
**Mental Health Practitioner
Practice Guidelines
Licensed Mental Health Counselors
Licensed Marriage & Family Therapists
Licensed Creative Arts Therapists
Licensed Psychoanalysts**

The University of the State of New York
THE STATE EDUCATION DEPARTMENT

Office of the Professions
Division of Professional Licensing Services
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NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF THE PROFESSIONS
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GUIDELINES FOR MENTAL HEALTH PRACTICE IN NEW YORK STATE

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Introduction

The State Education Department and the State Board for Mental Health Practitioners have developed practice guidelines to provide you with important information on good and recommended practices in the mental health professions. While this information is **not** a substitute for an understanding of the law, rules and regulations governing the practice of the mental health professions in New York State, it is a useful supplement that reflects common professional practice issues and concerns. These practice guidelines can help licensed mental health practitioners to better understand what might lead to professional practice complaints and to take steps to eliminate or minimize those situations.

These practice guidelines reflect the collective experience of the members of the State Board for Mental Health Practitioners along with input from a variety of sources, including mental health organizations and practitioners, mental health educators, Office of the Professions' staff, and other State Boards for the Professions.

Relevant sections of Education Law are available through the Office of the Professions Web site at www.op.nysed.gov/title8.htm. Part 29 of the Rules of the Board of Regents on Unprofessional Conduct is accessible at www.op.nysed.gov/part29.htm. You may access all New York State Laws, such as Public Health Law, Civil Practice Law and Rule, and Insurance Law at <http://public.leginfo.state.ny.us>.

If in doubt about the appropriateness of specific practices, you should consult the actual laws, rules or regulations. You may also access these guidelines on our Web site at www.op.nysed.gov/mhp.htm. You may direct any questions and comments to David Hamilton, Executive Secretary for the State Board for Mental Health Practitioners, at 518-474-3817 ext. 450, by e-mail at mhpb@mail.nysed.gov, or by fax to 518-486-2981.

Purpose, Benefits and Limitations of Practice Guidelines

In accordance with Section 6504 of Title VIII of the Education Law:

"Admission to the practice of the professions and regulation of such practice shall be supervised by the board of regents and administered by the education department, assisted by a state board for each profession."

The Board of Regents' supervision and the State Education Department's administration of professional regulation is guided by the Education Law, Regents Rules and Commissioner's Regulations. To meet their responsibility to assist in regulating the practice of the professions, several professional State Boards have developed practice guidelines to assist licensed professionals in understanding how to apply the law and accompanying rules and regulations in their daily practice. They are intended to provide licensees with guidance to promote good practice and prevent incidents of professional misconduct¹.

¹It should also be understood that it is not the intent of the guidelines to establish a standard for the evaluation of issues in civil liability lawsuits involving claims of negligence or malpractice. The intent is to provide a frame of reference to be used with other appropriate considerations for assessment of issues relating to professional misconduct and unprofessional conduct as defined by statute, Regents Rule or Commissioner's Regulations.

Practice guidelines can benefit licensees and consumers by broadening their understanding of statutory and regulatory language that defines professional practice, including professional misconduct and unprofessional conduct. They inform practitioners of the Office of the Professions' and State Board's perspective of what constitutes good practice in their profession. In the discipline process, practice guidelines can serve as one of many resources that may be referred to by a board member in consultations, early involvement meetings, and informal settlement conferences, all of which seek resolution of complaints. When combined with the board member's education, experience, and prior activity in the profession and the disciplinary process, they can inform a board member's recommendation when consulted upon a complaint.

Practice guidelines, however, are not a substitute for nor do they have the authority of Education Law, Regents Rules, or Commissioner's Regulations. They do not have the force of the law. Therefore, while the guidelines may be a resource in assessing conduct that underlies a violation, they may not be used as the basis for a charge of professional misconduct. Specifically, a professional cannot be charged with professional misconduct based upon a violation of or failure to comply with guidelines. A licensee can only be charged with professional misconduct if there is a violation of the Education Law or Regents Rules. Nor can conformance with guidelines be deemed to immunize a professional from potential charges of misconduct. Those determinations are to be made on a case by case basis by the Professional Conduct Officer in accordance with Section 6510 of the Education Law.

In formal disciplinary hearings, a guideline may not be used in deliberations unless the Administrative Officer determines that it is admissible. Unless guidelines have been legally admitted into evidence upon a motion to be decided by the Administrative Officer, a panel should not refer to guidelines because a determination should be based solely on the evidence of individual conduct in an individual case. We realize that a panel member may have discussed and contributed to the development of practice guidelines. That is part of the board member's perspective, formed by his or her professional background, education, experience, research, and discussions. When a board member serves on a hearing panel, due process requires that board member to disregard whatever knowledge or insight was developed during the development of the guidelines unless they have been admitted into evidence, as noted above.

A guideline cannot be part of the hearing record or considered as evidence of the respondent's guilt, unless it has been admitted into evidence. In analyzing and interpreting the evidence presented in the hearing record, panel members should not substitute any guideline for evidence or proof of any charge.

As an articulation of good practice, guidelines are a very important tool for the State Education Department in meeting its critical mission of promoting good practice. We hope you find this information useful.

**NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF THE PROFESSIONS
STATE BOARD FOR MENTAL HEALTH PRACTITIONERS**

GUIDELINES FOR MENTAL HEALTH PRACTICE IN NEW YORK STATE

Guideline 1: Defining the Terms for Providing Professional Services

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

As a licensed mental health practitioner, you are required to practice within your authorized scope of practice, as defined in the Education Law, Commissioner's Regulations and Rules of the Board of Regents. It is important that you are aware of any restrictions that are based on law or regulation, as well as those areas in which you are competent to practice.

A licensed mental health practitioner may be charged with unprofessional conduct for practicing the profession beyond the authorized scope. A licensee can be charged with gross incompetence for providing professional services that they are not competent to provide, even one that falls within the legal scope of practice for their profession. As a licensed professional, it is your responsibility to practice within the scope of your abilities and expertise. If you practice beyond your personal scope of competence, you can be charged with professional misconduct.

At the outset of service, you should provide your patient with information on what services you or your agency can provide to patients and what is required of patients receiving these services. You should involve your patient in the development and implementation of any treatment program or service plan to the fullest extent of the patient's abilities.

Consumers' Rights

All consumers of services offered by New York State licensed professionals have the right to:

- receive competent professional services;
- verify the credentials of licensed professionals and to know the names and titles of licensed professionals who provide services;
- receive clear explanations of the services being offered or provided and how much they cost;
- refuse any services offered;
- know what patient records will be maintained and how to obtain copies; personally identifiable information normally cannot be revealed without the patient's consent;
- file a complaint with the State Education Department about a licensed professional or an unlicensed practitioner; and
- request and be provided a reasonable accommodation to access professional services if they have a disability.

Informed Consent

You may wish to develop a written statement for the patient to sign to document informed consent to treatment and the boundaries of practice. Items that could be included in such a form include:

- your qualifications as a licensed professional and the qualifications of any staff you employ or supervise who might be treating the patient;
- your requirement to report suspected child abuse and maltreatment or crimes, in conformance with applicable State and federal laws and regulations;
- a delineation of services that you provide in your practice, as well as situations in which you may seek the patient's consent to consult with another licensed colleague or refer for supplementary treatment.

If you ask the patient to sign the consent form, you should provide the patient with a copy and place the original in the patient's file.

Fees and Procedures

You may wish to provide a written statement to your patient regarding all fees and relevant business procedures. This may include, but is not limited to, procedures for billing and payment including the use of collection agencies, when appropriate, requirements for canceling appointments, charges for missed appointments, and your patient's right to access records under the law.

If you participate with third-party insurers, including public programs, you should communicate particular requirements and responsibilities to your patient and conform with applicable State or federal laws, rules or regulations.

Termination of Services

The patient has the right to terminate services at any time. However, if a patient wishes to stop using your services against your advice and you believe that this places the patient or others at risk, you should develop a clear plan, preferably in writing, for re-engaging the patient or directing the patient to other services and measures taken by you to prevent patient harm to self or others. You should note why you believe termination is not appropriate, any alternative services that could be sought by the patient, and the means by which the patient may return to your care. Provide a copy of the plan to the patient and place a copy in the patient's file.

If you close your practice, provide reasonable advance notice in writing and a clear, written plan to patients for continuation of care and transfer of records. You should place a copy of the plan in the patient's file and ensure safe storage of records.

When you are not accessible or available for a short time, for example during your vacation, you should provide patients with information on how to contact you or a qualified, licensed professional in the event of an emergency.

Citations of Pertinent Law, Rules or Regulations:

- Education Law, section 6509(9) - *"unprofessional conduct"*
- Education Law, section 6509-a - *"fee splitting"*
- Education Law, section 8402(1) - *"practice of mental health counseling"*
- Education Law, section 8403(1) - *"practice of marriage and family therapy"*
- Education Law, section 8404(1) - *"practice of creative arts therapy"*
- Education Law, section 8405(1) - *"practice of psychoanalysis"*
- Education Law, section 8407 - *"boundaries of professional competency"*
- Regents Rules, part 29.1(b)(2) - *"exercising undue influence"*
- Regents Rules, part 29.1(b)(3) - *"referral fees"*
- Regents Rules, part 29.1(b)(4) - *"fee splitting"*
- Regents Rules, part 29.1(b)(7) - *"failing to release requested records"*
- Regents Rules, part 29.1(b)(11) - *"patient/client authorization of services"*
- Regents Rules, part 29.1(b)(12) - *"advertising not in the public interest"*
- Regents Rules, part 29.2(a)(1) - *"abandoning a patient/client"*
- Regents Rules, part 29.2(b) - *"failing to provide access to records as required by Public Health Law, section 18"*
- Regents Rules, part 29.15 - *"special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis"*

NEW YORK STATE EDUCATION DEPARTMENT
OFFICE OF THE PROFESSIONS
STATE BOARD FOR MENTAL HEALTH PRACTITIONERS

GUIDELINES FOR MENTAL HEALTH PRACTICE IN NEW YORK STATE

Guideline 2: Maintaining Confidentiality of Patient Information

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

At the outset of service, you should clearly advise patients, preferably in writing, of your professional responsibility to maintain confidential information. This may include a review of your policy on record keeping and patient access to records, communications with other health care providers, and mandatory reporting of suspected child abuse or neglect or possible danger to the patient or others.

Clarify with patients how confidential information will be managed within your professional agency or organization, within supervisory or consultative relationships, and with colleagues who may provide coverage in your absence.

When seeing legally dependent patients (e.g., minors) or more than one patient together (e.g., family or group services), clarify the ways in which individual confidences will be managed. If you are practicing in an agency or school, you should be familiar with their policy for sharing information with other parties.

Before sharing personally identifiable facts, data, or similar information with others (e.g., family members, third party payers, other agencies), secure the informed consent of the patient, preferably in writing, except as otherwise authorized or required by law (see Guideline 1).

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(9) - *"unprofessional conduct"*

Regents Rules, part 29.1(b)(7) - *"failing to release requested records"*

Regents Rules, part 29.1(b)(8) - *"revealing information without patient consent"*

Regents Rules, part 29.15 - *"special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis"*

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Guideline 3: Advertising and Specialty Credentials

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

In New York State you may only refer to yourself as "licensed" if you are licensed and registered to practice with the State Education Department as a licensed mental health counselor, licensed marriage and family therapist, licensed creative arts therapist, or licensed psychoanalyst.

Specialty Titles

A licensed and registered mental health practitioner may achieve certification by a national organization in the practice of the profession or a specialty within the profession, such as a "Board-Certified Music Therapist", "Art Therapist-Registered", "National Certified Counselor", or "Approved Supervisor in the American Association for Marriage and Family Therapy". In order to use a specialty title in the name of a professional corporation or in an advertisement, you would be required to substantiate that you have met the requirements necessary to use the title, including appropriate education, training, or experience. If you could not document such specialty you may be denied the use of such title in the name of a professional corporation registered by the Education Department or face a charge of unprofessional conduct for advertising that is misleading or not in the public interest.

Advanced Education or Specialty Training

If you have received a graduate degree or have completed specialized training, you may refer to that degree or qualification in your advertising or signature. However, you may not imply that the degree or training alone qualifies you as a licensed professional under the Education Law.

Licensees, other than an allopathic (M.D.) or osteopathic (O.D.) physician who use the title "Doctor" must indicate the profession in which you hold a doctorate when offering to provide professional services.

Providing Services That Do Not Require a License

As a licensed mental health practitioner, you may provide services that do not require a license, such as "coaching". However, if you use your professional title or license to suggest that you are more qualified than an unlicensed person providing similar services, you could face charges of unprofessional conduct for advertising that is not in the public interest.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6503 - *"practice of a profession"*

Education Law, section 6509(9) - *"definitions of professional misconduct"*

Education Law, section 8410(1) - *"practice by other licensed professionals"*

Regents Rule 29.1(b)(12)(I)(a) - *"unprofessional conduct"*

Regents Rule 29.1 (b)(12)(I)(d) and (f) - *"unprofessional conduct"*

Regents Rule 29.2(a)(4) - *"unprofessional conduct for health professions"*

Regents Rules, part 29.15 - *"special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling, and psychoanalysis"*

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Guideline 4: Documenting the Provision of Services

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

You should maintain written records related to all substantive contact with patients and the records should be kept in a secure setting. If you choose to keep electronic records, you should make a backup copy that is kept in a secure setting.

While the content and format of patient records is not prescribed in the law or regulations, you must maintain a record that indicates the assessment and treatment of each patient. There is general consensus that an acceptable record includes:

- patient name and contact information;
- reason for initial contact, preliminary assessment, and subsequent disposition;
- comprehensive assessment of problem, including reasons to support the assessment;
- history of treatment for same or related condition, including any medical evaluations and prescriptions if appropriate;
- plan for service;
- dates of service and issues of significance discussed during each contact with patient, including specific actions to be taken related to those issues, if relevant;
- discharge summary, including specific notation of any plans for future treatment and/or referral or circumstances under which a patient stops using services against your advice or because you are leaving the agency and/or practice (see Guideline 1);
- specific steps taken at any time during the course of service to assess and treat issues of potential danger to the patient and/or others, such as suicide or homicide, or the suspected abuse or neglect of a child; and
- any consultations with other professionals, including reason for consult and outcome, and patient's authorization to release information.

Maintain all paper and electronic patient records in a secure area accessible only to authorized persons in accordance with applicable State and federal laws and regulations and in a manner that lends itself to substantiating the records to be trustworthy and unalterable.

Be aware of retention requirements for patient records, including the period you are required to retain records by law. You should plan to retain records for a longer period, when necessary, such as a patient with a long-term condition whose treatment will continue beyond the statutory requirement. You must keep records for 6 years or until the patient turns 22 years of age, whichever is longer.

You should be familiar with requirements for providing patient access to records. For instance, New York State public health law requires that you provide a patient with copies of his or her records, upon request, and may charge no more than 75 cents per page for copying the records.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(9) - *"unprofessional conduct"*

Education Law, section 8407(1) - *"boundaries of professional competency"*

Public Health Law, section 18 - *"access to records"*

Regents Rules, part 29.2(a)(3) - *"failing to keep records"*

Regents Rules, part 29.15 - *"special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis"*

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Guideline 5: Maintaining Appropriate Professional Boundaries

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

It is your responsibility, not your patient's, to maintain appropriate boundaries in your professional relationship. All complaints of inappropriate behavior by licensed professionals are taken very seriously. The Regents Rules define as unprofessional conduct a licensed professional exercising undue influence on a patient in such a manner as to exploit the patient or conduct that evidences moral unfitness to practice the profession of a licensed mental health practitioner.

You should be especially vigilant regarding any conduct that could impair your objectivity and professional judgment in serving your patient, and any conduct that carries the risk and/or the appearance of exploitation or potential harm to your patient. If a current or former patient files a complaint against you, it will be your responsibility to demonstrate that you have not exploited or coerced the patient, either intentionally or unintentionally.

The practice of the mental health professions, including counseling and psychotherapy, requires interaction with patients, which may be emotional. In most cases, it is advisable to avoid hugging or other physical contact that could imply that you have a personal, rather than a professional, relationship with the patient. If a situation arises that leads you to believe that a hug or similar contact is appropriate, you should still seek the patient's consent before touching or hugging him or her to minimize the risk of misunderstanding or allegations of inappropriate contact.

You should recognize and avoid the dangers of dual relationships when relating to patients in more than one context, whether professional, social, educational, or commercial. Dual relationships can occur simultaneously or consecutively. Some of the types of situations that may lead to problems include, but are not limited to:

- accepting as a patient anyone with whom you have had a prior sexual relationship;
- forming a sexual relationship with a current or former patient;
- treating patients to whom you are related by blood or legal ties;
- bartering with patients for the provision of services;
- supervising applicants for licensure or other training when you are related by blood or legal ties, or when you are having or have previously had a sexual relationship with the trainee;
- referring patients to services in which you have a financial relationship, without disclosing that you may stand to benefit financially from their use of the service; and
- entering into financial relationships with patients other than their paying for your professional services.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(9) - *"unprofessional conduct"*

Regents Rules, part 29.1(b)(2) - *"exercising undue influence"*

Regents Rules, part 29.1(b)(5) - *"moral unfitness to practice"*

Regents Rules, part 29.2(a)(2) - *"patient harassment, abuse, intimidation"*

Public Health Law, section 238 - *"health care practitioner referrals"*

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Guideline 6: Delegation of Professional Practice to Authorized Persons

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

Practice as a mental health practitioner is defined in the Education Law and restricted to individuals licensed in those professions. The law defines exempt persons, including individuals licensed in similar professions that are authorized to provide mental health services, students in registered education programs, and individuals under a limited permit issued by the Education Department, who can provide services that would otherwise be restricted to licensees. Exempt persons cannot use a professional title restricted to licensees.

As a licensed mental health practitioner, you may not delegate to an unlicensed person any activities that are defined as the practice of your profession and which can only be performed by a licensed or exempt person, even when the unlicensed person is under your supervision.

A person not licensed or otherwise authorized under the Education Law may perform only those functions that any unlicensed person could perform, such as assisting a patient in completing a form or assessment and a patient history.

If you are supervising a student in an approved education program or an individual with a limited permit to practice your profession, you may not delegate tasks that the person is not qualified by training, education or experience to perform. If you delegate tasks that are beyond the competence of the person you are supervising, charges of unprofessional conduct could be brought against you and the supervisee under the Education Law and Regents Rules.

Before delegating a task to a student in an approved education program or an individual with a limited permit, you should consider several factors, including the following.

Supervision

The tasks you assign to the student or permit holder should be based on instructions you provide in the course of the procedure. You should be certain that the task is within the abilities of the student or permit holder and it may be necessary for you to remain in the office where the services are being performed. If you do not participate in the treatment of the patient, it may be advisable to meet with the patient who received services from the student or permit holder, depending on the training and competence of the student or permit holder.

Training

Although tasks may be delegated to a student in an approved education program or an individual holding a limited permit, you should ensure that the person is appropriately trained or authorized to provide the task.

Responsibility

You are responsible and accountable for services performed by an individual under your supervision. Education Law prohibits a licensed professional from permitting, aiding or abetting an unlicensed individual to perform tasks that require a professional license, even one authorized under the Education Law such as a student in an approved education program or a limited permit holder.

If a student in an approved program or an individual with a limited permit is providing services under your supervision, you should consider how to refer to the student or permit holder. You should communicate clearly to the patient the qualifications, title, and responsibility of the student or permit holder, including your role as supervisor, to avoid misunderstanding of the relationship between you, the supervisee and the patient.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(2) - *"incompetence and negligence"*

Education Law, section 6509(7) - *"permitting unlicensed practice"*

Education Law, section 6509(9) - *"unprofessional conduct"*

Education Law, section 6512 - *"unauthorized practice a crime"*

Education Law, section 6513 - *"unauthorized use of a professional title a crime"*

Regents Rules, part 29.1(b)(9) - *"practicing beyond competency and without adequate supervision"*

Regents Rules, part 29.1(b)(10) - *"improper delegation of duties"*

Regents Rules, part 29.2(a)(5) - *"failing to supervise appropriately"*

Education Law, section 8402(2) - *"practice of mental health counseling"*

Education Law, section 8403(2) - *"practice of marriage and family therapy"*

Education Law, section 8404(2) - *"practice of creative arts therapy"*

Education Law, section 8405(2) - *"practice of psychoanalysis"*

Education Law, section 8410(3) - *"exemptions"*

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GUIDELINES FOR MENTAL HEALTH PRACTICE IN NEW YORK STATE

Guideline 7: Consultation with Other Professionals

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

You may only provide mental health services that you are personally competent to provide, even though the service may be included in the scope of practice for your profession. In the course of your practice, you may be faced with a patient whose condition or complaint is beyond your professional competence and training, so that you choose to consult with a colleague who is better qualified to treat the patient. You should seek informed consent, preferably in writing, from the patient for the consultation if it could reveal patient-identifiable information.

When you are consulting with another professional about a patient, you should remember that:

- the patient must consent before confidential information is shared with another licensed professional;
- whether consultation is in oral or written form, the consultation should be documented in the patient's record with a copy of the patient's signed consent included in the record;
- you should provide a summary of your assessment of the patient, treatments implemented and results, and the desired outcome of the consultation;
- if appropriate, you should discuss with the patient a potential transfer of care to another licensed professional and the discussion and plans should be reflected in the patient's chart;
- you may choose to include the patient's self-reported physical health in your intake or assessment to determine whether the patient is currently or has been under medical treatment for a related condition and whether services should be coordinated with another provider.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(2) - "*practicing beyond the scope*"

Education Law, section 8407 - "*boundaries of professional competency*"

Regents Rules, part 29.1(b)(9) - "*practicing or offering to practice beyond the authorized scope*"

Regents Rules, part 29.2(a)(3) - "*record of treatment and evaluation*"

Regents Rules, part 29.1(b)(9) - "*practicing beyond competency*"

Regents Rules, part 29.15 - "*special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis*"

NEW YORK STATE EDUCATION DEPARTMENT
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Guideline 8: Maintaining Professional Competence

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Although the Education Law does not require that you meet continuing education requirements to renew your license as a mental health practitioner, you should assess and renew your competence throughout your career through self-evaluation, education, and consultation.

You can expand your knowledge and skills during your career through continuing education and training. While maintaining professional competence is important for all professionals, many specialty credentials have specific continuing education requirements. You should document all of the activities and education you undertake so you can verify your expertise and training.

If you are a recent graduate and a new licensee in the practice of the mental health professions your education and training may not have prepared you to provide all the services that could be offered by a licensed mental health professional in New York State. Before you include new or advanced professional services in your profession, particularly one that was not included in your professional education (e.g., biofeedback or hypnosis), it may be necessary for you to enroll in and successfully complete a program of study in a recognized institution and/or with recognized authorities to ensure competency in that service.

Even if you complete training in a professional specialty or service, you must maintain your registration to practice your profession in New York State. A national credential or voluntary registration by a professional organization cannot substitute for licensure. Similarly, you must be clear in advertising and other communications as to the mental health profession in which you are registered to practice in New York State, particularly when the credential or designation is not restricted to an individual licensed in the same profession as you. For instance, designation in biofeedback may be available to individuals licensed in the professions of mental health counseling, licensed clinical social work, psychology, physical therapy, or medicine but each licensee could only provide services in his or her personal competence that are allowed within the practice of the licensee's profession. You must use your professional title when providing professional services, not a general title such as "psychotherapist," "art therapist," or "hypnotist."

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(2) - *"incompetence and negligence"*

Education Law, section 6509(9) - *"unprofessional conduct"*

Education Law, section 8402(2) - *"practice of mental health counseling"*

Education Law, section 8403(2) - *"practice of marriage and family therapy"*

Education Law, section 8404(2) - *"practice of creative arts therapy"*

Education Law, section 8405(2) - *"practice of psychoanalysis"*

Regents Rules, part 29.1(b)(9) - *"practicing beyond competency"*

Regents Rules, part 29.15 - *"special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis"*

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Guideline 9: Engaging in Telepractice

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

"Telepractice" is providing service that is not "in person" and is facilitated through the use of technology. Such technology may include, but is not limited to, telephone, telefax, e-mail, internet, or videoconference.

Practice as a licensed professional in New York State, even through telepractice, requires the practitioner to be licensed or otherwise authorized to practice in New York. Telepractice, when used as a form of mental health practice, is subject to all practice and ethical considerations discussed in this document and in the law, rules and regulations governing licensed practice in New York State. If you are licensed in New York State and wish to provide services in another jurisdiction, you should determine the qualifications for practice and any requirements for licensure imposed by that jurisdiction.

You should consider the particular impact of telepractice on dimensions of mental health practice, including, but not limited to:

- awareness and assessment of non-verbal behavior by the patient;
- ensuring the privacy of patients and protection of confidential information through the transmission of information;
- relational and transference issues;
- access issues such as distribution of computers and familiarity with technology;
- temporal factors such as simultaneous communication, time between responses, and formalized "sessions";
- provisions for emergencies; and
- development of technological proficiencies and on-line culture/language.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(2) - *"incompetence and negligence"*

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Guideline 10: Improving Practice Through Supervision

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

Your Use of Supervision

If you are receiving supervision for the purpose of qualifying for licensure, you should ensure that the supervision is provided according to the requirements defined in the Education Law and Commissioner's Regulations. The regulations establish qualifications for a supervisor that include education, licensure in New York State to practice the profession being supervised, and at least three years of experience in the practice of the profession.

You should not accept employment unless the supervision you will receive meets the specific requirements for the frequency, duration, and location of supervision necessary to qualify for a professional license. You can review the definition of a qualified supervisor in the law and regulations.

After you are licensed and during your initial years of professional practice, you are encouraged to seek regular supervision focused primarily on improving skills and knowledge in patient care and professional development. You may wish to seek supervision from a more experienced practitioner in the same profession as you or from a licensed professional in another field with experience in that area of patient care.

Even as an independent and mature practitioner, you should seek consultation with experienced colleagues whenever you are minimally qualified in a specific practice modality, when you believe a patient could benefit from a collaborative approach to service, or when the practice raises personal issues that may affect or obstruct your ability to provide professional services.

Your Responsibility as a Supervisor

Your supervisory relationships are a form of professional practice and should be governed by the same guidelines that apply to patient relationships with regard to ethical considerations, defining needs, confidentiality, expectations and responsibilities and in establishing appropriate boundaries.

It is your responsibility as the supervisor to ensure that the supervisee is competent to practice, whether or not the supervisee is licensed. The supervisor who allows a supervisee to practice beyond the supervisee's level of competence, may be subject to charges of professional misconduct under the Education Law.

If you are providing supervision in a group setting, the size and duration of the group should be conducive to participation by all supervisees. Many agree that groups should be limited to no more than five supervisees with one supervisor. You may choose to supervise a group of less than five, based on factors such as your supervisory skills and the qualifications and needs of the supervisees.

In some instances, the Commissioner's Regulations may allow you to provide supervision by telephone or other technology. Before using such technology, you should determine the requirements established in regulation and assess the skills of the supervisee and the purpose of the supervision, including limitations that may be inherent in the use of supervision that is not conducted face-to-face.

You may find it helpful to conduct a regular progress report with your supervisee(s). This could include documentation of the supervisee's ability to:

- establish professional relationships;
- assess patient need and plan appropriate interventions;
- carry out appropriate interventions;
- be flexible and change interventions in response to changing needs or patient preferences;
- practice as a licensed professional;
- work effectively with patients at various levels and in relation to systems, including families, organizations and other groups.

When you provide supervision you should consider developing with the supervisee a written agreement that clarifies the responsibilities of each party, such as:

- purpose and scope of the supervision;
- learning and development needs of the supervisee and plans to address those needs in supervision;
- structure of the supervision, including but not limited to:
 - o expected duration of the supervisory relationship;
 - o if other than individual supervision, the number of participants;
 - o duration/length of each supervisory session;
 - o frequency of supervisory sessions;
 - o time and place of supervisory sessions;
 - o cost (if any) and payment arrangements;
 - o responsibilities for case materials;
 - o role expectations of supervisor and supervisee(s);
 - o accountability and reporting requirements;
 - o confidentiality protections.

You should not accept responsibility for supervising an individual if you are not licensed in the profession or have not met other appropriate qualifications. Supervising an individual when you are not competent could result in charges of unprofessional conduct against you and the supervisee.

An individual practicing under a limited permit is not qualified to practice independently. In most cases, the permit holder may not supervise other permit holders, students, interns, or licensees.

The supervisor must have access to information about the supervisee's patient in order to provide appropriate supervision. The supervisee and supervisor must place a premium on maintaining as confidential any patient-specific information. The supervisor has the same obligation as the supervisee to keep information confidential. You may not provide third party supervision to an individual employed in an agency, without the consent of the employing agency.

When you are supervising an individual under a limited permit, the supervisee must notify the patient in advance that information will be shared with a licensed supervisor for the purpose of improving the practitioner's skills. The patient must know that you are supervising the permit holder and how to contact the supervisor. Even when you are licensed and practicing independently, and you choose to consult with a supervisor to improve your skills, you should obtain the patient's consent if identifiable information may be shared with a third-party.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(2) - *"incompetence and negligence"*

Education Law, section 6509(7) - *"permitting unlicensed practice"*

Education Law, section 6509(9) - *"unprofessional conduct"*

Regents Rules, part 29.1(b)(9) - *"practicing beyond competency and without adequate supervision"*

Regents Rules, part 29.1(b)(10) - *"improper delegation of duties"*

Regents Rules, part 29.2(a)(5) - *"failing to supervise appropriately"*

Commissioner's Regulations, part 79-9.3 - *"experience requirement" for mental health counselors*

Commissioner's Regulations, part 79-10.3 - *"experience requirement" for marriage and family therapists*

Commissioner's Regulations, part 79-11.3 - *"experience requirement" for creative arts therapists*

Commissioner's Regulations, part 79-12.3 - *"experience requirement" for psychoanalysts*

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GUIDELINES FOR MENTAL HEALTH PRACTICE IN NEW YORK STATE

Guideline 11: Consultation for Treatment of Serious Mental Illness

Law, rules and regulations, not guidelines, specify the requirements for practice and violating them constitutes professional misconduct. Not adhering to this guideline may be interpreted as professional misconduct only if the conduct also violates pertinent law, rules and regulations, some citations of which are listed at the end of this guideline and available on the Web at www.op.nysed.gov.

Education Law and Regents Rules define the practice of the professions of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis, and a licensee may only engage in those activities within the scope of practice in which the licensee is competent. In the course of providing professional services, a licensee may encounter situations or conditions that are beyond his or her competence or authorized practice. In these situations, it is the licensee's responsibility to ensure that the patient is referred appropriately for further assessment or treatment.

Prior to providing professional services, you should inform the patient about the services you are authorized to provide under law. You may wish to review in particular the practice guidelines developed by the State Board in relation to:

- Defining the terms for providing professional services (Guideline 1);
- Documenting the provision of services (Guideline 4); and
- Consultation with other professionals (Guideline 7).

When providing professional services to patients or prospective patients, it may be appropriate to note that the Education Law and Regents Rules place restrictions on services that may be provided. For instance, a licensee may not prescribe or administer drugs or use invasive procedures that involve cutting or altering human tissue as a treatment, therapy or professional service.

The Education Law and Regents Rules specify that it is unprofessional conduct for a creative arts therapist, marriage and family therapist, mental health counselor, or psychoanalyst to provide any mental health service for a serious mental illness on a continuous and sustained basis without a medical evaluation of the illness by, and consultation with, a physician regarding such illness. The law defines serious mental illness as schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder, panic disorder, obsessive-compulsive disorder, attention-deficit hyperactivity disorder, and autism. You may wish to include in your informed consent forms or other agreements information about the statutory requirement for you to consult with a physician when treating a patient for serious mental illness on a continuous and sustained basis and obtain permission to consult with the patient's physician.

Your initial assessment of a patient should include questions about recent or on-going medical treatment for serious mental illness, and the responses should be noted in the file. If, in the course of assessment and treatment, you suspect that the patient has a serious mental illness, you should discuss with the patient the value of a medical evaluation to determine whether medical care is indicated for the mental illness. You should document in the patient chart any and all discussions with the patient regarding continued treatment of a serious mental illness, the legal requirement for a medical evaluation by, and consultation with, a physician and whether this may affect your ability to continue to provide services to the patient.

The Education Law and Regents Rules do not define "continuous and sustained basis" or establish a fixed standard for all cases. The determination is subject to the professional judgment of the licensed mental health practitioner, based on his or her assessment of the patient and the treatment provided.

When it is determined that the patient has a serious mental illness, it is your responsibility to inform the patient of the requirement for a medical evaluation and consultation to determine and advise whether any medical care is indicated for the illness. For instance, a patient with major depressive disorder that does not respond to psychotherapy may have an underlying medical condition that could only be determined by a physician. The medical evaluation may be completed by a licensed physician and it is not necessary that a psychiatrist conduct the evaluation.

A patient may refuse to be evaluated by a physician or deny consent to allow the physician to consult with the licensed mental health counselor, marriage and family therapist, creative arts therapist or psychoanalyst. The licensed mental health practitioner should note the patient's refusal in the record and provide the patient with an appropriate recommendation or referral for treatment. If the licensee continues treatment for a serious mental illness, the licensee faces the possibility of being charged with unprofessional conduct.

If the physician's evaluation recommends a medical treatment that the patient refuses to accept, the licensed mental health practitioner should consult with the physician and determine whether the licensee is competent to continue to provide treatment within the licensee's profession. Section 29.1(a)(9) of Regents Rules requires a licensee to ensure that he or she is practicing within the scope of the professional license and competent to provide the services.

If it is determined that the patient should be referred to another practitioner or you are discontinuing services, you should provide treatment summaries or other information requested by the patient, in accordance with applicable laws and regulations for confidential communication.

Citations of Pertinent Law, Rules or Regulations:

Education Law, section 6509(2) - *"practicing beyond the scope"*

Education Law, section 8407 - *"boundaries of professional competency"*

Regents Rules, part 29.1(b)(9) - *"practicing or offering to practice beyond the authorized scope"*

Regents Rules, part 29.2(a)(3) - *"record of treatment and evaluation"*

Regents Rules, part 29.1(b)(9) - *"practicing beyond competency"*

Regents Rules, part 29.15 - *"special provisions for the professions of creative arts therapy, marriage and family therapy, mental health counseling and psychoanalysis"*

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