constituting the partnerships, corporations or groups be

prohibited from sharing, dividing, or apportioning the fees and moneys

received by them or by the partnership, corporation, or group in

accordance with a partnership or other agreement; provided that no such

practice as partners, corporations, or groups, or pooling of fees or

moneys received or shared, division or apportionment of fees shall be

permitted with respect to and treatment under the workers' compensation $\ensuremath{\mathsf{S}}$

law. Nothing contained in this chapter shall prohibit a corporation

licensed pursuant to article forty-three of the insurance law pursuant

to its contract with the subscribed from prorationing a medical or

dental expenses indemnity allowance among two or more professionals in

proportion to the services rendered by each such professional at the

request of the subscriber, provided that prior to payment thereof such

professionals shall submit both to the corporation licensed pursuant to

article forty-three of the insurance law and to the subscriber

statements itemizing the services rendered by each such professional and $% \left(1\right) =\left(1\right) +\left(1\right) +\left$

the charges therefor.

§ 6532. Enforcement, administration and interpretation of this

article. The board of professional medical conduct and the department

of health shall enforce, administer and interpret this article. Before

issuing a declaratory ruling pursuant to section two hundred four of

state administrative procedure act with respect to this article, the

department of health shall fully consult with the department of

education. Neither the commissioner of education, the board of regents

nor the commissioner of health may promulgate any rules or regulations $% \left(1\right) =\left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left(1\right) +\left(1\right) \left(1\right) \left$

concerning this article.