

Rules of the Board of Regents

Part 29, Unprofessional Conduct

Effective November 23, 2006

[§ 29.1 - General provisions.](#) | [§ 29.2 - General provisions for **health professions**.](#) | [§ 29.3 - General provisions for **design professions**.](#) | [§ 29.4 - Special provisions for the profession of **medicine**.](#) | [§ 29.5 - Special provisions for the professions of **dentistry** and **dental hygiene**.](#) | [§ 29.6 - Special provisions for the profession of **veterinary medicine**.](#) | [§ 29.7 - Special provisions for the profession of **pharmacy**.](#) | [§ 29.8 - Special provisions for the profession of **optometry**.](#) | [§ 29.9 - Special provisions for the profession of **ophthalmic dispensing**.](#) | [§ 29.10 - Special provisions for the profession of **public accountancy**.](#) | [§ 29.11 - Special provisions for the profession of **certified shorthand reporting**.](#) | [§ 29.12 - Special provisions for the profession of **psychology**.](#) | [§ 29.13 - Special provisions for the profession of **massage therapy**.](#) | [§ 29.14 - Special provisions for the profession of **nursing**.](#) | [§ 29.15 - Special provisions for the professions of **creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis**.](#) | [§ 29.16 - Special provisions for the **social work** professions.](#) | [§ 29.17. Special provisions for the profession of **physical therapy**.](#)

§ 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 providing direct patient care or in handling patient care equipment; and
- xiii. placing all specimens of blood and body fluids in well-constructed containers with secure lids to prevent leaking; and cleaning any spill of blood or other body fluid with an appropriate detergent and appropriate chemical germicide.

b. Unprofessional conduct shall also include, in those professions specified in Section 18 of the Public Health Law and in the professions of acupuncture, creative arts therapy, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis, failing to provide access by qualified persons to patient information in accordance with the standards set forth in Section 18 of the Public Health Law. In the professions of acupuncture, creative arts therapy, marriage and family therapy, massage therapy, mental health counseling, and psychoanalysis, qualified persons may appeal the denial of access to patient information in the manner set forth in Section 18 of the Public Health Law to a record access committee appointed by the executive secretary of the appropriate State Board. Such record access review committees shall consist of not less than three, nor more than five members of the appropriate State Board.

§ 29.3 General provisions for design professions.

- a. Unprofessional conduct shall also include, in the professions of architecture and landscape architecture, engineering and land surveying:
 1. being associated in a professional capacity with any project or practice known to the licensee to be fraudulent or dishonest in character, or not reporting knowledge of such fraudulence or dishonesty to the Education Department;
 2. failing to report in writing to the owner or to the owner's designated agent any unauthorized or improperly authorized substantial disregard by any contractor of plans or specifications for construction or fabrication, when professional observation or supervision of the work is provided for in the agreement between the owner and the design professional or when supervision of the work is under the control of the design professional;
 3. certifying by affixing the licensee's signature and seal to documents for which the professional services have not been performed by, or thoroughly reviewed by, the licensee; or failing to prepare and retain a written evaluation of the professional services represented by such documents in accordance with the following requirements:
 - i. a licensee who signs and seals documents not prepared by the licensee or by an employee under the licensee's direct supervision shall prepare, and retain for a period of not less than six years, a thorough written evaluation of the professional services represented by the documents, including but not limited to drawings, specifications, reports, design calculations and references to applicable codes and standards. Such written evaluation shall clearly identify the project and the documents to which it relates, the source of the documents and the name of the person or organization for which the written evaluation was conducted, and the date of the evaluation, and the seal and signature of the licensee shall also be affixed thereto; and
 - ii. nothing in this paragraph shall be construed as authorizing the practice of a design profession in this State by persons other than those authorized to practice pursuant to the provisions of Article 145, 147 or 148 of the Education Law;
 4. failure by a licensee to maintain for at least six years all preliminary and final plans, documents, computations, records and professional evaluations prepared by the licensee, or the licensee's employees, relating to work to which the licensee has affixed his seal and signature;

5. having a substantial financial interest, without the knowledge and approval of the client or employer, in any products or in the bids or earnings of any contractor, manufacturer or supplier on work for which the professional has responsibility;
6. permitting any person to share in the fees for professional services, other than: a partner, employee, associate in a professional firm or corporation, subcontractor or consultant. 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. 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.

§ 29.4 Special provisions for the profession of medicine.

- a. Unprofessional conduct in the practice of medicine 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. knowingly or willfully performing a complete or partial autopsy on a deceased person without lawful authority;

2. 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;
 3. a physician who prescribes or dispenses lenses or frames for the correction of vision shall be subject to the provisions of Sections 29.8 and 29.9 of this Part relating to unprofessional conduct in optometry and/or ophthalmic dispensing;
 4. in the conduct of psychological research, failing to undertake reasonable efforts to remove the possible harmful aftereffects of emotional stress as soon as the design of the research permits, or failing to inform prospective research subjects or their authorized representatives fully of the danger of serious aftereffects, if such danger exists, before they are utilized as research subjects;
 5. in the interpretation of the provisions of Section 29.1(b)(5) of this Part and in the treatment of sexual dysfunction as well as in other areas of the practice of psychiatry:
 - i. immoral conduct shall include any physical contact of a sexual nature between physician and patient; but immoral conduct shall not include the use of films and/or other audiovisual aids with individuals or groups in the development of appropriate responses to overcome sexual dysfunction;
 - ii. in therapy groups, immoral conduct shall include activities which promote explicit physical sexual contact between group members during sessions.
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§ 29.5 Special provisions for the professions of dentistry and dental hygiene.

Unprofessional conduct in the practice of dentistry and dental hygiene 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:

- a. Failing to comply with a signed agreement to practice dentistry in New York State in an area designated by the Commissioner of Education as having a shortage of dentists or refusing to repay dental 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 dental 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 dentistry, or failing to comply with any agreement entered into to aid his or her dental education.

- b. Claiming professional superiority or special professional abilities, attainments, methods or resources, except that a practitioner who has completed a program of specialty training approved by the Board of Regents in a specialty recognized as such by the Board of Regents, or who can demonstrate to the satisfaction of the department the completion of the substantial equivalent of such a program, may advertise or otherwise indicate the specialty. A practitioner who has completed all of the requirements for specialty qualification except an examination may advertise or otherwise indicate the additional training which has been acquired. The phrase *practice limited* shall be deemed a claim of special professional abilities, and may be used only by dentists who have completed specialty training satisfactory to the department or dentists who have restricted their practice to a dental specialty prior to January 1, 1979. This subdivision shall apply in addition to Section 29.1(b)(12)(i)(f) of this Part.

§ 29.6 Special provisions for the profession of veterinary medicine.

- a. Unprofessional conduct in the practice of veterinary medicine shall include all conduct prohibited by Section 29.1 of this Part except as provided in this section, and shall also include the following:
 - 1. claiming or using any secret or special method of treatment which the licensee refuses to divulge to the State Board for the Professions;
 - 2. failing to exercise adequate supervision over persons who are authorized to practice only under the supervision of the licensee;
 - 3. failing to maintain adequate records of visits, diagnoses and prescribed treatments for a period of at least three years;
 - 4. using the word "Doctor" in offering to perform professional services without also indicating that the licensee holds a doctorate in veterinary medicine;
 - 5. claiming professional superiority or special professional abilities, attainments, methods or resources, except that a specialist may indicate a specialty that has been recognized as such by the Board of Regents. This provision shall apply in lieu of Section 29.1(b)(12)(i)(f) of this Part;

6. guaranteeing that satisfaction or a cure will result from the performance of professional services;
 7. excessive administering of treatment or use of treatment facilities not warranted by the condition of the animal patient;
 8. abandoning or neglecting an animal patient under and in need of immediate care, without making reasonable arrangements for the continuation of such care; or
 9. entering into an arrangement or agreement with a pharmacy for the compounding and/or dispensing of coded or specially marked prescriptions.
- b. Distribution of information to members of a union, association or other organized group which has a contractual arrangement with a practitioner or practitioners for the provision of veterinary services at specific prices, which state the details of the arrangement including the names, addresses and telephone numbers of the participating practitioners, shall be deemed an appropriate means of informing the public of the availability of services.
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§ 29.7 Special provisions for the profession of pharmacy.

- a. The requirements of this section set forth for written prescriptions shall also be applicable to electronically transmitted prescriptions, as defined in Section 63.6(a)(7) of this Title, unless otherwise indicated. Unprofessional conduct in the practice of pharmacy 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. Dispensing a written prescription which does not bear the name, address and age of the patient for whom it is intended; the date on which it was written; the name, strength, if applicable, and the quantity of the drug prescribed; directions for use, if applicable; and, the name, address, telephone number, profession and signature of the prescriber; provided that the pharmacist may record on the prescription the address and age of the patient, the strength and quantity of the drug prescribed, the directions for use and the prescriber's address, telephone number and profession if these are missing or unclear. If the address and age of the patient and the address, telephone number and profession of the prescriber are missing from the prescription, the pharmacist shall not be required to enter any of these items on the prescription if the information is otherwise readily available in the records of the pharmacy. Prescription labels must be legible. An order for a drug to be dispensed for an inpatient in a health care facility by the pharmacy of that facility may be transmitted to the

pharmacy in accordance with written procedures approved by the medical or other authorized board of the facility. The items of information required by this paragraph which are found in the records regularly maintained by the facility and which are not essential to the execution of the order need not appear on the order which is transmitted to the pharmacy. A drug which is dispensed for an inpatient in a health care facility by the pharmacy of that facility may be labeled in accordance with the policy adopted by the medical or other authorized board of the facility. That policy shall insure that all the information required by law to be placed on prescription labels is readily available to all concerned parties and that accuracy and safety prevail in the dispensing process. The address of a patient in a hospital or other health care facility may, for the purpose of a prescription, be that of the facility. An order for a drug for a particular patient issued by a practitioner authorized to prescribe, and transmitted to a pharmacy for dispensing, shall constitute a prescription. Prescriptions written for controlled substances shall meet the requirements of Article 33 of the Public Health Law.

2. Failure by a pharmacist to reduce to writing a prescription transmitted orally, which writing shall include all the information required by paragraph (1) of this subdivision and the signature or readily identifiable initials of the receiver of the oral prescription, provided that oral prescriptions for controlled substances shall meet the requirements of Article 33 of the Public Health Law.
3. Failure by a pharmacist dispensing a prescription to enter on the prescription the date of dispensing and to sign or initial legibly the prescription in such a manner as not to interfere with any other information on the prescription; provided that when the prescription is dispensed by an intern, the prescription shall bear the signature or readily identifiable initials of the intern and of the pharmacist who is supervising the intern.
4. Refilling a prescription without entering on the reverse of the prescription the date of the refill and the signature or readily identifiable initials of the pharmacist and of the intern, if applicable, dispensing the refill, except as provided in paragraph (8) of this subdivision. As a refill instruction, the pharmacist may accept a number of times, a time period, such as one year, or the Latin phrase *pro re nata* (abbreviated prn--meaning "as needed"). In the case of the latter, the pharmacist shall refill the prescription once only. The pharmacist receiving on oral order to refill a prescription shall reduce the order to writing and shall sign or initial it legibly as the recipient of the oral order. When a prescription is refilled, the date placed on the label shall be the date of the refill.
5. Using or substituting without authorization one or more drugs in the place of the drug or drugs specified in a prescription. Unauthorized use or

substitution occurs if the same is done without the knowledge and consent of the prescriber. If other than the ingredients specified are utilized by the pharmacist in compounding or dispensing the prescription, improper substitution shall be presumed unless there shall be entered upon the reverse of the original prescription information setting forth the facts of the substitution, the date, time and manner in which authorization for substitution was given and the signature of the pharmacist who received such authorization.

6. Failure to identify a generic product dispensed on a prescription by writing the name of the manufacturer and of the distributor, if different, on the prescription and on the label, except as otherwise provided in Education Law, Section 6816-a(1)(c).
7. Failure to number prescriptions consecutively and file them in a numerical or other form which provides for ready retrieval of the prescriptions; provided that orders for drugs to be dispensed for inpatients in a health care facility, including but not limited to a general hospital, in the pharmacy of that facility under a drug distribution system approved by the medical or other authorized board of the facility, need not be numbered if the orders are otherwise readily available and retrievable; and, provided further that prescriptions for controlled substances shall be filed in accordance with the provisions of Article 33 of the Public Health Law.
8. Failure to maintain in a form which provides for ready retrieval of prescriptions a daily record of all prescriptions filled and refilled which identifies clearly the practitioner who ordered the prescription, the patient for whom the prescription is intended, the signature or readily identifiable initials of the pharmacist who filled or refilled the prescription, and the number assigned to the prescription where applicable. The record of the dispensing of a drug for an inpatient in a health care facility, including but not limited to general hospital, by the pharmacy of that facility may be maintained in a form which is consistent with the record of the total health service provided to the patient provided the information required by this paragraph is readily retrievable and available. Original prescriptions filed in accordance with the provisions of paragraph (7) of this subdivision may constitute the record of the initial filling of those prescriptions. The daily record may be maintained by a manual system or, alternatively, by an electronic data processing system which meets the following requirements:
 - i. The system shall provide adequate safeguards against improper manipulation or alteration of stored records.
 - ii. Arrangements shall be made which assure completeness and continuity of prescription records if the relationship between a pharmacy and a supplier of data processing services terminates for any reason.

- iii. The system shall provide retrieval of information regarding original dispensing and the refilling of prescriptions.
- iv. A pharmacist, and a pharmacy intern, if applicable, using a computerized system shall sign or initial the original prescription at the time of the first dispensing as provided in paragraph (3) of this subdivision and the initials of the pharmacist shall be entered into the computer record of the dispensing.
- v. For all refills of a prescription, the records introduced into the system shall be sufficient if:
 - a. the initials of the pharmacist who dispensed the refill are entered by such pharmacist at the time of dispensing; and
 - b. a printout is produced of all prescriptions filled and refilled each day and the pharmacist(s) whose initials appear(s) on the printout sign(s) the printout to indicate that it is a accurate record.
- vi. A pharmacy that employs a computerized system shall have an auxiliary procedure which shall be used for documentation of all new and refilled prescriptions dispensed during system downtime. The auxiliary procedure shall provide for the entry into the computer of all data collected during the downtime, and the pharmacist shall insure that the maximum number of refills authorized on the original prescription has not been exceeded.
- vii. Only pharmacists and pharmacy interns shall enter prescription data into the computerized system and access the data, except as provided in paragraph (21) of this subdivision.

9. Except as otherwise provided in 16 CFR Part 1700 (*Code of Federal Regulations*, 1984 edition, Superintendent of Public Documents, U.S. Government Printing Office, Washington, DC 20402: 1984, available at New York State Board of Pharmacy, Office of the Professions, State Education Building - 2nd floor, 89 Washington Avenue, Albany, New York 12234), failure to package a drug in a child-resistant container unless either the prescriber or the patient requests otherwise. Such request shall be documented in the records of the pharmacy. Child-resistant containers shall not be reused.

10. Failure by a supervising pharmacist to provide adequate supervision of a registered establishment. A supervising pharmacist must be a full-time employee of the establishment. For the purposes of this section, full-time shall be deemed to be 30 or more hours per week. In those circumstances in which an establishment operates for less than 30 hours per week, the supervising pharmacist shall be employed for a majority of the hours that the establishment operates. The State Board of Pharmacy shall be notified within seven days of any change in the identity of the supervising

pharmacist of a registered establishment. Such notification shall be made by the owner of the registered establishment.

11. Advertisements of the prices of prescription drugs which do not comply with the following provisions:
 - i. The advertised price shall be in effect for a period of time stated in the advertisement.
 - ii. When the advertising of prescription prices forms part of a larger advertisement which includes the offering of general merchandise, the advertising pertaining to prescription prices shall be separated physically, such as by a box, from the advertising pertaining to general merchandise.
 - iii. Nothing in this subdivision shall be construed to prevent the use in advertising of a statement to the effect that the price for which any prescription will be filled is available on request.
 - iv. Such advertisement shall comply with the "Prescription Drug Consumer Price Listing" requirements set forth in Section 200.200 of Title 21 of the *Code of Federal Regulations* (1984 edition, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1984, available at New York State Board of Pharmacy, Office of the Professions, State Education Building - 2nd floor, 89 Washington Avenue, Albany, New York 12234).

12. Advertising or soliciting professional practice by means of providing physicians, or others authorized to prescribe, with prescription blanks imprinted with either the name of the pharmacist or the name of the pharmacy.

13. Failing to make prescription fee or price information readily available by providing such information upon request and upon the presentation of a prescription for pricing or dispensing. Nothing in this section shall be construed to prohibit the quotation of price information on a prescription drug to a potential consumer by telephone.

14. Placing in stock of any pharmacy any part of any prescription compounded or dispensed which is returned by a patient; provided, however, that in a health care facility, including but not limited to a general hospital, which has its own pharmacy and in which unit-dose medication is dispensed to inpatients, each dose being individually sealed and labeled with the name of the drug, dosage strength, manufacturer's control number and expiration date, the unused unit dose of medication may be returned to the pharmacy of the facility for redispensing; and provided further that unused medication may be returned to pharmacies by residential health care facilities in accordance with the provisions of 10

NYCRR 415.18(f) or by other facilities, including but not limited to county correctional facilities, provided that such other facilities utilize standards, policies and procedures determined by the State Board of Pharmacy to be equivalent to those enumerated in 10 NYCRR 415.18(f).

15. Repacking of drugs in a pharmacy, except by a pharmacist or under his/her immediate and personal supervision. Labels on repacked drugs shall bear sufficient information for proper identification and safety. A repacking record shall be maintained, including the name, strength, lot number, quantity and name of the manufacturer and/or distributor of the drug repacked, the date of the repacking, the number of packages prepared, the number of dosage units in each package, the signature of the person performing the repacking operation, the signature of the pharmacist who supervised the repacking, and such other identifying marks added by the pharmacy for internal recordkeeping purposes. Drugs repacked for in-house use only shall have an expiration date 12 months, or 50 percent of the time remaining to the manufacturer's expiration date, whichever is less, from the date of repacking. For the repacking of drugs by manufacturers and wholesalers, the provisions of Parts 210 and 211 of Title 21, *Code of Federal Regulations* (1984 edition, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1984, available at New York State Board of Pharmacy, Office of the Professions, State Education Building - 2nd floor, 89 Washington Avenue, Albany, New York 12234), shall apply. Repacking records shall be maintained for five years and shall be made available to the department for review and copying.
16. Holding for sale, offering for sale and selling adulterated and/or misbranded drugs, devices and cosmetics. Any drug, device or cosmetic shall be deemed to be adulterated and/or misbranded if:
 - i. it is not manufactured in accordance with the good manufacturing practices specified in Parts 210 and 211 of Title 21, *Code of Federal Regulations* (1984 edition, Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402: 1984, available at New York State Board of Pharmacy, Office of the Professions, State Education Building - 2nd floor, 89 Washington Avenue, Albany, New York 12234), provided that a drug manufactured by a pharmacy for in-house use may be manufactured in accordance with protocols, including documentation by means of a batch record, which insure the meeting of established standards for purity and potency; and
 - ii. at any time it fails to meet standards for purity, potency, labeling, safety and effectiveness established under the Federal Food, Drug and Cosmetic Act, as amended (June 1981, Superintendent of Public Documents, U.S. Government Printing Office, Washington, DC 20402, available at New York State Board of Pharmacy, Office

of the Professions, State Education Building - 2nd floor, 89 Washington Avenue, Albany, New York 12234).

17. Holding for sale, offering for sale, or selling:
 - i. any drug later than the 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; provided, however, that when such drug is identified as an outdated drug by segregation from regular stock or by other means, the holding of such drug beyond its expiration date shall not be deemed a violation of this paragraph. When the expiration date is expressed by month and year, the expiration date shall be the last day of the month indicated; or
 - ii. any drug, 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 drug contained in an official compendium, or as directed by common prudence, unless such special condition of temperature control shall have been complied with during the entire period of time in which such drug has been held for sale.

18. The sale of drugs at auction without filing with the State Board of Pharmacy, at least seven days prior to the date of said auction, a notice giving the date, time and place of the auction. At such auction, drugs in bulk or in open containers may be sold in one lot only to a registered pharmacy. The drugs shall be removed to the premises of the purchaser promptly and the board notified as to the disposition of such drugs; provided, however, that drugs found, by the representative of the board assigned to such auction, to be unfit for human use by virtue of age, adulteration and/or misbranding shall be destroyed voluntarily in the presence of the said representative or shall be quarantined by the representative pending action for seizure and destruction.

19. Holding for sale, offering for sale, selling or distributing a new drug or an investigational new drug, which is not recognized as a new drug or an investigational new drug under the provisions of Part 310 or 312 of Title 21, *Code of Federal Regulations* (1984 edition, Superintendent of Public Documents, U.S. Government Printing Office, Washington, DC 20402: 1984, available at New York State Board of Pharmacy, Office of the Professions, State Education Building - 2nd floor, 89 Washington Avenue, Albany, New York 12234).

20. Abandoning the premises of a registered establishment. Premises shall be deemed abandoned if the registrant vacates the premises without surrendering the certificate of registration to the State Board of Pharmacy and without making appropriate arrangements for the disposal of prescription-required drugs.

21. Aiding and abetting an unlicensed person to dispense drugs.

- i. Subject to the limitations set forth in subparagraph (ii) of this paragraph, an unlicensed person may assist a pharmacist in the dispensing of drugs by:
 - a. receiving written or electronically transmitted prescriptions, except that in the case of electronically transmitted prescriptions the pharmacist or pharmacy intern shall review the prescription to determine whether in his or her professional judgment it shall be accepted by the pharmacy, and if accepted, the pharmacist or pharmacy intern shall enter his or her initials into the records of the pharmacy;
 - b. typing prescription labels;
 - c. keying prescription data for entry into a computer-generated file or retrieving prescription data from the file, provided that such computer-generated file shall provide for verification of all information needed to fill the prescription by a pharmacist prior to the dispensing of the prescription, meaning that the pharmacist shall review and approve such information and enter his or her initials or other personal identifier into the record-keeping system prior to the dispensing of the prescription or of the prescription refill;
 - d. getting drugs from stock and returning them to stock;
 - e. getting prescription files and other manual records from storage and locating prescriptions;
 - f. counting dosage units of drugs;
 - g. placing dosage units of drugs in appropriate containers;
 - h. affixing the prescription label to the containers;
 - i. preparing manual records of dispensing for the signature or initials of the pharmacist; and
 - j. handing or delivering completed prescriptions to the patient or the person authorized to act on behalf of the patient after the pharmacist or the pharmacy intern has met the requirements of Section 63.6(b)(8) of this Title regarding the offering of counseling to such person.
- ii. Limitations on assistance by an unlicensed person.

- a. No pharmacist shall obtain the assistance of more than two unlicensed persons in the performance of the activities set forth in clauses (i)(b)-(j) of this paragraph. The pharmacist shall provide the degree of supervision of such persons as may be appropriate to ensure compliance with the provisions of this Part and Part 63 of this Title. Individuals who are responsible for the act of placing drugs which are in unit-dose packaging into medication carts as part of an approved unit-dose drug distribution system for patients in institutional settings shall be exempt from such ratio, provided that such individuals are not also engaged in performing the activities set forth in clauses (i)(b)-(j) of this paragraph.
 - b. Unlicensed persons shall not be authorized to:
 1. receive oral prescriptions from prescribers;
 2. interpret and evaluate a prescription for conformance with legal requirements, authenticity, accuracy and interaction of the prescribed drug with other known prescribed and over-the-counter drugs;
 3. make determinations of the therapeutic equivalency as such determinations apply to generic substitution;
 4. measure, weigh, compound or mix ingredients;
 5. sign or initial any record of dispensing required to be maintained by law;
 6. counsel patients; or
 7. perform any other function involving the exercise of professional judgment.
 - c. No drug which is dispensed with the assistance of an unlicensed person, as provided in subparagraph (i) of this paragraph, shall be dispensed without the review and approval of the pharmacist.
- b. Nothing in this Part shall be construed to prevent the ownership of a firm or corporate practice in this State by an unlicensed person or persons or to prevent any contractual arrangement computing the salary of professional employees or the amount due the owner of such firm or corporation or a person leasing space or equipment to such firm 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.

- c. The requirements of this section and sections 29.1 and 29.2 of this Part shall be applicable to nonresident establishments, as defined in section 6808-b of the Education Law, to the extent prescribed in section 63.8 of this Title.
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§ 29.8 Special provisions for the profession of optometry.

- a. Unprofessional conduct in the practice of optometry 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. advertisements of the prices of frames or lenses which do not identify the lenses as single vision, bifocal or trifocal; the specific type of bifocal or trifocal lenses; and as either glass or plastic. Advertisements which indicate that a number of frame types are available at a stated price at an establishment shall not be prohibited; provided, however, that stock sufficient to meet any demand which may be reasonably expected must be maintained at the location. Advertisements of the prices of contact lenses shall state whether the lenses are hard or soft. Any advertised price shall be in effect for a period of time stated in the advertisement;
 - 2. aiding and abetting, directly or indirectly, the conduct or advertising of any employer, firm or associate if such conduct or advertising conflicts with the foregoing regulations in this Part. It shall also be unprofessional conduct for a licensee to continue in the employment of an employer who has been found to have advertised in violation of this Part after a preliminary hearing. Notice of such preliminary hearing shall be given in writing to the licensee and to the employer. It shall state the specific violation or violations, and that continuation of the licensee's employment after the charges are sustained may constitute unprofessional conduct by the licensee. It shall also state that both the licensee and the employer shall have the right to appear at the preliminary hearing, the right to be represented by counsel, and the rights set forth in Section 6510 of the Education Law;
 - 3. failing to provide a patient, upon request, with the patient's prescription, including the name, address and signature of the prescriber and date of the prescription;
 - 4. failing to adhere to standards for ophthalmic materials as set forth in regulations of the Commissioner of Education; or
 - 5. failing to wear an identifying badge as required by Section 29.2(a)(10) of this Part, while working in an establishment which dispenses eyeglasses or lenses to the public.

- b. Nothing in this Part shall be construed to prevent the sale of eyeglasses or lenses for the correction of vision by any person, firm or corporation in accordance with the provisions of Section 7106(2) of the Education Law, or to prevent any contractual arrangement between any such person, firm or corporation, its professional employees, or a person leasing space or equipment to such firm or corporation under which the amount due any of such parties is computed 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.
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§ 29.9 Special provisions for the profession of ophthalmic dispensing.

- a. Unprofessional conduct in the practice of ophthalmic dispensing 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. advertisements of the prices of frames or lenses which do not identify the lenses as single vision, bifocal or trifocal; the specific type of bifocal or trifocal lenses, and as either glass or plastic. Advertisements which indicate that a number of frame types are available at a stated price at an establishment shall not be prohibited; provided, however, that stock sufficient to meet any demand which may be reasonably expected must be maintained at the location. Advertisements of the prices of contact lenses shall state whether the lenses are hard or soft. Any advertised price shall be in effect for a period of time stated in the advertisement;
 - 2. aiding and abetting, directly or indirectly, the conduct or advertising of any employer, firm or associate if such conduct or advertising conflicts with the foregoing regulations. It shall also be unprofessional conduct for a licensee to continue in the employment of an employer who has been found to have advertised in violation of these regulations after a preliminary hearing. Notice of such preliminary hearing shall be given in writing to the licensee and to the employer. It shall state the specific violation or violations, and that continuation of the licensee's employment after the charges are sustained may constitute unprofessional conduct by the licensee. It shall also state that both the licensee and the employer shall have the right to appear at the preliminary hearing, the right to be represented by counsel, and the rights set forth in Section 6510 of the Education Law;
 - 3. failing to fill the prescription in which the refractive error of the eye at a vertex distance is indicated and to dispense the proper effective power of the prescription as adapted and fitted to the patient. Such prescription may

not be modified without the approval of the prescriber and unless this approval is noted on the prescription;

4. failing to adhere to standards for ophthalmic materials as set forth in regulations of the Commissioner of Education; or
 5. failing to wear an identifying badge, as required by Section 29.2(a)(10) of this Part, while working in an establishment which dispenses eyeglasses or lenses to the public.
- b. Nothing in this Part shall be construed to prevent the sale of eyeglasses or lenses for the correction of vision by any person, firm or corporation in accordance with the provisions of Section 7126(1) of the Education Law, or to prevent any contractual arrangement between any such person, firm or corporation, its professional employees, or a person leasing space or equipment to such firm or corporation under which the amount due any of such parties is computed 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.

§ 29.10 Special provisions for the profession of public accountancy.

- a. Unprofessional conduct in the practice of public accountancy shall include all conduct prohibited by Section 29.1 of this Part, except as provided in this section, and shall also include the following:
 1. in expressing an opinion on representations in the financial statements which the public accountant examined:
 - i. failing to disclose a material fact known to the licensee which is not disclosed in the financial statements but disclosure of which is necessary to make the financial statements not misleading;
 - ii. failing to report any material misstatement known to the licensee to appear in the financial statements;
 - iii. failing to acquire sufficient information to warrant the expression of an opinion, or the licensee's exceptions are sufficiently material to negate the expression of an opinion; or
 - iv. failing to direct attention to any material departure from generally accepted accounting principles or to disclose any material omission of generally accepted auditing procedures applicable in the circumstances;

2. allowing any person other than a partner or a duly authorized employee to engage in the public practice of accountancy in the licensee's name or in the name of his or her firm, this paragraph not being intended to apply to the use of firm names by successors;
3. issuing in the public accountant's name, or permitting his or her firm to issue in its name, a report purporting to be based upon an examination by the licensee or his or her firm of financial statements, when any material portion of the examination of such statements and related records, including the examination of any material, financial statements or data incorporated in the financial statements reported upon, has not been made either:
 - i. by the public accountant or a partner or an employee; or
 - ii. with the approval of the public accountant or his or her firm, by a certified public accountant of a state, territory or possession of the United States or the District of Columbia or the holder of an equivalent certificate issued by the proper authorities of another country, or a firm partially composed of such certified public accountants or holders of equivalent certificates, or by a public accountant of the State of New York;
4. making a written forecast of future transactions or permitting such a forecast to be issued in the licensee's name or his or her firm's name without setting forth:
 - i. the character of work performed;
 - ii. the sources of information used and major assumptions made, and the degree of responsibility taken with respect thereto; and
 - iii. a statement that the public accountant or firm does not vouch for the achievability of the forecast;
5. expressing an independent opinion or knowingly permitting his or her firm to express an opinion on financial statements of an enterprise, whether such enterprise is a for-profit or a not-for-profit enterprise, if the licensee or a partner or employee in the firm is not independent with respect to such enterprise. Independence will be considered to be impaired if the public accountant, or a partner in the firm, owns or is committed to acquire any direct or material indirect financial interest in the enterprise or had a direct or material indirect financial relationship with any officer, director, employee or principal stockholder of the enterprise. Independence will be considered to be impaired if the licensee, a partner in the firm or a member of his or her or the partner's immediate family, is

or has been a director or officer of the enterprise, or is or has been involved in any situation creating a conflict of interest, during the period covered by the examination or at the time of issuance of a report;

6. offering or rendering professional services under a contingency fee arrangement when serving a client for whom the licensee performs: an audit or review of a financial statement; or a compilation of a financial statement when the licensee knows or has reason to know that a third party will use the financial statement and the licensee's compilation report does not disclose a lack of independence; or an examination of prospective financial information; or an original or amended tax return or claim for a tax refund; or any public accounting services for a client during the period in which the licensee is engaged in the foregoing services for that client or for any period covered by historical financial statements involving such foregoing services. For the purposes of this paragraph, a *contingency fee* shall mean a fee established for the performance of any service pursuant to an arrangement whereby no fee, or lesser fee, will be charged unless a specified finding or result is attained, or where the fee is otherwise contingent upon the finding or result of such service. Fees are not regarded as contingent if fixed by courts or other public authorities or, in tax matters, if determined on the basis of the results of judicial proceedings or the findings of governmental agencies. Fees charged may vary depending on the complexity of the service rendered;
7. permitting the public accountant's name to be associated with statements purporting to show financial position or results of operations in such a manner as to imply that he or she is acting as an independent certified public accountant or public accountant, unless:
 - i. the licensee has complied with generally accepted auditing standards. The State Board for Public Accountancy may consider statements on auditing standards promulgated by the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board for licensees subject to such requirements, or a recognized national accountancy organization whose standards are generally accepted by other regulatory authorities in the United States, including but not limited to: the American Institute of Certified Public Accountants to be interpretations of generally accepted auditing standards. Departures from such standards, or other standards considered by the State Board to be applicable in the circumstances, must be justified by a licensee who does not follow them; and
 - ii. the licensee expresses an opinion on financial statements or financial data presented in conformity with generally accepted accounting principles. The State Board for Public Accountancy may consider those principles promulgated by a recognized national accountancy organization whose standards are generally

accepted by other regulatory authorities in the United States, including but not limited to: the Financial Accounting Standards Board, the Government Accounting Standards Board, and the International Accounting Standards Board, to be generally accepted accounting principles. If financial statements or data contain departures from generally accepted accounting principles but the licensee can demonstrate that the financial statements or data would have been misleading had generally accepted accounting principles been followed, the licensee's opinion should describe the departure, its approximate effect if practicable, and the reasons why compliance with generally accepted accounting principles would have otherwise been misleading;

8. refusing to furnish to a client upon request:
 - i. copies of tax returns; or
 - ii. copies of reports or other documents that were previously issued to or for such client; or
 - iii. any accounting or other records belonging to or obtained for the client which the public accountant may have had occasion to remove from the client's premises or to receive for the client's account; but this shall not preclude making copies of such documents when they form the basis for work done by the licensee; but in no event shall the public accountant have a lien on these accounting or other records; or
 - iv. copies of information contained in an accountant's working papers, if such information would ordinarily constitute part of the client's books and records and is not otherwise available to the client. Such information shall include client owned records or records which the licensee receives from a client. In addition, it shall include any records, tax returns, reports, or other documents and information which are contained in an accountant's working papers that were prepared for the client by the accountant and for which the accountant has received payment from the client;
 - v. after the licensee has complied with the foregoing requirements by providing information to a client, it shall not constitute unprofessional conduct for an accountant to refuse to provide the same information to the client pursuant to a subsequent request by that client;
 - vi. this paragraph shall apply in lieu of Section 29.1(b)(7) of this Part;

9. permitting any partner, or employee acting as such, to perform any service for his or her client which the licensee or the firm is not permitted to perform;
10. soliciting or advertising for clients in violation of Section 29.1(b)(12) of this Part, which shall be interpreted as follows: soliciting and advertising not in the public interest shall include, but not be limited to, obtaining clients through any other corporation or business used as a "feeder"; using the title of certified public accountant or public accountant together with that of any other business or occupation on any letterhead, card, circular or other media, if the certified public accountant or public accountant conjointly engages in such business or occupation with his or her public accounting practice; provided, however, that nothing herein shall prohibit a certified public accountant or public accountant licensed to practice another profession from including such professional designation on his or her letterhead or business card or upon any listing or other designation of his or her office;
11. failing to maintain and/or submit work papers in accordance with the requirements of this paragraph.
 - i. Applicability of the requirement. The documentation requirements of subparagraph (iii) shall apply to work papers in support of work products issued on or after January 3, 2003. The retention requirements of subparagraph (iv) of this paragraph shall apply to the licensee's work papers that exist on or after January 3, 2003.
 - ii. Definition. As used in this paragraph:
 - a. Work papers means the licensee's records of the procedures applied, the tests performed, the information supporting, and the material conclusions reached for a work product produced in the practice of public accountancy as defined in section 7401 of the Education Law, including but not limited to an audit, review, compilation, forecast or projection. Work papers may include, but are not limited to, programs used to perform professional services, analyses, memoranda, letters of confirmation and representations, copies or abstracts of company documents and schedules or commentaries prepared or obtained by the licensee. Work papers may be in handwritten, typewritten, printed, photocopied, photographed, or electronic form, or in any other form of letters, words, pictures, sounds, or symbols.
 - b. Substantive alterations to work papers means changes to work papers that alter the nature, timing, extent, and results of the procedures performed for the work product; alter the information obtained and the conclusions reached for the work product; and alter the identity of the persons who performed and reviewed the work for the work product.

- iii. Documentation in work papers.
 - a. Work papers shall contain sufficient documentation to enable a reviewer with relevant knowledge and experience, but having no previous connection with the specific work product, to understand the nature, timing, extent, and results of the procedures performed for the work product, information obtained and conclusions reached for the work product, and the identity of the persons who performed and reviewed the work for the work product.
 - b. Within 45 days of the issuance of the work product, a complete set of work papers shall be retained. Any substantive alteration to work papers made subsequent to the issuance of the work product shall be clearly documented by indicating the subject of the alteration, the date of the alteration, and the reason for the alteration.
 - c. Substantive alterations to work papers resulting from post-issuance review procedures shall be identified in an addendum to the work papers. Such alterations shall be clearly documented by indicating the subject of the alteration, the date of the alteration, and the reason for the alteration.
- iv. Retention of work papers.
 - a. Licensees shall ensure that a formal written policy is established for the retention of work papers that is in accordance with the requirements of this subparagraph. Licensees employed by an employer authorized to practice public accountancy shall have met this requirement for a formal written policy, for work papers produced under such employment, if their employer has established a formal written policy for the retention of work papers that is in accordance with the requirements of this subparagraph. Such written policy shall identify the process and authorization requirements for the destruction of work papers after the expiration of the retention period.
 - b. Licensees shall ensure that work papers are retained for a minimum of seven years after the date of issuance of the work product, unless licensees are required by law to retain such records for a longer period. Work papers may be retained for a period that is longer than seven years from the date of the issuance of the work product and may be retained permanently.
 - c. Licensees shall ensure that work papers are retained during the term of a New York State Education Department investigation or disciplinary proceeding by the New York State Education Department that is reasonably related to such work papers. Licensees shall not dispose of such work

papers until notified in writing by the New York State Education Department of the closure of the investigation or until final disposition of the disciplinary proceeding.

- d. If work papers are retained in an electronic form, the licensee shall ensure that such work papers are capable of being accessed, for read-only purposes, throughout the required retention period established for the work papers and are safeguarded through sound computer security procedures to prevent the unauthorized modification of the work papers.
 - e. Work papers shall not be destroyed or otherwise disposed of at a time or in a manner that is inconsistent with applicable requirements of the law.
- v. Availability of work papers to the department. A licensee shall make available to the New York State Education Department at its request work papers that the department determines to be relevant to an inquiry or complaint about a licensee's unprofessional conduct, in accordance with the requirements of section 29.1(b)(13) of this Part.

12. in determining "incompetence" or "negligence" within the meaning of Section 6509(2) of the Education Law, the Board of Regents and the Education Department may consider among others, the generally accepted auditing standards and accounting principles promulgated by the American Institute of Certified Public Accountants and by the Financial Accounting Standards Board (as referenced in paragraph [7] of this subdivision);

- b. Unprofessional conduct shall also include permitting any person to share in the income of a firm practicing public accountancy other than a person authorized to practice public accountancy who is a sole proprietor, a partner, or an officer, director or shareholder of a professional corporation or an employee thereof. This prohibition shall not prevent the payment of salaries or other compensation to employees of a public accounting firm, provided that the total of salaries and other compensation of unlicensed employees which is computed in whole or in part on the basis of a percentage of the income or receipts of the firm does not exceed 35 percent of the annual net income of the firm. For the purposes of this subdivision, annual net income of the firm shall be computed without deduction for total compensation paid to a sole proprietor, partners, or officers, directors or shareholders of professional corporations. Except as provided in this subdivision, it shall be unprofessional conduct for a licensee or professional accounting firm to enter into any arrangement or agreement whereby the amount to be paid for

furnishing of space, facilities, equipment or personnel services to the licensee or firm is computed in whole or in part on the basis of a percentage of, or is otherwise dependent upon, the income or receipts of the licensee or firm. The provisions of this subdivision shall apply in lieu of Section 29.1(b)(4) of this Part.

- c. Unprofessional conduct shall also include revealing of personally identifiable facts, data or information obtained in a professional capacity without the prior consent of the client, except such information may be disclosed as necessary to other licensees of the profession conducting professional standards or ethics reviews, or as otherwise authorized or required by law.
- d. The definitions of unprofessional conduct prescribed in sections 29.1 and 29.10 of this Part that apply to licensees shall also apply to public accountancy firms, meaning any form of business organization that is authorized to engage in the practice of public accountancy and is subject by law to Regents disciplinary proceedings and penalties in the same manner and to the same extent as licensees, unless public accountancy firms are specifically exempted from the definitions of unprofessional conduct in such sections of this Part.
- e. Reportable events.
 - 1. For purposes of this subdivision, public accountancy firm shall have the meaning defined in subdivision (d) of this section.
 - 2. Unprofessional conduct in the practice of public accountancy shall include failure of a licensee or public accountancy firm to submit a written report, as prescribed in paragraph (3) of this subdivision, to the department within 45 days of the occurrence of any of the following events, even though all available appeals have not yet been exhausted, unless exempted from disclosure pursuant to paragraph (5) of this subdivision or excused for good cause as determined by the department, such as a circumstance beyond the licensee's or public accountancy firm's control that prevented timely compliance:
 - i. conviction of a licensee, a registered partnership, or public accountancy firm in New York State or any other jurisdiction of a crime that constitutes a felony or misdemeanor in the jurisdiction of conviction. For purposes of this subparagraph, conviction shall include a plea of guilty or no contest, or a verdict or finding of guilt that has been accepted and entered by a court of competent jurisdiction;
 - ii. receipt of a court decision awarding a monetary judgment in excess of twenty-five thousand dollars in a civil action brought in a court of competent jurisdiction or an award in excess of twenty-five thousand dollars in an arbitration proceeding in which the licensee, the registered partnership, or public accountancy firm is found to be liable for:
 - a. negligence, gross negligence, recklessness, or intentional wrongdoing relating to the practice of public accountancy in New York State;

- b. fraud or misappropriation of funds relating to the practice of public accountancy in New York State;
 - c. breach of fiduciary responsibility relating to the practice of public accountancy in New York State; or
 - d. preparation, publication, and/or dissemination of false, fraudulent, and/or materially incomplete or misleading financial statements, reports, or information relating to the practice of public accountancy in New York State;
 - iii. receipt of written notice of imposition of a disciplinary penalty upon the licensee, the registered partnership, or public accountancy firm, including but not limited to, censure, reprimand, sanction, probation, monetary penalty, suspension, revocation, or other limitation on practice, relating to the practice of public accountancy, issued by:
 - i. the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board;
 - ii. another agency of the United States government that regulates the practice of public accountancy;
 - iii. an agency of the government of another state or territory of the United States that regulates the practice of public accountancy; or
 - iv. an agency of the government of another country that regulates the practice of public accountancy;
- 3. The report to the department shall consist of the following:
 - i. for a conviction as prescribed in subparagraph (i) of paragraph (2) of this subdivision, the report shall consist of a copy of the certificate of conviction, or comparable document of the court;
 - ii. for a court decision or arbitration award as prescribed in subparagraph (ii) of paragraph (2) of this subdivision, the report shall consist of a copy of the court decision or arbitration award and any findings of facts or special verdict form;
 - iii. for a written notice of imposition of a disciplinary penalty upon the licensee, as prescribed in subparagraph (iii) of paragraph (2) of this subdivision, the report shall consist of a copy of the notice; or
 - iv. in lieu of the documentation described in subparagraphs (i), (ii), or (iii) of this paragraph, a narrative statement on a form prescribed by the department setting forth information specified by the department, including but not limited to the date and jurisdiction of the court decision and/or judgment, conviction, arbitration award, or notice of imposition of disciplinary penalty, as applicable.
- 4. A public accountancy firm shall be responsible for reporting reportable events relating to the public accountancy firm, and shall designate an individual to make such reports. An individual licensee shall be responsible for reporting those reportable events specifically relating to the licensee. Licensees who are partners in a registered partnership may designate an individual to report reportable events relating to the

registered partnership, but each such licensee shall be responsible for ensuring the reporting of the reportable events.

5. Failure to submit a report which is subject to a confidentiality order, clause or provision in a court decision or arbitration award under subparagraphs (i) or (ii) of paragraph (2) of this subdivision shall not be deemed to constitute unprofessional conduct under the following conditions:
 - i. the court or arbitrator has included language in such decision that specifically provides that the decision shall not be reported to the department pursuant to this subdivision; or
 - ii. the licensee or firm demonstrates to the satisfaction of the department that the licensee or firm explicitly informed the court or arbitrator in writing prior to execution of any confidentiality order, clause or provision of the duty to report such decision to the department and the effect of any confidentiality order, clause or provision on such duty of disclosure, and the confidentiality order, clause or provision does not expressly provide for disclosure to the department.
 6. Reports submitted to the department in accordance with this subdivision shall be files of the department relating to the investigation of possible instances of professional misconduct and shall be confidential in accordance with the provisions of subdivision (8) of section 6510 of the Education Law.
 7. Nothing in this subdivision shall have any effect upon the duty of the licensee or firm to respond fully to all questions on any re-registration application which shall become due, or to respond to written communications from the department pursuant to section 29.1(b)(13) of this Part.
- f. Unprofessional conduct in the practice of public accountancy shall include:
1. having admitted guilt to or having been found guilty of improper professional practice or professional misconduct in a disciplinary proceeding brought by the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board, where the conduct upon which the finding or admission of guilt was based would, if committed in New York State, constitute professional misconduct under the laws of New York State, provided that in any adversary proceeding conducted pursuant to subdivision (3) of section 6510 of the Education Law, the individual licensee or public accountancy firm shall have the rights set forth in that subdivision; or
 2. having voluntarily consented to a revocation or temporary or permanent suspension of the authority to appear or practice as an accountant before the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board, or having voluntarily surrendered

such authority; or having voluntarily consented to a revocation or temporary or permanent suspension from further association with any public accounting firm registered pursuant to Chapter 98 of Title 15 of the United States Code, or having voluntarily surrendered such authority; or having voluntarily consented to a revocation or temporary or permanent suspension of registration under Chapter 98 of Title 15 of the United States Code, or a voluntary surrender of such registration; all after a disciplinary action was commenced by the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board where any conduct charged resulting in the consent to such revocation or temporary or permanent suspension or surrender would, if committed in New York State, constitute professional misconduct under the laws of New York State; and where the date of such consent or surrender is on or after January 1, 2007. In any adversary proceeding conducted pursuant to subdivision (3) of section 6510 of the Education Law, the individual licensee or public accountancy firm shall have the rights set forth in that subdivision.

- g. Unprofessional conduct in the practice of public accountancy, as such practice relates to the audit in the practice of public accountancy of an issuer of publicly traded securities that is subject to the Federal Sarbanes-Oxley Act of 2002, shall include, for purposes of subdivision (f) of this section, a failure of a licensee or public accountancy firm, as appropriate, to meet the standards prescribed in the following provisions of Federal law: subdivisions (a), (b), (g), (h), (i), (j), (k), and/or (l) of section 78j-1 of Title 15 of the United States Code (United States Code, 2000 edition, Volume 7, and Supplement II, Volume 1 to the 2000 edition; Superintendent of Documents, U.S. Government Printing Office, Stop SSOP, Washington, DC 20402-0001; available at the NYS Education Department, Office of the Professions, 2M West Wing, Education Building, 89 Washington Avenue, Albany, NY 12234). To the extent that the United States Securities and Exchange Commission or the Public Company Accounting Oversight Board have exempted or excepted licensees or public accountancy firms from these standards, such exemptions or exceptions shall also apply to the requirements of this subdivision.

§ 29.11 Special provisions for the profession of certified shorthand reporting.

- a. Unprofessional conduct in the practice of certified shorthand reporting shall include all conduct prohibited by Section 29.1 of this Part, except as provided in this section. The provisions of Section 29.1(b)(3) of this Part, except as it prohibits bribes, and Section 29.1(b)(12)(i)(d), (e) and (g) of this Part shall not apply to the practice of certified shorthand reporting.

§ 29.12 Special provisions for the profession of psychology.

- a. Unprofessional conduct in the practice of psychology shall include 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. in the conduct of psychological research, failing to undertake reasonable efforts to remove the possible harmful aftereffects of emotional stress as soon as the design of the research permits, or failing to inform prospective research subjects or their authorized representatives fully of the danger of serious aftereffects, if such danger exists, before they are utilized as research subjects;
 2. in the interpretation of the provisions of Section 29.1(b)(5) of this Part and in the treatment of sexual dysfunction, as well as in other areas of the practice of psychology:
 - i. immoral conduct shall include any physical contact of a sexual nature between psychologist and client; but immoral conduct shall not include the use of films and/or other audiovisual aids with individuals or groups in the development of appropriate responses to overcome sexual dysfunction;
 - 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.

§ 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.

§ 29.15. Special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis.

Unprofessional conduct in the practice of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis shall include conduct prohibited by sections 29.1 and 29.2 of this Part and, in accordance with section 8407 of the Education Law, shall also include:

- a. in the case of treatment of schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder and autism, providing any mental health service for such illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness. Such medical evaluation and consultation shall be to determine and advise whether any medical care is indicated for such illness;
- b. prescribing or administering drugs as a treatment, therapy, or professional service in the practice of his or her profession; or
- c. using invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For purposes of this subdivision, invasive procedure means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedure includes, but is not limited to, surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy.

§ 29.16. Special provisions for the social work professions.

Unprofessional conduct in the practice of licensed master social work and licensed clinical social work shall include conduct prohibited by sections 29.1 and 29.2 of this Part and, in accordance with section 7708 of the Education Law, shall also include:

- a. prescribing or administering drugs as a treatment, therapy, or professional service in the practice of his or her profession; or
 - b. using invasive procedures as a treatment, therapy, or professional service in the practice of his or her profession. For purposes of this subdivision, invasive procedure means any procedure in which human tissue is cut, altered, or otherwise infiltrated by mechanical or other means. Invasive procedure includes, but is not limited to, surgery, lasers, ionizing radiation, therapeutic ultrasound, or electroconvulsive therapy.
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§ 29.17. Special provisions for the profession of physical therapy.

(Effective November 23, 2006)

Unprofessional conduct in the practice of physical therapy shall include conduct prohibited by sections 29.1 and 29.2 of this Part. In addition, unprofessional conduct in the practice of physical therapy shall include failing to meet the requirements of subdivision (d) of section 6731 of the Education Law and/or section 77.9 of this Title, when providing treatment in the practice of physical therapy without a referral from a physician, dentist, podiatrist, or nurse practitioner.