

ARTICLE 131-A

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.

§ 6530. Definitions of professional misconduct. Each of the
following
is professional misconduct, and any licensee found guilty of
such
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
scope;
3. Practicing the profession with negligence on more than
one
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
the
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 was

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 of

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 the

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 her

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;

10. 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 or 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

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

third party;

18. 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 in connection with the

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 of 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 a 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 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;

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 the

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

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
rep-

resentatives of the press, radio, television or other
communications

media in anticipation of or in return for professional publicity in
a

news item;

(d) No demonstrations, dramatizations or other portrayals
of

professional practice shall be permitted in advertising on radio
or

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 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;

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 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 and 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, or 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 the 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

development of appropriate responses to overcome sexual dysfunction and

(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 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 professional services furnished by an individual professional member, or employee of such partnership, corporation, or group, nor shall the

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 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 subscriber from prorating 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 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
the 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 concerning this article.