

## Licensed Professionals Must Remain Alert to Activities Which Could Lead to License Suspension or Revocation

Licensed professionals in New York State, such as physicians, dentists, podiatrists, chiropractors, optometrists, veterinarians, and others, are subject to regulatory oversight by governmental agencies (such as the Department of Health and the Department of Education) with respect to what they can and cannot do in the context of practicing their profession. A licensed professional who is found guilty of [professional misconduct](#) can have his or her license to practice suspended or revoked.

Certain acts which are perfectly legal if engaged in by people in the business world are deemed “professional misconduct” (and thereby sanctionable) if engaged in by licensed professionals. For example, paying a percentage of one’s revenues to a landlord in exchange for office space is an acceptable method for calculating rent in the business world, but constitutes improper “fee-splitting” if engaged in by certain licensed professionals.

It is therefore critical that all licensed professionals familiarize themselves with the definition of professional misconduct which is applicable to their particular profession and to consult with knowledgeable attorneys if they are uncertain whether their actions might violate these standards of conduct.

To illustrate the scope of behavior that is subject to professional discipline, New York’s Education Law identifies 49 different activities which constitute “professional misconduct” in the practice of medicine. These are as follows:

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 willfully 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, 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

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 therefore 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 available for inspection upon demand of the department of health;
- (ii) 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;
- (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 multi-professional 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-nine of the public health law by a professional;
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 hereunder;
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.

\* \* \*

For more information on this or other related issues, please contact your attorney contact at our firm.